

## **ORDINANCE NUMBER 2317**

**AN ORDINANCE TO LEVY A CITY SALES AND EXCISE TAX; PROVIDE FOR THE COLLECTION AND PAYMENT AND PRESCRIBED USE OF PROCEEDS OF SAME; PRESCRIBE PENALTIES FOR VIOLATIONS THEREOF; AND REPEAL PRIOR ORDINANCES LEVYING A SIMILAR SALES TAX INCLUDING REPEALING ORDINANCE NUMBER 2195**

**WHEREAS**, the City Council of the City of Vestavia Hills, Alabama, on August 6, 2007, approved and adopted Ordinance 2195; and

**WHEREAS**, Ordinance 2317 repealing Ordinance Number 2195 as last amended, shall read in its entirety, as follows:

**“PURSUANT TO THE PROVISIONS OF ACT NO. 917, THE REGULAR SESSION OF THE ALABAMA LEGISLATURE IN 1969, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:**

### **SECTION 1. DEFINITIONS AND USE OF PHRASES**

The term “City”, wherever used herein, shall mean the City of Vestavia Hills, Alabama.

The term “City Clerk”, wherever used herein, shall mean the City Clerk of the City.

The term “City Treasurer”, wherever used herein, shall mean the City Treasurer of the City.

The term “Council”, wherever used herein, shall mean the City Council or other governing body of the City.

The terms “State Sales Tax Statutes” and “State Excise or Use Tax Statutes”, wherever used herein, shall mean Act No. 100 adopted at the Second Extraordinary Session of 1959 of the Legislature of Alabama, as heretofore amended and supplemented,

and all other statutes of the State of Alabama directly relating to the subject matter of Act No. 100 (including, without limiting the generality of the foregoing, all statutes exempting the gross proceeds from various sales from the measure of the tax levied thereby), as said other statutes now exist.

The term “Tax Proceeds within the City”, wherever used herein, shall mean the proceeds from the taxes herein levied with respect to businesses conducted within the corporate limits of the City.

The definitions set forth in the State Sales Tax Statutes shall be effective as definitions of the words, terms and phrases used in this Ordinance. All words, terms and phrases used herein, other than those hereinabove specifically defined, shall have the respective meanings ascribed to them in the State Sales Tax Statutes, and shall have the same scope and effect that the same words, terms and phrases have where used in the State Sales Tax Statutes.

The definitions set forth in the State Excise or Use Tax Statutes shall be effective as definitions of the words, terms and phrases used in this Ordinance. All words, terms and phrases used herein, other than those hereinabove specifically defined, shall have the respective meanings ascribed to them in the State Excise or Use Tax Statutes, and shall have the same scope and effect that the same words, terms and phrases have where used in the State Excise or Use Tax Statutes.

## **SECTION 2. LEVY OF TAX IN THE CITY**

There is hereby levied, in addition to all other taxes of every kind now imposed by law, and shall be collected as herein provided, a privilege or license tax against the

person on account of the business activities and in the amounts 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 engaged or continuing, within the City, 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 evidence of debt or stocks, nor materials and supplies sold to any person for use in fulfilling a contract for the painting, repairing or reconditioning of vessels, barges, ships and other watercraft of over fifty tons of burden, an amount equal to three percent (3%) of the gross sales of the business, except where a different amount is expressly provided herein; provided, however, that any person engaging or continuing in business as a retailer and wholesaler or jobber shall pay the tax measured by 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 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 as a retailer the tax measured by the gross sales of the business; (and provided further, that where all sales of a company are single sales of peanut products, milk products, coffee and confections sold in dispensing machines located in industrial plants or on private property for employees where such machines dispense exclusively articles not to exceed ten cents (.10) per sale and shall have filed with the City Treasurer or his authorized designee, a sworn statement to that effect and shall keep and maintain records satisfactory to the City Treasurer or his authorized designee, the tax herein provided for shall not be levied with respect to such business);

B. Upon every person, firm or corporation engaged or continuing, within the City, in the business of conducting or operating places of amusements 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 exhibitions, football and baseball games (excluding, however, athletic contests conducted by or under the auspices of the Vestavia Hills Board of Education, but specifically including any other athletic association or other association whether such institution of association be a denominational, a state, a county or municipal institution or association of 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 amount equal to three percent (3%) of the gross receipts of any such business:

C. Upon every person, firm or corporation, engaged or continuing, within the City in the business of selling at retail machines used in mining, quarrying, compounding, processing and manufacturing of tangible personal property, an amount equal to one percent (1%) of the gross proceeds of the sale of such machines; 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. For the purpose of this

Ordinance, the term “machine” shall also mean - when used in broadcasting by television, cable tv, and radio stations, equipment which amplifies, modifies, or otherwise controls electrical currents and signals imposed on electrical current and the attendant electromagnetic waves - and qualify as a machine used in processing tangible personal property and is, therefore, subject to the reduced machine tax rate. Examples of the equipment include, but are not limited to traps, receivers video sequencers, filters, data scanners, taps, character generators, equalizers, modulators and modules, power supplies and standby power supplies, attenuators, and converters (wherever located); and

D. Upon every person , firm or corporation engaged or continuing, within the City, in the business of selling an automotive vehicle, truck trailer, semi-trailer or house trailer at retail, an amount equal to one percent (1%) of the gross proceeds of the sale of said automotive vehicle, truck trailer, semi-trailer or house trailer; provided, that when any used automotive vehicle, truck trailer, semi-trailer or house trailer is taken in trade, or in a series of trades, as a credit or part payment of the sale of a new or used vehicle, the tax levied herein shall be computed and paid on the net difference. That is, the price of the new or used vehicle sold less the credit for the used vehicle taken in trade; and provided further, that when a taxpayer subject to the tax provided for in this Subsection D withdraws from his stock in trade any automotive vehicle or truck trailer, semitrailer or house trailer for use by such taxpayer or by an employee or agent of such taxpayer in the operation of such business, the tax of such taxpayer hereunder shall be measured with respect to the item so withdrawn by him by the sum of eighty-three and one-third cents (83-1/3 cents) per M per year or part thereof during which such automotive vehicle, truck trailer, semitrailer or house trailer so withdrawn shall remain the property of such

taxpayer. Each such year or part thereof shall begin with the day or the anniversary date, as the case may be, of such withdrawal and shall run for the twelve succeeding months or part thereof during which such automotive vehicle, truck trailer, semitrailer or house trailer so withdrawn shall remain the property of such taxpayer.

**SECTION 3. EXCISE (USE) TAX**

A. An excise tax is hereby imposed on the storage, use of 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 of more than fifty tons burden) purchased at retail on or after the effective date of this Ordinance for storage, use or other consumption in the City, except as provided in Subsections B and C, at the rate of three percent (3%) of the sales price of such property within the corporate limits of said City.

B. An excise tax is hereby imposed on the storage, use or other consumption in the City of any machines used in mining, quarrying, compounding, processing and manufacturing of tangible property purchased at retail on or after the effective date of this Ordinance at the rate equal to one percent (1%) of the sales price of any such machine; within the corporate limits of the City; 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.

C. An excise tax is hereby imposed on the storage, use or other consumption in the City of any automotive vehicle or truck trailer, semitrailer or house trailer, 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 automotive vehicle, truck trailer, semitrailer or house trailer within the corporate limits of said City. Where any used automotive vehicle, truck trailer, semitrailer or house trailer is taken in trade, or in a series of trades, as a credit or part payment on the sale of a new or used vehicle, the tax levied herein shall be paid on the net difference. That is, the price of the new or used vehicle sold less the credit for the used vehicle taken in trade.

The taxes levied by this section of this Ordinance shall be subject to all definitions, exceptions, exemptions, proceedings, requirements, rules, regulations, provisions, discounts, penalties, fines, punishments and deductions that are applicable to the taxes levied by the State Use Tax Statutes, except where inapplicable or where herein otherwise provided, including all provisions of the State Use Tax Statutes for enforcement and collection of taxes.

**SECTION 4                    PROVISIONS OF STATE SALES TAX STATUTES  
APPLICABLE TO THIS ORDINANCE AND TAXES  
HEREIN LEVIED**

This Ordinance and the taxes herein levied shall be subject to all definitions, exceptions, exemptions, proceedings, requirements, rules, regulations, provisions, 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.

**SECTION 5                    COLLECTION AND PAYMENT OF TAXES HEREIN  
LEVIED**

The taxes levied under the provisions of this Ordinance shall be due and payable in monthly installments on or before the twentieth day of the month next succeeding the month in which taxes accrue. On or before the twentieth day of each month, beginning with the month following the month during which this Ordinance becomes effective, every person on whom the taxes levied by this Ordinance becomes effective are imposed and shall render a true and correct statement showing:

(a) the gross sales, the gross proceeds of sales or gross receipts of his business, as the case may be, for the next preceding month,

(b) the amount of gross proceeds or gross receipts which are not subject to the said taxes, or are not to be used as measurement of the taxes due by such person and the nature thereof and

(c) such other information as may be required, as herein provided; and at the time of making said monthly report, such person shall compute the amount of the taxes due and shall pay the amount of taxes shown to be due. The taxes herein levied shall be paid by each taxpayer to the City of Vestavia Hills, and the monthly reports or statements herein provided for shall be made to the City of Vestavia Hills, all pursuant to and in accordance with the applicable procedures of the City of Vestavia Hills and any State of Alabama statutes that may be at the time applicable to the collection by the City of Vestavia Hills of the taxes herein levied. If any person subject to this Ordinance should willfully make a false return or false statement of facts in any statement or report required hereunder, he shall be guilty of a misdemeanor and upon conviction shall be punished as provided in Section 10 of this Ordinance.

**SECTION 6** **ADDING AMOUNT OF TAX TO PRICE**

Any person on whom the taxes levied by this Ordinance are imposed may add the tax herein levied to the sale price for the goods sold or to the admission price to a place of amusement and may collect the amount so added from the purchaser, or person paying the admission price, but this section is not mandatory.

#### **SECTION 7** **REPORTING OF CREDIT SALES**

Any person having cash and credit sales and subject to paying taxes under this Ordinance may, if he desires, report such cash sales only, and he shall thereafter include in each monthly report all credit collections made during the month preceding and shall pay the taxes due thereon at the time of filing such report.

#### **SECTION 8** **RECORDS**

It shall be the duty of every person engaging or continuing in any business for which a privilege tax and/or excise tax is imposed by this Ordinance, to keep and preserve suitable records of the gross sales, gross proceeds of sales and gross receipts of sales of such business and such other books or accounts as may be necessary to determine the amount of tax for which he is liable under the provisions of this Ordinance, and it shall be the duty of every person to keep and preserve, for a period of three years, all invoices of goods, wares and merchandise purchased for resale or otherwise, and all such books, invoices and other records shall be open for examination at any time by the City or its agents. Any person selling both at wholesale and retail shall keep his books so as to show separately the gross proceeds of wholesale sales and the gross proceeds of retail sales. The books, records and accounts provided for in this section shall at all times be open to examination by the City Treasurer or his authorized designee, and any other person designated by the governing body of the City. In the event that any person subject

to payment of sales or use taxes or any other taxes levied under the provisions of this chapter to the City of Vestavia Hills, Alabama, does not have all books of account, invoices, records and any other information from which the correct taxes owed by such person may be ascertained as provided above, at a place of business in the corporate limits of the City, then it shall be the duty of such person to deliver all such records to the Office of the Finance Director or his authorized deputy or inspector or agent of the City, for inspection and examination. If the taxpayer states that the books and records required herein cannot be delivered to and produced for inspection at the Office of the Finance Director or his agent within the City, then the taxpayer shall be required to pay and shall pay all costs attendant with sending the necessary number of city auditors to the place where the tax payer's records are kept in order to complete the audit and inspection and make the determination necessary to arrive at the correct amount of taxes as set out above.

**SECTION 9** **PENALTIES FOR VIOLATION HEREOF**

A. Any person who shall fail to keep the records provided for in Section 8 hereof, or who shall refuse to permit such examination thereof, shall be guilty of a misdemeanor and upon conviction shall, upon conviction, be punished in accordance with Title 11-45-9, Code of Alabama, 1975, for a misdemeanor violation for each such offense. Each day any violation of this Ordinance shall continue shall constitute a separate offense.

“B. Any person who fails to pay, within the time provided in Section 6 hereof, any tax levied by this Ordinance for which he is liable shall be deemed to be doing business without a license and shall pay, in addition to the tax, a penalty of ten percent (10%) of the amount of tax due (but in no instance less than Five Dollars [\$5.00]),

together with an interest rate as set quarterly by the State of Alabama Department of Revenue according to Section 40-1-44 of the Code of Alabama, 1975 from the date on which the tax became due until it is paid, the penalty and interest to be assessed and collected as a part of the tax; provided that the City may for good and sufficient reason shown to it waive or remit the said ten percent (10%) penalty and any portion thereof.”

**SECTION 10**                      **DISCOUNT FOR PROMPT PAYMENT**

A discount equal to five percent (5%) of the first One Hundred Dollars of each monthly installment of the taxes herein levied and two percent (2%) of that portion of each monthly installment of the said taxes in excess of One Hundred Dollars, but not to exceed a maximum discount of four hundred dollars (\$400.00) per month to each taxpayer, shall be allowed to each taxpayer on the filing of the monthly report with respect to such installment in the form and at the time herein provided, upon payment of the amount of such monthly installment (minus said discount) at or prior to the time when such installment is required herein to be paid. If the report is not filed and payment is not made within the time herein provided with respect to any monthly installment of the tax herein levied, the taxpayer shall not be entitled to the said discount with respect to that monthly installment but shall pay the full amount of the tax then due, together with the applicable penalty and interest provided in Section 10 hereof.

**SECTION 11**                      **USE OF PROCEEDS FROM TAXES HEREIN LEVIED**

The proceeds from tax herein levied remaining after payment of the cost of collecting the said tax shall be applied as follows:

1. The City shall deposit into a special designated fund a portion of the proceeds of sales taxes herein levied and collected with respect to business conducted within the

corporate limits of the City in an amount equal to one-twelfth (1/12th) of the said taxes so levied and collected, to be exclusively used by the City of Vestavia Hills, Alabama, for capital building projects; and

2. An amount equivalent to 30% of said one-twelfth (1/12<sup>th</sup>) of said taxes collected in paragraph 1 above, shall be remitted to the Vestavia Hills Board of Education; and

3. An amount equivalent to 70% of said one-twelfth (1/12<sup>th</sup>) of said taxes collected in paragraph 1 above, shall be deposited into a special designated fund to be exclusively used by the City of Vestavia Hills, Alabama, for capital building project; and

4. All other tax proceeds so levied and collected shall be used for such lawful purpose or purposes for which the governing body of the City may from time to time direct and provide.

**SECTION 12**                      **THIS ORDINANCE CUMULATIVE**

This Ordinance shall not be construed to repeal any of the provisions of the general license code or Ordinance of the City or of any other Ordinance of the City (except as otherwise specifically provided herein), but shall be held to be cumulative, and the amounts of all other license taxes imposed by the City.

**SECTION 13**                      **SEVERABILITY**

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 or invalid shall not affect any other provision hereof, it being hereby declared that the other provisions of

this Ordinance would have been enacted regardless of any provision which might have been held invalid.

**SECTION 14 REPEAL OR PRIOR ORDINANCE**

Ordinance number 2195 adopted by the governing body on August 6, 2007; respectively, shall be and hereby are repealed, such repeal to become effective on the effective date of this Ordinance; provided that nothing herein contained shall be construed to relieve any person from tax liability, penalty, interest or forfeiture incurred under either of said Ordinance prior to the effective date of this Ordinance.

**SECTION 15 EFFECTIVE DATE**

This Ordinance shall become effective on the 1st day of January, 2010, and the first payment of taxes hereunder shall be due and payable on the 20th day of February, 2010. This Ordinance shall remain in full force and effect beginning with the month of January, 2010, and apply each month of each calendar year thereafter from year to year.

**SECTION 16 PUBLICATION**

This Ordinance shall be published one time in *The Birmingham News*, a newspaper of general circulation in the City, and further shall be posted at each of the following four public places in the City: the Vestavia Hills Municipal Center, the Vestavia Hills City Center, the Vestavia Hills Public Library, and the Vestavia Hills Recreational Center. The City Clerk is hereby authorized and directed to cause such publication and posting to be effected.

**ADOPTED AND APPROVED** this the 23<sup>rd</sup> day of November, 2009.

David Carrington

Council President

ATTESTED BY:

Rebecca Leavings  
City Clerk

APPROVED BY:

Alberto C. Zaragoza, Jr.  
Mayor

**CERTIFICATION:**

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance # 2317 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 23<sup>rd</sup> day of November, 2009, as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Public Library, and Vestavia Hills Civic Center this the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

Rebecca Leavings  
City Clerk