

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2010-22

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA OF SITKA AMENDING SITKA GENERAL CODE AT TITLE 4 ENTITLED "REVENUE & FINANCE" BY ADDING A NEW CHAPTER 27 ENTITLED "EXCISE TAX ON NONALCOHOLIC SUGAR-SWEETENED BEVERAGES," AND AMENDING THE SITKA CHARTER TO CREATE A DEDICATED FUND FOR PROCEEDS FROM THE EXCISE TAX ON NONALCOHOLIC SUGAR-SWEETENED BEVERAGES FOR A COMMUNITY RECREATION CENTER, AND PLACING THESE AMENDMENTS ON THE BALLOT FOR THE NEXT REGULAR MUNICIPAL ELECTION

1. CLASSIFICATION. All sections of this Ordinance, except section 6 regarding the ballot proposition, are of a permanent nature, with section 4 intended to become part of the Sitka General Code (SGC) and section 5 intended to become part of the Sitka Charter, if both sections are approved by the voters at the next regular municipal election on October 5, 2010.

2. SEVERABILITY. If any provision of this Ordinance or any application to any person or circumstance is held invalid, the remainder of this Ordinance and application to any person or circumstance shall not be affected.

3. PURPOSE. If ratified by the voters at the next regular municipal election, SGC at Title 4 would be amended to add a new chapter 27 entitled "Excise Tax on Nonalcoholic Sugar-Sweetened Beverages," and the Sitka Charter would be amended to add a new Section 21, entitled "Community Recreation Center Dedicated Fund."

Proposed SGC Chapter 27 is modeled after SGC Chapter 26, entitled "Excise Tax on Cigarettes and Tobacco Products." Proposed Charter amendment at Section 21 is modeled after Charter Section 26, entitled "Excise Tax on Cigarettes and Tobacco Products."

The proposed excise tax on nonalcoholic sugar-sweetened beverages would impose a tax of one cent (\$.01) on each full ounce of any nonalcoholic sugar-sweetened beverage sold or offered for sale in Sitka on the first distributor when it is brought into or acquired Sitka. Distributor means any person other than a bottler that sells at wholesale prices nonalcoholic sugar-sweetened beverages in the municipality to retailers, other distributors, or others for resale purposes. Such distributors are also required to be licensed under this Ordinance.

The proposed SGC amendments contain various definitions, as well as tax and licensing procedures. For example, "sugar-sweetened beverage" is defined in the new SGC provisions, to include any nonalcoholic drink that is sweetened with a caloric sweetener, including any soft drink, soda, sports drink, energy drink, milk, water, fruit juice, vegetable drink, water, tea, and coffee. Baby-formula and 100% fruit or vegetable juice with no other caloric sweetener added

1 are not included in that definition. Nonalcoholic sugar-sweetened beverages may be in liquid,
2 frozen, powder, or dehydrated form.

3
4 The proposed Charter amendment would create a dedicated fund for the nonalcoholic
5 sugar-sweetened beverage excise tax revenue, to be used for a community recreation center,
6 including acquisition or lease, operation, capital improvements, maintenance, repairs, and debt
7 service of such a facility.

8
9 4. **ENACTMENT.** NOW, THEREFORE BE IT ENACTED by the Assembly of
10 the City and Borough of Sitka of Sitka that SGC at Title 4, entitled "Revenue & Finance," is
11 amended by adding a new Chapter 4.27, entitled "Excise Tax on Nonalcoholic Sugar-Sweetened
12 Beverages," (new language underlined), with the new Chapter to read as follows:

13
14 **Title 4**
15 **REVENUE AND FINANCE**

16 Chapters:

- 17 4.04 Budgetary Organization
18 4.05 Marine Passenger Fee Fund
19 4.06 Allocation of Revenues from Sale of Water
20 4.09 Sales Tax
21 4.12 Property Tax
22 4.16 Fuel Flow Tax
23 4.17 Driver Facility Charge
24 4.19 Sitka Permanent Fund
25 4.20 Miscellaneous Fees
26 4.24 Hotel, Motel and Bed and Breakfast Transient Room Tax
27 4.26 Excise Tax on Cigarettes and Tobacco Products
28 4.27 Excise Tax on Nonalcoholic Sugar-Sweetened Beverages
29 4.28 Investment Policy
30 4.32 Debt Service Priority
31 4.35 Delinquent Accounts
32 4.40 Uncollectable Accounts and Bad Debt Write-Offs
33 4.42 Small Business Guaranteed Loan Program

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36
37 **Chapter 4.27 Excise Tax on Nonalcoholic Sugar-Sweetened Beverages**

38 Sections:

- 39 4.27.010 Applicability of chapter.
40 4.27.020 Tax on nonalcoholic sugar-sweetened beverages.
41 4.27.030 [Reserved.]
42 4.27.040 Intent and purpose of chapter.
43 4.27.050 Exemptions.
44 4.27.060 Exemption cards.
45

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- 3 4.27.080 License fee.
- 4 4.27.090 Expiration and renewal of licenses.
- 5 4.27.100 Transfer of license.
- 6 4.27.110 Refund of tax or license fee.
- 7 4.27.120 Display of license – surrender of License – Suspension or revocation of
- 8 license.
- 9 4.27.125 Tax Returns.
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- 12 4.27.140 Application of payments.
- 13 4.27.145 Prohibited acts and penalties.
- 14 4.27.150 Civil fraud.
- 15 4.27.155 Tax lien.
- 16 4.27.160 Interest on unpaid tax.
- 17 4.27.165 Taxpayer, licensee, cardholder, or other person remedies.
- 18 4.27.170 [Reserved].
- 19 4.27.175 Inspection and maintenance of documents and records.
- 20 4.27.180 Administrative regulations.
- 21 4.27.185 Confidential and nonconfidential tax information.
- 22 4.27.190 Definitions.

23 **4.27.010 Applicability of chapter.**

24 Unless provided otherwise, this chapter shall apply to the taxation of all

25 nonalcoholic sugar-sweetened beverages brought into or acquired in the City and

26 Borough of Sitka for sale in the municipality by the first distributor.

27 **4.27.020 Tax on Sugar-sweetened Beverages.**

28 An excise tax of one cent (\$.01) on each full ounce of a nonalcoholic sugar-

29 sweetened beverage sold or offered for sale in the municipality is imposed only on the

30 first distributor who brings into or acquires in the municipality a nonalcoholic sugar-

31 sweetened beverage sold or offered for sale, when the nonalcoholic sugar-sweetened

32 beverage is first brought into or acquired in Sitka.

33

34 **4.27.030 [Reserved.]**

35 **4.27.040 Intent and purpose of chapter.**

- 36 A. It is the intent and purpose of this chapter to collect the tax from only the first
- 37 distributor who acquires or brings the nonalcoholic sugar-sweetened beverage
- 38 within the City and Borough of Sitka of Sitka for sale or offer to sale the
- 39 nonalcoholic sugar-sweetened beverage within the municipality.
- 40 B. The tax imposed under this chapter does not apply to any successive sale or offer
- 41 to sale nonalcoholic sugar-sweetened beverage in Sitka by a subsequent
- 42 distributor or any other person.

1 C. The tax imposed under this chapter is in addition to all other taxes imposed under
2 this title.

3 D. Notwithstanding anything to the contrary that may be contained in this chapter,
4 the taxpayer shall be those persons described in this section and no others.

5 **4.27.050 Exemptions.**

6 A. The tax imposed under this chapter shall not apply to nonalcoholic sugar-
7 sweetened beverages if the United States or Alaska Constitutions, or federal or
8 state laws, prohibit the levying of this tax on such products by the municipality.

9 B. Provided all persons otherwise subject to this chapter comply with its
10 requirements, the tax imposed under this chapter does not apply to nonalcoholic
11 sugar-sweetened beverages brought into or acquired in the municipality which
12 are:

- 13 1. Transported outside of the municipality; and
- 14 2. For resale outside the municipality by a merchant with an Alaska State
15 business license that allows such resale activities of products like
16 nonalcoholic sugar-sweetened beverages by the merchant.

17 C. The following shall be exempt from the tax levied by this chapter:

- 18 1. Nonalcoholic sugar-sweetened beverages sold to the United States, State
19 of Alaska, Sitka Tribe of Alaska, City and Borough of Sitka, including the
20 Sitka School District and the Sitka Community Hospital;
- 21 2. Nonalcoholic sugar-sweetened beverages exported from the municipality
22 by a distributor, wholesaler or manufacturer for resale outside the
23 municipality, as provided in subsection B;
- 24 3. Any frozen concentrate, freeze dried, or powdered concentrate to which no
25 sweetener is added and to which only water is added to produce a natural
26 fruit or natural vegetable juice drink;
- 27 4. Any natural fruit juice or natural vegetable juice that has no added
28 sweetener;
- 29 5. Any liquid or powdered milk or milk substitute beverage which is
30 intended by the manufacturer for consumption by infants, commonly
31 referred to as infant formula;
- 32 6. Water to which no sweetener has been added; and
- 33 7. Any coffee or tea beverage to which no sweetener was added prior to sale.

34 **4.27.060 Exemption cards.**

35 A. Except as otherwise provided in this section, no distributor or licensee may
36 acquire or bring into the municipality nonalcoholic sugar-sweetened beverages
37 exempt from taxation under this chapter, unless that distributor or licensee has
38 been issued an exemption card in accordance with this chapter. No distributor or
39 licensee shall claim any exemption under this chapter unless the nonalcoholic
40 sugar-sweetened beverage for which an exemption is claimed has been sold or
41 transferred to a person presenting a valid and current exemption card issued by
42 the department in accordance with this chapter prior to such sale or transfer.

- 1 1. Any person with an active physical business presence within the
2 municipality, including a licensee, may apply for an exemption card under
3 this section as an agent for merchants whose principal places of business
4 are located outside of the municipality, and who acquire from an agent
5 nonalcoholic sugar-sweetened beverages exempt from the tax imposed
6 under this chapter, provided each merchant has a valid Alaska State
7 business license that allows such resale activities of products like
8 nonalcoholic sugar-sweetened beverages by the merchant, and that lists
9 the line of business code or equivalent.
- 10 2. Merchant acquiring nonalcoholic sugar-sweetened beverages through an
11 agent under this section shall be considered an exemption cardholder for
12 all purposes under this chapter.
- 13 3. A person or licensee issued an exemption card as an agent under this
14 section shall comply with all provisions of this chapter except the agent
15 shall not be required to maintain records to prove that nonalcoholic sugar-
16 sweetened beverages for which an exemption is claimed under the agent's
17 exemption card have been resold outside of the municipality by the
18 merchant. Violation of any provision of this chapter relating to exemption
19 cardholders by a licensee as agent for a merchant shall be grounds for
20 revocation of the licensee's license issued under this chapter.
- 21 4. Notwithstanding anything to the contrary contained in or implied by other
22 provisions of this chapter, the licensee shall be and remain the taxpayer
23 liable for the payment of taxes due under this chapter.
- 24 B. Application for an exemption card is restricted to persons with an active physical
25 business presence within the municipality acting as an agent for merchants whose
26 principal places of business are located outside the municipality, shall be on a
27 form provided by the finance department, and shall include the following
28 information and such other information as the finance department may require:
 - 29 1. Applicant's name and address;
 - 30 2. Copy of the applicant's current Alaska State business license and the line
31 of business code or equivalent; and
 - 32 3. Merchant names and locations where nonalcoholic sugar-sweetened
33 beverages will be sold.
- 34 C. All exemption card holders must maintain a valid, current business license and
35 line of business code or equivalent, issued by the state of Alaska.
- 36 D. Each exemption card, unless suspended or revoked by the finance department, is
37 valid from its date of issue until the end of that calendar year, and may be
38 renewed each year upon application and payment of the fee to the finance
39 department.
- 40 E. The department may suspend, revoke or refuse to issue an exemption card under
41 this section for any violation of or failure to comply with the requirements of this
42 chapter by agent or cardholder, including any act or omission by such person
43 which withholds, misstates or provides false or misleading information required
44 by the finance department.

1 **4.27.070 License required for nonalcoholic sugar-sweetened beverage distributors**
2 **— Issuance.**

- 3 A. No person may sell, purchase, possess, acquire or transfer nonalcoholic sugar-
4 sweetened beverages in the municipality as a distributor without a license issued
5 under this chapter.
- 6 B. The department, upon application and payment of the fee, shall issue a license to
7 each distributor. A copy of the applicant's current Alaska State business license is
8 required and must accompany the application. The application must include the
9 following information:
- 10 1. Applicant's name and address;
- 11 2. Name under which the business will be conducted; and
- 12 3. Other information required on the department's application form.
- 13 C. The department may refuse to issue a license if there is reasonable cause to
14 believe that the applicant has willfully withheld information requested to
15 determine the applicant's eligibility to receive a license, or if there is reasonable
16 cause to believe that information submitted in the application is false or
17 misleading and is not made in good faith.
- 18 D. A license required by this chapter is in addition to any other license required by
19 law.
- 20 E. A license issued under this chapter shall include:
- 21 1. Name and address of the licensee;
- 22 2. Type of business to be conducted;
- 23 3. Name and address at which the business is conducted; and
- 24 4. Calendar year for which the license is issued.

25 **4.27.080 License fee.**

26 For each license issued under this chapter, and for each renewal year, the fee is
27 one hundred dollars per year, with no proration of the fee except as provided in SGC
28 4.27.110.

29 **4.27.090 Expiration and renewal of licenses.**

30 The initial license issued under this chapter expires on December 31st. A licensee,
31 on application to the department accompanied by the renewal fee, may before the
32 expiration of the license, renew the license for two years from the expiration date of the
33 license. If the licensee moves the business to another location within the municipality, the
34 licensee shall, upon application to the department, be reissued a license for the new
35 location for the balance of the unexpired term. A person whose license is lost, stolen or
36 defaced shall immediately file an application with the department for reissuance of the
37 license for the balance of the unexpired term.

1 **4.27.100 Transfer of license.**

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

7 **4.27.110 Refund of tax or license fee.**

- 8 A. The license fee paid under this chapter shall only be refunded if the license is
9 surrendered before the beginning of the license year. However, upon application,
10 the department will refund a license fee that is paid in error.
- 11 B. Upon timely written request of the licensee for a refund of taxes, and if the
12 department determines upon audit of the account that the amount submitted
13 exceeds the amount due, the department shall, refund the excess to the licensee
14 without interest.
- 15 C. Any claim for refund filed more than one year after the due date of the tax is
16 untimely and forever barred.

17 **4.27.120 Display of license—Surrender of license—Suspension or revocation of**
18 **license.**

- 19 A. A license issued under this chapter must be prominently displayed at the
20 licensee's place of business.
- 21 B. A licensee shall surrender a license within ten days after:
- 22 1. Revocation or suspension of a license;
- 23 2. Cessation of the business;
- 24 3. Change of ownership; or
- 25 4. Change in the location of the business.
- 26 C. The department may suspend or revoke a license issued under this chapter:
- 27 1. For violation of this chapter or a municipal regulation adopted pursuant to
28 this chapter; or
- 29 2. If a licensee ceases to act in the capacity for which the license was issued.
- 30 D. No person whose license is suspended or revoked under this chapter shall during
31 the period of the suspension or revocation, offer for sale, permit to be sold, or sell
32 nonalcoholic sugar-sweetened beverages in the municipality.
- 33 E. No disciplinary proceeding or other action is barred or abated by the expiration,
34 transfer, surrender, renewal or extension of a license issued under this chapter.

35 **4.27.125 Tax returns.**

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

- 1 B. The return shall be signed under penalty of perjury by the licensee or agent, and
2 must include the following information:
 - 3 1. Name and address of the licensee;
 - 4 2. Name and address of the person filing the return, if different from the
5 licensee;
 - 6 3. Number of the license issued under this chapter;
 - 7 4. Name under which the business is being conducted;
 - 8 5. Number of nonalcoholic sugar-sweetened beverages brought into or
9 acquired in the municipality during the preceding month from any source
10 whatsoever;
 - 11 6. Weight of all nonalcoholic sugar-sweetened beverages in ounces brought
12 into or acquired in the municipality during the preceding month from any
13 source whatsoever;
 - 14 7. Names of persons from whom nonalcoholic sugar-sweetened beverages
15 were brought into or acquired in the municipality during the preceding
16 month from any source whatsoever;
 - 17 8. The number of nonalcoholic sugar-sweetened beverages brought into or
18 acquired in the municipality from each person named in subsection B.7
19 above;
 - 20 9. Deductions claimed for the number of nonalcoholic sugar-sweetened
21 beverages for which exemptions are claimed under this chapter;
 - 22 10. Deductions claimed for the number of nonalcoholic sugar-sweetened
23 beverages for which the tax has been paid previously by another person;
 - 24 11. Amount of tax due on the nonexempt nonalcoholic sugar-sweetened
25 beverages brought into or acquired in the municipality during the
26 preceding month; and
 - 27 12. Other information and supporting documentation which may be required
28 by the department with the return.
- 29 C. Each licensee shall report the nonalcoholic sugar-sweetened beverages sales and
30 the number of nonalcoholic sugar-sweetened beverage ounces for which an
31 exemption is claimed as a deduction on its monthly tax return to the department,
32 and shall provide a copy of an invoice or other document satisfactory to the
33 department supporting each sale to a cardholder.
- 34 D. A monthly tax return must be filed by the licensee even if there were no
35 nonalcoholic sugar-sweetened beverages brought into or acquired in the
36 municipality during the preceding month.
- 37 E. The taxes imposed under this chapter and the return required by this section must
38 be received by the department or postmarked on or before the last day of each
39 calendar month following the month covered by the return.

40 **4.27.130 Involuntary returns.**

41 If a licensee fails to file a return as required by this chapter, or when the
42 department finds that a return is not supported by the records required to be maintained
43 under this chapter, the department may prepare and file a return on behalf of the licensee.
44 Involuntary returns filed under this section may be premised upon any information that is

1 available to the department, including comparative data for similar businesses. A licensee
2 for whom an involuntary return is filed under this section shall be subject to liability for
3 the tax stated in the return, as well as subject to the penalties and interest provided for in
4 this chapter. A return prepared by the department is prima facie evidence of the tax owed,
5 good and sufficient for all legal purposes. However, nothing prevents the licensee from
6 presenting evidence in an appeal to rebut the presumed sufficiency of a return prepared
7 by the department, nor does the presumption of sufficiency alter the parties' respective
8 burdens of proof once the licensee has presented evidence to rebut that presumption.

9 **4.27.135 Amended tax returns.**

- 10 A. Any filed tax return may be amended by the licensee within one year after the due
11 date of the tax return being amended. No amendment by the licensee shall be
12 allowed after this one-year period.
- 13 B. Any tax return prepared and filed by the department on behalf of the licensee may
14 be amended by the licensee within one year of the date filed by the department.
15 No amendment by the licensee shall be allowed after this one-year period.

16 **4.27.140 Application of payments.**

17 Any payment, submitted to the department for any taxes, penalties, interest or cost
18 due under any provision of this chapter or any return or any finding or determination by
19 the department under this chapter, shall be credited to the monthly tax period for which
20 remitted, and applied first to the payment of costs and then to penalties, interest and
21 taxes, in that order.

22 **4.27.145 Prohibited acts and penalties.**

- 23 A. No distributor in violation of or without complying with the provisions of this
24 chapter may:
- 25 1. Bring into or acquire in the municipality nonalcoholic sugar-sweetened
26 beverages for sell;
 - 27 2. Sell, transfer or offer for sale nonalcoholic sugar-sweetened beverages
28 within in the municipality; or
 - 29 3. Participate in the importation into the City and Borough of Sitka for the
30 purpose of selling or transferring nonalcoholic sugar-sweetened beverages
31 within the municipality.
- 32 B. A penalty of six percent of the taxes due shall be incurred automatically when a
33 person fails to pay the full amount of the tax due under this chapter within seven
34 calendar days following its due date. An additional penalty of six percent of the
35 taxes due shall be incurred automatically when a person fails to file a tax return or
36 report within seven calendar days following its due date under this chapter. If a
37 person fails to pay the full amount of the tax due and/or file a tax return or report
38 required under this chapter within sixteen calendar days after its due date, the six
39 percent penalties incurred above shall be increased automatically to fifteen
40 percent. The penalty shall be computed on the unpaid balance of the tax liability
41 as determined by the department.

- 1 1. Notice of the penalties incurred and to be incurred shall be given to the
- 2 person responsible for payment of the taxes or for filing the return or
- 3 report when such tax payment or return or report is delinquent for seven
- 4 calendar days after its due date.
- 5 2. The penalties provided for in this section shall be in addition to all other
- 6 penalties and interest provided for under this chapter.
- 7 C. If a properly filed amended return reduces the total tax liability or the tax required
- 8 to be paid, or the department reduces the tax liability, the related penalty will be
- 9 reduced accordingly.
- 10 D. All penalties and remedies enumerated in this chapter are cumulative.
- 11 E. Unless otherwise provided in this section, any person who violates or fails to
- 12 comply with the provisions of this chapter shall be personally liable for all costs,
- 13 interest, penalties and taxes due under this chapter plus a penalty equal to thirty
- 14 percent of the tax due. For good cause shown, the finance director may waive or
- 15 reduce all or part of any penalty imposed under this subsection.

16 **4.27.150 Civil fraud.**

- 17 A. A civil fraud penalty may be assessed against a person in addition to a penalty for
- 18 failure to file or failure to pay.
- 19 B. If it is determined by the department that a tax deficiency or part of a tax
- 20 deficiency is due to fraud, then a penalty will be added to the tax. The penalty is
- 21 fifty percent of the deficiency due or five hundred dollars, whichever is greater.
- 22 The penalty is computed on the total amount of the deficiency due.
- 23 C. Fraud is the intentional misrepresentation of a material fact with the intent to
- 24 evade payment of tax which the person is believed to owe. The person must have
- 25 had knowledge of its falsity and intended that it be acted upon or accepted as the
- 26 truth.
- 27 D. To establish civil fraud, the department must prove by clear and convincing
- 28 evidence that:
- 29 1. The tax liability was understated; and
- 30 2. The understatement was the result of an intent to evade tax.
- 31 E. An intent to evade tax may be demonstrated by any relevant evidence, including
- 32 but not limited to the following:
- 33 1. The person has provided false explanations regarding understated or
- 34 omitted acquisitions of nonalcoholic sugar-sweetened beverages;
- 35 2. The person has provided falsified or incomplete source documents;
- 36 3. The person has not justified an omission or understatement of a significant
- 37 amount of acquisitions of nonalcoholic sugar-sweetened beverages; or
- 38 4. The person has substantially overstated a deduction and has failed to
- 39 justify the overstatement.

40 **4.27.155 Tax lien.**

- 41 A. If any person who is liable to pay a tax or license fee under this chapter neglects
- 42 or refuses to pay the tax or licensee fee after demand, the amount, including
- 43 interest, additional amounts, or assessable penalty together with costs, is a lien in

1 favor of the municipality upon all property and rights to property, real or personal,
2 belonging to that person.

3 B. The lien imposed by this section arises upon delinquency and continues until the
4 amount is paid or a judgment against the person arising out of the liability is
5 satisfied.

6 C. A lien arising out of a tax due under this chapter, including the penalties and
7 interest on the tax, is, subject to AS 29.45.300, a lien prior, paramount and
8 superior to all other liens, mortgages, hypothecation, conveyances and
9 assignments, upon all real and personal property of the person liable for the tax
10 and upon all the real and personal property used with the permission of the owner
11 to carry on the business which is subject to the tax.

12 D. The lien on personal and real property may be enforced as provided in
13 AS 29.45.300 through AS 29.45.480 for enforcement of real and personal
14 property tax liens.

15 **4.27.160 Interest on unpaid tax.**

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

18 **4.27.165 Taxpayer, licensee, cardholder, or other person remedies.**

19 A. Any person aggrieved by any action of the department in issuing, suspending,
20 revoking or refusing to issue any license or exemption card under this chapter or
21 in fixing the amount of taxes, penalties, interest or costs under this chapter may
22 appeal to the department and request a hearing within thirty days from the date the
23 department mails the notice of the department's action. Upon timely written
24 appeal under this subsection, the finance director shall serve as the hearing
25 officer, and shall hold a hearing to determine whether a correction is warranted.
26 Hearings before the finance director under this subsection may, at the option of
27 the finance director, be conducted by an administrative hearing officer designated
28 by the finance director. If the finance director elects to refer the matter to an
29 administrative hearing officer, the hearing officer shall conduct the hearing and
30 prepare findings of fact and conclusions of law. These findings and conclusions
31 must be forwarded to the finance director for adoption, rejection, or modification
32 and issuance of a final order or decision by the finance director. An appeal must
33 notify the department of the specific action complained of, amount of tax, interest,
34 cost or penalty contested, and the reason it is contested. After receipt of a written
35 decision by the department which shall constitute the final decision of an
36 administrative agency, the appellant may appeal to the Superior Court for the First
37 Judicial District at Sitka in accordance with the Alaska Rules of Appellate
38 Procedure. The appellant shall be given access to the department's file in the
39 matter for preparation of the appeal.

40 B. A request for appeal is considered filed on the date it is personally delivered, or if
41 delivered to the department by the United States Postal Service, the date of the
42 postmark stamped on the properly addressed envelope in which the request is
43 mailed. If the due date falls on a Saturday, Sunday or holiday, the due date is the

1 next working day. A current mailing address must be provided to the department
2 with the request for appeal, and any change in mailing address after the request
3 for appeal is filed must be reported to the department.

- 4 C. If the notice to the person pursuant to subsection A of this section shows an
5 amount due the department, the uncontested portion of the amount due must be
6 paid within thirty days after the date of the notice. If the uncontested amount is
7 not paid within thirty days, collection action will be taken on that amount even if
8 the person has filed a request for appeal. Payment of the total amount due may be
9 made at any time before the hearing. If the department has reason to believe that
10 collection of the total amount due might be jeopardized by delay, immediate
11 payment of the total amount will be demanded and the department may pursue
12 any collection remedies provided by law. Payment in full does not affect the
13 person's right to a hearing.
- 14 D. If a person appeals and requests a hearing, but fails to appear at the hearing, the
15 hearing office may issue a decision without taking evidence from that person,
16 unless that person provides written notice showing reasonable cause for the
17 failure to appear to the department within seven days after the date scheduled for
18 the hearing.
- 19 E. Taxes, license fees, penalties and interest declared to be due in the final
20 administrative decision must be paid within thirty days after the date of the
21 decision, or a bond must be filed with the court in accordance with Alaska Rules
22 of Appellate Procedure.

23
24 **4.27.170 [Reserved].**

25 **4.27.175 Inspection and maintenance of documents and records.**

- 26 A. Every person subject to this chapter shall keep a complete and accurate record of
27 all nonalcoholic sugar-sweetened beverages brought into or acquired in the
28 municipality by such person.
- 29 1. The records shall include a statement containing the name and address of
30 the person from whom nonalcoholic sugar-sweetened beverages were
31 purchased or acquired, the date of delivery, the quantity of nonalcoholic
32 sugar-sweetened beverages, the trade name and brand, and the number of
33 nonalcoholic sugar-sweetened beverage ounces.
 - 34 2. Each invoice or other documentation of the sale of nonalcoholic sugar-
35 sweetened beverages within the municipality shall state whether the tax
36 imposed under this chapter has been paid.
 - 37 3. Persons subject to this chapter shall keep such other documents and
38 records as the department prescribes.
 - 39 4. All documents and records required by this section shall be preserved by
40 persons subject to this chapter for three years. All records and documents
41 required by this chapter to be kept or retained are subject to inspection
42 within the municipality upon demand by the department.
- 43 B. The finance director may during business hours enter the business premises of a
44 licensee or cardholder where nonalcoholic sugar-sweetened beverages are kept or

1 stored, so far as it may be necessary for the purpose of examining such products
2 and the related business records.

3 **4.27.180 Administrative regulations.**

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

7 **4.27.185 Confidential and nonconfidential tax information.**

- 8 A. The following information is publicly available information:
- 9 1. Names and addresses of business owners who filed tax returns under this
10 chapter;
 - 11 2. Whether a business is licensed under this chapter;
 - 12 3. Whether a business is current in filing tax returns and in remitting tax due
13 under this chapter, and the number of returns not filed; and
 - 14 4. Names and exemption numbers of those entities which have received a
15 tax-exempt number from the municipality relating to taxes due under this
16 chapter.
- 17 B. The municipality may permit any authorized representative of any federal, state or
18 other local government agency to inspect and copy any tax returns filed and
19 reports prepared under this chapter, if the other governmental agency provides
20 substantially similar access to the municipality and if the municipality determines
21 that other governmental agency provides adequate safeguards for the
22 confidentiality of the tax returns and reports.
- 23 C. Except as otherwise provided in this section, tax forms and their contents shall be
24 confidential and shall not be disclosed by the finance department except:
- 25 1. In connection with efforts by the municipality to collect the tax;
 - 26 2. In response to a subpoena issued by a court, state agency or governmental
27 board or commission;
 - 28 3. In connection with legislative inquiry specifically authorized by the
29 assembly;
 - 30 4. In connection with the municipal audits for purposes of verifying the
31 municipality's accounting practices; or
 - 32 5. In compilation of statistics and studies by the finance department for
33 public distribution, so long as information from individual businesses is
34 not identifiable as to source.
- 35

36 **4.27.190 Definitions.**

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

40

41 "Brought into or acquired" includes all manners, ways, and modes of bringing into or
42 obtaining nonalcoholic sugar-sweetened beverages within the municipality.
43

1 “Bottle” means any closed or sealed glass, metal, paper or plastic container or any other
2 type of container regardless of the composition, size or shape.

3
4 “Bottler” means a person who bottles, cans or otherwise packages nonalcoholic sugar-
5 sweetened beverages in beverage containers.

6
7 “Bottled nonalcoholic sugar-sweetened beverages” means any complete, ready to
8 consume nonalcoholic sugar-sweetened beverage contained in any bottle, as well as in
9 powder, dehydrated or frozen form, as further defined in this chapter.

10
11 “Carbonated beverage” means any packaged nonalcoholic liquid intended for human
12 consumption that contains carbonation by natural or artificial means and any of the
13 following substances: caffeine; extracts; fruit juice or concentrated fruit juice; herbs;
14 caloric sweeteners; or syrup.

15
16 “Cardholder or exemption cardholder” means a person in whose name a valid and current
17 exemption card has been issued by the department.

18
19 “Department” means the finance department of the City and Borough of Sitka.

20
21 “Distributor” means any person other than a bottler that sells at wholesale prices
22 nonalcoholic sugar-sweetened beverages in the municipality to retailers, other
23 distributors, or others for resale purposes.

24
25 “Exemption card” means a municipal nonalcoholic sugar-sweetened beverage exemption
26 card issued under this chapter.

27
28 “Milk” means natural liquid milk regardless of animal source or butterfat content; natural
29 milk concentrate, whether or not reconstituted, regardless of animal source or butterfat
30 content; or powdered, frozen, or dehydrated natural milk, whether or not reconstituted.

31
32 “Municipality” means the City and Borough of Sitka.

33
34 “Natural fruit juice” means the original liquid resulting from the pressing of fruit or the
35 liquid resulting from the reconstitution of natural fruit juice concentrate or the liquid
36 resulting from the restoration of water to powdered, frozen, or dehydrated natural fruit
37 juice.

38
39 “Natural vegetable juice” means the original liquid resulting from the pressing of
40 vegetables or the liquid resulting from the reconstitution of natural vegetable juice
41 concentrate or the liquid resulting from the restoration of water to powdered, frozen or
42 dehydrated natural vegetable juice.

43
44 “Nonalcoholic beverage” means and includes all beverages not defined as an “alcoholic
45 beverage” under AS 04.21.080(b).

1
2 “Nonalcoholic sugar-sweetened beverage” includes any nonalcoholic beverage that is
3 sweetened with caloric sweeteners, such as sugar, honey, sucrose, corn syrup, dextrose
4 and fructose. For the purpose of this legislation, “sugar-sweetened beverage” includes
5 any soft drinks as defined in this chapter. Drinks that are not sweetened with a caloric
6 sweetener are not included in this definition, as well as drinks that are 100% fruit or
7 vegetable juice with no other caloric sweetener added.

8
9 “Packaged” includes cans, bottles, and other similar sealed containers.

10
11 “Person” includes an individual, company, partnership, joint venture, joint agreement,
12 association (mutual or otherwise), corporation, estate, trust, business trust, receiver or
13 trustee, syndicate, or combination acting as a unit, including individuals who are
14 employees or officers of any of the such entities who are under a duty to perform an act
15 concerning which a violation of this chapter could occur. It is the intent of this chapter
16 that such persons be personally liable for unremitted taxes.

17
18 “Place of business” means a place where nonalcoholic sugar-sweetened beverages are
19 sold, or where they are brought or kept for the purpose of sale or consumption, including
20 a building, vessel, vehicle, or airplane.

21
22 “Ounce” means a unit of weight under the United States Customary System.

23
24 “Purchase” means the acquisition of ownership or possession of nonalcoholic sugar-
25 sweetened beverages from any source.

26
27 “Record” means a group of logically related fields of information concerning events
28 effecting an organization, which is an integral part of an accounting information system,
29 where separate, identifiable transaction data is entered as historical data.

30
31 “Retailer” means a person in the municipality who is engaged in the business of selling
32 nonalcoholic sugar-sweetened beverages at retail prices.

33
34 “Sale or sold” includes a sale, barter, exchange and every other manner of transferring
35 the ownership of personal property.

36
37 “Simple syrup” means a mixture of sugar and water.

38
39 “Soft drink” means any packaged nonalcoholic, sugar-sweetened beverage, that is sold
40 for human consumption, and contains any sugar or other natural or artificial caloric
41 sweetener, including but not limited to, soda pop, sport drinks, “energy” drinks, colas and
42 other flavored drinks, bottled coffee and tea beverages, water drinks, and any diluted fruit
43 or vegetable drink to which caloric sweetener is added, and all other beverages
44 commonly referred to as soft drinks.
45

