

ORDINANCE NO. 2006-67

**AN ORDINANCE TO AMEND THE CODE OF ORDINANCES,
ADOPTED MAY 11, 1992,
IN SECTION 5,
BUSINESS LICENSES, TAXES AND REGULATIONS,
IN GENERAL,
BY REWRITING THE ENTIRE ARTICLE**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF NEWSITE, ALABAMA, WHILE IN REGULAR SESSION ON SEPTEMBER 25, 2006, as follows:

Section 1. That Section 5, BUSINESS LICENSES, TAXES AND REGULATIONS, of the *Code of Ordinances*, adopted May 11, 1992, be and it is hereby amended at ARTICLE I., IN GENERAL by rewriting the entire Article to read as follows:

CHAPTER 8 BUSINESS LICENSES, TAXES AND REGULATIONS

ARTICLE I. IN GENERAL.

SECTION 1. Levy of Tax.

Pursuant to the *Code of Alabama*, for 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, 2007, 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, exhibition, or other activity in the municipality.

SECTION 2. Definitions.

Unless the context clearly requires otherwise, the following terms shall have the following meaning as set forth below:

Business. Means and includes all activities engaged in or caused to be engaged in within the municipality, including any commercial or industrial enterprise, trade, profession, occupation, calling, or livelihood, and every other kind of activity whether or not carried on for gain or profit, and whether or not engaged in as a principal or as an independent contractor, but shall not include services rendered by an employee to his or her employer.

Business License. An annual license issued by the municipality for the privilege of doing any kind of business, trade, profession, or other activity in the municipality, by whatever name called.

Business License Remittance Form. Any business license return, renewal reminder notice, or other writing on which the taxpayer calculates the business license tax liability for all or part of the license year and remits the amount so calculated with the form.

Corporate Limits. Corporate limits mean the corporate limits of the municipality.

Designee. An agent or employee of the municipality authorized to administer and/or collect the municipality's business license taxes, which may include another taxing jurisdiction, the Department of Revenue, or a "private auditing firm" as defined in Section 40-2A-3 of the *Code of Alabama*.

License Form. Any business license application form, renewal reminder notice, business license remittance form, or business license return by whatever name called.

Licensee. Any taxpayer or other persons issued a business license under this ordinance and/or the person responsible for the payment of the license tax.

License Year. Means the calendar year.

Person. Means an individual, a corporation, a partnership, an association, a joint stock company, a business trust, an unincorporated organization, or any other legal entity.

Police Jurisdiction. Means the territory outside the corporate limits of the city within one and one-half (1 1/2) miles thereof, or as otherwise permitted by statute, but not including territory within the corporate limits of any other incorporated municipality. The police jurisdiction shall not overlap the police jurisdiction of a neighboring municipality, but shall extend to the median line of such police jurisdiction lines, or as otherwise provided by laws of the state and the decisions of its courts.

Revenue Officer. The municipal employee charged by the municipality with the primary responsibility of administering the municipality's business license tax ordinance and related matters thereto.

Schedule of Licensees or Schedule. Refers to the classifications included herewith which describes the various business activities subject to this business license ordinance and specifies the applicable license tax rate for each activity.

Taxpayer. Means any person, firm, corporation, or other legal entity liable under this ordinance for any business license tax levied by the municipality.

Willfully. An act is done willfully when it is done voluntarily, with a conscious motion of the will. Willfulness does not require knowledge that the conduct was unlawful.

Other Terms. Other capitalized or specialized terms used in the ordinance, and not defined above, shall have the same meanings ascribed to them in Section 40-2A-3, of the *Code of Alabama*, unless the context therein otherwise specifies.

SECTION 3. License Term; Minimums.

The license term and the minimum amount for a business license are as follows:

- A. *Full Year.* Every person who commences business before the first day of July shall be subject to and shall pay the annual license for such business in full. Unless otherwise specified in the enclosed schedules, the minimum annual license shall be \$30.00.
- B. *Half Year.* Every person who commences business on or after July 1st shall be subject to and shall pay one-half (1/2) the annual license for such business for that calendar year.
- C. *Annual Renewal.* Except as provided in subsections (1) and (2) below, the business license shall be renewed annually on January 1st and no later than the 31st day of January each year.
 1. If the due date for payment of any business license falls on a weekend or a holiday recognized by the municipality from time to time, the due date shall automatically be extended until the next business day.
 2. Insurance company annual license renewals shall be renewed in accordance with Section 11-51-122 of the *Code of Alabama*, which states that each year each insurance company shall furnish the municipality a statement in writing duly certified showing the full and true amount of gross premiums received during the preceding year and shall accompany such statement with the amount of license tax due according to the licensing schedule. Failure to furnish such statement or to pay such sum shall subject the company and its agents to those penalties as prescribed for doing business without a license as provided for in the municipal code.
 3. On or before December 31 of each year, a renewal reminder shall be mailed to each licensee that purchased a business license during the current year. Said renewal notice shall be mailed via regular U.S. mail to the licensee's last known address of record with the municipality. Licensees are required to furnish the municipality any address changes for their business prior to December 1st in order for them to receive their notice.
 4. Business license renewal payments received by the municipality shall be applied to the current renewal only when any and other debts the licensee owes to the municipality are first paid in full. No business license shall be issued if the current renewal payment does not meet said prior obligations and the current renewal. Failure to pay such sums shall subject the licensee and its agents to those penalties as prescribed for doing business without a license provided for in the municipal code.

SECTION 4. Due Date for Payment of License.

Except as otherwise specifically provided for in this article, all licenses under this article shall be due and payable on the first day of the whole license year, beginning January 1, 2007, and from year to year thereafter; provided, however, that the license year beginning October 1, 2006, shall be a transition license year containing fifteen (15) months ending on December 31, 2007, and thereafter each whole license year shall commence on January 1 and end on December 31. In

computing the license due for the license year commencing on January 1, 2007, the preceding license year shall be the period beginning October 1, 2006 and ending December 31, 2007. A license for a person who first does business within the corporate limits or within the police jurisdiction of the town on a day subsequent to the first day of the license year shall be due and payable on the day the person first does business within the corporate limits or within the police jurisdiction of the town.

SECTION 5. Due in Advance; Delinquency Penalties; Arrest for Nonpayment.

- A. All licenses are due and payable in advance, except where otherwise provided.
- B. 1. A penalty of ten percent (10%) will be added to any business license due and payable on the first day of the whole license year that is not paid within forty-five (45) days after the first day of the whole license year. An additional penalty of twenty percent (20%) will be added to any such business license not paid within ninety (90) days after the first day of the whole business year.
- C. The payment of all licenses due may be enforced immediately after same become due and payable. A person who fails to pay any business license due and payable on the first day of the whole license year within thirty (30) days after the first day of the whole license year shall be subject to prosecution for doing business without a license pursuant to Section 3. Prior to the institution of prosecution, the Chief Revenue Officer shall cause a notice of delinquency to be delivered personally to such person or deposited in the US mail, postage prepaid, addressed to such person at the address shown on such person's prior year license. Such notice of delinquency shall advise the recipient that payment of the current year license is delinquent and shall advise that the recipient will be subject to prosecution under Section 3 unless payment of the delinquent license is received within then (10) days of the date of such notice.

SECTION 6. Payment of License by Check; Interstate Commerce.

Whenever a license or license receipt shall be issued in return for any check, the same shall not be valid or of any force or effect, unless such check shall be duly paid upon presentation to the drawee.

No provision of this article shall be construed as to tax interstate commerce or any United States or government business.

SECTION 7. License Subject to Revocation.

Any lawful license issued to any person to conduct any business shall be subject to revocation by the Council for the violation by the licensee of any ordinance of the town relating to the business for which such license is used, and shall be subject to revocation by the Council if the licensee, under color of such license, violates or aids or abets in violating or knowingly permits or suffers to be violated any ordinance of the town.

SECTION 8. False Oath to Procure License.

It shall be unlawful for any person to knowingly and willfully make any false written affidavit, certificate or statement to the Clerk or any license collector or inspector, or any deputy license inspector or collector for the purpose of defrauding the city by procuring a license for a less sum than is lawfully due by the affiant or affiant's principal.

SECTION 9. Penalty for Violation.

Any person violating any provision of this article shall upon conviction be punished as provided by this *Code of Ordinances*, within the limits of and as provided by section 11-51-93 of the *Code of Alabama 1975*.

SECTION 10. License Shall Be Location Specific.

- A. For each place at which any business is carried on, a separate license shall be paid, and any person desiring to engage in any business for which a license is required shall designate the place at which business is carried on, and the license to be issued shall designate such place, and such license shall authorize the conducting of such business only at the place designated.
- B. Every person dealing in two or more of the license classifications, or engaging in two or more of the businesses, vocations, occupations, or professions scheduled herein, shall take out and pay for a license for each line of business.

SECTION 11. Restriction on Transfer of License.

No license shall be transferred to another owner or person.

SECTION 12. Unlawful To Do Business without a License.

It shall be unlawful for any person to willfully engage in any business within the corporate limits or within the police jurisdiction unless such person has been issued and holds a current business license that has not been revoked or suspended. Each day that a person does business without such a license shall constitute a separate offense.

SECTION 13. License Must Be Posted.

Every license shall be posted in a conspicuous place, where said business, trade, or occupation is conducted, and the holder of the license shall immediately show same to the designee of the Town of New Site upon being requested so to do.

SECTION 14. Duty to Permit Inspection and Produce Records.

Upon demand by the designee of the Town of New Site, it shall be the duty of all licensees to:

- A. Permit the designee of the Town to enter the business and to inspect all portions of his place or places of business for the purposes of enabling said Town designee to gain such information as may be necessary or convenient for determining the proper license classification, and determining the correct amount of license tax;

SECTION 15. Unlawful to Obstruct.

It shall be unlawful for any person, or for any agent, servant or employee of such person, to fail or refuse to perform any duty imposed by this ordinance; nor shall any person, agent, servant, or employee of such person obstruct or interfere with the Revenue Officer of the Town in carrying out the purposes of this ordinance.

SECTION 16. Privacy.

- A. It shall be unlawful for any person connected with the administration of this ordinance to divulge any information obtained by him/her in the course of inspection and examination of the books, papers, reports, and memoranda of the taxpayer made pursuant to the provisions of this ordinance, except to the Mayor, the Municipal Attorney, or others authorized by law to receive such information described herein.
- B. It shall be unlawful for any person to print, publish, or divulge, without the written permission or approval of the taxpayer, the license form of any taxpayer or any part of the license form, or any information secured in arriving at the amount of tax or value reported, for any purpose other than the proper administration of any matter administered by the taxing jurisdiction, or upon order of any court, or as otherwise allowed in this ordinance.
- C. Nothing herein shall prohibit the disclosure of the fact that a taxpayer has or has not purchased a business license. Statistical information pertaining to taxes may be disclosed to the Town Council upon their written request through the Mayor's office. It shall be unlawful for any person to violate the provisions of this section.

SECTION 17. Lien for Non-Payment of License Tax.

On all property, both real and personal, used in the business, the Town shall have a lien for such license, which lien shall attach as of the date when the license is due, as allowed by *Alabama Code*, Section 11-51-44 (1975).

SECTION 18. Criminal Penalties.

Any person found guilty of violating any of the provisions of this ordinance shall be fined in an amount not less than fifty dollars (\$50.00), and not more than five hundred dollars (\$500.00), and may also be sentenced to imprisonment for a period of not exceeding six (6) months, in the discretion of the Court trying the case, and violations on separate days shall each constitute a separate offense.

SECTION 19. Civil Penalties.

In addition to the remedies provided by *Alabama Code*, Section 11.51-150 (1975) et seq., the continued or recurrent performance of any act or acts within the corporate limits for which a license may be revoked or suspended under this ordinance is hereby declared to be detrimental to the health, safety, comfort and convenience of the public and is a nuisance. The Town, as an additional or alternative remedy, may institute injunctive proceedings in a court of competent jurisdiction to abate the same.

SECTION 20. Penalties and Interest.

Due in advance; delinquency penalties; arrest for nonpayment.

- A. All licenses are due and payable in advance, except where otherwise provided.
- B. 1. Except as provided by *Alabama Code*, Section 11-51-120/123, a penalty of ten percent (10%) will be added to any business license due and payable on the first day of the whole license year that is not paid within forty-five (45) days after the first day of the whole license year. An additional penalty of twenty percent (20%) will be added to any such business license not paid within ninety (90) days after the first day of the whole business year.

SECTION 21. Prosecutions Unaffected.

The adoption of this ordinance shall not in any manner affect any prosecution of any act illegally done contrary to the provisions of any ordinance now or heretofore in existence, and every such prosecution, whether begun before or after the enactment of this Chapter shall be governed by the law under which the offense was committed; nor shall a prosecution, or the right to prosecute, for the recovery of any penalty or the enforcement of any forfeiture be in any manner affected by the adoption of this ordinance; nor shall any civil action or cause of action existing prior to or at the time of the adoption of this ordinance be affected in any manner by its adoption.

SECTION 22. Procedure for Denial of New Applications.

- A. The City Revenue Officer shall have the authority to investigate all applications and may refer any application to the Town Council for a determination of whether such license should or should not be issued.
- B. If the Town Council denies the issuance of any license referred to it, the Revenue Officer shall promptly notify the applicant of the Town Council's decision.
- C. If said applicant desires to appear before the Town Council to show cause why said license should be issued, he shall file a written notice with the Revenue Officer, said notice to be filed within two (2) weeks from the date of mailing by the Revenue Officer of the notice of the denial of such license by the Town Council.
- D. Upon receipt of said notice the Revenue Officer shall promptly schedule a hearing, to be held within fifteen (15) days from the date of receipt of such notice, before the Town

Council and shall give the notice of the date, time and place of said hearing to the applicant.

- E. The applicant shall be given the opportunity to appear personally, or through his counsel or both, and the Town Council shall proceed to hear any evidence which may be presented both for and against the issuance of said license.
- F. If the Town Council determines from the evidence presented that in order to either provide for the safety, preserve the health, promote the prosperity, or improve the morals, order, comfort and convenience of the inhabitants of the municipality said license should not be granted, it shall enter an order to that effect; otherwise, said license shall be ordered issued upon payment of any required license fees.

SECTION 23. Procedure for Revocation or Suspension of License.

- A. Any lawful license issued to any person to conduct any business shall be subject to revocation by the Town Council for the violation by the licensee, his agent, servant, or employee of any provision of this ordinance or of any ordinance of the Town, or any statute of the State of Alabama relating to the business for which such license is issued; and shall also be subject to revocation by the Town Council if the licensee, his agent, servant, or employee under color of such license violates or aids or abets in violating or knowingly permits or suffers to be violated any penal ordinance of the Town or any criminal law of the State of Alabama; and shall also be subject to revocation by the Town Council if, in connection with the issuance or renewal of any license, the licensee or his agent filed or caused to be filed any application, affidavit, statement, certificate, book, or any other data containing any false, deceptive or other misleading information or omission of material fact.
- B. The conditions hereinabove set forth as grounds for the revocation of a license shall also constitute grounds for refusing to renew a license.
- C. The Town Council shall set a time for hearing on the matter of revoking or refusing to renew a license; and a notice of such hearing shall be given to the licensee, or the applicant for renewal, as the case may be, at least ten (10) days before the day set for said hearing. At the hearing the Town Council shall hear all evidence offered by any party and all evidence that may be presented bearing upon the question of revocation or the refusal of renewal, as the case may be.

SECTION 24. Refunds on Overpayments.

- A. Any taxpayer may file a petition for refund with the Town for any overpayment of business license tax erroneously paid to the Town. If a final assessment for the tax has been entered by the Town, 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.
- B. A petition for refund shall be filed with the Town within two (2) years from the date of payment of the business license tax, which is the subject of the petition.

- C. The Town shall either grant or deny a petition for refund within six (6) months from the date the petition is filed, unless the period is extended by written agreement of the taxpayer and the Town. The taxpayer shall be notified of the Town'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 the Town fails to grant a full refund within the time provided herein, the refund petition shall be deemed to be denied.
- D. If the petition is granted or the Town or a court otherwise determines that a refund is due, the overpayment shall be promptly refunded to the taxpayer by the Town, together with interest to the extent provided for in Section 11-51-92. If the Town determines that a refund is due, the amount of overpayment plus any interest due thereon may first be credited by the Town against any outstanding tax liabilities due and owing by the taxpayer to the Town, and the balance of overpayment shall be promptly refunded to the taxpayer. If any refund or part thereof is credited to any other tax by the Town, 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 resulting amount of the refund.
- E. 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 Tallapoosa County. Said notice of appeal must be filed within two (2) years from the date the petition was 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 Tallapoosa County Circuit Court within two (2) years of the date the petition was denied, then the appeal shall be dismissed for lack of jurisdiction.

SECTION 25. Delivery License.

- A. In lieu of any other type of license, a taxpayer may at its option purchase for \$30.00 a delivery license for the privilege of delivering its merchandise in the Town if the taxpayer meets all of the following criteria:
 - 1. Other than deliveries, the taxpayer has no other physical presence within the Town;
 - 2. The taxpayer conducts no other business in the Town other than delivering merchandise and performing the requisite set-up and installation of said merchandise;
 - 3. Such delivery and set-up and installation is performed by the taxpayer's employees or agents, concerns the taxpayer's own merchandise in that Town, and is done by means of delivery vehicles owned, leased, or contracted by taxpayer;
 - 4. Any set-up or installation shall relate only to:

- a) That required by the contract between the taxpayer and the customer or as may be required by state or local law, and
 - b) The merchandise so delivered;
5. If at any time during the current license year the taxpayer fails to meet any of the above stated criteria, then within ten (10) days after any of said criteria have been violated or exceeded, the taxpayer shall purchase all appropriate business licenses from the Town for the entire license year and without regard to this section.
- B. A common carrier, contract carrier, or similar delivery service making deliveries on behalf of others shall not be entitled to purchase a delivery license.
- C. The purchase of a delivery license shall not, in and of itself, establish nexus between the taxpayer and the Town for purposes of the taxes levied by or 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 Town.

**Town of New Site
12791 Hwy 22 East
New Site, AL 36256**

Business License Rates

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| Business License (inside city limits..... | \$30.00 |
| Business License (inside police jurisdiction)..... | \$15.00 |
| All companies that make deliveries or furnish services to Businesses or residences..... | \$30.00 |
| Beer – Off Premise..... | \$50.00 |
| Gasoline Distributor..... | \$50.00 |
| Video Games/Pool Tables..... | \$50.00 |
| Fire and Marine Insurance Companies: 4% on each \$100 of gross premiums less return premiums on policies issued during the preceding year | |
| Insurance Companies other than Fire & Marine: \$10.00 per year and \$1.00 in each \$100.00 and major fraction thereof of the gross premiums, less return premiums issued during the preceding year | |
| Issuance Fee..... | \$10.00 |

Adopted September 25, 2006