

ORDINANCE 4342

AN ORDINANCE OF THE CITY OF HARTSVILLE, SOUTH CAROLINA AMENDING AND RESTATING CHAPTER 14 “BUSINESS LICENSE” ARTICLE II “BUSINESS LICENSE PROGRAM” OF THE CITY’S CODE OF ORDINANCES, TO UPDATE THE BUSINESS LICENSE RATE SCHEDULE; TO MAKE CERTAIN OTHER MODIFICATIONS TO CITY’S BUSINESS LICENSE PROCEDURES; AND OTHER MATTERS RELATED THERETO.

WHEREAS, the City of Hartsville, South Carolina (the “City”) was created as a municipal corporation under the laws of the State of South Carolina (the “State”); and

WHEREAS, the City is duly empowered by Section 5-7-30 of the Code of Laws of South Carolina 1976, as amended, to require businesses located within the City to pay an excise tax for the privilege of doing business within the City; and

WHEREAS, City Council of the City of Hartsville, the governing body of the City (the “Council”), pursuant to Ordinance No. 4276, enacted on December 20, 2016, as subsequently amended, has enacted and implemented a comprehensive business license program (the “Business License Program”); and

WHEREAS, the Council has determined to update the Business License Rate Schedule based on the latest available IRS statistics and to generally update the City’s procedures for the implementation of the Business License Program.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF HARTSVILLE, SOUTH CAROLINA, that Chapter 14 “Business License”, Article II “Business License Program” is hereby amended to read as follows:

CHAPTER 14 “BUSINESS LICENSE”. ARTICLE II “BUSINESS LICENSE PROGRAM “.

Sec. 14-1. Title.

This article shall be titled “Business License Program”.

Sec. 14-32. License required.

Every person engaged or intending to engage in any business listed in the rate classification index portion of this article, in whole or in part, within the municipal boundary of the city, is required to pay an annual license tax for the privilege of doing business within the city and obtain a license as provided in this article.

Sec. 14-33. 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:

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 pursuant to section 14-37.

Charitable organization means an organization that is determined by the Internal Revenue Service to be exempt from federal income taxes under 26 U.S.C. Section 501 (c) (3), (4), (6), (7), (8), (10) or (19).

City means the City of Hartsville, South Carolina.

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 the council.

Council means the city council of the city.

Gross income means the gross receipts or gross revenue of a business, received or accrued, for one calendar year collected or to be collected from business done within the city, excepting therefrom income earned outside of the city on which a license tax is paid by the business to some other municipality or a county and fully reported to the city. Gross income for agents means gross commissions received or retained, unless otherwise specified. Gross income for insurance companies means gross premiums written. Gross income for 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 license purposes may be verified by inspection of returns and [report] is filed with the Internal Revenue Service, the South Carolina Department of Revenue, the South Carolina Department of Insurance, or other government agency.

License means a license for the privilege of conducting business within the city and issued pursuant to the terms of this article.

License official means a person designated by the city to administer this article.

License tax means an annual excise tax required to be paid as a condition of receiving a license.

Licensee means the business, the person applying for the license on behalf of the business, an agent or legal representative of the business, a person who receives any part of the net profit of the business, or a person who owns or exercises control of the business.

NAICS means the North American Industry Classification System for the United States published by the Federal Office of Management and Budget.

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 principal.

Sec. 14-34. Purpose and duration.

The license levied pursuant to this article 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 an excise tax for the privilege of conducting business within the city. Each yearly license shall be issued for the twelve-month period of May 1 to April 30. The provisions of this article and the rates herein shall remain in effect from year to year, as it may be amended from time-to-time by the council.

Sec. 14-35. License tax.

- (a) Each business in the city shall pay the license tax required under the terms hereof according to the applicable rate classification on or before the due date of April 30 of each year. Notwithstanding the due date set forth in this section, those businesses included within the classifications in rate class 8 shall be subject to the due date specified in each such classification.
- (b) A separate license shall be required for each place of business and for each classification or business conducted at one place. If gross income cannot be separated by classification for businesses at one location, the license tax shall be computed on the combined gross income for the classification requiring the highest rate. A license tax based on gross income shall be computed on the gross income for the preceding calendar or fiscal year, and on a twelve-month projected income based on

the monthly average for a business in operation for less than one year. The license tax for a new business shall be computed on the estimated probable gross income stated in the license application for the balance of the license-year. The initial license tax for an annexed business shall be prorated for the number of months remaining in the calendar year. No refund shall be made for a business that is discontinued.

- (c) The license official shall determine the appropriate classification for each business in accordance with the latest issue of the NAICS for the United States published by the office of management and budget.

Sec. 14-36. Registration required.

- (a) The owner, agent or legal representative of every business subject to this article, whether listed in the classification index or not, shall register the business and make application for a license on or before the due date of each year; provided, a new business shall be required to have a license prior to operation within the city, and an annexed business shall be required to have a business license within thirty (30) days of the annexation. A license for a bar (NAICS 722410) must be issued in the name of the person who has been issued an alcohol, beer or wine permit or license by the State of South Carolina and will have actual control and management of the business.
- (b) The application shall be on a form provided by the license official which shall contain the social security number and/or the federal employer's identification number, the business name as reported on the South Carolina income tax return, and all information about the applicant, the licensee, and the business deemed appropriate to carry out the purpose of this article by the license official. Applicants may be required to submit copies of portions of state and federal income tax returns reflecting gross receipts and gross revenue 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, personal property taxes on business property and other monies due and payable to the city have been paid.
- (d) License decals shall be required on each vehicle for electrical, plumbing, mechanical, general, landscaping, or service contractor who shall individually or through an entity or other person construct, service, or repair buildings of any type within the city. Decals shall be purchased with license renewals beginning January 1, 2017. License decals shall be issued annually by the city at a cost of \$3.00 per decal.
- (e) Whenever there is a change of tenant, occupancy, or use in a new or existing building or structure a new Certificate of Occupancy must be issued by the building official to the new tenant before a business license can be issued. Failure to obtain a Certificate of Occupancy shall invalidate the license and subject the licensee to prosecution for doing business without a license.

Sec. 14-37. Deductions, exemptions, and charitable organizations.

- (a) No deductions from gross income shall be made except to account for income earned outside of the city on which a license tax is paid by the business to some other municipality or a county and fully reported to the city, taxes collected for a governmental entity, or income which cannot be included for computation of the license 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 this article by reason of the lack of an established place of business within the city, unless exempted by state or federal law. No person shall be exempt from this article 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 or fee by reason of application of this article.

- (c) A charitable organization shall be exempt from the license tax on its gross income unless it is deemed a business subject to a license tax on all or part of its gross income as provided in this article. A charitable organization or any for-profit affiliate of a charitable organization that reports income from for-profit activities, or unrelated business income, for federal income tax purposes to the Internal Revenue Service shall be deemed a business subject to a license tax on the part of its gross income from such for-profit activities or unrelated business income.
- (d) A charitable organization shall be deemed a business subject to a license tax on its total gross income if (1) any net proceeds of operation, after necessary expenses of operation, inure to the benefit of any individual or any entity that is not itself a charitable organization as defined in this article, or (2) any net proceeds of operation, after necessary expenses of operation, are used for a purpose other than a charitable purpose as defined in this article. Excess benefits or compensation in any form beyond fair market value to a sponsor, organizer, officer, director, trustee or person with ultimate control of the organization shall not be deemed a necessary expense of operation.
- (e) Real estate owners and lessors involved in leasing less than five residential dwelling units or less than three nonresidential units within the city shall be classified as not operating a business and shall be exempt from the license tax.
- (f) For-profit vendors for community sponsored events or festivals may be exempt from normal license taxes provided that a per-event or per-festival fee be required as set by resolution of council prior to each such event or festival.

Sec. 14-38. False application unlawful.

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

Sec. 14-39. 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. Contractors required to have decals shall display decals conspicuously at a location approved by staff on each and every vehicle at the job site used in performance of construction or service trades in the city. A transient or non-resident, that is not a contractor, 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 city.
- (b) A change of address must be reported to the license official within ten days after removal of the business to a new location and the license will be valid at the new address upon written notification by 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 licensee to prosecution for doing business without a license.
- (c) A license shall not be transferable and a transfer of controlling interest in a business shall be considered a termination of the old business and the establishment of a new business requiring a new license, based on old business income.

Sec. 14-40. Administration of article.

The license official shall administer the provisions of this article, collect license taxes, issue licenses, make or initiate investigations and audits to insure compliance, initiate denial or suspension and revocation procedures, report violations to the city attorney, assist in prosecution of violators, produce

forms, make reasonable regulations relating to the administration of this article, and perform such other duties as may be duly assigned.

Sec. 14-41. Inspection and audits.

- (a) For the purpose of enforcing the provisions of this article, the license official or other authorized agent of the city is empowered to enter upon the premises of any person subject to this article 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 added to the correct license tax and late penalties in addition to other penalties provided for herein. Each day of failure to pay the proper amount of license tax shall constitute a separate offense.
- (b) The license official shall make systematic inspections and random audits of all businesses within the city to insure compliance with this article. Financial information and records 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, except as authorized by this article, state or federal law, or proper judicial order. Statistics compiled by Classifications are public records.
- (c) Further, the city's code enforcement officer shall be empowered to enter upon the premises of any person subject to this article for the purpose of inspecting, examining and searching for violations of the city's Code of Ordinances, which includes technical codes enacted by the city. It shall be unlawful for such person to deny entry to any code enforcement officer of the city. A denial of entry shall be grounds for penalties under section 14-49 and suspension or revocation of a license under section 14-46. Every such denial of entry shall constitute a separate offense under the terms hereof.

Sec. 14-42. Assessments, payment under protest, appeal.

- (a) If a person fails to obtain a license or to furnish the information required by this article 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 or personal service. An application for adjustment of the license tax may be made to the license official within five days after the notice is mailed or personally served or the assessment will become final. The license official shall establish a uniform procedure for hearing an application for adjustment of assessment and issuing a notice of final assessment.
- (c) In order for a licensee to appeal a final assessment to council, in the manner set forth in section 14-47, the licensee must make payment of the license tax under protest within five days of the date that notice of the assessment is either mailed or personally served upon the licensee. Pursuant to section 14-47, the licensee must file a written notice of appeal with the license official within ten days after payment is made.

Sec. 14-43. Delinquent license taxes, partial payment.

- (a) For non-payment of all or any part of the correct License Tax, the license official shall levy and collect a late penalty of five percent of the unpaid tax for each month or portion thereof after the due date until paid. Penalties shall not be waived. If any license tax remains unpaid for 60 days after its due date, the license official shall issue an execution which shall constitute a lien upon the property of the licensee for the tax, penalties and costs of collection and shall proceed to collect in the same manner as prescribed by law for the collection of other taxes.

- (b) Partial payment may be accepted by the license official to toll imposition of penalties on the portion paid; provided, however, no license shall be issued or renewed until the full amount of the license tax due, including any penalties, has been paid.

Sec. 14-44. Notices.

The license official may, but shall not be required to, mail written notices that license taxes 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 city three 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 license tax due or grounds for waiver of penalties.

Sec. 14-45. Denial of license.

- (a) The license official shall deny a license to an applicant when the license official determines:
 - (1) The application is incomplete, contains a misrepresentation, false or misleading statement, evasion or suppression of a material fact; or
 - (2) The activity for which a license is sought is unlawful or constitutes a public nuisance per se or per accidents; or
 - (3) The applicant, licensee 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 dishonest conduct or moral turpitude, or an unlawful sale of merchandise or prohibited goods; or
 - (4) The applicant, licensee or prior licensee or the person in control of the business has engaged in an unlawful activity or nuisance related to the business or to a similar business in the city or in another jurisdiction; or
 - (5) The applicant, licensee or prior licensee or the person in control of the business is delinquent in the payment to the city of any tax or fee; or
 - (6) The license for the business or for a similar business of the licensee in the city or another jurisdiction has been denied, suspended or revoked in the previous license-year.
- (b) The license official shall provide an applicant with a written denial stating the reasons therefor. A decision of the license official shall be subject to appeal to council in the manner set forth herein.

Sec. 14-46. Suspension or revocation of license.

- (a) The license official shall suspend a business' license when the license official determines any of the following:
 - (1) A license has been mistakenly or improperly issued or issued contrary to law; or
 - (2) A licensee has breached any condition upon which the license was issued or has failed to comply with the provisions of this article; or
 - (3) A licensee has obtained a license through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license application; or
 - (4) A licensee has been convicted of an offense under a law or ordinance regulating business, a crime involving dishonest conduct or moral turpitude, or an unlawful sale of merchandise or prohibited goods; or
 - (5) A licensee has engaged in an unlawful activity or nuisance related to the business; or
 - (6) A licensee is delinquent in the payment to the city of any tax or fee.

- (b) When the license official determines that one or more of the above-stated reasons exist to suspend a license, the license official shall give written notice to the licensee or the person in control of the business within the city 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 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 article.

Sec. 14-47. Appeals to council.

- (a) Any person aggrieved by a decision, final assessment, proposed revocation, suspension, or a denial of a license by the license official may appeal the decision to the council by written request stating the reasons therefore, filed with the license official within ten days after service by certified mail or personal service of the notice of decision, final assessment, proposed revocation, suspension or denial.
- (b) An appeal or a hearing on proposed revocation shall be held by the council within 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 the final decision of the city.
- (c) No person shall be subject to a prosecution pursuant to section 14-49 for doing business without a license until the expiration of ten days after notice of denial or revocation which is not appealed or until after final judgment of a circuit court upholding denial or revocation.

Sec. 14-48. Confidentiality.

Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any official or employee 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 article. 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 this article.

Sec. 14-49. Violations.

Any person violating any provision of this article 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 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.

Sec. 14-50. Classification and rates.

- (a) The class structure model by the NAICS code and the class structure model by rate class shall be adopted in their initial form by the council and shall be updated annually by the license official based upon the latest available IRS statistics and information provided by the Municipal Association of South Carolina. The class structure models are tools for classification and not a limitation on Businesses subject to a license tax. Class structure models and the latest issue of the NAICS shall be kept on file with the city's municipal clerk and shall be made available by the business license official.

(b) The license tax for each class of businesses subject to this article shall be computed in accordance with the business license rate schedule which shall be adopted and amended by council from time to time. A current copy of the business license rate schedule shall be filed in the office of the city's municipal clerk and shall be made available by the business license official.

Sec. 14-51. The Business License Rate Schedule.

Attached hereto as **Appendix A**, is hereby approved. The rates set forth therein may be amended from time to time by the Council as necessary. The initial form of the Class Structure Model by NAICS code and the Class Structure Model by rate class, attached hereto as Appendix B is hereby approved and shall be updated annually by the License Official as set forth in Section 14-50 of the Code, subject to the ability of Council to make any adjustments as may be necessary from time to time. A current copy of the Business License Rate Schedule Appendix A and Appendix B shall be filed in the office of the City's municipal clerk and shall be made available by the Business License Official.

Sec. 14-52. Severability.

Pursuant to City Code Section 1-6:

(a) If any section, subsection, sentence, clause, or phrase of the License Program or this Ordinance is, for any reason, held or determined to be invalid or unenforceable, such decision shall not affect the validity of the remaining portions of the Business License Program or this Ordinance.

(b) Nothing in this Ordinance or in the Business License Program hereby enacted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause of causes of action acquired or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

(c) All ordinances or parts of ordinances inconsistent or in conflict with this Ordinance are hereby repealed in their entirety. This Ordinance and the provisions of the Business License Program shall take effect immediately upon its enactment by the Council.

Secs. 14-53—14-75. - Reserved.

NOW, THEREFORE BE IT ORDAINED IN MEETING DULY ADVERTISED AND ASSEMBLED on the ____ day of _____ 2018 and to become effective upon final reading.

Carl M. (Mel) Pennington IV, Mayor

ATTEST: _____
Sherron L. Skipper, City Clerk

First Reading: July 10, 2018
Public Hearing:
Final Reading: