

Council Member Mike Sherwood introduced the following Ordinance:

ORDINANCE NO. 06-011

AN ORDINANCE TO AMEND THE CIGARETTE TAX ORDINANCE.
BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ALABASTER, ALABAMA
AS FOLLOWS:

Section 94-82 of the Code of Ordinances of the City of Alabaster, is hereby amended so that the following sub-sections reads as follows:

Definitions.

Unless the context clearly indicates a different meaning, the following words and phrases, wherever used in this article, shall have the meanings respectively ascribed to them in this section:

Generally. Any words or phrases used in this article and not herein defined which are defined in the Code of Ala. 1975, § 40-25-2, shall have the meaning ascribed to them by such section of the Code of Alabama.

Cigarette means a roll of finely cut tobacco or any substitutes thereof enclosed in paper prepared for smoking by individuals.

Dealer means any wholesale or retail dealer as defined in this section.

Package means individual containers from which or in which retail sales of cigarettes are normally made or intended to be made.

Retail dealer means any person, other than a wholesale dealer, who sells or delivers cigarettes within the city, and any person operating under a retail dealer's license.

Retail price means the retail-selling price of the cigarettes before adding the amount of the tax assessed herein or any tobacco tax assessed by the state.

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 therefore, including rewards, prizes or premiums of cigarettes given as a result of operations on punch boards, shooting galleries or other activities.

Stamps mean the stamp or stamps by the use of which the taxes levied under this article are paid.

Store and stored mean the storage or warehousing of cigarettes in any manner, or the withdrawal or use of the same for any purpose, other than for resale or reshipment outside the city.

Wholesale dealer means a person who sells or delivers within the city, at wholesale only, cigarettes to retail dealers for the purpose of resale only.

Section 3. Application of article.

This article shall not be construed to tax interstate commerce or any business of the United States government or any branch or agency thereof. This article shall not be construed to apply to cigarettes stored for the purpose of resale or reshipment outside the city and which are actually so resold or reshipped. This article shall not be construed to repeal any of the provisions of the general license provisions of the city, but shall be held to be cumulative.

Section 94-82. Tax Levy within city.

In addition to all other taxes now imposed by law, every person who sells, stores or delivers cigarettes shall pay a license tax to the city, and a license tax is hereby fixed and levied, for the sale storage or delivery of cigarettes in the corporate limits of the city, which license shall be in an amount equal to five cents (\$.05) for each package of cigarettes so sold, stored or delivered.

Section 94-84. Stamps – Required; purchase generally; discount.

The revenue examiner shall keep on hand for sale an adequate quantity of stamps to be affixed to each package of cigarettes in denominations as required under this article. Each such stamp shall have inscribed thereon the words "City of Alabaster—Tobacco Tax" but such words need not be arranged in the foregoing order and may be abbreviated. Such stamps may be sold to wholesale dealers only by the revenue examiner at a price equal to ninety percent (90%) of the full amount thereof, the remaining ten percent (10%) of such full amount representing compensation to the wholesale dealer for the labor of affixing such stamps to the packages in which the cigarettes are contained. All other persons, except such wholesale dealers, must pay the full face 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 94-85. Same – purchased under exceptional circumstances and sale without.

If for any reason deemed sufficient by the mayor and revenue examiner in their discretion, and under exceptional circumstances, it is more practical to sell stamps provided for in this article to a retail dealer, the mayor and revenue examiner are hereby given authority to sell such stamps to such retail dealer under the same terms and conditions as the same are provided to be sold to wholesale dealers and jobbers only. Failure of the revenue examiner to have available for sale the stamps provided for in this article at any time shall not relieve any dealer of the obligation to pay such tax or to keep the records provided for in this article, or to fully comply with the terms of this article in all other respects, but such dealer shall collect such tax and pay the same in the same manner and in the same amount as if such stamps were actually affixed as provided in this article.

Section 94-86. Same – Affixing and canceling

Before any cigarettes shall be sold, stored or delivered within the corporate limits of the city by any dealer, such dealer shall affix to each package of cigarettes a stamp or stamps obtained from the revenue examiner in the amounts set out in this article in payment of the license taxes imposed by this article. Every dealer shall, within one hour after receipt of any cigarettes within the city, unless sooner offered for resale, 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 reasonable diligence by such dealer until all unstamped cigarettes shall have been stamped and the stamps cancelled as herein provided, be again used in payment of any part of the tax levied under this article. Such stamps shall be affixed in such manner that their removal will require continued application of water or steam. In the case of cigarettes sold by retail in packages, the stamps shall be affixed to each individual package in such a way that such stamps shall be torn apart or mutilated when such package is opened.

Section 94-87. Records; reports of unstamped cigarettes; obstruction officer.

Every wholesale dealer shall, at the time of selling or delivering cigarettes 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 cigarettes and the prices thereof. Every wholesale dealer and every retail dealer shall keep a record of the purchase, sale, exchange or receipt of cigarettes. All such invoices and records and all cancelled checks and other memoranda pertaining to any such purchase, sale, exchange or receipt shall be retained for a period of three (3) years and shall be subject to inspection of the revenue examiner or his 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 cigarettes which do not have stamps affixed in the manner required by this article shall, within three (3) days after receipts of such cigarettes, report the receipt and purchase thereof to the revenue examiner, giving the date of purchase or receipt, the name of the person from whom purchased or received and a list describing the cigarettes so purchased or received and a list describing the cigarettes so purchased or received and the purchase price thereof. Such report must be made by registered mail or in person.

Section 94-88. Illegal acts

Among others, and except as provided in section 94-85, the following acts and omissions shall be unlawful:

- (1) It shall be unlawful for any person who is required by this article to affix stamps to cigarettes, to fail to affix such stamps, or to cancel such stamps in the manner or within the time required by this article.
- (2) It shall be unlawful for any person to sell, offer for sale, store or deliver within the city or its police jurisdiction any cigarettes where stamps have not been affixed and cancelled as provided in this article.
- (3) It shall be unlawful for any person to have in his possession or under his control any cigarettes where stamps have not been affixed in the manner required by this article for more than six (6) hours after receipt of such cigarettes on the premises of such person. The possession of each package of cigarettes not having the proper stamps affixed, as required by this article shall be deemed a separate offense.
- (4) It shall be unlawful for any person 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 article 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.
- (5) It shall be unlawful for any person to remove from a package or otherwise prepare any stamp 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 under this article, to reuse any stamp which has theretofore been used for the payment of any tax provided in this article or to sell any stamp provided for herein except as to sales made by the revenue examiner.
- (6) It shall be unlawful for any person to reuse or refill with cigarettes any package from which cigarettes have been removed and with respect to which the tax has theretofore been paid.
- (7) It shall be unlawful for any person, who is in this article required to keep records, to fail or omit to keep the same in the manner herein provided, or to refuse to permit the revenue examiner or his or her duly authorized deputy to inspect the same at any reasonable hour, or to interfere with or obstruct the revenue examiner or his or her duly authorized deputy in the making of any such inspection.
- (8) It shall be unlawful for any person who is in this article required to file statements with the revenue examiner 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 cigarettes in the city during such default shall constitute a separate offense.

Section 94-89. Cigarettes subject to confiscation; sale

Any cigarettes taxable under the provisions of this article, found at any point within the city, which cigarettes shall have been within the city for a period of six hours or longer, in the possession of any retail dealer, or for a period of 36 hours or longer, in the possession of any wholesale dealer or jobber, not having affixed to the packages the stamps as provided in this article, are hereby declared to be contraband goods, and the same may be seized by the revenue examiner, the examiner's deputy or agent, or by any peace officer of the city, without a warrant, and such goods shall be delivered to the examiner for sale at public auction to the highest bidder, for cash, after advertisement for five days by posting notice, but the examiner, before delivering any of such cigarettes so seized, shall require the purchaser to affix the proper amount of stamps to the individual packages.

The proceeds of any such sale shall be accounted for the revenue examiner as in the case of other funds collected by such officer. Provided further, that any of the cigarettes enumerated in this article when offered for sale, either at wholesale or retail, without stamps having been first affixed, shall be subject to confiscation and sale as provided in this article.

Penalty

Persons failing to properly affix the required stamps to any cigarettes or other tobacco products shall be required to pay, as part of the tax imposed hereunder, a penalty of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Each article or commodity not having proper stamps affixed thereto as herein required shall be deemed as a separate offense. Any cigarettes or other tobacco products in the place of business of any person required by this article to stamp the same shall be prima facie evidence that they are intended for sale. The revenue examiner, upon good cause shown, may waive or remit any penalty or any part thereof provided for in this section.

The provisions of this ordinance are severable. If any part hereof is declared invalid or unconstitutional by a court of competent jurisdiction, such declaration shall not affect the part which remains.

Effective Date. This ordinance shall become effective immediately after passage and adoption by the City Council of the City of Alabaster, Alabama, and posting or otherwise required by law. Unless further amended, and shall replace any conflicting provisions heretofore adopted and currently in effect, or otherwise.

ADOPTED AND APPROVED THIS 2 DAY OF OCTOBER 2006.

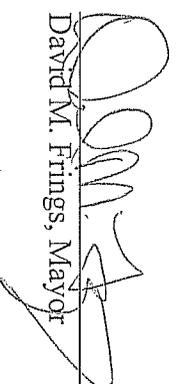
ATTEST:

CITY OF ALABASTER, ALABAMA


Marsha Massey, City Clerk/Treas.

BY 
Rick Walters, Council President

APPROVED:


David M. Frings, Mayor