

TOWN COUNCIL

STAFF REPORT Police Department



MEETING DATE:	March 10, 2015
PROJECT:	Ordinance Amending Chapter 6 Businesses and Business Regulations, Article II Business Licenses and Regulations of the Town Code Establishing Provisions to Deny, Revoke, or Suspend Licenses of Businesses in Violation of Chapter 18 General Offenses, Article XI Community Safety Ordinance – Second/Final Reading
PROJECT MANAGER:	Joey Reynolds, Chief of Police

RECOMMENDATION: Town Staff recommends that Town Council approve First Reading of an Ordinance amending Chapter 6 Businesses and Business Regulations, Article II Business Licenses and Regulations of the Town Code establishing provisions to deny, revoke, or suspend licenses of businesses in violation of Chapter 18 General Offenses, Article XI Community Safety Ordinance.

UPDATE SINCE FIRST READING: On February 10, 2015, Town Council approved First Reading of this Ordinance with the following amendments:

1. Clarify that the Town Manager, or designee, has the authority to deny, suspend, or revoke a Business License.
2. Include a process in which a written notice and time for remedy is provided to a Licensee prior to a license being denied, suspended, or revoked.

These changes have been incorporated into the current Ordinance. These changes are not considered a material change requiring the adoption process to begin again. As a result, this proposed Ordinance is being considered for Second/Final Reading approval.

BACKGROUND: As a result of recent Town Council direction and Town Staff's on-going review of the regulations and requirements governing the community, Town Staff presented several Ordinances for Town Council consideration at the January 20, 2015 Town Council workshop. Among other items, this included an amendment to the existing Business License Ordinance. In general, this draft Ordinance amendment included the following:

1. Allowed for the suspension, revocation, and denial of business licenses for applicants charged with a community safety violation as set forth in the proposed Community Safety Ordinance.
2. Clarified the due process procedures for suspending, revoking, denying, or appealing the administration of business licenses.

After review of the draft ordinance, Town Council, as suggested by the Town Attorney, directed Town Staff make the administration, denial, suspension, and revocation of business licenses purely an administrative function performed by the License Official. Appeals, if so desired by the applicant or Licensee, would be heard by Town Council in a quasi-judicial role. Currently, such matters as they relate to suspensions and revocations are automatically forwarded to Town Council. The current Ordinance contains this change.

TOWN COUNCIL ACTIONS: Town Council has the authority to take the following actions with respect to this request:

1. Approve the Ordinance as submitted;
2. Approve the Ordinance with conditions; or
3. Deny the Ordinance as submitted.

ANALYSIS: During the recent implementation of the current Ordinance, it was determined by Town Staff and the Town Attorney that the current Ordinance was difficult to enforce in that a conviction of a nuisance premise was necessary to suspend or revoke a business license. As a result of a comprehensive rewrite of the Nuisance Premise Ordinance into the Community Safety Ordinance, these additional changes to the Business License Ordinance are necessary.

These changes, as proposed by Town Staff and recommended by Town Council at the recent Town Council Workshop, are necessary to ensure a predictable and enforceable Ordinance is in effect in the Town of Bluffton. Further, the changes to the appeal process are consistent with other communities in the state, particularly those in the upstate.

ADOPTION PROCESS: These amendments are being processed according to the following schedule:

1. Town Council Workshop – January 20, 2015;
2. Town Council First Reading – February 10, 2015; and
3. Town Council Second Reading – March 10, 2015.

ATTACHMENTS:

1. Ordinance No. 2015-_____
 - a. Exhibit A – Chapter 6 Article II Business Licenses and Regulations

ORDINANCE NO. 2015 - _____

TOWN OF BLUFFTON, SOUTH CAROLINA

AN ORDINANCE AMENDING CHAPTER 6 BUSINESSES AND BUSINESS REGULATIONS, ARTICLE II BUSINESS LICENSES AND REGULATIONS OF THE TOWN CODE ESTABLISHING PROVISIONS TO DENY, REVOKE, OR SUSPEND LICENSES OF BUSINESSES IN VIOLATION OF CHAPTER 18 GENERAL OFFENSES, ARTICLE XI COMMUNITY SAFETY ORDINANCE

WHEREAS, the Town of Bluffton desires to improve the general safety, welfare, health and properties of the citizens of the Town of Bluffton; and,

WHEREAS, to establish the necessary provisions to accomplish the above, the Town of Bluffton has authority to enact resolutions, ordinances, regulations, and procedures pursuant to South Carolina Code of Laws 1976, Section 5-7-30; and,

WHEREAS, the Town of Bluffton Town Council previously enacted the Town of Bluffton Business License Ordinance; and,

WHEREAS, the Town Council shall from time to time examine ordinances to ensure that they are properly regarded, enforced, sufficient and satisfactory to the needs of the community and can further suggest changes as deemed appropriate; and,

WHEREAS, the Code of Ordinances for the Town of Bluffton Chapter 6, Business and Business Regulations, Article II, Business Licenses and Regulations provides the current regulations pertaining to the denial, suspension, and revocation of Business Licenses; and,

WHEREAS, the Town of Bluffton Town Council desires to revise these Business License provisions to establish additional regulations for the denial, suspension and revocation of a Business License for nuisance businesses as defined in Chapter 18 General Offenses, Article XI Community Safety Ordinance as well as establish an appeal procedure to enable the Town of Bluffton to better facilitate, regulate, supervise, and provide consistent treatment throughout the Town.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BLUFFTON, SOUTH CAROLINA, in accordance with the foregoing, the Town hereby amends the Code of Ordinances for the Town of Bluffton as follows:

SECTION 1. AMENDMENT. The Town of Bluffton hereby amends the Code of Ordinances for the Town Of Bluffton, South Carolina by adopting and incorporating an amendment to Chapter 6, Business and Business Regulations, Article II, Business Licenses and Regulations as shown in Exhibit A, which is attached and incorporated hereto.

SECTION 2. REPEAL OF CONFLICTING ORDINANCES. All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 3. ORDINANCE IN FULL FORCE AND EFFECT. This entire Ordinance shall take full force and effect upon adoption.

DONE, RATIFIED AND ENACTED this _____ day of _____, 2015.

This Ordinance was read and passed at first reading on _____, 2015.

Lisa Sulka, Mayor
Town of Bluffton, South Carolina

Sandra Lunceford
Clerk, Town of Bluffton, South Carolina

This Ordinance was passed at second reading held on _____, 2015.

Lisa Sulka, Mayor
Town of Bluffton, South Carolina

Sandra Lunceford
Clerk, Town of Bluffton, South Carolina

ARTICLE II – BUSINESS LICENSES AND REGULATIONS

Sec. ~~6-32~~6-32. Denial of License.

The ~~License Official~~Town Manager, or designee, shall deny a license, including renewals and transfers thereof, to an applicant when the ~~License Official~~Town Manager, or designee, determines:

- (a) The application is incomplete, contains a misrepresentation, false or misleading statement, evasion or suppression of a material fact; or
- (b) The activity for which a license is sought is unlawful or constitutes a public nuisance per se or per accidens; or
- (c) The applicant, Licensee, or prior Licensee or the person in control of the business has been convicted of an offense under a law or ordinance regulating business, a crime involving dishonest conduct or moral turpitude, or an unlawful sale of merchandise or prohibited goods; or
- (d) The applicant, Licensee, or prior Licensee or the person in control of the business has engaged in a unlawful activity ~~or~~, safety violation as defined in Section 18-238, or other nuisance related to the business or to a similar business in the Municipality or in another jurisdiction; or
- (e) The applicant, Licensee, or prior Licensee or the person in control of the business is delinquent in the payment to the Municipality of any tax ~~or fee~~, betterment, fine, fee or other municipal charge, including but not limited to, business personal property tax, real property tax, accommodations tax, or hospitality tax; or
- (f) The license for the business or for a similar business of the Licensee in the Municipality or another jurisdiction has been denied, suspended or revoked in the previous license year. ~~A decision of the License Official shall be subject to appeal to Town Council as herein provided. Denial shall be written with reasons stated.~~

~~Sec. 6-33. Suspension or Revocation of License.~~

- ~~(a) — When the License Official determines:~~
 - ~~(1) — A license has been mistakenly or improperly issued or issued contrary to law; or~~
 - ~~(2) — A Licensee has breached any condition upon which the license was issued or has failed to comply with the provisions of this ordinance; or~~
 - ~~(3) — A Licensee has obtained a license through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license application; or~~
 - ~~(4) — A Licensee has been convicted of an offense under a law or ordinance regulating business, a crime involving dishonest conduct or moral turpitude, or an unlawful sale~~

~~of merchandise or prohibited goods; or~~

- ~~(5) — A Licensee has engaged in an unlawful activity or nuisance related to the business; or~~
- ~~(4) — A Licensee is delinquent in the payment to the Municipality of any tax or fee the License Official shall give written notice to the Licensee or the person in control of the business within the Town by personal service or certified mail that the license is suspended pending a hearing before Town Council for the purpose of determining whether the license should be revoked. The notice shall state the time and place at which the hearing is to be held, which shall be at a regular or special Town Council meeting within thirty (30) days from the date of service of the notice, unless continued by agreement. The notice shall contain a brief statement of the reasons for suspension and proposed revocation and a copy of the applicable provisions of this ordinance.~~

Sec. 633. Suspension or Revocation of License.

- (a) The Town Manager, or designee, may suspend and/or revoke any license issued under the provisions of this Chapter whenever the Licensee, or any officer, employee, partner or agent thereof:
- (1) Has been mistakenly or improperly issued a license or has obtained a license issued contrary to law; or
 - (2) Has breached any condition upon which the license was issued or has failed to comply with the provisions of this Chapter; or
 - (3) Has obtained a license through a fraud, misrepresentation, a false or misleading statement, evasion, omission or suppression of a material fact in the license application; or
 - (4) Has been convicted of an offense under a law or ordinance regulating business, a crime involving dishonest conduct or moral turpitude, or an unlawful sale of merchandise or prohibited goods; or
 - (5) Has engaged in any unlawful activity, safety violation as defined in Section 18-238, or other nuisance related to the business, or has permitted the same; or
 - (6) Is delinquent in the payment to the Municipality of any tax, betterment, fine, fee or other municipal charge, including but not limited to, business personal property tax, real property tax, accommodations tax, or hospitality tax.

Section 6-34. Notice.

- (a) Prior to denying, suspending, or revoking a License, the Town Manager, or designee, shall provide written notice to the Licensee of the reason that the license may be denied, suspended, or revoked. It is the intent of this notice to provide the Licensee notification the license is subject to denial, suspension, or revocation and the Licensee can take appropriate

action, if available, to immediately remedy the issue prior to official action being taken. The notice shall be presumed provided when the written notice is either personally served upon the Licensee or mailed to the last known address of the Licensee, as provided on the license application or to such new address if reported pursuant to Section 6-26, by registered or certified mail, return receipt requested. If service on any person cannot be accomplished through the above-stated means or if any person refuses to accept service, the Town Manager, or designee, may provide written notice to the Licensee by posting such written notice in a conspicuous place on the property or building of the business establishment located at the address provided on the license or at such new address if reported pursuant to Section 6-26. The removal of the posted notice by any person shall not affect the validity of such notice. The notice shall include the following:

- (1) A brief statement of the reasons for the potential denial, suspension, or revocation and a copy of the applicable provisions of this ordinance; and,
- (2) A statement that the Licensee has ten (10) days from the date of service to remedy the reason for denial, suspension, or revocation otherwise the license may be denied, suspended, or revoked.

(b) Whenever the Town Manager, or designee, determines that there is cause for suspending, denying or revoking any license issued pursuant to this Chapter, the Town Manager, or designee, shall provide written notice to the Licensee by personal service or registered or certified mail, return receipt requested, to the address provided on the license application or to such new address if reported pursuant to Section 6-26, of his/her determination. If service through the above-stated means cannot be reasonably accomplished or if the Licensee refuses to accept service, the Town Manager, or designee, may provide written notice to the Licensee by posting such written notice in a conspicuous place on the property or building of the business establishment located at the address provided on the license or at such new address if reported pursuant to Section 6-26. The removal of the posted notice by any person shall not affect the validity of such notice. The notice shall include the following:

- (1) A brief statement of the reasons for the denial, suspension, or revocation and a copy of the applicable provisions of this ordinance; and,
- (2) A statement that the Licensee has ten (10) days from the date of service to file a written appeal to Town Council, as set forth in Section 6-35.

Section 6-35 Appeals; Hearings by Council.

(a) Any applicant or Licensee aggrieved by a decision, final assessment, suspension or denial of a Business License by the Town Manager, or designee, may appeal the decision to the Town Council by written request stating the reasons therefore, filed with the Town Manager, or designee, within ten (10) days after service of the notice of the decision, final assessment, suspension or denial. If a Licensee timely files an appeal, any assessment or suspension shall be stayed until Town Council renders a written decision on the appeal or the proposed revocation.

(b) An appeal or a hearing on proposed revocation shall be held by the Town Council within forty-five (45) days after receipt of a request for appeal or service of notice of suspension, whichever occurs first, at a regular or special meeting of which the applicant or Licensee has

been given written notice, unless such hearing is continued by agreement of the applicant or Licensee and the Town Manager, or designee. At the hearing, all parties shall have the right to be represented by counsel, to present testimony and evidence and to cross-examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party requesting the proceedings. The rules of evidence and procedure prescribed by Town Council shall govern the hearing. Town Council shall, by majority vote of members present, render a written decision based on findings of fact and application of the standards herein which shall be served upon all parties or their representatives and shall be the final decision of the Town.