



## Town of Luray

45 East Main Street  
P. O. Box 629  
Luray, Virginia 22835

### RESOLUTION

**WHEREAS**, the Town Council of Luray desires to amend the Town Code related to itinerant merchants, peddlers, and solicitors; and

**WHEREAS**, the Town Council of Luray desires to amend the Town Code to comply with current regulations of the Commonwealth of Virginia related to business, professional, and occupational licenses; and

**WHEREAS**, the Council of the Town of Luray, Virginia after public advertising a public hearing to receive comment on the proposed Amendments to the Town Code and conducting said public hearing; and

**WHEREAS**, the following Amendments to the Town Code are considered:

***Sec. 30-1. – Solicitation of residents and commercial businesses***

***(a) As a means to preserve safety and well-being of town residents, the town hereby establishes the following regulations for commercial solicitation at residences and businesses:***

- 1) Commercial solicitors may only visit properties between the hours of 9:00 a.m. and 7:00 p.m.***
- 2) No commercial solicitor shall enter in or upon any house, building, or private property of any type without the prior express consent of the owner or occupant thereof, where there is placed or posted on the premises in a conspicuous location at or near the usual means of ingress a sign or other form of notice stating or indicating that the owner or occupant thereof forbids or otherwise does not desire persons in solicitation or selling to enter upon the premises.***

***(b) The regulations described in subsection (a) shall not apply to:***

- 1) The sale or offering for sale of newspapers.***
- 2) The sale or offering for sale of fresh farm products.***

***(c) Any person willfully failing to observe these restrictions under this article shall, upon conviction thereof, be guilty of a Class 3 misdemeanor.***

Sec. 30-36. - Separate license for each place of business.

When any person is engaged in a business subject to taxation under the provisions of this chapter, a separate license shall be required for each ~~different~~ ***definite*** location where such business is conducted.

Sec. 30-38. - Application; statements and other proof as to gross receipts, purchases, etc.

(a) Every person desiring to obtain a license to prosecute any business, trade, profession or occupation, or to do anything for which a license is required under this chapter, shall make application therefor to the town treasurer, in

which application shall be stated the residence of the applicant, the nature of the business, trade, profession, occupation or thing to be done and the place where it is proposed to be conducted.

(b) Where the license tax imposed by this chapter is measured by gross receipts, gross value, sales or purchases, the town treasurer or license inspector may require of the applicant for a license a statement, under oath, as to the amount of his gross receipts, gross value, sales or purchases, and, if the town treasurer or license inspector deems it advisable or necessary, he may demand of such person such other proof of the amount of his gross receipts, gross value, sales or purchases as may enable him to satisfactorily determine the same. The town treasurer may decline to issue the license until such proof has been furnished.

(c) ***No business license shall be issued until the applicant has produced evidence satisfactory to the town treasurer that all delinquent business license, real estate, personal property, meals, and lodging taxes owed by the business to the town have been paid in full.***

(d) It shall be unlawful for any person to make a false or misleading statement or give false testimony for the purpose of obtaining a license under this chapter. Any license issued because of any such statement or testimony shall be revoked and no part of the license tax collected shall be refunded.

(Code 1981, § 11-8; Ord. of 5-9-1983)

Sec. 30-71. - Business, professional and occupational licenses.

(a) *Overriding conflicting ordinances.* Except as may be otherwise provided by the laws of the commonwealth, and notwithstanding any other current ordinances or resolutions enacted by the town council, whether or not compiled in this Code, to the extent of any conflict, the following provisions shall be applicable to the levy, assessment, and collection of licenses required and taxes imposed on businesses, trades, professions and callings and upon the persons, firms and corporations engaged therein within this locality.

(b) *License requirement.*

(1) *Generally.*

a. Every person engaging in this jurisdiction in any business, trade, profession occupation or calling (collectively hereinafter "a business"), as defined in this section, unless otherwise exempted by law, shall apply for a license for each such business if:

(~~1~~) Such person maintains a definite place of business in this jurisdiction,

(~~2~~) Such person does not maintain a definite office anywhere but does maintain an abode in this jurisdiction, which abode for the purposes of this section shall be deemed a definite place of business, or

(~~3~~) There is no definite place of business but such person operates amusement machines, is engaged as a peddler or itinerant merchant, carnival or circus as specified in Code of Virginia, § 58.1-3717, 58.1-3718, or 58.1-3728, respectively, or is a contractor subject to Code of Virginia, § 58.1-3715, or is a public service corporation subject to Code of Virginia, § 58.1-3731.

b. *Multiple places of business.* A separate license shall be required for each definite place of business. A person engaged in two or more businesses or professions carried on at the same place of business may elect to obtain one license for all such businesses and professions if all of the following criteria are satisfied:

(~~1~~) Each business or profession is licensable at the location and has satisfied any requirements imposed by state law or other provisions of the ordinances of this jurisdiction;

(~~2~~) All of the businesses or professions are subject to the same tax rate, or if subject to different tax rates, the licensee agrees to be taxed on all businesses and professions at the highest rate; and

(~~3~~) The taxpayer agrees to supply such information as the assessor may require concerning the nature of the several businesses and their gross receipts.

(2) Each person subject to a license tax shall apply for a license prior to beginning business if he was not subject to licensing in this jurisdiction on or before January 1 of the license year or no later than March 1 of the current license year if he had been issued a license for the preceding license year. The application shall be on forms prescribed by the assessing official.

(3) The tax shall be paid with the application in the case of any license not based on gross receipts. If, the tax is measured by the gross receipts of the business, the tax shall be paid on or before March 1 of each year.

(4) The assessing official may grant an extension of time, not to exceed 90 days, in which to file an application for a license, for reasonable cause. The extension shall be conditioned upon the timely payment of a reasonable estimate of the appropriate tax, subject to adjustment to the correct tax at the end of the extension together with interest from the due date until the date paid and, if the estimate submitted with the extension is

found to be unreasonable under the circumstances, a penalty of ten percent of the portion paid after the due date.

(5) A penalty of ten percent of the tax may be imposed upon the failure to file an application or the failure to pay the tax by the appropriate due date. Only the late filing penalty shall be imposed by the assessing official if both the application and payment are late; however, both penalties may be assessed if the assessing official determines that the taxpayer has a history of noncompliance. In the case of an assessment of additional tax made by the assessing official, if the application and, if applicable, the return were made in good faith and the understatement of the tax was not due to any fraud, reckless or intentional disregard of the law by the taxpayer, there shall be no late payment penalty assessed with the additional tax. If any assessment of tax by the assessing official is not paid within 30 days, the treasurer (or other collecting official) may impose a ten percent late payment penalty. The penalties shall not be imposed, or if imposed, shall be abated by the official who assessed them, if the failure to file or pay was not the fault of the taxpayer. In order to demonstrate lack of fault, the taxpayer must show that he acted responsibly and that the failure was due to events beyond his control. "Acted responsibly" means that:

- a. The taxpayer exercised the level of reasonable care that a prudent person would exercise under the circumstances in determining the filing obligations for the business and
- b. The taxpayer undertook significant steps to avoid or mitigate the failure, such as requesting appropriate extensions (where applicable), attempting to prevent a foreseeable impediment, acting to remove an impediment once it occurred, and promptly rectifying a failure once the impediment was removed or the failure discovered.

"Events beyond the taxpayer's control" include, but are not limited to, the unavailability of records due to fire or other casualty; the unavoidable absence (e.g., due to death or serious illness) of the person with the sole responsibility for tax compliance; or the taxpayer's reasonable reliance in good faith upon erroneous written information from the assessing official, who was aware of the relevant facts relating to the taxpayer's business when he provided the erroneous information.

(6) Interest shall be charged on the late payment of the tax from the due date until the date paid without regard to fault or other reason for the late payment. Whenever an assessment of additional or omitted tax by the assessing official is found to be erroneous, all interest and penalty charged and collected on the amount of the assessment found to be erroneous shall be refunded together with interest on the refund from the date of payment or the due date, whichever is later. Interest shall be paid on the refund of any tax paid under this section from the date of payment or due date, whichever is later, whether attributable to an amended return or other reason. Interest on any refund shall be paid at the same rate charged under Code of Virginia, § 58.1-3916. No interest shall accrue on an adjustment of estimated tax liability to actual liability at the conclusion of a base year. No interest shall be paid on a refund or charged on a late payment, in event of such adjustment, provided the refund or the late payment is made not more than 30 days from (i) the date of the payment that created the refund or (ii) the due date of the tax, whichever is later.

(c) *Situs of gross receipts.*

(1) *General rule.* Whenever the tax imposed by this section is measured by gross receipts, the gross receipts included in the taxable measure shall be only those gross receipts attributed to the exercise of a licensable privilege at a definite place of business within this jurisdiction. In the case of activities conducted outside of a definite place of business, such as during a visit to a customer location, the gross receipts shall be attributed to the definite place of business from which such activities are initiated, directed, or controlled. The situs of gross receipts for different classifications of business shall be attributed to one or more definite places of business or offices as follows:

- a. The gross receipts of a contractor shall be attributed to the definite place of business at which his services are performed, or if his services are not performed at any definite place of business, then the definite place of business from which his services are directed or controlled, unless the contractor is subject to the provisions of Code of Virginia, § 58.1-3715.
- b. The gross receipts of a retailer or wholesaler shall be attributed to the definite place of business at which sales solicitation activities occur, or if sales solicitation activities do not occur at any definite place of business, then the definite place of business from which sales solicitation activities are directed or controlled; however, a wholesaler or distribution house subject to a license tax measured by purchases shall determine the situs of its purchases by the definite place of business at which or from which deliveries of the purchased goods, wares and merchandise are made to customers. Any wholesaler who is subject to

license tax in two or more localities and who is subject to multiple taxation because the localities use different measures, may apply to the department of taxation for a determination as to the proper measure of purchases and gross receipts subject to license tax in each locality.

c. The gross receipts of a business renting tangible personal property shall be attributed to the definite place of business from which the tangible personal property is rented or, if the property is not rented from any definite place of business, then the definite place of business at which the rental of such property is managed.

d. The gross receipts from the performance of services shall be attributed to the definite place of business at which the services are performed or, if not performed at any definite place of business, then the definite place of business from which the services are directed or controlled.

(2) *Apportionment.* If the licensee has more than one definite place of business and it is impractical or impossible to determine to which definite place of business gross receipts should be attributed under the general rule (and the affected jurisdictions are unable to reach an apportionment agreement), except as to circumstances set forth in Code of Virginia, § 58.1-3709, the gross receipts of the business shall be apportioned between the definite places of businesses on the basis of payroll. Gross receipts shall not be apportioned to a definite place of business unless some activities under the applicable general rule occurred at, or were controlled from, such definite place of business. Gross receipts attributable to a definite place of business in another jurisdiction shall not be attributed to this jurisdiction solely because the other jurisdiction does not impose a tax on the gross receipts attributable to the definite place of business in such other jurisdiction.

(3) *Agreements.* The assessor 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 the agreement shall not exceed the total gross receipts attributable to all of the definite places of business affected by the agreement. Upon being notified by a taxpayer that its method of attributing gross receipts is fundamentally inconsistent with the method of one or more political subdivisions in which the taxpayer is licensed to engage in business and that the difference has, or is likely to, result in taxes on more than 100 percent of its gross receipts from all locations in the affected jurisdictions, the assessor shall make a good faith effort to reach an apportionment agreement with the other political subdivisions involved.

(d) *Limitations and extensions.*

(1) Where, before the expiration of the time prescribed for the assessment of any license tax imposed pursuant to this section, both the assessing official and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(2) Notwithstanding Code of Virginia, § 58.1-3903, the assessing official shall assess the local license tax omitted because of fraud or failure to apply for a license for the current license year and the six preceding years.

(3) The period for collecting any local license tax shall not expire prior to the period specified in Code of Virginia, § 58.1-3940, two years after the date of assessment if the period for assessment has been extended pursuant to this subdivision, two years after the final determination of an appeal for which collection has been stayed pursuant to the following subsection (e)(2) or (e)(4) of this section, or two years after the final decision in a court application pursuant to Code of Virginia, § 58.1-3984, or similar law for which collection has been stayed, whichever is later.

(e) *Appeals and rulings.*

~~(1) Any person assessed with a license tax under this section as the result of an audit may apply within 90 days from the date of the assessment to the assessing official for a correction of the assessment. The application must be filed in good faith and sufficiently identify the taxpayer, audit period, remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer relies, and any other facts relevant to the taxpayer's contention. The assessor may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents, further audit, or other evidence deemed necessary for a proper and equitable determination of the applications. The assessment shall be deemed prima facie correct. The assessor shall undertake a full review of the taxpayer's claims and issue a determination to the taxpayer setting forth its position. Every assessment pursuant to an audit shall be accompanied by a written~~

explanation of the taxpayer's right to seek correction and the specific procedure to be followed in the jurisdiction (e.g., the name and address to which an application should be directed):

(2) — Provided an application is made within 90 days of an assessment, collection activity shall be suspended until a final determination is issued by the assessor, unless the assessor determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of subsection (b)(6) of this section, but no further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" includes a finding that the application is frivolous, or that a taxpayer desires:

a. — To depart quickly from the locality,

b. — To remove his property therefrom,

c. — To conceal himself or his property therein, or

d. — To do any other act tending to prejudice or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.

(3) — Any person assessed with a license tax under this section as a result of an audit may apply within 90 days of the determination by the assessing official on an application pursuant to subsection (e)(1) above to the tax commissioner for a correction of such assessment. The tax commissioner shall issue a determination to the taxpayer within 90 days of receipt of the taxpayer's application, unless the taxpayer and the assessing official are notified that a longer period will be required. The application shall be treated as an application pursuant to Code of Virginia, § 58.1-1821, and the tax commissioner may issue an order correcting such assessment pursuant to Code of Virginia, § 58.1-1822. Following such an order, either the taxpayer or the assessing official may apply to the appropriate circuit court pursuant to Code of Virginia, § 58.1-3984. However, the burden shall be on the party making the application to show that the ruling of the tax commissioner is erroneous. Neither the tax commissioner nor the department of taxation shall be made a party to an application to correct an assessment merely because the tax commissioner has ruled on it.

(4) — On receipt of a notice of intent to file an appeal to the tax commissioner under subsection (e)(3) above, the assessing official shall further suspend collection activity until a final determination is issued by the tax commissioner, unless the assessor determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of subsection (b)(6), but no further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" shall have the same meaning as set forth in subsection (e)(2) above.

**(1) Definitions. For purposes of this section:**

**"Amount in dispute," when used with respect to taxes due or assessed, means the amount specifically identified in the administrative appeal or application for judicial review as disputed by the party filing such appeal or application.**

**"Appealable event" means an increase in the assessment of a local license tax payable by a taxpayer, the denial of a refund, or the assessment of a local license tax where none previously was assessed, arising out of the local assessing official's (i) examination of records, financial statements, books of account, or other information for the purpose of determining the correctness of an assessment; (ii) determination regarding the rate or classification applicable to the licensable business; (iii) assessment of a local license tax when no return has been filed by the taxpayer; or (iv) denial of an application for correction of erroneous assessment attendant to the filing of an amended application for license.**

**An appealable event shall include a taxpayer's appeal of the classification applicable to a business, including whether the business properly falls within a business license subclassification established by the town, regardless of whether the taxpayer's appeal is in conjunction with an assessment, examination, audit, or any other action taken by the town.**

**"Frivolous" means a finding, based on specific facts, that the party asserting the appeal is unlikely to prevail upon the merits because the appeal is (i) not well grounded in fact; (ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (iii) interposed for an improper purpose, such as to harass, to cause unnecessary delay in the payment of tax or a refund, or to create needless cost from the litigation; or (iv) otherwise frivolous.**

**"Jeopardized by delay" means a finding, based upon specific facts, that a taxpayer designs to (i) depart quickly from the town; (ii) remove his property therefrom; (iii) conceal himself or his property therein; or**

(iv) do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.

(2) *Administrative appeals to town treasurer.*

a. *Filing and contents of administrative appeal.* Any person assessed with a local license tax as a result of an appealable event as defined in this section may file an administrative appeal of the assessment within one year from the last day of the tax year for which such assessment is made, or within one year from the date of the appealable event, whichever is later, with the town treasurer. The appeal must be filed in good faith and sufficiently identify the taxpayer, the tax periods covered by the challenged assessments, the amount in dispute, the remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer relies, and any other facts relevant to the taxpayer's contention. The town treasurer may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents, an audit or further audit, or other evidence deemed necessary for a proper and equitable determination of the appeal. The assessment placed at issue in the appeal shall be deemed prima facie correct. The town treasurer shall undertake a full review of the taxpayer's claims and issue a written determination to the taxpayer setting forth the facts and arguments in support of his or her decision.

The taxpayer may at any time also file an administrative appeal of the classification applicable to the taxpayer's business, including whether the business properly falls within a business license subclassification established by the town. However, the appeal of the classification of the business shall not apply to any license year for which the Tax Commissioner has previously issued a final determination relating to any license fee or license tax imposed upon the taxpayer's business for the year. In addition, any appeal of the classification of a business shall in no way affect or change any limitations period prescribed by law for appealing an assessment.

b. *Notice of right of appeal and procedures.* Every assessment made by the town treasurer pursuant to an appealable event shall include or be accompanied by a written explanation of the taxpayer's right to file an administrative appeal and the specific procedures to be followed in the jurisdiction, the name and address to which the appeal should be directed, an explanation of the required content of the appeal, and the deadline for filing the appeal.

c. *Suspension of collection activity during appeal.* Provided a timely and complete administrative appeal is filed, collection activity with respect to the amount in dispute relating to any assessment by the town treasurer shall be suspended until a final determination is issued by the town treasurer, unless the town treasurer determines (i) collection would be jeopardized by delay as defined in this section; (ii) the taxpayer has not responded to a request for relevant information after a reasonable time; or (iii) the appeal is frivolous as defined in this section. Interest shall accrue in accordance with Sec. 30-71(b)(6), but no further penalty shall be imposed while collection action is suspended.

d. *Procedure in event of nondecision.* Any taxpayer whose administrative appeal to the town treasurer pursuant to the provisions of subdivision (2) of this subsection has been pending for more than one year without the issuance of a final determination may, upon not less than 30 days' written notice to the town treasurer, elect to treat the appeal as denied and appeal the assessment or classification of the taxpayer's business to the Tax Commissioner in accordance with the provisions of subdivision (3) of this subsection. The Tax Commissioner shall not consider an appeal filed pursuant to the provisions of this subsection if he finds that the absence of a final determination on the part of the town treasurer was caused by the willful failure or refusal of the taxpayer to provide information requested and reasonably needed by the town treasurer to make a determination.

(3) *Administrative appeal to the Tax Commissioner.*

a. Any person assessed with a local license tax as a result of a determination or that has received a determination with regard to the person's appeal of the license classification or subclassification applicable to the person's business, upon an administrative appeal to the town treasurer pursuant to subdivision (2) of this subsection, that is adverse to the position asserted by the taxpayer in such appeal may appeal such assessment or determination to the Tax Commissioner within 90 days of the date of the determination by the town treasurer. The appeal shall be in such form as the Tax Commissioner may prescribe and the taxpayer shall serve a copy of the appeal upon the town treasurer. The Tax Commissioner shall permit the town treasurer to participate in the proceedings, and shall issue a determination to the taxpayer within 90 days of receipt of the taxpayer's application, unless the taxpayer

and the assessing official are notified that a longer period will be required. The appeal shall proceed in the same manner as an application pursuant to Va. Code § [58.1-1821](#), and the Tax Commissioner pursuant to § [58.1-1822](#) may issue an order correcting such assessment or correcting the license classification or subclassification of the business and the related license tax or fee liability.

b. **Suspension of collection activity during appeal.** On receipt of a notice of intent to file an appeal to the Tax Commissioner under subdivision a of this subsection, collection activity with respect to the amount in dispute relating to any assessment by the town treasurer shall be suspended until a final determination is issued by the Tax Commissioner, unless the town treasurer determines (i) collection would be jeopardized by delay as defined in this section; (ii) the taxpayer has not responded to a request for relevant information after a reasonable time; or (iii) the appeal is frivolous as defined in this section. Interest shall accrue in accordance with Sec. 30-71(b)(6), but no further penalty shall be imposed while collection action is suspended. The requirement that collection activity be suspended shall cease unless an appeal pursuant to subdivision (3)a of this subsection is filed and served on the necessary parties within 30 days of the service of notice of intent to file such appeal.

c. **Implementation of determination of Tax Commissioner.** Promptly upon receipt of the final determination of the Tax Commissioner with respect to an appeal pursuant to subdivision (3)a of this subsection, the town treasurer shall take those steps necessary to calculate the amount of tax owed by or refund due to the taxpayer consistent with the Tax Commissioner's determination and shall provide that information to the taxpayer and to the treasurer in accordance with the provisions of this subdivision.

(i) If the determination of the Tax Commissioner sets forth a specific amount of tax due, the town treasurer shall issue a bill to the taxpayer for such amount due, together with interest accrued and penalty, if any is authorized by this section, within 30 days of the date of the determination of the Tax Commissioner.

(ii) If the determination of the Tax Commissioner sets forth a specific amount of refund due, the town treasurer shall issue a payment to the taxpayer for such amount due, together with interest accrued pursuant to this section, within 30 days of the date of the determination of the Tax Commissioner.

(iii) If the determination of the Tax Commissioner does not set forth a specific amount of tax due, or otherwise requires the town treasurer to undertake a new or revised assessment that will result in an obligation to pay a tax that has not previously been paid in full, the town treasurer shall promptly commence the steps necessary to undertake such new or revised assessment, and provide the same to the taxpayer within 60 days of the date of the determination of the Tax Commissioner, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the Tax Commissioner, whichever is later. The town treasurer shall issue a bill to the taxpayer for the amount due, together with interest accrued and penalty, if any is authorized by this section, within 30 days of the date of the new assessment.

(iv) If the determination of the Tax Commissioner does not set forth a specific amount of refund due, or otherwise requires the town treasurer to undertake a new or revised assessment that will result in an obligation on the part of the locality to make a refund of taxes previously paid, the town treasurer shall promptly commence the steps necessary to undertake such new or revised assessment or to determine the amount of refund due in the case of a correction to the license classification or subclassification of the business, and provide the same to the taxpayer within 60 days of the date of the determination of the Tax Commissioner, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the Tax Commissioner, whichever is later. The town treasurer shall issue a refund to the taxpayer for the amount of tax due, together with interest accrued, within 30 days of the date of the new assessment or determination of the amount of the refund.

(4) **Judicial review of determination of Tax Commissioner.**

a. **Judicial review.** Following the issuance of a final determination of the Tax Commissioner pursuant to subdivision (3) of this subsection, the taxpayer or town treasurer may apply to the appropriate circuit court for judicial review of the determination, or any part thereof, pursuant to Va. Code § [58.1-3984](#). In any such proceeding for judicial review of a determination of the Tax Commissioner, the burden shall be on the party challenging the determination of the Tax Commissioner, or any part thereof, to show that the ruling of the Tax Commissioner is erroneous with respect to the

part challenged. Neither the Tax Commissioner nor the Department of Taxation shall be made a party to an application to correct an assessment merely because the Tax Commissioner has ruled on it.

b. *Suspension of payment of disputed amount of tax due upon taxpayer's notice of intent to initiate judicial review.*

(i) *On receipt of a notice of intent to file an application for judicial review, pursuant to Va. Code § [58.1-3984](#), of a determination of the Tax Commissioner pursuant to subdivision (3) of this subsection, and upon payment of the amount of the tax relating to any assessment by the town treasurer that is not in dispute together with any penalty and interest then due with respect to such undisputed portion of the tax, the treasurer shall further suspend collection activity while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines that (i) the taxpayer's application for judicial review is frivolous, as defined in this section; (ii) collection would be jeopardized by delay, as defined in this section; or (iii) suspension of collection would cause substantial economic hardship to the locality. For purposes of determining whether substantial economic hardship to the locality would arise from a suspension of collection activity, the court shall consider the cumulative effect of then-pending appeals filed within the locality by different taxpayers that allege common claims or theories of relief.*

(ii) *Upon a determination that the appeal is frivolous, that collection may be jeopardized by delay, or that suspension of collection would result in substantial economic hardship to the locality, the court may require the taxpayer to pay the amount in dispute or a portion thereof, or to provide surety for payment of the amount in dispute in a form acceptable to the court.*

(iii) *No suspension of collection activity shall be required if the application for judicial review fails to identify with particularity the amount in dispute or the application does not relate to any assessment by the town treasurer.*

(iv) *The requirement that collection activity be suspended shall cease unless an application for judicial review pursuant to Va. Code § [58.1-3984](#) is filed and served on the necessary parties within 30 days of the service of the notice of intent to file such application.*

(v) *The suspension of collection activity authorized by this subdivision shall not be applicable to any appeal of a local license tax that is initiated by the direct filing of an action pursuant to Va. Code § [58.1-3984](#) without prior exhaustion of the appeals provided by subdivisions (2) and (3) of this subsection.*

c. *Suspension of payment of disputed amount of refund due upon locality's notice of intent to initiate judicial review.*

(i) *Payment of any refund determined to be due pursuant to the determination of the Tax Commissioner of an appeal pursuant to subdivision (3) of this subsection shall be suspended if the town serves upon the taxpayer, within 60 days of the date of the determination of the Tax Commissioner, a notice of intent to file an application for judicial review of the Tax Commissioner's determination pursuant to Va. Code § [58.1-3984](#) and pays the amount of the refund not in dispute, including tax and accrued interest. Payment of such refund shall remain suspended while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines that the locality's application for judicial review is frivolous, as defined in this section.*

(ii) *No suspension of refund activity shall be permitted if the town's application for judicial review fails to identify with particularity the amount in dispute.*

(iii) *The suspension of the obligation to make a refund shall cease unless an application for judicial review pursuant to Va. Code § [58.1-3984](#) is filed and served on the necessary parties within 30 days of the service of the notice of intent to file such application.*

d. *Accrual of interest on unpaid amount of tax. Interest shall accrue in accordance with Sec. 30-71(b)(6), but no further penalty shall be imposed while collection action is suspended.*

(5) Any taxpayer may request a written ruling regarding the application of the tax to a specific situation from the ~~assessor~~ *town treasurer*. Any person requesting such a ruling must provide all the relevant facts for the situation and may present a rationale for the basis of an interpretation of the law most favorable to the taxpayer.

***In addition, the taxpayer or authorized representative may request a written ruling with regard to the classification applicable to the taxpayer's business, including whether the business properly falls within a business license subclassification established by the town.***

Any misrepresentation or 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 revoked or amended prospectively if (i) there is a change in the law, a court decision, or (ii) the assessor notifies the taxpayer of a change in the policy or interpretation upon which the ruling was based. However, any 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 such ruling was in effect.

(f) *Recordkeeping and audits.* Every person who is assessable with a license tax shall keep sufficient records to enable the ~~assessor~~ **town treasurer** to verify the correctness of the tax paid for the license years assessable and to enable the ~~assessor~~ **town treasurer** to ascertain what is the correct amount of tax that was assessable for each of those years. All such records, books of accounts and other information shall be open to inspection and examination by the ~~assessor~~ **town treasurer** to establish whether a particular receipt is directly attributable to the taxable privilege exercised within ~~this jurisdiction~~ **the town**. The ~~assessor~~ **town treasurer** 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 ~~assessor's~~ **town treasurer's** office upon demand.

(g) *Exclusions and deductions from gross receipts.*

(1) *General rule.* Gross receipts for license tax purposes shall not include any amount not derived from the exercise of the licensed privilege to engage in a business or profession in the ordinary course of business or profession.

(2) *Exclusions.* The following items shall be excluded from gross receipts:

- a. Amounts received and paid to the United States, the commonwealth or any county, city or town for the Virginia retail sales or use tax, or for any local sales tax or any local excise tax on cigarettes, for any federal or state excise taxes on motor fuels.
- b. Any amount representing the liquidation of a debt or conversion of another asset to the extent that the amount is attributable to a transaction previously taxed (e.g., the factoring of accounts receivable created by sales which have been included in taxable receipts even though the creation of such debt and factoring are a regular part of its business).
- c. Any amount representing returns and allowances granted by the business to its customer.
- d. Receipts which are the proceeds of a loan transaction in which the licensee is the obligor.
- e. Receipts representing the return of principal of a loan transaction in which the licensee is the creditor, or the return of principal or basis upon the sale of a capital asset.
- f. Rebates and discounts taken or received on account of purchases by the licensee. A rebate or other incentive offered to induce the recipient to purchase certain goods or services from a person other than the offeror, and which the recipient assigns to the licensee in consideration of the sale of goods and services shall not be considered a rebate or discount to the licensee, but shall be included in the licensee's gross receipts together with any handling or other fees related to the incentive.
- g. Withdrawals from inventory for purposes other than sale or distribution and for which no consideration is received and the occasional sale or exchange of assets other than inventory, whether or not a gain or loss is recognized for federal income tax purposes.
- h. Investment income not directly related to the privilege exercised by a licensable business not classified as rendering financial services. This exclusion shall apply to interest on bank accounts of the business, and to interest, dividends and other income derived from the investment of its own funds in securities and other types of investments unrelated to the licensed privilege. This exclusion shall not apply to interest, late fees and similar income attributable to an installment sale or other transaction that occurred in the regular course of business.

(3) *Deductions.* The following shall be deducted from gross receipts or gross purchases that would otherwise be taxable:

- a. Any amount paid for computer hardware and software that are sold to a United States federal or state government entity provided that such property was purchased within two years of the sale to said entity by the original purchaser who shall have been contractually obligated at the time of purchase to resell such property to a state or federal government entity. This deduction shall not occur until the time of resale and

shall apply to only the original cost of the property and not to its resale price, and the deduction shall not apply to any of the tangible personal property which was the subject of the original resale contract if it is not resold to a state or federal government entity in accordance with the original contract obligation.

b. Any receipts attributable to business conducted in another state or foreign country in which the taxpayer is liable for an income or other tax based upon income.

(h) *License tax.* Every person or business subject to licensure under this section shall be assessed and required to pay annually:

(1) Except as may be otherwise provided in Code of Virginia, §§ 58.1-3712, 58.1-3712.1 and 58.1-3713, every person or business with annual gross receipts of more than \$1.00 shall be assessed and required to pay annually a license tax on all the gross receipts of such persons includable as provided in this section at a rate set forth below for the class of enterprise listed.

a. For contractors and persons constructing for their own account, \$30.00 if the gross receipts during the preceding year did not exceed \$30,000.00. If such gross receipts exceeded \$30,000.00, the license tax shall be an additional \$0.10 per \$100.00 of gross receipts;

b. For retailers, \$30.00 per year and an additional \$0.12 per \$100.00 of gross receipts in excess of \$25,000.00;

c. For financial, real estate and professional services, \$30.00 per year and an additional \$0.25 per \$100.00 of gross receipts in excess of \$12,000.00;

d. For repair, personal and business services and all other businesses and occupations not specifically listed or exempted in this section or otherwise by law, \$30.00 and an additional \$0.25 per \$100.00 of gross receipts in excess of \$12,000.00;

e. For wholesalers, \$0.05 per \$100.00 of purchases from the preceding year;

f. For fortunetellers, clairvoyants and practitioners of palmistry, \$250.00 per year;

g. For massage parlors, \$1,500.00 per year;

h. For itinerant merchants, ~~or~~ peddlers, **and commercial solicitors**, \$500.00 per year, **unless otherwise provided for in Sec 30-96 for itinerant merchants, Sec 30-97 for peddlers, or Sec 30-102 for commercial solicitors**;

i. For permanent coliseums, arenas or auditoriums having a maximum capacity in excess of 10,000 persons, open to the public, \$1,000.00 per year; and

j. For savings institutions and state-chartered credit unions, \$50.00 per year.

(2) License taxes provided for herein shall be due as follows: For taxes based on gross receipts, the tax shall be due on or before March 1 of each year, or no more than 30 days after the person begins business. Taxes not based on gross receipts shall be paid with the application.

(Code 1981, § 11-70; Ord. of 12-30-1996; Ord. of 10-10-2000)

Sec. 30-96. - Itinerant ~~vendors~~ **merchants** generally; tax rate.

**An itinerant merchant is any person who engages in, does, or transacts any temporary or transient business within the town who, for the purpose of carrying on such business, occupies any location for a period of less than one year.**

(a) *License display.* A license certificate must be prominently displayed by an itinerant ~~vendor~~ **merchant**.

(b) *License tax rates* ~~enumerated.~~ License tax rates shall be as follows:

(1) Itinerant ~~vendors~~ **merchants conducting business at a festival, parade, or other special event: \$25.00 per day** of family supplies of a perishable nature or which are used for heating purposes (produce, fruits, meats, seafood, perishable food, ice cream, sandwiches, beverages, vegetables, flowers, plants, ice, wood, coal, etc.): ~~\$250.00 per month or fraction thereof.~~

(2) **All other itinerant vendors merchants:** of general merchandise (not household supplies of a perishable nature or supplies used for heating purposes as previously described): **\$500.00 per year.**

(3) **The license tax for itinerant merchants shall not be subject to proration.** In no event shall the tax rates specified in subsections (b)(1) and (b)(2) of this section exceed cumulatively \$500.00 per year.

~~(c) License fee.~~ An Itinerant ~~vendor~~ wishing to conduct business at a festival, parade or other special event: in the town shall purchase a license for ~~\$25.00 per day.~~

~~(d)~~(c) **Exemptions. No license tax shall be due from:** *Application of section provisions.*

(1) This section shall not apply to ~~a~~Any person who holds not more than two garage or yard sales within any 12-month period, provided that such sale shall be held upon residential property and shall offer for sale only used

~~household or personal goods owned by the seller or his immediate family~~ **conducting a garage or yard sale in accordance with Chapter 66, Article II of the Town Code provided the sale is held upon residential property and offers for sale only household or personal goods owned by the seller or immediate family.**

**(2) A nonprofit organization described in Internal Revenue Code § 501(c)(3) or 501(c)(19).**

**(3) The sale of newspapers.**

**(4) Vendors participating in a special event sponsored by the town.**

**(5) An itinerant merchant who sell or offer for sale in person, or by their employees, ice wood, charcoal, meats, milk, butter, eggs, poultry, game, vegetables, fruits, or other family supplies or a perishable nature or farm products grown or produced by them and not purchased by them for sale**

**(d) Location. Itinerant merchants shall not utilize any location in a manner that creates a zoning violation by the host property.**

(Code 1981, § 11-87; Ord. of 10-10-2000, § VII)

Sec. 30-97. - Peddlers generally; tax rate.

***A peddler shall be one who moves from place to place within the Town and offers merchandise, goods, food, or services for sale or barter at no definite place of business.***

(a) ~~*Exemptions; license display.*~~ This section shall not apply to a peddler at wholesale or those who sell or offer for sale in person, or by their employees, ice, wood, charcoal, meats, milk, butter, eggs, poultry, game, vegetables, fruits or other family supplies of a perishable nature or farm products grown or produced by them and not purchased by them for sale. This section shall not apply to those who sell to dealers or retailers only, a licensed wholesale dealer who sells and, at the time of such sale, delivers merchandise to retail merchants, a distributor or vendor of motor fuels and petroleum products, a farmer or farmers' cooperative association, and a manufacturer who is subject to state tax on intangible personal property who peddles at wholesale only the goods, ware or merchandise manufactured by him at a plant, whose intangible personal property is taxed by the commonwealth. License certificates must be prominently displayed by peddlers.

(b) ~~*Tax rates enumerated.*~~ License tax rates shall be as follows:

(1) Peddlers of general merchandise and goods not specifically exempted: ~~\$30.00~~ **\$500.00** per year or fraction thereof, per person or vehicle.

(2) Peddlers who purchase for resale family supplies of a perishable nature (***produce, fruits, seafood, perishable food, ice cream, meat, sandwiches, beverages, vegetables, flowers, plants, ice, etc.***) or which are used for heating purposes (~~produce, fruits, seafood, perishable food, ice cream, meat, sandwiches, beverages, vegetables, flowers, plants, ice, wood, coal, etc.~~): \$30.00 per year or fraction thereof, per person or vehicle.

(3) ***The license tax for peddlers shall not be subject to proration.***

(b) ***Exemptions. No license tax shall be due from:***

1) ***A peddler at wholesale or those who sell or offer for sale in person, or by their employees, ice wood, charcoal, meats, milk, butter, eggs, poultry, game, vegetables, fruits, or other family supplies or a perishable nature or farm products grown or produced by them and not purchased by them for sale.***

2) ***A licensed wholesale dealer who sells and, at the time of such sale, delivers merchandise to retail merchants.***

3) ***A distributor or vendor of motor fuels and petroleum products***

4) ***A distributor of seafood who catches seafood and sells only the seafood caught by him.***

5) ***A farmer or producer of agricultural products who sells only the farm or agricultural products produced or grown by him.***

6) ***A farmer's cooperative association.***

7) ***A manufacturer who is subject to state tax on intangible personal property who peddles at wholesale only the goods, ware, or merchandise manufactured by him at a plant, whose intangible personal property is taxed by the Commonwealth.***

(c) ~~*Direct sales exempted; exception.*~~ Notwithstanding any other provision of this section, no license tax shall be imposed on a direct seller, unless the total sales of such seller exceeds \$4,000.00 per year. The rate of tax on a direct seller who resides in the town and whose total sales exceed \$4,000.00 per year, shall be \$0.20 per \$100.00 of retail sales, or \$0.05 per \$100.00 of total annual wholesale sales, whichever is applicable.

(Code 1981, § 11-88; Code 1981, §§ 11-70, 11-88; Ord. of 10-10-2000, § VIII)

***Sec. 30-102. – Commercial solicitor; tax rate.***

---

*A commercial solicitor is any person who goes from property to property within the town for the purpose of taking orders or offering to take orders for the sale of goods, wares, or merchandise or taking orders for services to be performed in the future.*

*(a) License tax rates enumerated:*

- (1) For commercial solicitors who i) maintain a place of abode within town limits; ii) are direct sellers as defined by Virginia Code § 58.1-3719.1.B; and iii) whose total sales exceed \$4,000.00 per year: \$0.20 per \$100.00 of retail sales, or \$0.05 per \$100.00 of total annual wholesale sales, whichever is applicable. No license tax shall be due from direct sellers with total sales of less than \$4,000 per year.*
- (2) For all other commercial solicitors: \$500.00 per year.*
- (3) The license tax for commercial solicitors shall not be subject to proration.*

*(b) Exemptions. No license tax shall be due for activities:*

- (1) By or on behalf of a nonprofit civic, charitable, government, or educational organization.*
- (2) By a vendor at a special event sponsored by the town.*

**NOW, THEREFORE, BE IT RESOLVED**, that the Council of the Town of Luray, Virginia does hereby adopts and ordains the Amendments to the Town Code.

Adopted this 9<sup>th</sup> day of July, 2018.

---

Barry Presgraves, Mayor

**CERTIFICATE**

I certify that I am the Clerk of the Town of Luray, Virginia, and that the foregoing is a true copy of a Resolution adopted by the Council of the Town of Luray, Virginia, on July 9, 2018, upon the following vote:

NAME	AYE	NAY	ABSTAIN	ABSENT
Mayor Barry Presgraves <sup>1</sup>				
Ronald "Ron" Vickers				
Jerry Dofflemyer				
Jerry Schiro				
Leroy Lancaster				
Joey Sours				
Leah Pence				

Date: July 9, 2018

[SEAL]

**ATTEST:** \_\_\_\_\_  
Mary Broyles, Clerk of Council

---

<sup>1</sup> Votes only in the event of a tie.

---