

ORDINANCE NO: 2021-121

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, AMENDING THE HIALEAH CODE OF ORDINANCES CHAPTER 86, ENTITLED "TAXATION AND FEES", TO CLARIFY THE LOCAL BUSINESS TAX APPLICATION REQUIREMENTS; ARTICLE II LOCAL BUSINESS TAX, § 86-26 ENTITLED "DEFINITIONS", § 86-37 "FALSE STATEMENTS"; § 86-40 "EXEMPTIONS" § 86-42 "DETERMINATION OF CLASSIFICATION OF A BUSINESS"; § 86-44 "EXPIRATION DATE OF BUSINESS TAX RECEIPT"; DELINQUENCY"; § 86-45 "BUSINESS TAX RECEIPT FOR FRACTIONAL PART OF YEAR"; § 86-46 "TRANSFER OF LOCATION, OWNERSHIP OR CHANGE OF NAME, EXCEPT WHEN PROHIBITED"; § 86-53 "DENIAL OF BUSINESS TAX RECEIPT". REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the purpose of this ordinance is to provide clarity to businesses in the city and ensure that Chapter 86 of the City of Hialeah Code of Ordinances pertaining to the local business tax requirements is abided by and understood; and

WHEREAS, accordingly the amendments to Chapter 86, shall provide for the health, safety and welfare of the city pertaining to the lawful operation of businesses in the city, which a city issued business tax receipt provides.

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

Section 1. Chapter 86, entitled "Taxation and Fees", Article II Local Business Tax is hereby amended as follows:

CHAPTER 86 - TAXATION AND FEES

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ARTICLE II. - LOCAL BUSINESS TAX

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Sec. 86-26. – 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, profession and occupation do not include the customary religious, charitable or educational activities of nonprofit religious, nonprofit charitable and nonprofit educational institutions in this state, which institutions are more particularly defined and limited as follows:

- (1) Charitable institutions means only nonprofit corporations operating physical facilities, registered with the state and approved by the Internal Revenue Service, at which charitable services are provided, and a reasonable percentage of which shall be without cost to those unable to pay.
- (2) Educational institutions means state tax-supported or parochial, church, and nonprofit private schools, colleges or universities conducting regular classes and courses of study required for accreditation by or membership in the Southern Association of Colleges and Secondary Schools, department of education, or the Florida Council of Independent Schools. Nonprofit libraries, art galleries, and museums open to the public are defined as educational institutions and eligible for exemption, if in compliance with state and federal laws and regulations for not-for-profit organizations.
- (3) Religious institutions means churches and ecclesiastical or denominational organizations, church cemeteries or established physical places for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on, and who have registered with the state and have been approved as not-for-profit organizations by the Internal Revenue Service of the United States.

- (4) Although nonprofit religious, nonprofit charitable and nonprofit educational institutions or other IRS approved entities may be exempt from paying for a business tax receipt, they are not exempt from the application process, reviews and/or fees of other disciplines which include the Zoning Division, Building Division, DERM, and Fire prevention, or other reviews as may be applicable.

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Sec. 86-37. - False statements or affidavits.

It shall be unlawful to make any false statements or misrepresentation of facts when applying for a business tax receipt. The business entity shall provide all documents and information necessary in support of the application and to assist the business tax division in its determination of the required business tax receipts, proper classification and tax assessment. It shall be unlawful for any person to make any false affidavit or material misrepresentation in support of an application to the city business tax division, or any other city official, for the purpose of procuring a business tax receipt.

Any business tax receipt obtained under this article, upon a misrepresentation of a material fact, or false statement shall be deemed null and void, and the holder of the business tax receipt, who has thereafter engaged in any business under such business tax receipt, shall be subject to prosecution for conducting business without a valid business tax receipt to the same effect and degree as though such business tax receipt had never been issued.

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Sec. 86-40. - Exemptions.

~~(a) *Exemption I.* A business tax exemption of up to \$50.00 annually, except for alcoholic beverage or amusement machine business tax receipts, may be allowed to the following in accordance with state law:~~

~~(1) U.S. armed forces veterans who are entitled to receive compensation for a service-connected disability and unmarried widows of such veterans for licenses of solely owned businesses.~~

~~(2) Persons with a confirmed disability or physical impairment not capable of manual labor, widows with minor dependents, and persons 65 years of age or older for licenses of solely owned businesses.~~

~~(3) Growers of farm and grove products.~~

~~(a) (b) *Exemption II.* Charitable, religious, fraternal, civil, and service organizations that are chartered as nonprofit organizations by the state and that have a valid federal tax exemption number may, upon approval of the request on the application, be exempt from a fee for the business tax receipt. This subsection shall not apply to the licensing and sale of alcoholic beverages, where applicable.~~

~~(b) (e) *Exemption III.* Federal, state, county and municipal government offices and facilities; offices providing municipal-administered grant-funded program services; and residential facilities owned and operated by the city or the housing authority.~~

~~(c) Exemptions are those identified in Florida Statute § 205.055.~~

~~(d) Persons claiming an exemption must complete and sign, under penalty of perjury, a request for fee exemption to the business tax division.~~

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Sec. 86-42. - Determination of classification of a business.

(a) If a disagreement occurs between the applicant and the city on the question of proper classification of any business, occupation or profession for business tax purposes, the business tax administrator shall decide the proper classification.

- (b) Any person who wishes to appeal any decision of the local business tax section will have the right to appear before the city council, provided a petition is made, in writing, to the city clerk within ten working days of the notification of the determination of the local business tax section by following the same procedures provided in section 86-57.

- (c) Persons engaging in any business, profession, service or occupation in the city, and not specifically designated in this article, shall pay a business tax to be determined by the business tax division by choosing the classification that is most similar to the business not specifically classified.

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Sec. 86-44. - Expiration date of business tax receipt; delinquency.

- (a) Except as otherwise provided, business tax receipts shall expire on September 30. Those business tax 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 for each month of delinquency thereafter until paid, provided that the total delinquency fee shall not exceed 25 percent of the yearly business tax for the delinquent establishment.

- (b) Any person who engages in any business, occupation, or profession, covered by this article, who does not pay the required business tax within one hundred fifty (150) days after the initial notice of delinquent tax due, and who does not obtain the required receipt is subject to civil actions and penalties for enforcement and collection of amounts due, including court costs, reasonable attorney's fees and additional administrative costs incurred as a result of any enforcement or collection efforts. In addition, failure to pay any amount

due pursuant to this Section 86-44 shall result in the imposition of a fine of two hundred fifty dollars (\$250.00).

Sec. 86-45. - Business tax receipt for fractional part of year.

~~Unless otherwise provided, new business tax receipts obtained between November 1 and September 30 will have a fee of 1/12 of the yearly tax for every month between the month of issue and September, inclusive of both the month in which the business tax receipt is issued and the month of September. However, when a new business tax receipt is issued between September 1 and September 30, the applicant is required to pay for the September fraction of that year's tax and the full amount of the business tax for the business tax year to begin the following October 1. All receipts issued under this article shall expire on the thirtieth day of September of each year. No receipt shall be issued for more than one (1) year. For each receipt obtained between October first and April first, the full tax for one (1) year shall be paid, except as herein otherwise provided, and for each receipt obtained from April first to September thirtieth, one-half (1/2) the full tax for one (1) year shall be paid, except as herein otherwise provided. When a person applies after receiving a notice of violation for opening for business without first obtaining business tax receipt, no fractional business tax will be issued, regardless of the opening date. A full year's tax plus penalties will be required.~~

Sec. 86-46. - Transfer of location, ownership or change of name, except when prohibited.

- (a) ~~Every business tax receipt may be transferred to a new owner when there is a bona fide sale of the business, upon payment of a transfer fee of \$50.00, provided such original business tax receipt has not been revoked or invalidated by actions of the previous owner or decision of the city council or the county or the state.~~

Any business tax receipt may be transferred when (1) there is a bona fide sale of the business assets or (2) to reflect a change in ownership or change of business name upon payment of a transfer fee of ten (10) percent of the annual tax, but not less than three dollars (\$3.00) nor more than twenty-five dollars (\$25.00) and submission of an application together with sufficient documentation or evidence of the circumstances necessitating the change.

- (b) ~~Upon written request and presentation of the original business tax receipt and evidence of sale, including, but not limited to, bill of sale, warranty deed and others, any business tax receipt may be transferred from one location to another location in the city, by the same business tax receipt holder, upon payment of a transfer fee of \$50.00, provided the location is zoned with a classification that permits such use.~~

Upon written request, any receipt, unless specified by this code, may be transferred from one location to another location in the city upon payment of a transfer fee of ten (10) percent of the annual license tax, but not less than three dollars (\$3.00) nor more than twenty-five dollars (\$25.00) and submission of an application together with sufficient documentation or evidence of the change in business location.

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Sec. 86-53. - Denial of business tax receipt.

- (a) An application for business tax receipt under this article may be denied on the following grounds:

(1) The applicant misrepresents or fails to disclose material information required in the business tax application form or requested by the local business tax section.

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(14) Habitual conduct has occurred at the applicant's business location that violates city, county, state or federal law. Habitual conduct is understood to

mean excessive number of times for the police department, fire department, code enforcement, and/or business tax division ~~licensing~~ section to respond to complaints regarding violations of federal, state or county laws or other city ordinances, rules or regulations. If the call-out rate is twice the average call-out rate of two or more comparable businesses within a one-quarter mile area, then the city may consider such activity excessive.

Section 2: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 4: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

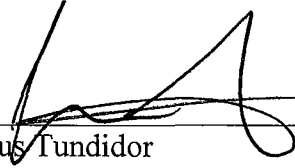
Section 5: Inclusion in Code.

The provisions of this Ordinance shall be included and incorporated in the Code of Ordinances of the City of Hialeah, as an addition or amendment thereto, and the sections of this ordinance shall be renumbered to conform to the uniform numbering system of the Code.


Section 6: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED and ADOPTED this 26 day of October, 2021.



Jesus Tundidor
Council President

Attest: 

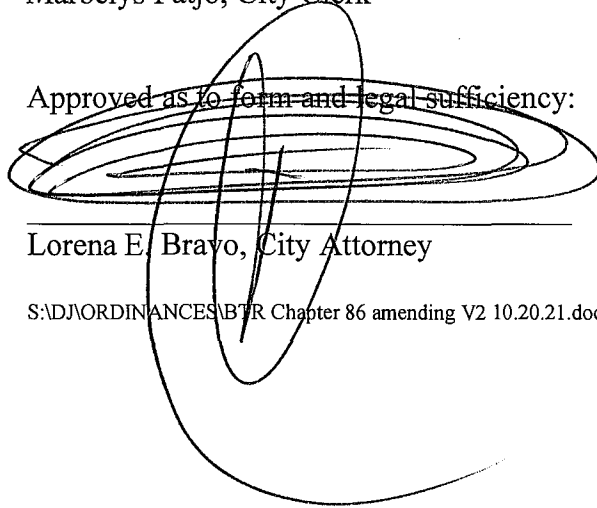
Brigette Leal
for: Marbelys Fatjo, City Clerk

Approved on this 3 day of November, 2021.



Mayor Carlos Hernandez

Approved as to form and legal sufficiency:



Lorena E. Bravo, City Attorney

Ordinance was adopted by 6-0-1 vote with Councilmembers, Cue-Fuente, De la Rosa, Garcia-Roves, Hernandez, Tundidor, and Zogby voting "Yes" and with Council Vice President Perez absent.