

AMENDED

COUNCIL BILL NO. 96-266

ORDINANCE NO. 96-192

AN ORDINANCE Amending Chapter 19, Article V. Cigarette Dealers;  
providing for a new method of collecting the  
cigarette tax

WHEREAS, the Missouri Department of Revenue will no longer accept metering as a method of determining cigarette taxes due;

WHEREAS, the City of Joplin desires to continue the collection of cigarette taxes

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI as follows:

Section 1. Chapter 19, Article V., Cigarette Dealers of the Joplin City Code, is hereby amended as follows:

- a. "That Section 19-80. Definitions be repealed and new section 19-80. Definitions be adopted to read as follows:

Section 19-80. Definitions

When used in this article the following words shall have the meanings herein indicated:

- (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) *Consumer:* Any person who comes into possession of tobacco for the purpose of consuming it, giving it away or disposing of it in any way.
- (c) *Dealer:* Any person dealing directly with the manufacturer of cigarettes in their purchase and in the business of selling cigarettes as a first seller.
- (d) *First Seller:* All persons who make the initial or first sale or distribution of cigarettes within the City of Joplin.
- (e) *Occupation tax:* The tax imposed by the city under this article upon the business and for the privilege of selling cigarettes at retail in the city.

- (f) *Package:* The individual packages, box or other container from which sales of cigarettes are normally made or intended to be made.
  - (g) *Person:* Any individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, or any combination of individuals.
  - (h) *Retailer:* Any person other than a dealer or wholesaler as defined in this section, who is engaged in the business of selling cigarettes at retail, who shall sell or offer for sale cigarettes, irrespective of quantity, number of sales, giving the same away or exposing the same where it may be taken, or purchased, or otherwise acquired.
  - (I) *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.
  - (j) *Vending machine operator:* All person engaged in the distribution or sale of cigarettes by means of a coin-operated vending machines.
  - (k) *Wholesaler:* Any person whose principal business is that of a wholesale jobber and who is known to the trade as such, who sells cigarettes for only the purpose of resale or giving them away, or exposing the same where they may be taken or purchased or otherwise acquired by the retailer.”
- b. “That Section 19-81. Stamp, etc., as prerequisite to sale of cigarettes. be repealed and new Section 19-81 Payment of tax required, be adopted to read as follows:
- Section 19-81. Payment of tax required  
This tax shall be paid by the dealer or wholesaler, as defined in section 19-80, selling cigarettes or offering them for sale.”
- d. “That Section 19-82. Forging, altering, etc., stamps, etc. be repealed and new Section 19-82 Tax levy be adopted to read as follows:
- Section 19-82. Tax levy  
Every dealer or wholesaler engaged in the business of selling cigarettes or offering or displaying the same for sale within the city shall pay an occupation tax at the rate of \$2.00 per thousand for all cigarettes sold or offered or displayed for sale. This tax shall be paid but once as provided for in Section 19-83., and only by

the dealer selling cigarettes or displaying or offering them for sale. The intent and meaning of this ordinance is that the same shall levy an occupation tax based upon and pursuant to the methods provided for by Section 92.040, RSMo. (1994), and pursuant to the powers herein granted and the powers contained in the Joplin City Charter.”

- e. “That Section 19-83. Procedure when retailer affixes stamps to cigarettes be repealed and new Section 19-83. Monthly payment be adopted to read as follows:

**Section 19-83. Monthly payment**

It shall be the duty of every dealer or wholesaler, as defined in Section 19-80, selling, offering or displaying for sale any package of cigarettes, to remit the monthly cigarette tax reporting form and full payment by the 15th day of each following month. The canceled check, accompanied by the monthly cigarette tax reporting form, shall be proof of payment.”

- f. “That Section 19-84. Possession of unstamped, etc., cigarettes by retailer, be repealed and new section 19-84. Rules and regulations -- Records, be adopted to read as follows:

**Section 19-84. Rules and regulations -- Records**

For purposes of enabling the Finance Director to enforce the terms of this ordinance, the following provisions are enacted:

- A. Each dealer in the city and those wholesalers and retailers as defined in Section 19-80 shall procure and retain invoices showing the amount and value of the shipment of cigarettes received by him, the date thereof, and the name of the shipper, and shall retain this invoice for a period of three years subject to the use and inspection of the Finance Director.
- B. All dealers, wholesalers and retailers as defined in Section 19-80 within the City of Joplin shall maintain and keep for a period of three years such other records of cigarettes received, sold or delivered within the city as may be required by the Finance Director.
- C. The Finance Director or his duly authorized representatives, are authorized to examine the books, papers, invoices and other records, stock of cigarettes in an upon any premises where they are placed, stored or sold, and equipment of any such dealer, wholesaler, or retailer pertaining to the sale and delivery of cigarettes taxable under this ordinance.
- D. To verify the accuracy of the occupation tax imposed and assessed by this

ordinance, each person, as defined in Section 19-80, is directed and required to give to the Finance Director or his duly authorized representatives, the means, facilities and opportunity for such examinations as are herein provided for and required.

- E. In addition to the powers herein granted to the Finance Director, he is authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to the delegation of his powers to a deputy or other employee of his office and any other matter or thing pertaining to the administration and enforcement of the provisions of this ordinance.
- F. Cigarette tax reporting information received from the State of Missouri shall be held in confidence and used solely for verifying cigarette tax payments.”
- f. “That Section 19-85. Aggregate denomination of stamps, etc., affixed; stamps, etc., to be visible to purchaser be repealed and new Section 19-85. Refunds be adopted to read as follows:

**Section 19-85. Refunds**

The Finance Director is authorized to adopt, prescribe and promulgate rules and regulations including a monthly cigarette tax reporting form with regard to the presentation and proof of claim for refunds and credits as he may deem advisable.”

- g. “That Section 19-86. Records required be repealed and new Section 19-86. Penalty for violation be adopted to read as follows:

**Section 19-86. Penalty for violation**

Any person violating this ordinance by failing to file the report and make the payment provided for in Section 19-83 hereof shall be punished by a fine of not more than five hundred dollars or imprisoned for not more than 90 days or be punished by both such fine and imprisonment. Failure to file each monthly report and make each monthly payment shall be deemed a separate offense.”

- h. “That Section 19-87. Examination of books, records, stocks, etc. be repealed.”
- I. “That Section 19-88. Rules and regulations generally be repealed.”
- j. “That Section 19-89. Refund of taxes paid where stamps used on cigarettes not sold in city be repealed.”

- k. "That Section 19-90. Seizure, etc., of cigarettes upon which tax has not been paid and of vending machines. be repealed."
- l. "That Section 19-91. Oaths, affidavits, witnesses, etc. be renumbered as Section 19-87."
- m. "That Sections 19-87 through 19-100 be reserved."

Section 2. Division 2. License, of Article V. Cigarette Dealers, of Chapter 19 be amended as follows:

- a. "That Section 19-103. Fee and tax, be amended as follows:

The title of Section 19-103 shall be amended by the deletion of the words 'and tax', this section shall be further amended by the by the deletion of the phrase ', and in addition thereto, an occupation license tax at the rate of two dollars (\$2.00) per one thousand (1,000) for each and all cigarettes sold or offered or displayed for sale within the city.' in the fourth through the seventh lines and the addition of a period after the word 'him' in the fourth line."
- b. "That Section 19-104. Payment, discount be repealed."
- c. "That Section 19-105. Vending machines, be amended by the deletion of the words 'and the payment thereof evidenced on the containers thereof. It shall be unlawful for any person, through a vending machine, or otherwise, to remove the container of cigarettes, in whole or in part, or mutilate same, before the occupation license tax thereon has been paid and evidence of payment stamped or printed thereon.' in the tenth through the fifteenth line and the addition of a period after the word 'paid' in the tenth line."
- d. "That Section 19-111. Suspension or revocation be amended by the deletion of the words ', together with all stamps, if any, in his possession which he has not affixed to packages of cigarettes and the director of finance is hereby authorized to refund all moneys paid for such stamps." in lines eleven through fourteen and the addition of a period after the word 'requested' in the eleventh line."

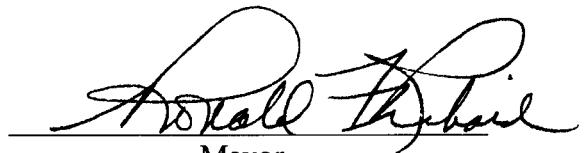
Section 3. The provisions of this ordinance shall be severable. In the event that any provision of this ordinance is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of this ordinance are valid unless the court finds the valid provisions of this ordinance are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be

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presumed that the Council of the City of Joplin would have enacted the valid provisions without the void ones or unless the Court finds that the valid provisions, standing alone, are incomplete and incapable of being executed in accordance with the legislative intent.

- Section 4. That the Municipal Code Corporation is hereby authorized to re-number certain sections of the Code, as is required by this ordinance.

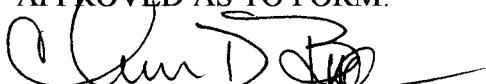
PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this 2ND day of DECEMBER, 1996.

  
Donald Thibault  
Mayor

ATTEST:

  
Barbara Lynn Kogelin  
Deputy City Clerk

APPROVED AS TO FORM:

  
Dan D. Price  
City Attorney

**EFFECTIVE 20 DAYS FROM DATE**