

AN ORDINANCE NO. 19-12

Amending Chapter 258, Taxation, of the Colonial Heights City Code by adding an Article IX, Cigarette Tax, to such chapter.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLONIAL HEIGHTS:

1. That Chapter 258 of the Colonial Heights City Code is amended by adding the following article to such chapter:

ARTICLE IX
Cigarette Tax

§ 258-61. Definitions.

The following words and phrases shall, for the purposes of this article, have the following meanings:

CARTON – Any container, regardless of material used in its construction, in which two (2) or more packs of cigarettes are placed.

CIGARETTE –Any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; (ii) tobacco, in any form, that is functional in the product, which because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (iii) any roll of tobacco used in the filler, or its packaging and labeling, likely to be offered to, or purchased by, consumers as a cigarette described in clause (i) of this definition. The term “cigarette” includes “roll-your-own” tobacco, which means any tobacco which, because of its appearance, type, packaging or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of “cigarette”, 0.09 ounces of “roll-your-own” tobacco shall constitute one individual cigarette.

COMMISSIONER – Commissioner of the Revenue of the City.

DEALER – Every manufacturer, manufacturer's representative, wholesaler, or other person, who sells, receives, stores, possesses, distributes, or transports cigarettes for resale within or into the city.

PACK – Every package, box, can, or other container of any cigarettes, irrespective of the material from which such container is made, and in which retail sales of cigarettes are normally made or intended to be made. Packs are those containers of cigarettes from which individual cigarettes are ordinarily taken when the ultimate user consumes them.

PURCHASER – Every person to whom a seller transfers title to any cigarette within the city's corporate limits.

RETAILER – Every person who transfers title to any cigarette, or in whose place of business title to any cigarette is transferred, within the city’s corporate limits, for any purpose other than resale.

SALE – Every act or transaction, irrespective of the method or means employed, whereby a seller transfers title to any cigarette to any person within the city’s corporate limits.

STAMP – A small heat set of paper or decalcomania to be sold by the director of finance, or as the commissioner of the revenue authorizes, to be affixed to every pack of cigarettes sold at retail in the city.

§ 258-62. Amount of tax; exemption; other taxes.

- A. The city levies, upon the sale of each pack or part of a pack of cigarettes sold within city limits, a tax of thirty-five cents (\$0.35) per pack, regardless of the number of cigarettes within the pack. The tax shall be paid and collected in the manner and at the time hereinafter prescribed; provided that the tax payable for each cigarette or cigarette pack sold or used within the city shall be paid but once.
- B. The tax shall not apply to free distribution of sample cigarettes in packs containing five (5) or fewer cigarettes.
- C. The tax this article levies shall be in addition to all other taxes that any other ordinance or law levies.

§ 258-63. Methods of collection; reports.

- A. The tax this article imposes shall be evidenced by the use of a stamp, and each dealer or retailer liable for the tax shall pay it at the time the stamps are purchased from the director of finance. The stamps shall be affixed in such a manner that their removal will require continued application of water or steam.
- B. All unstamped cigarette packs in a retailer’s possession on the effective date of this article shall be inventoried and reported to the commissioner not later than July 1, 2019. The commissioner shall provide the retailer with a report form, and the retailer shall remit the tax for the unstamped packs along with the completed report. Such reporting shall continue monthly until all unstamped cigarette packs have been sold. The commissioner may confiscate any unstamped cigarette packs not reported or for which the tax has not been paid.
- C. It shall be the duty of each dealer or retailer liable for the tax to report monthly to the commissioner separately the following information:
 - (1) The quantity of stamped cigarettes each dealer sells or delivers to a retailer;
 - (2) The quantity of stamps on hand, both affixed and unaffixed, on the last day of the month and the quantity of stamps or stamped cigarettes received; and
 - (3) Such further information as the commissioner may require for this article’s proper administration and enforcement.

- D. The commissioner is authorized to enter into an arrangement with the Virginia Department of Taxation to allow a dealer or retailer to use a dual die or stamp to evidence the payment of both the city and the state cigarette tax.
- E. When, upon examination and audit of any invoices, records, books, canceled checks, or memoranda relating to the purchase, sale, receipt, storage, or possession of cigarette products taxed herein, any dealer or retailer liable for the tax is unable to furnish the commissioner with evidence of sufficient tax payments and stamp purchases for cigarettes that he sold, used, stored, received, purchased, or possessed, the prima facie presumption shall arise that he received, sold, used, stored, purchased, or possessed such cigarettes without the proper tax having been paid. The commissioner shall, from the results of the examination and audit, assess the tax due and unpaid. This subsection shall not apply to cigarettes destined for resale outside the city limits.
- F. The dealer or retailer liable for the tax shall be notified by certified mail or hand delivery of such deficiency; and the tax, penalty, and interest assessed shall be due and payable within ten (10) days after notice of the deficiency.
- G. Every dealer and retailer in the city shall keep complete records for the current year and the three (3) preceding calendar years of all cigarettes that the dealer or retailer delivers or sells and shall make all such records available for examination upon demand by the commissioner or other authorized person at any reasonable time. The commissioner is authorized to examine the records, papers, and cigarettes in any premises where a retailer stores, sells, or offers for sale cigarettes.

§ 258-64. Preparation and sale of stamps generally; discount.

- A. For the purpose of making stamps available for use, the director of finance shall sell stamps by the roll for the tax payments this article imposes. In the sale of such stamps, the director of finance shall allow a discount of one cent (\$0.01) per stamp to cover the costs incurred in affixing the stamps to cigarette packs.
- B. Stamps shall be placed upon each pack of cigarettes in a manner so as to be readily visible to the purchaser.
- C. Every retailer shall examine each cigarette pack prior to making it available for sale, for the purpose of ascertaining whether the pack has the proper stamps affixed to it as this article provides.

§ 258-65. Notice by retailers.

Retailers who sell, offer for sale, store, possess, distribute, purchase, receive, or transport cigarettes in or into the city shall, upon the commissioner's request, notify the commissioner of their dealers' names and addresses and the name, address, and Virginia Retail Sales and Use Certificate of Registration number for each of the retailers' separate places of business.

§ 258-66. Display of stamps; seizure.

- A. A retailer shall display packs of cigarettes so that the stamps are readily visible.
- B. Except as allowed by subsection B. of §258-63, any retailer who possesses any cigarettes without the stamp affixed and is not in the process of affixing such stamps, shall be presumed to possess untaxed cigarettes in violation of this article.
- C. Any vending machine located within the city containing cigarettes upon which the stamp has not been affixed, or containing cigarettes placed so as to not allow the stamp's visual inspection through the vending machine's viewing area, shall be presumed to contain untaxed cigarettes in violation of this article.
- D. Any cigarettes, vending machines, counterfeit stamps, or other property found in violation of this article shall be considered contraband goods; and the commissioner may seize them. In addition to any tax due, the violating dealer or retailer shall be subject to the penalties prescribed in §258-70.
- E. In lieu of seizure, the commissioner may seal such vending machines to prevent the cigarettes' continued illegal sale or removal. The removal of the seal from a vending machine by any unauthorized person shall be a violation of this article. Nothing in this article shall prevent the vending machine's seizure at any time after it is sealed.
- F. Any cigarette vending machine shall be plainly marked with the owner's name, address, and telephone number.
- G. Any seized and confiscated cigarettes, vending machines, or other property used in the furtherance of any illegal evasion of the tax must be redeemed by the original owner within thirty (30) days by payment of the tax and penalties as prescribed in §258-70. Such confiscated items may be disposed of by sale as the commissioner deems appropriate thirty (30) days after notice of intent to do so is provided to the person from whom the items were seized. No credit from the commissioner's sale of cigarettes, vending machines, or other property seized shall be allowed toward the tax, penalties, or interest the violator owes.

§ 258-67. Design of stamps.

The director of finance may, from time to time, provide for the issuance and exclusive use of stamps of a new design and forbid the use of stamps of any other design.

§ 258-68. Refunds.

- A. Should any person, after acquiring from the director of finance the appropriate stamps, cease to engage in a business necessitating the use of stamps, or should any such stamps become mutilated and unfit for use, the person shall be entitled to a refund of

the face amount of any stamps so acquired and not used, less one cent (\$0.01) per stamp. To receive the refund, the person shall present the stamps and an affidavit to the director of finance showing that the person acquired the stamps and that they have not been used, and providing the reason for requesting a refund.

B. In the case of stale-dated cigarettes, a refund of the stamps' face amount, less one cent (\$0.01) per stamp, shall be made upon furnishing the commissioner with (i) a count of pre-stamped packs that have not been sold and have been removed from the market, and (i) an affidavit of the manufacturer affirming the number of packs returned.

§ 258-69. Policies and regulations; delegation of duties.

The commissioner is authorized to adopt policies and regulations to administer and enforce this article's provisions. The commissioner is empowered to delegate any of the powers and duties this article specifies to one or more deputies or assistants, except as the law prohibits.

§ 258-70. Violation of article; and penalties.

A. Any person violating any provision of this article, or performing any act or failing to perform any act for the purpose of evading the payment of the cigarette tax, shall be guilty of a Class I misdemeanor. Conviction and punishment for a violation shall not relieve a person from any tax payment this article imposes. In addition, any person who shall perform any act or fail to perform any act for the purpose of evading the payment of the tax this article imposes shall pay a penalty in the amount of fifty (50) percent, and interest at the rate of ten (10) percent per year, of any tax that is overdue and unpaid.

B. Each day's violation of, or noncompliance with, any of this article's provisions may constitute a separate offense.

2. That this ordinance shall be in full force and effect upon approval on second reading.

Approved:

Mayor

Attest:

City Clerk

I certify that the above ordinance was:

Adopted on its first reading on _____.

Ayes: _____. Nays: _____. Absent: _____. Abstain: _____.

The Honorable Michael A. Cherry, Councilman: _____.

The Honorable Kenneth B. Frenier, Councilman: _____.

The Honorable W. Joe Green, Jr., Councilman: _____.

The Honorable, John E. Piotrowski, Councilman: _____.

The Honorable John T. Wood, Councilman: _____.

The Honorable Elizabeth G. Luck, Vice Mayor: _____.

The Honorable T. Gregory Kochuba, Mayor: _____.

Adopted on its second reading on _____.

Ayes: _____. Nays: _____. Absent: _____. Abstain: _____.

The Honorable Michael A. Cherry, Councilman: _____.

The Honorable Kenneth B. Frenier, Councilman: _____.

The Honorable W. Joe Green, Jr., Councilman: _____.

The Honorable, John E. Piotrowski, Councilman: _____.

The Honorable John T. Wood, Councilman: _____.

The Honorable Elizabeth G. Luck, Vice Mayor: _____.

The Honorable T. Gregory Kochuba, Mayor: _____.

City Clerk

Approved as to form:

City Attorney