

ORDINANCE NO: 25-388

BE IT ORDAINED by the City Council of the City of Huntsville, Alabama, that the Code of Ordinances of the City of Huntsville, Alabama (hereinafter referred to as “City Code”) is amended as follows:

Section 1. Chapter 15, Article I, Section 15-1 of the City Code is hereby amended to read as follows:

Sec. 15-1. *Definitions applicable to entire chapter.*

(a) *Definitions.* The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administrative hearing officer means any individual acting in that capacity in accordance with the provisions of this chapter.

Alabama Department of Revenue or *ADOR* means the Alabama Department of Revenue, as created under the Code of Ala. 1975, §§ 40-2-1 et seq.

City means the city council or any one or more of its delegates and, where appropriate, the term “city” shall be substituted for terms in the corresponding state tax laws that are expressly incorporated into this chapter by reference and that refer to the taxing authority.

City attorney means the city attorney of the city or any one or more of his delegates or a private attorney designated by the city attorney, and, where appropriate, shall be substituted for the term “legal division” as such term appears in the corresponding state tax laws in reference to the legal division of the ADOR.

City clerk means the city clerk of the city or any one or more of his delegates, and, where appropriate, shall be substituted for the term "municipal clerk" as such term appears in Code of Ala. of 1975 § 11-51-191(e).

City finance department or *finance department* means the finance department of the city, and, where appropriate, shall be substituted for the term "department of revenue" or “department” or “license officer” as such term appears in the corresponding state tax laws. The term includes the city finance director.

City finance director or *finance director* means the finance director of the city or any one or more of his delegates, and, where appropriate, shall be substituted for the term "commissioner" as such term appears in the corresponding state tax laws.

Corresponding state tax laws mean state tax laws that the city parallels, incorporates by reference into this chapter, or otherwise conforms to in the levy, assessment, collection, administration, or enforcement of the taxes levied or assessed under this chapter. The term does not include the rules of the Alabama Tax Tribunal nor the declaratory judgment, declaratory ruling or contested case provisions of the Alabama Administrative Procedure Act (Code of Ala. 1975, § 41-22-1 et seq.).

Delegate means any officer, agent, or employee of the city duly authorized, directly or indirectly, by one or more re-delegations of authority, to perform the function described in the context.

Include. The term include, or its derivations, does not limit a term to the specified example.

State tax laws mean state tax statutes, and the regulations promulgated thereunder pursuant to the Alabama Administrative Procedures Act, as such laws now exist or are hereafter adopted, superseded, or amended from time to time. The term does not include the rules of the Alabama Tax Tribunal.

U.S.C. means the applicable title and section of the United States Code, as amended from time to time.

(b) *Meanings and rules of construction.* Where not otherwise defined in this chapter, including subsection (a) of this section, the words, terms, and phrases, when used in this chapter, shall have the meanings and rules of construction ascribed to them in section 1-2 of this Code, except where the context clearly indicates a different meaning.

(c) *Rule of plain meaning; aid to construction of words and provisions; city finance director's general power of interpretation and administration.* Unless this chapter or any federal, state, or local law, rule, or regulation requires a particular meaning for any word, term, or provision not expressly defined, all other words, terms, and provisions shall be interpreted and construed in accordance with the rule of plain meaning. Solely as a nonbinding aid to assist in interpreting and construing any word, term, or provision of this chapter, the city finance director may utilize any reasonable source, including this Code, other ordinances and resolutions of the city council; prior interpretations, constructions, rules, regulations, policies, and rulings of the city finance director; the Code of Alabama; rules, regulations, interpretations, and rulings of the Alabama Department of Revenue; judicial decisions, rulings, and opinions; dictionaries and encyclopedias; rules, regulations, rulings, and promulgations of any department, agency, commission, authority, or bureau of the city, the state, or the United States. To the extent allowed by law and subject only to the executive, administrative, statutory, judicial, or legislative powers of other bodies or officials or as otherwise provided by law, the interpretation, construction, and administration by the city finance director of this chapter shall be final and binding.

(d) *Construction to allow maximum taxation.* The provisions of this chapter shall be construed to allow taxes, licenses, and other revenues to be assessed in the maximum amount allowed by the Constitution and laws of the United States and the state, including those provisions relating to interstate commerce. All provisions of this chapter are intended to be consistent with the Constitution and laws of the United States and the state. This rule of construction shall be applied as follows:

- (1) The amount of tax, license, or other revenue due to the city shall be calculated in accordance with municipal law;
- (2) If the Constitution or laws of the United States or the state impose no limitation thereon, then the amount due shall be assessed solely in accordance with municipal law;
- (3) If the Constitution or laws of the United States or the state do impose a limitation on the amount due under municipal law, then the amount due shall be reduced only to the extent required by such federal or state limitation.

(e) *Automatic conformity to federal and state law.* To the extent this chapter may conflict with any valid superseding federal or state law, it shall automatically conform to such federal or

state law. The city finance director is authorized to administer this chapter in accordance with such automatic conformity.

Section 2. The following references in Chapter 15, Article I, Section 15-2 and/or Section 15-3 of the City Code are hereby amended as follows:

1. In Sections 15-2 and 15-3 all references to the title “city tax administrator” or “tax administrator” shall be deleted and in lieu thereof the title “city finance director” or “finance director” shall be substituted.
2. In Section 15-2 all references to “city tax administration office” or “tax administration office” shall be deleted and in lieu thereof the reference “city finance department” or “finance department” shall be substituted.

Section 3. Chapter 15, Article I of the City Code is hereby amended to add the following Section 15-5:

Sec. 15-5. Right of appeal to administrative hearing officer or circuit court.

(a) *Sales, use, rental and lodging tax appeals from final assessment or denied refund.*

(1) The city has elected to divest the Alabama Tax Tribunal of jurisdiction over appeals of final assessments or denied refunds in whole or part, of the sales, use, rental, and lodgings taxes levied or collected under article III of this chapter. Accordingly, the city has established an appeal process to an administrative hearing officer that functions in a manner similar to the procedures prescribed for appeals to the Alabama Tax Tribunal or to circuit court, as provided by the state statute.

(2) A taxpayer may appeal a final assessment, a denied refund, or a preliminary assessment that has been entered but not withdrawn or finalized within the prescribed 5-year period, involving sales, use, rental, or lodgings taxes levied or assessed under article III of this chapter to either (i) the administrative hearing officer (see section 15-6(b) regarding commencing a proceeding with the administrative hearing officer) or (ii) to the Circuit Court of Madison County, Alabama, or to the circuit court of the county in which the taxpayer resides or has a principal place of business in Alabama, in accordance with the procedures and requirements applicable to such appeals provided in Section 40-2A-7 Code of Ala. 1975. For purposes of any appeal filed by a taxpayer pursuant to article III of this chapter, the term “department” means the finance department and the term “secretary of the department” means the city finance director, as used in Section 40-2A-7 Code of Ala. 1975.

(b) *License tax appeals from final assessment.* A taxpayer may appeal a final assessment involving a business license tax levied or assessed under article II, a liquor privilege license tax levied or assessed under article IV, a sale of liquid fuel privilege license tax levied or assessed under article V, and a tobacco privilege license fee levied or assessed under article VII, of this chapter, to either the administrative hearing officer or the circuit court in accordance with the applicable procedures and requirements provided in section 15-75 of this chapter.

(c) *License tax appeals from denied refund.* Appeals from the denial, in whole or part, of a petition for a refund of a business license tax levied or assessed under article II, a liquor privilege license tax levied or assessed under article IV, a sale of liquid fuel privilege license tax levied or assessed under article V, and a tobacco privilege license fee levied or assessed under

article VII, of this chapter, shall be to the circuit court in accordance with section 15-75 of this chapter.

Section 4. Chapter 15, Article I of the City Code is hereby amended to add the following Section 15-6:

Sec. 15-6. Administrative tax appeals.

(a) *Administrative hearing officer; process.*

(1) The purpose of this section is to establish an administrative hearing process for tax appeals made to the administrative hearing officer pursuant to this chapter, and to establish the authority and responsibilities of the administrative hearing officer concerning such appeals. The provisions of this section should be liberally construed to provide for the fair, efficient, complete resolution of all matters in dispute. The administrative hearing process and the authority of the administrative hearing officer established in this section do not govern appeals from other actions taken under this chapter, including actions against business licenses, which are governed by other provisions of this chapter.

(2) The administrative hearing officer shall be an attorney in private practice licensed to practice law in the state that is impartial and reasonably knowledgeable of the relevant tax laws governing the taxes levied under this chapter. The city finance director shall maintain a list of qualified attorneys to select from to act as the administrative hearing officer in an appeal under this chapter. Nothing in this provision shall be construed to waive the conflict provisions of the Alabama Rules of Professional Conduct.

(3) The administrative hearing officer shall have the authority to schedule and conduct hearings on properly filed appeals to the administrative hearing officer from the action appealed from in accordance with this chapter and render decisions and orders relating thereto. The administrative hearing officer hearing the case may prescribe the procedure to be followed in a given circumstance if there is no controlling law, including this chapter and applicable state law, that applies.

(4) Except in cases involving the denial of a claim for refund and except as provided in the Alabama statute regarding jeopardy assessments (see Code of Ala. 1975 § 40-29-91), the taxpayer shall have the right to have his or her case heard by the administrative hearing officer prior to the payment of any of the amounts asserted as due by the tax administrator and prior to the posting of any bond.

(5) In the case of sales, use, rental, and lodging taxes if, with or after the filing of a timely notice of appeal, the taxpayer pays all or part of the tax or other amount in issue before the administrative hearing officer has rendered a decision, the administrative hearing officer shall treat the taxpayer's notice of appeal as a protest of a denial of a claim for refund of the amount so paid.

(6) The administrative hearing officer shall decide questions regarding the constitutionality of the application of state statutes, city laws, and ADOR regulations related to sales, use, rental, and lodging taxes, to the taxpayer, but shall not have the power to declare such laws and regulations facially unconstitutional. A taxpayer desiring to challenge the

constitutionality of said laws on their face, at the taxpayer's election, may do so by one of the following methods:

- a. Commence a declaratory action in the courts of Alabama with respect to the constitutional challenge and file a notice of appeal with the administrative hearing officer with respect to the remainder of the matter, which proceeding shall be stayed by the administrative hearing officer pending final resolution of the constitutional challenge.
- b. File a notice of appeal with the administrative hearing officer with respect to issues other than the constitutional challenge, in which the taxpayer preserves the constitutional challenge until the entire matter, including the constitutional challenge and the facts related to the constitutional challenge, is presented to a court of competent jurisdiction.
- c. Commence and simultaneously prosecute a declaratory action in the courts of Alabama with respect to the constitutional challenge and a proceeding with the administrative hearing officer with respect to the remainder of the issues.

Where the taxpayer elects to file a notice of appeal with the administrative hearing officer as provided for in this subsection (a)(6), such filing of the notice of appeal shall be accomplished in accordance with subsection (b) of this section.

(b) *Pleadings.*

(1) A taxpayer may commence a proceeding with the administrative hearing officer by filing with the city finance department a notice of appeal: (i) of a final assessment protesting the city finance director's determination imposing a liability for a tax, penalty, or interest levied under this chapter; or (ii) from the finance director's denial of a refund involving a sales, use, rental, or lodgings tax levied under article III of this chapter; or (iii) of a preliminary assessment involving a sales, use, rental, or lodgings tax levied under article III of this chapter that has been entered but not withdrawn or finalized by the finance director within five years from the date of entry. The administrative hearing officer shall not have authority to hear appeals from the denial of a petition of refund involving a business license tax levied under article II, a liquor privilege license tax levied under article IV, a sale of liquid fuel privilege license tax levied under article V, and a tobacco privilege license fee levied under article VII, of this chapter.

(2) With regard to sales, use, rental and lodgings taxes, the notice of appeal shall be filed in accordance with the time periods required by Section 40-2A-7 Code of Ala. 1975. With regard to business license taxes, liquor privilege license taxes, sale of liquid fuel privilege license taxes, and tobacco privilege license fee, the notice of appeal shall be filed in accordance with the time periods required by Section 11-51-191 Code of Ala. 1975 and section 15-75 of this chapter.

(3) The notice of appeal filed by the taxpayer shall be filed with the city finance department and shall identify the final assessment, denied refund, or non-withdrawn or non-finalized preliminary assessment, which is the subject of the appeal, the position of the appealing party (taxpayer), the basis on which relief should be granted, and the relief sought.

A notice of appeal that does not include all of the above information shall be sufficient to invoke the jurisdiction of the administrative hearing officer. The administrative hearing officer may require a taxpayer to file an amended notice of appeal if more information is deemed necessary.

(4) Upon receipt of the notice of appeal, the city finance director shall assign an administrative hearing officer to the case. Upon the administrative hearing officer's acceptance of the appeal, the finance director shall: (i) forward the original appeal to him; (ii) notify the city attorney in writing that an appeal has been filed, provide him with a copy of the appeal (with attachments) and the name of the administrative hearing officer accepting the assignment of the appeal; and (iii) mail a copy of such notification (except for the copy of the appeal), along with the name of the administrative hearing officer, to the taxpayer or its authorized representative. The city attorney, on behalf of the finance director, shall file his answer with the administrative hearing officer no later than 45 days after the city attorney's receipt of the notification from the city finance director that an appeal has been filed and the name of the administrative hearing officer accepting the appeal. Upon written request, the administrative hearing officer may grant up to 45 additional days to file an answer. The answer shall state the facts and the issues involved and the city finance director's position relating thereto. The administrative hearing officer may require the city finance director to file an amended answer if more information is deemed necessary. The city finance director shall serve a copy on the taxpayer's representative or, if the taxpayer is not represented, on the taxpayer, and shall file proof of such service with the answer.

(5) The taxpayer may file a reply with the administrative hearing officer within 30 days after receipt of the answer. The taxpayer shall serve a copy on the city attorney and shall file proof of such service with the reply. When a reply has been filed, or, if no reply has been filed, then 30 days after the filing of the answer, the controversy shall be deemed at issue and will be scheduled for hearing.

(6) The notice of appeal and any subsequent pleadings submitted by the parties shall be deemed to conform to the evidence submitted by the parties. If an issue is raised or evidence is presented at a hearing that was not previously pled or raised, the opposing party may, at the discretion of the hearing officer, be allowed time to address the issue or evidence, either through brief, or at a subsequent hearing in the case, as fairness dictates.

(c) The administrative hearing officer shall have the authority to hold pre-hearing conferences and may enter a preliminary order directing one or more parties to take such action as deemed appropriate.

(d) *Fees; costs.* No filing fee shall be imposed on a taxpayer for an appeal filed with the administrative hearing officer.

(e) *Stipulation.* The parties to a proceeding shall stipulate all relevant and non-privileged matters to the fullest extent to which complete or qualified agreement can or fairly should be reached.

(f) *Hearings.*

(1) Proceedings before the administrative hearing officer shall be tried de novo.

(2) Except as set forth in this section or otherwise precluded by law, the administrative hearing officer may subpoena such witnesses, consistent with the procedure set out in Section 40-2A-7 Code of Ala. 1975, as may be requested by the taxpayer or the finance director, or as otherwise deemed by the administrative hearing officer to be important to the decision of the matter, and shall take evidence, conduct hearings, and issue final and preliminary orders. An appeal may be held in abeyance by the agreement of the parties or at the discretion of the administrative hearing officer or may be submitted for decision on a joint stipulation of facts without a hearing or as otherwise agreed by the parties. The administrative hearing officer, with or without a hearing, may dismiss any appeal or grant appropriate relief to any party, if a party refuses to comply with any applicable law concerning appeals before the administrative hearing officer or if a party refuses to comply with any preliminary order directing the party to take such action as deemed appropriate by the administrative hearing officer.

(3) Hearings shall not be open to the public and all pleadings and other materials filed with or submitted to the administrative hearing officer are not considered to be a public record of the city.

(4) The administrative hearing officer shall not be bound by the rules of evidence applicable to civil cases in the circuit courts of this state. The administrative hearing officer shall admit relevant evidence, including hearsay, if it is probative of a material fact in controversy. The administrative hearing officer shall exclude irrelevant and unduly repetitious evidence. Notwithstanding the foregoing, the rules of privilege recognized by law shall apply.

(5) Testimony may be given only on oath or affirmation.

(6) In the case of an issue of fact, the taxpayer shall have the burden of persuasion by a preponderance of the evidence in the record, except that the tax administrator shall have the burden of persuasion in the case of an assertion of fraud and in other cases provided by law. The final assessment shall be prima facie correct, and the burden of proof shall be on the taxpayer to prove the assessment is incorrect.

(7) Hearings involving taxpayers that appear pro se or that are represented by an authorized representative who is not an attorney shall be informal in nature. To ensure a fair hearing in such cases, the hearing officer may explain to the pro se taxpayer or the taxpayer's non-attorney authorized representative the general procedures to be followed in the hearing, the legal issue or issues involved in the case, and the facts that are generally relevant in deciding the legal issue or issues. The intent of this subsection is to ensure that all taxpayers will receive a fair hearing, and that taxpayers and their non-attorney authorized representative fully understand the legal issue or issues and the relevant facts involved in the case.

(8) All hearings shall be recorded by a qualified court reporter, and the proceedings shall be transcribed at the request of either the city finance director, the taxpayer, or the administrative hearing officer, with the expense of transcription being charged to the requesting party. The record of the proceedings or transcript thereof shall be maintained by the finance department for at least five years; provided, however, upon appeal to circuit court by either party, the administrative hearing officer shall thereafter prepare a record on appeal,

which shall include the orders of the administrative hearing officer, the stenographic transcript of the hearing before the administrative hearing officer, the pleadings, and all exhibits and documents admitted into evidence.

(g) *Decisions.*

(1) The administrative hearing officer shall render his final decision in writing, including therein a concise statement of the facts found and the conclusions of law reached. The administrative hearing officer's decision, subject to law, shall grant such relief, invoke such remedies, and issue such orders as he or she deems appropriate to carry out his or her decision. The administrative hearing officer may enter a preliminary order directing one or more parties to take such action as deemed appropriate. The administrative hearing officer, after a hearing or after a case is otherwise submitted for decision, may issue an opinion and preliminary order, which shall include findings of fact and conclusions of law. The opinion and preliminary order may direct the finance director to recompute a taxpayer's liability or the amount of a refund due or for any party to take such action as specified in the preliminary order.

(2) The administrative hearing officer shall render his or her preliminary or final order, as applicable, no later than six months after submission of the last brief filed subsequent to completion of the hearing or, if briefs are not submitted, then no later than six months after completion of the hearing. The administrative hearing officer may extend the six-month period, for good cause, up to three additional months.

(3) If the administrative hearing officer fails to render either a preliminary order or a final order within the prescribed period, either party may institute a proceeding in the circuit court to compel the issuance of such decision.

(4) The administrative hearing officer's decision shall finally decide the matters in controversy, unless any party to the matter timely appeals the decision as provided for under applicable state law.

(5) Any party may apply for rehearing from any final order or opinion and preliminary order of the administrative hearing officer; provided, however, the application must be filed with the administrative hearing officer within 15 days from the date of entry of such order. The application for rehearing shall specify the reasons and supporting arguments why such order is incorrect and should be reconsidered. The timely filing of an application for rehearing from a final order shall suspend the time period for filing an appeal to circuit court as provided in this chapter and under applicable state law. If an application for rehearing is timely filed, the administrative hearing officer shall thereafter issue a final or other order on rehearing, either with or without a hearing on the application, at the discretion of the administrative hearing officer. The time for filing a notice of appeal to circuit court shall begin anew on the date of entry of the final order on rehearing.

(6) The administrative hearing officer's final order shall have the same effect, and shall be enforced in the same manner, as a judgment of a circuit court of the state, unless altered or amended on appeal or rehearing.

(h) *Appeals.* Appeals from a decision of the administrative hearing officer shall be to the appropriate circuit court and shall follow the procedure for appeals from final or appealable orders of

the Alabama Tax Tribunal as set out in Code Ala. Code 1975 §40-2B-2(m). The appropriate circuit court for appeals shall be as follows:

(1) Any appeal by the city shall be filed with the circuit court of the county in which the taxpayer resides or has a principal place of business in Alabama.

(2) Any appeal by the taxpayer shall be filed with the Circuit Court of Madison County, Alabama, or with the circuit court of the county in which the taxpayer resides or has a principal place of business in Alabama.

(3) Notwithstanding paragraphs a. and b., if the taxpayer does not reside in Alabama or have a principal place of business in Alabama, any appeal by the taxpayer or the city shall be filed with the Circuit Court of Madison County, Alabama.

(i) *Representation.*

(1) Appearances in proceedings conducted by the administrative hearing officer may be by the taxpayer; by an attorney admitted to practice in this state, including an attorney who is a partner or member of, or is employed by, an accounting or other professional services firm; by an accountant licensed in this state; or by an authorized representative with written authority or power of attorney to represent the taxpayer. Nothing herein shall be construed as entitling any such individual who is not a license attorney to engage in the practice of law.

(2) The city attorney is authorized to represent or provide representation for the city finance director in all proceedings before the administrative hearing officer and the circuit court under this chapter and applicable state law.

(j) *Service of Process.*

(1) Mailing by first class or certified or registered mail, postage prepaid, to the address of the taxpayer given on the taxpayer's notice of appeal, or to the address of the taxpayer's representative of record, if any, or to the usual place of business of the city finance director, shall constitute personal service on the other party. The administrative hearing officer may prescribe that notice by other means shall constitute personal service and, in a particular case, may order that notice be given to additional persons or by other means.

(2) Mailing by registered or certified mail and delivery by a private delivery service approved by the Internal Revenue Service in accordance with Section 7502(f) of the Internal Revenue Code of 1986, as amended, shall be deemed to have occurred, respectively, on the date of mailing and the date of submission to the private delivery service.

(3) Timely mailed document considered to be timely filed.

(k) *Settlement by the parties.* Nothing in this section shall be construed to prevent the parties from settling a matter that is pending on appeal before the administrative hearing officer or the circuit court and requesting a dismissal of the appeal, with or without prejudice, and the entry of an order consistent with the terms of the settlement, as may be agreed to by the parties.

Section 5. The following references in Chapter 15, Article II of the City Code, except for

Section 15-75, are hereby amended as follows:

1. Throughout Article II, except for Section 15-75, all references to the title “city clerk-treasurer” or “city clerk” shall be deleted and in lieu thereof the title “city finance director” or “finance director” shall be substituted.
2. Throughout Article II, except for Section 15-75, all references to “city clerk’s office” or “city-clerk-treasurer’s office” shall be deleted and in lieu thereof the reference “city finance department” or “finance department” shall be substituted.

Section 6. Chapter 15, Article II, Division 4, Section 15-75 of the City Code, is hereby amended to read as follows:

Sec. 15-75. Determination of amounts due; preliminary and final assessments; review; appeal; refund for overpayment.

(a) *Basis for entry of preliminary assessment.* If the city finance director determines that the amount of any business license tax reported on or remitted with a business license remittance form is incorrect, if no business license remittance form is filed within the time prescribed, or if the information provided on the form is insufficient to allow the city finance director to determine the proper amount of business license tax due, the city finance director may calculate the correct amount of the tax based on the most accurate and complete information reasonably obtainable. The city finance director may thereafter enter a preliminary assessment for the correct amount of business license tax, including any applicable penalty and interest. Nothing contained herein shall limit or restrict the city's right to seek injunctive relief under Code of Ala. 1975, §§ 11-51-150 *et seq.*

(b) *Immediate entry of final assessment.* In the event any of the following occurs: (1) the amount of the license tax reported on a remittance form is undisputed by the city finance director; (2) the taxpayer consents in writing to any deficiency; or (3) the taxpayer consents in writing to the amount of the preliminary assessment, then the city finance director may, immediately enter a final assessment for the amount of the tax due, plus any applicable penalty and interest.

(c) *Method and limitation period for entry.*

(1) All preliminary and final assessments of business licenses issued by the city finance director shall be executed by the city finance director or by those to whom he has delegated the right to execute said assessments. Such execution may be written by hand or facsimile signature, or by any other method which constitutes a valid method for executing any form of official document.

(2) Any preliminary assessment shall be entered within four years from the due date of the business license form, or four years from the date the form is filed, whichever is later, except as follows:

- a. A preliminary assessment may be entered at any time if no license form is filed as required, or if a false or fraudulent license form is filed with the intent to evade the business license tax.

b. A preliminary assessment may be entered within six years from the due date of the license form or six years from the date the license form is filed with the finance department, whichever date occurs last, if the taxpayer omits or fails to report an amount in excess of 25 percent of its gross receipts or other applicable business license tax base.

c. A preliminary assessment may be entered within five years from the due date of the license form, or five years from the date the form is filed, whichever is later, if the taxpayer or its authorized agent fails or refuses to execute and return to the city finance department a written extension of the statute of limitations on issuing preliminary assessments for up to eight months, as requested by the city finance department or its agent, within 30 days after receipt of the request for extension by the taxpayer or its authorized agent.

(3) The preliminary assessment entered by the city finance director, or a copy thereof, shall promptly upon entry be mailed by the city finance department to the taxpayer's last known mailing address by either first class U.S. mail or certified U.S. mail with return receipt requested, but at the option of the city finance department, the preliminary assessment may be delivered to the taxpayer by personal delivery.

(d) *Petition for review of preliminary assessment; entry of final assessment.*

(1) If a taxpayer disagrees with a preliminary assessment as entered by the city finance director, the taxpayer may file a petition for review with the city finance department, within 30 days from the date of entry of the preliminary assessment setting out the specific objections to the preliminary assessment. If a petition for review is timely filed, or if the city finance director otherwise deems it necessary, the city finance director, or his delegate, shall schedule a conference with the taxpayer for the purpose of allowing the taxpayer or its representatives and the representatives of the city to present their respective positions, discuss any omissions or errors, and to attempt to agree upon any changes or modifications to their respective positions.

(2) If a petition for review:

a. Is not timely filed; or

b. Is timely filed, and upon further review the city finance director determines that the preliminary assessment is due to be upheld in whole or in part, the city finance director may make the assessment final in the amount of business license tax due as computed by the city finance director, with applicable interest and penalty computed to the date of entry of the final assessment. The city finance director shall, whenever practicable, complete his review of the taxpayer's petition for review and applicable law within 90 days following the later of the date of filing of the petition or the conference, if any.

(3) The final assessment entered by the city finance director, or a copy thereof, shall promptly upon entry be mailed to the taxpayer's last known mailing address:

- a. By either first class U.S. mail or certified U.S. mail with return receipt requested in the case of assessments of business license tax of \$500.00 or less; or
- b. By certified U.S. mail with return receipt requested in the case of assessments of business license tax of more than \$500.00.

In either case and at the option of the city finance department, the final assessment, or a copy thereof, may be delivered to the taxpayer by personal delivery.

(e) *Appeals of final assessment.*

(1) A taxpayer may appeal from any final assessment entered hereunder by the city finance director by filing a notice of appeal, within 30 days from the date of entry of the final assessment, with the city finance department. Upon receipt the city finance director shall promptly forward a copy of the notice of appeal and related documents to the administrative hearing officer. No filing fee or supersedeas bond shall be required for such appeals. [See section 15-6 for the administrative hearing process]

(2) In lieu of the appeal under subdivision (1) to the administrative hearing officer, and at the option of the taxpayer, the taxpayer may appeal from any final assessment hereunder to the Circuit Court of Madison County, Alabama by filing a notice of appeal within 30 days from the date of entry of the final assessment with both the city clerk and the clerk of the circuit court and by otherwise following the requirements of Code of Ala. 1975, § 11-51-191(e).

(f) *Appeal from administrative hearing officer.* A final order issued by the administrative hearing officer is appealable in accordance with Code of Ala. 1975, § 11-51-191(f). The city finance director is hereby authorized and empowered to file such appeals and prosecute them through all appeals on behalf of the city, with the assistance and representation of the city attorney, or an attorney selected by the city attorney.

(g) *Petition for refund.*

(1) Any taxpayer may file a petition for refund with the city finance department for any overpayment of business license tax erroneously paid to the city. If a final assessment for the tax has been entered by the city finance director, 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.

(2) A petition for refund shall be filed with the city finance department within a) three years from the date that the business license form was filed, or b) 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.

(3) The city finance director 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 city finance director acting on behalf of the city. The taxpayer shall be notified of the city finance director'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 mailing address. If the city finance director fails to grant a full refund within the time provided herein, the petition for refund shall be deemed to be denied.

(4) If the petition is granted, or the city finance director or a court otherwise determines that a refund is due, the overpayment shall be promptly refunded to the taxpayer by the city finance director, together with interest to the extent provided in section 15-4 of this chapter. If the city finance director or a court determines that a refund is due, the amount of overpayment plus any interest due thereon may first be credited by the city finance director against any outstanding final tax liabilities due and owing by the taxpayer to the city, 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 city finance director, 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.

(5) a. 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 Madison County, Alabama 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.

b. 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.

c. The provisions of this section 15-75 shall also be applied to the taxes levied and assessed under articles IV, V, and VII of this chapter.

Section 7. Chapter 15, Article III, Division 1, Section 15-91 of the City Code is hereby mended to read as follows:

Sec. 15-91. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Except as may be otherwise provided in this section or where the context clearly indicates a different meaning or where inapplicable, all words, terms, and phrases used in this article that are defined in the corresponding state tax laws shall have the meanings ascribed to them therein.

City taxes means the sales, use, rental, and lodging taxes levied or assessed by the city against a city taxpayer under this article, and, where appropriate, shall be substituted for the corresponding terms in the corresponding state tax laws.

City taxpayer means any person liable to the city for taxes levied or assessed under this article and, where appropriate, the term shall be substituted for the term taxpayer as such term appears in the corresponding state tax laws.

Local Tax Simplification Act or *LTSA* means the Local Tax Simplification Act of 1998, 1998 Alabama Laws Act 98-192, as such may be superseded or amended from time to time.

Lodging tax means the taxes levied by the state under Code of Ala. 1975, Title 40, Chapter 26, and the corresponding tax levied by the city under division 5 of this article.

Rental tax means the taxes levied by the state under Code of Ala. 1975, Title 40, Chapter 12, Article 4, and the corresponding tax levied by the city under division 4 of this article.

Sales tax means the taxes levied by the state under Code of Ala. 1975, Title 40, Chapter 23, Article 1, and the corresponding tax levied by the city under division 2 of this article.

State taxes means the state's sales, use, rental, and lodging taxes.

Use tax means the taxes levied by the state under Code of Ala. 1975, Title 40, Chapter 23, Article 2, and the corresponding tax levied by the city under division 3 of this article.

Section 8. Chapter 15, Article III, Division 1, Section 15-92 of the City Code is hereby amended to read as follows:

Sec. 15-92. Conformance with state tax laws.

(a) *Provisions of corresponding state tax laws applicable to article and city taxes.* The city sales, use, rental, and lodgings taxes levied or assessed under this article are subject to all definitions, exceptions, exemptions, proceedings, requirements, provisions, rules and regulations promulgated under the Alabama Administrative Procedures Act, direct pay permit and drive-out certificate procedures, statutes of limitations, penalties, fines, punishments, and deductions for the corresponding state sales, use, rental, or lodgings tax, except for those provisions relating to the tax rate, and except where inapplicable or where otherwise provided in this chapter and in title 11 and title 40 of the Code of Ala. 1975, including provisions for enforcement and collection of the taxes. All provisions of the corresponding state tax laws, including those for collection and enforcement, that are made applicable in this subsection (a) to the city taxes levied or assessed in this article are incorporated herein by reference and made a part hereof as if fully set forth herein.

(b) In accordance with subsection (a), the Alabama Taxpayers' Bill of Rights and Uniform Revenue Procedures Act (Title 40, Chapter 2A of the Code of Ala. 1975), which is incorporated herein by reference as if fully set forth, shall apply to the taxes administered in this article, except where inapplicable or where otherwise provided.

Section 9. Chapter 15, Article III, Division 1, Section 15-94 of the City Code is hereby amended to read as follows:

Sec. 15-94. Penalties, etc.

(a) *Civil penalties.* In addition to other penalties provided by law, civil penalties and liabilities levied against a person, including a taxpayer, applicable to the state's sales, use, rental or lodging tax, including those provided for pursuant to the Alabama Taxpayers' Bill of Rights and Uniform Procedures Act, are hereby made applicable under this article for the city's sales, use, rental, or lodging tax, and are incorporated herein by reference as if fully set forth.

(b) *State misdemeanors and violations of corresponding state tax laws.*

(1) Except for an offense that is declared by state law to be a felony, any person committing an offense within the corporate limits of the city that is declared by a corresponding state tax law to be a misdemeanor or a violation, or that results in the imposition of a fine, shall be guilty of an offense against the city.

(2) A person convicted of a violation of subsection (1) above shall be punishable as prescribed in the corresponding state tax law; provided, however, where the penalty or fine under the corresponding state tax law exceeds the penalty provisions of section 1-7 of this Code, in such case section 1-7 shall apply and violations that are continuous in nature with respect to time shall constitute a separate offense for each day or month, as appropriate, that the violation continues.

(c) *Willful failure to collect or pay over tax.* It shall be unlawful for any person that is required under this article to collect, account for, and pay over any tax imposed by this article to willfully fail to collect or truthfully account for and pay over such tax and upon conviction thereof, shall, in addition to other penalties provided by law, be punished by a fine not exceeding \$500.00 or by imprisonment in the city jail for a period not exceeding six months, together with costs of court, or by any combination. Each month of such failure shall constitute a separate offense. The penalty imposed upon a corporation shall consist of the fine only, plus costs of court.

(d) *Violation of article.* Where not otherwise provided for under this article, including corresponding state tax laws incorporated herein by reference, any person violating any of the provisions of this article, on conviction, shall be punished by a fine not exceeding \$500.00 or by imprisonment in the city jail for a period not exceeding six months, together with costs of court, or by any combination. With respect to violations of this section that are continuous with respect to time, each day or month, as appropriate, that the violation continues is a separate offense. The penalty imposed upon a corporation shall consist of the fine only, plus costs of court.

(e) *Violator may be restrained from continuing in business.* Any city taxpayer who shall violate any of the provisions of this article, including corresponding state tax laws incorporated herein by reference, may be restrained from continuing in business, and the proper prosecution shall be instituted in the name of the city by the city attorney, until such person shall have complied with the provisions of this article.

(f) *Reports under oath.* Wherever in the corresponding state tax laws a report is required to be sworn to, the same, as it relates to city taxes, shall be sworn to by the city taxpayer or his agent before some officer authorized to administer oaths, and any false statement to a material fact made with intent to defraud shall constitute perjury, and upon conviction thereof, the person so convicted shall be punished as provided by law.

(g) *Lien for taxes.* The city shall have a lien for the city taxes as such lien may be provided for or authorized by state law, rule, or regulations.

Section 10. The following references in Chapter 15, Article III, Division 1, Section 15-95 of the City Code are hereby amended as follows:

In Section 15-95 all references to the title “city tax administrator” or “tax administrator” shall be deleted and in lieu thereof the title “city finance director” or “finance director” shall be substituted.

Section 11. Chapter 15, Article III, Division 2 of the City Code is hereby amended to add the following Section 15-110: Sec. 15-110. Provisions of corresponding state sales tax applicable to city sales tax.

All provisions of the corresponding state sales tax law, including those for collection and enforcement, that are made applicable in section 15-92 to the city sales taxes levied or assessed in this division are incorporated herein by reference and made a part hereof as if fully set forth herein. Without limiting the generality of the foregoing, the following are violations of this division:

- (1) *Penalty for failure to make reports or keep records.* Any person subject to the provisions of this division who shall fail to make the reports or any of them, as required, or who shall fail to keep the records as required, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than \$25 nor more than \$500 for each offense. Each month of such failure shall constitute a separate offense. (see Code of Ala. 1975 § 40-23-11)

- (2) *Penalty for willful refusal to make reports or permit examination of records.* Any person subject to the provisions of this division willfully refusing to make the reports required, or who shall refuse to permit the examination of his records by the finance department, or its duly authorized agents, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than \$50 nor more than \$500 for each offense, and in addition may be imprisoned in the city jail for a period not to exceed six months. Each month of failure to make such reports shall constitute a separate offense, and each refusal of a written demand of the department to examine, inspect or audit such records shall constitute a separate offense. (see Code of Ala. 1975 § 40-23-12)

- (3) *Tax to be added to purchase price; refund unlawful; tax a direct tax on retail consumer.*
 - a. Every person, firm, corporation, association or copartnership engaged in or continuing within this city in the business for which a license or privilege tax is required by this division shall add to the sales price and collect from the purchaser on all sales upon the gross receipts or gross proceeds of which there is levied by this division a sales tax at the rate set forth in section 15-108 of this division.

 - b. It shall be unlawful for any person, firm, corporation, association or copartnership described in this section to fail or refuse to add to the sales price and collect from the purchaser the amount required by this section to be so added to the sales price and collected from the purchaser; and it shall likewise be unlawful to refund or offer to refund all or any part of the amount collected, or to absorb or advertise directly or indirectly the absorption or refund of the amount required to be added to the sales price and collected from the purchaser, or any portion of such amount. Any person, firm, corporation, association or copartnership

violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined in a sum of not less than \$50 nor more than \$100, or may be imprisoned in the city jail for not more than six months, or may be punished by both such fine and imprisonment, and each act in violation of the provisions of this division shall constitute a separate offense. The provisions of this section that there shall be added to the sale price and collected from the purchaser the amounts provided herein shall in no way relieve the person, firm, corporation, association or copartnership described in this section of the tax levied by this division; nor shall the inability, impracticability, refusal or failure to add to the sales price and collect from the purchaser the amounts provided herein relieve such person, firm, corporation, association or copartnership from the tax levied by this division.

c. All taxes paid in pursuance to this division or any other statute enacted in this connection shall conclusively be presumed to be a direct tax on the retail consumer, precollected for the purpose of convenience and facility only.

d. In the event that any sum is collected from a consumer that purports to be collected because of this section, whether or not the amount is actually provided for hereunder, then any such sum, except such as is collected solely because of rounding the correct amount of tax upward to the nearest cent, shall be paid to the city for the purposes provided in section 15-106 of this division. (see Code of Ala. 1975 § 40-23-26)

Section 12. Chapter 15, Article III, Division 3 of the City Code is hereby amended to add the following Section 15-118:

Sec. 15-118. Provisions of corresponding state use tax applicable to city use tax.

All provisions of the corresponding state use tax law, including those for collection and enforcement, that are made applicable in section 15-92 of this chapter to the city use taxes levied or assessed in this division are incorporated herein by reference and made a part hereof as if fully set forth herein. Without limiting the generality of the foregoing, the following are violations of this division:

(1) *Seller to collect tax; seller not to assume or absorb tax.* Every such seller, as “such seller” is specified in Code of Ala. 1975 § 40-23-66, making sales of tangible personal property for storage, use or other consumption in this city, not exempted under the provisions of Code of Ala. 1975 § 40-23-62, shall at the time of making such sales or, if the storage, use or other consumption of the tangible personal property is not then taxable hereunder, at the time such storage, use or other consumption becomes taxable hereunder, collect the tax imposed by this division from the purchaser, and give to the purchaser a receipt therefor in the manner and form prescribed by the finance department. The tax required to be collected by the seller from the purchaser shall be displayed separately from the list, advertised in the premises, marked or other price on the sales check or other proof of sales. It shall be unlawful for any such seller to advertise or hold out or state to the public

or to any customer, directly or indirectly, that the tax or any part thereof imposed by this division will be assumed or absorbed by the seller or that it will not be added to the selling price of the property sold, or if added that it or any part thereof will be refunded. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. The tax herein required to be collected by the seller shall constitute a debt owed by the seller to this city. (see Code of Ala. 1975 § 40-23-67)

(2) *Failure to file a return; false return.* Any seller or other person failing or refusing to furnish any return required to be made, or failing or refusing to furnish a supplemental return or other data required by the finance department, or rendering a false or fraudulent return, shall be guilty of a misdemeanor and subject to a fine of not exceeding \$500 for each such offense. (see Code of Ala. 1975 § 40-23-88)

(3) *False or fraudulent return.* Any person required to make, render, sign or verify any report as aforesaid who makes any false or fraudulent return, with intent to defeat or evade the determination of an amount due required by law to be made shall be guilty of a misdemeanor, and shall for each such offense be fined not less than \$50 and not more than five hundred dollars (\$500.00), or be imprisoned in the city jail not exceeding six months or be subject to both said fine and imprisonment in the discretion of the court. (see Code of Ala. 1975 § 40-23-88)

Section 13. The following reference(s) in Chapter 15, Article III, Division 4, Section 15-124 of the City Code are hereby amended as follows:

In Section 15-124 all references to “city clerk-treasurer’s office” or “clerk treasurer’s office” shall be deleted and in lieu thereof the “city finance department” or “finance department” shall be substituted.

Section 14. Chapter 15, Article III, Division 4 of the City Code is hereby amended to add the following Section 15-127:

Sec. 15-127. Provisions of corresponding state rental tax applicable to city rental tax.

All provisions of the corresponding state rental tax law, including those for collection and enforcement, that are made applicable in section 15-92 of this chapter to the city rental taxes levied or assessed in this division are incorporated herein by reference and made a part hereof as if fully set forth herein. Without limiting the generality of the foregoing, the following are violations of this division:

(1) *Penalty for failure to make reports or keep records.* Any person subject to the provisions of this division who shall fail to make the reports or any of them, as required, or who shall fail to keep the records as required, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than \$25 nor more than \$500 for each offense. Each month of such failure shall constitute a separate offense. (see Code of Ala. 1975 § 40-23-11, made applicable under Code of Ala. 1975 § 40-12-224)

(2) *Penalty for willful refusal to make reports or permit examination of records.* Any person subject to the provisions of this division willfully refusing to make the reports required, or who shall refuse to permit the examination of his records by the finance department, or its duly authorized agents, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than \$50 nor more than \$500 for each offense, and in addition may be imprisoned in the city jail for a period not to exceed six months. Each month of failure to make such reports shall constitute a separate offense, and each refusal of a written demand of the department to examine, inspect or audit such records shall constitute a separate offense. (Code of Ala. 1975 § 40-23-12 made applicable under Code of Ala. 1975 § 40-12-224)

Section 15. Chapter 15, Article III, Division 5 of the City Code is hereby amended to add the following Section 15-134:

Sec. 15-134. Provisions of corresponding state lodging tax applicable to city lodging tax.

All provisions of the corresponding state lodging tax law, including those for collection and enforcement, that are made applicable in section 15-92 of this chapter to the city lodging taxes levied or assessed in this division are incorporated herein by reference and made a part hereof as if fully set forth herein. Without limiting the generality of the foregoing, the following are violations of this division:

(1) *Failure to make reports and keep records.* Any person, firm or corporation subject to the provisions of this division who fails to make the reports or any of them as herein required, or who fails to keep the records as herein required, shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$25 nor more than \$500 for each offense. Each month of such failure shall constitute a separate offense. (see Code of Ala. 1975 § 40-26-8)

(2) *Willful refusal to make reports or permit examination of records.* Any person, firm or corporation subject to the provisions of this division willfully refusing to make the reports herein required, or who shall refuse to permit the examination of his or its records by the finance department, or its duly authorized agents, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than \$50 nor more than \$500 for each offense, and in addition may be imprisoned in the city jail for a period not to exceed six months. Each month of failure to make such report shall constitute a separate offense and each refusal of a written demand of the department to examine, inspect or audit such records shall constitute a separate offense. (see Code of Ala. 1975 § 40-26-9)

(3) *Failure to add tax to price of service; refund or absorption of tax prohibited.*

It shall be unlawful for any person, firm or corporation engaged in or continuing within this city in any business for which a license or privilege tax is required by this division to fail or refuse to add to the price of the service rendered the amount due by the taxpayer on account of the tax levied by this division. Nor shall any person refund or offer to refund all or any part of the amount collected as tax under this division or to absorb such tax or

to advertise directly or indirectly the absorption or refund of such tax or any portion of the same. Any person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined in a sum not less than \$50 nor more than \$100, or may be imprisoned in the city jail for not more than six months, or by both such fine and imprisonment, and each act or violation of the provisions of this division shall constitute a separate offense. (see Code of Ala. 1975 § 40-26-16)

Section 16. The following reference(s) in Chapter 15, Article IV, Section 15-143, Section 15-144, and Section 15-152 of the City Code are hereby amended as follows:

In Section 15-143, Section 15-144, and Section 15-152 all references to “city clerk-treasurer’s office” or “clerk treasurer’s office” shall be deleted and in lieu thereof the “city finance department” or “finance department” shall be substituted.

Section 17. The following reference(s) in Chapter 15, Article V, Section 15-193 and Section 15-204 of the City Code are hereby amended as follows:

In Section 15-193 and Section 15-204 all references to “city clerk-treasurer’s office” or “clerk treasurer’s office” shall be deleted and in lieu thereof the “city finance department” or “finance department” shall be substituted.

Section 18. The following reference(s) in Chapter 15, Article VII, Section 15-302, Section 15-303, Section 15-304, Section 15-306, Section 15-307, and/or Section 15-313 of the City Code are hereby amended as follows:

1. In Section 15-302, Section 15-303, and Section 15-313 all references to “city clerk-treasurer’s office” or “clerk treasurer’s office” shall be deleted and in lieu thereof the “city finance department” or “finance department” shall be substituted.

2. In Section 15-304, Section 15-306, and Section 15-307 all references to the title “city clerk-treasurer” or “clerk-treasurer” shall be deleted and in lieu thereof the title “city finance director” or “finance director” shall be substituted.

Section 19. With regard to Chapter 2, Article VII, Division 5, Section 2-416 of the City Code:

1. Subsection (6) and Subsection (15) of Section 2-416 are hereby amended to read as follows:

(6) *Tax administration; licenses.* The finance director shall oversee the administration and enforcement, including auditing, assessment, and collection, of the city's tax laws in accordance with applicable state and city laws, including chapter 15 of this Code. The finance director shall issue city business licenses and shall have general supervision and control over the city's licensing division, which includes the administration and enforcement of business licenses and related regulatory matters associated therewith, including alcoholic beverage licensure, bingo operations, vehicles for hire, and residential solicitation.

(15) *Public depository; liability for loss.* The city council hereby directs that those qualified

public depositories, defined and designated as such pursuant to the Code of Ala. 1975, Tit. 41, Ch. 14A, are depositories where the finance director shall deposit public money, with interest being paid thereon and security given therefor by the depository. As to deposits made under the authority of an ordinance of the council, neither the finance director nor his bondsmen if the finance director has exercised due care shall be further liable for any loss occasioned thereby.

2. The remainder of Section 2-416, including Subsections (1) through (5), (7) through (14), and (16), shall remain in full force and effect.

Section 20. Severability. The severability provisions of section 1-8 of the City Code shall apply to this ordinance.

Section 21. Effective Date. This ordinance shall become effective upon its adoption, approval and publication.

ADOPTED this the 22nd day of May, 2025.

/s/ John Meredith
President of the City Council
of the City of Huntsville, Alabama

APPROVED this the 22nd day of May, 2025.

/s/ Tommy Battle
Mayor of the City of Huntsville,
Alabama