

**AN ORDINANCE DEFINING AND REGULATING BUSINESS LICENSE AND REGISTRATON IN  
THE TOWN OF DUCK**

**Ordinance 23-16**

**WHEREAS**, pursuant to N.C General Statutes §160A-174 a town may by ordinance define, prohibit, regulate or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the town; and

**WHEREAS**, pursuant to N.C. General Statute §160A-194 a town may by ordinance, subject to the general law of the State, regulate and license occupations, businesses, trades, professions, and forms of amusement or entertainment and prohibit those that may be inimical to the public health, welfare, safety, order, or convenience, and in licensing trades, occupations, and professions, a town may, consistent with the general law of the State, require applications for licenses to be examined and charge a reasonable fee for the same.

**NOW, THEREFORE, BE IT ORDAINED** by the Town Council for the Town of Duck, North Carolina, as follows:

**PART I.** The following new Chapter 111 shall be added to the Code of Ordinances:

**CHAPTER 111: BUSINESS LICENSE AND REGISTRATION**

- 111.01 Definitions
- 111.02 Construction
- 111.03 Applicability of chapter provisions
- 111.04 Levy of business license fee
- 111.05 Period of license; due date; annual license
- 111.06 Refunds
- 111.07 Application for business license
- 111.08 Reasons for refusal or revocation of license
- 111.09 Unqualified applicants; right to conference
- 111.10 Town Clerk to issue license; payment of fee a prerequisite
- 111.11 Revocation; conference
- 111.12 Record of conferences
- 111.13 Form and contents of license
- 111.14 Assignments
- 111.15 Changes in business conducted by licensee during year
- 111.16 Town Clerk to furnish duplicates
- 111.17 Providing notice to applicant or licensee
- 111.18 Responsibility of business owner to determine whether fee is due
- 111.19 Town Clerk to investigate

- 111.20 Displaying license
- 111.21 Notice of violation
- 111.22 Request for conference
- 111.23 Violation to become final if conference not requested
- 111.24 Procedures when conference held
- 111.25 Remedies

§111.01 DEFINITIONS.

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

**APPLICABLE BUSINESS.** Each business within the Town to which this chapter is applicable.

**BUSINESS.** Each trade, occupation, profession, business and franchise on which a business license fee is imposed under this chapter. The North Carolina General Assembly has authorized the Town to impose a business license and fee on businesses. "Person" as used in this chapter means any individual, company, corporation, firm or other entity.

**BUSINESS WITHIN THE TOWN.** A person maintains a business location in the Town, or if, either personally or through agents, the person solicits or transacts business within the Town; or picks up or delivers goods, or delivers services within the Town.

**CONDUCTS BUSINESS.** A person, firm, corporation or other entity engages in one act of any business within the Town as defined in this chapter.

§111.02 CONSTRUCTION.

This chapter is enacted for revenue and regulatory purposes. Therefore, it should be construed to require payment of the maximum fee permitted under its terms. In addition, issuances of a business license pursuant to this chapter does not excuse a licensee from compliance with any other applicable ordinance or statute. This chapter does not prevent the Town from imposing license fees on additional businesses, from increasing or decreasing the amount of any license fee, or from regulating any business paying such license fee.

§111.03 APPLICABILITY OF CHAPTER PROVISIONS.

Each person who conducts any of the following businesses within the Town is subject to this chapter, except as expressly exempted herein:

- (A) Beach equipment vendors.

§111.04 LEVY OF BUSINESS LICENSE FEE.

An annual business license fee as listed in the Town of Duck Fee Schedule is hereby levied on all applicable businesses conducted within the Town. Those businesses subject to an annual privilege fee imposed by the State of North Carolina or otherwise exempted from local privilege license fees by State

law are exempt from the Town's business license fee.

#### §111.05 PERIOD OF LICENSE; DUE DATE; ANNUAL LICENSE.

Unless the section of this chapter levying the business license fee applicable to a particular business provides otherwise, a business license issued pursuant to this chapter is good for the 12-month period beginning April 1 and ending March 31. The business license fee is due on March 15 of each year. However, if a person begins a business after April 1 of a year, the business license fee for that year is due before the business operation has begun.

#### §111.06 REFUNDS.

If for any reason a person discontinues their business during the year for which a business license fee is imposed, the person is not entitled to a refund of any fees paid.

#### §111.07 APPLICATION FOR BUSINESS LICENSE.

A person who conducts an applicable business in the Town shall register the business with the Town before beginning the conducting of the business. A business shall be registered by submitting a form provided by the Town Clerk which shall provide all of the following information:

(A) The name of the applicant and whether the applicant is an individual, a partnership, a corporation or some other entity.

(B) The nature of the business.

(C) Where the business is conducted.

(D) An address to which may be mailed notices and statements required by this chapter.

(E) For any corporation or other entity registered with the North Carolina Secretary of State, the name and address of their registered agent.

(F) A certificate of insurance from an insurance company, licensed to do business in the State of North Carolina and acceptable to the Town, which confirms the existence of commercial general liability insurance coverage with a minimum limit of \$1,000,000.00 general aggregate, products/completed operations aggregate, personal and advertising injury and each occurrence including premises and operations, naming the applicant as the insured and the Town as an additional named insured on such policy. The certificate shall provide for 60 days advance notice to the Town in the event of termination or cancellation of coverage. The applicant shall submit a certificate of insurance to the Town within 10 days after the Town's issuance of the business license to the applicant.

(G) A certificate of insurance from an insurance company, licensed to do business in the State of North Carolina and acceptable to the Town, which confirms the existence of worker's compensation insurance, valid in the state, in the minimum amount of the statutory limit for worker's compensation, naming the applicant as the insured and the Town as an additional insured on such policy. The certificate shall provide for 60 days advance notice to the Town in the event of termination or cancellation of coverage. The applicant shall submit a certificate of insurance to the Town within 10 days after the Town's issuance of the business license to the applicant.

§111.08 REASONS FOR REFUSAL OR REVOCATION OF LICENSE.

The Town Clerk shall refuse to issue a business license or shall revoke a business license for any of the following reasons:

- (A) The applicant misrepresents a fact relevant to the applicant's qualifications for a license; or
- (B) The applicant refuses to provide information necessary to complete the application; or
- (C) The applicant violates provisions of the Town Code.

§111.09 UNQUALIFIED APPLICANTS; RIGHT TO CONFERENCE.

After receipt of the completed application, if the Town Clerk believes that a reason exists for refusing a license under §111.08, the Town Clerk shall refuse to accept payment of the fee and shall not issue the licenses. At the applicant's request, the Town Clerk shall, pursuant to §111.17, give the applicant a written statement of the reason for refusing the license. The applicant may, within 10 days after the day the applicant receives this statement, request a conference to discuss the refusal. In the applicant's request, the applicant shall specify why the application for a license should not be refused. The Town Clerk shall arrange the conference within a reasonable time.

- (A) If the Town Clerk refuses to issue a license, the applicant may reapply for a license at any time thereafter. If the reason for which the application was refused no longer exists and if no other reason exists for refusing to issue a license, the Town Clerk shall issue the license pursuant to §111.10.

§111.10 TOWN CLERK TO ISSUE LICENSE; PAYMENT OF FEE A PREREQUISITE.

After receipt of the completed application, if the Town Clerk believes that no reason exists for refusal of a license under §111.08, the Town Clerk shall notify the applicant of the amount of the license fee as listed in the Town of Duck Fee Schedule.

§111.11 REVOCATION; CONFERENCE.

(A) The Town Clerk shall revoke a license if a reason exists to revoke it as set forth in §111.08. Before the Town Clerk may revoke a license, the Town Clerk shall give the licensee written notice of the grounds for revocation, pursuant to §111.17. The licensee may, within 10 days after the day on which notice is provided, request in writing a conference with the Town Clerk. The request shall specify the reasons why the license should not be revoked. The Town Clerk shall arrange the conference within a reasonable time.

(B) If the licensee fails to request a conference within 10 days after the day on which notice is provided, the Town Clerk shall revoke the license. If the licensee requests a conference, the Town Clerk may not make a decision on the proposed revocation until after the conference.

(C) If the Town Clerk revokes a license, the former licensee may apply for a new license at any time thereafter. If the reason for which the license was revoked no longer exists and if no other reason for refusing to issue a license, the Town Clerk shall issue the license pursuant to §111.10.

§111.12 RECORD OF CONFERENCES.

The Town Clerk shall maintain for three (3) years a record of each conference held pursuant to this chapter. The record shall contain the applicant's or licensee's name, the date of the conference and a brief statement of the issues discussed and the result reached. After three (3) years, the Town Clerk shall

dispose of the record pursuant to N.C.G.S. §121-5 or any applicable replacement provision.

#### §111.13 FORM AND CONTENTS OF LICENSE.

A business license issued pursuant to this chapter shall show:

- (A) The name of the person licensed;
- (B) The place where the business is conducted (if it is to be conducted at one place);
- (C) The nature of the business licensed;
- (D) The period for which the license is issued; and
- (E) The amount of the license fee paid.

#### §111.14 ASSIGNMENTS.

(A) A license issued pursuant to this chapter may be assigned if:

- (1) A business licensed under this chapter and carried on at a fixed place is sold as a unit to any person; and
- (2) The purchaser is to carry on the same business at the same place.

(B) Such a change shall be reported to the Town Clerk within 10 days. Otherwise, each license issued under this chapter is a personal privilege and is not assignable.

#### §111.15 CHANGES IN BUSINESS CONDUCTED BY LICENSEE DURING YEAR.

A person conducting an applicable business within the Town shall report a change in their registration information to the Town Clerk within 10 days after the change occurs. A licensee or his assignee shall report any change in the information contained in the license application within 10 days after the change occurs. If information shown on a license issued under this chapter is affected thereby, the licensee or his assignee shall surrender the license to the Town Clerk when reporting the change.

(A) Changes affecting amount of fee due. If there are no reasons for revoking the license under §111.08 and the change results in the imposition of a separate or additional fee, the Town Clerk shall reissue a license reflecting the change upon payment of the separate or additional fee.

(B) Changes not affecting amount of fee due. If there are no reasons for revoking the license under §111.08 and the change does not result in an imposition of a separate or additional fee, the Town Clerk shall reissue a license reflecting the change at no charge.

(C) Change requiring refusal of license. If there is reason for revoking the license under §111.08, the Town Clerk shall refuse to reissue a license and shall instead begin proceedings to revoke the license pursuant to §111.11.

#### §111.16 TOWN CLERK TO FURNISH DUPLICATES.

Upon satisfactory proof that a license has been lost or destroyed, the Town Clerk shall furnish a duplicate for the fee as listed in the Town of Duck Fee Schedule.

#### §111.17 PROVIDING NOTICE TO APPLICANT OR LICENSEE.

Whenever this chapter requires the Town Clerk to give a written statement or notice to a business registered in the Town, or to an applicant or a licensee, the Town Clerk may do so in any one of three (3) ways:

(A) By personally delivering the statement or notice to the applicant or licensee;

(B) By mailing the statement or notice to the address specified for that purpose in the license application by either (1) certified mail, return receipt requested, or (2) commercial overnight delivery service; or

(C) By causing the statement or notice to be served on the applicant or licensee in accordance with the procedures for service of process under Rule 4, North Carolina Rules of Civil Procedure.

#### §111.18 RESPONSIBILITY OF BUSINESS OWNER TO DETERMINE WHETHER FEE DUE.

Each person has the duty to determine whether the business being conducted is required to hold a business license under this chapter, and if so, whether that fee has been paid for the current year.

#### §111.19 TOWN CLERK TO INVESTIGATE.

If the Town Clerk has reason to believe that a person is conducting an applicable business in the Town in violation of this chapter, the Town Clerk shall conduct an investigation to determine whether the person is subject to the requirements of this chapter.

#### §111.20 DISPLAYING LICENSE.

A licensee shall post their business license conspicuously in the place of business licensed, and in or on the vehicle, visible from the outside of the vehicle used for delivery. If the license has no regular place of business, the license must be kept where it may be inspected at all times by Town officials.

#### §111.21 NOTICE OF VIOLATION.

If the Town Clerk determines that a person operating an applicable business in the Town has not applied for a business license and/or paid the license fee, either for the current license year or for a prior license year, the Town Clerk shall give the person written notice of violation, pursuant to §111.17. The notice of violation shall specify the total amount of fee due, the section upon which the fee is based, the amount of fee due, and the manner and time period in which the person may respond to the notice of violation and the consequences to the person if the person fails to respond as specified.

#### §111.22 REQUEST FOR CONFERENCE.

The person may, within 10 days after the day on which notice of violation under this chapter is served, request in writing a conference. The request shall specify the person's objections to the notice of violation. By way of illustration, but not limitation, a person who receives a notice of violation may object on the grounds that the business license for the current year has been issued and/or the fee due has already been paid.

#### §111.23 VIOLATION TO BECOME FINAL IF CONFERENCE NOT REQUESTED.

If the person fails to request a conference under §111.22, the violation becomes final and the Town Clerk shall pursue any or all available remedies.

§111.24 PROCEDURES WHEN CONFERENCE HELD.

If the person requests a conference, the Town Clerk shall not take action on the violation until the Town Clerk hears the person’s objections and determines whether the violation should become final.

§111.25 REMEDIES.

(A) The Town Clerk may use any of the following methods to enforce any provisions of this chapter:

- (1) License revocation as provided in §111.11;
- (2) Impose a civil penalty as set forth in §10.99 of the Town Code; and/or

(3) In addition to the remedies set forth in this section and in compliance with G.S. §160A-175(d), seek an injunction and/or other equitable remedies against any person who conducts an applicable business in violation of this chapter.

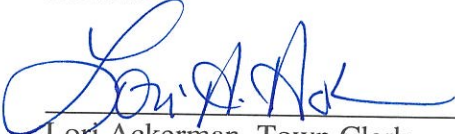
(B) Any business/privilege license invoice older than three (3) years, regarding an applicable business that the Town no longer regards as active, may be removed from the list of receivable accounts in the Town’s financial statement. At least annually, the Town Clerk will present the Town Manager with a list of uncollectible accounts, requesting the Town Manager’s approval for a formal write-off of such accounts. The Town may use all available means to collect these accounts to include but not be limited to the following: bank attachment and payroll garnishment where applicable, debt set-off, etc.

**PART II.** This ordinance shall be effective upon its adoption.



\_\_\_\_\_  
Don Kingston, Mayor

ATTEST:



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Lori Ackerman, Town Clerk

Date adopted: January 3, 2024

Motion to adopt by: Brenda Chasen

Vote: 4 AYES 0 NAYS

