

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO. 2021-16

PROPOSED ORDINANCE NO. 2021-20

AN ORDINANCE TO REPEAL AND REPLACE CERTAIN PORTIONS OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, TO INCLUDE SECTIONS 10-1-10 THROUGH SECTION 10-1-210 AND REPLACE WITH REVISED CODE SECTIONS 10-1-10 THROUGH 10-1-250 AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, in September of 2020, the General Assembly passed Act 176 mandating that all municipalities use standard methods of administering their business license codes; and

WHEREAS, Act 176 streamlines the business license process, creating a uniform process for taxing jurisdictions across the state; and

WHEREAS, the standardization process is not optional; it is now required by law; and

WHEREAS, as a result of Act 176, the Town Council desires to repeal and replace the current Town of Hilton Head Island Business License Ordinance with the model business license ordinance, crafted by the Municipal Association of South Carolina.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AND IT IS HEREBY ORDERED AND ORDAINED BY AND UNDER THE AUTHORITY OF THE SAID TOWN COUNCIL THAT CODE SECTIONS 10-1-10 THROUGH SECTION 10-1-210 IS HEREBY REPEALED IN THE ENTIRETY AND REPLACED WITH THE FOLLOWING CODE SECTIONS IDENTIFIED AS 10-1-10 THROUGH 10-1-250, AS FOLLOWS:

Section 10-1-10. License Required. Every person engaged or intending to engage in any business, calling, occupation, profession, or activity engaged in with the object of gain, benefit, or advantage, in whole or in part within the limits of the Town of Hilton Head Island, South Carolina, is required to pay an annual license tax for the privilege of doing business and obtain a business license as herein provided. In addition to the above- described activities constituting doing business in the town, a person shall be deemed in business if that person owns and rents one (1) or more residential units (or partial interest therein) within the town. This applies to both short-term rentals and long-term rentals. A person shall also be deemed in business if that person owns and rents one (1) or more commercial property units (or partial interest therein) within the town.

Section 10-1-20. Definitions. The following words, terms, and phrases, when used in this ordinance, shall have the meaning ascribed herein. Defined terms are not capitalized when used in this ordinance unless the context otherwise requires.

“Business” means any business, 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 that 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 NAICS codes 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 Town Council of the Town of Hilton Head Island, South Carolina.

“*Domicile*” means a principal place from which the trade or business of a licensee is conducted, directed, or managed. For purposes of this ordinance, a licensee may be deemed to have more than one domicile.

“*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. If the licensee has a domicile within the Municipality, business done within the Municipality shall include all gross receipts or revenue received or accrued by such licensee. If the licensee does not have a domicile within the Municipality, business done within the Municipality shall include only gross receipts or revenue received or accrued within the Municipality. In all cases, if the licensee pays a business license tax to another county or municipality, then the licensee’s gross income for the purpose of computing the tax within the Municipality must be reduced by the amount of revenues or receipts taxed in the other county or municipality and fully reported to the Municipality. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, 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 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. In calculating gross income for certain businesses, the following rules shall apply:

- A. Gross income for agents shall be calculated on gross commissions received or retained, unless otherwise specified. If commissions are divided with other brokers or agents, then only the amount retained by the broker or agent is considered gross income.
- B. Except as specifically required by S.C. Code § 38-7-20, gross income for insurance companies shall be calculated on gross premiums written.
- C. Gross income for manufacturers of goods or materials with a location in the Municipality shall be calculated on the lesser of (i) gross revenues or receipts received or accrued from business done at the location, (ii) the amount of income allocated and apportioned to that location by the business for purposes of the business’s state income tax return, or (iii) the amount of expenses attributable to the location as a cost center of the business. Licensees reporting gross income under this provision shall have the burden to establish the amount and method of calculation by satisfactory records and proof. Manufacturers include those

taxpayers reporting a manufacturing principal business activity code on their federal income tax returns.

- D. Gross income for residential and commercial properties shall be calculated on the gross rental income or gross proceeds received from tenants to pay for the space, utilities and services provided under the rental agreement. All mandatory fees associated with the rental of the residential or commercial property should be included as gross income when calculating a business license tax.

“*License Official*” means a person designated to administer this ordinance. Notwithstanding the designation of a primary license official, the Municipality may designate one or more alternate license officials to administer particular types of business licenses, including without limitation for business licenses issued to businesses subject to business license taxes under Article 20, Chapter 9, Title 58, and Chapters 7 and 45, Title 38, of the South Carolina Code.

“*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 Town of Hilton Head Island, South Carolina.

“*NAICS*” means the North American Industry Classification System for the United States published under the auspices of the Federal Office of Management and Budget.

“*Person*” means any individual, firm, partnership, limited liability partnership, limited liability company, 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.

Section 10-1-30. Purpose and Duration. The business license required 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. The license year ending on April 30, 2022, shall commence on January 1, 2021 and shall run for a 16-month period. Thereafter, the license periods shall be established as follows. Except as set forth below for business licenses issued to contractors with respect to specific construction projects, each yearly license shall be issued for the twelve-month period of May 1 to April 30. A business license issued for a construction contract may, at the request of the licensee, be stated to expire at the completion of the construction project; *provided*, any such business license may require that the licensee file, by each April 30 during the continuation of the construction project, a statement of compliance, including but not limited to a revised estimate of the value of the contract. If any revised estimate of the final value of such project exceeds the amount for which the business license was issued, the licensee shall be required to pay a license fee at the then-prevailing rate on the excess amount. The provisions of this ordinance and the rates herein shall remain in effect from year to year as amended by the Council.

Section 10-1-40. Business License Tax, Refund.

- A. The required business 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. Late payments shall be subject to penalties as set forth in Section 12 hereof, except that admitted insurance companies may pay before June 1 without penalty.

- 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 business license tax shall be computed on the combined gross income for the classification requiring the highest rate. The business license tax must be computed based on the licensee's gross income for the calendar year preceding the due date, for the licensee's twelve-month fiscal year preceding the due date, or on a twelve-month projected income based on the monthly average for a business in operation for less than one year. The business license tax for a new business must be computed on the estimated probable gross income for the balance of the license year. A business license related to construction contract projects may be issued on a per-project basis, at the option of the taxpayer. No refund shall be made for a business that is discontinued.
- C. A licensee that submits a payment greater than the amount owed may request a refund. To be considered, a refund request must be submitted in writing to the Municipality before the June 1 immediately following the April 30 on which the payment was due and must be supported by adequate documentation supporting the refund request. The Municipality shall approve or deny the refund request, and if approved shall issue the refund to the business, within thirty days after receipt of the request.

Section 10-1-50. 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 the corresponding state alcohol, beer, or wine permit or license and will have actual control and management of the business.
- B. Application shall be on the then-current standard business license application as established and provided by the Director of the South Carolina Revenue and Fiscal Affairs Office and shall be accompanied by all information about the applicant, 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. The applicant is also subject to compliance with the zoning ordinance, building code, electrical code, mechanical code, plumbing code, roofing code and other regulatory codes as adopted by the town council. With regard to registration of insurance companies and brokers for non-admitted insurance companies, the Municipal Association of South Carolina is designated as the exclusive agent of the town and is empowered to utilize all procedures and actions authorized by ordinance or state law.

- D. In addition to the Municipality's existing online payment system, the Municipality shall allow application, reporting, calculation, and payment of business license taxes through the business license tax portal hosted and managed by the South Carolina Revenue and Fiscal Affairs Office, subject to the availability and capability thereof. Any limitations in portal availability or capability do not relieve the applicant or Licensee from existing business license or business license tax obligations.
- E. Every business, which either 1) acts as an agent, broker or representative for any other person, or 2) has contractual arrangements with person, who are acting as independent contractors for it, shall supply the following information. The information required shall include the name, property address, telephone number, and estimated payments or premiums due to that person. Such information shall be supplied upon the request of the license inspector and shall be a condition to the obtainment of the license required under this chapter.
- F. Any person or entity that designs or installs irrigation systems ("landscape contractor") must be licensed to do so by the town. Prior to issuance or renewal of the license required herein, each landscape contractor or designated employee of said landscape contractor shall pass a certification test given by the town. Said license and certification must be shown at the annual renewal of the town business license. See section 13-3-310 of the Town Code for additional information regarding this requirement.
- G. Peddlers, solicitors, canvassers, door-to-door sales, direct retail sales of merchandise, vendors, participants at markets with regular activities require a business license. Regular activities are defined as more than two sale periods of more than three days per year.
- H. Promoters or Coordinators of art and craft shows, markets or other specialty venues require a business license.

Section 10-1-60. 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 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. Properly apportioned income from business in interstate commerce shall be included in the calculation of gross income and is not exempted. 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 NAICS. 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. Wholesalers are exempt from business license taxes unless they maintain warehouses or distribution establishments within the Municipality. A wholesale transaction involves a sale to an individual who will resell the goods and includes delivery of the goods to the reseller. It does not include a sale of goods to a user or consumer.

- D. 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 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.
- E. 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.

Section 10-1-70. 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.

Section 10-1-80. 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.

Section 10-1-90. Administration of Ordinance. The license official shall administer the provisions of this ordinance, collect business license taxes, issue licenses, make or initiate investigations and audits to ensure compliance, initiate denial or suspension and revocation procedures, report violations to the municipal attorney, assist in prosecution of violators, produce forms, undertake reasonable procedures relating to the administration of this ordinance, and perform such other duties as may be duly assigned. With regard to the administration of this chapter as it pertains to license fees from insurance companies and brokers for non-admitted insurance companies, the Municipal Association of South Carolina is designated as the exclusive agent of the town and is empowered to utilize all procedures and actions authorized by ordinance or state law.

Section 10-1-100. 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 and to 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 business license tax and late penalties in addition to other penalties provided herein. Each day of failure to pay the proper amount of business license tax shall constitute a separate offense.
- B. The license official shall have the authority to make inspections and conduct audits of businesses to ensure 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 business 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. With regard to inspections and audits of insurance companies and brokers for non-admitted insurance companies, the Municipal Association of South Carolina is designated as the exclusive agent of the town and is empowered to utilize all procedures and actions authorized by ordinance or state law.

Section 10-1-110. Assessments, Payment under Protest, Appeal.

- A. Assessments, payments under protest, and appeals of assessment shall be allowed and conducted by the Municipality pursuant to the provisions of S.C. Code § 6-1-410, as amended. In preparing an assessment, the license official may 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 business license tax and penalties as provided herein. With regard to assessments of insurance companies and brokers for non-admitted insurance companies, the Municipal Association of South Carolina is designated as the exclusive agent of the town and is empowered to utilize all procedures and action authorized by ordinance or state law.
- B. The license official shall establish a uniform local procedure consistent with S.C. Code § 6-1-410 for hearing an application for adjustment of assessment and issuing a notice of final assessment; provided that for particular types of business licenses, including without limitation for business licenses issued to businesses subject to business license taxes under Article 20, Chapter 9, Title 58, and Chapters 7 and 45, Title 38, of the South Carolina Code, the Municipality, by separate ordinance, may establish a different procedure and may delegate one or more rights, duties, and functions hereunder to the Municipal Association of South Carolina.

S.C. Code §6-1-410. (A) If a taxpayer fails or refuses to pay a business license tax by May first or, for business license taxes collected pursuant to Article 20, Chapter 9, Title 58 and Chapters 7 and 46, Title 38, the date on which the business license tax is due, the taxing jurisdiction business license official may serve notice of assessment of the business license tax due on the taxpayer by mail or personal service. Within thirty days after the date of postmark or personal service, a taxpayer may request, in writing with reasons stated, an adjustment of the assessment. An informal conference between the taxing jurisdiction business license official and the taxpayer must be held within

fifteen days of the receipt of the request, at which time the taxpayer may present any information or documents in support of the requested adjustment. Within five days after the conference, the taxing jurisdiction business license official shall issue a notice of final assessment and serve the taxpayer by mail or personal service with the notice and provide a form for any further appeal of the assessment by the taxpayer.

(B) Within thirty days after the date of postmark or personal service, the taxpayer may appeal the notice of final assessment by filing the completed appeal form with the taxing jurisdiction business license official, by mail or personal service, and by paying to the taxing jurisdiction in protest at least eighty percent of the business license tax based on the final assessment. The appeal must be heard and determined by the taxing jurisdiction council or its designated appeals officer or appeals board. The taxing jurisdiction council or its designee shall provide the taxpayer with written notice of the hearing and with any rules of evidence or procedure prescribed by the taxing jurisdiction council or its designee. The hearing must be held within thirty days after receipt of the appeal form unless continued to another date by agreement of the parties. A hearing by the taxing jurisdiction council, its designee, or the appeals board must be held at a regular or special meeting of the taxing jurisdiction council or appeals board. At the appeals hearing, the taxpayer and the taxing jurisdiction have the right to be represented by counsel, to present testimony and evidence, and to cross-examine witnesses. The hearing must be recorded and must be transcribed at the expense of the party so requesting. The taxing jurisdiction council, its designee, or the appeals board shall decide the assessment by majority vote. The taxing jurisdiction council, its designee, the appeals board, or the designated appeals officer shall issue a written decision explaining the basis for the decision with findings of fact and conclusions and shall inform the taxpayer of the right to request a contested case hearing before the Administrative Law Court. The written decision must be filed with the taxing jurisdiction business license official and served on the taxpayer by mail or personal service. The decision is the final decision of the taxing jurisdiction on the assessment.

(C) Within thirty days after the date of postmark or personal service of the taxing jurisdiction's written decision on the assessment, a taxpayer may appeal the decision to the Administrative Law Court in accordance with the rules of the Administrative Law Court.

(D) For the purposes of this section, 'business license official' means the officer, employee, or agent designated by the taxing jurisdiction as having primary responsibility for business licensing within the taxing jurisdiction.

Section 10-1-120. Delinquent License Taxes, Partial Payment.

- A. For non-payment of all or any part of the correct business license tax, the license official shall impose 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. If any business 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.

With regard to the collection of delinquent business license fees from insurance companies and brokers for non-admitted insurance companies, the Municipal Association of South Carolina is designated as the exclusive agent of the Town and is empowered to utilize all procedures and actions authorized by ordinance or state law.

Upon identification of a delinquent account the town manager or his/her designee has the authority to establish payment plans, revenue procedures, and reduce or waive penalties based on the revenue procedures as adopted with this ordinance.

- 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 10-1-130. Notices. The license official may, but shall not be required to, mail written notices that business 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.

With regard to the collection of delinquent business license fees from insurance companies and brokers for non-admitted insurance companies, the Municipal Association of South Carolina is designated as the exclusive agent of the Town and is empowered to utilize all procedures and actions authorized by ordinance or state law.

Section 10-1-140. Denial of License. The license official may deny a license to an applicant when the license official determines:

- A. The application is incomplete or contains a misrepresentation, false or misleading statement, or evasion or suppression of a material fact;
- B. The activity for which a license is sought is unlawful or constitutes a public nuisance *per se* or *per accidens*;
- C. The applicant, licensee, 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;
- D. The applicant, licensee, 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;
- E. The applicant, licensee, prior licensee, or the person in control of the business is delinquent in the payment to the Municipality of any tax or fee;
- F. A licensee has actual knowledge or notice, or based on the circumstances reasonably should have knowledge or notice, that any person or employee of the licensee has committed a crime of moral turpitude on the business premises, or has permitted any person or employee of the licensee to engage in the unlawful sale of merchandise or prohibited goods on the business premises and has not taken remedial measures necessary to correct such activity; or
- G. 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.

A decision of the license official shall be subject to appeal as herein provided. Denial shall be written with reasons stated.

Section 10-1-150. Suspension or Revocation of License. When the license official determines:

- A. A license has been mistakenly or improperly issued or issued contrary to law;
- B. A licensee has breached any condition upon which the license was issued or has failed to comply with the provisions of this ordinance;
- C. A licensee has obtained a license through a fraud, misrepresentation, a false or misleading statement, or evasion or suppression of a material fact in the license application;
- 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;
- 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 may give written notice to the licensee or the person in control of the business within the Municipality by personal service or mail that the license is suspended pending a single hearing before Council or its designee for the purpose of determining whether the suspension should be upheld and the license should be revoked.

The written notice of suspension and proposed revocation shall state the time and place at which the hearing is to be held, and shall contain a brief statement of the reasons for the suspension and proposed revocation and a copy of the applicable provisions of this ordinance.

Section 10-1-160. Appeals to Council or its Designee.

- A. Except with respect to appeals of assessments under Section 11 hereof, which are governed by S.C. Code § 6-1-410, any person aggrieved by a determination, denial, or suspension and proposed revocation of a business license by the license official may appeal the decision to the Council or its designee by written request stating the reasons for appeal, filed with the license official within ten (10) days after service by mail or personal service of the notice of determination, denial, or suspension and proposed revocation.
- B. A hearing on an appeal from a license denial or other determination of the license official and a hearing on a suspension and proposed revocation shall be held by the Council or its designee within ten (10) business days after receipt of a request for appeal or service of a notice of suspension and proposed revocation. The hearing shall be held upon written notice at a regular or special meeting of the Council, or, if by designee of the Council, at a hearing to be scheduled by the designee. The hearing may be continued to another date by agreement of all parties. 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 or its designee shall govern the hearing. Following the hearing, the Council by majority vote of its members present, or the designee of Council if the hearing is held by the designee, shall render a written decision based on findings of fact and conclusions on application of the standards herein. The written decision shall be served, by personal service or by mail, upon all parties or their representatives and shall constitute the final decision of the Municipality.

- C. Timely appeal of a decision of Council or its designee does not effectuate a stay of that decision. The decision of the Council or its designee shall be binding and enforceable unless overturned by an applicable appellate court after a due and timely appeal.
- D. For business licenses issued to businesses subject to business license taxes under Article 20, Chapter 9, Title 58, and Chapters 7 and 45, Title 38, of the South Carolina Code, the Municipality may establish a different procedure by ordinance.

Section 10-1-170. 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.
- C. Electrical and gas companies operate under a consent or franchise.

Section 10-1-180. Confidentiality. Except in accordance with proper judicial order or as otherwise provided by law, no official or employee of the Municipality may divulge or make known in any manner the amount of income or any financial 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 this ordinance.

Section 10-1-190. 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 in this ordinance.

Section 10-1-200. Severability and effective date. A determination that any portion of this ordinance is invalid or unenforceable shall not affect the remaining portions. To the extent of any conflict between the provisions of this ordinance and the provisions of the South Carolina Business License Tax Standardization Act, as codified at S.C. Code §§ 6-1-400 *et seq.*, the standardization act shall control. The effective date of this ordinance shall be September 21, 2021 AT 12:01 a.m.

Section 10-1-210. Local Industry License. Any person who desires to exclusively engage in the business of offering for public sale at designated locations, as determined by the town manager, farm and garden products or flowers grown on the property of such person, or flower arrangements, arts or crafts produced in the home of such person, or seafood caught by such person, shall secure from the town an annual business license, but shall be exempt from the payment of a business license tax.

Section 10-1-220. Telecommunication Companies.

- A. Notwithstanding any other provisions of the Business License Ordinance, the business license tax for "retail telecommunications services," as defined in S.C. Code § 58-9-2200, shall be at the maximum rate authorized by S.C. Code § 58-9-2220, as it now provides or as provided by its amendment. The business license tax year shall begin on January 1 of each year. The rate for the 2005 business license tax year shall be the maximum rate allowed by State law as in effect on February 1, 2005. Declining rates shall not apply.
- B. In conformity with S.C. Code § 58-9-2220, the business license tax for "retail telecommunications services" shall apply to the gross income derived from the sale of retail telecommunications services for the preceding calendar or fiscal year which either originate or terminate in the municipality and which are charged to a service address within the municipality regardless of where these amounts are billed or paid and on which a business license tax has not been paid to another municipality. The measurement of the amounts derived from the retail sale of mobile telecommunications services shall include only revenues from the fixed monthly recurring charge of customers whose service address is within the boundaries of the municipality. For a business in operation for less than one (1) year, the amount of business license tax shall be computed on a 12-month projected income.
- C. For the year 2005, the business license tax for "retail telecommunications services" shall be due on February 1, 2005, and payable by February 28, 2005, without penalty. For years after 2005, the business license tax for "retail telecommunications services" shall be due on January 1 of each year and payable by January 31 of that year, without penalty.
- D. The delinquent penalty shall be five (5) percent of the tax due for each month, or portion thereof, after the due date until paid.
- E. Nothing in this section shall be interpreted to interfere with continuing obligations of any franchise agreement or contractual agreement in the event that the franchise or contractual agreement should expire after December 31, 2003.
- F. Exemptions in the business license ordinance for income from business in interstate commerce are hereby repealed. Properly apportioned gross income from interstate commerce shall be included in the gross income for every business subject to a business license tax.
- G. All fees collected under such a franchise or contractual agreement expiring after December 31, 2003, shall be in lieu of fees or taxes which might otherwise be authorized by this section.
- H. As authorized by S.C. Code § 5-7-300, the agreement with the Municipal Association of South Carolina for collection of current and delinquent license taxes from telecommunications companies pursuant to S.C. Code § 58-9-2200 shall continue in effect. Notwithstanding the provisions of the agreement, for the year 2005, the Municipal Association of South Carolina is authorized to collect current and delinquent license taxes, in conformity with the due date and delinquent date for 2005 as set out in this ordinance and is further authorized, for the year 2005, to disburse business license taxes collected, less the service charge agreed to, to this municipality on or before April 1, 2005 and thereafter as remaining collections permit.

Section 10-1-230. Insurance Companies/Brokers Premium Tax.

- A. Except as to fire insurance, “gross premiums” means gross premiums written for policies for property or a risk located within the municipality. In addition, “gross premiums” shall include premiums written for policies that are sold, solicited, negotiated, taken, transmitted, received, delivered, applied for, produced or serviced by (1) the insurance company’s office located in the municipality, (2) the insurance company’s employee conducting business within the municipality, or (3) the office of the insurance company’s licensed or appointed producer (agent) conducting business within the municipality, regardless of where the property or risk is located, provided no tax has been paid to another municipality in which the property or risk is located based on the same premium.
- B. Solicitation for insurance, receiving or transmitting an application or policy, examination of risk, collection or transmitting of a premium, adjusting a claim, delivering a benefit, or doing any act in connection with a policy or claim shall constitute conducting business within the municipality, regardless of whether or not an office is maintained in the municipality.
- C. As to fire insurance, “gross premiums” means gross premiums (1) collected in the municipality, and/or (2) realized from risks located within the limits of the municipality.
- D. Gross premiums shall include all business conducted in the prior calendar year. Declining rates shall not apply.
- E. Gross premiums shall include new and renewal business without deductions for any dividend, credit, return premiums or deposit.
- F. Notwithstanding any other provision of this ordinance, license taxes for insurance companies shall be payable on or before May 31 in each year without penalty. The penalty for delinquent payments shall be five (5) percent of the tax due per month, or portion thereof, after the due date until paid.
- G. Any exemptions in the business license ordinance for income from business in interstate commerce are hereby repealed. Gross income from the interstate commerce shall be included in the gross income for every business subject to a business license tax.
- H. Pursuant to S.C. Code 1996, § 38-45-10 and 38-45-60, the Municipal Association of South Carolina is designated the municipal agent for purposes of administration of the municipal broker’s premium tax and business license taxes from insurance companies. The agreement with the association for administration and collection of current and delinquent license taxes from the insurance companies as authorized by S.C. Code 1996, § 5-7-300 and administration of the municipal broker’s premium tax is approved, and the town manager is authorized to execute it.

Section 10-1-240. Special Event Permit License and Special Event Vendor Permits.

- A. Event sponsors: A special event permit license will be issued by the town to the event sponsor or promoter once a special event permit application has been approved by the town and shall be valid solely for the time period and the specific location stated thereon. This special license must be applied for and obtained before commencement of the event for which it is to be used.
- B. Event vendors: A special event vendor permit will be issued by the town to a vendor that does not require a town business license in accordance with this ordinance. It shall be valid solely for the time period and the specific location stated thereon. This special license must

be applied for by the event sponsor on behalf of the vendor and obtained before the commencement of the event for which it is used.

- C. It is the responsibility of the special event sponsor or promoter to ensure that all participating vendors have either a town business license or a special event vendor permit for the specified event in accordance with this ordinance.
- D. Each participating vendor must be the creator of the art or craft which is to be sold. This includes any person who desires to engage in the business of offering for public sale flower arrangements or any hand-crafted item produced in the home. Goods purchased for sale or resale cannot be vended on special license.
- E. Merchants and vendors now operating under valid town business licenses shall be allowed to operate on those licenses, incorporating such gross sales in the annual gross sales to be reported on the succeeding year's business license renewal application.

Section 10-1-250. Classification and Rates.

- A. The business 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.
- B. The current business license class schedule is attached hereto as Appendix B. Hereafter, no later than December 31 of each odd year, the Municipality shall adopt, by ordinance, the latest standardized business license class schedule as recommended by the Municipal Association of South Carolina and adopted by the Director of the South Carolina Revenue and Fiscal Affairs Office. Upon adoption by the Municipality, the revised business license class schedule shall then be appended to this ordinance as a replacement Appendix B.
- C. The classifications included in each rate class are listed with 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 business license tax. The classification in the most recent version of the business license class schedule adopted by the Council that most specifically identifies the subject business shall be applied to the business. The license official shall have the authority to make the determination of the classification most specifically applicable to a subject business.
- D. A copy of the class schedule and rate schedule shall be filed in the office of the municipal clerk.

**PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE
TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, ON THIS 21st DAY OF
SEPTEMBER, 2021.**

(SIGNATURES ON FOLLOWING PAGE)

John D. McCann, Mayor

ATTEST:

By: _____
Krista Wiedmeyer, Town Clerk

First Reading: _____
Second Reading: _____

APPROVED AS TO FORM:

Curtis Coltrane, Town Attorney

Introduced by Council Member: _____

BUSINESS LICENSE RATE SCHEDULE

Appendix A

RATE CLASS	INCOME: \$0 - \$2,000	INCOME OVER \$2,000
<u>FRACTION THEREOF</u>	BASE RATE	RATE PER \$1,000 OR
1	\$46.30	\$.75
2	\$54.00	\$1.00
3	\$61.60	\$1.10
4	\$69.40	\$1.30
5	\$77.10	\$1.40
6	\$84.80	\$1.50
7	\$92.50	\$1.70
8.1	\$61.60	\$1.10
8.2	Set by state statute-Railroad Companies	
8.3	MASC Telecommunications	
8.4	MASC Insurance	
8.51	\$12.50 + \$12.50 per machine	
8.52	\$12.50 + \$180.00 per machine	
8.6	\$61.60 plus \$5.00 -OR- \$12.50 per table	\$1.10
9.10	\$187.50	\$3.24
9.30	\$54.00	\$1.00
9.40	\$54.00	\$1.00
9.70	\$107.90	\$1.70

NON-RESIDENT RATES

Unless otherwise specifically provided, all taxes and rates shall be doubled for nonresidents and itinerants having no fixed principal place of business within the Municipality.

CLASS 8 RATES

Each NAICS number designates a separate subclassification. The businesses in this section are treated as separate and individual subclasses due to provisions of state law, regulatory requirements, service burdens, tax equalization considerations, and other factors that are deemed sufficient to require individually determined rates. In accordance with state law, the Municipality

also may provide for reasonable subclassifications for rates, described by an NAICS sector, subsector, or industry, that are based on particularized considerations as needed for economic stimulus or for the enhanced or disproportionate demands on municipal services or infrastructure.

Non-resident rates do not apply except where indicated.

8.1 NAICS 230000 – Contractors, Construction, All Types [Non-resident rates apply].

Resident rates, for contractors having a permanent place of business within the Municipality:

Minimum on first \$2,000	\$61.60 PLUS
Per \$1,000, or fraction, over \$2,000	\$1.10

Non-resident rates apply to contractors that do not have a permanent place of business within the Municipality. A trailer at the construction site or structure in which the contractor temporarily resides is not a permanent place of business under this ordinance.

No contractor shall be issued a business license until all state and municipal qualification examination and trade license requirements have been met. Each contractor shall post a sign in plain view on each job identifying the contractor with the job.

Sub-contractors shall be licensed on the same basis as general or prime contractors for the same job. No deductions shall be made by a general or prime contractor for value of work performed by a sub-contractor.

No contractor shall be issued a business license until all performance and indemnity bonds required by the Building Code have been filed and approved. Zoning permits must be obtained when required by the Zoning Ordinance.

Each prime contractor shall file with the License Official, or it's designee, a list of sub-contractors furnishing labor or materials for each project.

For licenses issued on a per-job basis, the total tax for the full amount of the contract shall be paid prior to commencement of work and shall entitle the contractor to complete the job without regard to the normal license expiration date. An amended report shall be filed for each new job and the appropriate additional license fee per \$1,000 of the contract amount shall be paid prior to commencement of new work. Only one base tax shall be paid in a license year. Licensees holding a per-job license shall file, by each April 30 during the continuation of the construction project, a statement of compliance, including but not limited to a revised estimate of the value of the contract. If any revised estimate of the final value of such project exceeds the amount for which the business license was issued, the licensee shall be required to pay a license fee at the then-prevailing rate on the excess amount.

8.2 NAICS 482 – Railroad Companies (See S.C. Code § 12-23-210).

8.3 NAICS 517311, 517312 – Telephone Companies.

With respect to “retail telecommunications services” as defined in S. C. Code § 58-9-2200, the Municipality participates in a collections program administered by the Municipal Association of South Carolina. The Municipality has approved participation in the collections program with the

rates, terms, conditions, dates, penalties, appeals process, and other details of the business license applicable to retail telecommunications services as set forth in this ordinance.

8.4 NAICS 5241, NAICS 5242 – Insurance Companies/Brokers Premium Tax:

Independent agents, brokers, their employees are subject to a business license tax based on their natural class. With respect to insurers subject to license fees and taxes as defined in S.C. Code 1996, §§38-45-10 and 38-45-60, the Municipality participates in a collections program administered by the Municipal Association of South Carolina. The Municipality has approved participation in the collections program with the rates, terms, conditions, dates, penalties, appeals process, and other details of the business license applicable to insurers and brokers are set forth in this ordinance.

8.51 NAICS 713120 – Amusement Machines, coin operated (except gambling). Music machines, juke boxes, kiddie rides, video games, pin tables with levers, and other amusement machines with or without free play feature licensed by SC Department of Revenue pursuant to S.C. Code §12-21-2720(A)(1) and (A)(2) [**Type I and Type II**]._For operation of all machines (not on gross income), pursuant to S.C. Code §12-21-2746:

Per Machine	\$12.50 PLUS
Business license	\$12.50

Distributors that sell or lease machines and are not licensed by the state as an operator pursuant to §12-21-2728 are not subject to Subclass 8.51.

8.52 NAICS 713290 – Amusement Machines, coin operated, non-payout. Amusement machines of the non-payout type or in-line pin game licensed by SC Department of Revenue pursuant to S.C. Code §12-21-2720(A)(3) [**Type III**].

For operation of all machines (not on gross income), pursuant to S.C. Code §12-21-2720(B):

Per Machine	\$180.00 PLUS
Business license	\$12.50

Distributors that sell or lease machines and are not licensed by the state as an operator pursuant to §12-21-2728 are not subject to Subclass 8.52.

8.6 NAICS 713990 – Billiard or Pool Rooms, all types. (A) Pursuant to SC Code § 12-21-2746, license tax of \$5.00 per table measuring less than 3½ feet wide and 7 feet long, and \$12.50 per table longer than that; PLUS, (B) with respect to gross income from the entire business in addition to the tax authorized by state law for each table:

Minimum on first \$2,000	\$61.60 PLUS
Per \$1,000, or fraction, over \$2,000	\$1.10

CLASS 9 RATES

9.10 NAICS 561599- All Other Travel Arrangement and Reservation Services. Establishments primarily engaged in providing travel arrangements and reservation services (except travel agencies, tour operators, and convention and visitors bureaus).

Minimum on first \$2,000\$ 187.50 PLUS

Per \$1,000, or fraction, over \$2,000\$3.24

9.30 NAICS 441100- Automobile Dealers [Non-resident rates apply]. Establishments primarily engaged in retailing new and used automobiles and light trucks, such as sport utility vehicles, and passenger and cargo vans.

Minimum on first \$2,000\$54.00 PLUS

Per \$1,000, or fraction, over \$2,000\$1.00

9.30 NAICS 4412000- Other Motor Vehicle Dealers [Non-resident rates apply]. Establishments primarily engaged in retailing new and used vehicles (except automobiles, light trucks, such as sport utility vehicles, and passenger and cargo vans).

Minimum on first \$2,000\$54.00 PLUS

Per \$1,000, or fraction, over \$2,000\$1.00

9.40 NAICS 454390- Other Direct Selling Establishments (Peddlers). Establishments primarily engaged in retailing merchandise (except food for immediate consumption and fuel) via direct sale to the customer by means, such as in-house sales (i.e., party plan merchandising), truck or wagon sales, and portable stalls (i.e., street vendors).

Minimum on first \$2,000\$ 54.00 PLUS

Per \$1,000, or fraction, over \$2,000\$1.00

9.70 NAICS 722410- Drinking Places (Alcoholic Beverages). Establishments known as bars, taverns, nightclubs, or drinking places primarily engaged in preparing and serving alcoholic beverages for immediate consumption. These establishments may also provide limited food services.

Minimum on first \$2,000\$107.90 PLUS

Per \$1,000, or fraction, over \$2,000\$1.70

**Business License Class Schedule by NAICS Code
Appendix B**

This appendix will be updated every odd year based on the latest available IRS statistics.

<u>NAICS SECTOR/SUBSECTOR</u>	<u>INDUSTRY SECTOR</u>	
<u>CLASS</u>		
1100	Agriculture, Forestry, Fishing and Hunting	2
1150	Support Activities for Agriculture, Animals and Forestry	2
2100	Mining, Quarrying, and Oil and Gas Extraction	4
2300	Construction	8.10
3100-3300	Manufacturing	2
4200	Wholesale Trade	1
4400-4500	Retail Trade	1
4411	Automobile Dealers	9.30
4412	Other Motor Vehicle Dealers	9.30
454390	Other Direct Selling Establishments (Peddlers)	9.40
4800-4900	Transportation and Warehousing	2
482	Rail Transportation	8.2
5100	Information	4
517311/517312	MASC Telephone Companies	
8.30		
5200	Finance and Insurance	7
5241/5242	MASC Insurance Companies	8.40
5300	Real Estate and Rental Leasing	7
5400	Professional, Scientific and Technical Services	5
5500	Management Companies	7
5600	Administrative and Support Services	4
6100	Educational Services	4
6200	Health Care and Social Assistance	4
7100	Arts, Entertainment and Recreation	3
713120	Amusement Machines, Coin Operated	8.51
713290	Amusement Machines, Non-Payout	8.52

713990	Billiard or Pool Rooms	
8.60		
7210	Accommodations	3
7220	Food Services and Drinking Places	1
722410	Drinking Places	9.70