



City of Foley, AL

Signature Copy

Ordinance: 17-2004-ORD

BALDWIN COUNTY, ALABAMA
TIM RUSSELL PROBATE JUDGE
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File Number: 16-0760

Enactment Number: 17-2004-ORD

AN ORDINANCE ENACTING AND LEVYING A TEMPORARY, ADDITIONAL ONE PERCENT (1%) MUNICIPAL SALES AND USE TAX ON CERTAIN TYPES OF TRANSACTIONS OR ACTIVITIES.

WHEREAS, Sections 11-51-200, *et seq.*, Code of Alabama (1975), as amended, authorize and empower municipalities to levy a municipal sales and use taxes; and

WHEREAS, the City of Foley previously enacted Ordinance Number 946-06, which has now been codified as Sections 5-50, *et seq.* of the Code of the City of Foley, which levied certain municipal sales and use taxes; and

WHEREAS, certain of the City of Foley's municipal sales and use tax rates levied by Ordinance Number 946-06 are lower than the comparable tax rates being charged by neighboring municipalities like Orange Beach, Elberta, Summerdale, and Gulf Shores; and

WHEREAS, the City Council has found and determined that it needs additional municipal revenues to continue to provide the level of public services and public benefits which are in the best interest of the public; and

WHEREAS, the City Council has determined that temporarily increasing some of the municipal sales and use tax rates by one percent (1%) is necessary and in the best interest of the public and in the best interest of the City; and

WHEREAS, the City Council has further determined that the additional revenues to be generated by the one percent (1%) additional tax will not be needed permanently, but will only be needed for a limited or temporary amount of time not to exceed three and one-half years; and

WHEREAS, the City Council desires for the additional one percent sales and use tax created hereby to automatically expire and end three and one-half years after the additional one percent tax first becomes due and collected if this Ordinance has not previously been repealed;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Foley as follows:

Sec. 1. Additional One Percent Sales Tax. That in addition to the municipal sales taxes previously adopted and enacted by the City Council under Ordinance Number 964-06, which has since been codified as Section 5-50, *et seq.* of the Code of the City of Foley, and in addition to all other taxes of every kind now imposed by law, there is hereby established, levied and created an additional privilege, license or excise tax against the person on account of the business activities in the amount to be determined by the application of rates against gross sales, or gross receipts, as the case may be, as follows:

(a) Upon every person, firm, or corporation, (including the State of Alabama, the University of Alabama, Auburn University and all other institutions of higher learning in the state, whether such institutions be denominational, state, county or municipal institutions, and any association or other agency or instrumentality of such institutions) engaged or continuing within the City of

Foley in the business of selling at retail any tangible personal property whatsoever, including merchandise and commodities of every kind and character, (not including, however, bonds or other evidences of debts or stocks, nor sale or sales of material and supplies to any person for use in fulfilling a contract for the painting, repair, or reconditioning of vessels, barges, ships and other watercraft and commercial fishing vessels of over five (5) tons load displacement as registered with the U. S. Coast Guard and licensed by the State of Alabama Department of Conservation and Natural Resources), an additional amount equal to one percent (1%) of the gross proceeds of sales of the business. Provided, however, that any person engaging or continuing in business as a retailer and wholesaler or jobber shall pay the tax required on the gross proceeds of retail sales of such business at the rates specified, when his books are kept so as to show separately the gross proceeds of sales of each business, and when his books are not so kept he shall pay the tax as retailer on the gross sales of the business.

(b) Upon every person, firm or corporation engaged or continuing within the city, in the business of conducting, or operating, places of amusement or entertainment, billiard and pool rooms, bowling alleys, amusement devices, musical devices, theaters, opera houses, moving picture shows, vaudeville, amusement parks, athletic contests, including wrestling matches, prize fights, boxing and wrestling exhibitions, football and baseball games, (including athletic contests, conducted by or under the auspices of any educational institution within the city, or any athletic association thereof, or other association whether such institution or association be a denominational, a state, or county, or a municipal institution or association or a state, county, or city school, or other institution, association or school), skating rinks, race tracks, golf courses, or any other place at which any exhibition, display, amusement or entertainment is offered to the public or place or places where an admission fee is charged, including public bathing places, public dance halls of every kind and description within the city, an additional amount equal to one percent (1%) of the gross receipts of any such business. Provided, however, notwithstanding any language to the contrary in the prior portion of this subsection, the tax provisions so specified shall not apply to any athletic event conducted by a public, primary or secondary school. The tax amount which would have been collected pursuant to this subsection shall continue to be collected by said public, primary or secondary school but shall be retained by the school which collected it and shall be used by said school for school purposes.

(c) Upon every person, firm or corporation engaged or continuing within the city in the business of selling through coin-operated dispensing machines, food and food products for human consumption, not including beverages other than coffee, milk, milk products and substitutes therefore, there is hereby levied an additional tax equal to one percent (1%) of the retail selling price of such food, food products and beverages sold through such machines.

Section 2. Exemptions from Additional One Percent Sales Tax. Notwithstanding anything

contained in this Ordinance to the contrary, the additional one percent sales tax levied by Section 1 of this Ordinance shall not apply to, and shall not be levied against, any of the following types of sales or transactions:

(a) The sale at retail of machines used in mining, quarrying, compounding, processing, and manufacturing of tangible personal property; provided, that the term "machines" as herein used, shall include machinery which is used for mining, quarrying, compounding, processing, or manufacturing tangible personal property, and the parts of such machines, attachments and replacements therefore which are made or manufactured for use on or in the operation of such machines and which are necessary to the operation of such machines and are customarily so used.

(b) The sale at retail of any automotive vehicle or truck trailer, semi-trailer, house trailer or mobile home set-up materials and supplies including but not limited to steps, blocks, anchoring, cable pipes and any other materials pertaining thereto.

(c) The sale at retail of any machine, machinery or equipment which is used in planting, cultivating and harvesting farm products, or used in connection with the production of agricultural produce or products, livestock or poultry on farms, and the parts of such machines, machinery or equipment, attachments and replacements therefore which are made or manufactured for use on or in the operation of such machine, machinery or equipment, and which are necessary to and customarily used in the operation of such machine, machinery or equipment.

Section 3. Additional One Percent Use Tax. That in addition to the municipal use taxes previously adopted and enacted by the City Council under Ordinance Number 964-06, which has since been codified as Section 5-50, *et seq.* of the Code of the City of Foley, and in addition to all other taxes of every kind now imposed by law, there is hereby established, levied and created an additional excise tax on the storage, use or other consumption in the city of tangible personal property (not including materials and supplies bought for use in fulfilling a contract for the painting, repairing, or reconditioning of vessels, barges, ships and other watercraft and commercial fishing vessels of over five (5) tons load displacement as registered with the U. S. Coast Guard and licensed by the State of Alabama Department of Conservation and Natural Resources) purchased at retail on or after the effective date of this ordinance for storage, use or other consumption in the city, at the rate of one percent (1%) of the sales price of such property within the corporate limits of said city.

Section 4. Exemptions from Additional One Percent Use Tax. That notwithstanding anything contained in this Ordinance to the contrary, the additional one percent use tax levied by Section 3 of this Ordinance shall not apply to, and shall not be levied against, any of the following types of activities or transactions:

(a) The storage, use or other consumption in the city, of any machines used in mining, quarrying, compounding, processing, and manufacturing of tangible personal property purchased at retail on or after the effective date of this ordinance; provided, that the term "machine" as herein used, shall include machinery which is used for mining, quarrying, compounding, processing, or manufacturing tangible personal property, and the parts of such machines,

attachments and replacements therefore, which are made or manufactured for use on or in the operation of such machines and which are necessary to the operation of such machines and are customarily so used.

(b) The storage, use or other consumption in the city of any automotive vehicle or truck trailer, semi-trailer, house trailer or mobile home set-up materials and supplies including but not limited to steps, blocks, anchoring, cable pipes and any other materials pertaining thereto purchased at retail on or after the effective date of this ordinance for storage, use or other consumption in the city.

(c) The storage, use or other consumption in the city of any machine, machinery or equipment which is used in planting, cultivating and harvesting farm products, or used in connection with the production of agricultural produce or products, livestock or poultry on farms, and the parts of such machines, machinery or equipment, attachments and replacements therefore which are made or manufactured for use on or in the operation of such machine, machinery or equipment, and which are necessary to and customarily used in the operation of such machine, machinery or equipment.

Section 5. Levy of One-Half of the Additional One Percent Sales and Use Taxes in Police Jurisdiction.

(a) Upon every person, firm or corporation engaged in the doing of an act, or who shall do an act, or continuing in the doing of an act, or engaged in the operation of any business, or who shall engage in the operation of any business, within the police jurisdiction of the city but beyond the corporate limits of said city for which or upon which a privilege or license tax is in this ordinance levied or required within the corporate limits of the city, there is hereby levied, in addition to any other taxes of every kind now imposed by law or by municipal ordinance, to be collected as herein provided for the privilege or license taxes herein levied within the corporate limits of the city a privilege or license tax equal to one-half of that provided, levied or required in this ordinance for the doing of such act, or the engaging or continuing therein, or the engaging or continuing in the operation of such business within the corporate limits of the city. Provided further, that except for the amount of the privilege or license tax herein levied within the police jurisdiction of said city but without the corporate limits thereof, all the provisions of this ordinance extend and apply to all the area within the police jurisdiction of the city.

(b) An excise tax is hereby imposed on tangible personal property at one-half the rates specified in Section 3 of this Ordinance on the storage, use or other consumption of such tangible personal property outside the corporate limits of the city, but within the police jurisdiction.

Section 6. Provisions of State Tax Statutes Applicable to this Ordinance and Taxes herein levied. This ordinance and the taxes levied herein shall be subject to all definitions, exceptions, exemptions, proceedings, requirements, provisions, rules and regulations promulgated under the State of Alabama's sales and use tax laws, including the Alabama Administrative Procedure Act, direct pay permit and drive-out certificate procedures, statute of limitation, discounts, penalties, fines, punishments, and deductions that are applicable to the taxes levied by the State Sales Tax statutes, except where inapplicable or where herein otherwise provided, including all provisions of the State sales and use tax statutes for enforcement and collection of

taxes.

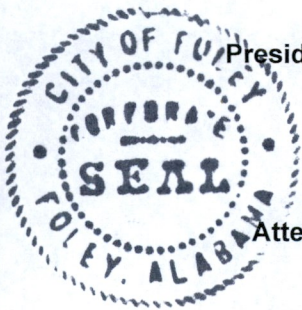
Section 7. Relationship with Ordinance Number 946-06. The types of transactions and activities which are subject to the additional one percent sales and use taxes levied by this Ordinance are some, but not all, of the sales and use taxes levied by Ordinance Number 946-06, which has been codified as Sections 5-50, *et seq.* of the Code of the City of Foley. Ordinance Number 946-06 shall remain in full force and effect and is not hereby modified, repealed, replaced, or amended in any way. The additional one percent sales and use taxes levied by this Ordinance are in addition to the taxes levied by Ordinance Number 946-06, and the taxes levied by this Ordinance shall be collected, rendered, and paid at the same time and in the same manner as the taxes levied by Ordinance Number 946-06. For purposes of clarity, if a transaction or activity is taxed at a municipal tax rate of two percent (2%) under Ordinance Number 946-06, and if this Ordinance also levies an additional municipal tax of one percent (1%) on that same type of transaction or activity, then that transaction or activity shall be taxed at a municipal tax rate of three percent (3%) during the time that this Ordinance remains in effect.

Section 8. Effective Date. That this Ordinance shall become effective on March 1, 2017, which date will be after this Ordinance is published as required by law and at least 30 days after it will have been transmitted to the Alabama Department of Revenue.

Section 9. Automatic Termination and Repeal. That this Ordinance and the additional one percent sales and use taxes levied hereby shall automatically expire and terminate, and this Ordinance shall automatically be repealed without further action by the City Council or the City, at 11:59 PM on August 31, 2020 if not previously repealed by official action by the City Council. No repeal, expiration or termination of this Ordinance shall have any effect or impact on Ordinance Number 946-06 which shall remain in full force and effect at all times during and after the dates that this Ordinance is effective.

Section 10. Severability. That 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, unenforceable, or invalid for any reason 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 have been held invalid.

PASSED, APPROVED AND ADOPTED this 3rd day of January, 2017.



President's Signature

[Handwritten Signature]

Date

1-5-17

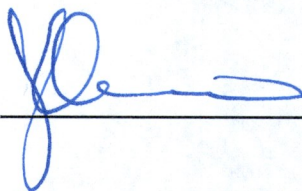
Attest by City Clerk

Kathryn Taylor

Date

1-5-17

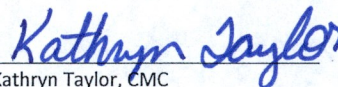
Mayor's Signature



Date

1/6/17

"I certify that the foregoing Ordinance was published in the Baldwin Times, a newspaper of general circulation in the City of Foley, in its issue of Friday, January 13, 2017."



Kathryn Taylor, CMC
City Clerk