

ORDINANCE TO REQUIRE AN ANNUAL BUSINESS LICENSE TO OPERATE A BUSINESS IN THE TOWN OF ONLEY

ARTICLE 1. GENERALLY

Section 1. Title

This Ordinance shall be known as a "Business Professional, Occupational License Fee for the Town of Onley, Virginia," and may be so cited. The purpose of this Ordinance is to impose a license fee on all persons engaged in the businesses, professions, occupations and trades conducted in the Town, to require a license to be obtained therefor, provide for the collection thereof, and to impose penalties for failure to comply with the provisions hereof.

Section 2. Definitions.

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

Affiliated group means:

- (1) One or more chains of corporations subject to inclusion connected through stock ownership with a common parent corporation which is a corporation subject to inclusion if:
 - a. Stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of each of the corporations subject to inclusion, except the common parent corporation, is directly owned by one or more of the other corporations subject to inclusion; and
 - b. The common parent corporation directly owns stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of at least one of the other corporations subject to inclusion. As used in this subdivision, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends; the phrase "corporation subject to inclusion" means any corporation within the affiliated group irrespective of the state or county of its

incorporation; and the term "receipts" includes gross receipts and gross income.

2. Two or more corporations if five or fewer persons who are individuals, estates or trusts own stock possessing:
 - a. At least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock of each corporation; and
 - b. More than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership is identical with respect to each such corporation.

When one or more of the corporations subject to inclusion, 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.

Business means a course of dealing which requires the time, attention and labor of the person or 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.

Definite place of business means an office or a location at which occurs a regular and continuous course of dealing for 30 consecutive days or more. A definite place of business for a person engaged in a business may include a location leased or otherwise obtained by 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.

Financial services means the buying, selling, handling, managing, investing and providing of advice regarding money, credit, securities or other investments.

License year means the calendar year for which the license is issued for the privilege of engaging in business.

Peddler at wholesale means any person, firm or corporation, who or which sells or offers to sell goods, wares or merchandise to licensed dealers, other than at a definite place of business operated by the seller, and at the same time of such sale or exposure for sale delivers, or offers to deliver, the goods, wares or merchandise to the buyer. Any delivery made on the day of sale shall be construed as a delivery at the time of sale.

Person means an individual, firm, corporation, copartnership, partnership, company, association or joint stock association. Such term 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 court appointed trustee, receiver or personal representative, in the liquidation of assets for immediate distribution, or sergeant or sheriff or any deputy, selling under authority of process of writ of a court of justice. Such terms shall not include a volunteer fire department, a volunteer rescue squad or a nonprofit organization operating a community center, swimming pool, tennis court or other educational, cultural, recreational, and athletic facilities, and facilities for the welfare of the residents of the area.

Professional services means 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 Code of Virginia (1950), § 58.1-8701, as amended. 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.

Real estate services means providing a service with respect to the purchase, sale, lease, rental or appraisal of real property.

Wholesale merchant means any person who sells to others for resale or sells at wholesale to institutional, commercial or industrial users.

ARTICLE 2. ADMINISTRATION

Section 1. License requirements

Every person shall apply annually for a license for each business or profession when engaging in a business or profession in the Town if: (i) the person has a definite place of business in the Town; (ii) there is no definite place of business anywhere and the person

resides in the Town; or (iii) there is no definite place of business in the Town but the person operates amusement machines or is classified as an itinerant merchant, peddler, contractor subject to Code of Virginia (1950), § 58.1-3715, as amended, operates a carnival or circus or is a public service corporation. A separate license shall be required for each definite place of business and for each business. A person engaged in two or more businesses or professions carried on at the same place of business may elect to obtain one license for all such businesses and professions if all of the following criteria are satisfied: (i) each business or profession is subject to licensure at the location and has satisfied any requirements imposed by state law or other provisions of the ordinances of the Town; (ii) all of the businesses or professions are subject to the same license fee.

Section 2. Due dates and penalties.

(a) Each person subject to a license fee shall apply for said license prior to beginning business, or no later than March 1 of the license year if he had been issued a license for the preceding year. The application shall be on forms prescribed by the Town Council.

(b) A fee of \$30.00 shall be paid with the application.

(c) A penalty of ten percent of the fee may be imposed upon the failure to file an application or the failure to pay the tax by the appropriate date.

(d) Under the authority of the Code of Virginia (1950), § 15.2-1429, as amended, the Town hereby imposes the penalty of a class 3 misdemeanor and a fine of not more than \$500.00 for operating a business without a business license in the Town. If the failure to file or pay was not the fault of the feepayer, the penalty shall not be imposed, or if imposed, shall be abated by the Town Council. In order to demonstrate lack of fault, the feepayer must show that he acted responsibly and that the failure was due to events beyond his control.

(e) Any person assessed with a local license tax as a result of an audit may apply within 90 days from the date of such assessment to the Town Council for a correction of the assessment. The application must be filed in good faith and sufficiently identify the taxpayer, audit period, remedy sought, each alleged error in assessment, the grounds upon which the tax payer relies, and any other facts relevant to the taxpayer's contention. The Town Council may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents, a further audit, or other evidence deemed necessary for a proper and equitable determination of the application. The assessment shall be deemed prima facie correct. The Town Council shall undertake a full review of the taxpayer's claims and issue a determination to the taxpayer setting forth its position. Every assessment pursuant to an audit shall be accompanied by a written explanation of the taxpayer's right to seek correction and the specific procedure to be

followed in the jurisdiction (e.g., the name and address to which an application should be directed.)

(f) Any person assessed with a local license tax as a result of an audit may apply within 90 days of the determination by the assessing official or an application to the Town Council for a correction of such assessment. The Town Council shall issue a determination to the taxpayer within 90 days of receipt of taxpayer's application. The application shall be treated as an application pursuant to Code of Virginia, § 58.1-1821, and the Town Council may issue an order correcting such assessment pursuant to Code of Virginia, § 58.1-1822. Following such an order, either the taxpayer or the assessing official may apply to the appropriate circuit court pursuant to Code of Virginia, § 58.1-3984.

"Acted responsibly" means that: (i) the feepayer 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 feepayer undertook significant steps to avoid or mitigate the failure, such as 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 feepayer'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 fee compliance; or the feepayer's reasonable reliance in good faith upon erroneous written information from the Mayor or Town Clerk who was aware of the relevant facts relating to the feepayer's business when he provided the erroneous information.

Section 3. Rate of license fee.

The fee for the issuance of a business license shall be \$30.00 each year. No business license under this Ordinance shall be issued until the applicant has produced satisfactory evidence that all delinquent business license fees, personal property, meals, transient occupancy, severance and admissions (if applicable) taxes owed by the business to the Town have been paid which have been properly assessed against the applicant by the Town.

Section 4. Exemptions

No license fee shall be required for:

- (1) On any public service corporation, except as provided in Code of Virginia, § 58.1-1-3731, which authorizes no fee greater than one-half of one percent of the gross receipts of such companies accruing from sales to the ultimate consumer in the Town or as permitted by other provisions of law;

- (2) For selling farm or domestic products or nursery products, ornamental or otherwise, or for the planting of nursery products, as an incident to the sale thereof, outside the regular market houses and sheds of the Town; provided, such products are grown or produced by the person offering such products for sale;
- (3) Upon the privilege of right of printing or publishing any newspaper, magazine, newsletter or other publication issued daily or regularly at average intervals not exceeding three months; provided the publication's subscription sales are exempt from state sales tax, or for the privilege or right of operating or conduction any radio or television broadcasting station or service;
- (4) On a manufacturer for the privilege of manufacturing and selling goods, wares and merchandise at wholesale at the place of manufacturer;
- (5) On a person engaged in the business of severing minerals from the earth for the privilege of selling the severed mineral at wholesale at the place of severance, except as provided in Code of Virginia, §§ 58.1-3712 and 58.1-3713, as amended, authorizing counties to levy a license tax on every person engaging in the business of severing coal, oil or gases from the earth;
- (6) Upon a wholesaler for the privilege of selling goods, wares and merchandise to other persons for resale unless such wholesaler has a definite place of business or store in the Town; this subdivision shall not be construed as prohibiting the Town from imposing the license fee on a peddler at wholesale;
- (7) Upon any person, firm, or corporation for engaging in the business of renting, as the owner of such property, real property other than hotels, motels, motor lodges, auto courts, tourist courts, travel trailer parks, lodging houses, rooming houses and boarding houses;
- (8) Upon a wholesaler or retailer for the privilege of selling bicentennial medals on a nonprofit basis for the benefit of the Virginia Independence Bicentennial Commission or any local bicentennial commission;

- (9) On or measured by receipts for management, accounting or administrative services provided on a group basis under non-profit cost-sharing agreement by a corporation which is an agricultural cooperative association under provisions of Code of Virginia (1950), Chapter 3, Ordinance 2 (§§ 13.1-312 et seq.), Title 13.1, as amended, or a member of subsidiary or affiliated association thereof, to other members of the same group; this exemption shall not exempt any such corporation from such license requirements to be measured by receipts from outside the group;
- (10) On or measured by receipts or purchases by a corporation which is a member of an affiliated group of corporations from other members of the same affiliated group; this exclusion shall not exempt affiliated corporations from such license measured by receipts or purchases from outside the affiliated group; this exclusion shall not preclude the Town from levying a wholesale merchant's license fee on an affiliated corporation on those sales by the affiliated corporation to a nonaffiliated person, company, or corporation; as used in this subdivision, the term "sales by the affiliated corporation to a nonaffiliated person, company or corporation" shall mean sales by the affiliated corporation where goods sold by the affiliated corporation or its agent are manufactured or stored in the commonwealth prior to their delivery to the nonaffiliated person, company or corporation;
- (11) On any insurance company subject to taxation under Code of Virginia (1950), Chapter 25 (§§ 58.1-2500 et seq.) as amended, or on any agent of such company;
- (12) On any bank or trust company subject to taxation in Code of Virginia (1950), Chapter 12 (§§ 68.1-1200 et seq.) as amended;
- (13) Upon a taxicab driver, if the county has imposed a license fee upon the taxicab company for which the taxicab driver operates;
- (14) On any blind person operating a vending stand or other business enterprise under the jurisdiction of the department for the visually handicapped, or a nominee of the department, as set forth in Code of Virginia (1950), § 36.1-164, as amended;
- (15) Reserved;

- (16) On an accredited religious practitioner in the practice of the religious denomination; "accredited religious practitioner" shall be defined as one who is engaged solely in praying for others upon accreditation by such church or religious denomination;
- (17) On or measure by receipts of charitable nonprofit organizations exempt to the extent the organization has receipts from an unrelated trade or business the income of which is taxable under the Internal Revenue Code Section 511 et seq. For the purpose of this subdivision, "charitable nonprofit organization" means an organization which is described in the Internal Revenue Code Section 501(c)(3) and to which contributions are deductible by the contributor under the Internal Revenue Code Section 170, except that educational institutions shall be limited top schools, colleges, and other similar institutions of learning;
- (18) On or measured by gifts, contributions, and membership dues of a nonprofit organization. For the purpose of this subdivision, "nonprofit organization" means an organization exempt from federal income tax under the Internal Revenue Code Section 501 other than charitable nonprofit organizations;
- (19) On any venture capital fund or other investment fund, except commissions and fees of such funds. Gross receipts from the sale and rental of real estate and buildings remain taxable by the locality in which the real estate is located provided the locality is otherwise authorized to tax such business and rental of real estate; or
- (20) On any person engaged in the seafood business as a working waterman who sells their catch on the wholesale market.


Section 5.

This Ordinance has been adopted pursuant to Code of Virginia, § 58.1-3700 et seq. and shall become effective on January 1, 2002.

Adopted November 5, 2001 at the regular meeting of the Onley Town Council.


John Willis Kellam, Mayor

ATTEST:


Elizabeth Bell, Town Clerk