

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
ORDINANCE NO. 044-08HR

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COUNTY

AN ORDINANCE AMENDING THE RICHLAND COUNTY CODE OF ORDINANCES; CHAPTER 16, LICENSES AND MISCELLANEOUS BUSINESS REGULATIONS; ARTICLE 1, IN GENERAL, SO AS TO AMEND REQUIREMENTS PERTAINING TO SEXUALLY ORIENTED BUSINESSES, AND MAKE CLARIFICATIONS PERTAINING TO ALL BUSINESSES.

WHEREAS, sexually oriented businesses require special supervision from the public safety agencies of the County in order to protect and preserve the health, safety, and welfare of patrons of such businesses as well as citizens of the County; and

WHEREAS, upon review of numerous studies, case law, analyses, and observations, the County concludes that sexually oriented businesses, as a category of business, are associated with a wide variety of negative secondary effects, including but not limited to, public safety risks, prostitution, potential spread of disease, lewdness, public indecency, illicit sexual activity, sexual assault and exploitation and other crimes against morality and decency; and

WHEREAS, the Richland County Council has a substantial government interest in minimizing and controlling these adverse effects and thereby protecting the health, safety and welfare of the citizenry; protect the citizens from crime; and preserve the quality of life; and

WHEREAS, the County's interest in regulating sexually oriented businesses extends to future secondary effects that could occur in the County related to current sexually oriented businesses as well as sexually oriented businesses that may locate in the County in the future; and

WHEREAS, the County recognizes its constitutional duty to interpret, construe, and amend its laws and ordinances to comply with constitutional requirements as they are announced; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the United States Constitution or the South Carolina Constitution, but to enact an ordinance to further the content-neutral governmental interests of the County, to wit, the controlling of secondary effects of sexually oriented businesses.

NOW, THEREFORE, pursuant to the authority by the Constitution of the State of South Carolina and the General Assembly of the State of South Carolina, BE IT ENACTED BY RICHLAND COUNTY COUNCIL:

**SECTION I.** The Richland County Code of Ordinances, Chapter 16, Licenses and Miscellaneous Business Regulations; Article I, In General; Sections 16-1 through 16-3 are hereby amended as follows:

**Section 16-1. License Required.**

Every person engaged or intending to engage in any calling, business, occupation or profession, whether or not it is listed in the rate classification index portion of the Business License Fee Schedule, in whole or in part, within the unincorporated areas of the county is required to submit a completed application for a business license accompanied by the appropriate fees for the privilege of doing business in the county and to obtain a business license as herein provided, except those as noted in Section 16-7.

**Section 16-2. Definitions.**

The following words, terms, and phrases, when used in this article shall have the meaning ascribed herein, except where the context clearly indicates or requires a different meaning:

- (1) “*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.
- (2) “*Charitable organization*” means a person:
  - (a) determined by the Internal Revenue Service to be a tax exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code; or
  - (b) that is or holds itself out to be established for any benevolent, social welfare, scientific, educational, environmental, philanthropic, humane, patriotic, public health, civic, or other eleemosynary purpose, or for the benefit of law enforcement personnel, firefighters, or other persons who protect the public safety; or
  - (c) that employs a charitable appeal as the basis of solicitation or an appeal that suggests that there is a charitable purpose to a solicitation, or that solicits or obtains contributions solicited from the public for a charitable purpose.
- (3) “*Charitable purpose*” means a purpose described in Section 501(c)(3) of the Internal Revenue Code or a benevolent, social welfare, scientific, educational, environmental, philanthropic, humane, patriotic, public health, civic, or other eleemosynary objective, including an objective of an organization of law enforcement personnel, firefighters, or other persons who protect the public safety if a stated purpose of the solicitations includes a benefit to a person outside the actual service membership of the organization.
- (4) “*Classification*” means a 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 County Council.
- (5) “*Construction Manager*” means any self-employed individual, firm, partnership, corporation, or group which supervises or coordinates construction of any building, highway, sewer, grading, improvement, re-improvement, structure, or part thereof. Notwithstanding payment by fixed price, commission, fee, or wage, said “construction manager” shall be classified in the category of “construction contractors” for purposes of this article and shall pay a license fee based upon the total cost of the undertaking supervised or coordinated, except as otherwise exempted.
- (6) “*Contractor*” means any self-employed individual (not reporting income taxes on the IRS Form W2), firm, partnership, corporation, or group performing a service or providing a product subsequent to a contract signed by that party and another party.
- (7) “*County*” means the County of Richland.
- (8) “*Drinking Place*” means any business which obtains the majority, not necessarily at least 50.1%, of its gross income from the sale or provision of alcohol for onsite consumption.
- (9) “*Gross income*” means the total revenue of a business, received or accrued, for one (1) calendar or fiscal year, collected or to be collected by a business within the county, excepting there from business done wholly outside of the county on which a license fee is paid to some other county or a municipality and fully reported to Richland County.

Gross income for brokers or agents means gross commissions received or retained, unless otherwise specified. Gross income for business license fee purposes shall not include taxes collected for a governmental entity (such as sales taxes), escrow funds, or funds that 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 Department of Insurance, or other government agency.

- (10) "*Gross receipts*" means the value proceeding or accruing from the sale of tangible personal property, including merchandise and commodities of any kind and character and all receipts, by the reason of any business engaged in, including interest, dividends, discounts, rentals of real estate or royalties, without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, or any other expenses whatsoever, and without any deductions on account of losses.
- (11) "*Insurance company*" refers to a businesses which meets the definition established in South Carolina Code of Laws, § 38-1-20, Definitions: an insurer defined as "any corporation, ... or aggregation of individuals engaging or proposing or attempting to engage as principals in any kind of insurance [defined as a "contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies"] or surety business, including the exchanging of reciprocal or inter-insurance contracts between individuals, partnerships, and corporations", and does not meet the criteria for a health maintenance organization as covered by South Carolina Code of Laws, § 38-33-140(D).
- (12) "*License official*" means a county employee who is designated to administer this article, and/or his/her designee(s).
- (13) "*Person*" means any individual, firm, partnership, LLP, LLC, cooperative, nonprofit membership, corporation, joint venture, professional 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.
- (14) "*Sexually Oriented Business*" means a sexually oriented business as defined within Section 26-22 of the Richland County Code of Ordinances.

### **Section 16-3. General Purpose and Duration.**

- (1) The requirement of a business license is for the purpose of assuring that a business conducted within unincorporated Richland County complies with all applicable State and County regulations and requirements in order to protect the health, safety and welfare of the citizens of the County. Additionally, the requirement of a business license fee levied by this article serves to establish an excise tax for the privilege of doing business within unincorporated Richland County.
- (2) Each license that is issued shall be valid for one calendar year, beginning on January 1 and expiring on December 31. This time period shall be considered a license year. The provisions of this article and the rates set out in this article shall remain in effect from year to year as amended by the County Council.

**SECTION II.** The Richland County Code of Ordinances, Chapter 16, Licenses and Miscellaneous Business Regulations; Article I, In General; Sections 16-6 through 16-7 are hereby amended as follows:

**Section 16-6. Registration Required.**

- (1) 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 business license on or before the due date of each year. A new business shall be required to have a business license prior to operation within any unincorporated area of the county.
- (2) 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 South Carolina Retail License Number (if applicable), the business name as reported on the South Carolina income tax return, the business name as it appears to the public at the physical location, and all information about the applicant and the business deemed reasonably necessary 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 income figures.
- (3) The applicant shall certify 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, that all funds due to the County have been paid, and that all other licenses and permits required by the County or State to do business in the County have been obtained.
- (4) No business license shall be issued until the applicant has obtained all other licenses and/or permits required by the County or State to do business in the County, and paid in full any associated license and permit fees or business-related fees and taxes, including any late fees or penalties.
- (5) As a prerequisite to submittal of a business license application, the premises and real property to be used as a business must be in compliance with all applicable state and local health, fire, zoning and building codes or regulations. As part of the Business License application, the applicant must submit to the License Official documentation that shows that the premises is currently in compliance with the Richland County Zoning Ordinance, Building Code, Electrical Code, Mechanical Code, Plumbing Code, Roofing Code and other applicable regulatory Codes as adopted by the County Council.
- (6) 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 an insurance company or employed by more than one insurance company shall be licensed as a broker.
- (7) Fireworks Sales: Any establishment desiring to sell fireworks must first acquire the Annual State Board of Pyrotechnic Safety License and must meet all regulations pursuant to the provisions of Regulation 19-405, S.C. Code of Laws for 1976. Prior approval of the Richland County Sheriff's Department is required as governed by regulations of the State Fire Marshal pursuant to the 1976 Code, Chapter 9 of Title 23, and Chapter 43 of Title 39, governing the transportation and use of pyrotechnics.
- (8) Miscellaneous Sales (Antique Malls, Flea Markets or Leased Space Sales): Any person leasing space for the sale of merchandise from an established business shall be required to have a business license, whether or not the sales are made through a central cash register. Furthermore, it shall be the responsibility of the lessor of the spaces to advise the business license office of persons leasing space.

**Section 16-7. Deductions, Exemptions, Charitable Organizations, and Determination of Classification**

- (1) No deductions from gross income shall be made except income from business done wholly outside of the county jurisdiction on which a license fee is paid to another county or to any municipality, taxes collected for a governmental entity, or income which cannot be taxed pursuant to State or Federal law. The applicant shall have the burden to establish the right to deduction by satisfactory records and proof by including with the business license application, either new or renewing, a separate itemized list showing all deductions claimed, or no deductions will be allowed. Deductions will be approved as authorized by this section.
  
- (2) (a) No person shall be exempt from the requirements of this article by reason of the lack of an established place of business within the County, unless exempted by State or Federal law. The following businesses, occupations or professions are exempt from the requirements of this article:
  - 1. Teachers;
  - 2. Ministers, pastors, preachers, rabbis and other leaders of commonly recognized religious faiths;
  - 3. Telephone, telegraph, gas and electric and other utilities or providers regulated by the South Carolina Public Service Commission;
  - 4. Insurance companies; and
  - 5. An entity which is exempt from license tax under any state law other than South Carolina Code of Laws, § 4-9-30(12), or a subsidiary or affiliate of any such exempt entity.
  
- (b) No person shall be exempt from this article by reason of the payment of any other tax or fee, unless exempted by State law, and no person shall be relieved of the liability for the payment of any other tax or fee by reason of the application of this article.
  
- (3) In lieu of the license required by Section 16-1, a participant in a single annual event of not more than ten consecutive calendar days in length may be issued a permit at the rate of \$10.00 on gross income on the first \$2,000 and \$1.20 on each additional \$1,000.00 of gross income or fraction thereof. This permit will be valid only for the time period specified thereon and can be obtained for no more than one event annually. Organizers of such events may pay for and obtain a business license on behalf on all its vendors at a rate of \$10 per vendor or on the previous year's income generated by the event based upon the rate above, whichever is greater.

Inspections prior to the issuance of a permit may be waived. Inspections may be conducted during the event. For purposes of this subsection, an event is defined as participation by a group of exhibitors or others where displays are established in individual booths or stalls for the purpose of presenting to the audience goods, wares, merchandise or services offered for sale, rent or promotional purposes or for the general good will of the exhibitors. An event may be a trade show, an antique show, a craft show, or any other type of show fitting this definition.

- (4) Notwithstanding any provision to the contrary, businesses and individuals defined as "contractor" herein shall be exempt from the provisions of this article in the following manner:

The business license fee shall be reduced by excluding that portion of the business' gross income generated from work done for which a Richland County building permit was obtained and a building permit fee paid (by either the general contractor or subcontractor responsible for that work), pursuant to the provisions of Section 6-51 of the Richland County Code of Ordinances.

If all income of a contractor is generated from work done for which a building permit fee is paid (by either the general contractor or subcontractor responsible for that work), said contractor shall be exempt from paying any business license fee. Such an exempt contractor shall still submit a business license application by the deadline with documentation attached establishing such contractor's right to an exemption.

