

Aiken City Council Minutes

WORK SESSION

April 13, 2005

Present: Mayor Cavanaugh, Councilmembers Clyburn, Cuning, Price, Sprawls, Smith, and Vaughters.

Others Present: Roger LeDuc, Bill Huggins, Gary Smith, Anita Lilly, Lex Kirkland, Al Cothran, Roy Bates, G. C. Robinette, Krista Zilizi of the Augusta Chronicle, and about 3 citizens.

Mayor Cavanaugh called the meeting to order at 5:04 P.M. He stated Council wanted to review and discuss the Business License Ordinance regarding rates and possibly adopting the NAICS Classification. He pointed out that Roy Bates and G. C. Robinette were present to help answer any questions regarding the business license.

BUSINESS LICENSE ORDINANCE

SIC

NAICS

Reclassification

Mr. LeDuc stated that last fall Roy Bates made a presentation to Council regarding Business Licenses. At that time Council asked staff to look at possibly changing the present classification system, SIC, to the NAICS Classification. He stated Roy Bates was hired to review the city's 3,000 plus business licenses and to present the proposed NAICS classification to City Council, showing how this would affect the different license classifications.

Mr. Lex Kirkland, Business License Administrator, stated a slide presentation had been prepared to show Council what had taken place since last fall regarding business licenses. He said about 3,000 plus businesses had been reclassified under the NAICS system. He said Mr. Robinette had helped with the reclassification. Mr. Kirkland first reviewed the revenue collected through business licenses for the last two fiscal years. He pointed out the city was already over budget for the current fiscal year for business licenses. He also pointed out that in reclassifying the businesses some moved up a class while others moved down a class, and this means some licenses increased while others went down based on the new rate and class.

Mr. Kirkland stated the Finance Department recommends a revenue neutral conversion from SIC to NAICS, allowing the City to maintain the current level of revenue. He said a conversion from SIC to NAICS would result in less revenue being collected from licenses. He pointed out that NAICS breaks the classifications by IRS statistics as well as the SIC. He stated, however, the SIC Code has not been updated since 1987, and it is never going to be updated again, which makes the SIC Code outdated for the licenses. The NAICS code was produced in 1997, and has been updated in 2002. He said the NAICS is based on more recent statistics and is fairer. He pointed out the business license and the classes are based on the ability to pay, and by using more recent statistics the businesses are being treated fairer.

Mr. Kirkland reviewed the proposed fees to convert to a revenue neutral conversion with a \$.15 difference in rate between each rate class. He also compared different types of businesses based on gross receipts under the SIC code and the NAICS code, and the % change up or down in the amount of the license. He also presented a listing of Business License Comparison with other cities after the conversion. He pointed out that most cities' licenses would be higher than Aiken's license fee.

It was pointed out that Columbia has its own system for classification of business licenses. Mr. Bates pointed out that a city does not have to use SIC or NAICS, but the rate system has to be based on a rational basis and be fair and equitable. A study would have to be done to be able to classify the businesses and to be equitable.

Mayor Cavanaugh stated he was concerned that, in the comparison of SIC and NAICS, some of the increases for some businesses were very high, such as 26%, 22%. He asked how Council could explain the increase.

Mr. Bates pointed out that the IRS statistics, plus the reclassification under the NAICS system, produces these results. He said, however, what the city would be doing was updating the ordinance to make it more equitable. He said not updating the ordinance means that those businesses that would have received an increase are getting a windfall, because based on the statistics they should be paying more.

Councilwoman Vaughters stated in some businesses the overhead is huge. She was particularly concerned about small businesses and their overhead. She said when she first mentioned the business license, she never intended to raise anyone's business license fee. She said her feeling is that if the city wants to encourage businesses to stay in the city the license fees need to be lowered, not increased. She said it had always been her goal to lower the fees. She felt the fees need to be more equitable. She felt that the NAICS system could be used, but not increase the rates so much.

Councilman Cunning stated he wanted to be sure the fee is fair. He said the new system is supposed to be fairer, with some businesses paying more and others paying less, based on IRS statistics. He said he would like to give a rebate to the businesses if the city's income from licenses exceeds a certain amount of income. He said he did feel that the city has to have a fair and equitable system, and the NAICS system seems to be a fair system.

Councilwoman Price stated a system needs to be used, but she wondered if the system has to be in line with IRS and its statistics.

Mr. Bates stated the system does not have to use the IRS statistics, but there has to be some rationalization to determine the classifications. He said the reason the IRS statistics are used is because the state supreme court has said a city cannot use the local business practices as the basis, but have to have a broader statistical base. He said what the NAICS system does is use a broader, nation-wide basis. He said there is supreme court language that says that a business license is a privilege for doing business, and is based on the ability to pay. The ability to pay is determined from the ability to make a profit using these statistics. He said the system had been tested in court and has been upheld as constitutional. He said the tax is based on gross receipts, as this is the only way the tax is allowed by the legislature. He pointed out that NAICS is used on each IRS form as the basis for the classifications.

Councilwoman Clyburn stated she was questioning why the city should come up with its own system for business licenses when there is a system that has been used extensively and has been found to be reputable.

Mr. Kirkland stated the recommendation from the Finance Department was revenue neutral to the city. He said after the changes are made, if the businesses reported the exact same receipts with the SIC system and the NAICS system, the city would take in the same amount of revenue. He said the city changed the classifications for the businesses from SIC to NAICS and put them on a spread sheet, and then determined what the rates would have to be for the new NAICS system to equal the same amount of revenue as the city collected in fiscal year 2003-04 with the same receipts.

Council continued to discuss the business license system and the proposal submitted by the Finance Department at length. A question was whether the city could incrementally change the license. Mr. Bates stated if the system was changed incrementally the city would lose revenue.

Councilwoman Vaughters stated staying revenue neutral was not the only option. She pointed out there are other options. She suggested that Council adjust the base fee and rates per \$1,000.

Councilman Smith stated it had been stated that if the city implemented the new system, but used the old rates, there would be a loss of revenue. Mr. Kirkland responded there would be a loss of about \$40,000 in revenue.

Councilman Cunning stated if the old rates were used he did not feel it would be fair as far as the ability to pay now. He said basing the license on the ability to pay is based on the law. He said he would like to rebate a percentage to the businesses if the city goes over a certain amount of revenue for business licenses.

Councilwoman Vaughters stated she felt if the city wants to be sensitive to businesses, Council needs to figure out how the city can lower the cost to the businesses rather than a rebate.

Councilwoman Clyburn stated the citizens had passed a sales tax to pay for projects that could not be paid for out of the budget. She said now we want to tell the citizens we have enough money, and we want to give some back to businesses. She said we wanted a sales tax to pay for projects, and now we want to find a way to give money back. She pointed out the city had received a lot of cuts in revenue.

Councilwoman Price stated she did not like the idea of giving a rebate back, but would like a system designed to be fair in the beginning. She did not like the idea of getting money back one year and not another year. She felt a rebate would be creating more work for staff.

Councilman Smith stated for fairness to not use revenue neutral. He suggested to make the adjustment fair for all the taxpayers just let the chips fall where they may and not let the adjustment be revenue neutral, but the city take exactly what the new revised system produces. He said if the loss in revenue is only \$40,000 he did not understand the problem.

Mr. LeDuc pointed out there would still be increases in some licenses, because some businesses would be in a different class, which would be a different rate. He did point out if Council wants to lower the rate per \$1,000 they could, but they would have to be equal. He stated the recommendation is for \$.15 between each increment, but that could be lowered if Council desires.

Councilman Sprawls stated he had bought 28 business licenses since he has been in business. He said he does not like to pay more taxes, but he felt the business license is a fair tax. He said if his business did a half a million dollars, he did not feel he would complain about paying an additional \$180 on his business license. He felt the new system was fair to everyone. He said he had had no business people to complain to him about the cost of their business license.

Councilwoman Vaughters stated she had had 100 business people complain about the license. She said when she goes downtown the merchants are not happy about the business license. She said when businesses realize others are not paying the same rate, they are very unhappy. She said she felt the city should be able to use the new system and lower the base fee and the rate per \$1,000. She said she wants to keep businesses in Aiken, and one way to do that is to show that the city is friendly to business. She said she hears all the time from other small business people, not in her husband's profession necessarily, that the license tax is a galling tax that makes them upset with municipal government. She said she felt the city can afford to do something about it. She felt the city had money.

Mayor Cavanaugh asked staff how many businesses had left town because of the city's business license. He said he sees more businesses coming in, not leaving. Mr. Kirkland stated no one had ever told him they were leaving because of the license fee.

Council continued to discuss the license fee. Mayor Cavanaugh stated Mr. LeDuc could give Council a list of things which he feels could be eliminated from the budget. He said to lower the fee the city would have to give up something.

Councilman Smith stated he felt the NAICS system is logical and the city needs to update the system. He said, however, setting the actual fee for each category needs to be determined. He said there would be winners and losers in setting the fee, and he felt the city could afford to implement the system and absorb some loss.

Mr. LeDuc stated for no one to lose money, the rates would probably have to be lowered by 15% to 20%, which would amount to about \$200,000 loss for the city. He said some businesses would then have a 25% to 35% decrease. He pointed out everything has to be consistent, so everything would have to be lowered. He said the amount depended on how much money Council wanted to lose and where they wanted to cut the budget. Mr. LeDuc stated he had included in the proposed budget, which Council will receive shortly, \$1,650,000 for business license tax. He said that was based on this year's revenue plus the growth. He said the proposed budget has the services which Council had asked to be included with no rate increases. He said Council will need to decide what they want to cut, or to increase fees to balance the budget. He said Council could lower the business license rates and increase garbage fees, or look at other items that they could reduce.

Councilman Cuning asked if the staff could see what the rates would be if we kept the revenue from business license at \$1,550,000, and what amount or percentage that amount of revenue would require the rates for business license to be. He said he did not want to raise business license fees. He said they could adjust the rates for each category to lower the revenue.

Councilman Smith asked about Category 8, especially the contractors. Mr. Kirkland explained that most of the businesses in Category 8 are set by state legislature, and that contractors was under Category 8 under the SIC system also. Mr. Bates responded that contractors were in the special category. He said they really should be assigned to their regular category, which would be class 3.

Councilman Smith stated that, in order to be fair, shouldn't contractors be in Class 3.

Council discussed contractors and the category to which they should be assigned. It was pointed out contractors were assigned to the category which they had been in for years, but the correct category would be class 3. Council discussed the possibility of raising contractors incrementally over a number of years to get their rate to the correct rate for contractors. Councilman Cuning stated to reclassify contractors and put them in category 3 would be a tremendous increase for contractors.

Mr. LeDuc pointed out that everyone outside the city pays a double rate. He pointed out most of the subcontractors and many of the contractors are outside the city.

Councilwoman Clyburn stated she felt that some effort should be made to get contractors in their correct category. She said the city at least should move in that direction.

Mr. LeDuc stated the budget would be presented to Council on May 2. He said staff could have at that time what the rates for the various categories would be for a revenue of \$1,550,000 for business licenses. He said if Council wants to change the license revenue to that figure, then Council could look at the budget and see what could be changed. Mr. LeDuc stated he would recommend that Council go ahead with first reading of an ordinance to change to the NAICS system at the next meeting. He pointed out there has to be two readings of the ordinance, and the license bills need to go out by the end of May. He said it seemed to be the general consensus of Council to go the NAICS system, and this change would have to be done by ordinance.

Councilwoman Vaughters stated she was in agreement to adopt the NAICS system, but she could not vote for the rates recommended by staff.

Mr. Gary Smith stated the ordinance would have to have some rates in the ordinance so it would be clear what the businesses would be charged.

Mr. LeDuc stated if Council does not adopt an ordinance to change by the end of May, then the city would stay with the SIC system another year. He said until Council decides

what they want to make the license rates, a proposed ordinance would give the rates recommended by staff. He said an ordinance could be prepared for first reading with the rates recommended by staff and then the ordinance could be amended on first or second reading.

ADJOURNMENT

There being no further business the meeting adjourned at 6:33 P.M.

A handwritten signature in cursive script, reading "Sara B. Ridout", written over a horizontal line.

Sara B. Ridout  
City Clerk