

ORDINANCE NO. 1561

AN ORDINANCE to amend Chapter 36 of The Code of the City of Alexandria, Virginia, 1963, as amended, by adding thereto a new article numbered X; which Chapter 36 relates to TAXATION, and which new Article X relates to and establishes a TAX ON THE SALE OF CIGARETTES and prescribes DEFINITIONS, RATE AND AMOUNT OF TAX, PAYMENT OF TAX BY SELLER TO CITY, USE BY CITY OF REVENUES RESULTING FROM SUCH TAX, VIOLATIONS OF ORDINANCE AND PENALTIES THEREFOR.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Chapter 36 of The Code of the City of Alexandria, Virginia, 1963, as amended, be and the same hereby is amended by adding thereto a new Article X to read as follows:

Article X. Tax on the Sale of Cigarettes.

Sec. 36-50. Definitions.

The following words and phrases, when used in this article, shall for the purpose of this article have the following respective meanings, except where the context clearly indicates a different meaning:

(a) The masculine pronoun shall include the feminine and neuter, and the singular shall include the plural.

(b) The word "and" shall also mean "or", and the word "or" shall also mean "and", whenever the context or purpose so requires.

(c) The word "person" shall mean and include any individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals.

(d) The word "Collector" shall mean and include the Collector of the City and every person duly authorized by him to serve as his representative.

(e) The words "Director of Finance" shall mean the Director of Finance of the City and any of his duly authorized deputies or agents.

(f) The word "sale" shall mean and include every act or transaction, irrespective of the method or means employed, including the use of vending machines and other mechanical devices, whereby title to any cigarettes shall be transferred from the seller, as herein defined, to any other person within the corporate limits of the City.

(g) The word "seller" shall mean and include every person engaged in the business of selling cigarettes who transfers title or in whose place of business title to any such cigarettes is transferred within the corporate limits of the City for any purpose other than resale.

(h) The word "dealer" shall mean and include every manufacturer, jobber, wholesale dealer or other person who supplies a seller with cigarettes.

(i) The word "agent" shall mean and include every local dealer and other person who shall be authorized by the Director of Finance to purchase and affix stamps to packages of cigarettes under the provisions of this ordinance.

(j) The word "purchaser" shall mean and include every person to whom the title to any cigarettes is transferred by a seller within the corporate limits of the City.

(k) The word "package" shall mean and include every package, box, can or other container of any cigarettes, irrespective of the material from which such container is made, in which retail sales of such cigarettes are normally made or intended to be made.

(l) The word "stamp" shall mean the small gummed piece of paper or decalcomania to be sold by the Collector and to be affixed by an agent to every package of cigarettes sold at retail in the City, but it shall also denote any insignia or symbol printed by a meter machine upon any such package under the authorization of the Director of Finance.

(m) The word "Tax Inspector" shall mean the Tax Inspector of the City of Alexandria.

Sec. 36-51. Rate and Amount of Tax on Sale of Cigarettes.

In addition to all other taxes of every kind now imposed by law, there is hereby levied and imposed by the City, upon each and every sale of cigarettes, as herein defined, on and after the effective date of this ordinance, a tax equivalent to two and one half cents (2 1/2) for each ten (10) cigarettes or fractional number of ten (10) cigarettes sold within the City; the amount of said tax to be paid by the seller in the manner and at the time hereinafter prescribed.

Sec. 36-52. Preparation and Sale of Stamps by City and Duties and Powers of the Director of Finance and the Collector in Connection Therewith.

The tax imposed by this article shall be paid by a local dealer, or other agent, affixing a stamp or stamps, or causing a stamp or stamps to be affixed, to each and every package of cigarettes in the manner and at the time or times hereinafter stated. Every dealer in the City shall have the right to buy and affix such stamps as an agent, and the Director of Finance may appoint, in addition to local dealers, such other persons as agents for the purpose of buying and affixing stamps as he may deem necessary; provided, however, that a seller shall not be entitled to be appointed as an agent until such seller shall have filed with the Director of Finance a bond in the penal sum of \$100.00, with surety approved by the Director of Finance, conditioned upon such seller's faithful performance of all duties and obligations imposed

upon him as an agent hereunder. Every agent shall at all times have the right to appoint a person in his employ to affix the stamps to any cigarettes under the agent's control. For the purpose of making such stamps available for use by local dealers and other agents, the Director of Finance shall prescribe, prepare and furnish to the Collector, and the Collector shall sell, stamps of such denominations and quantities as may be necessary for the payment of the tax imposed by this article. In the sale of such stamps to a local dealer or other agent the Collector shall allow a discount of five per centum (5%) of the denominational or face value thereof to cover the cost which will be incurred by such dealer or agent in affixing the stamps to packages of cigarettes, and in the event that printing by a meter machine is used in lieu of gummed stamps, there shall be allowed a further discount equal in amount to the cost to the City of the stamps that would otherwise be required. The Director of Finance may from time to time, and as often as he deems advisable, provide for the issuance and exclusive use of stamps of a new design and forbid the use of stamps of any other design, and he is hereby empowered to make and carry into effect all such reasonable rules and regulations relating to the preparation, furnishing and sale and redemption of stamps as he may deem necessary; provided, however, that in redeeming stamps or making refund for destroyed stamps, he shall in no case refund more than ninety per centum (90%) of the face value of such redeemed or destroyed stamps. He is hereby further authorized and empowered to prescribe the method to be employed and the conditions to be observed in the use of meter machines for printing upon packages of any such cigarettes insignia to represent the payment of said tax.

Sec. 36-53. Duties of Dealers, Agents and Sellers with Respect to Tax on Sale of Cigarettes.

Every local dealer in cigarettes and every agent appointed hereunder is hereby required and it shall be his duty to purchase such stamps at the office of the Collector as shall be necessary to pay the tax imposed under the provisions of this ordinance, and to affix a stamp or stamps of the monetary value prescribed by said ordinance, or cause such stamp or stamps to be affixed, to each package of cigarettes prior to delivering or furnishing such cigarettes to any seller who is not also an agent; provided, however, that nothing herein contained shall preclude any dealer from authorizing and employing any agent to purchase and affix such stamps in his behalf or to have a stamp meter machine used in lieu of gummed stamps to effectuate the provisions of this ordinance. Stamps or the printed markings of a meter machine shall be placed upon each package of cigarettes in such manner as to be readily visible to the purchaser. Every seller is hereby required to examine each package of cigarettes prior to exposing it for sale for the purpose of ascertaining whether such package has the proper stamp affixed thereto in compliance with the provisions of this ordinance. If, upon such examination, unstamped or improperly stamped packages of cigarettes are discovered, the seller, when such cigarettes were obtained from a local dealer, shall immediately notify such dealer and upon such notification such dealer shall forthwith either affix to such unstamped or improperly stamped packages the proper amount of stamps or shall replace such packages with others to which stamps have been properly affixed. If a seller, who is not also an agent, shall obtain or acquire possession of unstamped or improperly stamped cigarettes from any person other than a local dealer, the seller shall forthwith notify the Director of Finance of such fact and the Director of Finance shall thereupon designate an agent to affix the proper stamps to such cigarettes, the funds required to purchase such stamps at face value to be advanced to such agent by such seller; and the agent so designated shall thereupon affix the appropriate

stamps at such agent's place of business. In the event that any packages of cigarettes are found in the possession of a seller without the proper stamps being affixed thereto or without authorized printed markings of a meter machine thereon, and the seller shall be unable to submit evidence establishing that he received such packages within the immediately preceding forty-eight (48) hours and that he has not offered the same for sale, the presumption shall be that such packages are being kept by such seller in violation of the provisions of this ordinance and shall subject him to all of the penalties hereinafter provided, even though such seller be also an agent. In the event that the Director of Finance shall promulgate rules and regulations so requiring, every local dealer, agent or seller is hereby further required and it shall be his duty to cancel all stamps upon all packages of cigarettes in his possession in accordance with such rules and regulations. It shall also be the duty of every local dealer and seller, and he is hereby required, to maintain and to keep for a period of two (2) years such records of cigarettes received and sold by him as may be required by the Director of Finance, to make all of such records available for examination in the City by the Director of Finance, or Tax Inspector upon demand, and to make available the means, facilities and opportunity for making any such examination at all reasonable times.

Sec. 36-54. Powers of the Director of Finance, Collector,
and Tax Inspector Relative to Tax on Cigarettes.

In addition to the powers granted in Sections 36-52 and 36-53 of this article, the Director of Finance is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to (a) the method and means to be used in the cancellation of stamps, (b) the delegation of any of his powers to his representative or representatives, (c) the redemption of stamps, and (d) any other matter pertaining to the administration and enforcement of the provisions of this article. The Director of Finance or Tax Inspector is hereby authorized and empowered to examine books, records, invoices, papers and any and all cigarettes in and upon any premises where the same are placed, stored, sold, offered for sale or displayed for sale by a seller. In the event that such officers shall discover in any such place any cigarettes which are subject to the tax imposed under the provisions of this article, but upon which such tax has not been paid and upon which stamps have not been affixed or evidence of payment shown thereon by the printed markings of a meter machine in compliance with the provisions of Sections 36-52 and 36-53 of this article, such officers or any of them, are hereby authorized and empowered to seize and take possession forthwith of such cigarettes, which shall thereupon be deemed to be forfeited to the City. The Director of Finance may, within a reasonable time thereafter, and after written notice posted at the front door of the City Hall, at least five (5) days before the date of sale, sell such forfeited cigarettes at the place designated by him in such notice, and from the proceeds of such sale shall collect the tax due thereon, together with a penalty of fifty per centum (50%) thereof and the costs incurred in such proceedings, and shall pay the balance, if any, of such proceeds to the seller in whose possession such forfeited cigarettes were found; provided, however, that such seizure and sale shall not be deemed to relieve any person from any of the penalties provided in this article. The Director of Finance or Tax Inspector is further authorized and empowered to administer oaths and to take affidavits in relation to any matter or proceedings in the exercise of their powers and duties relating to such tax, and they shall have power to **subpoena** and to require the attendance of witnesses and the production of books, papers, and documents, and to examine such witnesses, books, papers and documents, for the purpose of securing information pertinent to the performance of such duties.

Sec. 36-55. Utilization of Moneys Derived by City from Tax on Sale of Cigarettes.

All moneys derived by the City from the tax on the sale of cigarettes imposed under the provisions of this article shall be deposited by the Collector to the credit of the General Fund of the City for utilization for such legal purposes as the Council of the City may from time to time determine.

Sec. 36-56. Violations Defined.

It shall be unlawful and a violation of this article for any person to perform any act, or to fail to perform any act, for the purpose of evading the payment of such tax, or of any part thereof, or for any dealer or seller, with intent to violate any provision of this article, to fail or refuse to perform any of the duties imposed upon him under the provisions of this article, or to fail or refuse to obey any lawful order which the Director of Finance may issue under the provisions of Sections 36-52 and 36-54 of this article. It shall further be unlawful for any person to sell and dispense through a vending machine or other mechanical device any cigarettes upon which such tax has not been paid and upon which evidence of the payment thereof is not shown on each package of such cigarettes.

Sec. 36-57. Each Violation a Separate Offense.

Each violation of, or noncompliance with, any of the provisions of this article shall be and constitute a separate offense and shall subject every person guilty thereof to the penalties prescribed in Section 36-58 of this article.

Sec. 36-58. Penalties for Violations.

Any person violating any of the provisions of this article shall, upon conviction thereof, be punished by a fine of not less than \$10.00 nor more than \$300.00.

Section 2. That this ordinance shall be published in a newspaper of general circulation in the City not later than five days following its introduction together with a notice containing the time and place for a public hearing. The Clerk of the Council shall note the date of introduction and first reading, the date of publication, the date of the public hearing, and the date of the second reading and final passage in the minutes of the meeting. This ordinance shall become effective July 1, 1969.

Charles E. Beatley, Jr.
Mayor

Final Passage: May 8, 1969.