

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 102 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "TAXATION," BY AMENDING ARTICLE V, ENTITLED "LOCAL BUSINESS TAX," BY AMENDING SECTION 102-373 THEREOF, ENTITLED "INVESTIGATION TO DETERMINE COMPLIANCE WITH ARTICLE," BY REINFORCING THE AUTHORITY OF CITY DEPARTMENTAL PERSONNEL TO ENTER PUBLIC AREAS OF BUSINESS ESTABLISHMENTS IN ORDER TO INVESTIGATE OR DETERMINE COMPLIANCE WITH THE CITY CODE, AND BY AMENDING SECTION 102-377 THEREOF, ENTITLED "PENALTIES, ENFORCEMENT; COLLECTION OF DELINQUENT FEES AND TAXES, AND CRIMINAL PENALTIES" BY ENHANCING THE PENALTIES FOR BUSINESSES THAT REPEATEDLY OPERATE WITHOUT PROCURING THE REQUIRED LOCAL BUSINESS TAX RECEIPT; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City consistently finds businesses that operate without first obtaining the required local business tax receipt; and

WHEREAS, the current penalties, as set forth in the City Code, and Special Magistrate proceedings, have not been effective in curtailing such businesses operating without a business tax receipt; and

WHEREAS, the specter, and potential imposition, of more stringent penalties for those businesses continuing to operate without first obtaining a business tax receipt, despite having previously been cited for doing so, is essential in remediating this ongoing issue; and

WHEREAS, it is also essential that personnel from appropriate City departments (Police, Fire, Code, and Building) are authorized to enter the public areas and spaces contained within commercial business establishments, for the sole purpose of determining compliance with this article and chapter 18 of the City Code; and

WHEREAS, the City Administration believes that the proposed amendments will be effective in deterring and curtailing the operation of businesses without first procuring the required business tax receipt, or otherwise operating in violation of this article or chapter 18 of the City Code; and

WHEREAS, the amendments set forth below are necessary to accomplish the objectives identified above, in order to protect the health, welfare, and safety of the City's residents and visitors by ensuring that businesses are operating in a manner consistent with the City Code.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. That those Sections of the City's Local Business Tax Ordinance, as such Ordinance is codified in Sections 102-373 and 102-377 of the City Code, be amended as follows and hereinafter set forth below:

CHAPTER 102

TAXATION

* * *

ARTICLE V. LOCAL BUSINESS TAX

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Sec. 102-373. – Investigation to determine compliance with article.

The city manager, ~~or his~~ the city manager's designee, may investigate persons and/or establishments engaged in any business encompassed by this article and make such inquiry as shall be necessary to determine whether or not such persons have procured a business tax receipt as required by this article, or engaged in conduct which violates this article or chapter 18. City police, fire, code, and building department personnel shall be authorized to enter all public areas and spaces of commercial business establishments operating in the city whenever such areas and spaces are open to the public.

Sec. 102-377. – Penalties, enforcement; collection of delinquent fees and taxes, and criminal penalties.

(a) Any person who shall carry on or conduct any business for which a tax receipt is required by this article without first obtaining such tax receipt shall be issued a violation for the offense which shall ~~have a civil fine of \$1,000.00. The enhanced enforcement for this violation shall be pursuant to subsection 102-377(d) herein~~ be subject to the following fines and penalties:

- (1) First offense within a 12-month period: punishable by a \$1,000.00 civil fine, and the business shall be prohibited from operating until the required tax receipt is obtained.
- (2) Second offense within a 12-month period: punishable by a \$3,500.00 civil fine, and the business shall be prohibited from operating for a period of 10 days from the date of the second violation or until the required tax receipt is obtained, whichever is later.
- (3) Third offense within a 12-month period: punishable by a \$5,000.00 civil fine, and the business shall be prohibited from operating for a period of 30 days from the date of the third violation or until the required tax receipt is obtained, whichever is later.
- (4) Fourth offense within a 12-month period: punishable by a \$5,000.00 civil fine, and the business shall be prohibited from applying for a tax receipt for a period of 12-months from the date of the fourth violation. Additionally, no new tax receipt shall be issued during such 12-month period to any other business, person, firm, corporation or entity in which the violator (taxee) or any of its general partners, limited partners, officers, shareholders (owning 10 percent or

more of its stock), agents, or employees have any monetary or equitable interest.

~~The enforcement and appeal of the notice of violation shall be consistent with those requirements set forth in subsection 102-386(c)(2) and (3).~~

Businesses issued a notice of violation and prohibited from operating, pursuant to subsections (a)(1) – (a)(4) herein, may request a prompt post-closure hearing, to be held before a special magistrate, by remitting a notice of appeal and request for hearing within 10 days of the issuance of the notice of violation.

Enhanced enforcement for continuing violations shall be pursuant to subsection 102-377(d) herein.

- (b) Any person who violates any other provision of this article shall be cited with a notice of violation as provided in ~~subsection 102-386(c)~~ section 102-322 of this Code, and may be subject to one or more of the following enforcement/collection procedures:
 - (1) Suspension/revocation proceedings as set forth in sections 102-383 through 102-385.
 - (2) Suit for injunctive relief to enjoin operation of the business in violation of this article.
- (c) As an additional means of enforcement/collection and supplemental to the above, when a notice or record of any past-due business tax/fees and penalties that become due and payable to the city after the effective date of this section is recorded in the public records of the county, the notice shall constitute a special assessment lien upon all real and personal property of the business owing such fees and penalties, and shall remain a lien equal in rank and dignity with the lien of ad valorem taxes, and shall be superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the property involved. Such liens may be foreclosed or levied upon in the manner provided by law.
- (d) In addition to the above, a continued violation of subsection 102-377(a) for a period of 30 days or more without first obtaining a tax receipt, shall be punished ~~by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both~~ pursuant to section 1-14 of the City Code.
- ~~(e) As an additional means of enforcement and supplemental to the above, if any person carries on or conducts any business for which a tax receipt is required by this article without first obtaining such tax receipt, then the city may prevent the business from operating until the required tax receipt is obtained.~~
- (f) An alcoholic beverage establishment that permits, allows, authorizes, grants, or approves the use of its premises by a promoter, who has violated the provision(s) of section 102-360, shall be subject to the immediate closure of its business operations for the event duration.

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Miami Beach City Code. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect on the ____ day of _____, 2023.

PASSED AND ADOPTED this ____ day of _____, 2023.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

(Sponsored by Commissioner Alex J. Fernandez)

Underline denotes additions

~~Strikethrough~~ denotes deletions