

**FIFTH DRAFT PROPOSAL
BOLD INDICATES REVISIONS**

ARTICLE III. BUSINESS AND PROFESSIONAL LICENSES

Sec. 18-46. Purpose.

The business license levied by this article is for the purpose of providing such regulation as may be required by the business subject thereto and for the purpose of raising revenue to provide ad valorem tax relief. The net revenues of the business license program shall be used to reduce the county property tax levy effective in fiscal year 2000-2001.

(Ord. No. 99-36, ' III, 11-22-1999)

Sec. 18-47. 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 unless the entire proceeds of its operation are devoted to charitable purposes. In addition to the above-described activities constituting doing of business in the county, an individual shall be deemed to be in business if that individual owns and rents five or more residential rental units (or partial interest therein) within the county, excluding the municipalities therein.

Classification means that division of businesses 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 county council.

Gross income means the total revenue of a business, received or accrued, for one fiscal year collected or to be collected by reason of the conduct of business within the county, excepting therefrom income from business done wholly within a municipality or other county on which a license tax is paid to some other municipality or a county and fully reported to the county. Gross income from interstate commerce shall not be included in the gross income for every business subject to a business license fee. The gross income for business license purposes shall conform to the gross income reported to the Internal Revenue Service, the state department of revenue and taxation, or the state insurance commission. In the case of brokers or agents, gross income shall mean gross commissions retained. Gross receipts for insurance companies shall mean gross premiums collected.

License inspector means the county employee, or other individuals, designated by the county administrator to perform the duties set forth in this article.

Person means any individual, firm, partnership, 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 plural, and the agent or employee having charge or control of a business in the absence of the principals. A governmental entity is not a person as defined in this section.

Wholesaler means a business where the product the business sells is to be resold (retailed); where the supplier is truly a wholesaler, a business license is not required. Suppliers to grocery stores, retailers, etc., do not have to obtain a business license. Further, if the product is used as raw material or as components in a manufactured product, a business license is not required. However, if a product is sold to an end user, its ultimate customer, a business license is required. Therefore, paper goods distributors who sell supplies to hotels and building supply distributors who sell to contractors or owners for buildings under construction are required to obtain a business license. Such distributors' customers are the end users of the products.

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(Ord. No. 99-36, ' II, 11-22-1999)

Cross references: Definitions generally, ' 1-2.

Sec. 18-48. Administration.

The license inspector shall administer the provisions of this article, collect license fees, issue licenses, make or initiate investigations and audits to ensure compliance, initiate denial or revocation procedures, report violators to the county council, produce forms, make reasonable regulations relating to the administration of this article, and perform such other duties as may be assigned by the county administrator. With regard to the administration of this article as it pertains to license fees from insurance companies and brokers for nonadmitted insurance companies, the state association of counties is designated as the exclusive agent of the county and is empowered to utilize all procedures and actions authorized by ordinance or state law.

(Ord. No. 99-36, ' IX, 11-22-1999)

Sec. 18-49. Violations.

Any persons violating any provision of this article shall be subject to punishment under section 1-6, the general penalty provisions of this Code, upon conviction. Each day of violation shall be considered a separate offense. Punishment for violation shall not relieve the offender of liability for delinquent penalties and costs provided for in this article.

(Ord. No. 99-36, ' XVII(b), 11-22-1999)

Sec. 18-50. License required.

Every person engaged or intending to engage in any calling, business, occupation or profession listed in the rate classification index in sections 18-65--18-68, in whole or in part, within the limits of the county, including the municipalities therein, is required to pay an annual license fee and obtain a business license as provided in this article.

(Ord. No. 99-36, ' I, 11-22-1999)

Sec. 18-51. License fee.

The required license fee shall be paid for each business subject to this article according to the applicable rate classification on or before May 31 in each year. A separate license shall be required for each place of business and for each classification of business conducted at one place. However, multiple businesses consolidated under one federal identification number may choose to file for one license covering all businesses, and the license fee shall be computed on the combined gross income for the classification requiring the highest rate. A license fee 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 fee 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.

(Ord. No. 99-36, ' IV, 11-22-1999)

Sec. 18-52. Effective date.

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For persons not in business for a full tax year ending December 31, 1999, the gross revenues required to be prorated shall be estimated in the same manner as provided in section 18-51, provided, however, the pro rata license fee due for calendar year 2000 by each business shall not be lower than the stated annual minimum fee for the business's category. The business license tax shall be implemented on an annual basis for calendar year 2000 and all subsequent years. The required due date for the payment of all fees and the display of license for calendar year 2000 shall be May 31, 2000. In all subsequent years the due date shall be as specified in section 18-53.

(Ord. No. 99-36, ' XVIII(b), 11-22-1999)

Sec. 18-53. Registration required.

(a) The owner, agent or legal representative of every business subject to this article, whether listed in the classification index or not, shall register the business and make application for a business license on or before May 31 of each year, except that a new business shall be required to have a business license prior to operation within the county. Application shall be on a form provided by the license inspector which shall contain the social security number and/or the federal identification number, the business name as reported on the state income tax return, and all other information about the applicant and the business deemed necessary to carry out the purposes of this article by the license inspector. The applicant shall certify 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 and personal property taxes due and payable to the county have been paid. With regard to registration of insurance companies and brokers for nonadmitted insurance companies, the state association of counties is designated as the exclusive agent of the county and is empowered to utilize all procedures and actions authorized by ordinance or state law.

(b) Every business, which either acts as an agent, broker or representative for any other person or has contractual arrangements with persons who are acting as independent contractors for it shall supply the following information: name, address, telephone number and estimated payments or premiums due to that person. Such information shall be supplied upon the request of the license inspector and shall be a condition precedent to obtaining the license required under this article.

(c) Elimination of commercial waste. On the business license application form, each business shall fully disclose its method of solid waste handling and shall present proof of such solid waste disposal before a license is granted.

(Ord. No. 99-36, ' V, 11-22-1999)

Sec. 18-54. Deductions and exemptions.

No deductions from gross income shall be made, except from income from business done wholly within a municipality on which a license tax is paid to some other municipality or other jurisdiction, or income which cannot be taxed pursuant to state law. The applicant shall have the burden to establish the right to a deduction by satisfactory records and proof. No person shall be exempt from the requirements of this article by reason of the lack of an established place of business within the county, unless exempted by state or federal law. The license inspector shall determine the appropriate classification for each business. No person shall be exempt from this article 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 by reason of the application of this article.

(Ord. No. 99-36, ' VI, 11-22-1999)

Sec. 18-55. False application unlawful.

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It shall be unlawful for any person subject to the provisions of this article 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 fee required by this article.

(Ord. No. 99-36, ' VII, 11-22-1999)

Sec. 18-56. Display and transfer.

All persons shall display the license issued to them under this article on the original form provided by the license inspector 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 county. A change of address must be reported to the license inspector 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 of the license inspector and compliance with zoning and building codes. Failure to obtain the approval of the license inspector 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 ownership shall be considered a termination of the old business and the establishment of a new business requiring a new business license, based on old business income, prorated for the balance of the calendar year.

(Ord. No. 99-36, ' VIII, 11-22-1999)

Sec. 18-57. Inspections and audits.

For the purpose of enforcing the provisions of this article the license inspector or other authorized agent of the county is empowered to enter upon the premises of any person subject to this article to make inspections and 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 during normal business hours with 24 hours' prior written notice. 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 fee and late penalties in addition to other penalties provided in this article. Each day of failure to pay the proper amount of license fee shall constitute a separate offense. The license inspector may make systematic inspections of all businesses within the county to ensure compliance with this article. Records of inspections and audits shall not be deemed public records. The license inspector shall not release the reported gross income of any person by name without permission of the licensee, provided that statistics compiled by classifications may be made public. With regard to inspections and audits of insurance companies and brokers for nonadmitted insurance companies, the state association of counties is designated as the exclusive agent of the county and is empowered to utilize all procedures and actions authorized by ordinance or state law.

(Ord. No. 99-36, ' X, 11-22-1999)

Sec. 18-58. Assessments.

When any person shall have failed to obtain a business license or to furnish the information required by this article or the license inspector, the license inspector shall proceed to examine the records of the business or any other available records as may be appropriate and to conduct investigations and statistical surveys as he may deem appropriate to assess a license tax and penalties as provided in this article. A notice of assessment shall be served by certified mail and any application for adjustment of the assessment may be made to the license inspector within five days after the notice is mailed or the assessment will become final. The license inspector shall establish by regulation the procedure for hearing an application for adjustment of assessment and issuing a notice of final

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assessment. A final assessment may be appealed to county council only by payment in full of the assessment under protest within five days and the filing of written notice of appeal within ten days after payment pursuant to the provisions of this article relating to appeals to county council. With regard to assessments of insurance companies and brokers for nonadmitted insurance companies, the state association of counties is designated as the exclusive agent of the county and is empowered to utilize all procedures and actions authorized by ordinance or state law.

(Ord. No. 99-36, ' XI, 11-22-1999)

Sec. 18-59. Delinquent license fees.

For nonpayment of all or any part of the correct license fee under this article, the license inspector shall levy and collect a late penalty of \$500.00 plus five percent of the unpaid fee for each month or portion thereof after the due date until paid plus the cost of collection. Penalties shall not be waived in the absence of reasonable cause. If any license fee shall remain unpaid for 60 days after its due date, the license inspector shall make a report to the county attorney for appropriate action. Partial payment may be accepted by the license inspector 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.

(Ord. No. 99-36, ' XII, 11-22-1999; Ord. No. 2001-17, 6-11-2001)

Sec. 18-60. Notices.

The license inspector may but shall not be required to serve or mail written notices that license fees under this article are due, but he shall publish a notice of the due date in a newspaper of general circulation within the county three times prior to the due date in each year. With regard to providing notice to insurance companies and brokers for nonadmitted insurance companies that license fees are due, the state association of counties is designated as the exclusive agent of the county and is empowered to utilize all procedures and actions authorized by ordinance or state law.

(Ord. No. 99-36, ' XIII, 11-22-1999)

Sec. 18-61. Denial of license.

The license inspector shall deny a license under this article to an applicant when the application is incomplete, contains a misrepresentation, false or misleading statement, evasion or suppression of a material fact, does not comply with all other applicable county ordinances, or when the activity for which a license is sought is unlawful or constitutes a public nuisance. A decision of the license inspector shall be subject to appeal to county council as provided in this article. Denial shall be written with reasons stated.

(Ord. No. 99-36, ' XIV, 11-22-1999)

Sec. 18-62. Suspension or revocation of license.

When the license inspector determines that:

- (1) A license has been mistakenly or improperly issued or issued contrary to law;
- (2) A licensee has breached any condition upon which his license was issued or has failed to comply with the provisions of this article;
- (3) A licensee has obtained a license through a fraud, misrepresentation, a false or misleading statement, evasion or

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suppression of a material fact on the license application;

(4) A licensee has been convicted of an offense under a law or ordinance regulating business, a crime involving moral turpitude, or an unlawful sale of merchandise or prohibited goods;

(5) A licensee has engaged in an unlawful activity or nuisance related to the business; or

(6) The business is not in compliance with all other applicable county ordinances;

the license inspector shall give written notice to the licensee or the person in control of the business within the county by personal service or certified mail that the license is suspended pending a hearing before county 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 30 days from the date of service of the notice. The notice shall contain a brief statement of the reasons for suspension and proposed revocation and a copy of the applicable provisions of this article.

(Ord. No. 99-36, ' XV, 11-22-1999)

Sec. 18-63. Appeals to county council.

(a) Any person aggrieved by a final assessment or a denial of a business license under this article by the license inspector may appeal the decision to county council by written request stating the reasons therefor filed with the license inspector within ten days after the payment of the assessment under protest or notice of denial is received.

(b) An appeal or a hearing on revocation shall be held by county council within 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. 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 county council shall govern the hearing. The county council shall by majority vote of members present render a written decision based on findings of fact and the application of the standards in this article which shall be served upon all parties or their representatives and shall be final unless appealed to a court of competent jurisdiction within ten days after service.

(c) No person shall be subject to prosecution for doing business without a license until the expiration of ten days after written notice of denial or revocation which is not appealed or until after final judgment of court upholding denial or revocation.

(Ord. No. 99-36, ' XVI, 11-22-1999)

Sec. 18-64. 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 article. Nothing in this section shall be construed to prevent the identification of particular reports or returns.

(Ord. No. 99-36, ' XVII(a), 11-22-1999)

Sec. 18-65. Classification rates and schedules.

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(a) The license fee for each class of business shall be computed in accordance with the rates set forth in sections 18-66--18-68 and with the Standard Industrial Classification (SIC) Manual 1987 and the North American Industrial Classification System (NAICS), except that, in cases of conflict between the provisions of the SIC and this Code, the provisions of this Code shall prevail.

(b) Unless otherwise specifically provided, all rates shall be doubled for businesses and itinerants having no fixed place of business within the county and triple for businesses located out of state.

(Ord. No. 99-36, ' XIX, 11-22-1999)

Sec. 18-66. Class 8 rates.

Each SIC number designates a separate subclassification. 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. Nonresident rates do not apply except where indicated.

15, 16, 17 Contractors, construction, all types. See the rate schedule in section 18-68.

(1) For nonresident contractors, the total fee for the full amount of the contract shall be paid prior to commencement of work and shall entitle the contractor to complete the job without regard to the normal license expiration date. A trailer at the construction site, a home office or structure in which the contractor resides is not a permanent place of business under this article.

(2) No contractor shall be issued a business license until all state and county 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.

(3) Subcontractors shall be licensed on the same basis as general or prime contractors for the same job, and no deductions shall be made by a general or prime contractor for value of work performed by subcontractors.

(4) No contractor shall be issued a business license until all performance and indemnity bonds required by the county building code have been filed and approved. Zoning permits must be obtained when required by the county zoning ordinance codified in chapter 106.

(5) Each prime contractor shall file with the license inspector a list of subcontractors furnishing labor or materials for each project.

40 Railroad companies. See S.C. Code 1976, ' 12-23-210.

41 Passenger transportation.

(1) On gross income, rate class 7.
Plus each vehicle per year, \$25.00.

(2) Permission to use streets required. 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 county 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 county council by ordinance which prescribes the term,

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fees and conditions for use.

- (3) Consent, franchise, or business license fee required. 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 based on gross revenues derived from activities in the county, the length of lines installed in streets and public places, or other formula deemed appropriate by county council. No consent fee or franchise fee shall be construed to be in lieu of a business license fee based on gross revenue unless specifically provided by ordinance. Credits for business license fees paid may be applied to fees set by ordinance granting consent or a franchise when specifically authorized by the ordinance.

481 Telephone companies not using public streets under franchise or consent. Establishments providing local or long distance telephone communications as described in Standard Industrial Classification (SIC) group 481 and North American Industrial Classification System (NAICS) 5733, including voice and data communications; radio telephone services; cellular telephone services; paging and beeper services; leasing lines, fiber optic cables, microwave or satellite facilities; selling access and reselling use of facilities or methods to others, shall pay an annual business license fee of 0.3 percent of gross receipts from all communications activities conducted in the county and for communications services billed to customers located in the county on which a business license tax has not been paid to another municipality.

4841 Television, cable or pay. Basic fee, consent or franchise.

491B 493 Electrical and gas companies. Consent or franchise.

55 Automotive, motor vehicle dealers and farm machinery, retail. See the rate schedule in section 18-68.

- (1) 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.
- (2) Gross receipts from this classification shall include full sales price without deduction for trade-ins.
- (3) Dealer transfers shall not be included in gross receipts.

5999 Promoter/coordinator of arts and crafts shows. See the rate schedule in section 18-68.

- (1) This shall be a special license issued only for special arts and crafts events sanctioned as such by the county council and shall be valid solely for the time period and the specific location stated thereon. This special license must be applied for and obtained before commencement of the event for which it is to be used.
- (2) It is the responsibility of the special events promoter or coordinator to ensure that all participating vendors are included in this special arts and crafts license.
- (3) Each participating vendor must be the creator of the art or craft which is to be sold. This includes any person who desires to engage in the business of offering for public sale flower arrangements or any handcrafted items produced in the home. Goods purchased for sale or resale cannot be vended on this special license. Inspection shall be made on site during the sale.
- (4) Other merchants and vendors at such special events, not qualifying for this special license under arts and crafts, shall be required to obtain a regular business license.

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- (5) Merchants and vendors now operating under valid licenses shall be allowed to operate under those licenses, incorporating such gross sales in the annual gross sales to be reported on the succeeding year's application.

63 Insurance companies.

- (1) On gross premiums collected through offices or agents located in the county, wherever the risk is located in the county, or collected on policies written on property or risks located in the county, wherever the premiums are collected.
- (2) Gross premiums shall include new and renewal business without deductions for any dividend, credit, return premiums or deposit.
- (3) Solicitation for insurance, receiving or transmitting an application or policy, examination of a risk, collection or transmitting of a premium, adjusting a claim, delivering a benefit, or doing any act in connection with a policy or claim shall constitute doing business within the county whether or not an office is maintained therein. A premium collected on property or a risk located within the county shall be deemed to have been collected within the county.

631--632 Life, health and accident insurance. The rate is 0.75 percent of gross premiums. Declining rates shall not apply.

633--635 Fire and casualty insurance. The rate is two percent of gross premiums. Declining rates shall not apply.

636 Title insurance. The rate is two percent of gross premiums. Declining rates shall not apply.

6411 Brokers for fire and casualty insurers. The rate is two percent of gross premiums. Declining rates shall not apply. Nonadmitted: On gross premiums collected on policies of companies not licensed in the state, the broker shall collect and remit annually to the state association of counties, with a copy of the report required by the insurance commission showing the location of the risks insured. (Premiums for nonadmitted business are not included in broker's gross commissions for other business.)

Notwithstanding any other provision of this article, license taxes for insurance companies and brokers for nonadmitted insurers shall be payable on or before May 31 in each year without penalty. Pursuant to the S.C. Code 1976, ' 5-7-300, the agreement with the state association of counties on file with the clerk for collection of current and delinquent license taxes from insurers and brokers is approved.

7993 Amusement machines, coin-operated.

- (1) Music machines, kiddie rides and amusement machines licensed pursuant to S.C. Code 1976, ' 12-21-2720(A)(1) and (A)(2):
- a. Operator of machine (S.C. Code 1976, ' 12-21-2746), \$12.50 per machine, plus \$12.50 business license for operation of machines (not on gross income).
 - b. Distributor selling or leasing machines, not licensed by the state as an operator pursuant to S.C. Code 1976, ' 12-21-2728, see schedule in section 18-68 (nonresident rates apply).
- (2) Video poker and amusement machines license pursuant to S.C. Code 1976, ' 12-21-2720(A)(3), see section 10-26 et seq. Distributor selling or leasing machines, not licensed by the state as an operator

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pursuant to S.C. Code 1976, ' 12-21-2728, see schedule in section 18-68.

(Ord. No. 99-36, ' XIX, 11-22-1999)
Sec. 18-67. Rate classification index.

[INTENTIONALLY DELETED. SEE SECTION 18-67]

(Ord. No. 99-36, ' XIX, 11-22-1999)

Sec. 18-68. Fee schedule.

INTENTIONALLY DELETED. SEE SECTION 18-68]

(Ord. No. 99-36, 11-22-1999)

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**AN ORDINANCE TO ADD A NEW SECTION 19 TO BEAUFORT COUNTY
ORDINANCE NO. 99/36 PERTAINING TO BUSINESS AND PROFESSIONAL
LICENSES SO TO ADD THE “BEAUFORT COUNTY, SOUTH CAROLINA, LAWFUL
EMPLOYMENT ORDINANCE,” TO PROVIDE AN EFFECTIVE DATE,
SEVERABILITY AND OTHER MATTERS RELATING THERETO**

SECTION 1. FINDINGS AND DECLARATION OF PURPOSE

- A. This Ordinance shall be known and may be cited as the “Beaufort County, South Carolina, Lawful Employment Ordinance.”
- B. The Beaufort County Council finds and declares:
1. State and federal law require that certain conditions be met before a person may be authorized to work in this country; and
 2. Unauthorized aliens as defined by Federal law do not normally meet such conditions as a matter of law when present in the County of Beaufort; and
 3. Unlawful employment harms the health, safety and welfare of persons authorized to work in the United States; and
 4. The state and federal government lack the resources to properly protect the citizens of Beaufort County from the adverse effects of the employment of unauthorized aliens; and
 5. The County finds that providing business license applicants and licensees (hereinafter “licensees”) with information, education and assistance with respect to hiring only persons authorized to work in the United States will assist licensees in complying with State and Federal laws; will operate as a deterrent to the employment of unauthorized aliens in violation of Federal Law; and further, the County finds it appropriate to serve licensees doing business in the County by providing information with respect to employment eligibility, employment eligibility verification, and available automated systems which serve as employment eligibility verification checks; and further, the County finds that it possesses authority delegated by the federal government pursuant to United States Code Title 8, Sections 1324a(h)(2), 1373 and 1644 to verify whether persons providing work or services on behalf of licensed businesses within the County are lawfully present in the United States under a citizenship or immigration status which authorizes the performance of such work.

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6. The County finds it is in the best interests of, and will serve and benefit, the health, safety and welfare of the public and licensees to enact this ordinance to deter and prevent employment of unauthorized aliens; provided, however;
7. The County shall not construe this ordinance to prohibit rendering of emergency medical care, emergency assistance or legal assistance to any person.

NOW THEREFORE, BE IT ORDAINED AND ENACTED, by the County Council of Beaufort County, South Carolina, duly assembled and by the authority of the same as follows:

SECTION 2. DEFINITIONS

- A. When used in this Ordinance, the following words, terms and phrases shall have the meanings ascribed to them herein and shall be construed so as to be consistent with state and federal law, including federal immigration law:
1. “Business” and “business entity” shall have the same meaning as provided in Beaufort County Ordinance Section 18-47.
2. “ County” means the County of Beaufort, South Carolina.
3. “Contractor” means a person, licensee, subcontractor or business entity that enters into an agreement to perform any service or work or to provide a certain product in exchange for valuable consideration. This definition shall include but not be limited to a subcontractor, contract employee, or a recruiting or staffing entity.
4. “Unauthorized alien” shall have the same meaning as 8 U.S.C. §1324(h)(3) and means with respect to the employment of an alien at a particular time, that the alien is not at that time either:
- (a) an alien lawfully admitted for permanent residence; or
- (b) authorized to be so employed by the United States Immigration and Nationality Act or by the United States Attorney General.

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5. The County shall not conclude that a person is an unauthorized alien unless and until an authorized representative of the County has verified with the federal government, pursuant to United States Code Title 8, subsection 1373(c), the person's citizenship or immigration status.
6. "Basic Pilot Program" means an electronic verification of work authorization program provided under the auspices of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, P.L. 104-208, Division C, Section 403(a); United States Code Title 8, subsection 1324a, and operated by the United States Department of Homeland Security (or ~~a successor~~ **an equivalent** program established by the federal government.)
- ~~7. "Employment Eligibility Verification" means the provisions codified at 8 U.S.C. 1324a as it appears now and as it may be amended from time to time and includes, in the case of a person or other entity hiring, recruiting or referring an individual for employment in the United States, the requirement to verify employment authorization and identity and attest thereto.~~
7. **"Employment Eligibility Verification" means the verification by an authorized representative of the County of Beaufort that a person providing work or services on behalf of a business entity licensed by the County is lawfully present in the United States in an immigration status for which such work has been authorized. Verification is made by the submission of such personal data of such a person as may be required by the appropriate federal government agency, which has been duly collected by the business and provided to the County pursuant to an enforcement action under this Section 19."**

SECTION 3. INFORMATION, EDUCATION AND ASSISTANCE

- A. It is unlawful for any business entity to recruit, hire for employment, or continue to employ, or to permit, dispatch, or instruct any person who is an unauthorized alien to perform work in whole or part within the County.
- B. Every business or person that applies for a business license to engage in any type of work in the County shall sign an affidavit, on a form designated by the County, attesting under penalty of perjury that the business and, or person does not knowingly utilize the services of, engage or hire any person who is an unauthorized alien; and further, the licensee shall affirm and attest that as a condition of issuance for a business license the applicant accepts and agrees to the provisions of this Section 19 and shall fully cooperate with the enforcement Section 19 as provided herein.
- C. Upon request, the County will provide a business license applicant or licensee with information pertaining

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to the requirements of Federal law regarding the unlawful employment of unauthorized aliens and unfair immigration-related employment practices.

SECTION 4. ENFORCEMENT

- A. The County of Beaufort Business License Division shall enforce the requirements of this Section 19.
1. For purposes of this section, an enforcement action is an action undertaken by the County to ascertain the lawful employment of any person within the County.
2. An enforcement action shall be initiated by means of:
- (a) a written signed complaint filed with the County Business License Division submitted by any County official, business entity, or County resident; or
- (b) as a part of an audit made pursuant to Beaufort County Ordinance Section 18-57.
3. A complaint shall include specific allegations describing the alleged violation including but not limited to, the date and location where an alleged violation occurred. For purposes of this section, “the alleged violator” means a licensee and “the actions constituting a violation” include allegations which create in the mind of a reasonable person that the licensee engages in unlawful business practices in violation of this Section 19.
4. A complaint which alleges a violation solely ~~or primarily~~ on the basis of national origin, ethnicity, or race shall be deemed invalid and shall not be enforced nor shall same constitute grounds to conduct an audit pursuant to Beaufort County Ordinance Section 18-57.
5. A licensee shall not be subject to license suspension if the licensee, prior to the date of the alleged violation, shows to the satisfaction of the Business License Division that it verified employment eligibility for all newly hired individuals under an electronic verification of work authorization program as defined in Section 2 (7).
- B. Upon receipt of a written complaint alleging that a licensee has failed, neglected or refused to comply with ~~8 U.S.C. § 1324a~~ of this Section 19, or upon receipt of **specific** information which would lead a reasonable person to conclude there exists cause to investigate the ~~employment verification practices~~ **compliance** of a licensee, the Business License Division will cause an investigation to commence ~~as provided herein.~~

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1. The Business License Division shall request a licensee to provide information, including but not limited to, employee identity information as required pursuant to 8 U.S.C. §§ 1324 et seq.

2. If an investigation of a complaint or the results of an audit show the licensee:
 - (a) complies with 8 U.S.C. 1324 a; and

 - (b) utilizes the “Basic Pilot Program” (or ~~such other successor~~ **an equivalent** Program, ~~if any~~) and electronically verifies work authorization for all individuals subject to this Section 19; the investigation shall be immediately concluded and the complainant notified thereof in writing.

3. If an investigation of a complaint or the results of an audit show that the licensee fails, refuses or neglects to provide documentation of employment verification as required pursuant to 8 U.S.C. §1234a or, upon production of such documentation, the County obtains verification information pursuant to 8 U.S.C. §1373 evidencing the employment of unauthorized alien(s), the employer shall receive written notice of the findings and notice of further action including, but not limited to possible suspension of the licensee’s business license.
 - (a) Upon receipt of such notice, the licensee may submit to the Business License Division any additional documentation to support that the individual is authorized to work in the United States. Additional documentation shall be filed with the Division within (15) business days from the date of notice **unless an extension up to forty-five (45) working days is requested and granted.** During this ~~fifteen (15) day~~ period, the licensee’s business practices may remain unaltered. However, absent additional documentation to support a finding of lawful employment, the licensee shall be subject to license suspension as provided in subjection (D).

 - (b) Upon the expiration of **the period referred to in Section 3 (a), fifteen (15)** working days, the failure, refusal or neglect by the licensee to provide additional documentation shall support the entry of a finding of a violation of this Section 19. All findings shall be made in writing with findings of fact and conclusions of law separately stated.

- C. Appeals: An appeal from a finding ~~as provided in subparagraph (B)(3)(b) above~~ shall be made to the Circuit Court under the applicable rules of Civil Procedure relating to an appeals from a final adjudication.

- D. Penalties: The exclusive remedy for violation of this Section 19 is as provided herein.

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1. Notwithstanding the monetary penalty provided at Beaufort County Ordinance Section 18-57, the exclusive penalty for violation of this Section 19 shall consist of suspension of the business license of any business entity which fails to correct a violation of this section within three (3) business days after receipt of notification of a violation by the County.

2. The suspension of a business license shall terminate one (1) business day after a legal representative of the business entity submits to the Business License Division a sworn affidavit attesting that the violation has ended.

3. The affidavit shall include a description of the specific measures and actions taken by the licensee to end the violation and shall include the name, address and other identifying information of the unauthorized alien related to the complaint.

4. Upon a finding, that a licensee employs two (2) or more unauthorized aliens, the licensee shall be required to file with the Business License Division, in addition to the affidavit provided at Section 4 (D)(5)(a), documentation acceptable to the County which evidences that the licensee has enrolled and participates in the Employment Eligibility Verification” program provided at Section 2(A)(7) for the duration of the business license granted to the licensee.

5. In the event of a second or subsequent violation of Section 19 the Business License Division shall suspend the licensee’s business license for a period of twenty (20) days. Upon the expiration of the suspension, and upon receipt of the affidavit provided at Section 19, the Business License Division shall reinstate the licensee’s business license and notify the appropriate Federal enforcement agency of same. In the case of the employment of a person unauthorized to work under State law and which is not related to Federal immigration laws, the Business License Division shall notify the appropriate State agency(s).

- E. All agencies of the County shall enroll and participate in the Basic Pilot Program.

- F. As a condition for any award of any County contract or grant to a business entity for which the value of employment, labor or, personal services shall exceed \$10,000, the business entity shall provide documentation confirming its enrollment and participation in the Employment Eligibility Verification program provided at Section 2 (A)(7).

SECTION 5. PROHIBITION OF DISCRIMINATION

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- A. The Federal Immigration and Nationality Act, as amended, and Title VII of the Civil Rights Act of 1964, as amended, the South Carolina Human Affairs Law, as amended, the South Carolina Unfair Trade Practices Act, as amended, among other Federal and State laws and regulations prohibit employment discrimination. Employers must treat all employees the same when completing employment eligibility verification documents. Employers may not set different employment eligibility verification standards or require different documents to be presented by different groups of employees.
- B. An allegation of discrimination may be filed by an individual who believes he or she is the victim of employment discrimination by contacting the appropriate State and Federal agencies. The Beaufort County Business License Department provides a list of State and Federal agencies authorized to accept and investigate complaints alleging employment discrimination.

SECTION 6. APPLICABILITY AND EFFECTIVE DATE

This Ordinance shall become effective on January 1, 2007.

SECTION 7. SEVERABILITY

If any part of this Ordinance is held by a court of competent jurisdiction to be unconstitutional, illegal, or invalid for any reason, it shall be construed to have been the legislative intent of the County Council of Beaufort County, South Carolina, to pass this Ordinance without such unconstitutional, illegal or invalid provision, and the remainder of this Ordinance shall be deemed and held to be constitutional, lawful and valid as if such portion had not been included. If this Ordinance or any provision thereof is held by a court of competent jurisdiction to be inapplicable to any person, group of persons, property, kind of property, circumstances or set of circumstances, such holding shall not affect the applicability thereof to any other persons, property or circumstances.

APPROVED AND ADOPTED BY THE COUNTY COUNCIL OF BEAUFORT COUNTY, SOUTH CAROLINA ON THIS ___ DAY OF _____, 2006.

COUNTY COUNCIL OF BEAUFORT COUNTY

Wm. Weston. J. Newton, Chairman

APPROVED AS TO FORM

Kelly J. Golden, Esquire
Beaufort County Staff Attorney

**FIFTH DRAFT PROPOSAL
BOLD INDICATES REVISIONS**

(SEAL)

ATTEST:

Suzanne M. Rainey, Clerk to Council

First Reading:
Second Reading:
Public Hearing:
Third and Final Reading:

J:\Illegal Immigration Relief Ordinance\FIFTH DRAFT.sdb.doc