

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN)  
TOWN OF NEW ELLENTON)


**BUSINESS LICENSE ORDINANCE**

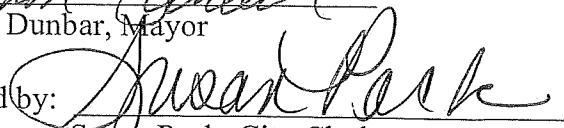
AN ORDINANCE RECENDING BUSINESS LICENSES ORDINANCE ADOPTED FEBUARY 17, 2004 AND REPLACING IT WITH ATTACHED ORDINANCE DATED OCTOBER 16, 2006 WITH RESPECT TO SETTING AND REGULATING LICENSE FEES TO BE PAID BY ANY PERSON, FIRM OR CORPORATION ENGAGED OR INTENDING TO ENGAGE IN ANY BUSINESS, TRADE, CALLING, SERVICE, ACTIVITY, OR PROFESSION OR MAINTAIN AN OFFICE OR OFFICES OR ACTING AS AGENT OF ANOTHER, IN WHOLE OR IN PART, WITHIN THE TOWN LIMITS OF THE TOWN OF NEW ELLENTON, SOUTH CAROLINA, AND TO PROVIDE FOR THE COLLECTION THEREOF.

Whereas, the Council of Town of New Ellenton last adopted the license ordinance on February 17, 2004, and there have been a number of amendments thereto since then; and

Whereas, the purpose of this ordinance is to adopt the business license attached with those prior amendments as set forth.

Now therefor, be it adopted and approved by mayor and council this October 16, 2006 and effective date of January 1, 2007

  
Vernon Dunbar, Mayor

Attested by:   
Susan Pack, City Clerk

Introduced	September 18, 2006
Public Hearing	October 16, 2006
Final Reading	October 16, 2006
Approved	October 16, 2006

## BUSINESS LICENSE ORDINANCE

State law references: Authority of town to levy business license tax on gross income, S.C. Code 1976, § 5-7-30.

### Sec. 12-31. License required.

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

### Sec. 12-32. Definitions.

The following words, terms and phrases, when used in this article, 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 purpose* means benevolent, philanthropic, patriotic, or eleemosynary purpose which does not result in personal gain to a sponsor, organizer, officer, director, trustee or person with ultimate control of the organization. A charitable organization shall be deemed a business subject to a license tax unless the entire net proceeds of its operation, after necessary expenses, are devoted to charitable purposes. Compensation in any form to a sponsor, organizer, officer, director, trustee or person with ultimate control of the organization shall not be deemed a necessary expense of operation.

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

*Gross income* means the total income of a business, received or accrued, for one calendar year or business fiscal year collected or to be collected from business done within the town, excepting therefrom income from business done wholly outside of the town on which a license tax is paid to some other town or a county and fully reported to the town. Gross income for brokers or agents means gross commissions received or retained, unless otherwise specified. Gross income for insurance companies means gross premiums collected. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income.

The gross income for business license purposes may be verified by inspection of returns and reports filed with the Internal Revenue Service, the South Carolina Department of Revenue, the South Carolina Insurance Commission, or other government agency.

*License official* means a person designated to administer this article.

*Municipality* means the Town of New Ellenton, South Carolina.

*Person* means any individual, firm, partnership, LLP, LLC, cooperative non-profit membership, corporation, joint venture, association, estate, trust, business trust, receiver, syndicate, holding company, or other group or combination acting as a unit, in the singular or plural, and the agent or employee having charge or control of a business in the absence of the principals.

### **Sec. 12-33. Purpose and duration.**

The business license levied by this article is for the purpose of providing such regulation as may be required for the business subject thereto and for the purpose of raising revenue for the general fund through a privilege tax. Each license shall be issued for the period commencing on January 1 and ending on December 31. The provisions of this article and the rates herein shall remain in effect from year to year as amended by council.

### **Sec. 12-34. License fee.**

(a) The required license fee shall be paid for each business subject hereto according to the applicable rate classification on or before January 31 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 fee shall be computed on the combined gross income for the classification requiring the highest rate. A license fee based on gross income shall be computed on the gross income for the preceding calendar or fiscal year. The fee for a new business shall be the base rate determined by their classification. No refund shall be made for a business that is discontinued.

### **Sec. 12-35. Registration required.**

(a) The owner, agent or legal representative of every business subject to this article, whether listed in the classification index or not, shall register the business and make application for a 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.

(b) Application shall be on a form provided by the license official which shall contain the social security number and/or the federal employee's identification number, the business name as reported on the South Carolina income tax return, and all information about the applicant and the business deemed appropriate to carry out the purpose of this article by the license official. Applicants may be required to submit copies of portions of state and federal income tax returns reflecting gross income figures.

© The applicant shall certify under oath that the information given in the application is true, that the gross income is accurately reported, without any unauthorized deductions, and that all assessments and personal property taxes on business property due and payable to the municipality have been paid.

(d) Insurance agents and brokers shall report the name of each insurance company for which a policy was issued and the total premiums collected for each company for each type of insurance coverage on a form approved by the license official. An insurance agent not employed by a company shall be licensed as a broker.

**Sec. 12-36. Deductions, exemptions, and charitable organizations.**

(a) No deductions from gross income shall be made except income from business done wholly outside of the municipality on which a license tax is paid to some other municipality or a county, taxes collected for a governmental entity, or income which cannot be included for computation of the tax pursuant to state or federal law. The applicant shall have the burden to establish the right to exempt income by satisfactory records and proof.

(b) No person shall be exempt from the requirements of the ordinance by reason of the lack of an established place of business within the municipality, unless exempted by state or federal law. The license official shall determine the appropriate classification for each business in accordance with the latest issue of the North American Industry Classification System (NAICS) for the United States published by the office of management and budget. No person shall be exempt from this article by reason of the payment of any other tax, unless exempted by state law, and no person shall be relieved of liability for payment of any other tax by reason of application of this article.

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

**Sec. 12-37. False application unlawful.**

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

**Sec. 12-38. 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) In addition to the foregoing, each electrical, plumbing, mechanical, general or service contractor who shall individually or through an entity or other person construct, service or repair buildings of any type within the town shall purchase one decal for each vehicle used at any job site within the town which shall be displayed on the lower right (passenger) corner of the front windshield of the vehicle. The decal shall be issued annually at such charge to the licensee as shall be set by the town manager based upon the costs of administering the decal program.

© A change of address must be reported to the license official within ten days after removal of the business to a new location and the license will be valid at the new address upon written

notification by the license official and compliance with zoning and building codes. Failure to obtain the approval of the license official for a change of address shall invalidate the license and subject the licensee to prosecution for doing business without a license.

(d) A business license shall not be transferable to another person and a transfer of controlling interest of a business for purposes of this article shall be considered a termination of the existing business and the establishment of another business requiring another business license based on the existing business's gross income as determined by the inspector, but the inspector shall credit the fee paid by the prior owner of the business against the fee due and payable by the succeeding owner for the same license year.

#### **Sec. 12-39. Administration of ordinance.**

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

#### **Sec. 12-40. Inspection and audits.**

(a) For the purpose of enforcing the provisions of this article the license official or other authorized agent of the municipality is empowered to enter upon the premises of any person subject to this article to make inspections, examine and audit books and records. It shall be unlawful for any such person to fail or refuse to make available the necessary books and records. In the event an audit or inspection reveals that the licensee has filed false information, the costs of the audit shall be added to the correct license fee and late penalties in addition to other penalties provided herein. Each day of failure to pay the proper amount of license fee shall constitute a separate offense.

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

#### **Sec. 12-41. Assessments, payment under protest, appeal.**

(a) If a person fails to obtain a business license or to furnish the information required by this article or the license official, the license official shall examine such records of the business or any other available records as may be appropriate, and conduct such investigations and statistical surveys as the license official may deem appropriate to assess a license tax and penalties as provided herein.

(b) A notice of assessment shall be served by certified mail. An application for adjustment of the assessment may be made to the license official within five days after the notice is mailed or the assessment will become final. The license official shall establish by regulation the procedure for hearing an application for adjustment of assessment and issuing a notice of final assessment.

© A final assessment may be appealed to the municipal council only by payment in full of the

assessment under protest within five days and the filing of written notice of appeal within ten days after payment pursuant to the provisions of this article relating to appeals to council.

**Sec. 12-42. Delinquent license fees.**

For non-payment of all or any part of the correct license fee, the license official shall levy and collect a late penalty of five percent of the unpaid fee for each month or portion thereof after the due date until paid. Penalties shall not be waived. If any license fee remains unpaid for 60 days after its due date, the license official shall report to the municipal attorney for appropriate legal action.

**Sec. 12-43. Notices.**

The license official may, but shall not be required to, mail written notices that license fees are due. If notices are not mailed there shall be published a notice of the due date in a newspaper of general circulation within the municipality three 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. 12-44. Denial of license.**

The license official shall deny a license to an applicant when the application is incomplete, contains a misrepresentation, false or misleading statement, evasion or suppression of a material fact, or when the activity for which a license is sought is unlawful or constitutes a public nuisance per se; or when any prior year's merchant's inventory tax or any town real or personal property ad valorem taxes remain unpaid for the applicant or for a predecessor business or occupation with substantial identity to the applicant. A decision of the license official shall be subject to appeal to council as herein provided. Denial shall be written with reasons stated.

**Sec. 12-45. Suspension or revocation of license.**

When the license official determines:

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

applicable provisions of this article.

✓ **Sec. 12-46. Appeals to council.**

(a) Any person aggrieved by a decision, final assessment, revocation, suspension, or a denial of a business license by the license official may appeal the decision to the municipal council by written request stating the reasons therefor, filed with the license official within ten days after the payment of the assessment under protest or notice of denial is received. Payment under protest shall be a condition precedent to appeal.

(b) An appeal or a hearing on revocation shall be held by the municipal council within 30 days after receipt of a request for appeal or service of notice of suspension at a regular or special meeting of which the applicant or licensee has been given written notice, unless continued by agreement. At the hearing all parties shall have the right to be represented by counsel, to present testimony and evidence and to cross-examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party so requesting. The rules of evidence and procedure prescribed by council shall govern the hearing. Council shall by majority vote of members present render a written decision based on findings of fact and application of the standards herein which shall be served upon all parties or their representatives and shall be final unless appealed to a court of competent jurisdiction within ten days after service.

© No person shall be subject to prosecution for doing business without a license until the expiration of ten days after notice of denial or revocation which is not appealed or until after final judgment of a circuit court upholding denial or revocation.

**Sec. 12-47. Permission to use streets required.**

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

**Sec. 12-48. Consent, franchise or business license fee required.**

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

**Sec. 12-49. Confidentiality.**

Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any official or employee to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this article. Nothing in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns. Any license data may be shared with other public officials or employees in the performance of

their duties, whether or not those duties relate to enforcement of the license ordinance.

**Sec. 12-50. Violations.**

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

**Sec. 12-51. Separability.**

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

**Sec. 12-52. Classification and rates.**

(a) The sectors of businesses included in each rate class are listed with the United States North American Industry Classification System (NAICS) codes. The alphabetical index in this article is a tool for classification, not a limitation on businesses subject to a license tax. The license official shall determine the proper class for a business according to the applicable NAICS manual, whether or not the business is listed in the alphabetical index.

(b) The license fee for each class of businesses subject to this article shall be computed in accordance with the following rates:

RATE CLASS	INCOME: 0--\$2000.00 MINIMUM FEE	ALL OVER \$2000.00 Rate per Thousand or fraction thereof
1	30.00	0.80
2	35.00	0.95
3	40.00	1.10
4	45.00	1.25
5	50.00	1.40
6	55.00	1.55
7	60.00	1.70
8	See individual business in Class 8	

**NON-RESIDENT RATES**

Unless otherwise specifically provided, all minimum fees and rates shall be doubled for non-residents and itinerants having no fixed principal place of business within the municipality.

**DECLINING RATES**

Declining rates apply in all classes for gross income in excess of \$1,000,000.00, unless otherwise specifically provided for in this article.