



City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMITTEE MEMORANDUM

TO: Members of the Public Safety and Neighborhoods Quality of Life Committee

FROM: Alina T. Hudak, City Manager

DATE: November 30, 2022

SUBJECT: **DISCUSSION REGARDING RECOMMENDATIONS BY RESIDENTS CONCERNING THE BUSINESS TAX RECEIPT CRITERIA.**

BACKGROUND/HISTORY

This item was referred to the Public Safety and Neighborhoods Quality of Life Committee (PSNQLC) at the April 21, 2021 City Commission meeting and is sponsored by Commissioner Fernandez. The purpose of the referral is to discuss the business tax receipt (BTR) criteria and proposed modifications sent by residents, including:

- (1) Authorize a review of police calls for service history and code enforcement history for any business seeking BTR renewal and require such review for certain specific types such as dance halls, liquor stores, restaurants, convenience stores, and alcohol beverage establishments, in an effort to identify patterns in calls for police service and/or code enforcement that may point to possible public safety concerns associated with the business seeking BTR renewal.
- (2) When such patterns stated in paragraph 1 are identified, require the City Manager to further vet the business seeking BTR renewal. Such vetting may include a review of business practices and a site visit during hours of operation but must at a minimum include consultation with the Director of Code Enforcement and the Chief of Police prior to the renewal of the BTR.
- (3) Upon such further vetting stated in paragraph 2, allow the City Manager to: (a) deny the issuance of a BTR or (b) issue conditions that must be met for the renewal of the BTR.

This item has been heard at the PSNQLC on September 20, 2021, March 29, 2022, and September 21, 2022.

At the last meeting on September 21st, the Committee provided direction to draft potential changes to the City Code, improve the Special Magistrate process, consider funding of dedicated Code officers for BTR and Resort Tax enforcement, and review businesses driving code violations and violent crimes.

ANALYSIS

Proposed Changes to the City Code

The first proposed change to the City Code is to add specific language in Section 102-373 to allow the City's regulatory departments access to public areas of businesses with a BTR. Currently, Police and Fire have no issues entering businesses, but on occasion, it can be problematic for Code and Building to gain access.

The proposed change to the City Code now specifically mentions that Police, Fire, Code and Building department personnel are authorized to enter all public areas and spaces of commercial business establishments that are open to the public.

The second proposed change is to increase the fines in Section 102-377 as currently the fine is \$1,000 for first offense and \$500 thereafter, does not appear to be a sufficient deterrent. The proposed changes are in the attached draft ordinance and highlighted below.

- First offense within a 12-month period: punishable by a \$1,000 civil fine, and the business shall be prohibited from operating until the required tax receipt is obtained.
- Second offense within a 12-month period: punishable by a \$3,500 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.
- Third offense within a 12-month period: punishable by a \$5,000 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.
- Fourth offense within a 12-month period: punishable by a \$5,000 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.
- 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.

Improve the Special Magistrate Process

The City Commission recently passed a resolution and an amended ordinance to help improve the Special Magistrate process. On October 26, 2022, the Commission passed resolution #2022-32343 that prohibits the Chief Special Magistrate and each Special Magistrate from engaging in practice where he/she represents a client in a manner adverse to the interest of the City of Miami Beach, and from lobbying the City during his/her service with the City.

On November 16, 2022, the Commission passed an ordinance that stipulates that upon consideration of future candidates for appointment as the Chief Special Magistrate or as a Special Magistrate, preference shall be given to residents of the City of Miami Beach.

Add Dedicated Code Officers

The cross-departmental team also recommends the addition of three code officer positions that would be dedicated to BTR and Resort Tax enforcement. This model was used effectively in the past, prior to staff reductions during the Great Recession. Dedicated code officers would be able to react faster to potential situations, be more proactive compared to the current reactive model, develop more familiarity with problematic businesses, and improve coordination with other regulatory departments.

At the September 21st PSNQLC meeting, direction was given to revisit this request as a mid-year budget item later in the year. At the September 30th FERC meeting, this request was also discussed and direction was given to revisit the potential funding of three dedicated code officer positions in December.

Businesses Driving Police Calls for Service

At the March 2021 FERC meeting, the team presented a list showing the top 24 businesses that drove police calls for service during calendar year 2021. For each business on the list, the team methodically checked that the BTR status was active, the Resort Tax reporting status if applicable, the number of code compliance calls for service, any building department violations, any moneys owed to the City, and whether or not the businesses currently have off-duty police.

At the September 21st PSNQLC meeting, direction was given to review a similar list that would be sorted by code violations or by violent crimes. This list is still being developed in conjunction with Code Enforcement and Police and should be ready for the next update of this item at an upcoming meeting of the PSNQLC.

CONCLUSION

The cross-departmental BTR team proposes two changes to the City Code to (1) specifically allow police, fire, code, and building department personnel to enter all public areas and spaces of commercial business establishments that are open to the public and (2) to progressively increase the fines for BTR code violations to deter negative behavior. In addition, the City Commission has recently approved a resolution and ordinance to improve the Special Magistrate process. The cross-departmental BTR team also recommends the addition of 3 dedicated code officers for BTR and resort tax enforcement. Finally, the PSNQLC has directed staff to develop a list of businesses driving code violations and violent crimes that should be ready for the next update of this item.

Attachment
Draft ordinance amendment