

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

December 17, 2009

A regular meeting of the Mayor and City Council of Hamilton, Alabama was held on December 17, 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. Bro. Eddie Davidson, pastor of First Baptist Church, 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:	Alan Gann Richard Gann Billy Miles Eddie Davidson Leland Hanford Jimmy Pendley Mark Gallups Alissa Brown Alan Cantrell Shannon Nichols Kieran Jackson Ed Howell Scott Hunt

The first order of business was a motion by Scotty Sanderson to approve the Minutes from the last meeting. Annette Sherrill seconded the motion which passed unanimously.

McDavid Franks made a motion to approve the 2009/2010 Budget. Paul Stidham seconded the motion and all voted "Yes".

McDavid Franks made a motion approving the acceptance of a right-of-way deed from Stanley Sherrill designating Eastview Drive as a city street. It was noted that paving the

street was not included in this recommendation. Scotty Sanderson seconded the motion and voting was as follows: Ayes: McDavid Franks, Scotty Sanderson, April Steele, and Paul Stidham. Nays: None. Abstained: Annette Sherrill.

The next item on the agenda was a recommendation for immediate consideration of Ordinance number 2009-23 amending Ordinance 2009-22 changing the effective date of the Sales Tax increase to February 1, 2010. McDavid Franks motioned to approve the recommendation and April Steele seconded the motion. Voting was as follows: Ayes: McDavid Franks, Scotty Sanderson, Annette Sherrill, April Steele and Paul Stidham. Nays: None. Immediate consideration was then given to the following ordinance.

City of Hamilton, Alabama

Ordinance No. 2009-23

PURSUANT TO THE PROVISIONS OF CODE OF ALABAMA 1975 SECTIONS 11-51-200 THROUGH 11-51-207 THIS ORDINANCE REPLACES ORDINANCE 2009-22-A IN ITS ENTIRETY.

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 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 $\frac{1}{2}$ % 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 February, 2010, and the first payment of taxes hereunder shall be due and payable on the twentieth day of March, 2010.

ADOPTED this 17th day of December, 2009.

MAYOR

ATTEST:

Annette Sherrill motioned that the foregoing ordinance be approved. McDavid Franks seconded the motion which passed unanimously.

The agenda then contained the recommendation for immediate consideration of Ordinance number 2009-24 to set a municipal option election for the City of Hamilton to determine the sentiment of the people as to whether or not alcoholic beverages can be legally sold or distributed in the City of Hamilton. McDavid Franks made a motion for immediate consideration to be given. April Steele seconded the motion. Voting was as follows: Ayes: McDavid Franks, Scotty Sanderson, Annette Sherrill, April Steele and Paul Stidham. Nays: None. Immediate consideration was then given to the following ordinance.

ORDINANCE NUMBER 2009-24

AN ORDINANCE OF THE CITY OF HAMILTON TO SET A MUNICIPAL OPTION ELECTION FOR THE CITY OF HAMILTON TO DETERMINE THE SENTIMENT OF THE PEOPLE AS TO WHETHER OR NOT ALCOHOLIC BEVERAGES CAN BE LEGALLY SOLD OR DISTRIBUTED IN THE CITY OF HAMILTON

BE IT ORDAINED by the City Council of the City of Hamilton, Alabama, as follows:

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

WHEREAS, THE CITY COUNCIL OF THE CITY OF HAMILTON finds and declares all of the following:

A. According to the 2000 census, the City of Hamilton's population is

B. 2170 voters cast a ballot in the November, 2008 municipal election, the last preceding general election in the City of Hamilton.

C. 30% of 2170 is 651.

D. The City Clerk of the City of Hamilton has certified

that a petition of 661 names, certified to be registered voters in the municipal limits of the City of Hamilton, has been filed with the City Clerk as of this date.

E. Act 2009-546 requires that upon receipt of a petition of 30 percent of the number of voters in the last preceding general election of the municipality being filed with the city clerk, the City Council MUST call a municipal option election for said municipality to determine the sentiment of the people as to whether or not alcoholic beverages can be legally sold or distributed in the City of Hamilton.

F. That the City of Hamilton has received a petition of more than 30% of the number of voters in the last preceding general election of the municipality.

NOW THEREFORE, for the foregoing purposes, and other legitimate purposes, BE IT ORDAINED BY THE CITY OF HAMILTON, ALABAMA, THROUGH ITS DULY ELECTED COUNCIL, as follows:

1. The City of Hamilton sets the date of February 2, 2010 as the date for a municipal option election to determine the sentiment of the people as to whether or not alcoholic beverages can be legally sold or distributed in the City of Hamilton.

2. The ballot to be used for such municipal option election shall contain the following question: "Do you favor the legal sale and distribution of alcoholic beverages within this municipality? Yes _____ NO _____."

3. The City of Hamilton shall appoint officers to conduct said municipal option election no less than 15 days prior to the election.

Adopted and approved this the 17th day of December, 2009.

Bobby Holliday
Mayor for the City of Hamilton

Authenticated:

Jan Williams
Clerk for the City of Hamilton

(Note)-Petition Signatures will be included in Minute Book

McDavid Franks motioned that the foregoing ordinance be approved. Paul Stidham seconded the motion which passed without opposition.

At approximately 6:08 p.m. Annette Sherrill made a motion to enter into executive session to discuss pending litigation. Scotty Sanderson seconded the motion and all voted in favor.

At 6:33 p.m. Scotty Sanderson motioned to return to regular session. Annette Sherrill seconded the motion and all voted "Yes".

McDavid Franks made a motion to approve the following 2010 Holidays which included adding Columbus Day. April Steele seconded the motion which passed unanimously.

New Year's Day	Friday, January 1 st , 2010
Martin Luther King, Jr. Day	Monday, January 18 th , 2010
President's Day	Monday, February 15 th , 2010
Good Friday	Friday, April 2 nd , 2010
Memorial Day	Monday, May 31 st , 2010
Independence Day	Monday, July 5 th , 2010
Labor Day	Monday, September 6 th , 2010
Columbus Day	Monday, October 11th, 2010
Veteran's Day	Thursday, November 11 th , 2010
Thanksgiving Day	Thursday, November 25 th , 2010
Day after Thanksgiving	Friday, November 26 th , 2010
Christmas Eve	Thursday, December 23 rd , 2010
Christmas Day	Friday, December 24 th , 2010
*Note-Christmas day falls on Saturday in 2010	

Mayor Holliday reviewed the holiday schedule for garbage pick-up. He then asked for comments from the guests and no one responded.

There being no further business, McDavid Franks 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:

