
THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1. Anchorage Municipal Code section 12.40.006 is hereby amended to read as follows (the remainder of the section is not affected and therefore not set out):

12.40.006 - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Other tobacco products means:

1. A cigar;
2. A cheroot;
3. A stogie;
4. A perique;
5. Snuff and snuff flour;
6. Smoking tobacco, including granulated, plug-cut, crimp-cut and ready-rubbed tobacco, and any form of tobacco suitable for smoking in a pipe or cigarette;
7. Chewing tobacco, including cavendish, twist, plug or scrap tobacco and tobacco suitable for chewing; [OR]
8. An article or product made wholly or in part of tobacco or a tobacco substitute or otherwise containing nicotine that is expected or intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, but not including cigarettes or smoking cessation products; or [a cigarette as defined in this section, a tobacco substitute prescribed by a licensed physician or a product that has been approved by the United States Food and Drug Administration for
sale as a tobacco use cessation or harm reduction product or for
other medical purposes and which is being marketed and sold
solely for that approved purpose; or |

[AN ARTICLE OR PRODUCT MADE OF TOBACCO OR A TOBACCO
SUBSTITUTE, BUT NOT INCLUDING A CIGARETTE AS DEFINED
IN THIS SECTION OR A TOBACCO SUBSTITUTE PRESCRIBED BY
A LICENSED PHYSICIAN.]

9. An electronic smoking device [−when sold with tobacco or
nicotine as part of a packaged unit,] which can be used to deliver
aerosolized or vaporized nicotine to the person inhaling from the
device, including, but not limited to, an e-cigarette, e-cigar, e-
pipe, vape pen or e-hookah. An electronic smoking device
includes any component, part, or accessory of such a device,
whether or not sold separately [−when sold as a packaged unit
with tobacco or nicotine], and includes any substance intended
to be aerosolized or vaporized during the use of the device,
whether or not it contains nicotine. An electronic smoking device
does not include any battery or battery charger when sold separately
or smoking cessation products.

[Any noncombustible device that provides a vapor of liquid
nicotine to the user or relies on vaporization of any liquid or solid
nicotine, including devices manufactured as e-cigarettes, e-
cigars, e-pipes or any other product name.]

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Retailer means a person in the State of Alaska who is engaged in the
business of selling cigarettes or other tobacco products at retail, but does
not include a marijuana retail establishment in Alaska licensed under
section 10.80.300 or state law engaged in the business of selling
electronic smoking devices.

Smoking cessation products means any FDA-approved tobacco
cessation drug, device, or a combination product that is intended to
help quit tobacco use, as those terms are defined in the Federal Food,

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(AO No. 2013-125, § 1, 1-1-14; AO No. 2018-107, § 1, 1-1-19)

Section 2. Anchorage Municipal Code section 12.40.025 is hereby amended to read
as follows (the remainder of the section is not affected and therefore not set out):

12.40.025 - Exemptions.

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D. Provided all persons otherwise subject to this chapter
comply with its requirements, electronic smoking devices
sold to a marijuana retail establishment in Alaska licensed
under section 10.80.300 or state law are exempt from the
tax imposed under this chapter.

Section 3[2]. This ordinance shall be effective on the first day of the next calendar
month following 90 days after passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this 4th day of November, 2020.

Chair

ATTEST:

Municipal Clerk
From: ASSEMBLY MEMBERS LAFRANCE AND CONSTANT


The proposed S-version of the ordinance amends the definition of “other tobacco products” with some changes, but not all, recommended by advocates representing state branches or chapters of national organizations. The changes are intended to reflect the model definitions used today by jurisdictions that have recently enacted legislation to tax e-cigarettes and vaping products, and similar to Senate Bill 15 passed in 2018 by the Alaska Legislature, an act that updated the state law to include electronic smoking products and products containing nicotine in those provisions regulating sales or possession by minors, and business licensing endorsements to sell cigarettes and tobacco products.

The model definition for “electronic smoking device” clarifies that batteries and chargers sold separately are not taxable. This is because they could be used for other purposes. We don’t want to inadvertently tax USB chargers or hearing aid batteries. The definition in this S-version differs from the model definition, on the advice of counsel and the Treasury Division, by not going as far as levying the tax on devices, components, parts or accessories which themselves do not contain tobacco or nicotine when sold separately from the liquid or substances derived from tobacco or nicotine. These devices and accessories will be subject to the tax only when they are sold as a packaged unit with tobacco or nicotine. The rationale is a vaping device, for example, with no nicotine or tobacco included is similar to cigarette rolling papers or a tobacco pipe and those are currently not subject to the tax when sold without tobacco. Moreover, vaping devices may be sold by marijuana retail stores for use with marijuana products, irrelevant to the purpose of this tax to reduce tobacco and nicotine usage. This S-version definition better aligns the inclusion of e-cigarettes and vaping products with the current Chapter 12.40 wholesale taxation regime, which was one goal of the ordinance.

The definition for "smoking cessation products" includes anything the FDA approves for tobacco cessation. It does NOT include harm reduction products. This ordinance is intended to support youth prevention. We do not want to create a lower-priced tobacco product that serves as an entry point, or training wheels, for youth tobacco addition. All tobacco use is harmful to youth.
Specifically, the substantive changes are:

- Added clarifying language in paragraph 8. of the “other tobacco products” definition to encompass newer products such as dissolvable tobacco lozenges, etc.

- Replaced language in paragraph 8. of the “other tobacco products” definition with reference to “smoking cessation products,” a newly defined term in the S-version that incorporates the federal definition for FDA-approved cessation products.

- Replaced the language in paragraph 9. of the “other tobacco products” definition with a new “electronic smoking device” definition to replace the e-cigarette definition.

- Adds a definition for “smoking cessation products” as described above.

We request your support for the S-version of the ordinance.

Prepared by: Assembly Counsel
Respectfully submitted: Suzanne LaFrance, Assembly Member
District 6, South Anchorage, Turnagain Arm, and Girdwood

Christopher Constant, Assembly Member
District 1, Downtown Anchorage
FROM: MAYOR

SUBJECT: ANCHORAGE HEALTH DEPARTMENT RECOMMENDATION IN SUPPORT OF AO 2020-89(S) ENDING THE EXCLUSION OF ELECTRONIC CIGARETTES AND VAPING DEVICES FROM THE EXCISE TAX ON TOBACCO PRODUCTS, BY AMENDING ANCHORAGE MUNICIPAL CODE CHAPTER 12.40.

The Anchorage Health Department respectfully submits the attached recommendation for the Assembly’s consideration regarding AO 2020-89(S) ending the exclusion of electronic cigarettes and vaping devices from the excise tax on tobacco products.

Prepared by: DeeAnn Fetko, Anchorage Health Department Deputy Director

Approved by: Heather Harris, Anchorage Health Department Director

Concur: William D. Falsey, Municipal Manager

Respectfully Submitted: Austin Quinn-Davison, Acting Mayor
Policy Recommendation

Excise Tax of Electronic Cigarettes and All Electronic Components of Electronic Smoking Devices

Policy:
The Anchorage Health Department (AHD) supports ending the exclusion of electronic cigarettes and vaping devices that are used for consumption from the excise tax on tobacco products, and to broaden the scope of products that are to be taxed to include all components of electronic smoking devices, whether or not sold separately, except batteries or chargers.

What is an electronic cigarette (e-cigarette) or vape?
According to the Centers for Disease Control and Prevention, an e-cigarettes (or vapes) produce an aerosol by heating a liquid that usually contains nicotine. Users inhale this aerosol into their lungs. Bystanders can also breathe in this aerosol when the user exhales into the air. E-cigarettes are known by many different names and are sometimes called “e-cigs,” “e-hookahs,” “mods,” “vape pens,” “vapes,” “tank systems,” and “electronic nicotine delivery systems (ENDS).” (7)

Justification:
Increase of Reported Usage: The use of electronic cigarettes and vaping devices is increasing in Alaska and nationwide; accessibility and the cost of vaping devices contribute to these risky health behaviors. According to the Youth Risk Behavior Study (YRBS), vaping among Alaska high school students is rising. In 2017, 15.7% of Alaska High School students reported use of electronic cigarettes or vaping devices compared to 26% of Alaska high school students reporting vaping use in 2019. (6) The self-report study shows an upward trajectory of electronic cigarette usage among Alaskan youth and may continue to rise without a public health intervention. Nationwide, the use of electronic cigarettes is reported by 37% of US 10th-grade adolescents (2); and it is associated with subsequent initiation of combustible cigarette smoking (3).

Best Practices: The Centers for Disease Control and Prevention (CDC), states "Increasing the price of tobacco products is the single most effective way to prevent initiation among nonsmokers and reduce consumption."(5) The CDC lists tobacco taxes as a best practice for tobacco prevention and control because they: help keep kids from starting, encourage adults to quit, and can provide funding for much needed health and cessation programs. Since an electronic cigarette or vaping device cannot be used without its electrical components, inclusion of taxing the electronic components of the device and not just the nicotine-containing liquid supports the CDC best practices model for prevention and to discourage use.

Cost to Our Healthcare System: The economic costs of smoking and vaping to Alaska and its citizens is immense. As of November 5, 2019, more than 2,000 vaping-related illnesses and 39 deaths have been reported to the CDC. (1) The State of Alaska Department of Health and Social Services estimated that 697 Alaskans died each year from 2012-2016 from smoking-related diseases, representing an annual average of $264 million in lost productivity. More Alaskans die each year from the direct effects of smoking tobacco than from suicide, motor vehicle crashes, chronic liver disease and cirrhosis, homicide, and HIV/AIDS combined. Moreover, 2014 estimates indicate that smoking cost Alaska approximately $575 million in direct medical expenditures. (4)
References:


