

ORDINANCE NO. 449

OCCUPATIONAL LICENSE FEE

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

Section 1. Definitions. The following terms, when used in this article, shall have the respective meanings ascribed to them:

Employee: Any person engaging in or following any trade, occupation or profession within the meaning of the term "trade, occupation, and profession" as defined herein.

Employer: Any person who employs any person in any trade, occupation or profession in the City within the meaning of the term "trade, occupation and profession" as defined herein.

Gross receipts, compensation: Each term shall have the same meaning and both words shall mean and include the total gross amount of all salaries, wages, commissions, bonuses, or other money payment of any kind, or any other consideration having monetary value, which a person received from, or is entitled to receive from or be given credit for by such person's 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 terms "gross receipts" and "compensation" shall not mean or include amounts paid to traveling salesmen or other workers 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.

Licensee: Any person required to file a return or to pay a license fee under this article.

Trade, occupation and profession: The doing of any kind of work, the rendering of any kind of personal services, or the holding of any kind or position or job within the city by any clerk, laborer, tradesman, manager, official or other employee, including any non-resident of the city is employed by any employer as defined in this section, where the relationship between the individual performing the services and the person 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 received a salary for personal services rendered in the business of such firm or corporation. "Trade, occupations, and professions" shall also mean and include 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 official or employee are rendered within the city.

Section 2. License fees required. It shall be unlawful for any person to engage in or follow any trade, occupation or profession, as defined in this article, within the city on and after the first day of October, 1986, without paying license fees for the privilege of engaging in or following such trade, occupation or profession, which license fees shall be measured by one-half of one (1) percent of the gross receipts of each such person.

Section 3. Proration of compensation for work done within and without 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 article shall be computed by determining upon the oath of the employer or if required by the director of revenue, upon the oath of the employee, that percentage of the compensation earned from the proportion of the work which was done or performed within the city.

Section 4. 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. 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 calendar day of each month of each year, on or before the twentieth day of the month next following the end of each such monthly period. Each employer shall at the same time make a return in connection therewith on a form made available by the city. 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 article, or with any regulations promulgated under this article. Each employer shall file in the Revenue Department, on or before January 31 of each year, a return on a form made available by the city, which return shall show the gross amount of compensation of each employee, the amount of the 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 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 five years subsequent to the date such compensation was earned.

Section 5. Returns to be filed and fees paid by employees. When a monthly return as required by Section 4. 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 Department on or before the first day of the second month next following the end of such monthly period. The return shall show the employee's gross receipts subject to license fees for such month. The employee shall also file a return with the Revenue Department on or before January 31 of each year thereafter in which the employer fails to file the annual report required by Section 4., and shall show therein the gross receipts such other pertinent information as may be required by the Revenue Department. Each person making such a return shall pay to

the city the amount of license fees due; provided, however, that any portion of the license fees withheld by the employer shall be deducted and only the balance 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 such employee for not less than five years subsequent to the date such compensation was earned.

Section 6. Appointment of Director of Revenue. There is hereby created the office of Director of Revenue who shall be appointed by the Mayor and Council, to serve at the pleasure of the same.

Section 7. Duties of Director of Revenue. It shall be the duty of the director of revenue to collect and receive all license fees imposed by this article and to keep records showing the amounts received by such director from each employer. All moneys received by the director of revenue shall be turned over daily to the city comptroller and a proper receipt obtained for same.

Section 8. Investigative Powers of Director of Revenue. The director of revenue or any agent or employee designated by the director is hereby authorized to examine the books, papers and records of any employer or supposed employer or of any licensee or supposed licensee 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 article by such examination. Each such employer or supposed employer or licensee or supposed licensee shall give to the director of revenue or to the director's duly authorized agent or employee, the means, facilities, and opportunity for the making of such examination and investigation. The director of revenue is hereby authorized to examine any person under oath concerning any gross receipts which were or should have been shown in a return and to this end may compel the production of books, papers, and records and the attendance of all persons before such director, whether as parties or as witnesses, whom the director believes to have knowledge of such gross receipts or compensation.

Section 9. Information to be confidential. Notwithstanding any ordinances to the contrary, any information gained by the director of revenue, 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 article, shall be confidential, except for official purposes, or in accordance with the proper judicial order, or the enforcement of this article, and any person or agent divulging such information shall, upon conviction, be subject to a fine not exceeding \$500.00.

Section 10. Regulations may be promulgated. The city council may by resolution prescribe, adopt, promulgate and enforce regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this article, including but not limited to provisions for the re-examination and correction of returns as to which an overpayment or underpayment is claimed or found to have been made, and the regulations so promulgated shall be binding upon all licensees and employers.

Section 11. Interest and penalties. (a) All license fees imposed by this article which remain unpaid after they become due shall bear interest at the rate of six (6) percent per annum and any person who has failed to pay such license fees when the same became due shall also be charged a penalty of ten (10) percent of the amount of such unpaid license fees. Any employer or other person who fails or refuses to withhold any license fees payable under this article, or who fails to pay such fees, after withholding the same, to the city at the time it is due as proved under the terms of this article, shall become liable to the city for such fees, as well as for the interest thereon at the rate of six (6) percent per annum and for the aforesaid penalty; provided, however, the minimum penalty imposed against such employer or other person shall be one dollar (\$1.00).

(b) Any employee or other person who shall fail, neglect or refuse to pay a license fee as by this article required, or any employer who shall fail to withhold said license fees or to pay over to the city such license fees, penalties, or interest imposed by this article, or any employer or other person who shall refuse to permit the director or revenue, or any agent or employee designated by the director in writing, to examine such employer's or other person's books, records and papers, or who shall knowingly make any incomplete, false or fraudulent return, or who shall attempt to do anything whatever to avoid the full disclosure of the amount of gross receipts or compensation in order to avoid the payment of the whole or any part of a license fee shall, upon conviction, be subject to punishment as provided in Section 8 for each offense. Such criminal penalties shall be in addition to the penalties imposed under subsection (b) of this Section.

Section 12. Use of license fees. All money derived from license fees under the provisions of this article shall be paid to the city and placed to the credit of the general revenue fund of the city, and may be pledged to pay principal and interest of any warrant or bonded indebtedness of the city, and any surplus remaining then to the general revenue fund of the city.

Section 13. Expiration date. This ordinance shall expire at midnight on the 30th day of September, 1990 unless extended by the City Council prior to that date.

Section 14. Adopted and Approved this 26th day of August, 1986.