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License Schedule Ordinance

The League of Municipalities has a proposed Model Licensing Ordinance available upon request that was created with the valuable input of many city attorneys and revenue officers around the state. Although some of the language quoted in this article comes from the model ordinance, this ordinance is merely a suggested approach. Each municipality should evaluate its local needs to arrive at the language it deems appropriate.

The first item to be considered in checking the readiness of a municipal license ordinance is the manner in which it was adopted. The license ordinance should be treated as an ordinance of general and permanent nature. Likewise, an ordinance amending an existing license ordinance should be treated with the same dignity. This means that the procedure prescribed in Section 11-45-2, Code of Alabama 1975, should be followed in adopting the ordinance.

Publication Requirements

Since a license ordinance is an ordinance of general and permanent nature, it must be published pursuant to the requirements of Section 11-45-8, Code of Alabama 1975. Section 11-45-8 (b)(2), Code of Alabama 1975, provides that all ordinances relating to licensing or franchising of businesses may be published in a synopsis form in some newspaper of general circulation published in the municipality provided that the synopsis, at a minimum, includes the following information:

a. A summary of the purpose and effect of the ordinance.

b. If the ordinance relates to planning or zoning, a general description of the property or properties affected by the ordinance including the common name by which the property or properties are known and the substance of the ordinance.

c. If the ordinance relates to the licensing of businesses or the granting of a franchise, the categories of businesses which will be affected by the ordinance and the substance of the ordinance.

d. The date upon which the ordinance was passed and, if different from the date of publication, the effective date of the ordinance.

e. A statement that a copy of the full ordinance may be obtained from the office of the city or town clerk during normal business hours.

Except in towns which had a population of less than 2,000 inhabitants as shown by the 1950 federal census, ordinances of a general and permanent nature must be published in some newspaper of general circulation published in the municipality. "Published" means where the newspaper is put into the mail (put into circulation). If no newspaper is published in the municipality, then the publication requirements are satisfied by posting copies in three public places in the municipality, one of which is the post office or the mayor's office. Municipalities of less than 2,000 in population by the 1950 federal census may satisfy the publication requirements merely by posting as stated above. For more information about the specific requirements for passing and publishing ordinances, please see the article titled "Municipal Ordinances" in this publication.

Permanent Schedule

A number of municipalities in the past have adopted entire new license ordinances each year even though only minor amendments were made to their old ordinances. To avoid having to do this, a municipality should phrase its business license ordinance so that it provides for the schedule to be in effect for the present year and each successive year thereafter until amended or repealed. This saves on future publication costs and allows for the ordinance to be printed in quantity for use in future years.

License year

With the passage of the Municipal Business License Reform Act of 2006, all municipalities are now required to follow a calendar year with licenses due on January 1st of any given year and expiring on December 31st of that same year. See Section 11-51-90 and 11-51-90.1, Code of Alabama 1975.

Standard License Form

Municipalities must allow taxpayers to use the standard license form set out in the Municipal Business License Reform Act to apply for a license. The application form may, however, be altered to incorporate the different business license rates that municipalities are permitted to charge from time to time, and to reflect additional or different instructions to taxpayers that are not inconsistent with this chapter. Section 11-51-90, Code of Alabama 1975.

Penalties

To promote the timely payment of licenses, the ordinance should provide for penalties as allowed by Section 11-51-193, Code of Alabama 1975. Municipalities are authorized to assess a 15 percent penalty on licenses not paid by due date and 30 percent if not paid within 30 days of due date. These penalties are not cumulative. Further, the law provides that there is no penalty charged if the Taxpayer (TP) can demonstrate reasonable cause.

Reasonable cause means: (1) The death or major illness of or an accident involving a sole proprietor causing serious bodily injury that in either case resulted in the sole proprietor being unable to purchase the license or operate his or her business during the 10 days preceding the due date; (2) natural disaster, fire, explosion, or accident that caused the closing or temporary cessation of the business of the taxpayer during the 10 days preceding the due date, or; (3) reliance on the erroneous advice of an employee or agent of the revenue department of the taxing jurisdiction or its designee given in writing or by electronic mail.

A municipality may waive the penalty for other reasons, including, but not limited to, the taxpayer's reliance on erroneous but good faith advice from its tax adviser or on erroneous, oral advice from an employee or agent of the revenue department of the taxing jurisdiction or its designee.

The burden of proving reasonable cause is on the business owner, and a determination by the taxing jurisdiction that reasonable cause does not exist shall be reversed only if that determination was made arbitrarily and capriciously.

Part-Year Licenses

A license ordinance should provide for licenses issued to new businesses during the year. Section 11-51-92, Code of Alabama 1975, provides that "In case the license of any business, trade, occupation, or profession is based on a flat rate and is taken out after July 1, only one half of the license shall be charged and collected, except for those subjects for which daily, weekly, monthly, quarterly, or semiannual licenses are provided by law." The League's Model License Ordinance provision states:

> "Every person who commences business on or after July 1, and whose annual license is based on a flat rate, shall be subject to and shall pay one-half the annual license for such business for that calendar year."

Issuance Fee

Section 11-51-90, Code of Alabama 1975, authorizes municipalities to collect a license issuance fee not exceeding ten dollars. This statutory provision is not self-executing. Therefore, municipalities should include a provision requiring the issuance fee in license ordinances. This issuance fee can help pay the cost of administering the collection of licenses.

The Alabama Department of Revenue shall increase the issuance fee every five license years by an amount equal to the percentage increase, if any, in the U.S. Department of Labor's Producer Price Index during that five-year period, rounded to the nearest dollar, with the base year being 2006. The Department of Revenue shall notify all municipalities and the Alabama League of Municipalities of any such fee increase no later than the November 30th preceding the license year for which the increase shall take effect.

The failure of the Department of Revenue to so notify all municipalities and the Alabama League of Municipalities shall not, however, prohibit a municipality from increasing the issuance fee, if any increase is otherwise due pursuant to this subsection. A reasonable projection of the Producer Price Index for the months of November and December of the fifth year of the test period may be employed in this calculation.

Small Vendor License

Pursuant to Section 11-51-90(a)(4), Code of Alabama 1975, municipalities may, but are not required, to establish a small vendor business license in their ordinance. In order to qualify as a small vendor, the following criteria must be met:

a. The taxpayer purchased a business license from the municipality with respect to the preceding license year and made a sale or provided services within the municipality thereof during each calendar quarter of the preceding license year.

b. The taxpayer's gross receipts derived from within the municipality for the preceding license year did not exceed fifteen thousand dollars ($15,000).

c. The taxpayer did not qualify for the special delivery license provided for by Section 11-51-194, Code of Alabama 1975.

Delivery License

Section 11-51-194, Code of Alabama 1975, requires municipalities to establish a special delivery license allowing certain out-of-town taxpayers to make deliveries into the municipality and police jurisdiction. The purchase of the special delivery license permits businesses with no physical presence in the municipality or its police jurisdiction to deliver merchandise into the police jurisdiction or municipality without having to purchase any other license for delivery. The amount of the license cannot exceed $100.00 for the business, although this amount may be adjusted every five years based on the standard set out in Section 11-51-90, Code of Alabama 1975. A municipality may charge a taxpayer an issuance fee for a business delivery license not to exceed $10.

In order to qualify for the special delivery license fee, the gross receipts from all deliveries into the municipality or its police jurisdiction must exceed ten thousand dollars ($10,000) during the preceding license year, and the taxpayer must have no other physical presence within the municipality or its police jurisdiction during the year. If deliveries exceed $75,000, the taxpayer does not qualify for this special license, and would instead need to purchase a regular business license. The delivery license shall be calculated in arrears, based on the related gross receipts during the preceding license year.

At its discretion, a municipality may, by ordinance, increase the amount of permitted deliveries up to $150,000. Again, this figure may be revisited every five years based on the standards contained in Section 11-51-90. Common carriers, contract carriers, or similar delivery services making deliveries on behalf of others do not qualify for the delivery license.

Delivery includes any requisite set-up and installation. To be included, set-up or installation must be required by the contract between the taxpayer and the customer or be required by state or local law. In addition, any set-up or installation must relate solely to the merchandise that is delivered. If the taxpayer or the taxpayer's agents perform set-up or installation that does not qualify under this definition, the taxpayer must pay any required license fee rather than the delivery license.

Municipalities may, by ordinance, require the taxpayer to purchase a decal for each delivery vehicle that will make deliveries within the municipality or its police jurisdiction. The charge for such decal cannot exceed the municipality's actual cost.

If the taxpayer fails to meet the criteria that qualify him or her for the special delivery license at any time during the license year, the taxpayer must purchase a delivery license and all other appropriate licenses for the entire license year within 45 days of the failure.

NAICS Sectors

Municipalities are required to apply the 2002 North American Industrial Classification System ("NAICS") sectors to define businesses in their municipality – **Each municipality still sets its own rates.** (NOTE: Rates that are restricted under the Code of Alabama for certain businesses are still restricted.). Section 11-51-90.2, Code of Alabama 1975.

If a Taxpayer is doing more than one type business at a single location, the taxpayer pays a license fee for each category it derived more than 10 percent of its gross receipts during the preceding license year. (NOTE: Municipalities may, in their ordinances, increase this amount up to 35%.) taxpayers are taxed only on gross receipts which arise within the line of business which is the subject of the license. No portion is untaxed, though. All receipts not accounted for otherwise are taxed at rate charged for the primary business.

Municipalities can use subcategories under the NAICS system except for bank holding companies and utilities, which are taxed separately. Whether to issue a business license is a factual determination that may only be made by the city. Under section 11-51-90.2(c)(1) of the Code of Alabama, a city may amend its business license classification ordinance for a business not specifically classified by creating a subcategory within a classification applying generally to that business. AGO 2010-059

Branch Office Rule

Section 11-51-90(b), Code of Alabama 1975, provides that a taxpayer engaged in business in more than one municipality, shall be permitted to account for its gross receipts so that the part of its gross receipts attributable to one or more branch offices

will not be subject to the business license tax imposed on the principal business office required to obtain a business license. Branch office gross receipts are those receipts that are the result of business conducted at or from a qualifying branch office.

To establish the existence of a qualifying branch office, the taxpayer shall meet all the following criteria:

1. Demonstrate the continuing existence of an actual physical facility located outside the police jurisdiction of the municipality in which its principal business office is located, such as a retail store, outlet, business office, showroom, or warehouse, to which employees or independent contractors, or both, are assigned or located during regular normal working hours.
2. Maintain books and records which reasonably indicate a segregation or allocation of the taxpayer's gross receipts to the particular facility or facilities.
3. Provide reasonable proof that separate telephone listings, signs, or other indications of its separate activity are in existence.
4. Billing or collection activities, or both, relating to the business conducted at the branch office or offices are performed by an employee or other representative of the taxpayer who has such responsibility for the branch office, whether or not the representative is physically located at the branch office.
5. All business claimed by a branch office or offices must be conducted by and through the office or offices.
6. Supply proof that all applicable business licenses with respect to the branch office or offices have been issued.

A business license is not required for a person traveling through a municipality on business if the person is not operating a branch office or doing business in the municipality. Section 11-51-90.2(a)(3), Code of Alabama 1975.

Business Licenses for Certain Contractors, Subcontractors, and Trades

The Legislature added Section 11-51-133 to the Alabama Code via Act 2026-437. This Act permits municipalities to impose business licenses on certain contractors, subcontractors, and tradespeople who work inside the limits of a municipality where they otherwise have no physical business location. Any such business license fee may be either a flat fee or an amount calculated based on the business's gross receipts for work performed inside the municipal limits. Please see Section 11-51-133(b)(1) for the complete list of businesses to which this Act applies.

Similarly, the Act permits municipalities to impose business license requirements on those same types of businesses when they have a physical business location and perform work inside the municipal limits. In that case, however, the municipality may choose between imposing a flat fee, a flat fee plus a fee calculated based on the business's gross receipts, and a fee solely calculated based on the business's gross receipts. If the municipality chooses to impose the combined fee, the flat fee portion cannot exceed $500. For a more detailed overview on the topic please see the article entitled "License Exemptions and Limitations" found on the League legal team's Selected Readings page, here: *https://almonline.org/SelectedReadingsfortheMunicipalOfficial.aspx*.

Notification of Renewals for Existing Licensees

Municipalities must notify taxpayers when it is time to renew their licenses. Section 11-51-90(d), Code of Alabama 1975. Each municipality shall mail or otherwise transmit a renewal reminder notice to each taxpayer that purchased a business license during the preceding license year, via regular U.S. mail addressed to the taxpayer's last known address, on or before December 31 of the current license year. The failure of the municipality to comply with the preceding sentence shall not, however, preclude it from enforcing its business license tax laws against a taxpayer but shall preclude the municipality from assessing any fines or penalties otherwise due for late payment until 10 days after a renewal reminder notice has been mailed to the taxpayer at its last known address as indicated in the municipality's records, or personally delivered to the taxpayer, and the taxpayer then fails or refuses to remit the business license tax due for such license year within the 10-day period.

If the municipality mails a renewal reminder notice to the last known address of the taxpayer, as indicated in the municipality's records, there shall exist a presumption that the municipality has complied with state law. A municipality shall not be precluded from assessing fines and penalties otherwise due for late payment if the taxpayer does not notify the municipality of a change in address within 90 days after changing such address.

Taxpayers shall notify the taxing jurisdictions in which they do business of a change of mailing address within 90 days after changing such address. In like manner, taxpayers shall notify the taxing jurisdictions in which they do business of a change in their federal employer identification number or Department of Revenue taxpayer identification number within a reasonable time after such number is changed.

A city may deliver the renewal reminder notice required under the provisions of the Alabama Municipal Business License Reform Act of 2006 by means other than via the U.S. mail. Should the required renewal reminder notice be transmitted other than by use of the U.S. mail, the city would be precluded from assessing any fines or penalties otherwise due for late

payment until proof of actual delivery has been achieved, and the city would not be entitled to the statutory presumption of compliance with delivery where the U.S. mail is not utilized. AGO 2009-0045

Transfer of Licenses

No license shall be transferred except with the consent of the council or other governing body of the municipality or of the director of finance or other chief revenue officer or his or her designee, and no license shall be transferred to reflect a physical change of address of the taxpayer within the municipality more than once during a license year and never from one business one taxpayer to another. Section 11-51-192, Code of Alabama 1975.

A mere change in the name or ownership of a taxpayer that is a corporation, partnership, limited liability company or other form of legal entity now or hereafter recognized by the laws of Alabama shall not constitute a transfer for purposes of this chapter, unless (1) the change requires the taxpayer to obtain a new federal employer identification number or Department of Revenue taxpayer identification number or (2), in the discretion of the municipality, the subject license is one for the sale of alcoholic beverages. Nothing prohibits a municipality from requiring a new business license application and approvals for an alcoholic beverage license.

Statements and Audits

The amount of the license fee is established for many classifications on the basis of gross receipts for the previous year, inventory or amount of capital employed in the business. To ensure proper payment and administration, a municipality should require the licensee to render to the clerk a sworn statement of such sales, inventory or capital employed. Furthermore, the clerk should be authorized to perform audits of licensees' records and require other proof when necessary. This power is authorized by Section 11-51-90, Code of Alabama 1975, but the municipality must exercise the power through ordinance provision. The ordinance should be closely inspected to see that the clerk has adequate power in this respect. If the municipality has not authorized the clerk to administer oaths by separate ordinance, that authority should be given in keeping with Section 11-43-5 of the Code of Alabama 1975.

Adjusting Fees

If the ordinance levies the fee on the basis of gross receipts of the business during the preceding year, a provision should be included for new businesses and the amount of the fee that shall be paid. If you use gross receipts as a basis for determining the license fee owed, the taxpayer must use the previous year's receipts for determining the amount owed for the present year's license. If a taxpayer is new to the municipality, he or she is required to project the amount of gross receipts for the remainder of the year and purchase a license based on that projection. The idea is that at the end of that year, the city and the taxpayer will know the actual gross receipts and can base the next year's license on the partial year's gross receipts by obtaining a monthly average based on the actual number of months the taxpayer was in business and multiplying that average by 12. If, at the end of the year, it is determined that the taxpayer incorrectly projected his or her gross receipts, then the amount of gross receipts (and, theoretically depending on the range of gross receipts used, the amount of the license owed) must be adjusted up or down for the next year by the amount of the difference. See Section 11-51-90.2(c), Code of Alabama 1975.

Bear in mind that in many cases, this won't make much difference in the amount of the license fee. Gross receipts licensing isn't an actual percentage of amount earned. Instead, gross receipts set a range to determine how much the taxpayer owes. In other words, someone who earns from $1.00 to $100,000 may pay one amount. Someone who earns over $100,000 may pay a different amount. But the amount due would not vary within those ranges. Below is a simplified example:

New Business:

Book store opens on June 1. This is the middle of the license year. Taxpayer (TP) estimates projected gross receipts for the remainder of the year of $12,000. She buys a license based on this amount.

Year One:

Scenario 1: If the TP actually made $12,000, it is easy. $12,000 divided by 6 months of operation is $2,000/month. $2,000/month multiplied by 12 is $24,000. The new license would be based on $24,000.

Scenario 2: Let's assume TP overestimated gross receipts by $6,000, so that she actually earned $6,000 rather than $12,000. Remember that TP's license fee is based on the previous year's gross receipts. The problem here is that you have to account for the overestimation by crediting TP for that amount. This would be done, in the League's opinion, by adjusting the amount of their gross receipts accordingly. You make the same computation above using $6,000 as your basis: $6,000

divided by 6 months of operation is $1,000/month. $1,000/month multiplied by 12 is $12,000. The new license would be based on $12,000, except you were overpaid for the license the previous year.

The law provides that the gross receipts used in calculating the "business license tax liability for the following license year shall be increased or decreased, respectively, by the amount of the difference." The League reads this to mean that you have to adjust the gross receipts by the amount of the difference to determine the license owed. In other words, the Year One license would be based on adjusted gross receipts of $6,000.

Scenario 3: Let's assume TP underestimated gross receipts and actually earned $18,000 rather than $12,000. You have to account for this difference by including the amount of the underestimation in TP's gross receipts. In this case, you compute gross receipts using $18,000 as your basis: $18,000 divided by 6 months of operation is $3,000/month. $3,000/month multiplied by 12 is $36,000. The new license would be based on $36,000, except you were underpaid for the license the previous year.

Again, the law provides that the gross receipts used in calculating the "business license tax liability for the following license year shall be increased or decreased, respectively, by the amount of the difference." The League reads this to mean that you have to adjust the gross receipts by the amount of the difference to determine the license owed. In other words, the Year One license would be based on adjusted gross receipts of $42,000.

Year Two and Further:

Now it is easy because you know the actual amount TP earned in Year One. You base the amount owed on the gross receipts earned in Year One, with no adjustment.

Bear in mind that the Act also provides that nothing prohibits:

Allowing or requiring a taxpayer to purchase a minimum business license with respect to the short license year following 90 days of operations in the municipality, based on the amount which bears the same relationship to the actual amount of gross receipts during such preceding license year as the entire license year bears to the number of days during which the taxpayer was operating during such preceding license year. If the taxpayer did not commence operations until after the first day of the calendar year, the municipality may by ordinance require the taxpayer to remit the business license tax at the end of such 90-day period, or on December 31 of the current license year, whichever occurs first.

Taxpayer Bill of Rights (TBOR)

Division 5, Article 2, Section 51 of Title 11, Code of Alabama 1975 (Section 11-51-186 et seq.), establishes a TBOR for licenses. These are assessed and collected in the same manner as sales and use taxes.

TBOR includes confidentiality of information on tax returns. Nothing prohibits the disclosure, upon request, of the fact that a taxpayer has or has not purchased a business license or of the name and address of a taxpayer purchasing or renewing a business license from the municipality. Section 11-51-196, Code of Alabama 1975. Statistical information pertaining to taxes may be disclosed to the municipal governing body upon their request. Any person willfully violating the provisions of this section shall, for each act of disclosure, have committed a Class A misdemeanor.

The governing body of a municipality may adopt from time to time an ordinance consistent with Section 40-2A-10(d) to permit the exchange of business license information between and among the municipality and other municipalities adopting similar ordinances or between county and state governments, subject to the confidentiality restrictions imposed by this section.

Business License Tax Reporting and Appeals Act (Act 2025-408)

Act 2025-408 requires each county and municipality that levies a business privilege tax or business license tax to file an annual fiscal year report with the Department of Revenue by March 30. The report must contain information concerning the previous fiscal year's business license tax classification and schedules as well as whether any changes to those classifications or schedules occurred during the year or will occur the immediately following fiscal year. Section 11-108-3(a), Code of Alabama 1975.

Municipalities or counties that fail to submit their report will have to escrow subsequent business license taxes and business privilege taxes until the municipality or county submits their report. Section 11-108-3(c), Code of Alabama 1975.

Records

To facilitate future license administration, it is recommended that the ordinance include a provision requiring the clerk to keep a full list of all the persons doing business in the city and subject to a license and to enter all amounts collected for licenses in a well-preserved book kept for that purpose. In addition, it is a good idea to require that a separate listing be

kept of all businesses according to license classification with the amounts collected from such classifications. This gives a ready reference to those who have complied with license requirements in each classification and aids in the revision of fees in future years.

Exemptions

There are numerous exemptions and limitations on municipal license power set out in the Code of Alabama. For more information on this, please see article titled "License Exemptions and Limitations" in this publication.

It is within the authority of a municipality to require persons claiming such exemptions to provide the clerk with satisfactory evidence that they meet the statutory conditions which entitle them to such exemptions. A number of cities, in their license ordinances, have provided authority for the clerk to prescribe and require the affidavits to be filed with the municipality before such exemptions are granted. Some ordinances go so far as to set out the affidavit to be used. This is a matter left to the discretion of the council.

Reserve Power to Amend

While it is generally understood that a municipality has the power and authority to amend its license schedule at any time, many municipalities include in their license ordinances a provision similar to the following: "The adoption of this schedule of licenses shall not abridge the right of the city council to change, alter, increase or decrease any of the license fees at any time; nor shall it abridge the right of the city council to require a license for any business, occupation, traffic, calling or profession not included in this schedule."

Violations

The ordinance should provide that it shall be unlawful (1) for any person to knowingly or willfully make or exhibit any false written affidavit, certificate or statement as to the basis upon which a license is issued for the purpose of defrauding the city by avoiding the payment of a license or for procuring a license for a less sum than is lawfully due by such person or his principal, and (2) for any person to engage in or carry on any business or to do any act within the corporate limits or within the police jurisdiction of the city for which a license is required by this ordinance without first having taken out such license as provided.

Furthermore, the ordinance should state that any person violating any of the provisions of the ordinance or doing any act made unlawful by the terms therein shall, upon conviction in any case, be fined not more than $500 and may also be sentenced up to six months in prison, either or both, at the discretion of the court trying the case.

For more discussion on violations and license enforcement, please see the article "License Enforcement" found on the League legal team's Selected Readings page, here: *https://almonline.org/SelectedReadingsfortheMunicipalOfficial.aspx*.

Agents

While not absolutely necessary, it is a good idea to specifically provide in the ordinance that agents shall be responsible for doing business of their principals without a license. A provision of this nature might read as follows: "The agents or other representatives of non-residents who are doing business in this city shall be personally responsible for the compliance with this ordinance of their principals and of the business they represent."

Construction

It is generally understood that where there is any conflict between two ordinances the provisions of the latter ordinance shall prevail. For this reason, it is usually safe for a municipality to specifically provide in its license ordinance that it is not intended to, nor shall it, repeal such special license ordinances (such as the gasoline license ordinance, cigarette license ordinance, gross receipts sales tax license, and amusement license ordinance) as might be listed. This is a point which should be checked carefully.

The License Levy

While there are many ways in which the actual license levy may be worded, the following from the model ordinance is very specific:

"Pursuant to the Code of Alabama, the following is hereby declared to be and is adopted as the business license code and schedule of licenses for the municipality for the year beginning January 1, 20__, and for each subsequent year thereafter. There is hereby levied and assessed a business license fee for the privilege of doing any kind of business, trade, profession or other activity in the municipality, or the police jurisdiction, by whatever name called." Note that this provision very specifically requires the license and definitely levies it.

Police Jurisdiction Levy

The basic authority for municipalities to license businesses operating in the corporate limits is found at Section 11-51-90, Code of Alabama 1975, and has been upheld many times by the Alabama Supreme Court. See, *Evers v. Dadeville*, 61 So.2d 78 (1952); *Estes v. Gadsden*, 94 So.2d 744 (1957), *Mobile Battle House v. Mobile,* 78 So.2d 642 (1955).

Section 11-51-91, Code of Alabama 1975, authorizes municipalities with an ordinance in effect on January 1, 2021 to license businesses operating within the police jurisdiction of the municipality. The court has sustained the constitutionally of this section. *Birmingham v. Wilson*, 172 So. 292 (Ala. 1936). The court has held that such ordinances are presumptively valid. *Atlantic Oil Co. v. Steele*, 214 So.2d 331 (Ala. 1968).

The amount of the license charged in the police jurisdiction must not exceed the cost of providing services to the area and in no instance may the amount exceed one-half the amount charged similar businesses operating in the corporate limits. In the case of *Hueytown v. Burge,* 342 So.2d 339 (1977), the Alabama Supreme Court ruled that the city must make an effort to relate the amount of the license revenues collected in the police jurisdiction to the cost of providing services to the area. Also, Section 11-51-91 of the Code specifically states that the amount of the license fees collected from businesses in the police jurisdiction cannot exceed the cost of providing services to the police jurisdiction as a whole. The League suggests that municipalities determine this fact on an annual basis. A city's reliance on an audit conducted six years prior to its enactment of an ordinance imposing an annual business-license tax on every business located within its police jurisdiction was sufficient to satisfy the requirements of Section 11-51-91, Code of Alabama, and, thus, the city was not required to do a more extensive analysis to determine that it spent more on municipal services than it collected on license taxes. Ex parte City of Mobile, 37 So.3d 150 (Ala.2009)

Care should be taken to ensure that the licenses intended for businesses in the police jurisdiction are specifically levied. The model ordinance states:

"Any person, firm, association, or corporation engaged in any business outside the municipality but within the police jurisdiction hereof shall pay one-half of the amount of the license imposed for like business within the municipality."

Any municipality collecting license revenue or other taxes and fees within its police jurisdiction outside the corporate limits shall notify the Department of Examiners of Public Accounts that it collects license revenue and other taxes and fees in its police jurisdiction outside the corporate limits. Beginning March 1, 2022, each municipality collecting license revenue and other taxes or fees within its police jurisdiction outside the corporate limits shall prepare an accounting of all license revenues and other taxes or fees collected in the police jurisdiction outside the corporate limits during the previous fiscal year and provide a list of the services provided by the municipality and a list of providers within the police jurisdiction outside the corporate limits. Section 11-51-91(c)(1), Code of Alabama 1975.

A municipality must file an annual report to the Examiners of Public Accounts by March 1 for the previous fiscal year. Section 11-51-91(c)(2), Code of Alabama 1975. A municipality failing to file a report within 12 months of the report being due may not collect any further license revenue or any other taxes or fees in the police jurisdiction outside the corporate limits. Section 11-51-91(c)(3), Code of Alabama 1975. The Department of Examiners of Public Accounts shall provide written notice to the Department of Revenue of any municipality prevented from further collection of license revenue or other taxes or fees within 30 days of the expiration of the time period. Section 11-51-91(c)(4), Code of Alabama 1975.

Miscellaneous Provisions

In addition to the foregoing provisions, a general survey of ordinances which have been adopted by Alabama cities and towns reveal a number of miscellaneous provisions. These include definitions of specific words and phrases used in the ordinance; provisions that no refunds shall be made on licenses unless the amount collected is in excess of the amount prescribed by the ordinance; provisions that a license issued in return for a check shall not be valid or effective until the check is honored by the drawee; provision for the licensee to file bond with the clerk in certain instances; provision that nothing in the ordinance shall be construed to levy a license for the privilege of engaging in interstate commerce. In *M & Associates, Inc. v. Irondale,* 723 So.2d 592 (1998), the Alabama Supreme Court held that a license tax was not internally consistent and therefore could not be used to base the license on the company's interstate sales. Note: This case does not hold that a municipality may not use interstate sales to determine gross receipts, provided that the municipality's nexus with the municipality is sufficient. In *Mobile Marine Radio v. Mobile,* 719 So.2d 213 (1997), the Alabama Court of Civil Appeals held that Mobile's license ordinance allowed a business to deduct portions of its business that are conducted in interstate commerce from the computation of its gross receipts taxes owed.

Severability Clause

In keeping with good ordinance construction, it is generally provided in the license ordinance that: "If for any reason, any clause, sentence, section, subsection, schedule, part of schedule or provision of this ordinance, or the application thereof to any person or any circumstance, is held invalid or inoperative, the remainder of the ordinance and the application thereof to other persons or circumstances shall not be affected thereby." There are a number of different wordings for such severability clauses. This is only one example. The point is that such a clause should be included in the ordinance.

Effective Date

In closing the ordinance, a provision usually sets forth the effective date, such as: "The ordinance shall become effective immediately upon its adoption and publication as required by law." After adoption the duty rests with the clerk to see that it is signed by the presiding officer of the council, which he or she shall attest, or by the mayor if the city is over 12,000 in population. Then the clerk must see that the publication requirements are met and that the original of the ordinance is placed in a well-bound ordinance book with the certificate of publication.

Refunds

The Municipal Business License Reform Act provides specific procedures for refunds. See, Section 11-51-191(g), Code of Alabama 1975. Any taxpayer may file a petition for refund with the municipality for any overpayment of business license tax erroneously paid. If a final assessment for the tax has been entered by the taxing jurisdiction, a petition for refund of all or a portion of the tax may be filed only if the final assessment has been paid in full prior to or simultaneously with the filing of the petition for refund. For more information on preliminary and final assessments of licenses, please see the article entitled "License Enforcement" found on the League legal team's Selected Readings page, here: *https://almonline.org/SelectedReadingsfortheMunicipalOfficial.aspx*.

A petition for refund must be filed with the municipality within three years from the date that the business license form was filed, or two years from the date of payment of the business license tax which is the subject of the petition, whichever is later, or if no form was timely filed, two years from the date of payment of the business license tax.

A municipality must either grant or deny a petition for refund within six months from the date the petition is filed, unless the period is extended by written agreement of the taxpayer and the municipality. The taxpayer shall be notified of the municipality's decision concerning the petition for refund by first class U.S. mail or by certified U.S. mail, return receipt requested, sent to the taxpayer's last known address.

If a municipality fails to grant a full refund within the time provided herein, the petition for refund shall be deemed to be denied. If the petition is granted, or the municipality or a court otherwise determines that a refund is due, the overpayment shall be promptly refunded to the taxpayer by the municipality, together with interest to the extent provided in Section 1151-192, Code of Alabama 1975. If a municipality or court determine that a refund is due, the amount of overpayment plus any interest due thereon may first be credited by the municipality against any outstanding final tax liabilities due and owed by the taxpayer to the municipality, and the balance of any overpayment shall be promptly refunded to the taxpayer. If any refund or part thereof is credited to any other tax by the municipality, the taxpayer shall be provided with a written detailed statement showing the amount of overpayment, the amount credited for payment to other taxes, and the amount refunded.

A taxpayer may appeal from the denial in whole or in part of a petition for refund by filing a notice of appeal with the clerk of the circuit court of the county in which the municipality denying the petition for refund is located by filing the notice of appeal within two years from the date the petition is denied. The circuit court shall hear the appeal according to its own rules and procedures and shall determine the correct amount of refund due, if any. If an appeal is not filed with the appropriate circuit court within two years of the date the petition is denied, then the appeal shall be dismissed for lack of jurisdiction.

In the discretion of the governing body of a municipality, by ordinance duly adopted, the provisions for refunds under Section 11-51-191(g) may also be applied to one or more of its other taxes not already governed by the Alabama Taxpayers' Bill of Rights and Uniform Revenue Procedures Act, Chapter 2A, Title 40, Code of Alabama 1975.

Important Attorney General's Opinions and Court Cases on Licensing Power
(NOTE: Many of the opinions and cases cited herein were decided prior to the adoption of the Municipal Business License Reform Act of 2006 – Act 2006-568. These opinions and cases must be reviewed carefully prior to reliance on their holdings.)

- A contractor of a church, government building or school is not required to obtain a business license pursuant to an ordinance applying to "builders of commercial or industrial buildings." AGO 1988-0409.
- Municipalities may impose business licenses on real estate agents who list and offer to sell property within the municipal limits, even though the agent has no office within the municipality. AGO 1989-0380.

- Section 5-17-24, Code of Alabama 1975, exempts credit unions from purchasing a business license. AGO 1990-0197.
- A municipality may revoke an improperly-issued business license, but the municipality may be subject to a lawsuit by the licensee if he or she has relied to his or her detriment on having the license. AGO 1990-0288.
- Agricultural products cease to be farm products for purposes of the farmer's exemption in Section 11-51-105, Code of Alabama 1975, when they are not directly produced and sold by farmers or others engaged in the production of farm products or when the products have been substantially processed, or commercially bottled, packaged or sold. Sale or distribution of farm products encompasses the delivery by the farmer of the farm products to a wholesaler or retailer so as to exempt this process from licensing. AGO 1990-0296.
- A municipality may license both the sale of gas under Section 11-51-129, Code of Alabama 1975, and the separate act of transportation of gas under Section 11-51-90. AGO 1990-0392.
- A municipality may not require an attorney to purchase a business license unless he or she maintains an office within the municipality. AGO 1990-0399.
- Agricultural cooperatives qualified and permitted under Article 4, Chapter 10, Title 2, Code of Alabama 1975, are exempt from purchasing municipal privilege licenses. AGO 1992-0031.
- In *American Bankers Life Assurance Company of Florida v. Birmingham,* 632 So.2d 450 (1993), the Alabama Supreme Court held that the fact that American Bankers does not have an office in Birmingham does not preclude the city from levying its license tax upon American Bankers. Merely transacting business within the city will suffice to subject American Bankers to the tax authorized by Section 11-51-90 (b), Code of Alabama 1975.
- A municipality can impose on businesses located within its corporate limits a license fee based upon the gross receipts of those businesses despite the fact that some of those receipts are derived from transactions conducted outside the city's corporate limits. *Tuscaloosa v. Tuscaloosa Vending Co.*, 545 So.2d 13 (Ala. 1989).
- A city may require a sworn statement of gross receipts from a professional who seeks to pay less than the maximum license fee. AGO 1994-0223.
- A city may not license engineering or land surveying firms not having a place of business in the city unless the firms provide professional services in the city on a regular and continuing basis. AGO 1995-0135.
- A separate utility board incorporated under Sections 11-50-310, et seq., Code of Alabama 1975, is not exempt from a municipal license fee imposed on water works companies. AGO 1996-0209.
- An official pardon from the Board of Pardons and Paroles restores full civil rights to an individual, who may then apply for and receive a state-issued occupational license. AGO 1996-0297.
- If a business processes seafood at one location solely for sale at a separate location, the business owes only one retail business license. AGO 1997-0009.
- A court might determine that a proposed regulation prohibiting certain vendors from opening up on private property during a street fair while allowing others does not further a legitimate municipal interest. AGO 1997-0085.
- The First Amendment does not prevent a municipality from charging a newspaper a reasonable business license, if a sufficient nexus exists for the newspaper to become subject to municipal licensing. AGO 1996-0204.
- Property of a health care authority created under Section 22-21-310, et seq., Code of Alabama 1975, is exempt from the payment of municipal license and permit fees. AGO 1996-0201.
- Where a municipality acts as its own contractor pursuant to Section 34-8-7, Code of Alabama 1975, the municipality must use licensed subcontractors if the project will cost $20,000 or more. If the municipality elects to use a general contractor to oversee the project, subcontractors do not have to be licensed. In either case, subcontractors whose work does not exceed $20,000 are exempt from the licensing requirements. AGO 1997-0053.
- In *Bah v. Atlanta*, 103 F.3d 964 (1997), the Eleventh Circuit Court of Appeals upheld Atlanta's imposition of a dress code on licensed drivers of vehicles for hire against an equal protection claim.
- In *AT&T Communications v. State Department of Revenue,* 677 So.2d 772 (1995) the Alabama Court of Civil Appeals held that access charges paid by AT&T to local exchange carriers represents a cost of doing business for AT&T and, thus, may not be deducted from AT&T's gross receipts license tax base.

- Following a reversal by the U.S. Supreme Court, the Alabama Supreme Court remanded this case, involving a county occupational tax, back to the trial court for a hearing on the merits of the case. *Jefferson County v. Richards*, 805 So.2d 690 (Ala. 2001).
- In *Millbrook v. Tri-Community Water System,* 692 So.2d 866 (1997), the Alabama Court of Civil Appeals held that a corporation which maintains and operates a system to provide water to its members and not to the general public is not a public utility subject to the municipality's business license tax.
- A municipality may require a gas district who is doing business within the municipality to purchase a privilege license and/or a franchise. AGO 1997-0125.
- Payment of a license fee by an insurance company assessed pursuant to Section 11-51-121, Code of Alabama 1975, enables it to do business in the municipality by its agents, who are not required to buy an additional license to represent the company. AGO 1998-0025.
- A municipality may not impose a business license fee on an auctioneer or an auction company licensed by the state. AGO 1998-035.
- In *M & Associates, Inc. v. Irondale,* 723 So.2d 592 (1998), the Alabama Supreme Court held that a license tax was not internally consist, and therefore could not be used to base the license on the company's interstate sales. Note: This case does not hold that a municipality may not use interstate sales to determine gross receipts, provided the municipality's nexus with the municipality is sufficient.
- In *Mobile Marine Radio v. Mobile*, 719 So.2d 213 (1997), the Alabama Court of Civil Appeals held that Mobile's license ordinance allowed a business to deduct portions of its business that are conducted in interstate commerce from the computation of its gross receipts taxes owed.
- The Eleventh Circuit held that Jefferson County's occupational tax cannot be assessed against federal judges. *Jefferson County, Ala. v. Acker,* 137 F.3d 1314 (11th Cir. 1998).
- The United States Supreme Court has upheld the assessment of Jefferson County's occupational tax against federal judges. *Jefferson County, Ala. v. Acker*, 527 U.S. 423 (1999).
- In *R. Mayer of Atlanta, Inc. v. Atlanta,* 158 F.3d 538 (1998), the Eleventh Circuit Court of Appeals held that federal law preempts municipal licensing of consensual towing services.
- A municipality may impose a license fee on property owners who lease real property in the municipality and on managers or agents employed by the owner to lease property if the municipality determines that this activity is a business. AGO 1999-0143.
- The Utilities Board of the City of Oneonta is required to pay a city license tax of three percent of the total revenue collected by the Utilities Board. AGO 1999-0275.
- In *Mobile v. Vasilios Simpsiridis* 733 So.2d 378 (1999), the Alabama Supreme Court upheld a lower court ruling that the denial of a liquor license was arbitrary and capricious because the facts did not justify the denial.
- A company that supplies baby chickens to farmers, pays the farmers for their service, and later collects and processes the chickens to various retailers is not exempt from purchasing a business license under Section 11-51-105 of the Code of Alabama. AGO 2000-0120.
- A property owner who allows, without compensation, the placement of motor vehicles upon his property for the purposes of advertising the vehicles for sale need not be licensed as an automobile dealer, as defined under Section 40-12-390(11), Code of Alabama 1975. AGO 2001-0074.
- Section 11-51-90, Code of Alabama 1975, allows, but does not require, a city to impose a license tax on a utility corporation. A municipal utilities board is not exempt from the business license imposed by another municipality upon gas and water distributions in that municipality unless specifically exempt in the ordinance levying the license. The municipality must have a validly enacted ordinance imposing a license tax and it must be applied uniformly. AGO 2002-0200. Note: Statutes creating certain boards exempt them from paying any license fees.
- The gross receipts tax or privilege tax paid by a cable company is not the type of sensitive proprietary information that Alabama law protects. Therefore, a city may divulge the amount of privilege or license tax paid to a city by a cable company. AGO 2003-0052.

- A pharmacist or apothecary is not a person "engaged in the practice of medicine" under section 40-12-126 of the Code of Alabama. Therefore, a municipal or county government is not limited by this statute in the amount the governing body may charge an apothecary or pharmacist for a business license. AGO 2008-0028.
- Montgomery County Circuit Court was the only proper venue for a foreign corporation's appeal from the denial of a refund petition by a Jefferson County municipality, where the corporation had no principal place of business in Alabama. *Ex parte* Tellabs Operations, Inc. 84 So.3d 53 (Ala.2011).
- A municipality may require a business engaged in "Truck Transportation" to pay a license fee based on all of the gross receipts of the business from whatever source derived when the business is not required to purchase a business license from any other municipality and the only physical location for that business is located within the municipal limits or its police jurisdiction. AGO 2012-0054.
- An appeal by a property owner whose application for a liquor license was denied based on the claim that the city failed to provide it with equal protection was moot since it did not include a claim for damages under federal law. *Brazelton Properties, Inc. v. City of Huntsville,* 237 So.3d 209 (Ala.Civ.App. 2017).
- If the city does not levy and collect license fees in its police jurisdiction, it may seek to collect insurance proceeds from applicable policies held by individuals who reside in the police jurisdiction pursuant to the costs of fire, emergency management services ("EMS"), hazardous material, and rescue services rendered by the city's fire department. Because the city levies and collects taxes to fund the services of its fire department, the city may not seek to collect insurance proceeds from applicable policies held by individuals who reside in the corporate limits pursuant to the costs of EMS, hazardous material, and rescue services rendered by the fire department. The city is not allowed to collect insurance proceeds from applicable policies held by commercial/industrial occupants located in the corporate limits pursuant to the costs of hazardous material mitigation or remediation because the city collects taxes and fees to fund these services. If the city does not levy and collect license fees in its police jurisdiction, it may collect insurance proceeds from applicable policies held by commercial/industrial occupants located in the police jurisdiction pursuant to the costs of hazardous material mitigation or remediation. AGO 2019-0012.
- A city, by ordinance, may cease requiring building permits for construction. A county commission may require permits in the corporate limits if the city council consents for the county to apply its building codes. AGO 2019-0023.