

CITY OF FOLEY, ALABAMA

ORDINANCE NO. 2025-__

AN ORDINANCE TO LEVY A LOCAL EXCISE TAX AND REQUIRE BUSINESS LICENSES FOR THE SALE OF CONSUMABLE VAPOR PRODUCTS IN THE CORPORATE LIMITS AND POLICE JURISDICTION OF THE CITY OF FOLEY

WHEREAS, pursuant to Title 11, Chapter 51, Article 2 of the Code of Alabama, 1975, municipalities are granted the authority to license and tax businesses operating within their jurisdiction; and

WHEREAS, the City of Foley desires to establish an excise tax on consumable vapor product wholesalers and a gross-receipts-based business license requirement for wholesalers and retailers of consumable vapor products, in accordance with current state law;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FOLEY, ALABAMA AS FOLLOWS:

SECTION 1. Definitions.

The following terms, as used in this article, shall have the respective meanings as follows:

- a. **"City"** shall mean the City of Foley, an Alabama municipal corporation.
- b. **"Person"** shall include every individual, partnership, limited liability company, association, limited liability partnership, or other form of organization engaged in any for-profit or not-for-profit activity.
- d. **"Consumable Vapor Product"** shall mean any solution, liquid, substance, or combination of substances intended for use in a vapor product and that is depleted as the vapor product is used.
- f. **"Vapor Product"** shall mean a device used to heat a consumable vapor product into an aerosol that can be ingested or inhaled, including, but not limited to, e-cigarettes, electronic cigarettes, vape pens, and similar devices.
- g. **"Wholesaler"** shall mean any person or business entity who sells consumable vapor products to retailers and not to end-users.
- h. **"Retailer"** shall mean any person or business entity who sells consumable vapor products to individual consumers or to the end-user, whether from a storefront or online, and regardless of location.
- i. **"Gross Receipts"** shall mean the total revenue received from the sale of consumable vapor products from all sources and before deductions.
- j. **"Milliliter (mL)"** shall mean one thousandth of a liter, which is typically the unit of measure used for the volume of consumable vapor products sold or distributed.

k. “**Business license**” shall mean an annual license issued by the City for the privilege of doing any kind of business, trade, profession, or any other activity in the City.

SECTION 2. Excise Tax Imposed.

Every person who sells consumable vapor products, whether as a retailer, wholesaler, or both, shall pay an excise tax to the City, which is hereby fixed and established as follows:

- Ten cents (\$0.10) per milliliter (mL) of consumable vapor products sold or delivered by them within the corporate limits of the City; and
- Five cents (\$0.05) per milliliter (mL) of consumable vapor products sold or delivered by them outside the corporate limits but within the City's police jurisdiction.

SECTION 3. Exemptions from subsequent Excise Tax.

The excise tax established in Section 2 of this Ordinance shall only be charged one time on each unit of a consumable vapor product, thus, if a Wholesaler or Retailer purchases consumable vapor products from a Wholesaler who has already paid the City the excise tax as outlined in Section 2 above, no additional excise tax on the re-sale of such consumable vapor products shall be owed. However, to qualify for this exemption, such person must submit a sworn written statement to the Revenue Director or their designee by the **20th of each month**, detailing:

- All purchases of consumable vapor products made by such person in the preceding calendar month (Wholesaler's name, address, date of purchase, description of products, quantity of products); and
- Proof of the payment of the excise tax for the consumable vapor products by the Wholesaler to the City.

SECTION 4. Monthly Statement of Sales Required.

Each Wholesaler or Retailer of consumable vapor products shall submit a sworn written statement to the Revenue Director or their designee by the **20th day of each month**, providing:

1. The quantity in milliliters (mL) of all consumable vapor products sold or delivered by them within the corporate limits of the City; and
2. The quantity in milliliters (mL) of all consumable vapor products sold or delivered by them outside the corporate limits but within the police jurisdiction of the City;

SECTION 5. Required Business Licenses.

Each person desiring to engage in the wholesale or retail sale of consumable vapor products in the City and/or in its police jurisdiction must first obtain a business license from the City under the applicable category:

- Retailers of consumable vapor products must be licensed under Schedule E – Retail Trade of the City's Business License Ordinance No. 1018-07.
- Wholesalers must be licensed under Schedule F – Wholesale Trade of the City's Business License Ordinance No. 1018-07.

The license must be renewed annually and remains subject to all provisions of the City's general business licensing ordinance.

SECTION 6. Out-of-City Wholesalers or Retailers.

Wholesalers or Retailers without a physical business location in the City or in its police jurisdiction who sell or deliver consumable vapor products within the police jurisdiction or corporate limits of the City must first obtain a Foley Schedule F business license and must fully comply with the filing and tax remittance requirements of this ordinance.

SECTION 7. Failure to File or Submitting False Statements.

Any person who fails to file the required monthly statement, submits false information, or who fails to first obtain a business license before selling or distributing consumable vapor products shall be subject to a fine of \$500 per offense. Each day the person is in violation shall constitute a separate offense. In addition, such person shall be subject to their business license being revoked (if they have one) or not issued until all fines, penalties, and interest have been paid.

SECTION 8. Payment Deadlines and Penalties.

The excise tax imposed by this ordinance is due on the 1st day of each month and must be paid no later than the 20th day of the same month. Failure to file and/or pay on time shall be considered a continuing offense, and each day shall constitute a separate offense. A 20% penalty shall be added to any delinquent tax payment.

SECTION 9. Duty to permit inspection and produce records.

Upon demand, it shall be the duty of all persons selling or distributing consumable vapor products in the corporate limits or police jurisdiction of the City to:

- (a) Permit the designee of the City to enter and to inspect all portions of their place or places of business for the purposes of enabling said municipal designee to gain such information as may be necessary or convenient for determining the proper license classification, determining the correct amount of the excise tax, and/or determining their compliance with City ordinances, codes, and regulations;
- (b) Furnish information, during reasonable business hours, at the person's place or places of business, all books of account, invoices, papers, reports and memoranda containing entries showing amount of purchases, sales receipts, inventory and other information from which the correct license tax classification of such person may be ascertained and the correct amount of excise tax to which they are subject may be determined, including exhibition of bank deposit books, bank statements, copies of sales tax returns to the State of Alabama, copies of Alabama income tax returns and federal income tax returns. Refusal to provide these documents is a violation of this ordinance.

SECTION 10. Penalties for Violations.

Any person who violates any provision of this ordinance shall be subject to a fine of up to \$500.00 per offense, with each day constituting a separate offense.

SECTION 11. No Impact on General Business License Ordinance.

This ordinance does not repeal any part of the City's existing Business License Ordinance. Taxes established herein are additional and cumulative to any other applicable license requirements.

SECTION 12. No Retroactive Effect.

This ordinance does not affect violations committed under prior ordinances or the validity of any bond or deposit made under prior rules. All such obligations remain in effect for their prescribed terms.

SECTION 13. Effective Date.

This ordinance shall become effective on September 1, 2025 following its adoption and lawful publication.

SECTION 14. Severability.

Each section, clause, sentence, and paragraph of this ordinance is severable. If any part is found unconstitutional, the remaining portions shall remain in effect.

SECTION 15. Repealer.

All ordinances or parts thereof in conflict with this ordinance are hereby repealed.

Adopted and approved this the ____ day of _____, 2025.

City Council President

ATTEST:

Katy Taylor, City Clerk