

ARTICLE I. IN GENERAL

Section 1. Short title.

This Ordinance shall be known, designated and cited as "The License Tax Ordinance of Middlesex County, 2004."

Section 2. Overriding conflicting ordinances.

Except as may be otherwise provided by the laws of the Commonwealth of Virginia, and notwithstanding any other current ordinances or resolutions enacted by the county, whether or not compiled in the Code of the county, to the extent of any conflict, the following provisions shall be applicable to the levy, assessment, and collection of licenses required and taxes imposed on businesses, trades, professions and callings and upon the persons, firms and corporations engaged therein within the County.

Section 3. Definitions.

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

Affiliated group:

- (1) One or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation if:
 - a. Stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of each of the includible corporations, except the common parent corporation, is owned directly by one or more of the other includible corporations; and
 - b. The common parent corporation directly owns stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of at least one of the other includible corporations. As used in this definition, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends. The term "includible corporation" means any corporation within the affiliated group irrespective of the state or country of its incorporation; and the term "receipts" includes gross receipts and gross income.
- (2) Two or more corporations if five or fewer persons who are individuals, estates, or trusts own stock possessing:
 - a. At least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock of each corporation; and
 - b. More than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

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When one or more of the includible corporations, including the common parent corporation is a nonstock corporation, the term “stock” as used in this definition, shall refer to the nonstock corporation membership or membership voting rights, as is appropriate to the context.

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

Assessor or assessing official. The commissioner of the revenue or business license inspector for the county.

Base year. The calendar year preceding the license year, except for contractors subject to the provisions of Section 58.1-3715 of the Code of Virginia.

Business. A course of dealing which requires the time, attention and labor of the person so engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of dealing, rather than an irregular or isolated transaction. A person may be engaged in more than one business. The following acts shall create a rebuttable presumption that a person is engaged in a business: (i) advertising or otherwise holding oneself out to the public as being engaged in a particular business; or (ii) filing tax returns, schedules and documents that are required only of persons engaged in a trade or business.

Contractor: Any person, firm or corporation:

- (1) Accepting or offering to accept orders for contracts for doing any work on or in any building or structure, requiring the use of paint, stone, brick, mortar, wood, cement, structural iron or steel, sheet iron, galvanized iron, metallic piping, tin, lead, or other metal or any other building material;
- (2) Accepting or offering to accept contracts to do any paving, curbing or other work on sidewalks, streets, alleys, or highways, or public or private property, using asphalt, brick, stone, cement, concrete, wood or any composition;
- (3) Accepting or offering to accept an order for or contract to excavate earth, rock, or other material for foundation or any other purpose or for cutting, trimming or maintaining right-of-ways;
- (4) Accepting or offering to accept an order or contract to construct any sewer of stone, brick, terra cotta, or other material;

- (5) Accepting or offering to accept orders or contracts for doing any work on or in any building or premises involving the erecting , installing, altering, repairing, servicing, or maintaining electric wiring, devices or appliances permanently connected to such wiring, or the erecting, repairing or maintaining of lines for the transmission or distribution of electric light and power.
- (6) Engaging in the business of plumbing and steam fitting.

Definite place of business. An office or a location at which occurs a regular and continuous course of dealing for 30 consecutive days or more. A definite place of business for a person engaged in business may include a location leased or otherwise obtained from another person on a temporary or seasonal basis; and real property leased to another. A person=s residence shall be deemed to be a definite place of business if there is no definite place of business maintained elsewhere and the person is not licensable as a peddler or itinerant merchant.

License year. The calendar year for which a license is issued for the privilege of engaging in business. *Personal services.* Rendering for compensation any repair, personal, business or other services not specifically classified as “financial, real estate or professional service” under this chapter, or rendered in any other business or occupation not specifically classified in this chapter unless exempted from local license tax.

Purchases. All goods, wares and merchandise received or offered for sale at each definite place of business of every wholesaler or wholesale merchant, and shall not be construed to exclude any goods, wares or merchandise otherwise coming within the meaning of such word, including such goods, wares and merchandise manufactured by a wholesaler or wholesale merchant and sold or offered for sale as merchandise.

Real estate services. Rendering a service for compensation as lessor, buyer, seller, agent or broker and providing a real estate service, unless the service is otherwise specifically provided for in this chapter.

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

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

Section 4. Adoptions of guidelines.

Except as otherwise modified by this chapter, there is hereby adopted by reference as if fully set forth herein the *Guidelines for Business, Professional and Occupational License Tax Imposed by City, County and Town Ordinances*, issued by the Commonwealth of Virginia Department of Taxation dated January 1, 2000.

Section 5. License requirement.

(a) Every person engaging in the county in any business, trade, profession, occupation or calling (collectively hereinafter "a business") as defined in this chapter, unless otherwise exempted by law, shall apply for a license for each such business if: (i) in the case of professional services, such person either maintains a definite office in the county, or if such person does not maintain a definite office in the Commonwealth of Virginia but does maintain an abode in the county, which abode for the purposes of this chapter shall be deemed a definite place of business; or (ii) in the case of any other business, such person has a definite place of business or maintains an office in the county; or (iii) such person is engaged as a peddler or itinerant merchant, carnival or circus as specified in Sections 58.1-3717, 58.1-3718, or 58.1-3728, respectively of the Code of Virginia, or is a contractor subject to Section 58.1-3715 of the Code of Virginia, or is a public service corporation subject to Section 58.1-3731 of the Code of Virginia. A separate license shall be required for each definite place of business.

(b) A person engaged in two or more businesses or professions carried on at the same place of business may elect to obtain one license for all such businesses and professions if all of the following criteria are satisfied: (i) each business or profession is licensable at the location and has satisfied any requirements imposed by state law or other provisions of the county code; (ii) all of the businesses or professions are subject to the same tax rate, or, if subject to different tax rates, the licensee agrees to be taxed on all businesses and professions at the highest rate; and (iii) the taxpayer agrees to supply such information as the assessor may require concerning the nature of the several businesses and their gross receipts.

(c) Each person subject to a license tax and/or fee shall obtain a license within ten days of beginning business, if he was not licensable in the county on or before January 1 of the license year. The application shall be on forms prescribed by the assessing official. Any application for renewal shall be submitted prior to March 1 of each license year.

(d) The tax and/or fee shall be paid with the application in the case of any license not based on gross receipts or purchases. If the tax is measured by the gross receipts or purchases of the business, the tax shall be paid on or before April 5.

(e) The assessing official may grant an extension of time, not to exceed 90 days, in which to file an application for a license for good cause. The extension may be conditioned upon the timely payment of a reasonable estimate of the appropriate tax, subject to adjustment to the correct tax at the end of the extension together with interest from the due date until the date paid and, if the estimate submitted with the extension is found to be unreasonable under the circumstances, a penalty of ten percent of the portion paid after the due date.

(f) A penalty of ten percent of the tax or \$10.00, whichever is greater, may be imposed upon the failure to file an application or the failure to pay the tax and/or fee by the appropriate due date. Only the late filing penalty shall be imposed by the assessing official if both the application and payment are late; however both penalties may be assessed if the assessing official determines that the taxpayer has a history of noncompliance. In the case of an assessment of additional tax made by the assessing official, if the application and, if applicable, the return were made in good faith and the understatement of the tax was not due to any fraud, reckless or intentional disregard of the law by the taxpayer, there shall be no late payment penalty assessed with the additional tax. If any assessment of tax by the assessing official is not paid within thirty days the treasurer may impose a ten percent late payment penalty. The penalties shall not be imposed, or if imposed, shall be abated by the official who assessed them, if the failure to file or

pay was not the fault of the taxpayer. In order to demonstrate lack of fault, the taxpayer must show that he acted responsibly and that the failure was due to events beyond his control.

(g) For the purpose of this section, the following words and phrases shall have the meanings respectively ascribed to them:

Acted responsibly means that (i) the taxpayer exercised the level of reasonable care that a prudent person would exercise under the circumstances in determining the filing obligations for the business; and (ii) the taxpayer undertook significant steps to avoid or mitigate the failure, such as requesting appropriate extensions, attempting to prevent a foreseeable impediment, acting to remove an impediment once it occurred, and promptly rectifying a failure once the impediment was removed or the failure discovered.

Events beyond the taxpayer's control include, but are not limited to, the unavailability of records due to fire or other casualty; the unavoidable absence (e.g., due to death or serious illness) of the person with the sole responsibility for tax compliance; or the taxpayer's reasonable reliance in good faith upon erroneous written information from the assessing official, who was aware of the relevant facts relating to the taxpayer's business when he provided the erroneous information.

(h) Interest shall be charged on the late payment of the tax and/or fee from the due date until the date paid without regard to fault or other reason for the late payment. Whenever an assessment of additional or omitted tax by the assessing official is found to be erroneous, all interest and penalty charged and collected on the amount of the assessment found to be erroneous shall be refunded from the date of payment or the date due, whichever is later. Interest shall be paid on any refund from the date of payment or date due, whichever is later. Interest on any refund shall be paid at the same rate charged to the taxpayer.

State law references-Doing business at more than one place, Code of Va., ' 58.1-3709 and ' 58.1-3703.1.

Section 6. Exemptions.

No license tax and/or fee shall be assessed or charged to any person prosecuting any business or businesses in which the aggregate gross receipts are \$4,000.00 or less in any license tax year; provided, however, all such persons shall provide the commissioner of the revenue, on a form provided by him, all information otherwise required to apply for a license. This exemption shall apply only to those businesses upon which taxes are imposed based upon gross receipts and shall specifically not apply to businesses upon which taxes are imposed by sections 28, 47, 99, 106, 120.1 or 131.

Section 7. Duty of applicant to ascertain zoning.

It shall be the duty of every person applying for a business license to ascertain whether the location for the conducting of such business, trade or occupation is properly zoned and has all necessary use permits before making application for such business license as may be required. The commissioner of the revenue, in any case where he suspects the location is not properly zoned for the type of business, trade or occupation proposed by the applicant, shall refuse to issue such business license until a certificate is issued by the zoning administrator, stating that the location is properly zoned and the necessary use permits, if any, have been granted. The issuance

of a business license by the commissioner shall not be deemed to be approval by the county or otherwise to be in compliance with the zoning ordinance or any other local law or regulation.

Section 8. Penalty for not making application.

Any person doing business, carrying on any trade or calling, or practicing any profession within the county, and any person who shall open an office for a place of business, or who shall by use of signs or otherwise advertise any trade, business or profession within the county, shall make application to the commissioner of the revenue for the license due under this chapter, as provided in section 5, and any person failing to make such application shall be subject to a fine of not less than \$25.00 nor more than \$300.00 as the judge or jury may determine.

Section 9. Penalties for nonpayment of license tax.

(a) Any person conducting any business, occupation or profession, or doing other things for which a license tax is required under this chapter, without applying for and obtaining such license as set forth in section 5, or who shall fail to obtain any tag, certificate or sign required under this chapter, shall be subject to a fine of not less than \$25.00 nor more than \$300.00, and each day of default shall constitute a separate offense. Such conviction shall not relieve any such person from the payment of any license tax imposed by this chapter.

(b) In addition to the above fine, if any license tax imposed by this chapter is not paid within the time prescribed in section 5, there shall be added to such license tax a penalty of ten percent or \$10.00 whichever shall be the greater; provided, however, that the penalty shall in no case exceed the amount of tax due. In addition thereto, interest in the amount of ten percent per annum shall commence the first day of the month following the month in which such tax is due.

(c) In the case of a false or fraudulent application where willful intent exists, a penalty of 50 percent of the amount of the proper tax shall be assessed.

Section 10. License tax on beginners.

For the purpose of ascertaining the tax to be paid by any person beginning a new business, employment or profession, and whose license tax shall be based on gross receipts, gross sales, gross purchases, gross commissions, gross contracts or orders, the licensee shall estimate the basis for measuring the license tax between the date of issuance of the license and the thirty-first of December following.

Section 11. Estimates.

Every underestimate under the preceding section shall be subject to correction by the commissioner of the revenue, whose duty it shall be to assess such licensee with such additional taxes as may be found to be due after the close of the license year on the basis of gross receipts, gross sales, gross purchases, gross commissions, or gross contracts or orders. In case of overestimate, the commissioner of the revenue shall order a refund in the amount of the overpaid tax, upon application of licensee.

Section 12. Keeping of records; penalty for failure to keep records.

(a) Every person liable for a license tax under this chapter which is based on actual or probable purchases or sales, actual or probable commissions, gross receipts from a business or profession, contracts or orders accepted or graded in any other way shall, where such tax is based on actual or probable purchases or sales, keep all invoices and a record of all purchases and from whom made, a record of all commissions, gross receipts, and contracts or orders accepted, from whom received and with whom made, and the report of such purchases, sales, commissions, receipts, contracts or orders accepted, required to be made for the computation of such license tax, shall be taken from such invoices and records and general books of account.

(b) All such invoices, records and general books of account shall be opened to inspection and examination on the premises of the business, employment or profession by the commissioner of the revenue, license inspector, or any assistant license inspector.

(c) Any person who shall fail or refuse to keep such invoices or records as above provided shall be subject to a fine of not less than \$25.00 nor more than \$300.00 in addition to the license tax imposed.

Section 13. Penalty for failing to file statement required and for making false statement.

If any person subject to the payment of a license tax required under this chapter should fail or refuse to file the statement or statements required by this chapter, or who should make any false statement in the affidavit required by this chapter, shall, upon conviction thereof, be fined not less than \$50.00 nor more than \$300.00 or confined in jail not more than 30 days, or both, in the discretion of the court or jury.

Section 14. Production of records and penalty for failure to produce.

(a) Should an officer of the county, charged in any manner with the duty of assessing or collecting license taxes, have reason to believe, in any case, that the amount of actual or probable purchases or sales, or actual or probable commissions, or the gross or net receipts from any business or profession, or any other matters that may be pertinent to the assessment of such license tax, have been incorrectly reported or returned, he shall make a report thereof to the commissioner of the revenue, whereupon, in any case in which the commissioner of the revenue shall deem it advisable, the commissioner of the revenue shall investigate and ascertain whether such person has made a correct return, and to that end, the commissioner of the revenue is hereby authorized and empowered to summon such person before him and require the production of any and all of his records, books and papers likely to throw any light upon the matter under investigation, and shall also be authorized and empowered to make, or cause to be made, such other and further reasonable investigations, examinations and audits of the records, books and papers of such person as he shall deem proper, and in order to accurately determine the proper return to be made by such person.

(b) If it shall appear that such purchases, sales, commissions, receipts or other matters pertinent to such assessment have been incorrectly reported or returned, the commissioner of the revenue shall assess such person with the proper county license tax.

(c) And if it shall appear to the commissioner of the revenue that such purchases, sales, commissions, receipts or other matters pertinent to such assessment have been willfully incorrectly reported or returned, such person shall be assessed, in addition to such increased license tax assessed, a penalty of 50 percent of such increased assessment. Any incorrect report of return shall be deemed prima facie willful.

(d) Any person who shall fail to appear before the commissioner of the revenue and produce such records, books and papers, when duly summoned, or who shall refuse to permit the commissioner of the revenue to make or cause to be made such other and further investigation and audit of such books and papers, shall, upon conviction thereof, be fined not more than \$300.00.

Section 15. Assessment of additional license taxes.

(a) Whenever an officer of the county charged in any manner with the duty of assessing or collecting license taxes shall find that any person should be assessed with any additional license tax or taxes, pursuant to the provisions of this chapter, it shall be his duty to report the matter, together with the amount thereof, to the commissioner of the revenue who, if the commissioner agrees with the finding, shall thereupon assess such person with such additional license tax or taxes, and shall also transmit a copy of such additional assessment to the county treasurer.

(b) In the event the additional license tax or taxes so assessed shall not have been paid within 30 days after such assessment, the county treasurer shall proceed to collect such tax or taxes in the same manner and with the same authority as all other taxes are collected and a penalty of five percent shall be added.

Section 16. Display of license; penalty for violation.

Every person required to pay a license tax or obtain any tag or sign under the provisions of this chapter shall keep the license tag or sign in a prominent place; and, whenever required to do so, shall exhibit it to any member of the sheriff's department or to the license inspector. Any person violating the provisions of this section, or any person failing to properly display license tag or grower's sign required under this chapter to be displayed in a particular way, shall, upon conviction, be fined not to exceed \$25.00 and each day of such violation shall constitute a separate offense.

Section 17. Situs of gross receipts.

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

classifications of business shall be attributed to one or more definite places of business or offices as follows:

- (1) The gross receipts of a contractor shall be attributed to the definite place of business at which his services are performed, or if his services are not performed at any definite place of business, then the definite place of business from which his services are directed or controlled, unless the contractor is subject to the provisions of section 58.1-3715 of the Code of Virginia.
- (2) The gross receipts of a retailer or wholesaler shall be attributed to the definite place of business at which sales solicitation activities occur, or if sales solicitation activities do not occur at any definite place of business, then the definite place of business from which sales solicitation activities are directed or controlled.
- (3) The gross receipts of a business renting tangible personal property shall be attributed to the definite place of business from which the tangible personal property is rented or, if the property is not rented from any definite place of business, then the definite place of business at which the rental of such property is managed.
- (4) The gross receipts from the performance of personal services shall be attributed to the definite place of business at which the services are performed or, if not performed at any definite place of business, then the definite place of business from which the services are directed or controlled.

(b) *Apportionment.* If the licensee has more than one definite place of business and it is impractical or impossible to determine to which definite place of business gross receipts should be attributed under the general rule and the affected jurisdictions are unable to reach an apportionment agreement, the gross receipts of the business shall be apportioned between the definite places of businesses as provided in section 58.1- 3709 of the Code of Virginia. Gross receipts shall not be apportioned to a definite place of business unless some activities under the applicable general rule occurred at, or were controlled from, such definite place of business. Gross receipts attributable to a definite place of business in another jurisdiction shall not be attributed to the county in the event the other jurisdiction does not impose a tax on the gross receipts attributable to the definite place of business in such other jurisdiction.

(c) *Agreements.* The assessor may enter into agreements with any other political subdivision of Virginia concerning the manner in which gross receipts shall be apportioned among definite places of business. However, the sum of the gross receipts apportioned by the agreement shall not exceed the total gross receipts attributable to all of the definite places of business affected by the agreement. In the event the assessing official is notified or becomes aware that its method of attributing gross receipts is fundamentally inconsistent with the method of one or more political subdivisions in which the taxpayer is licensed to engage in business and that the difference has, or is likely to, result in taxes on more than 100 percent of its gross receipts from all locations in the affected jurisdictions, the assessor shall make a good faith effort to reach an apportionment agreement with the other political subdivisions involved.

Section 18. Limitations, extensions, appeals and rulings.

The enforcement of the provisions of this chapter including limitations with respect thereto, the correction of any assessment hereunder and any appeal by the county of a correction made by its assessing official or by any person assessed with taxes hereunder and aggrieved by

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such assessment shall be pursuant to chapter 39, title 58.1 of the Code of Virginia; provided, however:

- (1) Any person assessed with a licensing tax under this chapter as the result of an audit may apply within 90 days from the date of such assessment to the assessing official for a correction of the assessment. The application must be filed in good faith and sufficiently identify the taxpayer, audit period, remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer relies, and any other facts relevant to the taxpayer's contention. The assessor may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents, further audit, or other evidence deemed necessary for a proper and equitable determination of the applications. The assessment shall be deemed prima facie correct. The assessor shall undertake a full review of the taxpayer's claims and issue a determination to the taxpayer setting forth its position. Every assessment pursuant to an audit shall be accompanied by a written explanation of the taxpayer's right to seek correction and the specific procedure to be followed in the jurisdiction (e.g., the name and address to which an application should be directed).
- (2) Provided a timely and complete application is made collection activity shall be suspended until 30 days after the final determination is issued by the assessor, unless the assessor determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of section 10 12-5(h), but no further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" includes a finding that the application is frivolous, or that a taxpayer desires (i) to depart quickly from the locality, (ii) to remove his property therefrom, (iii) to conceal himself or his property therein, or (iv) to do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.
- (3) A taxpayer may apply within 90 days of the determination made by the assessing official on an application pursuant to paragraph (1) of this section to the Commissioner of the Virginia Department of Taxation for a correction of such assessment. The tax commissioner shall issue a determination to the taxpayer within 90 days of receipt of the taxpayer's application, unless the taxpayer and the assessing official are notified that a longer period will be required.
- (4) On receipt of a notice of intent to file an appeal to the tax commissioner the assessing official shall further suspend collection activity until a final determination is issued by the tax commissioner, unless the assessor determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue but no further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" shall have the same meaning as set forth in paragraph (2) of this section.
- (5) Any taxpayer may request a written ruling regarding the application of the tax to a specific situation from the assessor. Any person requesting such a ruling must provide all the relevant facts for the situation and may present a rationale for the basis of an interpretation of the law most favorable to the taxpayer. Any misrepresentation or change in the applicable law or the factual situation as presented in the ruling request shall invalidate any such ruling issued. A written ruling may be revoked or

amended prospectively if (i) there is a change in the law, a court decision, or (ii) the assessor notifies the taxpayer of a change in the policy or interpretation upon which the ruling was based. However, any person who acts on a written ruling which later becomes invalid shall be deemed to have acted in good faith during the period in which such ruling was in effect.

Section 19. Recordkeeping and audits.

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

Section 20. Exclusions and deductions from gross receipts.

(a) *General rule.* Gross receipts for license tax purposes shall not include any amount not derived from the exercise of the licensed privilege to engage in a business or profession in the ordinary course of business or profession.

(b) *Exclusions.* The following items shall be excluded from gross receipts:

- (1) Amounts received and paid to the United States, the commonwealth or any county, city or town for the Virginia retail sales or use tax, for any local sales tax or any local excise tax on cigarettes, or for any federal or state excise taxes on motor fuels.
- (2) Any amount representing the liquidation of a debt or conversion of another asset to the extent that the amount is attributable to a transaction previously taxed (e.g., the factoring of accounts receivable created by sales which have been included in taxable receipts even though the creation of such debt and factoring are a regular part of its business).
- (3) Any amount representing returns and allowances granted by the business to its customer.
- 4) Receipts, which are the proceeds of a loan transaction in which the licensee is the obligor.
- (5) Receipts representing the return of principal of a loan transaction in which the licensee is the creditor, or the return of principal or basis upon the sale of a capital asset.
- (6) Rebates and discounts taken or received on account of purchases by the licensee. A rebate or other incentive offered to induce the recipient to purchase certain goods or services from a person other than the offeror, and which the recipient assigns to the

licensee in consideration of the sale of goods and services shall not be considered a rebate or discount to the licensee, but shall be included in the licensee's gross receipts together with any handling or other fees related to the incentives.

- (7) Withdrawals from inventory for which no consideration is received and the occasional sale or exchange of assets other than inventory, whether or not a gain or loss is recognized for federal income tax purposes.
- (8) Investment income not directly related to the privilege exercised by a licensable business not classified as rendering financial services. This exclusion shall apply to interest on bank accounts of the business, and to interest, dividends and other income derived from the investment of its own funds in securities and other types of investments unrelated to the licensed privilege. This exclusion shall not apply to interest, late fees and similar income attributable to an installment sale or other transaction that occurred in the regular course of business.

Section 21. Rates of license taxes and fees.

Effective January 01, 2005, there is hereby imposed, a thirty dollar (\$30.00) annual license fee on all businesses that have gross receipts exceeding \$4,000 in Middlesex County.

Effective January 1, 2006, the following shall apply: except as may be specifically otherwise provided by this chapter or other law, there shall be an annual license fee of \$30.00 charged to any class of business requiring a license pursuant to this chapter that has gross receipts exceeding \$4,000.00 but less than \$50,000.00. For all businesses requiring a license pursuant to this chapter with gross receipts of \$50,000.00 or more the annual charge shall be either the \$30.00 license fee or the tax calculated based on the rate set forth below for the class of enterprise listed, whichever is greater. For the purpose of this chapter, gross receipts shall be the aggregate of all gross receipts for all licensable enterprises at a particular place of business.

- (1) For contractors and persons constructing for their own account for sale, \$0.05 cents per \$100.00 of gross receipts;
- (2) For retailers, \$0.07 cents per \$100.00 of gross receipts;
- (3) For financial, real estate and professional services, \$0.19 cents per \$100.00 of gross receipts;
- (4) For repair, personal and business services and all other businesses and occupations not specifically listed or exempted in this article or otherwise by law, \$0.12 cents per \$100.00 of gross receipts;
- (5) For wholesalers, \$0.02 cents per \$100.00 of purchases (see section 58.1-3716 of the Code of Virginia for limitations);
- (6) For carnivals, circuses and speedways, \$500.00 per year held in this jurisdiction (see section 58.1-3728 of the Code of Virginia for limitations);
- (7) For fortune tellers, clairvoyants and practitioners of palmistry, \$300.00 per year;

- (8) For massage clinic or therapist, \$0.12 cents per \$100.00 of gross receipts;
- (9) For itinerant merchants or peddlers, \$150.00 per year (see limitation in section 58.1-3717 of the Code of Virginia);
- (10) For dealers in precious metals, \$0.07 cents per \$100.00 of gross receipts;
- (11) For permanent coliseums, arenas or auditoriums having a maximum capacity in excess of 10,000 persons, open to the public, \$1,000.00 per year (see limitation in section 58.1-3729 of the Code of Virginia);
- (12) For savings and loan associations, \$50.00 per year; and
- (13) For each wholesale druggist license, \$10.00 per year.

For businesses whose license fee is calculated using the above rates, the following maximum license fees are hereby imposed:

- For gross receipts amounting to two million dollars and under, the maximum license fee is established at \$2,500.00
- For gross receipts over two million dollars, the maximum license fee is established at \$5,000.00.

Any person engaging in such business without the required license shall be guilty of a Class 3 misdemeanor. This license shall not be proratable or transferrable.

Section 22. Rules of construction and collection of license taxes.

As to all questions in regard to the duty and conduct of officers of the county in collecting and enforcing the taxes herein imposed, and in regard to questions of construction and for definitions of terms used in this chapter, and the rules and regulations applicable to putting the same in operation, reference is hereby made to title 58.1, Code of Virginia, for the assessment, levy and collection of taxes for the current year, or to so much thereof as is applicable to this chapter and is not inconsistent with it and the general ordinances of the county and other parties affected by this chapter, and for fixing their powers, rights, duties and obligations the provisions of said laws, so far as applicable, are hereby adopted, without being specifically herein quoted.

Section 23. Interrogatories of applicant for license; penalty.

As one of the means of ascertaining the amount of any license tax, the commissioner of the revenue or any duly sworn deputy may take the sworn statement of such applicant or licensee and use such other evidence as he may properly and reasonably procure. Such interrogatories shall be answered under oath. Any applicant refusing to answer such interrogatories under oath shall be subject to a fine of not less than \$25.00 nor more than \$100.00.

Section 24. Subjects not mentioned in chapter.

Nothing contained in this chapter shall be construed to repeal any tax imposed by any other chapter of this Code or by any other ordinance of Middlesex County upon motor vehicles,

person, property, admissions, charges for utility services, or any subject not herein mentioned unless otherwise specified.

Section 25. Nonconflict with federal and state law.

Nothing contained in this chapter shall be construed as imposing any license tax on any business, occupation or professional employment, or on any part thereof, on which the county is prohibited to impose by federal or state law.

Section 26. Duty of commissioner of the revenue.

It shall be the duty of the commissioner of the revenue to require all parties prosecuting any business, employment or profession for which a license is provided herein to procure such license and pay the tax therefore, and should there be any license tax not paid, it shall be his duty to report any and all delinquents to the county treasurer, who shall report them to the commonwealth attorney for prosecution, as provided in this chapter.

ARTICLE II. SPECIFIC BUSINESSES AND ACTIVITIES

Section 27. Reserved.

Section 28. Alcoholic beverages.

(a) Every person engaged in dispensing alcoholic beverages shall become liable for license taxes as follows:

- (1) For each distiller's license, \$1,000.00 per annum; provided, that no such local license shall be required for any person who shall manufacture not more than 5,000 gallons of alcohol or spirits or both during such license year;
- (2) For each winery license, \$1,000.00 per annum;
- (3) For each brewery license, \$1,000.00 per annum;
- (4) For each bottler's license, \$500.00 per annum;
- (5) For each wholesale beer license, \$75.00 per annum;
- (6) For each wholesale wine distributor's license, \$50.00 per annum;
- (7) For each retail on-premises wine and beer license for a hotel, restaurant or club; and for each retail off-premises wine and beer license, including each specialty shop and convenience grocery store license, \$37.50 per annum;
- (8) For each retail on-premises beer license for a hotel, restaurant or club and for each retail off-premises beer license, \$25.00 per annum;
- (9) Mixed alcoholic beverages:
 - a. Persons operating restaurants, including restaurants located on premises of and operated by hotels and motels:

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1. \$200.00 per annum for each restaurant with a seating capacity at tables for 50 to 100 persons;
 2. \$350.00 per annum for each restaurant with a seating capacity at tables for more than 100 but not more than 150 persons;
 3. \$500.00 per annum for each restaurant with a seating capacity at tables for more than 150 persons;
 4. \$500.00 per annum for each caterer; and
 5. Mixed beverages special events licenses, \$10.00 for each day of each event.
- b. A private, nonprofit club operating a restaurant located on the premises of such club, \$350.00 per annum.
- (b) The aforesaid licenses shall be as respectively defined by the act of the general assembly of Virginia, as heretofore and hereafter amended, known as "The Alcoholic Beverage Control Act" and the terms "alcoholic beverage," "alcohol," "spirits," "beer," "wine," and "mixed alcoholic beverage," wherever used in this section, shall have the meanings respectively ascribed to them by that act.
- (c) No license shall be issued under this section to any person unless such person shall hold or shall secure simultaneously therewith the proper state license required by the "Alcoholic Beverage Control Act," which state license shall be exhibited to the commissioner of the revenue.
- (d) Any such license may be amended to show a change in the place of business within the county. Any such license may be transferred from one person to another, provided the person to whom transferred holds at the same time a similar license from the state alcoholic beverage control board.

State law references-Alcoholic Beverage Control Act, Code of Va., ' 4.1-100 et seq.; state license tax on alcoholic beverage dispensers, Code of Va., " 4.1-205, 4.1-233.

Sections 29 - 40. Reserved.

Section 41. Bondsmen, professional, and their agents.

(a) Every person who shall, for compensation, become or furnish surety for any person or persons charged with a felony or misdemeanor or with violation of any county ordinance or state law, shall be licensed as a personal service enterprise and pay such amount as required under section 12-21. Such license shall not be transferable.

(b) No professional bondsman licensed under the provisions of this section shall designate any person, association, firm, partnership or corporation as his agent to act in his behalf in furnishing surety for any person or persons.

(c) Nothing in this section shall be construed to conflict with regulatory laws governing conduct, practice or fees of professional bondsmen.

(d) No license shall be issued hereunder for any professional bondsman unless and until there is presented to the commissioner of the revenue a certificate from a judge of the circuit court of Middlesex County permitting the operation of this business and that the professional bondsman is entitled to be so licensed.

State law reference-State licenses for bondsmen, Code of Va., ' 58.1-3724.

Sections 42 - 46. Reserved.

**Section 47. Carnivals, circuses and trained animal shows-
Generally.**

(a) *Carnivals.* Every person who, in this county, exhibits performances in a carnival, as defined in Section 58.1-3728 of the Code of Virginia, shall pay a license tax of \$100.00 per day or for each performance held in the county, whichever is greater.

(b) *Circuses.* Every person who exhibits performances of a circus or circuses and menagerie or wild west show in this county shall pay a license tax of \$100.00 per day or for each performance held in the county, whichever is greater.

(c) *Bond.* Each person, firm or corporation that exhibits performances described in this section without maintaining a permanent place of business within the county shall, before beginning operation in this county, post a surety bond in the amount of \$1,000.00, which bond shall assure faithful compliance by the licensee with all of the laws of the county pertaining to revenue and regulation.

Section 47.1. Same--Sponsored by nonprofit organizations.

(a) No license tax shall be assessed or charged for any activity set forth in section 12-47; provided, that such activity is sponsored, supervised and controlled by a nonprofit organization; and provided further, that such organization shall first obtain a license for the privilege of doing business in the county.

(b) No license shall be issued under this section until the county administrator has first made or caused to be made an investigation of the organization involved and the nature of the sponsorship, supervision and control of the show or amusement and the county administrator is satisfied that:

- (1) The organization is in fact a bona fide nonprofit organization not authorized to distribute its income to its members by charter, constitution or bylaws.
- (2) The show is under the direct sponsorship, supervision and control of the nonprofit organization.
- (3) If any person, firm or corporation connected with, pertaining to or in any manner involved with the activity involved herein receives compensation of any nature for services rendered, such compensation must be paid directly by the nonprofit organization or an affiliate organization of which it is a member.

- (4) No arrangement exists for sharing the profits, net income or gross receipts from such show with any person, firm or corporation; provided, however such profits may be shared with either or both of the following:
- a. An affiliated organization of which the nonprofit organization is a member;
 - b. A property owner providing property upon which such show will be conducted.

State law reference-State license for carnivals and circuses, Code of Va., '58.1-3728.

Sections 48 - 54.1. Reserved.

Section 55. Detective agencies and watchmen.

(a) Every person operating a detective agency, or engaged in a business as a detective, shall be licensed as a personal service enterprise and pay such amount required under section 21.

No license shall be issued hereunder unless and until there is presented to the commissioner of the revenue a certificate or permit from the chief of police of this county recommending the applicant as a person of good moral character with no police record.

(b) Every person operating a business or agency furnishing watchmen, including ship watching for compensation, shall be licensed as a personal service enterprise and pay such amount as required under section 21.

Section 56. Reserved.

Section 57. Electric light and power, heat and gas.

Every person engaged in the business of furnishing heat, light and power, and gas for domestic, commercial and industrial consumption in this county shall pay for the privilege an annual license tax of one-half of one per centum of the gross receipts derived from sales to the ultimate consumer within this county, excluding, however, such service furnished federal, state and local public authorities, its offices or agencies, and sales for resale to other electric utilities.

State law references-Local taxation of water or heat, light and power companies, see Code of Va., "58.1- 2626, 58.1-2627, 58.1-2690, 58.1-3731.

Section 57.1. Private water companies.

Every person engaged in the business of furnishing water from private water sources for domestic, commercial and industrial consumption in this county shall pay for the privilege an annual license tax of one half per one per cent of the gross receipts derived from sales to the ultimate consumer within this county, excluding, however, such service furnished federal, state and local public authorities, its offices or agencies and sales for resale to other water companies.

State law references-Local taxation of water or heat, light and power companies, Code of Va., " 58.1- 2626, 58.1-2627, 58.1-2690, 58.1-3731.

Section 58. Maximum license tax on industrial loan companies.

Any license tax levied by the county on an industrial loan company shall be no greater than \$500.00.

Sections 58.1 - 61. Reserved.

Section 62. Goods stored in public warehouses.

Any person who maintains no place of business in this county, and who shall store goods, wares and merchandise in a public warehouse or public warehouses in this county, for ultimate distribution to wholesalers only, or to the federal or state government, or to any agency of either such government, shall not be deemed to be a wholesale merchant and, therefore, is not subject to a license tax as such.

Sections 63 - 67. Reserved.

Section 67.1. Merchants-Retail sales.

(a) A person is not subject to a local license tax if his business in this state is limited solely to the solicitation of orders by catalogs mailed from outside this state to mail-order buyers in this state and who fills orders from outside this state. However, if the catalogs are distributed by a Virginia resident by mail or in person or if the person engaged in the mail-order business has a definite place of business in this state at which mail orders are received or filled, the mail order business shall be treated the same as any other retail or wholesale business for purposes of local license taxes.

(b) Any person who merely fills prescriptions for or fits corrective lenses and eyeglass frames is a retail merchant. However, any practitioner who examines eyes is engaged in rendering a professional service.

(c) A job printer is a manufacturer and is engaged in either retail or wholesale sales as to the sales of the items printed.

Section 68. Reserved.

Section 69. News publications and broadcasting.

No local license tax shall be levied or collected upon the privilege or right of printing or publishing any newspaper, news magazine, newsletter or other news publication, or for the privilege or right of operating or conducting any radio or television broadcasting station or service.

Sections 70 - 71. Reserved.

Section 72. Pawnbrokers.

(a) *Pawnbroker defined.* For the purpose of this section, a "pawnbroker" shall be deemed to mean any person who lends or advances money or other things for profit on the pledge and possession of personal property, or other valuable things, other than securities or written or

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printed evidences of indebtedness, or who deals in the purchasing of personal property or other valuable things on condition of selling the same back to the seller at a stipulated price.

(b) *Application required; fee; information required.* Any person desiring to operate as a pawnbroker in the county shall make application to the commissioner of the revenue. Such application shall be accompanied by a nonrefundable application fee of \$100.00 to cover administrative costs and investigations. The applicant for the pawnbroker's license shall furnish the following:

- (1) Copy of application for county business license;
- (2) Copy of birth certificate;
- (3) Copy of driver's license or other proof of residence;
- (4) List of criminal convictions of the applicant, if any, other than traffic offenses, listing the place of each such conviction; and
- (5) Finger imprints prepared and certified by the Middlesex County Sheriff's Department or authorized Virginia law enforcement agency.

(c) *Issuance of license.* The commissioner of the revenue may issue a pawnbroker license upon receipt of the following:

- (1) Statement from the Zoning Administrator or his designee, that conduct of a pawnbroker business in the location proposed is in conformity with the applicable provision of County ordinances.
- (2) Statement from the chief of police, or his designee, that applicant's list of criminal convictions, if any, is accurate; and
- (3) Order of authorization from the judge of the circuit court.

(d) *Renewal.* A pawnbroker license shall continue automatically on timely renewal of a business license. The renewal of the business license shall be accompanied by an update to the statement of criminal convictions and a release form authorizing a criminal records check. At any time the commissioner of the revenue becomes aware of a felony conviction, the commissioner may petition the circuit court for review of the authorization to issue a license.

(e) *Annual tax.* Every person engaging in the business of a pawnbroker shall be licensed as a personal service enterprise and pay such amount as required by section 21.

(f) *Proratability and transferability.* No license issued under this section shall be proratable or transferable.

(g) *Ledger of transactions required.* Every person issued a license to operate a pawnbroker business in the county shall keep a complete and accurate ledger which contains, for each transaction, a description of the goods; the time and date transferred; and the name, address, phone number and social security number of the person pawning personal property or other valuable things with the pawnbroker. The ledger shall be open to inspection by the chief of police.

State law reference-Pawnbrokers, Code of Va., '54.1-4001 et. seq.

Sections 73 - 78. Reserved.

Section 78.1. Repair, personal, business and other services.

(a) *Maximum rate.* The maximum rate for a local license tax imposed upon a person engaged in a repair, personal or business service or any other business or occupation not specifically listed or excepted from Code of Virginia, section 58.1-3703 shall be such amount provided in section 21.

(b) *Repair service.* The repairing, renovating, cleaning or servicing of some article or item of personal property for compensation is a repair service, unless the service is specifically provided for under another section.

(c) *Personal service.* Any service rendered for compensation either upon or for persons, animals or personal effects is a personal service, unless the service is specifically provided for under another section.

(d) *Business service.* Any service rendered for compensation to any business, trade, occupation or governmental agency is a business service, unless the service is specifically provided for under another section.

(e) *Commission merchants.* Any person buying or selling any kind of goods, wares or merchandise for another on commission is a commission merchant and is engaged in a business service.

(f) *Photographers.* Photographers who have no place of business in Virginia may be subject to local license taxation so long as the tax is not in excess of the tax imposed on photographers by the state.

(g) *Sign painting.* Sign painting is a service unless the sign is painted on the side of a building or any other structure assessed as realty, in which case the sign painting is contracting.

(h) *Amusements.* An amusement is a type of entertainment or show for which compensation is received and that is not specifically provided for under another section of these guidelines.

Sections 79 - 82. Reserved.

Section 83. Tattooing.

(a) Every person engaged in the business of tattooing in this county shall be licensed as a personal service enterprise and pay such amount as required by section 21. Such license shall not be proratable.

(b) No license shall be issued hereunder unless and until there is presented to the commissioner of the revenue a certificate from the county administrator permitting the operation of this business.

Section 84. Tax when going out of business - Wholesale merchants.

If, after the close of the year for which the license is issued, the wholesale merchant should elect not to renew it, but desires the privilege to sell whatever goods, wares, and merchandise he may have on hand at the time, it may be lawful for him to do so upon the payment of a license tax upon such goods, wares and merchandise to be regarded as purchases for the purpose of computing the license tax, provided that no purchases may be made after the close of the preceding year by the merchant.

Section 85. Same - Retail merchants.

If, after the close of the year for which the license is issued, the retail merchant should elect not to renew it, but desires the privilege to sell whatever goods, wares and merchandise he may have on hand at the time, it may be lawful for him to do so upon the payment of a license tax measured by the retail sales value of such goods, wares and merchandise, which value shall be estimated by the commissioner of the revenue issuing the license; provided that no purchases may be made by the merchant after the close of the preceding year.

Section 86. Taxicab drivers.

No local license tax shall be collected from a taxicab driver if the county imposes a license tax upon the taxicab company for which the taxicab driver operates. The burden shall be upon each taxicab driver to provide reasonable proof of his employment status and that such a tax was paid.

Section 87. Telegraph companies.

On each and every telegraph company conducting business in this county and delivering messages without additional charge to any point within the county limits, for the business done exclusively within this county and not including any business done to or from points without the state, and not including any business done for the government of the United States, its officers or agents, shall pay an annual license tax equal to one-half of one per cent of the gross receipts derived from the sales to the ultimate consumer within this county.

State law references-Local taxation of telegraph and telephone companies, Code of Va., " 58.1-2690, 58.1-3731.

Section 88. Telephone companies.

(a) On each and every telephone company conducting a telephone exchange in the county, and using and occupying the streets, avenues and alleys in the county, and conducting or maintaining the works of the telephone company, or any part thereof, along, over and under the streets, avenues and alleys in the county, shall pay for the privilege an annual license tax of one-half of one per cent of the gross receipts derived from sales to the ultimate consumer within this county, excluding, however, such service furnished federal, state, and local public authorities, their offices or agencies.

(b) This license is for the privilege of doing business for local services in this county and does not include any license charge for business done to and from points without this state, and does not include any license charge for any business done for the government of the United States, its officers or agents, and does not include any license charge for any interstate business.

This license charge is restricted exclusively for local services and is no attempt to tax, regulate or hinder interstate commerce.

State law references-Local taxation of telegraph and telephone companies, Code of Va., " 58.1-2690, 58.1-3731.

Sections 89 - 98. Reserved.

Section 99. Vendors, itinerant.

(a) Every person who shall engage in, do or transact any temporary or transient business in this county for the sale of goods, wares and merchandise and who, for the purpose of carrying on such business, shall hire, lease, use or occupy any building or structure, motor vehicle, tent, car, boat or public room, or any part thereof, including rooms in hotels, lodging houses or houses or private establishments or in any street, alley or other public place, for a period of less than one year for the exhibition of or sale of such goods, wares or merchandise shall pay for such privilege, in addition to a merchant's license tax, a specific license tax of \$500.00.

(b) Every person who has not been licensed for at least one year to sell or offer for sale goods, wares or merchandise under this chapter and who shall apply for a license to offer or sell goods, wares or merchandise within this county shall file with such application an affidavit from the owner of the building, structure, etc., to be used by such applicant, showing for what period of time the property to be used by such applicant has been hired or leased by such applicant, and no license shall be issued unless and until such affidavit is attached to the application; provided, that the commissioner of the revenue may, in lieu of the foregoing affidavit, issue a regular merchant's or regular auctioneer's license to any applicant upon the giving of a bond or security in such amount as will equal the specific tax required by this chapter for a period of one year from the date of the application of such license, and such bond or security shall provide that such amount shall be paid to Middlesex County in the event and at any time during any such year that the commissioner of the revenue shall receive sufficient evidence showing that it was the applicant's intention to engage in or transact a temporary or transient business in this county.

(c) No person shall be exempt from the payment of the license tax imposed by this section by reason of association temporarily with any local merchant, dealer, trader or auctioneer, or by reason of conducting such temporary or transient business in connection with or as a part of the business in the name of any local merchant, dealer, trader or auctioneer.

(d) The provisions of this section shall not apply to the sale at auction of any wagon, carriage, automobile, mechanics tools, used farming implements, livestock, poultry (dressed or undressed), seafood, vegetables, fruits, melons, berries, flowers, leaf tobacco, or for sale of used household furniture and used household effects when being sold at the residence of the housekeeper desiring to dispose of the same; nor to sales made to dealers by commercial travelers or selling agents to regularly established merchants or of manufacturers selling to the trade by sample for future delivery from their established place of business, not to the sale of products raised upon lands leased or owned by the seller nor the sale of vegetables, fruits or other farm products, not to hawkers on the streets nor to the sales of any goods by an assignee, trustee, executor, fiduciary, officer in bankruptcy or other officer appointed by any court of this commonwealth or of the United States, nor to peddlers for whom licenses are otherwise provided by this chapter.

State law references-Peddlers, itinerant merchants, Code of Va., ' 58.1-3717; limitations on license taxes imposed on peddlers, itinerant merchants and peddlers at wholesale, Code of Va., ' 58.1-3719.

Sections 100 - 101. Reserved.

ARTICLE III. PEDDLERS

Section 102. "Peddler" defined.

Any person who carries from place to place any goods, wares or merchandise and offers to sell or actually sells and delivers at the same time is a peddler. Any person who does not keep a regular place of business, whether it be a house or a vacant lot or elsewhere, with regular business hours, but at that place offers to sell goods, wares and merchandise, is a peddler. Any person who keeps a regular place of business, with regular business hours at the same place, who other than at that regular place of business, personally or through agents offers for sale or sells and, at the time of such offering for sale, delivers goods, wares and merchandise is a peddler.

Section 103. Peddler's license tax.

Every person who engages in the business of peddling as defined in this article shall be deemed a peddler and shall be licensed as a retail merchant service enterprise and pay such amount as required by section 21.

Section 104. Growers and producers.

(a) No license shall be required from peddlers of market produce, fresh meats or fruits who are bona fide producers or growers of the produce, meats or fruits sold by them; and provided further, that no license shall be required of peddlers of seafoods who are bona fide catchers, producers or growers of seafoods sold by them.

(b) The commissioner of the revenue shall require such bona fide producer or grower of market produce, fruits or fresh meat to file with him a certificate in which shall be given the name and address of the applicant, the location of the land from which his fruits, vegetables and/or other perishables are to be produced, whether the applicant is the owner thereof, or renter, and in the latter case, the name of the landlord or owner and the time from which his lease is to run; also, that the applicant intends to use the sign hereinafter mentioned himself personally, or by agent, for the sale of his own produce only, and will not permit the same to be used by any third party, or for the sale of any produce, except his own. Upon receipt of such certificate, the commissioner of the revenue shall furnish to such bona fide producer a sign of a size and design to be selected by the commissioner of the revenue suitable to be displayed on his wagon or truck on which shall be printed "County Grower No. _____20_____" with the license year inserted.

(c) The commissioner of the revenue shall issue to each applicant for license to sell fish, oysters, clams or other seafood under this section a license tag of a size and design to be selected by the commissioner of revenue suitable to be displayed on the vendor's wagon, cart or truck, on which shall be printed "Seafood Peddler No. _____ 20_____" with the license year inserted.

(d) Any license tag or growers sign issued under this section shall be affixed and displayed by the owner on the left hand side of his cart, wagon, dray, automobile, truck, push cart or other vehicle, on the outside thereof, and in a conspicuous place, so that the same may be readily seen at all times by anyone authorized to inspect the same. A charge of \$1.00 will be made for each grower's tag issued.

State law references-State peddlers' license, Code of Va., " 58.1-3717-58.1-3719.

(e) Any person making a false statement in the abovementioned certificate, or permitting the grower's sign above mentioned to be used in the sale of any produce, except produce grown by him on the land described in the certificate, shall be subject to a fine of not less than \$10.00 and not more than \$100.00.

Section 105. Peddler's license tag.

(a) The commissioner of the revenue shall issue to each applicant for a peddler's license as imposed under this article, a license tag of a size and design to be selected by the commissioner of the revenue, suitable to be displayed on the vehicle to be used by the peddler in the prosecution of such business. On each tag so issued, there shall be printed the classification of the peddler, the tag number and the license year for which the license is issued. (b) No license issued under this article shall be proratable or transferable.

ARTICLE IV. COIN-OPERATED MACHINES

DIVISION 1. SLOT MACHINES GENERALLY

Section 106. License taxes.

(a) The license tax imposed on any amusement operator, as defined herein, may be imposed in any amount not exceeding the sum of \$200.00. The term "amusement operator" means any person leasing, renting or otherwise furnishing or providing a coin-operated amusement machine or device operated on the coin-in-the- slot principle; provided, however, the term "amusement operator" shall not include a person owning less than three coin machines and operating such machines on property owned or leased by such person. Notwithstanding the situs requirements of Code of Virginia, section 58.1-3707, this license tax is imposed on the amusement operator when any such coin-operated machine or device operated on the coin-in-the-slot principal of such amusement operator is located therein.

(b) Any person having anywhere in this county a machine of any description into which are inserted nickels or coins of larger denominations to dispose of articles of merchandise or for the purpose of operating devices that operate on the coin-in-the-slot principle, used for gain except a telephone, shall pay for every such machine or device a license tax of \$25.00 per year, except that for each coin-operated musical machine the license tax shall be \$10.00 per year.

(c) This section shall not be applicable to operators of weighing machines, automatic baggage or parcel checking machines or receptacles, nor to operators of vending machines which are so constructed as to do nothing but vend goods, wares and merchandise or postage stamps or provide service only, nor to operators of viewing machines or photomat machines, nor operators of devices or machines affording rides to children or for the delivery of newspapers.

(d) No license shall be imposed on any vending machine under the ownership or supervision of any state commission or state agency.

State law references-State licensing of slot machines generally, Code of Va., " 58.1-3720-58.1-3723.

Section 106.1. Gross receipts tax.

In addition to any tax imposable pursuant to the provisions of this division, Middlesex County shall levy a gross receipts tax on any operator, as defined in section 106, on the gross receipts actually received by the operator from coin machines or devices operated within this county. Gross receipts from machines vending merchandise or postage stamps shall be deemed gross receipts from retail sales for license purposes. Gross receipts from machines vending merchandise or stamps shall be deemed receipts from retail sales, and taxed at the same rate as other retail sales.

Section 107. Illegal machines not to be licensed.

Nothing in this division shall be construed as permitting any person to keep, maintain, exhibit or operate any coin-operated machine or other device, the operation of which is prohibited by law, nor shall the commissioner of the revenue issue any license under this division which is unlawful under the provisions of the state law.

Sections 108 --109. Reserved.

Section 110. Name and address of owner of each machine.

Every vending machine operated under the provisions of this chapter shall be plainly marked by the owner thereof with the name, trade name, address of each owner, and section number of this chapter under which such machine is operated or licensed.

DIVISION 2. RESERVED

Sections 111 -113. Reserved.

ARTICLE V. THERAPEUTIC MASSAGE

Section 114. Definitions.

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

Erogenous area. The genitals, pubic area, anus or perineum of any person, or the vulva or breasts of a female.

Massage. A method of treating the external parts of the body for medical, hygienic, exercise or relaxation purposes by rubbing, stroking, kneading, tapping, pounding, vibrating or stimulating with the hands or any instrument, or by the application of air, liquid or vapor baths of any kind.

Massage technician. Any person who administers a massage to another person for consideration and who has a valid permit issued pursuant to Va. Code ' 54.1-3029.

Patron. Any person who receives a massage in exchange for the payment of money or any other consideration.

Permit. A current card or other document issued by the State Board of Nursing evidencing compliance with Va. Code ' 54.1-3029

Person. Any individual, partnership, firm, association, joint stock company, corporation, or combination of individuals of whatever form or character.

Section 115. Permit required.

It shall be unlawful for person to conduct, perform or permit to be given a massage to a patron in or upon any premises in the county except by a massage technician with a permit issued pursuant to Va. Code ' 54.1- 3029. Massage technicians shall have their permit available whenever they perform a massage.

Section 116. Exemptions.

The requirements of section 115 shall not apply to a physician, surgeon, chiropractor or osteopath duly licensed by the state, or to a licensed nurse, licensed physical therapist or graduate from an approved school acting under direct prescription and direction of any physician, surgeon, chiropractor or osteopath for treatment of a specified ailment. The requirements of section 115 shall not apply to barbershops or beauty parlors in which massage is given to the scalp, the face, the neck or the shoulders only.

Section 117. Exposure or massage of certain portions of body prohibited.

(a) It shall be unlawful for any massage technician to massage, fondle or touch in any manner an erogenous area, or any portion thereof, of any person.

(b) It shall be unlawful for any massage technician to expose or fail to keep covered with fully opaque clothing an erogenous area, or any portion thereof, of his or her body while in the presence of any patron.

Section 118. Penalty.

Any person who violates any of the provisions of this article shall be guilty of a first class misdemeanor and upon conviction thereof shall be punished by a fine not exceeding \$2,500.00 or by confinement in jail for a period not exceeding one year, either or both.

Section 119. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this article, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this article or any part thereof.

Sections 120 - 129. Reserved.

ARTICLE VI. SECONDHAND ARTICLES

DIVISION 1. BUYERS OF GOLD, SILVER, DIAMONDS AND JEWELRY

Section 130. Definitions.

For the purposes of this article, the following definitions shall apply:

- (1) *Coin*. Any piece of gold, silver or other metal fashioned into a prescribed shape, weight and degree of fineness, stamped by authority of a government with certain marks and devices, and having a certain fixed value as money.
- (2) *Dealer*. Any person, firm, partnership or corporation engaged in the business of (i) purchasing secondhand precious metals or gems; (ii) removing in any manner precious metals or gems from manufactured articles not then owned by such person, firm, partnership, or corporation; or (iii) buying, acquiring, or selling precious metals or gems removed from such manufactured articles. "Dealer" shall mean all employers and principals on whose behalf a purchase is made, and any employee or agent who makes any such purchase for or on behalf of his employer or principal.

This definition shall not be construed so as to include persons engaged in the following:

- (a) Purchases of precious metals or gems directly from other dealers, manufacturers or wholesalers for retail or wholesale inventories, provided the selling dealer has complied with the provisions of this article.
 - (b) Purchases of precious metals or gems from a duly qualified fiduciary who is disposing of the assets of the estate being administered by such fiduciary in the administration of an estate.
 - (c) Acceptance by a retail merchant of trade-in merchandise previously sold by such merchant to the person presenting that merchandise for trade-in.
 - (d) Repairing, restoring or designing jewelry by a retail merchant, if such activities are within his normal course of business.
 - (e) Purchases of previous metals or gems by industrial refiners and manufacturers, insofar as such purchases are made directly from retail merchants, wholesalers, dealers, or by mail originating outside the Commonwealth of Virginia.
 - (f) Persons regularly engaged in the business of purchasing and processing nonprecious scrap metals which incidentally may contain traces of precious metals recoverable as a byproduct.
- (3) *Gems*. Any item containing precious or semiprecious stones customarily used in jewelry.

- (4) *Precious metals.* Any item except coins composed in whole or in part of gold, silver, platinum or platinum alloys.

Section 131. Permit required; method of obtainment; renewal.

(a) No person shall engage in the activities of dealer as defined in section 12-130 without first obtaining a permit from the chief of police.

(b) To obtain a permit, the dealer shall file with the chief of police an application form which shall include the dealer's full name, any aliases, address, age, sex, photograph and fingerprints; the name, address and telephone number of the applicant's employer, if any; and the location of the dealer's place of business. Upon filing this application and the payment of a \$200.00 fee, the chief of police shall within 30 days conduct an investigation of the applicant and his proposed operation. If the applicant is found to be of good moral character and not to have been convicted of a felony or crime of moral turpitude within seven years prior to the date of application, a permit shall be granted. A permit shall be denied if the applicant has been denied a permit or has had a permit revoked under any ordinance similar in substance to the provisions of this article.

(c) Before a permit may be issued, the dealer must have all weighing devices used in his business inspected and approved by local or state weights and measures official and present written evidence of such approval to the chief of police.

(d) The permit shall be valid for one year from the date issued and may be renewed in the same manner as such permit was initially obtained with an annual fee of \$200.00. No permit shall be transferable.

(e) If the business of the dealer is not operated without interruption, with Saturdays, Sundays and recognized holidays accepted, the dealer shall notify the chief of police of all closings and reopenings of such business. The business of a dealer shall be conducted only from the fixed and permanent location specified in his application for a permit.

Section 132. Bond or letter of credit required.

Every dealer securing a permit pursuant to section 131 shall, at the time of obtaining such permit, enter into a recognizance to the county secured by a corporate surety authorized to do business in the commonwealth, in the penal sum of \$10,000.00, conditioned upon due observance of the terms of this article. In lieu of a bond, a dealer may cause to be issued by a bank authorized to do business in the Commonwealth of Virginia a letter of credit in favor of the county in the sum of \$10,000.00.

Section 133. Records to be kept; inspection thereof.

(a) Every dealer shall keep at his place of business an accurate and legible record of each purchase of precious metals or gems. The record of each purchase shall be retained by the dealer for not less than 24 months. These records shall set forth the following:

- (1) A complete description of all precious metals or gems purchased from each seller. The description shall include all names, serial numbers or other identifying marks or monograms on each item purchased, the true weight or karat of any gem and the price paid for each item;

- (2) The date and time of receiving the items purchased; and
- (3) The name, address, age, sex, race, driver's license number or social security number and signature of the seller.

(b) The information required by paragraph (a) shall appear on each bill of sale for all precious metals and gems purchased by a dealer, and a copy shall be mailed or delivered within 24 hours of the time of purchase to the chief of police.

(c) Every dealer shall admit to his premises during regular business hours the chief of police, his sworn designee, the sheriff, or his sworn designee, or any other law enforcement official of the state or federal governments, and shall permit such law enforcement officer to examine all records required by this article, and to examine any article listed in a record which is believed by the officer to be missing or stolen.

Section 134. Credentials required from seller.

No dealer shall purchase precious metals or gems without first ascertaining the identity of the seller by requiring an identification issued by a governmental agency with a photograph of the seller thereon, and at least one other corroborating means of identification.

Section 135. Prohibited purchases.

(a) No dealer shall purchase precious metals or gems from any seller who is under the age of 18.

(b) No dealer shall purchase precious metals or gems from any seller who the dealer believes or has reason to believe is not the owner of such items, unless the seller has written and duly authenticated authorization from the owner permitting and directing such sale. Additionally, no dealer shall purchase any such items from any seller who the dealer believes or has reason to believe is intoxicated at the time of the proposed sale.

Section 136. Dealer to retain purchases.

(a) A dealer shall retain all precious metals or gems purchased for a minimum of ten calendar days from the date on which a copy of the bill of sale is received by the chief of police. Until the expiration of this period, the dealer shall not sell, alter or dispose of a purchased item in whole or in part, or remove it from the county.

(b) If a dealer performs the service of removing precious metals or gems, he shall retain the metals or gems removed and the article from which the removal was made for a period of ten calendar days after receiving such article and precious metals or gems.

Section 137. Record of disposition.

Each dealer shall keep and maintain for at least 24 months an accurate and legible record of the name and address of the person, firm, or corporation to which he sells any precious metal or gem in its original form after the waiting period required by section 136. This record shall also show the name and address of the seller from whom the dealer purchased such item.

Section 138. Private action on bond or letter of credit.

If any person shall be aggrieved by the misconduct of any dealer who has violated the provisions of this chapter, he may maintain an action for recovery in any court of proper jurisdiction against such dealer and his surety; provided that recovery against the surety shall be only for that amount of the judgment, if any, which is unsatisfied by the dealer.

Section 139. Exemptions from article.

The chief of police or his designee, may waive by written notice implementation of any one or more of the provisions of this article, except section 135, for particular numismatic gems or antique exhibitions or craft shows sponsored by nonprofit organizations, provided that the purpose of the exhibitions is nonprofit in nature, notwithstanding the fact that there may be casual purchases and trades made at such exhibitions. Additionally, the provisions of this article shall not apply to the sale or purchase of coins.

Section 140. Penalties, first and subsequent offenses.

(a) Any person convicted of violating any of the provisions of this article shall be guilty of a Class 2 misdemeanor for the first offense. Upon conviction of any subsequent offense, he shall be guilty of a Class 1 misdemeanor.

(b) Upon the first conviction by any court of a dealer for violation of any provision of this article, the chief of police may revoke his permit to engage in business as a dealer under this chapter for a period of one full year from the date the conviction becomes final. Such revocation shall be mandatory upon a second conviction.

Sections 141 - 144. Reserved.

ARTICLE VII. GOING OUT OF BUSINESS

Section 145. Purpose.

The purpose of this article is to promote and preserve public morals and welfare, economic integrity and fair dealing between sellers and buyers, and to prevent fraud, deceit and dishonesty in business dealings and transactions by regulating the conduct of certain sales of goods, wares, and merchandise.

State law references-Code of Va., " 18.2-223 and 18.2-224.

Section 146. Permit required.

It shall be unlawful for any person to advertise or conduct a sale for the purpose of discontinuing a retail business or to modify the word "sale" in any advertisement with the words "going out of business" or any other words which tend to insinuate that the retail business is to be discontinued or the merchandise liquidated, unless such person has a valid permit issued by the commissioner of the revenue to conduct such sale.

Section 147. Application.

Application for a permit required by this article shall be filed with the commissioner of the revenue of the county at least ten days prior to advertising or conducting a going-out-of-

business sale. It shall be unlawful for any person to make any false statement in any application filed pursuant to this article.

Section 148. Permit fee.

The fee for a permit required by this article shall be \$65.00, which shall be paid at the time the permit application, is filed. Such fee is nonrefundable.

Section 149. Issuance of permit.

The commissioner of the revenue shall, upon review and verification of the application and payment of the fee, issue the permit required by this article.

Section 150. Term of permit.

Each permit issued under this article shall be valid for a period of no longer than 60 days and any extension of that time shall constitute a new sale and shall require an additional permit and inventory. An additional permit beyond the initial 60-day permit may be granted solely for the purpose of liquidating those goods, wares and merchandise contained in the initial inventory list which remain unsold.

Section 151. Inspection.

The commissioner of the revenue shall inspect the advertisement and conduct of a sale to ensure conformity with this article and the permit.

Section 152. Inventory.

All applications for going-out-of-business sale permits shall be accompanied by an inventory list, including the kind and quantity of all good, wares and merchandise which are to be offered for sale during the sale and only the goods, wares and merchandise specified in the inventory list may be advertised or sold during the sale period. Goods, wares and merchandise not included on the inventory list of going-out-of-business sale goods, wares and merchandise shall not be commingled with or added to the going-out-of-business sale goods, wares and merchandise. The commissioner of the revenue shall have the right to revoke a going-out-of-business sale permit upon proof that goods, wares and merchandise not appearing on the original inventory list of going-out-of-business sale goods, wares and merchandise have been commingled with or added to the going-out-of-business sale goods, wares and merchandise.

Section 153. Commingling or adding articles with those offered for sale.

It shall be unlawful for any person to add to or commingle with the goods, wares and merchandise listed on the inventory required by section 152 at or during a sale any other goods, wares or merchandise. The goods, wares or merchandise offered for sale shall before they are sold or offered for sale be separated from other goods, wares or merchandise on the premises and be marked with symbols distinguishing them from such other goods, wares and merchandise.

Section 154. General prerequisites to advertising or conduct of sale.

It shall be unlawful for any person to conduct or advertise to conduct a sale to induce or attempt to induce the public to purchase or otherwise acquire an interest in goods, wares and

merchandise at a sale by means of any publication or advertisement in a newspaper, magazine, book, notice, handbill, poster, circular, pamphlet, letter, billboard, sign, radio or television broadcast or in any other manner unless the seller has a valid permit under this article and in fact and in good faith intends to go out of business.

Section 155. Violations of article.

A violation of any provision of this article shall constitute a Class I misdemeanor.

This ordinance shall be effective immediately upon adoption.

Adopted: December 20, 2005 by the following vote:

Kenneth W. Williams	aye
Wayne H. Jessie, Sr.	aye
Fred S. Crittenden	aye
John D. Miller, Jr.	aye

CERTIFICATION

I, Charles M. Culley, Jr., Clerk of the Board of Supervisors of the County of Middlesex, Virginia, certify that the foregoing is a true and correct copy of an ordinance passed at a lawfully organized meeting of the Board of Supervisors of Middlesex County held at Saluda, Virginia, at 7:30 P.M., on December 20, 2005

Charles M. Culley, Jr.