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Filling in the Gaps of Business License Appeals, Suspensions, and Revocations

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Background

- Business license tax
 - ✦ Neither a property tax nor an income tax
 - ✦ Fees are an "excise tax" on the privilege of doing business in the jurisdiction
 - ✦ Used to regulate business
 - ✦ Often serves as an important second or third revenue stream
 - ✦ Imposed in the vast majority of cities and towns
 - ✦ Imposed in 9 of 46 counties



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Background

- The inconsistent administration of business licenses has historically caused discord within the business community
- Standardization of the Business License Tax
 - ✦ Act 176 ultimately passed and established the standardized business license tax in South Carolina
 - ✦ Signed into law on September 30, 2020
 - ✦ Codified at Section 6-1-400 – 420
 - ✦ Effective January 1, 2022
- Act 176 required the use of standardized business license practices
 - ✦ Billing, collection, appeals, etc.



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Equal Protection and Due Process

Article I, Section 3 of the South Carolina Constitution provides that no "person [shall] be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the law...."

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Equal Protection

- Equal protection under the law requires that all persons be treated alike under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed
- Great deal of deference to legislatively created classifications of businesses
- Subclassifications must be based upon a "rational basis" that are stated in an ordinance



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Hypothetical #1



- What might rational basis be for a special subclassification for the following?
 - ❖ Grocery store in a food desert
 - ❖ New industry to be annexed into town
 - ❖ Full-service restaurant in a town that otherwise only has fast food

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Due Process



- Due Process guarantees that a person shall have an "opportunity to be heard" at a meaningful time and in a meaningful manner" before he is deprived of any life, liberty or property right

Tall Tower, Inc. v. South Carolina Procurement Review Panel, 294 S. C. 225, 232, 363 S. E. 2d 683, 686-87 (1987).

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Due Process



- Procedural due process requires that before any decree or order may affect a person's rights as to life, liberty, or property the person whose rights are affected is entitled to:
 1. Notification of a hearing; and
 2. An opportunity to be heard before an impartial tribunal
- In some circumstances, the opportunity to confront and cross-examine witnesses and to have access to evidence is also a due process right which requires procedural safeguards
 - ❖ The supreme court has ruled that fundamental fairness is required but this is generally a flexible concept and depends on the circumstances involved
- Due process is critical in an assessment appeal and business license denial or revocation process
- Who hears appeals? council or an appeals board?

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Rules of Evidence and Order of Proceedings

1) Evidence.


A. Governing Statute. S.C. Code § 23-530 (1976) (as amended) shall govern questions of evidence. Those provisions, with the South Carolina Rules of Evidence as not required, but the Board shall only receive relevant information. See Chapter 10, Article 2, Section 10-64.1, City Code of Ordinances.

B. Objections. Objections to evidence shall be timely made and noted in the record. Whenever evidence is ruled inadmissible, the party offering the evidence may submit as offer of proof on the record. The party making the offer of proof for excluded testimony shall briefly summarize the testimony. If the evidence excluded consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

2) Order of Proceedings. The Hearing Officer shall conduct the hearing in the following manner:

- The Hearing Officer shall give a brief opening statement describing the nature of the proceeding.
- The parties may be given an opportunity to present brief opening statements lasting no more than five (5) minutes each.
- Parties shall present their evidence as follows:
 - The party with the burden of proof - the City - will be the first to present evidence.
 - The City shall call its witness(es) with the Respondent being allowed to cross-examine as an exhibit follows:
 - The City shall have up to fifteen (15) minutes to question each witness while the Respondent shall have up to ten (10) minutes to cross-examine the witness.
 - Where the City rests, the Respondent shall call its witness(es) with the City being allowed to cross-examine in an exhibit follows:
 - The Respondent shall have up to fifteen (15) minutes to question each witness while the City shall have up to ten (10) minutes to cross-examine the witness.
 - After the Respondent rests, any person whose interests are affected by the proceeding who is not a party to the action (an "Interested Party") shall have up to ten (10) minutes to be heard by the Board. Each party shall have the opportunity to question any Interested Party for no more than five (5) minutes.
- Each witness shall be sworn or affirmed by the Hearing Officer and be subject to examination.
- All objections to procedure, admission of evidence, or any other matter shall be timely made and stated on the record.
- When all of the parties and witnesses have been heard, the parties may be given the opportunity to present brief final arguments lasting no more than five (5) minutes each.
- The Board may convene executive session to receive legal counsel and/or deliberate.
- The Board shall then vote and issue its ruling as to the Appeal on the record. A written Order of the Board shall be provided to all parties within fifteen (15) business days.
- Any person whose interests are directly or materially affected by the decision of the Board, regardless of a previous party of the appeal, shall have the right to appeal the Board's decision to the Court of Common Pleas for as the County.

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Assessment and Appeal Process


- How does Council (or the appeals board) take action?
- Is executive session permitted? What about to receive legal advice?
- Does the majority vote have to occur at the hearing?
 - Strongly consider the reasoning behind delaying the decision; does it uphold the spirit of the law?


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Hypothetical #2

Mater applied for a business license and stating he operated an auto sales business. After several months you notice that this classification seems incorrect and instead Mater seems to be operating an automotive repair shop. Why would an individual purposefully misclassify? How should you address the problem? What evidence can you use to establish correct classification? What findings of fact might Council need to make as a basis for its decision?

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Denials and Revocations

- ▶ Business license ordinance should state specific justifications to deny or revoke/suspend a business license
- ▶ Who decides?
 - ✦ Denials – final determination made by business license official, but subject to an appeal at the taxpayer's request
 - ✦ Revocations/Suspensions – preliminary decision made by business license official, subject to a decision by Council/appeals board at mandatory hearing
- ▶ Use the same procedures as assessment appeals

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Enforcement


- ▶ After working through the assessment process and any appeals process, the enforcement phase begins
- ▶ Options for enforcement include:
 - ✦ Civil Suits
 - Statute of limitations of three years
 - ✦ Warrants
 - ✦ Ordinance Summons

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Enforcement



- ▶ Penalties for late payment have been approved by South Carolina Supreme Court
 - ✦ 5% monthly penalty for late payment upheld in *Municipal Association of SC v. AT&T*
 - ✦ Model ordinance provides for a 5% penalty
- ▶ Criminal penalties may be assessed
 - ✦ Fine of \$500 and imprisonment for 30 days are the maximum available for each offense
 - ✦ Each day without a license is considered an offense



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Hypothetical #3



Sally owns a gift shop in town for which she properly pays her business license tax and has for years. During the COVID lockdown she picked up baking as a new skill. She has started selling her treats and uses the gift shop as a pickup location. Does she need to pay business license taxes on the revenue from her "side hustle"? How many years back can you look for unreported revenues?

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