

ORDINANCE NO. 1 , 2018

AN ORDINANCE TO AMEND THE CITY INCOME TAX CODE TO ADOPT SECTIONS 718.80 THROUGH 718.95 OF THE OHIO REVISED CODE AND DECLARING AN EMERGENCY

WHEREAS, House Bill (H.B.) 49 of the 132nd General Assembly, the State's general appropriations bill for the biennium, includes Section 803.100 purporting to require that municipalities, on or before January 31, 2018, to adopt certain municipal income tax provisions that are also adopted within H.B. 49 to authorize State officials to collect and administer municipal net profits taxes; and

WHEREAS, Section 803.100 of H.B. 49 references and relies upon Section 718.04(A) of the Ohio Revised Code, which purports to make municipal income taxing authority conditional upon a municipality's adoption of code sections as dictated by the State; and

WHEREAS, although the municipal income tax provisions of H.B. 49, and Section 718.04(A) of the Ohio Revised Code, violate the Home Rule Amendment, the City nevertheless is compelled to adopt H.B. 49's municipal income tax provisions, on or before January 31, 2018, to avoid any doubt or taxpayer challenge as to its ability to impose a municipal income tax under the terms of Section 803.100 of H.B. 49 and Section 718.04(A) of the Ohio Revised Code; and

WHEREAS, the City is a party to ongoing litigation seeking a declaration that the H.B. 49 municipal income tax provisions, Section 718.04(A) of the Ohio Revised Code, and other provisions of Ohio law that usurp the powers of local self-government

are unconstitutional, and to enjoin all actions by state officials to implement the H.B. 49 municipal income tax provisions; and

WHEREAS, the City, by enacting this Ordinance, does not concede the legality of H.B. 49's municipal income tax provisions, Section 718.04(A) of the Ohio Revised Code, or any other law that is subject to the suit in which the City is participating, and reserves its right to continue prosecution of that lawsuit.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Montgomery, Hamilton County, Ohio, that:

SECTION 1. Sections 44.1.97.1 through 44.1.97.16 inclusive of Chapter 44.1 of the Codified Ordinances of the City shall hereby be enacted to read as set forth in Exhibit A of this Ordinance, attached hereto and incorporated by reference herein.

SECTION 2. The City Council hereby expressly finds and determines that it does not concede the legality of H.B. 49's municipal income tax provisions; Section 803.100 of H.B. 49; Section 718.04(A) of the Ohio Revised Code; or any other law that is the subject of the action pending in Case Number 2017 CV 10258 in the Franklin County Court of Common Pleas, and in various other counties within the State of Ohio where the constitutionality of the enactment of H.B.49 is being challenged, and the City reserves its rights to continue its participation in and prosecution of said litigation, and any other litigation challenging the State's authority to dictate municipal tax collection and administration, and that adoption of this Ordinance shall not prejudice the claims of the City therein.

SECTION 3. This Ordinance is declared to be emergency legislation, necessary for the immediate preservation of the public peace, health, safety, and welfare

which shall be effective upon passage, such emergency arising from the coercive provisions of law found in H.B. 49 and Section 718.04(A) of the Ohio Revised Code and the need for the City to preserve its taxing authority in the event that the H.B. 49 municipal income tax provisions and Section 718.04(A) of the Ohio Revised Code are not declared to be unconstitutional.

SECTION 4. If any provision of the H.B 49 municipal income tax provisions is found unconstitutional, or is stayed or enjoined, the provisions adopted in Section 1 of this Ordinance shall likewise be stayed. The Code sections adopted herein by Section 1 shall be separated from all other Code sections within Chapter 44.1 as separate, standalone sections of the Code, and any conflict between the existing Code and those sections adopted herein shall be interpreted in favor of the existing Code unless the context clearly indicates otherwise, or if such overriding interpretation would cause the City to lose its taxing power. These newly adopted Code sections shall be interpreted more fully within the Code or stricken in their entirety from the Code once the constitutionality of H.B. 49 is determined.

SECTION 5. This Ordinance shall take effect the earliest opportunity as allowable by law.

PASSED: January 3, 2018

ATTEST: Connie M. Gaylor
Connie M. Gaylor, Clerk of Council

Christopher P. Dobrozi
Christopher P. Dobrozi, Mayor

APPROVED AS TO FORM:

Terrence M. Donnellon
Terrence M. Donnellon, Law Director