

CITY OF SIMPSONVILLE, SOUTH CAROLINA

TITLE: AN ORDINANCE TO AMEND CHAPTER 10, BUSINESSES, ARTICLE II, LICENSES, TO CONTINUE UNIFORMITY WITH OTHER MUNICIPALITIES IN THE STATE IN ITS BUSINESS LICENSE PROCEDURES AS REQUESTED BY THE MUNICIPAL ASSOCIATION OF SOUTH CAROLINA; TO ADOPT THE EXISTING RATE SCHEDULE (APPENDIX A) AS A PART OF THIS ORDINANCE; AND TO ADOPT THE CHANGES TO THE NAICS BUSINESS CLASSIFICATION SCHEDULE (APPENDIX B).

WHEREAS, the City of Simpsonville has a business license ordinance in the Code of Ordinances for the City of Simpsonville in Chapter 10, Article II; and

WHEREAS, the City's business license ordinance is a "uniform ordinance" as recommended by the Municipal Association of South Carolina ("MASC") and MASC has requested municipalities to adopt changes to their business license ordinances to remain uniform with business license ordinances across the state; and

WHEREAS, the City Council of the City of Simpsonville believes that it is in the best interests of the municipality to remain uniform with sister municipalities across the state in its business license procedures and therefore, the amendments should be adopted;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SIMPSONVILLE, SOUTH CAROLINA, as follows:

SECTION 1. That the Code of Ordinances, Chapter 10, Businesses, Article II, License, be amended as follows:

ARTICLE II. LICENSES

Sec. 10-41 License Required.

Every person engaged or intending to engage in any calling, business, occupation or profession, in whole or in part, within the limits of the City of Simpsonville, South Carolina, is required to pay an annual license tax for the privilege of doing business and obtain a business license as herein provided.

Sec. 10-42 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.

"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).

"Charitable Purpose" means a 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.

"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.

"Gross Income" means the gross receipts or gross revenue of a business, received or accrued, for one calendar or fiscal year collected or to be collected from business done within the Municipality, excepting therefrom income earned outside of the Municipality on which a license tax is paid by the business to some other municipality or a county and fully reported to the Municipality. 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 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 receipts or gross revenues 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 Department of Insurance, or other government agencies.

"License Official" means a person designated to administer this ordinance.

"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.

"Municipality" means the City of Simpsonville, 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 principal.

Sec. 10-43 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 yearly license shall be issued for the twelve-month

period of May 1 to April 30. The provisions of this ordinance and the rates herein shall remain in effect from year to year as amended by the Council.

Sec. 10-44 License Tax.

A. The required license tax shall be paid for each business subject hereto according to the applicable rate classification on or before the due date of the 30th day of April in each year, except for those businesses in Rate Class 8 for which a different due date is specified.

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 for classifications 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 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 tax for an annexed business shall be prorated for the number of months remaining in the license year. No refund shall be made for a business that is discontinued.

Sec. 10-45 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, 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 individual who has been issued a State alcohol, beer or wine permit or 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 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 and the Licensee 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 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 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.

Sec. 10-46 Deductions, Exemptions, and Charitable Organizations.

A. No deductions from gross income shall be made except income earned outside of the Municipality on which a license tax is paid by the business to some other municipality or a county and fully reported to the Municipality, 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 or fee by reason of application of this ordinance.

C. A Charitable Organization shall be exempt from the business license tax on its gross income unless it is deemed a business subject to a business license tax on all or part of its gross income as provided in this section. 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 business license tax on the part of its gross income from such for-profit activities or unrelated business income.

A Charitable Organization shall be deemed a business subject to a business 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 ordinance, 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 ordinance. 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.

Sec. 10-47 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 tax required by this ordinance.

Sec. 10-48 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 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. 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 business income.

Sec. 10-49 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 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.

Sec. 10-50 Inspection 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 added to the correct license tax and late penalties in addition to other penalties provided herein. Each day of failure to pay the proper amount of license tax shall constitute a separate offense.

B. The License Official shall have the authority to make inspections and conduct audits of 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, except as authorized by this ordinance, State or Federal law, or proper judicial order. Statistics compiled by classifications are public records.

Sec. 10-51 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 or personal service. An application for adjustment of the assessment may be made to the License Official within five (5) 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. A final assessment may be appealed to the 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.

Sec. 10-52 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 (5%) 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 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.

Sec. 10-53 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 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.

Sec. 10-54 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 accidens; or

C. The applicant, Licensee or prior Licensee or the person in control of the business has been convicted, within the previous ten years, of an offense under a law or ordinance regulating business, a crime involving dishonest conduct or moral turpitude related to a business or a subject of a business, or an unlawful sale of merchandise or prohibited goods; or

D. 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 Municipality or in another jurisdiction; or

E. The applicant, Licensee 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 or for a similar business of the Licensee in the Municipality or another jurisdiction has been denied, suspended or revoked in the previous license year.

Sec. 10-55 Suspension or Revocation of License.

When the License Official determines:

A. A license 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 a material fact in the license application; or

D. A Licensee has been convicted, within the previous ten years, of an offense under a law or ordinance regulating business, a crime involving dishonest conduct or moral turpitude related to a business or a subject of a business, 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; or

F. A Licensee is delinquent in the payment to the Municipality of any tax or fee,

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.

Sec. 10-56 Appeals to 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 Council by written request stating the reasons therefore, filed with the License Official within ten (10) days

after service by 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 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 the final decision of the Municipality.

Sec. 10-57. 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 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 taxes unless specifically provided by the franchise or consent agreement.

Sec. 10-59 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 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.

Sec. 10-60 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.

Sec. 10-61 Classification and Rates.

A. The classifications of businesses included in each rate class are listed with United States North American Industry Classification System (NAICS) codes, by sector, sub-sector, group or industry. The Business License Class Schedule (Appendix B) is a tool for classification and not a limitation on businesses subject to a license tax. The business classification, pursuant to the most recent version of the Business License Class Schedule adopted by the council, most specifically identifying the subject business, shall be applied to the business. The License Official shall have the authority to make the determination of the business classification most specifically applicable to a subject business...

B. The license tax for each class of businesses subject to this ordinance shall be computed in accordance with the current Business License Rate Schedule, designated as Appendix A to this ordinance, which may be amended from time to time by the Council. A copy of the Class Schedule and Rate Schedule shall be filed in the office of the municipal clerk.

APPENDIX A -- RATE SCHEDULE

**THE RATE SCHEDULE ADOPTED BY THIS ORDINANCE IS THE SAME AS THE
RATE SCHEDULE UNDER THE EXISTING ORDINANCE**

2019 APPENDIX B
2019 BUSINESS LICENSE CLASS SCHEDULE BY NAICS CODE

NAICS Sector/Subsector	Industry Sector	Class
11	Agriculture, forestry, hunting and fishing	3
113	Forestry and logging (including forest nurseries, timber tracts)	2
115	Support activities for agriculture and forestry	1
21	Mining	4
2211	Electric Power Generation, Transmission and Distribution	Franchise
2212	Natural Gas Distribution	Franchise
22	Utilities	1
23	Construction	8.1
31-33	Manufacturing	2
42	Wholesale trade	1
423930	Recyclable Material Merchant Wholesalers (Junk)	8.4A
44-45	Retail trade	1
441	Motor vehicle and parts dealers	1
4411	Automobile Dealers	8.5
4412	Other Motor Vehicle Dealers	8.5
442	Furniture and home furnishing stores	1
443	Electronic and appliance stores	1
444	Building material and garden equipment and supplies dealers	1
445	Food and beverage stores	1
446	Health and personal care stores	2
447	Gasoline stations	1
448	Clothing and accessories stores	2
451	Sporting goods, hobby, book, and music stores	1
452	General merchandise stores	1
453	Miscellaneous store retailers	2
454	Nonstore retailers	2
45439	Other Direct Selling Establishments (Peddlers)	8.6
48-49	Transportation and warehousing	2
482	Rail Transportation	8.2
484	Truck Transportation	2
486	Pipeline transportation	1
493	Warehousing and storage facilities	2
51	Information	3
511	Publishing industries (except internet)	2
512	Motion picture and sound recording	1
515	Broadcasting (except internet) and telecommunications	3
517	Telecommunications	3
5171	Wired Telecommunications Carriers	8.3
5172	Wireless Telecommunications Carriers (except Satellite)	8.3

518	Internet service providers, web search portals, and data processing	3
519	Other Information Services	5
52	Finance and insurance	6
522	Credit intermediation and related activities	4

NAICS Sector/Subsector	Industry Sector	Class
522298	Pawnshops	8.4B
523	Securities, commodity contracts, and other financial investments	7
524	Insurance agents, brokers, and related activities	6
5241	Insurance Carriers	8.7
52421	Insurance Brokers for non-admitted Insurance Carriers	8.7
525	Funds, trusts and other financial vehicles	7
53	Real estate and rental and leasing	7
531	Real estate	7
5311	Lessors of real estate (including miniwarehouses and self storage)	7
532	Rental and leasing services	1
533	Lessors of nonfinancial assets	7
54	Professional, scientific, and technical services	3
5411	Legal Services	7
5413	Architectural, engineering and related services	2
5416-9	Other professional, scientific, and technical services	4
55	Management of companies	6
56	Administrative and support and waste management and remediation services	3
561	Administrative and support services	3
562	Waste management and remediation services	1
61	Educational services	3
62	Health care and social assistance	3
623	Nursing and Residential Care Facility	1
71	Arts, entertainment, and recreation	3
71119	Other Performing Arts Companies (Carnivals and Circuses)	8.9B
712	Museums, Historical Sites and similar institutions	1
7131	Amusement Parks and Arcades	8.8
7132	Nonpayout Amusement Machines	8.8
713290	Bingo Halls	8.9A
713990	All Other Amusement and Recreational Industries (pool tables)	8.10
721	Accommodation	2
722	Food services and drinking places	2
72241	Drinking Places (Alcoholic Beverages)	8.9C
81	Other services	3
811	Repair and maintenance	1
8111	Auto repair and maintenance	2
812	Personal and laundry services	6

Note: Class Schedule is based on 2014 IRS data.

SECTION 2. AUTHORIZATION. The Mayor, the City Administrator, and the City Clerk, for and on behalf of the City, acting jointly or individually, are fully empowered and authorized to take such further action as may be reasonably necessary to effect the amendments authorized by this Ordinance in accordance with the conditions herein set forth.

SECTION 3. REPEALER: All ordinances, orders, resolutions and parts thereof in conflict herewith are, but only to the extent of such conflict, are hereby REPEALED and this Ordinance shall take effect and be in full force from the Effective Date as set forth in Section 7.

SECTION 4. PROVISION SEVERAGE: If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The CITY COUNCIL hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.


SECTION 5. SAVINGS CLAUSE: Nothing in this ordinance hereby adopted shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as stated in Section 3 of this ordinance; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

SECTION 6. The CITY CLERK is hereby ordered and directed to cause this ordinance to be published according to law.

SECTION 7. EFFECTIVE DATE: This ordinance shall become effective upon final approval by Council after second reading and signing by the Mayor.

DONE in Regular Meeting duly assembled this 14th day of April 2020.


SIGNATURE OF MAYOR:


Paul D. Shewmaker

ATTEST:


Phyllis Long
City Clerk

APPROVED AS TO FORM:


David W. Holmes
City Attorney

FIRST READING: March 10, 2020
SECOND READING: April 14, 2020