

MINUTES OF A REGULAR MEETING OF
THE MAYOR AND CITY COUNCIL OF
THE CITY OF HAMILTON, ALABAMA

March 17, 1997

A regular meeting of the Mayor and City Council of the City of Hamilton, Alabama was held on Monday, March 17, 1997 at 6:30 P.M. in the auditorium of Hamilton City Hall. Those present were as follows:

Mayor: Ken Mays

Council: Watha Williams
Wade Williams
Stanley Nixon
Neal Childers
John Tuck

City Clerk: Sue Page

Guests: Barron Wiginton Jimmy Mills
James Dodd Jan Williams
John Fikes Jeffrey Fikes
Kenny Jackson Kenneth Lolley
Billy Loden Larry Armstrong
Steve Cox Harold Burleson
Roger Nixon John Beddow
John Calvert Devel Emerson
Steve Logan John Bentley
Ed Howell Jimmy Brumley
Steve Nichols Annette Sherrill
Dee Howell Wyatt Howell
Jay Wilson Robert Barksdale
Tommy Gann Kevin Williams

Mayor Mays called the meeting to order and, following an invocation by Neal Childers, welcomed all guests.

John Tuck made a motion that the minutes of the last meeting be approved. Neal Childers seconded the motion which passed unanimously.

Next on the agenda was a report from the following Department Heads regarding their 4-year capital improvements:

Steve Cox - Water Department
Kenny Jackson - Street Department
Bill Loden - Fire Department
Larry Armstrong - Park and Recreation
Kenneth Lolley - Police Department
John Bentley - City Attorney - Financial Overview

Next, Mayor Mays welcomed guests who had requested to be on the agenda. Steve Logan, John Calvert and John Beddow expressed their concerns regarding an anticipated tax proposal. Other comments from the floor were heard from Devel Emerson, Ed Howell and James Dodd. Following a lengthy discussion of these issues, Councilman Wade Williams requested a 10 minute recess.

Following the recess, Wade Williams made a motion to consider and discuss five separate tax ordinances. Stanley Nixon seconded the motion which passed unanimously. The following ordinance was then introduced:

ORDINANCE 530
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, OR ITS POLICE JURISDICTION: TO PROVIDE
FOR THE ENFORCEMENT OF SAID ORDINANCE: AND TO PROVIDE PENALTIES FOR ITS VIOLATION

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

SECTION 1 - Ordinance No 196 dated March 30, 1953; Amendment to Ordinance No. 196 dated March 11, 1957; and Ordinance No. 417 dated February 23, 1981, are hereby repealed and superseded as follows:

SECTION 2 - 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 them in this section:

"Person" 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.

"Corporate Limits" means the corporate limits of the city.

"Police Jurisdiction" means the territory outside the corporate limits of the city lying within three miles from said corporate limits, and not within the corporate limits of any other municipality.

"Tobacco Products" means cigarettes, cigars, smoking tobacco, chewing tobacco, snuff, or any of them.

"Container" and "Containers" means (a) the original boxes from which cigars and chewing tobacco are customarily sold, and (b) the individual packages or cans in which cigarettes, smoking tobacco and snuff are customarily sold at retail.

"Sold" and "Sale" means 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 price" means the retail selling price of the tobacco products before adding the amount of tax assessed herein or any other tobacco tax imposed under the laws of the State of Alabama.

"Wholesale Dealer and Jobber" means persons, firms, or corporations who sell at wholesale only, any one or more of the articles taxed herein to licensed retail dealers for the purpose of resale only.

"Retail Dealer" means every person, firm, corporation, other than a wholesale dealer, who shall sell or offer for sale any one or more of the articles taxed herein, irrespective of quantity or amount, or the number of sales; and all persons operating under a retail dealer's license.

"Store" and "Stored" refers 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 or its police jurisdiction.

"Storer" means a person who stores tobacco products in the city or 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 tax levied under this ordinance is paid and shall be designated City of Hamilton revenue stamps.

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 3. Levy of Tax in City.

In addition to all other taxes of every kind now imposed by law, every person, firm, corporation, club or association, within the corporate limits of the City, who sells or stores or receives for the purpose of distribution to any person, firm, corporation, club or association within the corporate limits of the City, cigars, cheroots, stogies, cigarettes, smoking tobacco, chewing tobacco, snuff, or any substitute therefor, either or all, shall pay to the City of Hamilton for city purposes only a license or privilege tax which shall be measured by and graduated in accordance with the volume of sales of such person, firm, corporation, club or association in the City of Hamilton. There is hereby levied license or privilege taxes on articles containing tobacco enumerated in this ordinance in the following amounts:

(1) LITTLE CIGARS. - Upon cigars of all descriptions made of tobacco, or any substitute therefor, and weighing not more than three pounds per 1,000, \$.02 for each ten cigars, or fractional part thereof.

(2) CHEROOTS, STOGIES, CIGARSM ETC. - Upon cigars of all descriptions made of tobacco, or any substitute therefor, retailing for three and one-third cents each or less, \$1.50 per 1,000.

(3) CIGARS. - Upon cigars of all descriptions made of tobacco, or any substitute therefor, retailing for more than three and one-third cents each and not more than \$.05 each, \$3 per 1,000.

(4) CIGARS. - Upon cigars of all descriptions made of tobacco, or any substitute therefor, retailing for more than \$.05 each and not exceeding \$.08 each, \$4.50 per 1,000.

(5) CIGARS. - Upon cigars of all descriptions made of tobacco, or any substitute therefor, retailing for more than \$.08 each and not exceeding \$.10 each, \$7.50 per 1,000.

(6) CIGARS. - Upon cigars of all descriptions made of tobacco, or any substitute therefor, retailing for more than \$.10 each and not exceeding \$.20 each, \$15 per 1,000.

(7) CIGARS - Upon cigars of all descriptions made of tobacco, or any substitute therefor, retailing for more than \$.20 each, \$20.25 per 1,000.

(8) CIGARETTES. - Upon cigarettes made of tobacco, or any substitute therefor, an amount equal to \$.06 for each 20 cigarettes or fraction of said number, contained in each package sold within the corporate limits of the City.

(9) SMOKING TOBACCO. - Upon all smoking tobacco, including granulated, plug cut, crimp cut, ready rubbed and other kinds and forms of tobacco prepared in such manner as to be suitable for smoking in a pipe or cigarette, upon each package: weighing not more than one and one-eighth ounces, tax \$.02; over one and one-eighth ounces, not exceeding two ounces, tax \$.05; over two ounces, not exceeding three ounces, tax \$.08; over three ounces, not exceeding four ounces, tax \$.11; \$.03 additional tax for each ounce or fractional part thereof over four ounces.

(10) CHEWING TOBACCO. - Upon all chewing tobacco prepared in such manner as to be suitable for chewing only and not suitable for smoking as described and taxed in subdivision (9) of this section; three-fourths cent per ounce or fractional part thereof.

(11) SNUFF. - Upon each can or package of snuff weighing not more than five-eighths ounces, one-half cent tax; over five-eighths ounces and not exceeding one and five-eighths ounces, \$.01 tax; over one and five-eighths ounces and not exceeding two and one-half ounces, \$.02 tax; over two and one-half ounces and not exceeding five ounces (cans, packages, gulleets), \$.03 tax; over three ounces and not exceeding five ounces (glasses, tumblers, bottles), three and one-half cents tax; over five ounces and not exceeding six ounces, \$.04 tax; weighing over six ounces, an additional \$.06 for each ounce or fractional part thereof.

SECTION 4. Levy of Tax in Police Jurisdiction.

In addition to all other taxes of every kind now imposed by law, every person, firm, corporation, club or association, within the corporate limits of the City, who sells or stores or receives for the purpose of distribution to any person, firm, corporation, club or association within the corporate limits of the City, cigars, cheroots, stogies, cigarettes, smoking tobacco, chewing tobacco, snuff, or any substitute therefor, either or all, shall pay the City of Hamilton for city purposes only a license or privilege tax which shall be measured by and graduated in accordance with the volume of sale of such person, firm corporation, club or association in the City of Hamilton. There is hereby levied license or privilege taxes on articles containing tobacco enumerated in this ordinance in the following amounts:

- (1) LITTLE COGARS. - Upon cigars of all descriptions made of tobacco, or any substitute therefor, and weighing not more than three pounds per 1,000, \$.01 for each ten cigars, or fractional part thereof.
- (2) CHERROOTS, STOGIES, CIGARS, ETC. - Upon cigars of all descriptions made of tobacco or any substitute therefor, retailing for three and one-third cents each or less, \$.75 per 1,000.
- (3) CIGARS. - Upon cigars of all descriptions made of tobacco, or any substitute therefor, retailing for more than three and one-third cents and not more than \$.05 each, \$1.50 per 1,000.
- (4) CIGARS - Upon cigars of all descriptions made of tobacco, or any substitute therefor, retailing for more than \$.05 each and not exceeding \$.08 each, \$2.25 per 1,000.
- (5) CIGARS - Upon cigars of all descriptions made of tobacco, or any substitute therefor, retailing for more than \$.08 each and not exceeding \$.10 each, \$3.75 per 1,000.
- (6) CIGARS - Upon cigars of all descriptions made of tobacco, or any substitute therefor, retailing for more than \$.10 each and not exceeding \$.20 each, \$7.50 per 1,000.
- (7) CIGARS - Upon cigars of all descriptions made of tobacco, or any substitute therefor, retailing for more than \$.20 each, \$10.13 per 1,000.
- (8) CIGARETTES - Upon all cigarettes made of tobacco, or any substitute therefor, an amount equal to \$.03 for each 20 cigarettes or fraction of said number, contained in each package sold within the corporate limits of City.
- (9) SMOKING TOBACCO - Upon All smoking tobacco, including granulated, plug cut, crimp cut, ready rubbed and other kinds and forms of tobacco prepared in such manner as to be suitable for smoking in a pipe or cigarette, upon each package; weighing not more than one and one-eighth ounces, tax \$.01; over one and one-eighth ounces, not exceeding two ounces, tax \$.025; over two ounces, not exceeding three ounces, tax \$.04; over three ounces, not exceeding four ounces, tax \$.055; \$.015 additional tax for each ounce or fractional part thereof over four ounces.
- (10) CHEWING TOBACCO - Upon all chewing tobacco prepared in such manner as to be suitable for chewing only and not suitable for smoking as described and taxed in subdivision (9) of this subsection: one-half cent per ounce or fractional part thereof.
- (11) SNUFF - Upon each can or package of snuff weighing not more than five-eighths ounces, one-fourth cent tax; over five-eighths ounces and not exceeding one and five-eighths ounces, \$.005 tax; over one and five-eighths ounces and not exceeding two and one-half ounces, \$.01 tax; over two and one-half ounces and not exceeding five ounces (cans, packages, gullets), \$.015 tax; over three ounces and not exceeding five ounces (glasses, tumblers, bottles), one and three-fourths cents tax; over five ounces and not exceeding six ounces, \$.02 tax; weighing over six ounces, an additional \$.03 for each ounce or fractional part thereof.

SECTION 5. Payment of Tax.

- (a) Whenever in this ordinance reference is made to any manufactured tobacco products, manufactured or imported to sell at a certain price, as the basis for computing the tax, it is intended to mean the ordinary, customary or usual price paid by the consumer for such tobacco products taxable under this ordinance.
- (b) Whenever in this ordinance reference is made to any manufactured tobacco products on which the tax is based on weight, the weight as shown by manufacturer or the federal internal revenue stamp shall apply.
- (c) When the retail or selling price is referred to in this ordinance as the basis for computing the amount of stamps required on any article, it is intended to mean the retail or selling price of the articles before adding the amount of the tax.
- (d) When any articles or commodities subject to tax in this ordinance are given as prizes on punch boards, shooting galleries, premiums, etc., the tax shall be based on the ordinary retail selling price of such articles.
- (e) The tax herein levied shall be paid to the City Clerk through the use of stamps as herein provided. However, every wholesaler, distributor, jobber, or retail dealer shall add the amount of the tax levied herein to the price of the tobacco or tobacco products sold, it being the purpose and intent of this provision that the tax levied is in fact a levy on the ultimate consumer or user with the wholesaler, distributor, jobber, or retail dealer acting merely as an agent of the City for the collection and payment of the tax to the City. Therefore, notwithstanding any exemptions from taxes which any such seller may now or hereafter enjoy under the Constitution or laws of this or any other state, or of the United States, he shall collect the tax imposed hereunder from the purchaser or consumer, and the amount of the tax shall constitute a debt from the purchaser or consumer to the seller until paid. It shall be unlawful for any person, firm, corporation, association, or copartnership to fail or refuse to add to the sales price and collect from the purchaser the amount of the tax to be added to the sales price and collected from the purchaser hereunder. Stamps in denominations to the amount of the tax or in denominations specified pursuant to subsection (f) of this section shall be affixed to the box or other container from or in which tobacco products taxed by this section are normally sold at retail. The stamps shall be affixed in such a manner that their removal will require continued application of water or steam; and in case of cigars, cheroots, chewing tobacco and like manufactured tobacco products, where sales are made from the original container, the stamps shall be affixed to the box or container in such a way that the stamps shall be torn in two or mutilated when such containers or boxes are opened for the sale of the tobacco products. In the case of cigarettes, smoking tobacco, snuff and like products sold at retail in packages, the required amount of

stamps to cover the tax shall be affixed to each individual package or container. All taxable tobaccos herein enumerated, when offered for sale, either at wholesale or retail, without having stamps affixed in the manner set out by this ordinance, shall be subject to confiscation.

(f) The City Clerk shall prepare and issue stamps in denominations for the amount of the tax imposed by this ordinance, provided that if the City Clerk determines that it is not economical for the City to have a stamp prepared and issued for one or more particular types of tobacco products, then he may by regulation prescribe the use of a stamp in a denomination other than for the amount of the tax imposed with the difference between the amount of tax actually imposed and the amount of tax denominated by the stamp paid with the use of a monthly report; or he may require a monthly report without use of a stamp to report the amount of taxes due.

SECTION 6. STAMPS.

The City Clerk shall design the form and kind of stamps to be used and shall duly adopt and promulgate such form of stamps. Such stamps so adopted and promulgated shall be known and termed as "City of Hamilton Tobacco Tax", and in any information or indictment, it shall be sufficient to describe the stamps as "City of Hamilton Tobacco Tax."

SECTION 7. AFFIXING STAMPS.

The license taxes imposed by this ordinance shall be paid by affixing stamps in the manner and at the time herein set forth. In the case of cigars, stogies, cheroots, chewing tobacco and like products, the stamps shall be affixed to the box or container in which or from which normally sold at retail. In the case of cigarettes, smoking tobacco, and snuff, the stamps shall be affixed to each individual package. Time allowed for affixing stamps shall be as follows: Every wholesale or retail dealer in this City shall immediately after receipt of any unstamped cigars, stogies, cheroots, chewing tobacco, cigarettes, smoking tobacco, or snuff, unless sooner offered for sale, cause the same to have the requisite denominations and amount of stamp or stamps to represent the tax affixed as stated herein, and to cause same to be canceled by writing or stamping across the face of each stamp the registered number of such wholesaler or retailer, which shall be furnished by the Department of Revenue for the State of Alabama. The stamping of the cigars, stogies, cheroots, chewing tobacco, cigarettes, smoking tobacco, and snuff shall actually begin within one hour after receipt of the cigars, stogies, cheroots, chewing tobacco, cigarettes, smoking tobacco, and snuff in the premises of the wholesale or retail dealer. The stamping shall be continued with reasonable diligence by the wholesale or retail dealer until all of the unstamped cigars, stogies, cheroots, chewing tobacco, cigarettes, smoking tobacco, and snuff have been stamped and the stamps canceled as provided by law. Every wholesale dealer shall at the time of shipping or delivering any tobacco products as enumerated herein make a true duplicate invoice of the same which shall show full and complete details of the sale or delivery of the taxable article, and shall retain the same subject to the use and inspection of the City, or its duly authorized agents for a period of three years. Wholesale and retail dealers shall also keep a record of purchases of all tobacco products enumerated and defined in this ordinance and hold all books, records, and memoranda pertaining to the purchase and sale of those tobacco products open to the inspection of the City or its duly authorized agents at any and all times. Every wholesale dealer shall furnish to the Clerk of the City a monthly report, between the first and twentieth of each month for the preceding month, of all orders for tobacco products purchased through the wholesale dealer from without this city on a drop shipment and consigned direct to the person, firm, corporation, or association of persons ordering the tobacco products from without this city through the wholesale dealer. If, upon examination of invoices of any tobacco product sold by a wholesaler or purchased or received, or both, by a retail dealer, he or she is unable to furnish evidence to the City Clerk of sufficient stamp purchases to cover the unstamped tobaccos purchased, the prima facie presumption shall arise that the tobacco products were sold without the proper stamps affixed thereto.

SECTION 8. Illegal Acts.

Among other, 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 for sale, store or deliver within the city or its police jurisdiction any tobacco products where stamps have not been affixed and canceled 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 such 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 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 or 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 reuse 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 reuse 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 his duly authorized deputy to inspect the same at any reasonable hour, or to interfere with or obstruct the City Clerk or his duly authorized deputy in the making of 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 statement 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

(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 thereto in case of subsequent sales, deliveries or storage; provided, that where such tobacco products have been properly stamped for sale, delivery or stored in the corporate limits of the city there must be properly affixed to such tobacco products and properly canceled 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 less than \$500 nor more than \$1,000, or imprisonment for a period of six months either or both, at the direction of the court, and may be sentenced to hard labor for the city for a period not to exceed six months.

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.

Adopted and approved this 17th day of March, 1997.

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