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Fifteenth Judicial Circuit



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JIMMY A. RICHARDSON, II
Solicitor

March 24, 2022

The Honorable Alan Wilson
SC Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211

Dear Honorable Wilson:

Recently Horry County passed an Ordinance (see attached) that limits where people who are on the Sex Registry can work.

Our local Treasurer, Angie Jones, has been tasked with enforcing this as she has to issue and control Business License. She asked me if the Ordinance was constitutional.

By this letter, I defer to answer but respectfully request an Attorney General's Opinion on the constitutionality of Horry County Ordinance 24-2022.

Please let me know if you have questions or need additional information.

Sincerely,

Jimmy A. Richardson, II
Solicitor

The mission of the Fifteenth Circuit Solicitor's Office is to uphold the public's trust in the pursuit of justice and enforcement of the law.

COUNTY OF HORRY)
)
STATE OF SOUTH CAROLINA)

ORDINANCE 24-2022

AN ORDINANCE AMENDING CHAPTER 12.5 (LICENSES AND BUSINESS REGULATIONS) OF THE HORRY COUNTY CODE BY ADDING PROVISIONS TO SECTION 12.5-107 AND BY AMENDING SECTION 12.5-109 TO ESTABLISH BUSINESS LICENSE ELIGIBILITY REQUIREMENTS FOR CHILD-ORIENTED ENTERPRISES

WHEREAS, certain enterprises provide goods and services that cater to the interests of minors; and

WHEREAS, there are documented cases of minors suffering abuse from sexual predators on or near the premises of child-oriented establishments or facilities; and

WHEREAS, the County Council desires to protect minors by requiring that individuals who apply for a business license to operate a child-oriented enterprise must first undergo a background check conducted by the Horry County Police Department; and

WHEREAS, the County Council desires to protect minors by prohibiting any person that has been convicted of particular criminal activities, or is required to register as a sex offender, from acquiring a business license to operate a child-oriented enterprise, and from working at a child-oriented enterprise; and

WHEREAS, the provisions of this ordinance are intended to protect children from abuse and are non-punitive;

NOW THEREFORE, by the power and authority granted to the Horry County Council by the Constitution of the State of South Carolina and the powers granted to the County by the General Assembly of the State, it is ordained and enacted that:

Section 1. Amendment of Chapter 12.5 (Licenses and Business Regulations), Article IV (Business Licenses), Section 12.5-107. Chapter 12.5, Article IV, Section 12.5-107 of the Horry County Code of Ordinances is hereby amended to read as follows (add **bold underlined** and delete ~~strikethrough~~):

Sec. 12.5-107. – Denial, revocation or refusal to renew license.

(a) The license inspector may deny a license application:

- (1) When the application is incomplete, contains a misrepresentation, contains a false or misleading statement, evades or suppresses a material fact, or when the activity for which a license is sought is unlawful or constitutes a nuisance; or
- (2) When the applicant has, within the preceding three (3) years, and in relation to the premises for which the business license is sought:

- a. Repeatedly operated a business in violation of state or county law or regulation;
 - b. Been declared in a judicial proceeding to be a nuisance, or responsible for nuisance type activity;
 - c. Had its license to operate revoked; or
 - d. Had its liquor license revoked.
- (3) When the applicant or a person who resides with the applicant has been an owner, director, officer, partner, member, shareholder, or manager of a business that has, within the preceding three (3) years (and at a time during which the person was so related to the business):
 - a. Repeatedly operated a business in violation of state or county law or regulation;
 - b. Been declared in a judicial proceeding to be a nuisance, or responsible for nuisance type activity;
 - c. Had its license to operate revoked; or
 - d. Had its liquor license revoked.
- (4) When the applicant is shown by the county to be acting on behalf of a person who has, within the previous three (3) years, repeatedly operated a business in violation of applicable laws or regulations.
- (5) When the applicant seeks a license to operate a child-oriented enterprise as defined in Sec. 12.5-109, but the applicant is not eligible for the license under that section.**
- (b) In addition to other penalties provided by law, the license inspector may decide to revoke or refuse to renew a business license when:
 - (1) A license has been mistakenly or improperly issued or issued contrary to the requirements of section 12.5-107 of this Code or any other law;
 - (2) A licensee has breached any condition upon which his license was issued;
 - (3) The purposes for which the license was issued have become purposes different from that for which it was issued or to the detriment of the public;
 - (4) A licensee, or any of his servants, agents, or employees, while acting within the scope of his or her employment, allows any illegal or unlicensed business activity (activity not specifically licensed or permitted) by anyone on the premises, or is convicted of any felony or misdemeanor involving:
 - a. The sale or possession of alcohol or other controlled substance;
 - b. Discrimination against any person because of religion, race, age, political ideology, creed, ancestry, color, national origin, gender, mental or physical handicap; or
 - c. Public morality and decency;
 - (5) A nuisance, upon the premises for which the business license was issued, has been declared by a court of law;

- (6) A licensed business has failed, for ninety (90) days after proper notice to the licensee thereof, to abate conditions which have been identified by county code enforcement or law enforcement officials as violations of county code or regulations; or
- (7) A licensee has had its liquor license revoked.
- (8) A licensee is a child-oriented enterprise as defined in Sec. 12.5-109, but is not eligible for a license to operate a child-oriented enterprise under that section.**

Section 2. Amendment of Chapter 12.5 (Licenses and Business Regulations), Article IV (Business Licenses), Section 12.5-109. Chapter 12.5, Article IV, Section 12.5-109 of the Horry County Code of Ordinances is hereby amended to read as follows.

Sec. 12.5-109. – Reserved. Additional requirements for child-oriented enterprises.

(a) Definitions. For purposes of this section, the following words, terms, and phrases shall have the meaning ascribed herein:

- (1) Child-oriented enterprise. A children’s toy store, youth athletic facility, child day care center, mobile ice cream vendor, trampoline park, inflatable play facility, laser tag facility, go-kart track, skating park or skating rink, water park, mini-golf course, video game arcade, campground with an on-site amenity that caters to minors, or any similar commercial establishment or other facility that primarily caters to minors.**
- (2) Specified criminal offense. Any of the following specified crimes for which less than twenty (20) years has elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:**
 - a. Criminal sexual conduct and other offenses (see S.C. Code §§ 16-3-651—16-3-656);**
 - b. Sexual performance by children and other offenses (see S.C. Code §§ 16-3-810 and 16-3-820);**
 - c. Kidnapping and conspiracy to kidnap (see S.C. Code §§ 16-3-910 and 16-3-920);**
 - d. Prostitution and other offenses (see S.C. Code §§ 16-15-90, 16-15-100, and 16-15-110);**
 - e. Trafficking in persons (see S.C. Code § 16-3-2020);**
 - f. Material harmful to minors, child exploitation, and child prostitution and other offenses (see S.C. Code §§ 16-15-335—16-15-425);**
 - g. Any attempt, solicitation, or conspiracy to commit one (1) of the foregoing offenses; or**

- h. Any offense in another jurisdiction that, had the predicate acts(s) been committed in South Carolina, would have constituted any of the foregoing offenses.
- (3) Employee. Any individual who performs any service at a child-oriented enterprise (including a motor vehicle from which the enterprise is conducted) on a full-time, part-time, contract, or volunteer basis, regardless of whether the individual is denominated an owner, employee, independent contractor, agent, volunteer, or otherwise. Employee does not include a person exclusively at the child-oriented enterprise for repair or maintenance or for the delivery of goods to the enterprise.
- (b) Any individual who signs the application for a business license under this chapter to operate a child-oriented enterprise must, before the application will be considered complete, appear at the Horry County Police Department, furnish a government-issued picture identification document containing the individual's full name and date of birth, and consent to a criminal background search. The individual shall pay any fees relating to the search, including any fingerprinting fees, if applicable.
- (c) An application for a business license under this chapter to operate a child-oriented enterprise must, before the application will be considered complete, include a list of the enterprise's owners and employees and provide, from each owner and employee, a signed statement (signed within 45 days) that:
- (1) The individual has not been convicted of or pled guilty or nolo contendere to a specified criminal offense, as defined in this section; and
- (2) The individual is not a registered sex offender or required by law to register as a sex offender.
- (d) An applicant is not eligible to obtain or maintain a business license to operate a child-oriented enterprise if:
- (1) The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal offense, as defined in this section; or
- (2) The applicant is a registered sex offender or is required by law to register as a sex offender; or
- (3) The enterprise has an owner or employee who has been convicted of or pled guilty or nolo contendere to a specified criminal offense, as defined in this section; or
- (4) The enterprise has an owner or employee who is a registered sex offender or who is required by law to register as a sex offender.

(e) A child-oriented enterprise shall obtain the following information concerning each owner and each employee with 60 days of the effective date of this section:

(1) a South Carolina criminal record check; and

(2) results of a Name Search using the National Sex Offender Public Website.

(f) A child-oriented enterprise shall obtain a South Carolina criminal record check and results of a Name Search using the National Sex Offender Public Website for every new employee before the new employee begins to perform any service at the child-oriented enterprise, and for every new owner immediately before the new owner acquires an ownership interest in the enterprise. Within ten (10) days after such an individual joins the enterprise as a new employee or a new owner, the child-oriented enterprise shall provide to the county administrator a signed statement from each new employee and from each new owner, stating that:

(1) The individual has not been convicted of or pled guilty or nolo contendere to a specified criminal offense, as defined in this section; and

(2) The individual is not a registered sex offender or required by law to register as a sex offender.

(g) A child-oriented enterprise that, during the time of its licensure, has an owner who is convicted of a specified criminal offense or who is required by law to register as a sex offender, shall immediately notify the Horry County license inspector and relinquish the business license. The Horry County license inspector shall revoke the business license under Sec. 12.5-107(b)(8) if the enterprise does not relinquish the license.

(h) A child-oriented enterprise that, during the time of its licensure, learns that an employee has been convicted of a specified criminal offense, or is required by law to register as a sex offender, shall notify the Horry County license inspector of the conviction or required registration within ten (10) days after learning of same. If the disqualified employee continues to perform any service at the enterprise, the Horry County license inspector shall revoke the business license under Sec. 12.5-107(b)(8).

Section 3. Severability: If a Section, Sub-section, or part of this Ordinance shall be deemed or found to conflict with a provision of South Carolina law, or other pre-emptive legal principle, then that Section, Sub-section, or part of this Ordinance shall be deemed ineffective, but the remaining parts of this Ordinance shall remain in full force and effect.

Section 4. Conflict with Preceding Ordinances: If a Section, Sub-section or provision of this Ordinance shall conflict with the provisions of a Section, Sub-section or part of a preceding Ordinance of Horry County, then the preceding Section, Sub-section, or part shall be deemed repealed and no longer in effect.

Section 5. **Effective Date:** This Ordinance shall become effective upon third reading.

AND IT IS SO ORDAINED, ENACTED AND ORDERED this ____ day of _____, 2022.

HORRY COUNTY COUNCIL

Johnny Gardner, Chairman

Harold G. Worley, District 1
Bill Howard, District 2
Dennis DiSabato, District 3
Gary Loftus, District 4
Tyler Servant, District 5
Cam Crawford, District 6

Orton Bellamy, District 7
Johnny Vaught, District 8
R. Mark Causey, District 9
Danny Hardee, District 10
Al Allen, District 11

Attest:

Patricia S. Hartley, Clerk to Council

First Reading: March 15, 2022

Second Reading:

Third Reading: