

To: The Honorable Mayor and City Council

From: Jeff P. H. Cazeau, City Attorney *JPC*

Date: ~~August 23, 2016~~ September 13, 2016

RE: Proposed Ordinance Amending Section 11-33 "Evidence of Doing Business, Fee Schedule"

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 11 OF THE NORTH MIAMI CODE OF ORDINANCES, ENTITLED "LICENSES AND BUSINESS REGULATIONS" UNDER ARTICLE II, ENTITLED "LOCAL BUSINESS TAXES," BY SPECIFICALLY AMENDING SECTION 11-33, ENTITLED "EVIDENCE OF DOING BUSINESS, FEE SCHEDULE", TO DELINEATE THE USE OF SIGNS, NEWSPAPERS, MAGAZINES OR OTHER ADVERTISEMENTS AS EVIDENCE OF CONDUCTING A BUSINESS AS ADVERTISED, AND LIMITING SUCH EVIDENCE SOLELY FOR THE PURPOSE OF ESTABLISHING COMPLIANCE WITH THE REQUIREMENTS OF A BUSINESS TAX RECEIPT; PROVIDING FOR REPEAL, CONFLICTS, SEVERABILITY, CODIFICATION AND FOR AN EFFECTIVE DATE.

RECOMMENDATION

That the City Council adopt the proposed ordinance limiting the use of Section 11-33 entitled "Evidence of Doing Business, Fee Schedule" solely for the purpose of establishing compliance with the requirements of a Business Tax Receipt.

BACKGROUND

Section 6-205 of the City's land development regulations establishes that "if a nonconforming use ceases operations for any reason for a period of more than one hundred eighty (180) consecutive days, such nonconforming use shall not thereafter be re-established and any subsequent use of the land shall conform to these LDRs for the district in which it is located."

This ordinance amends Section 11-33 of the City's Business Tax Receipt ordinance which when read in conjunction with the section above, arguably, creates a loophole:

A business tax receipt shall be required to cover each and every business advertised by sign, newspaper, magazine or otherwise. Such sign, newspaper, magazine or other advertisement shall be considered evidence of conducting the business advertised and ***shall be considered by the special magistrate prima facie evidence that the business so noted is being conducted at the premises indicated.***

In the past, applicants seeking to reestablish a nonconforming use have been able to cite the existence of a sign on the property as prima facie evidence of business being conducted on the property. This ordinance makes clear that Section 11-33 applies only for the purposes of Business Tax Receipt and eliminates the loophole.

Attachments

Proposed Ordinance.

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 11 OF THE NORTH MIAMI CODE OF ORDINANCES, ENTITLED “LICENSES AND BUSINESS REGULATIONS” UNDER ARTICLE II, ENTITLED “LOCAL BUSINESS TAXES,” BY SPECIFICALLY AMENDING SECTION 11-33, ENTITLED “EVIDENCE OF DOING BUSINESS, FEE SCHEDULE”, TO DELINEATE THE USE OF SIGNS, NEWSPAPERS, MAGAZINES OR OTHER ADVERTISEMENTS AS EVIDENCE OF CONDUCTING A BUSINESS AS ADVERTISED, AND LIMITING SUCH EVIDENCE SOLELY FOR THE PURPOSE OF ESTABLISHING COMPLIANCE WITH THE REQUIREMENTS OF A BUSINESS TAX RECEIPT; PROVIDING FOR REPEAL, CONFLICTS, SEVERABILITY, CODIFICATION AND FOR AN EFFECTIVE DATE.

WHEREAS, the local business tax is a State of Florida legislative authorized tax (“Business Tax Receipt”) upon the privilege of conducting a business, profession or occupation within the corporate limits of the City of North Miami (“City”), pursuant to the Local Business Tax Act under Chapter 205, Florida Statutes, as amended from time to time; and

WHEREAS, the City’s current Business Tax Receipt provisions are codified under Chapter 11, Article II of the City Code of Ordinances, entitled “Local Business Taxes,” (“BTR Code”); and

WHEREAS, Section 11-33 of the BTR Code was recently used as a basis to attempt to circumvent other provisions of the Code (e.g., to establish the time period required to continue a non-conforming use), that are completely outside the scope, intent and purpose of City and state Business Tax Receipts’ regulations; and

WHEREAS, the periodic review, analysis and rendition of improved versions of the BTR Code is essential for the efficient and diligent conduct of City administration, while ensuring fair and equitable treatment of all persons and entities providing supplies, goods and services for public consumption; and

WHEREAS, the City Attorney respectfully recommends adoption of the proposed amendment to delineate the use of signs, newspapers, magazines or other advertisements solely for the purpose of establishing compliance with the BTR Code, and not to be used as a basis for undermining other valid provisions of the City Code; and

WHEREAS, the Mayor and City Council of the City of North Miami find the proposed amendment serves the best interest of the City.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, THAT:

Section 1. Amendment to Chapter 11, Section 11-33, North Miami Code of Ordinances. The Mayor and City Council of the City of North Miami, Florida, hereby amend Chapter 11 of the North Miami Code of Ordinances, entitled “Licenses and Business Regulations” under Article II, entitled “Local Business Taxes,” by specifically amending Section 11-33, entitled “Evidence of Doing Business, Fee Schedule”, to delineate the use of signs, newspapers, magazines or other advertisements as evidence of conducting a business as advertised, and limiting such evidence solely for the purpose of establishing compliance with the requirements of a business tax receipt, as follows:

CITY OF NORTH MIAMI CODE OF ORDINANCES

CHAPTER 11. LICENSES AND BUSINESS REGULATIONS

* * * * *

Sec. 11-33. - Evidence of doing business, fee schedule.

- (a) A business tax receipt shall be required to cover each and every business advertised by sign, newspaper, magazine or otherwise. For purposes of this chapter only, Ssuch sign, newspaper, magazine or other advertisement shall be considered evidence of conducting the business advertised ~~and shall be considered by the special magistrate prima facie evidence that the business so noted is being conducted at the premises indicated.~~
- (b) In any prosecutions under this article, the fact that such person is open for business shall be prima facie evidence of engaging in such business, profession or occupation, and the burden shall be upon the defendant taxpayer to refute the evidence. Any person found in violation of this section shall be subject to a penalty pursuant to section 11-19 of this article and chapter 2 of the City Code.

(c) The business tax receipt shall be issued for one (1) location and the assessment of such taxes are as follows:

SIC	Description	License Tax
	Agriculture, Forestry and Fishing	
0273	Animal aquaculture	\$195.00
0279	Animal specialties NEC	195.00
0742	Veterinary services for animal specialties	258.50
0752	Animal specialty services	195.00
0781	Landscape counseling and planning	132.00
0782	Lawn and garden services	97.00
0783	Ornamental shrub and tree services	97.00
	Mining	
1389	Oil and gas field services, NEC	301.00
	Construction	
1521	General contractor—Single-family houses	224.00
1522	Residential construction, NEC	258.50
1542	Nonresidential construction, NEC	280.50

1629	Heavy construction, NEC	301.00
1711	Plumbing, heating, air-conditioning	160.50
1721	Painting and paper hanging	160.50

* * * * *

- (d) To the extent, if any, that any tax imposed in subsection (c) of this section exceeds an amount authorized by F.S. ch. 205, such excess shall be construed to be enacted pursuant to F.S. 166.221, as a lawful regulatory fee.
- (e) All future rate increases, up to five (5) percent, may be accomplished by a resolution of the city council.

* * * * *

Section 2. **Repeal.** All ordinances or parts of ordinances in conflict herewith are repealed.

Section 3. **Conflicts.** In the event that the provisions of this Ordinance are in conflict with any other ordinance, rule or regulation, the provisions of this Ordinance shall prevail.

Section 4. **Severability.** 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 by a court of competent jurisdiction, 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 5. **Codification.** It is the intention of the City Council of the City of North Miami and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of North Miami, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and the word “ordinance” may be changed to “section,” “article” or any other appropriate word.

Section 6. **Effective Date.** This Ordinance shall become effective immediately upon adoption on second reading.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, on first reading this _____ day of _____, 2016.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, on second reading this _____ day of _____, 2016.

DR. SMITH JOSEPH
MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

JEFF P. H. CAZEAU, ESQ.
CITY ATTORNEY

SPONSORED BY: CITY ATTORNEY

Moved by: _____

Sponsored by: _____

Vote:

Mayor Dr. Smith Joseph, D.O., Pharm. D.	_____ (Yes)	_____ (No)
Vice Mayor Alix Desulme	_____ (Yes)	_____ (No)
Councilman Scott Galvin	_____ (Yes)	_____ (No)
Councilman Carol Keys, Esq.	_____ (Yes)	_____ (No)
Councilman Philippe Bien-Aime	_____ (Yes)	_____ (No)

Additions shown by underlining. Deletions shown by ~~overstriking~~.