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## **ARTICLE I. GENERAL PROVISIONS**

This Title shall be known as "The Business License Ordinance of the Town of Atlantic Beach, South Carolina" (hereinafter referred to as "this BLO or Title 7 or this Title) and may be cited as Ordinance No. 5-2001B. All explanatory matter is hereby adopted and made a part of this Ordinance. Individual sections of this Title may be cited by reference to the title, chapter and section number.

## **ARTICLE II. AUTHORITY**

In pursuance of the authority granted by this Title and S.C. Code Sections 4-9-30(12) and Sec. 5-7-30 municipalities may levy a business license tax measured by gross income. No other basis is authorized except for certain businesses. Railroads, telecommunications, and insurance companies are subject to special statutes.

## **ARTICLE III. PURPOSE**

To require the payment of licenses and license fees to the Town of Atlantic Beach, South Carolina, by any person, firm or corporation engaged or intending to engage in any business, trade, calling or profession or maintaining an office or officer acting as agent for another, in whole or in part, within the limits of the Town of Atlantic Beach, South Carolina; to fix and assess the amounts of such licenses and license fees and to provide rules and regulations for the collection thereof.

## **ARTICLE IV. JURISDICTION**

This Title and the provisions contained herein shall hereafter govern all business and occupation license fees, franchise fees, accommodations and hospitality fees within the incorporated areas of the Town of Atlantic Beach, South Carolina, as now or may be hereafter established, together with such adjacent unincorporated areas of Horry County which the Town Council and the Horry County Council may jointly agree to become governed by this Title.

## **ARTICLE V. CONFLICTING PROVISIONS**

**A.** Where there is a **conflict or apparent conflict** among provisions of this Title, the more restrictive provision shall control. Where it is possible to implement, administer or construe a particular provision in more than one way, it shall be implemented, administered or construed in that way that



eliminates or minimizes conflicts with other provisions of this Title and recorded as an administrative ruling.

**B.** Whenever this Title imposes a **more restrictive standard** than required by any other Town ordinance or requirement, the provisions of this Title shall govern. Whenever any other Town ordinance or requirement imposes a more restrictive standard than required by this Title, the provisions of such Town ordinance or requirement shall govern.

#### **ARTICLE VI. ADMINISTRATIVE RULINGS**

The license ordinance does not cover every situation. License officials must interpret and apply ordinance provisions in accordance with accepted principles of statutory construction and administration. Based on the ordinance, state and federal laws, the license official must decide if a business is subject to the tax, if a business needs more than one license, what classification applies to a business and whether the amount reported is correct. Although the license official has the right to interpret the license ordinance, the official cannot make rulings contrary to express provisions of the ordinance or make decisions that add to or take away from the ordinance. The license administrator shall record all administrative decisions or rulings in Chapter 12 of this Title. Each ruling shall be administered to like situations.

#### **ARTICLE VII. EFFECTIVE DATE**

The provisions in this Title represent an updated and amended version of the originally adopted business license ordinance and the previously amended business license ordinance 5-2001. The effective date of the amended Title shall be December 17, 2002 for the first amendment Ordinance 5-2001A-1202, and December 21, 2004 for the second amendment (B) so identified as BLO or Ordinance #5-2001B-1204 After the adoption of this Title, no person firm or corporation shall engage in any business, trade, calling, or profession or maintain an office or officer acting as agent for another, in whole or part, within the limits of the Town of Atlantic Beach without a business license.

#### **ARTICLE VIII. UPDATES**

The Town Council shall review this Title once every year prior to the end of the calendar year (business license year) to determine any changes and to clarify all situations in the current license year that required administrative rulings. Administrative rulings may be presented to Council separate from the amended business license ordinance. All rulings approved by Council shall be included in the appropriate section of the ordinance and presented along with other proposed changes for the annual review and adoption of the business license ordinance.



## **ARTICLE IX. VIOLATIONS AND PENALTIES**

**A. Arrest Warrant.** The violation of the business license ordinance is a misdemeanor within the jurisdiction of municipal court or magistrate's court. Prosecution is by criminal proceeding instituted by an arrest warrant in the form approved by the state attorney general pursuant to statute. Any person violating any provision of this Title shall be deemed guilty of an offense and shall be subject to punishment under the penalty provisions of the Town code. Each day of violation shall be considered a separate offense. Punishment for violation shall not relieve the offender of liability for delinquent penalties and costs provided for herein.

**B. Ordinance Summons.** S. C. Code Sec. 56-7-80 (1992) permits adoption of a municipal or county ordinance authorizing a law enforcement officer to issue a uniform ordinance summons for violation of an ordinance. The summons must be issued by an officer who has personal knowledge of the violation. It is served without arrest of the offender. A bond is not set or collected by the issuing officer; the summons must set forth the procedure to post bond. The summons gives jurisdiction over disposition of the offense to a magistrate or municipal judge.

**C. Civil Penalties.** Civil Penalties may be imposed, Attorney General Op. 1949-50, p. 173. Municipalities and counties have powers implied in the general grant of powers under Home Rule. Penalties for delinquent payments accrue at 10% monthly on unpaid license fees. These penalties also apply to amounts by which taxes are underpaid, even though prompt payment of the insufficient amount was made. Penalties are added to the taxes due and are collected in the same manner as the taxes.

**D. Criminal Penalties.** The maximum penalty that may be imposed by a court for a business license ordinance violation is a fine of \$500, imprisonment for 30 days or both for each violation. Each day of violation is a separate offense.

**E. Abatement of Nuisances.** The Home Rule Act gives municipal and county councils authority to abate public nuisances, S.C. Code Sec. 5-7-30; Sec. 4-9-30. The operation of a business constituting a common law nuisance is a criminal offense that is indictable by a grand jury. "Whenever a nuisance is kept, maintained or exists, as defined in this Title, the Attorney General, the solicitor of the judicial district in which such nuisance is kept or any citizen of the State may maintain an action in equity in the name of the State, upon the relation of such Attorney General, solicitor or citizen, to enjoin perpetually such nuisance, the person conducting or maintaining the nuisance and the owner or agent of the building or ground upon which the nuisance exists. If revocation



of the business license to deal with a nuisance is requested, pursuit of either an injunction under S.C. Code Sec 15-43-20 or prosecution for operation of a common law nuisance."

**F. Unlawful Business.** A business that is unlawful under provisions of the state Constitution or statutes is not entitled to operate. A license should be denied upon application or revoked upon discovery of unlawfulness.

**G. Zoning.** A business use that is prohibited in the location of the proposed business by health, safety, land use or zoning regulations, building codes, or fire prevention codes would be unlawful and may not be licensed for that location. A home occupation or business not permitted by zoning regulations is unlawful.

**H. Mistake or Misrepresentation.** A license issued by mistake or upon misrepresentation that is material may be revoked. The public can not be bound by an administrative error, and a licensee obtains no superior rights in a license to which he is not entitled, even if he has expended funds in reliance thereon.

#### **ARTICLE X. "ATLANTIC BEACH" IN THE NAME OF THE BUSINESS**

Any nonprofit organization, located in or doing business in the Town of Atlantic Beach, with the name "Atlantic Beach" contained in the name of the business, or in any abbreviated form or acronym, must carry a disclaimer approved at the time of application, to be stated on all advertising and stationery, and promotional items, that it is not an official agency or supported in whole or part by the Town of Atlantic Beach.

#### **ARTICLE XI. Errors and Omissions Do Not Invalidate This Ordinance**

If any term or provision of this Ordinance or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Ordinance, or the application of such term or provision to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Ordinance shall be valid and be enforced to the fullest extent permitted by law.



## CHAPTER 1 BUSINESS AND PROFESSIONAL LICENSES

### Sec. 7-1-1. Definitions

The following words, terms and phrases, when used in this ordinance shall have the meaning ascribed herein:

- 1) *Business*: A trade, calling, occupation, profession or activity engaged in with the object of gain, benefit or advantage, either directly or indirectly. A charitable organization (state or federally recognized tax exempt status, i.e., 501(c)(3) shall be deemed a business. In addition to the above-described activities constituting doing business in the town, an individual shall be deemed to be in "business" if that individual owns and rents one (1) or more residential rental units, (or partial interest therein) not to include the owners primary residence within the town; when a person stores products, equipment, supplies, etc. for the purpose of or in conjunction with a business operating out of another location or jurisdiction.
- 2) *Classification*: That division of business by major groups subject to the same license rate as determined by a calculated index based on national averages, benefits, equalization of tax burden, relationship of services or other basis deemed appropriate by the Town Council.
- 3) *Gross Income*: The total revenue of a business, received or accrued, for one calendar year collected or to be collected by reason of the conduct of business within the town, excepting income from business done wholly outside of the town on which a license tax is paid to some other municipality or a county and fully reported to that town. Section 61(a) of the Internal Revenue Code defines gross income as "all income from whatever source derived." The gross income for business license purposes shall confirm to the gross income reported to the Internal Revenue Service, the South Carolina Department of Revenue, The South Carolina Department of Revenue and Taxation, or the South Carolina Insurance Commission. In the case of brokers, or agents, gross income shall mean gross commissions retained. Gross receipts for insurance companies shall mean gross premiums collected.
- 4) *Business License Administrator*: The employee designated by the Town Manager to administer this ordinance.
- 5) *Person*: Any individual, firm, partnership, cooperative nonprofit 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. A governmental entity is not a "person" as defined above.

- 6) *Independent Contractor*: According to the Internal Revenue Service, the general rule is that an individual is an independent contractor if you, the payer, have the right to control or direct only the result of the work and not the means and methods of accomplishing the result.
- 7) *Employee*: Any person who works for wages or salary, has the proper deductions for FICA, state, and federal taxes withheld by the employer, and receives a W-2 from the employer annually for all work done on the employer's behalf.
- 8) *Unlawful activity*: Any instance of a person convicted in any court of competent jurisdiction of any violation of any of the laws of the United States of America, the State of South Carolina, Horry County ordinances, Town of Atlantic Beach ordinances, or of any ordinance of any municipality located within Horry County. The conviction must be the result of activity occurring on the premises of any person required to have a business license from the Town of Atlantic Beach as required by this ordinance. This shall include activities resulting in convictions of employees, guests, customers, patrons and/or clients of the person.
- 9) *Public Nuisance*: As determined by a law enforcement officer based upon the facts and circumstances found after reasonable inquiry, investigation or upon citizen report, those conditions or events which constitute an unreasonable interference with rights of the public in general, and where, in a public place, or where the public congregates, or where the public is likely to come within the range of influence through the senses, a person unlawfully does an act or omits to perform a duty, which act or omission does any one or more of the following:
  - a) annoys, injures, subverts or endangers the public's order, economy, resources, safety, health, welfare, comfort, repose or offends public decency;
  - b) unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage any waters or public places or way;
  - c) pursues or conducts any trade, business, occupation, or profession detrimental to the security, welfare, convenience, morals, health, peace or good government of the Town by operating without a valid, current and displayed business license; and businesses with outstanding liens, taxes, fees, charges or assessments; (Public Nuisance Ordinance Chapter 4, Sec. 12-4-3, 12-4-5.)



## **Sec. 7-1-2. License Fee Required**

Registration Required: The owner, agent or legal representative of every business in the Town of Atlantic Beach shall be subject to this ordinance and shall be registered with a license conspicuously posted or have available upon request a receipt for business license payment from the Town of Atlantic Beach for inspection by the Town Manager, or Town Manager's designee, or law enforcement officer. Every person engaged or intending to engage in any business, trade, calling or profession maintaining office or offices or acting as agents for another in whole or in part within the limits of the Town of Atlantic Beach, South Carolina except in the profession of teaching and ministers of the gospel, is required to obtain a business license and to pay an annual license fee as provided for herein. The business license and the payment of the annual license fee is required whether or not the business is listed in the rate classification index which is a portion of this Title and the Town Council reserves the right to set an appropriate business license fee to cover businesses not included in the index.

Computation of License Fees: License fees, based on estimated gross income, shall be computed on the gross income for the preceding calendar year, and on a twelve-month projected income based on the monthly average for a business in operation for less than one (1) year.

Underpayment of License Fees: Constitutes the non-payment of business license fees; therefore penalties will be assessed in accordance with the penalty provisions of this ordinance.

### Operating A Business Without A License:

Any person violating this Ordinance by operating a business without obtaining a license or paying license fees, shall be subject to the maximum fines and penalties allowable by law. The violation of the business license ordinance is a misdemeanor within the jurisdiction of the municipal court or magistrate's court. The maximum penalty that may be imposed by a court for a business license ordinance violation is a fine of \$500, imprisonment for 30 days or both for each separate offense. Each day of violation is a separate offense.

Appeal: An owner should not be prosecuted for doing business without a license while a determination or an appeal from a denial or revocation of a license is pending before Town Council.

Refunds: No refund of any license fee will be granted for any reason including overestimating probable gross income or estimated gross income, loss of revenue, business closing, etc.



### **Sec. 7-1-3. Purpose and Duration**

The business license levied by this ordinance is for the purpose of providing such regulation as may be required by the businesses subject thereto and for the purpose of raising revenue for the general fund through a privilege fee. Each license shall be issued for one (1) calendar year and shall expire on December 31<sup>st</sup>. The calendar year shall be considered a "license year." The provisions of this ordinance and the rates herein shall remain in effect from year to year or until amended by Town Council.

### **Sec. 7-1-4. License Fee Imposed**

1) Businesses in the entertainment, lodging, food and beverage industries must pay hospitality fees and Accommodations Tax. All businesses required to pay S.C. Admissions tax to the S.C. Department of Revenue must pay hospitality fees in accordance with Chapter 10, Hospitality Fees, and Chapter 11, Accommodations Tax.

2) Year-Round Businesses: The required license fee shall be paid annually, in full on June 1<sup>st</sup> for existing businesses operating year round subject to the applicable rate classification. Year-round businesses operate for at least half of the calendar year/license year. Penalties are imposed on the fifth day after the due date. The privilege extended to businesses operating year round with gross receipts exceeding \$50,000 to pay business license fees on a quarterly payment plan is revoked effective upon adoption of this amended ordinance. The transition period from quarterly back to annual payments shall be required as follows: quarterly payment due March 1, 2005 and the balance of fees for license year 2005 shall be due on June 1, 2005.

3) More than One Location/Classification of Business: A separate license shall be required for each place of business and for each classification of business conducted at one (1) location. (If gross income cannot be separated for classifications at one (1) location, the license fee shall be computed by addressing the percentage of square footage used by each business and calculating gross income of each based on that businesses separate classification).

3) Seasonal: Seasonal businesses that operate only during peak season (usually March 1 through September 30 and beyond), but for a period of time less than the full year, must have their license fees paid by June 1<sup>st</sup>.

4) New Businesses: A new business shall be required to have a business license prior to operation in the Town. The fee for a new business shall be computed on the estimated gross income stated in the license application for the balance of the license year for estimated probable gross income. Estimated probable gross income is calculated according to the business category/s, size,



products or services, data from license fees paid by businesses within the Town limits first, secondly, the Grand Strand, thirdly the State, and finally national industry standards. The required license fee shall be paid upon approval of the application prior to issuance of a license for the first year of operation for a new business.

5) Applications: Applications shall be on a form provided by the Town Manager or designee which shall contain the social security number and/or the federal employer's identification number, South Carolina Retail License # (if applicable), the business name as reported on the South Carolina income tax return, and all other information about the applicant or those persons financially responsible for or having an interest in the licensed business, and the business, deemed necessary to carry out the purposes of this Title by the Town Manager or designee. 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 and personal property taxes due and payable to the town, the county, and the State have been paid. An insurance agent not employed by a company shall be licensed as a broker. 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 for collection of fees authorized by ordinance or State law.

6) Agents, Brokers, Representatives: Every business, that either 1) acts as an agent, broker, or representative for any other person, or 2) has contractual arrangements with persons, not on their payroll, but providing sales or services, as independent contractors, at a licensed business within the Town, shall pay the license fees for the independent contractor/s and provide the names, addresses, telephone numbers, and social security numbers, and photo I.D. for each individual. Such information shall be due during payment of business license fees and shall be a condition for the obtainment of the license required under this ordinance. Failure to provide information and payment for independent contractors shall be a failure to pay business license fees or underpayment of business license fees and shall be subject to violations and penalties for such.

5) Homestead Discount: Business license fees are discounted .5% of the designated business license category for business owners that are year round residents in the Town of Atlantic Beach. If the business is a corporate entity or

6) Businesses Without A Physical Location In The Town of Atlantic Beach: Businesses whose only address is a post office box or mailing address, but who conduct business within the Town of Atlantic Beach are required to pay business license fees based on the gross receipts for their business classification/category, the base fee, application fee, and any penalties at the



time of application and license renewal. The fees shall be paid upon approval of the application prior to issuance of a license for the first year of operation for a new business and at the time of license renewal.

7) Payment of Fees in Arrears and Penalties: Payment shall be applied to first the license fee and any remaining funds shall be allocated to the penalty for each year beginning with the oldest outstanding year.

8) 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 for 1976. Prior approval of the Atlantic Beach Public Safety Department is required as governed by regulations of the State Fire Marshal pursuant to the 1976 Code, Chapter 35 of Title 23.

9) Miscellaneous Sales (Antique Malls, Flea Markets or Leased Space): Any person leasing or granting 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 or grantor of the spaces to notify the business license administrator of persons leasing spaces.

**State law reference(s) – Authority to levy business license tax. S.C. Code 1976, § 5-7-30.**

**Sec. 7-1-5. Granting License; Denial of License; Administration of Ordinance.**

- a) The Town Manager shall establish procedures for the administration of this Ordinance and include those procedures in Chapter 12 Administrative Rulings.
- b) The Town Manager shall grant the license if all conditions set forth in this ordinance have been met; provided, however, whenever it shall appear to the Town Manager that the granting of any license for the pursuit or conduct of any trade, business, occupation, or profession would be detrimental to the security, welfare, convenience, morals, health, peace or good government of the Town. Any business refused or denied a license by the Town Manager's designee, shall appeal the decision to the Town Manager. The decision of the Town Manager may be appealed to the Town Council.
- c) In case of a new business applying for a license during any year when it appears that said business cannot be placed properly under the classifications/category heretofore set out, if it appears that a manifest injustice is done by so classifying said business, the Town



Manager shall investigate said business and place such license thereon as seems appropriate. Any business in disagreement with license category so assigned by the Town Manager may appeal the decision to the Town Council.

#### **Sec. 7-1-6. Deductions and Exemptions**

- a) No deductions from gross income shall be made except for income from businesses done wholly outside the Town on which a license fee or tax is paid to some other municipality or, on income which cannot be taxed pursuant to state law. The applicant shall have the burden to establish the right to deduction by satisfactory records and proof. No person shall be exempt from the requirements of this ordinance by reason of lack of established place of business within the Town, unless exempted by state or federal law. The Town shall determine the appropriate classification for each business in accordance with the latest issue of the U.S. Office of Management and Budget Standard Industrial Classification Manual. Categories of businesses operating within the Town and percentages per category are set forth in this ordinance. 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 the liability for the payment of any other tax by reason of the application of this ordinance.

The following businesses are **exempt** from paying business license fees:

- 1) Banks and building loan companies.
- 2) Buses – intrastate and interstate.
- 3) Credit Unions, State and Federal
- 4) Churches and charitable organizations (501[c](3)
- 5) Workman's compensation insurance premiums
- 6) Businesses "contracted to do business" for the Town's administrative operation.

#### **Sec. 7-1-7. False Application Unlawful**

It shall be unlawful for any person subject to the provisions of this Title 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 Title.



**Sec. 7-1-8. Separate Licenses Required; Posting of License; Transfer of License**

**Posting of License:** All persons shall display the license issued to them on the original form provided by the Town Manager or designee in a conspicuous place in the business establishment at the address shown on the license. A transient or nonresident shall carry the license or license fee receipt upon his person or in a vehicle used in the business readily available for inspection by any authorized agent of the Town.

**Change of Business Address:** A change of the business address must be reported to the business license administrator within 10 (ten) days after removal of the business to a new location within the Town and the license will be valid at the new address upon written notification of the Town and compliance with zoning and building codes. Failure to obtain approval from the Town for a change of address shall invalidate the license and subject the licensee to prosecution for doing business without a license.

**Change in Business Name, Names of Owners, Business Classification and Products:** Requires a new application to do business within the Town. Failure to comply with these requirements 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 ownership 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. *Transfer of ownership or control* of a business means and includes any of the following:

- (1) The sale, lease or sublease of the business;
- (2) The transfer of securities which constitute a controlling interest in the business, and includes transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.
- (3) Transfer of ownership shall not be exempt from payment of fees, except in cases of involving death or other operation of law upon the death of the person possessing the ownership or control of the establishment.
- (4) When the sale of a business occurs with the new owner taking possession in December, the last month of the business license year (calendar year), with all fees current and the previous owner in total compliance with this Title, the new owner shall not be required to purchase a new license for the license year in which the business was



sold. The new owner shall purchase a new license on January 2 of the new license year for the full year.

(5) Multiple business operations, under one or more owners, shall be required to obtain a separate license for each distinct or separate business.

(6) A separate license shall be required for each place of business and for each separate branch or location of a business owned by the same person or firm. Where more than one (1) business is conducted in the same place, by the same person, firm or corporation, separate licenses shall be obtained and separate license fees shall be required.

(7) A separate business license is required, by the property owner, for each residential or commercial rental property, leased or rented in the Town of Atlantic Beach.

(8) No calling, business, profession or occupation shall be carried on in any location other than the place named in the license.

(9) No license granted under this ordinance shall be transferable as to person or location.

(10) Individuals opening the same type of business in the same location where unpaid license fees exist shall pay the full license fee due prior to issuance of a new business license.

#### **Sec. 7-1-9. Administration of Ordinance/Title**

The Town Manager or designee shall administer the provisions of this Title, collect license fees, issue licenses, make or initiate investigations and audits to insure compliance, initiate denial or revocation procedures, report violations to the Police Department, assist in prosecution of violators, produce forms, make reasonable regulations relating to the administration of this Title and perform such other duties as may be required. As it pertains to license fees from insurance companies and brokers for nonadmitted 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.



### **Sec. 7-1-10. Inspections and Audits**

For the purpose of enforcing the provisions of this Title the Town Manager or designee or other authorized agent of the Town is empowered to enter upon the premises of any person subject to this Title to make inspections, examine and audit books and records, and it shall be unlawful for any person to fail or refuse to make available the necessary books and records during normal business hours with twenty-four (24) hour prior written notice. Refusal to allow an audit constitutes grounds for prosecution. In the event an audit or inspection reveals that false information has been filed by the licensee, 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. The Town Manager/designee or Police Department may make systematic inspections of all businesses within the Town to insure compliance with this Title. Records of inspections and audits shall not be deemed public record. The license inspector shall not release the reported gross income of any person by name without permission of the licensee. Business license statistics compiled by classifications/categories may be made public. The business license administrator, upon approval of the Town Manager, may disclose gross income of licenses to the Internal Revenue Service, South Carolina Tax Commission, and Horry County Tax Assessor for the purpose of assisting tax assessments, tax collections and enforcement. Such disclosures shall be for internal, confidential and official use of these governmental agencies and shall not be deemed public records. With regard to inspections and audits of insurance companies and brokers for nonadmitted 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 for collection authorized by ordinance or State law.

### **Sec. 7-1-11. Assessments**

When any person fails to obtain a business license or to furnish the information required by this ordinance, the Town Manager or designee shall proceed to examine the records of the business or any other available records as may be appropriate and to conduct investigations and statistical surveys as may be appropriate to assess license fees and penalties as provided herein. A notice of assessment shall be served by certified mail and an application for adjustment of the assessment may be made to the Town within five (5) days after the notice is mailed or the assessment will become final. The Town Manager or designee 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 Town Council only by payment in full of the assessment under protest within five (5) days and the filing of written notice of appeal within ten (10) days after payment pursuant to the provisions of this ordinance relating to appeals to Town Council. With



regard to assessments of insurance companies and brokers for nonadmitted 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 for collection authorized by ordinance or State law.

#### **Sec. 7-1-12. Renewal Notices of Business License**

Renewal applications for a business license must be submitted on or before December 31<sup>st</sup> of each year. Businesses failing to file a renewal application by the deadline shall be assessed a \$500.00 late filing fee. All licenses shall be issued for the business license year (calendar year) and shall expire on December 31<sup>st</sup> at midnight. The Town renews business licenses upon completion of a renewal application if all business license fees and penalties are paid in full. No business license shall be renewed for any business with business license, hospitality, accommodation, or furniture, fixtures, and equipment fees/taxes delinquent for more than six months. The expiration date on the business license is also the official renewal notice. Renewal notice is not required by State law; however, the Town will make a good faith effort to remind businesses of the license renewal deadline in advance or as a notice of delinquency. Penalties begin on the fifth day following the first scheduled payment deadline.

#### **Sec. 7-1-13. Delinquent License Fees**

For nonpayment of all or any part of the correct license fee, the Town Manager or designee shall levy and collect a late penalty of ten (10%) percent of the unpaid fee for each month or portion thereof after the due date until fees are paid in full; provided however, that the late penalty to be collected for any one year's delinquent fee shall not exceed thirty (30) percent of the fee due for that year. If any license fee shall remain unpaid for thirty (30) days after its due date, the business license shall be revoked and the business owner shall be penalized for operating a business without a license; if the license fee shall remain unpaid for sixty (60) days after its due date, the Town shall issue an execution which shall constitute a lien upon the property of the licensee for the tax, penalties, administrative fee, and cost of collection, and shall proceed to collect in the same manner as prescribed by law for the collection of other taxes. Penalties begin on the fifth day following the payment deadline. If any license fee shall remain unpaid for thirty (30) days after its due date, the business owner will be penalized for operating business without a license.

#### **Section 7-1-14. Liability for Costs**

In the event business license fees remain unpaid after six months the Manager may, in a reasonable and prudent manner, direct the expenditure of public funds to place a lien on the real or personal property. The cost of abatement shall include an administrative assessment of ten (10%), in addition to legal



fees, licensed auditors, etc. expended in abatement. The person shall be served with a Notice of Assessment within 10 days of the completion of the abatement. The Notice of Assessment shall include the administrative fee and a statement of public cost, attested by affidavit, and shall be issued and served upon the person responsible for payment that shall make payment within thirty days of the date of service. Upon the expiration of the thirty-day period, if the amount has not been paid in full or contested before the Manager, the Manager may cause a lien in that amount to be filed with the County Clerk of Court and with the Finance Department of the Town. The lien shall be of record in the County Courthouse and the Town Hall in the book of liens, until paid or recovered, or otherwise released. Collection of the lien by way of recovery or foreclosure may be instituted by the town attorney on behalf of the Town.

### **Sec. 7-1-15. Violations, Penalties and Enforcement**

The violation of the business license ordinance is a misdemeanor within the jurisdiction of municipal court or magistrate's court. Prosecution is by criminal proceeding instituted by an arrest warrant in the form approved by the state attorney general pursuant to statute. Any person violating any provision of this Title shall be deemed guilty of an offense and shall be subject to punishment under the penalty provisions of the Town code. Each day of violation shall be considered a separate offense. Punishment for violation shall not relieve the offender of liability for delinquent penalties and costs provided for herein.

Ref. S.C. Code §54-7-80. County or municipal uniform ordinance summons.

### **Sec. 7-1-16. Denial of License**

The Town Manager or designee shall deny a license to an applicant when the application is incomplete, inadequate financial information has not been provided, contains a misrepresentation, false or misleading statement, evasion or suppression of a material fact, does not comply with all other applicable Town ordinances, or when the activity for which a license is sought is unlawful or constitutes a public nuisance. When a business provides information containing a misrepresentation, false or misleading statement, evasion or suppression of material facts necessary to accurately compute business license fees, it shall be deemed a violation of the business license ordinance and shall carry a \$500 fine. A decision of the Town Manager or designee shall be subject to appeal to Town Council as herein provided. Denial shall be written with reasons stated. The fine shall be executed by a law enforcement officer in the manner proscribed by law.



### **Sec. 7-1-17. Suspension or Revocation of License**

When the Town Manager or designee determines that:

- 1) A license has been mistakenly or improperly issued contrary to local or State law;
- 2) A licensee has breached any condition upon which his license was issued or has failed to comply with the provisions of this Title;
- 3) A licensee has obtained a license through fraud, misrepresentation, false or misleading statement, evasion or suppression of 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;
- 5) A licensee has engaged in an unlawful activity or nuisance related to the business; or
- 6) The business is not in compliance with all other applicable Town and County ordinances or State laws;

The Town Manager or designee shall give written notice to the licensee or the person in control of the business within the Town, by personal service or certified mail, that the license is suspended pending a hearing before Town Council for the purpose of determining whether the license should be revoked. The notice shall state the time and place at which the hearing is to be held, which shall be at a regular or special council meeting within thirty (30) days from the date of service of the notice. The notice shall contain a brief statement of the reasons for suspension and proposed revocation and a copy of the applicable provisions of this Title.

### **Sec. 7-1-18. Appeals to Town Council**

- a) Any person aggrieved by a final assessment or a denial of a business license by the Town Manager or designee may appeal the decision to Town Council in writing stating the reasons therein. The written appeal must be filed with the Town Manager or designee within ten (10) days after the payment assessment or notice of denial of license. The notice, means of payment and receipt shall contain the words "under protest".
- b) An appeal, or a hearing on revocation, shall be held by Town Council within thirty (30) days after receipt of a request for appeal or service of notice of suspension at a regular or special meeting of which the



applicant or licensee has been given written notice. 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 Town Council shall govern the hearing. Town Council shall, by majority vote of members present, render a written decision based on findings of fact and the 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 (10) days after service.

#### **Sec. 7-1-19. Confidentiality and Violations**

- a) *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 tax return required under this ordinance. Nothing in this section shall be construed to prevent the identification of particular reports or tax returns.
- b) *Violations.* Any persons violating any provision of this Title shall be subject to punishment, under the general penalty provisions of the Town Code. Each day of violation shall be considered a separate offense. Punishment for violation shall not relieve the offender of liability for delinquent penalties and costs provided for herein.



## **CHAPTER 13. ADMINISTRATIVE RULINGS**

### **Sec. 7-13-1. Business License Procedures (See attached)**

### **Sec. 7-13-2 Staff Procedures to Enforce BLO**

The Town Council approves the following procedures to be used by the town manager or his/her designee to enforce this ordinance from reporting of public nuisances through notification, abatement, assessment, and collection of all fees. The Town Manager or designee shall design a letter of notification or complaint form to use when reporting violations of the business license ordinance. Any written notice from a complainant, council member, staff, ticket, summons, or warrant from an enforcement officer may be used to report a violation and the Town Manager, upon receipt of such shall attach a copy of the complaint form which may be used as the Town's official notice to the business owner that a violation of the business license ordinance exists. The form shall also be used to notify the complainant of the status of the complaint. Designees from the Finance Department and the Public Safety Department shall conduct the initial investigation into the complaint. If deemed legitimate, both complainant and business owner will be notified. The complainant shall receive no more information regarding the matter until it has been resolved with the business owner and is a matter of public record, (state law and business license issues).

If a violation of the BLO exists, the owner shall be ticketed and a notice posted on the property requiring ten (10) days to respond for minor violations and sixty (60) days to abate major violations, i.e. sign removal, building repairs where more than 50% of the structure has been destroyed, abandoned, unattended, boarded up, unused, or in disrepair. Where violations involve an estimate of repair costs by an independent licensed appraiser, and contractor respectively.

If the violation is abate within the designated time, the ABPD may go to court and present this information to the judge for consideration. After the 10<sup>th</sup> day, if the violation has not been abated, the ABPD shall ticket the business owner up to 30 days. After the 30<sup>th</sup> day, the town may proceed with other enforcement action.

The Town Council's response to any hearings or appeals shall be expressed in a resolution, placed in the Town's book of resolutions and a copy forwarded to the business owner.



## **CHAPTER 2 LOCAL INDUSTRY LICENSE**

### **Sec. 7-2-1. 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, or designee, 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. Business must meet zoning specifications.

### **Sec. 7-2-2. Telecommunications Companies**

The Telecommunications Act of 1999 allows the Municipal Association to collect business license taxes from telecommunications companies through its Telecommunications Tax Collection Program and Ordinance No. 3 - 2004 Amending the Business License Ordinance, Levying A Business License Tax on Retail Telecommunications Services (See Attached Ordinance No. 3-2004)

- a. Pursuant to S.C. Code §58-9-2220, the following business license tax schedule shall apply to the gross income from 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 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.
- b. Notwithstanding any other provisions of the business license ordinance, business license fees for retail telecommunications services, as defined in S.C. Code §58-9-2200, including but not limited to those services described in Standard Industrial Classification (SIC) 481 and North American Industry Classification System (NAICS) 5133, shall pay an annual business license fee based on gross income.
  - Municipalities with a telecommunications business license ordinance in place on December 31, 1997 will continue to collect from telecommunication companies who have paid under this ordinance at the December 21, 1997 rate for the five-year transition period.



- Any company not previously paying a franchise fee or a business license tax will begin paying at a negotiated rate calculated as a percentage of gross income.
- At the end of the transition period, beginning in 2004, all companies will begin paying at a negotiated rate calculated as a percentage based on gross income.
- Establishes a franchise and consent fee schedule for telecommunications companies' use of the public rights-of-way. The fee is based upon the respective municipality's population.
- Under Act 112, municipal franchise or consent fees are limited by population ranges according to the following schedule:

| <u>Population</u> | <u>Maximum Fee</u> |
|-------------------|--------------------|
| 1 - 1,000         | \$ 100.00          |
| 1,001 - 3,000     | \$ 200.00          |
| 3,001 - 5,000     | \$ 300.00          |
| 5,001 - 10,000    | \$ 750.00          |
| 10,001 - 25,000   | \$1,000.00         |

For a business in operation for less than one year, the amount of business license tax authorized by this section shall be computed on a twelve-month projected income.

- c. The rate for business licenses for retail telecommunications service for 1999 shall be three-tenths (0.3) percent of 1998 gross income, due on October 1, 1999, and payable by January 31, 2000, without penalty.
- d. The telecommunications business license fee shall be due on January 1st in each year, beginning in the year 2002. Declining rates shall not apply. Taxes are payable without penalty by January 31<sup>st</sup> following the due date. After January 31<sup>st</sup>, 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. 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.
- f. Nothing in this section shall be interpreted to interfere with the continuing obligations of any franchise agreement or contractual



agreement in the event that the franchise or contractual agreement should expire after December 31, 2003.

- ~~g. All fees collected under such franchise agreement or contractual agreement shall be in lieu of fees or taxes which might otherwise be authorized by this section.~~
- h. A business license tax ordinance, adopted prior to December 31, 1997, which levied a business license tax paid by a telecommunications company higher than that levied under this section, shall remain in effect through December 31, 2003.
- i. 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.
- j. All ordinances in conflict with this ordinance are hereby repealed.



Ordinance No. 3-2004

2nd Reading 10/8/04

Page 1 of 3

**TOWN OF ATLANTIC BEACH, SOUTH CAROLINA**

**AMENDING THE BUSINESS LICENSE ORDINANCE  
LEVYING A BUSINESS LICENSE TAX ON RETAIL  
TELECOMMUNICATIONS SERVICES**

**WHEREAS**, South Carolina Code sections 58-9-2200 through 58-9-2270, effective June 30, 1999, provide for municipal business license taxes on "retail telecommunications services" as defined and limited therein; and

**WHEREAS**, the South Carolina General Assembly, on June 3, 2004, ratified an act (Rat # 0406) amending S.C. Code sections 58-9-2200, 58-9-2220, and 58-9-2230, that will take effect upon approval by the Governor, and that, among other things, authorizes municipalities, for business license tax years beginning after 2003, to levy a maximum business license tax on the gross income derived from the sale of retail telecommunications services for the preceding calendar or fiscal year at the rate of one percent; and

**WHEREAS**, it is necessary to amend the Business License Ordinance to conform to the State law as amended;

**NOW THEREFORE, BE IT ORDAINED** by the Mayor and Council of the City/Town of Atlantic Beach, that the Business License Ordinance is amended as follows:

**Section 1.**

a. Notwithstanding any other provisions of the Business License Ordinance, the business license tax for "retail telecommunications services", as defined in S. C. Code section 58-9-2200, shall be at the maximum rate authorized by S. C. Code section 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 section 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.



c. 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 year, the amount of business license tax shall be computed on a twelve-month projected income.

## **Section 2.**

a. 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.

b. The delinquent penalty shall be five percent (5 %) of the tax due for each month, or portion thereof, after the due date until paid.

## **Section 3.**

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.

## **Section 4.**

a. Nothing in this Ordinance 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.

b. 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 Ordinance.

## **Section 5.**

As authorized by S. C. Code section 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 section 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,



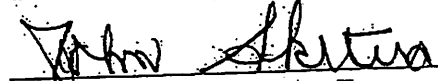
less the service charge agreed to, to this municipality on or before April 1, 2005, and thereafter as remaining collections permit.

Section 6.

All previous ordinances, or portions of ordinances, in conflict with this Ordinance are hereby repealed.

This Ordinance shall be effective on the date of final reading.

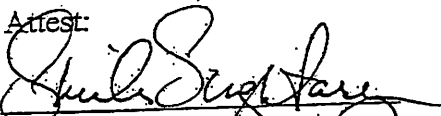
Irene Armstrong, Mayor


  
John Sketers, Mayor Pro Tem

First Reading: \_\_\_\_\_

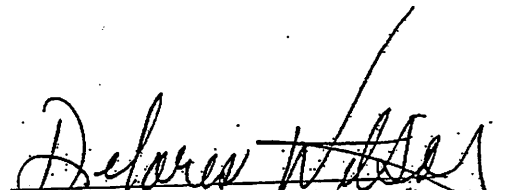
Second Reading: 10/8/04

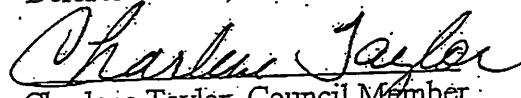
Attest:

  
Paula Singolare  
Town Clerk

  
Carolyn Montgomery  
Town Manager

Gloria Lance, Council Member

  
Delores Wilson, Council Member

  
Charlene Taylor, Council Member



### **Sec. 7-2-3. Outdoor Advertising: Signs and Billboards**

Billboards in the Town of Atlantic Beach are assessed at a percentage of gross revenue. The rate for outdoor advertising is 3% of the gross receipts.

### **Sec. 7-2-4. Home-Based Businesses**

- A. Home based businesses shall be defined as a business permitted in residential dwellings for the purpose of a business mailing address and telephone number. Home based businesses are limited to service businesses (building trades, consulting, and professional services with industry regulated licenses and without industry licenses). Home based business shall be subject to the following requirements:
1. No retail sales.
  2. No vehicle indication the residence is being used as a business location.
  3. No stock or equipment shall be stored at the residence beyond what can be confined to the residence.
  4. No stock or equipment shall be stored at the residence in a non operable vehicle.
  5. No vehicle
  6. Stock or equipment shall be contained in an operable vehicle used in conjunction with the business.
  7. Such business shall employ only the business owner and members of the immediate family currently residing at the business address.
  8. No clients or customers of such business shall be permitted to receive services at the business location.
  9. No accessory structure shall be used in conjunction with the business and only ten percent (10%) or one room of the residence shall be used in conjunction with the business.
  10. No deliveries shall be permitted other than by regular mail or overnight mail services.
  11. No tractor trailers shall be permitted in conjunction with home based businesses.
  12. No signs shall be permitted at the residence.
  13. All home based must provide a written narrative describing the operation of the business and names of all employees.
  14. The license administrator must approve all home based businesses.
  15. No home based business may operate without a business license.



**Sec.7-2-5. Insurance/Agents/Brokers**

**A. Insurance Agents or Brokers**

Payment of license fees by insurance companies does not exempt independent agents or brokers from license fees. Employees of insurance companies who sell insurance are exempt. (State Handbook p. 33)

**B. Provisions For Insurance Companies and For Brokers  
For Non-admitted Fire and Casualty Insurers**

1. SIC NAICS CODE or CODE 63 5241

Insurance Companies: Except as to fire insurance, "gross premiums" means gross premiums collected (1) on policies on property or risks located in the municipality, and (2) on policies, wherever the insured property or risk is located, that are sold, solicited, negotiated, taken, transmitted, received, delivered, applied for, produced or serviced by the insurance company's office located in the municipality or by the insurance company's employee doing business within the municipality or by the office of the insurance company's licensed or appointed producer (agent) located in the municipality or by the insurance company's licensed or appointed producer (agent) doing business within the municipality. 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.

Gross premiums shall include new and renewal businesses without deductions for any dividend, credit, return premiums or deposit.

Solicitation for insurance, receiving or transmitting an application or policy, examination of a 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 doing business within the municipality whether or not an office is maintained therein. A premium collected on property or a risk located within the municipality shall be deemed to have been collected within the municipality. Declining rates shall not apply.

631-632 52411.....Life, Health and Accident  
0.75% of Gross Premiums



633-635 524126 ..... Fire and Casualty  
2% of Gross Premiums

636 524127 ..... Title Insurance  
2% of Gross Premiums

6411 524210 ..... Brokers for Fire and Casualty Insurers - Non-admitted: As to brokers for non-admitted fire and casualty insurers, "gross premiums" means gross premiums collected by or for fire and casualty insurers not licensed in South Carolina (1) on policies on property or risks located in the municipality and/or (2) on policies, wherever the insured property or risk is located, that are sold, solicited, negotiated, taken, transmitted, received, delivered, applied for, produced or serviced by a broker located in or doing business within the municipality. Brokers shall provide, with their payment of the tax, a copy of the report required by the State Department of Insurance showing the locations of the property or risks insured.  
2% of Gross Premiums

[Premiums for non-admitted business are not included in broker's gross commissions for other business. Declining rates shall not apply.]

2. Notwithstanding any other provisions of this ordinance, license taxes for insurance companies and brokers for non-admitted fire and casualty insurers shall be payable on or before May 31 in each year without penalty. The penalty for delinquent payments shall be 5% of the tax due per month, or portion thereof, after the due date until paid.

3. Any exemptions in the business license ordinance for income from business in interstate commerce are hereby repealed. Gross income from interstate commerce shall be included in the gross income for every business subject to a business license tax.

4. The Agreement with the Municipal Association of South Carolina, pursuant to S. C. Code section 5-7-300, for collection of current and delinquent license taxes from insurance companies and brokers for non-admitted fire and casualty insurers shall continue in effect.

All ordinances in whole or in part in conflict with Sec. 7-2-5B of this ordinance are hereby repealed effective on the date of final reading.



### **Sec. 7-2-6. Real Estate Brokers and Agents**

The Business License Handbook is included in the business license ordinance as "explanatory matter." According to The Handbook real estate brokers and agents are required to pay business license fees

All real estate companies, brokers, and agents, to sell real estate and to advertise property for sale in any form (signs, print or broadcast media, flyers, etc.), must purchase a business license. Payment for business license fees is a two-part process for the real estate broker and/or agent. Prior to advertising property for sale, the broker and/or agent shall purchase their business license authorizing them to do business in the Town of Atlantic Beach at the same rate as the base fee charged for a professional license. This will enable the broker/agent to advertise property for sale.

1. Commissions received by real estate **brokers** constitute gross income for license purposes. If commissions are divided with other brokers or salespersons, only the amount retained by a broker is considered income.

Should the broker or broker's company sell the property, within the license year, actual commission retained by the broker or broker's company constitutes income. The business license fee shall be computed on the basis of this income and is due on the first day of the first month after the month in which closing occurred or for delayed closings, at the time when a commission was paid.

2. Although a real estate **salesperson/agent** is required to work for a broker, the salesperson is subject to business license fees if he works on commission rather than salary and the broker does not withhold income taxes. Only the actual commission retained constitutes income. The amount remitted to a broker should not be included. If the salesperson works on a salary or if the broker pays a license fee on the entire commission, the salesperson would not pay a license tax.

If the salesperson or agent works on a salary or if the broker pays a license fee on the entire commission, the salesperson would not pay a license fee.

Should the agent sell the property, within the license year, actual commission retained by the agent constitutes income. The second part of the business license fee shall be computed on the basis of this income and is due on the first day of the first month following the month in which closing occurred or for delayed closings, at the time a commission was paid.



3) Should a **broker or agent sell the property who is not the broker or agent that has a business license in the Town of Atlantic Beach**, that broker or agent must purchase a business license when the contract is accepted, prior to closing. The actual commission retained by the broker or agent constitutes income. The business license fee shall be computed on the basis of this income and is due at the time of application for a business license. Commission shall be calculated from the actual sales contract.

4) A new license is required by the company/broker and agent for each year they intend to do or do business in the Town of Atlantic Beach. Signs, advertisements, and/or contracts shall constitute doing business.

#### **Sec.7-2-7. Landlords and Tenants**

1. Landlords leasing residential or commercial property must have an annual building and fire inspection prior to license renewal. A grace period of 30 days from the business license renewal deadline shall be granted to allow for inspections. All property failing to meet code shall be vacated or closed until such repairs are made in accordance with the Public Nuisance Ordinance. No business license will be issued and business owners operating without a license will be subject to the penalty provisions in this ordinance.
2. Gross rents from the leasing of real estate, commercial or residential, constitute business income for computation of a license tax. The type of tenant is immaterial, and there is no interstate commerce involved in local leasing to an out-of-state firm.
3. Operation of buildings, developments, projects, complexes, malls, etc. is a business and the gross receipts of the operator (who may also be the owner) would be used to compute the tax. If the operator is also the owner, rents plus any other charges collected from tenants would be included.
4. Landlords leasing residential property for rent must adhere to occupancy standards for the health and safety of the tenants.



5. Occupancy standards shall conform to HUD standards for the number of tenants (adults and children) per number of bedrooms and baths.



## **CHAPTER 3 FRANCHISES**

### **Sec. 7-3-1 Franchise Distinguished**

S. C. Code § 5-7-30 and §4-9-30(11) provide that municipalities and counties may grant franchises and charge for the use of public streets. It is important not to confuse a franchise with a business license.

A franchise is the extension of a privilege to use the streets for a purpose for which the franchisee does not have a legal right to do without permission of the governing body in control of the streets. Franchises are customarily granted for the placement of telephone, electric, gas, water/sewer, and cable television lines in streets or on public property for an annual fee. The fee is not a tax. The franchise holder is not exempt from a business license tax unless specifically provided by the franchise agreement.

The franchise agreement is a contract and may be enforced as such by either party. A business license is not a contract. A franchise is not exclusive unless approved by the voters in a referendum, so for nonexclusive franchises, more than one franchise could be granted for the same purpose.

The Supreme Court, in *City of Cayce v. AT&T* (1997), ruled that the franchise power granted by S.C. Code §5-7-30 could be used only when the lines served customers within the municipality. Consent of the governing body to place lines in the streets not serving municipal customers may be required pursuant to S.C. Constitution Art., VIII, Sec. 15, and a fee may be charged for that consent.

The public has a legal right to use the street for ordinary purposes of pedestrian and vehicular travel and for transporting goods in commercial transactions. Such activities are not subject to franchise powers.

Counties may exercise the same franchise powers as municipalities, except counties may not franchise telephone, telegraph, gas and electric utilities or utilities owned by a municipality.

### **Sec. 7-3-2 Electric Service Franchise Granted to Santee Cooper**

A franchise is granted to Santee Cooper, to use the public rights-of-way for the provision of electric service to the corporate area of the Town for the purpose of erecting, construction, maintaining, and operating facilities thereon and thereunder under the terms of the attached franchise agreement which is hereby made a part hereof [but which is not set forth herein].



**Sec. 7-3-3. Telephone service franchise granted to GTE/Verizon**

A franchise is granted to GTE/Verizon, to use the public rights-of-way for the provision of telephone service to the corporate area of the Town for the purpose of erecting, constructing, maintaining, and operating facilities thereon and there-under under the terms of the attached franchise agreement which is hereby made a part hereof [but which is not set forth herein].

**Sec. 7-3-4. Cable Television Franchise**

A nonexclusive franchise for the use of the public streets and roads within the Town limits is granted to Time Warner Cable Co., to provide the construction, operation, and maintenance of a cable television system pursuant to the terms and conditions of the franchise agreement which is made a part hereof by reference.

**Sec. 7-3-5. Commercial Activities Franchise Granted to Atlantic Water Sports, Inc.**

A limited beach-service franchise is granted to Atlantic Water Sports, Inc. to conduct, within specified public beach areas, certain commercial activities pursuant to the terms and conditions of the attached franchise agreement which is attached hereto and made a party hereof [but which is not set forth herein]. The granting of this franchise shall in no way imply that said franchise is exclusive.



## CHAPTER 4 VEHICLES FOR HIRE

### Sec. 7-4-1. Applicability

Any company owner engaged in the business of offering vehicles for hire as defined in section 7-4-2 shall be subject to the provisions of this Title. Other kinds of vehicles for hire, including, but not limited to, animal-drawn vehicles, shall be required to meet additional safety and public health requirements as established by the Town Manager or designee.

### Sec. 7-4-2. Definitions

The following definitions shall apply in this Title:

- 1) A *Vehicle for hire* is defined as any of the following:
  - a. *Limousine*: Any motor vehicle that meets that manufacturer's specifications for limousine, and which operates on a contract basis with customers for use of the vehicle.
  - b. *Shuttle Service*: Service using any type of motor vehicle, including, but not limited to, vans and buses, which operates on a predetermined route and/or a regular schedule, or both, for the conveyance of passengers for hire or as a courtesy vehicle with no charge.
  - c. *Taxicab*: Any motor vehicle engaged in the business of carrying passengers for hire, and which operates on a per trip basis from point to point.
  - d. *Tour Bus*: Any large motor coach that meets manufacturers specifications for a bus, exclusive of interstate carriers, and primarily engaged in the business of conveying passengers.
- (2) *Owner*: An individual, firm, partnership or corporation having charge or control of a business operating vehicles for hire.
- (3) *Driver*: Any person who actually drives the vehicle for hire whether an employee of the owner, a lessee of the owner, an independent contractor driving for the owner or any other person driving for the owner.

### Sec. 7-4-3. Vehicle For Hire Companies; License

Each owner desiring to engage in the business of offering vehicles for hire within the Town shall first secure a business license as required by this Title. The Town shall not require any additional permits or licenses for the operation of such business. Upon submission and satisfactory review, the



Town Manager or designee shall issue an appropriate sticker for each vehicle used in the business to be placed on the driver's side front window.

**Sec. 7-4-4. Required Company and Driver Information**

- (1) Proof of ownership or lease status for each vehicle.
- (2) South Carolina registration information, license plate number, the make, type, year of manufacture, serial number, engine number and passenger capacity of each taxicab or limousine for which application for business license is made.
- (3) Name, home address, phone number and social security number for each driver.
- (4) Valid current driver's license number and state of issuance for each driver.
- (5) The name and address of the owner, and in the event that the owner is a corporation or partnership, a certified copy of the articles of incorporation or partnership agreement.
- (6) The number of vehicles actually owned and the number of vehicles actually operated by such owner on the date of such application, if any.
- (7) Any unpaid or unbonded judgments of record against owner, and, if so, the title of all actions and the amount of all judgments unpaid or unbonded.
- (8) If applicant is a corporation or partnership, a list of the officers or partners, directors and supervising employees thereof, including general manager.
- (9) Whether there are any liens, mortgages or other encumbrances on such taxicabs or limousines and if so, the amount and charter thereof.

**Sec. 7-4-5. Insurance**

The owner or manager of each vehicle-for-hire company shall submit proof of current insurance for each vehicle or a group policy covering all vehicles in the fleet. The required minimum insurance for each vehicle shall be three hundred thousand (\$300,000.00) dollars single liability coverage. The Town Manager or designee shall be immediately notified of any change in insurance coverage.



#### **Sec. 7-4-6. Company Responsibilities**

Each vehicle for hire owner who operates more than two (2) vehicles for hire shall maintain a business office and regular office hours at all times it is operating, a listed public phone numbers and sufficient parking at or near the business office of such company. Each vehicle-for-hire owner shall maintain for at least one (1) year and make available, copies of the daily trip sheets or books (including charges) kept by drivers upon request of the Town Manager or designee. Owners shall submit a proposed vehicle color scheme to the Town Manager or designee for approval. Any disputes about the color schemes determined by the Town Manager or designee may be appealed by written notice to Town Council, and its decision shall be final and binding. An appeal shall be heard by Town Council within thirty (30) days from the time notice to the Town is given.

#### **Sec. 7-4-7. Taxicab Requirements**

Any owner engaged in the business of offering taxicabs for hire shall:

- (1) Have the name of the company and telephone number, permanently affixed and conspicuously displayed, on both sides and trunk of each taxi. Letters and numbers shall be a minimum of three (3) inches high and shall conform to the approved color scheme.
- (2) Have a schedule of rates and charges and the name of the owner or manager and telephone number of the company office posted and affixed inside each taxi in a conspicuous location legible to passengers. This schedule shall remain posted and affixed at all times. In the event the owner desires to change the schedule, he shall send the revised schedule to the Town Manager or designee by registered mail ten (10) days prior to the effective date and post the revised schedule in the taxi on the effective date.
- (3) Have a properly charged minimum two and one-half (2 ½) pound ABC fire extinguisher available in the vehicles.

#### **Sec. 7-4-8. Enforcement**

In addition to any other penalties provided in this municipal code for the violation of municipal ordinances, the Town Manager or designee is authorized to suspend the business license of any vehicle-for-hire company, which has violated any of the provisions of this Title.



### **Sec. 7-4-9. Taxicab Prohibitions**

In order to promote the public health, safety, and welfare of all individuals using taxicabs, it shall be unlawful for:

- (1) Scanners to be operated from taxicabs.
- (2) Taxicab drivers to talk on a cellular telephone.
- (3) Play a radio (tape, CD, etc.) while a passenger is present without the permission of a passenger.
- (4) Taxicab drivers to smoke at any time while in the taxi.
- (5) A taxi driver to fail to offer a passenger a receipt reflecting the trip charge.
- (6) Taxicab drivers to dispatch company taxicabs from a moving taxicab.

### **Sec. 7-4-10. Qualifications Of Drivers**

Each driver of a vehicle-for-hire shall meet the following requirements:

- (1) Be at least eighteen (18) years of age;
- (2) Be of good health without any infirmity of body or mind which might render him unfit for the safe operation of a taxicab or limousine;
- (3) Be able to read, right and speak the English language;
- (4) Be neat and clean in appearance;
- (5) Not be addicted to the use of drugs or intoxicating liquors; and
- (6) Possess a valid driver's license.

### **Sec. 7-4-11. Authority To Operate**

No owner may allow a driver to operate a vehicle for hire:

- (1) Whose driver's license to operate a taxicab or limousine has been suspended or revoked.
- (2) Who has been convicted of a felony.



- (3) Who shall have previously been convicted of a traffic offense resulting in the death of a person.
- (4) Who shall have been convicted of driving a motor vehicle while under the influence of alcohol or drugs.
- (5) Who shall have been convicted of a violation of any state or federal statute, law or ordinance relating to the use, possession or sale of intoxicating liquors.
- (6) Who shall have been convicted of a violation of any state or federal law relating to prostitution.
- (7) Who shall have been convicted of a violation of any, state or federal statute, law or ordinance relating to the use, possession or sale of intoxicating, narcotic or illegal drugs.

**Sec. 7-4-12. Grounds For Suspension Or Revocation; Hearing**

- (a) Vehicle for hire licenses may be suspended or revoked by the Town Manager or designee for the following reasons:
  - (1) The owner fails to operate the vehicle in accordance with the provisions of this Title.
  - (2) The taxicab charges a fare or rate other than the rate published or posted by the owner.
  - (3) The owner allows his vehicle to deteriorate by failure to maintain it in a safe and dependable condition for public conveyance.
  - (4) Failure to maintain interior and exterior cleanliness and appearance.
  - (5) For any reason for which a business license may be revoked under the provisions of Section 7-1-18, Code of the Town of Atlantic Beach, South Carolina.
  - (6) An owner is convicted of:
    - (a) A felony.
    - (b) A violation of any federal or state statute relating to the possession or sale of intoxicating liquors.
    - (c) A violation of any federal or state statute relating to prostitution.



- (d) A violation of a federal or state statute relating to the use, possession or sale of narcotic, intoxicating or illegal drugs; or
  - (e) For employing and/or retaining any drivers who have been convicted of violations of traffic laws or ordinances.
- (7) The Town shall give written notice to the licensee or the person in control of the business within the Town by personal service or certified mail that the license is suspended pending a hearing before Town 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 a regular or special Town council meeting within thirty (30) days from the date of service of the notice. The notice shall contain a brief statement of the reasons for suspension and proposed revocation and a copy of the applicable provisions of this Title.



## **CHAPTER 5. COIN-OPERATED AMUSEMENT MACHINES**

### **7-5-1. Coin-Operated Amusement Machines**

No person shall operate a coin-operated amusement game or device until all appropriate State operator's license fees have been paid and all State fees and taxes have been paid. The owners or operators of coin-operated amusement devices other than video poker machines licensed pursuant to South Carolina Code of Laws §12-21-2720(A)(3) shall pay a business license fee as shown on the attached schedule. The operator of the business premises where video poker machines, which are licensed under §12-21-2720(A)(3), are located shall pay according to the attached schedule. The distributor of video poker machines licensed under §12-21-2720(A)(3) who sells or leases machines and is not an operator of these machines shall be required to pay a business license fee based on the distributor's gross income from engaging in the business of selling or leasing the machines.

### **7-5-2. Video Poker**

Under Act 125 of 1999, S.C. Code §12-21-2710 and §12-21-2720 as construed by the Supreme Court in *Joytime Distributors and Amusement Co., Inc. v. The State of South Carolina*, Opinion No. 25007, Oct. machines with a free play feature or cash payout is prohibited in the state effective July 1, 2000.

### **7.5.3. Non-pay Amusement**

S.C. Code §12-21-2720(B) provides from and after July 1, 2000, that a municipality may not limit the number of machines licensed pursuant to subsection (A)(3) of §12-21-2720, but may impose a license fee on those machines not exceeding 10 percent of \$3,500 for a two-year period. A machine that may be licensed by the S.C. Department of Revenue under subsection (A)(3) is "a machine of the non-payout type, or in-line pin game, operated by a slot in which is deposited a coin or thing of value except machines of the non-payout pin table type with levers or flippers operated by the player by which the course of the balls may be altered or changed." Each of these machines would continue to be subject to a \$180.00-per-year municipal license fee, plus a \$12.50 business license fee for operation of all machines at one location.

### **7-5-3. Music, Rides, Pinball**

The limits of \$12.50 per year per machine plus \$12.50 for a municipal business license fee for operation of all machines at one location licensed under S.C. Code §12-21-2720(A)(1) and (A)(2) remain in effect. Under those subsections, the State requires a license for each machine for playing of music, kiddy rides, juke boxes, amusements, video games without free play feature,



crane type machines and non-payout pinball tables operated by any coin or thing of value.

The maximum municipal business license of \$12.50 on the business operating machines at one location is set by Code §12-21-2746, limiting all licenses by municipalities and counties to one-half of the amount charged by the State before March 28, 1956 (which was \$25.00). *Crenco v. City of Lancaster*, 318 S.C. 278, 457 S.E.2d 338 (1995).

Pursuant to S.C. Code §12-21-2728, the State requires a machine owner to purchase an operator's license for the business in addition to the license for each machine.

- The summary of municipal amusement machine license fees, is as follows:
  - Operator of machines licensed under §12-21-2720(A)(1) and (A)(2) - \$12.50 per machine, plus \$12.50 business license fee for operation of all machines at one location.
  - Operator of non-payout machines licensed under §12-21-2720(A)(3) - \$180 per machine, plus \$12.50 business license fee for operation of all machines at one location.
  - Distributor who does not own and operate the machines nor is licensed as an operator under §12-21-2728, but sells or leases the machines – a gross receipts business license fee may apply.

#### **Sec. 7-5-4. Vending Machines**

Vending machines not listed (for example, cigarettes, candy, food machines) are not subject to local licenses on each machine by a State statute. A business license may be charged on gross income from operation of vending machines.

#### **Sec. 7-5-5. Billiard Tables**

The state requires a license for each billiard or pocket billiard table, football table, bowling lane table and skeeball table under S. C. Code §12-21-2730, and a license for the privilege of engaging in the business pursuant to §12-21-2734. S.C. Code §12-21-2746 authorizes municipalities and counties to levy a license fee on the business not to exceed one-half of the amount levied by the state before March 28, 1956. The maximum municipal license now is \$5.00 per table measuring less than 3 ½ feet wide and 7 feet long, and \$12.50 per table longer than that. Some municipalities, including the Town of Atlantic Beach,



charge a business licensee fee on the gross receipts from the whole business in addition to the fee authorized by statute for each table.



## **CHAPTER 6. BODY PIERCING, BRANDING, SCARIFICATION.**

### **7-6-1 Body Piercing, Branding, Scarification**

Body piercing, branding and/or scarification involves an invasive procedure by which the human body is penetrated creating the opportunity for the transmissions of infection and disease, and the premises upon which body piercing is performed and the equipment used must, in the interest of the health and welfare of the public, be maintained in a sanitary and sterile condition to prevent the spread of infection and disease. The conduct of body piercing as an accessory use to most commercial businesses is not consistent with the emphasis on sanitary and sterile conditions, which appears to be necessary to address the health, safety and welfare of the public as regulated by DHEC.

- (a) It is unlawful to perform body piercing, branding, and scarification on any person under the age of 18 without consent of the parents or legal guardian.
- (b) Body piercing, branding and/or scarification shall be permitted as an accessory use only in DHEC approved establishments.
- (c) Piercing of the ears is permitted in retail establishments, under sanitary and sterile conditions with the appropriate equipment and trained personnel, who meet all necessary health, safety and public welfare standards.
- (d) The following below are definitions for body piercing, branding and scarification.
  - *Body piercing:* any method of piercing of the human skin of one person by another person with the intention of inserting any object including, but not limited to, jewelry. For the purpose of this Business License Ordinance, the term body piercing shall also include any process of marking or disfiguring the skin or other tissue on any person by branding or scarification but shall not include the piercing of the fatty lobe of the ear by an ear-piercing gun designed solely for the purpose, or physician-authorized surgical procedures. This definition of body piercing includes that process commonly referred to as implantation.
  - *Branding:* The act of intentionally marking or disfiguring a human body by burning it through the use of hot objects or by the use of any substance or process, which results in such, marking or disfiguring.



- *Scarification:* The act of making one or more incisions in the skin of any person with the intent of causing visible marks on the skin upon healing of the incision.



## **CHAPTER 7. MASSAGE/BODYWORK THERAPY**

- See Massage/Bodyworks Practice Acts provided by the S. C. Department of Labor, Licensing and Regulation

### **7-7-1. Massage/Bodywork Therapy**

The South Carolina Department of Labor, Licensing and Regulation administers the statutes and regulations for massage/bodywork therapy.

"Massage/bodywork therapy" means the application of a system of structured touch of the superficial tissues of the human body with the hand, foot, arm, or elbow whether or not the structured touch is aided by hydrotherapy, thermal therapy, a massage device, human hands, or the application to the human body of an herbal preparation.

The following is a list of definitions:

- *Massage/Bodywork Therapist* is a person licensed, as required by this Title, who administers massage/bodywork therapy for compensation.
- *Massage device*: A mechanical device that mimics or enhances the actions possible by the hands by means of vibration.
- *Hydrotherapy*: The use of water, vapor, or ice for treatment of superficial tissues.
- *Thermal Therapy*: The use of ice or a heat lamp or moist heat on superficial tissues.
- *Licensure*: The procedure by which a person applies to the department and is granted approval to practice massage/bodywork.
- *Approved massage/bodywork school*: A facility that meets minimum standards for training and curriculum as determined by regulations of the department.



## **CHAPTER 8. SEXUALLY ORIENTED BUSINESSES**

### **Sec. 7-8-1. Purpose and Intent**

It is the purpose of this Title to regulate adult entertainment businesses, to promote the health, safety, morals and general welfare of the citizens of the Town, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of adult entertainment businesses within the Town of Atlantic Beach. The provisions of this section have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent or effect of this section to restrict or deny access for adults to any sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented adult entertainment to their intended market. Neither is it the intent or effect of this section to condone or legitimize the distribution of adult materials.

### **Sec. 7-8-2. Definitions**

For the purposes of this Title, the following words, terms and phrases shall have the meanings ascribed herein, unless the text clearly indicates otherwise:

*Adult arcade* shall mean any commercial place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing adult material, specified sexual activities or specified anatomical areas.

*Adult bookstore or adult video store* shall mean a commercial establishment which, as its principal business purpose, offers for sale or rent, for any form of consideration, any one or more of the following:

1. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which depict or describe adult material, specified sexual activities or specified anatomical areas; or
2. Instruments, novelties, devices or paraphernalia designed for use in connection with specified sexual activities, as defined herein. Birth control devices or devices for disease prevention are excluded from this definition.



A commercial establishment may have other principal business purposes that do not involve disseminating adult material or specified sexual activities or specified anatomical areas and still be categorized as an adult bookstore or adult video store. Such other business purposes will not serve to exempt such commercial establishment from being categorized as an adult bookstore or adult video store so long as one of its principal business purposes is the offering for sale or rent specified materials, which depict or describe specific sexual activities or specified anatomical areas.

An establishment will not be considered an adult bookstore or adult video store if the establishment demonstrates either:

- (a) The adult material is accessible only to employees and the gross income from the sale comprises less than ten (10) percent of the gross income from the sale or rental of goods or services at the establishment; or
- (b) The items of adult material offered for sale or rental comprise less than ten (10) percent of the inventory of stock used in trade and/or publicly displayed in the establishment and which are not accessible to minors.

*Adult cabaret* shall mean a nightclub, bar, club, tavern, restaurant or similar commercial establishment which features:

- (1) Service to patrons by persons in a state of nudity or semi-nudity;
- (2) Live performances, characterized by the exposure of "specified anatomical area", depiction of specified sexual activities or by sexual conduct; or
- (3) Films, motion pictures, videocassettes, slides or other photographic reproductions characterized by the depiction or description of adult material, specified sexual activities or specified anatomical areas.

*Adult entertainment use or business* shall mean an adult arcade, adult bookstore or adult video store, adult cabaret, adult motion picture theater, adult theater, sexually oriented escort agency, nude or semi-nude model studio, to include but not be limited to, sexually oriented clothing or lingerie, or sexual encounter center.

*Adult material* shall mean any book, magazine, newspaper, or other printed or written material, any picture, drawing, photograph, motion picture or other pictorial representation, any statue or other figure, any recording, transcription or mechanical, chemical or electrical reproduction, any other articles, equipment or machines which depicts or describes specified sexual activities or specified anatomical areas.



*Adult motel* means a hotel, motel or similar commercial establishment which:

- (1) Offers accommodations to the public for any form of consideration where patrons are provided closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas and has a sign visible for the public right-of-way which advertise the availability of this adult type of photographic reproductions;
- (2) Offers a sleeping room for rent with rates for a period of time that is less than ten (10) hours; or
- (3) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of less than ten (10) hours.

*Adult motion picture theatre* shall mean commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic representations are shown and where a substantial portion of the presentation time is devoted to showing of material which depicts or describes adult material, specified sexual activities or specified anatomical areas.

*Adult theatre* shall mean a theatre, concert hall, auditorium or similar commercial establishment which regularly features persons appearing nude or semi-nude, or engaged in live performances characterized by the exposure of specified anatomical areas or specified sexual activities.

*Available to the public* shall mean that the matter or performance may be purchased or attended on a subscription basis, on a membership fee arrangement, or for a separate fee for each item or performance.

*Disseminate* shall mean to transfer possession of, with or without consideration.

*Establishment* shall include any of the following:

- (1) The opening or commencement of any adult entertainment business as a new business;
- (2) The conversion of an existing business, whether or not an adult entertainment business, to any adult entertainment business;



- (3) The additions of any adult entertainment use to any other existing adult entertainment use or business;
- (4) The relocation of any adult entertainment business; or
- (5) The reinstatement or application for reinstatement of a revoked permit or license.
- (6) An existing adult entertainment business, which continues to operate after passage of this Title.

*Licensee or permittee* shall mean a person in whose name a permit and/or license to operate an adult entertainment business or use has been issued, as well as any other individual listed as an applicant on the application for a permit or license.

*Nude dancing establishment* shall mean an establishment which, as one of its principal businesses, provides a person or persons appearing in a state of nudity, semi-nudity or displaying "specified anatomical area" to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or offer any form of consideration. Exempted from this definition is a proprietary school, licensed by the State of South Carolina; a college, junior college or university supported entirely or partly by taxation; or a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university that is supported entirely or partly by taxation, or any other school defined and regulated by Title 59 of the Code of Laws of South Carolina, 1976, as amended.

*Nude, nudity or a state of nudity* shall mean the appearance of a bare human anal cleft, anus, male genitals, female genitals or female breast.

*Performance* shall mean any preview, play, show, skit, film, dance or other exhibition performed before an audience.

*Person* shall mean any individual, corporation, partnership, association, firm, club, proprietorship or other legal or commercial entity, including any type of charity organization.

*Promote* shall mean to cause, permit, procure, counsel or assist.

*School* shall mean any building or part thereof which is designed, constructed or used for educational or instruction in any branch of knowledge.



*Service to patrons* shall mean the provision of services to paying guests in establishments providing food and beverages, including, but not limited to, hosting, hat checking, cooking, bartending, serving, table setting and clearing, waiter and waitressing and entertaining.

*Semi-nude, semi-nudity or in a state of semi-nudity* shall mean a state of dress in which clothing covers no more than the genitals, pubic region and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

*Sexual conduct* shall mean any sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any other sexual act such as erotic touching, caressing or fondling or simulation thereof, of the breasts, buttocks, anus or genitals or any portion thereof.

*Sexual encounter center* shall mean an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theatre, adult theatre, sexually oriented escort agency, nude model studio, massage parlor or sexual encounter center.

*Specified anatomical areas* shall mean:

- (1) Less than completely and/or opaquely covered male or female pubic region, anal cleft, anus or female breast below a point immediately above the top of the areola;
- (2) Male genitals in a discernible turgid state, whether covered or not covered or the more intimate parts of the female genitals.

*Specified sexual activities* means and includes any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;
- (3) Masturbation, actual or simulated; or
- (4) Excretory functions as part of or in connection with any of the activities set forth in (1) through (3) above.

*Transfer of ownership or control* of an adult entertainment business means and includes any of the following:

- (4) The sale, lease or sublease of the business;



- (5) The transfer of securities which constitute a controlling interest in the business, and includes transfer by bequest or other operation of law upon the death of the person possessing the ownership of control.

### **Sec. 7-8-3. Permit and/or License Required**

In accordance with Title 7 of the Code, a license is required to establish or operate any adult entertainment.

- (1) A person commits an offense if he operates an adult entertainment use or business without a valid license, issued by the Town for the particular type of adult entertainment use.
- (2) An application for a license must be made on a form provided by the Town Manager or designee and in accordance with Title 7.
- (3) The applicant must be qualified in accordance with the provisions of Section 7-7-3.2 of this Title.
- (4) If a person who wishes to operate an adult entertainment business is an individual, he must sign the application for a license as applicant. If a person who wishes to operate an adult entertainment business is other than an individual, each individual who has an interest in the business must sign the application for a license as applicant. Each applicant must be qualified under Section 7-7-3.2 and each applicant shall be considered a licensee if a license is granted.
- (5) The fact that a person possesses a valid theater license, dance hall license, public house of amusement license or other type of license, does not exempt him from the requirement of obtaining an adult entertainment use or business license. A person who operates an adult entertainment business and possesses a theater license, dance hall license, public house of amusement license or other business license, shall comply fully with the requirements and provisions of this Title.

#### **Sec. 7-8-3.1. Fees**

The annual fee for an adult entertainment business shall be in accordance with Section 7-1-12. Transfer of ownership shall not be exempt from payment of fees, except in cases involving death or other operation of law upon the death of the person possessing the ownership or control of the establishment.



**Sec. 7-8-3.2. Issuance of License**

Upon receipt of proper application for a permit and/or license, the Town of Atlantic Beach shall approve and issue a permit and/or license to an applicant in accordance with the provisions of Title 7 of this Code within thirty (30) days after receipt of an application, unless one (1) or more of the following are found to be true:

- (1) An applicant is under eighteen (18) years of age.
- (2) An applicant or any applicant's spouse, individually or as a member of a business or corporate entity, with an outstanding debt to the Town, County, or State, including but not limited to, taxes, fees, fines, penalties, judgments or liens.
- (3) An applicant has failed to provide information reasonably necessary for issuance of the permit and/or license or has falsely answered a question or request for information on the application form.
- (4) An applicant is residing with a person or has a business partner or affiliate who has been denied a permit and/or license by the town to operate an adult entertainment business within the preceding twelve (12) months, or residing with a person or has a business partner or affiliate whose license to operate an adult entertainment business has been revoked within the preceding twelve (12) months.
- (5) The premises to be used for the adult entertainment has not been approved by health, fire marshal and building official as being in compliance with applicable laws and ordinances.
- (6) The permit and/or license fee required by this section has not been paid.
- (7) The cases where the adult entertainment use or business is considered newly established or application is a reinstatement of a revoked permit.
- (8) An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this section.
- (9) The application has not been sworn to be true and correct by the applicant.
- (10) The applicant has a criminal record.



If any of the above requirements are found to be true at the time of application or renewal of the permit and/or license, said permit and/or license shall be denied in accordance with Sec. 7-1-8 of this Title.

**Sec. 7-8-3.3. Inspection**

- (a) An applicant and or permittee and/or licensee shall permit the Town Manager or designee and representatives of the police, health or fire departments or other Town departments or agencies involved in code enforcement to inspect the premises of all businesses for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.
- (b) A person who operates an a business or his agent or employee commits a misdemeanor if he refuses to permit such lawful inspection of the premises at any time it is occupied or open for business.

**Sec. 7-8-3.4. Expiration of Permit and/or License**

- (a) Each permit or license shall expire in accordance with the provisions of Section 7-1-4. The annual expiration and subsequent payment of fees for renewal shall be considered the continuation of an existing use. Renewal and payment of license or permit fee shall be made in accordance with the provisions of this Title.
- (b) When the issuance of a business license renewal permit is denied for any of the reasons as stated in this Title, the applicant shall not be issued a permit and/or license for one (1) year from the date of denial. If, subsequent to denial, the administrator finds that the basis for denial of the renewal permit or license has been corrected or abated, the applicant may be granted a permit or license if at least ninety (90) days have elapsed since the date the denial became final.

**Sec. 7-8-3.5. Suspension of Permit and/or License**

The administrator shall suspend a license for a period not to exceed thirty (30) days if he determines that a permittee and/or licensee or an employee of a permittee and/or licensee has:

- (1) Violated or is not in compliance with any section of this Title.
- (2) Engaged in excessive use of alcoholic beverages while on the premises of the business.



- (3) Refused to allow an inspection of the premises of the adult entertainment business as authorized under this Title.
- (4) Knowingly permitted gambling or any other illegal activity by any person on the business premises.
- (5) Or, if premises of permittee have been deemed as not in compliance with applicable laws and ordinances as determined by health, fire or building officials.

**Sec. 7-8-3.6. Revocation of Permit and Prohibited Acts**

- (a) The administrator shall revoke a permit and/or license if a cause of suspension, as described in this Title occurs and the permit and/or license has been suspended within the preceding twelve (12) months.
- (b) The administrator shall revoke a permit and/or license if he/she determines that:
  - 1) A permittee, and/or licensee or an employee has knowingly allowed possession, use or sale of controlled substances on the premises.
  - 2) A permittee, licensee or an employee knowingly allowed prostitution on the premises.
  - 3) A permittee, licensee or an employee knowingly operated the adult entertainment business during a period of time when the licensee's permit and/or license was suspended.
  - 4) A permittee, licensee or employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or other sexual conduct to occur in or on the permitted and/or licensed premises.
  - 5) A permittee, and/or licensee are delinquent in payment to the Town or State any taxes, fees, fines or penalties as assessed against him.
  - (6) In accordance with this Title, it shall be unlawful for a permittee and/or licensee to transfer his permit and/or license to another, nor shall a permittee and/or licensee operate a business under the authority of a permit and/or license at any place other than the address designated in the application.
  - (7) When the administrator revokes a permit and/or license, the revocation shall continue for one (1) year, and the permittee shall not be issued a permit to operate an adult entertainment business for one



(1) year from the effective date of revocation. If, subsequent to revocation, the zoning administrator finds that the basis for revocation has been corrected or abated, the permit and/or license may be reinstated if at least ninety (90) days have elapsed since the date the revocation became effective.

- (8) Upon revocation of a permit for any reason, for a period greater than ninety (90) days, the application for reinstatement of the permit shall be considered as a newly proposed use and shall be subject to the full requirements of this Title.

**Sec. 7-8-4. Penalties**

- (1) A person who operates or causes to be operated an adult entertainment business without a valid permit and/or license or in violation of this Title is subject to a suit for injunction as well as prosecution for criminal violation.
- (2) Each day any violation of any provision of this Title shall continue shall constitute a separate offense.
- (a) Upon conviction of a violation of this Title, the business license issued by the Town shall be revoked upon written notice.



## **CHAPTER 9. WASTE DISPOSAL**

### **Sec. 7-9-1. License for Waste Contractors**

All waste contractors "doing business" in the Town of Atlantic Beach are required by the Town to purchase a business license. Businesses contracted to provide a service solely for the Town's administrative operation, are exempt from business license fees.

### **Sec. 7-9-2. Garbage, Trash & Refuse Management**

- Businesses in the Town of Atlantic Beach are required to show proof of service for trash removal and disposal. Businesses that have 1000 square feet or less of interior space, but not handling food or lodging may contract for a residential roll-off.
- Businesses with more than 1000 square feet of interior space, but not handling food or lodging, are required to have a minimum 2 cubic yard container.
- Businesses engaged in lodging, but not food, with less than five (5) units, must have a minimum 4 cubic yard container.
- Businesses engaged in lodging or food, with more than five (5) units and seating capacity less than fifty (50), must have a minimum 6 cubic yard container.
- Businesses engaged in lodging or food, with more than five (5) units and seating capacity greater than 50, must have a minimum 8 cubic yard container and more than one scheduled pick up per week.
- The Town of Atlantic Beach reserves the right to require all businesses to have more scheduled pick ups should visual inspections reveal a trash management problem.
- The waste disposal contract for all restaurants must include a grease disposal system.



## **CHAPTER 10. BUSINESS CLASSIFICATIONS AND FEES**

Each business license issued shall contain all categories of business conducted by the licensee, at the designated location, under said license in ranking order, i.e., first, second, third, or primary, secondary, tertiary, etc.

### **Sec. 7.10.1. BUSINESS LICENSE CATEGORIES:**

1. Retail/Wholesale/Distributor License
2. Professional Services (Including Commission Sales, i.e., Insurance Agents, business where payment is calculated as a % of the sales price including home-based businesses, Real Estate Agents, etc.)
3. Services-No Retail Sales
4. Food and Beverages License
5. Rental Property
  - Lodging/Temporary or Permanent
  - Commercial/Temporary or Permanent
6. Entertainment
  - a. Adult – Independent contractors; dancers; masseuses; bartenders; models; strip-o-grams, etc.
  - b. Family (Non-Adult) – Clowns, Sing-o-grams, etc.
7. Non-Taxable Business & Limitations License
  - \*Festivals, parades, carnivals, circuses and other special events.



**Sec. 7-10-2. BUSINESS LICENSE FEES:**

| <b>Business License</b>  | <b>Base Fee</b> | <b>+%</b>  | <b>Gross Receipts</b> |
|--|-----------------|------------|-----------------------|
| 1. Retail/Wholesale<br>/Distributor License  | \$ 150.00       | 3%         | \$2,000.00            |
| 2. Professional License  | \$ 100.00       | 2%         | \$2,000.00            |
| 3. Services – No Retail Sales<br><b>**State License + BOND applies</b>   | \$ 150.00       | 2%         | \$2,000.00            |
| 4. Food & Beverage License   |                 |            |                       |
| • Non-Alcoholic  | \$ 150.00       | 3%         | \$2,000.00            |
| • Alcohol Available  | \$ 150.00       | 4%         | \$2,000.00            |
| 5. Rental Property License<br><b>Lodging-Temporary &amp; permanent</b><br><b>Commercial-Temporary &amp; permanent</b>  | \$ 100.00       | 3%         | \$2,000.00            |
| 6. Entertainment:  |                 |            |                       |
| a. Adult   | \$150.00        | 4%         | \$2,000.00            |
| <b>This includes novelty items of a sexual content.</b>  |                 |            |                       |
| b. Family (Non-Adult)  | \$150.00        | 4%         | \$2,000.00            |
| 7. Non-Taxable Business  |                 |            |                       |
| Festivals, parades, carnivals, circuses, etc.  |                 |            |                       |
| 8. Special Events Vending and Bike Fest  |                 |            |                       |
| The Town of Atlantic Beach sets the license fees and limits the number of vending spaces on Bike Fest 2005 as follows: |                 |            |                       |
| Food   | \$3000.00       | 31 vendors |                       |
| T-Shirts   | \$2500.00       | 15 vendors |                       |
| Jewelry  | \$1000.00       | 5 vendors  |                       |
| Novelties  | \$1500.00       | 20 vendors |                       |
| Music Products   | \$2000.00       | 5 vendors  |                       |

Peddlers/Merchants: \$20.00 per day/except during special events when vendor license fees applies.

Building and Fire Inspections: \$50.00 each annually



## **CHAPTER 11. HOSPITALITY FEES**

### **Sec. 7-11-1. Hospitality Fees**

A Hospitality Fee is a 1 % per month fee imposed on the purchase of prepared or modified food and/or beverages intended for immediate consumption and/or on paid admissions to places of amusement.

### **Sec. 7-11-2. Businesses Required To Pay Hospitality Fees**

Food service, golf or amusement establishments are responsible for the collection of the fee from patrons and the monthly remittance of these collections to the Town.

#### **1. Examples of establishments required to pay Hospitality Fees:**

- ◆ Patrons or consumers of restaurants, bars and lounges, other food service establishments, and grocery and convenience stores (if they sell prepared or modified foods and/or beverages.
- ◆ Patrons of establishments who currently charge State of South Carolina Admissions tax.

For restaurants, bars and other food service establishments, all food sales of prepared food for immediate consumption either on or off premises and beverage sales to include, but not be limited to, all alcohol, beer or wine sales for on premise consumption would be responsible for paying a hospitality fee.

For all convenience stores, grocery stores and other food services facilities, all food and beverage sales prepared or modified as a meal for immediate consumption to include, but not be limited to, Heated foods, (pizzas, nachos, hotdogs, sandwiches, chicken, etc.) prepared sandwiches and salads, sliced meat and vegetable trays, fountain drinks, would be responsible for paying a hospitality fee.

For all businesses that involve entertainment and/or amusements for the general public, to include, but not be limited to, all golf courses, bowling alleys, waterslides, bingo halls, miniature golf courses arcades, theaters, skating rinks, piers, nightclubs, zoos, and other entertainment or amusement centers.



**Sec. 7-11-3. Businesses Exempt from Hospitality Fees:**

Items included, but not limited to, are pre-packaged foods, bulk or packaged cold deli products, canned and bottled drinks.

Admissions charged by any non-profit or eleemosynary organization exclusive for religious, charitable, scientific or educational purposes.

All other entities specifically exempted from payment of state license tax on admissions established in South Carolina Code §12-21-2420 shall be exempt from this hospitality fee.

**Sec. 7-11-4. Payment Due**

Fees will be remitted to the Town of Atlantic Beach by the 20<sup>th</sup> of each month for the prior month's total collections. Each remittance must include a completed Hospitality Fee Monthly Reporting Form. For zero gross sales, the Hospitality Fee Reporting Form must be submitted indicating the zero gross total. Businesses collecting the fee from multiple locations must complete a separate reporting form for each location. However, the total Hospitality Fee due may be sent on one check.

**Sec. 7-11-5. Penalties**

Remittances are considered delinquent if postmarked by the U.S. Postal Service after the 20<sup>th</sup> of the following month. A penalty payment of 10% must accompany any payment postmarked after the 20<sup>th</sup> but before the end of the month. A penalty of 10% of the unpaid fee will be charged for each month or portion thereof after the due date, until paid.



## **CHAPTER 12. ACCOMMODATIONS TAX**

### **Sec. 7-12-1. Accommodations Tax**

Accommodations Fee is a 1% monthly fee imposed on the charges for accommodations furnished to transients.

### **Sec. 7-12-2. Businesses Required To Pay Accommodations Fees**

Examples of business required to pay Accommodations Tax include, but are not limited to, hotels, motels, inns, campgrounds, tourist camps & courts, and condominiums. Residences, or any place in which rooms, lodging, or sleeping accommodations are furnished to transients for a consideration to which the tax was imposed by the S.C. Code §12-36-920 applies.

### **Sec. 7-12-3. Businesses Exempt from Accommodations Fees:**

Exemptions from the Accommodations Tax on rentals or charges for accommodations include meeting rooms and conference rooms, accommodations provided to the same patron who is residing at the same physical location in excess of ninety (90) consecutive days.

### **Sec. 7-12-4. Payment Due**

Fees will be remitted to the Town of Atlantic Beach by the 20<sup>th</sup> of each month for the prior month's total collections. Each remittance must include a completed Hospitality Fee Monthly Reporting Form. For zero gross sales, the Hospitality Fee Reporting Form must be submitted indicating the zero gross total. Businesses collecting the fee from multiple locations must complete a separate reporting form for each location. However, the total Hospitality Fee due may be sent on one check. (The Hospitality Fee Monthly Form is used for both Hospitality and Accommodations Tax payments)

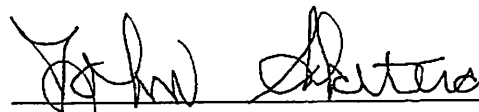
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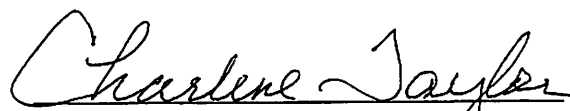


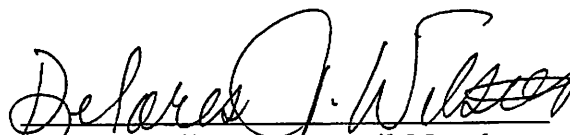
BE IT ORDAINED by the Town Council of the Town of Atlantic Beach,  
South Carolina, in Council duly assembled this 21<sup>st</sup> day of December 2004.

\_\_\_\_\_  
Irene Armstrong, Mayor

  
\_\_\_\_\_  
John Sketers, Mayor Pro-Tem

\_\_\_\_\_  
Gloria Lance, Council Member

  
\_\_\_\_\_  
Charlene Taylor, Council Member

  
\_\_\_\_\_  
Delores Wilson, Council Member

First Reading:

12-6-04  
Date

Second Reading:

12-21-04  
Date

Attest:

  
\_\_\_\_\_  
Town Clerk