

AN ORDINANCE FOR THE IMPOSITION OF A BUSINESS PERMIT FEE

WHEREAS, Section 58.1-3703 of the Code of Virginia, 1950, as may be amended from time to time, allows a local governing body to charge a fee on businesses, trades, professions, occupations, and callings and upon the persons, firms, and corporations engaged therein within the locality; and,

WHEREAS, the governing body desires to adopt an ordinance imposing such a fee, which ordinance shall become effective on January 1, 2015;

NOW, THEREFORE, BE IT ORDAINED that Article XI, Business, Professional, Occupational License, of the Charles City County Code is hereby amended by the addition of the following Sec. 23-273 through 23-279:

Sec. 23-273. - Title.

This article shall be known as a "Business Permit Fee for Charles City County, Virginia," and may be so cited. The purpose of this Article is to impose a license fee on all persons engaged in the businesses, professions, occupations and trades conducted in the County, to require a license to be obtained therefor, provide for the collection thereof, and to impose penalties for failure to comply with the provisions hereof.

Sec. 23-274. - Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Affiliated group means:

- 1) One or more chains of corporations subject to inclusion connected through stock ownership with a common parent corporation which is a corporation subject to inclusion if:
 - a) Stock possessing at least eighty (80) percent of the voting power of all classes of stock and at least eighty (80) percent of each class of the nonvoting stock of each of the corporations subject to inclusion, except the common parent corporation, is owned directly by one or more of the other corporations subject to inclusion; and,
 - b) The common parent corporation directly owns stock possessing at least eighty (80) percent of the voting power of all classes of stock and at least eighty (80) percent of each class of the nonvoting stock of at least one of the other subject to inclusion corporations. As used in this subdivision, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends; the phrase "corporation subject to inclusion" means any corporation within the affiliated group irrespective of the

state or country of its incorporation; and the term "receipts" includes gross receipts and gross income.

- 2) Two (2) or more corporations if five (5) or fewer persons who are individuals, estates or trusts own stock possessing:
 - a) At least eighty (80) percent of the total combined voting power of all classes of stock entitled to vote or at least eighty (80) percent of the total value of shares of all classes of the stock of each corporation; and,
 - b) More than fifty (50) percent of the total combined voting power of all classes of stock entitled to vote or more than fifty (50) percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

When one or more of the corporations subject to inclusion, including the common parent corporation, is a nonstock corporation, the term "stock" as used in this subdivision shall refer to the nonstock corporation membership or membership voting rights, as is appropriate to the context.

Business means a course of dealing which requires the time, attention and labor of the person so engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of dealing, rather than an irregular or isolated transaction. A person may be engaged in more than one business. The following acts shall create a rebuttable presumption that a person is engaged in a business: (i) advertising or otherwise holding oneself out to the public as being engaged in a particular business; or (ii) filing tax returns, schedules and documents that are required only of persons engaged in a trade or business.

Definite place of business means an office or a location at which occurs a regular and continuous course of dealing for thirty (30) consecutive days or more. A definite place of business for a person engaged in business may include a location leased or otherwise obtained from another person on a temporary or seasonal basis and real property leased to another. A person's residence shall be deemed to be a definite place of business if there is no definite place of business maintained elsewhere and the person is not subject to licensure as a peddler or itinerant merchant.

Financial services means the buying, selling, handling, managing, investing and providing of advice regarding money, credit, securities or other investments.

License year means the calendar year for which the license is issued for the privilege of engaging in business.

Peddler at wholesale means any person, firm or corporation, who or which sells or offers to sell goods, wares or merchandise to licensed dealers, other than at a definite place of business operated by the seller, and at the time of such sale or exposure for sale delivers, or offers to

deliver, the goods, wares or merchandise to the buyer. Any delivery made on the day of sale shall be construed as a delivery at the time of sale.

Person means individual, firm, corporation, copartnership, partnership, company, association or joint stock association. Such term shall include any trustee, receiver, assignee or personal representative thereof carrying on or continuing a business, profession, trade or occupation, but shall not include a court appointed trustee, receiver or personal representative, in the liquidation of assets for immediate distribution, or sergeant or sheriff or any deputy, selling under authority of process of writ of a court of justice. Such term shall not include a volunteer fire department, a volunteer rescue squad or a nonprofit organization operating a community center, swimming pool, tennis court or other educational, cultural, recreational, and athletic facilities and facilities for the welfare of the residents of the area.

Professional services means services performed by architects, attorneys-at-law, certified public accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities) and such occupations, and no others, as the department of taxation may list in the BPOL guidelines promulgated pursuant to Section 58.1-3701 of the Code of Virginia, 1950, as amended. The word "profession" implies attainments in professional knowledge as distinguished from mere skill, and the application of knowledge to uses for others rather than for personal profit.

Real estate services means providing a service with respect to the purchase, sale, lease, rental or appraisal of real property.

Wholesale merchant means any person who sells to others for resale or sells at wholesale to institutional, commercial or industrial users.

Sec. 23-275. - License requirement.

Every person shall apply annually for a license for each business or profession when engaging in a business or profession in the County if: (i) the person has a definite place of business in the County; (ii) there is no definite place of business anywhere and the person resides in the County; or (iii) there is no definite place of business in the County but the person operates amusement machines or is classified as an itinerant merchant, peddler, contractor subject to Section 58.1-3715 of the Code of Virginia, 1950, as amended, operates a carnival or circus or is a public service corporation. A separate license shall be required for each definite place of business and for each business. A person engaged in two (2) or more businesses or professions carried on at the same place of business may elect to obtain one (1) license for all such businesses and professions if all of the following criteria are satisfied: (i) each business or profession is subject to licensure at the location and has satisfied any requirements imposed by state law or other provisions of the ordinances of the County; (ii) all of the businesses or professions are subject to the same license fee.

Sec. 23-276. - Due dates and penalties.

- 1) Each business subject to a license fee shall apply for said license prior to beginning business, or no later than January 31 of the license year if the business had been issued a license for the preceding year. The application shall be on forms prescribed by the Commissioner of the Revenue.
- 2) A fee of thirty dollars (\$30.00) shall be paid with the application.
- 3) A penalty of ten (10) percent of the fee shall be imposed upon the failure to file an application.
- 4) Under the authority of Section 15.1-505 of the Code of Virginia, 1950, as amended, the County hereby imposes the penalty of a Class 3 misdemeanor and a fine of not more than five hundred dollars (\$500.00) for operating a business without a business license in the County. If the failure to file or pay was not the fault of the feepayer, the penalty shall not be imposed, or if imposed, shall be abated by the Commissioner of the Revenue. In order to demonstrate lack of fault, the feepayer must show that he acted responsibly and that the failure was due to events beyond his control.

"Acted responsibly" means that: (i) the feepayer exercised the level of reasonable care that a prudent person would exercise under the circumstances in determining the filing obligations for the business; and (ii) the feepayer undertook significant steps to avoid or mitigate the failure, such as attempting to prevent a foreseeable impediment, acting to remove an impediment once it occurred, and promptly rectifying a failure once the impediment was removed or the failure discovered.

"Events beyond the feepayer's control" include, but are not limited to, the unavailability of records due to fire or other casualty; the unavoidable absence (e.g., due to death or serious illness) of the person with the sole responsibility for fee compliance; or the feepayer's reasonable reliance in good faith upon erroneous written information from the commissioner of the revenue who was aware of the relevant facts relating to the feepayer's business when he provided the erroneous information.

Sec. 23-277. - Rate of license fee.

The fee for the issuance of a business license shall be thirty dollars (\$30.00) each year. No business license under this article shall be issued until the applicant has produced satisfactory evidence that all delinquent business license fees, personal property, meals, transient occupancy, severance and admissions (if applicable) taxes owed by the business to the County have been paid which have been properly assessed against the applicant by the County.

Sec. 23-278. - Exemptions.

No license fee shall be required for:

- 1) Any public service corporation except as provided in Section 58.1-3731 which authorizes no fee greater than one-half of one percent (0.005) of the gross receipts of such companies accruing from sales to the ultimate consumer in the County or as permitted by other provisions of law;
- 2) Selling farm or domestic products or nursery products, ornamental or otherwise, or for the planting of nursery products, as an incident to the sale thereof, outside the regular market houses and sheds of the County; provided, such products are grown or produced by the person offering such products for sale;
- 3) The privilege or right of printing or publishing any newspaper, magazine, newsletter or other publication issued daily or regularly at average intervals not exceeding three (3) months; provided the publication's subscription sales are exempt from state sales tax, or for the privilege or right of operating or conducting any radio or television broadcasting station or service;
- 4) A manufacturer for the privilege of manufacturing and selling goods, wares and merchandise at wholesale at the place of manufacture;
- 5) A person engaged in the business of severing minerals from the earth for the privilege of selling the severed mineral at wholesale at the place of severance, except as provided in Sections 58.1-3712 and 58.1-3713 of the Code of Virginia, 1950, as amended, authorizing counties to levy a license tax on every person engaging in the business of severing coal, oil or gases from the earth;
- 6) A wholesaler for the privilege of selling goods, wares and merchandise to other persons for resale unless such wholesaler has a definite place of business or store in the County; this subdivision shall not be construed as prohibiting the County from imposing the license fee on a peddler at wholesale, pursuant to 58.1-3718;
- 7) Any person, firm or corporation for engaging in the business of renting, as the owner of such property, real property other than hotels, motels, motor lodges, auto courts, tourist courts, travel trailer parks, lodging houses, rooming houses and boarding houses;
- 8) Any insurance company subject to taxation under Chapter 25 (Section 58.1-2500 et seq.) of the Code of Virginia, 1950, as amended, or on any agent of such company;
- 9) Any bank or trust company subject to taxation in Chapter 12 (Section 58.1-1200 et seq.) of the Code of Virginia, 1950, as amended;
- 10) A taxicab driver, if the County has imposed a license fee upon the taxicab company for which the taxicab driver operates;
- 11) Any blind person operating a vending stand or other business enterprise under the jurisdiction of the department for the visually handicapped, or a nominee of the department, as set forth in Section 63.1-164 of the Code of Virginia, 1950, as amended;

- 12) An accredited religious practitioner in the practice of the religious tenets of any church or religious denomination; "accredited religious practitioner" shall be defined as one who is engaged solely in praying for others upon accreditation by such church or religious denomination;
- 13) Nonprofit organizations, except those activities conducted for consideration which are similar to activities conducted for consideration by for-profit businesses shall be presumed to be activities that are part of a business subject to licensure. For the purpose of this subdivision, "nonprofit organization" means an organization exempt from federal income tax under Internal Revenue Code § 501 other than charitable nonprofit organizations;
- 14) Any venture capital fund or other investment fund, except commissions and fees of such funds. Gross receipts from the sale and rental of real estate and buildings remain taxable by the locality in which the real estate is located provided the locality is otherwise authorized to tax such businesses and rental of real estate;
- 15) Condominium unit owners assessments for common expenses. "Common expenses" and "unit owner" have the same meanings as in § 55-79.41; or,
- 16) A qualifying transportation facility directly or indirectly owned or title to which is held by the Commonwealth or any political subdivision thereof or by the United States as described in § 58.1-3606.1 and developed and/or operated pursuant to a concession under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or similar federal law.

Sec. 23-279. - Food distribution exemption.

- 1) The following methods of food distribution shall be exempt from the application of Code of Virginia, Tit. 35.1, as amended:
 - a) Food booths at fairs, if such booths are promoted or sponsored by any political subdivision of the Commonwealth, or by any charitable or nonprofit organization group thereof provided that such booths be operated and managed at all times by Charles City County residents.
 - b) Concession stands at youth athletic activities, if such stands are promoted or sponsored by either a youth athletic association or by any charitable or nonprofit organization or group thereof which has been recognized by ordinance or resolution as being a part of the recreational program for Charles City County. Further provided, however, that such concession stands be operated and managed at all times by Charles City County residents.
- 2) With regard to any organization or political subdivision exempt under this section, the Health Department of Charles City County shall have authority to assure that adequate

provision is made for persons operating food booths and concession stands to wash their hands when handling food and, further, that such food booths and concessions have adequate food cooling facilities to maintain food at a temperature of forty-one (41) degrees or less. This section does not prevent the use of coolers for the purposes of maintaining food temperature or the use of bottled water for hand washing facilities.

BE IT FURTHER ORDAINED that in calendar year 2015, the first year of the imposition of the fee, a permit application will be due by March 1, 2015, then in subsequent years returning to the published date of January 31st of each year.

Adopted the 25th day of November 2014 by a majority vote of the Board, the votes being recorded in the minutes as below:

William G. Coad	Aye
Gilbert A. Smith	Aye
Floyd H. Miles, Sr.	Nay

A copy teste:

Zach Trogdon, Clerk