

ORDINANCE AMENDING AND RE-ENACTING TITLE 12 – LICENSING  
AND REGULATIONS, CHAPTER 1 – BUSINESS, PROFESSIONAL AND  
OCCUPATIONAL LICENSES,  
SECTIONS 12-1-2, 12-1-4, 12-1-8, 12-1-10(a), AND 12-1-10(b),  
ENACTING 12-1-5(d), 12-1-5.1, 12-1-11, 12-1-12, AND  
REPEAL AND RESERVE 12-1-10(19), 12-1-10(25)(g), 12-1-10(25)(j), 12-1-  
10(25)(k) AND 12-1-10(25)(l)  
OF THE CODE OF ORDINANCES CITY OF HARRISONBURG, VIRGINIA

**Be it ordained by the Council of the City of Harrisonburg, Virginia:**

**That the following sections be amended and reenacted as follows:**

**Sec. 12-1-2. Definitions.**

For the purposes of this chapter, unless otherwise required by the context:

*Affiliated group:*

- (1) One or more chains of includable corporations connected through stock ownership with a common parent corporation which is an includable corporation 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 includable corporations, except the common parent corporation, is owned directly by one or more of the other includable corporations; 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 includable corporations. As used in this subdivision, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends; the term "includable corporation" 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 includable corporations, 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.

(3) Two (2) or more entities if such entities satisfy the requirements in subdivision 1 or 2 of this definition as if they were corporations and the ownership interests therein were stock.

Amusements: Every person providing any type of entertainment of show for which compensation is received and which is not specifically provided for or exempt under another provision of this chapter.

*Assessment:* A determination as to the proper rate of tax, the measure to which the tax rate is applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An assessment shall include a written assessment made pursuant to notice by the assessing official or a self-assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. Assessments shall be deemed made by an assessing official when a written notice of assessment is delivered to the taxpayer by the assessing official or an employee of the assessing official, or mailed to the taxpayer at his last known address. Self-assessments shall be deemed made when a return is filed, or if no return is required, when the tax is paid. A return filed or tax paid before the last day prescribed by this article for the filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing of a return or the payment of tax, as the case may be.

*Assessing official:* The commissioner of the revenue of the city.

*Base year:* The calendar year preceding the license year, except for contractors subject to the provisions of section 58.1-3715 of the Code of Virginia, 1950, as amended.

Broker: An agent of a buyer or a seller who buys or sells stocks, bonds, commodities, or services, usually on a commission basis.

*Business:* 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.

Business service: shall mean any service rendered for compensation to any business, trade, occupation or governmental agency unless such service is provided for under provision of this chapter.

Commodity: Staples such as wool, cotton, etc., which are traded on a commodity exchange and on which there is trading in futures.

*Contractor* shall have the meaning prescribed by section 58.1-3714.B of the Code of Virginia, 1950, as amended, whether such work is done or offered to be done by day labor, general contract or subcontract.

*Definite place of business:* 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.

*Dealer, for purposes of this article, shall mean any person, other than a motor vehicle dealer, engaged in the business of buying and selling securities for his own account, but does not include a bank, or any person in so far as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business.*

*Entity: A business organization, other than a sole proprietorship that is a corporation, limited liability company, limited partnership, or limited liability partnership duly organized under the laws of the Commonwealth or another state.*

*Financial services:* The buying, selling, handling, managing, investing, and providing of advice regarding money, credit, securities, or other investments and shall include the service for compensation by a credit agency, an investment company, a broker or dealer in securities and commodities or a security or commodity exchange, unless such service is otherwise provided for in this article.

~~*Broker: An agent of a buyer or a seller who buys or sells stocks, bonds, commodities, or services, usually on a commission basis.*~~

~~*Commodity: Staples such as wool, cotton, etc., which are traded on a commodity exchange and on which there is trading in futures.*~~

~~*Dealer, for purposes of this article, shall mean any person engaged in the business of buying and selling securities for his own account, but does not include a bank, or any person in so far as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business.*~~

~~*Security, for purposes of this article shall have the same meaning as in the Securities Act (section 13.1-501 et seq.) of the Code of Virginia, or in similar laws of the United States regulating the sale of securities.*~~

~~Those engaged in rendering financial services include, but without limitation, the following:~~

~~Buying installment receivables.~~

~~Chattel mortgage financing.~~

~~Consumer financing.~~

~~Credit card services.~~

~~Credit unions.~~

~~Factors.~~

~~Financing accounts receivable.~~

~~Industrial loan companies.~~

~~Installment financing.~~

~~Inventory financing.~~

~~Loan or mortgage brokers.~~

~~Loan or mortgage companies.~~

~~Safety deposit box companies.~~

~~Security and commodity brokers and services.~~

~~Stockbroker.~~

~~Working capital financing.~~

*Gross receipts:* The whole, entire, total receipts attributable to the licensed privilege, without deduction, except as may be limited by the provisions of chapter 37 of title 58.1 of the Code of Virginia, as amended.

*License year:* The calendar year for which a license is issued for the privilege of engaging in business.

*Person:* Shall include individuals, firms, partnerships, corporations, companies, associations or joint stock associations and any combination of individuals or whatever form or character. It 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 trustee, receiver or other representative appointed by a court to liquidate assets for immediate distribution, or a sergeant or a sheriff, or any deputy, selling under authority of process or writ of court of justice.

*Personal services:* Rendering for compensation any repair, personal, business or other services not specifically classified as "financial, real estate or professional service" under this chapter, or rendered in any other business or occupation not specifically classified in this chapter unless exempted from local license tax by title 58.1 of the Code of Virginia, 1950, as amended.

*Professional services:* 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 department shall identify and list each occupation or vocation in which a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study is used by its practical application to the affairs of others, either advising, guiding, or teaching them, and in serving their interests or welfare in the practice of an art or science founded on it. 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.

*Purchases:* All goods, wares and merchandise received for sale at each definite place of business of a wholesale merchant. The term shall also include the cost of manufacture of all goods, wares and merchandise manufactured by any wholesaler or wholesale merchant and sold or offered for sale. A wholesale merchant may elect to report the gross receipts from the sale of

manufactured goods, wares and merchandise if it cannot determine the cost of manufacture or chooses not to disclose the cost of manufacture.

*Real estate services:* Rendering a service for compensation as lessor, buyer, seller, agent or broker and providing a real estate service, unless the service is otherwise specifically provided for in this article, and such services include, but are not limited to, the following:

- Appraisers of real estate.
- Escrow agents, real estate.
- Fiduciaries, real estate.
- Lessors of real property.
- Real estate agents, brokers and managers.
- Real estate selling agents.
- Rental agents for real estate.

*Retailer or retail merchant:* Any person or merchant who sells goods, wares and merchandise for use or consumption by the purchaser or for any purpose other than resale by the purchaser but does not include sales at wholesale to institutional, commercial and industrial users.

Security, for purposes of this article shall have the same meaning as in the Securities Act (section 13.1-501 et seq.) of the Code of Virginia, or in similar laws of the United States regulating the sale of securities.

Those engaged in rendering financial services include, but without limitation, the following:

- Buying installment receivables.
- Chattel mortgage financing.
- Consumer financing.
- Credit card services.
- Credit unions.
- Factors.
- Financing accounts receivable.
- Industrial loan companies.
- Installment financing.
- Inventory financing.
- Loan or mortgage brokers.
- Loan or mortgage companies.
- Safety deposit box companies.
- Security and commodity brokers and services.
- Stockbroker.

Working capital financing.

*Services:* Things purchased by a customer which do not have physical characteristics, or which are not goods, wares, or merchandise.

*Wholesaler or wholesale merchant:* Any person or merchant who sells wares and merchandise for resale by the purchaser, including sales when the goods, wares and merchandise will be incorporated into goods and services for sale, and also includes sales to institutional, commercial, government and industrial users which because of the quantity, price, or other terms indicate that they are consistent with sales at wholesale.

**Sec. 12-1-4. Due dates and penalties.**

- (a) Each person subject to a license tax shall apply for a license prior to beginning business if he or she was not subject to licensing in this city on or before January 1 of the license year, or no later than January thirty-first of the current license year if he or she had been issued a license for the preceding year. ~~Beginning January 1, 1998, any~~ Any person having been issued a license for the preceding year, or subject to licensing on or before January 1 shall apply for a license no later than March 1 of the current license year. The application shall be on forms prescribed by the assessing official.
- (b) The tax shall be paid with the application in the case of any license not based on gross receipts. If the tax is measured by the gross receipts of the business, the tax shall be paid on or before ~~January thirty-first and beginning with the calendar year 1998 on or before March first.~~ March first.
- (c) The assessing official may grant an extension of time, not to exceed ninety (90) days, in which to file an application for a license for reasonable cause. The extension shall be conditioned upon the timely payment of a reasonable estimate of the appropriate tax, subject to adjustment to the correct tax at the end of the extension together with interest from the due date until the date paid and, if the estimate submitted with the extension is found to be unreasonable under the circumstances, a penalty of ten (10) percent of the portion paid after the due date.
- (d) A penalty of ten (10) percent of the tax may be imposed upon the failure to file an application or the failure to pay the tax by the appropriate due date. Only the late filing penalty shall be imposed by the assessing official if both the application and payment are late; however, both penalties may be assessed if the assessing official determines that the taxpayer has a history of noncompliance. In the case of an assessment of additional tax made by the assessing official, if the application and, if applicable, the return were made in good faith and the understatement of the tax was not due to any fraud, reckless or intentional disregard of the law by the taxpayer, there shall be no late payment penalty assessed with the additional tax. If any assessment of tax by the assessing official is not paid within thirty (30) days, the treasurer may impose a ten (10) percent late payment penalty. The penalties shall not be imposed, or if imposed shall be abated by the official who assessed them, if the failure to file or pay was not the fault of the taxpayer. In order to demonstrate lack of fault, the taxpayer must show that he or she acted responsibly and that the failure was due to events beyond his or her control.

"Acted responsibly" means that (i) the taxpayer 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 taxpayer undertook significant steps to avoid or mitigate the failure, such as requesting appropriate extensions (where applicable), 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 taxpayer'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 tax compliance; or the taxpayer's reasonable reliance in good faith upon erroneous written information from the assessing official who was aware of the relevant facts relating to the taxpayer's business when he provided the erroneous information.

- (e) Interest shall be charged on the late payment of the tax from the due date until the date paid without regard to fault or other reason for the late payment. Whenever an assessment of additional or omitted tax by the assessing official is found to be erroneous, all interest and penalty charged and collected on the amount of the assessment found to be erroneous shall be refunded together with interest on the refund from the date of payment or the due date, whichever is later. Interest shall be paid on the refund of any BPOL tax from the date of payment ~~efor~~ due date, whichever is later, whether attributable to an amended return or other reason. Interest on any refund shall be paid at the same rate charged under section 58.1-3916 of the Code of Virginia, 1950, as amended.

No interest shall accrue on an adjustment of estimated tax liability to actual liability at the conclusion of a base year. No interest shall be paid on a refund or charged on a late payment, provided the refund or the late payment is made not more than thirty (30) days from (i) the date of the payment that created the refund, or (ii) the due date of the tax, whichever is later.

- (f) In the event that said tax, penalty and interest are not paid within ninety (90) days of origination of license by the commissioner of the revenue, and is determined to be the fault of the taxpayer, the treasurer shall notify the business of their noncompliance by letter and phone using the address(s) and phone number(s) provided by the business, to inform said business that unless payment is made in full within fifteen (15) days of notification, ~~business shall be restricted by the installation of a padlock or other restrictive deterrent by the police department and signage shall be posted as to the reason for the closing. Upon payment in full, bringing said business into compliance, the padlock shall be removed and business can resume.~~

#### **Sec. 12-1-5. Situs of gross receipts.**

- (a) *General rule.* Whenever the tax imposed by this chapter is measured in gross receipts, the gross receipts included in the taxable measure shall be only those gross receipts attributed to the exercise of a licensable privilege at a definite place of business within the city. In the case of activities conducted outside of a definite place of business, such as during a visit to a customer location, the gross receipts shall be attributed to the definite place of business from which such activities are initiated, directed, or controlled. The situs of gross receipts for different classifications of business shall be attributed to one or more definite places of business or offices as follows:

- (1) The gross receipts of a contractor shall be attributed to the definite place of business at which his or her services are performed, or if his or her services are not performed at any definite place of business, then the definite place of business from which his services are directed or controlled, unless the contractor is subject to the provisions of section 58.1-3715 of the Code of Virginia, 1950, as amended;
  - (2) The gross receipts of a retailer or wholesaler shall be attributed to the definite place of business at which sales solicitation activities occur, or if sales solicitation activities do not occur at any definite place of business, then the definite place of business from which sales solicitation activities are directed or controlled; however, a wholesaler or distribution house subject to a license tax measured by purchases shall determine the situs of its purchases by the definite place of business at which or from which deliveries of the purchased goods, wares and merchandise are made to customers. Any wholesaler who is subject to license tax in two (2) or more localities and who is subject to multiple taxation because the localities use different measures, may apply to the Commonwealth of Virginia Department of Taxation for a determination as to the proper measure of purchases and gross receipts subject to license tax in each locality;
  - (3) The gross receipts of a business renting tangible personal property shall be attributed to the definite place of business from which the tangible personal property is rented or, if the property is not rented from any definite place of business, then to the definite place of business at which the rental of such property is managed; and
  - (4) The gross receipts from the performance of services shall be attributed to the definite place of business at which the services are performed or, if not performed at and definite place of business, then to the definite place of business from which the services are directed or controlled.
- (b) *Apportionment.* If the licensee has more than one definite place of business and it is impractical or impossible to determine to which definite place of business gross receipts should be attributed under the general rule, except as to circumstances set forth in section 58.1-3709 of the Code of Virginia, the gross receipts of the business shall be apportioned between the definite places of businesses on the basis of payroll. Gross receipts shall not be apportioned to a definite place of business unless some activities under the applicable general rule occurred at, or were controlled from, such definite place of business. Gross receipts attributable to a definite place of business in another jurisdiction shall not be attributed to the definite place of business in the city solely because the other jurisdiction does not impose a tax on the gross receipts attributable to the definite place of business in such other jurisdiction.
- (c) *Agreements.* The assessor may enter into agreements with any other political subdivision of Virginia concerning the manner in which gross receipts shall be apportioned among definite places of business. However, the sum of the gross receipts apportioned by the agreement shall not exceed the total gross receipts attributable to all of the definite places of business affected by the agreement. Upon being notified by a taxpayer that its method of attributing gross receipts is fundamentally inconsistent with the method of one or more political subdivisions in which the taxpayer is licensed to engage in business and that the difference has, or is likely to, result in taxes on more than one hundred (100) percent of its gross

receipts from all locations in the affected jurisdictions, the assessor shall make a good faith effort to reach an apportionment agreement with the other political subdivisions involved.

(d) Prorating. In the event a person ceases to engage in a business, trade, profession, or calling within the City during a year for which a license tax has already been paid, the taxpayer shall be entitled upon application to a refund for that portion of a license tax already paid, prorated on a monthly basis so as to ensure that the licensed privilege is taxed only for that fraction of the year during which it is exercised in the City. There shall be, however, no prorating based on beginning business estimates. In no event shall the City be required to refund any part of a minimum flat tax or the flat portion of the fee which is not based upon the gross receipts of the taxpayer.

#### **Sec. 12-1-5.1. Assessment of omitted license taxes.**

If the assessing official ascertains that any person has not been assessed with a license tax levied under the terms of this chapter for any license tax year during the last three years or for the current license tax year, and that the absence of such assessment was not due to the fraudulent intent to evade taxes on the part of such person, it shall be the duty of the assessing official to assess such person with the proper license tax for the year or years omitted, adding thereto the penalty and interest set forth in this chapter. If the tax was omitted due to fraud by the taxpayer, the assessing official shall assess the omitted tax for the current license year and the six preceding years.

#### **Sec. 12-1-8. Record-keeping and audits.**

Every person who is assessable with a local license tax shall keep sufficient records to enable the assessor to verify the correctness of the tax paid for the license years assessable and to enable the assessor to ascertain what is the correct amount of tax that was assessable for each of those years. All such records, books of accounts and other information shall be open to inspection and examination by the assessor in order to allow the assessor to establish whether a particular receipt is directly attributable to the taxable privilege exercised within the city. The assessor shall provide the taxpayer with the option to conduct the audit in the taxpayer's local business office, if the records are maintained there. In the event the records are maintained outside this jurisdiction, copies of the appropriate books and records shall be sent to the assessor's office upon demand.

If any licensee shall fail to maintain the records required in this section, regularly supported by customary vouchers, the assessing official is hereby authorized and directed to estimate the taxpayer's gross receipts or other license basis from the best evidence he can obtain, and the assessing official shall make an assessment based on such determination.

#### **Sec. 12-1-10. Fees and rates of license taxes.**

(a) The assessing officer shall charge a fee for issuing a license on businesses, trades, professions, occupations and callings upon the persons, firms and corporations engaged

therein within the city that have gross receipts of less than ~~fifty~~one hundred thousand dollars (\$~~50~~100,000.00) per year, in the following amounts:

Gross Receipts	Fee
\$0.00 to \$10,000.00	\$ 0.00
\$10,001.00 to \$25,000.00	\$25.00
\$25,001.00 to \$ <del>50</del> <u>100</u> ,000.00	\$50.00

All fees and taxes as set forth in this section shall be paid to the treasurer.

- (b) Except as specifically provided in this subsection and except for the fee set forth in subsection (a) of this section, no city license tax imposed pursuant to the provisions of this chapter shall be imposed on any person whose gross receipts from a business, profession or occupation subject to licensure are less than ~~fifty~~one hundred thousand dollars (\$~~50~~100,000.00). Any business with gross receipts of ~~fifty~~one hundred thousand dollars (\$~~50~~100,000.00) or more, shall be subject to a tax at the rates as set forth below for the class of business, profession or occupation listed:
- (1) For contractors or contracting, and persons constructing for their own account for sale, sixteen cents (\$0.16) per one hundred dollars (\$100.00) of gross receipts.
  - (2) For retail sales, twenty cents (\$0.20) per one hundred dollars (\$100.00) of gross receipts.
  - (3) For financial, real estate and professional services, fifty-eight cents (\$0.58) per one hundred dollars (\$100.00) of gross receipts, with the exception of the following financial services which shall be taxed at twenty-five cents (\$0.25) per one hundred dollars of gross receipts:
    - Chattel mortgage financing.
    - Consumer financing.
    - Industrial loan companies.
    - Installment financing.
    - Loan or mortgage brokers.
    - Loan or mortgage companies.
    - Small loan companies.
  - (4) For repair, personal and business services, and all other businesses and occupations not specifically listed or exempted in this chapter or otherwise by law, twenty cents (\$0.20) per one hundred dollars (\$100.00) of gross receipts.
  - (5) For wholesalers, thirty dollars (\$30.00) for the first one thousand dollars (\$1,000.00) of gross receipts and thereafter seventeen cents (\$0.17) per one hundred dollars (\$100.00) of gross receipts in excess of one thousand dollars (\$1,000.00).
  - (6) For public service companies, taxed at the rate of one-half ( $\frac{1}{2}$ ) of one (1) percent of the gross receipts.

- (7) For peddlers and itinerant merchants there shall be paid a license tax of five hundred dollars (\$500.00) per year for each person so engaged. A "peddler" shall be defined as any person who shall carry from place to place any goods, wares or merchandise and offer to sell or barter the same, or actually sell or barter the same. An "itinerant merchant" shall be defined as any person who engages in, does or transacts any temporary or transient business in any county, city or town and who, for the purpose of carrying on such business, occupies any location for a period of less than one (1) year.

This subsection shall not apply to a peddler at wholesale or to those who sell or offer for sale in person or by their employees ice, wood, charcoal, meats, milk, butter, eggs, poultry, game, vegetables, fruits or other family supplies of a perishable nature or farm products grown or produced by them and not purchased by them for sale. A dairyman who uses upon the streets of the city one or more vehicles may sell and deliver from his vehicles, milk, butter, cream and eggs within the city without procuring a peddler's license.

- (8) For direct sellers, should their total sales exceed four thousand dollars (\$4,000.00) per year, there shall be paid an annual license tax of twenty cents (\$0.20) per one hundred dollars (\$100.00) of retail sales or five cents (\$0.05) per one hundred dollars (\$100.00) of wholesale sales, whichever is applicable. A "direct seller" means any person who (1) engages in the trade or business of selling or soliciting the sale of consumer products primarily in private residences and maintains no public location for the conduct of such business; and (2) receives remuneration for such activities with substantially all of such remuneration being directly related to sales or other sales-oriented services, rather than to the number of hours worked; and (3) performs such activities pursuant to a written contract between such person and the person for whom the activities are performed and such contract provides that such person will not be treated as an employee with respect to such activities for federal income tax purposes.
- (9) All operators of coin-operated amusement machines shall pay an annual license tax of two hundred dollars (\$200.00) for the operation of ten (10) or more amusement machines in the city. For the operation of less than ten (10) amusement machines there shall be an annual license tax of twenty dollars (\$20.00) per machine; in addition, there is hereby levied a license tax of twenty cents (\$0.20) per one hundred dollars (\$100.00) of gross receipts on the operator's share of receipts actually received by such operator from coin machines operated in the city; the term "operator of coin-operated amusement machines" means any person leasing, renting or otherwise furnishing or providing a coin-operated amusement machine in the city, however, the term shall not include a person owning less than three (3) such machines and operating such machines on property owned or leased by such person. This license tax is further levied on all nonresident amusement machine operators regardless of the number of machines they have placed in the city.
- (10) Any person who, for compensation, shall pretend to tell fortunes, assume to act as a clairvoyant, or to practice palmistry or phrenology shall be deemed a fortune-teller and shall pay an annual license tax of six hundred dollars (\$600.00) per year. This license shall not be transferred or prorated.

(11)

- a. - Every person exhibiting performances in a side show, dog and pony show, trained animal show, carnival, circus and menageries, speedways, or other show, exhibition or performance similar thereto, shall procure a license therefor. The city license tax on side shows, circuses and menageries, speedways, or other similar shows, exhibitions or performances shall be three hundred dollars (\$300.00) per day.
- b. The city license tax on carnivals, dog, pony and trained animal shows shall be one hundred fifty dollars (\$150.00) per day. For the purpose of this section, a "carnival" shall be taken to mean an aggregation of shows, amusements, concessions, eating places and riding devices, or any of them, operated together on one parcel of ground or streets, or on contiguous parcels of ground or streets moving from place to place, whether the same are owned and actually operated by separate persons or not.
- c. This subsection shall not be construed to prohibit a resident mechanic or artist from exhibiting any production of his own art or invention without compensation, nor shall any license be required of an industrial arts exhibit nor of any agricultural fair or the shows exhibited within the grounds of such fair, during the period of such fair, whether any admission be charged or not, nor of resident persons performing in a show or exhibition for charity or other benevolent purposes, nor of exhibitions of volunteer fire companies, whether an admission be charged or not. Whenever any such show, exhibition or performance is given, whether exempted by the terms hereof or licensed, those engaged therein and operating under either such license or exemption, shall be exempt from a license tax for performing or acting thereat.
- d. The provisions of this section shall not be construed to allow without payment of, the tax herein imposed any performances for charitable or benevolent purposes by a company, association of persons or a corporation who make it their business to give exhibitions, no matter what terms of contract may be entered into or under what auspices such exhibition is given by such company, association of persons, or corporations for benevolent or charitable purposes, it being the intent and meaning of this article that every company, association of persons or corporation, the business of which is giving exhibitions for compensation, whether a part of the proceeds are for charitable or benevolent purposes or not, shall pay the license tax prescribed herein. The provisions of this subsection shall be construed to allow, without the payment of the state and local taxes imposed by law, exhibitions or performances by a company, association of persons or corporation, other than a bona fide local association or corporation organized for the principal purpose of holding and which holds legitimate agricultural exhibitions or industrial art exhibits who make it their business to give such exhibitions or performances, where they rent or lease fair or exhibition grounds or buildings for the purpose of giving such exhibitions or performances and exhibit therein agricultural or industrial arts products as a part of the exhibition offered.

- (12) Every savings and loan association shall pay for the privilege of doing business in the city an annual license tax of fifty dollars (\$50.00), only if the main office of the association is located herein.
- (13) Every precious metals dealer operating within the city shall comply with sections 54.1-4100 through 54.1-4111 of the Code of Virginia, 1950, as amended, and those sections are hereby adopted in their entirety and incorporated herein by reference.
- (14) There is hereby levied, for the use of the city, and to be collected by the treasurer in the manner prescribed by law, an annual tax equivalent to but not exceeding eighty (80) percent of the state rate of taxation on each one hundred dollars (\$100.00) of the taxable value of the shares of stock of banks located within the city, including the branch or branches of such banks located therein; but if any such bank has any branch or branches located outside the corporate limits of the city, the tax imposed hereby shall be upon only such proportion of the value of the shares of stock in such bank as the total deposits of such bank, minus deposits through any branch or branches located outside the corporate limits of the city bear to the total deposits of the bank as of the beginning of the tax year. As to any branch bank located in the city, the bank of which it is a branch having its principal office outside the city, a like tax, equivalent to but not exceeding eighty (80) percent of the state rate of taxation, is hereby imposed on such proportion of the taxable value of the shares of stock in such bank as the deposits through such branch or branches located in the city bear to the total deposits of the bank as of the beginning of the tax year.
- (15) Any person or organization may sponsor a show or sale on the taking out of a license under this subsection. A tax of thirty dollars (\$30.00) is hereby imposed on each nonprofit antique, art or craft show and sale, and a tax of two hundred dollars (\$200.00) is hereby imposed on any such other show and sale. A license issued under this subsection shall be in lieu of an itinerant vendor's or peddler's license which would be otherwise required of any seller who participates in such shows and sales under the sponsorship of such person or organization. The tax imposed hereby shall not apply to an auction or other sale, if the only sales thereunder are made directly by a nonprofit organization. The license issued hereunder shall not be prorated nor issued on a quarterly basis.
- (16) Every person conducting or engaging in the processing of poultry or poultry products shall pay for the privilege an annual license tax of thirty dollars (\$30.00) for the first five thousand dollars (\$5,000.00) of gross receipts, and three cents (\$0.03) for each additional one hundred dollars (\$100.00) of gross receipts in excess of the first five thousand dollars (\$5,000.00) derived from the occupation during the preceding calendar year.
- (17) Every person conducting or engaging in the business of buying and selling grain in bulk and/or brokering the sale of grain in bulk shall pay for the privilege an annual license tax of five cents (\$0.05) per one hundred dollars (\$100.00) of gross receipts derived from said business during the preceding calendar year.
- (18) Every person who shall engage in the business of operating a commercial hatchery shall obtain a license therefor and shall pay for the privilege of such operation an

annual license tax of five cents (\$0.05) for each one hundred dollars (\$100.00) of gross receipts derived from said business during the preceding calendar year.

~~(19) Every person conducting or engaging in the business of a "health club" as defined herein shall pay an annual license tax of one thousand dollars (\$1,000.00), not transferable to another person or subject to proration for part of the license year.~~

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

~~a. *Health club*: Any establishment which offers service in the form of massage, baths, exercise or similar services, in combination to club members, or the public for a charge. The term "health club" does not include (i) hospitals, nursing homes, medical clinics or the offices or quarters of a physician, a surgeon or osteopath; (ii) exercise clubs exclusively for members or clientele of one sex alone where the services, without massage in any form, are performed by persons of the same sex as the members of the clientele; or (iii) barbershops and beauty parlors.~~

~~b. *Masseur and masseuse*: A person who practices any one or more of the arts of body massage, either by hand or mechanical apparatus, oil rubs, corrective gymnastics, mechanotherapy, including color therapy, dietetics, hot packs, cabinet, tub, shower, sitz, vapor, steam or any other special type of bath.~~

(19) Reserved.

(20) The license tax for every junk dealer shall be as follows: On annual purchase of junk, wool, hides or furs not exceeding twenty thousand dollars (\$20,000.00), one hundred seventy-five dollars (\$175.00); purchases exceeding twenty thousand dollars (\$20,000.00) but not exceeding fifty thousand dollars (\$50,000.00), two hundred ninety dollars (\$290.00); purchases exceeding fifty thousand dollars (\$50,000.00), three hundred fifty dollars (\$350.00). On every person who engages in the business of canvassing for junk, the annual license tax shall be thirty dollars (\$30.00).

No license shall be issued for a junk dealer until he shall first obtain a permit from the city engineer showing that the premises on which such business is proposed to be conducted and such junk as is proposed to be stored are suitable for such purposes, and such permit shall be refused unless: (i) provision is made on such premises for the storage of junk within a suitably enclosed building, or such premises are completely enclosed by a fence and gates at least eight (8) feet high, constructed of boards, brick, cement, tile, cinder block or stone, in such manner as to effectively screen or shut off such premises; or (ii) applicant shall agree in writing to provide the required building or enclosure within sixty (60) days thereafter, and in default thereof, that his license shall be thereby automatically revoked. It shall be the duty of the city engineer to inspect such premises promptly upon receipt of such application, and to grant or deny such permit; and any such person aggrieved by the refusal of such permit or license, may appeal to the city council by serving a copy of notice of such appeal on the said city engineer within ten (10) days after the date of such refusal.

This subsection shall not be construed to permit the storing of junk, hides or furs, in violation of any provision of title 10, chapter 3 of this Code.

- (21) Every person selling or offering to sell Christmas trees or holly in the city, with the exception of regularly licensed retail merchants, shall obtain a license to sell such Christmas trees, holly, etc., and the license fee therefor shall be ten dollars (\$10.00) per annum, not subject to proration.
- (22) Every person who shall operate or conduct a public dance hall shall obtain a license therefor and shall pay therefor a license tax of two hundred fifty dollars (\$250.00) per annum. Licenses issued under this subsection shall not be prorated and shall not be transferable or assignable. The licenses required of public dance halls by this section shall be issued by the commissioner of the revenue of the city, but in no case shall the commissioner of the revenue issue such until and unless the person applying there for shall have obtained a permit as required by section 12-3-22 of this Code.
- (23) All persons engaged in the business of wall sign or billboard painting or posting or the rental of space of facilities for such signs or billboards shall pay for the privilege an annual tax of fifty dollars (\$50.00) for each such wall sign or billboard. Wall signs or billboards must comply with zoning regulations. Such license shall not be prorated.
- (24) Persons operating boardinghouses and lodging houses or fraternities or sororities in the city, renting rooms to three (3) or more regular lodgers for a predetermined period, shall pay for the privilege an annual license tax of fifteen dollars (\$15.00), and three dollars (\$3.00) for each person in excess of three (3), which license shall include the privilege of serving meals to such regular roomers. If meals are served or offered to the public at large, however, a restaurant license shall be obtained under the provisions of this chapter.
- (25) Every person who shall engage in the business of manufacturing, bottling, wholesaling or retailing alcoholic beverages shall obtain a license therefor and shall pay therefor the license tax hereinafter provided:
- a. *Distiller's license.* For each distiller's license, seven hundred fifty dollars (\$750.00) per annum if more than five thousand (5,000) gallons but not more than thirty six thousand (36,000) gallons manufactured during such year; one thousand dollars (\$1,000.00) per annum; ~~provided, that if more than 36,000 gallons manufactured during each year;~~ and no license shall be required of any distiller manufacturing not more than five thousand (5,000) gallons of alcohol or spirits or both during such license year.
  - b. *Winery and farm winery license.* For each winery and farm winery license ~~one thousand dollars (\$1,000.00) per annum; provided, that no license shall be required of any winery manufacturing not more than five thousand (5,000) gallons of wine during such license year.~~ fifty dollars (\$50.00) per annum.
  - c. *Brewery license- and limited brewery license.* For each brewery license, ~~one thousand~~ two hundred fifty dollars (\$250.00) per annum if not more than 500 barrels of beer manufactured during the year in which the license is granted, and one thousand dollars (\$1,000.00) per annum if more than 500 barrels of beer manufactured during the year in which the license is granted.
  - d. *Bottler's license.* For each bottler's license five hundred dollars (\$500.00) per annum.

- e. *Wholesale beer license.* For each wholesale beer license, one hundred fifty dollars (\$150.00) per annum.
- f. *Wholesale wine distributor's license.* For each wholesale wine distributor's license, ~~sixty~~fifty dollars (~~\$60~~50.00) per annum.
- ~~g. *Wholesale druggist's license.* For each wholesale druggist's license, fifteen dollars (\$15.00) per annum.~~
- g. *Reserved.*
- h. *Retail on-premises wine and beer license for a hotel, restaurant or club.* ~~For and~~ for each retail ~~on~~off-premises wine and beer license for a hotel, restaurant or club, including each gourmet brewing shop license, ninety dollars (\$90.00) per annum.
- i. *Retail off-premises wine and beer license.* For each retail off-premises wine and beer license, ninety dollars (\$90.00) per annum.
- ~~j. *Retail on-premises beer license for a hotel restaurant or club.* For each retail on-premises beer license for a hotel, restaurant or club, sixty dollars (\$60.00) per annum.~~
- ~~k. *Druggist's license.* For each druggist's license twenty five dollars (\$25.00) per annum.~~
- ~~l. *Fruit distiller's license.* For each fruit distiller's license, one thousand five hundred dollars (\$1,500.00) per annum.~~ j. *Reserved.*
- k. *Reserved.*
- l. *Reserved.*
- m. *Mixed alcoholic beverage license.* For each license for the sale of mixed alcoholic beverages by restaurants, including restaurants located on premises of and operated by hotels or motels and private nonprofit clubs operating restaurants, the rate shall be as follows:

Restaurants:

<i>Seating Capacity at Tables (number of persons)</i>	<i>License Tax (per year)</i>
<del>500</del> —100	<del>\$250</del> <u>200</u> .00
101—150	<del>400</del> <u>350</u> .00
<u>151-500</u>	<u>\$500.00</u>
Over <del>150</del> <u>500</u>	<del>550</del> <u>\$650</u> .00

Private, nonprofit clubs operating restaurants: \$350.00

The aforesaid licenses shall be as respectively defined by the Act of the General Assembly, known as "The Alcoholic Beverage Control Act" and the terms "alcoholic beverages", "alcohol", "spirits", "beer", and "wine", wherever used in this sub-section shall have the meanings respectively prescribed by them by such act.

No license shall be issued under this section to any person unless such person shall hold or secure simultaneously therewith the proper state license required by "The Alcoholic Beverage Control Act", which state license shall be exhibited to the ~~commissioner of the revenue~~assessing official, and all dining rooms, restaurants, lunchrooms and clubrooms, wherein the beverages herein defined are sold for consumption on the premises, shall at all times be open to inspection by the state police and the city police; provided, further, that no (any) storeroom or other building from which deliveries are made either at wholesale or retail by bottlers, wholesalers or retailers shall at all times be open to inspection by the state police and the city police. Any violation of the terms of this provision shall be sufficient grounds for the revocation of the license issued in accordance with this section.

No alcoholic beverage license shall be transferable.

**That Section 12-1-11 and 12-1-12 be enacted as follows:**

Section 12-1-11 Criminal penalties.

(a) If any person commences to operate any business, profession, trade or occupation in the City without first obtaining a license, such person shall be guilty of a Class 3 misdemeanor. Each day shall be a separate offense. Any conviction under this provision shall not relieve any such person from the payment of the license tax prescribed by this chapter.

(b) If any person shall continue to provide a business service or shall continue a business, profession, trade or occupation after the expiration date of a license previously issued therefor, without obtaining a new license, such person shall, if such failure to obtain a new license be continued for one month, shall be subject to the penalty provided for in this chapter. Further, such persons shall be guilty of a Class 3 misdemeanor. Each day shall be a separate offense.

(c) Failure or refusal to file any return required under this chapter at the time or times required therein or for making false statements with intent to defraud in such returns shall constitute: (i) A Class 3 misdemeanor if the amount of the tax lawfully assessed in connection with the return is \$1,000.00 or less, or (ii) A Class 1 misdemeanor if the amount of the tax lawfully assessed in connection with the return is more than \$1,000.00.

**Sec. 12-1-12. - Power to summon taxpayers and other persons; penalties.**

(a) The assessing official may, for the purpose of assessing all taxes assessable by his office, summon the taxpayer or any other person to appear before him at his office, to answer, under oath, questions touching the tax liability of any and all specifically identified taxpayers. The assessing official shall not, however, summon a taxpayer or other person for the tax liability of the taxpayer which is the subject of litigation.

(b) Any person who refuses to (i) furnish to the Commissioner access to books of account or other papers and records, (ii) furnish information to the Commissioner relating to the assessment

of taxes, (iii) answer under oath questions touching any person's tax liability, or (iv) exhibit to the Commissioner any subject of taxation liable to assessment by the Commissioner, shall be deemed guilty of a Class 3 misdemeanor. Each day's refusal to furnish such access or information shall constitute a separate offense

The remainder of Title 12, Chapter 1 is reaffirmed and reenacted in its entirety, except as hereby modified.

Adopted and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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**MAYOR**

ATTESTE:

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CITY CLERK