

Aiken City Council Minutes

WORK SESSION

March 21, 2011

Present: Mayor Cavanaugh, Councilmembers Clyburn, Dewar, Ebner, Homoki, Price and Wells.

Others Present: Richard Pearce, Gary Smith, Kim Abney, Ben Moore, Lex Kirkland, Al Cothran, Sara Ridout, Amy Banton of the Aiken Standard and about 40 citizens.

CALL TO ORDER

Mayor Cavanaugh called the meeting to order at 6:31 P.M. He stated this was a special work session of Council to discuss the topic of business license policies. He welcomed everyone present. Mayor Cavanaugh stated Danny Crowe, attorney, and Eric Budds and Scott Slatton of the Municipal Association, were present. Councilman Dewar led in prayer, which was followed by the pledge of allegiance to the flag.

BUSINESS LICENSE

Mayor Cavanaugh stated he would like to start the meeting with Danny Crowe talking briefly about the state law and business licenses. He said then citizens would be given time to speak on the subject.

Councilman Dewar stated he would like to say a few words about this meeting. "While I am pleased that we are meeting to once again address concerns from the business community, I join their frustration that the process is taking so long. Three businesswomen told us for the first time at our Horizon's Meeting on January 29, 2010 about their frustrations with the City's Business License program. We next discussed the same issues on April 26, May 3, June 2, August 9, at the Business Forum on August 24, at our Zero Based Budgeting meeting on December 7, 2010 and December 16, at our Horizons Meeting on January 29, 2011, and at our Council meeting on February 14. Nine times so far. I hope tonight we can agree to take serious and decisive action for the first time in over 14 months to resolve this issue.

"Conducting a business license program for our city is not easy. With nearly 4,000 business licensees it is a massive task. I reviewed a listing of licensees and found that 983 are from out of South Carolina, representing 36 states, with 645 of them in Georgia, most obviously near our border. 338 are in distant states. Our guests from the Municipal Association have 6 business licenses from our city.

"When our program requires applicants to furnish federal tax forms to substantiate their gross income, and only 1,860 of the nearly 4,000 comply, one can easily understand why some businesses in the city feel that they are being treated differently. 2,023 of the licensees do not need to furnish tax forms, while 1,860 do. This is not fair and equal treatment for our businesses.

"If we accept a statement from Bentonville, Arkansas, or from a company in Minnesota, Massachusetts or any other state, we should accept the word of our local businesses. If we have reason to doubt their numbers, we can make an on-site visit to validate their assertion. We must restructure this program to make it more acceptable to that part of our community that pays the taxes. While a few have challenged the program's legal basis or the amount of tax levied, we have not heard an overwhelming call to eliminate the program.

"Since this meeting was publicized, I have heard from constituents, some of who will not attend tonight's meeting, that they too don't like the idea of providing their federal tax forms to the Finance Department. Some are not present because they have been working since 7 a.m or 8 a.m. Some have said they are fearful of what would happen if maybe

city staff realized they were not happy about what they are doing. I also heard that there are rental businesses that do not have licenses. I understand that it is city policy that a single rental does not need a business license, but that often times one rental leads to another, and no business license is obtained. We need to explore that loophole.

“The key is fairness. All businesses should pay a business license tax in accordance with the ordinance approved by the City Council. Tonight’s agenda seems quite defensive to me and more oriented to explain what we do rather than dealing with the issue of providing tax forms to the city. I want a comprehensive ordinance satisfactory to the business community and staff that contains enough detail so everyone, including staff, understands their responsibilities with this program.

“One last point. I would like for us and our guests to listen first to our local businesses and then listen to our expert guests on the program.”

Mayor Cavanaugh stated the reason he suggested hearing from Danny Crowe first was that he had received many emails and talked to people. He said there seems to be a lot of people that do not understand how this started and the legality of the issue.

Ms. Debbie Nix stated she would like to be able to recognize the small businesses. She said she had put a lot of work in this and she would like to greet them.

Mayor Cavanaugh stated he would like to hear from Danny Crowe first. He said if Council would like to do otherwise, Council can overrule him. He felt it was very important to hear the basic facts of business licenses. He said later, if necessary, two gentlemen are here who have worked in other cities and now work with the Municipal Association, and they can talk about their experience in other cities. Mayor Cavanaugh stated he would like to do this if she did not mind.

Ms Nix stated she did mind and would like to be able to greet the small businesses. Mayor Cavanaugh agreed to let Ms. Nix greet the small businesses.

Ms. Nix stated. “Small business owners of Aiken, we believed in you. Thank you for trusting us. We knew that if you were informed you would show up. We now have a voice. Become involved.

“For many of us, the last two years have been the most difficult of our business life. We have weathered the worst economy since the Great Depression. We live daily with instability and fear that we are in jeopardy of losing what we have spent all our lives, passion and money creating.

“We have cut our budgets, cut our pay, and watched what little money we saved for retirement dwindle away. We are working longer and harder than most of us can remember in days past. As we watch our Nation and the great State of South Carolina teeter on the verge of bankruptcy, we quietly think to ourselves, dear God, what chance do we have?

“The meeting tonight was called largely because our Mayor did not think you cared about this issue. He believes that our love for the City of Aiken can be interpreted to mean we are not being mistreated by the administration.

“Mr. Mayor and City Council, our normal government chart is Aiken citizens, City Council, City Administration, Committees and city employees.

“This has not been the behavior of our city government. In fact, the reality is that this chart is totally inverted. This has been demonstrated over and over and has actually been demonstrated with this issue for the past 8 months.

“City Administration, Mr. Pearce, Ms. Abney, Mr. Kirkland advise the Council what to do. City Council takes this advice and votes accordingly. Citizens are then dictated to by the City Council, who are dictated to by the bureaucrats employed by our taxes.

“Over the past decade, we have experienced a City Council that has been steered by a City Manager and his administration.

“City Council it is time for you to take back the power. It is time for you to focus on the folks that elected you. Your job is to listen and advocate for the people. It is not to be steered and told what you can and cannot do by a power hunger bureaucracy. There is always threatening of lawyers such as those in the Finance Department. When Finance Director Kim Abney was asked about the Finance Department disallowing CPA letters and she stated “probably not”, why were you not compelled to ask WHY? Why did you not answer Councilman Dick Dewar when told that the city was treating its businesses unequally? Why do you marginalize the fact that 96% of the cities in South Carolina do not treat their small businesses with such disdain and disregard as Mr. Pearce and the Finance Department have treated us? On a broader scale, why have you allowed City Administration to charge us when we trim our trees that block our signs? Why do you allow Tommy Paradise to tell us that we have to plant full grown trees in our parking area and install sprinkler systems that cost us thousands? Actually we were told that we had to protect a concrete company next door who is a heinous neighbor, but who does not have to abide by the same law and the same rule but he is in the City of Aiken. Where is your courage? Where is your common sense? How can you stretch any of this to think that you are business friendly?

“We do not want to hear another word about not raising taxes in the City of Aiken for the past 21 years. We are not stupid. How could you possibly grow the city the past 21 years without increase of taxes? We know when you are talking about the tax rates that you are talking about one half the equation. With the exploding assessment valuations, the question is why have you not lowered the tax rates during this time? As we all know, by keeping the rate consistent with exploding assessments, you’ve actually raised our property taxes. And how about the water rates? That’s an easy way to increase income without having to say you are increasing taxes.

“Also, Mr. Mayor, you constantly use your wife’s micro business as an indicator of your understanding. Unless your wife just got notification that her S.C. employment taxes increased six times, and unless you both are dependent on her income for your livelihood, and unless she has risked all that she has had in the past, and all that she has now to be a small business owner, Mr. Mayor, you do not understand what it is like to be a small business.

“Richard Pearce, Kim Abney and Lex Kirkland, both your behavior and posturing have exposed you. We believe you have clearly demonstrated that you are not capable of properly upholding the responsibilities of your office. Your posture is non-serving and anti-business. You have successfully wasted both the time of City Council and small business with your subjective inconsistencies. This issue has turned into a “holy war,” if you will, between you and the small businesses of Aiken, when it should never have gone this far.

“We asked you to stop requiring the intrusion of our privacy with your “unwritten” policy and requirement that we show the most sensitive information of our business, our tax return, and behave like the majority of cities in the State of South Carolina.

“Your answer. Not only will you require our tax returns, but now you will require the tax returns of businesses in the County in order to be equal. Did you ever consider that being equal could also look like not requiring tax returns from anyone?

“You also put a box to be checked by small businesses stating that you request an audit. How ridiculous. The only ones that want you to audit, have nothing to hide. What a waste of time, but more so a blatant intimidation of small businesses. My accountant tells me that all of this is ridiculous, because the few folks out there that will give a low

gross receipts can simply go on line, fill out the tax page you require and state any amount of gross receipts they desire. You make no sense and have clearly demonstrated that this is a power grab and overreach, and an attempt to squash not only the small businesses, but also their advocates.

“Municipal Association. Your organization is not welcome in this meeting. By your very design, you are anti-business. As a matter of fact, I was in this very room when our City Council could not approve your 2011 agenda because of your overreach in regards to taxes. You are likely a lobbying group and not our friend, nor the friend of the citizens of Aiken. We understand your purpose is to teach local government how to grow their infrastructure and creatively tax both the businesses and citizenry.

“City Council. Please honor and help restore a representative government. Represent the people of Aiken. Represent the small businesses of Aiken. Restore the authority of your offices, which we the people believe you have. At your earliest lawful convenience please pass a resolution instructing the city Finance Department as to exactly how you want them to collect the business license tax, without reviewing income tax records as a matter of policy.”

Mayor Cavanaugh stated that since Ms. Nix had mentioned it, he would state the facts. The city has lowered its city property tax millage four times during the course of 21 years, and has not had an increase. We have not had an increase in 21 years and have lowered the millage rate four times. He said he does know what his wife goes through as a small business person. She does pay a business license tax, and she is proud to do it. He said the Municipal Association is very welcome in Aiken. They have been an organization over 60 something years that helps cities and towns. They provide training. He said there are over 100 cities out of 270 cities and towns in South Carolina that have 1,000 people or less. They have no staff, and the Municipal Association is a great help to these cities. He said the Municipal Association does lobby on behalf of the cities in South Carolina. He said he does like small businesses, and they are the backbone of the economy of our state, our city, and country. He said in talking to small businesses recently, they have asked that the city keep property taxes down. He pointed out, regarding the water and sewer rates, that out of 31 cities in South Carolina comparable in size to Aiken, that Aiken is number 30 on the list. Only one other city is lower than Aiken's rates, even with the increase.

Mayor Cavanaugh asked that Mr. Crowe speak.

Ms. DeeDee Vaughters asked if Council was going to vote to see if City Council was in favor of letting the citizens speak first.

Councilman Dewar stated he had agreed that his statement would stand on its own. He said the Mayor is the Chair of Council, and he would yield to the Mayor's discretion unless other Councilmembers wanted to vote to hear the citizens first.

Mr. Gary Smith, City Attorney, stated if there was a member of Council who wanted to make a motion to hear the citizens first they could make a motion. Otherwise the Mayor is the presiding officer of the meeting. He said Council could not vote on any official matter before Council, but during the course of the meeting Council could have discussion about how the meeting will be conducted.

Mayor Cavanaugh called for a motion. No motion was made.

Councilman Homoki stated he understands the frustration of the small businesses. He said in Horizons he asked that Council be given the facts. He said they had checked out the facts. He said he wanted to make sure that what is decided will be an agenda item at the next meeting for Council to vote. He said he regrets bringing remarks about personalities and individuals not on City Council. He said they could slam Council, but he felt the speakers should not make comments about others. He also pointed out, regarding the water and sewer rates, that the City has to run the city like a business. He said we can't go into the whole, which we were doing for several years, by taking money

out of the reserves to augment and supplement operations of the systems. He said he would expect individuals that run a business to understand that.

Ms. DeeDee Vaughters stated she would like for City Council to consider hearing from the constituents first. She asked that Council consider making a motion to at least take the matter to a vote. She felt that the constituents, who have taken time off work to be present, should be heard first. She pointed out that the constituents want to speak first since the meeting was called per their request. They did not request that Mr. Crowe come to the meeting. She wanted to be sure the businesses get to be heard because some of them have to leave.

Mayor Cavanaugh stated the reason he asked Mr. Crowe to speak first is because he has had experience with the law and understands it. He felt it was important for people to know the requirements of the law. The speakers stated they could be available at Council's convenience.

Councilman Dewar pointed out the guests had been invited, and we do owe them respect to listen to them. He pointed out the legitimacy of the program has not been challenged. Some people don't like the business license, but the right to have a business license program is not in question. He said if Mr. Crowe will shed some information on the right to use income tax forms to verify the gross receipts, that is not in question because in the business license handbook there is a legal reference.

Ms. Vaughters stated she felt disrespect is paid to the businesses that requested the meeting. She said we want to speak first.

Ms. Nix stated she had been informed that Council wanted to hear from other people. She said she had spent an entire week from her business talking to people to come to speak to Council. She said it was egregious that they had been put behind and the Mayor's concern was for the invited guests. She said the concern should be for the small businesses.

Ms. Melissa Major, Managing Broker of the Carolina Real Estate Company which is owned by Courtney Conger, stated she manages the finances and the business of Carolina Real Estate. She said she had been to four meetings during the past year, but had never spoken. She said most of the comments made had echoed her feelings. She said the problems she had seen over the last 10 years of their business is the inequity in the business license format between like businesses in the city and out of the city. She pointed out businesses outside the city give the city the amount of gross receipts which occur within the city, but they do not have to provide their income tax to verify the figure. She pointed out those outside the city pay double the inside city rate, but it is a different system from how the businesses in the city are taxed for the business license tax. She pointed out her business has had transactions in several other cities, but the receipts from those transactions are included in their gross receipts for Aiken's license tax. She felt this is inequitable. She stated the inequity of how the license fee is verified is a big concern. She said many of the real estate business owners and managers echoed their concern that they don't like showing their tax returns. She said there had been concern that Council had only heard from a few people. She pointed out she had heard from a few people, and each person in the room had heard from a few people. She said there is concern that businesses within the city limits are not trusted as an equal business outside the city limits. She pointed out the S.C. Unemployment tax was increased six times over last year. She understands this is a separate issue, but this was also a concern. She said she was proud to pay a business license tax in the city. The problem is the inequity between the in-city and outside city businesses.

In response to a question about the gross receipts including all their sales, Ms. Major stated that they do not pay a license fee in any of the other cities. She pointed out that she had been told the only thing she can bring to verify the gross receipts is the tax return which includes all sales. In response to a question, she stated the business license regulations are not easy to understand and need to be simplified.

Mr. Richard Pearce pointed out that if a business has gross receipts outside the city and pays a business license fee to other cities for those gross receipts, they are entitled to reduce those gross receipts from the gross receipts for the City of Aiken business license fee.

Ms. Debbie Nix stated she is also a builder, and when they build a house they pay 100% on the gross receipts. The electrician, the plumber, the heating and air all pay on their gross receipts for the house. She said in essence every house that is built in the City of Aiken is paid double because they all pay on gross receipts for the house as well as the subcontractors.

Mr. Markus Woodward stated he has a tree service in Aiken. He said he was new to business. He said he understands Ms. Nix's feelings on the issue. He said he trusts that City Council will make the right decision on the matter. He said the small business owners want fairness across the board.

In response to a question from Councilman Homoki about doing business outside the city, and whether that city or county does not have a license tax, Mr. Pearce responded that the state statute states the city would collect on gross receipts. The city developed a deduction policy so if someone is paying a license on a portion of the gross receipts, the business is allowed to deduct that from the City of Aiken's gross receipts. The city does not collect double.

Councilwoman Price stated there seems to be a problem with the business license. Also, there seems to be a problem with inequities as to what we require for in-city and out-of-city businesses. She felt none of Council would want to tolerate unfairness or inequities. She said if there are inequities, they will be fixed. She said Council is listening to the concerns and will identify possible solutions. She said Council needs to work as quickly as possible to fix the problems. She said there had been concern for some time, and they want the problems to go away.

Dr. Bruce Holdorf stated he has a business in downtown Aiken and has been here for 15 years. He asked if the Chamber of Commerce was represented at the meeting. It was pointed out that Mr. Jameson is not present, but the Chamber is represented by Gary Allington. Dr. Holdorf stated he felt there was a conflict of interest if the city pays dues to the Municipal Association. He said he was interested in how it came into effect for the city to look at personal tax returns to verify gross receipts. He expressed concern about the business license tax being based on gross receipts rather than a set fee. He asked for some leniency on small businesses in extension of the time to pay the tax. He was concerned about how taxes are spent.

Dr. Mike Vasovski, a general practice doctor since 1987, stated he was concerned about having to present his income tax return for verification of the gross receipts. He said confidentiality is a concern for him. He pointed out there is a penalty if the information is divulged, but he wondered how he would be able to determine who divulged the information.

Mr. Pearce pointed out the tax information that comes to the Finance Department is reviewed and shredded. He pointed out the name of the business, gross receipts, signature and date are what is needed. The other information can be blacked out.

Mr. Jet Beckum stated he was not present to debate the business license. He stated he does most of his business in the county. He said he did not understand what gross receipts had to do with the business license. He wondered why tax on gross receipts. He felt one should be taxed on profit. He said income tax is based on profit. He said he was concerned about the Municipal Association. He felt the small businesses are not well represented. He felt the Municipal Association was a big business lobbyist. He wondered how they are financed. He wondered what kind of governmental services they provide for Aiken. He wondered what kind of certification work the Municipal Association does.

Mr. Eric Budds, Deputy Director of the Municipal Association, stated the Municipal Association is a state professional organization for municipalities in the state. Their primary responsibility is to serve as a forum for the elected officials and staff in the state to network, to share best practices, and to receive education and training necessary for them to do their jobs. The primary source of funding for the Municipal Association is a collection program that is operated for all municipalities in the state in which MASC collects insurance business licenses, which is collected in the most efficient manner possible to make sure that municipalities receive their share. He said the MASC has a small lobbying component of the organization that deals with the General Assembly specifically on legislation that would have an impact on municipal operations. He said Scott Slatton, who is also present, is the Senior Field Service manager. He is in the field providing technical assistance to roughly half of the state.

Councilman Dewar pointed out one of the good things the Municipal Association does is training. They provide an excellent program for elected officials. He said he had graduated from the program. He said the MASC does provide a service. He said they are welcome to the meeting just as everyone else is welcome.

Councilman Wells pointed out that the Municipal Association fights day in and day out for Home Town Rule. That is keeping our local governments able to decide what we can do for our people and keeping that decision out of Columbia. He felt the Municipal Association is a great organization. They have a tremendous training program for elected officials as well.

Councilwoman Price stated she is a strong supporter of the Municipal Association. She pointed out some cities are very fortunate, as they have a Mayor, City Manager and great staff. Many of the small towns cannot afford staff. The Municipal Association helps many of these small towns to be able to meet the state regulations.

Councilman Homoki stated he had disagreed with some stands of the Municipal Association, but he said for training and education the Municipal Association is superb. He pointed out there is a lot one can learn from attending their seminars.

Mr. Beckum stated on the web site there are many patrons for the Municipal Association. He wondered about the patrons. He felt the Municipal Association has a lot of influence over Council. He said the citizens elect Council and assume that they are electing people who have intelligence and education to do their job. The citizens are not electing the Municipal Association.

Ms. Jane Page Thompson stated she was sorry this was not a full Council meeting so Council could vote on the issue. She stated after Horizons she thought, and she felt half of Council thought, they had this matter figured out. Apparently when it got back to staff it occurred to them that this was not going to be something with which they were happy, so now we are here. We have the Municipal Association with us. She said she had talked to Council numerous times over the last 12 years about the amount of money that is paid by the City of Aiken to organizations like the Municipal Association that use it for lobbying purposes. She said she brings this up every time we talk about the budget. She reminded Council that their job is to serve the constituents. The Municipal Association admits that they have four lobbyists, that lobby government at the state and federal level to protect cities rights to tax taxpayers, businesses and citizens. Mr. Crowe has represented 82 municipalities in law suits brought against them by businesses over business license tax issues. She said Mr. Crowe is the foremost authority on these kind of issues in South Carolina. She pointed out Mayor Cavanaugh and Councilwoman Price had served as President of the Association, and there is a personal amount of pride in the Association. As a taxpayer, as a citizen, and a voter to have to go and lobby each Councilmember with her personal time is hard to do. My personal investment and my personal money at the city level, at the county level, at the state level and at the federal level come into play. It becomes very time consuming, very expensive and very frustrating when one entity can come in and with one sentence change everything she has spent money and time on. She said the small businesses understand that the state law Title 12 Section 45 and Section 66 is clear that the city must charge a business license tax

on gross income. She said they know that is true, and Mr. Crowe has successfully defended that in court for 82 municipalities. The issue is what Councilman Dewar had the courage to remind everyone about--that 1,860 of the 4,000 business licenses comply. 983 represent 36 states. She wondered if Mr. Kirkland was getting a gross income statement from Walmart, Target, etc. She wondered if he was getting a gross income statement from the French companies, the British companies, etc. To what extent is the local business person on Laurens Street being discriminated against because they are here. She pointed out that maybe the policy should be not to require the income tax verification for everyone to be equal. Maybe it should be not to require it of the 1,860 that do comply, as opposed to the 2,023 that don't have to do it. Perhaps that is the solution. She said we have been talking about the business license tax verification for 14 months. She said she had been talking about some of the inequities for 12 years. She felt it was time to vote and to make it easy and fair. She commended the Finance Department for making a change in the business license form by removing the amount of the license fee on the public portion of the business license. She said businesses were concerned that a person could determine the amount of gross receipts of a business by seeing the amount of the license fee of the license. She said once Council has finished the business license issues, she wants them to look at all of the other taxes. She said Act 388 does not keep commercial property taxes low. It creates a disparity and inequity in the property tax structure. Businesses were asking that property taxes be kept low to help keep the bottom line low. She said this is one thing that is causing a very great hardship on businesses, not only existing businesses, but on bringing new businesses in to the city. Without new businesses, the city will not generate more business license tax. She said you want to create an environment that will create welcoming new businesses. By not reforming Act 388, and by not putting a point of sale provision for commercial businesses, the Municipal Association took a stand against commercial business. She said that is why she has a problem with the Municipal Association paying lobbyists to lobby against commercial business. She pointed out there are businesses that have to pay in the city and the county for things like shelving for their goods. She pointed out, however, if you have a home business where there is a trunk show, and the goods and services are shipped to the customers address, that person is not being charged for the shelves, computers, etc. that help run their business. She said that inequality exists as well. She felt it was up to Council to live up to the agreement that they came up with at Horizons and to live up to representing the constituents that they represent. She asked that Council cut out the requirement of gross receipts verification by income tax. She asked that Council get the matter equal and fair.

Mr. James Vaughn, owner of Cannon House Florist, stated he is a county business, and he lives in the county. He pointed out he is not represented by anyone and yet he has to pay the tax. He wondered how he could be taxed without representation. He pointed out a brick and mortar business has a lot more at risk and more invested than a trunk show business. He pointed out the internet companies do not pay a license and are his competitors. He said his business is in the county, but if he delivers a package into the city he has to pay taxes on it. He did not feel this was fair. He pointed out donut holes which are outside the city are a nightmare for him. He said it is difficult for him to know and to determine whether an address is in or outside the city. He also pointed out the person asking for the delivery may live outside the city, but the package is to be delivered inside the city. He said it is very difficult for him to determine his gross receipts for his business inside the city. He pointed out it takes a lot of time to try to determine what business is inside and what is done outside the city. He stated he can't vote for any of City Council. He said he felt the license tax is unfair. He said he was trying to comply. He stated the gross receipts for his income tax does not work. The S.C. Revenue Department sales tax does not work for him. A statement from his accountant showing his gross receipts also does not work for him. He asked if he has the choice to be audited every year. He said the city would not audit him, because he is in the county. He felt he was not under the city's jurisdiction. He said he operates in the county, but has deliveries in the city. He said the problem is trying to figure out what business was done in the city, as it is difficult to know what is in and what is outside the city.

Councilman Dewar stated if Mr. Vaughn wants to sell to customers in the city the law says he needs a City of Aiken business license. He pointed out the program is not

perfect, and that is what he had been trying to focus on. He said the ordinance needs to be very clear. He said a lot of issues had been raised.

Mr. Harold Robinson stated he is a small business person with 7 to 8 rental properties. He said his complaint was the tax on the gross. He said taxing on gross stops improvements to the rental properties. Without improvements to the properties they become run down and unfit to live in. He pointed out when a tenant moves and the name is changed on the water account, there is a \$20 fee for the accounts in the city and \$30 outside the city. He was concerned about the tax on gross receipts.

Ms. Jane Vaughters stated she and her husband have done business in the City of Aiken for 37 years. She said they pay commercial property taxes, business license, and state taxes. She felt the business license tax is the most foolish tax. In order to keep Aiken and the state vibrant we need businesses and businesses with employees. She said people need jobs and everyone can't run their own business. She pointed out part of her frustration is not just with the city, but with the state. She pointed out the increase in the State Unemployment taxes. She pointed out the taxes had increased 417% from \$685 to \$2,862 for the first quarter. She said in the 37 years in business they have had one person apply for unemployment. She said small businesses are hammered in every direction. She said a few years ago a state legislator had suggested that licenses be on net income rather than gross income. She said the Municipal Association at that time stated they were fighting that because they did not want to diminish the municipalities' ability to tax. She wondered why the Municipal Association was not lobbying to tax the internet. She pointed out the water and sewer rates had increased, and she wondered if some of the property tax, business license, etc. could be used to mitigate the water and sewer rates. She said Aiken is successful and wonderful to live in, and they do business here because they want to. She said, however, they also see projects that look very expensive such as the Railroad Station, a pension plan that she would love to offer to her employees where they contribute nothing. She said then there is the situation where the businesses can't be trusted to give the city the gross receipts. She said she does see why people are frustrated with the Municipal Association on some of their stands, and one is the business license tax.

Mr. Jerry Tindall stated he and his wife have had businesses in the City of Aiken for 36 years. He said they own 36 pieces of property in the City of Aiken that they pay heavily in taxes for commercial versus residential. He said they have a wedding chapel, and were in construction and plumbing and electrical for many years. He said he had no problem paying the taxes, and he felt this was not an issue for most of those here tonight. He felt the issue was a level playing field whether inside the city or outside the city should be treated fairly and equally. He said his businesses are inside the city, so it is not an issue for him. But there are businesses that do business in other cities that are taxed in the City of Aiken because of the gross receipts. He said that is the issue he had, especially when he was in construction, plumbing and electrical. He said until a few years ago, he never had to show a tax return to prove his gross receipts. He said for someone to question the integrity of the businesses and to have to show their gross receipts for each business is an insult to his integrity. He said he understands that the Municipal Association helps in certain degrees. He said the point is not why business licenses are here. He said Al Cothran, Harry Nix, and he were in the association that implemented business license decals in the City of Aiken in 1994. He said that was done because they wanted the quality of the City of Aiken to be better. They wanted the quality of the businesses that bought city licenses in the City of Aiken to be better. It was not something done to increase their costs of having to pay more for decals. He felt they did it to benefit everyone for the best of all. He said he would like to believe that Council would be willing to consider this as a situation where not everyone has to show their gross receipts, but that everybody speaks the truth and not question someone's integrity to provide a sheet of paper that is an invasion of privacy. No other government except the IRS and state are allowed to invade that privacy such as the city requires. He was puzzled as to how it came to this point. He said he hopes that tonight, with enough of the show of force, that Council will stand up and be the City Council of the small businesses which are the foundation of the city. He said the city is a great city, and he had not found another place he would rather live. He asked for Council to do away with the requirement for providing tax returns for verification of gross receipts.

Mr. Davis Cheek stated he had had a business license in the City of Aiken for 11 years and in business for 21 years. He said he had not been proud to pay the city business license because of having to show the gross receipts. He felt it was discriminatory. It is illegal and an invasion of his privacy. He said he pays it, but he is not happy to do it. He said he was not happy with the agenda for the meeting tonight. He said Mr. Pearce put in a bunch of out of towners and the Municipal Association. He pointed out that staff was loaded with paper work. He pointed out Mr. Kirkland and Ms. Abney's paper work. He said they came to lecture them for three hours so the citizens could not say anything. He said the small businesses are a concerned body of people. He said Mr. Kirkland and Ms. Abney in the Finance Department have been responsible for creating the hostile environment towards small business. They are using selective discrimination between large and small business.

Councilman Wells pointed out to Mr. Cheeks that City Council sets policy within the city. The employees enforce the policies set by Council. He said if Mr. Cheeks has a problem with the policies, then he has a problem with Council and not a problem with the employees. He said the city has great employees, people who work hard who have been with the city for a long time. He said he appreciates the staff. He said if Mr. Cheeks has a problem he would ask that he direct it to City Council and not to the city employees.

Councilman Wells stated Council is following up on the issue just as quickly as possible. He assured Ms. Nix that staff has been working on this. They have brought back suggestions that Council has made. We can't do something without research. We have looked at the different options and discussed them with our staff, and we are going forward to satisfy the requests that Council has had from small businesses. He said he was the one who brought the matter up at Horizons. He said he is a small business owner in Aiken, and he knows there are voices that need to be heard. He pointed out there have been a lot of changes in the past six months. There have been major decisions that have had to be made. He said with the changes that could be the reason why this has been postponed some. Council is listening now and would appreciate the concerns being presented in a nice manner. He said Council has heard the improprieties that the group says are going on with the business license. All of those have to do with policies that Council has made. He said Council is reviewing those. He said they would assure Ms. Nix that all improprieties will be done away with regarding the business license fee. He said this meeting will set the agenda for the next Council meeting to deal with the issues.

Ms. Nix stated they have been nice for eight months. We have questioned. We have asked. We have not had our questions answered. We have received lectures from the Mayor. We have been here for eight months. She said she was a business owner with two businesses. She said she gets up at 4:30 a.m. She said while others may be busy, she felt she could run circles around them in 24 hours and do what they might do in one week. She said being busy does not fly with her. She said it would not fly with her if her employees told her they had been busy but had not gotten their job done. She said she wanted to be clear. When you are doing what you are doing, you are stepping into something you don't want to step into. There is no way you will be equitable in asking everyone to bring in their tax returns. She said to get the County to bring in their tax returns would be political suicide. The easiest thing to do is what Columbia, Greenville, and Charleston do. All they do is say here is your renewal form, tell us your gross receipts, send us a check. We love you. That's what the businesses do. She said that is what they are asking for. She said to check the form if you want to be audited is ridiculous. She pointed out the business would have to pay to get a letter from a CPA. They charge for every minute. She asked that Council honor the businesses and trust the businesses. She said with all the other things they are fighting now, why do they have to be here fighting this. She said the staff is hostile and the issue has escalated. She said all Council had to do from the beginning was to make a decision, but Council did not. Council dragged it out. They are here tonight, and it is late and they still have to listen to somebody that we don't want to listen to because we know they betray us after this is over.

Councilman Dewar stated he thought Council had heard the small businesses and understand what they are saying. He said he doesn't need another 50 small businesses to come up. He said he would like to let Mr. Cheek finish and then listen to Danny Crowe and the guests. He said the small businesses message is loud and clear and some changes need to be made.

Mr. Cheek stated Gary Smith had been quoted as saying all businesses have to be treated the same. He said that is what the small businesses want. They want to be treated the same and want to be trusted. It appears that City Council has created a hostile business environment by not trusting its businesses and by letting their department heads, especially Mr. Kirkland and Ms. Abney do what they want to do with the Finance Office. He said it appears that Council has lost control over the staff that runs some of the offices. He said Council should get them back to working for the people instead of working for the bureaucracy. He said they are present because they know it is unfair and illegal. He said they don't like it at all. The Finance Office is doing whatever they can to jerk every nickel they can and every illegal way they can possibly do it. He said Council is defending their actions so Council is creating the hostile environment. He pointed out there is a Code Enforcement Officer that wears a gun and walks into people's places of business wearing a gun saying take down that banner that sign is too big. He said there is not a code on the books in Aiken that says it requires legal force to enforce. He said that is hostile to small business. He said the department heads are doing whatever they want to do and are overreaching their power and authority. He said Council is creating a hostile environment. He suggested that Council get their staff, department heads back under control and work for the people, not support your employees. Council is saying they are not wrong and the citizens are. He asked Council to get the law changed so the small businesses have equity with the large businesses. He said they know that Mr. Kirkland and Ms. Abney are out of control and have created a hostile environment endorsed by City Council. He asked that Council take a stance as a strong City Council and ask for their immediate resignation.

Councilwoman Price stated she felt one reason the matter had escalated is that it has taken much too long. She said when a situation is not addressed, the matter escalates. She said she felt there would be some resolutions to the matter by the next meeting and felt they would be happy with it. She said she takes personal responsibility as a City Councilmember for not moving aggressively in terms of getting some resolution to this issue quicker. She said it is not the staff. Staff only does what they are allowed to do by Council. She felt we should not point fingers at them. If they have done something illegal or severely wrong, then we look to the City Manager to correct the problem. But in terms of policy it is Council to whom the fingers should be pointed.

Councilman Ebner asked if Code Enforcement Officers were wearing weapons as indicated by Mr. Cheeks.

Mr. Pearce stated Code Enforcement Officers do not wear weapons. They don't have the power to arrest. They do have the power to issue an ordinance summons and give them a court date only.

Ms. Nix stated she wanted to make a statement—let me be clear. She said she felt the reason other cities do not require the income tax verification for gross receipts is that it is a Pandora's box. She said there will be discrimination. They have to deal with big boxes. Richmond County taxes by employees not gross receipts. She pointed out the federal income tax is an honor system. They accept what is turned in, and if there is something wrong they come to get you. She said the city has the right to audit the businesses. That is very clear, and they understand that. She said she wanted to be clear what the small businesses want. She said they want what 96% of the other cities in the State of South Carolina enjoy. She said they want a renewal form that they can do on line, fill it out, and write a check. If there is a question, we will be happy to show you our gross receipts. We will bring them in. We will let you come to our office. She said they will show the return to the city if there is a problem. That is fair. Also, there is none of this being in the city, in the county. There is none of this taking their tax return to the clerks who take the water bills. There is no extra staff. There is no extra funding. It is a

very simple solution. That is what they want the city to do. To abide by what 96% of the other municipalities in the state of South Carolina do. These cities include Columbia, Greenville, and Charleston. She asked what will be done when the businesses pay too much in taxes. She said the city didn't have their gross receipts so they could be deducted on the tax return all these years. She stated the city had discriminated against small businesses. She said for a business to deduct the gross receipts, there has to be a deduction and a calculation on the form, but this has not been on the form in the past. She wanted to know what will be done about the fact that they have been discriminated against. She said Mr. Pearce had admitted in a memo that now they are going to be fair. Everything is going to be equal now that the city is going to make everybody submit their tax return. She wanted to know what Council is going to do for the small businesses for what the city had done to them.

Mayor Cavanaugh stated we have been talking about fairness and everyone wants to be fair.

Mr. Richard Pearce, City Manager, stated he had heard a lot of concern on the part of a lot of business owners. He stated he would like to state publicly that the city had the business forum last summer at the request of small businesses. He said the results of the meeting were compiled and published. He said he and Councilmembers Ebner and Wells sat down with Ms. Nix, Ms. Vaughters, and Ms. Lipscomb to talk about what could be done in the Strategic Plan to help small businesses. We talked about forums such as this to provide people an opportunity to come in and talk about their business concerns. He said his feeling is that he is being screamed at tonight. He said if that is a measure of the frustration level, then he agrees with Council that it is time to address it and address it in a way that is fair to all businesses. He said Aiken, Bennettsville, Chesterfield, Clemson, Clover, Easley, Greenwood, Greer, Laurens, Mauldin, New Ellenton, Pendleton, Springdale, Surfside Beach, Union and Woodruff all use what Aiken uses to verify gross receipts for businesses. In speaking with staff, prior to 2002 the city allowed the filling in of gross receipts. We did use our auditing power, as that is what Council had given staff. Staff could spot audit to check numbers. Staff found out that conducting audits created far more acrimony than the comments in the room tonight. The thought was how to make it the most convenient for businesses to provide the city with verification of gross receipts. He stated Mr. Crowe is present at his request, as well as the two gentlemen from the Municipal Association. He said a survey had been conducted to see who was using the same method as Aiken to verify gross receipts. The thought was it would be simple if a city business, or out-of-city business, could file their renewal and show the gross receipts to determine the amount of business license to be paid. The first year this was done, which was 2002, the city saw an increase in the business license fees of \$150,000. He said at this meeting he sees a lot of focus on penalizing, penalty and taking away. He said that was never the intent. The city's intent is that the amount of business license fee that is paid is a fair amount based upon a national system, based upon the gross receipts, which is what the state of South Carolina says must be used. He said there are other stories where businesses have paid too much money, and the city has allowed them to file a revised form because they over reported the amount on which to base their business license fee. In trying to determine the fairest method for verifying the gross receipts that was not an invasive audit, the only thing the city was asking is for businesses to share the information they have already shared with the federal and state governments. The city does not need the whole tax return. All the city needs is the gross receipts figure. He pointed out on the copy furnished to the city everything can be blocked out except the business name, the gross receipts, signature and date. He said this seemed to be the least invasive, because the business was filling in the paperwork that had been filed with the IRS. The date for filing of the gross receipts report for business license was set to be the end of July. The timing seemed to be fair. We wanted the information provided to be fair. The tax information is shredded after being reviewed and verified by staff. He said he has to take exception to assertions that the city has done nothing, and eight months has gone by with no action. He pointed out the booklet "Doing Business in the City of Aiken" is on the website. A Strategic Plan has been adopted in which the city said they would help small businesses. He said the city wants to help. He said the last thing he wants to do when he leaves his office is to think that he treated someone unfairly. He said he had to take exception with the assertions in the room that there is some kind of power gap. He said serving as City Manager he is under the most scrutiny

he has ever had in his entire professional career. Treating people unfairly would not gain him any advantage at all. He said he wants to do what is right for businesses. He said many people hate paying taxes, and he is one of those people. He said the system was set up back in the 1930's. He said looking at the 1930's ordinance, people paid more money for their business license than they do today. He said the city's business license fees, like the water and sewer fees, are among some of the lowest ones in the state. He pointed out the enterprise fund, which is water and sewer, is separate money and has to be kept separately. He said some of the projects that were mentioned were the result of the One Cent Sales Tax. The way the City of Aiken has been successful is that everyone pays a fair share. He pointed out that most people are paying \$100 or less for a business license each year. He said a revised letter regarding the business license had been provided to Council, as the old letter could be confusing, with the person thinking they had to send in the entire tax return. The form has been revised so people will understand. He said one sheet of paper can be sent with the application with personal information blocked out. He said the gross receipts will be verified, and then the document shredded. He said we had heard the concern that businesses don't like doing that. He said staff, wanting to be fair, not trying to inconvenience people or invade their personal space or go into their business, tried to come up with other options. He said the other options had been included for Council's review. He said if a business does not want to show their state or federal tax return, that is fine. If the business is a retail business they can send in the Sales and Use Tax, a Profit and Loss Statement, or an income statement. When a business has trouble trying to decide exactly what business they have done in the city, Mr. Kirkland will work with them so they can better identify the business done in the city. If the business is not a retail business, there are other choices. A standardized form has been developed so that CPAs can complete the form. He said this is a choice. The city is not telling the business to incur the expense of a CPA to verify the gross receipts. The intent is that if a person does not want to give their tax return with the limited information, then there are other choices. The CPA can send a letter. If the business does not like any of the choices, then the city can come in and audit the books. He said staff does not want to do that and considers it invasive. He said the experience over the years has been that, rather than create a good working relationship, an audit creates acrimony that is long standing. He said staff would rather treat people fairly and have a system that everyone is comfortable with and least inconvenienced by. Staff is not on a power hungry role. They are in the process of taking the city ordinance, that has an audit capability, to verify the gross receipts. He pointed out that sometimes people don't report the right figure. Sometimes it is a complete mistake, and sometimes it could be totally on purpose. He said the point is that staff has to have a mechanism to help businesses report the correct amount of gross receipts, and then if they have not paid enough they need to pay their fair share. If they have paid too much, staff needs to make sure they pay only the fair amount they owe and nothing more. He said if a business feels they have overpaid on the business license tax, they need to provide the city with proof that a business license fee was paid elsewhere, and they are entitled to a deduction. Staff will review that. He said he felt it had been agreed that it is not a perfect system, but staff is trying to make sure they treat people fairly. If we can clarify what we have, we can try it and see if the experience is a good experience. He said staff can make whatever changes Council feels is appropriate. He said he works for City Council, and Council does work for the citizens. He said his concern is that the information that has been batted around and shared is not necessarily the whole story. He said we have some long-serving staff members, and they have the experience of what it was before we had the system to verify the gross receipts. The only reason the city went to the verification of gross receipts was because we had indications that people were not getting it right and filing incorrect amounts. He said staff had tried to find the most expedient, least intrusive way to determine the gross receipts. He said he understands and has heard the comments tonight and has been in all the other meetings. He said the matter had been discussed at Horizons, which is a goal setting session of Council. He said he wanted to put the issue on the agenda for February 28, but it was decided it should be a standalone meeting. He said his understanding is that there are two issues. One, some people don't like showing their tax return to verify gross receipts. Second, there were people concerned as an in-city business that they were handled at a higher degree of scrutiny than those outside the city. He said staff wanted to provide the background to show that they hear the concerns and wanted to make sure that everybody's business license fee payment is verified. He said staff found that many of the out-of-city businesses just file a consolidated tax return.

Some do business in more than one state. The reason for setting up the proposed system is to provide those businesses an opportunity to inform the city what income they have earned in the City of Aiken. They know what business they have done in the City of Aiken. He said he appreciated the concerns of the florist in trying to determine what business he does inside and outside the city. He said the business license official can help him through the process. He said they are trying to verify gross receipts for the out-of-city business with the best method available. He said the tax form that shows gross receipts shows receipts for the company state-wide or nation-wide. He said they have to figure out what they have earned in the City of Aiken. He said that was the reason for the provisions in the memo provided for this meeting. He said staff is always willing to try to figure out the best way to do that. He said staff is trying to be fair despite some of the claims to the contrary. He pointed out Aiken is not the only city verifying gross income through the tax form.

Ms. Nix stated "Mr. Pearce has lost great credibility. It is his staff that discriminated and under his watch. It is your staff that let this happen—that you discriminated against small and large businesses. She stated staff had not answered what will be done about Walmart or Aiken Regional. You have lost great credibility. She said she had to pay out of her pocket so people would know about the meeting. She said nothing had been sent from the City of Aiken notifying businesses of the meeting. She said Mr. Pearce had lost great credibility because he had discriminated against them. There was a business license that did not allow them to deduct their gross receipts. She said others had been invited to the meeting to speak, but small businesses were under the impression that you wanted to hear from small businesses. We have had to fight you tooth and nail the whole time. You have lost great credibility with these businesses. On video you have said that you were not equal. You still have not answered the question of how you are going to make it up to small business for overcharging them for their business license. She pointed out that the cities listed as using income tax to verify gross receipts were very small cities. She felt it was ridiculous to compare Aiken to these small cities. She felt we should be compared to Greenville, Columbia, or Charleston. She felt there was still going to be discrimination with the business license and how receipts are verified. She said Mr. Pearce is saying you are not going to do what small business has asked, but you are going to do more. She said she was saying to City Council that they had better watch. She wondered if they realized this could be a legal matter."

Mr. Pearce stated on video at Horizons he had very plainly said that the goal of the City of Aiken was to treat businesses fairly. He said he was sorry Ms. Nix did not feel that she had been treated fairly. He said his office door had been open.

Mayor Cavanaugh stated Council had not been able to respond. He said Ms. Nix had no idea what Council is going to do. He said he was beginning to think the best way would be to do away with verifying the gross receipts and have the ability to audit.

Ms. Nix stated other cities do not threaten. If they see a problem they call you. She said she had been told by some other cities that there had been a lot of chatter on the chat list about this. They suspect that the Municipal Association would love to see this spread across the State of South Carolina. She said there is a reason the big cities don't do it. She pointed out that no one had mentioned that they had discriminated against us. She wanted to know what they were going to do about discriminating against them.

Mr. Pearce stated Easley, Greenwood, Greer, and Surfside Beach are cities comparable in size to Aiken. He said it is not the city's intent to discriminate. It is our intent to fairly collect the tax. In the state of South Carolina cities are authorized to collect business license fees that are based upon gross receipts.

Councilman Dewar stated he had been on the side of Ms. Nix for the most part, but he felt we were getting carried away with two words. We are getting carried away with discrimination and with audits. He felt we were over stimulated by the use of those words. He said in the past the city, right or wrong, had made a best faith effort to comply with the ordinance that Council approved. We have maintained for a long time that they did it differently for businesses inside the city and outside the city. He said we all agree

on that. He said he felt that was going to be one of the major issues that we have to work on. He said he was not sure that what he had seen in the agenda packet is what will be done. He said he guess the word discrimination could be used, but he would not take it in the way it is normally used socially, because no one got in the back room and said how can we put it to this group of business owners and how can we put it to that group of business owners. He said he did not feel that it was a conscious act to do harm to anyone in the community. He said, with regard to the audit, the city gets an audit every year from Elliott Davis. He said that is not the kind of audit we would do. He said he would take the business' word for the gross receipts, and if the receipts were way less than last year, that would be a red flag and someone would contact the business and check on the reason for less gross receipts. He felt it would be more of a verification, and not like the audit done for the City of Aiken. He said maybe the type of audit should be structured. He cautioned not to get too emotional with the word discrimination and audit because they mean different things to different people.

Ms. Nix stated the words do mean different things, but if she is black and you are white and there is a separate rule for the two that is discrimination. She said there are separate rules for small businesses and large businesses.

Councilman Dewar pointed out it is not just small and large businesses, but it is different rules for in-city and outside city businesses. He pointed out Walmart is inside the city, but they do not have to bring their tax forms. He said that is part of the issue. He said he was hoping there could be something for Council's action on the agenda for the March 28 meeting. He said he felt Council had gotten the message and understands what the task is.

Ms. Nix stated the Mayor had always opened the microphone for citizens to speak no matter how late it was. She said she appreciated the Mayor doing that for the people that want to speak.

Mr. John Wade stated he had some questions for the Municipal Association and also for Mr. Crowe. He said in listening to everyone talk, it seems there is a bigger issue than just the business license. Mr. Wade stated the meeting for the business forum was not what the small business owners wanted. It was a staged set of questions, and they were answered. He pointed out it had also been discussed about having a Small Business Committee to act as a liaison between the businesses and Council.

Mayor Cavanaugh stated a Small Business Committee was suggested, but many people felt it was not a good idea. He said he personally felt it would be a good idea. He said he wanted the issue regarding business licenses to be on the next agenda if possible so Council can take some action.

Councilman Homoki stated he was not sure they have enough options to put it on the agenda to vote. He said he understands everything is not treated equally. He said he understands the frustration of the small business people. He said he felt Council had not gotten any closer to a solution. He said he had made a note to look at a three year program with a sunset clause to see what the gross receipts will be for three years. Then Council can make a decision as whether to go back to verifying gross receipts by income tax, a CPA letter verification or just an audit. He said then Council could see what the impact will be on the revenue. He said if the revenue is adverse and it is felt the reporting is not standard, the city has the right to audit the businesses.

Mayor Cavanaugh stated he felt perhaps Council was close to a solution. He said an option was to do away with the present rules and accept the word of the businesses for the gross receipts. If there is a big difference in gross receipts from last year, then the city can audit.

Mr. Wade continued his comments. He said he understands that a business in the city pays a license on gross receipts listed on the tax form. If a business is in the city they pay their license tax on the gross receipts, no matter if the business is outside the city. The only recourse is if the business pays a license to another city, they can deduct those gross

receipts from the City of Aiken's gross receipts, otherwise they pay on all gross receipts to the City of Aiken. He wondered if there was a way to only pay to the City of Aiken on business done in the City of Aiken. He pointed out he has no complaints about the amount he pays for a license to the City of Aiken, as it is a small amount. He said he did see where one might feel that it was not fair to pay a license on the amount of work done in the county. He said perhaps the County should charge a business license for the work done in the County. He stated he has the same issue that the gentleman from the florist has. He pointed out it is difficult to know what areas are in and out of the city. He said he does not have time to check each address as to whether it is in or out of the city. He said some years ago when business licenses was discussed, there was a listing of the classifications of the businesses. He said he would like another copy of the classification list. He said when the licenses was discussed he thought he remembered that the rates for the classifications were based on information for the previous five years. He pointed out that the economy has changed, so he was wondering if there was a way to look at more recent information. He was wondering if the City of Aiken can set its own rules or if the law requires the city to follow certain rules. He stated he had had a problem with the city's highway overlay district. He said his problem was for the city to be able to require a commercial business to come into the city because they needed city water or sewer. He said he was opposed to the city being able to require annexation to get city water or sewer.

Mr. Pearce stated Mr. Crowe could answer some of the questions. He said the state statute is what the city has to follow. He said the law talks about levying the business license fee on gross receipts. He said they were able to work out something so that if a business is paying a license to another city, then those gross receipts can be deducted from the gross receipts for the City of Aiken.

Mr. Danny Crowe said everyone always wonders who is paying the lawyer. He said no one is paying him. He said he was present because he likes municipalities. He said people can't go in front of the General Assembly and say the things they said to City Council in front of the General Assembly. They would not give you three hours to talk. You can't go to Congress and talk to Congress like you talked to City Council. He said that is why he likes municipalities. It is the government closest to the people. The municipal government is the one that hears your complaints. The municipal government provides you with water, sewer, fire, and police. He said this is the government that he likes. He said he was present because he likes the City of Aiken. He said he worked with the City of Aiken when he worked with the Municipal Association as their general counsel from 2003 to 2005. He said he had known Richard Pearce, Lex Kirkland, and Al Cothran for years in connection with his work for the Municipal Attorneys Association and also as an advisor for the Business Licensing Officials Association. He stated Aiken is very respected state-wide for its municipal government. Aiken's City Managers have always been well respected. Richard Pearce is well respected. Aiken's business license administration has always been well respected, and they have held positions of prominence in the Business License Association. He said when he heard about some of the complaints that were being levied, he thought he would love to come, talk and answer questions of Council and of the public. He said he had enjoyed being present tonight. He said he was very much a believer in democracy, but he is also a believer in being informed and not reacting on emotion, but reacting based on reason and rationality.

Mr. Crowe stated he had heard a lot of misperceptions about business licensing and how it works. For example, there has been a lot of talk about the privacy of the federal or state tax return. He said today any municipality in the state that levies a business license tax, whether they require verification upon application or not, can confirm gross receipt information from the federal and state tax returns with the IRS and the state government. He said all they have to do is ask. He said we are talking about whether you will require the city to contact the federal and state governments to get gross receipt information which you have sworn to be correct, or whether you will attach that information to the business license application which you swear under oath is accurate. If you did file an accurate federal and state return, and you did file an accurate business license return with the city, one has nothing to worry about by providing a copy of that portion of that page that shows the gross receipts to the city. Who really objects to accuracy? Who would object to that kind of accuracy? He said he was a child of the 1960s and they said in the

1960s you follow the money. He said who would object to accuracy? If you are being truthful in your return, you have nothing to be concerned about. He said he had provided a copy of the state statutes on confidentiality of county or municipal taxpayer information. He said he wanted to provide a copy of that to City Council. He said he knew they were aware of it because they were trained by the Municipal Association. Just to underscore, this information that is provided is confidential and there are penalties if anyone with the County or municipal government uses it in a way that is not provided for in the statute. If it is not for official business, if it is not for the publication of statistics that don't reveal the individual business, then that person can be tried and convicted of a misdemeanor, fined, sent to jail for up to a year. They can be required to be dismissed from office, and they can be disqualified from holding any other public office for five years. He said with those kind of stiff penalties, none of these staff people would want to share this information with anyone else. What you have heard from Mr. Pearce about the procedure of the city is that these returns that show the gross receipts are shredded and destroyed or returned, if they are requested to be returned after the city verifies the information. Who is afraid of verification? Why would anybody be afraid of verification? What are we really talking about? He said if all this information is accessible, would you require the city to hire extra people to contact the state or federal government and confirm this information or do we look to our taxpayers to provide the city with sworn information that they have already provided to two other levels of government. What is really at issue here? What are we really talking about? He said he hears what they are saying when they talk about the difference in treatment between in-city and out-of-city businesses. He said he looked at the proposal that is in the Council packet that Mr. Pearce talked about. He said he felt that the new proposal on how business license administration will require verification of information from out-of-city businesses is good. He felt it is reasonable, fair and lawful. The reason they can't just ask for the gross income information is that the out-of-city businesses only pay the Aiken city business license based on the business they do in the city. The federal income tax return does not break down work done in the city and out of the city or for work for more than one city. The information is not helpful in verifying the accuracy of the out of city business' gross receipts. He felt the new proposal by the city that also requires verification, but requires it in other forms will ensure that everyone is subject to verification. He said we all know that not everybody tells the truth. He said because a small group of people don't tell the truth, the rest of us have to pay the price of making sure that everyone pays their fair share. He said Ronald Reagan said in the 1980s "trust but verify." He said that is what the City of Aiken is talking about. He said it is not whether each person is being treated with dignity by the city, but it is that we all have to verify because some few number of us are not accurate or not truthful. He said that is probably why we have to attach the W-2 to the federal income tax return.

Mr. Crowe stated he appreciated the chance to come before Council and the chance to look at the proposals that have been made. He felt the proposals do conform with South Carolina law. They are fair, reasonable and are an effort to treat those who have to pay a business license fairly and equally to the extent that those federal and state income tax information provide the information that the city needs. He said he understood there had been some concerns about the July 31 filing date, and whether that allowed businesses adequate time to have determined their gross income for the previous year. He said most municipalities have an earlier date. He pointed out the City of Cayce has an April 15 business license due date. The information he has seen, and the proposals by the city that Mr. Pearce provided, show that the city will work with those who have requested extensions for filing taxes. He said there is an effort to address some of the problems that our federal and state taxing systems pose for cities. He said the city business license tax had been around for a long time. He said municipalities in South Carolina have been allowed to impose business license taxes since the initial municipal charters. He said he had read cases from as long ago as 1873 where municipal business license taxes were upheld. Beginning in 1975 there was an effort to bring some standardization to the municipal business license tax. At that time the Municipal Association created a model ordinance through Roy Bates who drafted Aiken's ordinance. About one-half of the municipalities in South Carolina that actually impose business license taxes have followed the model ordinance. Every version of the model since 1975 to the present has had a provision that provides for verification of gross income by the taxpayer providing federal and state tax records, and has also provided for audit at the option of the city. He

felt that verification of gross income by providing that information from the federal tax return is really the preferred method of obtaining this verification for municipalities. He felt Aiken should be applauded for trying to do that, because, as has been mentioned, the submittal of that information with the license application avoids the additional expense for the city of trying to contact the federal and state government and confirming the gross income information. It also avoids the very real expense for both the city and the taxpayer of audit. It also avoids, as has been mentioned, a further intrusion into everyone's financial privacy by audit, as well as the ill will that comes with an audit. He said he had been involved where cities had audited businesses. It is very expensive and time consuming, and it does create a lot of ill will on the part of the business involved. He said what has been proposed is the most efficient and most economical and least burdensome method of verifying gross receipts information. It is the same information the city could get if they have to go through obtaining it from the federal government or the state government. He said ask yourself what is really behind this objection to providing the verification. Who objects? If it is confidential, if it is protected by state statute from being disclosed to outsiders, and if it is the same information that the city could obtain any way from the federal or state government, who really objects to providing that kind of verification and why.

Mr. Crowe stated he appreciated the chance to come before Council. He said he was pleased to echo a lot of the things that Richard said in the case of what has been proposed for how business license administration should deal with the issue of verification.

Mr. John Wade stated if the city can get the gross receipts information there is no need for him to turn in the tax return with the license application.

Mr. Crowe stated that could be done, but it would increase the city's expense as there are 4,000 business licenses that would have to be verified by contacting the federal or state governments.

Mr. Wade stated another question was that his business does business outside the city in the county, but he has to pay a license on that money that he is earning somewhere else and not in the City of Aiken and not in another city.

Mr. Crowe stated he understood the question and he used an example of someone doing work in North Carolina, not being taxed in North Carolina, but being taxed in South Carolina on the work. He felt it would be fair for the work to be taxed in South Carolina, the state where he lives and works. He said if you pay a tax on income in another jurisdiction, the state statutes say that counties and municipalities have to give one credit for the tax paid somewhere else. He said there is no double taxation. He said the way the business license is structured is the way the income is taxed, because it is taxed on gross income, not gross income earned just in a particular city. The court cases have ruled just as Aiken operates. He stated no other taxing entity is capturing that income. He pointed out the state has limited the ability of municipalities to impose other taxes. He stated some counties have a business license fee. He also pointed out that businesses outside the city pay double the in-city rate to do business in the City of Aiken.

Mr. Wade stated since it is legal for municipalities to charge the business license tax, is it illegal for the municipality to not charge a business license fee for the work outside the city limits not taxed somewhere else.

Mr. Crowe stated in his view it would bump up against the state law that says the tax is based on gross income. He said the law does not allow for an exception for that. He said in his view he would say you can't do that under state law. He said other people may take a different position and the courts might have to decide. He said so far the courts have upheld the right of municipalities to capture that taxation.

Councilman Dewar stated he felt Mr. Crowe had missed a major point of what was heard tonight. He said the concern was that when a business is outside the city and does business inside the City of Aiken there is no way, by looking at the tax return to the federal or state, to determine what gross income was done inside the City of Aiken. He said he thought he heard him say that he endorses the idea that the City of Aiken would

get tax forms from the businesses outside the city that do business inside the city. He pointed out the tax forms for those outside the city will not help verify their gross income inside the city. He said a lot that had been heard tonight was that the small businesses within the city, the florist in the city, the medical practice in the city, the restaurant in the city are all required to provide their tax forms to the city, but to some is an embarrassment. He said the government has the right to have it, but the small businesses look at it as an element of fairness. Those inside the city have to provide their tax form for verification, but the florist and other businesses outside the city just have to give the city an amount which cannot be verified. He pointed out Mr. Crowe had used audit in a true financial sense. He said he hoped the city did not get to the point that we would go and do an official audit and verify every penny of their income statement, when all the city wants to verify is the gross income. He said he felt we still have to figure out how we will deal with the county businesses that do business inside the city regarding how to verify their gross receipts within the City of Aiken in a fair and equitable manner with those businesses that are within the city.

Mr. Crowe stated he agreed that providing the tax form with the application does not work. He said that is not a practical solution to the problem. He stated the city gets some type of tax information. He said businesses that have consolidated or separate profit centers like a Walmart show their gross income in a particular location. He said that information is obtainable. He said he agreed that part of the policy responsibility of Council would be to balance the burden of reporting with the end you hope to achieve, which is a fair payment of tax. He said there has to be some reasonableness there. He said you have to come up with a reasonable documentation that will provide the verification of income. He said in his view the city is trying to do that with the letter that was in the Council packet from Mr. Kirkland which says if the return does not provide the necessary information, please provide something else that provides that information. He said it may require some record keeping by the individual business.

Councilman Dewar stated Council could agree that the city will accept whatever the business reports as gross income. We will accept whatever adjustments to gross income the business provides. He said the city could change the program to accept whatever the business tells us is their gross income. He said it is the city's obligation to make sure they clearly understand what is needed and the only adjustments they can make from gross income by state law, as he understands it, is for income that has been taxed elsewhere. All other income, unless it is taxed elsewhere, is payable to the City of Aiken if the business is located within the city.

Mr. Crowe stated it goes back to the obligation of Council as a legislator to act reasonably, rationally, and within mind, your duty to be a public steward of public money. The situation would be that if you don't put adequate systems in to ensure that you get appropriate monies in, that has to be made up somewhere else in order to provide the city services that the public wishes to have. You have to be a good public steward of the money coming in as well as the money going out. There has to be an effective, efficient, appropriate, fair and reasonable system in place to do that.

Councilman Dewar stated the city accepts the gross receipts from Walmart, Walgreens, Target, etc. stating their gross receipts. He wondered if we had challenged them on their gross receipts. He said it is a matter of fair treatment. He said it is hard to say to the realtor inside the city that we need to see their tax form, but for the people from the 36 other states we take their word for their gross receipts. He felt Council has an obligation to be fair to every business whether inside or outside the city. He said he recognizes that obligation. He said he would recognize the professional competency of the Finance Department to look at what is submitted this year compared to past years, and if there is a difference, that staff would take the appropriate action. He said if the city is entitled to the income he wants the city to get it. He said he would expect the businesses to be honest, but the city always has the mechanism to go back and check.

Mr. Crowe stated those types of business may be the easiest of the big businesses. He said they do report by profit centers. He said Walmart knows exactly how much it makes from a particular store location. He said this is where balancing the reasonableness and

the public duty with the burden on the taxpayer comes into play. He said Council is always required legally to act reasonably and rationally. He said you can't arbitrarily close your eyes and cover your ears, that would not be good public stewardship.

Mr. Pearce stated that would be part of the verification process described in the memo given to Council.

Ms. Jane Page Thompson asked whether the city could tax the city businesses just for gross receipts for work inside the city just as taxing the businesses outside the city on work done inside the city. She felt this would be a level field for inside and outside the city businesses. She pointed out Aiken Properties' business is located outside the city, and they only report to the city the gross receipts for business inside the city. Their word is taken for the gross receipts. She pointed out Carolina Real Estate made an investment and restored a building in the commercial center of town. They pay 100% on their gross receipts whether inside the city or outside the city. She suggested for businesses inside the city that the city use gross receipts just for business in the city just as we do for businesses located outside the city. She said that would be one way in a bad economy and a struggling business environment where businesses within the city could be helped.

Mr. Crowe stated he felt the playing field is level because all the business being done in the City of Aiken is being taxed. He pointed out municipalities have the authority from the state legislature to tax businesses within the city on 100% of their business that is not taxed elsewhere. He said there is no exception for carving out that kind of approach to taxation. He said his answer would be that the city could not do that. In response to a question from Ms. Thompson whether the city could elect to not charge a business license at all, Mr. Crowe stated if Council elected to do that they would have to give up the tax that they are receiving from the telecommunications tax program, the insurance companies, etc.

Mr. Pearce pointed out the revenue from business licenses is over \$8 million. In response to a question from Ms. Thompson as to the revenue from the One Cent Sales Tax, Mr. Pearce responded that the projected revenue from the most recent vote for the One Cent Sales Tax is \$44,600,000. However, that money must be spent on the projects that were listed on the ballot. The money has to go for those projects.

Ms. Thompson said the City of Aiken has always been leaders and ahead of other municipalities. She said perhaps the City of Aiken could go to the legislature in Columbia and say we don't want to charge our businesses a business license tax. We would like to be able to charge 23 cents sales tax to every transaction in the City of Aiken so we could make up for not charging for a business license tax.

Mr. Crowe pointed out that no one paying a business license tax is paying more than 1% of their gross income for their business license. He said a 23 cent sales tax would be a 23% tax. He said a business license is less. He said he understands for an in-city license the highest rate is like .2 of 1%. Out of the city is paying .4 of 1% for a business license.

Councilman Homoki stated he had made a comment earlier regarding an honor system with a set time of three years and there seemed to be comments from the audience. He wondered what the objections were to such a system for three years.

Mayor Cavanaugh stated Council always has the prerogative to go back to a previous way of doing things if they wish.

Mr. Butch Bowers stated he is a lawyer in Columbia. He said he is paid to be present and has been retained by Dee Dee Vaughters. He said Danny is a well respected attorney, and he knows his business. He said Danny has said he is a city guy, and he is well known as a city guy. Mr. Bowers stated he is a citizen guy, and he is present for the citizens. He said he had read a lot of material related to this issue. He said it seems to him that unless Council does make a change along the lines of what the Mayor has recommended, that you are perilously close to an equal protection violation. He said there seems to be different treatment between the big boys and small businesses. He said there seems to be

different treatment between the out-of-city and the in-city. He said he had not heard a rational basis for the different treatment. He said there seems to be a serious equal protection claim that could be resolved with something along the lines of what the Mayor said. He urged Council to give the Mayor's recommendation a strong consideration to avoid potential legal issues. He said he was not making any threats. He said from his perspective as an attorney it seems there are some serious equal protection issues. Secondarily, there also seems to be a potential dormant commerce clause. It seems like a dormant commerce clause issue. It seems to be restrictive of interstate commerce. The policy as it is enforced now appears to be restrictive of interstate commerce. He said earlier a property owner stated the business license fee as currently imposed is a disincentive to improving his property. It is a disincentive to hiring employees, and to doing additional business. He said earlier Mr. Crowe had said that the South Carolina Supreme Court has ruled that the city can capture untaxed gross receipts. He said he did not dispute that, but he would say that it might warrant a second look under the dormant commerce clause theory. He said those were the two things he had heard from a legal perspective. He said the primary one was the different treatment of the little versus the big and the in-city versus the out-of-city and a potential equal protection claim. He said Mr. Crowe had stated that local governments can confirm gross receipts from the federal and state governments. He also stated that Walmart knows the gross receipts generated for each of their stores. The point is that the city does not ask for the specific information for the store.

Staff responded that they do verify the gross receipts for the Walmart stores with documentation. Mr. Pearce asked since the city is verifying whether in-city or out-of-city does that address the concern. He said to the extent that the Business Licensing Official is verifying both in-city and out-of-city would that address that particular concern.

Mr. Bowers responded no. It addresses a portion. He said it would address the concern if it is verified in exactly the same way. He said from what he has read and from what he has heard it is not verified in the same manner.

Mr. Pearce stated if the city has a consolidated return for a multi-jurisdictional business, and we verify the income for the City of Aiken, does that address the concern.

Mr. Bowers stated he felt it does not.

Councilman Dewar stated it is still a number that is chosen for the gross income that relates to the business in the City of Aiken, whereas the business in the City of Aiken gives a tax form with the gross income. It is a different way of getting the information. One, you are taking their word for it. For the other, you are saying we need a tax form.

Mr. Scott Slatton, of the Municipal Association, stated it is not an arbitrary number. He said the Walmart in Bentonville, Arkansas, is not taking the gross receipts for every Walmart in the world and then deducting the sales for each of the separate stores from the report. He said they have a separate report for each of their locations that is a verifiable number for each location, such as the Walmart in Aiken. He said when it comes to the question of verification, that is being done.

Mr. Crowe stated he disagrees with Mr. Bowers. He said we are not talking unequal treatment for businesses. He said the law says you can't treat like things differently. He pointed out these are unlike things so they can be treated differently. It is inherent in the nature of the business and how it reports its income to the other governments. So they have to be treated differently because they are different in how they treat their income reporting. He said that is not discrimination. It is not unequal treatment because they are not like things.

Councilman Dewar stated they are like businesses within the City of Aiken and to burden one with the requirement to bring a tax form to the city without the same equal burden on the other seems to be different. He said the law may allow it to be operated that way, but it makes those who have to bring the tax forms not happy campers.

Mr. Bowers stated he disagrees with Mr. Crowe and feels they are like entities, and that it is disparate treatment. He said to address Mr. Pearce's question to assume that verification is identical, does not address his different treatment concern. He said it does not.

Mr. Pearce stated he was hearing the concern that the city is not verifying the gross receipts number reported. He said if somebody is in the City of Aiken and the gross receipts for that business are what they report on the income tax form that is a verification method. If somebody is outside the city, but doing business inside the city that income tax form will show all their book of business, but the City of Aiken only needs to verify the book of business inside the city limits. He said if there is a financial record that shows the book of business just inside the city limits, the city would still be verifying. By the nature of the beast a different form has to be used for the verifying process. Mr. Pearce stated he was trying to get to the issue of filing by businesses outside the city limits of Aiken and how Mr. Bowers feels this can be verified.

Councilman Dewar pointed out that some of the gross income for the business could be subject to taxation elsewhere and there has to be an adjustment. He said just a gross income number is still not valid. It could be downward adjusted by income that is subject to taxation by another municipality.

Mr. Pearce stated he was trying to get to the issue of filing by the businesses outside the city limits of Aiken and how Mr. Bowers believes we can verify that.

Mr. Bowers stated the point is that the gross receipts on a small business are difficult to verify. He pointed out the doctor who spoke earlier is a sole practitioner and there may be additional income shown on his gross receipts documentation that probably should not be subject to taxation by the city. He said he was not talking about disparate treatment without harm. He said he was talking about the gross receipts that could show receipts that are not necessarily subject to taxation by the City of Aiken. He pointed out investment income on his income tax return may be shown as income. He pointed out for a sole proprietor investments may be shown in the gross receipts.

Councilman Ebner pointed out this is probably not a new issue. He felt the City of Aiken can't be the first one since 1835 to have this issue. He asked about the cases in other cities that have the same issue.

Mr. Bowers stated he had done research, and we know that Aiken is in the minority of cities that require a tax form showing the gross receipts. He said upon information and belief Aiken is in the vast minority of municipalities within the state that levy their business license for renewal fees from this fashion. He said there is a very small subset. After that you have to have someone to challenge the issue. He said he had not seen any cases that have been reported that deal with this precise issue.

Mr. Bowers stated it had been asked if the city could voluntarily reduce taxes. He said they could. It is not illegal to voluntarily reduce taxes. He said Mr. Crowe stated it has to be done reasonably and rationally, and he agrees. It can't be done arbitrarily. He said the city can voluntarily change its policy with regard to the way it levies its business license renewal fee. He said Mr. Crowe had referred to Ronald Reagan's phrase to "trust but verify." He said Reagan used the phrase with regard to U.S. relationships with the Soviet Union. He asked that we not characterize our relations with the small business people of Aiken as those with Russia.

Councilman Ebner stated he had been involved with class action suits on the corporate side. He felt there must be other states that have similar taxes. He felt if it happens in South Carolina, it is happening in other places. He stated other states do verify.

Councilman Homoki stated basically businesses in the city have to pay a business license fee on their gross income. If part of the gross income is in another municipality that does not have a business license fee, the business has to pay their license fee on all the gross receipts. If a business does business in another municipality that does have a business

license, they should reduce their gross income by the amount of gross income done in another city. He wondered if the business is responsible for letting the Finance Department know that a portion of their income is taxed in another city.

Mr. Crowe stated he was involved in a case where a county was not giving the business credit for business licenses they were paying in other counties and municipalities. It was challenged, and the business won. The state law has changed and municipalities are required to give credit for licenses paid in other municipalities and counties. He said that is a known principle. Everyone is presumed to know the law. The information can be given to the municipality at any time. He said he understands Aiken does give credit for out-of-state business license taxes paid in other jurisdictions. He said all cities that have the model ordinance give credit for license fees paid to other municipalities. All businesses within the city pay a license fee on all their income, if there is no other taxing jurisdiction.

Councilwoman Clyburn stated a few months ago when we started talking about small businesses, she suggested a small business advisory committee. At the time it was felt such a committee was not needed. She said she still feels that a small business committee would be a good idea to help Council and be a liaison between small businesses and Council.

Ms. DeeDee Vaughters stated it has been 14 months since small businesses have been complaining to Council. She said Jane Page Thompson says it has been 12 years for her. She said she is tired of waiting. She said she will not wait any more. She said she had used her money to hire an attorney and she is not waiting any more. We need to move forward with this. She said she is not really interested in another committee that will create another layer between her and City Council. She said she was not interested in a committee. She suggested that Council should go out and ask people what they think rather than waiting on an advisory committee to come to Council. She said she had encouraged the Councilmembers to each call 10 business people. She said it has been a long time. We have discussed and discussed this. We have brought people in. Now it is time for Council to make a decision. She asked that the matter be put on Monday, March 28, agenda.

Councilwoman Clyburn stated she was not saying not to make a decision, but she felt it might be good to have an advisory committee for the future that could be a liaison for Council and keep Council informed of issues and make recommendations.

Councilman Homoki stated he had talked to Ms. Vaughters over the 14 months about the issue. He said in fairness to Council every time we approached a solution the target was moved. He thought it is finally pinned down. He felt the Mayor has a good idea. He said every time Council would come to a solution the target moved. He felt we are finally getting there, but it was not purely Council's inactivity that is at fault. At one time we were talking about being charged too much on the license fee and now we are talking about verification. He said there seemed to always be another issue to be solved. He said he hoped we would try a solution that will answer most of the questions that the business people have brought up.

Ms. Vaughters stated she had talked to Councilman Homoki about her concerns versus the concerns of other small businesses. She said she feels she pays too much, especially if she has to pay more than Walmart on every dollar earned. She said her business requires less services than Walmart. She said that is her issue. However, tonight she felt the issue had been loud and clear what the issue is with the business community. She said they want fair and equal treatment as a business community. She felt her issue may have to be handled at the state level, and she plans to go after them also. She felt that is discriminating as well. She said tonight the small business group is asking that the city have fair and equal treatment and that the documentation be the same across the board. The city currently is not doing that. She said she is asking Council to change and make it fair and equal. Until everyone is treated like Applebee's and Walmart, it will not be fair and equal.

Councilman Dewar stated he had a question for Mr. Budds. He said regarding the business license program, he felt either we have it or not. If we have it he wanted to be able to choose the rates. He pointed out there is very little flexibility with the business license program for the municipality. He said he felt we would like more flexibility with the program. He pointed out the city does not have the flexibility to reduce the rate for small businesses unless we also reduce the same rate on the big businesses. Two million out of the \$8 million from business licenses comes from small businesses. The other \$6 million comes from some of the utilities. He said he would like for the Municipal Association to consider changes to the law that would give municipalities more flexibility with the business license program. He said he would like a survey to see how cities feel about the business license program. He suggested that the utilities could be put into a different category, so the city could control the rates for the local businesses and reduce their rates without having to reduce the rates of the utilities. He asked if there was any effort on the part of the Municipal Association to take a look at the business license program.

Mr. Eric Budds, of the Municipal Association, stated the model ordinance has been held up in the courts as being a fair and equitable way of charging the business license. Mr. Crowe would have to address the legal issues related to how the business license program could be modified and still be within the rulings of the court. He said the license program is a very complex program and Mr. Crowe can explain why the court upheld that system and the rational basis of the system.

Councilman Dewar stated he was not questioning the legality of the business license program. He said the law says the fees have to be based on gross income. He said when this was made there must have been a point paper that would explain why gross income was used. He said a lot of businesses are upset about being placed in one of the seven categories and the rate for the category. He said he came from a place that had a flat rate for categories of gross income.

Mr. Budds said that system has been upheld by the court and is considered to be fair and equitable. He said he would take the concerns back to the Executive Director, and they would do some research to see what other systems are used. He said the system is a model ordinance. There is some flexibility at the local level in setting rates and the determination of which classes businesses fall into.

Mr. Budds stated since he was called to the podium he wanted to make a few comments and correct some things. He said he came to this meeting solely for the purpose of providing technical support to both sides. He said they had talked to Mr. Pearce before the meeting and had indicated to him that they had no desire to make a formal presentation. He said a number of things which had been said about the Municipal Association are inaccurate. The Association is here to support the member governments to make sure you have the tools to do your job. The Association does not dictate policy. Any policy position that the Association has has been established by the 18 member board which is made up of elected officials voted on by the membership. He said he wanted to make sure that everyone understands the Association is not present advocating how you administer your business license. That is a local policy decision. He said if they had been asked the question if you should verify the income, the answer is that is a local policy decision. Council members have to decide which manner they think is the best manner for their community. He felt it was essential that the public understand that the Association's position is not to dictate to you. We are present to support you and make sure you have the tools to be the most effective local government possible.

Ms. Scott Slatton, of the Municipal Association, stated every year as part of the legislative agenda we advocate the state legislature to allow the local elected officials to make more of the decisions that are important to your community. Whether it be business license matters, property tax issues, code enforcement issues, the Association will always advocate on behalf of the local government to allow Council to make those local decisions. We can't do it by ourselves. We have to rely upon every Mayor and every City Councilmember across the state to speak to the issues that you are dealing with specifically in your municipality and talk to the legislators to make sure they

understand the issues and make sure you are capable of making decisions locally. He said regarding flexibility and local determination that is something the Association would advocate for.

Mayor Cavanaugh stated Council needed to decide on a course of action.

Councilman Dewar stated he was not sure staff could have everything ready for the next Council meeting for Council action. He said Council has to discuss what action they want to take. He said the only way for the solution to get developed is for Council to decide what they want to do. He said he hoped Council was through with work sessions on this subject. He said Council needs to come back with solutions that can possibly be finalized on Monday. He felt some time should be spent on the matter at the next meeting. He said some of Council want to go with the honor system, which he felt was the major issue that the small businesses want. He said he would not have bought off on the agenda that was prepared for this meeting.

Mayor Cavanaugh stated he felt Council had heard enough and should have several solutions or options. He said one of the options is to get gross receipts on the honor system, with the option to still audit if it is felt there is a problem. He pointed out staff had found where there was some under reporting of gross receipts. They also had found some over reporting of gross receipts and returned it to the businesses. He said there was under reporting of about \$150,000 and over reporting of about \$60,000. He wondered if it was worth the bad feelings that the citizens have about the city and the way we conduct business. He said everyone wants something fair. He said the question is what is the fairest way. He said it seems the fairest way at this time is to let the businesses report their gross receipts on the honor system. He suggested that Council try it and see how it works. Council can always go back and change the way things are done if they have a good reason. He said Council can talk about the options the staff suggested or other options and come to a consensus for action at the next meeting.

Councilman Homoki stated if Council goes on the honor system for reporting gross receipts, he wondered if there would be a penalty or interest charges if a business is found to be under reporting after an audit. He wondered if there would be a penalty to make sure people do pay attention and report accurate information.

Councilman Dewar stated there has to be a mechanism. He said if there is a reason to question a number, he felt Mr. Kirkland could go into a business and take a look at the figures and know quickly whether they are playing games. He said we are not looking for deductions, but looking for gross receipts. Every business is different. He felt if the staff felt the need they could go into a business and quickly determine whether or not the business made an honest mistake, didn't understand the program, or whether they were trying to evade paying the correct amount. He said if they are not reporting correctly, then a penalty has to be paid. He said he was concerned that the information is clear that someone would know how to report their gross receipts and figure the license fee. He pointed out the letter is written like a legal document. He felt the letter could be clearer. He felt we should not ask for Social Security number, Federal ID Tax Number, etc.

Mr. Pearce pointed out that the Social Security number would be needed in order to do an audit to contact the IRS or the DOR. Mr. Pearce pointed out there is a business license ordinance, and any changes to the ordinance will take two readings. He said he was hearing from Council that they want to try on a trial basis not requiring the income verification as part of the application process. However, Council is comfortable leaving the audit provision in the ordinance. Council was given a copy of the current ordinance. The provision allows staff to conduct an audit. The ordinance does not say the city has to require the gross income verification. He said the ordinance could be left as it is, and if Council agrees the city would not require income verification as part of the application process, but it could be used as part of the auditing process.

Council stated they did not want a trial period. They just wanted to get rid of the gross income verification process for the license application.

Councilman Homoki stated he felt a trial period did not apply, as Council could change the ordinance whenever they feel it needs to be changed, based on the results of the revenue. He said, however, he would recommend that the Finance Department make some changes to the letter regarding the business license process so it is more easily understood. It should include information how a person can reduce their business license fees by deducting the income for business done in another city.

Councilman Ebner asked if taking out the requirement to provide the income tax for verification of the gross receipts is a procedure item or is it in the ordinance.

Mr. Pearce responded that the verification is part of the Finance Department's operation procedures.

Mr. Gary Smith, City Attorney, stated the way the ordinance is worded the Finance Department may look at the income tax for gross receipts verification, but they are not required to by the ordinance in its current form. He said since this is a work session Council can't give Mr. Pearce a decision as a Council body. At the next meeting Council could have a discussion, and once Council has come to a conclusion as to what Council wants the policy to be they could give direction to the City Manager. Then the City Manager will have the direction needed to guide the staff as to how Council wants the matter handled for purposes of enforcing the ordinance. He said if the decision is Council doesn't want to use tax returns for gross receipts verification, that can be conveyed to the City Manager, and then he can give that to the staff without changing the ordinance.

Mr. Pearce stated staff could attempt to have for the March 28 meeting a revised letter and revised application form to see if that will address Council's concerns expressed at this meeting. The ordinance would not be modified. If the proposed revisions are not acceptable to Council on Monday, and Council feels the ordinance needs to be revised staff could proceed with changes to the ordinance. He pointed out Mr. Smith has stated the way the current ordinance is drafted it is permissible. He stated his understanding of Council's desire is that the filing of the financial verification would not be part of the application or renewal process. It would be part of the auditing process if staff felt there was a question or some kind of anomaly in the filing. The verification would not be part of the renewal process. The business would write the amount on the form.

Mr. Gary Smith stated he wanted a clarification from Mr. Crowe. He said he wanted to make sure they were correct. He said they had talked about the possibility of a future audit in the event the staff perceives an anomaly in the future reporting. He said the better practice is random audits where no particular one is targeted. The audits are done randomly. He asked if it is permissible to have an audit if someone on staff has a perception that the numbers don't agree with previous filings. Mr. Crowe responded yes.

Councilman Homoki asked if there were any penalties in the current ordinance if a person does not file correct information.

Mr. Pearce responded there is a penalty for late filing. Under the existing ordinance if there is something that is willful unlawful filing, there is the discretion to issue an ordinance summons.

Councilman Homoki stated it seems the consensus of Council is to address the issue of verification of gross receipts by income tax form at the next meeting of Council. He wondered if the businesses would be able to file their business license on line and make payment. He wondered if the city has the capability at this time. He felt on line filing would save the citizens time as well as staff and should be done as soon as possible. He said if filing is to be online he would like for it to be done correctly the first time, rather than having to keep modifying the process.

Mr. Pearce stated staff could look into this, but he was not sure he would have an answer on Monday night for online filing. He pointed out online filing is being done at the

Recreation Department, but he would have to discuss with staff to see where we are in the process for filing business licenses online.

Councilman Ebner asked for clarification as to what we are talking about for consideration at Monday's meeting regarding not having to use the income tax return for gross receipts verification.

Mr. Pearce stated we are talking about considering a revised application and renewal form for a business license.

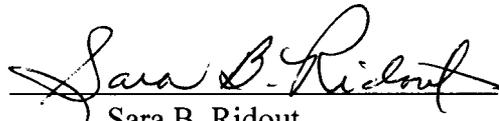
Mr. Smith stated Council would be making sure the City Manager understands what Council wants the city policy to be with respect to the income tax return for verification of gross receipts for the business license application.

Councilman Dewar thanked the businesses for coming to the Council meeting. He said if the city is not doing the job they think is right, Council needs to know. He said he was not sure they would be happy with just going with an honor system. The goal has always been to come up with a program that is easy to use and understand. If that is not done, we need to know.

Mayor Cavanaugh stated Council appreciates the businesses and thanked them for being present and for the discussion over the past few months.

ADJOURNMENT

There being no further business, the meeting adjourned at 10:38 P.M.


Sara B. Ridout
City Clerk