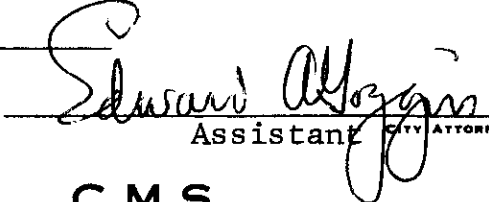


M.T.

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMAN \_\_\_\_\_

  
Assistant CITY ATTORNEY

ORDINANCE No. 7381 C. M. S.

AN ORDINANCE ADDING ARTICLE 22 TO  
CHAPTER 5 OF THE OAKLAND MUNICIPAL  
CODE ESTABLISHING A TAX UPON THE  
PRIVILEGE OF DISTRIBUTING CIGARETTES,  
AND PROVIDING FOR THE COLLECTION  
THEREOF, PENALTIES FOR DELINQUENCY,  
REMEDIES AND ENFORCEMENT.

BE IT ORDAINED by the Council of the City of  
Oakland as follows:

SECTION 1. Article 22 is hereby added to  
Chapter 5 of the Oakland Municipal Code to read as  
follows:

ARTICLE 22

CIGARETTE TAX

SEC. 5-22.01 TITLE. This Article shall  
be known as the Cigarette Tax Ordinance of the City of  
Oakland.

SEC. 5-22.02 DEFINITIONS. Except where  
the context otherwise requires, the definitions given in  
the following sections, 5-22.03 through 5-22.12, govern  
the construction of this Article.

SEC. 5-22.03 "Cigarette" means any roll  
for smoking, made wholly or in part of tobacco, irrespec-  
tive of size or shape and irrespective of whether the  
tobacco is flavored, adulterated, or mixed with any other  
ingredient, where such roll has a wrapper or cover made of  
paper or any other material, except where such wrapper is  
wholly or in the greater part made of tobacco, and such  
roll weighs over three pounds per thousand.

SEC. 5-22.04 PERSON. As used in this  
Article, "person" shall mean any domestic or foreign cor-  
poration, firm, association, syndicate, joint-stock com-  
pany, partnership of any kind, joint venture, club,  
Massachusetts business or common-law trust, society, or  
individual.

SEC. 5-22.05 CITY. As used in this  
Article, "City" shall mean the City of Oakland.

SEC. 5-22.06 TAX ADMINISTRATOR. As used  
in this Article, "Tax Administrator" means the Treasurer  
of the City of Oakland.

SEC. 5-22.07 DISTRIBUTOR. As used in this Article, "Distributor" means a person who, having title to cigarettes, transports them, or causes or allows them to be transported, to a retail outlet in the City.

SEC. 5-22.08 DISTRIBUTE; DISTRIBUTING. "Distribute" or "distributing" means the act, by a distributor, of transporting cigarettes to which he has title, or causing or allowing such cigarettes to be transported, to a retail outlet in the City.

SEC. 5-22.09 UNTAXED CIGARETTE. "Untaxed cigarette" means any cigarette which has not yet been distributed in such manner as to result in a tax liability under this Article.

SEC. 5-22.10 RETAIL OUTLET. "Retail outlet" means any place or premises in the City (including, without limiting the generality of the foregoing, every kind of store, business establishment, and club in the City) where cigarettes are transferred to the possession of the ultimate consumer thereof, irrespective of how such transfer is consummated, whether through a natural person, by means of a vending machine or other mechanical device, or otherwise.

SEC. 5-22.11 ULTIMATE CONSUMER. "Ultimate consumer" includes any person who acquires possession of cigarettes for his own use or consumption.

SEC. 5-22.12 USE OR CONSUMPTION. "Use or consumption" includes the exercise of any right or power over cigarettes incident to the ownership thereof, other than the sale of the cigarettes or the receiving, handling, or holding thereof for the purpose of sale.

SEC. 5-22.13 TAX IMPOSED. An excise tax, at the rate of one mill (\$.001) per cigarette, is hereby imposed upon the privilege of distributing cigarettes to retail outlets in the City. Any cigarette with respect to which a tax has once been imposed under this Article shall not be subject upon a subsequent distribution to the tax imposed by this Article. Unless the contrary is established, it shall be presumed that all cigarettes distributed in the City are untaxed cigarettes. It shall be unlawful knowingly to sell, transfer, distribute, or give away untaxed cigarettes in the City. Sample packets of five or less cigarettes each, given free of charge, are exempt from this tax.

SEC. 5-22.14 REGISTRATION. Within thirty (30) days after the effective date of this Ordinance, within thirty (30) days after commencing business, or within thirty (30) days after a change in ownership of a business registered under this Article, whichever is later, each distributor of cigarettes shall register with the Tax Administrator on a form provided by him.

SEC. 5-22.15 RECORDS AND STATEMENTS REQUIRED. Every distributor shall keep a complete and accurate record of all cigarettes distributed by him in the City. Such records shall, with respect to each

separate distribution, include a written statement containing the name and address of the retail outlet to which distribution is made and to whom title or possession of the distributed cigarettes is transferred, the date of delivery, the quantity of cigarettes, the amount of tax imposed under this Article, and such other information as the Tax Administrator may reasonably require. All statements and records required by this Section shall be in a form satisfactory to the Tax Administrator. They shall be preserved for a period of three years and shall be offered for inspection at any time upon oral or written demand by the Tax Administrator or his authorized agent.

The Tax Administrator is hereby authorized and directed to offset and deduct from the total amount of tax monies which may become owing and payable by a distributor to the City under the provisions of this Article 22 an amount of money equal to two percent (2%) of such total amount of tax monies owing and payable by such distributor to the City for such month, if such distributor has complied with and done all things required of him by the provisions of this Section to the satisfaction of the Tax Administrator. Such offset and deduction shall be deemed reimbursement to the distributor for costs and expenses incurred by him in complying with and doing all things required of him by this Section.

#### SEC. 5-22.16 REPORTING AND REMITTING.

The tax imposed under this Article shall be due and payable monthly on or before the last day of the calendar month following the calendar month in which the distribution of cigarettes occurs.

Each distributor shall make a return to the Tax Administrator, on forms provided by said Administrator, of the total number of cigarettes distributed to retail outlets in the City by the distributor during each calendar month and the amount of tax due thereon. Each such return shall be filed with the Tax Administrator on or before the last day of the calendar month following the close of the calendar month for which the return is made.

At the time the return is filed, the full amount of the tax imposed by this Article shall be remitted to the Tax Administrator. The Tax Administrator may establish a shorter reporting period for any distributor if he deems it necessary in order to insure collection of the tax. Returns and payments are due immediately upon cessation of business for any reason. All returns and payments submitted by each distributor shall be treated as confidential by the Tax Administrator and shall not be released by him except by order of a court of competent jurisdiction or to an official or agent of the United States, the State of California, the County of Alameda, or the City of Oakland for official use only.

#### SEC. 5-22.17 PENALTIES AND INTEREST.

(a) Original Delinquency Period. Any distributor who fails to remit any tax imposed by this

Article within the time required shall pay a penalty of ten percent (10%) of the amount of the tax in addition to the amount of the tax.

(b) Continued Delinquency. Any distributor who fails to remit any delinquent remittance within one month following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent (10%) of the amount of the tax in addition to the amount of the tax and the ten percent (10%) penalty first imposed.

(c) Fraud. If the Tax Administrator determines that the nonpayment of any remittance due under this Article is due to fraud, a payment of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs (a) and (b) of this Section.

(d) Interest. In addition to the penalties imposed, any distributor who fails to remit any tax imposed by this Article shall pay interest at the rate of one-half of one percent (0.5%) per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

(e) Penalties Merged with Tax. Every penalty imposed and such interest as accrues under the provisions of this Section shall become a part of the tax herein required to be paid.

(f) Penalties during Pendency of Hearing or Appeal. No penalty provided under the terms of this Article shall be imposed during the pendency of any hearing which is provided for in Section 5-22.18 of this Article, nor during the pendency of any appeal to the City Council which is provided for in Section 5-22.19 of this Article.

SEC. 5-22.18 FAILURES TO COLLECT AND REPORT TAX; DETERMINATION OF TAX BY TAX ADMINISTRATOR. If any distributor shall fail or refuse, within the time provided for in this Article, to make any report and remittance of said tax or any portion thereof required by this Article, the Tax Administrator shall proceed to obtain facts and information on which to base his estimate of the tax due. As soon as the Tax Administrator shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this Article and payable by any distributor who has failed or refused to make such report and remittance, he shall proceed to determine and assess against such distributor the tax, interest, and penalties provided for by this Article. In case such determination is made, the Tax Administrator shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the distributor so assessed, at his last-known place of address. Such distributor may within ten (10) days after the service or mailing of such notice make application in writing to the Tax Administrator for a hearing on such amount assessed. If application by the distributor for a hearing is not made within the time prescribed, the tax,

interest, and penalties, if any, determined by the Tax Administrator shall become final and conclusive and immediately due and payable. If such application is made, the Tax Administrator shall give not less than five (5) days' written notice in the manner prescribed herein to the distributor to show cause at a time and place fixed in said notice why said amount specified therein should not be fixed for such tax, interest, and penalties. At such hearing, the distributor may appear and offer evidence why such specified tax, interest, and penalties should not be so fixed. After such hearing, the Tax Administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the distributor in the manner prescribed herein of such determination and the amount of such tax, interest, and penalties. The amount determined to be due shall be payable after fifteen (15) days, unless an appeal is taken as provided in Section 5-22.19.

SEC. 5-22.19 APPEAL. Any distributor aggrieved by any decision of the Tax Administrator with respect to the amount of such tax, interest, and penalties, if any, may appeal to the Council by filing a notice of appeal with the City Clerk within fifteen (15) days of the serving or mailing of the determination of tax due. The Council shall fix a time and place for hearing such appeal, and the City Clerk shall give notice in writing to such distributor at his last-known place of address. The findings of the Council shall be final and conclusive and shall be served upon the appellant in the manner prescribed above in the service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

#### SEC. 5-22.20 REFUND.

(a) Whenever the amount of any tax, interest, or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the City under this Article, it may be refunded as provided in subparagraph (b) of this Section, provided a claim in writing therefor, stating under penalty of perjury the specific ground upon which the claim is founded, is filed with the Tax Administrator within three years of the date of payment. The claim shall be on forms furnished by the Tax Administrator.

(b) A distributor may claim a refund or take as credit against taxes due but never remitted the amount overpaid, paid more than once, or erroneously or illegally collected or received when it is established in a manner prescribed by the Tax Administrator that the amount claimed has been overpaid or paid more than once or has been erroneously or illegally collected or received by the City.

(c) No refund shall be paid under the provisions of this Section unless the claimant establishes by written records entitlement thereto.

SEC. 5-22.21 ACTIONS TO COLLECT. Any tax required to be paid by a distributor under the provisions

of this Article shall be deemed a debt owed to the City. Any person owing taxes under the provisions of this Article shall be liable to an action brought in the name of the City of Oakland for the recovery of such amount.

SEC. 5-22.22 VIOLATIONS; MISDEMEANOR.

Any person violating any provision of this Article shall be guilty of a misdemeanor and shall be punishable by a fine of not more than Five Hundred Dollars (\$500.00) or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

Any distributor who fails or refuses to register as required herein, or to furnish any return required to be made, or who fails to furnish or refuses to furnish other data required by the Tax Administrator, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor and is punishable as aforesaid. Any person required to make, render, sign, or verify any report or claim who makes a false or fraudulent report or claim with intent to defeat or evade the determination of any amount due under this Article is guilty of a misdemeanor and is punishable as aforesaid.

SECTION 2. This Ordinance shall take effect June 1, 1966, except that the tax imposed by this Ordinance shall become operative and shall be imposed on July 1, 1966, and shall not apply prior to said date.

APR 5 1966

IN COUNCIL, OAKLAND, CALIF., \_\_\_\_\_, 19\_\_\_\_

PASSED BY THE FOLLOWING VOTE:

AYES - BROM, CHIALVO, MAGGIORA, MAROVICH, OSBORNE, READING, RILEA, ROSE,  
AND PRESIDENT HOULIHAN - 9

NOES - none

ABSENT - none

ATTEST:

*F. Maggiora*  
MAYOR OF THE CITY OF OAKLAND, CALIF.

ATTEST:

*Gladys H. Murphy*  
CITY CLERK AND CLERK OF THE COUNCIL  
OF THE CITY OF OAKLAND, CALIF.