

ADOPTED: JUNE 21, 2016

ORDINANCE NO: 2016-02

AN ORDINANCE TO AMEND CHAPTER 66 TAXATION OF THE CODE OF THE TOWN OF PEARISBURG, VIRGINIA, 1979, AS AMENDED, BY ADDING A NEW ARTICLE VII, SECTION 200 CIGARETTE TAX

BE IT ORDAINED, by the Town Council of the Town of Pearisburg, Virginia, 6 of the elected members concurring, that:

Ch. 66 Sec. 200. Definitions:

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Agent means every local dealer and other person who shall be authorized by the Treasurer to purchase and affix decals to packages of cigarettes under the provisions of this article.

Cigarette 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 the same is flavored adulterated or mixed with any other ingredient, if the wrapper 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 by any other name. *Dealer* means every manufacturer, jobber, wholesale dealer or other person who supplies a seller with cigarettes.

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Decal means the small gummed piece of paper or decalcomania to be sold by the Treasurer and to be affixed by an agent to every package of cigarettes sold at retail in the town. Decal also denotes any insignia or symbol printed by a meter machine upon any such package under the authorization of the Treasurer.

Treasurer means the Treasurer of the town and every person duly authorized by him to serve as his representative.

Package means every package, box, can or other container of any cigarettes, irrespective of the material from which such container is made, to which the internal revenue decal of the United States government is required to be affixed by and under federal statutes and regulations and in which retail sales of such cigarettes are normally made or intended to be made.

Purchaser means every person to whom the title to any cigarettes is transferred by a seller within the town.

Sale means 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 to any other person within the town.

Seller means 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 town for any purpose other than resale.

Ch. 66 Sec. 201. Levy; amount:

There is levied and imposed by the town, in addition to any and all other taxes which may be or have been imposed, a tax to be paid and collected as provided in this article on each and every sale made in the town of cigarettes in the kind and manner required in this article; and the rate or amount of tax levied or imposed on cigarettes shall be at the rate of \$0.10 per pack of cigarettes.

Ch. 66 Sec. 202. Decals; duties of Treasurer generally:

- (a) The Treasurer shall acquire, keep and sell necessary decals to local dealers and other agents, the decals to be of such denominations and quantities as may be necessary for the payment of the tax imposed in this article.
- (b) The Treasurer may from time to time and as often as he deems advisable provide for the issuance and exclusive use of decals of a new design and forbid the use of decals of any other design. The Treasurer is empowered to make and carry into effect such reasonable rules and regulations relating to the preparation, furnishing, sale and redemption of decals as he may deem necessary. In redeeming decals or making refund for destroyed decals, he shall not in any case refund more than 90 percent of the face value of such redeemed or destroyed decals. He is further authorized and empowered to prescribe the method to be employed, the conditions to be observed, and any other necessary requirements not contrary to this article in the use of meter machines for printing upon packages of cigarettes insignia to represent the payment of the tax and in lieu of decals.
- (c) The Treasurer is further authorized and empowered to:
 - (1) Prescribe, adopt, promulgate and enforce rules and regulations relating to the method and means to be used in the cancellation of decals and any other matters pertaining to the administration and enforcement of the provisions of this article; and
 - (2) Delegate his powers to agents or others, including the police officers of the town.

Ch. 66 Sec. 203. Inspection of Records, Premises, etc:

The Treasurer is empowered to examine books, records, invoices and papers related to purchases, sales, etc., of cigarettes, and to examine all cigarettes in and upon any premises where they are placed, stored, sold, offered for sale or displayed for sale by a seller.

Ch. 66 Sec. 204. Seizure and disposition of untaxed cigarettes:

- (a) If the Treasurer discovers any cigarettes subject to the tax imposed under this article, but upon which such tax has not been paid and upon which decals have not been affixed or evidence or payment shown by printed markings of a meter machine in compliance with the provisions of this article, the Treasurer or duly authorized agents or officers, or any of them, are authorized and empowered to seize and take possession forthwith of such cigarettes, which shall thereupon be deemed to be forfeited to the town. Such cigarettes forfeited may, within a reasonable time thereafter, and after written notice is posted at the front door of the municipal building at least five days before the date given in the notice for sale, shall sell such cigarettes in the place designated in such notice. No credit from any sale or other disposition shall be allowed toward any tax or penalties owed. The Treasurer shall collect the tax due together with a penalty in the amount of 50 percent and the cost incurred in such proceedings. The seizure and sale of any cigarettes shall not be deemed to relieve any person of any other penalties provided in this article.
- (b) Cigarettes found in quantities of more than six cartons within the town shall be conclusively presumed for sale or use within the town and may be seized and confiscated 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 consignor or seller and of the consignee 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;
 - (2) They are in transit and are accompanied by a bill of lading or other document 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 cigarettes on which the taxes imposed by such other jurisdiction have not been paid, unless the tax of the state or District of Columbia destination has been paid and the cigarettes bear the tax decals of that state or District of Columbia; or
 - b. A consignee or purchaser in the Commonwealth but outside the town who does not possess a state sales and use tax certificate, a state retail cigarette license and, where applicable, both a business license and retail cigarette 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; however, this subsection shall not apply to cigarettes in the possession of distributors or public warehouses which have filed notice and appropriate proof with the town that those cigarettes are temporarily within the town and will be sent to consignees or purchasers outside the jurisdiction in the normal course of business.

Ch. 66 Sec. 205. Duties of Dealers, Agents and Sellers generally:

- (a) Every local dealer in cigarettes and every agent appointed under this section shall purchase necessary decals from the Treasurer to pay the tax imposed under this article and shall affix or cause to be affixed a decal of the monetary value provided by this article to each package of cigarettes prior to delivering or furnishing such cigarettes to any seller who is not also an agent.
- (b) Nothing contained in this section shall be deemed to preclude any dealer from authorizing and employing any agent to purchase and affix such decals in his behalf or to have a decal meter machine used in lieu of decals to effectuate the provisions of this article.
- (c) Decals or 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.
- (d) It shall be the responsibility of every seller to determine that each package of cigarettes offered for sale shall have a proper decal affixed in compliance with the provisions of this article.
- (e) If inspection by the agents of the town discloses packages of cigarettes with no decal or decals improperly placed, 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 package or container or item with no decal or decals improperly placed the proper amount of decals or shall replace such package, etc., with others to which decals have been properly affixed. If a seller, who is not also an agent, acquires or has in his possession cigarettes with no decal or decals improperly placed from any person other than a local dealer, the seller shall forthwith notify the Treasurer of such fact. The Treasurer shall thereupon affix or cause to be affixed the proper decals to such cigarettes. The cost of such decals at face value shall be advanced by such seller. The Treasurer shall thereupon affix the appropriate decal at such agent's place of business.
- (f) If any packages of cigarettes are found in the possession of a seller without proper decals or authorized printed markings on the package, and the seller is unable to submit evidence establishing that he received such packages, containers, etc., within the immediately preceding 48 hours, and that he has not offered the packages for sale, it shall be presumed that such packages, containers, etc., are being kept in violation of the provisions of this article; and the seller shall be subject to the penalties provided for in this article, even though such seller is also an agent.

- (g) The Treasurer, by proper rules and regulations, may require every local dealer, agent or seller to cancel decals upon all packages of cigarettes in his possession.
- (h) Every local dealer and seller shall maintain and keep for a period of at least two years such records of cigarettes received and sold by him as may be required by the Treasurer. Such records shall be made available for examination in the town by the Treasurer upon demand, and to make available the means, facilities and opportunities for making any such examinations at all reasonable times.

Ch. 66 Sec. 206. Disposition of Revenue:

Revenues derived from the tax imposed in this article shall be deposited by the Treasurer to the credit of the general fund of the town for utilization for such legal purposes as the council may determine

Ch. 66 Sec. 207. Violations:

- (a) Forging, altering decals and markings of meter machine. It shall be unlawful for any person falsely or fraudulently to make, forge, alter or counterfeit any decal or the printed marking of a meter machine; to procure or cause to be made, forged, altered or counterfeited decals 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 decal or printed marking of a meter machine.
- (b) Selling of untaxed products through vending machines. It shall be unlawful for any person to sell and dispense through a vending machine or other mechanical device any cigarettes upon which the tax imposed by this article has not been paid and upon which evidence of the payment is not shown on each package of such cigarettes.

Ch. 66 Sec. 208. Criminal Penalties:

It shall constitute a class 1 misdemeanor for any person to violate or fail to comply with any provision of this article or to forget, alter, steal, or use without paying for any stamped or metered insignia described in this Article. Conviction shall not relieve any person from payment of the tax as provided in this article. Each violation or failure shall be a separate offense.

Ch. 66 Sec. 209 – 229 RESERVED.


This ordinance shall be in effect August 1, 2016.

This 21st day of June, 2016.

APPROVED:


Mayor Robert L. Dickerson

ATTEST:


Regina H. Harless, Town Clerk