

April 10, 2012

The regular meeting of the Council of the City of Martinsville, Virginia, was held on April 10, 2012, in Council Chambers, Municipal Building, at 7:30 PM, with Mayor Kim Adkins presiding. Council Members present included: Mayor Kim Adkins, Vice Mayor Kimble Reynolds, Gene Teague, Mark Stroud and Danny Turner. Staff present included: Leon Towarnicki, Interim City Manager, Brenda Prillaman, Eric Monday, Wayne Knox, Eddie Cassady, Robert Fincher, and Ruth Easley.

Following the invocation by Council Member Gene Teague and Pledge to the American Flag, the Mayor welcomed everyone to the meeting.

Minutes: On a motion by Danny Turner, seconded by Kimble Reynolds, with a 5-0 vote, Council approved the minutes of the March 13, 2012 meeting.

Recognitions: Mayor Adkins presented a proclamation recognizing Arbor Day 2012 to Wayne Knox who represented the Tree Board.

FEMA Hazard Mitigation Grant: At the March 27, 2012 Council Meeting, staff reported on an opportunity to apply for grant funding for the two projects: (1) Neighborhood Tornado Alert Sirens and (2) the installation of an emergency generator at the Middle School which is the City's designated emergency shelter. Council endorsed the projects and authorized staff to proceed with the grant application, and as part of the application process staff noted that public comment is invited. It was requested that the issue be placed back on the agenda for April 10th meeting to allow such an opportunity. It was reported that no public comments have been received to date and Council received no public comments at tonight's meeting.

Abandonment of alley between 802 Smith St. and 802-Lot Smith St.: Mayor Adkins opened the public hearing regarding a request for abandonment of an alley between 802 Smith Street and 802-Lot Smith Street, being fifteen (15) feet in width and approximately seventy-eight (78) feet in length, as shown on city Tax Map 20, Section 1. Patrick Wright-1201 Spruce St.-commented on fire alarms working at Spruce Village. Mayor Adkins closed the public hearing. On a motion by Gene Teague, seconded by Kimble Reynolds, with a 5-0 vote, Council authorized the City Manager to sign a quitclaim deed conditioned upon payment of the assessed value and filing a map combining the alley with adjoining lots.

Zoning ordinance amendments related to pawnshops: Wayne Knox reported:

At present, the City of Martinsville allows pawnshops as a use permitted by right in the C-1A, C-2, C-3, M-1 and M-2 Districts. Planning Commission submitted a recommendation in July to remove pawnshops as a use permitted by right, which would have banned them from operating in the City. City Council reviewed the amendment and sent it back to the Planning Commission with a suggestion to look at regulating pawnshops through a special use permit. Planning Commission took that suggestion and began to work on conditions for a special use permit. After several work sessions, the Planning Commission has finalized their recommendation on this issue. The new recommendation would remove pawnshops as a use permitted by right in the C-1A, C-2, C-3, M-1, and M-2 Districts and would add pawnshops as a use permitted by special use permit in the C-1, C-1A, C-2, C-3, M-1, and M-2 Districts. It should be noted that the C-1 Commercial District currently does not allow pawnshops as a use permitted by right. However, to establish uniformity in the commercial districts; it is included in the recommendation to add pawnshops as a use permitted by special use permit. Planning Commission held a duly advertised public hearing on October 4, 2011. No one spoke for or against the issue during the public hearing. Planning Commission voted unanimously (4-0) to send this amendment to City Council for their consideration. City staff recommends amending the Zoning Ordinance to remove pawnshops as a use permitted by right and to include it as a use permitted by special use permit.

Council Member Turner voiced his opposition noting this is negative for promoting Uptown business.

Council Member Teague asked for language to make sure there is flexibility and the City Attorney

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suggested language such as “potentially subject to, but not limited to”. Mayor Adkins opened the public hearing. Citizen comments: Naomi Hodge-Muse-NAACP-the 1,000 ft. rule should stay in place; Ural Harris-217 Stuart St.-should be no restrictions on pawnshops; Laura Bowles-MURA-not in favor of the 1,000 ft. rule from churches as it would restrict businesses from coming Uptown; Dr. Mervyn King-supports special use permit. Mayor Adkins closed the public hearing. Council Member Turner made a motion to amend the ordinance and take out church and school restrictions. The City Attorney reported the 1,000 ft. issue would be reviewed and considered on a case by case basis and additional language suggested earlier by Council Member Teague would make it discretionary on a case by case basis. The motion failed for lack of a second. Council Member Teague made a motion to amend the ordinance language adding “potentially subject to, but not limited to” to all sections referenced in the ordinance which was seconded by Council Member Stroud and approved by Council with a voice vote of 4-1, with Council Member Turner voting nay. Mr. Teague clarified noting that this amendment gives Council flexibility and Mr. Turner agreed with Mr. Teague noting he does not want to discourage business. On a motion by Gene Teague, seconded by Kimble Reynolds, with the following 4-1 recorded vote: Adkins, aye; Teague, aye; Reynolds, aye; Stroud, aye; and Turner, nay, Council approved the zoning ordinance changes on first reading as amended with changes discussed and voted on and will consider the revised ordinance on second reading at the next meeting.

Public Hearing regarding local tax exemption request from Piedmont Youth Soccer League:

Commissioner of Revenue Ruth Easley reported that under the provisions of the Exemption Ordinance enacted by Council in January 2007, any entity that does not clearly fall into any exemption category granted by the Code of Virginia must request an exemption approval from the City Council in the form of an exemption ordinance. In order for the exemption requests to be considered by Council as part of the annual budget deliberations, the requesting entities must have submitted an exemption application to the Commissioner of the Revenue by November 1, 2011 which was then referred to the City Manager along with a report of the revenue impact that any possible exemption may have. The City Manager appointed a review committee consisting of himself, Mayor Adkins, the City Commissioner of the Revenue, the City Treasurer, and an accountant with the City’s Finance Department to review the applications received. Mayor Adkins opened the public hearing for PYSL and hearing no public comment, then closed the public hearing. On a motion by Danny Turner, seconded by Mark Stroud, with the following 5-0 recorded vote: Adkins, aye; Teague, aye; Reynolds, aye; Stroud, aye; and Turner, aye, Council approved the ordinance, on first reading, for PYSL Personal Property exemption request as a benevolent organization.

Public Hearing regarding local tax exemption request from the Pregnancy Care Center of MHC:

Mayor Adkins opened the public hearing for Pregnancy Care Center. Mayor Adkins abstained from the discussions for this organization since she was on the committee and this agency is now renting property from her spouse’s company. Bob Humkey made comments requesting Council’s favorable consideration of the organization’s request for exemption. Mayor Adkins closed the public hearing. On a motion by Gene Teague, seconded by Kimble Reynolds, with the following 4-0 recorded vote: (Adkins-

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abstained); Teague, aye; Reynolds, aye; Stroud, aye; and Turner, aye, Council approved the ordinance, on first reading, for Pregnancy Care Center Personal Property exemption request as a religious/charitable organization.

Public Hearing regarding local tax exemption request from the Archaeological Conservancy:

Mayor Adkins opened the public hearing for the Archaeological Conservancy. Will Shepherd made comments noting that the tax exemption offsets costs of maintaining the site. Council Member Teague reported he supports the review committee's recommendation of not granting an exemption and Council agreed. No action was taken on the Archaeological Conservancy exemption request.

New College Institute update and possible use of Baldwin Block:

NCI Executive Director William Wampler presented an overview of the proposed NCI building for the vacant Baldwin Block Uptown which will now include a second main entrance along Fayette St. NCI officials will conduct public input sessions and asked Council to consider conveying the Baldwin Block for the proposed building. Mayor Adkins asked for any public comment: Dr. Mervyn King—encouraged Council to participate in getting the school built; Naomi Hodge Muse-wants city to move forward with NCI. Mayor Adkins closed the public comment period. On a motion by Kimble Reynolds, seconded by Gene Teague, with a 5-0 vote, Council set a public hearing for April 24, 2012 and an ordinance is to be prepared for consideration of conveying the land to NCI at the April 24, 2012 meeting.

Itinerant merchant fee for Uptown Farmer's Market:

City Attorney Eric Monday briefed Council on proposed revision of Farmers Market BPOL tax. MURA has requested that the BPOL tax be revised for the Uptown Farmers Market, owned by the City and managed by MURA. Following discussions between MURA, Commissioner of Revenue, City Manager, and City Attorney, a new proposed Section 11-34(9)(b) sets the tax at \$5.00 annually and corrects a typographical error in Section 11-32 (in the definition of "itinerant merchant"). Commissioner of Revenue Easley commented on grower's permits and the need for a level playing field with all businesses and noted the ordinance needs to specify retroactive to January 1, 2012. On a motion by Danny Turner, seconded by Kimble Reynolds, with following 5-0 recorded vote: Adkins, aye; Teague, aye; Reynolds, aye; Stroud, aye; and Turner, aye, Council approved the ordinance on first reading to set fee at \$5.00 and make it retroactive to January 1, 2012:

Sec. 11-21. - Title; conflicting ordinance.

This article shall be known as the Martinsville Business, Professional, and Occupational License Ordinance (hereinafter called "this article"). Except as may be otherwise provided by the laws of the Commonwealth of Virginia, and notwithstanding any other ordinances enacted by the City of Martinsville, whether or not compiled in the City Code, the following provisions shall be applicable to the issuance of licenses required and the levy, assessment, and collection of license taxes imposed on businesses, trades, professions, occupations and callings and upon the persons, firms, partnerships and corporations engaged therein within the city.

(Ord. No. 96-13, § 11-1(A), 11-26-96)

Sec. 11-22. - Definitions.

For the purposes of this article, unless otherwise required by the context:

Amusement operator means any person leasing, renting or otherwise furnishing or providing a coin-operated amusement machine in the city, provided, however, that the term "amusement operator" shall not include a person owning less than three (3) such machines and operating such machines on property owned or leased by such person.

Assessment means a determination as to the proper rate of tax, the measure to which the tax rate is applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An assessment shall include a written assessment made pursuant to notice by the assessing official or a self-assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. Assessments shall be deemed made by an assessing official when a written notice of assessment is delivered to the taxpayer by the assessing official or an employee of the assessing official, or mailed to the taxpayer at his last known address. Self-assessments shall be deemed made when a return is filed, or if no return is required, when the tax is paid. A return filed or tax paid before the last day prescribed by ordinance for the filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing of a return or the payment of tax, as the case may be.

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Assessor or assessing official means the commissioner of revenue of the City of Martinsville.

Base year means the calendar year, or fiscal year if the business is on a fiscal year basis for federal income tax purposes, immediately preceding the license year, except for contractors subject to the provisions of section 58.1-3715. The base year shall be used as the basis for calculating any license tax measured by gross receipts, subject to the following:

- (a) Every person who during a license year begins a business, trade, profession, occupation or calling which requires a license where the license tax is measured by gross receipts shall estimate the amount of gross receipts which will be received by such business from the commencement of such business until the end of the license year. Such license tax shall be due and payable at the time such business commences. Such estimate shall be subject to correction based upon the actual gross receipts for this initial license year.
- (b) When the license for a full license year is measured by the gross receipts for a base year which does not represent a full twelve (12) months of operation of the business, trade, profession, occupation or calling, then the gross receipts shall be the estimated gross receipts which would result from a full twelve (12) months of operation. Upon the completion of the first base year which reflects a full twelve (12) months of operation such estimate shall be corrected based upon the actual gross receipts for such twelve-month base year.
- (c) Whenever a license tax measured by gross receipts is assessed on the basis of estimated gross receipts, subject to correction based upon the gross receipts actually received, the commissioner of revenue shall assess such additional license tax found to be due after the close of the license year or the commissioner shall credit any overpayment against the next license tax due or shall recommend the refunding of the amount of any excess payment made.

Business means a course of dealing which requires the time, attention and labor of the person so engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of dealing, rather than an irregular or isolated transaction. A person may be engaged in more than one (1) business. The following acts shall create a rebuttable presumption that a person is engaged in a business: (i) advertising or otherwise holding oneself out to the public as being engaged in a particular business; or (ii) filing tax returns, schedules and documents that are required only of persons engaged in a trade or business.

Coin-operated amusement machine means any machine or device operated by or after the insertion of coins or currency into the machine except weighing machines, change machines, automatic baggage or parcel checking machines or receptacles, vending machines which are so constructed as to do nothing but vend goods, wares and merchandise or postage stamps or provide service only, viewing machines or photomat machines, or devices or machines affording rides to children or for the delivery of newspapers.

Commission merchant means any person, firm, partnership or corporation which is engaged in the business of selling merchandise on commission by sample, circular, or catalog for a regularly established retailer and which has no stock or inventory under their control other than floor samples owned by the principal retailer which are used for demonstration or display purposes.

Contractor shall have the meaning prescribed in section 58.1-3714.B of the Code of Virginia, as amended, whether such work is done or offered to be done by day labor, general contract or subcontract.

Definite place of business means an office or a location at which occurs a regular and continuous course of dealing for thirty (30) consecutive days or more. A definite place of business for a person engaged in business may include a location leased or otherwise obtained from another person on a temporary or seasonal basis; and real property leased to another. A person's residence shall be deemed to be a definite place of business if there is no definite place of business maintained elsewhere and the person is not licensable as a peddler or itinerant merchant.

Financial services means the buying, selling, handling, managing, investing, and providing advice regarding money, credit, securities and other investments and shall include the service for compensation by a credit agency, an investment company, a broker or dealer in securities and commodities or a security or commodity exchange, unless such service is otherwise provided for in this article.

Broker means an agent of a buyer or a seller who buys or sells stocks, bonds, commodities, or services, usually on a commission basis.

Commodity means staples such as wool, cotton, etc., which are traded on a commodity exchange and on which there is trading in futures.

Dealer for purposes of this article means any person engaged in the business of buying and selling securities for his own account, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business.

Security for purposes of this article shall have the same meaning as in the Securities Act (section 13.1-501 et seq.) of the Code of Virginia, or in similar laws of the United States regulating the sale of securities.

Those engaged in rendering financial services include, but without limitation, the following:

- Buying installment receivables
- Chattel mortgage financing
- Consumer financing
- Credit card services
- Factors
- Financing accounts receivable
- Industrial loan companies
- Installment financing
- Inventory financing
- Loan or mortgage brokers
- Loan or mortgage companies
- Safety deposit box companies
- Security and commodity brokers and services
- Stockbroker
- Working capital financing

Gross receipts means the whole, entire, total receipts for the base year attributable to the licensed privilege, without deduction, except as may be limited by the provisions of Chapter 37 of Title 58.1 of the Code of Virginia, and the provisions contained in the definition of "base year" in this article.

Itinerant merchant means any person who engages in, does, or transacts any temporary or transient business in the city and who, for the purpose of carrying on such business, occupies any location for a period of less than one (1) year.

License year means the calendar year for which a license is issued for the privilege of engaging in business.

Peddler means any person, other than a peddler at wholesale, who shall carry from place to place any goods, wares or merchandise and offer to sell or barter the same or actually sell or barter the same.

Peddler at wholesale means any person who sells or offers to sell goods, wares or merchandise to licensed dealers, other than at a definite place of business operated by the seller, and at the time of such sale or exposure for sale delivers, or offers to deliver, the goods, wares or merchandise to the buyer. Any delivery made on the day of sale shall be construed as a delivery at the time of sale.

Person means an individual, firm, partnership, or corporation.

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Personal services means rendering for compensation any repair, personal, business or other services not specifically classified as "financial, real estate or professional service" under this article, or rendered in any other business or occupation not specifically classified in this ordinance unless exempted from local license tax by Title 58.1 of the Code of Virginia.

Professional services means services performed by architects, attorneys-at-law, certified public accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities) and such occupations, and no others, as the Virginia Department of Taxation may list in the BPOL guidelines promulgated pursuant to section 58.1-3701 of the Code of Virginia. The Department shall identify and list each occupation or vocation in which a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study is used by its practical application to the affairs of others, either advising, guiding, or teaching them, and in serving their interests or welfare in the practice of an art or science founded on it. The word "profession" implies attainment in professional knowledge as distinguished from mere skill, and the application of knowledge to uses for others rather than for personal profit.

Purchases means all goods, wares and merchandise received for sale at each definite place of business of a wholesale merchant. The term shall also include the cost of manufacture of all goods, wares and merchandise manufactured by any wholesaler or wholesale merchant and sold or offered for sale. Such merchant may elect to report the gross receipts from the sale of manufactured goods, wares and merchandise if it cannot determine or chooses not to disclose the cost of manufacture.

Real estate services means rendering a service for compensation as lessor, buyer, seller, agent or broker and providing a real estate service, unless the service is otherwise specifically provided for in this article, and such services include, but are not limited to, the following:

- Appraisers of real estate
- Escrow agents, real estate
- Fiduciaries, real estate
- Lessors of real property
- Real estate agents, brokers and managers
- Real estate selling agents
- Rental agents for real estate

Retailer or retail merchant means any person or merchant who sells goods, wares and merchandise for use or consumption by the purchaser or for any purpose other than resale by the purchaser, but does not include sales at wholesale to institutional, commercial, government and industrial users.

Services means things purchased by a customer which do not have physical characteristics, or which are not goods, wares, or merchandise.

The city or this city means the City of Martinsville.

Wholesaler or wholesale merchant means any person or merchant who sells wares and merchandise for resale by the purchaser, including sales when the goods, wares and merchandise will be incorporated into goods and services for sale, and also includes sales to institutional, commercial, government and industrial users which because of the quantity, price, or other terms indicate that they are consistent with sales at wholesale.

(Ord. No. 96-13, § 11-1(B), 11-26-96)

Sec. 11-23. - License requirement.

(a) Every person engaging in this city in any business, trade, profession, occupation or calling (collectively herein called "a business") as defined in this article, unless otherwise exempted by law, shall apply for a license for each such business if (i) such person maintains a definite place of business in this city, (ii) such person does not maintain a definite office anywhere but does maintain an abode in this city, which abode for the purposes of this article shall be deemed a definite place of business, or (iii) 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 sections 58.1-3717, 3718, or 3728, respectively of the Code of Virginia, or is a contractor subject to section 58.1-3715 of the Code of Virginia, or is a public service corporation subject to section 58.1-3731 of the Code of Virginia. A separate license shall be required for each definite place of business.

A person engaged in two (2) or more businesses carried on at the same place of business may elect to obtain one (1) license for all such businesses if all of the following criteria are satisfied: (i) each business is licensable at the location and has satisfied any requirements imposed by state law or other provisions of the ordinances of the city; (ii) all of the businesses are subject to the same tax rate, or, if subject to different tax rates, the licensee agrees to be taxed on all businesses at the highest rate; and (iii) the taxpayer agrees to supply such information as the assessor may require concerning the nature of the several businesses and their gross receipts.

(b) 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 city 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.

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

(d) The commissioner of revenue may grant an extension of time, not to exceed ninety (90) days, in which to file an application for a license or to pay the license tax, for reasonable cause. The extension of time to pay the tax 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 (10) percent of the portion paid after the due date.

(e) A penalty of ten (10) 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. Noncompliance for both of the two (2) previous years shall constitute 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 thirty (30) days, the treasurer may impose a ten (10) 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: (i) 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 (ii) 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

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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.

(f) 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 article 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 section 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 thirty (30) days from (i) the date of the payment that created the refund, or (ii) the due date of the tax, whichever is later.

(Ord. No. 96-13, § 11-1(C), 11-26-96)

Sec. 11-24. - Situs of gross receipts.

(a) *General rule.* Whenever the tax imposed by this article 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 city. 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 (1) or more definite places of business or offices as follows:

(1) 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 section 58.1-3715 of the Code of Virginia.

(2) 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.

(3) 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.

(4) 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.

(b) *Apportionment.* If the licensee has more than one (1) 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 section 58.1-3709 of the Code of Virginia, 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 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.

(c) *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 (1) 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 one hundred (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.

(Ord. No. 96-13, § 11-1(D), 11-26-96)

Sec. 11-25. - Limitations and extensions.

(a) Where, before the expiration of the time prescribed for the assessment of any license tax imposed pursuant to this article, 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.

(b) Notwithstanding section 58.1-3903 of the Code of Virginia, 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 (6) preceding years.

(c) The period for collecting any local license tax shall not expire prior to the period specified in section 58.1-3940 of the Code of Virginia, two (2) years after the date of assessment if the period for assessment has been extended pursuant to this subdivision, two (2) years after the final determination of an appeal for which collection has been stayed pursuant to the following [section 11-26\(b\)](#) or (d) of this article, or two (2) years after the final decision in a court application pursuant to section 58.1-3984 of the Code of Virginia or similar law for which collection has been stayed, whichever is later.

(Ord. No. 96-13, § 11-1(E), 11-26-96)

Sec. 11-26. - Appeals and rulings.

(a) Any person assessed with a license tax under this article as the result of an audit may apply within ninety (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 application. 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 his 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 this jurisdiction (e.g., the name and address to which an application should be directed).

(b) Provided an application is made within ninety (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

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request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of [section 11-23\(f\)](#) of this article, 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 (i) to depart quickly from the locality, (ii) to remove his property therefrom, (iii) to conceal himself or his property therein, or (iv) 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.

(c) Any person assessed with a license tax under this article as a result of an audit may apply within ninety (90) days of the determination by the assessing official on an application pursuant to [section 11-26\(a\)](#) to the tax commissioner for a correction of such assessment. The tax commissioner shall issue a determination to the taxpayer within ninety (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 section 58.1-1821 of the Code of Virginia, and the tax commissioner may issue an order correcting such assessment pursuant to section 58.1-1822 of the Code of Virginia. Following such an order, either the taxpayer or the assessing official may apply to the appropriate circuit court pursuant to section 58.1-3984 of the Code of Virginia. However, the burden shall be on the party making the application to the circuit court 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.

(d) On receipt of a notice of intent to file an appeal to the tax commissioner under subsection (c) 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 [section 11-23\(f\)](#), but no further penalty shall be imposed while collection activity is suspended. The term "jeopardized by delay" shall have the same meaning as set forth in subsection (b) of this section.

(e) Any taxpayer may request a written ruling regarding the application of the tax to a specific situation from the assessor. 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. 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.

(Ord. No. 96-13, § 11-1(F), 11-26-96)

Sec. 11-27. - Record keeping and audits.

Every person who is assessable with a license tax shall keep sufficient records to enable the assessor to verify the correctness of the tax paid for the license years assessable and to enable the assessor to ascertain what is the correct amount of tax that was assessable for each of those years. All such records, books of accounts, tax returns and other information shall be open to inspection and examination by the assessor in order to allow the assessor to establish whether a particular receipt is directly attributable to the taxable privilege exercised within this city. The assessor 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, returns and records shall be sent to the assessor's office upon demand.

(Ord. No. 96-13, § 11-1(G), 11-26-96)

Sec. 11-28. - Transfer of licenses.

Licenses issued under this article shall be transferable, except as otherwise provided. In order to transfer a license a written request for the transfer shall be submitted to the commissioner of revenue setting forth the name and place of business of the licensee, the date when the transfer should be made effective, and the name and address of the transferee. The transfer request shall be signed by both the transferor and transferee. If all currently due license taxes have been fully paid and the transferee would not be prohibited from obtaining a license by virtue of [section 11-30](#), the commissioner shall approve the transfer of the license and so advise the transferee. A fee of ten dollars (\$10.00), payable to the treasurer, shall be charged for the transfer of the license. Once the transfer has been approved by the commissioner and has become effective, the transferee shall be liable for all license taxes and other taxes payable by the business.

(Ord. No. 96-13, § 11-1(H), 11-26-96)

Sec. 11-29. - Keeping and production of license.

Every business required to have a license shall keep the license at the definite place of business of the business or, if a peddler or itinerant merchant, in the possession of such peddler or itinerant merchant. Whenever requested to do so, such license shall be produced and exhibited to any authorized representative of the city. No license measured by gross receipts shall be required to be publicly displayed.

(Ord. No. 96-13, § 11-1(I), 11-26-96)

Sec. 11-30. - Restrictions on issuance of licenses.

(a) No license shall be issued for the conduct of any business, trade, profession, occupation or calling at a location where the conduct of such business, trade, profession, occupation or calling is prohibited or not allowed by any zoning, land use, subdivision, or other ordinance of the city or by any state or federal law.

(b) No license shall be issued to any business which will conduct or transact business under any assumed or fictitious name in the city unless such business has filed the certificate required by section 59.1-69 of the Code of Virginia in the clerk's office of the circuit court of the City of Martinsville. Proof of such filing shall be exhibited to the commissioner prior to the issuance of a license.

(c) No license shall be issued to any applicant who has not paid in full all delinquent license, business personal property, meals, transient occupancy, and admissions taxes owed to the city. An applicant shall furnish satisfactory evidence of such payment to the commissioner upon request prior to the issuance of a license.

(Ord. No. 96-13, § 11-1(J), 11-26-96)

Sec. 11-31. - Exclusions and deductions from "gross receipts".

(a) 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 in the ordinary course of the business.

(b) The following items shall be excluded from gross receipts:

(1) Amounts received and paid to the United States, the commonwealth or any county, city or town for the Virginia retail sales or use tax, for any local sales tax, meals tax, for any local excise tax on cigarettes, or for any federal or state excise tax on motor fuels.

(2) 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).

(3) Any amount representing returns and allowances granted by the business to its customer.

(4) Receipts which are the proceeds of a loan transaction in which the licensee is the obligor.

(5) Receipts representing the return of principal of a loan transaction in which the licensee is the creditor, or the proceeds from the sale of a capital asset not part of the inventory of the business.

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(6) 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.

(7) 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.

(8) 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.

(9) Gross receipts for license tax purposes shall not include the license and admission taxes established under sections 59.1-392 and 59.1-393 of the Code of Virginia, respectively, nor shall it include pari-mutual wagering pools as established under section 59.1-392 of the Code of Virginia.

(10) Gross receipts of real estate brokers for license tax purposes shall not include amounts received by such broker which arise from real estate sales transactions to the extent that such amounts are paid to a real estate agent as a commission on any real estate transaction and the agent is subject to a business license tax on such receipts. The broker claiming this exclusion shall identify to the assessor each agent to whom the excluded receipts have been paid, and the jurisdiction in the commonwealth to which the agent is subject to business license taxes.

(c) The following shall be also deducted from gross receipts or gross purchases that would otherwise be taxable:

(1) Any amount paid for computer hardware and software sold to a federal or state government entity in the United States, provided that such property was purchased within two (2) years of the sale to the government entity by the original purchaser who shall have been contractually obligated at the time of the purchase to resell such property to the federal or state 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 federal or state government entity in accordance with the original contract obligation.

(2) 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.

(d) In ascertaining the liability of a beer wholesaler for license taxes as a wholesaler under sections 11-21 through 11-35 and in computing the amount of license taxes as a wholesaler payable by such beer wholesaler, the first five hundred thousand dollars (\$500,000.00) of beer purchases shall be disregarded.

(e) In ascertaining the liability of a wine wholesaler for license taxes as a wholesaler under sections 11-21 through 11-35 and in computing the amount of license taxes as a wholesaler payable by such wine wholesaler, the first one hundred thousand dollars (\$100,000.00) of wine purchases shall be disregarded.

(Ord. No. 96-13, § 11-1(K), 11-26-96)

Sec. 11-32. - License taxes.

Every business required to obtain a license under this article shall be assessed and required to pay annually a license tax of thirty dollars (\$30.00) or the tax set forth below, whichever is greater:

(1) For contractors and persons constructing for their own account for sale, ten cents (\$0.10) per one hundred dollars (\$100.00) of gross receipts;

(2) For retailers, twenty cents (\$0.20) per one hundred dollars (\$100.00) of gross receipts;

(3) For real estate and professional services and financial services other than licensees under the Consumer Finance Act, chapter 6 of title 6.1 of the Code of Virginia (section 6.1-244 et seq.), fifty-eight cents (\$0.58) per one hundred dollars (\$100.00) of gross receipts;

(4) For licensees under the Consumer Finance Act, chapter 6 of title 6.1 of the Code of Virginia (section 6.1-244 et seq.), twenty cents (\$0.20) per one hundred dollars (\$100.00) of gross receipts;

(5) For commission merchants and for repair, personal and business services and for all other businesses not specifically listed or exempted in this article or otherwise by law, thirty-six cents (\$0.36) per one hundred dollars (\$100.00) of gross receipts;

(6) For wholesalers, including peddlers at wholesale, five cents (\$0.05) per one hundred dollars (\$100.00) of purchases;

(7) For carnivals, circuses and speedways, one hundred fifty dollars (\$150.00) for each day a performance is held in this city;

(8) For fortune-tellers, clairvoyants and practitioners of palmistry or phrenology, one thousand dollars (\$1,000.00) per year;

(9) a. For itinerant merchants or peddlers, not exempt under [section 11-33](#) or [11-34](#), fifty dollars (\$50.00) per year;

b. For itinerant merchants or peddlers conducting business at the City of Martinsville Farmers Market, bounded by West Church, Main, and Moss Streets, on such days and at such hours designated as Market Days by the entity designated by the City as the manager of the Market, _____ dollars (\$ _____) per year.

(10) For photographers who have no regularly established place of business in Virginia, as defined in section 58.1-3727 of the Code of Virginia, thirty dollars (\$30.00) per year;

(11) For savings institutions and state chartered credit unions, which have their main office in the city, fifty dollars (\$50.00) per year;

(12) For direct sellers, as defined in section 58.1-3719.1 of the Code of Virginia, with total annual sales in excess of four thousand dollars (\$4,000.00), twenty cents (\$0.20) per one hundred dollars (\$100.00) of gross receipts from total annual retail sales or five cents (\$0.05) per one hundred dollars (\$100.00) of gross receipts from total annual wholesale sales, whichever is applicable;

(13) For any person, firm, partnership or corporation engaged in the business of promoting, managing, or organizing promotional shows or sales, subject to the provisions of [section 11-33](#), twenty cents (\$0.20) per one hundred dollars (\$100.00) of the total gross receipts from all sales of goods or merchandise sold by individuals participating in all such promotional shows or sales;

(14) For any person, firm, partnership or corporation engaged in the business of furnishing heat, light, and power, whether by means of electricity or gas, in the city, one-half of one per cent of the gross annual receipts accruing from sales to ultimate consumers in the city, provided, however, that there shall be deducted from such gross receipts any sum or sums paid to the city as license taxes except motor vehicle license taxes;

(15) For any telegraph or telephone company doing business in the city, one-half of one per cent of the gross annual receipts accruing from sales to ultimate consumers in the city, provided, however, that receipts from charges for long distance telephone calls shall not be considered receipts of such business in the city;

(16) For amusement operators operating ten (10) or more coin-operated amusement machines located in the city, two hundred dollars (\$200.00) per year; for amusement operators operating less than ten (10) coin-operated amusement machines located in the city, one hundred seventy-five dollars (\$175.00) per year; and in addition, amusement operators shall also pay thirty-six cents (\$0.36) per one

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hundred dollars (\$100.00) of gross receipts only on the share of the receipts actually received by such operator from such machines operated in the city, or thirty dollars (\$30.00), whichever is greater; and in addition, each amusement operator shall furnish to the commissioner of revenue a complete list of all machines on location and the address of each location on or before January 31 of each year; and each machine shall have conspicuously located thereon a decal, sticker, or other adhesive label, no less than one by two (1 X 2) inches in size, clearly denoting the operator's name and address.

(Ord. No. 96-13, § 11-1(L), 11-26-96; Ord. No. 97-2, 1-28-97)

Sec. 11-33. - Promotional shows or sales.

- (a) "Promotional show or sale" shall mean any show or sale consisting of a group of persons or merchants selling goods, wares or merchandise such as hobby crafts, antiques, art work, jewelry or second-hand articles, or any combination thereof.
- (b) Any promotional show or sale shall be limited to thirty (30) consecutive days or less.
- (c) No individual, firm, partnership, or corporation participating in a promotional show or sale as a retail merchant shall be liable for any license taxation on the gross receipts generated at such show or sale if the participant reports to the promoter, manager, or organizer the participant's total gross receipts from such show or sale and the promoter, manager, or organizer obtains a license and pays the license tax imposed in [section 11-32](#). If the promoter, manager, or organizer obtains a license and pays the license tax, individual participants in such a show or sale shall not be required to obtain an individual license for participation in the show or sale.
- (d) Obtaining a license or paying a license tax for a promotional show or sale shall not relieve the promoter, manager, or organizer from any obligation to pay any other license taxes imposed by this article.
- (e) No license tax shall be payable for any promotional show or sale if the only sales occurring at such show or sale are made directly by a nonprofit organization.
- (f) Any promoter, manager, or organizer of a promotional show or sale shall keep and maintain accurate and legible records setting forth the amount of total gross receipts from all sales of goods, wares or merchandise at the promotional show or sale, with a breakdown showing the total gross receipts of each participant in such promotional show or sale, along with the appropriate tax identification number used by each participant for federal and state tax reporting purposes. These records shall be submitted to the commissioner of revenue on or before the date the license tax is paid by the promoter, manager, or organizer.
- (g) Every promoter, manager, or organizer shall obtain an annual business license which shall cover all of the promotional shows or sales conducted by them during the license year.

(Ord. No. 96-13, § 11-1(M), 11-26-96)

Sec. 11-34. - Exemptions.

- (a) The provisions of this article shall not apply to nonprofit organizations, as determined by the commissioner of revenue in accordance with applicable Virginia and federal law.
- (b) Any person who sells or offers for sale at retail any goods, wares or merchandise as an authorized part of a public exhibition, fair, festival, promotion, recreational event, or special event, held in whole or in part on city owned property, pursuant to a permit issued by the city manager, shall not be required to obtain a business license. In determining whether such a permit should, in his discretion, be issued, the city manager shall consider the following factors:
 - (1) Whether such event is sponsored by a civic, charitable, or other nonprofit organization.
 - (2) Whether such event is being conducted by a local business or industry for the benefit and enjoyment of its employees.
 - (3) Whether such event poses any danger, actual or potential, to the public health, safety, and welfare, including, but not limited to any special traffic or fire hazard posed thereby. In making this determination the city manager shall consult with the city's police chief and fire chief, and any other person with any special expertise in the field of public safety, whether a city employee or otherwise, whose advice the city manager deems it advisable to seek.
 - (4) Whether the issuance of such a permit would conflict or interfere with any other use of city owned property already scheduled.
 - (5) Whether any other special factors or circumstances exist which would be affected by the issuance of such a permit.If the city manager is satisfied after due consideration of all of these factors that the issuance of such a permit would be in the best interests of the city, then he shall issue the permit.

(c)

The license tax on itinerant merchants and peddlers shall not apply to 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. A dairyman who uses upon the streets of the city one (1) or more vehicles may sell and deliver from his vehicle milk, butter, cream and eggs without procuring a peddler's license.

- (d) Any license tax imposed on peddlers or itinerant merchants or on peddlers at wholesale shall not apply to:
 - (1) A licensed wholesale dealer who sells and, at the time of such sale, delivers merchandise to retail merchants;
 - (2) A distributor or vendor of motor fuels and petroleum products;
 - (3) A distributor or vendor of seafood who catches seafood and sells only the seafood caught by him;
 - (4) A farmer or producer of agricultural products who sells only the farm or agricultural products produced or grown by him;
 - (5) A farmers' cooperative association;
 - (6) A manufacturer who is subject to Virginia tax on intangible personal property who peddles at wholesale, only the goods, wares or merchandise manufactured by him at a plant, whose intangible personal property is taxed by the commonwealth.

(Ord. No. 96-13, § 11-1(N), 11-26-96)

Sec. 11-35. - Cessation of business; proration and refunds.

- (a) If a business permanently ceases to engage in business within the city, no license tax measured by gross receipts or purchases shall be imposed for that fraction of the year after the business has ceased to engage in business.
- (b) In the event a person, firm, partnership or corporation ceases to engage in a business, trade, profession, occupation or calling in the city during a year for which a license tax measured by gross receipts or purchases has not yet been paid, the license tax shall be due and payable, except that the license tax shall be payable only for that fraction of the year prior to the cessation of business in the city, prorated on a monthly basis. Any license tax or portion of a license tax not measured by gross receipts or purchases shall be payable without proration.
- (c) In the event a person, firm, partnership or corporation ceases to engage in a business, trade, professional, occupation or calling in the city during a year for which a license tax measured by gross receipts or purchases has already been paid, the taxpayer shall be entitled, upon application, to a refund for that portion of the license tax already paid, prorated on a monthly basis so as to ensure that the licensed privilege is taxed only for that fraction of the year during which it was exercised in the city. Any past due license taxes owed by the taxpayer to the city shall be offset against such refund. No refund shall be given of any portion of any license tax not measured by gross receipts or purchases.
- (d) If a business permanently ceases to engage in business during a license year for which a license tax measured by gross receipts or purchases has not been or would not have been based on a full twelve-month base year, but on an estimate, the tax payable for the final license year shall be based upon the actual gross receipts or purchases for the final license year up to the date of the permanent cessation of business, with no proration.

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(Ord. No. 96-13, § 11-1(O), 11-26-96)

Sec. 11-36. - Alcoholic beverage licenses.

(a) In addition to the license tax payable as provided in sections [11-21](#) through [11-35](#), any person, firm, partnership or corporation licensed by the Virginia Alcoholic Beverage Control Board to manufacture, bottle, or sell alcoholic beverages in the city, except for temporary licenses authorized by section 4.1-211 of the Code of Virginia, shall obtain a city alcoholic beverage license and pay an alcoholic beverage license tax, as set forth below:

- (1) For each distiller's license, one thousand dollars (\$1,000.00) per year; however, no local license shall be required for any person who manufactures not more than five thousand (5,000) gallons of alcohol or spirits, or both, during each license year;
- (2) For each fruit distiller's license, one thousand five hundred dollars (\$1,500.00) per year;
- (3) For each bed and breakfast license, forty dollars (\$40.00) per year;
- (4) For each tasting license, five dollars (\$5.00) per day;
- (5) For each brewery license, one thousand dollars (\$1,000.00) per year;
- (6) For each bottlers' license, five hundred dollars (\$500.00) per year;
- (7) For each wholesale beer license, two hundred fifty dollars (\$250.00) per year;
- (8) For each retail on-premises beer license for a hotel, restaurant, or club, and for each retail off-premises beer license, one hundred dollars (\$100.00) per year;
- (9) For each winery license, one thousand dollars (\$1,000.00) per year;
- (10) For each wholesale wine license, fifty dollars (\$50.00) per year;
- (11) For each retail on-premises wine and beer license for a hotel, restaurant, or club, and for each retail off-premises wine and beer license, including each gift shop, gourmet shop, and convenience grocery store license, one hundred fifty dollars (\$150.00) per year;
- (12) For each hospital license, ten dollars (\$10.00) per year;
- (13) For each banquet license, five dollars (\$5.00) per day;
- (14) For each gourmet brewing shop license, one hundred fifty dollars (\$150.00) per year;
- (15) For each mixed beverage restaurant license, including restaurants located on the premises of and operated by hotels or motels, or other persons, two hundred dollars (\$200.00) per year for a restaurant having a seating capacity of one hundred (100) persons or less, three hundred fifty dollars (\$350.00) per year for a restaurant having a seating capacity of one hundred one (101) persons to one hundred fifty (150) persons, and five hundred dollars (\$500.00) for a restaurant having a seating capacity of more than one hundred fifty (150) persons;
- (16) For each private, nonprofit club operating a restaurant located on the premises of such club, three hundred fifty dollars (\$350.00) per year;
- (17) For each mixed beverage caterer's license, five hundred dollars (\$500.00) per year; and
- (18) For each mixed beverage special events license, ten dollars (\$10.00) for each day of each event.

(b) All licenses, except tasting, banquet, and mixed beverage special events licenses, shall be for the calendar year. If an annual license is terminated before the end of the calendar year, the taxpayer may obtain a refund of the license tax prorated on a monthly basis. Alcoholic beverage licenses shall not be transferable.

(c) An alcoholic beverage license shall not be issued by the city to any person who does not hold or secure simultaneously the proper state license. If any person holds a city alcoholic beverage license without at the same time holding the proper state license, the city license, during the period when such person does not hold the proper state license, shall confer no privileges under the Virginia Alcoholic Beverage Control Act.

(d) No wholesaler who delivers alcoholic beverages in the city but who maintains no place of business in the city shall be required to obtain a local alcoholic beverage license in the city.

(Ord. No. 96-13, § 11-1(P), 11-26-96)

Sec. 11-37. - Criminal penalties.

(a) It shall be unlawful and a Class 3 misdemeanor for any person, firm, partnership or corporation:

- (1) To operate or conduct any business, trade, profession, occupation or calling for which a license is required under any provision of this article without having first obtained such license;
- (2) To fail or refuse to pay any license tax imposed upon any business, trade, profession, occupation or calling by this article;
- (3) To transfer or attempt to transfer any license issued pursuant to this article without first having complied with the provisions of [section 11-28](#);
- (4) To refuse to produce and exhibit a license issued pursuant to this article in accordance with [section 11-29](#);
- (5) To fail or refuse to make any books, documents, or records available to the commissioner of revenue necessary to ascertain the assessment of any license tax required by this article or the necessity of obtaining any license required by this article;
- (6) To fail to answer or respond to any interrogatories requested or to any summons issued by the commissioner of revenue in order to ascertain the assessment of any license tax required by this article or the necessity of obtaining any license required by this article;
- (7) To violate any other provision or to fail to carry out any other requirement set forth in this article.

(b) It shall be unlawful and a Class 1 misdemeanor to knowingly make any false answer to any interrogatory propounded by the commissioner of revenue in order to ascertain the assessment of any license tax required by this article or the necessity of obtaining any license required by this article, or to knowingly make any false statement under oath relating to the assessment of any license tax required by this article, or to knowingly file any false return or application under this article.

(c) In addition to any penalties provided for herein, the commissioner of revenue shall have the authority to revoke the license or refuse to issue a license to anyone violating any provision of this article made illegal herein until such illegality has been cured, to correct any erroneous assessment resulting therefrom, and to impose an additional penalty of twenty-five (25) per cent of any increased assessment.

(Ord. No. 96-13, § 11-1(Q), 11-26-96)

FOOTNOTE(S):⁽²⁶⁾ *Editor's note*—Ord. No. 96-13, adopted Nov. 26, 1996, enacted provisions pertaining to business, professional, and occupational licenses, designated as § 11-1(A)—(R). Subsections (A)—(Q) have been redesignated as §§ 11-21—11-37 in order to facilitate indexing and referencing. Subsection (R), effective date and transitional provisions, has been deleted as being administrative in nature. ([Back](#))

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Rezoning 1150 Spruce St.: Wayne Knox briefed Council on the request for rezoning and amending Land Use Map. Bryant Gammon of Highmark Engineering presented information on the proposed Dollar General Store and pointed out proffers. Mayor Adkins asked for public comments: Virginia King-recommends parking in back of the store instead of front. On a motion by Gene Teague, seconded by Mark Stroud, with a 5-0 vote, Council set the public hearing for May 8, 2012 for consideration of the rezoning request.

Transportation priorities: Leon Towarnicki reported that localities have an opportunity annually to present to the Commonwealth Transportation Board their respective lists of prioritized future highway transportation projects which, depending on available funding, are included in VDOT's Six Year Improvement Program for construction. West Piedmont Planning District Commission will present the projects of its member localities at the Commonwealth Transportation Board hearing scheduled for April 24th at 6pm at Northside High School, 5768 Northside High School Road, Roanoke, VA. A list of the City's current highway construction priorities, which essentially has remained unchanged for a number of years, was reviewed with Council. On a motion by Kimble Reynolds, seconded by Mark Stroud, with a 5-0 vote, Council approved the WPPDC Martinsville prioritized list:

Priority Projects								Allocations Needed			
Jurisdiction(s)	Highway System	UPC (if Existing)	Route Number	From Termini	To Termini	Project Description	Project Length (miles)	PE	RW	CN	Total
Martinsville											
Martinsville	Urban	52077	Route 174	0.008 miles north of York Street	0.152 miles north of Longview Street	Widen to five lanes, PE and construction only.				FY 2012 \$4,195,000	4195000
Martinsville	Urban	100112	VA 174 (Liberty Street)	0.008 miles north of York Street	0.152 miles north of Longview Street	Major widening - RW only - Residue parcels for widening.	0.5890 miles				
Martinsville	Urban	94090	VA 174 (Liberty Street)	0.008 miles north of York Street	0.152 miles north of Longview Street	Major widening - RW only - widening to 5 lanes.	0.5890 miles				
Martinsville	Urban		Route 57 (Fayette Street)	Under Norfolk Southern Railroad		Long-term: Widen to four lane facility and replace underpass.					

Westside Neighborhood Meeting update from Mayor: Mayor Adkins gave an overview of the April 9, 2012 Council Neighborhood tour and the Neighborhood meeting held at Albert Harris School.

Consent agenda: On a motion by Gene Teague, seconded by Danny Turner, with a 5-0 vote, Council approved the following consent agenda:

BUDGET ADDITIONS FOR 4/10/12				
ORG	OBJECT	DESCRIPTION	DEBIT	CREDIT
<u>FY12</u>				
<u>General Fund:</u>				
01102926	436443	Federal Grant - ARRA - Efficiency Retrofit Grant		69,858
01431162	508220	City Hall Maintenance/Physical Plant Expansion Energy Efficiency Grant Reimbursement	69,858	
<u>Total General Fund:</u>			69,858	69,858
<u>Water Fund:</u>				
12100909	418104	Recovered Costs		21,679
12541311	506910	Water Plant - Chemical Spill Costs	21,679	

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Insurance Coverage of Chemical Spill

<u>Total Water Fund:</u>			<u>21,679</u>	<u>21,679</u>
<hr/>				
<u>Electric Fund</u>				
14102926	436440	Federal Grant - ARRA - Energy Efficiency Grant		121,045
14565340	503140	Electric - General Exp. - Prof. Serv.-Eng & Arch Hydro Plant Efficiency Grant Reimbursement	121,045	
<u>Total Electric Fund:</u>			<u>121,045</u>	<u>121,045</u>

Business from floor: none

Council comments: Turner--comments on detours in Thomas Hts. area and cautioned citizens about fire dangers; Stroud-encouraged citizens to donate blood and get on organ donor list.

Interim City Manager comments: Household Hazardous Waste Day to be held April 14; comments on city manholes being stolen and warned citizens to be cautious and report suspicious activity to 911; briefed Council on upcoming dates for FY13 budget discussions.

There being no further business, the meeting adjourned at 10:10 pm.

Brenda Prillaman
Clerk of Council

Kim Adkins
Mayor