

## Chapter 7

### CIGARETTES

*State Law Reference — Authority to impose license taxes, RSMo. § 94.110; Issuance of licenses, RSMo. § 94.120; Authority to prohibit sales to minors, RSMo. § 71.740; tax, RSMo. Ch. 149; State cigarette tax, RSMo. § 149.011 et seq.*

*Editor's note — Ord. No. 96-30 adopted December 10, 1996, repealed ch. 7 and enacted the new provisions set out herein. Former ch. 7 derived from ord. no. 73-28 §§ 1 — 2, 2-19-1974.*

#### **SECTION 7-1. Definitions.** [Ord. No. 96-30 § II(7-1), 12-10-1996]

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

**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 of material except tobacco.

**JOBBER** — Any person who shall sell, distribute, deliver, convey or give away cigarettes to retail dealers or other persons in the City, for the purpose of resale only.

**OCCUPATIONAL LICENSE TAX** — The tax imposed by the City under this Chapter upon the business and for the privilege of selling cigarettes at retail in the City.

**PACKAGE** — A quantity of cigarettes wrapped and sealed in paper, tinfoil or otherwise by the manufacturer of the cigarettes prior to being placed in cartons and shipment from the manufacturer.

**RETAIL DEALER** — Any person other than a wholesale dealer, jobber or manufacturer engaged in the business of selling cigarettes, by personal handling or through a vending machine, to the ultimate consumer or agent.

**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.

**SALE** — Any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever for a consideration or any agreement therefor.

**STAMP** — A small piece of paper with such printing thereon as may be prescribed by the Mayor which, when affixed to a package of cigarettes, shall evidence payment of the occupational tax thereon.

VENDING MACHINE — A mechanical device used for the sale and dispensing of cigarettes and automatically operated by the purchaser through the deposit of coins, slugs, or tokens.

VENDING MACHINE OPERATOR — Any person engaged in the distribution or sale of cigarettes by means of coin-operated vending machines.

WHOLESALE DEALER — Any person who shall sell, distribute, deliver, convey or give away cigarettes to retail dealers or other persons in the City for the purpose of resale only.

**SECTION 7-2. Licensing — Registration Fees — Tax Levy.** [Ord. No. 96-30 § II(7-2), 12-10-1996]

- A. *License Required.* Every wholesale dealer, jobber, retail dealer, manufacturer or other person engaged in selling cigarettes or offering, delivering or displaying the same for sale within the City shall procure an annual license therefor for each place of business that he/she desires to have for the sale or distribution of cigarettes.
- B. *Procedure.* Every application for a cigarette license shall be made upon a form prescribed, prepared and furnished by the City Collector, and shall set forth such information as shall be required. Upon approval of the application, the Collector shall grant and issue to the applicant a cigarette license as herein provided.
- C. *Fees.* At the time such license is issued, the City Collector shall collect the sum of ten dollars (\$10.00) as a registration fee for each place of business.

**SECTION 7-3. Occupational Tax License.** [Ord. No. 96-30 § II(7-3), 12-10-1996]

In addition to the license provided for in Section 7-2, each wholesale dealer or jobber or licensee shall pay an occupational license tax at a rate of one dollar fifty cents (\$1.50) per thousand (1,000) for each and all cigarettes sold, offered, delivered or displayed for sale.

**SECTION 7-4. Monthly Payment, Evidence of Payment.** [Ord. No. 96-30 § II(7-4), 12-10-1996]

It shall be the duty of every retail dealer or wholesaler, as defined in Section 7-1, selling, offering or displaying for sale any package of cigarettes, to remit the monthly cigarette tax reporting form and full payment of the tax by the fifteenth (15th) day of the following month. Every wholesaler or jobber shall generate a report detailing daily purchases and returns of cigarette sales by retail dealers or customers within the City. Monthly cigarette sales reports shall detail each day the invoice number, customer name, location, and total cigarettes purchased by each retail dealer or customer. The cancelled check, accompanied by the monthly cigarette tax reporting form, shall be proof of payment. The wholesaler or jobber is hereby granted a discount of two percent (2%) on the net tax due after refunds as provided for in Section 7-3 to cover collection costs.

**SECTION 7-5. Alternative Payment Method — Stamps.** [Ord. No. 96-30 § II(7-5), 12-10-1996]

- A. *Tax Provision.* The tax provided for in Section 7-3 may be paid to the City Collector upon purchase of stamps of such design and denomination as may be prescribed by the Mayor or his/her duly authorized representative. The City Collector may require the use of stamps for enforcement purposes.
- B. *Cigarette Stamp, Impression To Be Affixed.* Such stamps will be so affixed to each package of cigarettes intended for sale at retail, as will evidence the payment to the City of the tax imposed by this Chapter. Stamps shall be affixed to each package of cigarettes in an aggregate denomination not less than the amount of the occupation tax, based upon the contents therein and shall be affixed in such manner as to be visible to the purchaser.
- C. *Discounts.* Any wholesale dealer, jobber, retail dealer, retailer, manufacturer or other person engaged in selling cigarettes or offering, delivering or displaying cigarettes for sale within the City under the alternate payment method of stamps shall not be eligible for any discount on the denominational value of the stamps to be affixed to each cigarette package.

**SECTION 7-6. Sale of Cigarettes.** [Ord. No. 96-30 § II(7-6), 12-10-1996]

- A. It shall be unlawful for any person to sell or offer or display for sale at retail any cigarettes unless said tax has been paid.
- B. No person shall sell or offer for sale or display for sale at retail any cigarettes unless on the container thereof, there has been affixed a stamp evidencing the payment of the tax or in lieu thereof, proof of monthly payment of the tax to the City Collector as outlined in Section 7-3 of this Chapter.
- C. No person shall falsely or fraudulently make, forge, alter or counterfeit any stamp, as shall be prescribed by the Mayor, or procure or cause to be falsely or fraudulently made, forged, altered or counterfeited any such stamp, or knowingly and willfully utter, publish, pass or tender as true any false, altered, forged or counterfeited stamp.

**SECTION 7-7. Unstamped Cigarettes.** [Ord. No. 96-30 § II(7-7), 12-10-1996]

- A. *Duty of Dealer.* Whenever a retail dealer or other person engaged in the business of selling cigarettes shall obtain or receive and have in his/her possession for resale at retail in the City, packages of cigarettes upon which no stamps have been affixed or for which monthly payment has not been made of the cigarette tax imposed by this Chapter, that person shall be deemed guilty of a misdemeanor, unless such person within twenty-four (24) hours after receipt of the same, notifies the City Collector of his/her possession of the packages of the cigarettes and identifies the wholesale dealer or jobber who sold and delivered the packages of cigarettes to him/her.
- B. *Presumption Of Violation.* Whenever any cigarettes are found in the place of business of such retail dealer or other person without the stamps affixed in the manner prescribed by this Chapter, and not marked as having been received within

the preceding twenty-four (24) hours, the presumption shall be that the cigarettes are being kept in violation of the provisions of this Section.

**SECTION 7-8. Vending Machines.** [Ord. No. 96-30 § II(7-8), 12-10-1996]

- A. *Licensing.* Every person who, in the capacity of owner, lessee, tenant, or in any other capacity shall operate or cause to be operated, directly or indirectly, a vending machine for selling and dispensing of cigarettes to the public, shall obtain from the City Collector a license as required in Section 7-2 for each vending machine in a form prescribed by the Mayor. Said license shall be affixed on a conspicuous part of such vending machine.
- B. *Unlawful Sales.* It shall be unlawful for any person to sell and dispense through a vending machine any cigarettes upon which the tax has not been paid. 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 the same, before the tax thereon has been paid. The fee shall be as set out in Section 7-3.

**SECTION 7-9. Assignability of Licenses.** [Ord. No. 96-30 § II(7-9), 12-10-1996]

Cigarette licenses shall not be assignable, and shall be valid only for the person in whose name issued and for the transaction of business in the places designated therein.

**SECTION 7-10. Display of Licenses.** [Ord. No. 96-30 § II(7-10), 12-10-1996]

Cigarette licenses shall at all times be conspicuously displayed at the places for which issued.

**SECTION 7-11. Duration, Expiration of Licenses.** [Ord. No. 96-30 § II(7-11), 12-10-1996]

All cigarette licenses shall expire on June thirtieth (80th) in each and every year, unless sooner suspended, surrendered or revoked for cause by the City Collector.

**SECTION 7-12. Issuance of Duplicate Licenses.** [Ord. No. 96-30 § II(7-12), 12-10-1996]

Whenever any license issued under the provisions of this Chapter is defaced, destroyed or lost, the City Collector shall issue a duplicate license for the defaced, destroyed or lost license upon the payment of a fee of five dollars (\$5.00).

**SECTION 7-13. Suspension, Revocation of License, and Hearing.** [Ord. No. 96-30 § II(7-13), 12-10-1996]

- A. *Hearing Required.* Whenever it has been determined by the City Collector that the holder of a cigarette license has failed or refused to comply with any of the provisions of this Chapter, or any rules or regulations prescribed or promulgated under this Chapter, the City Council shall be notified of such violation. The City Collector shall submit to the Council evidence of the same and a full report thereof, and the Council shall thereafter afford the person alleged to have violated the Chapter or regulations a hearing at such time and place as the Council may

designate. The City Administrator shall provide written notice to the licensee of the hearing by regular mail at least ten (10) calendar days prior to the hearing. At the hearing the City Attorney shall present witnesses and evidence on behalf of the City to provide a full report of the alleged violation of this Chapter or regulations. The licensee shall have the right to present witnesses and evidence of its own which are relevant to the alleged violation.

- B. *Authority Of City Council.* The Council may thereafter, for good cause shown, suspend or revoke the cigarette license of the offender upon a written finding that the licensee has not complied with the provisions of this Chapter or the rules and regulations prescribed or promulgated hereunder.
- C. *Notice Of Penalty.* When the City Council suspends or revokes a cigarette license, the City Collector shall notify the holder of the license immediately, and the holder shall promptly surrender the license to the City Collector on request.

**SECTION 7-14. Inspection of Books, Records, Stock.** [Ord. No. 96-30 § II(7-14), 12-10-1996]

For the purpose of enabling the City to enforce the terms of this Chapter, the following provisions are enacted:

1. Each retail dealer in the City and those wholesalers and retailers as defined in Section 7-1 shall procure and retain invoices showing the amount and value of the shipment of cigarettes received, the date thereof, and the name of the shipper, and shall retain this invoice for a period of three (3) years subject to the use and inspection of the City.
2. All dealers, wholesalers and retailers as defined in Section 7-1 within the City shall maintain and keep for a period of three (3) years such other records of cigarettes received, sold or delivered within the City as may be required by the City Collector.
3. The City Collector or other duly authorized City representative is authorized to examine books, records, invoices, papers, stock of cigarettes in and upon any premises where the cigarettes are placed, stored or sold, and equipment of any such wholesale dealer, jobber or retail dealer pertaining to the sale and delivery of cigarettes taxable under this Chapter.
4. To verify the accuracy of the occupation tax imposed and assessed by this Chapter, each such person is directed and required to give to the City Collector or other duly authorized City representative the means, facilities and opportunity for such examinations as are provided for and required in this Section.
5. Cigarette tax reporting information received from the State of Missouri shall be held in confidence and used solely for verifying cigarette tax payments.

**SECTION 7-15. Refund of Tax.** [Ord. No. 96-30 § II(7-15), 12-10-1996]

- A. *Refund.* Whenever any cigarettes have become unfit for use and consumption and are not salable or have been destroyed, upon which stamps have been affixed or

evidence of payment verified, they shall be entitled to a credit of the actual amount of the tax paid on such cigarettes.

- B. *Monthly Payment.* The City Collector 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 the Collector may deem advisable.
- C. *Stamps.* Whenever any cigarettes upon which stamps have been affixed by a wholesale dealer or jobber, have been sold and shipped by him/her into another City or State for sale or use there, or have become unfit for use or consumption or have become unsalable, or have been destroyed, such wholesale dealer upon the presentation and proof of a claim for refund as required by rules and regulations promulgated in Sections 7-14 and 7-15. If the City Collector is satisfied that any wholesale dealer, jobber or retail dealer is entitled to a refund, the Collector shall submit evidence thereof to the City Council for approval of the refund.

**SECTION 7-16. Verification, Recording of Stamp, License Sales.** [Ord. No. 96-30 § II(7-16), 12-10-1996]

The City Collector shall, within five (5) days after the first (1st) day of each month, furnish to the City Clerk, duplicate copies of receipts of stamp sales and a verified statement of all license sales, or in lieu thereof, duplicate copies of cigarette license sales for the purpose of verification and recording.

**SECTION 7-17. Confiscation, Sale of Illegal Cigarettes.** [Ord. No. 96-30 § II(7-17), 12-10-1996]

- A. *Seizure.* Whenever the City Collector or any other duly authorized representatives shall discover any cigarettes subject to tax provided by this Chapter, and upon which said occupation tax has not been paid and the stamps affixed, or evidence of payment of said occupation tax verified, the City Collector or any duly authorized representatives are hereby authorized and empowered forthwith to seize possession of such cigarettes, together with any vending machine or other automatic mechanical device for selling and dispensing cigarettes, or receptacle in which they are held for sale, and the same shall thereupon be deemed to be forfeited to the City.
- B. *Sale.* The City Collector may, within a reasonable time thereafter, by public notice at least five (5) days before the day of the sale, sell such forfeited cigarettes at a place designated by the Collector, and from the proceeds of such sale, shall collect the tax thereon, together with a penalty of fifty percent (50%) thereof, and the costs incurred in such proceedings. The City Collector shall pay the balance, if any, to the person in whose possession such forfeited cigarettes were found. Such seizure and sale shall not be deemed to relieve any person from fine or imprisonment provided herein for violation of any provisions of this Chapter.

**SECTION 7-18. Oaths and Subpoenas.** [Ord. No. 96-30 § II(7-18), 12-10-1996]

The Mayor, or his/her employees or agents duly designated and authorized by him/her, shall have the power to administer oaths and take affidavits in relation to any matter or proceedings in the exercise of their powers and duties under this Chapter. The Mayor, or his/her duly authorized representative, shall have the power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the enforcement of this Chapter and to examine them in relation thereto.

**SECTION 7-19. Rules and Regulations.** [Ord. No. 96-30 § II(7-19), 12-10-1996]

- A. *Authority.* In addition to the other powers herein granted the Mayor, he/she is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to:
1. The denomination and sale of stamps;
  2. The delegation of his/her powers to the City Collector, a deputy or employee of the Collector's office to enforce payment of the tax; or
  3. Any other matter or thing pertaining to the administration and enforcement of the provisions of this Chapter, subject at all times to the approval of the City Council.
- B. *Duty.* It shall be the duty of the City Collector each year to annually renew the "*request for Cigarette Tax Records*" with the Missouri Department of Revenue.

**SECTION 7-20. Disbursement of Revenue.** [Ord. No. 96-30 § II(7-20), 12-10-1996]

The revenue accruing to the City from the permits and occupation licenses relating to the retail sale of cigarettes shall be paid into the General Fund.

**SECTION 7-21. Violations — Penalty.** [Ord. No. 96-30 § II(7-21), 12-10-1996]

- A. Any person violating any of the provisions of this Chapter shall be deemed guilty of a misdemeanor and, upon first (1st) conviction thereof be fined in the sum of not less than ten dollars (\$10.00) and not more than five hundred dollars (\$500.00) or imprisonment for not more than ninety (90) days or be punished by both such fine and imprisonment. Upon second (2nd) conviction thereof, in the sum of not less than twenty-five dollars (\$25.00) and not more than five hundred dollars (\$500.00) or imprisonment for not more than ninety (90) days or be punished by both such fine and imprisonment. Upon any subsequent conviction thereof shall be fined in the sum of not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00) or imprisonment for not more than ninety (90) days or be punished by both such fine and imprisonment. If the person so subsequently convicted shall be a licensed wholesale dealer, jobber or retailer dealer in cigarettes, his/her license shall thereupon be revoked, and the license shall not be renewed for a period of one (1) year therefrom.
- B. Failure to file each monthly report and make each monthly payment shall be deemed a separate offense.