

ORDINANCE 419

AN ORDINANCE TO LEVY A LICENSE TAX ON PERSONS, FIRMS, CORPORATIONS AND OTHERS ENGAGED IN THE BUSINESS OF SELLING, STORING OR DELIVERING CERTAIN TOBACCO PRODUCTS WITHIN THE CORPORATE LIMITS OF THE CITY OF HAMILTON, AND ITS POLICE JURISDICTION: TO PROVIDE FOR THE ENFORCEMENT OF SAID ORDINANCE: TO PROVIDE PENALTIES FOR ITS VIOLATION.

BE IT ORDAINED by the City Council of the City of Hamilton, Alabama, as follows:

- Section 1. Definitions. Unless the context clearly indicates a different meaning the following words and phrases wherever used in this ordinance shall have the meaning respectively ascribed to them in this section;
- "Persons" means a natural person, firm, corporation, association, club, receiver, and trustee or other person acting in a fiduciary capacity.
- "City" means the City of Hamilton, Alabama.
- "Corporate Limits" means the corporate limits of the City.
- "Police Jurisdiction" means the territory outside the corporate limits of the City lying within one and one-half miles from said corporate limits, and not within the corporate limits of any other municipality.
- "Tobacco Products" means cigarettes, cigars, and smoking tobacco, or any of them.
- "Container" and "Containers" means (a) the original boxes from which cigars are customarily sold at retail, and (b) the individual packages or cans in which cigarettes and smoking tobacco are customarily sold at retail.
- "Sold" and "Sale" mean any transfer of title or possession, or both, exchange or barter, conditional or otherwise in any manner or by any means whatsoever for a consideration or any agreement therefor, including rewards, prizes or premiums of tobacco products given as a result of operation on punch boards, shooting galleries or other activities.
- "Retail Dealer" means any person, other than a wholesale dealer, who sells or delivers tobacco products within the city and its police jurisdiction.
- "Store" and "Stored" refer to the storage or warehousing of tobacco products in any manner, or the withdrawal or use of the same for any purpose other than for resale or reshipment outside the city and its police jurisdiction.
- "Storer" means a person who stores tobacco products in the city and in its police jurisdiction.
- "Dealer" means any wholesale dealer, retail dealer, or storer as herein defined.
- "Stamps" means the stamp or stamps by the use of which the taxes levied under this ordinance are paid.
- The masculine gender shall include the feminine and neuter genders.
- Wherever the context requires, the plural shall include the singular and the singular shall include the plural.
- Section 2. Levy of Tax in the City. In addition to all taxes now imposed by law, every person who is engaged in the business of selling, storing or delivering tobacco products within the corporate limits of the city shall pay a license tax to the city and a license tax is hereby fixed and levied for engaging in such business within the corporate limits of the city, which license tax shall be in the following amounts (which amounts shall be in addition to all amounts of any license taxes levied with respect to such business in any general license code of the town):
- (a) An amount equal to two cents (2¢) for each twenty (20) cigarettes or fractional of said number contained in each package sold within the corporate limits of the city;
 - (b) An amount equal to two cents (2¢) for each ounce, or fraction thereof, contained in each individual package or can of smoking tobacco which

Section 3. Levy of tax in Police Jurisdiction. In addition to all taxes now imposed by law, every person who is engaged in the business of selling, storing or delivering tobacco products within the police jurisdiction of the city shall pay a license tax to the city and a license tax is hereby fixed and levied for engaging in such business within the police jurisdiction of the city, which license tax shall be in the following amounts (which amounts shall be in addition to all amounts of any license taxes levied with respect to such business in any general license code of the city):

- (a) An amount equal to one cent (1¢) for each twenty (20) cigarettes or fraction of said number contained in each package sold within the police jurisdiction of the city;
- (b) An amount equal to one cent (1¢) for each ounce, or fraction thereof, contained in each individual package or can of smoking tobacco sold within said police jurisdiction.

Section 4. Payment of Tax. The license tax imposed by this ordinance shall be paid by affixing stamps in the manner at the times herein set forth.

Section 5. Stamps. The City Clerk shall keep on hand for sale an adequate quantity of stamps to be affixed to each container of tobacco products in denominations as required under this ordinance. Each stamp shall have inscribed thereon the words "City of Hamilton Tobacco Tax", but said words need not be arranged in the foregoing order and may be abbreviated. Said stamps may be sold to wholesale dealers only by the City Clerk at a price equal to ninety per cent of the full amount thereof, the remaining ten per cent of such full amount representing compensation to the wholesale dealer for the labor of affixing such stamps to the containers of the tobacco products.

All other persons, except such wholesale dealers, must pay the full amount of the stamps but no person shall be entitled to purchase any such number of stamps as shall cause the purchase price to include a fraction of a cent.

Section 6. Affixing Stamps. Before any tobacco products shall be sold, stored or delivered within the corporate limits of the city or its police jurisdiction by any dealer, such dealer shall affix to each container of tobacco products a stamp or stamps obtained from the City Clerk in the amount set out in this ordinance in payment of the license taxes imposed by this ordinance. Every dealer shall, within one hour after receipt of any tobacco products within the city and its police jurisdiction, unless sooner offered for sale, cause stamps to the requisite amount of the tax to be affixed as herein provided and shall cause the same to be cancelled by writing or stamping with waterproof ink across the face of each stamp such registered number as shall be furnished to such dealer by the City Clerk. After such stamping has begun it shall be continued with reasonable diligence by such dealer until all unstamped containers shall have been stamped, and the stamps cancelled as herein provided, but no stamp required to be affixed to any container shall after the same has been affixed as herein provided, be again used in payment of any part of the tax levied under this ordinance. Stamps in denominations equal to the amount of the tax shall be affixed to the container from or in which the tobacco products with and shall be so affixed in such manner that their removal will require continued applications of water or steam. In the case of cigars, sales of which are normally made from the original container, the stamps shall be affixed to the container in such a way that the stamps shall be torn in two or mutilated when the container is opened for the sale of the cigars. In the case of cigarettes and smoking tobacco, which are normally sold at retail in individual packages, the stamps shall be affixed to each individual package in such a way that such stamps shall be torn in two or mutilated when such package is opened.

Section 7. Records. Every wholesale dealer shall, at the time of selling or delivering tobacco products into the city or its police jurisdiction, make a true duplicate invoice of the same, which shall show full and complete details of the sale or delivery of such tobacco products and the prices thereof. Every wholesale dealer and every retail dealer shall keep a record of the purchase, sale, exchange or receipt of tobacco products. All such invoices and cancelled checks and other memoranda pertaining to any such purchase, sale, exchange or receipt shall be retained for a period of three years and shall be subject to inspection of the City Clerk or her duly authorized deputy, who shall have the power and authority to enter upon the premises of any dealer at all reasonable times for the purpose of examining such invoices, records, cancelled checks and other memoranda. Any person who purchases or receives in any manner whatsoever tobacco products which do not have stamps affixed in the manner required by this ordinance shall, within three days after receipt of such tobacco products, report the receipt or purchase, as the case may be, of such tobacco products to the City Clerk, giving the date of purchase or receipt, the name of the person or firm from whom purchased or received, and list describing the tobacco products so purchased or received and the purchase price thereof. Such report must be made by registered mail or in person.

Section 8.

Illegal Acts. Among others, the following acts and omissions shall be unlawful:

- (a) It shall be unlawful for any person who is required by this ordinance to affix stamps to any container of tobacco products to fail to affix such stamps or to fail to cancel such stamps in the manner and within the time required by this ordinance.
- (b) It shall be unlawful for any person to sell, offer to sale, store or deliver within the City of its police jurisdiction any tobacco products where stamps have not been affixed and cancelled as provided in this ordinance.
- (c) It shall be unlawful for any person to have in his possession or under his control any tobacco products with respect to which stamps have not been affixed in the manner required by this ordinance for more than six hours after receipt of such tobacco products on the premises of the person. The possession of each container of tobacco products not having proper stamps affixed as required by this ordinance shall be deemed a separate offense.
- (d) It shall be unlawful to manufacture, buy, sell, offer for sale, or possess, or attempt so to do, any reproduction or counterfeit of the stamps provided for in this ordinance, or to possess tools, implements, instruments or materials of any kind necessary or appropriate to reproduce or counterfeit such stamps, or to alter or cause to be altered any stamps herein provided for.
- (e) It shall be unlawful to remove from a container of otherwise prepare any stamps with intent to use or cause the same to be used, after it has already been used, or to buy, sell, offer for sale or give away any washed, removed, altered or restored stamp to any person, or to have in possession any such washed or removed or restored or altered stamp, or for the purpose of indicating payment of any tax hereunder, to re-use any stamp which has theretofore been used for the payment of any tax provided in this ordinance, or to sell any stamp provided for herein, excepting, however, sales made by the City Clerk.
- (f) It shall be unlawful to re-use or refill with tobacco products any container from which tobacco products have been removed and with respect to which the tax has theretofore been paid.
- (g) It shall be unlawful for any person who is in this ordinance required to keep records to fail or omit to keep the same in the manner herein provided, or to refuse to permit the City Clerk or her duly authorized deputy to inspect the same at any reasonable hour, or to interfere with or obstruct the City Clerk or her duly authorized deputy in the making of any such inspection.
- (h) It shall be unlawful for any person who is herein required to file statements with the City Clerk to fail or omit to make or file any statements herein provided within the time herein specified, or to make any false statement therein, and such offense shall be a continuing offense against the City and each day during which such person shall sell, store or deliver tobacco products in the city or its police jurisdiction during such default shall constitute a separate offense.
- (i) It shall be unlawful for any person who is required to pay the license tax herein provided for to fail or omit to pay the same within the time herein specified, and such offense shall be a continuing offense against the city and each day during which said person shall sell, store or deliver tobacco products in the city or its police jurisdiction during such default shall constitute a separate offense.

Section 9.

Construction. (a) This ordinance shall not be construed to tax interstate commerce or any business of the United States Government or any branch or agency thereof.

- (b) This ordinance shall not be construed to apply to tobacco products stored for the purpose of resale or reshipment outside the city and its police jurisdiction and which are actually so resold or reshipped.

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- (c) This ordinance shall not be construed to repeal any of the provisions of the General License Code of the City, but shall be held to be cumulative.
- (d) Whenever the requisite amount of stamps has been affixed to the containers of tobacco products, as required herein, this ordinance shall not be construed to require additional stamps to be affixed thereunto in case of subsequent sales, deliveries or storage; provided, that where such tobacco products have been properly stamped for sale, delivery or storage within the police jurisdiction, then before the same can be sold, delivered or stored in the corporate limits of the city there must be properly affixed to such tobacco products and properly cancelled an equal amount of stamps to those already affixed.

Section 10. Time of Payment of Tax. The license tax imposed by this section shall be paid from time to time as stamps are purchased from the City Clerk and affixed as provided herein.

Section 11. Penalty. Any person violating any of the provisions of this ordinance shall, upon conviction, be punished by a fine of not more than \$100.00, and may be sentenced to hard labor for the city for a period not to exceed six months; provided, that upon conviction for a second or subsequent offense, the minimum fine imposed shall be \$25.00.

Section 12. Severability. Each and every provision of this ordinance is hereby declared to be an independent provision, and the holding of any provision hereof to be void or invalid shall not affect any other provision hereof, and it is hereby declared that the other provisions of this ordinance would have been enacted regardless of any provision which might be held invalid.

Section 13. This ordinance shall become effective on the 1st day of April, 1981.

Adopted and approved this, the 23rd day of February, 1981.

Barbara Pastain
City Clerk

Murray C. Ballard
Mayor

Council:

