

ORDINANCE NO. 486

AN ORDINANCE LEVYING AN OCCUPATIONAL LICENSE FEE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HAMILTON, ALABAMA, AS FOLLOWS:

Section 1. DEFINITIONS. That the following words, when used in this ordinance, shall have the meaning ascribed to them herein, except where the context clearly indicates or requires a different meaning:

- (a) The phrase "trade, occupation or profession: shall mean and include (i) the doing of any kind of work, the rendering of any kind of personal service, or the holding of any kind of position or job within the City, by any clerk, laborer, tradesman, manager, official or other employee, including any non-resident of the City who is employed by any employer, where the relationship between the individual performing the services and the employer for whom such services are rendered is, as to those services, the legal relationship of employer and employee, including also a partner of a firm or an officer of a firm or corporation, if such partner or officer receives a salary for his personal services rendered in the business of such firm or corporation; and (ii) the holding of any kind of office or position, either by election or appointment by any federal, state, county or city officer or employee where the services of such officer or employee are rendered, at least partially, within the City.
- (b) The word "employee" shall mean and include any person engaging in or following any trade, occupation or profession.
- (c) The word "employer" shall mean and include any person, business, firm, corporation, partnership, association or any other kind of organization that employs any person in any trade, occupation or profession in the City. Whenever the word "employer" is used in any clause prescribing and imposing a penalty in the nature of a fine or imprisonment, the word shall also mean, as applied to a partnership or other form of unincorporated enterprise, the partners or members thereof, and as applied to corporation, the officers and directors thereof.
- (d) The word "compensation: shall mean and include the total gross amount of all salaries, wages, commission, bonuses or other money payment of any kind, or any other considerations having monetary value, which an employee receives from or is entitled to receive from or be given credit for by his employer for any work done or personal services rendered in any trade, occupation or profession, including any kind of deductions before "take home" pay is received; but the word "compensation" shall not mean or include amounts paid to an employee as allowance or reimbursement for traveling or other expenses incurred in the business of the employer, except to the extent of the excess of such amounts over such expenses actually incurred and accounted for by the employee to the employer.
- (e) The word "City" shall mean the City of Hamilton.
- (f) The words "Revenue Clerk" shall mean the Revenue Clerk of the City.
- (g) The singular shall include the plural and vice versa, and the masculine shall include the feminine and the neuter.

Section 2. LICENSE FEES REQUIRED. It shall be unlawful for any employee to engage in or follow any trade, occupation or profession within the City on and after the 1st day of October, 1990 without paying license fees for the privilege of engaging in or following such trade, occupation or profession, which license fee shall be measured by one-half of one percentum (1/2 of 1%) of the compensation of each such employee.

Section 3. EXEMPTIONS FROM ORDINANCE. Any person who pays a privilege license fee as required under the Privilege License Code and Schedule of the City shall not be required to pay an occupational license fee under this ordinance for engaging in the profession or business for which he has a license under the Privilege License Code.

Section 4. WHERE WORK DONE OR SERVICES PERFORMED BOTH WITHIN AND WITHOUT THE CITY. In cases where compensation is earned as a result of work done or services performed both within and without the City, the license fees required under this ordinance shall be computed by determining upon the oath of the employer, or if required by the Revenue Clerk, upon the oath of the employee, that percentage of the compensation earned from the proportion of the work done or services performed within the City.

Section 5. EMPLOYERS TO WITHHOLD LICENSE FEES AND FILE RETURNS. Each employer shall deduct from each payment due each employee the amount of the license fees measured by the compensation due each employee beginning on the 1st day of October, 1990. The payments required to be made on account of such deductions by employers shall be made monthly to the City for the monthly periods ending on the last day of each calendar month of each year, on or before the twentieth day of the month next following the end of each such monthly period, and each employer shall at the same time make a return in connection therewith on a form made available to such employer by the Revenue Clerk at the office of the Revenue Clerk. Provided, however, that the failure or omission by any employer to deduct such license fees shall not relieve an employee from the payment of such license fees and compliance with the requirements for making returns as provided in this ordinance, or with any regulations promulgated under this ordinance. Each employer shall file in the office of the Revenue Clerk on or before January 31st of each year, a return on a form made available by said Revenue Clerk at the office of said Revenue Clerk, which return shall show the compensation of each employee, the amount of license fees deducted and paid by such employer for all or any part of the preceding calendar year, and the last known address of each such employee. Each employer shall keep accurate records of all such compensation, deductions, license fees, payments and returns. Such records shall be kept and maintained by each such employer for not less than (5) years subsequent to the date such compensation is earned.

Section 6. RETURNS TO BE FILED BY EMPLOYEES. When a monthly return, as required herein is not filed by an employer and the license fees are not paid to the City by such employer monthly as herein provided, the employee for whom no return has been filed and no payment has been made shall file a return with the Revenue Clerk on or before the 1st day of the second month next following the end of each such monthly period, showing in said return his compensation subject to license fees for such month, and he shall also file a return with the Revenue Clerk on or before January 31st of each year thereafter in which his employer has failed to file any monthly return required in the preceding calendar year, showing on said return the compensation subject to license fees during the preceding calendar year. If for any reason all license fees subject to the provisions of this ordinance were not withheld by his employer from his compensation, such employee shall file each return required by this Section on a form obtainable at the office of the Revenue Clerk. In addition to the compensation earned by him, such return shall show such other pertinent information as may be required by the Revenue Clerk. Each employee making a return required by this Section shall, at the time of filing thereof, pay to the City the amount of license fees due under this ordinance; provided, however, that any portion of the license fees deducted by the employer shall be deducted on the return and only the balance, if any, shall be due and payable at the time of filing said return. Each employee shall keep accurate records of all such compensation, deductions, license fees, payments and returns. Such records shall be kept and maintained by each employee for not less than five (5) years subsequent to the date such compensation is earned.

Section 7. APPOINTMENT BY REVENUE CLERK. There is hereby created the position of Revenue Clerk who shall be appointed by the Mayor and Council, to serve at the pleasure of the same.

Section 8. DUTIES OF THE REVENUE CLERK. It shall be the duty of the Revenue Clerk to collect and receive all license fees imposed by this ordinance and to keep records showing the amounts received by him from each employer or employee. All monies received by the Revenue Clerk shall be deposited in a duly approved depository and credited to the Occupational License Fund of the City. The Revenue Clerk shall prescribe printed forms for use by employers and employees subject to the provisions of this ordinance and shall make such forms available at his office for use by such employers and employees. The Revenue Clerk shall enforce all rules or regulations promulgated by the City Council pursuant to this ordinance.

Section 9. INVESTIGATIVE POWERS OF THE REVENUE CLERK. The Revenue Clerk or any agent or employee designated by him is hereby authorized to examine the books, papers, and records of any employer or supposed employer, or of any employee or supposed employee, in order to determine the accuracy of any return made, or if no return was made to ascertain the amount of license fees due under the terms of this ordinance by such examination. Each such employer or supposed employer or employee or supposed employee shall give to the Revenue Clerk, or to his duly authorized agent or employee, the means, facilities and opportunity for the making of such examination and investigation. The Revenue Clerk is hereby authorized to examine any person under oath concerning any compensation which was or should have been shown in a return, and to this end he may compel the production of books, papers, records and the attendance of all persons before him, whether as parties or as witnesses, whom he believes to have knowledge of such compensation.

Section 10. REGULATIONS MAY BE PROMULGATED. The City Council of the City may by resolution or ordinance prescribed, adopt, or promulgate rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this ordinance, including but not limited to rules and regulations for the re-examination and correction of returns as to which overpayment or underpayment is claimed or found to have been made, and the rules and regulations so promulgated shall be binding upon all employers and employees.

Section 11. INFORMATION TO BE CONFIDENTIAL. Notwithstanding any ordinance to the contrary, any information gained by the Revenue Clerk or any other official or agent or employee of the City as a result of any returns, investigations, hearings or verifications required or authorized by this ordinance shall be confidential, except for official purposes, or in accordance with proper judicial order, or the enforcement of this ordinance, and any person or agent divulging such information, except as herein permitted, shall upon conviction be subject to a fine of not more than \$100.00 or to imprisonment of not exceeding thirty (30) days, or to both such fine and imprisonment.

Section 12. INTEREST AND PENALTIES.

- (a) All license fees imposed by this ordinance which remain unpaid after they become due shall, subject to the provisions hereinafter set out, bear interest at the rate of twelve percentum (12%) per annum, and any employer or employee who has failed to pay such license fees when the same became due shall, subject to the provisions hereinafter set out, also be charged a penalty of ten percentum (10%) of the amount of such unpaid license fees. Any employer or employee who fails or refuses to withhold or pay any license fees payable under this ordinance, or who fails to pay such fees after withholding the same to the City at the time they are due, shall become liable to the City for such fees, as well as for the interest thereon at the rate of twelve percentum (12%) per annum, and for the aforesaid penalty. The minimum penalty imposed against such employer or employee shall be Ten Dollars (\$10.00).
- (b) Any employee who shall fail, neglect or refuse to pay a license fee as required by this ordinance, or any employer who shall fail to withhold said license fees or to pay over to City such license fees, penalties or interest imposed by this ordinance, or any employer or employee required to file a return under the provisions of this ordinance, who shall fail, neglect or refuse to file such return, or any employer or employee who shall refuse to permit the Revenue Clerk or any agent or employee designated by him, in writing, to examine the books, records and papers of such employer or employee for any purpose authorized by this ordinance, or who shall knowingly make any incomplete, false or fraudulent return, or who shall attempt to do anything whatsoever to avoid the full disclosure of the amount of compensation in order to avoid the payment of the whole or any part of a license fee, shall upon conviction be subject to punishment of not more than a \$100.00 fine or imprisonment of not more than thirty (30) days, or to both such fine and imprisonment. Such punishment shall be in addition to the penalties imposed under subsection (a) of this section.

Section 13. EXTENSIONS OF TIME FOR MAKING RETURNS. The Revenue Clerk, for good cause, may extend the time for making any return required under the provisions of this ordinance, but the time for filing any such return shall not be extended for a period greater than thirty (30) days from the day such return was due to be made and the Revenue Clerk shall not prevent penalty and interest from accruing during the period of such extension.

Section 14. USE OF LICENSE FEES. All money derived from license fees under the provisions of this ordinance shall be paid to the City and placed to the credit of the Occupational License Fund of the City, and shall be used and expended as authorized by the City Council.

Section 15. SEVERABILITY. The provisions of this ordinance are severable. If any provision, section, paragraph, sentence or part thereof, or the application thereof to any employer or employee or class of persons, shall be held unconstitutional or invalid, such decision shall not affect or impair the remainder of the ordinance, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence and part thereof, separately and independently of each other.

Section 16. OPERATION OF ORDINANCE. This ordinance shall not be construed to repeal any of the provision of the general privilege license code of the city.

Section 17. EFFECTIVE DATE. This ordinance shall be in full force and effect on and after October 1, 1990.

Section 18. EXPIRATION DATE. This ordinance shall expire at midnight on the thirty-first (31st) date of August, 1994 unless extended by the City Council prior to that date.

ADOPTED AND APPROVED this the 28th day of August, 1990.