



City of Miami
Legislation
Ordinance

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File Number: 16-00708

Final Action Date:

AN ORDINANCE OF THE MIAMI CITY COMMISSION AMENDING CHAPTER 31/ARTICLE II/SECTION 48 OF THE CODE OF THE CITY OF MIAMI, FLORIDA, AS AMENDED ("CITY CODE"), ENTITLED "LOCAL BUSINESS TAX AND MISCELLANEOUS BUSINESS REGULATIONS/LOCAL BUSINESS TAX ("BTR")/ REVOCATION; SUSPENSION", IN ORDER TO SIMPLIFY THE REVOCATION PROCESS AND TO PROVIDE A MORE EFFICIENT AND EFFECTIVE PROCESS FOR THE REVOCATION AND SUSPENSION OF A BTR; FURTHER AMENDING CHAPTER 31/ ARTICLE II/SECTION 49 OF THE CITY CODE, ENTITLED "LOCAL BUSINESS TAX AND MISCELLANEOUS BUSINESS REGULATIONS/LOCAL BUSINESS TAX ("BTR")/BTR ENFORCEMENT", TO PROVIDE FOR A MORE EFFECTIVE AND EFFICIENT ENFORCEMENT PROCESS; CONTAINING A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 31, Article II, Section 48 of the Code of the City of Miami, as amended ("City Code"), entitled "Local Business tax and Miscellaneous Business Regulations/Local Business Tax ("BTR")/Revocation; Suspension", provide the mechanism by which a Business Tax Receipt ("BTR") can be revoked or suspended; and

WHEREAS, the time increments and hearing requirements do not provide for a quick and efficient resolution for a business deemed to have violated the requirements of maintaining a valid BTR; and

WHEREAS, it is in the best interests of the residents of the City of Miami that issues regarding alleged violations of BTR licensure requirements are dealt with in an efficient and effective manner;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

Section 1. The recitals and findings contained in the preamble to this Ordinance are adopted by reference and incorporated as if fully set forth in the Section.

Section 2. Chapter 31, Article II, Section 48 of the City Code is amended in the following particulars: {1}

"CHAPTER 31

LOCAL BUSINESS TAX AND MISCELLANEOUS BUSINESS REGULATIONS

* * * *

ARTICLE II. LOCAL BUSINESS TAX (BTR)

* * * *

Sec. 31-48. Revocation; suspension.

(a) The city manager or designee shall deny the application for a BTR, or revoke the BTR of any individual, partnership, or other incorporated or unincorporated business entity holding a BTR under this article where it is determined by the city manager or designee, ~~after a hearing~~, that:

(1) The BTR holder and/or owner of the property has materially misrepresented or failed to include the information required by this article to be included in the BTR application form;

(2) The BTR holder and/or owner of the property, subsequent to being issued a BTR, has been convicted of or has pled guilty to a violation of a law of this state, or ordinance of the county or ordinance of the city, which violation occurred as a part of the main business activity of the BTR holder and/or owner of the property and not merely incident thereto;

(3) The BTR holder and/or owner of the property is conducting business from premises which do not possess a valid and current certificate of occupancy issued by the department of planning, building and zoning;

(4) The BTR holder and/or owner of the property is conducting business from premises which do not possess a valid and current certificate of use issued by the department of planning, building and zoning;

(5) The BTR holder and/or owner of the property is conducting business from the proposed premises and is not in compliance with a zoning ordinance or other city ordinance;

(6) Conduct is occurring at the ~~emptied~~ premises, which conduct constitutes a breach of the peace by threatening the safety and welfare of the patrons at said premises or the general public and which conduct is recurring;

(7) The BTR holder and/or owner of the property has obtained a permit, certificate or BTR for the ~~emptied~~ premises, including a BTR issued pursuant to this article, by misleading and/or deceptive information or making false statements that were relied upon by the city or an employee operating in an official capacity in issuing the above-mentioned permit(s), certificate(s), or BTR; or

(8) The BTR holder and/or owner of the property, subsequent to being issued a BTR, has had a permanent injunction in the form of an order and final judgment entered against said BTR holder and/or owner of the property enjoining restraining or preventing the BTR holder and/or owner of the property from exhibiting, showing, selling, lending, or transmitting any motion picture film(s), book(s), magazine(s), videotape(s) or other material that has been found to be obscene, lewd, lascivious, filthy or indecent pursuant to F.S. ch. 847, or construed, after said material(s) has undergone an adversary judicial hearing as required by law.

(b) (1) Upon receipt of a code enforcement citation affecting the health and safety of the community by a violator, the city attorney Code Enforcement Director shall notify in writing the city manager or designee of any violation of the enumerated grounds for revocation of a BTR contained in subsection (a) hereof this Ordinance. Upon said notification, the city manager or designee shall schedule an appellate hearing for the BTR holder and/or owner of the property at least 15 days from but within 30 days ten (10) days of the date of such notification to the City Manager or designee. Then the City Manager or designee shall notify the BTR holder and/or owner of the property of the revocation of the BTR and of the appellate hearing. The city manager or designee shall notify in writing, at least five (5) days in advance of the appellate hearing, the BTR holder and the city attorney's office/or owner of the property of the date, time and place of said appellate hearing and the specific charges that have caused for the said revocation notice to be sent by the city manager or designee. Said revocation notice and notice of appellate hearing shall be sent to the BTR holder and/or owner of the property by registered mail, return receipt requested, to the property owner's address and/or the business address listed on the BTR, or said revocation notice and notice of appellate hearing may be perfected upon any employee of said business by any city police officer, BTR inspector or authorized process server at the business address listed on the BTR. At said appellate hearing, the BTR holder and/or owner of the

property shall be given the opportunity to be represented by an attorney, to make a record of the hearing by the use of a court reporter, to call witnesses, to present documentary evidence, and to otherwise properly present his position or defense prove his appeal as to why the BTR should not remain in a revoked status.

(2) Upon the receipt of the registered mail to the BTR holder and/or owner of the property or upon perfecting notice upon any employee of the BTR holder business, the BTR shall be considered revoked or suspended as designated in the notice from the City Manager or designee.

~~(c) A revocation under this section shall extend for the BTR duration of the period, except as provided in section 31-27 herein, at which time a new application must be submitted. Said period of time revocation shall begin to run from the date the revocation notice was sent order is entered by hearing, the city manager or designee. shall render the determination, in writing, stating whether the BTR shall be revoked or suspended. The decision must be based on a preponderance of the evidence and the city manager or designee and the same is filed with the city clerk. The written determination of the city manager or designee shall be final, binding and conclusive. An appeal there from may be taken to a court of competent jurisdiction.~~

(d) All appellate revocation hearings shall be conducted in the following manner before a special master:

(1) The proceedings shall be as informal as is compatible with the essential requirements of the law.

(2) The admission of evidence shall be governed by the special master city manager or designee with the advice of legal counsel if such is available. ~~Strict rules of evidence, as in courts of law, shall not apply.~~ Evidence is to be admitted at the discretion of the ~~city manager or designee~~ special master consistent with generally accepted legal principles governing the admission of evidence in administrative proceedings.

(3) The BTR holder and/or owner of the property may be represented by counsel; the city may be represented by the city attorney or other counsel retained at the discretion of the city attorney.

(4) The burden of proof being on the ~~city~~ BTR holder and/or owner of the property, the order of presentation of evidence shall be as follows:

a. The parties shall be entitled to present oral argument at the opening and at the closing of the hearing.

~~b. The city shall present its evidence in support of the revocation of the BTR.~~

eb. The BTR holder and/or owner of the property, as appellant, has the burden of proof and shall produce such evidence as it may wish to offer in opposition to the continued revocation of the BTR.

c. The City shall have the opportunity to present any evidence in support of maintaining the revocation of the BTR.

d. The ~~city~~ BTR holder may offer rebuttal testimony.

~~(5) Within 15-5 (five) days of~~ At the close of the hearing, the ~~city manager or designee~~ special master shall render the determination, ~~in writing,~~ stating whether the BTR shall remain be revoked or suspended or not. The decision must be based on competent substantial ~~a preponderance of~~ the evidence and otherwise consistent with principles of law.

(6) Upon rendition of the determination in any appellate revocation or suspension hearing, the

~~city manager or designee special master shall file the determination with the city clerk Office of Hearing Boards and shall cause a true and correct copy of the order to be sent by registered mail, return receipt requested, regular mail to the business address listed on the BTR or to any such other address as the BTR holder shall designate in writing. The order may also be served upon any employee of said business by any city police officer, BTR receipt inspector or authorized process server at the business address listed on the BTR. It may also be handed to the BTR holder at the hearing.~~

~~(e) The BTR holder shall be placed upon notice that the BTR has been revoked or suspended when notification of revocation or suspension signed by the city manager or designee has been sent by registered mail, return receipt requested, to the business address listed on the BTR, or where said notification has been served upon any employee of the said business by any city police officer, BTR-Inspector or authorized process server at the business address listed on the BTR.~~

~~(f)(e) If a BTR is revoked or suspended revocation or suspension is upheld under this section the city shall be entitled to recover its reasonable attorneys' fees and any costs of the hearing such as court reporters and transcription charges expended by the city. Revocation of the license of an adult theater for one year under paragraph (a)(8) is incompatible with the First Amendment because it imposes a prior restraint on presumptively protected expression. Gayety Theatres, Inc., v. City of Miami, 719 F.2d 1559 (1983).~~

Sec. 31-49. BTR enforcement.

(a) Any entity who has not strictly complied with the provisions of this chapter shall be subject to the enforcement procedures as set forth herein:

~~(1) If noncompliance with this chapter is found, the finance department shall notify the noncompliant entity in writing by delivering the civil infraction notice to the violator or by leaving the civil infraction notice at the violator's place of business with any agent or employee therein and informing that person of its contents. In the alternative the civil violation notice may be sent by certified mail, return receipt requested, to the last listed mailing address supplied to the city's finance department or the mailing address reflected on the county's property appraiser's website. In addition to providing notice as set forth above, at the option of the finance department, notice may be served by posting on the violator's place of business. Such notice shall be posted for at least ten days at the business address upon which the violation is alleged to exist. Proof of posting shall be verified by affidavit of the agent who posted the notice. Evidence that an attempt has been made to hand deliver or mail notice together with proof of posting shall be sufficient that notice requirements have been met.~~

~~(2) A violator who has been served with a civil infraction notice shall elect either to:~~
~~a. Pay the civil penalty in the manner indicated on the infraction notice, and correct the violation;~~
~~or~~
~~b. Request an administrative hearing before a hearing officer to appeal the determination of the finance department which resulted in the issuance of the civil infraction notice.~~

~~(3) An appeal for administrative hearing shall be accomplished by filing a request in writing, to set the hearing for review, to the hearing boards department, no later than ten days after the service of the civil infraction. Said request may be made in writing however, the burden of proof that said request was received by the hearing boards department shall lay with the named violator.~~

~~(4) If the named violator, after notice, fails to pay the civil penalty and correct the violation (within the time specified), or fails to timely request an administrative hearing before a hearing officer, such failure shall constitute a waiver of the violator's right to an administrative hearing before a hearing officer. A waiver of the right to administrative hearing shall be treated as an admission of~~

~~the violation and penalties may be assessed accordingly.~~

~~(5) Upon receipt of a named violator's timely request for an administrative hearing, the hearing boards department shall set the matter down for hearing on the next available regularly scheduled hearing date or as soon as possible.~~

~~(6) The hearing boards department shall send a notice of hearing by certified mail to the violator's business address. The notice of hearing shall include but not be limited to the following:~~

- ~~a. Name of the enforcement officer who issued the notice;~~
- ~~b. Factual description of the alleged violation;~~
- ~~c. Date of alleged violation;~~
- ~~d. Section of the Code allegedly violated;~~
- ~~e. Place, date and time of hearing;~~
- ~~f. Right of violator to be represented by an attorney;~~
- ~~g. Right of violator to present witnesses and evidence; and~~
- ~~h. Notice that failure of violator to attend a hearing may result in civil penalty being assessed against the entity.~~

~~(7) The hearing officer shall conduct hearings on a regularly scheduled monthly basis or more frequently upon request of the city manager or designee. No hearing shall be set sooner than 20 days from the date of service of the civil infraction.~~

~~(8) All hearings before the hearing officer shall be open to the public. All testimony shall be under oath. Upon proper notice, a hearing may proceed in the absence of the named violator.~~

~~(9) The violator shall be allowed to make a record of the hearing by the use of a court reporter; such record may be transcribed at the expense of the party requesting the transcript. The party desiring the court reporter shall be responsible for the appearance fee.~~

~~(10) The city manager, or designee, shall provide clerical and administrative personnel to facilitate the proper issuance of civil infraction notices, processing and review of cases as may be reasonably required, and for the proper performance of clerical and hearing officer's duties.~~

~~(11) Each case before a hearing officer shall be presented by the enforcement officer or representative of the department which issued the violation.~~

~~(12) The hearing need not be conducted in accordance with formal rules of evidence. Any relevant evidence shall be admitted if the hearing officer finds it competent and reliable, regardless of the existence of any common law or statutory rule to the contrary.~~

~~(13) Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination, to impeach any witness regardless of which party first called him to testify, and to rebut the evidence against the witness.~~

~~(14) The hearing officer shall make findings of fact based on the evidence in the record alone. In order to make a finding upholding an enforcement officer's determination that a violation exists, the hearing officer must find that a preponderance of the evidence indicates that the violator was legally responsible for the infraction of the relevant section of the city ordinance or City Code as cited, and that the facts demonstrate the existence of a violation.~~

~~(15) The prescribed time for correction of the violation given to the named violator and contained in the notice of violation shall be presumed to have been a reasonable time for correction. Upon presentation of relevant evidence by the named violator that the time for correction was not reasonable, the hearing officer may make a redetermination as to the reasonableness of the time for correction contained in the notice of violation, if the time was less than five days.~~

~~(16) If the named violator is found guilty of the violation, he/she may be held liable for the costs of the prosecution.~~

~~(17) The fact-finding determination of the hearing officer shall be limited to whether the alleged violation did in fact occur and, if so, whether the entity named in the civil infraction is legally responsible for that violation. The hearing officer shall either affirm or reverse the determination of~~

~~the enforcement officer as to the responsibility of the named violator for the correction of the city ordinance or City Code violation. If the hearing officer reverses the determination of the enforcement officer and finds the named violator not responsible for the alleged violation in the civil infraction, absent a successful appeal of the hearing officer's ruling by the city, the named violator shall not be liable for the payment of any civil penalty. If the decision of the hearing officer is to affirm the enforcement officer's determination of violation, then the following elements shall be included in the decision:~~

- ~~a. Amount of civil penalty;~~
- ~~b. Costs of prosecution; and~~
- ~~c. Verbal warning that failure to comply with date by which violation must be corrected will result in an automatic referral to the hearing officer.~~

~~(18) The hearing officer shall have the power to:~~

- ~~a. Adopt procedures for the conduct of hearings;~~
- ~~b. Subpoena alleged violators and witnesses for hearings; subpoenas may be served by either the city police department or by the staff of the hearing officer;~~
- ~~c. Subpoena evidence;~~
- ~~d. Take testimony under oath; and~~
- ~~e. Assess and order the payment of civil penalties as provided herein.~~

~~(b) Alternatively, e~~ Enforcement may be made in accordance with City of Miami Code Chapter 2, Article X, Code Enforcement and any other remedies as provided by law, including but not limited to, an action in the Circuit Court.

~~(e)~~ Obstructing a revenue collections inspector in the performance of duties.

(1) Whoever opposes, obstructs, or resists the Revenue Collections Inspector or other person authorized by the finance department, in the discharge of his or her duty, as provided in this section, shall be guilty of a violation of this chapter, and, upon conviction thereof, shall be punished as provided in section 1-13.

(2) Revenue collections inspectors may notify the city police department immediately when in their judgment they feel threatened.

~~(d) Civil penalties assessed pursuant to this article are due and payable to the city on the last day of the period allowed for the filing of an administrative hearing before a hearing officer, or if proper appeal is made, when the appeal has been finally decided adversely to the named violator. The amount of such penalty assessed shall constitute and is hereby imposed as a lien against the real property where the business entity is operating with equal rank and dignity of any other special assessment liens.~~

~~(e)~~ In addition to any other remedies provided by this chapter or any other city ordinance, the finance department shall have judicial remedies available for violations of this chapter or any other lawful rule or regulation promulgated hereunder as enumerated below but not limited to:

(1) Institution of a civil action in a court of competent jurisdiction to establish liability and to recover damages for any costs incurred by the city in conjunction with the abatement of any condition prohibited by the provisions of this chapter.

(2) Institution of a civil action in a court of competent jurisdiction to seek injunctive relief to enforce compliance with the terms of this chapter or any rule or regulation promulgated hereunder, to enjoin and prohibit said violation or to compel the performance of actions which will result in compliance with the terms of this chapter.

~~(f)~~ These remedies are cumulative and the use of any appropriate remedy shall not constitute an election of remedies by the finance department. The use of one remedy shall not preclude the use of

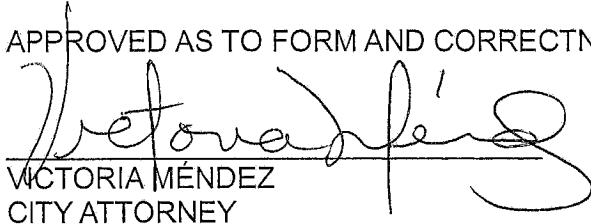
any others.

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Section 3. If any section, part of a section, paragraph, clause, phrase or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall not be affected.

Section 4. This Ordinance shall become effective thirty (30) days after final reading and adoption thereof. {2}

APPROVED AS TO FORM AND CORRECTNESS:



VICTORIA MÉNDEZ
CITY ATTORNEY

Footnotes:

{1} Words and/or figures stricken through shall be deleted. Underscored words and/or figures shall be added. The remains of the provisions are now if effect and remain unchanged. Asterisks indicate omitted and unchanged materials.

{2} This Ordinance shall become effective as specified as herein unless vetoed by the Mayor within ten (10) days from the date it was passed and adopted. If the Mayor vetoes this Ordinance, it shall become effective immediately upon override of the veto by the City Commission or upon the effective date stated herein, whichever is later.