

<p>STATE OF SOUTH CAROLINA</p> <p>CITY OF HARDEEVILLE</p> <p>2009-9-10B</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>An Ordinance to amend</p> <p>article II section 11-15 through</p> <p>11-43 (Business License) and to</p> <p>adopt the Classification and Rate</p> <p>Schedule</p>
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WHEREAS, City Council adopted ordinance no. 08-02-02A in 2002; and

WHEREAS, section 11-19 establishes the classification and rates for business licenses for the City; and

WHEREAS, certain amendments are necessary to clarify and update the Article II section concerning Business, Professional and Occupational Licenses; therefore

BE IT ORDAINED by the Mayor and City Council Members of Hardeeville, in City Council duly and lawfully assembled:

To amend section 11-15 through 11-43 of the Hardeeville Code by deleting the referenced sections in their entirety and replacing as follows:

Also, In accordance with section 11-19, the attached Classification and Rate schedule is hereby adopted by City Council as the schedule to be in effect for calendar year 2010:

ARTICLE II. BUSINESS, PROFESSIONAL AND OCCUPATIONAL LICENSES

Section 11-15. License Required.

Every person engaged or intending to engage in any calling, business, occupation or profession listed in the rate classification index portion of this ordinance, in whole or in part, within the limits of the City of Hardeeville, South Carolina, is required to pay an annual license fee for the privilege of doing business and obtain a business license as herein provided.

Section 11-16. Definitions.

The following words, terms and phrases, when used in this ordinance, shall have the meaning ascribed herein:

“Business” means a calling, occupation, profession, or activity engaged in with the object of gain, benefit or advantage, either directly or indirectly. A charitable organization shall be deemed a business unless the entire proceeds of its operation are devoted to charitable purposes. In addition to the above described activities constituting doing business in the city, an individual shall be deemed to be in business if that individual owns and rents five (5) or more residential rental units (or partial interest therein) within the city.

“Charitable Purpose” means benevolent, philanthropic, patriotic, or eleemosynary purpose which does not result in personal gain to a sponsor, organizer, officer, director, trustee or person with ultimate control of the organization. A charitable organization shall be deemed a business subject to a license tax unless the entire net proceeds of its operation, after necessary expenses,

are devoted to charitable purposes. Compensation in any form to a sponsor, organizer, officer, director, trustee or person with ultimate control of the organization shall not be deemed a necessary expense of operation.

“*Classification*” means that division of businesses by major groups subject to the same license rate as determined by a calculated index of ability to pay based on national averages, benefits, equalization of tax burden, relationships of services, or other basis deemed appropriate by Municipal Council.

“*Contractor*” means a person who agrees to furnish materials or perform services at a specified price, especially for construction and included subcontractors.

“*Gross Income*” means the total income of a business, received or accrued, for one calendar year collected or to be collected from business done within the Municipality, excepting there from income from business done wholly outside of the Municipality on which a license tax is paid to some other municipality or a county and fully reported to the Municipality. Gross income for brokers or agents means gross commissions received or retained, unless otherwise specified. Gross income for insurance companies means gross premiums collected. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross income for business license purposes may be verified by inspection of returns and reports filed with the Internal Revenue Service, the South Carolina Department of Revenue, the South Carolina Insurance Commission, or other government agency.

“*License Official*” means a person designated to administer this ordinance.

“*Merchant*” means a person whose business is buying and selling goods for profit or whose occupation is the wholesale purchase and retail sale of goods for profit.

“*Municipality*” means the City of Hardeeville, South Carolina.

“*Person*” means any individual, firm, partnership, LLP, LLC, cooperative non-profit membership, corporation, joint venture, association, estate, trust, business trust, receiver, syndicate, holding company, or other group or combination acting as a unit, in the singular or plural, and the agent or employee having charge or control of a business in the absence of the principals. A governmental entity is not a person as defined in this section.

“*Price Gouging*” means increasing prices for essential goods and services during or after an impending or actual emergency such as a hurricane, earthquake, or other natural or manmade disaster.

“*Wholesaler*” means a business where the product the business sells is to be resold (retailed). It does not include a sale to a user or consumer. Wholesalers are exempt from municipal license taxes unless they maintain warehouses or distribution establishments within the city limits.

Section 11-17. Purpose and Duration.

The business license levied by this ordinance is for the purpose of providing such regulation as

may be required for the business subject thereto and for the purpose of raising revenue for the general fund through a privilege tax. Each license shall be issued for one (1) calendar year beginning January first (1st) ending December thirty-first (31st). The provisions of this ordinance and the rates herein shall remain in effect from year to year as amended by Council.

Section 11-18. License Fee.

- a. The required license fee shall be paid for each business subject hereto according to the applicable rate classification on or before the fifteenth (15th) day of April in each year.
- b. A separate license shall be required for each separate location of business. For each classification of business conducted at one place the owner will have the option of combining all gross receipts into one business license or to have separate licenses for each classification. If gross receipts are combined into one license the rate for such license will be calculated at the classification with the highest rate. A license fee based on gross income shall be computed on the gross income for the preceding calendar year. The fee for a new business shall be computed using estimated gross receipts for the calendar year. The initial fee for an annexed business shall be calculated based on the gross receipts from the prior year, prorated for the number of months remaining in the license year.
- c. Any new business established after July first (1st) shall pay a prorated fee that is half the minimum base fee under which rate class the business is listed.

Section 11-19. Adoption of Schedule.

The Council shall adopt by ordinance on or before December 31 of each year a schedule of license taxes to be charged for the ensuing year. If the council fails to prepare such schedule in any year then the schedule for the previous year shall be continued in full force and effect unless amended by ordinance.

Section 11-20. Schedule of Rates.

The sums and amounts to be paid for a business license shall be published in a separate bulletin, entitled "Business and Professional License Classification and Rate Schedule," and a copy of the same shall be on file at City Hall at all times. This bulletin is hereby incorporated and made part of this code by reference as if printed here in full, and may be amended from time to time by ordinance. The License Official, upon payment of the proper fee, shall grant and issue the proper license herein provided for the trades, occupations and professionals as may have been specified and determined by the Council.

Section 11-21. Mixed Wholesale and Retail Businesses to Pay Retail Rate.

In the case of mixed wholesale and retail businesses, unless owners or agents can satisfactorily separate such businesses, the retail license shall be charged.

Section 11-22. Registration Required.

- a. The owner, agent or legal representative of every business subject to this ordinance, whether listed in the classification index or not, shall register the business and make application for a business license on or before the due date of each year; provided, a new business shall be required to have a business license prior to operation within the

Municipality. A license for a bar (NAICS 722410) must be issued in the name of the individual who has been issued a State ABC license and will have actual control and management of the business.

- b. Application shall be on a form provided by the License Official which shall contain the following information:
 - 1. Style name of the person, firm, company or corporation as reported on the South Carolina income tax return;
 - 2. Location at which the trade, business or profession is to be conducted;
 - 3. State Tax Commission Number, Federal Employer's Identification Number, and/or Social Security Number;
 - 4. Exact nature of the trade, business or profession for which the license is requested to include all services performed on the premises;
 - 5. A full and complete list of wholesalers, retailers, contractors, subcontractors, and any other supplier if requested.
 - 6. Any additional information about the applicant and the business deemed appropriate to carry out the purpose of this ordinance by the License Official. Applicants may be required to submit copies of portions of state and federal income tax returns reflecting gross income figures.
- c. The applicant shall certify under oath that the information given in the application is true, that the gross income is accurately reported, or estimated for a new business, without any unauthorized deductions, and that all assessments and personal property taxes on business property due and payable to the Municipality have been paid.
- d. Insurance agents and brokers shall report the name of each insurance company for which a policy was issued and the total premiums collected for each company for each type of insurance coverage on a form approved by the License Official. An insurance agent not employed by a company shall be licensed as a broker.

Section 11-23. Deductions, Exemptions, and Charitable Organizations.

- a. No deductions from gross income shall be made except income from business done wholly outside of the Municipality on which a license tax is paid to some other municipality or a county, taxes collected for a governmental entity, or income which cannot be included for computation of the tax pursuant to State or Federal law. The applicant shall have the burden to establish the right to exempt income by satisfactory records and proof.
- b. No person shall be exempt from the requirements of the ordinance by reason of the lack of an established place of business within the Municipality, unless exempted by State or federal law. The License Official shall determine the appropriate classification for each business in accordance with the latest issue of the North American Industry Classification System (NAICS) for the United States published by the Office of

Management and Budget. No person shall be exempt from this ordinance by reason of the payment of any other tax, unless exempted by State law, and no person shall be relieved of liability for payment of any other tax by reason of application of this ordinance.

- c. Charitable organizations which have exemptions from state and federal income taxes shall be exempt from a business license tax only in cases where the sponsors, organizers, directors, trustees, or persons who exercise ultimate control of the organization receive no part of the proceeds of operation, and all proceeds are devoted to charitable purposes as defined by this ordinance. Payment of necessary costs of operation and wages to non-management employees will not disqualify a charitable organization from exemption.

Section 11-24. False Application Unlawful.

It shall be unlawful for any person subject to the provisions of this ordinance to make a false application for a business license, or to give or file, or direct the giving or filing of any false information with respect to the license or fee required by this ordinance.

Section 11-25. Display and Transfer.

- a. All persons shall display the license issued to them on the original form provided by the License Official in a conspicuous place in the business establishment at the address shown on the license. A transient or non-resident shall carry the license upon his person or in a vehicle used in the business readily available for inspection by any authorized agent of the Municipality.
- b. A change of address must be reported to the License Official within ten (10) days after removal of the business to a new location and the license will be valid upon written notification of the License Official and compliance with zoning and building codes. Failure to obtain the approval of the License Official for a change of address shall invalidate the license and subject the license to prosecution for doing business without a license. A business license shall not be transferable and a transfer of controlling interest shall be considered a termination of the old business and the establishment of a new business requiring a new business license, based on old income.

Section 11-26. Administration of Article.

The License Official shall administer the provisions of this article, collect license fees, issue licenses, make or initiate investigations and audits to insure compliance, initiate denial or revocation procedures, report violations to the municipal attorney, assist in prosecution of violators, produce forms, make reasonable regulations relating to the administration of this ordinance, and perform such other duties as may be duly assigned.

Section 11-27. Inspections and Audits.

- a. For the purpose of enforcing the provisions of this ordinance the License Official or other authorized agent of the Municipality is empowered to enter upon the premises of any person subject to this ordinance to make inspections, examine and audit books and records. It shall be unlawful for any such person to fail or refuse to make available the necessary books and records. In the event an audit or inspection reveals that the

licensee has filed false information, the costs of the audit shall be calculated at \$40.00 per hour times the number of hours required to audit the information. This cost will be added to the correct license fee and late penalties in addition to other penalties provided herein. Each day of failure to pay the proper amount of license fee shall constitute a separate offense.

- b. The License Official shall make systematic inspections and random audits of all businesses within the Municipality to insure compliance with the ordinance. Financial information obtained by inspections and audits shall not be deemed public records, and the License Official shall not release the amount of license taxes paid or the reported gross income of any person by name without written permission of the licensee. Statistics compiled by classifications are public records.

Section 11-28. Assessments, Payment under Protest, Appeal.

- a. If a person fails to obtain a business license or to furnish the information required by this ordinance or the License Official, the License Official shall examine such records of the business or any other available records as may be appropriate, and conduct such investigations and statistical surveys as the License Official may deem appropriate to assess a license tax and penalties as provided herein.
- b. A notice of assessment shall be served by certified mail. An application for adjustment of the assessment may be made to the License Official within thirty (30) days after the notice is mailed or the assessment will become final. The License Official shall establish by regulation the procedure for hearing an application for adjustment of assessment and issuing a notice of final assessment.
- c. A final assessment may be appealed to City Council only by payment in full of the assessment under protest within five (5) days and the filing of written notice of appeal within ten (10) days after payment pursuant to the provisions of this ordinance relating to appeals to Council.

Section 11-29. Delinquent License Fees, Partial Payment.

- a. For non-payment of all or any part of the correct license fee, the License Official shall levy and collect a late penalty of five (5%) percent of the unpaid fee for each month or portion thereof after the due date until paid. Penalties shall not be waived. If any license fee remains unpaid for sixty (60) days after its due date, the License Official shall report it to the municipal attorney for appropriate legal action.
- b. Partial payment may be accepted by the License Official to toll imposition of penalties on the portion paid; provided, however, no business license shall be issued or renewed until the full amount of the tax due, with penalties, has been paid.

Section 11-30. Notices.

The License Official may, but shall not be required to, email and mail written notices that license fees are due. If notices are not mailed there shall be published a notice of the due date in a newspaper of general circulation within the municipality three (3) times prior to the due date in each year. Failure to receive notice shall not constitute a defense to prosecution for failure to pay the tax due or grounds for waiver of penalties.

Section 11-31. Denial of License.

The License Official shall deny a license to an applicant when the License Official determines:

- a. The application is incomplete, contains a misrepresentation, false or misleading statement, evasion or suppression of a material fact; or
- b. The activity for which a license is sought is unlawful or constitutes a public nuisance per se or per accidents; or
- c. The applicant or prior licensee or the person in control of the business has been convicted of an offense under a law or ordinance regulating business, a crime involving moral turpitude, or an unlawful sale of merchandise or prohibited goods; or
- d. The applicant or prior licensee or the person in control of the business has engaged in an unlawful activity or nuisance related to the business; or
- e. The applicant or prior licensee or the person in control of the business is delinquent in the payment to the municipality of any tax or fee; or
- f. The license for the business has been suspended or revoked in the previous license year. A decision of the License Official shall be subject to appeal to Council as herein provided. Denial shall be written with reasons stated.

Section 11-32. Suspension or Revocation of License.

When the License Official determines:

- a. A licensee has been mistakenly or improperly issued or issued contrary to law; or
- b. A licensee has breached any condition upon which the license was issued or has failed to comply with the provisions of this ordinance; or
- c. A licensee has obtained a license through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of material fact in the license application; or
- d. A licensee has been convicted of an offense under a law or ordinance regulating business, a crime involving moral turpitude, or an unlawful sale of merchandise or prohibited goods; or
- e. A licensee has engaged in an unlawful activity or nuisance related to the business; the License Official shall give written notice to the licensee or the person in control of the business within the municipality by personal service or certified mail that the license is suspended pending a hearing before Council for the purpose of determining whether the license should be revoked. The notice shall state the time and place at which the hearing is to be held, which shall be at a regular or special Council meeting within thirty (30) days from the date of service of the notice, unless continued by agreement. The notice shall contain a brief statement of the reasons for suspension and proposed revocation and a copy of the applicable provisions of this ordinance.

Section 11-33. License Subject to Restrictions.

Licenses shall be issued subject to all legal rules, restrictions and regulations in force at the time they are issued or that may thereafter be adopted.

Section 11-34. Special Provisions for Vehicles for Hire, Public Conveyances.

Any license issued for the operation of a public service automobile or bus, plying the streets for hire, upon conviction of the driver of such vehicle of transporting, having in possession or selling any alcoholic liquors or illegal drugs, or otherwise violating any of the alcoholic beverage or illegal drug ordinances of the City, State or County or transporting from place to place within the City any woman or man for immoral purposes shall be immediately revoked by the City Manager and no new license shall be granted to such driver during the calendar year to engage in the same character or kind of business.

Section 11-35. Itinerants.

Any person that does not list a permanent principal place of business in the city shall be deemed an itinerant (nonresident) and shall be subject to the license taxes levied on itinerants. The rate for itinerants shall be doubled the rate levied by this ordinance.

Section 11-36. License for Collection and Disposal of Solid Waste.

No business license shall be issued to any person or other legal entity for the purpose of engaging in, prosecuting or carrying on the business of collecting and disposing of residential solid waste within the corporate limits of the City of Hardeeville other than the contractor(s) under contract with the City to provide residential solid waste collection and disposal. Each business license applicant shall fully disclose on the application, and any renewal thereof, its method of solid waste handling, and shall present proof of such solid waste disposal plan before a license is granted or renewed.

Section 11-37. Appeals to City Council.

- a. Any person aggrieved by a decision, final assessment, proposed revocation, suspension, or a denial of a business license by the License Official may appeal the decision to the Municipal Council by written request stating the reasons therefore, filed with the License Official within ten (10) days after the payment of the assessment under protest or notice of denial is received. Payment under protest shall be a condition precedent to appeal.
- b. An appeal or a hearing on proposed revocation shall be held by the Municipal Council within thirty (30) days after receipt of a request for appeal or service of notice of suspension at a regular or special meeting of which the applicant or licensee has been given written notice, unless continued by agreement. At the hearing all parties shall have the right to be represented by counsel, to present testimony and evidence and to cross-examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party so requesting. The rules of evidence and procedure prescribed by Council shall govern the hearing. Council shall by majority vote of members present render a written decision based on findings of fact and application of the standards herein which shall be served upon all parties or their representatives and shall be final unless appealed to a court of competent jurisdiction within ten (10) days after service.

Section 11-38. Consent, Franchise, or License Required for Use of Streets.

- a. It shall be unlawful for any person to construct, install, maintain or operate in, on, above or under any street or public place under control of the municipality any line, pipe, cable, pole, structure or facility for utilities, communications, cablevision or other purposes without a consent agreement or franchise agreement issued by the Municipal Council by ordinance that prescribes the term, fees and conditions for use.

- b. The annual fee for use of streets or public places authorized by a consent agreement or franchise agreement shall be set by the ordinance approving the agreement and shall be consistent with limits set by State law. Existing franchise agreements shall continue in effect until expiration dates in the agreements. Franchise and consent fees shall not be in lieu of or be credited against business license fees unless specifically provided by the franchise or consent agreement.

Section 11-39. Confidentiality.

Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any official or employee of the City to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this ordinance. Nothing in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns. Any license data may be shared with other public officials or employees in the performance of their duties, whether or not those duties relate to enforcement of the license ordinance. The City elects to exempt from public disclosure the items set forth in the South Carolina Code of Laws, 1976, Section 30-4-40.

Section 11-40. Price Gouging During Emergency Situations.

- a. Certain goods and services become scarce due to the disruption of the City's economy during emergency situations, and certain merchants, vendors and contractors take advantage of the emergency by price gouging. The City Council prohibits any merchant, vendor or contractor from selling goods and/or offering services within the City from raising prices during the following time frames:
 - 1. For a hurricane, from the period beginning with the notification of hurricane watch for the City, issued by the National Weather Service, until either the hurricane is no longer a threat to the City or declared a state of emergency is terminated.
 - 2. For an earthquake, tornado, or other disaster from the actual time of the emergency until the declared state of emergency is terminated.
- b. Sale of goods and costs of services at prices above pre-emergency levels or during the time frames provided in subsection (a) of this section shall only be allowed if merchants, vendors or contractors can document purchase of these goods or providing services at increased costs to them. Price level increases after a state of emergency is terminated shall be consistent with cost increases to the merchant, vendor or contractor.

Section 11-41. Violations.

Any person violating any provision of this ordinance shall be deemed guilty of an offense and shall be subject to a fine of up to \$500.00 or imprisonment for not more than thirty (30) days or both, upon conviction. Each day of violation shall be considered a separate offense. Punishment for violation shall not relieve the offender of liability for delinquent taxes, penalties and costs provided for herein.

Section 11-42. Separability.

A determination that any portion of this ordinance is invalid or unenforceable shall not affect the remaining portions.

Section 11-43. Classification and Rates.

- a. The sectors of businesses included in each Rate Class are listed with the United States North American Industry Classification System (NAICS) codes. The alphabetical index in this ordinance, filed in the office of the City Clerk, is a tool for classification, not a limitation on businesses subject to a license tax. The License Official shall determine the proper class for a business according to the applicable NAICS manual, whether or not the business is listed in the alphabetical index.
- b. The license fee for each Class of businesses subject to this ordinance shall be computed in accordance with the following classification rate schedule filed in the office of the City Clerk. A copy of the license ordinance text, business classifications and rates shall be made available to the public in booklet form.