

**TOWN OF HIGHLAND LAKE, ALABAMA
ORDINANCE ESTABLISHING SALES & USE TAX**

ORDINANCE NO. 2020-07

Ordinance establishing sales and use tax as provided by the legislature in the State of Alabama and establishing rules and procedures for the implementation of a sales and use tax within the town limits of the Town of Highland Lake, Alabama.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Highland Lake, Alabama as follows:

SECTION 1. Definitions and use of phrases.

The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning:

Town means the municipal corporation of Highland Lake in the State of Alabama.

Town treasurer means the Town treasurer of the Town, or if there is no specifically designated treasurer, the Town clerk.

Council means the governing body of the Town as from time to time constituted.

State department of revenue means the Department of Revenue of the State of Alabama.

State sales and use tax statutes means chapter 23 of title 40 of the Code of Alabama, 1975, as amended and supplemented from time to time.

The definitions set forth in the state sales and use tax statutes shall be effective as definitions of the words, terms and phrases used in this section. 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 and use tax statutes, and shall have the same scope and effect that the same words, terms and phrases have when used in the state sales and use tax statutes.

SECTION 2. Levy of sales tax.

For the privilege of engaging or continuing within the Town in the business activities hereinafter referred to, 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 proceeds of sales, or gross receipts, as the case may be, as follows:

- (1) Upon every person, firm, or corporation, engaged or continuing within the Town, 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), an amount equal to three (3) percent of the gross proceeds of 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 required on the gross proceeds of retail sales of the business at the rates specified, when his or her books are kept so as to show separately the gross proceeds of sales of each business, and when his or her books are not kept he or she shall pay the tax as a retailer, on the gross sales of the business.

Where any used part, including tires, of an automotive vehicle or a 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 rebuilt part or tire, the tax levied herein shall be paid on the net difference, that is, the price of the new or used part or tire sold less the credit for the used part or tire taken in trade, provided, however, this provision shall not be construed to include batteries.

- (2) Upon every person, firm, or corporation engaged or continuing within the Town 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, vaudevilles, 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 this state, or any athletic association thereof, or other association whether the institution or association be a denominational, a state, or county, or a municipal institution, or association or a state, county, or Town 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 state, an amount equal to three (3) percent of the gross receipts of any such business. Provided, however, notwithstanding any language to the contrary in the prior portion of this subdivision, the tax provisions so specified shall not apply to any athletic event conducted by a public primary or secondary school or any football playoff conducted by or under the auspices of the Alabama High School Athletic Association. The tax amount which would have been collected pursuant to this subdivision shall continue to be collected by the public primary or secondary school but shall be retained by the school which collected it and shall be used by the school for school purposes.
- (3) Upon every person, firm, or corporation engaged or continuing within the Town 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-half (.005) of one (1) percent of the gross proceeds of the sale of the machines. 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 the machines, attachments, and replacements therefor, which are made or manufactured for use on or in the operation of the machines and which are necessary to the operation of the machines and are customarily so used.
- (4) Upon every person, firm, or corporation engaged or continuing within the Town in the business of selling at retail any automotive vehicle or truck trailer, semitrailer, or 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 an amount equal to one-half (.005) of one (1) percent of the gross proceeds of sale of the automotive vehicle or truck trailer, semitrailer, or house trailer, or mobile home set-up materials and supplies provided, however, where a person subject to the tax provided for in this subdivision withdraws from his or her stock in trade any automotive vehicle or truck trailer, semitrailer, or house trailer for use by him or her or by his or her employee or agent in the operation of the business, there shall be paid, in lieu of the tax levied herein, a fee of one dollar and sixty-six cents (\$1.66) per year or part thereof during which the automotive vehicle, truck trailer, semitrailer, or house trailer shall remain the property of the person. Each year or part thereof shall begin with the day or anniversary date; as the case may be of such withdrawal and shall run for the twelve (12) succeeding months or part thereof during which the automotive vehicle, truck trailer, semitrailer, or house trailer shall remain the property of the person.

Where any used automotive vehicle or 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.

Sales of automobiles, motorcycles trucks, truck trailers, or semitrailers that will be registered or titled outside Alabama, that are exported or removed from Alabama within seventy-two (72) hours by the purchaser or his or her agent for first use outside Alabama are not subject to the Alabama sales tax. Sales of other vehicles such as mobile homes, motor bikes, all-terrain vehicles, and boats do not qualify for the export exemption provision and are taxable unless the dealer can provide factual evidence that the vehicle was delivered outside of Alabama or to a common carrier for transportation outside Alabama. In order for the sale to be exempt from Alabama tax, the information page 4 relative to the exempt sale shall be documented on forms approved by the revenue department.

- (5) Upon every person, firm, or corporation engaged or continuing within the Town 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 therefor, there is levied a tax equal to three (3) percent of the cost of the food, food products, and beverages sold through the machines, which cost for the purpose of this subdivision shall be the gross proceeds of sales of the business.
- (6) Upon every person, firm or corporation engaged or continuing within the Town in the business of selling at retail 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 therefor 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, an amount equal to one-half (.005) of one (1) percent of the gross proceeds of the sale thereof; provided, that the one-half (.005) of one (1) percent rate herein prescribed with respect to parts, attachments and replacements shall not apply to any automotive vehicle or trailer designed primarily for public highway use, except farm trailers used primarily in the production and harvesting of agricultural commodities.

Where any used 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 and poultry on farms is taken in trade or in a series of trades as a credit or part payment on a sale of a new or used machine, machinery or equipment, the tax levied herein shall be paid on the net difference, that is, the price of the new or used machine, machinery or equipment sold, less the credit for the used machine, machinery or equipment taken in trade.

SECTION 3. Levy of excise tax.

The tax levied by this section shall be in lieu of the sales tax levied by subsections (1), (2), (3), (4) and (5) of Section two above.

(1) An excise tax is hereby imposed on the storage, use or other consumption in the Town of tangible personal property after the effective date of this section at the rate of three (3) percent of the sales price of such property or the amount of tax collected by the seller, whichever is greater.

(2) An excise tax is hereby imposed on the storage, use or other consumption in the Town 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 section, at the rate of one-half (.005) of one (1) percent of the sales price of any such machine; 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 therefor, 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.

(3) An excise tax is hereby imposed on the storage, use or other consumption in the Town of any automotive vehicle or truck trailer, semitrailer or house trailer, and 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 section, for storage, use or other consumption in this state at the rate of one-half (.005) of one (1) percent of the sales price of such automotive vehicle, truck trailer, semitrailer or house trailer, and mobile home set-up materials and supplies as specified above. Where any used automotive vehicle or 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.

(4) An excise tax is hereby imposed on the classes of tangible personal property, and at the rates imposed on such classes, specified in subsections (1), (2) and (3) of this section 3, on the storage, use, or other consumption In the performance of a contract in the Town of any such tangible personal property, new or used, the tax to be measured by the sales price or the fair and reasonable market value of such tangible personal property when put into use in this state, whichever is less; provided, that the tax imposed by this subsection shall not apply where the taxes imposed by subsection (1), (2), or (3) of this section 3 apply.

(5). There is hereby levied and imposed an excise tax on the storage, use or other consumption in the Town 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, or farms, and the parts of such machines, machinery or equipment, attachments and replacements therefor 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, which is purchased at retail after the effective date of this section, for storage, use or other consumption in this state, at the rate of two (2) percent of the sales price of such property. The tax herein levied and imposed shall be in lieu of the excise tax levied and imposed by subsections (1), (2), and (3) of this section 3; provided, that the one-half (.005) of one (1) percent rate herein prescribed with respect to parts, attachments and replacements shall not apply to any automotive vehicle or trailer designed primarily for public highway use except farm trailers used primarily in the production and harvesting of agricultural commodities.

(1) Every person storing, using or otherwise consuming in the Town tangible personal property purchased at retail shall be liable for the tax imposed by this section, and the liability shall not be extinguished until the tax has been paid to the Town.

SECTION 4. Ordinance subject to and construed in accordance with certain state statutes.

(1) This section and the taxes herein levied shall be subject to all definitions, exceptions, exemptions, proceedings, requirements, provisions, rules and regulations promulgated under the Alabama Administrative Procedures Act, direct pay permit and drive-out certificate procedures, statutes of limitations, penalties, fines, punishments, and deductions for the corresponding state tax as are provided by section 40-2A-7, Code of Alabama (1975) and the state sales and use tax statutes.

(2) This section and the taxes herein levied shall be construed so as to parallel the state sales and use tax statutes in all respects except rates of taxation.

SECTION 5. Provisions of sections 40-23-104 and 40-23-107, Code of Alabama (1975) applicable to this section and the taxes herein levied.

The taxes provided herein for any automotive vehicle, truck trailer, trailer, semitrailer or travel trailer required to be licensed with the probate judge, which is not sold through a licensed Alabama dealer, or sold by a dealer that is not licensed in Alabama or sold by a licensed dealer who fails to collect municipal taxes at the point of sale shall be collected and fees paid in accordance with the provisions of sections 40-23-1 04 and 40-23-1 07, Code of Alabama (1975), respectively, as amended and supplemented.

SECTION 6. Payment of tax herein levied.

The tax levied under the provisions of this section shall be due and payable in monthly installments on or before the twentieth day of the month next succeeding the month in which the tax accrued. On or before the twentieth day of each month beginning with the month following the month during which this section becomes effective, every person on whom the tax levied by this section is imposed shall render a true and correct statement showing the gross sales, the gross proceeds of sales, or gross receipts of his business, as the case may be, for the then next preceding month, the amount of gross proceeds of sales or gross receipts which are not subject to the said tax or are not to be used as a measurement of the tax due by such person, and the nature thereof, together with 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 tax due and shall pay the amount of tax shown to be due. The tax herein levied shall be collected by the Town treasurer and the monthly statements or reports

herein provided for shall be filed with the Town treasurer or as otherwise directed and shall be in such form as the council may prescribe. If any person subject to this section 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 subsection (j) of this section. The council may, in its discretion, contract with the state department of revenue or other agency for the collection of the taxes herein levied, or for enforcement of this section, or for both purposes, and, in such case, in lieu of payment to the Town treasurer payments shall instead be made as directed by the state department of revenue or other agency or its designated agent, agency, department or other subdivision.

SECTION 7. Seller to collect tax and related provisions.

- (1) Every person, firm, corporation, association or copartnership engaged in or continuing within the Town in the business for which a license or privilege tax is required by this section shall add to the sales price and collect from the purchaser on all sales upon the gross receipts or gross proceeds of which there is levied by this section a sales tax at the rates herein provided.
- (2) It shall be unlawful for any person, firm, corporation, association or co-partnership described in this section to fail or refuse to add to the sales price and collect from the purchaser the amount required by this section to be so added to the sales price and collected from the purchaser; and it shall likewise be unlawful to refund or offer to refund all or any part of the amount collected, or to absorb or advertise directly or indirectly the absorption or refund of the amount required to be added to the sales price and collected from the purchaser, or any portion of such amount. Any person, firm, corporation, association, or co-partnership violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined in a sum of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00), or may be imprisoned in the county jail for not more than six (6) months, or may be punished by both such fine and imprisonment, and each act in violation of the provisions of this division shall constitute a separate offense. The provisions of this section that there shall be added to the sale price and collected from the purchaser the amounts provided herein shall in no way relieve the person, firm, corporation, association, or co-partnership described in this section of the tax levied by this section.
- (3) All taxes paid in pursuance to subsection (b) of this section shall conclusively be presumed to be a direct tax on the retail consumer, precollected for the purpose of convenience and facility only.
- (4) Every such seller making sales of tangible personal property for storage, use or other consumption in the Town, not exempted under the provisions of section 40-23-62, Code of Alabama (1975) shall at the time of making such sales or, if the storage, use or other consumption of the tangible personal property is not then taxable hereunder, at the time such storage, use or other consumption becomes taxable hereunder, collect the tax imposed by this section from the purchaser, and give to the purchaser a receipt therefor in the manner and form prescribed by the state department of revenue. The tax required to be collected by the seller from the purchaser shall be displayed separately from the list, advertised in the premises, marked or other price on the sales check or other proof of sales. It shall be unlawful for any such seller to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by this article will be assumed or absorbed by the seller or that it will not be added to the selling price of the property sold, or if added that it or any part thereof will be refunded. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. The tax herein required to be collected by the seller shall constitute a debt owed by the seller to the Town.

SECTION 8. Reporting of credit sales

Any person taxable under this section having cash and credit sales 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.

- (1) Failure to keep records, permit examinations thereof or make reports. Any person who shall fail to keep any records required by this section or who shall refuse to permit the examination thereof provided for herein, shall be guilty of a misdemeanor and upon conviction shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) for each offense. Each month in which such failure, refusal or violation shall occur shall constitute a separate offense.

Any person failing to render any report required by this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00), and each failure shall constitute a separate offense.

- (2) Failure to pay taxes herein levied. Any person who fails to pay, within the time provided in subsection (f) hereof, any tax levied in this section 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 (10) percent of the amount of the tax due, together with interest thereon at the rate of twelve (12) percent per annum 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 council may for good and sufficient reason shown to it waive or remit the said ten (10) percent penalty or any portion thereof.

SECTION 9. Records.

It shall be the duty of every person engaging or continuing in any business, for which a privilege tax is imposed by this section, to keep and preserve suitable records of the gross sales, gross proceeds of sales and gross receipts 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 section, and it shall be the duty of every person to keep and preserve, for a period of three (3) years, all invoices of goods, wares and merchandise purchased for resale or otherwise, and all such books, invoices, accounts, and other records shall be open for examination at any time by the Town and its agent. 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 Town treasurer and by any other person designated by the council.

SECTION 10 Penalties for violation hereof

- (1) Failure to keep records, permit examinations thereof or make reports. Any person who shall fail to keep any records required by this section or who shall refuse to permit the examination thereof provided for herein, shall be guilty of a misdemeanor and upon conviction shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) for each offense. Each month in which such failure, refusal or violation shall occur shall constitute a separate offense.

Any person failing to render any report required by this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00), and each failure shall constitute a separate offense.

- (2). Failure to pay taxes herein levied. Any person who fails to pay, within the time provided in subsection (1) hereof, any tax levied in this section 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 (10) percent of the amount of the tax due, together with interest thereon at the rate of twelve (12) percent per annum 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 council may for good and sufficient reason shown to it waive or remit the said ten (10) percent penalty or any portion thereof.

SECTION 11. Discount for prompt payment

A discount equal to five (5) percent of the first one hundred dollars (\$100.00) or each monthly installment of the tax herein levied and two (2) percent of that portion of each monthly installment of the said tax in excess of one hundred dollars (\$100.00) 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 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 penalty and interest provided for in subsection (j) hereof.

SECTION 12. Use of proceeds from tax herein levied.

The proceeds from the tax herein levied shall be paid into the following accounts 65% Roads and 35% Police and may be used for any lawful purpose.

SECTION 13. Adding amount of tax to price.

Any person on whom the taxes levied by this article are imposed may add the tax herein levied to the sales price of 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 14. This section cumulative.

This section shall not be construed to repeal any of the provisions of the general license code or ordinance of the Town or of any other ordinance of the Town, but shall be held to be cumulative, and the amounts of the tax herein levied shall be in addition to the amounts of all other license taxes imposed by the Town.

PASSED, ADOPTED, AND APPROVED ON the ___ day of _____, 2020.

The Town of Highland Lake, Alabama

Donna Hanby, Mayor

Chase Moore, Council

Greg Posey, Council

Carl Randall, Council

Sid Nelson, Council

Ramzi Malek, Council

ATTEST:

Joan Shirley, Town Clerk