Kodiak Island Borough Assembly Regular Meeting Agenda

Thursday, September 17, 2020, 6:30 p.m., Assembly Chambers

Page

- 1. INVOCATION
- PLEDGE OF ALLEGIANCE
- ROLL CALL
- APPROVAL OF AGENDA AND CONSENT AGENDA

All items listed with an asterisk (*) are considered to be routine and noncontroversial by the Assembly and will be approved by one motion. There will be no separate discussion of these items unless an Assembly member so requests, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda.

- *APPROVAL OF MINUTES
 - A. *Regular Meeting Minutes Of September 3, 2020.
- 6. CITIZENS' COMMENTS (Limited To Three Minutes Per Speaker)
- AWARDS AND PRESENTATIONS
- 8. COMMITTEE REPORTS
- PUBLIC HEARING
- BOROUGH MANAGER'S REPORT
- 11. MESSAGES FROM THE BOROUGH MAYOR
- 12. UNFINISHED BUSINESS
- 3 15 A. Ordinance No. FY2021-12 Of The Assembly Of The Kodiak

Meeting broadcast live over radio station KMXT 100.1 FM. Citizens' Comments and Public Hearing Numbers: Toll Free (855) 492-9202 and Local 486-3231.





@KodiakBorough

Island Borough Amending KIBC Title 3 Revenue And Finance, Chapter 3.80 Excise Tax On Cigarettes And Tobacco Products Section .020 Definitions and Section .030 Excise Tax On Cigarettes And Tobacco Products.

Complete Binder For Ordinance No. FY2021-12 - Pdf

- 13. NEW BUSINESS
 - 13.A. Contracts
 - 13.B. Resolutions
- 16 18
- Resolution No. FY2021-10A Amending and Approving Kodiak Island Borough CARES Nonprofit Grants.
 Complete Binder For Resolution No. FY2021-10A - Pdf
- 13.C. Ordinances for Introduction
- 13.D. Other Items
- 19 20

- Approval of the October 6, 2020 Regular Municipal Election Workers.
 Complete Binder for Approval of Election Workers - Pdf
- 14. CITIZENS' COMMENTS (Limited To Three Minutes Per Speaker)
- 15. ASSEMBLY MEMBERS' COMMENTS
- 16. EXECUTIVE SESSION
 - A. Solid Waste Contract No. FY2019-25 Conference With Borough Attorney, Scott Brandt-Erichsen.
- 17. ADJOURNMENT
- 18. INFORMATIONAL MATERIALS (No Action Required)
 - 18.A. Minutes of Other Meetings
 - 18.B. Reports
- 21 26

1. August 2020 Projects Report - E/F Project Manager, Matt Gandel

Meeting broadcast live over radio station KMXT 100.1 FM. Citizens' Comments and Public Hearing Numbers: Toll Free (855) 492-9202 and Local 486-3231.



KODIAK ISLAND BOROUGH STAFF REPORT SEPTEMBER 17, 2020 ASSEMBLY REGULAR MEETING

SUBJECT: Ordinance No. FY2021-12 Of The Assembly Of The Kodiak Island Borough

Amending KIBC Title 3 Revenue And Finance, Chapter 3.80 Excise Tax On Cigarettes And Tobacco Products Section .020 Definitions and Section .030

Excise Tax On Cigarettes And Tobacco Products.

ORIGINATOR: Dennis Symmons

RECOMMENDATION:

Move to adopt Ordinance No. FY2021-12. This was postponed to the next regular meeting of the assembly on August 20th.

DISCUSSION:

VERSION 2

During the July 16th regular assembly meeting, staff was directed to include the taxation of vaping into our code.

During the research process, staff collected the following information:

Tobacco Excise Tax Rates for:

- Juneau Borough \$3/pack and 45% on other tobacco products
- Matanuska- Susitna Borough 110 mils/cigarette and 55% on other tobacco products
- Anchorage 124.6 mils/cigarette and 55% on other tobacco products
- Fairbanks 8% on all tobacco products

ORIGINAL

This ordinance was sponsored by Assembly member Symmons during the regular meeting of June 18, 2020.

The request was to increase the tobacco excise tax for products brought into the borough for distribution or sale as follows:

- cigarettes from \$0.05 to \$0.075 per cigarette; and
- other tobacco products from 25% to 37.5% of wholesale price

ALTERNATIVES:

FISCAL IMPACT:

Potential increase in excise tax revenues of \$200,000.

Due to the Maximum Allowable Tax Revenue Cap, additional excise funds would reduce property tax revenues by an equal amount.

OTHER INFORMATION:



KODIAK ISLAND BOROUGH STAFF REPORT SEPTEMBER 17, 2020 ASSEMBLY REGULAR MEETING

Title 3 Revenue and Finance Chapter 3.10.190 Review of service fees.

Not less than on the beginning of every calendar year, the finance director shall prepare a list of all fees for services charged by the various departments of borough government. The list shall be submitted to the departments involved for comments concerning the fees and a recommendation as to whether or not the fee or fees should be raised, lowered, or remain the same. The finance director shall submit a report of his findings, including the department comments and recommendations, to the manager for presentation to the assembly. The assembly may, by resolution, raise or lower any fee on the submitted list. [Ord. 98-03 §2, 1998; Ord. 83-2-O §1, 1983. Formerly §3.04.065].

1 Introduced by: Assembly Member Dennis Symmons Version 2 2 Drafted by: Finance Director 3 Introduced on: July 16, 2020 4 Public Hearing Date: 5 Adopted on: 6 KODIAK ISLAND BOROUGH 7 **ORDINANCE NO. FY2021-12** 8 9 AN ORDINANCE OF THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH AMENDING 10 KIBC TITLE 3 REVENUE AND FINANCE, CHAPTER 3.80 EXCISE TAX ON CIGARETTES AND TOBACCO PRODUCTS SECTIONS .020 DEFINITIONS AND SECTION .030 EXCISE TAX 11 12 ON CIGARETTES AND TOBACCO PRODUCTS. 13 14 WHEREAS, the Kodiak Island Borough has authority granted to it by AS 29.35.010 to levy a 15 tax; and 16 17 WHEREAS, Ordinance No. FY2018-04 assessed a new excise tax on tobacco and tobacco 18 products effective October 1, 2017; and 19 20 WHEREAS, the fees of the Borough are to be reviewed annual per KIBC 3.10.190; and 21 22 WHEREAS, the assembly desires to increase the fee rate for tobacco and tobacco products. 23 24 WHEREAS, the assembly desires to expand the definition of 'other tobacco products', 25 26 NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KODIAK ISLAND 27 **BOROUGH THAT:** 28 29 Section 1: This ordinance is of permanent nature and shall become a part of the Kodiak Island 30 Borough Code of Ordinances. 31 32 Section 2: That Section 3.80.020 Definitions of the Kodiak Island Borough Code of Ordinances 33 is amended to read as follows: 34 35 The following words, terms, and phrases, when used in this chapter, shall have the meanings 36 ascribed to them in this section, except where the context clearly indicates a different meaning: 37 A. "Borough" means the Kodiak Island Borough, Alaska. 38 B. "Brought into or acquired" includes all manners, ways, and modes of bringing into or 39 obtaining cigarettes or tobacco products in the borough. 40 C. "Buyer" means a person who brings into or acquires in the borough cigarettes or other 41 tobacco products for his own consumption from any source other than a manufacturer, 42 distributor, direct-buying retailer or retailer. 43 D. "Cigarette" means a roll for smoking of any size or shape, made wholly or partly of tobacco, 44 whether the tobacco is flavored, adulterated, or mixed with another ingredient, if the 45 wrapper or cover of the roll is made of paper or a material other than tobacco. 46 E. "Department" means the borough finance department. Kodiak Island Borough, Alaska Ordinance No. FY2021-12

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Version 2

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- F. "Direct-buying retailer" means a person who is engaged in the sale of the cigarettes or other tobacco products at retail in the borough, and who brings or causes them to be brought into the borough.
- G. "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 for resale in the borough.
- H. "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 borough excise tax under this chapter.
- I. "Licensee" means a person licensed under this chapter.
- J. "Manufacturer" means a person who makes, fashions or produces cigarettes or other tobacco products for sale to distributors or other persons within the borough.
- K. "Other tobacco products" means:
 - a. A cigar;
 - b. A cheroot;
 - c. A stogie;
 - d. A perique;
 - e. Snuff and snuff flour;
 - f. 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;
 - g. Chewing tobacco, including cavendish, twist, plug, or scrap tobacco and tobacco suitable for chewing; or
 - h. 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 cigarette as defined in this section or 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
 - i. 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.
- L. "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.
- M. "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.

Kodiak Island Borough, Alaska

Ordinance No. FY2021-12

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Version 2

92 N. "Purchase" means the acquisition of ownership or possession of cigarettes or other 93 tobacco products from any source. 94 O. "Record" means a group of logically related fields of information concerning events 95 affecting an organization, which is an integral part of an accounting information system, 96 where separate, identifiable transaction data is entered as historical data. 97 P. "Retail" means a sale to a consumer or to any person for any purpose other than for resale. 98 Q. "Retailer" means a person in the borough who is engaged in the business of selling 99 cigarettes or other tobacco products at retail. 100 R. "Sale" includes a sale, barter, exchange and every other manner of transferring the 101 ownership of personal property. 102 S. "Tax" means the cigarette and other tobacco products excise tax assessed pursuant to 103 this chapter. 104 T. "Tax return" means the quarterly report to be submitted to the department as required by 105 this chapter. 106 U. "Vending machine operator" means a person who brings or causes cigarettes or tobacco 107 products to be brought into the borough and who owns or operates a vending machine 108 that dispenses cigarettes, whether the vending machine is installed on the person's own 109 premises or installed elsewhere. 110 V. "Wholesale price" means the established price for which a manufacturer sells a tobacco 111 product to a distributor or other person, after deduction of a discount or other reduction 112 received by the distributor for quantity or cash. [Ord. FY2018-04 §2, 2017]. 113 114 Section 3: That Section 3.08.030 Excise tax on cigarettes and other tobacco products of the 115 Kodiak Island Borough Code of Ordinances is amended to read as follows: 116 117 A. Excise Tax on Cigarettes. The borough hereby levies an excise tax of \$0.075 on 118 each cigarette brought into the borough for distribution or sale in the borough beginning 119 on October 1, 2017. Cigarettes upon which the tax is imposed are not again subject to the 120 tax when acquired by another person. 121 B. Excise Tax on Other Tobacco Products. The borough hereby levies an excise tax on other 122 tobacco products at the rate of 25 37.5 percent of the wholesale price of tobacco products 123 brought into the borough for distribution or sale in the borough after October 1, 2017. 124 125 Effective Date: This ordinance shall take effect upon adoption. 126 127 ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH 128 THIS _____, 2020. 129 130 KODIAK ISLAND BOROUGH 131 ATTEST: 132 133 134 William Roberts, Mayor

Kodiak Island Borough, Alaska

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VOTES:

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Alise L. Rice, Borough Clerk

Ordinance No. FY2021-12

AGENDA ITEM #12.A.

138 139	Ayes: Noes:	
139	Noes.	
	Kodiak Island Borough, Alaska	Ordinance No. FY2021-12 Page 4 of 4

1 Introduced by: Assembly Member Dennis Symmons 2 Drafted by: Finance Director 3 Introduced on: July 16, 2020 4 Public Hearing Date: 5 Adopted on: 6 KODIAK ISLAND BOROUGH 7 **ORDINANCE NO. FY2021-12** 8 9 AN ORDINANCE OF THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH AMENDING 10 KIBC TITLE 3 REVENUE AND FINANCE, CHAPTER 3.80.30 EXCISE TAX ON CIGARETTES AND TOBACCO PRODUCTS. 11 12 13 WHEREAS, the Kodiak Island Borough has authority granted to it by AS 29.35.010 to levy a 14 tax; and 15 16 WHEREAS, Ordinance No. FY2018-04 assessed a new excise tax on tobacco and tobacco 17 products effective October 1, 2017; and 18 19 WHEREAS, the fees of the Borough are to be reviewed annual per KIBC 3.10.190; and 20 21 WHEREAS, the desires to increase the fee rate for tobacco and tobacco products. 22 23 NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KODIAK ISLAND 24 **BOROUGH THAT:** 25 26 Section 1: This ordinance is of permanent nature and shall become a part of the Kodiak Island 27 Borough Code of Ordinances. 28 29 Section 2: That Section 3.08.030 Excise Tax on Cigarettes and Other Tobacco products of 30 the Kodiak Island Borough Code of Ordinances is amended to read as follows: 31 32 A. Excise Tax on Cigarettes. The borough hereby levies an excise tax of \$0.075 on 33 each cigarette brought into the borough for distribution or sale in the borough beginning 34 on October 1, 2017. Cigarettes upon which the tax is imposed are not again subject to the 35 tax when acquired by another person. 36 B. Excise Tax on Other Tobacco Products. The borough hereby levies an excise tax on other 37 tobacco products at the rate of 25 37.5 percent of the wholesale price of tobacco products 38 brought into the borough for distribution or sale in the borough after October 1, 2017. 39 40 Effective Date: This ordinance shall take effect upon adoption. 41 42 ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH THIS _____, 2020. 43 44 45 KODIAK ISLAND BOROUGH 46 ATTEST: Kodiak Island Borough, Alaska Ordinance No. FY2021-12 Page 1 of 2

AGENDA ITEM #12.A.

Ayes: Noes:
VOTES:
William Roberts, Mayor Alise L. Rice, Borough Clerk
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Mayor and members of the KIB Assembly

Here is the suggested model language as promised for Kodiak Island Borough Ordinance No. FY2021-12 For drafting purposes, you will need to do the following:

- Change the proposed increases in 3.80.030 A. from the current \$0.05 up to \$0.10 per cigarette
 and in B. increase the Other Tobacco Products tax from 25% up to 50% of the wholesale price in
 order to achieve a prevention benefit.
- Delete C. in the 3.80.040 Exemptions. This would remove the current exemption that limits the tax on e-cigarettes solely to disposable, single use products.
- 3. Replace the language in K. Of 3.80.020 Definitions with this contemporary model language: "Other tobacco products" means any product that is made from or derived from tobacco, or that contains nicotine, that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigar, pipe tobacco, chewing tobacco, snuff or snus. "Other tobacco products" also means electronic smoking devices and any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes and substances used in electronic smoking devices, whether or not they contain nicotine. "Other tobacco products" does not include cigarettes as defined in this section. "Other tobacco products" does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the federal Food, Drug and Cosmetic Act.
- Add an item L. in 3.80.020 Definitions to define e-cigarettes and exempt FDA-approved tobacco cessation devices as follows:

"Electronic smoking device" means any device that can be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device, including, but not limited to, an ecigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic smoking device includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device. Electronic smoking device does not include any battery or battery charger when sold separately. In addition, electronic smoking device does not include drugs, devices, or a combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

Betty MacTavish mactavish.betty@gmail.com 206.641.4946 This communication is confidential and intended to be protected by the attorney-client privilege and the attorney work product doctrine. The information transmitted is intended only for the use of the individual(s) named above. If you are not the intended recipient of the transmitted information, you are hereby notified that disclosing, copying, distributing, or taking action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, notify the sender and then delete the information.

----Original Message-----

From: Dora Cross <dcross@kodiakak.us> Sent: Thursday, August 6, 2020 12:01 PM

To: Scott Brandt-Erichsen <s.brandt-erichsen@keenecurrall.com>; Michael Powers <mpowers@kodiakak.us>

Subject: FW: Here is the handout from Ms. MacTavish

Scott,

Ms. MacTavish brought the attached recommendations to the assembly last week regarding changes she would like to see on our tobacco ordinance. Ms. MacTavish is a strong supporter of the American Lung and Cancer Association, she may even work for them but I am not sure. Her proposed changes are based in a strategy of 'prevention' (as stated in her letter) rather than the Borough's intention of increased revenue.

I appreciate knowable and helpful advice from citizens, especially when they have access to correct and accurate information, and I feel Ms. MacTavish's contribution is just that. However, as I read through her letter it appears that the changes she wants to make would put an excise tax on anything related to smoking such as rolling papers, filters, etc. Although I believe that would work for sales tax, I do not feel that is appropriate for an excise tax - am I correct on that?

If I am correct, I would like to call Ms. MacTavish today prior to her coming to the meeting tonight. If that is not possible, I have suggested to the clerk and the manager that this item be postponed so the assembly does not make amendments to the ordinance on the fly without understanding the ramifications or legality of their actions.

Thank you,

Dora Cross Finance Director Kodiak Island Borough 710 Mill Bay Road Kodiak, AK 99615 907.486.9320

PUBLIC RECORDS DISCLOSURE: This email and responses to this email are subject to provisions of the Alaska Statutes and may be made available to the public upon request.

Dora Cross

From: Dora Cross

Sent: Thursday, August 6, 2020 4:40 PM

To: Dora Cross

Subject: Handout from Ms. MacTavish

-----Original Message-----

From: Scott Brandt-Erichsen <s.brandt-erichsen@keenecurrall.com>

Sent: Thursday, August 6, 2020 4:15 PM

To: Dora Cross <dcross@kodiakak.us>; Michael Powers <mpowers@kodiakak.us>

Cc: 'Brittany Norton' <bri>Subject: RE: Here is the handout from Ms. MacTavish

Dora.

You asked that I review the proposed amendments offered by Ms. MacTavish and provide comments. In looking through the definitions in the tobacco tax codes in Juneau, Mat- Su, Anchorage and Ketchikan. All use definitions similar to Kodiak in terms of listing various items. None appeared to use terms such as rolling papers, filters, pipes, etc. The rolling papers, electronic smoking devices, filters, pipes, etc. are not necessarily restricted to tobacco consumption. The collection method may not work as the dealers in some of these products do not necessarily need to have a tobacco merchant license, or tobacco distributor license. As such, a broad range of merchants who do not deal in tobacco per se could be brought within its scope.

Similarly, the proposed definition of electronic smoking device to include "any substance intended to be aerosolized or vaporized during the use of the device" could include non-tobacco products such as marijuana or flavored liquids not containing nicotine. A provision which defined tobacco in a way that applied to marijuana and other substances may cause the same issues for collection, as well as issues with the state scheme for taxing marijuana.

While an excise tax on marijuana may not be precluded, it is generally different from tobacco taxes.

The deletion of the exemption for the device similarly would impose the tax on items which may be used solely for consumption of non-nicotine non-tobacco products.

I suggest caution and avoiding broad definitions which extend to products which have uses independent of tobacco or which contain no tobacco derivative or related substance. Likewise, applying the excise tax to products which may have non-tobacco uses is not generally in the same scope as a tobacco excise tax.

Scott A Brandt-Erichsen Keene & Currall, P.P.C. Currall Office Building 540 Water Street, Suite 302 Ketchikan, Alaska 99901 Telephone: (907) 225-4131

Telephone: (907) 225-4131 Direct: (907) 228-0504 Facsimile: (907) 225-0540

Toll Free within Alaska 866-719-5687

Direct email: s.brandt-erichsen@keenecurrall.com

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August 6, 2020

Kodiak Island Borough 710 Mill Bay Road Kodiak, AK 99615-6398

Dear Members of the Assembly,

The American Cancer Society Cancer Action Network (ACS CAN), American Heart Association (AHA) and American Lung Association in Alaska (ALA) would like to express our support for raising the tax on cigarettes to \$2.00 per pack as well as increasing the price on other tobacco products, including e-cigarettes, at an equivalent rate in the Kodiak Island Borough. Raising the tax on these products will reduce tobacco use, save lives, raise revenues and ultimately lower health care costs.

Our organizations have long advocated for passage of policies that raise the tax on tobacco, limit exposure to secondhand smoke, discourage the use of tobacco by youth and increase access to cessation services for those addicted to tobacco. Tobacco use is the leading cause of preventable death in Alaska, claiming approximately 700 lives each year and costing the state \$571 million dollars in direct health care costs and \$261 million in lost productivity.

In the Gulf Coast Region, an estimated 21.2% of adults and 9.6% high school students are estimated to currently smoke cigarettes. Our organizations are especially concerned with the dramatic rise in youth e-cigarette use, which is now up to 26.1% statewide. According to the Surgeon General, nearly 9 out of 10 daily cigarette smokers first try cigarettes by the age of 18. Increasing the tax on tobacco is a proven method to protect our youth from this deadly product. In fact, every 10 percent increase in the price of a pack of cigarettes leads to a seven percent decline in youth smokers. Teenagers are especially price sensitive -- an increased tobacco tax will stop many from becoming addicted in the first place and from becoming Alaskans with cancer, lung disease, heart disease or stroke.

By raising the tax on tobacco, lives will be saved, the economic burden as a result of tobacco use will be lessened and revenue generated. It is for these reasons we respectfully request your support of taking action to raise the tax on tobacco. Please do not hesitate to contact us should you have any questions.

Sincerely,

Jamie Morga

Jamie Morgan
Government Relations
Regional Lead
American Heart
Association
jamie.morgan@heart.org

or 916-201-8115

Emily Nenon, MPA Alaska Government Relations Director

American Cancer Society, Cancer Action Network Emily.Nenon@cancer.org or

907-273-2097

In 5.2

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Marge Stoneking
Executive Director

American Lung Association in Alaska

marge.stoneking@lung.org or 907-644-6404

			vices, Division of I Facts, FY2019 upd		ction of Chronic Disease		
ii Alaska Department of Health and Social Services, Division of Public Health, Section of Chronic Disease Prevention and Health Promotion. Tobacco Prevention and Control Regional Profile: Gulf Coast, FY2019 update iii Alaska Department of Health and Social Services, Division of Public Health, Section of Chronic Disease Prevention and Health Promotion. 2019 Alaska Youth Risk Behavior Survey Highlights http://dhss.alaska.gov/dph/Chronic/Documents/yrbs/2019YRBS_Highlights.pdf							