

TOWN COUNCIL

STAFF REPORT

Finance Department



MEETING DATE:	July 13, 2021
PROJECT:	Consideration of an Ordinance Repealing and Replacing the Town of Bluffton Code of Ordinances, Chapter 6, Business and Business Regulations, Article II, Business Licenses and Regulations and Amending Chapter 6, Business and Business Regulations, Article III, Soliciting and Mobile Vending – First Reading
PROJECT MANAGER:	Natalie Majorkiewicz, CGFO, Treasury Manager

RECOMMENDATION:

To repeal and replace Municipal Code of Ordinances Chapter 6, Businesses and Business Regulations, Article II, Business Licenses and Regulations using the Municipal Association of South Carolina's (MASC) recommendation revised business license model ordinance. The SC Business License Tax Standardization Act, Act 176, was passed in September of 2020 which becomes effective January 1, 2022 and requires all cities and towns to adhere to specific requirements.

To amend Municipal Code of Ordinances Chapter 6, Businesses and Business Regulations, Article III, Soliciting and Mobile Vending to reflect a new section for definitions that will capture term terms removed with the repeal and replacement of Article II, above.

BACKGROUND:

In 2018, Town Council amended its business license ordinance that took effect January 1, 2019. This amendment added additional incentives to businesses and replaced the over twenty business license rate classes, multiple base allowances, multiple base fees, and per thousand rates to a very streamlined eight rate classes, one base allowance of \$10,000, one base fee of \$50 (except for class 8.6 with a base fee of \$30), and a tiered per thousand rate increase of \$0.20 per rate class with rate class 1 starting at \$1.00 per thousand.

In September 2020, the South Carolina General Assembly passed the SC Business License Tax Standardization Act, known as Act 176. The new law will go into effect on January 1, 2022 and requires cities and towns that levy a business license tax to adhere to the following:

1. Have a payment due date of April 30.
2. Issue business licenses for a period of May 1 to April 30.
3. Calculate tax based on the business' income for the previous calendar year or its previous fiscal year.
4. Use the law's definition of gross income.
5. Accept a standardized application approved by the SC Revenue and Fiscal Affairs Office (SCRFA).

6. Use the law's standardized class schedule.
7. Allow businesses to make renewal payments through an online payment system hosted by the SCRFA.
8. Use the law's standardized appeals process.
9. Set rates for the 2022 license year to prevent a revenue windfall in the first year of compliance with the law.
10. Adopt the most recent Standardized Business License Class Schedule by December 31 of every odd year.

DISCUSSION:

Below is a comparison of changes between our current ordinance and the revised model ordinance:

Current Town of Bluffton Ordinance	Revised Model Ordinance
<p><u>Sec. 6-20 – Definitions:</u></p> <p><i>Includes term for Article III that will be moved with this amendment, if approved.</i></p>	<p><u>Sec. 6-20 – Definitions:</u></p> <p><i>Contains only terms pertinent to business license.</i></p>
<p><u>Sec. 6-21 – Purpose and Duration:</u></p> <p><i>Each license shall be issued for one calendar year ending December 31.</i></p>	<p><u>Sec. 6-21 – Purpose and Duration:</u></p> <p><i>The license year ending on April 30, 2022, shall commence on January 1, 2021 and shall run for a 16-month period. ...each yearly license shall be issued for the twelve-month period of May 1 to April 30.</i></p>
<p><u>Sec. 6-22 – Business License Tax:</u></p> <p>(B) ... <i>The tax for a new business shall be based on the minimum payment (base fee) under the Rate Class in which the business falls...</i></p> <p>(C) <i>When any new business taxable hereunder is begun on or after January first, but before July first, the full amount of the tax shall be due. New businesses beginning on or after July first shall be required to pay one-half of the license tax otherwise prescribed.</i></p> <p>(D) Removed <i>The tax for a new resident business during the first year of operation or portion thereof shall be the base tax for the</i></p>	<p><u>Sec. 6-22 – Business License Tax, Refund:</u></p> <p>(B) ... <i>The business license tax for a new business must be computed on the estimated probable gross income for the balance of the license year...</i></p> <p>(C) <i>A licensee that submits a payment greater than the amount owed may request a refund. To be considered, a refund request must be submitted in writing to the Municipality before the June 1 immediately following the April 30 on which the payment was due and must be supported by adequate documentation supporting the refund request. The Municipality shall approve or deny the refund request, and if approved shall issue the</i></p>

<p><i>classification for that business as determined by the license official using the classification rate schedules and details below, and thereafter, the tax for a new resident business shall be as follows:</i></p> <ul style="list-style-type: none"> • <i>1st Renewal: 40% Gross Income Reduction</i> • <i>2nd Renewal: 20% Gross Income Reduction</i> • <i>3rd Renewal: 30% Gross Income Reduction</i> 	<p><i>refund to the business, within thirty days after receipt of the request.</i></p> <p>(D) N/A</p>
<p><u>Sec. 6-23 – Registration Required:</u></p> <p>(D) Removed <i>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 official. An insurance agent not employed by a company shall be licensed as a broker.</i></p>	<p><u>Sec. 6-23 – Registration Required:</u></p> <p>(D) <i>The Municipality shall allow application, reporting, calculation, and payment of business license taxes through the business license tax portal hosted and managed by the South Carolina Revenue and Fiscal Affairs Office, subject to the availability and capability thereof. Any limitations in portal availability or capability do not relieve the applicant or Licensee from existing business license or business license tax obligations.</i></p>
<p><u>Sec. 6-24: Deductions, Exemptions, and Charitable Organizations:</u></p> <p>(C) becomes (D)</p> <p>Last paragraph in section becomes (E)</p>	<p><u>Sec. 6-24: Deductions, Exemptions, and Charitable Organizations:</u></p> <p>(C) <i>Wholesalers are exempt from business license taxes unless they maintain warehouses or distribution establishments within the Municipality. A wholesale transaction involves a sale to an individual who will resell the goods and includes delivery of the goods to the reseller. It does not include a sale of goods to a user or consumer.</i></p>
<p><u>Sec. 6-29 – Assessments; Payment Under Protest; Appeal:</u></p> <p>(A) <i>If a person fails to obtain a business license or to furnish the information required by this ordinance or the license official, the license official shall examine such records of the business or any other available records as may</i></p>	<p><u>Sec. 6-29 – Assessments, Payment under Protest, Appeal:</u></p> <p>(A) <i>Assessments, payments under protest, and appeals of assessment shall be allowed and conducted by the Municipality pursuant to the provisions of S.C. Code § 6-1-410, as amended. In preparing an assessment, the license official may</i></p>

<p><i>be appropriate, and conduct such investigations and statistical surveys as the license official may deem appropriate to assess a license tax and penalties as provided herein.</i></p> <p><i>(B) A notice of assessment shall be served by certified mail or personal service. An application for adjustment of the assessment may be made to the license official within five (5) days after the notice is mailed or personally served or the assessment will become final. The license official shall establish a uniform procedure for hearing an application for adjustment of assessment and issuing a notice of final assessment.</i></p> <p><i>(C) A final assessment may be appealed to the 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.</i></p>	<p><i>examine such records of the business or any other available records as may be appropriate and conduct such investigations and statistical surveys as the license official may deem appropriate to assess a business license tax and penalties as provided herein.</i></p> <p><i>(B) The license official shall establish a uniform local procedure consistent with S.C. Code § 6-1-410 for hearing an application for adjustment of assessment and issuing a notice of final assessment; provided that for particular types of business licenses, including without limitation for business licenses issued to businesses subject to business license taxes under Article 20, Chapter 9, Title 58, and Chapters 7 and 45, Title 38, of the South Carolina Code, the Municipality, by separate ordinance article, may establish a different procedure and may delegate one or more rights, duties, and functions hereunder to the Municipal Association of South Carolina.</i></p> <p><i>(C) N/A</i></p>
<p><u>Sec. 6-30 – Delinquent License Taxes; Partial Payment:</u></p> <p><i>(A) For non-payment of all or any part of the correct license tax, the License Official shall levy and collect a late penalty of five percent of the unpaid tax for each month or portion thereof after the due date until paid. License taxes may not be waived. If any license tax remains unpaid for 60 days after its due date, absent extraordinary and compelling circumstances, the license official shall report it to the Town Manager and/or Town Attorney for appropriate action.</i></p> <p><i>(B) Partial payment may be accepted by the license official to toll imposition of penalties on the portion paid; provided, however, no business license shall be issued or renewed until the full</i></p>	<p><u>Sec. 6-30 – Delinquent License Taxes; Partial Payment:</u></p> <p><i>(A) For non-payment of all or any part of the correct business license tax, the license official shall impose and collect a late penalty of five (5%) percent of the unpaid tax for each month or portion thereof after the due date until paid. Penalties shall not be waived. If any business license tax remains unpaid for sixty (60) days after its due date, the license official shall may report it to the municipal attorney for appropriate legal action.</i></p> <p><i>(B) Partial payment may be accepted by the license official to toll imposition of penalties on the portion paid; provided, however, no business license shall be issued or renewed until the full</i></p>

<p><i>amount of the tax due, with penalties, has been paid.</i></p> <p><i>(C) For good cause shown, but not otherwise, a business may petition the town manager, or designee for a reduction of the penalties otherwise due when the failure to pay is not willful and is more than mere oversight and inadvertence.</i></p>	<p><i>amount of the tax due, with penalties, has been paid.</i></p> <p><i>(C) For good cause shown, but not otherwise, a business may petition the town manager, or designee for a reduction of the penalties otherwise due when the failure to pay is not willful and is more than mere oversight and inadvertence.</i></p>
<p><u>Sec. 6-32 – Denial of License:</u></p> <p>(F) is moved to (G)</p>	<p><u>Sec. 6-32 – Denial of License:</u></p> <p><i>(F) A licensee has actual knowledge or notice, or based on the circumstances reasonably should have knowledge or notice, that any person or employee of the licensee has committed a crime of moral turpitude on the business premises, or has permitted any person or employee of the licensee to engage in the unlawful sale of merchandise or prohibited goods on the business premises and has not taken remedial measures necessary to correct such activity; or</i></p> <p><i>A decision of the license official shall be subject to appeal as herein provided. Denial shall be written with reasons stated.</i></p>
<p><u>Sec. 6-33 – Suspension or Revocation of License:</u></p>	<p><u>Sec. 6-33 – Suspension or Revocation of License:</u></p> <p><i>...the license official may give written notice to the licensee or the person in control of the business within the Municipality by personal service or mail that the license is suspended pending a single hearing before Council or its designee for the purpose of determining whether the suspension should be upheld and the license should be revoked.</i></p> <p><i>The written notice of suspension and proposed revocation shall state the time and place at which the hearing is to be held, and shall contain a brief statement of the reasons for the suspension and</i></p>

	<i>proposed revocation and a copy of the applicable provisions of this ordinance article.</i>
<p><u>Sec. 6-34 – Appeals; Hearings by Council:</u></p> <p>(B) <i>An appeal or a hearing on proposed revocation shall be held by the Town Council within 45 days after receipt of a request for appeal or service of notice of suspension, whichever occurs first, at a regular or special meeting of which the applicant or licensee has been given written notice, unless such hearing is continued by agreement of the applicant or licensee and the Town Manager, or designee. At the 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 requesting the proceedings. 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 application of the standards herein which shall be served upon all parties or their representatives and shall be the final decision of the Town.</i></p>	<p><u>Sec. 6-34 – Appeals to Council or its Designee:</u></p> <p>(B) <i>A hearing on an appeal from a license denial or other determination of the license official and a hearing on a suspension and proposed revocation shall be held by the Council or its designee within ten (10) business days after receipt of a request for appeal or service of a notice of suspension and proposed revocation. The hearing shall be held upon written notice at a regular or special meeting of the Council, or, if by designee of the Council, at a hearing to be scheduled by the designee. The hearing may be continued to another date by agreement of all parties. At the hearing, all parties shall have the right to be represented by counsel, to present testimony and evidence, and to cross-examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party so requesting. The rules of evidence and procedure prescribed by Council or its designee shall govern the hearing. Following the hearing, the Council by majority vote of its members present, or the designee of Council if the hearing is held by the designee, shall render a written decision based on findings of fact and conclusions on application of the standards herein. The written decision shall be served, by personal service or by mail, upon all parties or their representatives and shall constitute the final decision of the Municipality.</i></p> <p>(C) <i>Timely appeal of a decision of Council or its designee does not effectuate a stay of that decision. The decision of the Council or its designee shall be binding and enforceable unless overturned by an applicable appellate court after a due and timely appeal.</i></p> <p>(D) <i>For business licenses issued to businesses subject to business license taxes under Article 20,</i></p>

	<p><i>Chapter 9, Title 58, and Chapters 7 and 45, Title 38, of the South Carolina Code, the Municipality may establish a different procedure by ordinance article.</i></p>
<p><u>Sec. 6-34 – Permission to Use Streets Required:</u></p> <p><u>Sec. 6-35 – Fees Required:</u></p> <p>Combined into one section</p>	<p><u>Sec. 6-35 – Consent, Franchise, or License Required for Use of Streets:</u></p>
<p><u>Sec. 6-39 – Classification and Rates:</u></p> <p>(A) <i>The Class Structure Model by the North American Industry Classification System code, designated as Appendix B to this Article, may be amended by the Council from time to time, and current copies shall be filed in the office of the municipal clerk. Appendix B is a tool for classification and not a limitation on businesses subject to a license tax. The License Official shall determine the proper class for a business according to the applicable NAICS code.</i></p> <p>(B) <i>The license tax for each class of businesses subject to this Article shall be computed in accordance with the Rate Schedule, designated as Appendix A to this Article, which may be amended by the Council from time to time and a current copy filed in the office of the municipal clerk.</i></p> <p>(C) <i>A cap of \$25,000,000.00 is extended to all businesses such that the annual gross receipts of any one business exceeding this cap are exempt from the business license rates outlined herein. This does not apply to any other fees paid to other agencies for the Town.</i></p> <p>(D) <i>When a business owner(s) maintains two or more resident business locations under the same NAICS code as deemed proper by the license official, each location may deduct ten percent from its annual gross income in its annual license</i></p>	<p><u>Sec. 6-39 – Classification and Rates:</u></p> <p>(A) <i>The business license tax for each class of businesses subject to this ordinance article shall be computed in accordance with the current business license rate schedule, designated as <u>Appendix A</u> to this ordinance article, which may be amended from time to time by the Council.</i></p> <p>(B) <i>The current business license class schedule is attached hereto as <u>Appendix B</u>. Hereafter, no later than December 31 of each odd year, the Municipality shall adopt, by ordinance article, the latest standardized business license class schedule as recommended by the Municipal Association of South Carolina and adopted by the Director of the South Carolina Revenue and Fiscal Affairs Office. Upon adoption by the Municipality, the revised business license class schedule shall then be appended to this ordinance article as a replacement <u>Appendix B</u>.</i></p> <p>(C) <i>The classifications included in each rate class are listed with NAICS codes, by sector, sub-sector, group, or industry. The business license class schedule (<u>Appendix B</u>) is a tool for classification and not a limitation on businesses subject to a business license tax. The classification in the most recent version of the business license class schedule adopted by the Council that most specifically identifies the subject business shall be applied to the business. The license official shall</i></p>

<p><i>tax calculation. This does not apply to any other fees paid to other agencies for the Town.</i></p>	<p><i>have the authority to make the determination of the classification most specifically applicable to a subject business.</i></p> <p><i>(D) A copy of the class schedule and rate schedule shall be filed in the office of the municipal clerk.</i></p>
<p><u>Sec. 6-43 – Business License Incentive Program:</u></p> <p><u>Sec. 6-44 – Business Tax Abatement:</u></p> <p>Both sections removed.</p> <p>This process is captured in S.C. Code Section 6-4-400 (H)(2): <i>“This section does not impair or affect any future special business license ordinance passed for economic stimulus, an annual flat fee, or any future formal or informal agreement between a taxing jurisdiction and a taxpayer regarding the calculation of business license taxes.”</i></p>	<p><u>Sec. 6-40 - Business License Incentive Program:</u></p> <p><i>(A) When any new business taxable hereunder is begun on or after May first, but before October first, the full amount of the tax shall be due. New businesses beginning on or after October first shall be required to pay one-half of the license tax otherwise prescribed.</i></p> <p><i>(B) A cap of \$25,000,000.00 is extended to all businesses such that the annual gross receipts of any one business exceeding this cap are exempt from the business license rates outlined herein. This does not apply to any other fees paid to other agencies for the Town.</i></p> <p><i>(C) When a business owner(s) maintains two or more resident business locations under the same NAICS code as deemed proper by the license official, each location may deduct ten percent (10%) from its annual gross income in its annual license tax calculation. This does not apply to any other fees paid to other agencies for the Town.</i></p> <p><i>(D) The tax for a new resident business during the first year of operation or portion thereof shall be the base tax for the classification for that business as determined by the license official using the classification rate schedules and details below, and thereafter, the tax for a new resident business shall be as follows:</i></p> <ul style="list-style-type: none"> <i>• 1st Renewal: 40% Gross Income Reduction</i> <i>• 2nd Renewal: 20% Gross Income Reduction</i> <i>• 3rd Renewal: 30% Gross Income Reduction</i>

To assist cities and town through the process, seven steps were created by MASC.

Step 1	Convert Business License Year	In Sec. 6-21, this moves our current 2021 licenses set to expire on December 31, 2021 to expire on April 30, 2022.
Step 2	Review Data	2020 business license data has been analyzed, formatted, and updated to coincide with the 2017 NAICS classifications.
Step 3	Rebalance Rates	Town staff and MASC have been working together to ensure a windfall is prevented through a rebalancing process. This is similar to the process Town staff went through in 2018 when converting to the Model Ordinance that took effect January 1, 2019.
Step 4	Adopt Class Schedule	Found in Appendix A of Chapter 6, Article II
Step 5	Replace Ordinance	<ul style="list-style-type: none"> • First Reading on July 13, 2021 • Second Reading scheduled for August 10, 2021
Step 6	Set Up Portal Account	Town staff is currently working on the file to upload to the portal.
Step 7	Notify Stakeholders	After Second and Final Reading on August 10, Town staff is prepared to contact businesses regarding changes about the new law.

Currently, the Town's Ordinance permits the following incentives for businesses:

- Paying base fee when applying for business license
- Paying ½ of base fee when applying 6-months into the license year
 - Currently July 1 through December 31
 - Proposed to Oct 1 through April 30 with updated ordinance
- 1st Renewal: 40% Gross Income Reduction
- 2nd Renewal: 20% Gross Income Reduction
- 3rd Renewal: 30% Gross Income Reduction
- 2 or more resident businesses with same NAICS and owner: 10% Gross Income Reduction
- Cap of \$25,000,000 on gross revenue

The proposed Rate Class Schedule below was developed through the rebalancing process in partnership with MASC. There is a requirement for cities and towns to remain revenue neutral when incorporating the new Act during the 2022 business license cycle.

In an effort to be in concert with the Standardization Act, it is recommended the Town of Bluffton reduce the base allowance from \$10,000 to \$2,000 and reduce the step increase in rate class from \$0.20 per class to \$0.15.

	Current	Proposed
Base Allowance	\$10,000	\$2,000
Base Fee	\$50	\$50
	Rate Per \$1,000 or Fraction Thereof	
Rate Class 1	\$1.00	\$1.00
Rate Class 2	\$1.20	\$1.15
Rate Class 3	\$1.40	\$1.30
Rate Class 4	\$1.60	\$1.45
Rate Class 5	\$1.80	\$1.60
Rate Class 6	\$2.00	\$1.75
Rate Class 7	\$2.20	\$1.90
Rate Class 8.1	\$1.00	\$1.00
Rate Class 8.6 becomes 9.8	\$1.00 (\$30 base fee)	\$1.00 (\$30 base fee)

SUMMARY:

The SC Business License Tax Standardization Act requires the Town of Bluffton to certain criteria, such as a due date of April 30, business license period of May 1 through April 30, and acceptance of the standard business license application. Additionally, there is a rebalancing process requirement to ensure the Town of Bluffton does not create a windfall or loss in revenue when changing to the 2021 class schedule.

With both the rebalancing process and the standardization, the base allowance for the Town of Bluffton is recommended to be reduced from \$10,000 to \$2,000, retain the base fee of \$50, retain the rate class per thousand rate at \$1.00, but reduce the step per rate class from \$0.20 to \$0.15 per class.

NEXT STEPS:

Should Town Council approve the First Reading of the Ordinance, a Second Reading is anticipated at the August 10, 2021 Town Council meeting. The fully adopted ordinance will be effective January 1, 2022.

ATTACHMENTS:

1. Ordinance Chapter 6, Article II, Sec. 6-19 through 6-73 – Business Licenses and Regulations
2. Ordinance Chapter 6, Article III, Sec. 6-74 through 6-97 – Soliciting and Mobile Vending
3. South Carolina Code of Laws Sec. 6-1-400 through 6-1-420 – Business License Tax Standardization
4. Summary of Rate Class Schedule Changes and Estimated Revenue Impact
5. Recommended Motion