

Memo

DT: March 13, 2007

TO: Honorable Mayor and Members of the Village Council

FR: Jacqueline R. Menendez, Village Manager

RE: Proposed Amendment to Village Occupational License Tax Ordinance

RECOMMENDATION

It is recommended that the Village Council adopt the enclosed proposed ordinance which has been drafted by the Village Attorney, in order to amend the Village's occupational license tax ordinance to conform to an amendment to Chapter 205, Fla. Stat., which was made effective on January 1, 2007.

BACKGROUND

Effective January 1, 2007, the state legislature amended municipal occupational license tax provisions of Chapter 205, Fla. Stat., to delete references to "licenses" and to characterize the municipal occupational license tax as a "local business tax" for which a "receipt" is issued. The legislature made this change because it found that certain persons throughout the state of Florida were using the term "license" as a vehicle to falsely indicate to consumers that the business had been determined to be qualified and competent to provide certain services. The amended provisions of Chapter 205, Fla. Stat., clarify that the local occupational license is simply a local business tax and that persons who pay the tax receive a receipt, rather than a license. The local business tax continues to be a legislatively authorized tax upon the privilege of doing business.

The proposed ordinance serves to amend the Village Code, so as to conform to the revised nomenclature provisions of Chapter 205, Fla. Stat., and is effective retroactively to January 1, 2007, to coincide with the effective date of the amendments to Chapter 205, Fla. Stat. In August 2007, the annual local business tax receipt renewal process will begin for the tax period which commences on October 1, 2007.

Please be advised that the state legislative change did not provide for any new authority to increase the rate of the local business tax, and the local business tax remains subject to the restrictions of Chapter 205, Fla. Stat. In accordance with those restrictions, a five (5%)

percent increase in the local business tax rate may be authorized in 2008,if desired, but that decision is not required to be made at this time.

Please contact the Village Attorney if there are any questions on this matter.

cc: Conchita H. Alvarez, CMC, Village Clerk
David M. Wolpin, Esq., Village Attorney
Stephen H. Helfman , Esq., Village Attorney

100\103001\Memos.07\Mayor and Council from Menendez re Amdnt to Tax Ord

ORDINANCE NO. 2007-

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE FLORIDA, AMENDING THE CODE OF ORDINANCES BY AMENDING ARTICLE II, “OCCUPATIONAL LICENSE TAX”, OF CHAPTER 25 “TAXATION” TO CONFORM WITH RECENT REVISIONS TO FLORIDA STATUTE CHAPTER 205 BY CHANGING THE TERM OCCUPATIONAL LICENSE TO LOCAL BUSINESS TAX RECEIPT; MAKING COLLATERAL CONFORMING AMENDMENTS TO OTHER AFFECTED PROVISIONS OF THE VILLAGE CODE INCLUDING SECTIONS 30-11, 30-63, 30-66, 30-72, 30-100, 30-102 AND 30-197; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Florida Legislature amended Fla. Stat. Chapter 205 by changing the term occupational license to local business tax receipt; and

WHEREAS, this change was necessitated by unscrupulous persons who presented the occupational licenses to consumers as proof of competency to perform certain services; and

WHEREAS, the Council finds that it would be prudent to change the correlating municipal code to reflect the state law’s changes.

NOW THEREFORE, IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:¹

Section 1. Recitals Adopted. That each of the above stated recitals is hereby adopted and confirmed.

Section 2. Chapter 25 of Village Code Amended. That Article II “Occupational License Tax” of Chapter 25 “Taxation” of the Village Code of Ordinances, is hereby Amended to

¹ / Proposed additions to text of Village Code are indicated by underline; proposed deletions from text of Village Code are indicated by ~~striketrough~~.

read, as follows:

ARTICLE II. ~~OCCUPATIONAL LICENSE~~ LOCAL BUSINESS TAX RECEIPT

Sec. 25-21. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Business means and includes all vocations, occupations, professions, enterprises, establishments, and all activities and matters, together with all devices, machines, vehicles and appurtenances used therein, any of which are conducted for private profit or benefit, either directly or indirectly, on any Premises in the Village; "Business" does not include the customary activities of religious, charitable, non-profit service clubs and organizations, or educational nonprofit institutions as those terms are defined in F.S. ch. 205.

~~License~~ Receipt means a local business tax receipt ~~or occupational License~~ issued by the Village in accordance with this article.

~~Licensee~~ Recipient means any Person to whom a receipt ~~License~~ has been issued by the Village.

Person means any individual, firm, partnership, joint venture, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver or other fiduciary.

Premises means all lands, structures, places, and also the equipment and appurtenances connected or used therewith in any Business, and any personal property which is either affixed to or is otherwise used in connection with any such Business.

Shall. The word "shall" is always mandatory and not merely directory.

Tax means the applicable ~~local business occupational License~~ tax imposed pursuant to this article.

Sec. 25-22. Purpose; adoption of State law.

This article is enacted for the purpose of complying with F.S. ch. 205. The terms and provisions of F.S. ch. 205 and any subsequent amendments thereto are hereby adopted and made a part of this article by reference.

Sec. 25-23. License Receipt required.

(a) No Person, either directly or indirectly, shall engage in or manage any Business in the Village for which a License Receipt is required by this article without first obtaining the required License Receipt from the Village License Business Tax Officer.

(b) For the purpose of this article, any Person shall be deemed to be engaged in Business and thus subject to the requirements of this article when he:

- (1) Sells any goods or services;
- (2) Solicits Business or offers goods or services for sale or hire; or
- (3) Acquires or uses any vehicle or any Premises in the Village for Business purposes.

Sec. 25-24. Separate License Receipt for each place of Business.

A separate License Receipt shall be obtained in the manner prescribed in this article for each place of Business as if each such place of Business were a separate Business.

Sec. 25-25. Term of License Receipt and transfer.

- (a) No License Receipt shall be issued for more than one year, and all Receipts Licenses shall expire on October 1 of each year.
- (b) No License Receipt shall be issued for any fractional portion of a year, except that License Receipts required under this article for Businesses established after April 1 of any year may be issued, which are valid until the following October 1, upon the payment of one-half the Tax provided for in section 25-31.
- (c) License Receipts may be transferred to the new owner of a Business upon a bona fide sale of the Business, and upon payment of a transfer fee of \$3.00 and presentation to the Village of the original Receipt License and evidence of the sale.
- (d) Upon written request and presentation of the original License Receipt, any License Receipt may be transferred from one Premises to another Premises within the Village upon payment of a transfer fee of \$3.00.
- (e) Upon written request and presentation of the original License Receipt by the License Recipient and any proof as required by the Village, a change of Business name may be made upon payment of a fee of \$3.00.
- (f) It shall be the duty of every Person assuming operation of or purchasing an existing Business which is required to pay a Local Business Tax ~~be Licensed~~ under this article to notify the Village License Business Tax Officer and to comply with the requirements of this article within 30 days of such assumption or purchase.

Sec. 25-26. Due date for payment of the Local Business ~~occupational License~~ Tax; delinquent payment; penalties.

(a) ~~License Receipts~~ shall be sold by the Village commencing on September 1 of each year. The Tax shall be due and payable on October 1 of each year. If October 1 falls on a weekend or holiday, the Tax shall be due and payable on or before the first working day following October 1. Those ~~License Receipts~~ not renewed by October 1 shall be considered delinquent and subject to a delinquency penalty of ten percent for the month of October, plus an additional five percent penalty for each month of delinquency thereafter until paid; provided, that the total delinquency penalty shall not exceed 25 percent of the Tax due.

(b) Any Person engaging in or managing any Business without first obtaining a ~~Receipt License~~, if required under this article, shall be subject to a penalty of 25 percent of the Tax determined to be due, in addition to any other penalty provided by law or ordinance.

Sec. 25-27. Issuance of ~~License Receipt~~; application.

(a) No ~~License Receipt~~ shall be issued except upon written application filed with the Village ~~License Business Tax~~ Officer. Such application shall be filed on forms prescribed by the Village and shall include a statement, under Oath, detailing the full and complete information necessary to calculate the applicable Tax.

(b) It shall be unlawful for any Person applying to the Village ~~License Business Tax~~ Officer for a ~~License Receipt~~ to make a false statement in connection with any application for a ~~License Receipt~~ under this article.

Sec. 25-28. Display of ~~License Receipt~~.

Each ~~License Receipt~~ issued by the Village shall be displayed conspicuously at the place of Business and in such a manner as to be open to the view of the public and subject to the inspection of all duly

authorized officers of the Village. Failure to display the License Receipt in the manner provided for in this section shall result in the payment of a penalty equal to the Tax applicable to the Business for which the License Receipt was obtained.

Sec. 25-29. Village License Business Tax Officer; duties.

The Village Manager or his designee shall be the License Business Tax Officer, shall collect all Taxes and shall issue License Receipts in the name of the Village to all Persons or Businesses qualified under the provisions of this article and shall:

- (1) Investigate and determine the eligibility of any applicant for a License Receipt and/or the current status of any License Receipt as prescribed in this article.
- (2) Examine the books and records of any applicant or Licensee Recipient when reasonably necessary to the administration and enforcement of this article.
- (3) Notify any applicant of the acceptance or rejection of his application and shall, upon his refusal of any License Receipt, at the applicant's request, state in writing the reasons therefor and deliver them to the applicant.

Sec. 25-30. Examination of records.

It shall be unlawful for any Person and/or Business to refuse to allow the Village License Business Tax Officer to investigate and examine records for the purpose of determining whether such Person and/or Business has a License Receipt and/or whether such Person and/or Business shall be issued a Receipt License.

Sec. 25-31. ~~Occupational License~~ Business Tax schedule.

(a) Taxes for the following Businesses, occupations or professions are hereby levied and imposed as follows:

Vending machines:

(2) Merchandise vending machines at locations for which a License Receipt has been obtained pursuant to this article, per machine . . . 7.50

(c) Effective for and from the License Receipt period commencing on October 1, 2002, each Tax amount set forth above shall be increased by five percent. Further, pursuant to F.S. § 205.0535(4), which allows biennial review, the Council may again review and revise the Tax rates in ~~2004~~ 2008 for the License Receipt period commencing on October 1, ~~2004~~ 2008.

Section 3. **Section 30-11 of Village Code Amended.** That Section 30-11 “Definitions” of Chapter 30 “Zoning and Land Development Regulations” of the Village Code , is hereby amended to read, as follows:

Sec. 30-11. Definitions.

[As used in this chapter, the following words and terms shall have the meanings respectively ascribed:]

Adult Entertainment Establishment. An adult theater, an adult video/bookstore, an adult performance establishment, a commercial physical contact parlor, or an escort service operated for commercial or pecuniary gain, regardless of whether such Establishment is licensed under this code. "Operated for commercial or pecuniary gain" shall not depend upon actual profit or loss. An Establishment which has a ~~Occupational License~~ Local Business Tax Receipt or an Establishment which advertises itself as a type of Adult Entertainment Establishment shall be presumed to be "operated for commercial or pecuniary gain".

Local Business Tax Receipt. A receipt issued by the Village as a prerequisite to the maintaining and conducting of a business, service or profession.

Local Business Tax Receipt (Restricted). Any ~~Occupational License~~ Local Business Tax Receipt issued to a Person engaged in any business or profession whose place of business is his residence.

~~Occupational License.~~ A license issued by the Village as a prerequisite to the maintaining and conducting of a business, service or profession.

~~Occupational License (Restricted).~~ Any ~~Occupational License~~ issued to a Person engaged in any business or profession whose place of business is his residence.

Section 4. **Section 30-63 of Village Code Amended.** That Section 30-63 "Variance Procedures" of Chapter 30 "Zoning and Land Development Regulations" of the Village Code, is hereby amended to read, as follows:

Sec. 30-63. Variance procedures.

(a) *Variance criteria.* A Variance shall be granted upon a finding that the petition meets the following criteria:

(g) *Time limit.* The approval of any type of Variance shall automatically become null and void unless the appropriate Development order as defined in F.S. § 163.3164, building permit, ~~Occupational License~~ Local Business Tax Receipt, certificate of occupancy or certificate of completion has been issued within 12 months of the date the resolution was executed by the Village Mayor. Requests for an extension of time for a maximum additional 12 months shall be considered by the Village Council. Notice requirements for such requests are the same as those that were used for the original application.

Section 5. **Section 30-66 of Village Code Amended.** That Section 30-66 “Regulatory Variances” of Chapter 30 “Zoning and Land Development Regulations” of the Village Code , is hereby amended to read, as follows:

Sec. 30-66. Regulatory Variances.

The Village Council shall have jurisdiction regarding the disposition of Regulatory Variances. The following procedures shall be used in the processing of applications for Regulatory Variances.

(5) *Resolution.* The Village Council shall memorialize its decision in the form of a resolution. The resolution shall be recorded in the public records of Miami-Dade County and be considered as a covenant running with the land. No building permit, certificate of occupancy, certificate of use, or ~~Occupational License~~ Local Business Tax Receipt shall be issued until the applicant provides evidence of the recordation. A copy of the proof of recordation shall be submitted to the Building, Zoning, and Planning

Department prior to the issuance of any building permits.

Section 6. **Section 30-72 of Village Code Amended.** That Section 30-72 “Conditional Use Procedures” of Chapter 30 “Zoning and Land Development Regulations” of the Village Code , is hereby amended to read, as follows:

Sec. 30-72. Conditional Use procedures.

(g) Time limit. The approval of any type of Conditional Use shall automatically become null and void unless the appropriate Development order as defined in F.S. § 163.3164, building permit, ~~Occupational License~~ Local Business Tax Receipt, certificate of occupancy or certificate of completion has been issued within 12 months of the date the resolution granting the Conditional Use was executed by the Village Mayor. Requests for an extension of time for a maximum additional 12 months shall be considered by the Village Council. Notice requirements for such requests are the same as those that were used for the original application.

(h) Application forms. The Building, Zoning, and Planning Department shall provide the applicant with the application form.

Section 7. **Section 30-100 of Village Code Amended.** That Section 30-100 “Single Family and Two-Family districts” of Chapter 30 “Zoning and Land Development Regulations” of the Village Code, is hereby amended to read, as follows:

Sec. 30-100. Single Family and Two-Family districts.

(a) *Purpose and Uses.*

(g) *Supplemental Use Regulations in single Family and PS Parkside residential districts.*

(1) *Bed and Breakfast Inns.* Subject to the following Regulations:

f. The entire Building shall be substantially rehabilitated and conform to the ~~South~~ Florida Building Code, the Code of the Village of Key Biscayne, and the Fire Prevention and Life Safety Code on the date a certificate of use and ~~Occupational Licenses~~ Local Business Tax Receipts are applied for;

(2) *Community residential facilities.*

a. Total Number of residents and/or day users is limited to six;

b. That the applicant must obtain a license from the State regulatory agency responsible for the Regulation of such uses;

c. A certificate of use and an ~~Occupational License~~ Local Business Tax Receipt shall be required.

No such certificates shall be issued unless the Fire Department approves the issuance of said certificates.

The care provided at the facility limited to personal care, shelter, sustenance, and other support services.

Residents and day clients shall be ambulatory; and

d. A certificate of use, a Certificate of Occupancy, and an ~~Occupational License~~ Local Business Tax Receipt shall be required. No such certificates shall be issued unless the Fire Department approves the issuance of said certificates.

(4) *Home occupations.*

a. Signage is prohibited.

b. No customer may be served in the home.

- c. Employees in the business are limited to full time residents of the Dwelling Unit.
- d. The business requires a Village ~~Occupational License~~ Local Business Tax Receipt (Restricted).

Section 8. **Section 30-102 of Village Code Amended.** That Section 30-102 “GU Government Use District” of Chapter 30 “Zoning and Land Development Regulations” of the Village Code, is hereby amended to read, as follows:

Sec. 30-102. GU Government Use District.

(11) Approval of a Beach Management Plan does not exempt user from adhering to all local, state and federal statutes and regulations and requirements, including, but not limited to, Article II "~~Occupational License~~ Local Business Tax Receipt " of Chapter 25 "Taxation" of the Village Code.

Section 9. **Section 30-197 of Village Code Amended.** That Section 30-197 “Supplemental Regulations” of Chapter 30 “Zoning and Land Development Regulations” of the Village Code, is hereby amended to read, as follows:

Sec. 30-197. Supplemental Regulations.

(i) *Signs on Golf Carts.*

(3) For a Golf Cart sign related to a commercial use, the business which is the subject of the sign shall have a Village of Key Biscayne ~~Occupational License~~ Local Business Tax Receipt with an office located in a C-1 Light Intensity Commercial District, O-1 Low Intensity Office District, or at a Hotel or Motel.

Section 10. **Severability.** That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 11. **Inclusion in Code.** That it is the intention of the Village Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Village of Key Biscayne; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 12. **Effective Date.** That this Ordinance shall be effective retroactively from and after January 1, 2007.

PASSED AND ADOPTED on first reading this 13th day of March, 2007.

PASSED AND ADOPTED on second reading this 10th day of April, 2007.

MAYOR ROBERT L. VERNON

ATTEST:

CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY