

CHAPTER 8. BUSINESSES & BUSINESS REGULATIONS

ARTICLE II. - LICENSE

DIVISION 1. - GENERALLY

Sec. 8-20. - Definitions.

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:

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.

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

Construction manager means any individual, firm, partnership, corporation or group which supervises or coordinates construction of any building, highway, sewer, grading, improvement, reimprovement, structure or part thereof, when the cost of the undertaking is \$30,000.00 or more. Notwithstanding payment by fixed price, commission, fee or wage, the term "construction manager" shall be classified in the category of "construction contractors" for purposes of this article and shall pay a license fee based upon the total cost of the undertaking supervised or coordinated.

Gross income means the total revenue of a business, received or accrued, for one calendar year collected or to be collected by a business.

- (1) The gross income for business license purposes shall conform to the gross income reported to the state tax commission or the state insurance commission.
- (2) In the case of brokers or agents, gross income shall mean gross commissions retained.
- (3) The gross income for business license purposes may be verified by inspection of returns filed with the Internal Revenue Service, the state tax commission for income tax purposes or the state insurance commission.
- (4) Gross income from interstate commerce shall be included in the gross income for every business subject to a business license tax.

Gross receipts means the value proceeding or accruing from the sale of tangible personal property, including merchandise and commodities of any kind and character and all receipts, by reason of which any business is engaged including interest, dividends, discounts, rental of real estate or royalties, without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, discounts and allowances or any other expenses whatsoever and without any deductions on account of losses, excepting therefrom gross income taxed in another municipality or county and fully reported to the town.

Inspector means the town representative.

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.

(Ord. No. 2013-05, § I, 10-22-2013)

Sec. 8-21. - Required.

Every person engaged or intending to engage in any calling, business, occupation or profession listed in the rate classification index tables as established by ordinance, in whole or in part, within the limits of the town, is required to pay an annual license fee and obtain a business license as provided in this article. Failure to obtain and/or maintain a valid business license will result in the town's refusal to issue permits or approvals required by any agency of the town and in prosecution to the fullest extent allowed.

(Ord. No. 2013-05, § I, 10-22-2013)

Sec. 8-22. - Payment of fee to operate business; calculation, determination of gross income estimates.

- (a) The required license fee, as established from time to time by ordinance, shall be paid for each business subject hereto according to the applicable rate classification on or before January 1 in each year. Any person holding a business license under this article shall continuously update such license when the information contained in the application is no longer complete or valid. A business license issued under this article is not valid when the business' gross income exceeds the anticipated gross income reported to obtain such license. Business license identification decals are required on company vehicles. The town may charge a fee as determined by the town for such decals of up to \$5.00 per decal. These decals are for the purpose of identification only.
- (b) A separate license shall be required for each place of business and for each classification of business conducted at one place. If gross income cannot be separated for classifications at one location, the license fee shall be computed on the combined gross income for the classification requiring the highest rate. A license fee based on gross income shall be computed on the gross income for the preceding calendar or fiscal year, and on a 12-month projected income based on the monthly average for a business in operation for less than one year. The fee for a new business shall be computed on the estimated probable gross income stated on the license application for the balance of the license year. The probable or anticipated gross income of a new business must be supplemented according to the provisions of this article when gross income exceeds anticipated income as submitted in each new business' application. No refund of any license fee will be granted due to overpayments of prior year license fees.
- (c) If gross income for the 12 months ending on the preceding December 31 cannot be determined before January 31 of the licensing year, estimated figures will be accepted, without penalties based on the following conditions:

- (1) Payment for the business license was received by January 31 and was 90 percent of the total amount that would be due; and
- (2) An amended application and all additional fees due are received by April 30 of the licensing year.

(Ord. No. 2013-05, § I, 10-22-2013)

Sec. 8-23. - Purpose; duration.

The business license levied by this article 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 one calendar year and shall expire on December 31; this time period shall be considered a license year. The provisions of this article and the rates herein shall remain in effect from year to year as amended by the town council.

(Ord. No. 2013-05, § I, 10-22-2013)

Sec. 8-24. - Registration required; worker's compensation coverage.

- (a) (1) The owner, agent or legal representative of every business subject to this article, whether listed in the classification index or not, shall register the business and make application for a business license on or before the due date of each year, except that a new business shall be required to have a business license prior to operation within the town. Application shall be on a form provided by the license inspector which shall contain the Social Security Number and/or the Federal Employer's Identification Number, and the South Carolina Retail License Number (if applicable), 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:
 - a. That the information given in the application is true;
 - b. That the gross income is accurately reported, or estimated for a new business, without any unauthorized deductions; and
 - c. That all assessments and personal property taxes due and payable to the town have been paid.
- (2) The applicant is also subject to compliance with the zoning ordinance, building code and all other regulatory codes of the town. No business license shall be issued until the applicant submits documents necessary to establish compliance with any town zoning ordinance, building code and other regulatory codes as adopted by the town council. The town may, in its sole discretion, require an applicant to provide a true and correct copy of its tax returns filed with the state department of revenue and the United States Internal Revenue Service to ensure compliance with the terms of this article. Such information shall remain confidential and be returned to the applicant in a timely manner. If such documents are unavailable, the town may audit the applicant as provided for in this article. Insurance agents and brokers shall report the name of each insurance company for which a policy was

issued and the total premiums collected for each company for each type of insurance coverage on a form approved by the license inspector. Insurance agents employed by more than one company shall be licensed as brokers.

- (b) (1) Proof of adequate workers' compensation insurance will not be required if the applicant presents a sworn or notarized statement that it has no employees or that it is not subject to the provisions of the South Carolina Workers' Compensation Act. The town may require additional evidence or information from the applicant necessary to make a determination as to whether or not the applicant is required to have coverage under the South Carolina Workers' Compensation Act.
- (2) It shall be a violation of this article for any contractor, subcontractor or other person or entity to use the services of any other contractor, subcontractor, person or company who does not have a valid business license issued by the town.

(Ord. No. 2013-05, § I, 10-22-2013)

Sec. 8-25. - Penalty.

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

(Ord. No. 2013-05, § I, 10-22-2013)

Sec. 8-26. - Fireworks sales.

Any establishment desiring to sell fireworks must abide by regulations of the state board of pyrotechnic safety and state laws. Prior approval of the fire department is required.

(Ord. No. 2013-05, § I, 10-22-2013)

Sec. 8-27. - Proof of insurance.

All contractors and subcontractors (see Rate Class 8)* shall certify and shall show evidence to the satisfaction of the town of adequate liability and worker's compensation insurance as a precondition to the issuance of a business license.

(Ord. No. 2013-05, § I, 10-22-2013)

***Editor's note**—The Rate Classification Tables are incorporated herein by reference but are on file in the office of town administrator. See section 8-40.

Sec. 8-28. - Deductions and exemptions.

No deductions from gross income shall be made except income from businesses on which a license tax is paid to a county or to another municipality, or income which cannot be taxed pursuant to state law. The applicant shall have the burden to establish the right to deduction by satisfactory records and proof. No person shall be exempt from the requirements of this article by reason of the lack of an established place of business within the town, unless exempted by state or federal law. The license inspector shall determine the appropriate classification for each business in accordance with section 8-40 of this chapter. 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.

(Ord. No. 2013-05, § I, 10-22-2013)

Sec. 8-29. - False application.

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

(Ord. No. 2013-05, § I, 10-22-2013)

Sec. 8-30. - Display and transfer.

- (a) 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 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 town. Authenticated copies shall be available at an additional cost per copy. A change of address must be reported to the license inspector within ten days after removal of the business to a new location and the license will be valid at the new address upon written notification 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.
- (b) A business license shall not be transferable. In the event of a sale or transfer of a business, the purchaser or new owner may apply to the license inspector for a credit for fees previously paid toward the new license fees. Upon determination by the license inspector that the new business is the same as the previously licensed business, the license inspector shall deduct from fees due to prorated credit for license fees paid. The applicant for such credit shall pay an administrative fee of \$50.00, notwithstanding such credits. Such application shall be made within 30 days of any transfer of sale. The transfer of any partial ownership shall be reported to the license inspector.
- (c) All owners or agents placing commercial advertisements offering a residential unit in the Town of Seabrook Island for rent or lease shall clearly display the current business license number for that residential unit in the text of such advertisement. No owner or agent may advertise a residential unit in such a way that would result in the violation of this Chapter.

(Ord. No. 2013-05, § I, 10-22-2013)

Sec. 8-31. - Administration of article; sheriff's department to initiate investigations and prosecutions.

- (a) The license inspector or other authorized agent of the town shall:
 - (1) Administer the provisions of this article;
 - (2) Collect license fees;
 - (3) Issue licenses;
 - (4) Make or initiate investigations and audits to ensure compliance;
 - (5) Initiate denial or revocation procedures;
 - (6) Report violations to the sheriff's department and assist in prosecution of violators;
 - (7) Produce forms;
 - (8) Make reasonable regulations relating to the administration of this article; and
 - (9) Perform such other duties as may be duly assigned.
- (b) The sheriff's department, in addition to the license inspector, is hereby empowered to make or initiate investigations to ensure compliance with the provisions of this article and to initiate prosecution of violations.

(Ord. No. 2013-05, § I, 10-22-2013)

Sec. 8-32. - Inspections; audits.

- (a) For the purpose of enforcing the provisions of this article, the license inspector and/or other authorized agents of the town are empowered to enter upon the premises of any person subject to this article to make inspections, examine and audit books and records. It shall be unlawful for any such person to fail or refuse to make available the necessary books and records. In the event an audit or inspection reveals that false information has been filed by the licensee, the costs of the audit shall be added to the correct license fee and late penalties in addition to other penalties provided herein. Each day of failure to pay the proper amount of license fee shall constitute a separate offense.
- (b) The license inspector shall make systematic inspections of all businesses with the town to ensure compliance with this article. Records of inspections 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. The license inspector, upon approval of the town council, may disclose gross incomes of licensees to the Internal Revenue Service, the state department of revenue or the county tax appraiser for the purpose of assisting tax assessments, tax collections and enforcement. Such disclosures shall be for internal, confidential and official use of these governmental agencies and shall not be deemed public records.

(Ord. No. 2013-05, § I, 10-22-2013)

Sec. 8-33. - Assessments; payment under protest.

- (a) When any person shall have failed to obtain or maintain a business license or to furnish the information required by this article to the license inspector, the license inspector shall 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 tax and penalties as provided in this article.
- (b) A notice of assessment shall be served by certified mail 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. The license inspector shall establish, by regulation, the procedure for hearing an application for adjustment of assessment and issuing a notice of final assessment.
- (c) A final assessment may be appealed to the business license committee only by payment in full of the assessment under protest within five days, and the filing of a written notice of appeal within ten days after payment pursuant to the provisions of section 8-38 relating to appeal to the business license committee.

(Ord. No. 2013-05, § I, 10-22-2013)

Sec. 8-34. - Delinquent fees.

For nonpayment of all or any part of the correct license fee, the license inspector shall levy and collect a late penalty of five percent each month or portion thereof after the due date until paid. Penalties shall not exceed 100 percent. If any license fee shall remain unpaid for 60 days after its due date, the license inspector may 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.

(Ord. No. 2013-05, § I, 10-22-2013)

Sec. 8-35. - Notices.

The license inspector may, but shall not be required to, mail written notices that license fees are due, but if notices are not mailed there shall be published a notice of the due date in a newspaper of general circulation within the county three times prior to the due date in each year.

(Ord. No. 2013-05, § I, 10-22-2013)

Sec. 8-36. - Denial of license.

- (a) *Grounds.* The license inspector shall deny a license to an applicant when:
 - (1) The application is incomplete;

- (2) The application contains a misrepresentation, false or misleading statement, evasion or suppression of a material fact; or
- (3) The activity for which a license is sought is unlawful or constitutes a public nuisance.
- (b) *Decision subject to appeal; written form.* A decision of the license inspector shall be subject to appeal as provided in section 8-38. Denial shall be written with reasons stated.

(Ord. No. 2013-05, § I, 10-22-2013)

Sec. 8-37. - Suspension or revocation.

- (a) *Criteria; delivery of notice by license inspector.* When the license inspector determines that:
 - (1) A license has been mistakenly or improperly issued or issued contrary to law;
 - (2) A licensee has breached any condition upon which his license was issued or has failed to comply with the provisions of this article, or any town ordinance;
 - (3) A licensee has obtained or attempted to obtain a license through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license application;
 - (4) A licensee has been convicted of an offense under a law or ordinance regulating or relating to his business, a crime involving moral turpitude, or an unlawful sale of merchandise or prohibited goods;
 - (5) A licensee has engaged in an unlawful activity or nuisance related to the business;
 - (6) A licensee has earned more gross income than that which was reported on its business license application and has not upgraded its license as required under the provisions of this article; or
 - (7) A licensee has failed to pay any fine or fee owed to the town unless such fine or fee is properly appealed and dismissed;

he shall give written notice to the licensee or the person in control of the business within the town by personal service or registered mail that the license is suspended, revoked or denied pending a hearing before the business license fee committee for the purpose of determining whether the license should be revoked or denied.

- (b) *Contents of notice.*
 - (1) The notice shall state the time and place at which the hearing is to be held, which shall be within 30 days from the date of service of the notice.
 - (2) The notice shall contain a brief statement of the reasons for suspension, denial and/or proposed revocation and a copy of the applicable provisions of this article.

(Ord. No. 2013-05, § I, 10-22-2013)

Sec. 8-38. - Appeals procedure.

- (a) *Written request and payment required.* Any person aggrieved by a final assessment or a denial of the business license by the license inspector may appeal the decision to the town council by written request stating the reasons therefor filed with the license inspector within ten days after the payment of the assessment under protest or notice of denial is received. The appeal must be accompanied with a \$25.00 fee that will be used to partially defray the costs incurred in connection with the administration of appeals. The fee will be refunded in the event of final resolution of the appeal in favor of the appellant.
- (b) *Hearing; decision.* An appeal or a hearing on revocation shall be held by the council after receipt of a request for appeal or service of notice of suspension at a meeting of which the applicant of the license has 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 council shall govern the hearing. The council shall, by majority vote of members present, tender a written decision based upon findings of fact and the application of the standards herein which shall be served upon all parties or their representatives. The decision of council shall be final unless appealed to a court of competent jurisdiction within ten days after service of the town council's decision.
- (c) *Prosecution stayed during appeal process.* No person shall be subject to prosecution for doing business without a license until the expiration of ten days after notice of denial or revocation which is not appealed or until after final judgment of a circuit court upholding denial or revocation.

(Ord. No. 2013-05, § I, 10-22-2013)

Sec. 8-39. - Garage and charitable sales.

No license fee shall be charged to a citizen of the town holding a sale of personal items at the owner's residence, not including imported goods, or to a church, civic, charitable or community group selling items to raise funds for charitable purposes. Persons holding such sales must register information required by the license inspector at his office prior to the date of sale.

(Ord. No. 2013-05, § I, 10-22-2013)

Sec. 8-40. - Classification rate and criteria schedules.

The license fee for each class of business shall be computed as determined from time to time by ordinance. The major groups of businesses included in each class are listed with the major group number according to the North American Industry Classification System (NAICS) or the Standard Industrial Classification Manual (SIC), as adopted by the town. The classifications as adopted by the town are attached hereto and incorporated by reference. The license inspector shall determine the proper class for a business according to the NAICS or the SIC.

(Ord. No. 2013-05, § I, 10-22-2013)

Sec. 8-41. - Retail telecommunications services.

- (a) Notwithstanding any other provisions of this article, the business license tax for "retail telecommunications services," as defined in S.C. Code 1976, § 58-9-2200, shall be at the maximum rate authorized by S.C. Code 1976, § 58-9-2220, as it now provides or as provided by its amendment. The business license tax year shall begin on January 1 of each year. Declining rates shall not apply.
- (b) In conformity with S.C. Code 1976, § 58-9-2220, the business license tax for retail telecommunications services shall apply to the gross income derived from the sale of retail telecommunications services for the preceding calendar or fiscal year which either originate or terminate in the municipality and which are charged to a service address within the municipality regardless of where these amounts are billed or paid and on which a business license tax has not been paid to another municipality. The measurement of the amounts derived from the retail sale of mobile telecommunications services shall include only revenues from the fixed monthly recurring charge of customers whose service address is within the boundaries of the municipality. For a business in operation for less than one year, the amount of business license tax shall be computed on a 12-month projected income.
- (c) The business license tax for retail telecommunications services shall be due on January 1 of each year and payable by January 31 of that year, without penalty. The delinquent penalty shall be five percent of the tax due for each month, or portion thereof, after the due date until paid.
- (d) Notwithstanding any other provisions of the business license provisions, exemptions in this article for income from business in interstate commerce are hereby repealed. Gross income from interstate commerce shall be included in the gross income for every business subject to a business license tax.

(Ord. No. 2013-05, § I, 10-22-2013)

Sec. 8-42. - License fee.

Effective January 1, 2015, the license fee for each class of business shall be computed in accordance with the following rates:

CLASS	INCOME 0-\$2000	EACH ADDITIONAL \$1,000
Class 1	\$40.00	\$ 1.75
Class 2	\$45.00	\$ 2.00
Class 3	\$55.00	\$ 2.25
Class 4	\$60.00	\$ 2.75
Class 5	\$65.00	\$ 3.00

Class 6	\$70.00	\$ 3.25
Class 7	\$80.00	\$ 3.50
Class 8	See individual business listing	See individual business listing

Each SIC Number designates a separate sub-classification. The businesses in each section are treated as separate and individual sub-classes due to provisions of the law, regulatory requirements, service burdens, tax equalization considerations, etc., which are deemed to be sufficient to require individually determined classes.

SIC #		
1510—1799	Contractors, Construction - All Types	
	First \$2,000.00 of income	\$80.00
	Over \$2,000.00	\$ 2.00/thousand

The total fee for the amount of the contract shall be paid prior to issuing a building permit or commencement of work.

No contractor shall be issued a business license until all state and town qualification examinations 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 and shall furnish the license inspector with a list of all sub-contractors for the same job, including telephone number and address.

Sub-contractors shall be licensed on the same basis as the general or prime contractors for the same job, and no deductions shall be made by a general or prime contractor for the value of work performed by a subcontractor.

(Ord. No. 2014-06, § I, 12-16-2014)

Secs. 8-43-8-65. – Reserved

DIVISION 2. - INSURANCE COMPANIES AND BROKERS

Sec. 8-66. - Provisions pertaining to license taxes.

SIC CODE or	NAICS CODE
63	524 <u>Insurance Companies</u> : Except as to fire insurance, "gross premiums" mean gross premiums written for policies for property or a risk located within the municipality. In addition, "gross premiums" shall include premiums written for policies that are sold, solicited, negotiated, taken, transmitted, received, delivered, applied for, produced or serviced by (1) the insurance company's office located in the municipality, (2) the insurance company's employee conducting business within the municipality, or (3) the office of the insurance company's licensed or appointed producer (agent) conducting business within the municipality, regardless of where the property of risk is located, provided no tax has been paid to another municipality in which the property or risk is located based on the same premium.
	Solicitation for insurance, receiving or transmitting an application or policy, examination of a risk, collection or transmitting of a premium, adjusting a claim, delivering a benefit, or doing any act in connection with a policy or claim shall constitute conducting business within the municipality, regardless of whether or not an office is maintained in the municipality.
	As to fire insurance, "gross premiums" means gross premiums (1) collected in the municipality, and/or (2) realized from risks located within the limits of the municipality.
	Gross premiums shall include all business conducted in the prior calendar year.
	Gross premiums shall include new and renewal business without deductions for any dividend, credit, return premiums or deposit.
631— 632	52411 Life, Health and Accident0.75% of Gross Premiums
633— 635	524126 Fire and Casualty2% of Gross Premiums
636	524127 Title Insurance2% of Gross Premiums

(Ord. No. 2013-05, § I, 10-22-2013)

Sec. 8-67. - License tax payment dates and penalties.

Notwithstanding any other provisions of this ordinance, license taxes for insurance companies shall be payable on or before May 31 in each year without penalty. The penalty for delinquent payments shall be five percent of the tax due per month, or portion thereof, after the due date until paid.

(Ord. No. 2013-05, § I, 10-22-2013)

Sec. 8-68. - [Exemptions.]

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

(Ord. No. 2013-05, § I, 10-22-2013)

Sec. 8-69. - [Designation of municipal agent.]

Pursuant to S.C. Code Ann. §§ 38-45-10 and 38-45-60, the Municipal Association of South Carolina is designated the municipal agent for purposes of administration of the municipal broker's premium tax. The agreement with the association for administration and collection of current and delinquent license taxes from insurance companies as authorized by S.C. Code § 5-7-300 and administration of the municipal broker's premium tax in the form attached hereto is approved, and the mayor is authorized to execute it.

(Ord. No. 2013-05, § I, 10-22-2013)