

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ORDINANCE NO. 65-98

AN ORDINANCE TO REGULATE HAWKERS AND PEDDLERS IN HORRY COUNTY BY LICENSES ISSUED PURSUANT TO SOUTH CAROLINA CODE § 40-41-10 *et seq.*

WHEREAS, the South Carolina Code of Laws authorizes Counties to license Hawkers and Peddlers; and

WHEREAS, the issue of a License for those activities is a privilege and not a right; and

WHEREAS, **Horry County Council** has determined that the licensing of Hawkers and Peddlers would better serve the public interest in regard to public health and safety, to better regulate the time, place and manner of the conduct of businesses of Hawkers and Peddlers, but not intending to interfere with their constitutional rights of free speech and the conduct of interstate commerce; and

WHEREAS, Horry County Council has approved the procedures and methods by which Hawkers and Peddlers might best be regulated by licensing, and has enacted this Ordinance to effect the same.

NOW THEREFORE, BE IT ORDAINED THAT:

- 1) Every person engaged in or intending to engage in the calling, business, occupation or profession of Hawker or Peddler, in whole or in part, within the unincorporated areas of Horry County is required to pay an annual license fee and obtain a license as provided in this article.
- 2) The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
 - a) *Business* means a calling, occupation, profession, or activity engaged in with the object of gain, benefit or advantage, either directly or indirectly. A charitable organization shall be deemed a business unless the entire proceeds of its operation are devoted to charitable purposes.
 - b) *County* means Horry County.
 - c) *License inspector* means the County finance director, or other person designated to administer this article.
 - d) *Person* means 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.
- 3) The license revenue 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 tax. Each license shall be issued for not more than one calendar year or part thereof, and shall expire on December 31 in the year of issuance. The provisions of this article and the rates herein shall remain in effect from year to year as amended by County Council.

4) ***License fee:***

- a) The required license fee shall be paid for each business subject hereto before the commencement of business by the licenses in each year.
- b) A separate license shall be required for each place of business.
- c) The license fee for the issue of each license shall be such amount as County Council may determine by Resolution each year. If County Council does not determine a revised license fee in any year, the prior license fee determined shall continue as the license fee for that and subsequent years until amended by Resolution of County Council.
- d) For the calendar year in which this Ordinance is first adopted, the license fee shall be Five Hundred (\$500.00) Dollars.

5) ***Registration required:***

The owner, agent or legal representative of every business subject to this article shall register the business and make application for a license under this Ordinance before the date in each year during which that business shall conduct business within Horry County. Each business, whether a new business or a business formerly operating under License in Horry County, shall be required to have a license under this Ordinance prior to operation within the County. Each license application shall be on a form provided by the license inspector which shall declare the social security number and/or the federal employer's identification number, the business name as reported on the state income tax return, and all information about the applicant and the business deemed necessary to carry out the purposes of this article by the license inspector. The applicant shall certify under oath that the information given in the application is true, and that all assessments and personal property taxes due and payable to the County have been paid by the licensee.

6) ***Deductions and exemptions:***

No person shall be exempt from the requirements of this article by reason of the lack of an established place of business within the County, unless exempted by state or federal law. No person shall be exempt from this article by reason of the payment of any other tax, unless exempted by state law, and no person shall be relieved of the liability for the payment of any other tax by reason of the application of this article.

7) ***False application unlawful:***

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

8) ***Display and transfer:***

All persons shall display the license issued to them on the original form provided by the license inspector in a conspicuous place in the business establishment, visible to customers at all times during the operation of the business, at the address shown on the license. A transient or nonresident 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 County. A change of address must be reported to the license inspector within two (2) days after removal of the business to a new location and the license will be valid at the new address upon written notification of the license inspector and compliance with zoning and building codes. Failure to obtain the approval of the license inspector for a change of address shall invalidate the license and subject the licensee to prosecution for doing business without a license. A 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 license, based on old business income.

9) ***Administration of article:***

- a) The license inspector shall administer the provisions of this article, collect license fees, issue certifications of compliance to the Clerk of Court for Common Pleas for Horry County, make or initiate investigations and audits to insure compliance, initiate denial or revocation procedures, report violations to the police department and assist in prosecution of violators, produce forms, make reasonable regulations relating to the administration of this article, and perform such other duties as may be duly assigned.
- b) The Clerk of Court for Common Pleas for Horry County shall, upon issuance to the Clerk of a certificate of compliance by the licensing officer, issue a license in the form attached hereto as Exhibit A, incorporated herein by reference. The Clerk of Court shall have no responsibility for the administration of this Ordinance except as set forth in this sub-article.

10) ***Inspection and audits:***

- a) For the purpose of enforcing the provisions of this article the license inspector or other authorized agent of the County is empowered to enter upon the premises of any person subject to this article to make inspections, examine and audit books and records, and it shall be unlawful for any such person to fail or refuse to make available the necessary books and records. A failure or refusal to make available information required under this Ordinance to the licensing officer shall be deemed to be conducting business without a license, in violation of this Ordinance.
- b) 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 in addition to other penalties provided herein.
- c) Each day of failure to pay the proper amount of license fee shall constitute a separate offense.
- d) Records of inspection and audits shall not be deemed public records, and the license inspector shall not release the reported gross income of any person by name without permission of the licensee, provided that statistics compiled by classifications may be made public.
- e) When any person shall have failed to obtain a license pursuant to this Ordinance, or to furnish the information required by this article or the license inspector, the license inspector may proceed to examine such records of the business or any other available records as may be appropriate and to

conduct such investigations and statistical surveys as he may deem appropriate to assess a license fee.

- f) A notice of assessment shall be served by certified mail or by personal service upon the person assessed, and an application for adjustment of the assessment may be made to the license inspector within five days after the notice is mailed or the assessment will become final.
- g) The license inspector 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 County Council only by payment in full of the assessment under protest within five days and the filing of written notice of appeal within ten days after payment pursuant to the provisions of this article relating to appeals to County Council.

11) ***Delinquent license fees:***

- a) For nonpayment of all or any part of the correct license fee, the license inspector shall levy and collect a late penalty of Fifty (50%) Percent of the full amount of the annual fee for each day or portion thereof after the due date until paid. This late payment penalty shall be in addition to and not in substitution for, other sanctions set forth in this Ordinance.
- b) If any license fee shall remain unpaid for 60 days after its due date, the license inspector shall issue an execution which shall constitute a lien upon the property of the licensee for the tax, penalties and costs of collection, and shall proceed to collect in the same manner as prescribed by law for the collection of other taxes.
- c) In cases of hardship or other extraordinary circumstances which, taken as a whole, indicate that failure to pay was inadvertent or honest error, the license inspector may, upon entering a written finding that sets forth the particular circumstances, waive some or all of the penalties that would otherwise fall due from the licensee.

12) ***Notices:***

The license inspector shall not be required to mail written notices to a licensee, but if any notices are mailed, such notice shall be deemed served upon the licensee four business days after deposit in the United States mail, first class postage prepaid. As an alternative to mailing notices, the license inspector may cause personal service to be effected upon the licensee or person subject to this Ordinance.

13) ***Denial of license:***

The license inspector shall deny a license to an applicant when the application is incomplete, contains a misrepresentation, false or misleading statement, evasion or suppression of a material fact, or when the activity for which a license is sought is unlawful or constitutes a public nuisance. A decision of the license inspector shall be subject to appeal to County Council as herein provided. Denial shall be written with reasons stated.

14) ***Suspension or revocation of license:***

When the license inspector determines that:

- a) A license has been mistakenly or improperly issued or issued contrary to law; or
- b) A licensee has breached any condition upon which his license was issued or has failed to comply with the provisions of this article; or
- c) A licensee has obtained a license through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license application; or
- d) A licensee has been convicted of an offense under a law or ordinance regulating business, a crime involving moral turpitude, or an unlawful sale of merchandise or prohibited goods; or
- e) A licensee has engaged in an unlawful activity or nuisance related to the business;

the license inspector shall give written notice to the licensee or the person in control of the business within the County by personal service or certified mail to the address set forth on the license application, that the license is suspended pending a hearing before County Council for the purpose of determining whether the license should be revoked. The notice shall state the time and place at which the hearing is to be held, which shall be at a regular or special Council meeting within 30 days from the date of service of the notice. The notice shall contain a brief statement of the reasons for suspension and proposed revocation and a copy of the applicable provisions of this article. The licensee shall forthwith after service of the notice of suspension or revocation cease and desist from conducting business pursuant to the license until the license is reinstated by the license inspector, or by County Council after notice and a hearing as set forth below in this Ordinance.

15) ***Appeals to County Council:***

- a) Any person aggrieved by a denial or revocation of a license by the license inspector may appeal the decision to County Council by written request stating the reasons therefor filed with the license inspector within ten days after the notice of denial or revocation is received.
- b) [An appeal or a hearing on revocation shall be held by County Council within 30 days after receipt of a request for appeal or service of notice of suspension at a regular or special meeting of which the applicant or licensee has been given written notice. At such hearing all parties shall have the right to be represented by counsel, to present testimony and evidence and to cross examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party so requesting. The rules of evidence and procedure prescribed by Council shall govern the hearing. County 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 days after service.]
- c) **Alternate:** [An appeal or a hearing on revocation shall be held by a hearing officer designated by the County Administrator within 30 days after receipt of a request for appeal or service of notice of suspension at a regular or special meeting of which the applicant or licensee has been given written notice. At such hearing all parties shall have the right to be represented by counsel, to present

testimony and evidence and to cross examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party so requesting. The rules of evidence and procedure prescribed by Council shall govern the hearing. The hearing officer shall 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 days after service.]

16) Confidentiality:

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

17) Violations:

The License Inspector may designate any duly sworn law enforcement officer of the County to act in the place of the License Inspector in regard to any violation of this Ordinance, and such law enforcement officer shall have all the powers and authority of the License Inspector set forth herein. Any person violating any provisions of this article shall be deemed guilty of an offense and shall be subject to punishment as a misdemeanor under State law in the Magistrate's Court in Horry County. Each day of violation shall constitute a separate offense. Each offense may be punished by a fine of up to \$200, or thirty days incarceration, or both. Punishment by way of fines or incarceration for each or any violation shall not relieve the offender of liability for delinquent taxes, penalties and costs provided for herein.

18) Severability:

If any provision of this Ordinance shall be deemed unconstitutional or unenforceable, then it shall be severed from the remaining provisions of this Ordinance, and the remaining provisions hereof shall not be affected.

19) Conflicts with other Ordinances:

If any provision of this Ordinance conflicts with the provisions of another Ordinance, then such conflicting provisions in the other Ordinance shall be deemed repealed and no longer of effect.

20) Exemption for Agricultural Produce Sales

The provisions of this Ordinance shall not apply to vendors of perishable agricultural produce.

Dated this _____ day of _____, 1998.

HORRY COUNTY COUNCIL

Raymond J. Brown, Acting Chairman

Ray Skidmore, Jr., District 1

John Kost, District 2

Chandler Brigham, District 4

Chandler C. Prosser, District 5

James R. Frazier, District 7

Elizabeth D. Gilland, District 8

Ulysses Dewitt, District 9

Johnny Shelley, District 10

Janice Jordan, District 11

ATTEST:

First Reading: _____

Second Reading: _____

Third Reading: _____

Rosella H. Carroll, Clerk to Council

Approved:

Horry County Staff Attorney:

Trefor Thomas

Effective Date: August 4, 1998