NORTHWEST ARCTIC BOROUGH ASSEMBLY
ORDINANCE 16-03

AN ORDINANCE OF THE NORTHWEST ARCTIC BOROUGH ASSEMBLY AMENDING TITLE SEVEN OF THE BOROUGH CODE TO REVISE THE TOBACCO EXCISE TAX AND FOR RELATED PURPOSES.

WHEREAS: the Borough Assembly wishes to amend Chapter 7.12 levying an excise tax on the act of bringing cigarettes or other tobacco products into the Borough; and

WHEREAS: the Assembly has determined that it is in the Borough's best interest to amend the tobacco excise tax.

NOW THEREFORE BE IT ENACTED BY THE NORTHWEST ARCTIC BOROUGH ASSEMBLY:

Section 1: Chapter 7.12 of the Borough Code is amended as follows, with additions indicated by **underline in blue** and deletions by ~~**strikethrough in red**~~:

Chapter 7.12
TOBACCO TAX

7.12.010 Definitions.

In this chapter:

A. "Borough" means the Northwest Arctic Borough.

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

C. "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 pure or nearly pure tobacco.

D. "Department" means the Northwest Arctic Borough Finance Department.

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

F. "Other tobacco product" 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, big leaf, 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; and

9. Any noncombustible device that provides a vapor or 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.

G. **"Pack" means an individual container of cigarettes (typically 20 or 25 cigarettes).**

H. **"Retailer" means any person engaged in the business of selling cigarettes or other tobacco products directly to consumers in the borough.**

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

J. "Wholesale price" means the price the distributor pays for a tobacco product, after deduction of a discount or other reduction received by the distributor for quantity or cash.

7.12.020 Excise Tax on tobacco products.

A. The borough hereby levies an excise tax of $2.00 per pack of cigarettes brought into or acquired in the borough after ~~January~~ **July** 1, 2016.

B. The borough hereby levies an excise tax on other tobacco products at the rate of 45 percent of the wholesale price of tobacco products brought into or acquired in the borough after ~~January~~ **July** 1, 2016.

C. It is the intent and purpose of this chapter to provide for the collection of the excise tax from the distributor who brings cigarettes or other tobacco products into the borough. The excise tax is levied when a distributor brings, or causes to be brought, cigarettes or other tobacco products into the borough from outside the borough for sale. **The excise tax does not apply to retailers unless a retailer directly brings cigarettes or other tobacco products into the borough for sale.**

7.12.030 Exemptions.

The tax imposed under this chapter does not apply to:

A. Cigarettes or other tobacco products brought into the borough by an exchange, commissary, or ship's stores operated by one of the uniformed services of the United States as defined in 5 U.S.C. 2101.

B. Cigarettes or other tobacco products if federal laws prohibit the levying of the tax on the product by the borough.

C. Cigarettes or other tobacco products brought into the borough for sale outside of the borough. Any distributor who brings cigarettes or other tobacco products into the borough for sale outside of the borough shall be allowed a per pack of cigarettes tax credit or a tax credit based on the wholesale price of the tobacco products. The distributor must maintain sufficient documentation to verify the wholesale price and shipping for the tobacco products.

7.12.040 Credit for Local Tobacco Excise Tax Paid.

A credit is allowed ~~to the extent~~ **for** a tobacco excise tax **that** was paid to a municipality within the borough; provided, however, ~~the~~ the amount of such credit shall not exceed:

A. $1.00 per pack for each pack of cigarettes brought into or acquired in the borough **regardless of quantity**.

B. 22.5 percent of the wholesale price of other tobacco products brought into or

acquired in the borough.

7.12.050 Registration.

A. No person may sell, purchase, possess or bring cigarettes or other tobacco products into the borough as a distributor without first registering with the borough. The registration shall be on a form provided by the Department and must include the information requested by the Department.

B. The registration required by this chapter is in addition to any other registration or license required by law.

C. A person who brings cigarettes or other tobacco products, or causes them to be brought, into the borough, and who sells or distributes them to others in the borough without being registered to do so is considered to have possession of the tobacco products as a distributor and is personally liable for the tax, plus a penalty of 100 percent of the tax due.

7.12.060 Quarterly tax returns; penalties and interest for delinquency.

A. Every distributor shall, on or before the last day of the month succeeding the end of each quarter year ending March 31, June 30, September 30 and December 31, complete an excise tax return for the preceding quarter year upon forms to be furnished by the borough, and sign and transmit the tax return to the Department. The tax return must include a total count of the number of packs of cigarettes and the wholesale price of the other tobacco products brought into the borough during the preceding quarter, the amount of excise tax due, a count of the packs of cigarettes and the wholesale price of the other tobacco products for which an exemption or credit is claimed, the amount of tax exemption or credit claimed under sections 7.12.030-.040, and such other information and supporting documentation as the borough may require.

B. Failure to pay penalty. A penalty of six percent of the taxes due shall be incurred automatically when a person fails to pay the full amount of the tax due under this chapter within seven calendar days following its due date. If a person fails to pay the full amount of the tax due within 16 calendar days after its due date, the six percent penalty for failure to pay shall be increased automatically to 15 percent.

C. Failure to file penalty. A penalty of six percent of the taxes due shall be incurred automatically when a person fails to file a tax return or report within seven calendar days following its due date under this chapter. If a person fails to file the tax return or report within 16 calendar days after its due date, the six percent penalty for failure to file shall be increased automatically to 15 percent.

D. For all penalties incurred:

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

2. Notice of the penalties incurred and to be incurred shall be given to the person responsible for payment of the taxes or for filing the tax return or report when such tax payment or tax return or report is delinquent for seven calendar days after its due date.

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

4. If a properly filed amended tax 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.

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

E. In addition to any penalties imposed by this chapter, interest at the rate of 12 percent per annum shall be charged on the unpaid balance of delinquent taxes.

7.12.070 Delinquency: failure to submit tax return or remit taxes.

A. Whenever the Department reasonably believes that a tax return contains inaccurate reporting or whenever any distributor has become delinquent in the submission of the required quarterly tax return or in remitting the excise tax, the Department shall mail to the delinquent distributor's last known address a written demand by certified mail, tax return receipt requested, for submission of the corrected or required excise tax return and remittance within ten days. In the event of noncompliance with such demand, the Department may make an excise tax assessment against the delinquent distributor, the assessment to be based on an estimate of the taxable wholesale price paid by the distributor during the quarterly period in question. A copy of the assessment shall be sent to the distributor at the distributor's last known address by certified mail, return receipt requested. The distributor shall have a right to a hearing before the Department at which time the distributor shall make available for examination the books, papers, records and other documents pertaining to the period involved in the assessment. The distributor may exercise the right to a hearing by delivering to the Department within 15 days of the date the notice was mailed, a written request for a hearing. The Department shall establish a date and time for a hearing to be held within ten days of receipt of the request unless a later time is mutually agreeable. The person conducting the hearing shall issue an amended assessment if it is determined that an amendment should be made. The amended assessment, or the original assessment if no amendment is made within five days of the hearing, shall be the final assessment for the purpose of determining the distributor's liability to the borough. If no timely request for a hearing is made, the original assessment shall be the final assessment 30 days after the mailing of the notice of the original assessment, unless the seller has submitted an accurate tax

return within the 30 days.

B. The borough may file a civil action for collection of any taxes, penalty or interest due after making a demand or assessment under subsection (A) of this section.

C. Whenever any distributor fails to submit the required quarterly tax return after notice given as provided in subsection (A) of this section, the Department shall require such distributor to submit tax returns on a monthly basis.

7.12.080 Records and inspection.

To facilitate the administration and enforcement of this chapter, each distributor shall maintain and keep for a period of three years all of the quarterly excise tax returns, reports, forms and other records prescribed by this chapter or as prescribed hereafter by the Department. The Department, or the Department's designee, is specifically authorized and empowered to examine and inspect at all reasonable hours the books, records and other documents of any distributor, including the distributor's state business license, in order to carry out the provisions of this chapter.

7.12.090 Sale of business; final tax return; purchaser liability.

A. If a distributor sells, assigns, transfers, conveys, leases, forfeits or abandons the business to another person, the distributor shall make a final excise tax return within 15 days after the date of selling, assigning, transferring, conveying, leasing, forfeiting or abandoning the business showing that all tax obligations imposed by this chapter have been paid. The purchaser, successor, transferee, lessee, assignee, creditor or secured party shall withhold a sufficient portion of the purchase money to pay the amount of any excise taxes, penalties and interest as may be due and unpaid to the borough. If the purchaser, assignee, transferee, lessee, successor, creditor or secured party fails to withhold from the purchase money, or fails to otherwise provide for or make the payment of the taxes, interest and penalty owed by the business as provided in this chapter, the purchaser, assignee, transferee, lessee, successor, creditor or secured party shall be personally liable for the payment of the taxes, penalties and interest accruing and unpaid to the borough on account of the operation of the business of any former owner, owners, operators or assigns.

B. Before the sale, lease, assignment, transfer, or other disposition of the business is completed, the distributor shall file with the Department an informational notice identifying the name and address of each person or entity involved in the transaction, the nature of the transaction, and the effective date of the transaction.

7.12.100 Tax lien; interest and penalties.

The tax, interest, and penalty imposed under this chapter shall constitute a lien in favor of the borough upon the assets or property of the distributor of tobacco products within the borough. The lien arises upon delinquency and continues until liability for the amount is satisfied or the property of the delinquent distributor is sold at a tax lien foreclosure sale. The lien is not valid as against a mortgagee, pledge, purchaser, or judgment creditor until notice of the lien is filed in the recorder's office for the Kotzebue Recording District.

7.12.110 Penalty violation.

A violation of any of the provisions of this chapter is a class B misdemeanor.

Section 2: This Code Ordinance shall be effective immediately.

PASSED AND ADOPTED THIS 15th **DAY OF** April **2016.**

Carl Weisner, Assembly President

PASSED AND APPROVED THIS 15th **DAY OF** April **2016.**

Clement Richards, Sr., Mayor

SIGNED AND ATTESTED TO THIS 15th **DAY OF** April **2016.**

Stella Atoruk, Borough Clerk

ATTEST:

First Reading: March 22, 2016
Second Reading: April, 15 **2016**