

Aiken City Council Minutes

August 23, 2004

WORKSESSIONBusiness License Fees

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

Council Absent: Councilmember Clyburn.

Others Present: Roger LeDuc, Gary Smith, Ed Evans, Bill Huggins, Lex Kirkland, Richard Pearce, Al Cothran, Anita Lilly, Roy Bates, Sara Ridout, Philip Lord of the Aiken Standard, Josh Gelinas of the Augusta Chronicle and about 65 citizens.

Mayor Cavanaugh called the meeting to order at 6:35 P.M and welcomed those present and stated Council was going to discuss the Business License Ordinance.

BUSINESS LICENSE FEES

Mr. LeDuc stated that a business license tax is not a property tax, or sales or income tax, although it is measured by gross income. It is a method of requiring a business or occupation to contribute its share in the support of government. Throughout the United States the fee is commonly known as a business license fee, although it is an excise tax levied on the privilege of doing business, and the value of the privilege is measured by the business' gross receipts. Although business licenses primarily are used as a revenue source, they may also be used to regulate businesses. Last year, Council revoked the business license of a drinking establishment that was not adhering to the general laws within the City of Aiken.

As City Council discusses the business license fee in the City of Aiken, Council needs to apply reasonableness in any consideration of changing the rates from one class to another. Currently our rates are developed on the ability to pay; therefore, if we raise or lower rates it should be across the board for all classes, not by singling out a targeted class. For instance, we should not give an advantage by lowering the rate significantly of one class while raising the rate significantly on another class. Currently, the City of Aiken has eight rate classifications as set by the Standard Industrial Classification (SIC), each based on their ability to pay. Class 8 is a general classification, with contractors and home builders listed within it. The City also charges a double rate for those doing business inside the city limits but located outside the city. The current licensing format for the City of Aiken has been in existence since 1938 and currently generates fees of approximately \$5.6 million or 25% of our budget.

Mr. LeDuc stated that recently North America, Canada, United States, and Mexico joined together to come up with a more uniform system that is called the North America Industrial Classification System. (NAICS) That classification system uses IRS coding. About six communities within South Carolina have now started using this system. This system was developed in 1997 with the cooperation of those three countries.

Mr. LeDuc stated that the difference in the two systems is that they have stopped putting in classification codes for the SIC system several years ago, which leaves out some of the businesses.

City Council has several options concerning the business licensing fees:

1. Keep the existing system without any changes.
2. Keep the existing system and make minor adjustments to the rates.
3. Adopt the NAICS Code, which would move a few businesses up or down in classification.

4. Eliminate business licensing altogether and substitute the revenue loss through other taxes, fees or reduced services.

Mr. LeDuc stated that in the 1990s City Council made one change to the ordinance, which was to double the license fees for those businesses outside the City limits.

Mr. LeDuc stated that Council needs to give staff clear direction on what changes, if any, they would like to make. He stated that staff is ready and willing to work with City Council in making any changes that they desire. Over 3,000 businesses received licenses last year to do business within the City of Aiken, therefore any changes or comparisons will take several months work for the Finance Department.

Roy Bates, the former Legal Counsel for the S. C. Municipal Association, write the model ordinance for municipal business licensing and has assisted numerous municipalities and counties in the state with their licensing program.

Mr. Bates gave an overview of what a business license fee is and how the City's system was developed and envisioned to work. He stated that state law required the business license fee be levied based on the gross income of the business. Mr. Bates explained that City Council has the right to classify businesses and that different rates can be charged to different classes of businesses. He stated that, in order to be fair, different classifications can be charged different fees, but the businesses within the same classifications must be charged the same fees. He stated that the legislature has made some exceptions to that rule, but that City Council cannot contest those decisions. He stated that the SIC system was developed in the 1970s by some Georgia Tech professors. It is a method of putting businesses with similar operational characteristics into the same class for statistical purposes. The government then published statistics keyed to those standard classification numbers. This was done until 1987 under the SIC system and then the new North American Industry Classification System (NAICS) was started. The NAICS works in much the same way. It differs in that it has businesses included in it that did not exist in the SIC system. These are businesses such as computer technology, communication technology, and different technical fields that did not exist at the time of the SIC system.

Mr. Bates stated that the Supreme Court has said that the privilege tax is in support of the government and that the businesses that pay it, pay it according to their ability to pay. He stated that the best measure of ability to pay is the ability to make a profit. This does not necessarily mean the business makes a personal profit, but that the national statistics show that that class of business has the ability to make a certain level of profit.

Mr. Bates stated that the purpose of the business license fee is to support the general fund. It is not marked for any specific purpose. He stated that serves the legislative purpose for the tax. He stated that City Council has the freedom to legislatively set the level of rates. The way to do this is to determine how much revenue is needed to balance the budget from the business license fee and work backwards from there to determine rates that produce that revenue based on the reported gross income of the businesses.

Mr. Bates stated that in order to change the system for business license fees, all businesses would have to be reclassified manually under the new NAICS numbers. There is not a direct correlation in the SIC and the NAICS classification. Some businesses have been split out and some have changed groups, because it was discovered that the new system does not work in today's world with the new types of businesses that have come out. He stated that City staff are not able to take the SIC numbers and convert them into NAICS numbers. Each individual has to be looked at. Once that is done, staff has to group the NAICS sectors into classes according to the latest IRS statistics. He stated that the assignment of new NAICS codes and the shifting of rate classes because of the changes in the IRS statistics would cause the current ordinance to shift businesses from one rate class to another. Some would go up and some would go down. He stated that usually the movement is only one rate class change. He stated that one of the features of this system is that it can be updated periodically to reflect what is going on in the nationwide economy. He stated it would take at least six months for NAICS to be implemented.

Mr. Bates stated that the legislature had treated a couple of businesses differently and that is why there is a Class 8 in the SIC system. This class is a grouping of individual service classes, not a general class. He stated, for example, that railroads are to be taxed on the population of the city. He stated that at the present time, the City of Aiken contracts with the Municipal Association to collect this tax for them. He stated that recently the legislature set rates for telecommunication providers. There are State mandated rates which mean if the city charges them, then there are specific charges that have to be used. The Legislature greatly reduced the franchise fees that can be charged a telecommunication company. They have set flat franchise fees based on the population of municipalities.

Mr. Bates gave a brief overview of what a franchise fee is and what it is used for.

Council had several questions they presented to Mr. Bates. Some of these concerns were whether Council could have an exemption for a certain amount of gross income if it is done across the board. Has the excise tax hurt municipalities in their ability to attract businesses to locate and stay within the city limits? It was stated that businesses that do international business and other business abroad have to pay taxes on all that income, even though it is not business conducted inside the city limits.

Mr. Bates addressed these concerns. He stated that there was no provision for exemptions. He stated that the threshold of the base fee could be adjusted. Mr. Bates stated that the business license excise tax is nationwide. He stated that businesses are taxed according to where their physical business is located. He stated that it is the least burdensome tax there is. Mr. Bates stated that the businesses pay their business license tax on income that they do not pay a tax on to other taxing authority. They are not double taxed. Mr. Bates stated that one way to get lower rates is to use a lower starting point per thousand in lower rate classes if you want to give lower rate classes a break.

Julian Dunbar, of Julian Dunbar Insurance, stated his concern was that he is required to pay taxes on all the policies he sells outside the city because his business is located inside the city. He was questioning whether or not all the non-local companies from which he receives mail are charged a business license fee.

Mr. Carlos Garcia, president of RCS Corporation, stated his concern was his business license fee being so high. The cost of his business license is going to force him to move his business out of the city limits since most of his business is done outside of the city.

Al Fernandez, of O & R Enterprises, stated his question dealt with the business license fee being based on gross income. He asked if the adjusted gross income, such as that submitted to the IRS could be used to figure the business license tax.

Linda Chamblin, of Attitude with Fabric, stated she was against the business license fee being raised. She would like to see less spent on extra projects. She asked why the number of employees a business has is not taken into consideration when deciding business license fees.

Charlie Weiss, Chamber of Commerce, stated that the Chamber was very concerned with their members. He stated that the Board of the Chamber of Commerce agreed that additional information would be needed before considering changing the business license fee structure. He stated that the Chamber cares about the businesses but that they also understand how difficult any change in the business license ordinance would be.

Jewel Bradley, Bradley Plumbing and Heating, stated that the business license tax is the fairest tax the city has. She stated that she does business in other cities and that after presenting proof to the Business License Inspector, she is able to deduct that income from her gross income that she has to pay her business license fee on.

Joe Harrison, of State Farm Insurance, stated his concern was with having to pay the business license fee on the amount of insurance policies he sells inside the city. He stated the Municipal Association already collects a fee from the home company.

Alan Wood, 806 Oak Place, stated that he would like to see businesses not be penalized by doing business in the city by charging them higher business license fees.

John Wade, of John Wade Plumbing, stated his concern was with how businesses outside the city report their income to the Business License Inspector. He stated that he thought the out-of-city businesses should be charged triple or more for their business license fees. He stated that his concern was how he would be charged for his business license fees if the cost of housing and other factors changed.

Mr. Lex Kirkland, Business License Inspector, stated that they report their gross income to him, and that if there is any question about their income, he can pull their permit and find out how much their job was.

Deb Kohler, practice manager for Lee Grantham, M.D., stated her concern was the classification for doctors. She stated that doctors do not make as much money as they used to because of the insurance rates going up. She stated she did not agree with the being taxed on gross income.

Beth Jackson, of Jackson Transfer, stated her concern was with the transportation companies being charged the business license fee on where their primary business is located. She stated she is taxed for all business transaction that take place, whether they be local or international. She stated that she understood that companies like hers that are located outside of the city are not made to pay this business license fee.

Dr. Mark Meiler, Geriatrician, stated his concern was with the regulations for business license taxes. He stated that the classifications needed to be updated.

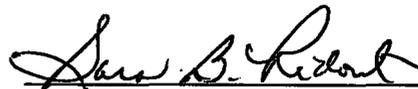
Mr. Bates stated that the insurance companies outside the city are charged a business license fee if they are brought to their attention. They are required to purchase a business license. Mr. Bates stated that the state code leaves no room for the adjusted gross income to be used in finding the amount of business license tax fees. Mr. Bates stated that the number of employees being used by a business is not a variable in figuring the business license according to state law.

Mr. Bates stated that the NAICS is updated every few years. He stated that in the NAICS the classifications are different. He stated that some fees would be raised and some would be reduced.

City Council continued to discuss the business license systems with Mr. Bates at length.

Mr. LeDuc stated that it seems the consensus of City Council is to change to the NAICS. He stated that the rates for the classes would remain the same until Council sees how the system works and if the rates can be adjusted.

The meeting adjourned at 9:41 P.M.



Sara B. Ridout
City Clerk