

ORDINANCE NO. 2005-05-43

AN ORDINANCE OF THE CITY OF MIAMI GARDENS, FLORIDA, AMENDING ORDINANCE NUMBER 2004-08-24 ENTITLED OCCUPATIONAL LICENSE TAX; AMENDING SECTION 4 ENTITLED "SEPARATE LICENSE FOR EACH PLACE OF BUSINESS"; AMENDING SECTION 7 ENTITLED "ISSUANCE OF LICENSE- APPLICATION"; AMENDING SECTION 12 ENTITLED "APPROVAL OF BUSINESS LOCATION REQUIRED"; AMENDING SECTION 13 ENTITLED "DENIAL OF LICENSE APPLICATION"; AMENDING SECTION 14 ENTITLED "RENEWAL OF LICENSE"; AMENDING SECTION 17 ENTITLED "OCCUPATIONAL LICENSE DOES NOT PERMIT ILLEGAL ACTIVITY"; AMENDING SECTION 18 ENTITLED "REVOCATION OF OCCUPATIONAL LICENSE"; PROVIDING FOR ADOPTION OF REPRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of Miami Gardens adopted Ordinance number 2004-08-24 pursuant to Section 205.042, Florida Statutes (1999), and Sections 4.9, 8.3 and 8.4 of the Charter of the City of Miami Gardens, and

WHEREAS, the City is growing to meet the needs and demands of its citizenry, modifications to the occupational licensing code are necessary to further clarify the code, and to provide more efficient and effective service to the community, and to provide adequate due process for the issuance and/or denial of a City occupational license,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, AS FOLLOWS:

SECTION 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas Clauses are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Ordinance.

SECTION 2. AMENDMENT: Section 4 of Ordinance No. 2004-08-24, is

hereby amended as follows:

Separate License for each place of Business.

A separate License shall be obtained in the manner prescribed in this Ordinance for each place of Business and/or business premises as if each such place of Business and/or business premises were a separate Business.

SECTION 3. AMENDMENT: Section 7 of Ordinance No. 2004-08-24, is

hereby amended as follows:

Issuance of License; Application Procedures for issuance:

A. ~~No License shall be issued except upon written application filed with the City License Officer. Such application shall be filed on forms prescribed by the City and shall include a statement, under Oath, detailing the full and complete information necessary to calculate the applicable Tax. An application fee of \$10.00 shall be assessed for either the issuance or transfer of such license. No license shall be issued or granted to any person to engage in any business named, identified or encompassed by this chapter unless an application is filed with the City Manager or his designee on forms provided for that purpose, disclosing the following information:~~

- (1) The applicant's name and address and telephone number.
- (2) The name of the business for which a license is sought.
- (3) The name and address of the owner and operator of the business and if a corporation, the names and addresses of each of its corporate officers and its resident or registered agent.
- (4) The type or classification of the business and the relationship of the applicant to the business.
- (5) The location in the City where the business will be operated.
- (6) The date of birth, social security number and driver's license number of the owner/operator and any applicable federal employer identification numbers.

B. When necessary for determining the proper license tax under this chapter, the area, capacity, capital invested, merchandise or property contained within the business, the stock carried, number of persons or things employed or engaged, the quantity, property or retail stock value or such other information as may be required by this chapter for purposes of determining the proper license fee. It shall be the duty of the City Manager or his designee before issuing a license requiring disclosure of such data to require the person applying for such license to file under oath a statement disclosing such data, which statement shall be kept permanently on file, and which statement shall promptly be amended by the licensee as the circumstances of the business change.

- (1) If the applicant is a corporation or partnership, the full name of the corporation or partnership and the state of incorporation.
- (2) If the business is a corporation and is to be conducted under another name, the business name and county of registration under F.S. § 865.09.
- (3) Whether any of the individuals listed on the application has had his license, or the license of any business in which he had substantial control or ownership interests, revoked or suspended under this chapter or other similar laws.

C. Emergency locator:

The application shall contain a section designated "emergency locator." The applicant shall fill out as part of the license application the names, business and residence addresses and residence and business phone numbers of the owner, and the manager or other persons to be notified in case of fire or other emergencies. Any changes in such information during the period for which the license is issued shall be made to the City Manager or his designee, in writing.

D. License number:

All applications and licenses shall be assigned a number, which may be an individual's social security number and a corporation's federal tax number, or such other uniform method of numbering selected by the City Manager or his designee.

E. Statement of accuracy:

The application form shall contain the following language:

"The undersigned has carefully reviewed this application and all information contained herein has been freely and voluntarily provided. All facts, figures, statements contained in this application are true, correct and complete to the best of my knowledge and belief. The applicant also acknowledges and understands that the issuance of a City occupational license is contingent upon a zoning compliance inspection and in conjunction with the issuance of a City certificate of use and occupancy. Failure to comply with the City's ordinances may result in revocation of said occupational license."

F. Name, signature:

The applicant shall print and sign his name to the applications immediately after the statement required in Subsection D of this section. In the case of a corporation, an officer shall be required to sign the application in his individual capacity and not solely as a corporate agent.

G. Obtaining certificate of use prior to issuance of license. Those businesses required to obtain a certificate of use pursuant to Ordinance number, 2004-14-30 as may be amended, must do so prior to the issuance of an occupational license.

H. State license. All businesses and professions regulated by the state must submit a copy of their current state license prior to the issuance of their original City licenses and thereafter each year at time of renewal. Only the state license itself, or in the case of the state hotel and restaurant commission, the receipt issued by the state, shall constitute proof of current state license.

I. B. It shall be unlawful for any Person applying to the City License Officer for a License to make a false statement in connection with any application for a License under this article.

J. C. All occupational licenses shall be applied for and issued in the real name of the applicant. In cases where the applicant does or will do business under a fictitious trade name or firm name, the application and license, if issued, will show the real name as well as the fictitious trade or firm name of the applicant. In such case, the applicant will deliver to the City either its application for registration of a fictitious name pursuant Section 865.09, Florida Statutes, or, if such a name is already registered, shall deliver to the City a Certificate of Status from the Division of Corporations acknowledging the name registration and its current status.

K. D. Any person beginning any new business under a classification covered by this article, the business tax for which is based on average annual inventory shall pay all the business taxes required by this article and shall pay the merchant's tax based upon initial inventory, at cost. If any business is operated less than twelve (12) months during the preceding business tax year, the business tax shall be arrived at by taking the average monthly inventory for that part of the year to arrive at the amount for the current business tax year.

L. An application fee of \$10.00 shall be assessed for the issuance of such license.

SECTION 4. AMENDMENT: Section 12 of Ordinance No. 2004-08-24, is hereby amended as follows:

Approval of business location required.

No license shall be issued for any Business until the location of the Business is first approved by the ~~Planning, Building and Zoning~~ Code Enforcement Department of the City as to its compliance with zoning and other regulatory ordinances of the City.

SECTION 5. AMENDMENT: Section 13 of Ordinance No. 2004-08-24, is hereby amended as follows:

Denial of license application.

~~Any person whose application for license has been rejected as provided in this Ordinance, shall have the right to appeal the decision of the City Manager to the City Council by appropriate written petition and shall be heard by the City Council at its next regular meeting, provided however, that the petition is filed with the City Council at least 40 days prior to the regular meeting of the City Council.~~

- A. An application for a business license under this chapter may be denied on the following grounds:
- (1) That the applicant has failed to disclose or has misrepresented information required by this chapter in the application.
 - (2) That the applicant currently has a license under suspension or revocation. Whenever any business license has been suspended or revoked by the City for any cause whatsoever, no subsequent license shall be issued during the period of suspension/revocation to the licensee or to any other firm in which the licensee or any of its general partners, limited partners, officers or stockholders owning 20% or more of its stock or agents, employees or other persons who were actively involved in the business under suspension/revocation.
 - (3) That the applicant desiring to engage in the business as described in the application has selected a proposed site or type of business activity which does not comply with the City's Zoning Ordinance or other laws of the City.
 - (4) That the applicant fails to obtain a bond at the limits required of his business.
 - (5) That the applicant fails to obtain insurance at the limits required of his business.
 - (6) That the applicant has failed to obtain a certificate of use as required by City Ordinance number 2004-14-30.
 - (7) The certificate of use for the proposed business has been denied, suspended or revoked for any reason.
 - (8) The applicant's proposed business activity or portion thereof consists of conduct that is an actual threat to the public health, welfare or safety.
 - (9) Habitual conduct has occurred at the applicant's premises that violates City, county or state laws.
 - (10) The issuance of a license is based on the applicant's compliance with specific provisions of federal, state, City or county law and the applicant has violated such specific provisions.
 - (11) The applicant has violated any provision of this chapter and has failed or refused to cease or correct the violation after notification thereof.
 - (12) The applicant within the preceding five years in this state or any other state in the United States has been adjudicated guilty of or forfeited a bond when charged with soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, or illegally dealing in narcotics.
 - (13) The premises have been condemned by the local health authority for failure to meet sanitation standards or the premises have been condemned by the local authority because the premises are unsafe or unfit for human occupancy.
 - (14) The applicant's premises have been found to constitute a public nuisance.
 - (15) The applicant is delinquent in the payment of any license fee imposed under this chapter; code enforcement lien; special assessment lien and/or any other debt or

obligation due to the City under state or local law.

- B. Any person whose application for license has been denied by the Director of Code Enforcement or his designee may appeal the decision by filing a written appeal with the City Manager within 10 days of the decision. The City Manager or his designee shall schedule a hearing before a Special Master within 30 days from the date of the filing of the appeal. New information and material may be received and considered by the Special Master where such information and material are pertinent to the determination of the appeal and the Special Master shall have the authority to override the decision of the Director of Code Enforcement or his designee, if said decision complies with the City Code of Ordinances. If the Code Enforcement Director's opinion is upheld by the Special Master the applicant may appeal the Special master's decision to the Circuit Court as authorized by law. No applicant aggrieved by the decision of the Code and Licensing Enforcement Official may apply to the Circuit Court for relief unless the applicant has first exhausted the remedies provided for herein and taken all the steps provided in the City's Code of Ordinances.
- C. At the hearing before the Special Master, the City Attorney shall represent the City.

SECTION 6. AMENDMENT: Section 14 of Ordinance No. 2004-08-24, is hereby amended as follows:

Renewal of license.

- A. Any current occupational license may be renewed for each new license year by the License officer without prior approval of any other departments, provided the applicant signs the following certification:
- (1) "I the undersigned hereby certifies that the license for which I am now applying is one for a renewal of a current occupational license which is now in full force and effect, and that I have not changed the authorized use of the premises and do not plan to make any physical or structural changes to the premises."
- B. Any renewal application, in which the applicant changes the authorized use of the premises or makes or proposes any physical or structural changes in the premises, shall be reprocessed as if the license were a new license.
- C. Renewed licenses will not be issued until all delinquent payments for any license fee imposed under this chapter; code enforcement lien; special assessment lien and/or any other debt or obligation due to the City under state or local law has been paid in full

- D. The City shall endeavor to notify all licensees that their licenses are due for renewal. However, if such licensee does not receive a renewal notification, it is the licensee's responsibility to renew the license prior to October 1, to avoid delinquent charges.

SECTION 7: AMENDMENT: Section 17 of Ordinance NO. 2004-08-24, is hereby amended as follows:

Occupational License does not permit illegal activity.

- A. No license shall be granted until there has been full compliance with all applicable City ordinances and no license which may have been granted without full and complete compliance with the provisions of this article shall be a protection to the applicant in any civil or criminal proceeding. The issuance or possession of a valid occupational license obtained under the provisions of this Ordinance does not constitute an approval of any offense, illegal activity or act prohibited by law.
- B. A license issued under this section does not waive or supersede other City or county ordinances or state or federal regulations or laws; does not constitute City approval of any particular business activity or manner of conducting a business activity; and does not excuse the licensee from all other City, county, state and federal regulations, ordinances and laws applicable to the licensee's business. All licenses and application materials prepared under this chapter shall so state. Neither the payment of a license tax nor the procurement of a license under this chapter shall authorize or legalize in any manner a licensee's violation of City, county, state or federal ordinance, regulation or law.
- C. The City Manager or his designee may investigate persons engaged in any business encompassed by this chapter and make such inquiries as shall be necessary to determine whether or not such persons have procured a license as required by this chapter and engaged in conduct which violates this chapter.

SECTION 8: AMENDMENT: Section 18 of Ordinance No. 2004-08-24, is hereby amended as follows:

Revocation of occupational license.

The City License Officer is granted authority and is charged with the duty to revoke, refuse to renew or suspend any license heretofore issued as follows:

- A. Grounds: The following matters shall be taken into consideration as grounds for revocation:

- (1) the number, frequency, and severity of complaints received from the public;
- (2) the number, frequency, and severity of existing code violation;
- (3) the number frequency and severity of similar prior code violations and or complaints;
- (4) the effects of continued uses and operations on the surrounding properties, including the effect on occupants and tenants thereof;
- (5) the effects of such continued uses and operations on the health and safety of the residents and citizens of the City and general public;
- (6) any additional factors or considerations which may reasonably be calculated to materially affect public health, safety and welfare;
- (7) any unlawful activity;
- (8) if the Licensee permits premises to be utilized for solicitation for prostitution, pandering, lewd and lascivious behavior, sale, distribution or display of obscene materials or conduct; sale or possession of any controlled substances or narcotic; and
- (9) Failure of Licensee to comply with any provision of this Ordinance.
- (10) Lack of refuse collection service.
- (11) Misrepresentations in the application or affidavit.

B. Procedure:

- (1) The City License Officer may petition the City Manager (or, in the case of the City Manager, he shall issue a petition) to revoke, suspend or refuse to issue or renew a license on any grounds set forth in Section 18A hereinabove. The petition shall set forth the grounds upon which the petition is issued. Written notice of the an administrative hearing and the petition shall be served upon the Licensee by certified mail, return receipt requested at the address in the application not less than five (5) days prior to the administrative hearing. Alternate service may be made by delivery of the petition and notice of hearing to the place of business provide posting thereon five (5) days prior to the hearing. If no appeal is taken by the Licensee as provided herein, the occupational license shall be automatically revoked. Upon revocation of the occupational license, the Licensee shall immediately cease doing business in any location listed therein.
- (2) At any time prior to the expiration of thirty (30) days following the receipt of service of the notice of intent to revoke occupational license from the City, the Licensee may request in writing that the City Manager schedule a hearing on the basis that he/she wishes to appeal the pending revocation notice. A hearing will be set by the City License Officer within fifteen (15) days after such Officer is notified in writing by said person that he or she desires a hearing. The Licensee shall receive a minimum of five (5) days written notice of the hearing which shall set forth the time and place for the public hearing on the petition.

- (3) The hearing shall be conducted by the ~~City Council (or a Board or hearing officer as the case may be, and as such authority may be delegated by the City Council by separate ordinance)~~ the City Special Master. The City License Officer may be represented at the hearing by the City Attorney or a special City Attorney appointed for such purpose, and the Licensee may be represented by legal counsel at his/her own expense.
- (4) The hearing shall be conducted in an informal manner and the formal rules for admission of evidence in court shall not apply, provided, however, that the Licensee shall be entitled to present evidence and witnesses and shall have a right to cross examine at all times.
- (5) The proceedings at the hearing shall be recorded on tape by the City Clerk and shall be conducted as follows:
 - (a) The City License Officer shall present testimony in evidence.
 - (b) The Licensee shall then present testimony in evidence.
 - (c) Each side shall have the right of cross-examination.
 - (d) City Council or its delegated board shall have the right of inquiry.
 - (e) The party shall have the right to present rebuttal evidence.
 - (f) Upon completion of the presentation of testimony in evidence, the hearing shall be closed, and the City Council or its designated board shall analyze testimony in evidence so presented and shall render a decision by majority vote either confirming or denying the determination of the City License Officer.
 - (g) This decision shall be reduced to writing within five (5) days of the hearing, and copies thereof shall be furnished to the City License Officer and the Licensee.
 - (h) This decision shall be appealable within thirty (30) days of such written order to the Circuit Court of the Eleventh Judicial Circuit of the State of Florida, or by such other remedy as may be provided by Florida law
 - (i) Upon the time period for such appeal having expired, and no such appeal having been filed, or upon the expiration of such appeal procedures resulting in the affirmation of the decision

of the City Council or its designated board of a written decision confirming the determination of the City License Officer, the occupational license shall stand automatically and immediately revoked and no new license shall be issued. Upon revocation, the Licensee shall immediately cease doing business in any location listed therein.

- (j) No application for a license shall be considered by the City until one (1) year after the date of any revocation or non-renewal.

SECTION 9. CONFLICT: All ordinances or Code provisions in conflict herewith are hereby repealed.

SECTION 10. SEVERABILITY: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 11. INCLUSION IN CODE: It is the intention of the City Council of the City of Miami Gardens that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Miami Gardens and that the sections of this Ordinance may be renumbered or relettered and the word "Ordinance" may be changed to "Chapter," "Section," "Article" or such other appropriate word or phrase, the use of which shall accomplish the intentions herein expressed.

SECTION 12. EFFECTIVE DATE: This Ordinance shall become effective immediately upon its final passage.

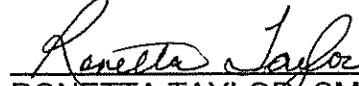
PASSED ON FIRST READING ON THE 8th DAY OF December, 2004.
PASSED ON SECOND READING ON THE 12th DAY OF
JANUARY, 2005.

ADOPTED AND PASSED BY THE CITY COUNCIL OF THE CITY OF MIAMI

GARDENS AT ITS REGULAR MEETING HELD ON THE 12TH DAY OF
JANUARY, 2005.


Shirley Gibson, Mayor

ATTEST:


RONETTA TAYLOR, CMC, CITY CLERK

Reviewed for Legal Sufficiency by SONJA K. KNIGHTON, ESQ.
City Attorney

SPONSORED BY: Danny Crew, City Manager

MOVED BY :Councilman Braynon
SECONDED BY: Councilwoman Watson

VOTE: 5-0

Mayor Gibson	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Vice Mayor Campbell	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Councilman Melvin L. Bratton	<input type="checkbox"/> (Yes)	<input type="checkbox"/> (No) Not present
Councilman Oscar Braynon, II	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Councilwoman Audrey J. King	<input type="checkbox"/> (Yes)	<input type="checkbox"/> (No) Not present
Councilwoman Sharon Pritchett	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Councilwoman Barbara Watson	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)