

Adopted 1-22-04

ORDINANCE NO. 04-68

BE IT ORDAINED by the City Council of the City of Huntsville, Alabama, that Ordinance No. 03-914, as adopted and approved on the 20th day of November, 2003, which amended Article VII, Tobacco Privilege License, of Chapter 15, Licenses, of the Code of Ordinances, City of Huntsville, Alabama, as adopted and approved on the 24th day of April, 2003, is hereby amended as follows:

Section 1. Article VII is hereby amended and shall be entitled:

ARTILCE VII. TOBACCO PRIVILEGE LICENSE FEE.

Section 2. Section 15-300 is hereby amended to read as follows:

Sec. 15-300. Definitions.

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

Chewing tobacco means tobacco prepared in such a manner as to be suitable for chewing only and not suitable for smoking.

Cigar means a compact roll of tobacco leaves prepared for smoking and shall include cigars, of all description containing any quantity of tobacco such as, but not limited to, cheroots and stogies.

Cigarette means a roll of finely cut tobacco or any substitute therefor, which is enclosed in paper and prepared for smoking by individuals.

Cigarillo means a small cigar or cigarette wrapped in tobacco instead of paper and sold in packages rather than by individual cigar.

City clerk-treasurer means the city clerk-treasurer or his delegate.

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

Person or company, used interchangeably, means any individual, firm, company, partnership, association, corporation, receiver or trustee, or any other group or combination acting as a unit, and the plural as well as the

singular number, unless the intention to give a more limited meaning is disclosed by the context.

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

Retail sale means any sale by retail dealer of tangible personal property to users or consumers for personal use and not for resale.

Smoking tobacco means prepared in such a manner as to be suitable for smoking in a pipe or cigarette which shall include granulated, plug cut, crimp cut, ready rubbed and other kinds and forms of tobacco.

Snuff and other tobacco products used in a similar manner means a preparation of finely pulverized tobacco that can be drawn up into the nostrils by inhaling and other tobacco products used in a similar manner, not smoked or chewed.

Tobacco product means cigars, cheroots, stogies, cigarettes, cigarillos, smoking tobacco, chewing tobacco, snuff, tobacco in any form or condition or any substitute therefor.

Wholesale dealer means a person engaged in wholesale sales.

Wholesale sale means a sale of tangible personal property by wholesalers to licensed retail merchants, jobbers, dealers or other wholesalers for resale, and does not include a sale by wholesalers to users or consumers, not for resale; and as further defined under state law.

Section 3. Section 15-301 is hereby amended to read as follows:

Sec. 15-301. License Fee Imposed.

There is levied, in addition to all other taxes of every kind and nature imposed by law, and shall be collected as provided in this article, a privilege or license fee upon every person engaged within the corporate limits of the city in the sale, storage or delivery of all tobacco products. Each person making such a sale of any tobacco product shall remit said license fee **which shall be paid one time only per individual package of tobacco product sold**. The fee shall be as follows:

(1) Cigarettes: Upon all cigarettes which contain any quantity of tobacco or any substitute, a fee of ten cents (\$0.10) for each individual package;

(2) Cigarillos: Upon all cigarillos which contain any quantity of tobacco or any substitute, a fee of ten cents (\$0.10) for each individual package;

(3) Cigars: Upon cigars of all description containing any quantity of tobacco or any substitute, a fee of three cents (\$0.03) for each cigar sold individually and not as part of a package;

(4) All other tobacco products: Upon all other tobacco products of any type including but not limited to chewing tobacco, smoking tobacco, and snuff, a fee of ten cents (\$0.10) for each individual package sold.

Section 4. Section 15-302 is hereby amended to read as follows:

Sec. 15-302. License required; general license provisions not affected.

(a) If any person shall engage in or continue in any business for which a privilege fee is imposed by Article II of this chapter as a condition precedent to engaging or continuing in such business, he shall apply for and obtain from the city clerk-treasurer's office a license to engage in and to conduct such business for the current tax year upon the condition that he shall pay the privilege license fee accruing to the city clerk-treasurer's office under the provisions of this article.

(b) The amount of privilege license fees provided for in this article shall be additional to and cumulative of all amounts required to be paid under Article II of this chapter and to all other licenses and taxes levied by law as a condition precedent to engaging in any business taxable under this article, except as in this article otherwise specifically provided.

(c) No provision of this article shall be construed as relieving any person from the payment of any license or privilege fee imposed by law.

(d) No license shall be issued under the provisions of the article to any person who has not complied with the provisions of this article.

Section 5. Section 15-303 is hereby amended to read as follows:

Sec. 15-303. License fees due monthly; filing of reports; estimated payment authorized; extension of time for making returns.

The license fees levied under the provisions of this article, except as otherwise provided, shall be due and payable in monthly installments on or before the 20th day of the month next succeeding the month in which the license fee accrues. On or before the 20th of each month, the person responsible for remitting the license fee to the city shall report such license fee on forms and in a manner prescribed by the city. At the time of making such monthly report such persons shall compute the license fees due and shall pay to the city clerk-treasurer's office the amount of license fees shown to be due.

Section 6. Section 15-304 is hereby amended to read as follows:

Sec. 15-304. Purchase and use of stamps for cigarettes only.

The license fee imposed by this article shall be paid by affixing stamps in the manner and at the time herein set forth.

(a) The city clerk shall keep on hand for sale an adequate quantity of stamps to be affixed to each individual package of cigarettes sold, stored or delivered in denominations as required under this article. The city clerk-treasurer shall be the sole distributor of the stamps. The stamps may be sold at a discounted price to licensed wholesale dealers at a price equal to ninety (90) percent of the full amount thereof, the remaining ten (10) percent of such full amount shall represent 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 licensed 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.

(b) 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 a stamp or stamps obtained from the city clerk-treasurer in the amounts set out in this article in payment of the license fees imposed by this article. Every dealer shall, within six (6) hours after receipt of any cigarettes within the city, unless sooner offered for sale, cause stamps equal to the required amount of the license fee to be affixed as herein provided and shall cause the same to be canceled by writing or stamping with waterproof ink a registered number, which shall be furnished to such dealer by the city

clerk-treasurer, across the face of each stamp. After such stamping has been begun, it shall be continued with reasonable diligence by such person until all unstamped cigarettes shall have been stamped and the stamps canceled as herein provided. No stamp required to be affixed to any package of cigarettes shall, after the same has been affixed as herein provided, be again used in payment of any part of the license fee levied under this article. The stamps shall be affixed in such a manner that the removal of the stamp will require continued application of water or steam. The required stamp shall be affixed to each individual package in such a way that the stamp shall be torn in two (2) or mutilated when such package is opened.

Section 7. Section 15-305 is hereby amended to read as follows:

Sec. 15-305. Cash sales and credit collections to be reported.

Any person required to remit license fees under this article, having cash and credit sales, may report such cash sales; and the taxpayer shall thereafter include in each monthly report all credit collections made during the month preceding and shall pay the license fees due at the time of filing such report; but in no event shall the proceeds of credit sales be included in the measure of the license fee to be paid until collections of such credit sales shall have been made.

Section 8. Section 15-306 is hereby amended to read as follows:

Sec. 15-306. Records to be kept.

Every wholesale dealer shall, at the time of selling or delivering tobacco products into the city, make a true duplicate of the invoice of the sale or delivery, 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 all tobacco products. All such invoices, records, all canceled 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 city clerk-treasurer or his 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, canceled checks and other memoranda.

Section 9. Section 15-307 is hereby amended to read as follows:

Sec. 15-307. Illegal acts.

(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 fail 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 any cigarettes which have not been affixed with stamps and which have not been cancelled, or other tobacco products on which sales have not been reported and taxes have not been paid as provided in this article.

(3) It shall be unlawful for any person to have in his possession or under his control, any cigarettes that have not been affixed with a stamp as 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 a tobacco product which lacks the required number of stamps shall be deemed a separate offense.

(4) It shall be unlawful for any person to effectuate or to attempt to manufacture, buy, sell, offer for sale or possess 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 as herein provided.

(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, removed, restored or altered stamp, or, for the purpose of indicating payment of any license fee under this article, to reuse any stamp which previously has been used for the payment of any license fee provided in this article or for any person other than the clerk-treasurer to sell any stamp provided for herein.

(6) It shall be unlawful for any person to reuse or refill with cigarettes any stamped package from which cigarettes have been removed and the required license fee has previously been paid.

(7) It shall be unlawful for any person, who is required under this article to keep records, to fail or

omit to keep the those records in the manner herein provided, or to refuse to permit the city clerk-treasurer or his duly authorized deputy to inspect the same at any reasonable hour, or to interfere with or obstruct the city clerk-treasurer or his duly authorized deputy in the making of any such inspection.

(8) It shall be unlawful for any person who is required by this article to file statements with the city clerk-treasurer 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 or other tobacco products in the city during such default shall constitute a separate offense.

(9) It shall be unlawful for any person who is required to pay the license fee provided for in this article 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 such person shall sell, store or deliver tobacco products in the city during such default shall constitute a separate offense.

Any person who violates any provision of this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$25.00 nor more than \$500.00 for each offense, and in addition may be imprisoned in the city jail for a period not to exceed six months. Each violation shall constitute a separate offense.

Section 10. Section 15-308 is hereby amended to read as follows:

Sec. 15-308. Reports under oath.

The monthly reports required in this article to be made are not required to be made on oath; but wherever in this article any report is required to be sworn to, it shall be sworn to by the person responsible for remitting the license fee or his agent before some officer authorized to administer oaths.

Section 11. Section 15-309 is hereby amended to read as follows:

Sec. 15-309. Penalty for failing to make payments, to make reports or to keep records.

Any person subject to the provisions of this article who shall fail to make the payments herein required, fail to make the reports herein required or who shall fail to keep the records as herein required, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than \$25.00 nor more than \$500.00 for each offense. Each occurrence of such failure shall constitute a separate offense.

Section 12. Section 15-310 is hereby amended to read as follows:

Sec. 15-310. Penalty for willful refusal to make reports or permit examination of records.

Any person subject to the provisions of this article willfully refusing to make the reports required in this article or who shall refuse to permit the examination of this records by the city shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$25.00 nor more than \$500.00 for each offense, and in addition may be imprisoned in the city jail for a period not to exceed six months. Each month of failure to make such reports shall constitute a separate offense; and each refusal of a written demand of the city to examine, inspect or audit such records shall constitute a separate offense.

Section 13. Section 15-311 is hereby amended to read as follows:

Sec. 15-311. Person selling out or quitting business to file return, part of purchase money to be withheld.

Any person subject to the provisions of this article who shall sell out his business or stock of goods, or shall quit business, shall be required to make out the return provided for under section 15-303 within 30 days after the date he sold out his business or stock of goods, or quit business; and his successor in business shall be required to withhold sufficient of the purchase money to cover the amount of license fees due and unpaid until such time as the former owner shall produce a receipt from the city showing that the license fees have been paid, or a certificate that no license fees are due. If the purchaser of a business or stock of goods shall fail to withhold purchase money, the license fees shall be due and unpaid after the 30-day period allowed and he shall be personally liable for the payment of the license fees accrued and unpaid on account of the operation of the business by the former owner. If in such cases the city deems it necessary in order to collect the license fees due the city, it may make a jeopardy assessment.

Section 14. Section 15-312 is hereby amended to read as follows:

Sec. 15-312. Violator may be restrained from continuing in business.

Any person who shall violate any of the provisions of this article may be restrained from continuing in business, and the proper prosecution shall be instituted in the name of the city by its attorney until such person shall have complied with the provisions of this article.

Section 15. Section 15-313 is hereby amended to read as follows:

Sec. 15-313. Enforcement; appointment of agents.

The enforcement of any of the provisions of this article shall be under the jurisdiction and supervision of the city clerk-treasurer's office, and the city clerk-treasurer's office may require the assistance of and act through the city attorney.

Section 16. Section 15-314 is hereby amended to read as follows:

Sec. 15-314. Mayor to make rules and regulations.

The mayor shall from time to time promulgate such rules and regulations for making returns and for ascertainment, assessment and collection of the privilege license fee imposed under this article as it may be deemed necessary to enforce its provisions; and upon request the city clerk-treasurer shall furnish any person with a copy of such rules and regulations.

Section 17. Section 15-315 is hereby amended to read as follows:

Sec. 15-315. Distribution of license fee proceeds.

The proceeds derived from the privilege license fees levied in this article shall be placed in the general fund.

Section 18. Section 15-316 is hereby amended to read as follows:

Sec. 15-316. Uniform procedures.

The provision of chapter 24, article II shall govern the administrative review and appeal rights available under this article.

Section 19. This ordinance shall become effective on the 1st day of March, 2004.

ADOPTED on this the ____ day of _____, 2004.

President of the City
Council of
the City of Huntsville,
Alabama

APPROVED on this the ____ day of _____, 2004.

Mayor of the City of
Huntsville,
Alabama