

ORDINANCE NO. 759

AN ORDINANCE LICENSING THE BUSINESS OF SELLING CIGARETTES AND IMPOSING PENALTIES FOR THE VIOLATION HEREOF AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

SECTION 1. At any time on and after January 1, 1948, it shall be unlawful for any person, firm, corporation or association to exercise, carry on or engage in the occupation of selling cigarettes in the City of Grand Junction, Colorado, without having a license therefor as herein provided.

SECTION 2. As herein used, certain words, unless the context indicates otherwise, shall have the following meanings:

a. Cigarette. Any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

b. Package. The individual package, box or other container in which cigarettes are normally sold at retail, or intended to be sold.

c. Wholesale dealer. Any person who sells cigarettes to retail dealers or other persons for purposes of resale only.

d. Retail dealer. Any person other than a wholesale dealer engaged in the business of selling cigarettes.

e. Dealer. Any wholesale dealer or retail dealer as herein defined.

f. Sale. 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 therefor.

SECTION 3. The license fee for carrying on the business of selling cigarettes shall consist of two parts: a license fee and an occupation tax, as follows:

a. The license fee for wholesale dealers shall be \$5.00.

b. The license fee for retail dealers shall be \$15.00 (except as hereinafter provided.)

c. The occupation tax shall be an amount equal to two cents (\$0.02) for each package of cigarettes sold, offered, or displayed for sale within the City of Grand Junction, provided however, if a

package of cigarettes contains more than 20 cigarettes, then the tax shall be increased two cents (\$0.02) for each additional 20 cigarettes or fraction thereof in said package.

SECTION 4. The occupation tax provided for by Section 3 of this ordinance shall be in the first instance advanced and paid and the stamps hereinafter provided for shall be affixed as follows:

a. The occupation tax shall be in the first instance advanced and paid by a wholesale dealer based upon the amount of cigarettes which are delivered by him to a retail dealer for resale and stamps therefor shall be affixed by the wholesale dealer before the cigarettes are delivered to a retail dealer for resale.

b. The occupation tax shall be in the first instance advanced and paid by a retail dealer based upon the amount of cigarettes which are received by the retail dealer other than from a wholesale dealer and stamps therefor shall be affixed by the retail dealer just as soon as the cigarettes are received by him. The City Manager as hereinafter provided is hereby authorized to specify in his regulations the manner in which such a retail dealer, once having started to affix stamps, shall prosecute such work.

SECTION 5. The affixing of stamps, as provided for in this ordinance, shall also include the affixing of tax meter stamps upon packages of cigarettes.

SECTION 6. The occupation tax provided for by Section 3 of this ordinance shall be paid by the purchase from the City Treasurer of stamps of such design and denomination as may be prescribed by the City Manager. Such stamps shall evidence the payment of the occupation tax imposed by this ordinance, and shall be canceled as soon as affixed to the package containing the cigarettes or tobacco. In case any retail dealer desires to make sales of cigarettes in cartons containing more than one package of cigarettes, the necessary number of stamps may be affixed to the outside of such carton. In such case the carton may be sold without stamps being affixed to the several packages therein contained, but if the wrapping of the carton is broken before sale, then each package contained therein shall be stamped.

SECTION 7. After the requested stamps have been affixed to any package of cigarettes by a wholesale dealer or by a retail dealer as herein provided, no further stamps need be affixed thereto irrespective of the number of times that such cigarettes are sold, it being the intention of this ordinance that only one occupation tax shall be paid based upon each package of cigarettes.

SECTION 8. No stamps need be affixed by a wholesale dealer to any package of cigarettes which is sold by such wholesale dealer for resale outside the City of Grand Junction.

SECTION 9. Any retail dealer who receives cigarettes other than from a wholesale dealer shall pay an additional license registration fee of \$5.00, the payment of which additional license registration fee shall entitle such retail dealer to the privilege of purchasing the stamps herein provided for from the City Treasurer and affixing same as herein provided. It shall be unlawful for any person, firm, corporation or association to purchase such stamps from the City Treasurer unless holding a license as a wholesale dealer hereunder, or unless holding a license as a retail dealer hereunder, and having paid such additional registration fee herein provided.

SECTION 10. A discount of 10 per cent of the face amount of said stamps shall be allowed by the City Treasurer to dealers authorized to affix stamps hereunder, to compensate such dealers for their trouble and expense in affixing the said stamps to the packages of cigarettes as herein provided.

SECTION 11. No retail dealer shall sell or offer for sale or display for sale at retail or have in his possession any cigarettes without there being affixed to the package thereof the stamp or stamps required to be affixed thereto under the provisions of this ordinance; nor shall any person, firm, corporation or association falsely or fraudulently make, forge, alter or counterfeit any stamp or stamps prescribed by the City Manager under the provisions of this ordinance, or cause or procure to be falsely or fraudulently made, forged, altered or counterfeited any such stamp or stamps, or knowingly or willfully alter, publish, pass, or tender as true any false, altered, forged or counterfeit stamp or stamps, or use any stamp which has been theretofore used hereunder.

SECTION 12. Every application for a license hereunder shall be in such form and shall contain such information as may be prescribed by the City Manager. Every license issued hereunder shall authorize the sale of cigarettes only at a single place of business, and shall be prominently displayed at all times at such place of business. Each such license shall give authority to a dealer to sell only at the place designated in the license.

SECTION 13. The City Manager is hereby authorized to provide regulations, to be promulgated by him, to aid in the collection of said tax, and in particular and without limiting the general language of this section, to provide for:

a. The form and issuance of the stamps by which said tax is to be paid;

b. How the said stamps shall be affixed to packages of cigarettes and to cartons containing the same, and how said stamps shall be cancelled;

c. The records which dealers are to keep concerning all

cigarettes and tobacco purchased or sold by them.

SECTION 14. All licenses issued hereunder shall expire at midnight of the last day of the year in which issued.

SECTION 15. Any police officer of the City of Grand Junction or any person designated for that purpose by the City Manager shall have the right at any and all times to enter upon the premises of any dealer licensed hereunder, for the purpose of seeing whether the provisions of this ordinance are being complied with or not, and shall also have the right to inspect all records to be kept under regulations to be promulgated by the City Manager.

SECTION 16. Whenever any cigarettes are discovered upon which stamps have not been affixed as provided by this ordinance, (and which ought to have been stamped under the provisions of this ordinance) any police officer or any authorized representative of the City Manager is hereby empowered forthwith to seize and take possession thereof, together with the vending machine and receptacle, if any, in which they are held for sale; and after giving five days' notice to the person found in possession thereof, the City Manager shall be and he is hereby authorized to sell the same at a time and place to be fixed by him; and out of the proceeds of such sale, the City Manager shall pay the amount of stamps which should have been affixed thereto, together with a penalty of 50 per cent thereof and the costs incurred in such proceedings, and the balance of such proceeds, if any, shall be delivered to the person found in possession thereof.

SECTION 17. The City Manager shall have power at any time upon violation by any holder or holders of a license to be issued hereunder, of this ordinance or of any of the regulations lawfully prescribed hereunder by the City Manager, or for violation of any other ordinance or statute, to suspend or revoke any such license, after notice shall first have been given to the holder of such license and a hearing had before the City Manager. Five days' written notice mailed to the last known address of the holder or holders of such license shall constitute due notice. Any device or method employed by the holder of any such license for the evasion of the payment of said tax shall be sufficient cause for such suspension or revocation.

SECTION 18. Any person, firm, corporation or association who, either as principal, agent or employee, fails to comply with, or who shall violate any of the provisions of this ordinance or any regulations lawfully issued hereunder by the City Manager, shall upon conviction, be fined in a sum of not less than \$10.00 nor more than \$300.00.

SECTION 19. All the remedies herein enumerated for violation of this ordinance shall be cumulative and the institution and prosecution of any one or more of them shall not prevent the enforcement of any other remedy.

SECTION 20. It is the intention of this ordinance that the occupation tax provided for in Section 3 of this ordinance is to be and shall be ultimately collected from and paid by the ultimate consumer. It shall be the duty of each wholesaler, in selling any cigarettes or tobacco to any retailer, to make a separate and distinct charge for the tax provided for in Section 3 hereof and to collect from such retailer the full amount of such tax without any deduction, discount or allowance, and on any and all statements or bills furnished, supplied or delivered by such wholesaler to any retailer, the amount of such tax shall be listed separately. It shall be the duty of every retailer to collect from each person to whom he sells any cigarettes, as and when such sale is made, the full amount of the tax provided for in Section 3 hereof without any deduction, discount or allowance on any and all such cigarettes so sold by such retailer.

SECTION 21. It shall be unlawful for any wholesaler or retailer, his agent or employee, to sell any cigarettes without collecting in addition to the price charged therefor, the tax provided for in Section 3 of this ordinance.

SECTION 22. It shall be unlawful for any wholesaler or retailer to assume or absorb the tax provided for in Section 3 of this ordinance.

SECTION 23. It shall be unlawful for any wholesaler or retailer to advertise, or hold out, or state to the public, or to the consumer, directly or indirectly, that the tax provided for in Section 3 of this ordinance, or any part thereof, will be assumed or absorbed by such wholesaler, or retailer, or that the same will not be collected from the person or persons who purchase such cigarettes.

SECTION 24. The City Manager is hereby authorized and empowered to provide regulations to be promulgated by him to insure the compliance with and the enforcement of Sections 20 to 23, inclusive, of this ordinance and he may require such records to be kept or such business practices to be followed to enable him to investigate, check and determine whether the wholesalers and retailers are complying with the terms and provisions hereof, and the books and records of all wholesalers and retailers shall at all times be open to the inspection and examination of said City Manager and the law enforcing departments, agents and employees of the City of Grand Junction.

SECTION 25. Every license issued hereunder shall designate the place of business at which the holder thereof may sell cigarettes; provided, however, if a licensed dealer shall change his place of business he may obtain a new license upon paying a transfer fee of \$1.00. In case a licensed dealer shall sell his business, his license may be transferred to the purchaser upon payment of a transfer fee of \$1.00 and upon the execution by the purchaser of an application therefor in substantially the same

form as in an original application for a license hereunder.

SECTION 26. Each and every provision of this ordinance is hereby declared to be an independent provision and the holding of any provision hereof to be void or invalid shall not affect any other provision hereof, and 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 27. Each and every ordinance or part of ordinance in conflict herewith is hereby repealed.

SECTION 28. In the opinion of the Council, a special emergency exists, and this ordinance is necessary for the preservation of the public peace, health and safety, and it shall therefore be in full force and effect immediately after its passage and final publication.

Passed by the Council and signed by its President this 9th day of December, A. D. 1947.

/s/Porter Carson

President

ATTEST:

/s/Helen C. Tomlinson

City Clerk

I HEREBY CERTIFY that the foregoing ordinance, being Ordinance No. 759, was introduced, read and ordered published by the City Council of the City of Grand Junction, Colorado, at a regular adjourned meeting of said body held on the 9th day of December, A. D., 1947, and that the same was published in the Daily Sentinel, a newspaper, published, and in general circulation in said city at least ten days before its final passage.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 10th day of December, A. D., 1947.

/s/Helen C. Tomlinson
City Clerk

1st Publication _____
last Publication _____