

ORDINANCE NO. 1842

AN ORDINANCE TO LEVY A BUSINESS PRIVILEGE LICENSE TAX BY THE AUTHORITY OF THE CODE OF ALABAMA, 1975 SECTIONS 11-51-90 THROUGH 11-51-185 AND TO REPEAL ORDINANCES 884, 885, 916, 1073, 1102, 1152, 1231, 1263, 1393, 1431, 1457 AND 1797 AS AMENDED WHICH PREVIOUSLY LEVIED A BUSINESS PRIVILEGE LICENSE TAX ON PERSONS AND ORGANIZATIONS CONDUCTING BUSINESS WITHIN THE CITY OF AUBURN AND EXEMPTED CERTAIN PERSONS AND ORGANIZATIONS CONDUCTING BUSINESS WITHIN THE CITY OF AUBURN FROM THE LEVY OF THE BUSINESS PRIVILEGE LICENSE TAX.

**AS AMENDED BY ORDINANCES 1908, 1922, 1976, 1981, 2054, 2117, 2338, 2376, 2446, AND 2521**

WHEREAS, the City's business privilege license tax is being administered under several ordinances that were enacted more than twenty years ago; and

WHEREAS, the City Council desires to update the City's business license Ordinance to reflect changes in business conditions including changes in price levels and to simplify the compliance with and administration of the business licensing requirements;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Auburn, Alabama, as follows:

**Section 1: Purpose and Legal Authority**

The City Council of the City of Auburn, Alabama enacts this Ordinance in accordance with §§11-51-90 to 11-51-185 of the Code of Alabama, 1975. The purposes of this Ordinance are to simplify the procedures for and calculation of fees for business licensing in the City and to provide a consistent and flexible structure for business license administration and compliance with the business licensing rules contained in this Ordinance. All persons and entities conducting business within the corporate boundaries of the City of Auburn shall be licensed under applicable provisions of this Ordinance. The business license fee imposed under this Ordinance shall be based on the gross receipts of the business conducted plus the amount of an issuance fee as established by State of Alabama

law, except in instances where the license fee is established by Alabama law. Nothing in this Ordinance shall limit or abridge the right of the City through its City Council to change, modify, or revoke any license obtained under this Ordinance.

## **Section 2: Definitions**

2.1 Any term not defined in this section shall have its generally accepted meaning for the purposes of this Ordinance.

2.2 *Business* – Each person, firm, partnership, limited liability company, corporation, organization, association, membership cooperative, agency, group or other organization or association which shall engage in, practice, conduct or carry on any business, occupation, trade, vocation, profession or exhibition, offering merchandise for sale, performing services for a consideration, soliciting orders for goods or services, making deliveries of any merchandise or engaging in business of any nature in the City of Auburn. For purposes of Sections 4 and 5 of this Ordinance, the term “business” shall include the owners, managers or officers of the business who bear responsibility for causing the business to comply with this Ordinance, where applicable.

2.3 *Business Category* - a grouping of businesses by their business activity as found in the North American Industrial Classification Code System (NAICS).

2.4 *Business Day* – Monday, Tuesday, Wednesday, Thursday, or Friday, except in the event that any such days are declared to be an official holiday of the City.

2.5 *Business Exempt from License* - any enterprise entered into with the primary purpose to pursue social, charitable or other benevolent activities and that is classified as a tax-exempt organization under applicable provisions of the United States Internal Revenue Code or the regulations thereunder. Subsidiaries and other similar organizations of a non-profit enterprise that are operated with the expectation of making a profit and are not classified as tax-exempt under applicable provisions of the Internal Revenue Code or the regulations thereunder are subject to the provisions of this Ordinance, regardless of the non-profit nature of the parent organization.

2.6 *City* - The City of Auburn, Alabama or the corporate boundaries of the City of Auburn, as applicable.

2.7 *City Manager* – the duly appointed City Manager of the City or, in his/her absence, the person performing the duties of the City Manager of the City.

2.8 *Contractor* - any person who accepts orders or contracts from the owner of property or the property owner's duly authorized agent to assume authority or control, or to supervise, manage, or direct the work of others, or who is delegated authority by the owner to do so, whether at a fixed price or on a cost-plus basis, for doing any work.

2.9 *Department*- the City of Auburn Finance Department.

2.10 *Finance Director* - the Finance Director of the City or, in his/her absence, the person performing the duties of the Finance Director of the City.

2.11 *Gross receipts* - the gross revenue of a business from all sources, whether received or accrued, during the period of one calendar year, as determined after applying the following Inclusions and Exclusions:

1. Inclusions:

- (a) Gross sales, proceeds or receipts or the equivalent value from the sale or exchange of property, goods and merchandise, or the performance of services, without deductions on account of cost and expenses (except that with respect to loans and sales discounts the principal amount of the loan made and the amount of the sales discount allowed shall be excluded).
- (b) In the case of brokers or agents who are selling goods and merchandise or performing services for a consideration (or both) on behalf of a third party, gross revenue shall include only that amount of any commissions, fees, or emoluments earned by the broker or agent by reason of such sales within the City.
- (c) Gains realized from trading in stocks, bonds, capital assets or instruments of indebtedness or securities when such gains are derived from trading in stocks, bonds, capital assets or instruments of indebtedness or securities that are held in the name of the business.
- (d) Revenue from interest, rents, royalties, dividends earned or received in the course of conducting a business for which a license fee is required under this ordinance.

- (e) The value or equivalent value of any goods or services provided by a business to an owner or lienholder of the business for which no direct consideration or compensation is received by the business.
- (f) Any type of consideration or compensation paid directly or indirectly to the employees, owner(s), or lienholders of a business that is, in fact, payment for goods or services provided by the business.
- (g) In the case of manufacturers or processors in the City, where finished products are not sold or consigned from the City but are shipped outside the City to another facility of the same or an associated company for sale or consignment from that facility, the wholesale market value of such goods at the time shipped from the City.
- (h) Any other revenue which should be included in order to accurately reflect the total gross revenue of the business for the calendar year.

2. Exclusions:

- (a) When the gross revenue of a business is accounted for by a method in which amounts attributable to sales returns, allowances, and discounts are included in the gross revenue figure for the year, the amount of such sales returns, allowances and discounts shall be excluded in calculating the amount of gross receipts of the business.
- (b) When the reported gross revenue of a business includes transfers or exchanges of property made between divisions of the same business, the amount of such exchanges shall be allowed as an exclusion from the gross receipts of the business.
- (c) Any tax which is collected on behalf of a governmental authority by the seller of goods or services from the purchaser as a result of a transaction shall be excluded from gross receipts, provided that it is specifically identified as a tax paid by the purchaser and set apart as an item separate from the price of the goods or services that are provided.
- (d) The value, amount, or equivalent value or amount of products accepted in trade shall be excluded when such items are to be held for resale, and only the amount paid by the purchaser excluding the value of such products accepted in trade shall be considered in arriving at gross revenue. When the item(s) received in trade is (are) sold, however, the amount of the selling price shall be included in arriving at gross revenue.

- (e) Gross receipts of a business located within the City from the sale or delivery of goods which were obtained from a point outside the City and delivered to a point outside the City and did not pass through the City.
- (f) Gross receipts of a business located within the City from the performance of a service or a construction contract outside the City, when such service or contract involves no equipment or materials from within the City.
- (g) Gross receipts from that portion of business conducted outside the City by a City-based business, for which it is shown that a business license was paid to another municipality.
- (h) Gross receipts from the sale of alcoholic beverages (such as liquor, fortified wine, beer, table wine, brewed and malt beverages and mixed drinks containing alcoholic beverages).

2.12 License Fee – the same as the business privilege license tax or fee which is levied for the privilege of conducting business in the City.

2.13 Transient – each person who brings merchandise into and/or performs services in the City on a temporary basis, or who parks a vehicle or sets up a temporary structure on a site and sells such merchandise and/or services at the site. No such merchandise and/or services shall be sold by a transient from such temporary site or structure without the authorization of the owner of the site or the authorization of the owner’s duly authorized agent. No such merchandise and/or services shall be sold from a site on City streets or rights of way of the City. This does not preclude non-transient merchants or enclosed shopping facilities from sponsoring sales on their premises by vendors the non-transient merchants may engage, provided the engaged vendor has a license separate from the license of the sponsoring, non-transient business.

### **Section 3: Administrative Procedures**

#### **3.1 License Requirement**

It shall be unlawful for any business to operate in the City of Auburn without first obtaining a business license unless specifically exempted from such requirement by this Ordinance. If any business is engaged in two or more activities and if less than twenty percent (20%) of the gross receipts of the business is attributable to the operation of the activities that are not included within the primary activities of the business, all of the gross receipts can be reported under the business license for the primary business activity

and additional business licenses will not be required. If a business is engaged in two or more activities and if more than twenty percent (20%) of the gross receipts of the business is attributable to the operation of the activities that are not included within the primary activities of the business, a separate business license will be required for each of the non-primary business activities the gross receipts of which are twenty percent (20%) or more of the gross receipts of the primary business activity. For example, if a business has a primary activity from which 75% of its gross receipts are derived and two additional business activities from which 15% and 10% of its gross receipts are derived, the business would be required to obtain a business license for the 75% activity and the 15% activity and the gross receipts from the 10% activity would be included with the gross receipts of the 75% activity for the purposes of calculating the business license fee (15% divided by 75% = 20% but 10% divided by 75% = 13%).

### 3.2 License Renewal Form

The City shall provide each currently licensed business a license renewal form for the upcoming year. These forms shall be mailed via the U.S. Postal Service by the last business day of each calendar year. Each license issued for a business continuing in operations at the end of a year shall be due for renewal on the first business day of each succeeding calendar year, and such license shall become delinquent on the last business day of February.

The City cannot be responsible for the timely mail delivery of the renewal forms. Failure to receive the business license renewal form, for whatever reason, will not excuse a business for failure to renew its business license by the stated deadline. Any business submitting a license renewal form which files the renewal application after the due date shall be charged a late processing fee of ten dollars (\$10.00) plus any other applicable penalties.

### 3.3 Expiration of License

A business license issued by the City is valid until the end of the calendar year for which the license was purchased. The penalty portion of this Ordinance shall be applicable if the license fee for a given calendar year is not paid by the 15<sup>th</sup> day of February of that calendar year, or if the 15<sup>th</sup> falls on the weekend, then if not paid by the next business day, except for insurance companies, whose business license fee must be paid on March 1 as in accordance with Section 11-51-188 of the Code of Alabama, 1975.

### 3.4 License Not Transferable

A license issued under this Ordinance shall not be transferred from the business purchasing such license to another business. Each business applying for a license required or provided for by this Ordinance shall state the name of the business and the location where the business shall operate under the license for which it applied; and the license shall permit the operation of that business only under that name and ownership and at the place designated. If the location or the name of the business is changed during the license period, the licensee shall so notify the City Manager in writing; and the City Manager will authorize the issuance of a new license certificate reflecting the new location or new name of the business, and for the remaining time of the license period no new license shall be required for the same owner to operate the same business under the new name or at the new location. Otherwise, a new business license application and fee shall be required for each change of owner, name of business or location.

### 3.5 License Not Refundable

No business license fee or portion thereof paid to the City and properly due to the City when paid shall be refunded to a licensee.

### 3.6 License Term: Proration

- (a) All licenses shall be for one calendar year, beginning on January 1<sup>st</sup> of each year and ending on December 31<sup>st</sup> of each year. All licenses issued under the authority of this Ordinance, whether issued on or after January 1<sup>st</sup> of the year for which they are issued, shall expire on December 31<sup>st</sup> of the same calendar year.
- (b) Any business, other than a transient merchant, not previously licensed by the City and beginning business operations in the City between and including January 1<sup>st</sup> and June 30<sup>th</sup> in the calendar year must obtain an initial whole-year license for \$100.00. Any business, other than a transient merchant, not previously licensed by the City and beginning business operations in the City on July 1<sup>st</sup> or later in the calendar year must obtain an initial half-year license upon payment of one-half the amount (\$50.00) on the initial annual license tax. Conducting business operations in the City for any portion of a month shall be counted as a full month. Transient merchants shall pay business license fees as specified in Section 7.2, Category 15 of this Ordinance.

- (c) If a business, other than a transient merchant, ceases to operate between December 31<sup>st</sup> of the preceding year and the last business day of February, a full year's business license fee will be required based on the gross receipts of the previous calendar year with a minimum license fee of \$100.00 for each business category, unless otherwise provided herein.

### 3.7 Licensee to Render Report

Where the amount of the business license fee is measured by the gross receipts of the business, the business applying for such license shall render to the City Manager a declaration giving the information upon which the amount of license fee is measured, and any further proof of the gross receipts of the business that the City Manager may require.

### 3.8 Computation of License Fee

- (a) Wherever in this Ordinance it is specified that the amount of the license fee, or any part thereof, upon renewal is to be computed upon the basis of gross receipts of the business, the gross receipts shall be the gross receipts of the business for the calendar year next preceding the current license year, unless otherwise specifically provided herein.
- (b) Any business not previously licensed by the City and beginning business operations in the City between and including January 1<sup>st</sup> and June 30<sup>th</sup> in the calendar year, must obtain an initial whole-year license for \$100.00. Any business not previously licensed by the City and beginning business operations on July 1<sup>st</sup> or later in the calendar year must obtain an initial half-year license upon payment of one-half of the amount of the initial annual license tax, which amount is \$50.00. Conducting business operations in the City in any portion of a month shall be counted as a full month. When the business license is renewed for the first time, the license for the renewal year will be calculated based on the actual gross receipts of the business for the first calendar year or portion thereof.

## **Section 4: Enforcement**

### 4.1 Sworn Statement

Applicants for business licenses shall attach to the business license application, whether for an initial license or a renewal license, a sworn statement that all information contained in the application is accurate, complete and correct. No application shall be accepted

without the sworn statement. Any business filing a business license application or license renewal application containing a false sworn statement shall be liable under the penalty provisions of this Ordinance.

#### 4.2 Exemption for Certain Persons

- (a) Exemptions of Veterans of World War I, World War II, and Korea shall be for the full amount allowed by the applicable provisions of Code of Alabama, 1975 and will be determined in the same manner as provided in such provisions of the Code of Alabama, 1975. Such veterans shall pay the issuance fee required under Alabama law.
- (b) Citizens seventeen years of age and under and citizens sixty-five years of age and older who are paid for incidental lawn maintenance work, incidental having the meaning of five or fewer lots on a routine basis in a calendar year, are exempt from the annual payment of a license fee for the incidental lawn maintenance work.
- (c) Any person selling programs for an event conducted by Auburn University and who is selling programs on the day of the event and under a licensing agreement with Auburn University shall be exempt from the provisions of this Ordinance. This exemption is applicable only to natural persons; any firm, partnership, limited liability company, corporation, organization, association, membership, cooperative, agency, group or other organization, entity or association receiving any portion of the proceeds from the sales of Auburn University event programs is subject to the provisions of this Ordinance requiring the submission of an annual business license application and remittance of an annual business license fee.
- (d) Farmers and others engaged in the production of farm products are not required to buy a license or pay a license fee as provided by § 11-51-105 of the Code of Alabama, 1975. Any business desiring to claim exemption under this provision shall file with the City Manager a duly executed affidavit attesting such business' eligibility for the exemption provided by this subsection (d). In addition, such business shall file with the City Manager a Certificate signed by a County Agricultural Agent certifying that said business is a bona fide grower or producer of the kind of farm products which said business proposes to sell in the City.
- (e) Any person offering parking spaces on private property for rental on Auburn University football home game days shall be exempt from the requirement to obtain a business license, provided that such person owns the private property on which parking space is being offered for rent; or, if the person offering parking spaces for rent on Auburn University football home game days is not the owner of the private property on which parking spaces are to be offered for rent, such person must first obtain written permission

from the property owner to use the private property to provide parking spaces for rent on Auburn University football home game days. This exemption is applicable only to natural persons; any firm, partnership, limited liability company, corporation, organization, association, membership, cooperative, agency, group or other organization, entity or association is subject to the provisions of this Ordinance requiring the submission of an annual business license application and remittance of an annual business license fee; except that, as provided in Section 2.5 of this Ordinance, any enterprise entered into with the primary purpose to pursue social, charitable or other benevolent activities and that is classified as a tax-exempt organization under applicable provisions of the United States Internal Revenue Code or the regulations thereunder, shall be exempt from the requirement to obtain a business license for the activity of offering parking spaces on private property for rental on Auburn University football home game days.

(f) Businesses that have been engaged by the City of Auburn to provide goods or services to the city government of the City of Auburn may be exempt from the business licensing requirements of this ordinance under the following circumstances:

- 1) during each specific calendar year, the individual or firm so engaged by the City of Auburn has not conducted any business within the city limits of the City of Auburn, other than with the city government of the City of Auburn, and does not anticipate conducting any business within the city limits of the City of Auburn, other than with the city government of the City of Auburn during the specified calendar year; and
- 2) the projected amount of the fees to be paid to such individual or firm during the specified calendar year by the City of Auburn for goods or services to be provided to the city government of the City of Auburn during the specified calendar year is less than the then current State bid law minimum (which at the time of adoption of this amending ordinance is seven thousand five hundred dollars, \$7,500.00); and
- 3) the individual or firm so engaged has executed a written statement, a *Statement to Claim Exemption under Ordinance No. 1842, Section 4. 2. (e)*, certifying to the City Manager of the City of Auburn that the individual or firm has not conducted any business within the city limits of the City of Auburn, other than with the city government of the City of Auburn, and does not anticipate conducting any business within the city limits of the City of Auburn, other than with the city government of the City of Auburn during the specified calendar year; and further certifying that:
  - a) if such individual or firm receives during the specified calendar year either fees from the

City of Auburn for goods or services exceeding the then current State bid law minimum or fees from other entities for doing business within the city limits of the City of Auburn, then such individual or firm acknowledges that the individual or firm will no longer be exempt from the business licensing provisions of this Ordinance; and

- b) if such individual or firm was exempt from the business licensing provisions of this ordinance, as amended, under the terms of this subsection 4. 2. (e), and later, during the same calendar year, shall fail to qualify for the exemption provided under this subsection 4. 2. (e), such individual or firm shall be subject to all provisions of Ordinance No. 1842, as amended, which includes the requirements to keep records, to make records available to the City of Auburn, to pay business license fees and any late penalties and interest which may be due thereon, and all other provisions of Ordinance No. 1842, as amended and as may be amended; and
- c) if such individual or firm has made a false statement on the *Statement to Claim Exemption under Ordinance No. 1842, Section 4. 2. (e)*, such individual or firm shall be subject to all penalties under Ordinance 1842, as amended, for failure to apply for a business license or failure to apply for a renewal business license; provided, however, that any such individual or firm that has obtained an exemption from the business licensing provisions of Ordinance No. 1842, Section 4. 2. (e) and executed in good faith a *Statement to Claim Exemption under Ordinance No. 1842, Section 4. 2. (e)*, shall have thirty (30) calendar days from the date on which such individual or firm first has knowledge that the certification such individual or firm had made in the *Statement to Claim Exemption under Ordinance No. 1842* is no longer true, to apply for a City of Auburn business license or renewal of a City of Auburn business license without being assessed late penalties or interest; further provided that in such circumstances, the calculation of the business license fee due from such individual or firm shall include the gross receipts from the City of Auburn that gave rise to the claim for exemption.

#### 4.3 Designation of Place of Business

All businesses operating in the City shall designate in writing on the business license application form each location where business operations are conducted. The business license shall be posted in a conspicuous place at the designated location of business at all times. For each separate location at which business activities are conducted, there shall be a separate business license application and fee even if the ownership of the separate locations of business is the same.

#### 4.4 Enforcement

Upon the written request of the City Manager, a business holding a business license under this Ordinance shall within ten business days of receipt of such written request provide to the City Manager at his/her office a copy of the appropriate accounting records and related documents, including employment records and federal and state tax returns requested, to provide documentation of the gross receipts of the business. Failure of the business owner or his duly authorized representative to comply with the City Manager's written request within ten business days of receipt of such written request shall invoke the penalty provisions of this Ordinance.

#### 4.5 Confidentiality

All applications for business licenses and any related materials and information provided in connection therewith to the City by the business shall be held in strictest confidence by the City. Only the City Manager and those employees who administer this Ordinance shall have access to this information. The public shall only have access to the listing of the names and addresses of those businesses holding a business license issued by the City. Department personnel may respond to oral inquiries concerning whether or not a specific business holds a current business license issued by the City. The only other manner for release of this information is upon judicial order of a court of competent jurisdiction.

#### 4.6 Payment Protection

Any first time licensee or transient merchant may be required by the City to pay the license fee in cash or by certified check before a business license is issued.

Any licensee who has paid the business license fee in prior years with financial instruments that were returned unpaid to the City by the financial institution on which drawn may be required by the City to pay the license fee in cash or by certified check before a business license is issued.

#### 4.7 Penalty Provisions

- (a) A business that has not been licensed previously by the City and that does not submit a business license application and remit payment of the prescribed license fee prior to the day on which business operations were begun in the City, will be subject to a penalty of 30% of the business license fee amount for the beginning year's operations, plus one percent (1%) interest for each month of delinquency following the month in which such business commenced operations in the City.
- (b) A business that fails to apply for a renewal business license and remit the business license fee due thereon prior to the 15th day of February or the first business day following the 15<sup>th</sup> day of February, if February 15<sup>th</sup> occurs on a weekend, will be assessed a penalty, as provided by Section 11-51-93 (b) of the State Code of Alabama, 1975, which penalty is 15% of the total amount of the license fee due, less issuance fees; except that there shall be assessed a 30% penalty on any renewal business license fees not paid within 30 days of the delinquent date. For every month that the license fee is delinquent after February of the calendar year in which the license fee is due but unpaid, there shall be assessed interest of one percent (1%) for each month of delinquency, but excluding the month in which the delinquency is cleared by remittance of the license fee and all penalties or waiver of the delinquent penalty fees as provided in this Ordinance.
- (c) A business that does not apply for a renewal business license and remit the business license fee due thereon prior to the first business day of May and a business previously unlicensed by the City that does not apply for an initial business license and remit the required license fee within 10 days of beginning business operations, will, if necessary, be cited in the appropriate court. Businesses violating any of the provisions of this Ordinance, or doing any act made unlawful by the terms of this Ordinance, are declared to have committed an offense against the City, and shall upon conviction, be fined in accordance with §11-51-93 of the Code of Alabama, 1975.
- (d) A business found by the Department to be conducting business operations in the City without having applied for and been issued a business license for the current calendar year and which in previous years has been licensed will be subject to a penalty of three (3) times the minimum license fee for that category in such current calendar year.

#### 4.8 Punishment

Violation of any portion of this Ordinance by a business required to apply for a business license and pay the license fee will subject the business to punishment not to exceed a \$500.00 fine or six months in jail. These penalties are in addition to any late fees and interest that may also be assessed under the provisions of this Ordinance. All remedies under these penalty provisions are cumulative and do not modify any civil or criminal action provided for by law.

#### 4.9 Records To Be Kept

In addition to all other requirements otherwise contained in this Ordinance, businesses shall keep and maintain an accurate and complete set of accounting records and other related information sufficient to enable the Department to determine the correct amount of gross receipts or correct amount of any license fee due, or other records or information as may be necessary for the proper administration of any matter under the provisions of this Ordinance in such form as the Department may require. Such records and other information shall be open for examination by the Department upon written request at a reasonable time and location. It shall also be the duty of every business to keep and preserve such records and other information for a period of not less than five (5) years from the due date of the business license application or renewal application on which the underlying license fee is required to be reported, or within five (5) years of the date the business license application or renewal application is filed, whichever is later.

- (a) Reasonable Time and Reasonable Location. “Reasonable time” shall be considered to be during normal business hours of the Department. “Reasonable location” shall be considered to be the business’ place of business or the offices of the business’ authorized representative, provided such business or representative is located within a thirty (30) mile radius of the City. Businesses maintaining such records outside of this radius must make such records available at City Hall or at such other location as agreed upon between the business and the Department. The Department, when conducting an audit, review, or examination for verification, may, at its election, require any business conducting business within the City to provide the accounting records and other documents at a reasonable time and reasonable place agreed upon between the business and the Department, as provided herein.
- (b) Businesses May Be Assessed Reasonable Costs. The Department may assess and collect from businesses the reasonable costs, based on the then current State of Alabama government per diem rates, incurred by, or charged to, the City in connection with performing an examination of the business’ books and records if the business received notice by certified U.S. mail, return receipt requested, at least thirty (30) days prior to the date on which the examination was to begin, **and**

- (1) The business either failed or refused to respond or did not propose a reasonable alternative date on which the examination was to commence within fifteen (15) days of receipt of notice of the pending examination, **or** if
  - (2) The business and the Department agreed in writing as to an alternative date on which the examination was to commence but the business then failed or refused to permit reasonable access to its books and records on the alternative date.
- (c) **Separate Records to be Maintained Where Liquor Sold.** It shall be the duty of each business selling beer and/or spirituous and vinous liquors, and intermingling the receipts from such sales with receipts of the licensee's other business to keep a separate intelligible record of each beer and/or spirituous and vinous liquor sale. Where no such records are maintained, the Department may immediately enter a final assessment for the amount of such license tax due plus applicable penalties; or, if the Department determines that the collection of such license tax will be impaired unless immediate collection efforts are commenced, the Department may at any time enter a final jeopardy assessment, pursuant to § 40-29-91 of the Code of Alabama, 1975.

#### 4.10 Investigative Powers

Each business shall give to the Finance Director the means, facilities and opportunity for the making of such audit, examination, and investigation of the accounting records and other relevant information maintained by the licensee or other person for the purpose of computing and determining the proper classification of such business for license fee purposes, as provided for in Section 4.9. The Finance Director is hereby authorized to examine any person under oath concerning any gross receipts which were or should have been shown on a business license application or renewal application, and to this end, he/she may compel the production of documents and the attendance of all persons before him/her, whether as parties or as witnesses, whom he/she believes to have knowledge of such gross receipts.

- (a) Any business, or officer of a corporation or association, or partner of a partnership, or fiduciary of a trust, or responsible individual of any entity under a duty to maintain books and records pursuant to this Ordinance, who fails or refuses to maintain or provide such records and books, or permit inspection, as required herein, shall be subject to the provisions of Section 5.1 of this Ordinance, and shall be subject to proceedings in a court of competent jurisdiction.

4.11 Audit and Subpoena Authority; Additional Requirements.

Section 40-2A-7 (a) of the Code of Alabama, 1975, outlines further requirements for the maintenance of taxpayer records, in addition to the record keeping requirements set forth in Section 4.9 of this Ordinance. The Department’s authority to audit, to subpoena records, and to enter into contracts with private examining or collecting firms is granted pursuant to Act No. 98-191, the “Local Tax Procedures Act of 1998”, as well as § 40-2A-7 (a), Code of Alabama, 1975.

4.12 Lien for Taxes

If any business liable to pay the business license fees herein levied, neglects or refuses to pay the same within thirty (30) days of a final assessment of such fees, the amount (including any interest, additional amount, addition to tax, or assessable penalty together with filing fees and any other cost that may accrue thereto) shall be a lien in favor of the City upon all property and rights to property of the business, whether real or personal, tangible or intangible, used in any exhibition, trade, business, vocation, occupation or profession for which a privilege or license tax is or may be required.

The Department shall give a ten (10) day “Notice of Intent to File Lien” to the business by any one of the following methods:

- a. Given in person;
- b. Left at the business location or the dwelling of the business owner or the duly authorized representative of the business owner; or
- c. Sent by certified mail with return receipt requested to the business’ last known address.

Unless another date is specifically fixed by law, the lien shall arise at the time of the final assessment and shall continue until the liability for the amount so assessed is satisfied or becomes unenforceable by reason of lapse of time.

The Department may enforce such lien in any court of competent jurisdiction, by attachment issued by any officer authorized to issue such writs, upon executing bond as in any other cases of attachment, and upon making an affidavit that the attachment is not issued for the purpose of vexing or harassing the defendant, and describing the property on which the lien is claimed and setting forth all the facts necessary to the creation of the lien and the amount due and unpaid.

Liens against real property will be filed in the Office of the Probate Judge of Lee County. Liens against personal property will be filed in the Office of Secretary State of the State of Alabama. The lien will be valid when perfected by the Probate Judge of Lee County or the Alabama Secretary of State. All liens are pursuant to §§ 40-29-20, 40-29-21, 40-29-23(e) (2) and 11-51-96 of the Code of Alabama, 1975.

With respect to the lien described in this Section 4.12, the Department shall within ten (10) days release the lien when the liability out of which such lien arose is satisfied, and shall promptly notify the person upon whom such lien was made that such lien has been released.

#### 4.13 Remedies Cumulative

The conviction and fine or imprisonment of any business owner for engaging in any business without first obtaining a license to conduct such business shall not relieve such business owner from paying the license fee to conduct such business, nor shall the payment of any license fee prevent a civil action or criminal prosecution for the violation of any of the provisions of this Ordinance. All remedies prescribed hereunder shall be cumulative and the use of one or more remedies by the Department shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof.

#### 4.14 Violator May be Restrained from Continuing In Business

Any business which shall violate any of the provisions of this Ordinance may be restrained from continuing in business in the City, and proper prosecution shall be instituted in the name of the City until such business shall have complied with the provisions of this Ordinance.

#### 4.15 Waiver of Penalties

The City is authorized to reduce or waive penalties upon a determination of reasonable cause. In establishing what constitutes reasonable cause, the City shall follow the regulations of the State of Alabama Department of Revenue. However, the burden of proving reasonable cause shall be on the business. In order to appeal an assessed penalty, the business shall submit a formal written request for such waiver to the Finance Director, describing the circumstances which resulted in the penalty assessment and requesting that the assessment be waived. Such request is due to the Finance Director within thirty (30) days of the penalty assessment in

question. The Finance Director shall respond to the request within thirty (30) days of receipt of the request in the Finance Director's Office.

## **Section 5: Violations**

### **5.1 Failure to Make Reports, Keep or Provide Records**

Any business subject to the provisions of this Ordinance which shall fail to make the reports or which shall fail to keep or provide records, as herein required, as provided in § 40-29-112 of the Code of Alabama, 1975, shall be guilty of a misdemeanor and upon conviction be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) for each offense, and in addition, may be imprisoned for a period not to exceed six (6) months, or may be punished by such fine and imprisonment. Each occurrence of such failure shall constitute a separate offense.

### **5.2 Willful Refusal to Make Reports, or Permit Examination of Records**

Any business subject to the provisions of this Ordinance willfully refusing to make the reports herein required, or which shall refuse to permit the examination of the business' accounting records and related information by the Department, shall be guilty of a misdemeanor, and upon conviction be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) for each offense, and in addition may be imprisoned for a period not to exceed to six (6) months, or may be punished by such fine and imprisonment. Each occurrence or failure to make such reports shall constitute a separate offense, and each refusal of a written demand by the Department to examine, inspect or audit such records shall constitute a separate offense.

### **5.3 Violation of Ordinance**

Any business which shall fail, neglect, or refuse to perform any duty imposed by this Ordinance, or other City ordinances, or any rule, regulation, or law thereof, or which shall fail or neglect to do or perform any act or series of acts as required by this Ordinance or other City ordinances shall, upon conviction, be punished by a fine not exceeding five hundred dollars (\$500.00) for each offense, or by imprisonment for a period not exceeding six (6) months, or by both such fine and imprisonment, pursuant to the Code of the City of Auburn, as amended and as it may hereinafter be amended.

### **5.4 Unlawful for Businesses to Fail or Refuse to Perform Duties Required by this Business License Ordinance**

- (a) It shall be unlawful for any business to fail or refuse to perform any duty herein imposed upon such business, or to obstruct or interfere with the Finance Director in obtaining information necessary or convenient for determination of the proper license classification of the business or the calculation of the business license fee due from such business.
- (b) It shall also be unlawful for any such business, or for any agent, servant or employee of such business, to fail or refuse to perform any duty herein imposed upon such business or obstruct or interfere with the City Manager in carrying out the purposes of this Ordinance. Each occurrence of a failure or refusal to perform any duty herein imposed shall constitute a separate offense.

**Section 6: Licenses Governed by the Code of Alabama, 1975**

**6.1 Cable Television and Telecommunications Services**

All businesses providing telecommunications services within the City shall pay a license fee of 2% of gross receipts, except as herein provided.

**6.2 Farmers and Farm Production**

Farmers or others engaged in the production of farm products are not required to obtain a business license or pay a business license fee as provided by § 11-51-105 of the Code of Alabama, 1975. Any business desiring to claim exemption from the business license fee under this provision shall file with the City Manager a duly executed affidavit attesting to such eligibility. In addition, such business shall file with the City Manager a Certificate signed by a County Agricultural Agent certifying that said business is a bona fide grower or producer of the kind of farm products which said business proposes to sell in the City.

**6.3 Fire and Marine Insurance Companies**

Each Fire and Marine Insurance Company doing business in the City shall pay a license fee of four dollars (\$4.00) on each one hundred dollars (\$100.00), or major fraction thereof (more than \$50.00), of gross premiums, less return premiums, received on policies issued during the preceding year on property located in the City. A business privilege license tax of one hundred fifty dollars (\$150.00) is levied on each new Fire and Marine Insurance Company doing business in the City. Such tax will be due and payable at the beginning of the calendar year in which the company begins doing business in the City. The one hundred fifty dollar (\$150.00) fee will be adjusted at the expiration of the year so that the fee paid does not exceed four percent (4%) of the gross premiums, less return

premiums, collected by such companies on policies issued during the preceding year in the City as provided by § 11-51-120 of the Code of Alabama, 1975.

#### 6.4 Insurance Companies Other than Fire and Marine Insurance Companies

Each insurance company, other than Fire and Marine Insurance Companies, doing business in the City shall pay a business privilege license tax of twenty dollars (\$20.00) plus one dollar (\$1.00) on each one hundred dollars or major fraction (more than \$50.00) thereof of gross premiums, less return premiums, received during the preceding year on policies issued during that year to citizens of the City of Auburn as provided by § 11-51-121 of the Code of Alabama, 1975.

#### 6.5 Railroads

Each railroad company or each person operating railroads, whether such companies are incorporated under the laws of Alabama or any other state or whether incorporated at all or not, shall pay a business license fee of twenty five dollars (\$25.00) for the first 1,000 inhabitants of the City and thirty- five dollars (\$35.00) for each additional 1,000 inhabitants or major fraction thereof; provided, however, that in no case shall the City assess or collect such a privilege or license tax exceeding two thousand dollars (\$2,000) as provided by § 11-51-124 of the Code of Alabama, 1975.

Each railway sleeping car company, whether incorporated or not under the laws of Alabama, shall pay a business license fee of ten dollars (\$10.00) as provided by § 11-51-125 of the Code of Alabama, 1975.

#### 6.6 Express Companies

Express companies conducting business within the City shall pay a business license fee of five hundred dollars (\$500.00) per year as provided by § 11-51-126 of Code of Alabama, 1975.

#### 6.7 Telegraph Companies

Telegraph companies conducting business in the City shall pay an annual business license fee of three hundred seventy five dollars (\$375.00) per year as provided by § 11-51-127 of the Code of Alabama, 1975.

#### 6.8 Telephone Companies with Exchange License

Telephone companies with an exchange license operating in the City shall pay an annual business license fee of two hundred ten dollars (\$210.00) per year as provided by § 11-51-128 of the Code of Alabama, 1975.

#### 6.9 Telephone Companies with Long Distance Service

Telephone companies providing long distance service and conducting business in the City shall pay an annual business license fee of one thousand one hundred ten dollars (\$1,110) for the first twenty thousand (20,000) inhabitants of the City and sixty dollars (\$60.00) for each additional one thousand (1,000) inhabitants or major fraction thereof as provided by § 11-51-128 of the Code of Alabama, 1975.

#### 6.10 Electric, Gas, Waterworks, and Related Businesses

Utility companies which are not otherwise classified shall pay a business license fee equal to three percent (3%) of gross receipts of the business done by the utility in the municipality during the preceding year as provided by § 11-51-129 of the Code of Alabama, 1975. This section shall not affect any existing contract between the City and any public utility operating therein, except those provisions of contracts which relate to the amount or basis of the business license fee imposed by the City on such utility.

#### 6.11 Banks

The City shall levy a business license fee for banks and financial institutions according to the following schedule as provided by § 11-51-130 of the Code of Alabama, 1975.

1. Where the capital, surplus and undivided profits are \$50,000 or less: \$10.00.
2. Where the capital, surplus and undivided profits are more than \$50,000 and not more than \$100,000: \$20.00.
3. Where the capital, surplus and undivided profits are more than \$100,000 and not more than \$150,000: \$30.00.
4. Where the capital, surplus and undivided profits are more than \$150,000 and not more than \$200,000: \$40.00.

5. Where the capital, surplus and undivided profits are more than \$200,000 and not more than \$250,000: \$50.00.
6. Where the capital, surplus and undivided profits are more than \$250,000 and not more than \$300,000: \$60.00.
7. Where the capital, surplus and undivided profits are more than \$300,000 and not more than \$350,000: \$70.00.
8. Where the capital, surplus and undivided profits are more than \$350,000 and not more than \$400,000: \$80.00.
9. Where the capital, surplus and undivided profits are more than \$400,000 and not more than \$450,000: \$90.00.
10. Where the capital, surplus and undivided profits are more than \$450,000 and not more than \$500,000: \$100.00.
11. Where the capital, surplus and undivided profits are more than \$500,000 and not more than \$600,000: \$110.00.

Where the capital, surplus and undivided profits are more than \$600,000: \$125.00.

13. On each branch bank, \$10.00.

#### 6.12 Savings and Loans

The license fees for Savings and Loan Associations will be according to the schedule for banks and financial institutions contained in Section 6.11 of this Ordinance.

#### **Section 7: License Schedule**

All businesses not explicitly covered by a Code of Alabama, 1975, business license provision limiting the amount of business license fee that may be imposed on such businesses shall pay a license fee of \$100.00 or a percentage of total gross receipts of the business as specified in Section 7.2 of this Ordinance, whichever is greater, unless an exemption or flat fee is imposed under Section 7.2 of this Ordinance. All businesses shall pay a business license issuance fee as established by State law in addition to the business license fee.

## 7.1 Business Classification

Businesses shall be classified according to the North American Industrial Classification System (NAICS) based on their business activity or activities. Such classifications will be utilized for purposes of City auditing and enforcement efforts in order to provide information about types of businesses operating in the City. The classifications will be used to determine the appropriate business category and business license fee rate schedule as specified in Section 7.2 and other sections of this Ordinance.

## 7.2 Business Categories

### *Category 1: Wholesalers*

Annual business license fee is hereby fixed at 1/50 of 1% of the business' gross receipts (gross receipts multiplied by 0.000200), provided that the minimum license fee shall be \$100.00.

### *Category 2: Vehicle Retail Sales*

Annual license is hereby fixed at 5/1000 of 1% of the business' gross receipts (gross receipts multiplied by 0.000050), provided that the minimum license fee shall be \$100.00.

### *Category 3: Rental of Tangible Personal Property*

Annual business license fee is hereby fixed at 15/100 of 1% of the business' gross receipts (gross receipts multiplied by 0.001500) up to \$1,000,000.00 in gross receipts. For any amount of gross receipts over \$1,000,000.00, the business license fee is fixed at 12/100 of 1% of the business' gross receipts over \$1,000,000.00 (gross receipts over \$1,000,000.00 multiplied by 0.001200), provided that the minimum business license shall be \$100.00.

### *Category 4: Rental Real Estate-Residential Property*

Annual license is hereby fixed at 1.5% of the business' gross receipts (gross receipts multiplied by 0.01500); provided that the minimum license fee shall be \$100.00. Provided further that this license fee shall not apply to owner-occupied single family or two-family residences nor to residential accessory buildings to an owner-occupied residence (such as a garage apartment or condominium)

located on the same lot of record. Further provided that property shall be deemed to be “owner-occupied” if and only if said property is the principal residence of the owner of said property and if the owner claims homestead exemption on the property. In order to claim the benefit of the exemption provided by this paragraph, said property owner shall file a business license application or business license renewal form each calendar year and shall also file an affidavit with the City Manager or his designee, stating the name and address of the owner of said property, that said property is the principal residence of said owner, that said owner claims homestead exemption for said property, that the gross receipts from the rental income of said property is derived from the rental of only one residential building or a portion of one building on the same lot of record, and stating the amount of gross receipts from the rental income of said property for the prior calendar year.

*Category 5: Rental Real Estate-Commercial Property*

Annual business license fee is hereby fixed at 1/40 of 1% of the business’ gross receipts (gross receipts multiplied by 0.000250) provided that the minimum license fee shall be \$100.00.

*Category 6: Manufacturing*

Annual business license fee is hereby fixed at 3/1000 of 1% of the business’ gross receipts (gross receipts multiplied by 0.000030) up to \$25,000,000.00 of gross receipts. For any amount of gross receipts over \$25,000,000.00, the business license fee is fixed at 1/10000 of 1% of the business’ gross receipts over \$25,000,000.00 (gross receipts over \$25,000,000.00 multiplied by 0.000001), provided that the minimum business license fee shall be \$100.00.

*Category 7: Service Station Retail Sales*

Annual business license fee is hereby fixed at 75/1000 of 1% of the business’ gross receipts (gross receipts multiplied by 0.000750) up to \$1,000,000.00 in gross receipts. For any amount of gross receipts over \$1,000,000.00, the business license fee is fixed at 1/20 of 1% of the business’ gross receipts over \$1,000,000.00 (gross receipts over \$1,000,000.00 multiplied by 0.00050), provided that the minimum business license fee shall be \$100.00.

*Category 8: All other retail sales*

Annual business license fee is hereby fixed at 15/100 of 1% of the business' gross receipts (gross receipts multiplied by 0.001500) up to \$1,000,000.00 in gross receipts. For any amount of gross receipts over \$1,000,000.00, the annual business license fee is fixed at 12/100 of 1% of the business' gross receipts over \$1,000,000.00 (gross receipts over \$1,000,000.00 multiplied by 0.001200), provided that the minimum business license fee shall be \$100.00.

*Category 9: All Services*

Annual business license fee is hereby fixed at 25/100 of 1% of the business' gross receipts (gross receipts multiplied by 0.002500) provided that the minimum business license fee shall be \$100.00.

*Category 10: Package Store*

In addition to the liquor license fees set forth in Section 3 of the Code of the City of Auburn, an annual business license fee is hereby fixed at an amount equal to a percentage of gross receipts set at 1% (gross receipts, excluding gross receipts from sales of alcoholic beverages as provided by Section 2.11, item 2. Exclusions, paragraph (h) multiplied by .01), provided that the minimum business license fee shall be \$100.00.

*Category 11: Alcoholic Beverage Sales other than Package Store*

In addition to the liquor license requirements set forth in Section 3 of the Code of the City of Auburn, all businesses (other than package stores) selling alcoholic beverages shall pay a business license fee based on the category of business which is the primary business activity for which a business license is required, provided that the minimum license fee shall be \$100.00. For example, a restaurant that is licensed to sell alcoholic beverages shall purchase a business license under the provisions of *Category 8: All other retail sales* and the gross receipts of the restaurant shall exclude the gross receipts from the sales of the alcoholic beverages as provided by Section 2.11, item 2. Exclusions, in calculating the restaurant's business license, provided that the minimum license fee would be \$100.00.

*Category 12: General Contractors and Subcontractors:*

Annual business license fee is hereby set at a fixed rate for contractors, \$150.00 and subcontractors, \$100.00. In addition to the foregoing fixed-rate fees, contractors and subcontractors required to purchase a business license under this Ordinance shall pay a

license fee of an amount equal to 25/100 of 1% (.002500) of the total contract price or the total cost to the licensee, whichever is greater, of each project undertaken by the licensee during the current year for which a building permit is not required. Building permit fees as required by other City ordinances are not in lieu of the business license fees required by the provisions of this Ordinance.

*Category 13: Utilities*

Annual business license fee is hereby fixed at an amount equal to a percentage of gross receipts set at 3% (gross receipts multiplied by 0.030000), with no minimum license fee required, as provided by Code of Alabama, 1975.

*Category 14: Telecommunications*

Annual business license fee is hereby fixed at an amount equal to a percentage of gross receipts (from all subscriber and non-subscriber sources) set at 2% (gross receipts multiplied by 0.020000) with no minimum license fee required.

*Category 15: Transient Merchant*

1. Prior to conducting business within the City, each transient merchant shall submit a complete business license application or business license renewal application and remit a minimum deposit of \$500.00, or such greater amount as required below, to the Department. This deposit is made in prepayment of the transient merchant's business license fee, sales tax liability and occupation license fee liability for the calendar year. However, if in any previous calendar year, the transient merchant's total liability for business license fee, sales tax liability and occupation license fee liability exceeds \$500.00, the transient merchant shall be required to remit a minimum deposit equivalent to the maximum previous annual total for business license fee, sales tax liability and occupation license fee liability.
2. No business license shall be issued to a transient merchant until and unless the license application has been reviewed and approved by the Director of the City Planning Department and all requirements governing such businesses have been met. (See Section 8.9 of this Ordinance for additional requirements applicable to Transient Merchants.)
3. After a transient merchant has completed doing business within the City for the calendar year, the transient merchant shall file a Transient Merchant's Report of Calendar Year Business Activity with the Department. The Transient Merchant's Report of Calendar Year Business Activity shall provide the following information to the Department: 1) the gross receipts from sales within

Auburn for the calendar year, 2) the amount of gross receipts from tax-exempt sales, if any, 3) the amount of gross wages paid to the employees of the transient merchant during the period in which the transient merchant was conducting business in the City, 4) the dates during the calendar year on which the transient merchant was conducting business within the City, and 5) the location(s) within the City at which the transient merchant conducted business activities during the calendar year. The Transient Merchant's Report of Calendar Year Business Activity shall become delinquent if not filed by the last business day of February of the year following the calendar year in which the transient merchant conducted business within the City.

4. From the information submitted in the Transient Merchant's Report of Calendar Year Business Activity, the Department shall calculate the transient merchant's total tax and fee liability as follows:
  - a. *Business license fee*: The business license fee for a transient merchant is hereby fixed at 15/100 of 1% of the transient merchant's gross receipts (gross receipts multiplied by 0.001500) up to \$1,000,000.00 of gross receipts, provided that the minimum business license fee shall be \$150.00. For any amount of gross receipts over \$1,000,000.00, the annual business license fee is fixed at 12/100 of 1% of the transient merchant's gross receipts over \$1,000,000.00 (gross receipts over \$1,000,000.00 multiplied by 0.001200), provided that the minimum business license fee shall be \$150.00.
  - b. *Sales tax liability*: The transient merchant's sales tax liability is hereby fixed at the City's then prevailing sales tax rate multiplied by the transient vendor's gross receipts net of any gross receipts from tax-exempt sales.
  - c. *Occupation license fee liability*: The transient merchant's occupation license fee liability is hereby fixed at the City's then prevailing occupation license fee rate multiplied by the total gross wages paid to the employees of the transient merchant during the period in which the transient merchant was conducting business in the City.
  - d. *Transient merchant's total tax and fee liability*: The transient merchant's total tax and fee liability to the City shall be the sum of the business license fee, sales tax liability, and occupation license fee liability as provided above.

Within 60 calendar days of the transient merchant's filing of the Transient Merchant's Report of Calendar Year Business Activity, the Department shall calculate the transient merchant's total tax and fee liability as provided above.

- e. If the transient merchant's total tax and fee liability is less than the amount of the deposit remitted by the transient merchant, the Department shall refund the excess to the transient merchant within 75 calendar days of the transient merchant's report filing.
  - f. If the transient merchant's total tax and fee liability exceeds the amount of the deposit remitted by the transient merchant, the Department shall invoice the transient merchant for the balance due. The transient merchant shall have 30 days from the date of the Department's notice to remit the balance due.
5. If a transient merchant has filed a Transient Merchant's Report of Calendar Year Business Activity for a given calendar year and then subsequently conducts business within the City during the same calendar year without again remitting the required deposit as provided above, the transient merchant will be subject to a penalty of \$1,500.00 in addition to any other applicable penalties under this Ordinance.
6. Transient merchants shall be subject to all other penalty provisions of this Ordinance.

*Category 16: Fortune Tellers*

Annual business license fee is hereby set at a fixed rate of \$2,500.00. No business license shall be issued to a Fortune Teller unless the license application or renewal application has been reviewed and approved by the Director of the City Public Safety Department and the Director of the City Planning Department.

*Category 17: Money Lenders/Brokers, Pawn Shops and Dealers in Precious Metals*

Annual business license fee is hereby set at a fixed rate of \$500.00. No business license shall be issued unless the license application or renewal application has been reviewed and approved by the Director of the City Public Safety Department and the Director of the City Planning Department.

*Category 18: Auburn University Event Day Program Vendors*

Any natural person selling programs for an event conducted by Auburn University and who is selling programs on the day of the event under a licensing agreement with Auburn University shall be exempt from the provisions of this Ordinance. This exemption is

applicable only to natural persons; any firm, partnership, limited liability company, corporation, organization, association, membership, cooperative, agency or other group receiving any portion of the proceeds from the sales of Auburn University event programs is subject to the provisions of this Ordinance requiring a business license for doing business within the City. Business conducted on the campus of Auburn University is by definition business conducted within the City since the campus of Auburn University lies within the city limits of the City.

*Category 19: Waste Management*

An annual business license fee is hereby fixed at an amount equal to a percentage of gross receipts set at 3% (gross receipts multiplied by .03), provided that the minimum business licensee fee shall be \$100.00.

*Category 20: Delivery License*

1. A delivery business license, the fee for which is \$100.00, is required as provided by Section 11-51-194 of the State Code of Alabama, 1975, for businesses that meet the following criteria:
  - a. Having no other physical presence within the City of Auburn;
  - b. Conducting no other business in the City of Auburn other than delivering merchandise and performing the requisite setup and installation of said merchandise;
  - c. Performing the delivery, setup and installation of the business' own merchandise within the City and by the business' employees or agents, and which delivery is done by means of delivery vehicles owned, leased, or contracted by the business;
  - d. Having gross receipts derived from the sale and any requisite set-up or installation of all merchandise so delivered which does not exceed seventy-five thousand dollars (\$75,000) during the license year;
  - e. Any set-up or installation shall relate only to (i) that required by the contract between the business and the customer or as may be required by state or local law and (ii) the merchandise delivered;
  - f. If at any time during the current license year, the business fails to meet any of the above stated criteria then within 10 days after any of said criteria have been violated or exceeded, the business shall purchase all appropriate business licenses from the City for the entire license year and without regard to this section. The business' payment of the delivery license fee shall be credited toward the total of all business license fees due under this sub-section.

2. The mere delivery of a business' merchandise by common carrier shall not allow the City to assess a business license fee against the business, but the gross receipts derived from any sale and delivery accomplished by means of common carrier shall be counted against the seventy-five thousand (\$75,000) limitation described in the preceding section if the business also during the same license year sells and delivers in to the taxing jurisdiction using a delivery vehicle other than a common carrier.
3. A common carrier, contract carrier, or similar delivery service making deliveries on behalf of other businesses shall not be entitled to purchase a delivery license under this Section.
4. The delivery license shall be calculated in arrears, based on the related gross receipts during the preceding license year. More explicitly, if a business did not meet the criteria for a delivery license as detailed in *Category 20. 1 (a) – (e)* above in the prior calendar year, the business shall not be eligible for a delivery license in the current calendar year. Further provided that for the first calendar year in which a business begins operating a delivery service that meets the criteria *Category 20. 1 (a) – (e)*, the delivery license shall be \$100.00, unless and until the business meets the criterion of *Category 20. 1 (f)*.
5. The purchase of a delivery license shall not, in and of itself, establish nexus between the taxpayer and the municipality for the purpose of the taxes levied by and under the authority of Title 40 of the Code of Alabama or other provisions of law, nor does the purchase of a delivery license conclusively determine that nexus does not exist between the taxpayer and the municipality.

## **Section 8: Other License Requirements**

### **8.1 Contractors**

Each general contractor who shall make contracts, no one of which amounts to \$20,000.00 or more, shall, prior to being issued a business license and a building permit for such work, post an Indemnity Bond in the amount of \$1,000.00 with the City. Each general contractor who shall make contracts, any one of which amounts to \$20,000.00 or more, shall, prior to being issued a business license and a building permit for such work, post an Indemnity Bond in the amount of \$5,000.00 with the City.

### **8.2 Sub-contractors**

A *sub-contractor* is defined as a contractor who is licensed to perform one type of work for which a Contractor's business license is required, and who performs the work under sub-contract to a general contractor. A sub-contractor shall, nonetheless, be entitled to

perform such work as is authorized by his license, under direct contract to the owner of property, in which capacity the sub-contractor shall perform the work of contractor; provided, however, that he shall not be entitled to perform other types of work for which a contractor's business license is required, nor to award sub-contracts to other sub-contractors. Provided that each person applying for a license as an electrical contractor or sub-contractor shall, prior to being issued such business license, post an Indemnity Bond in the amount of \$5,000.00 with the City. Provided further, that each person applying for license as a plumbing contractor or sub-contractor shall, prior to being issued such business license, post an Indemnity Bond in the amount of \$5,000.00 with the City. And provided further, that a separate business license shall be required for each different type of contracting work.

### 8.3 State Regulated Licenses

No City business license shall be issued to any business that is regulated by the State of Alabama without evidence that the business owner possesses a current State license to provide services of the type so regulated. Businesses regulated by the State of Alabama include but are not limited to: General contractors, Electrical contractors, Plumbing contractors, Heating/Air-Conditioning contractors, Exterminators and Landscapers.

### 8.4 Day Care Center

A day care center is defined as any person(s) providing care, for compensation, to more than six (6) children during part of, or all of, the day but less than 24 hours apart from their own parents or guardians. A business license shall be issued only upon presentation of proof that the applicant is licensed to operate a day care home as may be required by the State of Alabama and upon proof that the premises meet City fire, safety and health standards and zoning requirements and upon approval of the City Manager.

### 8.5 Day Care Home

A day care home is defined as any person(s) providing care, for compensation, to more than two (2) but less than six (6) children other than his or her children, in his or her own home during part of, or all of the day, but less than 24 hours apart from their own parents or guardians. A business license shall be issued only upon presentation of proof that the applicant is licensed to operate a day care home as may be required by the State of Alabama and upon proof that the premises meet City fire, safety and health standards and zoning requirements. Foster Homes registered with the State of Alabama are not required to obtain a City business license.

### 8.6 Restaurant/Catering Service

A business license shall not be issued to any establishment where meals and/or snacks are prepared and/or served without presentation of a valid State Health permit.

### 8.7 Rental of Residential Property

- (a) This section applies to the rental or leasing, for residential purposes, of real property, including but not limited to houses, apartments, condominiums, rooms or dormitories, mobile homes or spaces for mobiles, or any portion thereof. Each owner of residential real property in the City, who rents or leases such property to others as the lessor, whether directly or through an agent, shall obtain a business license and pay a business license fee to the City as provided for in Section 7.2 (*Category 4*). The business license fee for residential rental real property shall be due on the first business day of each calendar year, and such license fee shall become delinquent on the last business day of February of each calendar year. All penalty and business license reporting requirements applicable to other categories of business under this Ordinance shall also be applicable to this Category.
- (b) Owners of residential real property who have engaged a third party to manage their rental properties may choose to have the third party management agent business to submit such owners' business license applications or business license renewals, as well as their residential rental business license fees. Real estate management businesses that submit business license applications or business license renewals on behalf of their residential rental clients will be issued a single business license to which is appended a detailed listing of the property owners and the individual properties for which the business license is being obtained or renewed. The business license issuance fee for such management agent businesses shall be five dollars (\$5.00), based on the issuance of a single business license. When a business license is to be issued to such management agent business, the calculation of the management agent business' business license fee shall apply the minimum business license fee of \$100.00 to each individual property owner's prior calendar year's gross receipts.
- (c) Every owner or manager of residential rental real property is required to submit to the City with each business license application or business license renewal a detailed listing of each property from which rental income was received, and for each property so listed, the amount of the gross receipts from that property for the specified calendar year. The listing shall be organized by property owner and shall include the name of the property owner, the property address(es), the gross receipts from the rental of each of the properties for the specified calendar year, a subtotal of the gross receipts from rentals by property owner, and the license amount due thereon. At the end of

the listing, the total gross receipts from all properties shall be shown, as shall the total rental license fees due for all properties. This detailed property listing is required to be submitted with the annual license fee that is required to be remitted under this ordinance, in order for such remittance to be considered complete.

- (d) In addition to the detailed property listing specified in section (c) above, each owner or manager of residential rental real property shall report any change in the detailed listing submitted, from the listing submitted for the previous calendar year. Changes to be reported include the acquisition of new properties, whether by purchase or by agreement to provide management services therefore, the sale of previously owned properties and the removal of previously managed properties from the business agent's management responsibility.
- (e) If a residential rental property owner has engaged a property management agent, the property manager agent may submit the detailed listing required above on behalf of the property owner; provided, however, that the failure or omission by any property management agent to report such gross receipts detailed by property and to remit the rental real property license fee due thereon shall not relieve any property owner from the requirement to report such gross receipts and pay such license fee.

### 8.8 Rental of Commercial Property

- (a) This section applies to the rental or leasing of real property for commercial purposes, including but not limited to stores, restaurants, offices, warehouses, or other similar non-residential enterprises, or any portion thereof in which business other than the rental of residential real property may be conducted. Each owner of commercial real property in the City, who rents or leases such property to others as the lessor, whether directly or through an agent, shall obtain a business license from and pay a business license fee to the City as provided for in *Category 5* of Section 7.2. The business license fee for commercial rental real property shall be due on the first business day of each calendar year, and such license fee shall become delinquent on the last business day of February of each calendar year. All penalty and business license reporting requirements applicable to other categories of business under this Ordinance shall also be applicable to this Category.

- (b) Owners of commercial rental real property who have engaged a third party to manage their rental properties may choose to have the third party management agent business to submit such owners' business license applications or business license renewals, as well as their commercial rental business license fees. Management agent businesses that submit business license applications or business license renewals on behalf of their clients will be issued a single business license to which is appended a detailed listing of the property owners and the individual properties for which the business license is being obtained or renewed. The business license issuance fee for such management agent businesses shall be five dollars (\$5.00), based on the issuance of a single business license. When a business license is to be issued to such management agent business, the calculation of the management company's business license fee shall apply the minimum business license fee of \$100.00 individually to the prior calendar year's gross receipts of each property owner.
- (c) Every owner or manager of commercial rental real property is required to submit to the City with each business license application or business license renewal a detailed listing of each commercial property from which rental income was received, and for each property so listed, the amount of the gross receipts from that property for the specified calendar year. The listing shall be organized by property owner and shall include the name of the property owner, the property address(es), the gross receipts from the rental of each of the properties for the specified calendar year, a subtotal of the gross receipts from rentals by property owner, and the license amount due thereon. At the end of the listing, the total gross receipts from all properties shall be shown, as shall the total rental license fees due for all properties. This detailed property listing is required to be submitted with the annual license fee that is required to be remitted under this ordinance, in order for such remittance to be considered complete.
- (d) In addition to the detailed property listing specified in section (c) above, each owner or manager of rental real property shall report any change in the detailed listing submitted, from the listing submitted for the previous calendar year. Changes to be reported include the acquisition of new properties, whether by purchase or by agreement to provide management services therefore, the sale of previously owned properties and the removal of previously managed properties from the business agent's management responsibility.
- (e) If a commercial rental property owner has engaged a property management agent, the property manager may submit the detailed listing required above on behalf of the property owner; provided, however, that the failure or omission by any property management agent to report such gross receipts detailed by property and to remit the rental real property license fee due thereon shall not relieve any property owner from the requirement to report

such gross receipts and pay such license fee.

On the occasion that the owner or manager of real property has been approved to file annually as provided in Ordinance 1922, the requirements for detailed reporting as specified in Section 8.8 as amended by Section 1 above will be applied on an annual basis.

#### 8.9 Transient Merchant

No transient merchant business license will be issued without presentation of written permission from the owner of the property from which the transient merchant plans to conduct business and approval of the Planning Director.

#### 8.10 License Fee Credit

Any Business (a “Wireline Business”) subject to the provisions of Ordinance number 1871, adopted October 19,1999 (the “Wireline Ordinance”) that pays a fee (a “Right-of-Way Fee”) to the City for the use and occupancy of the public rights-of-way shall be eligible, upon proper proof, for a credit (the “Business License Fee Credit”) against the amount of the annual business privilege License Fee levied pursuant to the provisions of this Ordinance which such Wireline Business is required to pay to the City. The Business License Fee Credit for any calendar year shall be the amount by which the sum of:

- a. The Right-of-Way Fee such Business is required to pay to the City for a calendar year, and
- b. The License Fee such Business is required to pay to the City for such calendar year

Together exceed five percent (5%) of the Gross Receipts (determined in accordance with the definition of Gross Receipts contained in the Wireline Ordinance) of such Business for the immediately preceding calendar year.

### **Section 9: Rules and Regulations Authorized**

The City Manager is hereby empowered to promulgate such reasonable rules, regulations, procedures and forms as may be necessary or appropriate for the administration and enforcement of this Ordinance, provided that such rules, regulations, procedures and forms are not inconsistent with this Ordinance nor with any laws of the City, the State of Alabama, or the United States; and such rules, regulations, procedures and forms so promulgated shall be binding upon all licensees.

**Section 10: Certain Ordinances Repealed**

Ordinances heretofore adopted by the City that are in conflict with the provisions of this Ordinance, and particularly Ordinance Numbers 884, 885, 916, 1073, 1102, 1152, 1231, 1263, 1393, 1431, 1457, and 1797, as amended, are hereby repealed. No ordinance heretofore or hereafter adopted by the City requiring a license for any business other than the businesses described herein shall be affected.

**Section 11: Quadrennial Review**

The City Manager shall conduct a review of this Ordinance and all other City ordinances levying taxes, license fees or charges for services and report thereon to the City Council at least once every four (4) years following the revenue review conducted in the fiscal year ending September 30, 2003. The City Council shall review the report on these revenue sources and enact such changes in the tax rates, license fee rates and rates of charges for services as the Council may consider necessary.

**Section 12: Severability**

The provisions of this Ordinance are severable. If any section, sub-section, category or provision of this Ordinance shall for any reason be declared illegal, void or invalid, such illegality, voidness or invalidity shall not affect any other section, sub-section, category or provision of this Ordinance.

**Section 13: Effective Date.**

This Ordinance shall be effective January 1, 2000, and shall be published as required by law.

**ADOPTED AND APPROVED** by the City Council of the City of Auburn, Alabama, this the 6th day of July, 1999.

Ham, Jr.

Mayor

Bill

ATTEST:

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Douglas J. Watson

City Manager

Amending Ordinances:

*Ordinance 1908 adopted April 18, 2000*

*Ordinance 1922 adopted June 2, 2000*

*Ordinance 1976 adopted January 2, 2001*

*Ordinance 1981 adopted February 20, 2001*

*Ordinance 2054 adopted May 7, 2002*

*Ordinance 2117 adopted April 15, 2003*

*Ordinance 2324 adopted September 6, 2005*

*Ordinance 2378 adopted April 4, 2006*

*Ordinance 2446 adopted December 5, 2006*

*Ordinance 2521 adopted October 16, 2007*

*Ordinance 2526 adopted December 18, 2007*