

**NORTH CHARLESTON CITY COUNCIL
AGENDA ITEM**

Meeting of December 14, 2023

DATE: November 9, 2023

ITEM TITLE: An Ordinance to Adopt a Revised Business License Ordinance in Accordance with the Business License Standardization Act (2020 Act No. 176)

SUBMITTED BY: Francie Austin, Legal Department

CONTACT PERSON: Jessica Jarrell, 843-460-1605

SUMMARY EXPLANATION:

The City of North Charleston (the "Municipality") is authorized by S.C. Code Section 5-7-30 and Title 6, Chapter 1, Article 3 to impose a business license tax on gross income. Through Act No. 176 of 2020, known as the South Carolina Business License Tax Standardization Act and codified at S.C. Code Sections 6-1-400 to -420 (the "Standardization Act"), the South Carolina General Assembly imposed additional requirements and conditions on the administration of business license taxes. The Standardization Act requires that by December thirty-first of every odd year, each municipality levying a business license tax must adopt, by ordinance, the latest Standardized Business License Class Schedule as recommended by the Municipal Association of South Carolina (the "Association") and adopted by the Director of the Revenue and Fiscal Affairs Office. following the enactment of the Standardization Act, the Municipality enacted Ordinance No. 2021-080 on December 9, 2021 in order to comply with the requirements of the Standardization Act (the "Current Business License Ordinance"). The City Council of the Municipality (the "Council") now wishes to amend the Current Business License Ordinance to adopt the latest Standardized Business License Class Schedule, as required by the Standardization Act, and to make other minor amendments as recommended by the Association.

STAFF RECOMMENDATION:

Staff agrees with the recommendation to adopt the new business license ordinance.

BOARD, COMMISSION, COMMITTEE RECOMMENDATIONS:

COUNCIL COMMITTEE RECOMMENDATION:

COUNCIL ACTION:

EXHIBITS

Resolution X Ordinance Contract Minutes Plan/Map Transfer of Funds Other

**Exhibit A: Amendment to Classes 1 – 8 in Appendix B of the
Current Business License Ordinance**

**APPENDIX B
Classes 1 – 8: Business License Class Schedule by NAICS Codes**

NAICS Sector/Subsector	Industry Sector	Class
11	Agriculture, forestry, hunting and fishing	1
21	Mining	2
22	Utilities	1
31 - 33	Manufacturing	3
42	Wholesale trade	1
44 - 45	Retail trade	1
48 - 49	Transportation and warehousing	1
51	Information	4
52	Finance and insurance	7
53	Real estate and rental and leasing	7
54	Professional, scientific, and technical services	5
55	Management of companies	7
56	Administrative and support and waste management and remediation services	3
61	Educational services	3
62	Health care and social assistance	4
71	Arts, entertainment, and recreation	3
721	Accommodation	1
722	Food services and drinking places	2
81	Other services	4
Class 8	Subclasses	
23	Construction	8.1
482	Rail Transportation	8.2
517111	Wired Telecommunications Carriers	8.3
517112	Wireless Telecommunications Carriers (except Satellite)	8.3
517122	Agents for Wireless Telecommunications Services	8.3
5241	Insurance Carriers	8.4
5242	Insurance Brokers for non-admitted Insurance Carriers	8.4
713120	Amusement Parks and Arcades	8.51
713290	Nonpayout Amusement Machines	8.52
713990	All Other Amusement and Recreational Industries (pool tables)	8.6

2023 Class Schedule is based on a three-year average (2017 - 2019) of IRS statistical data.

AN ORDINANCE

TO ADOPT A REVISED BUSINESS LICENSE ORDINANCE IN ACCORDANCE WITH
THE BUSINESS LICENSE STANDARDIZATION ACT (2020 ACT NO. 176)

WHEREAS, the City of North Charleston (the "Municipality") is authorized by S.C. Code Section 5-7-30 and Title 6, Chapter 1, Article 3 to impose a business license tax on gross income;

WHEREAS, by Act No. 176 of 2020, known as the South Carolina Business License Tax Standardization Act and codified at S.C. Code Sections 6-1-400 to -420 (the "Standardization Act"), the South Carolina General Assembly imposed additional requirements and conditions on the administration of business license taxes;

WHEREAS, the Standardization Act requires that by December thirty-first of every odd year, each municipality levying a business license tax must adopt, by ordinance, the latest Standardized Business License Class Schedule as recommended by the Municipal Association of South Carolina (the "Association") and adopted by the Director of the Revenue and Fiscal Affairs Office;

WHEREAS, following the enactment of the Standardization Act, the Municipality enacted Ordinance No. 2021-080 on December 8, 2021 in order to comply with the requirements of the Standardization Act (the "Current Business License Ordinance");

WHEREAS, the City Council of the Municipality (the "Council") now wishes to amend the Current Business License Ordinance to adopt the latest Standardized Business License Class Schedule, as required by the Standardization Act, and to make other minor amendments as recommended by the Association;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of North Charleston, as follows:

SECTION 1. Amendments to Appendix A. Appendix A to the Current Business License Ordinance, the "Business License Rate Schedule," is hereby amended as follows:

- (a) Class 8.3 is hereby amended by deleting the NAICS Codes and replacing them with NAICS 517111, 517112, 517122 – Telephone Companies.
- (b) Class 8.6 is hereby amended and restated in its entirety to read as follows: "**8.6 NAICS Code Varies – Billiard or Pool Tables.** A business that offers the use of billiard or pool tables shall be subject to business license taxation under its natural class for all gross income of the business excluding the gross income attributable to the billiard or pool tables. In addition, the billiard or pool tables shall require their own separate business licenses pursuant to SC Code § 12-21-2746 and shall be subject to a license tax of \$5.00 per table measuring less than 3½ feet wide and 7 feet long, and \$12.50 per table longer than that."
- [(c) The NAICS codes corresponding to Classes 9.41 and 9.42 have been eliminated. Businesses that were previously classified into 9.41 or 9.42 shall be required to apply and pay for a business license in their natural class.

SECTION 2. Amendments to Appendix B. Appendix B to the Current Business License Ordinance, the “Business License Class Schedule,” is hereby amended as follows:

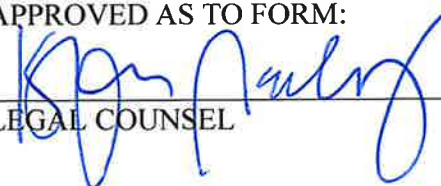
- (a) Classes 1 through 8 in Appendix B to the Current Business License Ordinance, the “Business License Class Schedule,” are hereby amended and restated as set forth on the attached Exhibit A.
- (b) Class 9 in Appendix B to the Current Business License Ordinance, the “Business License Class Schedule,” shall remain in full force and effect as set forth in the Current Business License Ordinance.
- [(c) The NAICS codes corresponding to Classes 9.41 and 9.42 have been eliminated. Businesses that were previously classified into 9.41 or 9.42 shall be required to apply and pay for a business license in their natural class.

SECTION 3. Repealer, Effective Date. All ordinances in conflict with this ordinance are hereby repealed. This ordinance shall be effective with respect to the business license year beginning on May 1, 2024.

THE WITHIN ORDINANCE SHALL BE EFFECTIVE IMMEDIATELY UPON ITS ADOPTION BY CITY COUNCIL.

Ordained in City Council this 14th day of December, in the Year of Our Lord, 2023, and in the 247th year of Independence of the United States of America.


R. KEITH SUMMEY, MAYOR

APPROVED AS TO FORM:

LEGAL COUNSEL

ATTEST:

COURTNAY HEYWARD, MUNICIPAL CLERK

AN ORDINANCE

TO ADOPT A REVISED BUSINESS LICENSE ORDINANCE IN ACCORDANCE WITH THE BUSINESS LICENSE STANDARDIZATION ACT (2020 ACT NO. 176)

WHEREAS, in September 2020 the South Carolina General Assembly adopted the South Carolina Business License Tax Standardization Act (2020 Act No. 176), now codified at S.C. Code Sections 6-1-400 to 6-1-420 (the “Act”);

WHEREAS, the Act requires all municipalities and counties that impose a business license tax to adopt a standard business license year of May 1 through April 30;

WHEREAS, the Act requires all municipalities and counties that impose a business license tax to utilize the Act’s standardized business licensing requirements and class schedule;

WHEREAS, the Act requires all municipalities and counties to update their business license class schedules every odd year based on the latest available IRS statistics; and

WHEREAS, in order to comply with the requirements of the Act, the City of North Charleston (the “Municipality”) has prepared the attached 2022 Business License Ordinance, which is incorporated herein by reference;

NOW, THEREFORE, be it ordained by the Mayor and Council of the City of North Charleston, South Carolina, that:

1. The attached 2022 Business License Ordinance is hereby adopted and shall become effective beginning with the business license period commencing on January 1, 2021.
2. Except as otherwise provided in Item 3 below, prior ordinances of the Municipality related to business licensing (Chapter 10.5, Article II) which are in effect at the time of this enactment are hereby repealed and replaced in their entirety with the 2022 Business License Ordinance; provided that any prior ordinances of the Municipality related to collections programs administered by the Municipal Association of South Carolina, including without limitation the Insurance Tax Collection Program (ITCP), the Brokers Tax Collection Program (BTCP), the Telecommunications Tax Collection Program (TTCP), and Setoff Debt Collection Program, shall remain in full force and effect in accordance with their terms except to the extent specifically amended by the 2022 Business License Ordinance.
3. The adoption of the 2022 Business License Ordinance and effective repeal of prior versions shall not apply to an offense committed under the Business License Ordinance before the effective date of this Ordinance. An offense committed before the effective date of this Ordinance is governed by that law as it existed on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of the 2022 Business License Ordinance if any element of the offense occurred before that date.

THE WITHIN ORDINANCE SHALL BE EFFECTIVE IMMEDIATELY UPON ITS RATIFICATION
CY CITY COUNCIL

Ordained in City Council this 9th day of December, 2021 in
the year of our Lord and in the 245th year of Independence
of the United States of America


R. KEITH SUMMEY, MAYOR

APPROVED AS TO FORM:


LEGAL COUNSEL

ATTEST:


SANDY L. BROWN, MUNICIPAL CLERK

2022 BUSINESS LICENSE ORDINANCE

CITY OF NORTH CHARLESTON

Section 1. License Required. Every person engaged or intending to engage in any business, calling, occupation, profession, or activity engaged in with the object of gain, benefit, or advantage, in whole or in part within the limits City of North Charleston, South Carolina, is required to pay an annual license tax for the privilege of doing business and obtain a business license as herein provided.

Section 2. Definitions. The following words, terms, and phrases, when used in this ordinance, shall have the meaning ascribed herein. Defined terms are not capitalized when used in this ordinance unless the context otherwise requires.

“*Business*” means any business, calling, occupation, profession, or activity engaged in with the object of gain, benefit, or advantage, either directly or indirectly.

“*Charitable Organization*” means an organization that is determined by the Internal Revenue Service to be exempt from Federal income taxes under 26 U.S.C. Section 501(c)(3), (4), (6), (7), (8), (10) or (19).

“*Charitable Purpose*” means a benevolent, philanthropic, patriotic, or eleemosynary purpose that does not result in personal gain to a sponsor, organizer, officer, director, trustee, or person with ultimate control of the organization.

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

“*Council*” means the City Council of the City of North Charleston.

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

“*Gross Income*” means the gross receipts or gross revenue of a business, received or accrued, for one calendar or fiscal year collected or to be collected from business done within the Municipality. If the licensee has a domicile within the Municipality, business done within the Municipality shall include all gross receipts or revenue received or accrued by such licensee. If the licensee does not have a domicile within the Municipality, business done within the Municipality shall include only gross receipts or revenue received or accrued within the Municipality. In all cases, if the licensee pays a business license tax to another county or municipality, then the licensee’s gross income for the purpose of computing the tax within the Municipality must be reduced by the amount of revenues or receipts taxed in the other county or municipality and fully reported to the Municipality. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds that are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross receipts or gross revenues for business license purposes may be verified by inspection of returns and reports filed with the Internal Revenue Service, the South Carolina Department of Revenue, the South Carolina Department of Insurance, or other government agencies. In calculating gross income for certain businesses, the following rules shall apply:

- A. Gross income for agents shall be calculated on gross commissions received or retained, unless otherwise specified. If commissions are divided with other brokers or agents, then only the amount retained by the broker or agent is considered gross income.
- B. Except as specifically required by S.C. Code § 38-7-20, gross income for insurance companies shall be calculated on gross premiums written.
- C. Gross income for manufacturers of goods or materials with a location in the Municipality shall be calculated on the lesser of (i) gross revenues or receipts received or accrued from business done at

the location, (ii) the amount of income allocated and apportioned to that location by the business for purposes of the business's state income tax return, or (iii) the amount of expenses attributable to the location as a cost center of the business. Licensees reporting gross income under this provision shall have the burden to establish the amount and method of calculation by satisfactory records and proof. Manufacturers include those taxpayers reporting a manufacturing principal business activity code on their federal income tax returns.

"License Official" means a person designated to administer this ordinance. Notwithstanding the designation of a primary license official, the Municipality may designate one or more alternate license officials to administer particular types of business licenses.

"Licensee" means the business, the person applying for the license on behalf of the business, an agent or legal representative of the business, a person who receives any part of the net profit of the business, or a person who owns or exercises control of the business.

"Municipality" means the City of North Charleston, South Carolina.

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

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

Section 3. Purpose and Duration. The business license required by this ordinance is for the purpose of providing such regulation as may be required for the business subject thereto and for the purpose of raising revenue for the general fund through a privilege tax. The license year ending on April 30, 2022, shall commence on January 1, 2021 and shall run for a 16-month period. Thereafter, the license periods shall be established as follows. Except as set forth below for business licenses issued to contractors with respect to specific construction projects, each yearly license shall be issued for the twelve-month period of May 1 to April 30. A business license issued for a construction contract may, at the request of the licensee, be stated to expire at the completion of the construction project; *provided*, any such business license may require that the licensee file, by each April 30 during the continuation of the construction project, a statement of compliance, including but not limited to a revised estimate of the value of the contract. If any revised estimate of the final value of such project exceeds the amount for which the business license was issued, the licensee shall be required to pay a license fee at the then-prevailing rate on the excess amount. The provisions of this ordinance and the rates herein shall remain in effect from year to year as amended by the Council.

Section 4. Business License Tax, Refund.

- A. The required business license tax shall be paid for each business subject hereto according to the applicable rate classification on or before the due date of the 30th day of April in each year, except for those businesses in Rate Class 8 for which a different due date is specified. Late payments shall be subject to penalties as set forth in Section 12 hereof, except that admitted insurance companies may pay before June 1 without penalty.
- B. A separate license shall be required for each place of business and for each classification or business conducted at one place. If gross income cannot be separated for classifications at one location, the business license tax shall be computed on the combined gross income for the classification requiring the highest rate. The business license tax must be computed based on the licensee's gross income for the calendar year preceding the due date, for the licensee's twelve-

month fiscal year preceding the due date, or on a twelve-month projected income based on the monthly average for a business in operation for less than one year. The business license tax for a new business must be computed on the estimated probable gross income for the balance of the license year. A business license related to construction contract projects may be issued on a per-project basis, at the option of the taxpayer. No refund shall be made for a business that is discontinued.

- C. A licensee that submits a payment greater than the amount owed may request a refund. To be considered, a refund request must be submitted in writing to the Municipality before the June 1 immediately following the April 30 on which the payment was due and must be supported by adequate documentation supporting the refund request. The Municipality shall approve or deny the refund request, and if approved shall issue the refund to the business, within thirty days after receipt of the request.

Section 5. Registration Required.

- A. The owner, agent, or legal representative of every business subject to this ordinance, whether listed in the classification index or not, shall register the business and make application for a business license on or before the due date of each year; *provided*, a new business shall be required to have a business license prior to operation within the Municipality. A license for a bar (NAICS 722410) must be issued in the name of the individual who has been issued the corresponding state alcohol, beer, or wine permit or license and will have actual control and management of the business.
- B. Application shall be on the then-current standard business license application as established and provided by the Director of the South Carolina Revenue and Fiscal Affairs Office and shall be accompanied by all information about the applicant, the licensee, and the business deemed appropriate to carry out the purpose of this ordinance by the license official. Applicants may be required to submit copies of portions of state and federal income tax returns reflecting gross receipts and gross revenue figures.
- C. The applicant shall certify under oath that the information given in the application is true, that the gross income is accurately reported (or estimated for a new business) without any unauthorized deductions, and that all assessments, personal property taxes on business property, and other monies due and payable to the Municipality have been paid.
- D. The Municipality shall allow application, reporting, calculation, and payment of business license taxes through the business license tax portal hosted and managed by the South Carolina Revenue and Fiscal Affairs Office, subject to the availability and capability thereof. Any limitations in portal availability or capability do not relieve the applicant or Licensee from existing business license or business license tax obligations.
- E. No business license shall be issued until the applicant first submits documents necessary to establish compliance with the Municipality's Zoning Ordinance, Building Code, Electrical Code, Mechanical Code, Plumbing Code, Roofing Code and other regulatory Codes as adopted by the Municipality's Council.

Section 5.1. Firework Sales

Any establishment desiring to sell fireworks must first acquire the Annual State Board of Pyrotechnic Safety License and must meet all regulations pursuant to the provisions of Regulation 19-405, S.C. Code

of Laws for 1976. Prior approval of the City of North Charleston Fire Department is required as governed by regulations of the state fire marshal pursuant to the 1976 Code, Chapter 9 of Title 23, and Chapter 43 of Title 39, governing the transportation and use of pyrotechnics.

Section 5.2. Hawkers and peddlers

Any person desiring to peddle goods anywhere in the city must first acquire the state hawkers and peddlers license and must meet all regulations pursuant to the provisions of Section 40-41-10, S.C. Code of Laws of 1976 and are also subject to being in compliance with the zoning and building codes.

Section 5.3. Transient merchants – Site permitting, inspections and operation.

a) Site permit required.

- (1) No transient merchant may trespass. In addition, no transient merchant may operate from a privately owned site which has not been permitted as a "transient merchant host location."
- (2) No private property owner within the City of North Charleston may knowingly permit a transient merchant to operate from property which has not been permitted as a "transient merchant host location."

(b) *Site permit application.* The owner of commercially or industrially zoned private property within the City of North Charleston may make application to the city for a parcel to be approved as a "transient merchant host location." Such application shall be made on a form provided by the city's business license division.

Submission of this application shall be accompanied by payment of an application fee of fifteen dollars (\$15.00). Where an owner of property owns multiple parcels within the city each parcel at which the owner desires to allow transient merchants must be the subject of a separate application and permit.

(c) *Approval of transient merchant host location permits.* Applications for a transient merchant host location permit shall be approved if the application complies with all zoning, business license, fire, building, and other ordinance requirements applicable to the subject location as well as all other requirements of local, state, and federal rules, regulations and statutes. Appeals from denials of a transient merchant host location permit shall be handled through the due process associated with the nature of the requirement the city contends led to denial (e.g. if an application were denied due to violation of a zoning requirement the appeal would be through the board of zoning appeals; if the denial were due to a violation of the business license ordinance then the appeal would be through the business license appeals board, etc.).

Applications shall be deemed denied if no response is provided by the city within fifteen (15) business days of the application and any subsequent appeal shall be conducted through the business license appeals process.

(d) Transient merchant set-up inspections.

- (1) No transient merchant shall conduct operations from a site, and no landowner may knowingly permit a transient merchant to operate from a site, unless the landowner has first properly applied for a transient merchant set-up inspection.
- (2) Application for a transient merchant set-up inspection must be made at least twenty-four (24) hours prior to the proposed transient merchant operation.
- (3) Such application shall be made on a form provided by the city's business license division. Submission of this inspection request shall be accompanied by payment of an administrative fee of ten dollars (\$10.00).

- (4) No transient merchant shall conduct operations from a site, and no landowner may permit a transient merchant to operate from a site, if informed by the city that the proposed set-up fails to comply with the ordinances of the City of North Charleston or if the actual set-up differs from that described within the inspection request. The inspection shall be deemed "passed" unless the transient merchant or land owner is informed by the city that the site has failed inspection.
- (5) No proposed transient merchant set-up location may be approved unless:
 - a. The proposed placement of the transient merchant on the site is at least seventy-five (75) feet away from the nearest fuel pump; provided, however that if state statute/regulation or an authorized state official specifically promulgates or authorizes some other spacing requirement then the state space requirement shall govern; and
 - b. Adequate space and parking exists. For purposes of this subsection, "adequate space and parking" means that:
 - 1. The proposed set-up location has sufficient parking and land area available such that, in addition to the surface area dedicated to the operation of the transient merchant, five (5) standard sized parking spaces are available for use by customers of the transient merchant; and
 - 2. Sufficient land area and parking remains available on the host site such that any fixed location business operating or licensed to operate from the host site is still able to satisfy the minimum parking and site layout requirements established by North Charleston's ordinances even after subtraction of the parking and operations surface area described in the preceding subsection.
 - c. The vendor, any vending equipment and/or vehicle, and the proposed site are in compliance with all local, state, and federal rules, regulations and statutes.
- (e) *Hours of operation.* No transient merchant vending shall occur between the hours of 9:00 p.m. and 6:00 a.m.

Section 5.4. Miscellaneous sales (antique malls, flea markets or leased space sales)

Any person leasing space for the sale of merchandise from an established business shall be required to have a business license, whether or not the sales are made through a central cash register. Furthermore, it shall be the responsibility of the lessor of the spaces to advise the business license office of persons leasing space.

Section 6. Deductions, Exemptions, and Charitable Organizations.

- A. No deductions from gross income shall be made except income earned outside of the Municipality on which a license tax is paid by the business to some other municipality or county and fully reported to the Municipality, taxes collected for a governmental entity, or income which cannot be included for computation of the tax pursuant to state or federal law. Properly apportioned income from business in interstate commerce shall be included in the calculation of gross income and is not exempted. The applicant shall have the burden to establish the right to exempt income by satisfactory records and proof.
- B. No person shall be exempt from the requirements of the ordinance by reason of the lack of an established place of business within the Municipality, unless exempted by state or federal law. The license official shall determine the appropriate classification for each business in accordance with the latest issue of NAICS. No person shall be exempt from this ordinance by reason of the payment

of any other tax, unless exempted by state law, and no person shall be relieved of liability for payment of any other tax or fee by reason of application of this ordinance.

- C. Wholesalers are exempt from business license taxes unless they maintain warehouses or distribution establishments within the Municipality. A wholesale transaction involves a sale to an individual who will resell the goods and includes delivery of the goods to the reseller. It does not include a sale of goods to a user or consumer.
- D. A charitable organization shall be exempt from the business license tax on its gross income unless it is deemed a business subject to a business license tax on all or part of its gross income as provided in this section. A charitable organization, or any affiliate of a charitable organization, that reports income from for-profit activities or unrelated business income for federal income tax purposes to the Internal Revenue Service shall be deemed a business subject to a business license tax on the part of its gross income from such for-profit activities or unrelated business income.
- E. A charitable organization shall be deemed a business subject to a business license tax on its total gross income if (1) any net proceeds of operation, after necessary expenses of operation, inure to the benefit of any individual or any entity that is not itself a charitable organization as defined in this ordinance, or (2) any net proceeds of operation, after necessary expenses of operation, are used for a purpose other than a charitable purpose as defined in this ordinance. Excess benefits or compensation in any form beyond fair market value to a sponsor, organizer, officer, director, trustee, or person with ultimate control of the organization shall not be deemed a necessary expense of operation.

Section 7. False Application Unlawful. It shall be unlawful for any person subject to the provisions of this ordinance to make a false application for a business license or to give or file, or direct the giving or filing of, any false information with respect to the license or tax required by this ordinance.

Section 8. Display and Transfer.

- A. All persons shall display the license issued to them on the original form provided by the license official in a conspicuous place in the business establishment at the address shown on the license. A transient or non-resident shall carry the license upon his person or in a vehicle used in the business readily available for inspection by any authorized agent of the Municipality.
- B. A change of address must be reported to the license official within ten (10) days after removal of the business to a new location and the license will be valid at the new address upon written notification by the license official and compliance with zoning and building codes. Failure to obtain the approval of the license official for a change of address shall invalidate the license and subject the licensee to prosecution for doing business without a license. A business license shall not be transferable, and a transfer of controlling interest shall be considered a termination of the old business and the establishment of a new business requiring a new business license, based on old business income.

Section 9. Administration of Ordinance. The license official shall administer the provisions of this ordinance, collect business license taxes, issue licenses, make or initiate investigations and audits to ensure compliance, initiate denial or suspension and revocation procedures, assist in prosecution of violators, produce forms, undertake reasonable procedures relating to the administration of this ordinance, and perform such other duties as may be duly assigned.

Section 10. Inspection and Audits.

- A. For the purpose of enforcing the provisions of this ordinance, the license official or other authorized agent of the Municipality is empowered to enter upon the premises of any person subject to this ordinance to make inspections and to examine and audit books and records. It shall be unlawful for any such person to fail or refuse to make available the necessary books and records. In the event an audit or inspection reveals that the licensee has filed false information, the costs of the audit shall be added to the correct business license tax and late penalties in addition to other penalties provided herein. Each day of failure to pay the proper amount of business license tax shall constitute a separate offense.
- B. The license official shall have the authority to make inspections and conduct audits of businesses to ensure compliance with the ordinance. Financial information obtained by inspections and audits shall not be deemed public records, and the license official shall not release the amount of business license taxes paid or the reported gross income of any person by name without written permission of the licensee, except as authorized by this ordinance, state or federal law, or proper judicial order. Statistics compiled by classifications are public records.

Section 11. Assessments, Payment under Protest, Appeal.

- A. Assessments, payments under protest, and appeals of assessment shall be allowed and conducted by the Municipality pursuant to the provisions of S.C. Code § 6-1-410, as amended. In preparing an assessment, the license official may examine such records of the business or any other available records as may be appropriate and conduct such investigations and statistical surveys as the license official may deem appropriate to assess a business license tax and penalties as provided herein.
- B. The license official shall establish a uniform local procedure consistent with S.C. Code § 6-1-410 for hearing an application for adjustment of assessment and issuing a notice of final assessment.

Section 12. Delinquent License Taxes, Partial Payment.

- A. For non-payment of all or any part of the correct business license tax, the license official shall impose and collect a late penalty of five (5%) percent of the unpaid tax for each month or portion thereof after the due date until paid or the penalty has reached 100%. Penalties shall not be waived. If any business license tax remains unpaid for sixty (60) days after its due date, the license official may pursue other remedies as allowed by law.
- B. Partial payment may be accepted by the license official to toll imposition of penalties on the portion paid; *provided*, however, no business license shall be issued or renewed until the full amount of the tax due, with penalties, has been paid.

Section 13. Notices. The license official may, but shall not be required to, mail written notices that business license taxes are due. If notices are not mailed, there shall be published a notice of the due date in a newspaper of general circulation within the Municipality three (3) times prior to the due date in each year. Failure to receive notice shall not constitute a defense to prosecution for failure to pay the tax due or grounds for waiver of penalties.

Section 14. Denial of License. The license official may deny a license to an applicant when the license official determines:

- A. The application is incomplete or contains a misrepresentation, false or misleading statement, or evasion or suppression of a material fact;

- B. The activity for which a license is sought is unlawful or constitutes a public nuisance *per se* or *per accidens*;
- C. The applicant, licensee, prior licensee, or the person in control of the business has been convicted within the previous ten years of an offense under a law or ordinance regulating business, a crime involving dishonest conduct or moral turpitude related to a business or a subject of a business, or an unlawful sale of merchandise or prohibited goods;
- D. The applicant, licensee, prior licensee, or the person in control of the business has engaged in an unlawful activity or nuisance related to the business or to a similar business in the Municipality or in another jurisdiction;
- E. The applicant, licensee, prior licensee, or the person in control of the business is delinquent in the payment to the Municipality of any tax or fee;
- F. A licensee has actual knowledge or notice, or based on the circumstances reasonably should have knowledge or notice, that any person or employee of the licensee has committed a crime of moral turpitude on the business premises, or has permitted any person or employee of the licensee to engage in the unlawful sale of merchandise or prohibited goods on the business premises and has not taken remedial measures necessary to correct such activity; or
- G. The license for the business or for a similar business of the licensee in the Municipality or another jurisdiction has been denied, suspended, or revoked in the previous license year.

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

Section 15. Suspension or Revocation of License. When the license official determines:

- A. A license has been mistakenly or improperly issued or issued contrary to law;
- B. A licensee has breached any condition upon which the license was issued or has failed to comply with the provisions of this ordinance;
- C. A licensee has obtained a license through a fraud, misrepresentation, a false or misleading statement, or evasion or suppression of a material fact in the license application;
- D. A licensee has been convicted within the previous ten years of an offense under a law or ordinance regulating business, a crime involving dishonest conduct or moral turpitude related to a business or a subject of a business, or an unlawful sale of merchandise or prohibited goods;
- E. A licensee has engaged in an unlawful activity or nuisance related to the business; or
- F. A licensee is delinquent in the payment to the Municipality of any tax or fee,

the license official may give written notice to the licensee or the person in control of the business within the Municipality by personal service or mail that the license is suspended pending a single hearing before the Council or its designated/appointed Appeals Board for the purpose of determining whether the suspension should be upheld and the license should be revoked.

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

Section 16. Appeals to Council or its designee (Business License/User Fee Appeals Board).

- A. Except with respect to appeals of assessments under Section 11 hereof, which are governed by S.C. Code § 6-1-410, any person aggrieved by a determination, denial, or suspension and proposed revocation of a business license by the license official may appeal the decision to the Business License/User Fee Appeals Board by written request stating the reasons for appeal, filed with the license official within thirty (30) days after service by mail or personal service of the notice of determination, denial, or suspension and proposed revocation.
- B. A hearing on an appeal from a license denial or other determination of the license official and a hearing on a suspension and proposed revocation shall be held by the Appeals Board within thirty (30) business days after receipt of a request for appeal or service of a notice of suspension and proposed revocation. The hearing shall be held upon written notice at a hearing to be scheduled by the Appeals Board. The hearing may be continued to another date by agreement of all parties. At the hearing, all parties shall have the right to be represented by counsel, to present testimony and evidence, and to cross-examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party so requesting. The rules of evidence and procedure prescribed by the Appeals Board shall govern the hearing. Following the hearing, the Appeals Board, by majority vote of its members present, shall render a written decision based on findings of fact and conclusions on application of the standards herein. The written decision shall be served, by personal service or by mail, upon all parties or their representatives and shall constitute the final decision of the Municipality.
- C. Timely appeal of a decision of the Appeals Board does not effectuate a stay of that decision. The decision of the Appeals Board shall be binding and enforceable unless overturned by an applicable appellate court after a due and timely appeal.

Section 17. Consent, franchise, or license required for use of streets.

- A. It shall be unlawful for any person to construct, install, maintain, or operate in, on, above, or under any street or public place under control of the Municipality any line, pipe, cable, pole, structure, or facility for utilities, communications, cablevision, or other purposes without a consent agreement or franchise agreement issued by the Council by ordinance that prescribes the term, fees, and conditions for use.
- B. The annual fee for use of streets or public places authorized by a consent agreement or franchise agreement shall be set by the ordinance approving the agreement and shall be consistent with limits set by state law. Existing franchise agreements shall continue in effect until expiration dates in the agreements. Franchise and consent fees shall not be in lieu of or be credited against business license taxes unless specifically provided by the franchise or consent agreement.

Section 18. Confidentiality. Except in accordance with proper judicial order or as otherwise provided by law, no official or employee of the Municipality may divulge or make known in any manner the amount of income or any financial particulars set forth or disclosed in any report or return required under this ordinance. Nothing in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns. Any license data may be shared with other public officials or employees in the performance of their duties, whether or not those duties relate to enforcement of this ordinance.

Section 19. Violations. Any person violating any provision of this ordinance shall be deemed guilty of an offense and shall be subject to a fine of up to \$500.00 or imprisonment for not more than thirty (30) days or both, upon conviction. Each day of violation shall be considered a separate offense. Punishment for violation shall not relieve the offender of liability for delinquent taxes, penalties, and costs provided for in this ordinance.

Section 20. Severability. A determination that any portion of this ordinance is invalid or unenforceable shall not affect the remaining portions. To the extent of any conflict between the provisions of this ordinance and the provisions of the South Carolina Business License Tax Standardization Act, as codified at S.C. Code §§ 6-1-400 *et seq.*, the standardization act shall control.

Section 21. Classification and Rates.

- A. The business license tax for each class of businesses subject to this ordinance shall be computed in accordance with the current business license rate schedule, designated as Appendix A to this ordinance, which may be amended from time to time by the Council.
- B. The current business license class schedule is attached hereto as Appendix B. Hereafter, no later than December 31 of each odd year, the Municipality shall adopt, by ordinance, the latest standardized business license class schedule as recommended by the Municipal Association of South Carolina and adopted by the Director of the South Carolina Revenue and Fiscal Affairs Office. Upon adoption by the Municipality, the revised business license class schedule shall then be appended to this ordinance as a replacement Appendix B.
- C. The classifications included in each rate class are listed with NAICS codes, by sector, sub-sector, group, or industry. The business license class schedule (Appendix B) is a tool for classification and not a limitation on businesses subject to a business license tax. The classification in the most recent version of the business license class schedule adopted by the Council that most specifically identifies the subject business shall be applied to the business. The license official shall have the authority to make the determination of the classification most specifically applicable to a subject business.
- D. A copy of the class schedule and rate schedule shall be filed in the office of the Municipal Clerk.

On November 23, 2021 City Council voted to approve the Ordinance on the first reading and move it to a final reading.

CLASS 8 RATES

Each NAICS number designates a separate subclassification. The businesses in this section are treated as separate and individual subclasses due to provisions of state law, regulatory requirements, service burdens, tax equalization considerations, and other factors that are deemed sufficient to require individually determined rates. In accordance with state law, the Municipality also may provide for reasonable subclassifications for rates, described by an NAICS sector, subsector, or industry, that are based on particularized considerations as needed for economic stimulus or for the enhanced or disproportionate demands on municipal services or infrastructure.

Non-resident rates do not apply except where indicated.

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

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

Minimum on first \$2,000	\$ 55.00 PLUS
Each additional 1,000.....	\$ 1.60

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

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

Sub-contractors shall be licensed on the same basis as general or prime contractors for the same job. No deductions shall be made by a general or prime contractor for value of work performed by a sub-contractor. General or prime contractors will be responsible and will pay for the business license of any sub-contractor doing work on the project if the sub-contractor is found to be without a Municipality business license.

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

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

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

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

8.3 NAICS 517311, 517312 – Telephone Companies.

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

Carolina. The Municipality has approved participation in the collections program by separate ordinance (the “Telecommunications Collections Ordinance”). The rates, terms, conditions, dates, penalties, appeals process, and other details of the business license applicable to retail telecommunications services are set forth in the Telecommunications Collections Ordinance

8.4 NAICS 5241 and 5242 – Insurance Companies and Brokers:

Independent agents, brokers, and their employees are subject to a business license tax based on their natural class. With respect to insurers subject to license fees and taxes under Chapter 7 of Title 38 and to brokers under Chapter 45 of Title 38, the Municipality participates in a collections program administered by the Municipal Association of South Carolina. The Municipality has approved participation in the collections program by separate ordinance (the “Insurers and Brokers Collections Ordinance”). The rates, terms, conditions, dates, penalties, appeals process, and other details of the business license applicable to insurers and brokers are set forth in the Insurers and Brokers Collections Ordinance.

8.51 NAICS 713120 – Amusement Machines, coin operated (except gambling). Music machines, juke boxes, kiddie rides, video games, pin tables with levers, and other amusement machines with or without free play feature licensed by SC Department of Revenue pursuant to S.C. Code §12-21-2720(A)(1) and (A)(2) [Type I and Type II].

For operation of all machines (not on gross income), pursuant to S.C. Code §12-21-2746:

Per Machine	\$12.50 PLUS
Business license	\$12.50

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

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

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

Per Machine	\$180.00 PLUS
Business license	\$12.50

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

8.6 NAICS 713990 – Billiard or Pool Rooms, all types. (A) Pursuant to SC Code § 12-21-2746, license tax of \$5.00 per table measuring less than 3½ feet wide and 7 feet long, and \$12.50 per table longer than that; PLUS, (B) with respect to gross income from the entire business in addition to the tax authorized by state law for each table per the rate for NAICS subsector 71 in Appendix A and the class schedule in Appendix B.

MUNICIPAL ASSOCIATION OF SOUTH CAROLINA
BUSINESS LICENSE STANDARDIZATION CLASS NINE SUPPLEMENT

Appendix A of the Association's Model Business License Ordinance includes a list of mandatory or recommended Class 8 rates. Under S.C. Code Section 6-1-400(G)(2), municipalities "may provide for additional reasonable subclassifications ... based upon particularized considerations as needed for economic stimulus or the enhanced or disproportionate demands by specific business subclassifications on taxing jurisdiction services or infrastructure."

The Municipality wishes to adopt the following Class 9 subclasses.

9.1 NAICS 423930 – Junk or Scrap Dealers [Non-resident rates apply].

Minimum on first \$2,000\$55 PLUS
Per \$1,000, or fraction, over \$2,000\$1.90

9.2 NAICS 522298 – Pawn Brokers [All Types].

Minimum on first \$2,000\$55 PLUS
Per \$1,000, or fraction, over \$2,000\$1.60

9.3 NAICS 4411, 4412 – Automotive, Motor Vehicles, Boats, Farm Machinery or Retail.

(except auto supply stores - see 4413)

Minimum on first \$2,000\$40 PLUS
Per \$1,000, or fraction, over \$2,000\$1.50

One sales lot not more than 400 feet from the main showroom may be operated under this license provided that proceeds from sales at the lot are included in gross receipts at the main office when both are operated under the same name and ownership.

Gross receipts for this classification shall include value of trade-ins. Dealer transfers or internal repairs on resale items shall not be included in gross income.

NAICS 454390 – Peddlers, Solicitors, Canvassers, Door-To-Door Sales.

Direct retail sales of merchandise. [Non-resident rates apply]

9.41 Regular activities [more than two sale periods of more than three days each per year]

Minimum on first \$2,000\$55 PLUS
Per \$1,000, or fraction, over \$2,000\$1.60

9.42 Seasonal activities [not more than two sale periods of not more than three days each year, separate license required for each sale period]

Minimum on first \$2,000\$55 PLUS
Per \$1,000, or fraction, over \$2,000\$1.60

Applicants for a license to sell on private property must provide written authorization from the property owner to use the intended location.

9.5 NAICS 713290 – Bingo halls, parlors.

Minimum on first \$2,000\$45 PLUS

Per \$1,000, or fraction, over \$2,000\$2.00

9.6 NAICS 711190 – Carnivals and Circuses.

Minimum on first \$2,000\$70 PLUS

Per \$1,000, or fraction, over \$2,000\$1.60

9.7 NAICS 722410 – Drinking Places, bars, lounges, cabarets (Alcoholic beverages consumed on premises).

Minimum on first \$2,000\$55 PLUS

Per \$1,000, or fraction, over \$2,000\$1.60

License must be issued in the name of the individual who has been issued a State alcohol, beer or wine permit or license and will have actual control and management of the business

9.9 NAICS 485310 – Taxi Service.

Minimum on first \$2,000\$45 PLUS

Per \$1,000, or fraction, over \$2,000\$2.10

Proof of insurance and \$5.00 decal required

9.91 NAICS 621491– HMO.

Minimum on first \$2,000\$60 PLUS

Per \$1,000, or fraction, over \$2,000\$1.60

9.92 NAICS 5112– Software Publisher.

Minimum on first \$2,000\$55 PLUS

Per \$1,000, or fraction, over \$2,000\$.30

9.93 NAICS 5415– Computer Programming Service.

Minimum on first \$2,000\$55 PLUS

Per \$1,000, or fraction, over \$2,000\$.30

**NORTH CHARLESTON CITY COUNCIL
AGENDA ITEM**

Meeting of December 9 2021

DATE: October 25, 2021

ITEM TITLE: Ordinance – Final Reading
An Ordinance to Adopt a Revised Business License Ordinance in Accordance with the Business License Standardization Act (2020 Act No. 176)

SUBMITTED BY: Jessica Jarrell, Budget Manager and Supervisor of Business License Operations

CONTACT PERSON: E. Warren Newton, Director of Administration and Finance

SUMMARY EXPLANATION

The SC Legislature passed the 2020 ACT No. 176, known as the SC Business License Tax Standardization Act signed into law in September 2020, which requires every local government with a business license tax to administer the business license tax uniformly across the State of SC. Major changes are required, the most significant being that each local government must adjust its current business license year to a new license year which runs May 1 through April 30. Currently, the City’s business license year starts January 1 and ends December 31 which will require the current business license year to be extended for a 16-month period to end April 30, 2022. The other major change requires each business to be assigned to the correct, state-mandated rate class using the 2021 Class Schedule and the rebalancing of the business license tax rates to ensure revenue neutrality during the 2022 business license cycle. Attached you will find the new business license ordinance which must be adopted with the correct rate classes and new tax rates per class.

STAFF RECOMMENDATION:

Staff agrees with the recommendation to adopt the new business license ordinance.

BOARD, COMMISSION, RECOMMENDATION:

COMMITTEE RECOMMENDATIONS:

On November 18, 2021 the Finance Committee voted to recommend approval. (11-0-0)

COUNCIL ACTION:

EXHIBITS

Resolution Ordinance Contract Minutes Plan/Map Transfer of Funds Other