

ARTICLE 719
Business Licenses

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CROSS REFERENCES

Authority to tax - see W. Va. Code 8-13-4, 11-12-4

719.01 DEFINITIONS.

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

- (a) "Business" means any business, whether a person engaged expressly or impliedly holds himself out as engaged in business or supplying his products or a commodity or service to the public as a class or a limited portion of the public or sells any goods, wares, merchandise of any kind or provides a service of any kind; provided, "business" shall not include sales of products of the farm, garden, or dairy by the producer or grower thereof, occasional sales by societies acting for charitable, religious or benevolent purposes; judicial sales directed by law or court order; or any business the gross income of which is less than one thousand dollars (\$1,000) per license year and, in this connection, "gross income" means the gross receipts of the business received as compensation for personal services and from trade, commerce, or sales and the value accruing from the sale of tangible property (real or personal), or service or both, without any deduction on account of the cost of property sold, materials used, labor costs, taxes or any other expenses whatsoever. Yard sales are not included in this category unless there are more than three within the fiscal year.

- (b) "Business franchise registration certificate" means a franchise or certificate, issued by or in behalf of the State, authorizing a person to conduct business within the State of West Virginia and when referred to in this article, as certificate or registration shall mean business franchise registration certificate.
- (c) "Exemptions". Casual and occasional sales of property not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character by an individual, corporation or organization means sales of tangible personal property or services at fund raisers and yard sales. These individuals, corporations or organizations are exempt from payment of the license fee, when such funds raisers or yards sales are of limited duration and held no more than three times during any twelve-month period and limited duration means no more than three consecutive days.
(Ord. 11-10-92.)

719.02 PURPOSES FOR WHICH LICENSE REQUIRED.

It shall be unlawful for any person to conduct within the Town any business, profession, calling or vocation for which a Town license is required by this article or elsewhere in the other titles or for which a business franchise registration certificate or any other form of State license is required by law without first obtaining from the Town such license as may be required therefor, and each person so licensed by the Town shall pay such Town license tax or fee as may be imposed thereon by the Town and maintain any such Town license in a currently valid status at all times while conducting the business, profession, calling or vocation to which such Town license relates.

(Ord. 11-10-92.)

719.03 ISSUANCE OF LICENSE; PAYMENT OF TAX; RECORDS.

(a) Each applicant for a license shall make application to the Recorder, on a form to be provided by the Town, and holders of business franchise registration certificates or other form of State licenses authorizing them to do business within the Town shall display such State certification or licenses to the Recorder at the time of making application for a Town license.

(b) Upon payment to the Recorder of such license tax or fee as may be imposed by this article or elsewhere in other titles for the particular license for which application is made, the Recorder shall issue the license applied for; provided, that the application is in proper form and that all requirements of State law and the other titles appear to the Recorder to have been complied with, and provided further, that the applications for licenses which are required to be issued by Council shall be referred by the Recorder to Council at its next meeting succeeding the date of filing thereof, and he shall not issue any such license until authorized to do so by Council, and in any such case the payment of any license tax or fee shall be deferred until such application has been approved by Council.

(c) The Recorder shall maintain on file all applications for Town licenses and a record of each license issued which shall set forth the name and business address of the licensee, the date of issuance and the term for which issued, the type of license, the amount of license tax or fee paid, the number of the license, and such additional information as may be pertinent to establish that all requirements of law and this Code have been complied with.

(Ord. 11-10-92.)

719.04 FALSE STATEMENTS PROHIBITED.

It shall be unlawful for any person to knowingly make any false statement in any application for a Town license, or in any tax return, report or other statement relating to any activity licensed by the Town and which is required to be made to any officer or agency.
(Ord. 11-10-92.)

719.05 SEPARATE LICENSE REQUIRED FOR EACH PLACE OF BUSINESS.

Except as may be provided otherwise in the other titles, any person who, at more than one physical location of a business within the Town engages in or prosecutes any business, profession, calling or vocation for which a Town license is required and who within the Town engages in or prosecutes more than one type of business, profession, calling or vocation for which a Town license is required, shall obtain a separate license and pay the prescribed fee therefor for each physical place of business and for each such business, profession, calling or vocation.
(Ord. 11-10-92.)

719.06 EXPIRATION DATE; ANNUAL RENEWAL; PRORATION OF TAX.

(a) Town licenses shall expire at midnight on the last day of June subsequent to the date of issuance and shall be renewable annually, except such licenses for which the fee is by the day, week, month or other period less than a year, and except as may be provided otherwise by other titles.

(b) The license fee for and initial license upon the commencement of business shall be prorated in the following manner. All licenses granted prior to January 1, shall be charged the full amount of such license fee and all license fees and all licenses granted after January 1, shall be charged one-half the full license fee.

(c) The applicant shall pay an annual fee of fifteen dollars (\$15.00) on or before July 1 of the fiscal business year.
(Ord. 11-10-92.)

719.07 DISPLAY OF LICENSE.

Each person to whom a Town license has been issued shall keep such license conspicuously posted upon or within the premises to which such license relates. Each licensee having no fixed place of business shall carry his license upon his person at all times while engaged in the licensed business or any transaction incidental thereto, and shall display such license upon request of any person with whom he is transacting business or any law enforcement officer.
(Ord. 11-10-92.)

719.08 LICENSE NOT ASSIGNABLE.

Each Town license shall confer a personal privilege only, to transact the business, profession, calling or vocation which is the subject of the license, and shall not be exercised except by the person holding the same and shall not be assignable to any other person.

Changes in the name of the person or change of location, or address, or changes in ownership of the business or changes in real parties of interest shall be considered a cessation of the business and a new license shall be required. Changes of partners or members of firms or officers of a corporation shall not require a new license to be issued.
(Ord. 11-10-92.)

719.09 LICENSE DOES NOT LEGALIZE UNLAWFUL ACTS.

Nothing in this article and no payment for or issuance of any Town license under the provisions hereof, shall be deemed to legalize any act which otherwise may be in violation of law, or to exempt any person from any penalty prescribed for such violation.
(Ord. 11-10-92.)

719.10 METHODS FOR ENFORCING COLLECTION.

The Treasurer may distraint upon any real or personal property, including intangibles, of any person delinquent in the payment of Town license fees or penalties accrued and unpaid under the provisions of this article, or he may bring a civil action or institute appropriate legal or equitable procedure for the collection thereof in any court of competent jurisdiction, and for any such purpose he may have the assistance of the Town Attorney, the police or other appropriate Town officers.
(Ord. 11-10-92.)

719.11 SUSPENSION AND REVOCATION OF LICENSE.

The Recorder, upon reasonable notice to the licensee, may summarily revoke any license issued by him for any reason which would have been grounds for denial of such license when first issued, for violation of any term or condition of such license, for violation of any pertinent provision of State law or other ordinances, or for the perpetration or attempted perpetration of fraud, malpractice or malfeasance by the licensee, without prejudice to prosecution of such licensee by the Town. Any person having an interest in any license so revoked and who feels aggrieved thereby may request the Recorder to further investigate the grounds for revocation and to reconsider this action, and if the Recorder accedes to such request he may suspend or reinstate the license pending his final decision. If the Recorder refuses to accede to such request, or if, upon reconsideration, he affirms his revocation of the license, the party so aggrieved may appeal to Council, which shall, without delay, afford such person a public hearing at which he may appear in person or by counsel, and may have the attendance of witness, books and papers in his behalf, and may testify in person. The decision of Council following such hearing shall be final, subject only to such judicial review as may be provided by law.
(Ord. 11-10-92.)

719.12 PROSECUTION FOR VIOLATIONS; INJUNCTION.

If any person engages in or prosecutes any business, profession, calling or vocation contrary to any of the provisions of this article, whether without first obtaining a license therefor, or by continuing the same after the termination of the effective period of any such license, or by any violation of the terms and conditions of such license, he shall be subject to immediate prosecution. In addition, the Town Attorney may, in the name of the Town, seek such injunctive relief as may be appropriate in any court of competent jurisdiction.
(Ord. 11-10-92.)

719.13 BUSINESS NOT OTHERWISE LICENSED.

Every person engaging in any business, profession, calling or vocation in the Town, for which a State business franchise registration certificate is required and or which no other license fee is prescribed in this article or in the other titles, and which is not exempted from the payment of any Town license fee by State law, or other titles, shall obtain annually a Town license therefor and shall pay to the Town an annual license fee of fifteen dollars (\$15.00) for each location within the Town where he holds himself out to engage in or transact business therefrom.
(Ord. 11-10-92.)

719.14 LICENSE FEE TO BE PAID BY ALL BUSINESSES.

In addition to the fees imposed by Section 719.13 et seq., each applicant for an initial or renewal Town license shall pay the license fee as provided in Section 719.06. (Ord. 11-10-92.)

719.15 HAWKERS AND PEDDLERS.

(a) When used in this section "hawker and peddler" means and includes all persons who engage or conduct, within this Town, in traveling from place to place within this State, a temporary or transient business of selling goods, wares or merchandise for delivery at the time of sale, and who, for the purpose of carrying on such business may use, lease or occupy either in whole or in part, a shed or sheds, open grounds, streets, roads or highways, a room, building or other structure or who use, lease, or occupy for such purposes a room or rooms in any hotel or lodging house, for the exhibition and sale of goods, wares, and merchandise; or any person who shall carry goods, wares, or merchandise from place to place on foot or with a vehicle, either in person or by agent or employee, and sell, for delivery at or retail, and any person who shall solicit for the purpose of rendering any service shall be deemed a hawker and peddler under this section. The person so engaged shall not be relieved from the provisions of this section by reason of association temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such temporary or transient business in connection with or as part of the business of, or in the name of any local dealer, trader, merchant or auctioneer.

(b) The provisions of this section shall not apply to any person who sells any goods, wares, or merchandise to be delivered in the future; or to any of the following who offer immediate delivery of the goods, wares or merchandise being sold.

- (1) Any person or persons engaged within this State in the business or calling of agriculture, horticulture, or grazing, who sells or sell individually or collectively, one or more for the other or others, the products derived from his or their business or calling aforesaid.
- (2) Any retail or wholesale business concern, established and operating continuously for one year or more within this State in the sale of any product or products over regular routes who are licensed under other provisions of this article.
- (3) Any wholesaler or jobber selling soft drinks or non-intoxicating beer for which he is duly licensed under other provisions of this or another title.
- (4) Any person who sells petroleum products, ice, wood, meat, ice cream, dairy products, bread, cakes, pies and other bakery products, butter and eggs, manufactured, grown or produced by any such person and not purchased by him for resale.

- (5) Sales made to persons by commercial travelers, or selling agents in the usual course of business, nor to bona fide sales of goods, wares, or merchandise by sample for future delivery; nor to any sales of goods, wares or merchandise on the grounds of any agricultural association during the continuance of any annual fair held by such association; nor to any sales by organizations acting for charitable, religious or benevolent purposes; nor to annual showings or street exhibits, which may include sales of their showings or exhibits conducted by members of art associations; numismatic or philatelic societies or antique associations or societies when such showing or exhibit does not continue for more than one week each calendar year; nor to judicial sales directed by law, or under the orders of any court.
- (6) Any agent or salesman selling manufactured products produced by his employer, and who sells the same to retail dealers for the purpose of resale.
- (7) Any firm, corporation or individual having a stock of goods, or merchandise, or manufacturing or processing plant or plants kept or operating at a fixed situs in the State of West Virginia, and declared for taxation in the county where located, and using a vehicle or vehicles over a fixed route or routes for the purpose of selling or distributing at wholesale, their, his or its said merchandise, stock of goods or plant products.

(c) Any licensed hawker or peddler who shall be guilty of any fraud, cheating or misrepresentation, whether through himself or through an employee, while acting as a peddler in this Town or who shall barter, sell or peddle any goods or merchandise or wares other than those specified in his application for a license shall be deemed guilty of a violation of this section.
(Ord. 11-10-92.)

719.16 VENDOR.

"Vendor" means any person who transfers property, real or personal, and becomes the recipient of the consideration.
(Ord. 11-10-92.)

719.99 CIVIL AND CRIMINAL PENALTIES.

(a) Any person engaging in or prosecuting any business, profession, calling or vocation contrary to the provisions of this article, whether without obtaining a Town license therefor before commencing the same, or by continuing the same after the termination of the effective period of any such license may in addition to paying the prescribed license fee, be liable for a penalty of fifty dollars (\$50.00) for each month or fraction thereof during which he has been in default of such payment.

(b) Except as may herein be expressly provided, any person violating any provisions under this article shall be fined not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00), and each day or part thereof that any violation shall continue shall be deemed to constitute a distinct and separate offense and be punished accordingly.
(Ord. 11-10-92.)