

Chapter 9
LICENSES AND BUSINESS REGULATIONS

ARTICLE I. IN GENERAL

Sec. 9-1. License Required

Every person engaged or intending to engage in any calling, business, occupation or profession listed in the rate classification index portion of this ordinance, in whole or in part, within the limits of the City of Spartanburg, South Carolina, is required to pay an annual license fee for the privilege of doing business and obtain a business license as herein provided.

Sec. 9-2. Definitions

The following words, terms and phrases, when used in this ordinance, shall have the meaning ascribed herein:

"*Business*" means a calling, occupation, profession, or activity engaged in with the object of gain, benefit or advantage, either directly or indirectly.

"*Charitable Purpose*" means benevolent, philanthropic, patriotic, or eleemosynary purpose which does not result in personal gain to a sponsor, organizer, officer, director, trustee or person with ultimate control of the organization. A charitable organization shall be deemed a business subject to a license tax unless the entire net proceeds of its operation, after necessary expenses, are devoted to charitable purposes. Compensation in any form to a sponsor, organizer, officer, director, trustee or person with ultimate control of the organization shall not be deemed a necessary expense of operation.

"*Classification*" means the division of businesses by major groups as provided in Appendix A. In the event that a certain business cannot be located in Appendix A, the Business License Official shall assign to it a classification.

"*Commercial Property*" is all property classified by County Assessor as commercial property, excluding homes that are used primarily as residential properties. If the same entity owns more than one property, one license will be required with all gross rental income. Owner will be required to attach list identifying all properties.

Exemptions: Commercial properties that are owner-occupied by the same entity. Single-family homes and multi-family residential properties of four or less units will not be required to obtain a license.

Calculation for partial year license fee: (Businesses who began the previous year) In the event the amount reported is for less than a full year, the fee shall be based upon a calculation of the prior year's actual gross revenues plus a calculation on the difference between the actual and the estimated gross revenue.

"*Conference Center*" shall be a facility providing multiple accommodations for guest, including but not limited to, hotel, meeting space, restaurants, shops and retail establishments for the sale of alcohol.

"*Gross Income*" means that every person liable for the payment of a license tax under this chapter based upon gross receipts, in making application for a License, shall include and report the gross amount of all receipts from all business done in whole or in part within the City during the preceding calendar year, or in the case of fiscal year taxpayers, during the fiscal year that ended in the preceding calendar year, the amount of tax shall be computed thereon unless otherwise provided herein. No license based on gross receipts, or otherwise, shall be issued except upon oath of the applicant that the applicant's report of gross receipts, or otherwise, conforms to the books and records of the applicant's business and with the report or return of such gross receipts, or otherwise, for the corresponding period made or to be made to the Internal Revenue or the Insurance Commissioner of the State, as the case may be. In addition to the forgoing information the Application shall contain the Social Security Number and/or the Federal Employer's Identification Number.

"*Insurance Agents*" is defined as any person representing an insurance company, society or association licensed by the state, having an agent in the state and doing a business. Soliciting business, servicing business already written or making adjustments by himself or others either in a local or itinerant capacity shall obtain a business license on gross commissions.

"*Insurance Companies*" are those businesses except as to fire insurance in which "gross premiums" means gross premiums collected (1) on policies on property or risks located in the municipality, and (2) on policies, whatever the insured property or risk is located, that are sold, solicited, negotiated, taken, transmitted, received, delivered, applied for, produced, or serviced by the insurance company's office located in the municipality or by the insurance company's

employee doing business within the municipality or by the office of the insurance company's licensed or appointed producer (agent) located in the municipality or by the insurance company's licensed or appointed producer (agent) doing business within the municipality. As to fire insurance, "Gross premiums" means gross premiums (1) collected in the municipality. Gross premiums shall include new and renewal businesses without deductions for any dividend, credit, return premiums or deposit.

Solicitation for insurance, receiving or transmitting an application or policy, examination of a risk, collection or transmitting of a premium, adjusting a claim, delivering a benefit, or doing any act in connection with a policy or claim shall constitute doing business within the municipality whether or not an office is maintained therein. A Premium collected on property or a risk located within the municipality shall be deemed to have been collected within the municipality. Declining rates shall not apply.

Life, Health and Accident.....0.75% of Gross Premiums
Fire and Casualty.....2.75% of Gross Premiums
Title Insurance......2% of Gross Premiums

Brokers for Fire and Casualty Insurers - non-admitted:

As to brokers for non-admitted fire and casualty insurers, "gross premiums" means gross premiums collected by or for fire and casualty insurers not licenses in South Carolina:

(1) on policies on property or risks located in the municipality and/or (2) on policies, wherever the insured property or risk is located, that are cold, solicited, negotiated, taken, transmitted, received, delivered, applied for, produced or serviced by a broker located in or doing business within the municipality. Brokers shall provide, with their payment of the tax, a copy of the report required by the State Department of Insurance showing the locations of the property or risks insured.....2% of Gross Premiums

Notwithstanding any other provisions of this ordinance, license taxes for insurance companies and brokers for non-admitted fire and casualty insurers shall be payable on or before May 31 in each year without penalty.

Sec. 9-3. Same--Registration; information; oath; procedure when false information is given.

- (a) Every person required by this chapter to obtain a license to engage in any trade, business or profession shall before the last day of February in each year register with the city license inspector.
 - (1) His name or style, and in case of a firm, partnership or company, the names of the several persons constituting such firm, partnership or company, and their respective addresses, and in case of a corporation the true and complete name of the corporation, the state or county of its incorporation, and its principal place of business;
 - (2) The trade, business or profession for which a license is required;
 - (3) The place where such trade, business or profession is to be carried on; and
 - (4) The full and true extent and gross receipts of the business or profession.
- (b) The information given under subsection (a) shall be given under oath by the owner, or a member of the firm, or officer of the corporation, or authorized employee having exact knowledge of the actual business done. If it appears to the city license inspector that there are errors so submitted under oath as to the extent of the gross receipts of the business carried on, the city license inspector is authorized and required to summon the owner, manager or other person having knowledge of the business to appear before him or the city council and answer under oath as to such matters, and upon the information so received, to add to or reduce the figures of such statements as first made and fix the license tax accordingly.
- (c) The city license inspector is further authorized to employ, should he deem it necessary, an accountant to check the books and records of any applicant or licensee who, in his judgment and belief, has made an incorrect or false return of his business as required by this chapter, and should the findings of such accountant be more than was returned, then the licensee shall be required to pay such additional license tax as may be due with penalties thereon. The applicant or licensee shall be liable for and shall pay the expense charged by the accountant for such work in every case where an additional sum is found to be due.

Sec. 9-4. Authorization for city, etc., to examine books and records of applicant or licensee.

- (a) For the purpose of enforcing the provisions of this section and for the purpose of collecting the licenses and license

fees provided for in this chapter, the city, its proper nominees, representatives and employees, as designated by the city manager, in addition to all other powers, shall have the right and are hereby empowered to enter upon the premises or place of business of any person, subject to the payment of the licenses or license fees under this chapter and to examine, inspect and audit the books, records and facilities of any such person and the same shall promptly be made available to the city for such purpose by any such person and should the findings be more than was returned, then the licensee shall be required to pay any such additional license tax as may be due with penalties thereon, and the failure or refusal of the licensee to permit the examination of books and records or the failure or refusal of the licensee to pay any additional amounts found due and penalties thereon shall constitute a violation of this section and the penalties provided for such violation may be invoked.

- (b) Upon the failure of the licensee to make available the books and records to the proper representative of the city at its place of business within the city, such licensee may be charged all costs and expenses of such audit, including the reasonable cost of the time of the employee or person making the examination.

Sec. 9-5. Requirements when license tax is based upon gross amount of sales.

Every person liable for the payment of a license tax under this chapter based upon gross receipts, in making application for a license, shall include and report the gross amount of all receipts from all business done in whole or in part within the city during the preceding calendar year or, in the case of fiscal year taxpayers, during the fiscal year that ended in the preceding calendar year; and the amount of tax shall be computed thereon unless otherwise provided in this chapter. No license based on gross receipts or otherwise shall be issued except upon oath of the applicant that the applicant's report of gross receipts or other license base conforms to the books and records of the applicant's business and with the report or return of such gross receipts or other license base for the corresponding period made or to be made to the commissioner of internal revenue or the United States, the state tax commission or the insurance commissioner of the state, as the case may be. In addition to the foregoing information, the application shall contain the social security number or the federal employer's identification number or both.

Sec. 9-6. When tax is due and payable.

The taxes imposed by this chapter shall be due and payable on or before January thirty-first of each year, except in cases where a person shall begin a new business enterprise, when such license on same shall be due and payable on the day such business is begun. Nothing in this section shall be construed to relieve any person from the payment of any ad valorem tax on property. The payment of any particular license tax imposed in this chapter shall not relieve the party paying the same from liability for the payment of any other license tax specifically imposed for the privilege of carrying on any other business.

Sec. 9-7. Transferability of licenses.

No license granted under this chapter shall authorize the person mentioned therein to exercise or carry on the trade, business or profession specified in such license in any other place than that mentioned therein. No license shall be transferable, except in those cases where a business is sold or transferred and the same type business license is applicable to the new person, and such business is continued at the same location. The city license inspector shall charge a fee equal to ten (10) percent of the original amount of such license, but not less than twenty-five dollars (\$25.00), for such transfer and it shall be the duty of the owner, officer or other responsible official to notify the city license inspector of any change of ownership, the nature of the business, address and other information required in connection with the issuance of a business license, within ten (10) days after any change becomes effective.

Sec. 9-8. Duration of licenses.

All licenses issued under this chapter shall be issued for the calendar year unless otherwise provided for.

Sec. 9-9. Information contained on license; record to be kept; inspection.

Every license to be taken out under or by authority of this chapter shall contain and set forth the purposes, trade, business or profession for which such license is granted, and the name and place of business of the person taking out the license, and the time for which it is granted. The city license inspector shall prepare a form of license to be used in each case, and shall have the form of license printed and bound in book form in a neat and substantial manner with proper check or stub attached to each, upon which shall be written, at the time the license is granted, the name of the party obtaining the license, the length of time covered by such license, together with amount charged therefor, and the party receiving such license shall keep the license and make it available upon request by proper city officials. The city license inspector, or any public safety officer or other authorized agent of the city, shall have the right at all reasonable times to enter such place or building for the purpose of inspecting such certificates or receipts.

Sec. 9-10. Separate license for each business required.

A separate license shall be required for each place of business and every class of business for which a license tax is required by this chapter. When two (2) or more kinds of businesses are conducted in the same place, it shall be the duty of the licensee to keep an accurate account of the affairs of each kind of business and to satisfactorily separate the affairs of each so that the proper amount of tax imposed and payable on each type of business may be readily ascertained, otherwise the maximum rate applicable to any type of business being operated shall apply to the whole.

Sec. 9-11. Licenses subject to city ordinances and regulations; revocation.

All licenses shall be subject to all ordinances and regulations of the city in effect at the time any license is issued or that may be thereafter adopted by the city council. The city council in its discretion may revoke any license issued to any person without refund of any part of the tax paid.

Sec. 9-12. Assessment on probable gross income of new business.

In every case where a new business is begun and the amount of tax applicable to such business is based upon gross receipts or facts to be ascertained, the tax shall be assessed upon the probable gross receipts or other estimated facts during a term of one (1) year and the city license inspector, or other authorized agent of the city, shall have the power and authority at any time during the period covered by any license issued under such circumstances to require of such licensee additional statements under oath as to the gross receipts or any other material facts of such business and any additional tax which may be found to be due shall be paid.

Sec. 9-13. Public safety officers to report violators; prosecution of delinquent or defaulting license payers.

It shall be the duty of public safety officers to investigate and report to the city license inspector all persons doing business without a license; and the city license inspector shall be required to turn over to the police department for prosecution the names of all delinquent or defaulting license payers, and the police department shall forthwith bring such delinquents or defaulters before the recorder for violation of this chapter.

Sec. 9-14. Exemptions.

No person engaged in or carrying on any business, calling or profession, either in whole or in part, within the corporate

limits of the city, or maintaining an office or place of business in the city, shall be exempt from payment of license tax to the city, except such as may be expressly relieved from payment thereof by the laws of the United States and of the state.

Sec. 9-15. Denial, Revocation or Suspension

A. Generally.

- (1) The City Manager, or his designee, shall have the authority to deny or revoke any business license under the provisions set forth in this article.
- (2) For a period of one year after a revocation of a business license, no new license shall be granted to:
 - (a) The same licensee; or
 - (b) The licensee's agent or any person who can be shown to be acting on the licensee's behalf in attempting to do business in the City.
- (3) For a period of one year after a revocation, no business license shall be granted to any applicant for the operation of the same or similar type of business in the same location without a detained report compiled from City departments with knowledge or information acquired on the new applicant and the proposed business activity. If the report supports a finding that the new applicant and proposed activity will circumvent the effect of the business license revocation, or that issuance of a new license will perpetuate the conditions giving rise to the revocation, then no new license will be issued.

B. Grounds for denial or revocation. A license application under this article may be denied, or an issued license may be suspended or revoked, upon any of the following grounds:

- (1) Any principal involved with the business who has been convicted, forfeited bond, or pled guilty or nolo contendere within the last ten (10) years for the violation of any local, state, or federal law for which there is a potential penalty of one (1) year or more in jail. Any principal involved with the business who has been convicted, forfeited bond, or pled guilty or nolo contendere within the last five (5) years, regardless of the length of potential penalty for a jail term, to the following offenses:

- (a) Sale, possession, storage, or transportation of intoxicating liquors, wine or beer;
- (b) Sale or possession of narcotics or other controlled substances;
- (c) Gambling or the sale of illegal lottery tickets;
- (d) Sale of promotion of obscenity;
- (e) Prostitution or soliciting for prostitution;
- (f) Sale or possession of weapons; or
- (g) Crime of dishonest conduct.

When the principal was convicted, forfeited bond, pled guilty or nolo contendere in another state jurisdiction or the jurisdiction within another country, then the offense shall be assessed on the potential jail sentence of the nearest comparable offense under South Carolina law.

For the purposes of this section, the term "principal involved with the business" shall include the applicant, the licensee, and any owner of five percent (5%) or more of the business, the manager of business or financial operations, or the person directly in charge of the premises. The term may also include a major financier of the business when the financing arrangement has the appearance of masking actual ownership. The disqualification for prior offenses is not automatic; however for good cause shown by the business, the denial, suspension, or revocation may be waived or withdrawn upon a finding of mitigating circumstances justifying the issuance in the public interest.

- (2) The licensee's operation of the business constitutes a public nuisance, provided the determination of the public nuisance arises from one or more of the following activities on the premises or in the immediate vicinity thereof and the licensee has actual or constructive knowledge of the activities:
 - (a) Frequent arrests of persons for crimes of violence, possession or sale of controlled substances, possession or sale of deadly weapons, the discharge of fire arms, excessive noise, disorderly conduct, prostitution, disturbance of the peace, and the illegal acts correspond with or relate to the hours of operation of the business

operations of this licensee;

- (b) The police make an unusually high number of response calls, regardless of arrests, to the business premises, or to the immediate vicinity, and the high number of response calls corresponds with or relates to the hours of business operations of the licensee;
 - (c) There are ongoing and significant deposits of litter and debris in the immediate vicinity, whether the persons making the deposits can be identified or not, when the litter and debris relate to the business operations of the licensee; and
 - (d) Material violations of property maintenance codes, environmental codes, fire code, and building codes where violations are applicable to the business premises.
- (3) Failure to provide sufficient security measures to protect people and property located on the premises and to protect people and property located in the immediate vicinity when the immediate vicinity is affected by the business operations of the licensee;
 - (4) The provision of materially false and inaccurate statements in the business license application or to a City official at the time of application;
 - (5) Failure to pay municipal taxes or fees applicable to the premises or business operations when due, including but not limited to, personal and real property taxes, hospitality taxes, accommodation fees and accommodation taxes, property assessments, sewer fees, stormwater fees, and fire alarm and false alarm fees;
 - (6) Failure of an applicant or licensee to show current compliance with applicable state laws related to the operation of business activities, including, but not limited to, any requirement to maintain sanitary kitchen facilities, to be in compliance with permitting requirements for the service of alcoholic beverages, beer and wine, or to pay state taxes and fees related to business operations in a timely manner.
 - (7) Failure to provide full payment to the City within ten (10) days of notice a check returned to the City for insufficient funds. Full payment means the full amount due of the original heck plus

costs and fees assessed to the City by its bank for the return of the check presented, as well as any return check fee otherwise assessed by the City.

- (8) Failure to provide substantiation, when asked by the City, that the actual business use of the location for which a business license has been applied for or granted, complies with what is allowed at the location under the City's zoning ordinance. Nothing in this provision shall be interpreted to abrogate or limit any variances, special exceptions, or lawful nonconforming uses, previously established under the City's zoning ordinance. In the case of authorization of signs, structures, and uses, the business owner must demonstrate that the amortization period has not expired. In instances requiring an interpretation of the zoning administrator, such interpretations may be rendered in accordance with the duties assigned to the zoning administrator under the zoning ordinance.

Sec. 9-16. Notice of Denial, Revocation or Suspension; Hearing; Appeals.

- (A) Notice. Where grounds exist to deny or revoke a license under this article, the business license administrator shall provide written notice to the licensee or applicant setting forth the grounds, revoking the license effective forty-five (45) days from the date of the notice, and advising the licensee or applicant of appeal procedures
- (B) Hearing. The applicant or licensee may, within five (5) working days from the date of the notice, request a hearing to contest the grounds or request an extension of time to close the business. The hearing shall be held within fifteen (15) days unless additional time is allowed by the City Manager. The hearing officer shall be a supervisory employee designated by the City Manager. The licensee or applicant may be represented by an attorney and may present witnesses, affidavits and any relevant documentary evidence. The licensee may view and copy any documentary evidence prior to the hearing. Formal rules of evidence shall not apply. The hearing officer shall prepare a summarized report of the hearing, to include his findings and recommendations, which shall be submitted to the City Manager, who shall take final administrative action, notifying the licensee or applicant in writing. Unless extended in writing by the City Manager, any revocation is effective forty-five (45) days from the date of the original notice to the licensee.

- (C) **Appeals.** An appeal, which shall not stay the revocation, may be taken upon the written record to the City Council. Notice of such appeal shall be served upon the City Clerk within five (5) days from the final action by the City Manager, specifying the grounds for the appeal and the action requested. The record shall consist of the report of the hearing officer, any documentary evidence presented at the hearing, and the written appeal. The Council may, in its discretion hear oral arguments on the appeal.

Sec. 9-17. Collection of unpaid taxes after sixty days.

If any tax due under this chapter shall remain unpaid sixty (60) days after its due date, the city license inspector shall forthwith issue his execution under seal of the city in the usual form for the collection of taxes, and he shall immediately proceed to collect the tax, together with any penalties and costs due thereon, by distress and sale of the defaulter's property in the same manner as is now provided by law for the collection of other taxes.

Sec. 9-18. Penalty for violation of chapter; to be in addition to any additional tax imposed.

Any person who makes a false or fraudulent return in making application for a license or who fails to make application for a license as required by this chapter or who exercises or carries on any trade, business, calling, occupation or profession in the city for which a license is required without first paying when due the license tax imposed or who fails to do any other act or thing required by any of the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished in accordance with section 1-11. Payment of any fine or service of any term of imprisonment for violation of this chapter shall not operate to relieve any person from liability for the payment of any tax or penalty due under the provisions of this chapter.

Sec. 9-19. Schedule of business license taxes.

The city council from time to time shall adopt a business license ordinance which shall enumerate the schedule of license taxes imposed on businesses, callings, occupations and professions for the purpose of providing such regulations as may be required by the businesses subject thereto and for the purpose of raising revenue for the general fund through a privilege tax. Copies of such ordinances, as adopted or thereafter amended, shall be made available to the public from the business license division of the department of finance.

Sec. 9-20. Licenses not otherwise provided for.

The license tax for any business, calling, occupation or profession not provided in this chapter may be fixed by the city manager and license inspector.

Sec. 9-21. Non-issuance or revocation if taxes unpaid.

No person shall be issued a business license to do business in the city unless and until such person making application for such business license shall have paid any personal and sewer assessments or charges due the city by such person for the year immediately preceding the year for which such business license is required by this Code or other ordinances of the city, and if any such business license shall have been issued, the license shall be subject to revocation until such time as the unpaid taxes or charges are paid.

Sec. 9-22. Solicitors; permit and business license.

- (a) *Permit required.* It shall be unlawful for any person to go from house to house or from place to place within the city, and sell or solicit orders for periodicals of any kind or subscriptions thereto and goods, wares and merchandise without first having obtained a permit as provided in this section.
- (b) *Permit application; information.* Any person desiring to engage in the business described in subsection (a) shall, before engaging in such business, file an application for a permit with the chief of police. The application shall state the applicant's name, age, sex, race, business and residence addresses, the name and address of the applicant's employer and shall furnish, in addition, at least three (3) references satisfactory to the chief of police as to the applicant's character. The application shall state the length of time for which the permit is requested, shall be in writing and shall have been sworn before a notary public for the state.
- (c) *Issuance of permit.* After the filing by the applicant under subsection (b), and if, upon due investigation of the application, the application is approved, the chief of police shall issue to the applicant a permit authorizing the applicant to engage in the business described in this section for the period of time set forth in such permit.
- (d) *Business license required.* After obtaining such permit, such person shall obtain the applicable business licenses and shall conform to any and all other ordinances of the city.
- (e) *Exception.* All civic organizations, service clubs, schools and churches and religious organizations shall be exempt from the provisions of this section.

(Code 1958, § 18-64.1)

Sec. 9-23. Insurance companies.

- (a) On gross premiums collected through offices or agents located in the city, wherever the risk is located, or collected on policies written on property or risks located in the city, wherever the premiums are collected.

Gross premiums shall include new and renewal business without deductions for any dividend, credit, return premiums or deposit.

Solicitation for insurance, receiving or transmitting an application or policy, examination of a risk, collection or transmitting of a premium, adjusting a claim, delivering a benefit, or doing any act in connection with a policy or claim shall constitute doing business within the city whether or not an office is maintained therein. A premium collected on property or a risk located within the city shall be deemed to have been collected within the city.

- (b) Schedule:

Percent of

Gross Premiums

- | | | |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| (1) | Life, health and accident [Declining rates shall not apply.] | 0.75 |
| (2) | Fire and casualty [Declining rates shall not apply.] | 2 |
| (3) | Title insurance [Declining rates shall not apply.] | 2 |
| (4) | Brokers for fire and casualty insurers--Nonadmitted: On gross premiums collected on policies of companies not licensed in South Carolina, the broker shall pay annually to the city or its designees with a copy of the report required by the Insurance Commission showing location of the risk insured [Premiums for non-admitted businesses are not included in broker's gross commissions for other business. Declining rates shall not apply.] | 2 |
- (c) Notwithstanding any other provisions of this section, license taxes for insurance companies and brokers for nonadmitted insurers shall be payable on or before May 31 in each year without penalty. The penalty for delinquent payments shall be five (5) percent of the tax due per month, or portion thereof, after the due date until paid.

- (d) Exemptions in the business license ordinance for income from business in interstate commerce are hereby repealed. Gross income from interstate commerce shall be included in the gross income for every business subject to a business license tax.
- (e) Pursuant to S.C. Code Ann. § 5-7-300, the Agreement with the Municipal Association of South Carolina for collection of current and delinquent license taxes from insurance companies and brokers for nonadmitted insurers in the form attached hereto [Ordinance No. 1934] is approved, and the city manager is authorized to execute it.

(Ord. No. 1934, § 1, 1-22-96)

Secs. 9-24--9-40. Reserved.

ARTICLE II. BANKRUPT, FIRE, WRECK AND CLOSING-OUT SALES

DIVISION 1. GENERALLY

Sec. 9-41. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Inspector means the license inspector of the city.

License means a license issued pursuant to this chapter.

Licensee means any person to whom a license has been issued pursuant to this chapter.

Publish, publishing, advertisements and advertising includes any and all means of conveying to the public notice of sale or notice of intention to conduct a sale, whether by word of mouth, by newspaper advertisement, by magazine advertisement, by handbill, by circular, by pamphlet, by written notice, by printed notice, by printed display, by billboard display, by poster, by signs or store or store windows (internal or exterior), by radio announcement, by radio program, by recordings and any and all means including oral, written or printed.

Sales means the sale or an offer to sell to the public, goods, wares and merchandise of any and all kinds and descriptions on hand and in stock in connection with a declared purpose, as set forth by advertising, on the part of the seller that such sale is anticipatory to the termination, closing liquidation, revision, windup, discontinuance, conclusion or abandonment of the business in connection with such sale. It also includes any sale advertised, either specifically or in substance to be a fire sale, smoke and water damage sale, adjustment sale,

creditor's sale, trustee's sale, bankrupt sale, save us from bankruptcy sale, insolvent sale, insurance salvage sale, mortgage sale, assignee's sale, adjustor's sale, loss-of-lease sale, receiver's sale, forced-out-of-business sale, removal sale, and any and all sales advertised in such a manner as to reasonably convey to the public that upon the disposal of the stock of goods on hand, the business will cease and be discontinued.

(Code 1958, § 6-1)

Cross reference(s)--Definitions and rules of construction generally, § 1-2.

Secs. 9-42--9-60. Reserved.

DIVISION 2. LICENSE

Sec. 9-61. Required.

No person shall publish or conduct any sale pursuant to this article without a license therefor.

(Code 1958, § 6-2)

Sec. 9-62. Application; inventory as part of application.

- (a) Application for a license under this article shall be made to the inspector on a form to be approved by the city council, and shall be in writing and verified by the applicant. Such application shall contain a description of the place where such sale is to be held, the nature of the occupancy, whether by ownership, lease or sublease, and the effective date of termination of such occupancy, the means to be employed in publishing such sale, together with the proposed language contained in any advertisements. Such application shall further contain, as part thereof, an itemized list of goods, wares and merchandise to be offered to sale, why such goods, wares and merchandise are to be sold under such descriptive name or title, and in what manner such name is truthfully descriptive of such sale, the place where such stock was purchased or acquired, and if not purchased, the manner of such acquisition and when acquired, and also, the date of delivery thereof to the applicant. After commencement of the sale, no further goods or merchandise shall be added to the inventory.
- (b) All goods included in such inventory shall have been purchased by the applicant for resale on bona fide orders without cancellation privileges and shall not comprise goods purchased on consignment.
- (c) Such inventory shall not include goods ordered in contemplation of conducting a sale regulated under this

article. Any unusual purchase, or additions to the stock of goods of the business hereby affected within fifteen (15) days before the filing of an application hereunder shall be deemed to be of such character. Upon receipt of such application and payment of the fee prescribed in this division, the city council shall cause the application examined and investigated.

(Code 1958, § 6-3)

Sec. 9-63. Issuance.

If, upon investigation, the facts as represented by the application for a license under this chapter are found to conform to the representations thereof, and the advertising proposed to be used truly represents such facts and is not fraudulent or misleading to the public, the inspector shall issue a license permitting the publication and conduct of such sale.

(Code 1958, § 6-4)

Sec. 9-64. Duration.

Each license under this chapter shall be for a period not exceeding thirty (30) days, and shall be renewable for one (1) additional thirty-day period upon repayment of fees prescribed in this division.

(Code 1958, § 6-5)

Sec. 9-65. Fees.

Upon filing an original application for a license to advertise or conduct a sale or special sale under the provisions of this article, an applicant shall pay, if he shall bring or cause to be brought into the city goods or merchandise for the purpose of such sale valued at five thousand dollars (\$5,000.00) or less, a fee of one thousand dollars (\$1,000.00). In addition, he shall pay a fee of one hundred dollars (\$100.00) for each one thousand dollars (\$1,000.00) worth of merchandise over and above the original five thousand dollars (\$5,000.00). If an applicant purchases or causes to be purchased a business or stock of goods presently within the city for the purpose of such sale, he shall pay a fee of five (5) percent of the cost value of the business or stock of goods or merchandise purchased. If any application is disapproved, one-half of such payment shall be forfeited to the city council as and for the cost of investigating the statements in such application or renewal application.

(Code 1958, § 6-6)

Sec. 9-66. Powers and duties of the license inspector.

The inspector is hereby authorized and empowered to supervise or regulate sales or special sales pursuant to this division and to issue appropriate licenses therefor upon proper application.

(Code 1958, § 6-7)

Sec. 9-67. Fraudulent or misleading advertising; adding goods to inventoried stock.

It shall be unlawful for a licensee to advertise or cause to be advertised goods, wares or merchandise for a sale pursuant to this division which do not conform to the representations of the advertisement. It shall be unlawful for a licensee to publish or cause to be published advertising falsely representing the reason for a sale. It shall be unlawful for any person conducting such a sale to add any goods to the inventoried stock thereof or to sell any goods, except those in the original inventory while representing the same by advertising, inference or otherwise, as being a part of the goods advertised for sale.

(Code 1958, § 6-8)

Sec. 9-68. Weekly reports to inspector.

At the conclusion of each week of such sale or the continuation thereof the permittee shall report to the license inspector the approximate proportion of the original inventory of the goods sold, and shall furnish him with a revised inventory thereof.

(Code 1958, § 6-9)

Sec. 9-69. Bond required.

Before a license shall be issued by the city council under application for a license under this article, the applicant shall execute and deliver to the city a bond in the penal sum of five thousand dollars (\$5,000.00) signed by such applicant and also signed by a surety company duly authorized to transact business in the state, which bond shall be conditioned upon the faithful observance of the provisions of this chapter, and also conditioned to reimburse and indemnify any purchaser at any such sale duly held by such licensee for any loss incurred or damage sustained by such purchaser by reason of misrepresentation or fraud in the sale of any such goods, wares or merchandise.

(Code 1958, § 6-10)

Sec. 9-70. Display of license; availability of stock list, merchandise, etc., for inspection; requirements for manner of advertising.

Upon commencement of any sale pursuant to this article, the license issued by the city council shall be prominently displayed near the entrance to the premises. A duplicate or original of the application and stock list, pursuant to which such license was issued, shall at all times be available to the city council or to the inspector. The licensee shall permit such inspector to examine all merchandise in the premises for comparisons with such stock list at any and all times during the period of such sale. All advertisements or advertising and the language contained therein, shall be in accordance with the purpose of the sale as stated in the application pursuant to which a license was issued, and the wording of such advertisement shall not vary from the wording as indicated in the application. Such advertising shall contain a statement in these words: "Sale held pursuant to Permit No. _____ of the License Inspector, granted the _____ day of _____ 19_____" and in such blank spaces shall be indicated the permit number and the requisite dates. Books and records of the sale shall be kept by the licensee and shall at all times be available to the inspector.

(Code 1958, § 6-11)

Sec. 9-71. Exemptions.

The provisions of this chapter shall not apply to or affect:

- (1) Persons acting pursuant to an order or process of a court of competent jurisdiction;
- (2) Persons acting in accordance with their powers and duties as public officers such as sheriffs, bailiffs or marshals;
- (3) Duly licensed auctioneers, selling at auction;
- (4) Executors, guardians, assignees of insolvent debtors, bankrupts and other persons required by law to sell such property.

(Code 1958, § 6-12)

Secs. 9-72--9-90. Reserved.

ARTICLE III. BILLIARDS AND POCKET BILLIARDS* Article III deleted by Ordinance dated January 30, 2006

~~_____~~
~~_____ *State law reference(s) No. 70.~~
~~_____~~

~~Sec. 9-91. Definitions.~~

~~—The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.~~

~~—Poolrooms and billiard rooms, halls or parlors means any room, hall or parlor within which there shall be maintained or operated, for hire or profit, one (1) or more pool or billiard tables; provided, that the term pool or billiard table shall be construed as applying only to tables of size three and one half (3 1/2) by six and one half (6 1/2) feet or larger, inside measurements.~~

~~(Code 1958, § 8-1)~~

~~—Cross reference(s) Definitions and rules of construction generally, § 1-2.~~

~~**Sec. 9-92. License required.**~~

~~—No person shall maintain or operate any poolroom or billiard room, hall or parlor for hire or profit unless and until such person shall have applied for and received, on blanks furnished by the city, a license so to do for each such poolroom or billiard hall, room or parlor. Each such applicant shall furnish his name, address and nationality and the location at which it is proposed to operate the poolroom, or billiard room, hall or parlor, and shall state whether or not the applicant has been convicted of any offense prohibited by municipal, state or federal law. The giving of false or fraudulent information in answer to any of the questions on the application blank shall be deemed a violation of this article. No license shall be granted to an applicant who shall have been convicted of an offense involving moral turpitude, prostitution, selling or distributing drugs, or an offense in involving the violation of any ordinance of the city or of the state relating to the sale and consumption of alcoholic beverages. Each application shall be approved in writing by the public safety director and the city manager.~~

~~(Code 1958, § 8-2)~~

~~**Sec. 9-93. Other business or trade on premises prohibited; exceptions.**~~

~~(a) No business, trade or occupation except the operation of a poolroom, or billiard room, hall or parlor shall be carried on in the room, hall or parlor licensed as a poolroom, or billiard room, hall or parlor; provided, that the licensee or his employee may sell soft drinks, cigarettes, sandwiches and candy upon compliance with the business license tax thereto respectively applying.~~

~~(b) The provisions of this section shall not apply to a business establishment whose principal purpose of business is the operation of any other lawful business enterprise and the maintenance of not more than two (2) pool tables is incidental only to the principal purpose of such business.~~

~~(Code 1958, § 8-6)~~

~~Sec. 9-94. Gambling prohibited.~~

~~— No gambling, wagering or betting of any kind or nature shall be permitted in any poolroom, or billiard room, hall or parlor and the possession, sale or use of any pull or punchboard, or the holding of any lottery or raffle by the licensee, his employees, agents or servants on the premises licensed is hereby prohibited.~~

~~(Code 1958, § 8-7)~~

~~— Cross reference(s) — Gambling generally, § 13-141.~~

~~Sec. 9-95. Minors.~~

~~(a) It shall be unlawful for any person under seventeen (17) years of age to visit or loiter in any poolroom, or billiard room, hall or parlor either as players, customers or employees.~~

~~(b) Any such person violating the provisions of this section or any poolroom, or billiard room proprietor or manager who permits such violation shall be punished in accordance with section 1-11.~~

~~(c) If the proprietor or manager of any poolroom or billiard room is of the opinion that any person desiring permission to enter thereto is under the age of seventeen (17) years, he shall require such person to certify his age in writing. If any person under seventeen (17) years of age makes a false certificate as to his age or uses a forged permit from his parent or guardian, such person shall be guilty of a misdemeanor punishable in accordance with section 1-11.~~

~~(Code 1958, § 8-8)~~

~~— State law reference(s) — No. 71.~~

~~Sec. 9-96. Drinking alcoholic beverages.~~

~~— The drinking of whiskey or other alcoholic or intoxicating liquors is hereby prohibited on any premises licensed as a poolroom, or billiard room, hall or parlor.~~

~~(Code 1958, § 8-9)~~

~~-----Cross reference(s)-----Alcoholic beverages, Ch. 3.~~

~~Sec. 9-97. Miniature and skillo tables.~~

~~-----The same conditions and restrictions shall apply to the operation and maintenance of miniature or skillo tables as are set out in this article with respect to regulation of pool or billiard tables; provided, that the same may be maintained or operated along with and in or on the same premises as any other trade, occupation or business; provided further, that no license shall be granted except for a location approved by the city council. The regulation with regard to minors in connection with miniature or skillo tables shall be that minors are hereby prohibited from playing upon such tables, and any minor so doing, or any licensee or operator who shall knowingly permit a minor so to do, shall be guilty of a misdemeanor.~~

~~(Code 1958, § 8-12)~~

~~Sec. 9-98. Bond required.~~

~~-----All applicants for the license required by this article shall file with the city clerk, with the application for the license, a bond in the penal sum of five hundred dollars (\$500.00), with corporate surety, conditioned upon the applicant's observance of the provisions of this article and providing for forfeiture of such bond upon revocation of the license or conviction of the licensee of any such violation; provided, that a cash bond may be posted in lieu of the surety bond. Applicants for a license for miniature or skillo tables shall file bond in the penal sum of one hundred dollars (\$100.00) with each application.~~

~~(Code 1958, § 8-13)~~

~~Secs. 9-99--9-120. Reserved.~~

~~ARTICLE IV. BINGO*~~

~~-----
*State law reference(s) --No. 72.
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~~Sec. 9-121. Definitions.~~

~~For the purpose of this article, the operation of a bingo game shall have the same definitions as set out in the state statutes.~~

~~(Code 1958, § 8A-1)~~

~~Cross reference(s) --Definitions and rules of construction generally, § 1-2.~~

Sec. 9-122. Requirements.

- (a) The game of bingo shall not be conducted within the boundaries of the city unless the:
- (1) Organization has been chartered by the state as a charitable not for profit organization and has been granted a tax exemption as a tax exempt organization by the internal revenue service;
 - (2) Organization applying for a permit shall have a permanent facility in the city and conduct regular meetings within its membership according to the bylaws of that organization;
 - (3) Names of the officers of the charitable organization and location of the organization must be properly filed with the secretary of state. The officers thereof shall certify in writing to the city that no nonmembers participated in the decision to operate a bingo game and that the members themselves will be responsible for the supervision of such game;
 - (4) Game of bingo shall be played in the regular meeting place of the organization and at no other location unless an alternate location is approved by city council;
 - (5) Organization files an application under oath with the city signed by the appropriate officer stating that no outside promoter will be involved in any way in the operation of the bingo game; provided, however, city council may grant special permission to an organization for the game to be conducted by a person not a member of the organization; that no portion of the proceeds derived from the playing of bingo will be paid to any person or other organization; and that all proceeds derived from the playing of bingo will go to charity, with the exception of the payment of reasonable operating costs;
 - (6) Organization will furnish to the city manager such documents as will show that the organization intending to conduct bingo is a legitimate and bona fide charitable organization.
- (b) No more than one (1) organization shall be permitted to conduct bingo games at any one (1) location unless approved by the city manager.

(Code 1958, § 8A-2)

Sec. 9-123. Inspections and reports.

The city manager shall inspect each bingo operation and make periodic written reports to the city council. The city manager may require that the organization provide any information, affidavit or other documentation as may be needed in order to ensure compliance with this article and the laws of this state.

(Code 1958, § 8A-3)

Sec. 9-124. Number to be operated.

No organization shall operate more than one (1) bingo game. Any subdivision or auxiliary chapter of such organization cannot take advantage of the organization's permit with the city except with the written permission of the city manager. No subdivision or auxiliary chapter of an organization may operate any bingo game at the same time the organization operates such a game.

(Code 1958, § 8A-4)

Sec. 9-125. Permit fees.

The city council shall have the authority to establish appropriate permit fees for the operation of bingo games to cover the administrative cost of enforcing the provisions of this article.

(Code 1958, § 8A-5)

Secs. 9-126--9-145. Reserved.

ARTICLE V. JUNK DEALERS AND SECONDHAND DEALERS*

*Cross reference(s)--Garbage and trash, Ch. 8; nuisances, Ch. 12.

State law reference(s)--No. 73.

Sec. 9-146. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Junk dealer means and includes any person buying and selling old castings, iron or other metals, rope, rags, cloth, old cotton or any article usually found in junk shops; provided, that this article shall not apply to the purchasers of bones and old rubber.

Secondhand dealer means any person buying coins, guns, camera equipment or power operated devices including but not limited to televisions, compact disk players, video cassette recorders, radio or sound equipment, electronic equipment and yard or garden equipment from any entity not having a South Carolina Tax Commission license and reselling same.

(Code 1958, § 17-1; Ord. No. 1812, § 2, 2-8-93)

Cross reference(s)--Definitions and rules of construction generally, § 1-2.

Sec. 9-147. Location of business and building to be approved by city council.

It shall be unlawful for any person to secure a license for dealing in junk or waste in the city, without first obtaining from the city council its approval as to the location proposed to be used and the building to be occupied or constructed.

(Code 1958, § 17-2)

Sec. 9-148. Cancellation of license.

Any license granted to a junk dealer or secondhand dealer may be cancelled at any time by the city manager or the mayor, upon the written request of the director of public safety, for reasons stated therein, which must, however, satisfy the city manager or the mayor that the dealer whose license he cancels has violated the spirit of this article. The action of the city manager or the mayor shall be subject to review by the city council.

(Code 1958, § 17-10; Ord. No. 1812, § 3, 2-8-93)

Sec. 9-149. Transaction records.

Every junk dealer or secondhand dealer, doing business in the city, shall record in a book kept for that purpose a sufficient description of each article purchased by such dealer, together with the date of such purchase and the name, age and residence of the seller, and the party to whom the junk or secondhand goods are sold.

(Code 1958, § 17-3; Ord. No. 1812, § 4, 2-8-93)

State law reference(s)--No. 74.

Sec. 9-150. Inspection of records and goods.

It shall be the duty of every junk dealer or secondhand dealer doing business within the city to admit the director of public safety or any officer of the city to his place of business

at any time admittance may be demanded to inspect his books or stock of goods.

(Code 1958, § 17-4; Ord. No. 1812, § 5, 2-8-93)

State law reference(s)--No. 75.

Sec. 9-151. Inspection by fire and health departments.

All persons dealing in junk, waste material or secondhand goods shall keep their places of business open daily, except on Saturdays and Sundays, for inspection by the fire and health departments of the city, if, to these departments, the inspection is deemed necessary.

(Code 1958, § 17-5; Ord. No. 1812, § 6, 2-8-93)

Sec. 9-152. Article not to be disposed of for five days.

Every article purchased by a junk dealer or secondhand dealer shall remain at his place of business, open to inspection, for a period of at least five (5) days before being removed or otherwise disposed of.

(Code 1958, § 17-6; Ord. No. 1812, § 7, 2-8-93)

Sec. 9-153. Purchases from minors.

It shall be unlawful for any junk dealer or secondhand dealer doing business within the city to purchase any junk or secondhand goods from any person under eighteen (18) years of age.

(Code 1958, § 17-7; Ord. No. 1812, § 8, 2-8-93)

Sec. 9-154. Storage of materials that collect water.

It shall be unlawful for any person dealing in junk or waste material to leave in the open any tires, tin cans, scrap metal or any other junk or waste capable of acting as a receptacle for water. All such waste material shall be stored or placed in an approved shed or building within twelve (12) hours after receipt.

(Code 1958, § 17-8)

Sec. 9-155. Storage of inflammable materials.

It shall be the duty of all persons dealing in junk or waste material to store all wastepaper, rags or any other inflammable waste in an approved building within twelve (12) hours after receiving the material.

(Code 1958, § 17-9)

Secs. 9-156--9-175. Reserved.

ARTICLE VI. PAWNBROKERS*

***State law reference(s)--No. 76.**

Sec. 9-176. License and bond required.

No person shall engage in business as a pawnbroker within the city without first obtaining and paying for a license and giving bond with two (2) good and approved sureties in the sum of three thousand dollars (\$3,000.00), conditioned to make good all damages sustained by the carelessness, neglect or unfair dealings of such licensee.

(Code 1958, § 17-19)

State law reference(s)--No. 77.

Sec. 9-177. Identification of pawner required.

The pawnbroker shall be required in establishing ownership of the pawned article to have each pawner identified sufficiently by requiring a valid South Carolina identification card.

(Code 1958, § 17-20)

Sec. 9-178. Tickets to be furnished to pawner.

It shall be the duty of every pawnbroker to deliver to the pawner, at the time of the pawning, a certificate or ticket numbered and corresponding with the number and description of the article kept by him in his books.

(Code 1958, § 17-21)

State law reference(s)--No. 78.

Sec. 9-179. Amount of loan; time limits on redemption.

Upon all articles pawned the pawnbroker may advance such sum and for such time as may be agreed upon with the pawner and upon the failure of the pawner to redeem the articles or things pledged at the time agreed upon, then, and after the expiration of ninety (90) days, the pawnbroker may sell such articles. The pawner shall have the privilege of redeeming such articles or things up to the time of such sale.

(Code 1958, § 17-22)

State law reference(s) --No. 79.

Sec. 9-180. Transaction records.

Every pawnbroker doing business within the city shall record in a book kept for that purpose a sufficient description of each article pawned, the amount loaned, the date of the transaction, the name, age and residence of the pawner and the party to whom the pawned article was sold upon failure to redeem.

(Code 1958, § 17-23)

State law reference(s) --No. 80.

Sec. 9-181. Inspection of records and goods.

It shall be the duty of every pawnbroker doing business within the city to submit to an inspection of his books and stock of goods by the director of public safety without the formality of a search warrant.

(Code 1958, § 17-24)

State law reference(s) --No. 81.

Sec. 9-182. Information to be furnished to director of public safety upon demand.

It shall be the duty of every pawnbroker, upon the demand of the director of public safety, to furnish a complete list of all articles pawned, together with names of the pawners and the names of the parties who identified such pawners on any business day or during any specified period.

(Code 1958, § 17-27)

Sec. 9-183. Purchases from minors.

It shall be unlawful for any pawnbroker doing business within the city to receive any pledge or transact any business with any person under the age of eighteen (18) years, knowing or having reason to know he is under age.

(Code 1958, § 17-26)

Sec. 9-184. Receiving suspicious articles.

It shall be unlawful for any pawnbroker to receive any goods, articles or things from any thief, knowing or having reason to believe him to be such.

(Code 1958, § 17-25)

Secs. 9-185--9-200. Reserved.

ARTICLE VII. TEMPORARY VENDOR LICENSE--CAROLINA PANTHERS CAMP*

***Editor's note--**Ord. No. 1895, adopted June 12, 1995, amended the Code by the addition of Art. VII, which provisions have been designated at the discretion of the editor as §§ 9-201--9-206.

Sec. 9-201. Temporary business license required.

The temporary business licenses shall be required by tenants and property owners desiring to sell souvenir, novelty or similar goods or food items (as approved by the South Carolina Health Department and appropriate regulations) near the Wofford College Campus during the operation of the Carolina Panthers Summer Training Camp.

(Ord. No. 1895, § 2, 6-12-95)

Sec. 9-202. When valid.

The temporary license shall be known as "Temporary Vendor License--Carolina Panthers Camp." The license shall be valid during the dates established from time to time by the city manager of the City of Spartanburg.

(Ord. No 1895, § 3, 6-12-95)

Sec. 9-203. Amount of tax for temporary license.

The tax for the temporary license shall be twenty-five dollars (\$25.00) annually to be payable on application regardless of gross receipts.

(Ord. No 1895, § 4, 6-12-95)

Sec. 9-204. Area of issuance.

Temporary business license may be issued regardless of zoning classification in the confines of the City of Spartanburg bounded by Pine Street on the east, railroad on the south, Church Street on the west and Evins and Cummings Streets on the north. The Wofford College Campus is excluded from this article. A map of this area is on file in the office of the city license inspector.

(Ord. No 1895, § 5, 6-12-95)

Sec. 9-205. Issuance of license; parcels.

The licenses shall be issued to the owner or tenant for any parcel within the defined area. Parcels shall be deemed to be determined by the current tax map sheets of Spartanburg County. Only one such temporary license shall be issued for each parcel. In the event of a conflict between the owner of the property and the tenant, the tenant shall have the prevailing right for a temporary license unless a written lease agreement provides otherwise. Owners may prohibit, by written lease agreement, tenants from procuring temporary licenses for the leased parcel.

(Ord. No 1895, § 6, 6-12-95)

Sec. 9-206. Nonassignability of license.

Licenses are not assignable. In the event of vacant property, the owner of the property shall be the only person entitled to hold a temporary license.

(Ord. No 1895, § 7, 6-12-95)

Secs. 9-207--9-299. Reserved.

ARTICLE VII. VIDEO GAMES

Sec. 9-300. Permit required.

- (a) Every person who maintains for use or permits the use of on a place or premises occupied by him must pay a license fee for a video game with a free-play feature operated by a slot which is deposited a coin or thing of value. The fee shall be in an amount of one hundred eighty dollars (\$180.00) per year to be due and payable on or before July 1 of each year. The "free-play feature" on a machine as described includes video poker machines.
- (b) The per year license fee is the liability of the person occupying the premises.
- (c) Subparagraph 45A, "Coin Operated Machines" paragraph (d) "Video Poker and Amusement Machines Licensed Pursuant to S.C. Code Ann. § 12-21-2720(A)(3)" of Section 18-21 of this code is repealed.

Article VIII. Outdoor Cafes and Signage

Sec. 9-400. Purpose and applicability.

The provisions of this article shall apply to the establishment, operation, and maintenance of outdoor cafes and signage within the City of Spartanburg's Central Business District (B-2). The purpose of this article is to promote the general economic development and atmosphere of the B-2 district for the benefit of all businesses and citizens located there, and no rights of

individuals or individual businesses are created in this article. The City Manager and Zoning Administrator shall have broad discretion to grant, modify or revoke permits issued pursuant to this article in the interests of improving the public health, safety and welfare.

Sec. 9-401. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administrator means the Zoning Administrator or other person authorized by the City Manager to enforce this section.

Design requirements means the standards adopted with this article that guide design and materials in encroachment areas.

Encroachment means stands, tables, umbrellas, chairs, displays, signs, banners, flags, objects related to the business, or other items for sale on the public right-of-way, sidewalk or common area on public property.

Outdoor café means the placing, locating or permitting of the placing or locating of chairs and tables on the right-of-way, such as sidewalks, adjacent to a business licensed to operate as an eating establishment where food and/or other refreshments are served, or upon public property within designated areas.

Permittee means the recipient of an encroachment permit under the terms and provisions of this article.

Sidewalk means that area of the public right-of-way between the curblines or the lateral lines of a roadway and the adjacent property lines reserved for pedestrian traffic, not including street crossings.

Sec. 9-402. Penalty

Any person violating any provision of this article shall be guilty of a misdemeanor and upon conviction, shall be punished in accordance with Section 1-11. Each day any violation of this article shall continue shall constitute a separate offense.

Sec. 9-403. Permit required.

- (a) It shall be unlawful for any person to create, establish, operate, maintain or otherwise be engaged in the business of running an outdoor café, or place any items upon the sidewalks or public property, in the B-2 zoning district in the City of Spartanburg unless he

shall hold a currently valid permit issued under the terms of this section.

- (b) Permits shall be issued only to validly licensed businesses that wish to provide tables and chairs or other objects related to their business on the public property adjacent to their businesses for use by the general public.

Sec. 9-404. Application for permits; fee.

- (a) Application for the permit required by this section shall be made at the Business License and/or Inspections Office in a form deemed appropriate by the Administrator. Such application shall include but not be limited to the following information:
 - (1) Name, home and business addresses and telephone numbers of the applicant, and the name and address of the owner of the business if other than the applicant.
 - (2) Name, home address and telephone numbers of a responsible person whom the City may notify or contact at any time concerning the applicant's encroachment.
 - (3) A copy of a valid business license to operate a business establishment adjacent to the public property, which is the subject of the application.
 - (4) Proof of current liability insurance, issued by an insurance company licensed to do business in the state, protection for the licensee and the City from all claims for damage to property and providing bodily injury, including death, which may arise from operation under or in connection with the encroachment permit. Such insurance shall name the City as a additional insured and shall provide that the policy shall not terminate or be cancelled prior to the expiration date without 30 days advance written notice to the City. The policy limits must be at least \$250,000.00.
 - (5) A sketch, to scale, of the proposed location, showing the layout and dimensions of the existing public area and adjacent private property.
 - (6) Proof of any required ABC license, health permits or other state permits for the business involved.
 - (7) Photographs, drawings or manufacturers' brochures fully describing the appearance of all proposed

tables, chairs, umbrellas or other objects related to the business.

- (b) Not later than 15 days after the filing of a completed application for a temporary encroachment permit, the applicant shall be notified by the Zoning Administrator of the decision on the issuance or denial of the permit. Upon issuance of the permit, an annual fee shall be due and payable as fixed from time to time by the City council. This fee is in addition to the business license fee required for operation within the City. Only new permits shall be prorated on a quarterly basis. No fees shall be charged for encroachments solely for the purpose of beautification, but all other provisions of this article shall apply.
- (c) Applications for a permit shall be made at the Business License or the Inspections Office within 48 hours of written notice for failure to obtain a permit. Where the same owner, occupant or person responsible has been given notice for the same violation at the same location within the previously 180 days, such requirements of written notice may waived, fees doubled, and legal proceedings commenced immediately.

Sec. 9-405. Form and Condition of Permit.

The permit required by this article shall be issued on a form deemed suitable by the administrator. In addition to naming the Permittee and any other information deemed appropriate by the Administrator, the permit shall contain the following conditions:

- (a) Each permit shall be effective for one year, from January 1 to December 31, subject to annual renewal, unless revoked or suspended prior to expiration. When a permit is revoked, the prorated fee for any full quarter year remaining shall be refunded. No fees will be refunded for periods of suspension.
- (b) The permit issued shall be personal to the Permittee only and shall not be transferable in any manner.
- (c) The Administrator may suspend the permit when necessary to clear the public property for public safety community or special event authorized by a permit issued by the City.
- (d) The Administrator may require the temporary removal of items within the encroachment area when street, sidewalk, common area or utility repairs necessitate such action.
- (e) The permit for retail establishments shall be limited

to placing items within the encroachment area for no more than three (3) three (3) day periods in a year, except in cases of special events where sidewalk sales and activities are encouraged, without the permission of the City Manager or his designee.

- (f) The permit shall be specifically limited to the area shown on the plat diagram attached to the permit application. As a condition of approval, the City may require that the proposed area be reconfigured if it is determined that the proposed configuration presents an unsafe seating arrangement and/or encroaches upon the required three (3) foot clearance area.
- (g) The encroachment area covered by the permit shall be maintained in a neat and orderly appearance at all times, and the area shall be cleared of all debris on a periodic basis during the day, and again at the close of each business day.
- (h) No tables or chairs or any other part of the business shall be attached, chained or in any manner affixed to any tree, post, sign or other fixtures, curb or sidewalk within or near the permitted area. No additional outdoor seating authorized under this section shall be used for calculating seating requirements pertaining to location of, application for or issuance of an ABC license for any establishment, or be used as a basis for computing required seating for restaurants and dining rooms, or as grounds for claiming exemption from such requirements under the provisions of any City ordinance or state law.
- (i) The issuance of a permit does not grant or infer vested rights to use of the area by the Permittee. The City retains the right to deny the issuance of a permit or the renewals of a permit for any reason.
- (j) Tables, chairs, umbrellas and any other objects provided shall be maintained with a clean and attractive appearance and shall be kept safe and in good repair at all times.
- (k) The City retains the right to suspend the privilege of using glass containers within the encroachment area during major festivals and events and when streets are closed. The use of glass containers will be revoked if an incident jeopardizes the health, safety and welfare of customers of the general public. Any violation of state or local laws will also result in a revocation of this privilege. Repeated offenses may result in revocation or denial of the encroachment permit.
- (l) The serving and consumption of alcoholic beverages on

City sidewalks and public property is limited to beer and wine. The serving and consumption of alcoholic beverages in sidewalk encroachments is limited to patrons seated at tables. The serving and consumption of alcoholic beverages on other public property is not restricted to patrons seated at tables, provided the configuration and use of the encroachment does not result in undue interference with the public's safe access and use of the surrounding public space.

- (m) The City may require the postings or placement of the permit and relevant notices to facilitate the administration and enforcement of this section.

Sec. 9-406. Signage.

- (a) Shall not be attached to buildings or in any way interferes with or destroys important architectural details.
- (b) The only style sign permitted under this section to be placed within the public right-of-way shall be of a sandwich board design and shall not exceed nine (9) square feet in sign area.
- (c) Be limited to not more than one (1) temporary sandwich board sign at any one time per business establishment. No advertising of the name of the establishment is permitted (except for the posting of prices) on any stand or item, except to identify the name of the product.
- (d) Sign applications shall be reviewed and permitted by the Administrator, except where the Board of Architectural Design and Historic Review approval is specifically required for parcels or areas that are designated as local historical significance.

Sec. 9-407. Prohibited Activity.

- (a) No merchant, vendor, business or property owner shall:
 - (1) Place any items for sale or other equipment, tables or chairs on any portion of the public property other than that directly in front of his existing place of business without the written consent of the adjacent landowners or businesses.
 - (2) In no event shall such items be placed in the landscaped areas or extend beyond the authorized boundary lines.
 - (3) Block or restrict the passageway to less than six

feet in width, or block ingress or egress to or pedestrian activity, the Administrator is authorized to require a wider pedestrian path, as circumstances dictate. Also, no items shall be placed so as to block any driveway, crosswalk, bus stop or counter service window.

- (4) Sublicense the encroachment area separately to non-occupants of the premises.
 - (5) Place objects around the perimeter or an area occupied by tables and chairs, which would have the effect of forming a physical or visual barrier.
 - (6) Use tables, chairs, umbrellas and any other objects of such quality, design, materials and workmanship that are not authorized by the Administrator. The West Main Street area must meet the encroachment design requirements.
 - (7) Use umbrellas or other decorative material which is not fire-retardant, pressure treated or manufactured of fire resistive material.
 - (8) Fail to secure permission of the landlord where a building has multiple occupants.
 - (9) Vend or display without the insurance coverage specified.
 - (10) Sound or permit the sounding of any device on the public property which produces a noise, or the use of any loudspeaker, public address system, radio, sound amplifier or similar devices in violation of the noise regulations.
 - (11) Fail to pick up, remove and dispose of all trash or refuse left by the business on the public-right-of-way.
 - (12) Store, park, or leave any stand or items of merchandise overnight on any street or sidewalk, except for tables and chairs, which may be kept in the permitted area at the permittee's risk.
 - (13) Store, park or leave any vehicle, truck or trailer within the encroachment area.
- (b) The encroachment permit is a temporary license, which may be denied, suspended or revoked for any conduct which is contrary to the provisions of this section of for conduct of the business in such a manner as to create a public nuisance or constitute a danger to the

operator's or the public's health, safety or welfare. No property right is created by this section, and the decision of the City Manager shall be final.

Sec. 9-408. Denial, suspension or revocation of permit; removal of property by City.

- (a) Grounds for denial, suspension or revocation; removal of property by City. The Administrator or his designee may deny, revoke or suspend a permit issued under this section at any time for any business authorized in the City if it is found that:
- (1) Any necessary business or health permit has been suspended, revoked or canceled.
 - (2) The permittee does not have insurance in force, which is correct and effective in the minimum amount described in Section 9-404(a).
 - (3) Changing conditions of pedestrian or vehicular traffic causes congestion necessitating removal of the encroachment. Such decision shall be based upon findings of the administrator that the minimum pedestrian path is insufficient under existing circumstances and represents a danger to the health , safety or general welfare of pedestrians or vehicular traffic.
 - (4) The permittee has failed to correct violations of this section or conditions of his permit upon receipt of the administrator's notice of the violation delivered in writing to the permittee.
 - (5) The permittee has failed to take positive actions to prohibit violations from reoccurring.
 - (6) The permittee has failed to make modifications upon receipt of the Administrator's notice to make such modifications delivered in writing to the permittee.

Tables, chairs, and other vestiges of the business may be removed by the Department of Public Works, and a reasonable fee charged for labor, transportation or storage, should the permittee fail to remove the items within 24 hours of receipt of the zoning administrator's final notice to do so for any reason provided for under this section. If the action is taken based on subsection 9-404(a)(4) of this section, the action shall become effective upon the receipt of such notice and the permittee shall have four hours to remove the items.

- (b) Notice of denial or revocation. Upon denial or

revocation, the zoning administrator shall give notice of such action to the applicant or the permittee, in writing, state the action, which has been taken and the reason therefor. The action shall be effective upon giving such notice to the permittee.

- (c) Appeals. The permittee shall have the right to appeal the decision of the City official to the City Manager within five (5) working days from receipt of notice. An appeal does not stay the denial or revocation of the encroachment permit. The hearing shall be held within two (2) working days from the date of notice of the request. The permittee or applicant may be represented by an attorney and may present witnesses, affidavits and any relevant documentary evidence. Formal rules of evidence shall not apply. The City Manager or his designee shall notify the permittee or applicant of his determination in writing.

2000 Encroachment Permit Application

Section 9-403(a). It shall be unlawful for any person to create, establish, operate, maintain or otherwise be engaged in the business of running an outdoor café, or place any items upon the sidewalks or public property, in the B-2 Central Business District in the City of Spartanburg unless he shall hold a currently valid permit issued under the terms of this article.

1. Applicant: _____
Name (First, Middle, Last) Telephone Number

Home Address (Street, City, State, Zip)

2. Business: _____
Name Telephone Number

Physical Address Mailing Address

Ownership: Sole Proprietorship Partnership Corporation: _____

City Business License Number: _____ Business Capacity _____

3. Personal history of all owners, partners, or corporate officers: (use additional sheets, if necessary)

A. _____
Name (First, Middle, Last) Home Telephone Number

Home Address (Street, City, State, Zip)

Date of Birth Place of Birth Social Security Number

B. _____
Name (First, Middle, Last) Home Telephone Number

Home Address (Street, City, State, Zip)

Date of Birth Place of Birth Social Security Number

4. Contact Person: _____
Name Daytime Phone Nighttime Phone

Emergency Contact Daytime Phone Nighttime Phone

TYPE OF ENCROACHMENT: Sign <input type="checkbox"/> Retail <input type="checkbox"/> Outdoor Café <input type="checkbox"/> Business License No. _____ Date Issued _____

5. Attach the following items to complete your application: (YOUR APPLICATION WILL BE RETURNED AS INCOMPLETE WITHOUT THESE ITEMS.)
- A. A sketch of the proposed location, drawn to scale or with dimensions, showing the existing public area and adjacent private property and the proposed lay-out of the encroachment.
 - B. A Certificate of Insurance, issued by an insurance company licensed to do business in the State of South Carolina, protecting the licensee and the city from all claims for damage to property and providing bodily injury, including death, which may arise from operation under or in connection with the encroachment permit. Such insurance shall name the city as an additional insured and shall provide that the policy shall not terminate or be canceled prior to the expiration date without 30 days advance written notice to the city. The policy shall be in an amount not less than \$250,000.00.
 - C. A copy of any required city or state permits for the business involved (i.e. ABC License, Health Permit, Business License, Retail License, etc.).
 - D. Photographs, drawings, or manufacturers' brochures fully describing the appearance of all proposed tables, chairs, displays, umbrellas, signs or other objects or the encroachment.
6. Prior to issuing the Encroachment Permit, a permit fee must be paid to the City. This fee is \$35 for a sign encroachment and \$100 for dining encroachment. A retail establishment may elect to purchase an annual encroachment permit for the amount of \$100 or may purchase an individual permit of \$35 for each retail sale encroachment. **Note:** If individual permits are purchased, no more than three (3) permits can be purchased for any one location/establishment in an one year period per Section 9-405(e) of this Ordinance.

I certify that all the statements and information provided in this application are true and accurate, to the best of my knowledge. If approved, I understand that the Encroachment Permit is a temporary license which can be denied, suspended or revoked for any conduct which is contrary to the provisions of this section or if business is conducted in such a manner as to create a public nuisance, or to constitute a danger to the operator's or the public's health, safety, or welfare. No property right is created by this permit and that any decision of the City Manager related to this permit shall be final.

I UNDERSTAND THIS APPLICATION WILL BE RETURNED IF IT IS NOT FULLY COMPLETELY, INCLUDING ALL ITEMS IN SECTION 5 ABOVE.

Signature of Applicant

Date

Please return to: City of Spartanburg Finance Office
P. O. Box 1749
Spartanburg, SC 29304

FOR OFFICIAL USE ONLY

Type of Encroachment: Café _____ Retail Establishment _____ Sign _____

Approved by: _____ Fee _____ Date _____