Introduced 2017-10 (Sub-1): December 7, 2017
Tabled: 2017-10 (Sub-1) February 1, 2018
Introduce 2017-10 (Sub-2): April 5, 2018:
Public Hearing: May 10, 2018
Enacted Ord. No. 2017-10(Sub-2): May 10, 2018

CITY OF DILLINGHAM, ALASKA

ORDINANCE NO. 2017-10(Sub-2)

AN ORDINANCE OF THE DILLINGHAM CITY COUNCIL AMENDING DILLINGHAM MUNICIPAL CODE TITLE 4 – REVENUE AND FINANCE BY THE ADDITION OF A NEW CHAPTER 4.24 IMPOSING AN EXCISE TAX ON CIGARETTES AND TOBACCO PRODUCTS

WHEREAS, Alaska has some of the nation's highest rates of smoking and tobacco use; and

WHEREAS, an excise tax on tobacco products benefits public health through decreased tobacco use; and

WHEREAS, an excise tax on tobacco products will generate additional revenues for the city;

NOW, THEREFORE, BE IT ENACTED BY THE DILLINGHAM CITY COUNCIL:

Section 1. Classification. This is a code ordinance.

Section 2. Amendment to Title 4. That Dillingham Municipal Code Title 4 – Revenue and Finance is hereby amended by the addition of a new Chapter 4.24 – Excise Tax on Cigarettes and Tobacco Products to read as follows:

Chapter 4.24

EXCISE TAX ON CIGARETTES AND TOBACCO PRODUCTS

Sections:

4.24.010 Definitions.
4.24.020 Tax on cigarettes.
4.24.030 Tax on other tobacco products.
4.24.040 Intent and purpose of chapter and taxpayer.
4.24.050 Exemptions.
4.24.060 Registration required to acquire cigarettes and other tobacco products exempt of tax for resale outside the city; eligibility of applicant.
4.24.063 Expiration and renewal of registration.
4.24.065 Suspension or revocation of registration.
4.24.070 License required for dealers in cigarettes or other tobacco products; issuance.
4.24.080 License fee.
4.24.090 Expiration and renewal of licenses.
4.24.100 Transfer of license.
4.24.110 Refund of tax or license fee.

4.24.120 Display of license; surrender of license; suspension or revocation of license.
4.24.125 Tax returns.
4.24.130 Involuntary returns.
4.24.135 Amended tax returns.
4.24.140 Application of payments.
4.24.145 Prohibited acts and penalties.
4.24.150 Civil fraud.
4.24.155 Tax lien.
4.24.160 Interest on unpaid tax.
4.24.165 Taxpayer, licensee, or other person remedies.
4.24.170 Inspection and maintenance of documents and records.
4.24.175 Administrative regulations.
4.24.180 Confidentiality of records.

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

""Brought into or acquired" includes all manners, ways, and modes of bringing into or obtaining cigarettes or other tobacco products in the city.

"Buyer" means a person who brings into or acquires in the city cigarettes or other tobacco products for his own consumption.

"Cigarette" means a roll for smoking of any size or shape, made wholly or partly of tobacco, whether the tobacco is flavored, adulterated, or mixed with another ingredient, if the wrapper or cover of the roll is made of paper or a material other than tobacco.

"Department" means the city finance department.

"Distributor" means a person who brings cigarettes or other tobacco products or causes them to be brought into the city, and who sells or distributes them to others for resale.

"Inventory count" means the effective date and details of a count by description, including the trade name and brand, purchase price and total quantity on-hand of all cigarettes and other tobacco products. Detail must be subtotaled and distinguished between cigarettes and other tobacco products which are taxable and cigarettes and other tobacco products which were acquired exempt of the city excise tax under this chapter.

"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, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or cigarette;

(7). Chewing tobacco, including cavendish, twist, plug, scrap, and tobacco suitable for chewing;

(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, but not including 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;

(9). 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 under any other product name.

"Person" includes an individual, company, partnership, joint venture, joint agreement, association (mutual or otherwise), corporation, estate, trust, business trust, receiver or trustee, syndicate, or political subdivision of this state, or combination acting as a unit including individuals who are employees or officers of any of the such entities who are under a duty to perform an act concerning which a violation of this chapter could occur. It is the intent of this chapter that such persons be personally liable for unremitted taxes.

"Place of business" means a place where cigarettes or other tobacco products are sold, or where they are brought or kept for the purpose of sale or consumption, including a vessel, vehicle, airplane, or train.

"Purchase" means the acquisition of ownership or possession of cigarettes or other tobacco products from any source.

"Retail" means a sale to a consumer or to any person for any purpose other than for resale.

"Retailer" means a person who is engaged in the business of selling cigarettes or other tobacco products at retail to consumers.

"Sale" includes a sale, barter, exchange, and every other manner of transferring the ownership of personal property.

"Tax" means the cigarette and other tobacco products excise tax assessed pursuant to this chapter.

"Tax return" means the monthly report to be submitted to the department as required by this chapter.

"Vending machine operator" means a person who brings or causes cigarettes or other tobacco products to be brought into the city and who owns or operates a vending machine that dispenses cigarettes, whether the vending machine is installed on the person's own premises or installed elsewhere.

"Wholesale price" means the price paid by a distributor or retailer for cigarettes or other tobacco products.

4.24.020 Tax on cigarettes.

A. The municipality hereby levies an excise tax of **100** mils on each cigarette brought into the city after **June 30, 2018**. Cigarettes upon which the tax is imposed are not again subject to the tax when acquired by another person.

4.24.030 Tax on other tobacco products.

A. An excise tax of **45** percent of the wholesale price is levied on tobacco products, other than cigarettes, brought into the city. The tax is levied effective **July 1, 2018**. Tobacco products upon which this tax is imposed are not again subject to this tax when acquired by another person.

4.24.040 Intent and purpose of chapter and taxpayer.

A. It is the intent and purpose of this chapter to collect the tax from the person who:

1. brings or causes cigarettes or other tobacco products to be brought into the city;

2. makes, manufactures, or fabricates cigarettes or other tobacco products in the city;

3. ships or transports cigarettes or other tobacco products into the city; or

4. commits, or is complicit in, an act of tax evasion resulting in the city being deprived of the tax due under this chapter.

B. Notwithstanding anything to the contrary contained in this chapter, the taxpayer shall be those persons described in this section and no others.

4.24.050 Exemptions.

A. **Supremacy Clause**

The tax imposed under this chapter does not apply to cigarettes and other tobacco products if the United States Constitution or other federal laws prohibit the levying of this tax on such products by the city.

B. **Resale Outside the City**

Provided all persons otherwise subject to this chapter comply with its requirements, any distributor who brings cigarettes or other tobacco products into the City for resale outside of the City shall be allowed a per pack of cigarettes tax credit or a tax credit based on the wholesale price of the tobacco products.

4.24.060 Registration required to acquire cigarettes and other tobacco products exempt of tax for resale outside the city; eligibility of applicant.

A. **Except as otherwise provided herein,** no person may acquire cigarettes or other tobacco products in the city exempt of the tax unless that person has registered with the department in accordance with this chapter. No licensee shall claim any deduction under this chapter unless cigarettes or other tobacco products for which any deduction is claimed have been sold or transferred to a person registered with the department in accordance with this chapter prior to such sale or transfer.

1. Any person whose principal place of business is located outside the City and who acquires cigarettes or other tobacco products in the City for resale outside the City at his or her principal place of business must apply for registration with the department to acquire cigarettes or other tobacco products in the City exempt of the tax provided such person has a valid State of Alaska business license with a tobacco endorsement and relevant line of business code or equivalent thereon.
2. A business having more than one location outside the City shall apply with the department to register each separate location that will or does receive tax-exempt cigarettes and other tobacco products directly from a distributor in the City.

B. Application for registration to acquire cigarettes or other tobacco products in the City exempt of the tax shall be on a form provided by the department, and shall include the following information and such other information as the department may require:

1. The applicant's name and mailing address;
2. A copy of the applicant's current State of Alaska business license, including a tobacco endorsement and the line of business (LOB) code or equivalent;
3. The business name and location(s) where cigarettes and other tobacco products will be sold;
4. The applicant's signature, firmly binding the applicant, to an agreement that, in the event the department revokes the applicant's registration in accordance with Section 4.24.065, the applicant will become ineligible to register under this section for a period of two years, beginning with the date of revocation;
5. The applicant's signature confirming that the applicant fully understands the relevant compliance requirements of this chapter;

6. Each signature shall be by a person or agent having such authority to sign and bind the applicant and shall be under penalty of prosecution for unsworn falsification.

C. All persons registered under this section shall maintain compliance with all relevant State of Alaska laws and administrative requirements related to the registered business, including but not necessarily limited to: business license, tobacco endorsement, and any related required periodic reporting.

D. All persons applying for registration under this section shall be current with all financial obligations due to the City.

E. A registration under this section is valid from the date the department approves registration until December 31 that year.

F. The department may refuse to register an applicant if there is reasonable cause to believe that

1. The applicant has structured its business organization to avoid ineligible status;
2. The applicant has structured its business to avoid payment of amounts due under this chapter; or
3. The applicant is responsible for any act or omission by any person which withholds, misstates or provides false or misleading information required by the department.

G. A person whose registration is revoked becomes ineligible to register under this section for a period of two years, beginning with the date of revocation.

H. A natural person whose acts result in revocation of registration becomes ineligible to register under this section.

I. The department shall maintain and publish a current listing of businesses registered under this section for use by a licensee to confirm if a merchant customer is eligible to purchase cigarettes and/or other tobacco products exempt of the tax imposed by this chapter.

4.24.063 - Expiration and renewal of registration.

A. Registration under section 4.24.060 expires on December 31. A person, upon application to the department, may, on or before December 31, renew registration for one calendar year from the expiration date.

1. If there is a change in ownership of the registered business, registration shall automatically expire.
2. If the person who signed the application ceases to have the authority to bind the registered business, then registration shall automatically expire.
3. If the name of the registered business is changed or the registered business is moved to another location, the registration shall automatically expire. Upon application to the department, registration may be renewed without fee for the new name and/or new location of the business for the balance of the 12-month term of registration.
4. If a person who is ineligible to register under section 4.25.060 becomes an owner, partner, member, officer, director, or manager of a registered business, registration of that business shall automatically expire.

4.24.065 - Suspension or revocation of registration.

A. The department may suspend or revoke a person's registration under section 4.24.060 for any violation of this chapter by the officers, directors, owners, members, or employees of the applicant business.

4.24.070 License required for dealers in cigarettes or tobacco products; issuance.

A. No person may sell, purchase, possess, or acquire cigarettes or other tobacco products in the city as a manufacturer, distributor, retailer, or vending machine operator, without a license issued under this chapter.

B. The department, upon application and payment of the fee, shall issue a license to the applicant. A copy of the applicant's active State of Alaska business license with a tobacco endorsement is required and must accompany the application. The application must include the following information:

1. the applicant's name and address;

2. the name under which the cigarette or other tobacco products business will be conducted;

3. the applicant's cigarette or other tobacco products business categories as a manufacturer, distributor, retailer or vending machine operator;

4. in the case of vending machine operator, the number of vending machines which will be operated; and

5. other information required on the department's application form.

C. The department may refuse to issue a license if there is reasonable cause to believe that the applicant has willfully withheld information requested to determine the applicant's eligibility to receive a license, or if there is reasonable cause to believe that information submitted in the application is false or misleading and is not made in good faith.

D. A license required by this chapter is in addition to any other license required by law.

E. A license issued under this chapter shall include:

1. the name and address of the licensee and name of licensed business;

2. the type of business to be conducted;

3. the address at which the business is conducted; and

4. the year for which the license is issued.

4.24.080 License fee.

A. For each license issued under this chapter, and for each renewal, the fee is $50 per calendar year. This license shall be in addition to the regular business license required under Dillingham Municipal Code (DMC).

4.24.090 Expiration and renewal of licenses.

A. A license issued under this chapter expires on December 31 of each respective year. A licensee, on application to the department accompanied by the renewal fee, may, before the expiration of the license, renew the license for one year from the expiration date of the license. If the licensee moves the business to another location within the city, the licensee shall, upon application to the department, be reissued a license for the new location for the balance of the unexpired term. A person whose license is lost, stolen, or defaced shall immediately file an application with the department for reissuance of the license for the balance of the unexpired term.

4.24.100 Transfer of license.

A. A license issued under this chapter is not assignable or transferable. However, in the case of death, bankruptcy, receivership or incompetency of the licensee, or if the business of the licensee is transferred to another person by operation of law, the department may in its discretion extend the license for a limited time to the executor, administrator, trustee, or receiver, or the transferee of the licensee.

4.24.110 Refund of tax or license fee.

A. The department shall not refund the license fee paid pursuant to this chapter upon the surrender or revocation of a license after the beginning of the license year. Upon application, the department may refund a license fee that is paid or collected in error.

B. If a remittance by a licensee exceeds the amount due, and the department, on audit of the account in question, is satisfied that this is the case, the department shall, upon written request of the licensee, refund the excess to the licensee without interest.

C. Any claim for refund filed more than one year after the due date of the tax is forever barred.

4.24.120 Display of license; surrender of license; suspension or revocation of license.

A. A license issued under this chapter must be prominently displayed at the licensee's place of business.

B. A licensee shall surrender a license within ten days after:

1. a revocation of a license;

2. a cessation of business;

3. change of ownership of; or

4. a change of a place of business.

C. The department may suspend or revoke a license issued under this chapter:

1. for violation of this chapter or a regulation of the city adopted pursuant to this chapter; or

2. if a licensee ceases to act in the capacity for which the license was issued.

3. If the licensee fails to submit their taxes due in a timely manner as required by Code.

D. No person whose license is suspended or revoked shall sell cigarettes or other tobacco products or permit cigarettes or other tobacco products to be sold during the period of the suspension or revocation on the premises occupied or controlled by that person. No disciplinary proceeding or action is barred or abated by the expiration, transfer, surrender, renewal, or extension of a license issued under this chapter.

4.24.125 Tax returns.

A. On or before the last day of each calendar month a licensee shall submit to the department a tax return, upon forms provided by the department, for each license, and submit payment for the taxes due.

1. The return shall be signed under penalty of perjury by the licensee or his agent and must include:
   (a) the name and address of the licensee;
   (b) the name and address of the person filing the return, if different from the licensee;
   (c) the number of the license issued under this chapter;
   (d) the name under which the cigarette or tobacco business is being conducted;
   (e) the number of cigarettes manufactured, brought into or acquired in the city during the preceding month from any source whatsoever;
   (f) the wholesale price of all other tobacco products brought into or acquired in the city during the preceding month from any source whatsoever;
   (g) the names of persons from whom cigarettes and other tobacco products were brought into or acquired in the city during the preceding month from any source whatsoever;
   (h) the number of cigarettes brought into or acquired in the city from each person named in subparagraph g of this section;
   (i) deductions claimed for the number of cigarettes and the wholesale price of other tobacco products for which exemptions are claimed under this chapter;
   (j) deductions claimed for the number of cigarettes and the wholesale price of other tobacco products, specified in the return in response to subparagraphs e and f of this section, for which the tax has been paid previously by another person;

(k) the amount of tax due on the nonexempt cigarettes manufactured, brought into or acquired in the city during the preceding month; and the amount of tax due based on the wholesale price of nonexempt other tobacco products manufactured, brought into or acquired in the city during the preceding month; and

(l) other information and supporting documentation which may be required by the department with the return.

B. Each licensee shall report the cigarette and other tobacco product sales for which an exemption is claimed as a deduction on its monthly tax return to the department and shall provide a copy of an invoice or other document satisfactory to the department supporting each sale of exempt product.

C. A tax return must be filed even if there were no cigarettes or other tobacco products manufactured, brought into or acquired in the city during the preceding month.

D. The taxes imposed under this chapter and the return required by this section must be received by the department or postmarked on or before the last day of each calendar month following the month covered by the return.

4.24.130 Involuntary returns.

A. If a licensee fails to file a return as required by this chapter, or when the department finds that a return is not supported by the records to be maintained pursuant to this chapter, the department may prepare and file a return on behalf of the licensee. Involuntary returns filed under this section may be premised upon any information that is available to the department, including, among other things, comparative data for similar businesses. A licensee for whom an involuntary return is filed under this section shall be subject to liability for the tax stated in the return, as well as subject to the penalties and interest provided for in this chapter. A return prepared by the department is, prima facie, good and sufficient for all legal purposes. However, nothing prevents the licensee from presenting evidence on an appeal to rebut the presumed sufficiency of a return prepared by the department, nor does the presumption of sufficiency alter the parties' respective burdens of proof once the licensee has presented evidence to rebut that presumption.

4.24.135 Amended tax returns.

A. Any tax return filed hereunder may be amended by the licensee within one year after the due date of the tax return being amended. No amendment by the licensee shall be allowed after this one-year period.

B. Any tax return prepared and filed by the department on behalf of the licensee may be amended by the licensee within one year of the date filed by the department. No amendment by the licensee shall be allowed after this one-year period.

4.24.140 Application of payments.

A. Any payment submitted to the department for any taxes, penalties, interest, or cost due under any provision of this chapter or any return or any finding or determination by the

department under this chapter shall be credited to the monthly tax period for which remitted, first to the payment of costs and then to penalties, interest, and taxes in that order.

4.24.145 Prohibited acts and penalties.

No person may, in violation of or without complying with the provisions of this chapter,:

1. import cigarettes or other tobacco products into the city;

2. sell, transfer or acquire cigarettes or other tobacco products in the city; or

3. participate in the importation into the city or in the sale, transfer, or acquisition within the city of cigarettes or other tobacco products.

B. If a person fails to pay the full amount of the tax due and/or file a tax return or report required under this chapter by the due date, a penalty of 10% of the taxes due shall be assessed.

1. The penalty shall be computed on the unpaid balance of the tax liability as determined by the department.

2. The penalties provided for in this section shall be in addition to all other penalties and interest provided for under this chapter.

C. If a properly filed amended return reduces the total tax liability or the tax required to be paid, or the department reduces the tax liability, the related penalty will be reduced accordingly.

D. All penalties and remedies enumerated in this chapter are cumulative.

4.24.155 Tax lien.

A. If any person who is liable to pay a tax or license fee under this chapter neglects or refuses to pay the tax or licensee fee after demand, the amount, including interest, additional amounts, or assessable penalty together with costs, is a lien in favor of the city upon all property and rights to property, real or personal, belonging to that person.

B. A notice of lien for amounts described in this section may be recorded in the office of the district recorder, Bristol Bay Recording District, Third Judicial District and in the State Recorder's Office UCC Central File System; however failure to so record said interests shall not be construed as a waiver or abrogation of any and all priorities, rights and interests of the city at law and in equity. Upon full satisfaction of payment of all charges, interest, penalties and costs due and owing to the city, the city shall file a certificate discharging the lien.

C. In an action to enforce a lien, the court shall allow as part of the costs all money paid for drawing the lien and for filing and recording the lien claim, and a reasonable attorney fee for the foreclosure of the lien.

4.24.160 Interest on unpaid tax.

A. In addition to any penalties imposed by this chapter, interest at the rate of 6 percent per annum shall be charged on the unpaid balance of delinquent taxes.

4.24.165 Taxpayer, licensee, or other person remedies.

A. Any person aggrieved by any action of the department in issuing, suspending, revoking, or refusing to issue any license or registration for exemption under this chapter or in fixing the amount of taxes, penalties, interest, or costs under this chapter should provide written protest notice to the department. The city will rule on each protest within 30 days of receipt of the notice by the city.

4.24.170 Inspection and maintenance of documents and records.

A. Every person subject to this chapter shall keep a complete and accurate record of all cigarettes and other tobacco products manufactured, purchased, sold, brought into, transported outside of for the purpose of sale, or acquired in the city by such person.

1. Except in the case of a manufacturer, the records shall include a statement containing the name and address of the person from whom cigarettes or other tobacco products were purchased or acquired, the date of delivery, the quantity of cigarettes and other tobacco products, the trade name and brand, and the price paid for other tobacco products purchased.

2. Each invoice or other documentation of the sale of cigarettes or other tobacco products within the city shall state whether the tax imposed under this chapter has been paid.

3. Persons subject to this chapter shall keep such other documents and records as the department prescribes.

4. All documents and records required by this section shall be preserved by persons subject to this chapter for three years. All records and documents required by this chapter to be kept or retained are subject to inspection within the city upon demand by the department.

B. A licensee transferring or selling cigarettes or other tobacco products to a Section 4.24.060 registrant must keep a record of cigarettes and other tobacco products transferred or sold to such person.

C. The finance director may, during business hours, enter the business premises of a licensee where cigarettes or other tobacco products are kept or stored, so far as it may be necessary for the purpose of examining such products and the related business records.

4.24.175 Administrative regulations.

A. The finance director, or designee, may adopt regulations providing for the application and interpretation of this chapter and providing methods and forms for reporting and collecting the tax imposed by this chapter.

4.24.180 Confidentiality of records.

A. All tax returns, documents, records, and/or reports filed with the department pursuant to the provisions of this chapter and all data obtained from such tax returns, documents, records, and/or reports are confidential and may not be released for inspection by any person except the finance department; provided, however, that such data may be released upon court order.

B. It is the duty of the finance director to safely keep tax returns, documents, records, and/or reports and all data taken thereof secure from public and private inspection except as provided by this chapter.

C. This section does not prohibit the department from compiling and publishing statistical evidence concerning the data submitted; provided, that no identification of particular tax returns, documents, records, and/or reports is made. Nothing in this section shall be deemed to prohibit the finance director from examining the tax returns, documents, records, and/or reports; provided, that no information obtained from specific or identifiable tax returns shall be made available to persons other than those authorized to review them under subsection A of this section.

Section 3. Amendment to Section 1.20.040. That Dillingham Municipal Code Section 1.20.040 - Minor offense fine schedule is amended to by the addition of new language to read as follows:

Code Section	Offense	Penalty/Fine
4.24.	Failure to register as a dealer in tobacco products.	$500
4.24.	Failure to file tobacco excise tax return.	$500
4.24.	Falsifying tobacco excise tax records.	$500
4.24.	Failure to allow inspection of records.	$500

Section 4. Effective Date. This ordinance is effective July 1, 2018.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on May 10, 2018.

Alice Ruby, Mayor

[SEAL]

ATTEST:

Lori Goodell, City Clerk

City of Dillingham Information Memorandum Agenda of: April 5, 2018

Attachment to:
Ordinance No. 2017-10 **/ Resolution No.** _____

Subject:

An Ordinance amending Dillingham Municipal Code Title 4 - Revenue and Finance by the addition of a new chapter imposing a tobacco excise tax in the City of Dillingham, Alaska

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City Manager: Recommend Approval

Signature: Ted Dan 4/2/18

Route to	Department Head	Signature	Date
	Finance Director		
X	City Clerk		

Fiscal Note: ☐ Yes ☑ No **Funds Available:** ☐ Yes ☐ No

Other Attachments:

- An advertisement for a Public Hearing on Ordinance No. 2017-10 was placed in the March 1st edition of the Bristol Bay Times as required to be advertised in a local newspaper five days in advance of the public hearing. It was readvertised in the March 29th edition due to the March Council meeting being cancelled.

Summary Statement:

This Ordinance serves two purposes;

First this additional excise tax will reduce tobacco use; especially among the youth.

Second as a new revenue stream. This is important as the City has experienced declining revenue over the past few years. Sales tax revenue is down, as well as State funded programs.

This ordinance was vetted through the Finance and Budget Committee and has been reviewed by the City Attorney; this revised version is now recommended to the Council.

Ordinance No. 2017-10 **/ Resolution No.** _____

Summary Statement continued:

The local vendors that will be effected by this new tax were invited to meet with the Finance and Budget Committee. The meeting was scheduled December 1, 2017; one vendor showed to the meeting.