

**AN ORDINANCE TO AMEND LEXINGTON CITY CODE, CHAPTER 366 - TAXATION TO ADD A NEW ARTICLE IX – CIGARETTE TAX, TO IMPOSE A CIGARETTE TAX AT THE RATE OF \$0.0125 PER CIGARETTE ON EACH CIGARETTE SOLD, WITH A MINIMUM OF \$0.25 PER PACKAGE, IN THE CITY OF LEXINGTON**

**WHEREAS**, the Code of Virginia in §§ 58.1-3830 et seq. allows local governments to levy, administer, and enforce local taxes on the sale or use of cigarettes; and

**WHEREAS**, the City of Lexington plans to levy, administer, and enforce a local cigarette tax beginning on January 1, 2022.

**NOW, THEREFORE, BE IT ORDAINED AND ENACTED** by the Mayor and Council of the City of Lexington, Virginia, pursuant to their authority, that:

Article IX, containing the following Sections of the City's Code, is hereby added to Chapter 366:

**ARTICLE IX. CIGARETTE TAX**

**Sec. 366-55. Definitions.**

For purposes of this Article, the following words and phrases have the following meanings respectively ascribed to them by this Section, except where the context clearly indicates a different meaning:

*Cigarette* means and includes any roll of any size or shape for smoking, whether filtered or unfiltered, with or without a mouthpiece, made wholly or partly of cut, shredded or crimped tobacco or other plant or substitute for tobacco, whether it is flavored, adulterated or mixed with another ingredient, if the wrapper or cover is made of any material other than leaf tobacco or homogenized leaf tobacco, regardless of whether the roll is labeled or sold as a cigarette or by any other name.

*Cigarette Machine Operator* means any individual, partnership or corporation engaged in the sale of packages of cigarettes from vending machines.

*Commissioner of the Revenue* means the Commissioner of the Revenue of the City and any of his or her duly authorized deputies and agents.

*Dealer* means and includes every manufacturer, jobber, wholesaler, retailer, cigarette machine operator, public warehouseman, or other person who supplies a seller or agent with cigarettes for sale within the City.

*Package* means any container, regardless of the material used in its construction, in which separate cigarettes are placed without such cigarettes being placed into any container within the package. Packages are those containers of cigarettes from which individual cigarettes are ordinarily taken when they are consumed by their ultimate user. Ordinarily, a package contains twenty (20) cigarettes; however, the term “package” includes those containers in which fewer or more than twenty (20) cigarettes are placed.

*Person* means and includes any individual, firm, partnership, society, association, joint stock company, group, agency, syndicate, 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. The word “person” as applied to a partnership, unincorporated association or other joint venture means the partners or members thereof, and as applied to a corporation, includes all of the officers and directors thereof.

*Place of business* means and includes any place where cigarettes are sold, placed, stored, offered for sale or displayed for sale or where cigarettes are brought or kept for the purpose of sale, consumption or distribution, including vending machines, by a dealer within the City.

*Purchaser* means every person to whom title to any cigarettes is transferred by a seller within the jurisdictional limits of the City.

*Sale or sell* means and includes every act or transaction, irrespective of the method or means employed, including the use of vending machines and other mechanical devices, whereby ownership or possession, or both, of any cigarettes is transferred from the seller to any other person within the jurisdictional limits of the City.

*Seller* means every person who transfers title to any cigarettes or in whose place of business title to any cigarettes is transferred, within the jurisdictional limits of the City, for any purpose other than resale.

*Stamp* means a small, gummed piece of paper or decal to be sold by the Treasurer and to be affixed to every package of cigarettes sold at retail in the City, and any insignia or symbols printed by meter machine upon any such package under the authorization of the Treasurer.

*Treasurer* means the Treasurer of the City and any of his or her duly authorized deputies and agents.

### **Sec. 366-56. Registration required.**

Each distributor, wholesaler, vendor, retailer, or other person selling, storing, or possessing cigarettes within or transporting cigarettes within or into the City for sale or

use shall first register with the Commissioner of the Revenue. The application form, which shall be supplied upon request, shall require such information relative to the nature of the business engaged in by the applicant as the Commissioner of the Revenue deems necessary for the administration and enforcement of this Article. Any applicant whose place of business and residence is outside the City shall automatically, by filing his application, submit himself to the City's legal jurisdiction and appoint the City Manager as his agent for any service of lawful process. A copy of any such process served on the City Manager shall be sent forthwith by registered mail to the distributor, wholesaler, vendor, retailer, or other person.

**Sec. 366-57. Levied; amount.**

There is hereby levied and imposed by the City a tax at the rate of \$0.0125 per cigarette on each cigarette sold, with a minimum of \$0.25 per package, to the ultimate consumer in the City. The amount of such tax shall be paid by the seller, if not previously paid, in the manner and at the time provided for in this Article.

**Sec. 366-58. Method of payment.**

A. The tax imposed by this Article shall be paid by affixing or causing to be affixed a stamp or stamps, of the proper denominational or face value, to each and every package of cigarettes sold within the City, in the manner and at the time or times provided for in this Article. Every dealer and every seller in the City, once registered, shall have the right to buy such stamps from the City Treasurer and to affix the same to packages of cigarettes as provided in this Article.

B. The Commissioner of the Revenue may permit the payment in advance of the tax levied and imposed by this Article by the method of placing imprints of the stamps upon original packages by the use of meter machines, in lieu of the method of paying such tax by the purchase and affixing of gummed stamps and may prescribe and enforce the necessary regulations setting forth the method to be employed and the condition to be observed in the use of such meter machines.

**Sec. 366-59. Preparation and sale of stamps.**

For the purpose of making stamps available for use, the Commissioner of the Revenue shall prescribe, prepare and furnish to the City Treasurer, and the City Treasurer shall sell stamps of such denominations and in such quantities as may be necessary for the payment of the taxes imposed by this Article.

**Sec. 366-60. General duties of dealers and sellers with respect to stamps.**

A. Every dealer in cigarettes is hereby required and it shall be his duty to purchase such stamps, at the office of the Commissioner of the Revenue and payment to the City Treasurer, as shall be necessary to pay the tax levied and imposed by this Article, and to affix or cause to be affixed a stamp or stamps of the monetary value

prescribed by this Article to each package of cigarettes prior to delivery or furnishing of such cigarettes to any seller. Nothing herein contained shall preclude any dealer from using a stamp meter machine in lieu of gummed stamps to effectuate the provisions of this Article.

B. Every seller shall examine each package of cigarettes prior to exposing the same for sale, for the purpose of ascertaining whether such package has the proper stamps affixed thereto or imprinted thereon, as provided by this Article. If, upon such examination, unstamped or improperly stamped packages of cigarettes are discovered, the seller, where such cigarettes were obtained from a dealer, shall immediately notify such dealer, and upon such notification, such dealer shall forthwith either affix to or imprint upon such unstamped or improperly stamped packages the proper number of stamps, or shall replace such packages with others to which stamps have been properly affixed or imprinted thereon.

C. Should a seller obtain or acquire possession of, from any person other than a dealer, any unstamped or improperly stamped cigarettes, such seller shall forthwith, before selling or offering or exposing such cigarettes for sale in the City, purchase and affix or cause to be affixed to such packages of cigarettes the proper stamps, or the markings of a meter machine, covering the tax imposed by this Article.

D. In the event any seller elects to purchase and affix stamps or imprints of a meter machine, before offering cigarettes for sale, any dealer delivering and furnishing cigarettes to such seller shall not be required to purchase and affix such stamps or imprints to such cigarettes so sold or furnished; provided that any such dealer shall, on the day after such delivery and furnishing, file with the Commissioner of the Revenue a copy of the delivery memorandum showing the name and address of the seller and the quantity and type of cigarettes so delivered and furnished.

#### **Sec. 366-61. Visibility of stamps or meter markings.**

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.

#### **Sec. 366-62. Altering design of stamps.**

The Commissioner of the Revenue may, from time to time, and as often as he or she may deem advisable, provide for the issuance and exclusive use of stamps of a new design and forbid the use of stamps of any other design.

#### **Sec. 366-63. Refund for unused stamps or meter imprints.**

A. Should any person, after acquiring from the Commissioner of the Revenue and payment to the City Treasurer for any stamps or metered imprints provided for in this Article, cease to be engaged in a business necessitating the use thereof, or should any such stamps become mutilated and unfit for use, other than by cancellation as

provided in this Article, or otherwise not be used, such person shall be entitled to a refund of the denominational or face amount of any stamps or imprints so acquired and not used by him, upon presenting such stamps or imprints to the Commissioner of the Revenue and furnishing the Commissioner of the Revenue with an affidavit showing, to his satisfaction, that such stamps or imprints were acquired by such person and have not in any manner been used and the reason for requesting such refund.

B. All refunds for unused and mutilated stamps and for nonuse of imprints of stamps by meter machines provided for under this Section are hereby authorized to be made on vouchers approved by the Commissioner of the Revenue and, when made, the same shall be charged against the sums collected for the sale of such stamps and for the use of such imprints.

#### **Sec. 366-64. Seizure and sale of unstamped cigarettes.**

A. Whenever the Chief of Police or any of his or her officers shall discover cigarettes in quantities of more than six (6) cartons within the City which are subject to the tax imposed by this Article and upon which the tax has not been paid or upon which stamps have not been affixed or evidence of such tax shown thereon by the printed markings of an authorized meter machine, as this Article requires, such cigarettes shall be conclusively presumed for sale or use within the City and the Chief of Police or any of his or her officers may forthwith seize and confiscate such cigarettes, if:

- (1) They are in transit, and are not accompanied by a bill of lading or other document indicating the true name and address of the cosigner or seller and of the cosigner or purchaser, and the brands and quantity of cigarettes so transported; or are in transit and accompanied by a bill of lading or other document which is false or fraudulent in whole or in part; or
- (2) They are in transit and are accompanied by a bill of lading or other documents indicating:
  - a. A consignee or purchaser in another state or the District of Columbia who is not authorized by the law of such other jurisdiction to receive or possess such tobacco products on which the taxes imposed by such other jurisdiction have not been paid, and unless the tax of the state or district of destination has been paid and the said products bear the tax stamp of that state or district; or
  - b. A consignee or purchaser in the Commonwealth but outside the City who does not possess a Virginia sales and use tax certificate, a Virginia retail tobacco license and where applicable, both a business license and retail tobacco license issued by the local jurisdiction of destination; or

- (3) They are not in transit and the tax has not been paid, nor have approved arrangements for payment been made, provided that this subsection shall not apply to cigarettes in the possession of distributors or public warehouses which have filed notice and appropriate proof with the Commissioner of the Revenue that those cigarettes are temporarily within the City and will be sent to consignees or purchasers outside the City in the normal course of business.

B. All cigarettes seized and confiscated according to Subsection (1) of this Section shall thereupon be deemed to be forfeited to the City and may be sold within a reasonable time thereafter, after proper notice of such seizure is given to the known holders of property interests in the cigarettes. Such notice shall be given to known holders of property interests, if any, by certified mail and by written notice posted on the bulletin board(s) of City Hall at least seven (7) days before the date of sale. Such notice shall contain the time and place at which the sale is to occur and procedures for administrative appeal as well as affirmative defenses which may be asserted by such holders. All moneys collected under this Section shall be paid to the City Treasurer and treated as other taxes collected under this Article. No credit from any sale or other disposition shall be allowed toward any tax or penalties owed.

**Sec. 366-65. Seizure and sale of coin-operated vending machines and counterfeit stamp or impression devices.**

A. Any coin-operated vending machine, in which any cigarettes are found, stored or possessed bearing a counterfeit or false tobacco tax stamp or impression or any unstamped cigarettes, or any cigarettes upon which the tax has not been paid, may be declared contraband property and be subject to confiscation and sale as provided in Section 366-64(B). When any such vending machine is found containing such cigarettes, it shall be presumed that such cigarettes were intended for distribution, sale or use therefrom. In lieu of immediate seizure and confiscation of any vending machine used in an illegal evasion of the tax, it may be sealed by appropriate enforcement authorities to prevent continued illegal sale or removal of any cigarettes and may be left unmoved until other civil and criminal penalties are imposed or waived. Notice requirements shall be the same as if the machine had been seized. Such seal may be removed, and the machine declared eligible for operation only by authorized enforcement authorities. Nothing in this Section shall prevent seizure and confiscation of a vending machine at any time after it is sealed.

B. Any counterfeit stamps or counterfeit impression devices found may also be seized and confiscated.

**Sec. 366-66. Dealers' and sellers' records.**

It shall be the duty of every dealer and seller to maintain and keep, for a period of two (2) years, such records of cigarettes sold and delivered by him as may be required by the Commissioner of the Revenue and to make all such records available for examination by such Commissioner of the Revenue, upon demand, at any and all reasonable times.

**Sec. 366-67. Rules and regulations for enforcement and administration of article; examination of books, records, etc.**

A. The Commissioner of the Revenue may prescribe, adopt, promulgate and enforce rules and regulations relating to the method and means to be used in the cancellation of stamps and to all other matters pertaining to the administration and enforcement of the provisions of this Article. It shall be unlawful for any person to fail, neglect or refuse to comply with such rules and regulations.

B. The Commissioner of the Revenue may 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 or dealer.

**Sec. 366-68. Tax is in addition to other taxes.**

The tax levied and imposed by this Article shall be in addition to all other taxes of every kind levied and imposed by any other Ordinance or law.

**Sec. 366-69. Violations of article - Generally.**

A. Any person violating any of the provisions of this Article shall be guilty of a Class 1 misdemeanor. In addition, any person who shall perform any fraudulent act or fail to perform any act for the purpose of evading the payment of any tax imposed by this Article shall be required to pay a penalty in the amount of fifty percent (50%) and interest not to exceed three quarters of one percent per month upon any tax found to be overdue and unpaid. Conviction and payment of a fine for such violation shall not relieve any person from the payment of any tax imposed by this Article.

B. 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 convicted thereof to the penalties prescribed.

**Sec. 366-70. Same - Prohibited acts enumerated.**

It shall be unlawful and a violation of this Article for any person:

- (1) To perform any act or fail to perform any act for the purpose of evading the payment of any tax imposed by this Article 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 Commissioner of the Revenue may issue under this Article.

- (2) To falsely or fraudulently make, forge, alter or counterfeit any stamp or the printed markings of any meter machine or to procure or cause to be made, forged, altered or counterfeited any such stamp or printed markings of a meter machine or to knowingly and willfully alter, publish, pass or tender as true any false, altered, forged or counterfeited stamp or stamps or printed markings of a meter machine.
- (3) To sell any cigarettes upon which the tax imposed by this Article has not been paid and upon which evidence of payment thereof is not shown on each package of cigarettes.
- (4) To reuse or refill with cigarettes any package from which cigarettes, for which the tax imposed has been theretofore paid, have been removed.
- (5) To remove from any package any stamp or the printed markings of a meter machine with intent to use or cause the same to be used after the same have already been used, or to buy, sell or offer for sale or give away any used, removed, altered or restored stamps or printed markings of a meter machine to any person, or to reuse any stamp or printed markings of a meter machine which had theretofore been used for evidence of the payment of any tax prescribed by this Article, or, except as to the City Treasurer, to sell or offer to sell any stamps or printed markings of a meter machine provided for in this Article.

**Sec. 366-71. Same - Presumption of violation by seller.**

A. In the event any package of cigarettes is 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 package within the immediately preceding forty- eight (48) hours and that he has not offered the same for sale, the presumption shall be that such package is being kept by such seller in violation of the provisions of this Article and shall subject him to the penalties provided for such violation.

B. Any cigarettes placed in any coin-operated vending machine located within the City shall be presumed for sale within the City. Any vending machine located within the City containing cigarettes upon which the stamp has not been affixed or containing cigarettes placed so as not to allow visual inspection of the stamp through



the viewing areas as provided for by the vending machine manufacturer shall be presumed to contain untaxed cigarettes in violation of this Article.

C. Any cigarettes, coin-operated vending machines, counterfeit stamps, or other property found in violation of this Article shall be declared contraband goods and may be seized by the Sheriff or any of his deputies. In addition to any tax due, the dealer or other person liable for the tax possessing such untaxed cigarettes shall be subject to civil and criminal penalties herein provided.

D. In lieu of seizure, the Sheriff or any of his deputies may seal such vending machines to prevent continued illegal sale or removal of such cigarettes. The removal of the seal from a vending machine by any unauthorized person shall be in violation of this Article. Nothing in this Article shall prevent the seizure of any vending machine at any time after it is sealed.

E. All cigarette vending machines shall be plainly marked with the name, address and telephone number of owner of the machine.

**BE IT FURTHER ORDAINED**, that this Ordinance shall be effective on and from the 1<sup>st</sup> day of January, 2022.

Recorded Vote:

AYES:

NAYES:

ABSENT:

ABSTAIN:

**Adopted** this \_\_\_\_ day of \_\_\_\_\_, 2021.

**Approved:** \_\_\_\_\_  
Frank W. Friedman, Mayor

**Attest:** \_\_\_\_\_  
Jani Hostetter, Clerk