

MINUTES OF A REGULAR MEETING OF
THE MAYOR AND CITY COUNCIL OF
THE CITY OF HAMILTON, ALABAMA

December 7, 2009

A regular meeting of the Mayor and City Council of Hamilton, Alabama was held on December 7, 2009 at 6:00 p.m. in the Auditorium of Hamilton City Hall. Mayor Holliday called the meeting to order and welcomed all guests. McDavid Franks led the Pledge of Allegiance and gave the invocation. Those present were:

Mayor:	Bobby Holliday
Council:	McDavid Franks Scotty Sanderson Annette Sherrill April Steele Paul Stidham
City Clerk:	Jan Williams
Guests:	Bill Tyra Scott Hunt Don Gann Shannon Nichols Alissa Brown Kieran Jackson Alan Cantrell Ed Howell

The first order of business was a motion by Paul Stidham that the Minutes from the last meeting be approved. McDavid Franks seconded the motion which passed unanimously.

Scotty Sanderson made a motion to approve the Accounts Payable Bills once the Council has had an opportunity to review all the bills. April Steele seconded the motion and all voted in favor.

The next item on the agenda was a recommendation for immediate consideration of Ordinance number 2009-22 amending Ordinance number 534 of the City of Hamilton to increase the sales tax 1% effective January 1, 2010. McDavid Franks motioned to approve the recommendation and Paul Stidham seconded the motion. Voting was as follows: Ayes: McDavid Franks, Paul Stidham, April Steele, Annette Sherrill and Scotty Sanderson. Nays: None. Immediate consideration was then given to the following ordinance.

City of Hamilton, Alabama

Ordinance No. 2009-22

PURSUANT TO THE PROVISIONS OF CODE OF ALABAMA 1975 SECTIONS 11-51-200 THROUGH 11-51-207 .

AND LEVIES A PRIVILEGE, LICENSE OR EXCISE TAX AGAINST PERSONS, FIRMS, OR CORPORATIONS STORING, USING, OTHERWISE CONSUMING OR ENGAGED IN THE BUSINESS OF SELLING AT RETAIL TANGIBLE PERSONAL PROPERTY OR CONDUCTING PLACES OF AMUSEMENT IN THE CITY OF HAMILTON, ALABAMA, OR WITHIN ITS POLICE JURISDICTION; PROVIDES FOR THE COLLECTION OF THE SAID TAXES; PROVIDES PENALTIES FOR THE VIOLATION OF THIS ORDINANCE

Pursuant to the provisions of Code of Alabama 1975 Sections 11-51-200 through 11-51-207, be it ordained by the City Council of the City of Hamilton, in the State of Alabama as follows:

Section 1. 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, license or excise tax against persons, firms, or corporations storing, using, otherwise consuming or engaged in the business of selling at retail tangible personal property or conducting places of amusement within City of Hamilton and in the amount to be determined by the application of rates against gross proceeds of sales:

(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, any association or other agency or instrumentality of such institutions) engaged or continuing within City of Hamilton 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 sales of material and supplies to any person for use in fulfilling a contract for the painting, repair, or reconditioning of vessels, barges, ships, other watercraft and commercial fishing vessels of over five tons load displacement as register with the US Coast Guard and licensed by the state of Alabama Department of Conservation and Natural Resources), an amount equal to three percent (3%) of the gross proceeds of sales of each 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 a retailer, on the gross sales of the business.

(b) Upon every person, firm, or corporation engaged or continuing within City of Hamilton in the business of conducting or operating places of amusement or entertainment, billiard and pool rooms, bowling alleys, amusement devices, musical devices, theaters, opera house, 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 City of Hamilton, or any athletic association thereof, or other association whether such institution or association be a denominational, a state, or county, or municipal 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 City of Hamilton, an amount equal to Two percent (2%) of the gross proceeds of sales of the 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. The tax amount which would have been collected pursuant to this subdivision 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 City of Hamilton in the business of selling at retail machines used in mining, quarrying, compounding, processing and manufacturing of tangible personal property an amount equal to 0.375% of the sale of such machines; 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.

(d) Upon every person, firm or corporation engaged or continuing within City of Hamilton in the business of selling at retail any automotive vehicle or truck trailer, semi-trailer 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 1/2% of the gross proceeds of sales of said automotive vehicle or truck trailer, semi-trailer 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 stock in trade any automotive vehicle or truck trailer, semi-trailer or house trailer for use by him or by his employee or agent in the operation of such business, there shall

be paid, in lieu of the tax levied herein, a fee of \$5.00 per year or part thereof during which such automotive vehicle, truck trailer, semi-trailer or house trailer shall remain the property of such person. Each such 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 12 succeeding months or part thereof during which such automotive vehicle, truck trailer, semitrailer or house trailer shall remain the property of such person.

Where any used automotive vehicle or truck trailer, semi-trailer or house trailer is taken in trade or in a series of trades, as a credit or partial 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.

(e) Upon every person, firm or corporation engaged or continuing within City of Hamilton 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 replacement 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, an amount equal to $\frac{1}{2}\%$ of the gross proceeds of sales thereof. Provided, however, the rates herein prescribed with respect to parts, attachments, and replacement 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 partial 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.

(f) Upon every person, firm or corporation engaged or continuing within City of Hamilton 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 amount equal to $\frac{3}{4}\%$ on the cost of such food, food products and beverages sold through such machines, which cost for the purpose of this subsection shall be the gross proceeds of sales of such business.

Section 2.

(a) An excise tax is hereby levied on the storage, use or other consumption within City of Hamilton of tangible personal property (not including materials and supplies bought for use in fulfilling a contract for the painting, repair, or reconditioning of vessels, barges, ships, other watercraft and commercial fishing vessels of over five tons load displacement as register with the US 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 resolution for storage, use or other consumption in City of Hamilton, except as provided in subsections (b), (c), and (d) at the rate of Three percent (3%) of the sales price of such property within City of Hamilton.

(b) An excise tax is hereby levied on the storage, use or other consumption within City of Hamilton 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 resolution at the rate of 0.375% 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.

(c) An excise tax is hereby levied on the storage, use or other consumption within City of Hamilton 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 City of Hamilton at the rate of ½% of the sales price of such automotive vehicle or truck trailer, semi-trailer, house trailer or mobile home set-up materials and supplies within City of Hamilton.

Where any used automotive vehicle or truck trailer, semi-trailer or house trailer is taken in trade or in a series of trades, as a credit or partial 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.

(d) An excise tax is hereby levied and imposed on the storage, use or other consumption within City of Hamilton 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 replacement 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, which is purchased at retail on or after the effective date of this resolution, for the storage, use or other consumption in City of Hamilton at the rate of ½% of the sales price of such property within City of Hamilton; provided, however, that the rates herein prescribed with respect to parts, attachments, and replacement 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 partial 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 the Tax in the Police Jurisdiction. Upon every person, firm or corporation engaged in the doing of an act, or who shall do an act, or continuing in the 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 the Ordinance levied or required within the corporate limits of the City, there is hereby levied, in addition to all 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.

Section 4.

The taxes levied by Section 1 and Section 2 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 sales and use taxes levied by the State sales and use tax statutes, except where inapplicable or where herein otherwise provided, including all provisions of the State sales and use tax statutes for enforcement and collections of taxes.

Section 5.

This resolution shall not be construed to repeal or replace any of the provisions of other taxes of every kind, but shall be held to be cumulative, and the amounts of taxes herein levied shall be in addition to the amount of all other license, privilege or excise taxes imposed by City of Hamilton.

Section 6.

Severability. Each and every provision of this resolution is hereby declared to be an independent provision and the holding of any provision hereof to be void and invalid for any reason, shall not affect any other provision hereof, and it is hereby declared that the other provisions of this resolution would have been enacted regardless of any provision which might have been held invalid.

Section 7.

The tax levied by Sections 1 and 2 hereof may be collected by the State Department of Revenue, or a private firm under contract with the City of Hamilton. The private firm shall have and exercise the same powers, duties, and obligations with respect to the tax levied hereunder that are imposed on the commissioner and department by the state sales and use tax statutes.

Section 8.

The net proceeds of the taxes levied herein shall be paid into the general fund of the City of Hamilton.

Section 9.

The taxes levied herein shall become effective on the first day of January, 2010, and the first payment of taxes hereunder shall be due and payable on the twentieth day of February, 2010.

ADOPTED this 7th day of December, 2009.

MAYOR

ATTEST:

McDavid Franks motioned that the foregoing ordinance be approved. Paul Stidham seconded the motion and voting was as follows: Ayes: McDavid Franks, Paul Stidham, April Steele and Annette Sherrill. Nays: Scotty Sanderson. Mayor Holliday declared motion passed by majority vote.

The agenda then contained the recommendation to approve the 2009/2010 Budget. Annette Sherrill made a motion to table this matter until the December 17, 2009 meeting. April Steele seconded the motion and all voted "Yes".

At this time Paul Stidham made a motion to approve the Consulting Agreement between the City of Hamilton and Building Inspector, Roger Karr. McDavid Franks seconded the motion and all voted in favor.

CITY OF HAMILTON, ALABAMA,
A MUNICIPAL CORPORATION

CONSULTING AGREEMENT

THIS AGREEMENT is entered into as of the 7th day of December, 2009 by and between the City of Hamilton, a municipal corporation organized and existing under the laws of the State of Alabama ("City"), and Roger Karr, having his principal place of business at Hamilton, Alabama ("Consultant").

WITNESSETH:

In consideration of the premises and mutual covenants hereinafter contained, the parties hereto agree as follows:

1. THE SERVICES

The Consultant agrees to perform the duties of a building inspector for the City.

2. WORK FOR HIRE

a. It is the intention of the parties hereto that all rights, including without limitation copyright, in any reports, surveys, marketing promotional and collateral materials prepared by the Consultant pursuant to the terms of this Agreement, or otherwise for City (hereinafter "the Work") vest in City. The parties expressly acknowledge that the Work was specially ordered or commissioned by City, and further agree that it shall be considered a "Work Made for Hire" within the meaning of the copyright laws of the United States and that City is entitled, as author to the copyright and all other rights therein, throughout the world, including, but not limited to, the right to make such changes therein and such uses thereof, as it may determine in its sole and absolute discretion.

b. If, for any reason, the Work is not considered a work made for hire under the copyright law, then the Consultant hereby grants and assigns to City, its successors and assigns, all of its rights, title, and interest in and to the Work, including, but not limited to, the copyright therein throughout the world (and any renewal, extension or reversion copyright now or hereafter provided), and all other rights therein of any nature whatsoever, whether now known or hereafter devised, including, but not limited to the right to make such changes therein, and such uses thereof, as City may determine.

3. INTELLECTUAL PROPERTY

Notwithstanding the provisions above, Consultant hereby retains the sole and exclusive right, title and interest in any intangible marketing or business thought, concept, idea, method or process arising out of Consultant's engagement with the City pursuant to this Agreement.

4. PROPRIETARY INFORMATION

a. For purposes of this Agreement, "proprietary information" shall mean any information relating to the business of City and shall include (but shall not be limited to) information encompassed in all drawings, designs, programs, plans, formulas, proposals, marketing and sales plans, financial information, costs, pricing information, customer information, and all methods, concepts or ideas in or reasonably related to the business of City.

b. Consultant agrees to regard and preserve as confidential, all proprietary information, whether Consultant has such information in memory or in writing or other physical form. Consultant shall not, without written authority from City to do so, directly or indirectly, use for the benefit or purposes, nor disclose to others, either during the term of its engagement hereunder or thereafter, except as required by the conditions of Consultant's engagement hereunder, any proprietary information.

c. Consultant shall not disclose any reports, recommendations, conclusions or other results of the Services or the existence or the subject matter of this contract without the prior written consent of City. In Consultant's performance hereunder, Consultant shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.

d. The Consultant expressly agrees that the covenants set forth in this Paragraph are being given to City in connection with the engagement of the Consultant by City and that such covenants are intended to protect City against the competition by the Consultant, within the terms stated, to the fullest extent deemed reasonable and permitted in law and equity. In the event that the foregoing limitations upon the conduct of the Consultant are beyond those permitted by law, such limitations, both as to time and geographical area, shall be, and deemed to be, reduced in scope and effect to the maximum extent permitted by law.

e. The foregoing obligations of this Paragraph shall not apply to any part of the information that (i) has been disclosed in publicly available sources of information, (ii) is, through no fault of the Consultant, hereafter disclosed in publicly available sources of information, (iii) is now in the possession of Consultant without any obligation or confidentiality, or (iv) has been or is hereafter lawfully disclosed to Consultant by any third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party.

5. INJUNCTIVE RELIEF

Consultant acknowledges that the injury to City resulting from any violation by it of any of the covenants contained in this Agreement will be of such a character that it cannot be adequately compensated by money damages, and, accordingly, City may, in addition to pursuing its other remedies, obtain in injunction from any court having jurisdiction of the matter restraining any such violation; and no bond or other security shall be required in connection with such injunction.

6. FEES AND REIMBURSEMENT OF CERTAIN EXPENSES

a. City shall pay Consultant a consulting fee equal to sixty percent (60%) per permit inspected, plus reasonable expenses, including but not limited to travel expenses, and report production expenses directly related to the Services performed by Consultant hereunder. Consultant shall furnish to City, upon request, suitable evidence regarding all such expenses; provided however, that the liability of City for such reasonable expenses shall not exceed one hundred dollars (\$100.00) per month, if required.

b. The City shall be invoiced monthly for the consulting fee and the reimbursement of expenses payable pursuant to this paragraph and the City shall pay such amounts due within thirty days of the date of each invoice.

c. Upon termination of this Agreement, Consultant expressly understands and agrees that City's sole obligation shall be to pay Consultant for Services rendered and authorized expenses completed as of the date of termination.

7. BENEFITS

The Consultant, as an independent contractor, shall not be entitled to any other benefits other than the fees and reimbursement of expenses provided specifically in this Agreement.

8. DUTY TO REPORT INCOME

The Consultant acknowledges and agrees that it is an independent contractor and not an employee of the City and that it is Consultant's sole obligation to report as income all compensation received from City pursuant to this Agreement. The Consultant further agrees that the City shall not be obligated to pay withholding taxes, social security,

unemployment taxes, disability insurance premiums, or similar items, in connection with any payments made to the Consultant pursuant to the terms of this Agreement.

9. TERM

This Agreement shall be effective beginning as of the 7th day of December, 2009 and shall continue until indefinitely; provided, however, that either City or Consultant may terminate this Agreement in whole or in part at any time upon thirty (30) days written notice to the other party. In the event of termination or upon expiration of this Agreement, Consultant shall return to City any and all equipment, documents or materials, and all copies made thereof, which Consultant received from City for the purposes of this Agreement and the City shall pay to Consultant the amounts provided hereof through the date of such termination or expiration.

10. IDEMNIFICATION

The Consultant shall indemnify and save City harmless from and against all claims arising in favor of any person, firm or corporation on account of personal injury or property damage in any way resulting from the improper or illegal acts of Consultant, its employees or agents. The foregoing indemnity shall include all costs incurred by City, including reasonable attorneys' fees.

11. NOTICES

All notices and billings shall be in writing and sent via first class mail to the respective addresses of the parties set forth at the beginning of this Agreement or to such other address as any party may designate by notice delivered hereunder to the other party.

12. GENERAL

a. The terms and conditions of Paragraphs 3, 4, 5 and 6 hereof shall survive the termination of this Agreement or completion of the Services as the case may be.

b. Neither the City nor Consultant shall assign this Agreement or delegate its duties hereunder and shall not subcontract any of the Services to be performed hereunder without the prior written consent of the other party hereto.

c. Consultant shall perform the Services as an independent contractor and shall not be considered an employee of City or Partner, joint venturer or otherwise related to City for any purpose.

d. This Agreement shall be governed by the laws of the State of Alabama.

e. This Agreement constitutes the entire understanding between Consultant and City respecting the Services described herein. The terms and conditions of any purchase

order shall have no effect upon this Agreement and shall be used for accounting purposes only.

f. The failure of either party to exercise its rights under this Agreement shall not be deemed to be a waiver of such rights or a waiver of any subsequent breach.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

CITY OF HAMILTON

By: _____
Joseph R. Holliday, Mayor

Attest:

Jan Williams, City Clerk

CONSULTANT

By: _____
Roger Karr

There being no further business, Scotty Sanderson made a motion that the meeting be adjourned. Annette Sherrill seconded the motion, following a unanimous consent in favor Mayor Holliday declared the meeting adjourned.

Mayor

City Clerk

Council:
