

ORDINANCE NO. 3834

AN ORDINANCE to amend and reordain Article A (GENERAL PROVISIONS), Article B (REGULATORY LICENSES), Article C (NONREGULATORY LICENSES) and Article D (BUILDERS AND DEVELOPERS) of Chapter 1 (BUSINESS LICENSES), Title 9 (LICENSING AND REGULATION), of The Code of the City of Alexandria, Virginia, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Article A of Chapter 1, Title 9 of The Code of the City of Alexandria, Virginia, 1981, shall be, and the same hereby is amended by repealing Sections 9-1-17, 9-1-30, 9-1-35 and 9-1-41.

Section 2. That Article A of Chapter 1, Title 9 of The Code of the City of Alexandria, Virginia, 1981, shall be, and the same hereby is, amended by amending Sections 9-1-2 through 9-1-15, Sections 9-1-18 through 9-1-25 and Sections 9-1-27, 9-1-28, 9-1-29, 9-1-31, 9-1-32, 9-1-34, 9-1-39, 9-1-40 and 9-1-42, and adding new Sections 9-1-6.1, 9-1-7, 9-1-9.1, 9-1-10.1, 9-1-43, 9-1-44 and 9-1-45, to read as follows:

Sec. 9-1-2 Definitions.

The following words and phrases, when used in this chapter, shall have the following assigned meanings:

(1) Amusements. Any entertainment or amusement or the operation or use of property for the provision of entertainment or amusement for compensation, including, but not limited to, arcades or buildings devoted to general amusement or entertaining, auditoriums, ball-throwing establishments, billiard parlors or poolrooms, bowling alleys, coliseums, dance bands, exhibition or performance, furnishing music for dancers, gardens, golf driving ranges, miniature golf establishments, miniature railroads, movie theaters, museums, parks or athletic fields, performers, renting or furnishing of horses or ponies, skating rinks, swimming pools or swimming clubs, tennis courts, theaters and "slot machines," as that term is defined in this chapter.

(2) Base Year. The calendar year preceding the license year.

(3) Builder or developer. Any person engaged in the improvement or development, for sale or rent, of any real property owned by, leased by or otherwise controlled by the person. The term "builder or developer" includes persons performing the tasks of a contractor, as that term is defined in this chapter, but doing so on their own account.

(4) Business. A course of dealing which requires the time, attention and labor of the person so engaged for the purpose of earning a livelihood or profit. The term "business" implies a continuous and regular course of dealing, rather than an

irregular or isolated transaction. Whether a person is engaged in a business or simply is undertaking an irregular or isolated transaction is a factual determination to be made by the director. A person may be engaged in more than one business. The following acts shall create a rebuttable presumption that a person is engaged in a business: (i) advertising or otherwise holding oneself out to the public as being engaged in a particular business; or (ii) filing tax returns, schedules and documents that are required only of persons engaged in a business. The term "business" includes, but is not limited to, trades, professions, occupations, callings, vocations and similar activities and commerce.

(5) Consultant. Any person accepting or offering to accept orders or contracts to provide professional services, financial services or repair, personal or business services. A consultant shall be taxed under this chapter in accordance with the licensable privilege in which he is engaged.

(6) Contractor. Any person accepting or offering to accept orders or contracts for (i) doing work on or in building or structure requiring the use of paint, stone, brick, mortar, cement, wood, wallpaper, structural iron or steel, sheet iron, galvanized iron, metallic piping, tin, lead or other metal or other building materials, (ii) doing electrical work on or in a building or structure, (iii) doing any paving or curbing on sidewalks or streets, public or private property, requiring the use of asphalt, brick, stone, cement, wood or any composition, (iv) excavating earth, rock or material for foundations or any other purpose, (v) cutting, trimming or maintaining rights of way, (vi) constructing any sewer of stone, brick, concrete, terra cotta or other material, (vii) caring for plots in cemeteries, (viii) rebuilding, remodeling, repairing, wrecking, razing or demolishing, or moving a building or structure, (ix) drilling, boring or digging a well, (x) installing, maintaining or repairing neon signs or heating or air conditioning equipment, or (xi) engaging in the business of plumbing and steam fitting. The term "contractor" shall also include any person doing any work on the subjects set forth in the preceding sentence under an employment agreement or arrangement, but the term shall not include persons who are employed directly by a contractor duly licensed as such. The term "contractor" shall not include any person deemed by the director to be a "consultant."

(7) Definite place of business. A location, including an office, at which occurs a regular and continuous course of dealing for thirty consecutive days or more. A definite place of business for a person engaged in the business of renting real property, for the purposes of section 9-1-88 of this code, shall include, but is not limited to, real property leased to another. A person's residence shall be deemed to be a definite place of business if there is no definite place of business maintained

elsewhere, and the person is not licensable as a peddler or itinerant merchant.

(8) Direct seller. Any person who engages in the business of selling or soliciting the sale of consumer products primarily in private residences, who maintains no public location for the conduct of such business, who receives remuneration for such activities, with substantially all of such remuneration being directly related to sales or other sales-oriented services, rather than to the number of hours worked, and who performs such activities pursuant to a written contract between such person and the person for whom the activities are performed and such contract provides that such person will not be treated as an employee with respect to such activities for federal tax purposes.

(9) Director. The director of the department of finance of the city and any duly authorized representative.

(10) Financial services. Any services for compensation by a credit agency, by an investment company, by a broker or dealer in securities and commodities, or by a security or commodity exchange, as those terms are defined in the Code of Virginia (1950) and the securities and exchange laws of the United States, unless such services are otherwise provided for in this chapter. The term "financial services" includes, but is not limited to, the buying of installment receivables, chattel mortgage financing, consumer financing, credit card services, credit unions, factoring, financing of accounts receivable, installment financing, inventory financing and working capital financing. Those engaged in the rendering of financial services include, without limitation, industrial loan companies, loan or mortgage brokers, loan or mortgage companies, safety deposit box companies and securities and commodities brokers or dealers.

(11) Gross receipts. The whole, entire, total receipts attributable to the licensed privilege, without deduction, except as may be limited by other provisions of this chapter or by provisions of the Code of Virginia (1950).

(12) License year. The calendar year for which a license is issued for the privilege of engaging in a business.

(13) Local resident. Any persons having a place of abode in the city, irrespective of the intention of the person to return to some other residence outside of the city at some future time.

(14) Operator. Any person selling, leasing, renting or otherwise furnishing or providing a coin-operated machine or device operated on the coin-in-the-slot principal; provided, that this term shall not include a person owning fewer than three coin-operated machines and operating such machines on property owned or leased by such person.

(15) Person. Any individual, firm, partnership, limited liability company, corporation, company, association or joint stock association. The term shall include any trustee, receiver, assignee or personal representative thereof carrying on or continuing a business, but shall not include a trustee, receiver or personal representative duly appointed by a court to liquidate assets for immediate distribution, or a sheriff or deputy sheriff, selling under authority of process or writ of a court or justice.

(16) Professional services. Any service rendered by a person professing knowledge of some area or department of science or learning, gained by a prolonged course of specialized instruction and study. The term implies attainments in professional knowledge, as distinguished from a skill or a trade. Professional services include, but are not limited to, those services rendered by accountants, architects, dentists, engineers, land surveyors, lawyers, practitioners of any healing arts, surgeons and veterinarians.

(17) Purchases. All goods, wares and merchandise received for sale at a definite place of business during the calendar year preceding the license year for which a license is applied, and all goods, wares and merchandise manufactured by a wholesale merchant and sold or offered for sale in the state as merchandise; provided, that this term shall not apply to manufacturers taxed on capital by the Commonwealth of Virginia, who offer for sale at wholesale, at the place of manufacture, goods, wares and merchandise manufactured by them.

(18) Repair, personal and business services. Any service rendered for compensation not specifically classified as a financial, professional or real estate service pursuant to this chapter and not rendered in connection with any other business specifically classified pursuant to this chapter.

(19) Research and development. A two-stage procedure focusing on new products or processes or improvements to existing products or processes, and entailing (i) a systematic study or search directed toward new scientific knowledge or new understanding of a particular subject and (ii) the gradual transformation of the new knowledge or new understanding garnered from the research stage into a tangible product or process.

(20) Retail merchant. A person who sells goods, wares or merchandise to others at retail only, i.e., not for resale and not at wholesale to institutional, commercial, or industrial users.

The term "retail merchant" shall include, but is not limited to, filling stations, restaurants, operators of vending machines and persons engaged in the short-term rental business, as defined in section 58.1-3510 of the Code of Virginia (1950). The term

shall also include direct sellers who sell goods, wares and merchandise at retail only and not for resale, and manufacturers, mills and processors selling at retail the goods manufactured or produced.

(21) Slot machine. A coin-operated amusement-type machine or device operated on the coin-in-the-slot principle, including musical machines and musical devices operated by the insertion of coins or tokens.

(22) Vending machine. A machine or device that sells goods, wares or merchandise or provides services and that is operated by the insertion of coins or tokens or is operated on the coin-in-the-slot principle. The term "vending machine" shall not include machines used solely for the purpose of selling individual sanitary drinking cups or sanitary drinking cups and natural water, or machines vending sanitary napkins, which machines shall not be subject to tax pursuant to this chapter.

(23) Wholesale merchant. A person who sells goods, wares or merchandise to others for resale only and every person who sells to institutional, commercial or industrial users. The term "wholesale merchant" shall include, but not be limited to, direct sellers who sell to others for resale.

Sec. 9-1-3 Director to administer and enforce chapter.

Unless otherwise provided in this chapter, the director shall administer and enforce the provisions of this chapter.

Sec. 9-1-4 License year.

Except where otherwise herein specifically provided, the license year shall begin on January 1 in each year and shall end on December 31 of each year.

Sec. 9-1-5 License and tax required to engage in a business in the city; unlawful to engage in business without license.

Any person who engages in a business identified in article B of this chapter in the city shall, except as otherwise provided in this chapter, obtain a business license for the business and pay an annual license tax for the privilege of conducting the business in the city. Any person who engages in a business identified in article C of this chapter in the city and who, in connection with that business, maintains a definite place of business in the city shall, except as otherwise provided in this chapter, obtain a business license for the business and pay an annual license tax, based upon the gross receipts of the business, for the privilege of conducting the business in the city. It shall be unlawful for any person to engage in any business identified in article B or article C of this chapter in

the city without holding a valid license if and when such a license is required by this chapter. A valid license is one that has been lawfully issued and remains unsuspended, unrevoked and not otherwise terminated or expired. It shall be unlawful for any person to engage in any business identified in article B or article C of this chapter in the city without paying the business license tax that is levied by this chapter.

Sec. 9-1-6 Levy.

(a) For the privilege of engaging in a business in the city, there are hereby levied upon, and there shall be assessed against and collected from, the person engaging in the business an annual license tax as set forth in this chapter, which license tax shall be for the support of the city government, the payment of the city debts and interest thereon, and for other municipal purposes.

(b) Except as provided in section 9-1-18 of this chapter, any license tax which is based in whole or in part on gross receipts shall be measured by the gross receipts with situs in the city, under section 9-1-7 for the license year next preceding the then current license year.

Sec. 9-1-6.1 Levy in the case of builder or developer in business solely to improve, develop or redevelop a single project for sale.

Any builder or developer who undertakes a project in the city consisting of the improvement, development or redevelopment of real property for sale, and who intends to undertake only that project during its lifetime, shall annually procure a license in the manner set forth in this chapter, but shall not be required to pay any license tax until the project is completed and gross receipts from the sale of the improved, developed or redeveloped property are received; provided, that the builder or developer (i) prior to commencing the project deposits with the director a bond in favor of the city as obligee which insures the proper filing of records and payment of taxes, in such form and amount and with such surety as shall be acceptable to the director, and (ii) at such times as directed by the director, provides the director with the necessary records to establish the gross receipts from the project.

Sec. 9-1-7 Situs of gross receipts.

(a) Whenever the license tax imposed by this chapter is based upon gross receipts, it shall be measured solely by those gross receipts with situs in the city.

(b) Gross receipts with situs in the city shall be gross receipts attributable to the exercise of a licensable privilege at or from a definite place of business within the city. In the

case of activities conducted outside of a definite place of business that is located in the city, whether conducted within or beyond the city, such as during a visit to a customer location, the gross receipts arising from such activities shall be attributed to the definite place of business within the city if the activities are initiated, directed, controlled, supervised or otherwise managed from that place of business.

(c) If a licensable privilege is exercised at or from more than one definite place of business, at least one of which is located within the city and one or more of which are located beyond the city, and it is impractical or impossible to determine to which definite places of business the gross receipts arising from the exercise of the privilege should be attributed, such gross receipts shall be apportioned between or among the different places of business on the basis of the relative personnel payrolls of each definite place of business.

(d) Under no circumstances shall the gross receipts arising from the exercise of a licensable privilege be attributed or apportioned to a definite place of business within the city unless some activities associated with the exercise of the privilege occurred at, or were initiated, directed, controlled, supervised or otherwise managed from, such definite place of business. Gross receipts shall not be attributed or apportioned to a definite place of business within the city solely because a jurisdiction in which another definite place of business is located and to which the receipts are properly attributed or apportioned does not impose a tax on gross receipts.

Sec. 9-1-8 Procedure for obtaining licenses.

All persons subject to this chapter shall make application for licenses to the director at his office in the city hall. Persons applying for a license shall furnish the director in writing their name the trade name of their business, their correct residence, the nature of the business to be pursued, and the address of the location or the place in the city where the business is to be pursued.

Sec. 9-1-9 Separate license for each definite place of business; exception.

No license shall be issued under the provisions of this chapter to cover more than one definite place of business. A separate license shall be obtained for each definite place of business of a business for which a license is required under the provisions of this chapter. Nothing in this chapter shall prevent two or more businesses from being conducted by the same or separate persons at the same location.

Sec. 9-1-9.1 Stickers to evidence payment of tax by operators of slot machines and vending machines.

The director shall annually provide stickers of such colors and design as he may designate to operators of slot machines and vending machines upon payment by such operators of the required license tax. The director shall issue and deliver one sticker for each slot machine and vending machine for which the operator has paid the required license tax, which sticker shall be securely attached to each slot machine or vending machine on which the tax has been paid, so that the same may be easily seen throughout the license year.

Sec. 9-1-10 When payable generally.

(a) All license taxes levied by this chapter, except as otherwise provided in this chapter, shall become due and payable on or before January 31 of each license year.

(b) Whenever a person shall enter into a business, after January 1 of the license year, any license tax levied upon the business shall become due and payable at the time when such person shall commence business.

Sec. 9-1-10.1 Quarterly payment when tax is based on gross receipts

(a) In all cases where a license tax is based in whole or in part upon gross receipts, and the tax on such gross receipts is equal to or exceeds the sum of \$1,000, exclusive of any and all other types of tax, the tax may be paid in four equal installments during the license year, the first payment to be made on or before January 31, the second on or before May 1, the third on or before August 1 and the fourth on or before November 1, provided the taxpayer elects to do so by making his application for a license and paying the first installment and any tax unpaid and owing for any previous license year on or before January 31 of the license year for which the application is being made.

(b) Upon a default in the payment of any license tax installment when it becomes due, the amount of such installment and all remaining installments shall be delinquent and shall become due and payable immediately, in addition to the applicable late payment penalty and interest.

(c) There is hereby imposed on payments made on installment a charge which shall be calculated as follows:

- (1) first installment: none;
- (2) second installment: five percent of payment made;

(3) third installment: six percent of payment made;

(4) fourth and final installment: nine percent of payment made.

#### Sec. 9-1-11 Exemptions.

(a) Notwithstanding any provision of this chapter to the contrary, the license tax levied in accordance with this chapter shall not be imposed upon the following businesses:

(1) those exempt from the license tax under section 58.1-3703(B) of the Code of Virginia (1950), as amended;

(2) except as otherwise provided in subsection (c) of this section, those owned by charitable nonprofit organizations which, for the purposes of this subsection are organizations qualified by the Internal Revenue Service under Internal Revenue Code §501(c) and to which contributions are deductible by the contributor under Internal Revenue Code §170; provided, that among educational institutions, only schools, colleges and similar institutions of learning shall be considered to be charitable nonprofit organizations;

(3) those engaged in research and development; and

(4) those with gross receipts totalling less than \$10,000 for the entire tax year.

(b) Any bona fide religious, charitable, benevolent or civic organization, or any group of responsible citizens of the city, desiring to hold a dance where an admission fee is required or where a charge is made for dancing, to hold a breakfast, lunch, dinner or supper for which a charge is made or to hold a rummage sale or bake sale, may through a member representative apply to the director for exemption from taxes under this chapter. After such proof as may be necessary, and upon being satisfied as to the character and nature of the applicant and the event, the director shall exempt the applicant from the license requirement and license tax otherwise imposed, so long as all of the fees or proceeds from the event are devoted to and used for bona fide religious, charitable or benevolent purposes, or, in the case of a dance, breakfast, lunch, dinner or supper, no profit is expected.

(c) The exemption granted by subsection (a)(2) shall not apply to any business owned or operated by a charitable nonprofit organization, the conduct of which is not substantially related to the exercise or performance of the organization's charitable, educational, or other purpose or function constituting the basis for its exemption. The determination of whether a business is substantially related to the exempt purpose or function of a charitable nonprofit organization shall be based solely on the

relationship of the business activities to the exempt purpose or function, and the fact that revenue derived from the business may be used for an exempt purpose shall not be considered.

(d) The director shall determine whether a business is exempt under the provisions of this section and whether any portion of the gross receipts of an otherwise exempt entity is not exempt under subsection (c).

(e) The provisions of this section shall not relieve any person of the duty to comply with section 9-1-5.

Sec. 9-1-12 Penalty for failure to pay when due.

(a) There shall be a penalty of 10 percent or \$10, whichever is greater, added to all license taxes levied under the provisions of this chapter that are unpaid on the due dates thereof and are, therefore, delinquent.

(b) In addition thereto, interest at the rate of 10 percent per annum on the delinquent license taxes and the penalty shall commence on the first day following the day such taxes were due.

(c) The penalties and interest shall not be imposed, or if imposed shall be abated, by the director if the failure to pay license taxes when due was not the fault of the licensee. In order to demonstrate lack of fault, the licensee must show that he acted responsibly and that his failure to pay was due to events beyond his control. The term "acted responsibly" means that (i) the licensee exercised the same care that a reasonable and prudent person engaged in business would have exercised in determining the filing obligations for the business, and (ii) the licensee undertook significant steps to avoid or to mitigate his failure, such as promptly rectifying the failure once discovered.

Sec. 9-1-13 Penalty for continuing business, etc., without new license.

(a) If any person shall continue the business after the expiration of a license previously issued, without obtaining a new license, such person shall, if the failure to obtain a new license is continued for one month, be subject to a penalty, in addition to that imposed by section 9-1-12, of 10 percent of the amount of the license tax which was due and payable at the beginning of the month, but such penalty shall in no case be less than \$10. The penalty shall be assessed and paid along with the license tax and shall become a part of the license tax. However, a penalty under this section shall not be imposed or if imposed, shall be abated by, the director if the failure to obtain a new license was not the fault of the licensee. In order to demonstrate lack of fault, the licensee must show that he acted responsibly and that his failure to obtain a new license was due to events beyond his control. The term "acted responsibly" means

that (i) the licensee exercised the same care that a reasonable and prudent person engaged in business would have exercised in determining the filing obligations for the business, and (ii) the licensee undertook significant steps to avoid or to mitigate his failure, such as promptly rectifying the failure once discovered.

(b) If the failure to obtain a new license is continued for a longer period than one month, the person shall be guilty of a misdemeanor and, unless otherwise specifically provided by law, shall on conviction thereof be fined not less than \$5 nor more than \$500 for each separate offense committed after the expiration of the month. The taxes and the penalty provided for in this section shall also be assessed against such person and collection thereof enforced in the manner provided by law for the enforcement of the collection of other taxes.

(c) If the person who has failed to obtain a new business license shall, upon demand, fail or refuse to file with the director the information necessary to enable the director to assess a license tax according to the basis provided by law, the director shall assess such license tax upon the best information he can obtain, adding thereto the penalty prescribed by law.

Sec. 9-1-14 Penalty for beginning business, etc., without license.

(a) If any person shall commence a business without a license required by this chapter, the person shall be guilty of a misdemeanor and unless otherwise specifically provided by law, shall on conviction thereof be fined not less than \$5 nor more than \$500 for each separate offense. Such conviction shall not relieve any such person from the payment of the license tax prescribed by law. If such violation of law is continued for one month, the person shall moreover be subject to a penalty, in addition to that imposed by section 9-1-12, of 10 percent of the amount of the license tax which was due and payable at the time the business was commenced, but such penalty shall in no case be less than \$10. The penalty shall be assessed and paid along with the license tax and shall become a part of the license tax. The collection of such taxes and penalty shall be enforced in the manner provided by law for the enforcement of the collection of other taxes. In such case if the person shall, on demand, fail or refuse to file with the director the information necessary to enable him to assess a license tax according to the basis provided by law, the director shall assess the license tax upon the best information he can obtain, adding thereto the penalty prescribed by law.

(b) A penalty shall not be imposed under this section, or if imposed, shall be abated by, the director if the failure to obtain a license was not the fault of the person commencing the business. In order to demonstrate lack of fault, such person must show that he acted responsibly and that his failure to

obtain a license was due to events beyond his control. The term "acted responsibly" means that (i) the person exercised the same care that a reasonable and prudent person engaged in business would have exercised in determining the filing obligations for the business, and (ii) the person undertook significant steps to avoid or to mitigate his failure, such as promptly rectifying the failure once discovered.

Sec. 9-1-15 Each day's continuance in business without required license a separate offense.

Each day's continuance without a license in the exercise of any business for which a license is required shall constitute a separate violation of this chapter and a separate offense.

Sec. 9-1-18 Beginner's license when tax is based on gross receipts.

(a) Every person beginning a business which is subject to a license tax under the provisions of this chapter based in whole or in part on gross receipts shall estimate the amount of the gross receipts that he will receive between the date of beginning business and the end of the then current license year, and his license tax for the current year shall be computed upon that estimate.

(b) Every person conducting a business which is subject to a license tax under the provisions of this chapter based in whole or in part on gross receipts who began the business during the license year next preceding the then current license year shall estimate the amount of the gross receipts the business will receive during the current license year, and his license year shall be computed upon that estimate.

(c) Whenever a license tax is so computed upon estimated gross receipts, any erroneous estimate shall be subject to correction. In the case of an underestimate, the director shall assess the person with any additional license tax found to be due after the close of the current license year, and, in case of an overestimate, the licensee shall be entitled to a credit upon his license taxes payable the following year.

Sec. 9-1-19 Partnerships when tax is based on gross receipts.

Whenever a business for which a license tax is required under the provisions of this chapter is conducted by a partnership, and the license tax is measured by the gross receipts, the license may be issued to the partnership and the tax may be paid by it and when so paid, it shall be deemed to discharge the license tax liability of the members of such partnership insofar as it relates to partnership business.

Sec. 9-1-20 Proration.

(a) Except as otherwise specifically provided, all license taxes imposed under the provisions of this chapter which are not based on gross receipts shall be prorated as follows: on licenses issued between April 1 and June 30 of a year, the amount of tax shall be three-fourths of the annual tax on the licensee; on licenses issued between July 1 and September 30, the amount of tax shall be one-half of the annual tax on the licensee; and on licenses issued on and after October 1, the license tax shall be one-fourth of the annual tax.

(b) There shall be no prorating of any license tax of \$5.00 or less.

Sec. 9-1-21 Refunds.

(a) Any person who has permanently ceased to conduct a business within the city may apply to the director for a refund of a portion of the license tax already paid, prorated on a monthly basis; except that a refund to a person who has permanently ceased to conduct a business in the city during a license year for which the license tax was paid based upon an estimate of gross receipts shall be equal to the difference between the license tax on the estimated gross receipts for the current license year and the license tax on the actual gross receipts for the period of time the business was conducted during that license year, unless the license tax on the actual gross receipts is greater than the license tax on the estimated gross receipts in which case the director shall assess the licensee in accordance with section 9-1-18. Such proration will be done only for taxes based on gross receipts.

(b) The amount of license tax paid shall not be less than the minimum tax of \$30 prescribed by section 9-1-24.

(c) Application for a refund must be made within three years from the last day of the license year in which the licensee permanently ceased to conduct a business in the city.

(d) Following receipt of an application for a refund, the director shall remit to the licensee any refund which is due, less any other taxes then due and owing to the city by the licensee.

Sec. 9-1-22 Transfer.

(a) Licenses issued to businesses identified in article C of this chapter may be transferred, except as otherwise provided, from one person to another or from one location to another; provided, that no such transfer shall be valid unless and until notice in writing is given to the director of the proposed transfer, which notice shall contain the name and address of the

proposed transferee, the trade name of the business, the proposed new location, if any, and the effective date of the proposed transfer. The director shall approve such transfer upon being satisfied of the good faith thereof.

(b) No license issued for a business that sells alcoholic beverages, regardless of amount of alcohol content, shall be transferable.

Sec. 9-1-23 Regulatory compliance.

The director shall not issue a license for any business until necessary certifications from relevant city regulatory authorities are received, including, but not limited to, a certification from the fire chief that the building in which the business is to locate is in compliance with all applicable building code regulations, and from the director of planning and zoning that the activity to be licensed is permitted by the City of Alexandria Zoning Ordinance to occur at the place where the business is to locate.

Sec. 9-1-24 Flat tax of \$30 on businesses with gross receipts of less than \$50,000.

A license tax of \$30 shall be levied on any business identified in article C of this chapter whose annual gross receipts with situs in the city, under section 9-1-7, are less than \$50,000, unless the business is exempt from any license tax pursuant to this chapter. The \$30 tax shall be levied without regard to the license tax as measured by the licensee's gross receipts.

Sec. 9-1-25 Payment of delinquent taxes as prerequisite to issuance of license.

The director shall not grant a license under this chapter to any person until the person has paid and, when required by the director, has produced satisfactory evidence of payment of all delinquent business license, business personal property, meals, transient occupancy and other taxes which the person owes the city.

Sec. 9-1-27 Additional taxes.

If the director ascertains that any person who has been assessed with a license tax under the provisions of this chapter for any license year of the three license years last past, or for the then current license year, but that upon a correct audit and computation of the license tax, the assessment thereof should be in an increased amount, and the assessment of the license tax in the lesser amount was not due to fraudulent intent or to evade taxes, then the director shall assess the licensee with the additional license tax found to be due, without penalty. If the

assessment of the additional tax is not paid to the director within 15 days after written notice to the licensee, a penalty of 10 percent of the additional tax or \$10, whichever is greater, plus interest at 10 percent per annum shall accrue from the date of the notice until payment, and the director shall collect the penalty and interest along with the tax and in the same manner as the tax may be collected. Any overpayment ascertained shall be credited to the amount due the following year or shall be refunded in case the license does not engage in business the year following.

Sec. 9-1-28 Omitted taxes.

(a) If the director ascertains that a person has not been assessed with a license tax levied under the provisions of this chapter for any license year of the three license years last past, or for the then current license year, and the absence of such assessment was not due to the fraudulent intent to evade taxes on the part of such person, it shall be the duty of the director to assess the person with the proper license tax for the year or years omitted, adding thereto the penalty and interest set out in section 9-1-12 of this code.

(b) The penalties and interest set forth in subsection (a) shall not be imposed, or if imposed, shall be abated by, the director if the failure to pay license taxes when due was not the fault of the licensee. In order to demonstrate lack of fault, the licensee must show that he acted responsibly and that his failure to pay was due to events beyond his control. The term "acted responsibly" means that (i) the licensee exercised the same care that a reasonable and prudent person engaged in business would have exercised in determining the filing obligations for the business, and (ii) the licensee undertook significant steps to avoid or to mitigate his failure, such as promptly rectifying the failure once discovered.

(c) If the assessment of the omitted tax is not paid to the director within 15 days after written notice to the licensee, a penalty of 10 percent of the additional tax or \$10, whichever is greater, plus interest at 10 percent per annum, shall accrue from the date of the notice until payment, and the director shall collect the penalty and interest along with the tax and in the same manner as the tax may be collected.

Sec. 9-1-29 Assessment in cases of fraudulent intent to evade license taxes.

If the director ascertains that a person has fraudulently, or with intent to evade the payment of proper license taxes, failed or refused to obtain a proper license as required by the provisions of this chapter, for any one or more of the three license years last past, or for the then current license year, and the liability therefor is ascertained, the omitted or

additional license tax or taxes and the normal penalty prescribed shall be assessed for each and every year of the three license years last past and for the current license year, for which that person was assessable, together with an additional penalty thereon of 50 percent of the unpaid tax or taxes. Failure to obtain the license as is required by the provisions of this chapter shall be taken as prima facie evidence of an intent to so evade the taxes.

Sec. 9-1-31 License as personal privilege.

Every license under the provisions of this chapter shall be held to confer a personal privilege to transact, carry on or conduct the business which is the subject of the license, and shall not be exercised except by the person licensed.

Sec. 9-1-32 Suspension of licenses.

(a) The city manager is hereby authorized and empowered to suspend any license issued under the provisions of this chapter for cause. The suspension shall continue until the cause is removed or corrected. No suspension shall become effective until the manager has notified the licensee, or any person that is in charge of any definite place of business maintained by the licensee in the city, in writing of the grounds for the suspension of the license and has provided the licensee an opportunity to address those grounds.

(b) The suspension, once effective, shall place the licensee in such position as if he had never obtained a license.

Sec. 9-1-34 Powers and authority of director generally.

In the enforcement of this chapter the director, in addition to the powers herein specifically granted, shall have all and the same enforcement authority with respect to city licenses that state law gives to commissioners of revenue or directors of finance generally with respect to state licenses. As one of the means of ascertaining the amount of any license tax under the provisions of this chapter or of ascertaining any other pertinent information to the license, the director may propound such interrogatories and requests for production of documents as may be relevant to that purpose to any applicant or licensee. Such interrogatories and requests for production of documents shall be answered under oath, and the failure or refusal of any applicant for a city license or any licensee to answer any interrogatories or respond to requests for production of documents shall be grounds for denial or revocation of the license.

Sec. 9-1-39 Procedure as to persons without license.

(a) The director shall, after reviewing the record of all persons licensed, ascertain the name of each person conducting

without a license in the city any business for which a license is required, and the name of each person possessing or operating any coin-operated machine without a license in the city for which a license is required. Any such person in a proper case may be prosecuted before any court having jurisdiction of the offense.

(b) A written report on each person investigated and so ascertained to have no city license, which report shall give complete information, including action taken if any, shall be prepared and submitted to the director monthly.

Sec. 9-1-40 Same--prosecutions.

The director may initiate prosecutions for violations of any provisions of this chapter.

Sec. 9-1-42 Investigations generally; audit authority.

(a) The director may make investigations of the things and matters in this chapter laid to his charge, and shall have power to summon before him any person whom he believes may have knowledge or evidence touching upon the conduct of any business in the city or touching upon the possession or operation of any coin-operated machine in the city, and to require such person to answer under oath any question relating to the matters under investigation.

(b) Every person who is assessable with a license tax shall keep accurate and correct records and books of accounts which reflect true tax liability for the current license year and the three previous license years. These records and books of accounts may be kept on either a cash or an accrual basis but the system of accounts shall be the same as that used for federal income taxes. These records and books of accounts shall be kept in such a manner so as to enable the director to verify the correctness of the tax paid for the current license year and the three previous license years and to ascertain the correct amount of tax that was assessable for those years. All such records, books of accounts and other information shall be open to inspection and examination by the director in order to allow the director to establish whether a particular receipt is directly attributable to the taxable privilege exercised within the city. In the event that the director conducts an audit pursuant to his authority in section 58.1-3109 of the Code of Virginia (1950), the director shall provide the taxpayer with the option to conduct the audit in the taxpayer's local business office, if the records are maintained there. In the event the records are maintained outside this jurisdiction, copies of the appropriate books and records shall be sent to the director's office upon demand.

Sec. 9-1-43 Appeals.

(a) Any person assessed with a license tax may, within 90 days from the date of such assessment, apply to the director for a correction of the assessment. The application shall be filed in good faith and shall identify the licensee, the remedy sought, each alleged error in the assessment, the grounds upon which the licensee relies, and any other facts relevant to the licensee's contention. The director may require submission of additional information and documents or other evidence deemed necessary for a proper and equitable determination of the appeal and may conduct an audit. The director shall undertake a full review of the licensee's claims and, upon the conclusion of such review, issue a determination on the appeal setting forth the director's position.

(b) Any licensee aggrieved by an audit conducted by the director may appeal the audit findings in the manner set forth in subsection (a). Any new or revised assessment resulting from an audit shall be accompanied by a written explanation of the licensee's right to apply for a correction of the assessment and of the specific procedure to be followed.

Sec. 9-1-44 Administrative rulings.

Any licensee may request a written ruling from the director regarding the application of the tax levied by this chapter to a specific situation. A licensee requesting such a ruling shall provide all the relevant facts for the situation and may present a rationale for an interpretation of the law most favorable to the licensee. Any misrepresentation by the licensee and any change in the applicable law or the factual situation as presented in the ruling request shall invalidate any such ruling issued. A written ruling may be prospectively revoked or prospectively amended if (i) there is a court decision or a change in the law or regulation upon which the ruling was based, or (ii) the director notifies the licensee of a change in the policy or interpretation upon which the ruling was based. A person who acts on a written ruling which later becomes invalid shall be deemed to have acted in good faith during the period in which the ruling was in effect.

Sec. 9-1-45 Inter-jurisdictional agreements.

The director may enter into agreements with any other political subdivision of Virginia concerning the manner in which gross receipts shall be apportioned among definite places of business. However, the sum of the gross receipts apportioned by an agreement shall not exceed the total gross receipts attributable to all of the definite places of business subject to the agreement. Upon being notified by a licensee that the director's method of attributing gross receipts is inconsistent with the method of one or more political subdivisions in which

the licensee is licensed to engage in business and that the inconsistency has, or is likely to, result in taxes on more than 100 percent of the licensee's gross receipts from all locations in the affected jurisdictions, the director shall make a good faith effort to reach an apportionment agreement with the other political subdivisions involved.

Section 3. That Article B of Chapter 1, Title 9 of The Code of the City of Alexandria, Virginia, 1981, shall be, and the same hereby is, amended by repealing Sections 9-1-55 and 9-1-57.

Section 4. That Article B of Chapter 1, Title 9 of The Code of the City of Alexandria, Virginia, 1981, shall be, and the same hereby is, amended by amending the title of the article and Section 9-1-56, to read as follows:

#### Article B

#### License Taxes Not Based on Gross Receipts

Sec. 9-1-56 Slot machine operators.

Every slot machine operator, as defined in this chapter, shall pay for the privilege of doing business in the city an annual license tax of \$20 for each slot machine for the operation of fewer than 10 slot machines and \$200 for the operation of 10 or more slot machines. The number of machines shall be calculated as the number located in the city on January 1 of the license year, or in the case of a beginner, an estimate of the number of such machines to be brought into the city. The license tax imposed by this section is not in lieu of, but is in addition to, the other license taxes imposed by section 9-1-82 of this code; provided, that the slot machine operator's license imposed by this section shall not apply to operators of weighing machines, automatic baggage or parcel-checking machines or receptacles, or to vending machines so constructed as to do nothing but vend goods, wares and merchandise or postage stamps or to machines which provide service only or to operators of viewing machines or photomat machines or to devices or machines affording rides to children.

Section 5. That Article C of Chapter 1, Title 9 of The Code of the City of Alexandria, Virginia, 1981, shall be, and the same hereby is, amended by repealing Sections 9-1-73, 9-1-74, 9-1-76, 9-1-81, 9-1-85 and 9-1-86.

Section 6. That Article C of Chapter 1, Title 9 of The Code of the City of Alexandria, Virginia, 1981, shall be, and the same hereby is, amended by amending the title of the article and Sections 9-1-71, 9-1-72, 9-1-75, 9-1-77, 9-1-78, 9-1-79, 9-1-82, 9-1-87 and 9-1-88, and by adding a new Section 9-1-72 License Taxes Based on Gross Receipts.

Sec. 9-1-71 Professional services.

Every person who conducts or operates a business that provides professional services in, and who maintains a definite place of business in, the city shall pay for the privilege of doing so an annual license tax of \$30 or, if the business' annual gross receipts with situs in the city equal or exceed \$50,000, \$0.58 per \$100 of all the business' gross receipts with such situs.

Sec. 9-1-71.1 Financial services.

Every person conducting or operating a business that provides financial services in, and who maintains a definite place of business in, the city shall pay for the privilege of doing so an annual license tax of \$30 or, if the business' annual gross receipts with situs in the city equal or exceed \$50,000, \$0.35 per \$100 of all the business' gross receipts with such situs.

Sec. 9-1-72 Repair, personal and business services.

(a) Every person who conducts or operates a business that provides repair, personal and business services in, and who maintains a definite place of business in, the city shall pay for the privilege of doing so an annual license tax of \$30 or, if the business' annual gross receipts with situs in the city equal or exceed \$50,000, \$0.35 per \$100 of all the business' gross receipts with such situs.

Sec. 9-1-75 Retail merchants.

(a) Every person who engages in or conducts the business of a retail merchant in, and who maintains a definite place of business in, the city shall pay for the privilege of doing so an annual license tax of \$30 or, if the business' annual gross receipts with situs in the city equal or exceed \$50,000, \$.20 per \$100 of all the business' gross receipts with such situs.

(b) The license tax provided for in this section shall be in addition to the alcoholic beverage license tax required under any other sections of this chapter.

(c) Any person or organization who sponsors a show or sale of goods, wares and merchandise at retail and not for resale shall obtain a license under this section for such show or sale, and shall pay for the privilege of conducting the show or sale a license tax of \$30 and, upon the termination of the show or sale, \$0.20 per \$100 of the gross receipts of the show or sale in excess of \$15,000; provided that no license shall be issued for a period longer than one year.

Sec. 9-1-78 Wholesale merchants.

Every person who engages in or conducts the business of a wholesale merchant in, and who maintains a definite place of business in, the city shall pay for the privilege of doing so an annual license tax of \$30 or, if the business' annual gross receipts with situs in the city equal or exceed \$50,000, \$0.05 for each \$100 of all the business' gross receipts with such situs, whichever amount is greater.

Sec. 9-1-79 Contractors and contracting.

(a) Every person who maintains a definite place of business in the city and engages in the business of a contractor shall pay for the privilege of doing so an annual license tax of \$30 or, if the business' annual gross receipts with situs in the city equal or exceed \$50,000, \$0.16 for each \$100 of all the business' gross receipts with such situs.

(b) Notwithstanding any contrary provision of this chapter, (i) every person who engages in the business of a contractor in the city, who maintains a definite place of business in the state, but not in the city, shall not be liable for any license tax under this section, unless the gross receipts received in any year by such person from the business conducted in the city exceed \$25,000, in which event the person shall pay the city a license tax of \$0.16 for each \$100 of such gross receipts ; and (ii) every person who engages in the business of a contractor in the city, and who does not maintain a definite place of business in the state, shall pay for the privilege of conducting such business or occupation in the city an annual license tax of \$30 or \$0.16 for each \$100 of gross receipts from business conducted in the city, whichever amount is greater.

(c) Orders and contracts covering more than one calendar year may be prorated to allow the gross amount or any portion thereof of any such order or contract to be used only once as a basis for determining the amount of the annual license tax to be paid pursuant to this section.

(d) The provisions of this section shall not relieve a person who engages in the business of a contractor in the city of any duty to register as a contractor with the city or the state before engaging in such business in the city, as may be required by other law.

Sec. 9-1-82 Amusements.

Every person who conducts or operates a business that provides amusements in, and who maintains a definite place of business in, the city shall pay for the privilege of doing so an annual license tax of \$30 or, if the business' annual gross receipts

with situs in the city equal or exceed \$50,000, \$0.36 per \$100 of all the business' gross receipts with such situs.

Sec. 9-1-87 Soliciting agents for sale of goods, etc.

(a) Every person who engages in or conducts business in the city as a soliciting agent or solicits orders in the city for goods, wares and merchandise, services, business services, repair services and the like, and who is not otherwise in this chapter taxed, shall pay for the privilege of doing so an annual license tax of \$30 or, if the annual gross receipts derived from such activities equal or exceed \$50,000, \$0.20 per \$100 of all the gross receipts from such activities.

(b) Any person engaged solely in the manufacture and sale of his own manufactured goods, wares and merchandise, and who maintains no place of business in the city other than for the solicitation of orders for his manufactured products, and who sells only to licensed jobbers and not to retailers or consumers, and who makes delivery to jobbers from his manufactured goods, wares and merchandise that are regularly stored in the city, shall be licensed and pay a tax under the provisions of this section.

Sec. 9-1-88 Renting by owners of dwelling units or commercial establishments.

(a) Except as provided in subsection (b), every person who, as principal, engages in or conducts the business of renting one or more dwelling units, including houses and apartments, located within the city shall pay for the privilege of doing so an annual license tax of \$30 or, if the annual gross receipts derived from such activities equal or exceed \$50,000, \$0.50 of each \$100 of all the gross receipts from such activities.

(b) Persons engaged in the business of renting dwelling units shall not come within the provisions of this section and the tax levied, unless they are engaged in the business of renting more than four separate dwelling units.

(c) The term "business of renting houses and apartments," as used in this section, means the rental of dwelling units, whether located in a single-family, two family, multifamily, condominium or other residential building, but shall not include the rental of living units in hotels, motels, tourist homes or boarding and rooming houses.

(d) The term "dwelling unit," for the purpose of this section, means one or more rooms designed for or intended for the occupancy of one family for living purposes and having cooking facilities.

(e) Every person who, as principal, engages in or conducts the business of renting commercial property located within the city shall pay for the privilege of doing so an annual license tax of \$30 or, if the annual gross receipts derived from such activities equal or exceed \$50,000, \$0.35 for each \$100 of all the gross receipts from such activities.

Section 7. That Article D of Chapter 1, Title 9 of The Code of the City of Alexandria, Virginia, 1981, shall be, and the same hereby is, amended by repealing Sections 9-1-101 and 9-1-103.

Section 8. That Article A, Article B, Article C and Article D of Chapter 1, Title 9 of The Code of the City of Alexandria, Virginia, 1981, as amended by Sections 1 through 7 of this ordinance, shall be, and the same hereby are, reordained as part of The Code of the City of Alexandria, Virginia, 1981.

Section 9. That this ordinance shall become effective on January 1, 1996.

PATRICIA S. TICER  
Mayor

Final Passage: November 18, 1995