

Ordinance 4-1003 & Amendments

ADOPTED ORDINANCE 7-1999

Ordinance 4-1001

Introduced by: Mayor Robinson

TOWN OF EASTOVER, SOUTH CAROLINA

AN ORDINANCE FOR THE PAYMENT OF A LICENSE OR PRIVILEGE TAX TO BE PAID BY ANY PERSON, FIRM OR CORPORATION DOING BUSINESS IN THE TOWN OF EASTOVER, SOUTH CAROLINA AND TO PROVIDE A PENALTY FOR PERSONS DOING BUSINESS WITHOUT A LICENSE.

BE IT ENACTED by the Town Council of the Town of Eastover:

SECTION 1 That no person, firm or corporation shall engage in any trade, business, occupation, profession or vocation, as mentioned and set forth in the Business Classification Index hereinafter referred to, within the limits of the Town of Eastover, without having first secured from the Town a license to do so. A person, firm, or corporation wishing to procure a licence shall paid in advance to the Town Clerk-Treasurer a special license tax, the amount of which shall be determined by the Council of the Town of Eastover and set forth opposite or under the appropriate rate classification schedule hereinafter mentioned and referred to in this Ordinance.

SECTION 2 Definitions.

The following works, terms and phrases, when used in this Ordinance, shall have the meanings ascribed herein:

- (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) "Town" means the Town of Eastover.
- (c) "Classification" means that division of business by 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 or services, or other basis deemed appropriate by Town Council.
- (d) "Gross Income" means the total revenue of a business, received or accrued, for one calendar year collected or to be collected by a business

within the Town, excepting therefrom income from interstate commerce and from business done wholly outside the Town on which a license tax is paid to some other municipality or a county and fully reported to the Town. The gross income for business license purposes shall conform to the gross income reported to the South Carolina State Tax Commission or the South Carolina Insurance Commission. In the case of brokers or agents, gross income shall mean gross commissions retained.

(e) "License Inspector" means the Town Clerk-Treasurer or any duly appointed Town employee.

(f) "Person" means any individual, firm, partnership, 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 principals.

(g) For the purposes of this Ordinance, any person, firm or corporation, which does not list property for taxation in the Town of Eastover shall be deemed an itinerant or nonresident of the Town of Eastover and shall be subject to the license herein provided for such itinerants and nonresidents, excepting trade personnel or firms who are customers of the water or sewage distribution system of the Town of Eastover.

SECTION 3.

Purpose and Duration.

The business license levied by this Ordinance is for the purpose of providing such regulation as may be required by the businesses subject thereto and for the purpose of raising revenue for the general fund through a privilege tax. Each license shall be issued for one year and shall expire on June 30, excepting that in the first year of passage, the license fee shall be charged from the effective date of this ordinance until June 30 of the following year and the fee therefore prorated. The provisions of this Ordinance and the rates herein shall remain in effect from year to year as amended by Town Council.

SECTION 4

License Fee.

The required license fee shall be paid for each business subject hereto according to the applicable rate classification on or before the 30th day of June in each year. 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 twelve 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 in the license application for the balance of the calendar year on a prorated basis. A new business license, computed as outlined above, shall be recalculated during the month of August in the year following such estimate and the tax shall be computed on the actual business done during that period. Should there have been an overpayment based upon an estimated tax, said overpayment shall be returned to the applicant. Should there have been an underpayment, said applicant shall be required to pay the additional amount computed based on actual gross income.

SECTION 5

Registration Required.

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 July 1 of each year, except that a new business shall be required to have a business license prior to operation within the Town. Publication shall be on a form provided by the License Inspector which shall contain the social Security Number and/or Federal Employer's Identification Number, the business name as reported on the South Carolina Income Tax Return, and all information about the applicant and the business deemed necessary to carry out the purposes of this Ordinance by the License Inspector. The applicant shall certify under oath that the information given in the application is true, that the gross income is accurately reported, or estimated for a new business, without any unauthorized deductions, and that all assessments and personal property taxes due and payable to the Town have been paid. 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.

SECTION 6.

Deductions and Exemptions.

No deductions from gross income shall be made except income exempt by Federal Law, income from business done wholly outside the Town on which a license tax is paid to some other political subdivision, or income which cannot be taxed pursuant to State law. The applicant shall have the burden to establish the right to a deduction by satisfactory records and

proof. No persona shall be exempt from the requirements of this Ordinance by reason of the lack of an established place of business within the city, unless exempted by State or Federal law. No person shall be exempt from this Ordinance by reason of the payment of any other tax, unless exempted by State law, and no person shall be relieved of the liability for the payment of any other tax by reason of the application of this Ordinance.

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 fee required by this Ordinance.

SECTION 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 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 Town. A change of address must be reported to the License Inspector within ten (10) days after the 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 business license shall not be transferable and a transfer of ownership shall be considered a termination of the old business and the establishment of a new business license, based on old business income, will be required.

SECTION 9 Administration of Ordinance.

The License Inspector shall administer the provisions of this ordinance, collect license fees, issue licenses, make or initiate investigations and audits to insure compliance, initiate denial or revocation procedures, report violations to the police department and assist in prosecution of violators; produce forms, make recommendations relating to the administration of this ordinance, and perform such other duties as may be assigned by the Council.

SECTION 10 Inspection and Audits.

For the purpose of enforcing the provisions of this ordinance, the License Inspector or other authorized agent of the Town is empowered to enter upon the premises of any person subject to this ordinance 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. In the event an audit or inspection reveals that false information has been filed by the licensee, the costs of the audit shall be added to the correct license fee and late penalties in addition to other penalties provided herein. Each day of failure to pay the proper amount of license fee shall constitute a separate offense. The License Inspector shall make systematic inspections of all businesses within the Town to insure compliance with the ordinance. Records of inspections and audits are treated as trade secrets and may not be deemed public records; 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.

SECTION 11

Assessments.

When any person shall have failed to obtain a business license or to furnish the information required by this Ordinance 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 herein. 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 (5) 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. A final assessment may be appealed to Town Council only by payment in full of the assessment under protest within five (5) days and the filing of written Notice of Appeal within ten (10) days after payment, pursuant to the provisions of this Ordinance relating to appeals to Town Council.

SECTION 12

Delinquent License Fees.

For non-payment of all or any part of the correct license fee, the License Inspector shall levy and collect a late penalty of five (5%) percent of the unpaid fee. If any license fee shall remain unpaid for sixty (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 collections, and he shall proceed to collect in the same manner as prescribed by law for the collection of other taxes.

SECTION 13

Notices.

The License Inspector shall be required to, mail written notices that license fees are due.

SECTION 14

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 Town Council as herein provided. Denial shall be written with reasons stated.

SECTION 15

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 Ordinance; 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 Town by personal service or registered mail that the license is suspended pending a hearing before Town Council for the purpose of determining whether the license should be revoked. The notice shall state the time and place at which the hearing is to be held, which shall be at a regular or special Council meeting within thirty (30) days from the date of service of the notice. The notice shall contain a brief statement of the reasons for suspension and proposed revocation and a copy of the applicable provisions of this Ordinance.

SECTION 16

No lunch room, restaurant, cafe, coffee shop, hotel serving food, or other establishments including portable or temporary establishments or vehicles

from which food products are dispensed and except those which are enclosed and from which ice cream in packaged and prepackaged containers is sold and those from which fresh vegetables and uncooked produce are dispensed, shall be hereinafter licensed to do business by said Town until same has been inspected and approved and certified by the South Carolina Health Department or County Health Department. Proof of such inspection and certification and approval by the Health Department shall be presented to the Town Council by every person applying for a license to operate any lunch room, restaurant, cafe, coffee shop, hotel serving food or other establishments, including portable or temporary establishments or vehicles from which food products are dispensed, along with applications for Town license. In the event that any cafe, restaurant, lunch room, coffee shop, hotel serving food or other establishment, including portable or temporary establishments or vehicles from which food products are dispensed, is duly licensed by the Town and thereafter approval or certification to operate is revoked or withdrawn by the State or County Health Department, the owner or operator of such business shall cease to operate and the Town license issued by the Town shall be revoked or suspended until such time as said business meets the requirements of the Health Department and is again duly approved or certified and license has been duly restored by action of the Council. Violations of this provisions shall be punished as hereinafter provided.

SECTION 17: No person shall sell, either directly or in connection with the sale or display of any other article, within the Town of Eastover, any drug or drug products or medicine for either internal or external use, except within a regular licensed place of business or establishment within the Town or in connection with operation of a regular licensed trade or selling route where such products sold are manufactured by known and recognized person, firm or corporation, an no license shall be issued for such sale except as herein specified and set forth.

SECTION 18: Vendors/Peddlers of goods, wares, merchandise (other than produce) selling from automobiles, vans, trucks or any temporary facility and whose business is not part of an established licensed business will be required to have a peddler's license. The conducting of this type business must be done outside of the area bordered on both of Weston and Main to Joyner except they have been given prior consent from the business owner.

Vendors of produce (fruits and vegetables), selling from automobiles, vans, trucks or any temporary facility and whose business is not part of an established licensed business may conduct their business outside the area _____.

Vendors of produce grown within the town limits of Eastover are not required to have a license; however, for any produce grown outside the town limits of the Town of Eastover, the vender shall be required to have a produce license. This Ordinance shall not be construed to prevent any person who is a resident of the

Town of Eastover from selling goods or wares of any description whatsoever from one time "garage sales" or other forms of activities designed to sell personal goods or items, which were not purchased for resale.

SECTION 19

Appeals to Town Council.

(a) Any person aggrieved by a final assessment or a denial of a business license by the License Inspector may appeal the decision to Town Council by written request stating the reasons therefor filed with the License Inspector or Town Clerk within ten (10) days after the payment of the assessment under protest or notice of denial is received.

(b) An appeal or a hearing on revocation shall be held by Town Council within thirty (30) days after receipt of a request for appeal or service of notice of suspension at a regular or special meeting of which the applicant or licensee has been given written notice. At 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 Town Council shall govern the hearing. Town Council shall, by majority vote of members present, render a written decision based on findings of fact and the application of the standards herein which shall be served upon all parties or their representatives and shall be final unless appealed to a court of competent jurisdiction within ten (10) days after service.

(c) No person shall be subject to prosecution for doing business without a license until the expiration of ten (10) days after notice or denial or revocation which is not appealed or until after final judgement of court upholding denial or revocation.

SECTION 20

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 upon conviction or both. Each day of violation shall be considered a separate offense. Punishment for violation shall not relieve the offender of liability for delinquent penalties and costs provided for herein.

SECTION 21

Separability.

A determination that any portion of this Ordinance is invalid or unenforceable shall not affect the remaining portions.

SECTION 22

Classification Rate Schedules.

The license fee for each Class of business shall be computed in accordance with a rate as adopted by council resolution prior to each new budget year. The License Inspector shall determine the proper class for a business according to the SIC.

SECTION 23

Notwithstanding any other provisions of this Ordinance, license taxes for insurance companies and brokers for non-admitted insurers shall be payable on or before May 31, in each year without penalty. The penalty for delinquent payments shall be 5% of the tax due.

SECTION 24

Pursuant to S.C. Code Ann. §5-7-300, the Council may authorize the Town to enter an agreement with the Municipal Association of South Carolina for collection of current and delinquent license taxes from insurance companies and brokers for non-admitted insurers.

SECTION 25

Notwithstanding any other provisions of the business license ordinance, license taxes for telecommunications as described in Standard Industrial Classification (SIC) 481 and North American Industry Classification System (NAICS) 5133, including voice and data communications; radiotelephone services; cellular telephone services; paging and beeper services; leasing lines; fiber optic cables; microwave or satellite facilities; selling access and reselling use of facilities or methods to others shall pay an annual business license tax of 3% of gross receipts from all communications activities conducted in the municipality and for communications services billed to customers located in the municipality on which a business license tax has not been paid to another municipality. The tax shall be payable on or before December 31 in each year without penalty. Declining rates shall not apply. The penalty for delinquent payments shall be 5% of the tax due after the due date.

SECTION 26

Pursuant to S.C. Code Ann. § 5-7-300, the council may authorize the Town to enter an agreement with the Municipal Association of South Carolina for collection of current and delinquent license taxes from telecommunications.

Done in Council this ____ day of _____, 1999.

MAYOR: _____

TOWN CLERK: _____

TOWN ATTORNEY: _____
(Approved as to form)

First Reading: 6-14-99

Second Reading: 7-6-99

Third Reading : 8-2-99

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RESOLUTION _____ ADOPTED _____ 1999

Carries out 4-1003 adopted Annually

RATES

| <u>CLASS</u> | <u>INCOME 0-\$10,000</u> | <u>ALL OVER \$10,000</u> Rate per thousand or fraction thereof |
|--------------|-----------------------------------|--|
| 1 | \$ 40.00 | \$ 1.10 |
| 2 | 40.00 | 1.15 |
| 3 | 42.00 | 1.25 |
| 4 | 44.00 | 1.35 |
| 5 | 46.00 | 1.45 |
| 6 | 48.00 | 1.60 |
| 7 | 50.00 | 1.75 |
| 8 | See individual business in Class* | |

| <u>Amount of Gross Income</u> | <u>Percent of Rate for Each Additional \$1,000</u> |
|-------------------------------|--|
| 250,000 - 500,000 | 25% |
| 500,000 - 750,000 | 20% |
| 750,000 - 1,000,000 | 15% |
| All over 1,000,000 | 10% |

*CLASS 8 RATES

| | <u>INCOME</u> | <u>ALL OVER \$10,000</u> Per \$1,000 or Fraction |
|------------------------------|---------------|---|
| 15 Contractors, Construction | 0-\$10,000 | \$50.00 |
| 16 ALL TYPES (Bond Required) | \$10,000 | 1.00 |

Any person or firm not operating a regular established business duly licensed by the Town of Eastover to do business within the Town of Eastover will be required to provide proof of a performance bond in the minimum amount of two thousand five hundred (\$2,500) dollars. Proof of bonding will be submitted to the Clerk/Treasurer showing the amount of bond, writer of bond and dates in force with the business license application.

INSURANCE COMPANIES

| <u>Premium</u> | <u>Per \$1,000 or Fraction</u> |
|----------------|------------------------------------|
|----------------|------------------------------------|

"636 Title Insurance 2% of Gross Premiums"

[Declining rates shall not apply.]

631-632 Life, Health & Accident 0-\$2,000

\$50.00

Over 2,000

2.50

All Over \$250,000 Declining Rate

633-635 Fire & Casualty & Auto Minimum

\$50.00

0-\$25,000

2%

25,000-75,000

1-1.5%

Over 75,000

1%

of Gross Income

(Declining rate applies over \$250,000)

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AN ORDINANCE AMENDING AN ORDINANCE FOR THE PAYMENT OF A PRIVILEGE TAX TO BE PAID BY ANY PERSON FIRM OR CORPORATION DOING BUSINESS IN THE TOWN OF EASTOVER, SOUTH CAROLINA AND TO PROVIDE A PENALTY FOR PERSONS DOING BUSINESS WITHOUT A LICENSE.

Ordinance Number 4-1003

BE IT ENACTED by the Town of Eastover:

SECTION 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 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 Town. A change of address must be reported to the License Inspector within ten (10) days after the 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 written approval of the License Inspector of 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 ownership shall be considered a termination of the old business and the establishment of a new business license, based on old business income, will be required.

SECTION 14. 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, the applicant has a prior business license revocation from the Town of Eastover involving the same or similar business activity within the three (3) years next preceding the application, 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 Town Council as herein provided. Denial shall be written with reasons stated.

This amendment shall be in full force and effect immediately following its passage, approval and publication by law.

APPROVED by Eastover Town Council this 4th day of April 2005.

ATTEST: _____
First Reading: March 14, 2005

Mayor
Town Clerk

6-3
Final Reading: April 4, 2005

APPROVED AS TO FORM ONLY BY: _____
Town Attorney