

16.
PUBLIC HEARING
January 27, 2016
CITY OF MIRAMAR
PROPOSED CITY COMMISSION AGENDA ITEM

Meeting Date: November 23, 2015

Second Reading Date: January 27, 2016

Presenter's Name and Title: Barbara Hastings, Assistant Finance Director, on behalf of the Financial Services Department

Temp Ord Number: 1624

Item Description: (SECOND READING) Temp. Ord. No. 1624, AMENDING CHAPTER 11, "BUSINESS TAXES, PERMITS AND BUSINESS REGULATIONS," OF THE MIRAMAR CODE OF ORDINANCES BY REPEALING SECTION 11-33 "INTERVIEW AND INVESTIGATION OF RECEIPT APPLICANTS; DUTIES; FEE TO DEFRAY COST OF CRIMINAL HISTORY FORM; RECEIPT QUESTIONNAIRE FORM", SECTION 11-34 "GROUNDS FOR DENIAL", SECTION 11-35 "APPEAL FROM DENIAL OF RECEIPT", AND SECTION 11-36, "REVOCAION OF RECEIPT", TO ELIMINATE THE PROCESSING OF BACKGROUND CHECKS FOR NEW BUSINESSES AS PART OF THE BUSINESS TAX RECEIPT APPLICATION PROCESS. (Finance Assistant Director Barbara Hastings)

Consent Resolution Ordinance Quasi-Judicial Public Hearing

Summary Explanation and Background: In 1995, the City Commission created an Equity Study to review, reclassify and revise the City's occupational license tax classifications in accordance with Chapter 205, Florida Statutes. Occupational license tax rates and classifications and the licensing application process were set at that time. The City Code included a process for interviewing applicants and the requirement that occupational license tax applicants be subject to a background check.

In 2007, the Florida Legislature amended Chapter 205, Florida Statutes, changing the term "local occupational license tax" to "local business tax" to reflect the taxing nature of the business tax as opposed to a regulatory licensing scheme. Thereafter, the City adopted Ordinance number 07-10 to change the City's Code to conform with State law. However, the application requirement for a criminal background check remained unchanged. The criminal background check process as described in City Code Chapter 11 is no longer appropriate as a prerequisite for payment and collection of a business tax. According to our City Attorney, Chapter 205, Florida Statutes, does not authorize the City to reject a Business Tax Receipt ("BTR") application on the basis of the results of a criminal background check. The City is therefore limited in its ability to deny a BTR application based on the information discovered during the criminal background check

process. The BTR is a receipt evidencing payment of the local business tax and not a document evidencing that the business is properly qualified. Accordingly, City Staff is seeking Commission approval to amend the City Code to eliminate the requirement for a background check for new businesses as part of the Business Tax application process.

Instructions for the Office of the City Clerk: NONE

Public Notice – As Required by the Sec. _____ of the City Code and/or Sec. _____, Florida Statutes, public notice for this item was provided as follows: on _____, in a _____ ad in the _____; by the posting the property on _____ and/or by sending mailed notice to property owners within _____ feet of the property on _____. (Fill in all that apply)

Special Voting Requirement – As required by Sec. _____, of the City Code and/or Sec. _____ Florida Statutes, approval of this item requires a _____ (unanimous 4/5ths etc. vote of the City Commission).

Fiscal Impact: Yes No

REMARKS: Revenues from the Administrative Charge for Background Checks in previous years averaged approximately \$300 and were recorded in account 001 101 000 000 316000.

Content:

- **Agenda Item Memo from the City Manager to City Commission**
- **Ordinance TO 1624**



**CITY OF MIRAMAR
INTEROFFICE MEMORANDUM**

TO: Mayor, Vice Mayor, & City Commissioners
FROM: Kathleen Woods-Richardson, City Manager *Kathleen Woods-Richardson*
BY: Barbara Hastings, Assistant Finance Director
DATE: December 23, 2015

RE: SECOND READING of Temp. Ord. No. 1624, Amending Chapter 11 Business Taxes, Permits and Business Applications, Sections 11-33 Thru 11-36 of the City Code, related to Business Tax processing in order to eliminate the background check requirement as part of the Business Tax Application process.

RECOMMENDATION: The City Manager recommends approval of Temp. Ord. No. 1624, amending Chapter 11, Business Taxes, Permits and Business Regulations, of the Miramar Code of Ordinances by amending Sections 11-33 through 11-36 related to Business Tax processing to eliminate the background check requirement as part of the Business Tax Receipt ("BTR") application process.

ISSUE: City Commission approval is required to amend Chapter 11 to eliminate background check processing as part of the BTR application process.

BACKGROUND: In 1995, the City Commission created an Equity Study to review, reclassify and revise the City's occupational license tax classifications in accordance with Chapter 205, Florida Statutes. Occupational license tax rates and classifications as well as the process for issuing same were set at that time. The City Code also included the process for interviewing applicants and the requirement that occupational license tax applicants be subject to a background check.

In 2007, the Florida Legislature amended Chapter 205, Florida Statutes by changing the term "local occupational license tax" to "local business tax". The City adopted Ordinance number 07-10 to change the City's Code to conform with State law. All other provisions, including the requirement for a background check, remained unchanged.

In 2007, the Florida Legislature amended Chapter 205, Florida Statutes, changing the term "local occupational license tax" to "local business tax" to reflect the taxing nature of the business tax as opposed to a regulatory licensing scheme. Thereafter, the City adopted Ordinance number 07-10 to change the City's Code to conform with State law. However, the application requirement for a criminal background check remained unchanged.

The criminal background check process as described in City Code Chapter 11 is no longer appropriate as a prerequisite for payment and collection of a business tax. According to our City Attorney, Chapter 205, Florida Statutes, does not authorize the City to reject a BTR application on the basis of the results of a criminal background check. The City is therefore limited in its ability to deny a BTR application based on the information discovered during the criminal background check process. The BTR is a receipt evidencing payment of the local business tax and not a document evidencing that the business is properly qualified. Accordingly, City Staff is seeking Commission approval to amend the Code to eliminate the requirement for a background check for new businesses as part of the Business Tax application process.

The \$5.00 administrative fee associated with the background check (currently \$24.00) should be eliminated if the ordinance is approved. The 2016 Schedule of Fees will be adjusted accordingly.

Temp. Ord. No. 1624
9/29/15
11/12/15

**CITY OF MIRAMAR
MIRAMAR, FLORIDA**

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF MIRAMAR, FLORIDA, AMENDING CHAPTER 11, "BUSINESS TAXES, PERMITS AND BUSINESS REGULATIONS," OF THE MIRAMAR CODE OF ORDINANCES BY REPEALING SECTION 11-33 "INTERVIEW AND INVESTIGATION OF RECEIPT APPLICANTS; DUTIES; FEE TO DEFRAY COST OF CRIMINAL HISTORY FORM; RECEIPT QUESTIONNAIRE FORM", SECTION 11-34 "GROUNDS FOR DENIAL", SECTION 11-35 "APPEAL FROM DENIAL OF RECEIPT", AND SECTION 11-36, "REVOCATION OF RECEIPT", TO ELIMINATE THE PROCESSING OF BACKGROUND CHECKS FOR NEW BUSINESSES AS PART OF THE BUSINESS TAX RECEIPT APPLICATION PROCESS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the current City of Miramar Code of Ordinances ("City Code") contains business tax classifications and rates (formerly occupational license fees) that were set and adopted in 1995 in accordance with Florida law; and

WHEREAS, Sections 11-33 through 11-36 of the City Code pertain to the process of interviewing, investigating and conducting a criminal background check for new businesses prior to the approval and issuance of a Business Tax Receipt ("BTR"); and

WHEREAS, in 2007, the Florida Legislature amended Chapter 205, Florida Statutes, changing the term "local occupational license" to "local business tax" to reflect the taxing nature of the business tax as opposed to a regulatory licensing scheme.

Ord. No. _____

Temp. Ord. No. 1624
09/29/15
11/12/15

WHEREAS, City Code Sections 11-33 through 11-36 were established for the issuance of the prior Occupational License and are no longer appropriate as a prerequisite for the issuance of a BTR; and

WHEREAS, the BTR is a receipt evidencing payment of the local business tax and not a document evidencing that the business is properly qualified; and

WHEREAS, Chapter 205, Florida Statutes, does not authorize the City to reject a BTR application on the basis of the results of a criminal background check, and the City is therefore limited in its ability to deny a BTR application based on the information discovered during the criminal background check process; and

WHEREAS, the City Manager recommends eliminating the need for and the processing of background checks as part of the BTR process by amending the City Code to eliminate the related background check requirements; and

WHEREAS, the City Commission recognizes the need to update the City Code to reflect current practices, guidelines and changes in state law and deems it to be in the best interest of the citizens and residents of the City of Miramar to eliminate the requirement to perform a background check on new businesses as a prerequisite for payment and collection of a business tax.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF MIRAMAR, FLORIDA, AS FOLLOWS:

Temp. Ord. No. 1624
09/29/15
11/12/15

Section 1: That the foregoing “**WHEREAS**” clauses are ratified and confirmed as being true and correct and made a specific part of this Ordinance.

Section 2: That Chapter 11, “Business Taxes, Permits and Business Regulations”, Sections 11-33 through 11-36 of the City Code related to Business Tax criminal background checks be amended and repealed to read as follow¹:

~~Sec. 11-33. - Interview and investigation of receipt applicants; duties; fee to defray cost of criminal history form; receipt questionnaire form.~~

~~(a) It shall be the duty of the city to interview and, when deemed necessary or desirable, to investigate all persons, firms, corporations or occupations within the city and to determine whether or not it would be in the best interest of the city to issue such a receipt as applied for by the applicant.~~

~~(b) In accordance with the chapter, in order to determine whether the person applying for a receipt has been convicted of any misdemeanor or felony within the preceding five (5) years, the city shall obtain a criminal history report pertaining to any applicant from a vendor authorized by the state department of law enforcement prior to the city's issuance of such receipt. A regulatory fee is hereby assessed against each person applying for a receipt to defray the cost charged for the criminal history report and of postage and mailing. The amount of the fee will be the amount charged for the criminal history report, plus one dollar (\$1.00). This fee shall be in addition to the business tax levied by this chapter. This fee shall be payable upon each application for a receipt.~~

~~(c) As part of the interview and investigatory process prescribed herein, all persons applying for a receipt shall answer the questions provided on the standard city questionnaire form including, without limitation, inquiries as to convictions for a felony or misdemeanor within the past five (5) years and whether the applicant has had civil rights restored under color of law. Failure to answer fully or truthfully such questions shall be cause to deny a receipt in accordance with section 11-34 of this chapter. Regardless of any provision of the Charter or this Code, the city will not deny a receipt~~

Ord. No. _____

3

¹Proposed additions to existing City Code text are shown by underlining; proposed deletions from existing City Code text are shown by ~~strike through~~.

Temp. Ord. No. 1624
09/29/15
11/12/15

~~to a person who has been convicted of a crime but has had civil rights restored in accordance with F.S. Ch. 940, F.S. § 944.292, and/or Article IV, Section 8 of the Florida Constitution. Such person shall demonstrate the restoration of civil rights by furnishing appropriate documents.~~

~~Sec. 11-34. — Grounds for denial~~

~~(a) After interview or investigation, if the city determines that any person making application or any member of such firm, corporation or association does not possess a reputation for honesty, integrity and good character, the department shall not grant or issue a receipt to such applicant.~~

~~(b) The lack of honesty, integrity or good character shall be presumed, when based upon an interview and investigation as provided herein, the city has reasonable and probable grounds to believe that:~~

~~(1) Within the past three (3) years the applicant committed any act which if done by any person who obtained a receipt to do business within the city would constitute grounds for the revocation of the receipt;~~

~~(2) Within the past three (3) years the applicant has committed an act involving dishonesty, fraud, deceit or lack of integrity whereby the applicant has been benefited or whereby some injury has been sustained by another;~~

~~(3) The applicant has been convicted of a misdemeanor or felony during the three (3) years last past;~~

~~(c) The city also shall not grant or issue a receipt if it is determined that the business is not permitted by law or by any city ordinance.~~

~~Sec. 11-35. — Appeal from denial of receipt.~~

~~Any person whose application for a receipt has been rejected or there is a dispute as to the business classification shall have a right to appeal the decision of the city, first to the city manager and then, if necessary, to the city commission by appropriate written petition, and shall be heard by the city commission at its next regular meeting providing, however, that such petition is filed with the city at least ten (10) days prior to such regular meeting of the city commission.~~

Temp. Ord. No. 1624
09/29/15
11/12/15

~~Sec. 11-36. Revocation of receipt.~~

~~(a) Notwithstanding any other section in this Code to the contrary, the privilege of doing business within the city allowed by the issuance of a receipt will be subject to a summary administrative revocation by one (1) written thirty-day notice of revocation issued to the receipt applicant by the city if it is determined that one (1) or more of the following conditions exist:~~

- ~~(1) Repeated code violations.~~
- ~~(2) Misrepresentations in the application or affidavit.~~
- ~~(3) Use of business location for illegal or unsafe activities.~~
- ~~(4) Use of business location for activities not contemplated in the application.~~
- ~~(5) Misrepresentations made to the city during the application and investigation process.~~
- ~~(6) Use of business not in compliance with the conditions of the receipt.~~
- ~~(7) Written verification from State Department of Law Enforcement that the applicant has been convicted of a felony or misdemeanor within the past three (3) years.~~
- ~~(8) Lack of refuse collection service. Such a violation of this article will be deemed to relate back to the original time of issuance of such receipt as if the receipt had been originally denied at the time of application under section 11-34 of this chapter. Such revocation will be effective in thirty (30) days without the necessity of any hearing or other disposition.~~

~~(b) Except as provided in subsection (a) above, any receipts issued under this article may be revoked by the city commission or code enforcement board at any time upon notice and hearing for violation of any ordinance of the city or law of the state or county or for any other good and sufficient reason in the interests of public health, safety and welfare. This section shall not affect the power of the county court to revoke certain receipts where such revocation is specifically provided for by law.~~

Temp. Ord. No. 1624
09/29/15
11/12/15

Section 3: That it is the intention of the City Commission of the City of Miramar that the provisions of this Ordinance shall become and be made a part of the Code of the City of Miramar, and that the word “ordinance” may be changed to “section,” article,” or such other appropriate word or phrase in order to accomplish such intention.

Section 4: That should this Ordinance or any part thereof be declared invalid by a court of competent jurisdiction, the invalidity of any part of this Ordinance shall not otherwise affect the validity of the remaining provisions of this Ordinance, which shall be deemed to have been enacted without the invalid provision.

Section 5: That all sections of the Code of Ordinances, all ordinances or sections of ordinances, and all resolutions, or sections of resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 6: That the appropriate City officials are authorized to do all things necessary and expedient to carry out the aims of this Ordinance.

Temp. Ord. No. 1624
09/29/15
11/12/15

Section 7: That this Ordinance shall take effect immediately upon adoption on second reading.

PASSED FIRST READING: _____

PASSED AND ADOPTED ON SECOND READING: _____

Mayor, Wayne M. Messam

Vice Mayor, Darline B. Riggs

ATTEST:

City Clerk, Denise A. Gibbs

I HEREBY CERTIFY that I have approved this ORDINANCE as to form:

City Attorney
Weiss Serota Helfman
Cole & Bierman, P.L.

<u>Requested by Administration</u>	<u>Voted</u>
Commissioner Winston F. Barnes	_____
Commissioner Maxwell B. Chambers	_____
Commissioner Yvette Colbourne	_____
Vice Mayor Darline B. Riggs	_____
Mayor Wayne M. Messam	_____

Ord. No. _____