

ORDINANCE NO. 2010-07-05

**AN ORDINANCE TO AMEND AND RESTATE
TOBACCO TAX ORDINANCE**

WHEREAS, the City Council of the City of Leeds, Alabama adopted Ordinance No. 2003-08-06 to revise the tobacco tax ordinance and increase the tobacco tax;

WHEREAS, in response to *City of Bessemer v. McClain*, 957 So. 2d 1061 (Ala. 2006), the City Council of the City of Leeds, Alabama adopted Ordinance No. 2006-08-01 to rescind Ordinance 2003-08-06 as it applied to that part of the City of Leeds, Alabama that lies in Jefferson County, Alabama; and

WHEREAS, the City Council of the City of Leeds, Alabama desires to amend and restate Ordinance No. 2003-08-06 as amended by Ordinance No. 2006-08-01 to avoid any confusion regarding the application of the tobacco tax ordinance or its rates.

BE IT ORDAINED, by the City Council of the City of Leeds, Alabama, as follows:

Section 1. Definitions.

Generally. Any words or phrases used in this ordinance and not herein defined which are defined in Section 40-25-1, et seq., Code of Alabama 1975, shall have the meanings ascribed to them by such sections of the Code of Alabama.

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

City means the City of Leeds, Alabama.

Dealer means any Wholesale Dealer or Retail Dealer as identified in this section.

Package means individual containers from which or in which retail sales of Tobacco Products are normally made or intended to be made. In the case of cigarettes, a package shall mean each individual package of twenty (20) cigarettes. In the case of smokeless tobacco, a package shall mean each individual container of smokeless tobacco.

Prohibited Area means that portion of the City located in Jefferson County, Alabama.

Retail Dealer means any person, firm, corporation, club, association or other entity than a Wholesale Dealer, who sells or delivers tobacco products within the City, and any person, firm, corporation, club, association or other entity operating under a Tobacco, Retail license under the current Business License Code of the City of Leeds, Alabama.

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

Store and *Stored* mean the storage or warehousing of Tobacco Products in any manner, or the withdrawal or use of the same for any purpose, other than for resale or reshipment outside the City.

Tobacco Products means cigars, cheroots, stogies, cigarettes, smoking tobacco, smokeless tobacco, chewing tobacco, snuff, and any other product derived from tobacco, or any substitute therefore.

Wholesale Dealer means a person, firm, corporation, club, association or other entity who sells or delivers within the City, at wholesale only, Tobacco Products to Retail Dealers for the purpose of retail only.

Section 2. Construction.

(a) This ordinance shall not be construed to tax interstate commerce or any business of the United States government or any branch or agency thereof.

(b) This ordinance shall not be construed to apply to Tobacco Products stored for the purpose of resale or reshipment outside of the City and which are actually so resold or reshipped.

(c) This ordinance 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.

(d) This ordinance shall not be construed to apply to Tobacco Products sold or stored in the Prohibited Area.

Section 3. Tax Levied.

In addition to all other taxes now imposed by law, every Wholesale Dealer who sells, stores or delivers any Tobacco Products for sale within the City, other than the Prohibited Area, shall pay a license tax to the City and every Retail Dealer who sells, stores or delivers any Tobacco Products for sale within the City, other than the Prohibited Area, that were not purchased through a Wholesale Dealer who sells, stores or delivers Tobacco Products for sale within the City, other than the Prohibited Area, shall pay a license tax to the City and a license tax is hereby fixed and levied, which license tax shall be in the following amounts for the sale, storage and/or delivery of the following named Tobacco Products in the corporate limits of the City, other than the Prohibited Area:

(a) Upon cigars of all descriptions made of tobacco, or any substitute therefore, a tax of three cents (\$0.03) per cigar, sold individually, and not as part of a Package.

(b) Upon all other Tobacco Products, including cigars sold as part of a Package, a tax of ten cents (\$0.10) for each Package of Tobacco Products so sold, stored, received or delivered.

Section 4. Reporting and Payment.

Each Dealer shall file with the City Clerk a statement within twenty (20) days after the end of each month showing all sales and the tax to be paid to the City. The license tax shall be paid at the time of filing the monthly statement.

Section 5. Records.

Every Wholesale Dealer shall, at the time of selling or delivering Tobacco Products into the City, make a true duplicate in invoice of the same, 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 Tobacco Products. All such invoices and records and 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 or his duly authorized representative, 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, firm, corporation, club, association or other entity who purchases or receives in any manner whatsoever 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 Tobacco Products, report the receipt and purchase thereof to the City Clerk, and pay the appropriate license tax, giving the date of purchase or receipt, the name of the person, firm, corporation, club, association or other entity from whom purchased or received, and a list describing the Tobacco Products so purchased or received and the purchase price thereof. Such report must be made by registered mail or in person.

Section 6. Inspection.

The City shall have the right to inspect the books of all Dealers at any reasonable hour of the business day upon due and reasonable notice thereof to such Dealer, in regard to the payment of tax on each package of Tobacco Products sold, as herein above set out.

Section 7. Illegal Acts.

Among others, the following acts and omissions shall be unlawful:

- (1) It shall be unlawful for any person, firm, corporation, club, association or other entity to sell, offer for sale, store or deliver within the City, other than the Prohibited Area, any Tobacco Products for which the tax levied herein has not been paid.

- (2) It shall be unlawful for any person, firm, corporation, club, association or other entity to have in his possession or under his control any Tobacco Products for which the tax required by this ordinance has not been paid for more than six (6) hours after receipt of such Tobacco Products on the premises of such person
- (3) It shall be unlawful for any person, firm, corporation, club, association or other entity to reuse or refill with Tobacco Products any Package from which Tobacco Products have been removed and with respect to which the tax theretofore has been paid.
- (4) It shall be unlawful for any person, firm, corporation, club, association or other entity who is in this ordinance required to keep records, to fail or omit to keep the same in the manner herein provided, or to refuse to permit the City Clerk or his duly authorized representative to inspect the same at any reasonable hour, or to interfere with or obstruct the City Clerk or his duly authorized representative in the making of such inspection.
- (5) It shall be unlawful for any person, firm, corporation, club, association or other entity who is in this ordinance required to file statements with the City Clerk 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, firm, corporation, club, association or other entity shall sell, store or deliver Tobacco Products in the City during such default shall constitute a separate offense.

Section 8. Penalty and Interest for Delinquent Taxes.

Any amount of tax due to be paid to the City pursuant to the terms of this ordinance which is not paid by the time stated herein shall be delinquent and a penalty shall be assessed in an amount equal to ten percent (10%) of the taxes owed and, in addition, interest will accrue on the amount of taxes owed at the rate of one percent (1%) per month or fractional part thereof until paid.

Section 9. Violation of Ordinance – Penalty.

Any person, firm, corporation, club, association or other entity violating any of the provisions of this ordinance shall, upon conviction thereof, be punished by a fine of not less than Twenty-Five Dollars (\$25.00) and not more than Five Hundred Dollars (\$500.00) and may be incarcerated for not more than six (6) months. Each violation of this ordinance shall constitute a separate offense.

Section 10. Severability.

Each and every provision of this ordinance is hereby declared to be an independent provision hereof, and should any provision be declared void or invalid, it shall not affect any

other provision hereof. It is hereby declared that the other provisions of this ordinance would have been enacted regardless of any provision which might be held invalid.

Section 11. Conflicting Ordinances.

All ordinances or parts of ordinances insofar as the same conflict with the provisions of this ordinance are hereby repealed.

Section 12. Effective Date.

This ordinance shall become effective immediately after publication as required by law, and the first payment of taxes as provided hereunder shall be due and payable on July 1, 2010. This ordinance shall remain in full force and effect and shall apply to each month of the year 2010 beginning with the month of June, and to each month of each calendar year thereafter from year-to-year unless otherwise revised, amended, repealed or replaced by the City Council of the City of Leeds, Alabama.

ADOPTED and ORDAINED this 14th day of July, 2010.

THE CITY OF LEEDS, ALABAMA



R. Eric Patterson, Mayor

ATTEST:



Kevin Fouts, Acting City Clerk