

**AGENDA  
TOWN OF EDISTO BEACH  
July 12, 2018  
PUBLIC HEARING  
5:45**

- I. Call to Order**
- II. Second Reading of Ordinance No. 2018-02 02 An Ordinance to Enact Article IX of the Town's Zoning Ordinance Related to Fences on Private Lots**
- III. Second Reading of Ordinance No. 2018-15 to Amend Article II of Chapter 18 of the Town's Code Titled Licenses**

V. A.

No-2018-15

**TOWN OF EDISTO BEACH**

**AN ORDINANCE**

**TO AMEND ARTICLE II OF CHAPTER 18 OF THE TOWN'S CODE ENTITLED  
"LICENSES"**

WHEREAS, Town Council has contracted with a professional attorney consultant to review and provide suggested revisions to the Town's Business License ordinance to more accurately conform with current state law, and after receiving the recommendations of the consultant, the Town Council believes it is in the best interest of the Town to amend Article II of Chapter 18 of the Town's Code as set forth below to include the attached Appendix A and Appendix B.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Town of Edisto Beach, South Carolina, in council duly assembled that Article II of Chapter 18 of the Town's Code entitled "Licenses" is hereby amended to read as follows, to include the attached Appendix A and Appendix B:

**ARTICLE II. - LICENSES**

**Sec. 18-31. - Definitions.**

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

*"Business"* means a calling, occupation, profession or activity engaged in with the object of gain, benefit or advantage, either directly or indirectly. A charitable organization shall be deemed a business as provided in section 18-36.

*"Charitable organization"* means an organization that is determined by the Internal Revenue Service to be exempt from Federal income taxes under 26 U.S.C. section 501 (c)(3), (4), (6), (7), (8), (10) or (19).

*"Charitable purpose"* means a benevolent, philanthropic, patriotic, or eleemosynary purpose that does not result in personal gain to a sponsor, organizer, officer, director, trustee or person with ultimate control of the organization.

*"Classification"* means a division of business by major groups subject to the same license rate as determined by a calculated index of ability to pay based on national averages, benefits, equalization of tax burden, relationship of services or other basis deemed appropriate by the town council.

Day vendor is defined as a person who brings by automobile, truck or other means of transportation tangible personal property into the town and offers or intends to offer the tangible personal property for sale at retail during a special event or at an open air market or farmer's market and does not maintain an established office, distribution house, sales house, warehouse, service enterprise, or residence from which business is conducted or other place of business within the town.

"*Gross income*" means the gross receipts or gross revenue of a business, received or accrued, for one calendar year or fiscal year collected or to be collected from business done within the Municipality, excepting therefrom income earned outside of the Municipality on which a license tax is paid to some other municipality or a county and fully reported to the Municipality. Gross income for agents means gross commissions received or retained, unless otherwise specified. Gross income for insurance companies means gross premiums written. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds that are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross income receipts or gross revenues for business license purposes may be verified by inspection of returns and reports filed with the Internal Revenue Service, the South Carolina Department of Revenue, the South Carolina Department of Insurance, or other government agency.

"*License official*" means the Building Code Administrator, his or her designee, or any other persons designated by the Town Administrator to administer and enforce this article.

"*Licensee*" means the business, the person applying for the license on behalf of the business, an agent or legal representative of the business, a person who receives any part of the net profit of the business, or a person who owns or exercises control of the business.

"*Municipality*" means the Town of Edisto Beach, South Carolina

"*Nonresident business*" means a business as defined in this section and not having a physical building structure or its business headquarters located in the town.

"*Person*" means any individual, firm, partnership, LLP, LLC, cooperative nonprofit membership, corporation, joint venture, association, estate, trust, business trust, receiver, syndicate, holding company or other group or combination acting as a unit, in the singular or the plural, and the agent or employee having charge or control of a business in the absence of the principal.

(Ord. of 11-11-93, § 2; Ord. of 11-14-96(6), § 2; Ord. No. 2011-26, 7-14-11)

**Cross reference**— *Definitions generally, § 1-2.*

**Sec. 18-32. - License required.**

- (a) Every person engaged or intending to engage in any calling, business, occupation or profession, in whole or in part within the limits of the Town of Edisto Beach, South Carolina is required to pay an annual license tax for the privilege of doing business and obtain a business license as herein provided.

- (b) Every person engaged or intending to engage in any calling, business, occupation or profession which requires state registration, certification or licensure shall provide the Municipality with a copy of that registration, certification or license prior to obtaining a business license and/or beginning that activity, in whole or in part, within the limits of the Municipality.

*(Ord. of 11-11-93, § 1; Ord. of 11-14-96(6), § 1)*

**Sec. 18-33. - Purpose and duration.**

The business license levied by this ordinance is for the purpose of providing such regulation as may be required for the businesses subject thereto and for the purpose of raising revenue for the general fund through a privilege tax. Each yearly license shall be issued for a twelve- month period of May 1 – April 30. The provisions of this ordinance and the rates herein shall remain in effect from year to year as amended by the Council.

*(Ord. of 11-11-93, § 3; Ord. of 11-14-96(6), § 3)*

**Sec. 18-34. - License Tax**

The required license tax shall be paid for each business subject hereto according to the applicable rate classification on or before the due date of the 30<sup>th</sup> day of April in each year, except for those businesses in Rate Class 8 for which a different due date is specified.

A separate license shall be required for each place of business and for each classification of business conducted at one place. If gross income cannot be separated for classification at one location, the license tax shall be computed on the gross income for the classification requiring the highest rate. A license tax based on gross income shall be computed on the gross income for the preceding calendar or fiscal year, and on a 12-month projected income based on the monthly average for a business in operation for less than one year. The tax for a new business shall be computed on the estimated probable gross income stated in the license application for the balance of the calendar year. The initial tax for an annexed business shall be prorated for the number of months remaining in the calendar year. No refund shall be made for a business that is discontinued.

*(Ord. of 11-11-93, § 4; Ord. of 11-14-96(6), § 4)*

**Sec. 18-35. – Registration Required.**

- (a) The owner, agent or legal representative of every business subject to this ordinance, whether listed in the classification index or not, shall register the business and make application for a business license on or before the due date of each year; provided, a new business shall be required to have a business license prior to operation within the Municipality and an annexed business shall be required to have a business license within thirty (30) days of annexation. A license for a bar (NAICS 722410) must

be issued in the name of the individual who has been issued the State alcohol, beer or wine permit or license and will have actual control and management of the business.

- (b) Application shall be on a form provided by the License Official which shall contain the Social Security Number and/or the Federal Employer's Identification Number, the business name as reported on the South Carolina income tax return, and all information about the applicant and the Licensee and the business deemed appropriate to carry out the purpose of this ordinance by the License Official. Applicants may be required to submit copies of portions of state and federal income tax returns reflecting gross receipts and gross revenue figures. No business license shall be issued until applicant submits documents necessary to establish compliance with chapter 86, the building code adopted in section 14-31 and other regulatory codes as adopted by the town council.
- (c) The applicant shall certify under oath that the information given in the application is true, that the gross income is accurately reported or estimated for a new business, without any unauthorized deductions, and that all assessments, personal property taxes on business property, and other monies due and payable to the Municipality have been paid.

*(Ord. of 11-11-93, § 5; Ord. of 11-14-96(6), § 5)*

#### **Sec. 18-36. - Deductions, Exemptions, and Charitable Organizations**

(a) No deductions from gross income shall be made except, income earned outside of the Municipality on which a License Tax is paid to some other municipality or a county and fully reported to the Municipality, taxes collected for a governmental entity, or income which cannot be included for computation of the license tax pursuant to State or Federal law. The applicant shall have the burden to establish the right to a deduction by satisfactory records and proof.

(b) No person shall be exempt from the requirements of this ordinance by reason of the lack of an established place of business within the Municipality, unless exempted by state or Federal law. The License Official shall determine the appropriate classification for each business in accordance with the latest issue of the North American Industry Classification System (NAICS) for the United States published by the Office of Management and Budget. No person shall be exempt from this ordinance by reason of the payment of any other tax, unless exempted by State law, and no person shall be relieved of the liability for the payment of any other tax or fee by reason of the application of this ordinance.

(c) A Charitable Organization shall be exempt from the business license tax on its gross income unless it is deemed a business subject to a business license tax on all or part of its gross income as provided in this section. A Charitable Organization, or any for-profit affiliate of a Charitable Organization, that reports income from for-profit activities, or unrelated business license income, for Federal income tax purposes to the Internal

Revenue Service shall be deemed a business subject to a business license tax on the part of its gross income from such for-profit activities or unrelated business income.

(d) A Charitable Organization shall be deemed a business subject to a business license tax on its total gross income if (1) any net proceeds of operation, after necessary expenses of operation, inure to the benefit of any individual or any entity that is not itself a Charitable Organization as defined in this article, or (2) any net proceeds of operation, after necessary expenses of operation, are used for a purpose other than a Charitable Purpose as defined in this article. Excess benefits or compensation in any form beyond fair market value to a sponsor, organizer, officer, director, trustee or person with ultimate control of the organization shall not be deemed a necessary expense of operation.

*(Ord. of 11-11-93, § 6; Ord. of 11-14-96(6), § 6; Ord. of 1-10-08)*

**Sec. 18-37. - False application.**

It shall be unlawful for any person subject to the provisions of this ordinance to make a false application for a business license, or to give or file, or direct the giving or filing, of any false information with respect to the license or tax required by this ordinance.

*(Ord. of 11-11-93, § 7; Ord. of 11-14-96(6), § 7)*

**Sec. 18-38. - Display and transfer.**

(a) All persons shall display the license issued to them on the original form provided by the License Official in a conspicuous place in the business establishment at the address shown on the license. A transient or nonresident shall carry the license upon his person or in a vehicle used in the business readily available for inspection by any authorized agent of the Municipality.

(b) A change of address must be reported to the License Official within ten days after removal of the business to a new location and the license will be valid at the new address upon written notification by the License Official and compliance with zoning and building codes. Failure to obtain the approval of the License Official for a change of address shall invalidate the license and subject the licensee to prosecution for doing business without a license. A business license shall not be transferable, and a transfer of controlling interest shall be considered termination of the old business and the establishment of a new business requiring a new business license, based on old business income.

*(Ord. of 11-11-93, § 8; Ord. of 11-14-96(6), § 8)*

**Sec. 18-39. - Administration of Article.**

The License Official shall administer the provisions of this article, collect license taxes, issue licenses, make or initiate investigations and audits to ensure compliance, initiate denial or suspension and revocation procedures, report violations to the police department and assist in the prosecution of violators, produce forms, make reasonable regulations relating to the administration of this ordinance and perform other such duties as may be assigned.

*(Ord. of 11-11-93, § 9; Ord. of 11-14-96(6), § 9)*

**Cross reference**— *Administration, ch. 2.*

**Sec. 18-40. - Inspection and audit.**

(a) For the purpose of enforcing the provisions of this ordinance, the License Official or other authorized agent of the Municipality is empowered to enter upon the premises of any person subject to this article to make inspections, examine and audit books and records. It shall be unlawful for any person to fail or refuse to make available the necessary books and records. If an audit or inspection reveals that false information has been filed by the licensee, the costs of the audit shall be added to the correct license tax in addition to the other penalties provided in this article. Each day of failure to pay the proper amount of license tax shall constitute a separate offense.

(b) The License Official also shall make systematic inspections of all businesses within the town to ensure compliance with this article. Financial information obtained by inspections and audits shall not be deemed public records, and the license official shall not release the reported gross income of any person by name without permission of the licensee, except as authorized by this article, State or Federal law, or proper judicial order. Statistics compiled by classifications are public records.

*(Ord. of 11-11-93, § 10; Ord. of 11-14-96(6), § 10)*

**Sec. 18-41. - Special considerations.**

- (a) The Municipality requires no license to hold a garage sale within the town limits.
- (b) Anyone who owns property in the town, directly or in a trust, corporation or partnership, when such property is rented shall be considered to have a business under this article.
- (c) It shall be unlawful for any person, unless exempt under state or Federal law, to engage in the business of soliciting or canvassing or peddling within the corporate limits of the town without first obtaining a license as required in section 18-50. Every such nonexempt person, before obtaining a license, must first acquire the hawkers and peddlers license issued by the state and must meet all regulations pursuant to the provisions of S.C. Code 1976, § 40-41-10 et seq., and also must be in compliance with chapter 86 and the building codes adopted in section 14-31. The provisions of this section shall not extend to vendors of newspapers, magazines, vegetables, tobacco and provisions of any kind of agricultural products, but shall extend and apply to vendors of every other class and kind of goods.
- (d) There is hereby levied against each day vendor an annual business license tax of \$20.00. No day vendor shall be permitted to conduct business in the town until the business license tax has been remitted to the town and a business permit issued. A day vendor operating in the town without first obtaining a business license as provided

herein shall constitute a misdemeanor under the provisions of section 1-6 of this Code.

*(Ord. of 11-11-93, § 11; Ord. of 11-14-96(6), § 11; Ord. No. 2011-26, 7-14-11)*

**Sec. 18-42. – Assessments, Payments under Protest, Appeal.**

(a) If a person fails to obtain a business license or to furnish the information required by this article to the License Official, the License Official shall examine such records of the business or any other available records as may be appropriate and conduct such investigations and statistical surveys as the License Official may deem appropriate to assess a license tax and penalties as provided herein.

(b) A notice of assessment shall be served by certified mail or personal service and an application for adjustment of the assessment may be made to the license official within five days after the notice is mailed or served or the assessment will become final. The license official shall establish a uniform procedure for hearing an application for adjustment of assessment and issuing a notice of final assessment.

(c) A final assessment may be appealed to the Town Council only by payment in full of the amount of the assessment under protest within five (5) days and the filing of written notice of appeal within ten (10) days after payment, pursuant to the provisions of this ordinance relating to appeals to Council.

*(Ord. of 11-11-93, § 12; Ord. of 11-14-96(6), § 12)*

**Sec. 18-43. - Classification and rate schedules.**

(a) The Class Structure Model by the North American Industry Classification System code, designated as Appendix B to this ordinance, may be amended by the Council from time to time, and current copies shall be filed in the office of the municipal clerk. Appendix B is a tool for classification and not a limitation on businesses subject to a license tax. The License Official shall determine the proper class for a business according to the applicable NAICS code.

(b) The license tax for each class of businesses subject to this article shall be computed in accordance with the Rate Schedule, designated as Appendix A to this article, which may be amended by the Council from time to time and a current copy filed in the office of the municipal clerk.

*(Ord. of 11-11-93, § 13; Ord. of 11-14-96(6), § 13; Ord. of 1-10-08)*

**Sec. 18-44. - [Reserved]**

**Sec. 18-45. - Delinquent License Taxes, Partial Payment.**



(a) For nonpayment of all or any part of the correct license tax, the license official shall levy and collect a late penalty of ten percent of the unpaid tax for each month or portion thereof after the due date until paid. Penalties shall not be waived. Penalties shall not exceed 50 percent of the amount of the unpaid taxes.

(b) Partial payment may be accepted by the License Official to toll imposition of penalties on the portion paid: provided, however, no business license shall be issued or renewed until the full amount of the tax due, with penalties, has been paid. If any license tax shall remain unpaid for 60 days after its due date, the License Official may proceed to collect as allowed by law. The License Official can also proceed with the provisions of section 18-52.

*(Ord. of 11-11-93, § 14; Ord. of 11-14-96(6), § 15)*

#### **Sec. 18-46. - Notices.**

The License Official may, but shall not be required to, mail written notices that license taxes are due, but if notices are not mailed, there shall be published a notice of the due date in a newspaper of general circulation within the town three (3) times prior to the due date in each year. Failure to receive notice shall not constitute a defense to collection or to prosecution for failure to pay the tax due or grounds for waiver of penalties.

*(Ord. of 11-11-93, § 15; Ord. of 11-14-96(6), § 16)*

#### **Sec. 18-47. – Denial of License.**

The License Official shall deny a license to an applicant when the license official determines:

(a) The application is incomplete, contains a misrepresentation, false or misleading statement, evasion or suppression of a material fact;

(b) The activity for which a license is sought is unlawful, violates a town ordinance or constitutes a public nuisance per se or per accidens; or

(c) The applicant, Licensee or prior Licensee or the person in control of the business has been convicted of an offense under a law or ordinance regulating business, a crime involving dishonest conduct or moral turpitude that relates to the conduct of the business, or an unlawful sale of merchandise or prohibited goods;

(d) The applicant, Licensee or prior Licensee or the person in control of the business has engaged in an unlawful activity or nuisance related to the business or to a similar business in the Municipality or in another jurisdiction;

(e) The applicant, Licensee or prior Licensee or the person in control of the business is delinquent in the payment to the Municipality of any tax or fee; or

(f) The license for the business or for a similar business of the Licensee in the Municipality or another jurisdiction has been denied, suspended or revoked in the previous license year.

A decision of the License Official shall be subject to appeal to Council as provided in this ordinance. Denial shall be written with reasons stated.

*(Ord. of 11-11-93, § 16; Ord. of 11-14-96(6), § 17)*

**Sec. 18-48. - Suspension or revocation.**

When the License Official determines that:

- (a) A license has been mistakenly or improperly issued or issued contrary to law;
- (b) A Licensee has breached any condition upon which the license was issued or has failed to comply with the provisions of this ordinance;
- (c) A Licensee had obtained a license through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license application;
- (d) A Licensee has been convicted of an offense under a law or ordinance regulating business, a crime involving dishonest conduct or moral turpitude that relates to the conduct of the business, or an unlawful sale of merchandise or prohibited goods;
- (e) A Licensee has engaged in an unlawful activity or nuisance related to the business; or
- (f) A Licensee is delinquent in the payment to the Municipality of any tax or fee,

The License Official shall give written notice to the licensee or the person in control of the business within the Municipality by personal service or certified mail that the license is suspended pending a hearing before Council for the purpose of determining whether the license should be revoked.

The notice shall state the time and place at which the hearing is to be held, which shall be at a regular or special Council meeting within thirty (30) days from the date of service of the notice, unless continued by agreement. The notice shall contain a brief statement of the reasons for suspension and proposed revocation and a copy of the applicable provisions of this ordinance.

*(Ord. of 11-11-93, § 17; Ord. of 11-14-96(6), § 18)*

**Sec. 18-49. - Appeals by Council.**

- (a) Any person aggrieved by a decision, final assessment, proposed revocation, suspension, or denial of a business license by the License Official may appeal the decision to town council by a written request stating the reasons therefor filed with the License Official within ten (10) days after service by mail or personal service of the notice of decision, final assessment, proposed revocation, suspension, or denial.

- (b) An appeal or a hearing on proposed revocation shall be held by Council within thirty (30) days after receipt of a request for appeal or service of notice of suspension at a regular or special meeting of which the applicant or licensee has been given written notice, unless continued by agreement. At the hearing, all parties shall have the right to be represented by counsel, to present testimony and evidence, and to cross-examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party so requesting. The rules of evidence and procedure prescribed by Council shall govern the hearing. Council shall, by majority vote of members present, render a written decision based on findings of fact and application of the standards herein which shall be served upon all parties or their representatives and shall be the final decision of the Municipality.
- (c) A person who has been denied a license pursuant to this ordinance shall be subject to prosecution until a license is issued.

*(Ord. of 11-11-93, § 18; Ord. of 11-14-96(6), § 19)*

**Sec. 18-50. - Permits and licenses for peddlers, canvassers and solicitors.**

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

Canvasser or solicitor means any individual, whether resident of the Municipality or not, traveling either by foot, wagon, automobile, motor truck or any other type of conveyance, from place to place, or from house to house, taking or attempting to take orders for sale of goods, wares, subscriptions and merchandise, personal property of any nature whatsoever for future delivery or for services to be furnished or performed in the future, whether or not such individual has, carries or exposes for sale a sample of the subject of such sale or whether he is collecting advance payments on such sales or not, provided that such definition shall include any person who, for himself or for another person, hires, leases, uses or occupies any building, structure, tent, boat, hotel room, lodging house, apartment, shop or any other place within the town for the sole purpose of exhibiting samples and taking orders for future delivery.

Peddler means and includes any person, whether a resident of the town or not, traveling by foot, wagon, automotive vehicle or any other type of conveyance, from place to place, or from house to house, carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products or provisions, offering and exposing such products for sale or making sales and delivering articles to purchasers or who, without traveling from place to place, shall sell or offer the same for sale from a wagon, automotive vehicle or other vehicle or conveyance, and further provided that one who solicits orders and as a separate transaction makes deliveries to purchasers as a part of a scheme or design to evade the provisions of this article shall be deemed a peddler subject to the provisions of this article. The word "peddler" shall include the words "hawker" and "huckster."

- (b) Permit and business license required. It shall be unlawful for any person to engage in the business of solicitor or canvasser or peddler within the corporate limits of the

town without first obtaining a permit and license. Every such nonexempt person, before obtaining a license, must first acquire the state hawkers and peddlers license and must meet all regulations pursuant to the provisions of S.C. Code 1976, § 40-41-10.

(c) Application. Applicants for permits and licenses under this article must file with the license official a sworn application in writing, which shall give the following information:

- (1) The name and description of the applicant, including Social Security number;
- (2) The permanent home address and full local address of the applicant;
- (3) A brief description of the nature of the business and the goods to be sold; in the case of products of farm or orchard, whether produced or grown by the applicant, and in all other cases, the place where the goods or property proposed to be sold or orders taken for the sale thereof are manufactured or produced, where such goods or products are located at the time such application is filed; and the proposed method of delivery;
- (4) If employed, the name and address of the employer, together with credentials establishing the exact relationship;
- (5) The length of time for which the right to do business is desired;
- (6) If a vehicle is to be used, a description of such vehicle, together with license number or other means of identification;
- (7) A photograph of the applicant, taken within 60 days immediately prior to the date of filing of the application, which picture shall be two inches by two inches, showing the head and shoulders of the applicant in a clear and distinguishing manner;
- (8) The names of at least two reliable property owners of the town who will certify as to the applicant's good character and business respectability or, in lieu of the names of references, such other available evidence as to the good character and business responsibility of the applicant as will enable an investigator to properly evaluate such character and business responsibility; and
- (9) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefor.

(d) Investigation and insurance.

- (1) Upon receipt of such application, the original shall be referred to the chief of police, who shall cause such investigation of the applicant's business and moral character to be made as he deems necessary for the protection of the public good.
- (2) If as a result of such investigation the applicant's character or business responsibility is found to be unsatisfactory, the chief of police shall endorse on such application his disapproval and his reasons for such disapproval, and return

the application to the license official, who shall notify the applicant that the application is disapproved and that no permit and license will be issued.

- (3) If as a result of such investigation, the character and business responsibility of the applicant are found to be satisfactory, the chief of police shall endorse on the application his approval, execute a permit addressed to the applicant for the carrying on of the business applied for and return such permit, along with the application, to the license official, who shall, upon payment of the prescribed license tax, deliver to the applicant the permit and issue a license. Such license shall contain the signature and seal of the issuing officer and shall show the name, address and photograph of such licensee, the class of license issued and the kind of goods to be sold thereunder, the amount of tax paid, the date of issuance and the length of time such license shall be operative, as well as the license number and other identifying description of any vehicle used in such peddling. The license official shall keep a permanent record of all licenses issued.
- (e) Use of public property prohibited. Selling, canvassing, peddling, and/or commercial solicitation shall be prohibited on the beach, town streets, town sidewalks, beach accesses, and public rights-of-way, except as provided in section 18-53, as may be amended from time to time. Notwithstanding this prohibition, the town council may grant an exception and approve the issuance of a temporary business license for special events at its sole discretion, upon application.
- (f) Exhibition of license. Solicitors, canvassers and peddlers are required to exhibit their licenses at the request of any citizen.
- (g) Duty of police to enforce. It shall be the duty of any police officer of the town to require any person seen soliciting, canvassing or peddling, and who is not known by such officer to be duly licensed, to produce his license and to enforce the provisions of this article against any person found to be violating such article.

*(Ord. of 11-14-96(6), § 21; Ord. No. 2011-06, 4-14-11)*

**Sec. 18-51. - [Reserved]**

**Sec. 18-52. - [Reserved]**

**Sec. 18-53. - Mobile vending; regulations.**

- (a) Findings.
  - (1) The primary purpose of the public streets and sidewalks is the use by vehicular and pedestrian traffic.
  - (2) Vending in public areas promotes the public interest by contributing to an active and attractive pedestrian environment.

- (3) Reasonable regulation of mobile vending is necessary to protect the public health, safety and welfare.
- (4) The regulations contained in this division do not prohibit free speech but regulate activities which are commercial in nature.
- (5) The granting of business licenses for the use of public streets and the making of charges therefore are authorized by S.C. Code 1976, § 5-7-30, and are subject to such conditions as the council may impose to protect the public interest, welfare and convenience.

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

Mobile vendor means a person, corporation, or business entity of any kind, its employees and agents, who peddle, vend, sell and offer for sale food products and beverages as permitted herein by means of a motorized vehicle not more than eight feet in width and 20 feet in length capable of moving under its own power.

Vending district means the zone or area specifically designated for mobile vendors.

(c) Permitted merchandise. No merchandise shall be sold by a mobile vendor except the merchandise approved herein. Permitted merchandise shall be limited to edibles such as hot dogs, sausages, hamburgers, tacos, burritos, baked potatoes, pizza, peanuts, bagels, pastries, candy, prepackaged sandwiches, chips, biscuits, popcorn, nuts, pretzels, ice products, ice cream, milk products, frozen yogurt, fruit, hot and cold beverages containing no alcohol, and items related to permitted merchandise.

(d) Business licenses, mobile vending permits; transfer of business licenses and mobile vending permit.

(1) It shall be unlawful to sell, or offer for sale, any food, beverage or merchandise within the town on public property and rights-of-way without first obtaining a business license and mobile vending permit.

(2) Mobile vending permit.

- a. An annual permit fee of \$100.00 per vendor for the whole year or any part of the year shall be paid in advance.
- b. No permits will be issued before the vendor's securing of a business license.
- c. The number of permits per mobile vendor is limited to one, with the exception that a mobile vendor may apply for and receive a second permit if the number of applications submitted to the town is less than the maximum number of permits per ordinance, subject to the selection procedures set forth in subsection (f).
- d. A copy of the permit must accompany the operator at all times.
- e. A permit may not be transferred in any manner. Sale of a majority of stock in a company by stockholders listed on the permit application or sale of a

majority interest in a partnership as listed on the application shall be deemed a transfer of the license, which is prohibited.

- (3) The provisions of this division shall not apply to festivals, community projects or public events which occur on a periodic basis and which are specifically approved by the town council.
- (e) Application for mobile vending permit. The application for a permit shall include the following information:
- (1) The name, home and business address of the applicant, and the name and address of the owner/owners, if other than the applicant, of the vehicle to be used in the operation of the vending business.
  - (2) A description of the type of food, beverage or merchandise to be sold.
  - (3) A description and photograph or drawing of the vehicle proposed to be used.
  - (4) The names, addresses and percentage of stock owned by shareholders in a corporate applicant, and the percentage interest of each partner in a partnership applicant.
  - (5) Such other information as the applicant may choose or as may be requested by the town to demonstrate the applicant's financial ability, criminal record history, etc. By submitting an application the mobile vendor gives the town express permission to conduct a criminal history investigation on the mobile vendor, its employees and agents, at the expense of the applicant.
- (f) Issuance of mobile vending permits.
- (1) The permit shall be issued in accordance with other sections herein. Any permit issued pursuant to this section shall be subject to modification by ordinance at any time deemed necessary by the town council for protection of public interests. Any permit shall be granted as a privilege and not as a matter of right. Vending at any location may be temporarily suspended or relocated by the town upon reasonable notice when private or public construction or activities of the town make it unsafe or impractical to allow vending.
  - (2) In determining the acceptability of an application, the town may consider any factors presented in the application, at a public hearing, or in any staff report or investigation of matters related to the past record and ability of the applicant to perform conditions of this section and the permit agreement in a manner which serves the public interests.
  - (3) The maximum number of mobile vendors in the vending district shall be three. Permits are issued on a first-applied-first-served basis for open slots. If the number of applicants exceeds the maximum vendors allowed, a waiting list will be maintained by the town. If a slot opens the town shall give priority to those on the waiting list in the order of application.
  - (4) If a permit is denied pursuant to any section of this section, the applicant shall be provided with a statement of the reasons therefore entered in writing on the application.

- (g) Evidence of compliance with health and fire regulations; insurance.
- (1) A certificate of inspection or compliance as required by applicable health regulations and evidence of compliance with the fire code shall be filed with the town before any sales are made by mobile vendors.
  - (2) Proof of an insurance policy, issued by an insurance company licensed to do business in the state, protecting the owner and the town from all claims for damages to property and bodily injury, including death, which may arise from operations under or in connection with the owner, shall be filed with the town prior to vending operations and annually thereafter. Such policy shall be a general liability policy naming the vendor as insured and the Town of Edisto Beach as certificate holders and additional insureds in the amounts not less than \$1,000,000.00 per occurrence and \$1,000,000.00 aggregate combined single limit for bodily injury, personal injury and property damage. A valid certificate of insurance will be provided to the town for as long as a business license is held. Any changes, terminations or cancellations of the insurance will be provided to the town at least 30 days prior to such change, termination or cancellation.
- (h) Approved and prohibited locations.
- (1) The designated vending district for mobile vendors is the R-1 Zoning District and the parking areas of Bay Creek Park, except during events, Burley Lyons Park, and Jungle Road Park, all subject to the prohibitions set forth below.
  - (2) Mobile vending shall be prohibited in the following areas: all zoning districts not set forth in the preceding paragraph, with the exception of the town parks as set forth above, and Jungle Road.
- (i) Prohibited conduct. No vendor shall:
- (1) Vend on any street or sidewalk where vending is otherwise prohibited.
  - (2) Vend between official sunset as determined by the Astronomical Applications Department of the U.S. Naval Observatory and 10:00 a.m. of the following day.
  - (3) Leave any vehicle unattended.
  - (4) Store, park or leave any vehicle overnight on any street or sidewalk.
  - (5) Sell food or beverages for immediate consumption unless there is a litter receptacle which is available for patrons' use.
  - (6) Leave any location without first picking up, removing and disposing of all trash or refuse remaining from sales made by the vendor.
  - (7) Set up, maintain or permit the use of any table, crate, carton, rack or other device to increase the selling or display capacity of his vehicle.
  - (8) Solicit or conduct business with persons in motor vehicles.
  - (9) Sell anything other than that for which a license to vend have been issued.
  - (10) Sound or permit the sounding of any device which produces a loud and raucous noise, or use or operate any loudspeaker, public address system, radio, sound



amplifier or similar device to attract the attention of the public, provided that notwithstanding the above, a bell or musical recording may be sounded to announce the arrival of the vehicle at each location.

- (11) Vend without the insurance coverage specified herein.
- (12) Allow any item relating to the operation of the vending business to lean against or hang from any building or other structure lawfully placed on public property.
- (j) Advertising. Advertising shall be permitted on the vehicle only to identify the name of the product or the name of the vendor, and the posting of prices. No temporary signs are allowed.
- (k) Renewal of business license and mobile vending permit.
  - (1) All business license renewal are regulated by the town business license ordinance.
  - (2) Permit renewal applications must be received no later than December 15 to be automatically considered for the new year. Failure to submit renewal application by December 15 may result in loss of position in the vending district in which case first-come-first-served and/or lottery drawing will apply.
- (l) Denial, suspension or revocation of business license and mobile vending permit.
  - (1) Business license denials, suspensions and revocations are regulated by the town business license ordinance.
  - (2) Any permit granted under this section may be denied, suspended or revoked by the town for any of the following reasons:
    - a. Fraud or misrepresentation contained in the permit application.
    - b. Fraud or misrepresentation made in the course of carrying on the business of vending.
    - c. Conduct of the vendor in such manner as to create a public nuisance or constitute a danger to the public health, safety, welfare or morals.
    - d. Conduct which is contrary to the provisions of this section.
    - e. Failure to use the license fully in accordance with its terms within 90 days after notice of the granting of the license, or within 15 days after notice of non-use, during the term of the license.
    - f. Failure to qualify for a business license or determination that any condition in the herein sections exists.
    - g. A determination that the applicant is not able or qualified, by reason of background, medical limitations, financial condition or conditions related to the vending business, to render acceptable service to the public pursuant to this section.

(Ord. No. 2011-14, 4-14-11; Ord. No. 2012-23, 11-8-12; Ord. No. 2013-12, §§ 1—3, 12-12-13)

**Sec. 18-54. - Consent, franchise or license required for use of streets.**

(a) It shall be unlawful for any person to construct, install, maintain or operate in, on, above or under any street or public place under control of the municipality any line, pipe, cable, pole, structure or facility for utilities, communications, cablevision or other purposes without a consent agreement or franchise agreement issued by the Council by ordinance that prescribes the term, fees and conditions for use.

(b) The annual fee for use of streets or public places authorized by a consent agreement or franchise agreement shall be set by the ordinance approving the agreement and shall be consistent with limits set by State law. Existing franchise agreements shall continue in effect until expiration dates in the agreements. Franchise and consent fees shall not be in lieu of or be credited against business license taxes unless specifically provided by the franchise or consent agreement.

**Sec. 18-55. - Confidentiality.**

Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any official or employee to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this ordinance. Nothing in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns. Any license data may be shared with other public officials or employees in the performance of their duties, whether or not those duties relate to enforcement of the license ordinance.

**Sec. 18-56. - Violations.**

Any person violating any provision of this article shall be deemed guilty of a misdemeanor which shall be punishable in accordance with Section 1-6 of this Code

**Sec.18-57. - Severability.**

A determination that any portion of this article is invalid or unenforceable shall not affect the remaining portions.

**Secs. 18-58—18-80. - Reserved.**

**APPENDIX A**

**RATE SCHEDULE**

<b>RATE CLASS</b>	<b>INCOME: \$0 - \$2,000 MINIMUM TAX</b>	<b>INCOME OVER \$2,000 Rate per Thousand or fraction thereof</b>
1	\$45.00	\$1.60
2	\$50.00	\$1.75
3	\$55.00	\$2.10
4	\$65.00	\$2.10
5	\$70.00	\$2.35
6	\$75.00	\$2.60
7	\$80.00	\$3.10
8.1	\$50.00	\$2.10
8.1A	\$100.00	\$4.20
8.2	\$15.00 set by State Statue	
8.3	MASC Telecommunications	
8.4	MASC Telecommunications	
8.4A	\$110.00	\$2.00
8.4B	\$110.00	\$2.00
8.5	\$ 51.00	\$1.00
8.6	\$100.00	\$2.00
8.6A	\$50.00	\$1.00
8.7	MASC Insurance	
8.8A	\$12.50 + \$12.50 per machine	
8.8B	\$215.00	\$3.50
8.8C	\$12.50 + \$180.00 per machine	
8.9	\$50.00	\$2.00
8.10	\$5.00 per table	
8.11	\$20.00 annual flat rate	

**NON-RESIDENT RATES**

*Unless otherwise specifically provided, all minimum taxes and rates shall be doubled for nonresidents and itinerants having no fixed principal place of business within the municipality.*

**DECLINING RATES**

*Declining Rates apply in all Classes for gross income in excess of \$1,000,000, unless otherwise specifically provided for in this ordinance.*

<b><u>Gross Income in \$ Millions</u></b>	<b><u>Percent of Class Rate for each additional \$1,000</u></b>
0 - 1	100%
1 - 2	90%
2 - 3	80%
3 - 4	70%
OVER 4	60%

## CLASS 8 RATES

Each NAICS Number designates a separate sub-classification. The businesses in this section are treated as separate and individual subclasses due to provisions of State law, regulatory requirements, service burdens, tax equalization considerations, etc., which are deemed to be sufficient to require individually determined rates. Non-resident rates do not apply except where indicated.

### **NAICS 230000 - Contractors, Construction, All Types**

- 8.1** Having permanent place of business within the municipality  
Minimum on first \$2,000.....\$ 50.00 PLUS  
Each additional 1,000.....\$ 2.10
- 8.1A** Not having permanent place of business within the municipality  
Minimum on first \$2,000.....\$100.00 PLUS  
Each additional \$1,000.....\$4.20  
(non-resident double rates do not apply)

A trailer at the construction site or structure in which the contractor temporarily resides is not a permanent place of business under this ordinance.

The total tax for the full amount of the contract shall be paid prior to commencement of work and shall entitle contractor to complete the job without regard to the normal license expiration date. An amended report shall be filed for each new job and the appropriate additional license fee per \$1,000 of the contract amount shall be paid prior to commencement of new work. Only one base tax shall be paid in a calendar year.

No contractor shall be issued a business license until all state and municipal qualification examination and trade license requirements have been met. Each contractor shall post a sign in plain view on each job identifying the contractor with the job.

Sub-contractors shall be licensed on the same basis as general or prime contractors for the same job. No deductions shall be made by a general or prime contractor for value of work performed by a sub-contractor.

No contractor shall be issued a business license until all performance and indemnity bonds required by the Building Code have been filed and approved. Zoning permits must be obtained when required by the Zoning Ordinance.

Each prime contractor shall file with the License Official a list of sub-contractors furnishing labor or materials for each project.

- 8.2** **NAICS 482 - Railroad Companies** – (See S.C. Code § 12-23-210)  
For the first 1000 inhabitants of the City .....\$15.00  
For each additional 1000 inhabitants according to the last US census ..... \$ None  
Census population: 414. Tax = \$15.00

**8.3 NAICS 5171, 5172 - Telephone Companies:**

A. Notwithstanding any other provisions of the Business License Ordinance, the business license tax for "retail telecommunications services", as defined in S. C. Code Section 58-9-2200, shall be at the maximum rate authorized by S. C. Code Section 58-9-2220, as it now provides or as provided by amendment. The business license tax year shall begin on January 1 of each year. Declining rates shall not apply.

B. In conformity with S.C. Code Section 58-9-2220, the business license tax for "retail telecommunications services" shall apply to the gross income derived from the sale of retail telecommunications services for the preceding calendar or fiscal year which either originate or terminate in the municipality and which are charged to a service address within the municipality regardless of where these amounts are billed or paid and on which a business license tax has not been paid to another municipality. The measurement of the amounts derived from the retail sale of mobile telecommunications services shall include only revenues from the fixed monthly recurring charge of customers whose service address is within the boundaries of the municipality. For a business in operation for less than one year, the amount of business license tax shall be computed on a twelve-month projected income.

C. The business license tax for "retail telecommunications services" shall be due on January 1 of each year and payable by January 31 of that year, without penalty.

D. The delinquent penalty shall be five percent (5 %) of the tax due for each month, or portion thereof, after the due date until paid.

E. Exemptions in the business license ordinance for income from business in interstate commerce are hereby repealed. Properly apportioned gross income from interstate commerce shall be included in the gross income for every business subject to a business license tax.

F. Nothing in this Ordinance shall be interpreted to interfere with continuing obligations of any franchise agreement or contractual agreement in the event that the franchise or contractual agreement should expire after December 31, 2003.

G. All fees collected under such a franchise or contractual agreement expiring after December 31, 2003, shall be in lieu of fees or taxes which might otherwise be authorized by this Ordinance.

H. As authorized by S. C. Code Section 5-7-300, the Agreement with the Municipal Association of South Carolina for collection of current and delinquent license taxes from telecommunications companies pursuant to S. C. Code Section 58-9-2200 shall continue in effect.

**NAICS 22112 - Electric Power Distribution..... Consent or Franchise**

**NAICS 22121 – Natural Gas Distribution ..... Consent or Franchise**

**NAICS 517110 – Television: Cable or Pay  
Services using public streets .....See Franchise**

**8.4 Cable television services not using public streets:..... See Franchise**

**8.4A NAICS 423930 - Junk or Scrap Dealers [Non-resident rates apply]**

Minimum on first \$2,000 .....\$110.00 PLUS  
Per \$1,000, or fraction, over \$2,000 ..... \$2.00

**8.4B NAICS 522298 - Pawn Brokers - All Types**

Minimum on first \$2,000 ..... \$110.00 PLUS  
Per \$1,000, or fraction, over \$2,000 ..... \$2.00

**8.5 NAICS 4411, 4412 - Automotive, Motor Vehicles, Boats, Farm Machinery or Retail  
(except auto supply stores - see 4413)**

Minimum on first \$2,000 .....\$51.00 PLUS  
Per \$1,000, or fraction, over \$2,000 .....\$1.00

One sales lot not more than 400 feet from the main showroom may be operated under this license provided that proceeds from sales at the lot are included in gross receipts at the main office when both are operated under the same name and ownership.

Gross receipts for this classification shall include value of trade-ins. Dealer transfers or internal repairs on resale items shall not be included in gross income.

**NAICS 454390 - Peddlers, Solicitors, Canvassers, Door-To-Door Sales**

direct retail sales of merchandise. [Non-resident rates apply]

**8.6 Regular activities [more than two sale periods of more than three days each per year]**

Minimum on first \$2,000 .....\$100.00 PLUS  
Per \$1,000, or fraction, over \$2,000 .....\$2.00

**8.6A Seasonal activities [not more than two sale periods of not more than three days each year,  
separate license required for each sale period]**

Minimum on first \$2,000 .....\$50.00 PLUS  
Per \$1,000, or fraction, over \$2,000 .....\$1.00

Applicant for a license to sell on private property must provide written authorization from the property owner to use the intended location.

**8.7 NAICS 5241 - Insurance Companies:**

Except as to fire insurance, "gross premiums" means gross premiums written for policies for property or a risk located within the municipality. In addition, "gross premiums" shall include premiums written for policies that are sold, solicited, negotiated, taken, transmitted, received, delivered, applied for, produced or serviced by (1) the insurance company's office located in the municipality, (2) the insurance company's employee conducting business within the municipality, or (3) the office of the insurance company's licensed or appointed producer (agent) conducting business within the municipality, regardless of where the property or risk is located, provided no tax has been paid to another municipality in which the property or risk is located based on the same premium.

Solicitation for insurance, receiving or transmitting an application or policy, examination of a risk, collection or transmitting of a premium, adjusting a claim, delivering a benefit, or doing any act in connection with a policy or claim shall constitute conducting business within the municipality, regardless of whether or not an office is maintained in the municipality.

As to fire insurance, "gross premiums" means gross premiums (1) collected in the municipality, and/or (2) realized from risks located within the limits of the municipality.

Gross premiums shall include all business conducted in the prior calendar year.

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

Declining rates shall not apply.

**NAICS 52411 - Life, Health and Accident** ..... 0.75% of Gross Premiums

**NAICS 524126 - Fire and Casualty**..... 2% of Gross Premiums

**NAICS 524127 - Title Insurance** ..... 2% of Gross Premiums

Notwithstanding any other provisions of this ordinance, license taxes for insurance companies shall be payable on or before May 31 in each year without penalty. The penalty for delinquent payments shall be 5% of the tax due per month, or portion thereof, after the due date until paid.

Any exemptions in the business license ordinance for income from business in interstate commerce are hereby repealed. Gross income from interstate commerce shall be included in the gross income for every business subject to a business license tax.

Pursuant to S.C. Code Ann. §§ 38-45-10 and 38-45-60, the Municipal Association of South Carolina, by agreement with the municipality, is designated the municipal agent for purposes of administration of the municipal broker's premium tax. The agreement with the Association for administration and collection of current and delinquent license taxes from insurance companies as authorized by S.C. Code § 5-7-300.

[The South Carolina General Assembly, in order to ensure consistency with the federal Non-admitted and Reinsurance Reform Act of 2010 ("NRRA"), ratified an act (Rat# 283) on June 28, 2012, amending S.C. Code §§ 38-7-16 and 38-45-10 through 38-45-195. The act establishes a blended broker's premium tax rate of 6 percent comprised of a 4 percent state broker's premium tax and a 2 percent municipal broker's premium tax. The act states a municipality may not impose on brokers of non-admitted insurance in South Carolina an additional license fee or tax based upon a percentage of premiums.]

**NAICS 713120 - Amusement Machines, coin operated (except gambling) -**

Music machines, juke boxes, kiddie rides, video games, pin tables with levers, and other amusement machines with or without free play feature licensed by SC Department of Revenue pursuant to S.C. Code §12-21-2720(A)(1) and (A)(2) – [Type I and Type II]

**8.8A Operator of machine** .....\$12.50/machine PLUS  
..... ..\$12.50 business license  
for operation of all machines (not on gross income).[§12-21-2746]

**8.8B Distributor selling or leasing machines** (not licensed by the State as an operator pursuant to §12-21-2728) - [Nonresident rates apply.] Minimum on first \$2,000 .....\$215.00 PLUS  
Per \$1,000 or fraction over \$2,000 .....\$3.50

**NAICS 713290 - Amusement Machines, coin operated, non-payout**

Amusement machines of the non-payout type or in-line pin game licensed by SC Department of Revenue pursuant to S.C. Code §12-21-2720(A)(3) [Type III]

**8.8C** -.Operator of machine (owner of business).....\$12.50 business license

for operation of all machines (not on gross income). [§12-21-2720(B)]

**8.8B** -. Distributor selling or leasing machines (not licensed by the State as an operator pursuant to §12-21-2728) - [Nonresident rates apply.] -Minimum on first \$2,000..... \$215.00 PLUS  
Per \$1,000, or fraction, over \$2,000 .....\$3.50

**8.9** ~~**NAICS 713290 - Bingo halls, parlors--**~~  
Minimum on first \$2,000 .....\$ \_\_\_\_\_ PLUS  
Per \$1,000, or fraction, over \$2,000 .....\$ \_\_\_\_\_

**8.9** ~~**NAICS 711190 - Carnivals and Circuses--**~~  
Minimum on first \$2,000 .....\$ \_\_\_\_\_ PLUS  
Per \$1,000, or fraction, over \$2,000 .....\$ \_\_\_\_\_

**8.9** **NAICS 722410 - Drinking Places, bars, lounges, cabarets** (Alcoholic beverages consumed on premises)  
Minimum on first \$2,000 .....\$50.00 PLUS  
Per \$1,000, or fraction, over \$2,000 .....\$2.00

License must be issued in the name of the individual who has been issued a State alcohol, beer or wine permit or license and will have actual control and management of the business.

**8.10** **NAICS 713990 - Billiard or Pool Rooms, all types** ..... \$5.00 stamp/table

**8.11** **Day vendors, as defined in section 18-31**, shall be subject to a business license tax as a Non-store Retailer (NAICS Code 454000) at a rate class 8.11. The business license shall be issued on an annual basis.

**8.11** Day vendors that register with the Town for participation in the weekly art and craft market, festivals, or similar special events.....\$20.00

Day vendors that register with the Town for participation in the weekly Town Art and Craft Market, shall be the creator of the art or craft which is to be sold. Goods purchased for sale or resale cannot be vended on this special license.

Festival, or similar special event organizers shall provide the Town with a list of participating day vendors, and inspections shall be made on site during the event, by the license official or his or her designee.

The attached Appendix A and Appendix B are hereby adopted and made a part of this amendment.

This ordinance shall take effect upon final reading.

\_\_\_\_\_  
Jane Darby, Mayor



First Reading: 06/14/2018

ATTEST:

Final Reading: 07/12/2018

Deborah Hargis, Municipal Clerk

Approved as to form: \_\_\_\_\_

V.B.

No. 2018 - 02

## TOWN OF EDISTO BEACH

### AN ORDINANCE TO ENACT ARTICLE IX OF THE TOWN'S ZONING ORDINANCE RELATED TO FENCES ON PRIVATE LOTS

WHEREAS, the Town Council desires to enact fence regulations in the zoning ordinance to maintain visual harmony within zoning districts throughout the Town, to provide for flow of storm water, and to protect adjacent properties from the indiscriminate placement and unsightliness of fences; and

WHEREAS, prior to adoption of this ordinance it was presented to the planning commission and a public hearing was duly held.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Town of Edisto Beach, South Carolina, in council duly assembled, that Article IX of Chapter 86 of the Town's Zoning Ordinance is enacted to read as follows:

#### ARTICLE IX. FENCES

##### **Sec. 86-300. Purpose.**

This article establishes standards for fences on private lots.

##### **Sec. 86-301. Applicability.**

The provisions of this article shall apply to all new construction, redevelopment, or replacement of fences or walls not required for support of a primary or accessory structure, or any other linear barrier intended to delineate different portions of a lot. For purposes of this article "Fence" shall be defined as structure and/or materials, other than plant material, erected to provide a barrier or enclosure within or around a lot or any portion thereof and its component parts, including, but not limited to, gates, posts, columns, and associated components of entry gates.

##### **Sec. 86-302. General Requirements for Fences.**

(A) *Location.* Fences are permitted on the property line between two or more parcels of land held in private ownership. No fence shall extend seaward beyond a dune.

(B) *Temporary fences.* Temporary fences for construction sites or a similar purpose shall comply with the requirements of the Building Codes adopted by the town.

(C) *No fences in easements.* Fences shall be prohibited within utility easements and right of way easements and the town shall not be responsible for damage to, or the repair or replacement of fences that must be removed to access such easements. In no instance shall

this provision be construed to prevent fencing around storm water retention or detention facilities.

(D) *Blocking natural drainage flow.* No fence shall be installed so as to block or divert a natural drainage flow of water onto or off of any other land. Fences shall not be constructed which impede the free flow of water.

(E) *Fences on retaining walls or berms.* If a fence is constructed on top of a wall or berm, the combined height of the fence and wall or berm shall not exceed the maximum height that would apply to a fence or wall alone.

(F) *Fences within buffers.* Fences shall be installed so as not to disturb or damage existing vegetation or installed plant material. The perimeter fencing for a single subdivision or development shall be of a uniform style that meets the standards of this section in order to provide visual interest in an orderly manner.

(G) *Permits.* For fences seven (7) feet tall or taller, a building permit is required to construct a fence, replace a fence, or repair a fence that has been damaged more than 48% of its value. All proposed fences are subject to review by the Building Code Administrator and require a sketch or drawing plan for approval.

(H) *Within Flood V-Zone.* Within flood V-Zone as determined by the most recent FIRM, no part of a fence shall be constructed with masonry material or heavy lumber. For purposes of this section, the term "heavy lumber" means any piece of wood with a nominal cross section dimension greater than 4 inches by 4 inches.

(I) *Within Flood A-Zone.* Fences constructed with masonry and/or heavy lumber shall incorporate hydrostatic openings below the flood elevation to allow for the unimpeded flow of floodwaters. Flood zones shall be determined by the most recent FIRM. Hydrostatic openings shall be a minimum of 1 square foot in area each with the bottom edge of the opening no more than 1 foot above grade and shall not be spaced more than 20 feet apart. The total required area of hydrostatic openings shall equal 1 square foot for every 50 square feet of fence area.

### **Sec. 86-303. Height Requirements for Fences.**

All fences and walls shall conform to the following standards. In all cases, heights are measured from existing grade.

(A) *Residential districts; (R-1) low density residential district, (PUD) Planned Unit Development,* or a residential use in any district, fences shall not exceed a height of six (6) feet along common side property lines. Fences along front property lines, streets, beaches, and regulated wetland areas shall not exceed a height of four (4) feet. If a fence is constructed on top of a retaining wall or other wall, the combined height of the fence and wall shall not exceed the maximum height that would apply to a fence or wall alone.

(B) *Nonresidential districts; (C-1) Office Commercial District, (C-2) Marine Commercial District, (C-3) Commercial District* In the nonresidential districts, fences and walls shall not be permitted in front setback areas. Fences and walls shall not exceed eight (8) feet in height in all other areas. If a fence is constructed on top of a retaining or other wall, the combined height of the fence and wall shall not exceed the maximum height that would apply to a fence or wall alone.

(C) *Exemption for required screening.* Fencing provided to meet the standards of screening is exempted from the height standards of this subsection, subject to approval by the Building Official, but in no case shall the fencing exceed the maximum height limits of the screening requirement.

(D) *Exemption for recreational fencing.* Customary fencing provided as a part of a permitted tennis court, athletic field, or other recreational facility shall be exempt from the height restrictions of this subsection, subject to approval by the Building Official.

(E) *Exemption for safety.* Major utilities, government facilities, and other public safety uses shall be exempted from these standards as needed for public safety, subject to approval by the Building Official.

**Sec. 86-304. Perimeter Fences Abutting Public Rights-of-Way.**

Perimeter fences abutting a public right-of-way shall:

- (A) Be of a uniform style;
- (B) Be located outside the right-of-way associated with a public street; and
- (C) Include breaks in the fence plane at least every 200 feet.

**Sec. 86-305. Visibility Clearance.**

Fences, walls, and plantings shall be placed in accordance with the sight line visibility standards in the Zoning Ordinance and applicable state and federal law.

**Sec. 86-306. Prohibited Fences.**

(A) *Certain barbed wire and electrified fences prohibited; warning signs.* Except as needed for major utilities, government facilities, and other public safety uses, (1) barbed, razor, concertina, or similar wire fences located anywhere on property and (2) electrified fences located within ten (10) feet of a public sidewalk, public right of way, or adjoining property line, are prohibited in all zoning districts. In addition, above ground electrified fences not meeting any one or more of the following criteria are prohibited: (1) be powered by 12 volts direct current (DC), 120 volts alternating current (AC) or less; (2) be operated by a system listed by a national testing agency such as UL or ETL; and (3) meet the height limitations set forth in this Article, subject to the exception for major utilities, government facilities, and other public safety uses. Above ground electrified fences shall be clearly identified with warning signs that read: **"Warning-Electric Fence"** at intervals of not less than 20 feet. Underground electrified fences designed for control of domestic animals are exempt from this division.

**Sec. 86-307. Appearance of Fences and Walls.**

(A) *Customary materials.* Fences and walls shall be constructed of customary materials, including, but not limited to; solid wood, brick, masonry, stone, brick, wrought iron, decorative metal materials, or products designed to resemble these materials.

(B) *Finished side to outside.* Wherever a fence or wall is installed, if one side of the fence or wall appears more "finished" than the other (i.e., one side has visible support framing and the other does not), then the more "finished" side of the fence shall face the perimeter or outside of the lot, rather than facing the interior of the lot.

(C) *Maintenance required.* All fences and walls shall be maintained by the owner in good repair and in a safe condition, including but not limited to replacement of missing, decayed, or broken structural and decorative elements. All fences and walls shall receive regular structural maintenance to prevent and address sagging and weathering of surfaces visible from the public right-of-way. Any deteriorated, damaged or decayed fence materials shall be promptly repaired, and any fence or wall post or section that leans more than 20 degrees from vertical shall be promptly repaired to correct that condition.

**Sec. 86-308. Exception for nonconforming fences.**

Any fence lawfully erected as of the adoption of this ordinance from which this article is derived shall be considered a legal, nonconforming structure. Upon any nonconforming fence being physically damaged or destroyed by 48% or more of its value, replacement or repair shall fully comply with all of the terms and requirements of this article.

This ordinance shall take effect upon adoption.

\_\_\_\_\_  
Jane Darby, Mayor

First reading: 06/14/2018  
Public Hearing: 07/12/2018  
Adopted: 07/12/2018

ATTEST:

\_\_\_\_\_  
Deborah Hargis, Municipal Clerk

Approved as to form: \_\_\_\_\_