

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR RICHLAND COUNTY
ORDINANCE NO. 018-09HR

AN ORDINANCE AMENDING THE RICHLAND COUNTY CODE OF ORDINANCES; CHAPTER 16, LICENSES AND MISCELLANEOUS BUSINESS REGULATIONS; ARTICLE 1, IN GENERAL, SECTION 5 AND SECTION TO AUTHORIZE MOTOR VEHICLE TRADE-INS AS AN ALLOWABLE DEDUCTION, SECTION 16-19, APPEALS; AND SECTION 16-22, PENALTIES; SO AS TO AMEND THE APPEALS PROCESS AND TO ALLOW THE WAIVER OF PENALTIES IN CERTAIN LIMITED CIRCUMSTANCES.

REC'D
MAY 11 2009
RICHLAND COUNTY
SOUTH CAROLINA

Pursuant to the authority by the Constitution of the State of South Carolina and the General Assembly of the State of South Carolina, BE IT ENACTED BY RICHLAND COUNTY COUNCIL:

SECTION I. The Richland County Code of Ordinances, Chapter 16, Licenses and Miscellaneous Business Regulations; Article I, In General; Section 16-5, Classification and Rates; Business License Fee Schedule, is hereby amended to read as follows:

<u>Rate</u>	<u>NAICS #</u>	<u>Business Type</u>
8.07	4411-4412	<u>Automobile & Motor Vehicle Dealers, Farm Machinery Dealers, Boat Dealers Retail</u>
		First \$2,000 Gross Income \$35.00
		Each additional \$1,000 \$1.50/thousand

One sales lot not more than 400 feet from main showroom may be operated under this license provided that proceeds from sales there are included in gross receipts at main office when both are operated under the same name and ownership.

SECTION II. The Richland County Code of Ordinances, Chapter 16, Licenses and Miscellaneous Business Regulations; Article I, In General; Section 16-7, Deductions, Exemptions, Charitable Organizations, and Determination of Classification, is hereby amended to read as follows:

Section 16-7. Deductions, Exemptions, Charitable Organizations, and Determination of Classification

- (1) (a) Businesses whose business activity(ies) are described by the North American Industry Classification System (NAICS) with codes beginning with 4411 or 4412, which includes the following:
 - New and Used Automobile Dealers (441110 and 441120)
 - Recreational Vehicle Dealers (441210)
 - Motorcycle, ATV, and Personal Watercraft Dealers (441221)
 - Boat Dealers (441222)
 - All Other Motor Vehicle Dealers (441229)

shall be authorized to deduct the amounts paid to customers in exchange for motor vehicle trade-ins as part of sales transactions.

SECTION III. The Richland County Code of Ordinances, Chapter 16, Licenses and Miscellaneous Business Regulations; Article I, In General; Section 16-19, Appeals, is hereby amended as follows:

Section 16-19. Appeals.

- (1) Any person aggrieved by the following actions or decisions made by the License Official may bring an appeal to the Business License Service Center Appeals Board:

- a. a final assessment pursuant to Section 16-12;
 - b. charge backs or other adjustment to the business license fee as determined by an audit conducted pursuant to Section 16-11;
 - c. a revocation or a denial of a business license pursuant to Section 16-15 or Section 16-18;
 - d. imposition of a business license penalty; or
 - e. a decision or determination made by the License Official concerning the proper classification of a business or the proper calculation of business license fees. This ground for appeal shall not be construed to authorize appeals based on objections to the business license fee structure established by Richland County Council.
- (2) Those wishing to appeal must first file a written appeal with the License Official for decision by the Business Service Center Appeals Board. The Business Service Center Appeals Board, or its designee, is authorized to reject an appeal for failure to comply with the requirements of this subsection. The following requirements for submission of an appeal must be strictly complied with:
- a. The appeal must be in writing and state the reasons for the appeal.
 - b. The appeal shall be filed with the License Official within fifteen (15) business days after the payment of all applicable fees and penalties, including assessments or charge-backs of an audit, and within twenty (20) business days after receipt of the License Official's written and certified mailed notification of an assessment, charge-backs of an audit, or notice of denial or revocation.
 - c. The written notice of appeal must be accompanied by an administrative fee (which shall be determined by the License Official) that will be used to partially defray the costs incurred in connection with the administration of appeals. Payment under protest of all applicable fees and penalties, an assessment, or audit charge backs shall be a condition precedent to appeal. The fee will be refunded in the event of final resolution of the appeal in favor of the appellant.
- (3) An appeal or a hearing on revocation shall be held by the Appeals Board within thirty (30) calendar days, or as soon as reasonably possible, after receipt of a request for appeal or service of notice of suspension or intent to revoke. The applicant or licensee shall be given written notice as to the date and time of the meeting. At the meeting, all parties have the right to be represented by counsel and to present testimony and evidence. The proceedings shall be recorded and transcribed at the expense of the party so requesting. The rules of evidence and procedure prescribed by the Board shall govern the hearing.
- (4) In the event of an appeal of business license penalties paid, the Appeals Board may waive a business license penalty paid only if any of the following circumstances of reasonable cause are proven by the appellant:
- a. An unexpected and unavoidable absence of the appellant from South Carolina, such as being called to active military duty. In the case of a corporation or other business entity, the absence must have been an individual having primary authority to pay the business license fee.
 - b. A delay caused by death or serious, incapacitating illness of the appellant, the appellant's immediate family, or the appellant's accountant or other third party professional charged with determining the business license fee owed. In the case of a corporation or other business entity, the death or serious, incapacitating illness must have been an individual having primary authority to pay the business license fee.
 - c. The business license fee was documented as paid on time, but inadvertently paid to another taxing entity.
 - d. The delinquency was caused by the unavailability of necessary records directly relating to calculation of business license fees, over which the

appellant had no control, which made timely payment impossible. For example, the required records may have been destroyed by fire, flood, federally-declared natural disaster, or actions of war or terrorism. Unavailability of records caused by time or business pressures, employee turnover, or negligence are not reasonable cause for waiver of business license penalties.

- e. The delinquency was the result of clear error on the part of the License Official or Business Service Center staff in processing or posting receipt of appellant's payment.
 - f. Delay or failure caused by good faith reliance on erroneous guidance provided by the License Official or other staff, so long as complete and accurate information was given to the Business License Service Center, no change in the law occurred, and the appellant produces written documentation.
- (5) The Appeals Board shall, by majority vote of members present, render (or cause to have rendered) a written decision as to whether the decision or action listed in subsection (1) above was affected by material error based upon findings of fact and the application of the standards herein. The decision of the Appeals Board shall be served upon all parties or their representatives within fifteen (15) calendar days, or as soon as reasonably possible, after the hearing. The decision of the Board shall be final unless appealed to County Council within ten (10) calendar days after service of the Board's decision. County Council shall review the record and without further hearing affirm, modify, or deny the appeal in the event of an error of fact by the Board. The decision of Council shall be final unless appealed to a court of competent jurisdiction within ten (10) calendar days after service of the County Council's decision.

SECTION IV. The Richland County Code of Ordinances, Chapter 16, Licenses and Miscellaneous Business Regulations; Article I, In General; Section 16-22, Penalties, is hereby amended as follows:

Section 16-22. Criminal and Civil Penalties, Injunctive Relief.

- a. **Criminal Penalty.** Any person violating any provision of this article shall be deemed guilty of a misdemeanor and upon conviction shall be subject to punishment under the general penalty provisions of Section 1-8 of this Code of Ordinances: that is, shall be subject to a fine of up to \$500.00 or imprisonment for not more than thirty (30) days or both. Each day of violation shall be considered a separate offense. Punishment for violation shall not relieve the offender of liability for delinquent fees, penalties, and costs provided for herein.
- b. **Civil Penalty.** For non-payment of all or any part of the business license fee, the License Official shall levy and collect a penalty of five (5%) percent of the unpaid fee for each month or portion thereof after the due date until paid. Penalties shall not be waived except in accordance with circumstances of reasonable cause set forth in Section 16-19 of this article as determined by the Business Service Center Appeals Board.
- c. **Injunctive Relief.** The County may seek injunctive relief in a court of competent jurisdiction as a means of enforcing the provisions of this article.

SECTION V. Severability. If any section, subsection, or clause of this article shall be deemed unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

SECTION VI. Conflicting Ordinances. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION VII. Effective Date. All sections of this ordinance, excepting Sections 1 and 2, shall be effective on and after April 21, 2009. Sections 1 and 2 of this ordinance shall be effective on and after January 1, 2010.

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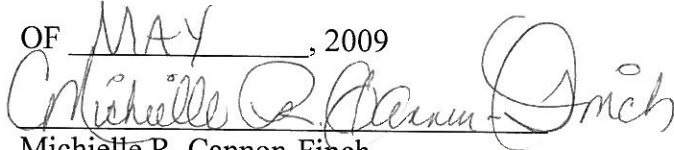
RICHLAND COUNTY COUNCIL

BY:


Paul Livingston, Chair

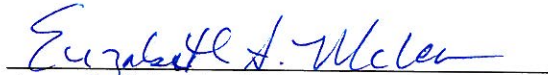
ATTEST THIS THE 12TH DAY

OF MAY, 2009



Michelle R. Cannon-Finch
Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE



Approved As To LEGAL Form Only
No Opinion Rendered As To Content

First Reading: Feb. 17, 2009
Second Reading: March 3, 2009
Public Hearing: March 17, 2009
Third Reading: April 21, 2009)