

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date: October 17, 2022

Action Required: Approval of Ordinance

Presenter: Todd Divers, Commissioner of the Revenue

Staff Contacts:

Title: To amend, re-ordain and re-enact Section 14-19 of the City Code, to clarify the businesses subject to taxation at the rate specified within Subclassification H of Section 14-19 (1 reading)

Background

The Supreme Court of Virginia recently determined that the City’s Business License Ordinance classification of “any other repair, personal or business service not specifically included in any other subclassification under this section” does not apply to the business of freelance writers and authors. Further, the Supreme Court ruled that the City’s Business License Ordinance does not contain a suitable alternative license category for that specific business activity. Therefore, the Court ruled that the City had erroneously assessed and collected license tax from this business. The City was therefore required to refund that entity and other similar businesses for taxes paid in error.

Discussion

The Court essentially ruled that, despite writers and authors working under contract, being paid on a 1099, and filing business income on a Schedule C (as would any other service provider), the work of freelance authors and writers is somehow still not a “service” as set out in Sec.14-19 of City Code (Class IV: Repair, personal, business and other services). This despite clear guidance in the Virginia Administrative Code (23VAC10-500-480) that “*Other services not clearly identified as financial, real estate or professional are classified as “repair, personal, business and other services”*”.

The Court did not dispute that freelance writers and authors are licensable businesses.

We therefore recommend amending Sec. 14-19 such that it applies to *repair, personal, business and other services, and all other businesses and occupations not specifically listed or excepted in this chapter*. This new language conforms with §58.1-3706 of the Code of Virginia.

We further recommend adding “*writers and authors*” to the list of licensable businesses set out under Subclassification H of Sec. 14-19. Writers and authors were previously licensed under the catch-all category within that same subclassification – “*any other repair, personal or business service not specifically included in any other subclassification under this section*”.

Finally, we recommend altering the catch-all provision itself so that it encompasses non-service

businesses: “Any other repair, personal or business service, **or other business or occupation not specifically included in any other subclassification under this section**”.

We believe that the indicated changes will address the issues brought to light by the recent case.

Alignment with City Council's Vision and Strategic Plan

N/A

Community Engagement

N/A

Budgetary Impact

None

Recommendation

Approval of the ordinance to amend and reauthorize Sec. 14-19 of Chapter 14 of the Charlottesville City Code - Licenses. It is requested that, pursuant to City Code 2-97, City Council waive the requirement for a second reading of this Ordinance and adopt the Ordinance upon first reading. Waiver of the second reading requires a 4/5 vote of City Council.

Suggested Motion: “I move the ORDINANCE to amend, re-ordain and re-enact Section 14-19 of the City Code, to clarify the businesses subject to taxation at the rate specified within Subclassification H of Section 14-19 and also that City Council adopt the ORDINANCE by four-fifths vote effective on this first reading, waiving the requirement for a second reading, as allowed by City Code Sec. 2-97”

Alternatives

None

Attachments

1. Ordinance Amending Sec. 14-19