

## ORDINANCE NO. 192-2003

### AN ORDINANCE PROVIDING AND LEVYING A TAX ON CIGARETTES, TOBACCO PRODUCTS AND ROLLING PAPERS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SPANISH FORT,  
ALABAMA, as follows:

#### SECTION 1. Definitions.

The following words or phrases used in this Ordinance shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

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

**Cigarette** means roll or finely cut tobacco, or any substitutes, enclosed in paper prepared for smoking by individuals.

**Corporate limits** means the corporate limits of the City of Spanish Fort as they now exist or are hereinafter established.

**Dealer** means any wholesale dealer, retail dealer, or store.

**Package** means the individual box or other container from which or in which retail sales of tobacco products are normally made or intended to be made.

**Person** means a natural person, firm, corporation, association, club, receiver, and trustee or other person acting in a fiduciary capacity.

**Police jurisdiction** means the territory outside the corporate limits but within the police jurisdiction of the City as set forth in Ala. Code § 11-40-10 (1975).

**Retail dealer** means any person, other than a wholesale dealer, who sells, offers for sale or delivers tobacco products within the City or police jurisdiction, and any person operating under a retail dealer's license.

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

**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 agreement, including rewards, prizes or premiums of tobacco products given as a result of the operation of punch boards, shooting galleries or other activities.

**Store and stored** means the storage or warehousing of tobacco products in any manner, or the withdrawal or use of tobacco products for any purpose, other than for resale or reshipment outside the City.

**Tobacco product** means cigarettes, cigars, and chewing tobacco, smoking tobacco, snuff or any substitute therefore or any other product in which the main ingredient is tobacco.

**Wholesale dealer** means a person who sells or delivers within the City or police jurisdiction, at wholesale only, tobacco products to retail dealers for the purpose of resale.

## **SECTION 2. Tax Levied in Corporate Limits.**

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 and shall be in addition to any license taxes levied with respect to such business in any general license code or Ordinance of the City:

(1) **CIGARETTES.** Upon all cigarettes made of tobacco, or any substitute therefor, five mills on each such cigarette.

(2) **ALL OTHER FORMS OF TOBACCO.** All other forms of tobacco products other than cigarettes, including, but not limited to, cigars, granulated, plug, cut, crimp, ready rubbed and other kinds and forms of tobacco prepared in such a manner as to be suitable for smoking, chewing, dipping and/or sniffing, five percent (5%) of the wholesale price.

(3) **ROLLING PAPERS.** All rolling papers, five percent (5%) of the wholesale price.

## **SECTION 3. Tax Levied in Police Jurisdiction.**

In the event the City Council decides to exercise its police jurisdiction and provide services therein, the tax levied by this Ordinance shall be applied to and be collectible in the police jurisdiction at the rate of one-half of the amount of the tax levied and prescribed in Section 2 hereof.

## **SECTION 4. Payment of Taxes and Reporting.**

The tax levied hereunder on all tobacco products, including cigarettes, shall be due and payable in monthly installments on or before the 20<sup>th</sup> day of the next succeeding month in which the tax accrued. On or before the 20<sup>th</sup> day of each month, every wholesaler, jobber, dealer or distributor who sells, stores, or delivers any tobacco products, including cigarettes, for sale within the City of Spanish Fort and every retailer who sells, stores or delivers any tobacco products, including cigarettes, for sale within the City that were not purchased through a wholesaler, jobber, dealer or distributor who sells, stores, or delivers tobacco products for sale within the City:

(1) Shall file with the City Clerk a true and correct monthly statement in writing (on a form approved by the City Clerk) of all tobacco products, including cigarettes, sold or delivered during the preceding month, for which said person shall be liable for the payment of the license tax; and

(2) Shall, in each and every instance, upon the filing of said statement, furnish to the City Clerk such additional information, either oral or in writing, as the Clerk may require as to the sale or delivery of any tobacco products covered by such statement; and

(3) Shall at the time of making such statement, pay to the City Clerk the amount of the license tax for the preceding month covered by such statement.

#### **SECTION 5. Records and Reports.**

Every wholesale dealer shall, at the time of selling or delivering cigarettes and tobacco products into the City, make a true duplicate invoice of the same, which shall show full and complete details of the sale or delivery of such cigarettes and 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 cigarettes and tobacco products. All such invoices and canceled checks and other memorandum 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 or the Clerks 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. Any person who purchases or receives in any manner whatsoever cigarettes or tobacco products on which the appropriate license tax has not been paid as required by this Ordinance shall, within three (3) days after receipt of such cigarettes and tobacco products, report the receipt of such cigarettes and tobacco products to the City Clerk and pay the appropriate license tax, giving the date of purchase or receipt, the name of the person from whom purchased or received, and a list describing the cigarette and tobacco products so purchased or received and the purchase price thereof. Such report must be made by certified mail or in person.

#### **SECTION 6. Failure to Report/Assessments.**

In the event the amount of tax due from a wholesaler, jobber, dealer, distributor, retailer or person cannot be accurately determined from the sworn monthly statement submitted to the City Clerk of Spanish Fort as provided in Section 4, or adequate records are not kept as required in Section 5, or if a wholesaler, jobber, dealer, distributor, retailer, or person subject to the license tax levied by this Ordinance refuses to allow an examination of their records, the amount of tax due may be determined from other information or data available, and the amount of the tax so determined shall be assessed against said wholesaler, jobber, dealer, distributor, retailer or person. Notice of such assessment shall be given to said wholesaler, jobber, dealer, distributor, retailer or person and a demand made for immediate payment.

#### **SECTION 7. Prohibited Acts and Penalties.**

It shall be unlawful for any person required by this Ordinance to keep records to fail or omit

to keep the records in the manner provided in this Ordinance, or to refuse to permit the agent of the City to inspect the records at any reasonable hour, or to interfere with or obstruct the agent of the City in the making of any such inspection.

It shall be unlawful for any person required by this Ordinance to file statements with the Clerk or fail or omit to make or file any statement provided in this Ordinance, within the time specified, or to make any false statement in such statement; and such offense shall be a continuing offense against the City; and each day during which such person shall sell or deliver tobacco products in the City during such default shall constitute a separate offense.

It shall be unlawful for any person required by this Ordinance to pay the license tax to fail or omit to pay the tax within the time specified in this Ordinance; 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 fails to pay the tax herein levied within the time required hereunder shall pay, in addition to the tax, a penalty of ten (10%) percent of the amount of tax due. Such penalty shall be assessed and collected as part of the tax. Any tax not paid by the 20<sup>th</sup> of the month following the date due shall be considered delinquent, and the City Clerk or the City Clerks designee shall proceed to collect the delinquent tax. In addition, the failure to pay this tax when due shall constitute grounds for revocation of any license issued under this Ordinance.

Any person or entity who or which violates any provision of this Ordinance shall be guilty of a misdemeanor for each such violation and, upon conviction, shall be punished by a fine not less than \$50.00, nor more than \$500.00, plus court costs, or by a jail sentence not to exceed six (6) months, or by both such fine and imprisonment for each such conviction.

#### **SECTION 8. Rules of Construction.**

This Ordinance shall not be construed to tax interstate commerce or any business of the United States Government or any branch or agency of the government.

This Ordinance shall not be construed to apply to cigarettes or tobacco products stored for the purpose of resale or reshipment outside the City and which are actually so resold or reshipped.

#### **SECTION 9. Disposition of funds.**

All revenues collected under the provisions of this Ordinance shall be deposited in the General Fund and shall be expended 50% for educational uses and 50% for recreational uses as determined by the City Council.

#### **SECTION 10. Repealer Clause.**

Any Ordinance heretofore adopted by the City Council of the City of Spanish Fort, Alabama, which is in conflict with this Ordinance, is hereby repealed to the extent of such conflict. This Ordinance shall not be construed to repeal any of the provisions of the general license code or

ordinance of the City but shall be held to be cumulative.

**SECTION 11. Severability Clause.**

If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect notwithstanding such holding.

**SECTION 12. Effective Date.**

This Ordinance shall become effective on September 1, 2003, immediately upon its adoption or as otherwise required by state law.

ADOPTED AND APPROVED this *21<sup>st</sup> day of August, 2003.*