

CHAPTER 8
(Amend. 7/1/90 4/7/2009)
TRADES AND BUSINESSES

Subchapter I - Privilege License Tax (Amend. 6/6/2000)

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Article I

DEFINITIONS

Section 8-1 Definitions.

For the purposes of this chapter, unless otherwise specifically provided or unless clearly required by the context, the following words or phrases shall have the meanings respectively ascribed to them by this section:

Agent means the person having authority to represent a manufacturer, producer or distributor of goods or services.

Business means any trade, occupation, profession or other activity engaged in by any person or entity or caused to be engaged in by any person or entity for gain, profit, benefit or advantage, direct or indirect, except that such term does not include occasional or isolated sales or transactions by a person or entity who does not hold himself out as engaged in a business.

- 1) A person “conducts a business” when he engages in one act of any business. If a person or entity is (i) listed in the yellow pages of the telephone directory issued by a telephone system serving the town, or (ii) listed on the internet or other forms of electronic media, as a business, or (iii) has taxable business valuation property listed in Orange County, that shall be prima facie evidence that the person is conducting a business.
- 2) A person or entity conducts a business “within the town” when he maintains a business location within the town or when, either personally or through agents, he (i) solicits business within the town, or (ii) picks up or delivers goods or services within the town.

Electronic gaming operation means any business enterprise, whether as a principal or accessory use, where persons utilize electronic machines, including but not limited to computers and gaming terminals (collectively the “machines”), to conduct games of chance, including sweepstakes, and where cash, merchandise or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined odds. Electronic gaming operations may include, but are not limited to, internet cafes, internet sweepstakes, electronic gaming machines/operations, or cybercafés. This does not include any lottery approved by the State of North Carolina or any operations

conducted by nonprofit organizations or entities. (Amend. 6/22/2010)

Fiscal year means the period beginning with July 1 and ending on June 30 next following.

Gross receipts of the business means (i) for a business with its principal place of business within Carrboro's corporate limits, total receipts from all sales of goods or services, and (ii) for businesses not having a principal place of business within Carrboro's corporate limits, total receipts from sales or services generated within Carrboro's corporate limits.

Town manager means the duly appointed Town Manager of the Town of Carrboro or his designee.

Section 8-2 Construction of this Chapter.

This chapter is enacted primarily for revenue purposes, and therefore it should be construed to require payment of the maximum tax permitted by its terms. A secondary purpose of this subchapter is to prevent the operation of covered businesses until the person or entity applying for the license has complied with certain town ordinances. Issuance of a license pursuant to this subchapter does not excuse the licensee from compliance with any other ordinance or statute. This chapter does not prevent the town from increasing or decreasing the amount of any license tax or regulating any business taxed.

Article II

LEVY OF TAX

Section 8-3 License and Payment of Tax Required.

Subject to Section 8-4, no person or entity may conduct any business within the town until it has paid the tax required by this chapter and been issued a valid privilege license pursuant to this chapter. Privilege licenses shall be renewed, and privilege license tax shall be paid, annually in accordance with this Subchapter I.

Section 8-4 Exemptions.

- (a) If an individual conducts a business as a partner in a partnership or as an officer or employee of a corporation or as an employee or member of any other business entity, that individual is not required to obtain a privilege license or pay a privilege license tax. However, the partnership, corporation, or other business entity must obtain the license and pay the tax unless exempted by this section.
- (b) Owners of real property who lease that property need not obtain a privilege license or pay a privilege license tax solely for acting as lessor of that property.
- (c) A person who operates a business as a not-for-profit religious, educational, civic, patriotic, charitable, or fraternal organization, registered with the State of North Carolina is exempt from obtaining a privilege license and from paying a privilege license tax.
- (d) Blind persons and persons who serve in the United States Armed Forces or the Merchant Marines are exempt from obtaining a privilege license and from paying any privilege license tax levied by this chapter to the extent formerly provided by G.S. 105-249 and G.S. 105-249.1. (since repealed).
- (e) Persons or entities who pick up or deliver goods within the town are not required to obtain a privilege license or pay a privilege license tax based solely on the pick up or delivery of goods as part of a transaction for the purchase and sale of such goods, where the purchaser and/or seller of such goods has a valid privilege license. (For example, a soft drink distributor not located in Carrboro may deliver a truck load of soft drinks to a grocery store in Carrboro without becoming liable to pay a privilege license tax or to obtain a privilege license because the grocery store in Carrboro does possess a privilege license and pays a privilege license tax.) Provided, however, that local courier services or delivery services who pick up and deliver goods for compensation, with a principal place of business within Carrboro's corporate limits shall be required to comply with the requirements of this Subchapter I.

- (f) The businesses listed on Schedule A annexed hereto and incorporated in this Ordinance by reference (the Schedule of Exempt Businesses) are exempt by State law from obtaining a privilege license or paying a privilege license tax as provided by the indicated section of the General Statutes.
- (g) Any business whose sole business activity within Carrboro's corporate limits is the sale or provision of goods or services at events conducted on Town-owned property shall be exempt from the requirements of this Subchapter I. Provided, however, that if such business conducts any other business within Carrboro's corporate limits it shall be subject to this Subchapter I with respect to revenues generated by such other business.

Section 8-5 License Tax Schedule.

(a) (i) Subject to the provisions of subsections (b) and (c) of this section, all persons and entities conducting nonexempt business within the town shall pay a privilege license tax in an amount based upon the annual gross receipts of that business during the previous year. The privilege license tax schedule shall be included in the town Miscellaneous Fees and Charges Schedule and may be amended periodically by resolution of the Board of Aldermen, provided that amendments to the privilege license tax schedule shall become effective beginning the first fiscal year that occurs more than two months after the changes are adopted. (Amended. 6/5/07, 6/22/2010)

- (2) If the business has been in operation for a period of least three months, but less than one year, on the date the privilege license application is due, then the amount of the tax shall be calculated by (i) estimating the annual gross receipts by dividing the actual gross receipts for the number of whole months the business has been in operation by that number of months, and multiplying that result by twelve, and (ii) determining the tax by using the estimated gross receipts in reference to the table set forth in subsection (a)1 above. (For example, if a business commences operation ~~in~~ on March 1st and generates \$20,000 in gross receipts by June 30, the privilege license tax due would be calculated as follows: \$20,000 divided by 4 months (March, April, May, June) equals \$5,000, times 12 equals \$60,000; estimated gross receipts for privilege license tax purposes is \$60,000).
- (3) If the business has not been in operation for at least three months on the date the privilege license application is due, or if the business is conducted or is intended to be conducted for not more than a total of ten days in any twelve month period, then the amount of the privilege license tax shall be \$25.00.
- (b) The businesses with rates fixed by state statute, incorporated within the Town's Miscellaneous Fees and Charges Schedule as "Schedule of Fees For Businesses Established By State Statute," shall pay a privilege license tax equal to the

amount stated in the fee schedule. If substantially all the gross receipts of a business are derived from a single business activity that is subject to a rate fixed by the state, then that business shall pay a privilege license tax equal to the amount listed in the Schedule of Fees for Businesses Established by State Statute only. If only an insubstantial portion of a business's gross receipts are derived from a business activity whose rates are fixed in state statutes, then such business shall pay a privilege license tax as fixed by state statute plus an amount determined by application of the schedule established by subparagraph (a) to the gross receipts of the business minus the portion of its gross receipts derived from the business activity that is fixed by state statute. The privilege license fees, shall be maintained on file in the town clerk's office within the miscellaneous fees and charges schedules approved annually by the board of aldermen in connection with the annual budget ordinance

(c) Notwithstanding the provisions of subsection (a) of this section, all persons and entities engaged in the business of an electronic gaming operation within the town shall pay an annual privilege license tax in the amount of one thousand dollars (\$1,000) plus five hundred dollars (\$500.00) per electronic gaming machine use or stored as part of the electronic gaming operation. (Amend. 6/22/2010)

Article III

LICENSES

Section 8-6 Licenses as Personal Privilege and Nonassignable; Exception.

Every license issued under this chapter shall be a personal privilege and shall not be assignable; except, that when any business carried on at a fixed place designated in the license issued therefor is sold as a unit to any person or entity and the purchaser thereof is to carry on such business at the same place, the license for such business may be assigned to such purchaser who, upon delivery of such license properly assigned to the town manager, together with a written and signed statement that such business has been sold as a unit and that the purchaser is to carry on the same at the same place of business, shall be entitled to have a new and appropriate license issued to him; provided, that any business requiring special approval from any local governmental entity shall not have such license issued until such special approval has been duly obtained from the proper authority.

Section 8-7 License Year; When Tax Due and Payable.

(a) The taxes levied by this chapter are levied as of July 1 for the fiscal year beginning with such day.

(b) In the case of businesses operating under a prior license, the license tax levied as of July 1 shall be due and payable not later than July 31. Payments made after July 31 shall be subject to a late payment penalty equal to five (5%) percent of the tax due or five dollars (\$5.00), whichever is greater.

(c) In the case of any business which is begun after July 1, the tax shall be due and payable before the business is begun.

Section 8-8 Separate Businesses; Multiple Businesses.

(a) A separate license is required and a separate tax must be paid for each separate place of business operated within Carrboro's corporate limits. By the licensee.

(b) If two or more separate taxable businesses are operated at the same location by the same licensee, the town manager may issue one privilege license upon the payment of the total amount of taxes due for all businesses operated at the same time.

Section 8-9 New License Required Upon Alteration In Nature of Business.

When a license is issued to carry on a certain line of business and, after the issuance of such license, the licensee shall so change or alter his business as to bring it under a classification for which a higher license tax is required, the licensee shall, before making such change, deliver its license to the town manager, together with a written and signed statement as to the nature of such proposed change, and shall pay to the city manager the proper additional license tax. The

town manager shall thereupon cancel the old license and shall issue to the licensee a new and appropriate license.

Section 8-10 Application.

(a) Generally. Every application for a license required by this chapter shall be made in writing to the Department of Management Services upon a form provided by the town. Such application shall be signed by either the applicant or its agent and shall furnish all the information as provided on the form.

(b) Statement of gross receipts. When the amount of the tax to be paid depends on gross receipts, applicants for a license shall render to the town manager a sworn statement of the gross receipts of the business as defined in Section 8-1), and upon an applicant's failure to render such a sworn statement, the amount of tax to be paid shall be \$200.

(c) Confidentiality. To the extent permitted by law, all information regarding gross receipts furnished or secured under authority of this ordinance shall be kept in confidence by the town manager and used solely for the administration of this chapter. Provided that summaries of the information may be shared with other town officials for purposes of research, analysis, and budgetary matters.

Section 8-11 Additional Information Required of Solicitors.

In addition to the information furnished by applicants on the application form as provided in section 8-10, every solicitor subject to the provisions of Article VII of this Subchapter I, who applies for a license shall furnish to the town manager the name and address of the person whom he represents, together with a description of the goods or services which he offers for sale. No license shall be issued to any solicitor who does not provide such additional information.

Section 8-12 Approval by Board of Aldermen, etc., and Compliance of Applicant with Chapter Prerequisite to Issuance of License.

The town manager shall not issue any license when the application therefor is refused by the board of aldermen or by any local government board, commission or official, in any case where the approval of the board of aldermen, or of such other local government board, commission or official, is required before business may commence, nor shall the town manager issue any license until the applicant therefor has complied with every provision of this chapter, including the execution and delivery of any bond required.

Section 8-13 Reasons for Refusal or Revocation of a License.

The town manager shall refuse to issue a license, or shall revoke a license already issued, for any of the following reasons:

- 1) The applicant misrepresents a fact relevant to calculating the amount of tax due or his qualifications for a license.

- 2) The applicant refuses to provide information necessary to compute the amount of tax due.
- 3) The applicant has not obtained a certificate of occupancy or other state or local government approval required by law as a condition precedent to conducting business when required to do so by local ordinance.
- 4) The administrator charged with the enforcement of the following codes or ordinances has certified to the town manager that the applicant has been found to be in violation of the law enforced by the administrator and has either failed to appeal that determination within the time provided or has exhausted all administrative and judicial appeals: North Carolina State Building Code, Zoning Ordinance, Subdivision Ordinance, Chapter 11 or 12 of the Town Code.

Section 8-14 Unqualified Applicants; Right to a Conference.

(a) If, after receipt of the completed application, the town manager believes that a reason exists to deny a license under Section 8-13, he shall refuse to accept payment of the tax and shall not issue the license. At the applicant's request, the town manager shall, pursuant to Section 8-22, give the applicant a written statement of the reasons for refusing the license. The applicant may, within ten days after receipt of such statement, request a conference to discuss the denial. Such request shall specify why the application should not have been denied. The town manager shall arrange the conference within a reasonable time, not to exceed thirty days after receipt of the request for a conference.

(b) If the town manager denies a license application, the applicant may reapply for a license at any time thereafter. If the reason for which the application was initially denied no longer exists, and if no other reason exists to deny to issue a license, the town manager shall issue the license pursuant to Section 8-15.

Section 8-15 Town Manager to Issue License; Payment of Tax a Prerequisite.

If, after receipt of the completed application, the town manager believes that no reason exists to deny a license under Section 8-13, he shall determine the amount of tax due and notify the applicant of that amount. The town manager shall not issue a license until the tax is paid.

Section 8-16 Amount of Tax Disputed.

If the applicant disputes the amount of tax the town manager determines to be due, he may either refuse to pay the tax and request a conference with the town manager to discuss the determination, or pay the amount and request a conference to discuss his right for a refund. If a conference is requested, the town manager shall arrange it in a reasonable time, not to exceed thirty days after receipt of the request for a conference. However, if the applicant refuses to pay the tax in the amount calculated by the town manager, no license shall be issued and the

applicant shall not conduct business within Carrboro's corporate limits until the proper tax is paid.

Section 8-17 Revocation.

(a) The town manager shall revoke a license if reason exists to revoke it as set forth in Section 8-13. Before the town manager may revoke a license, he shall give the licensee ten (10) days advance written notice of the grounds for revocation, pursuant to Section 8-22. The licensee may, within ten days after the day on which the notice is served, request in writing a conference with the town manager. The request shall specify the reasons why the license should not be revoked. The town manager shall arrange the conference within a reasonable time, not to exceed thirty days. The licensee may continue to operate its business until the conference is conducted.

(b) If the licensee fails to request a conference within ten days after the day on which notice is served, the town manager shall revoke the license. If the licensee requests a conference, the town manager may not revoke the license until after the conference.

(c) If the town manager revokes a license, the former licensee may apply for a new license at any time thereafter. If the reason for which the license was revoked no longer exists, and if no other reason exists to deny a license, the town manager shall issue the license pursuant to Section 8-15.

Section 8-18 Form and Contents; Town Manager to Keep Copy.

Every license issued shall show on the face thereof the name of the licensee, the nature of the business and the location thereof (provided such business has a fixed location), the time for which issued, the amount of the tax and the penalty, if any, paid. Any license requiring the approval of the board of aldermen, or of any other local government board, commission or official, shall indicate such approval on its face. The town manager shall keep an exact copy of each license issued, including the approval of the board of aldermen or of any board, commission or official endorsed on the face of the same.

Section 8-19 Display.

Every license must be prominently displayed at the place of business of the licensee named therein or, if such licensee has no fixed place for doing business, such licensee must keep such license wherever such business is being operated and in a place where it can be seen at any time by an official to inspect the same.

Section 8-20 Duplicate Licenses.

The town manager shall, when requested, issue duplicate licenses when such evidence as he may required is presented to show that the original has been lost or destroyed. The fee fixed by the board of aldermen from time to time shall be paid for each duplicate license so issued.

Section 8-21 Record of Conferences.

The town manager shall maintain for three years a written record of each conference held pursuant to this article. The record shall contain the applicant's or licensee's name, a copy of the applicant's or licensee's written request for a conference, the date of the conference, and a brief statement of the issues discussed and the result reached. A copy of this record shall be served upon the applicant or licensee in the manner provided by Section 8-22. After three years the town manager may dispose the record pursuant to G.S. 121-5.

Section 8-22 Providing Notice to an Applicant or Licensee.

Whenever this chapter requires the town manager to provide a written statement or notice to an applicant or a licensee, he may do so in any one of three ways:

- 1) By personally delivering the statement or notice to the applicant or licensee.
- 2) By mailing the statement or notice by registered or certified mail, return receipt requested, to the address specified for that purpose in the licensee application.
- 3) By causing the statement or notice to be served on the applicant or licensee in accordance with the procedures for service or process under Rule 4, North Carolina Rules of Civil Procedure.

Section 8-23 Exemptions from Tax – Businesses Operated by Religious or Charitable Organizations.

The license taxes levied by this chapter shall not apply to any business operated by any strictly religious or charitable not-for-profit organization registered with the State of North Carolina Secretary of State when the proceeds of such business are for the exclusive benefit of such organization.

Section 8-24 Exemptions Limited to Those Provided for by Code and State law.

Except as provided by section 8-4, 8-23, in the Town's Miscellaneous Fees and Charges Schedule, or as otherwise provided by State law, no business conducted within Carrboro's limits shall be exempt from the payment of the license taxes levied by this chapter.

Section 8-25 Revocation of Prior License for Late Payment of Tax; Refusal to Issue New License until Tax Paid.

The privilege license tax is due each year. If a business fails to pay the privilege license tax when due, its license shall not be renewed, and no new privilege license shall be issued to the licensee for any business conducted within Carrboro's corporate limits by that licensee, until all past due privilege license taxes owed by the licensee are paid.

Section 8-26 Each Day's Operation of Business Without License, After Tax Due and Payable, to Constitute Separate Offense.

Each day any person operates any business after the license tax therefore, as levied by this chapter, becomes due and payable, without paying such tax and securing a license for such business, shall constitute a separate offense.

ARTICLE IV

ENFORCEMENT AND COLLECTIONS

Section. 8-27 Duty to Determine Whether Tax Due.

(a) Each person has the duty to determine whether the business he conducts is subject to taxation under this Subchapter I, and if so, whether the tax has been paid for the current tax year.

(b) If the town manager has reason to believe that a person is conducting a business in the town in violation of this Subchapter I, he shall conduct an investigation to determine the person's tax liability.

Section. 8-28 Notice of Deficiency.

If the town manager determines that a person has not paid the full amount of tax due under this ordinance, either for the current license year or for a prior license year, he shall give the person written notice of the deficiency, pursuant to Section 8-22. The notice of deficiency shall specify: the total amount of tax due; the section of this chapter upon which the tax is based; the amount of tax paid; any interest due; the balance owed; the manner and time period in which the person may respond to the notice of deficiency; and the consequences to the person if he fails to respond as specified.

Section 8-29 Request for a Conference.

A person who receives a notice of deficiency pursuant to Section 8-28 may, within ten days after the day on which notice is served, request in writing a conference. The request shall specify the person's objections to the notice of deficiency. By way of illustration but not limitation, a person who receives notice of deficiency may object on the following grounds:

- 1) That the tax due has already been paid.
- 2) That the town manager miscalculated the amount of tax due.
- 3) That the town manager based his calculation on incorrect or insufficient information concerning either the nature of amount of business conducted.

Section 8-30 Deficiency to Become Final.

If the taxpayer fails to request a conference pursuant to Section 8-29, the town manager's determination of deficiency becomes final and the town manager shall proceed to collect the deficiency.

Section 8-31 Conference Held.

If the taxpayer requests a conference, the town manager shall not proceed to collect the deficiency until he hears the taxpayer's objections and determines that the deficiency should become final. The town manager shall maintain for three years records of each conference held pursuant to Section 8-29, in accordance with the requirements of Section 8-21.

Section 8-32 Collection of Deficiency.

(a) The town manager may use any one, or a combination, of the following methods to collect a deficiency:

- 1) Criminal prosecution in accordance with subsection 8-34(a).
- 2) Civil penalties in accordance with subsection 8-34(b).
- 3) Equitable relief in accordance with subsection 8-34(c).
- 4) The remedies of levy and sale and attachment and garnishment in accordance with G.S. 160A-207.
- 5) The remedies of levy and sale of real and personal property of the taxpayer within the city in accordance with the provision of G.S. 105-109.

(b) Any person who commences or continues to conduct a business taxed under this chapter without payment of the tax is liable for the additional tax of five percent of the privilege license tax due, but in no event less than Five Dollars (\$5.00), each thirty days that the privilege license tax remains delinquent.

Section 8-33 Appeals.

(a) Subject to the provision of this section, a person may appeal to the Privilege License Tax Review Board a decision by the town manager:

- 1) That an applicant is not entitled to a privilege license;
- 2) That a licensee's privilege license should be revoked;
- 3) Concerning the amount of tax owed by an applicant;
- 4) That a person has not paid the amount of tax due for current license year or any prior years.

(b) An appeal may be taken only if the applicant has properly pursued and exhausted his right to have a conference with the town manager on any of the matters specified in subsection (a).

(c) An appeal is taken by filing with the town manager a written notice of appeal. This notice of appeal must be filed not later than ten days after the appellant is served with the record of the conference as provided in Section 8-22 or 8-31.

(d) The Privilege License Tax Review Board shall hear and decide the appeal within thirty days after notice of appeal is filed, unless the hearing is continued for good cause. The appellant shall be given at least five working days' notice of the date and time of hearing and shall be served with a written copy of the board's decision following the hearing. The burden of establishing the correctness of the town manager's decision shall be on the town manager.

(e) The Privilege License Tax Review Board shall consist of the mayor and the members of the Town Board of Aldermen, sitting ex officio. The board may choose its own chairman and adopt its own rules of procedure, except that three members shall constitute a quorum and decisions shall be made by a majority of those present and voting.

Section 8-34. Enforcement of Chapter.

(a) A violation of Section 8-3 constitutes a misdemeanor punishable as provided in G.S. 14-4. Payment of a fine imposed in criminal proceedings pursuant to this section does not relieve a person of his liability for taxes imposed under this chapter.

(b) A violation of Section 8-3 shall subject the offender to a civil penalty as provided for in G.S. 105-236. A violation of Section 8-19 shall subject the offender to a civil penalty of ten dollars (\$10.00). If the offender does not pay the penalty within ten days after he has been cited for a violation, the town may attempt to recover the penalty by filing a civil action in the nature of debt. Payment of this civil penalty does not relieve a person of his liability for taxes imposed under this chapter. (Amend. 6/28/2005)

(c) The town may seek appropriate equitable relief from a court of competent jurisdiction to prevent or redress violations of this chapter.

(d) Each day that a violation of Section 8-3 of 8-19 exists after the person has been notified of the violation shall constitute a separate and distinct offense.

(e) This chapter may be enforced by any one, all, or a combination of the remedies authorized and prescribed by this section.

Sections 8-35 through 8-39 Reserved.

Subchapter II. Regulation and Licensing of Businesses

ARTICLE V

INSULATION CONTRACTORS LICENSE

Section 8-40 Administrator.

As used in this article, the term "administrator" means the town building inspector or any other person designated by the manager to perform the functions assigned by this article to the administrator.

Section 8-41 License Required.

(a) Subject to subsection (b), no person may, for a consideration, install, alter, or restore within the town any insulation or other materials or energy utilization equipment designed or intended to meet the State Building Code requirements without a license issued pursuant to this article.

(b) Subsection (a) shall not apply to:

(1) General contractors licensed under Chapter 87 of the General Statutes; or

(2) Persons working under the supervision of a registered architect or professional engineer; or

(3) An owner working upon his own building.

Section 8-42 License Application, Issuance, Duration, Revocation.

(a) Application for license under this article shall be made to the administrator on a form provided by the administrator and shall contain at least the following information:

(1) The name and principal business address of the applicant;

(2) The name, address, date of birth, and social security number of

a. The applicant, if an individual.

b. Each partner, if the applicant is a partnership.

c. Each corporate officer, if the applicant is a corporation.

(3) A complete record of the convictions of a felony or a crime involving dishonesty, fraud, or deceit by the applicant or any employee, partner, or officer of the applicant, whether in this state or any other jurisdiction;

(4) A complete record of the circumstances under which a license of the applicant (or any employee, partner or officer thereof) to do the type of work authorized by the license issued pursuant to this article has been suspended or revoked within the past three years.

(b) The application shall be accompanied by a fee of \$10.00.

(c) The administrator shall issue the license within fifteen days after receiving the completed application, unless he finds that the applicant or any employee, partner, or officer thereof:

(1) Has been convicted within the last three years of a felony or a crime involving dishonesty, fraud, or deceit, whether in this state or any other jurisdiction; or

(2) Within the last three years has been refused a license to do the work authorized by the licensing provision of this article, or has had such a license suspended or revoked by any local, state, or federal agency and such agency has not subsequently granted or restored the license; or

(3) Has knowingly made a false statement in the application; or

(4) Has failed to post the bond or other security required by Section 8-44.

(d) Licenses issued pursuant to this article shall be valid for an annual period running from July 1st until the following June 30th. Renewal of such licenses shall be pursuant to the same procedures and requirements set forth for initial issuance.

(e) A license may be revoked by the administrator, after notifying the licensee and giving him an opportunity to be heard, upon a showing that any of the grounds for denying a license (as set forth in subsection (c)) then exist.

Section 8-43 Appeals.

If one administrator refuses to issue a license or revokes a license, the applicant or licensee may appeal this decision to the Board of Adjustment. The burden of justifying the refusal or

revocation shall be on the administrator. The decision of the administrator may be reversed by a majority vote of those present at the hearing (assuming a quorum is present).

Section 8-44 Bond Required.

Before a license may be issued to an applicant, the applicant shall post with the town a license bond or other sufficient security in the amount of one thousand dollars (\$1,000.00), in a form approved by the town attorney, conditioned upon the applicant's complying during the term of his license with the provisions of this ordinance and with the terms of any building permit issued to install insulation or other materials or energy utilization equipment designed or intended to meet the State Building Code.

Section 8-45 Penalties and Remedies.

(a) A violation of Section 8-41 shall constitute a misdemeanor, punishable as provided in G.S. 14-4.

(b) A violation of Section 8-41 shall also subject the offender to a civil penalty of twenty five dollars (\$25.00). If the offender fails to pay this penalty within ten days after being cited for a violation, the penalty may be recovered by the town in a civil action in the nature of debt.

(c) Each day that a violation continues after notification that such violation exists shall constitute a separate offense for purposes of the penalties and remedies specified in this section.

(d) This article may be enforced by any appropriate equitable action.

(e) This ordinance may be enforced by any one, all, or any combination of the remedies authorized by this section.

Sections 8-46 through 8-49 Reserved.

ARTICLE VI (Amend. 7/14/81)

TAXICABS

Section 8-50 Definitions.

Unless otherwise specifically provided or unless otherwise clearly required by the context, the following words and phrases shall have the meaning indicated when used in this article.

- (1) Administrator. The chief of police or any other person designated by the manager to perform the responsibilities assigned by this chapter to the administrator.
- (2) Conduct a taxicab business. A person conducts a taxicab business when he operates one or more taxicabs.
- (3) Taxicab. A motor vehicle that transports passengers for hire and has a capacity of not more than nine passengers.

Section 8-51 Privilege License Required.

(a) No person may conduct a taxicab business having a permanent office, headquarters, or similar place of business within the town unless and until such person satisfies the requirements of this article and has been issued a privilege license under Subchapter I of this chapter. .

(b) The privilege license to operate a taxicab business shall not be issued unless and until the applicant:

- (1) Pays to the town the sum of fifteen dollars for each vehicle operated as a taxicab, as authorized by G.S. 20-97; and
- (2) Presents sufficient proof of financial responsibility (i.e., a certificate of liability insurance) as required by G.S. 20-280; and
- (3) Demonstrates that all drivers of all taxicabs operated by the business have been issued an operator's permit pursuant to Section 8-52.

(c) A privilege license issued under this section may be revoked, in accordance with the procedures in Subchapter I of this chapter, for any reason that would have justified denial of the license.

Section 8-52 Operator's Permit.

(a) No person may operate a motor vehicle as a taxicab without a taxicab operator's permit issued by the administrator in accordance with this section.

(b) An applicant for a taxicab operator's permit shall be required to furnish to the administrator, on forms prescribed by the town or otherwise, information deemed reasonably necessary by the administrator to determine whether the permit should be issued according to the criteria set forth in subsection (c).

(c) The taxicab operator's permit shall be issued unless the administrator determines that the permit should be refused for one of the following reasons:

- (1) Conviction of a felony against this State, or conviction of any offense against another state which would have been a felony if committed in this State;
- (2) Violation of any federal or state law relating to the use, possession, or sale of intoxicating liquors or narcotic or barbiturate drugs;
- (3) Addiction to or habitual use of intoxicating liquors or narcotic or barbiturate drugs;
- (4) Violation of any federal or State law relating to prostitution; or
- (5) Habitual violation of traffic laws or ordinances.

(d) The taxicab operator's permit may be revoked by the administrator for any reason that would have justified denial of the permit as specified in subsection (c). Before revocation, the administrator shall notify the permit holder of his intent to revoke the permit and the reasons therefor and shall afford the permit holder a reasonable opportunity to appear and be heard on the question of such revocation. After the hearing, the administrator shall notify the permit holder in writing of his decision and the reasons therefor.

Section 8-53 Taxicabs to Display Required Information.

Any person who conducts a taxicab business, as well as the driver of any taxicab, shall be responsible for ensuring that the following items are displayed within the taxi so as to be visible to passengers:

- (1) The taxicab operator's permit required by Section 8-52;
- (2) A photograph of the driver; and
- (3) The schedule of fares.

Section 8-54 Waiver of Certain Requirements.

(a) Notwithstanding the other provisions of this article, a privilege license may be issued to an applicant who does not comply with the provisions of Subdivisions 8-51(b)(2) and (3) if the

applicant has received a privilege license from another local government where the headquarters of such applicant lies and, in the opinion of the police chief, the requirements of the foregoing subdivisions are thereby rendered superfluous.

(b) The police chief may waive the requirements of Section 8-52 with respect to any taxicab operators employed by a taxicab business that is licensed by another municipality if he finds that such other municipality employs procedures adequate to ensure that persons who could not receive operators' permits under Section 8-53 are also prohibited from operating taxicabs by such other municipality.

Sections 8-55 through 8-59 Reserved.

ARTICLE VII (Amend. 1/26/82)

COMMERCIAL SOLICITATION

Section 8-60 Definitions.

Unless otherwise specifically provided or unless clearly required by the context, the following words and phrases shall have the meaning indicated when used in this article:

- (1) Administrator. The Chief of Police of the Carrboro Police Department, or the Chief's designee.
- (2) Door-To-Door Salesman or Solicitor. Any person who, for himself or as an agent for any other person or entity not otherwise exempt from this Article, without prior appointment with the occupants thereof, travels from dwelling to dwelling or place to place selling or offering for sale or taking orders for the sale of any services, goods, wares magazines, periodicals, or other merchandise of any kind.
- (3) Itinerant merchant. A person classified as an itinerant merchant under former G.S. 105-53, now repealed.
- (4) Peddler. A person classified as a peddler under former G.S. 105-53, now repealed.

Section 8-61 Commercial Solicitation Permit Required.

(a) Pursuant to authority granted by, *inter alia*, General Statutes 160A-178, and for the purpose of protecting the public from fraudulent, unfair or unsafe practices of some individuals or entities engaged in door-to-door commercial solicitation, the Town has adopted the following regulations.

(b) The requirements of subsection (a) shall apply only to door-to-door salesmen or solicitors, itinerant merchants and peddlers who:

- (1) Were exempt from obtaining a privilege license under former G.S. 105-53 because such persons are engaged in the sale of books, periodicals, printed music, ice, wood for fuel, fish, beef, mutton, pork, bread, cakes, pies, dairy products, eggs, livestock, or other articles produced by the vendor offering them for sale; or
- (2) Are exempt from obtaining a privilege license because such persons are engaged exclusively in interstate commerce by soliciting orders for goods, wares, magazines, periodicals, or other merchandise produced outside the State of North Carolina.

(c) A permit issued under this article shall be valid for the period specified in the permit, which period shall be the period the permittee intends to conduct business within the town. Permits may be issued for a period of up to sixty (60) consecutive calendar days, with one renewal period of up to sixty (60) additional, consecutive days.

Section 8-62. Application Requirements; Grounds for Denial.

- (a) To obtain the permit required by Section 8-61 above, a permit applicant shall
- (1) provide a government-issued form of photographic identification;
 - (2) submit to the administrator his or her name, address, telephone number, photograph, and social security number;
 - (3) submit the name, address, and telephone number, taxpayer identification number and/or employer identification number, of any company, firm, organization, or person for whom the applicant is acting as an agent or employee;
 - (4) state the type of service(s) or product(s) being sold or offered;
 - (5) state the time period (not to exceed sixty [60] consecutive calendar days) for which the permit is sought;
 - (6) provide a statement of whether the applicant has been convicted of any misdemeanor or felony in any jurisdiction in the past ten [10] years, and if so, provide details for each conviction;
 - (7) state his or her date of birth, place of birth, height, weight, eye color, hair color and/or other unique identifying information (scars, tattoos, etc.); and
 - (8) pay the permit application fee and security deposit in such amount(s) as may be established by the Town.

(b) Upon receipt of a complete application, the administrator shall conduct a criminal background check through the North Carolina State Bureau of Investigation's Division of Criminal Investigation Network and shall otherwise investigate the applicant's background. Prior to denial or termination of a permit based upon criminal history record information, the administrator shall verify the existence of an applicant's criminal record either by obtaining a certified public record or by submitting the applicant's fingerprints to the Criminal Information and Identification Section of the North Carolina State Bureau of Investigation for verification that the criminal record belongs to the applicant.

(c) The administrator shall issue the permit requested under this article unless he finds that:

- (1) Within the preceding ten years (for felonies) or five years (for misdemeanors), the applicant has been convicted of a Class A, B, C, D, E, F, or H felony as defined by G.S. 14-1.1 et. seq., or of any crime involving moral turpitude, or other crimes of like nature; or
- (2) The applicant is not in fact a legitimate agent or employee of the company, firm, organization, or person that the applicant purports to represent; or
- (3) Any of the information provided by the applicant pursuant to subparagraph (a) above is false or incorrect; or
- (4) The applicant has had a permit revoked within one year prior to the date of application.

(d) Upon completion of the investigation, the administrator shall forthwith either (i) issue the permit or (ii) deny the permit and provide the applicant with a written statement of the reasons for denial.

(e) An applicant to whom a commercial solicitation permit has been issued shall have such permit on his person, available for display, at all times while engaging in commercial solicitation activities.

Section 8-62.1 Revocation of Permit

(a) If after a permit has been issued, the administrator (i) finds that any of the information provided pursuant to Section 8-62(a)(2), (a)(3), (a)(4), (a)(6) or (a)(7), is incorrect, or (ii) makes any finding described in Section 8-62(c)(1) through (3) above, or (iii) determines that it is in the interest of public health or safety to do so, the administrator shall revoke the permit.

(b) If the administrator determines that a permit should be revoked, he shall give the permittee written notice of such determination, which notice shall state the reason(s) for revocation. Such revocation shall become effective two (2) days after the date such written notice is given.

(c) The permittee may request a conference with the administrator in writing. Such request for a conference shall be made within ten (10) days of permittee's receipt of the notice of revocation. If the permittee fails to request a conference, the administrator's determination shall become final.

(d) If the permittee requests a conference, the administrator shall conduct the conference within five (5) business days of the request. The administrator shall notify the

permittee in writing of his determination on the permittee's revocation conference within two (2) business days after completion of the conference.

(e) The permittee may appeal the administrator's written determination to the Board of Aldermen by submitting a written notice of appeal to the administrator with a copy to the Town Clerk, within five (5) business days of the administrator's written determination.

(f) The Board of Aldermen shall hear and decide the appeal within thirty (30) days after the Notice of Appeal is filed, unless the hearing is continued for good cause. The permittee/applicant shall be given at least five (5) business days' notice of the date and time of hearing and shall be served with a written copy of the Board's decision following the hearing. The burden of establishing the correctness of the administrator's decision to revoke the permit shall be on the administrator.

(g) Unless the administrator expressly suspends or delays enforcement of the permit revocation, the permit revocation shall be effective during any appeal.

(h) If the permittee fails to request a conference with the administrator pursuant to subparagraph (c) above, then the administrator's revocation determination becomes final.

Section 8-63 Exemptions.

The permit requirements of this Article shall not apply to:

- (1) Delivery of goods or services which have been ordered before delivery;
- (2) Circulation of petitions for signatures or lawful distribution of advertising materials, flyers, or materials expressing views on political, social or religious matters;
- (3) Lawful promotion or expression of views concerning political, social, religious and other matters;
- (4) The solicitation of contributions or pledges thereof for bona fide nonprofit organizations;
- (5) The sale or delivery of goods to a business establishment.

Sections 8-64 through 8-69 reserved.

ARTICLE VIII
(Amend. 10/12/93)

Regulation of Smoking

Section 8-70 Findings and Purpose

- (a) The Board finds that:
- (1) Exposure to environmental tobacco smoke (ETS) is a hazard to the public health. Scientific and medical evidence exists which documents this hazard including the 1992 report of the US Environmental Protection Agency on “Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders” which classified ETS as a Class A carcinogen and as one of the few agents known to cause cancer in man; and
 - (2) Studies have found that breathing ETS is a cause of disease, including lung cancer, in healthy nonsmokers. At special risk are children, elderly people, individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.

(b) The purpose of this article is to protect and promote the public health and welfare by regulating smoking in public places, eating establishments, and places of employment to minimize the public's exposure to ETS. In fulfilling this purpose, this article recognizes that where individual needs conflict, the need to breathe smoke-free air shall have priority.

Section 8-71 Definitions

The following words and phrases shall have the meaning indicated when used in this article.

- (1) “Art/Entertainment Facility” includes, but is not limited to, “theaters” meaning any enclosed facility engaged in the business of exhibiting motion pictures, plays or performances to an audience; concert halls, art galleries, auditoriums, indoor recreational areas, libraries, and museums.
- (2) “Eating Establishment” means an establishment open to the public which is engaged in the business of regularly and customarily selling food, primarily to be eaten on the premises. Eating establishments shall include businesses that are referred to as restaurants, cafeterias, or cafes. Eating establishments shall also include lunch stands, drink stands, grills, bars, lounges, snack bars, fast-food businesses, and other establishments (such as drugstores) which have a lunch counter or other section where food is sold to be eaten on the premises.
- (3) “Educational Facility” means any public or private facility that is used for the principal purpose of providing instruction or training in a trade, craft, business, skill,

or athletic or sports activity; or of providing child care; or primary, secondary, or higher education.

- (4) “Employee” means any person who is employed by any employer for compensation, direct or indirect.
- (5) “Employer” means any person, business, partnership, corporation, or non-profit entity, who employs the services of one or more individual persons.
- (6) “Enclosed Area” means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passageways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, or similar structures.
- (7) “Health Care Facility” means any facility associated with the rendition of health care, including, but not limited to, laboratories, hospitals, public and private health care facilities.
- (8) “Place of Employment” means any enclosed area where an employee is engaged to work for an employer, except that:
 - a. A private residence is not a “place of employment” unless it is used as a licensed child care facility, licensed health care facility, or domiciliary home.
 - b. The dining area of an eating establishment is not a “place of employment.”
- (9) “Private Club” means an establishment which maintains selective members, is operated by the membership, does not provide food or lodging for pay to anyone who is not a member or a member’s guest, and is not profit oriented.
- (10) “Private Residence” includes a resident’s room within a rest home or long-term care facility, a dormitory room, or a rooming house, or homeless shelter as long as the room is not shared by a non-smoker.
- (11) “Public place or area” means any enclosed area to which the public is invited or in which the public is generally permitted. The term does not include private residences, places generally restricted to employees, private offices, or other areas not generally available to the public except when accompanied by a person in charge of such premises or one who is employed by such person.
- (12) “Smoking” means inhaling, exhaling, burning, or carrying any lighted cigar, lighted cigarette, or other lighted tobacco product in any manner or in any form.
- (13) “Sports Facility” means an enclosed sports facility including, but not limited to, sports pavilions, bowling alleys, gymnasiums, health spas, swimming pools, roller

and ice skating rinks, where members of the general public assemble either to engage in or witness physical exercise or events.

Section 8-72 Smoking Prohibited In Public Places

(a) Smoking is prohibited within the enclosed areas of public places. Such public places include, but are not limited to, the following:

- (1) Elevators
- (2) Public rest rooms
- (3) Polling places
- (4) Lobbies, hallways, and other common areas in apartment buildings, condominiums, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- (5) Busses and taxicabs
- (6) Public areas of art/entertainment facilities.
- (7) Public areas of retail stores, shopping malls, service establishments, offices, and other businesses or commercial facilities.
- (8) Public areas of sports facilities.
- (9) Public areas of health care facilities.
- (10) Public areas of educational facilities, including classrooms, gymnasiums, auditoriums, and other common areas.

(b) The smoking ban set forth in subsection (a) shall not apply to eating establishments of those areas within places of employment that are not generally open to the public.

Section 8-73 Smoking In Eating Establishments

(a) All eating establishments with a seating capacity of 30 or more patrons shall designate nonsmoking areas in accordance with the provisions of this subsection. The seating capacity of any bar or lounge located within the dining area of an eating establishment shall be included in the calculation of the total capacity of the eating establishment.

- (1) Eating establishments with an enclosed seating capacity of 30 or more patrons shall have posted a conspicuous sign or signs clearly stating that a nonsmoking area is available.

- (2) The nonsmoking area shall be separate and contiguous, containing at all times one-third (1/3) or more of the seating capacity of the dining area. Effective July 1, 1994, the nonsmoking area shall contain one-half (1/2) or more of the seating capacity of the dining area. Effective July 1, 1995, smoking will not be permitted in the dining area unless a designated smoking area has a separate and adequate heating, ventilation, and air conditioning system (HVAC) according to current standards established by the American Society of Heating, Refrigeration, and Air Conditioning Engineers.

(b) Eating establishments with a seating capacity of fewer than 30 patrons shall designate the entire facility as either smoking or nonsmoking and post signage to that effect at the patron entrance. Effective July 1, 1995, all public eating establishments with fewer than 30 seats shall prohibit smoking in the dining area unless a designated smoking area has a separate and adequate heating, ventilation, and air conditioning system (HVAC) according to current standards established by the American Society of Heating, Refrigeration, and Air Conditioning Engineers.

(c) Notwithstanding any other provision of this article, any owner, operator, manager or other person who controls any eating establishment may declare the entire eating establishment as a nonsmoking eating establishment at any time.

Section 8-74 Smoking In Places of Employment

(a) Employers shall make reasonable efforts to provide a smoke-free environment for nonsmoking employees. Each employer shall have the right to designate any place of employment as a nonsmoking place of employment.

(b) Employers may define designated smoking areas for employees within their places of employment in accordance with this article. Effective July 1, 1995, any and all smoking areas in places of employment, other than individual, enclosed offices, must be (i) outside of the facility, or (ii) serviced by a separate and adequate heating, ventilation, and air conditioning (HVAC) system according to current standards established by American Society of Heating, Refrigeration, and Air Conditioning Engineers so as to provide a smoke-free environment for nonsmoking employees in enclosed buildings.

Section 8-75 Signage

(a) The owner of every public place or eating establishment where smoking is prohibited under the provisions of Sections 8-72 and 8-73 shall ensure that signs are conspicuously posted at the entrance to or within such places to give reasonable notice of the smoking ban to persons entering or occupying such places. Such signs shall have letters at least one inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

(b) No person may remove or deface any placard required to be erected by or under the authority of this section.

Section 8-76 Exclusions

The provision of this article shall not apply to private residences, private clubs, or properties owned, leased, or occupied by the federal, state, county or town governments.

Section 8-77 Enforcement

(a) The proprietor, employer, or other person in charge of an eating establishment, public place or place of employment where smoking is regulated shall make reasonable efforts to prevent smoking in nonsmoking areas.

(b) No person may engage in smoking in violation of the provisions of this article. However, a violation of the provision of this article shall not subject the violator to the penalties set forth in Section 8-80 unless the violation occurs in an area where signs have been posted in accordance with Section 8-75 or the

violator persists in smoking after having been informed by any person that smoking is unlawful in the location in question.

Article IX
(Amend. 7/31/08)

TOWING OF MOTOR VEHICLES FROM PRIVATE PROPERTY

Section 8-78 Applicability

The provisions of this article shall apply only to persons who tow a motor vehicle from private property at the request of a person who is not the owner or operator of the motor vehicle that is towed.

Section 8-78.1 Limitation on Fees for Towing from Private Property

No person who tows or removes a motor vehicle from private property may charge the owner or operator of the vehicle removed an amount in excess of one hundred dollars (\$100.00) for the towing or removal. No person who stores a motor vehicle so removed may charge the owner or operator of the vehicle a storage fee in excess of twenty dollars (\$20.00) per day. No storage fees shall be charged for the first twenty-four (24) hour time period from the time the vehicle is initially removed from the private property. The fees referred to herein shall be all inclusive; no additional fees may be charged for the use of particular equipment or services. The towing or storage firm must accept payment by a credit, debit card in addition to cash. The towing or storage firm must provide a receipt for each payment at the time the payment is made.

Section 8-78.2 Report to Police Department

Within thirty (30) minutes after a vehicle has been placed at a storage site pursuant to this Article, the tow truck operator who removed the vehicle shall report by telephone to the Carrboro Police Department that the vehicle has been removed, a license tag number and description of the vehicle, and its present location.

Section 8-78.3 Release Prior to Tow

If, prior to the tow truck and vehicle having left the private property at which the vehicle was parked, the owner or operator or other person able to move the vehicle returns to the property, the tow truck operator shall release the vehicle to that person. No fee may be charged unless the vehicle has been attached to the tow truck prior to the arrival of the person, in which case a fee not in excess of fifty dollars (\$50) may be charged.

Section 8-79 Reserved

ARTICLE IX (Amend. 1/14/82)

PENALTIES AND REMEDIES

Section 8-80 Penalties and Remedies.

(a) A violation of the following sections of Subchapter II shall constitute a misdemeanor, punishable as provided in G.S.14-4: 8-41, 8-51(a), 8-52, 8-53, 8-61(a), 8-62(a) and (b), 8-63 through 8-66, and 8-70 through 8-77. (Amend. 10/12/93)

(b) A violation of the provisions listed in subsection (a) shall also subject the offender to a civil penalty of twenty five dollars (\$25.00). If the offender fails to pay this penalty within ten days after being cited for a violation, the penalty may be recovered by the town in a civil action in the nature of debt.

(c) Each day that a violation continues after notification that such violation exists shall constitute a separate offense for purposes of the penalties and remedies in this section.

(d) This subchapter may be enforced by any appropriate equitable action.

(e) This subchapter may be enforced by any one, all, or any combination of the remedies authorized by this section.

SCHEDULE A
SCHEDULE OF EXEMPT BUSINESSES

Amusements - manufacturing, selling, leasing or distributing moving picture films. (G.S. 105-36).

Attorneys, physicians, land surveyors, engineers, architects, photographers real estate brokers, accountants, morticians, and similar professionals. (G.S. 105-41).

Private detective services. (G.S. 105-42).

Alarm system businesses. (G. S. 105-51.1).

Persons engaged in the business of reporting the financial standing of persons, firms, and corporations. (G.S. 105-57).

Persons operating, maintaining, or placing on location music machines. (G.S. 105-65).

Operators or distributors of merchandise dispensing machines. (G.S. 105-65.1).

Installment paper dealers. (G.S. 105-83).

Wholesale distributors of motor fuels. (G.S. 105-99).

Certain cooperative associations. (G.S. 105-102.1).

Banks. (G.S. 105-102.3).

Dealers in office machines, home appliances, burglar alarms, smoke alarms or other warning devices. [G.S. 105-102.5(e)]

Businesses that sell or lease computers [G.S. 105-102.5)

Soft drink manufacturers and bottlers. [G.S. 105-113.50(a)]

Railroads. (G.S. 105-115).

Utility companies (electrical power, gas, water, and sewer). (G.S. 105-116).

Telephone companies. (G.S. 105-120).

Bus companies. (G.S. 105-120.1).

Insurance companies and associations. (G.S. 105-228.10).

Building and loan associations. (G.S. 105-228.25).

