



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 3/20/2007

SUBJECT: State Statute required name change of "Occupational License Tax" to "Local Business Tax"

DEPARTMENT: COMMUNITY DEVELOPMENT

RECOMMENDED MOTION:

To approve Ordinance No. 2007 13, amending Chapter 18, of the Code of Ordinance, City of Port Orange, Florida to be in compliance with State Statute change of name from the "Local Occupational License Tax Act" to the "Local Business Tax Act".

SUMMARY

The subject ordinance amends Chapter 18, of the Code of Ordinance, to be in compliance with State Statute change of name from the "Local Occupational License Tax Act" to the "Local Business Tax Act".

The nomenclature, "occupational license" may imply that the holder of the license possesses certain qualifications or competency in a profession. In addition, it has provided some unscrupulous persons the opportunity to present a local occupational license to consumers as proof of competency to perform certain repairs and services. Changing the name of "local occupational license" to "local business tax" may eliminate some misrepresentation and false reliance.

ATTACHMENTS: Ordinance Resolution Budget Resolution

Other Support Documents

DEPARTMENT HEAD

Wayne Clark, Director

Date 3/9/07

FINANCE DEPARTMENT

Approved as to Budget Requirements

Date 3/9/07

CITY ATTORNEY

Approved as to Form and Legality

Date 3/9/07

CITY MANAGER

Approved Agenda Item For:

3/20/07

COUNCIL ACTION: Approved as Recommended Disapproved

Tabled Indefinitely

Continued to Date Certain

Approved with Modification:

Second Reading - 4/17/07

ORDINANCE NO. 2007- 13

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING CHAPTER 18 OF THE CODE OF ORDINANCES, CITY OF PORT ORANGE, FLORIDA, RELATING TO BUSINESSES; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, for purposes of this Ordinance, text with underlined (underlined) type shall constitute additions to the original text and text with strike-through (~~strike-through~~) type shall constitute deletions to the original text; and

WHEREAS, the City of Port Orange is entitled to impose an occupational license tax for the privilege of engaging in a business or profession; and

WHEREAS, the nomenclature, "occupational license" may imply that the holder of the license possesses certain qualifications or competency in a profession. In addition, it has provided some unscrupulous persons the opportunity to present a local occupational license to consumers as proof of competency to perform certain repairs and services; and

WHEREAS, the City has a bona fide interest in protecting the citizens of Port Orange from misleading or fraudulent consumer information; and

WHEREAS, changing the name of "local occupational license" to "local business tax" may eliminate some misrepresentation and false reliance; and

WHEREAS, the City seeks to change the name of the "Local Occupational License Tax Act" to the "Local Business Tax Act" and make related changes; and

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. The Chapter 18, title page, of the Code of Ordinances, City of Port Orange, Florida, is hereby amended as follows:

Article II. Local Business Occupational License Tax

Sec. 18-27. Business License tax imposed.

Sec. 18-29. Display of business tax receipt license.

Sec. 18-31. Exemptions from business tax receipt occupational license requirement.

- Sec. 18-32. Exhibition of state certificate, registration, business tax receipt license, or permit.
- Sec. 18-33. Duration, expiration of business tax receipt licenses; delinquent business tax payment licenses, penalties; doing business without business tax receipt license, penalty.
- Sec. 18-34. Transfer of business tax receipt license authorized; fees.
- Sec. 18-36. Prerequisites for issuance of business tax receipt license; denial; appeal.
- Sec. 18-38. Classification and schedule of business license taxes.
- Sec. 18-39. Definition of Local Business Tax
- Sec. 18-40 - 18-55 Reserved.

Article III. Fortunetellers, Psychics

- Sec. 18-60. Issuance of business tax receipt license.

Article V. Billiards, Pool and Coin-Operated Devices

- Sec. 18-104. Business tax receipt Occupational license and registration.

Article VII. Secondhand Dealers

- Sec. 18-202. Business tax receipt License required.

Article IX. Sexually Oriented Businesses

- Sec. 18-240. Adult entertainment business tax receipt license required; classifications.
- Sec. 18-241. Application for business tax receipt license required; contents; attachments; application fee; consent by applicant.
- Sec. 18-242. Business tax receipt License contents, term, renewal, expiration and cancellation.
- Sec. 18-246. Annual business tax license fee.
- Sec. 18-247. Business tax receipt License transfers.
- Sec. 18-248. Suspension of business tax receipt license.
- Sec. 18-249. Revocation of business tax receipt license.

Section 2. Subsection 18-1(c) of Article I of the Code of Ordinances, City of Port Orange, Florida is hereby amended as follows:

Sec. 18.1. Buildings must conform to code requirements.

(c) No business tax receipt occupational license shall be issued or granted to any person or legal entity to carry on and conduct a business, profession or occupation in any building or structure in the city which fails to meet all of the requirements of any adopted city code.

Section 3. Section 18-27 of Article II, of Chapter 18 of the Code of Ordinances, City of Port Orange, Florida is hereby amended as follows:

Sec. 18-27. Business License tax imposed.

There is hereby imposed upon each and every business, profession and occupation having an effective place of business within the city an business ~~occupational license~~ tax according to the schedule of taxes contained in this article.

Section 4. Section 18-28 of Article II, of Chapter 18 of the Code of Ordinances, City of Port Orange, Florida is hereby amended as follows:

Sec. 18-28. Administration.

The community development director or his designee is responsible for the administration of this article, and the community development director or his designee shall collect all business ~~occupational license~~ taxes and shall issue all business tax receipts ~~occupational licenses~~.

Section 5. Section 18-29 of Article II, of Chapter 18 of the Code of Ordinances, City of Port Orange, Florida is hereby amended as follows:

Sec. 18-29. Display of business tax receipt license.

The business tax receipt license required by this article for each business, profession and occupation shall be prominently displayed in the office or place of business of the business, profession or occupation.

Section 6. Section 18-30, Article II, of Chapter 18 of the Code of Ordinances, City of Port Orange, is hereby amended as follows:

Sec. 18-30. Exemptions from payment of tax.

(a) All disabled persons physically incapable of manual labor, widows with minor dependents, and persons 65 years of age or older, with not more than one employee or helper, and who use their own capital only, not in excess of \$1,000.00, shall be allowed to engage in any business or occupation in the city without being required to pay for a business tax receipt license, except that this exemption shall not apply for fortunetellers, clairvoyants, palmists, astrologers, phrenologists, character readers, spirit mediums, absent treatment healers or mental healers, and every person engaged in any occupation of similar nature. The exemption provided by this section shall be allowed only upon the certificate of any physician licensed to do business in the county or any city in the county that the applicant

claiming the exemption is disabled, the nature and extent of the disability being specified therein, and in case the exemption is claimed by a widow with minor dependents, or a person over 65 years of age, proof of the right to the exemption shall be made. Any person entitled to the exemption provided by this section shall, upon application and furnishing of the necessary proof as aforesaid, be issued a license, and the reason for the exemption shall be written thereon. Veterans shall be entitled to exemptions as provided for in F.S. ch. 205.

(b) The following shall also be exempt from payment of business occupational license tax:

(c) Any person or organization exempt from the payment of business occupational license tax provided by this section must comply with all applicable laws, ordinances and codes relating to the business, profession or occupation in which such person or organization is engaged.

Section 7. Section 18-31, Article II, of Chapter 18 of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 18-31. Exemptions from business tax receipt occupational license requirement.

(a) Nothing in this article shall be construed to require an business tax receipt occupational license for practicing the religious tenets of any church.

(b) No business tax receipt occupational license shall be required of any charitable, religious, fraternal, youth, civic, service or other such organization when the organization makes occasional sales or engages in fundraising projects when the projects are performed exclusively by the members thereof and when the proceeds derived from the activities are used exclusively in the charitable, religious, fraternal, youth, civic and service activities of the organization.

(c) A duly licensed mobile home dealer or a duly licensed mobile home manufacturer, or an employee of such dealer or manufacturer, who performs setup operations as defined in F.S. § 320.822 shall not be required to obtain an business tax receipt occupational license to engage in such operations. However, such dealer or manufacturer shall be required to obtain an business tax receipt occupational license for his permanent business location or branch office if such location or office is within the city.

(d) Any person or organization exempt from the requirement of an business tax receipt occupational license provided by this section shall comply with all applicable laws, ordinances and codes relating to the business, activity or operation in which such person or organization is engaged.

Section 8. Section 18-32, Article II, of Chapter 18 of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 18-32. Exhibition of state certificate, registration, business tax receipt license or permit.

(a) Any person applying for or renewing a city business tax receipt occupational license for the ~~taxing~~ licensing period beginning October 1, 1985, to practice any profession regulated by the state department of professional regulation, or any board or commission thereof, must exhibit an active state certificate, registration, or license, or proof of copy of same, before such city business tax receipt occupational license may be issued. Thereafter, only persons applying for the first time for a city business tax receipt occupational license must exhibit such certification, registration or license.

(b) Any applicant for an business tax receipt occupational license to operate a pharmacy shall first exhibit a current permit from the state board of pharmacy; however, no such business tax receipt occupational license shall be required in order to practice the profession of pharmacy.

(c) Any applicant for an business tax occupational license to operate an adult congregate living facility pursuant to F.S. ch. 400, part II, shall first exhibit a current license issued by the state department of health and rehabilitative services to operate such facility at the specified location or locations.

Section 9. Section 18-33, Article II, of Chapter 18 of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 18-33. Duration, expiration of business tax receipt licenses; delinquent business tax payment licenses, penalties; doing business without business tax receipt license, penalty.

(a) The business tax occupational license provided herein shall be ~~paid to~~ paid by the community development director or his designee beginning September 1 of each year and shall be due and payable on or before the following October 1 of such year and shall expire on September 30 of the succeeding year. No business tax receipt occupational license shall be issued for more than one year nor less than one year prior to April 1 of any year, after which date a business tax receipt license for six months may be issued for one-half of the amount of the annual business tax license. Those business tax receipts licenses 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. However, the total delinquency penalty shall not exceed 25 percent of the business tax occupational license fee for the delinquent establishment.

(b) Any person engaging in or managing any business, profession or occupation without first obtaining an business tax receipt occupational license as required herein shall be subject to a penalty of 25 percent of the fee license determined to be due, in addition to any other penalty provided by this article.

Section 10. Section 18-34, Article II, of Chapter 18, of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 18-34. Transfer of business tax receipt license authorized; fees.

All business tax receipts occupational licenses may be transferred to a new owner when there is a bona fide sale of the business or occupation upon payment to the community development director or his designee of a transfer fee of \$3.00 and presentation of evidence of the sale and original business tax receipt occupational license. Upon written request and presentation of the original business tax receipt license, any business tax receipt license may be transferred from one location to another location within the city upon payment to the community development director or his designee of a transfer fee of \$3.00.

Section 11. Section 18-35, Article II, of Chapter 18, of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 18-35. Suspension and revocation.

Any business tax receipt license granted pursuant to this article by the city may be temporarily suspended or absolutely revoked or cancelled by a majority vote of the city council when, after public hearing upon the proposed suspension or revocation, the council shall have ascertained and determined, in the exercise of its sound discretion, that such action will promote the public peace or health or safety or welfare or good order of the neighborhood in which the business tax recipient's licensee's place of business is located and, further, that the failure to suspend or revoke the business tax receipt license will have a deleterious or detrimental effect upon the public peace or health or safety or good order of the neighborhood in which the business tax recipient's licensee's place of business is located. In the case of revocation or cancellation of business tax receipt license the city shall refund to such business tax recipient licensee the pro rata unearned or unused portion of his business license tax. No refund shall be made where the business tax license is temporarily suspended.

Section 12. Section 18-36, Article II, of Chapter 18, of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 18-36. Prerequisites for issuance of business tax receipt license; denial; appeal.

(a) *Application.* No business tax receipt occupational license will be issued to any person, business, profession or occupation in the city until an application has been filed with the community development director or his designee. The application shall contain the following information:

(b) *Inspections.* No business tax receipt occupational license shall be issued to any person until the person's business location has been inspected by city inspectors for the building division and fire department, and such business location has been found by both inspectors to be in compliance with all applicable ordinances, codes and regulations. Such inspections shall not be required if a certificate of occupancy has been issued for the business location within 12 months preceding the application for the business tax receipt occupational license, provided that certificate of occupancy was issued for the same type of business for which the business tax occupational license application is being made.

(c) *Denial of business tax receipt.* If an inspector from the building division or fire department determines that the applicant's business location does not comply with the requirements of the building code or fire code, respectively, such business tax occupational license application shall be denied by the community development director or his designee and the applicant shall not be permitted to engage in the business at such location.

(d) *Right of appeal.*

- (1) If the community development director or his designee denies an business tax occupational license, the applicant therefor shall have the right to appeal such denial to the city manager by filing a notice of appeal with the city manager within ten days after such denial. The city manager, within 15 days of such appeal, shall hold an informal hearing to determine if the business location complies with the requirements of all applicable ordinances, codes and regulations. Written notice of the hearing shall be provided by the city manager to the applicant, which notice shall set a date for the hearing giving the applicant an opportunity to be heard on the denial of the business tax receipt occupational license. The city manager, after hearing from all interested parties, shall either sustain the position of the community development director or his designee and deny the business tax receipt license, or order the community development director to issue the business tax receipt license. The city manager shall issue a written decision based on whether the business location complies with the requirements of all applicable ordinances, codes and regulations.
- (2) If the city manager sustains the position of the community development director or his designee and denies an business tax receipt occupational license, the applicant therefor shall have the right to appeal such denial to the city council by filing a notice of appeal with the city clerk within ten days after

such denial. The city council, within 30 days of such appeal, shall hold a public hearing to determine if the business location complies with the requirements of all applicable ordinances, codes and regulations. Written notice of the hearing shall be provided by the city clerk to the applicant, which notice shall set a date for the hearing giving the applicant an opportunity to be heard on the denial of the business tax receipt occupational license. The city council, after hearing from all interested parties, by majority vote, shall either sustain the position of the city manager and deny the business tax receipt license, or order the city manager to direct the community development director to issue the business tax receipt license. The city council shall base its decision on whether the business location complies with the requirements of all applicable ordinances, codes and regulations.

Section 13. Section 18-37, Article II, of Chapter 18, of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 18-37. Penalty.

Any person violating any portion or section of this article, or any person operating under a business tax receipt license issued under a false statement, shall be subject to a fine as provided in section 1-8 of this Code.

Section 14. Section 18-38, Article II, of Chapter 18 of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 18-38. Classification and schedule of business licenses taxes.

The following annual business occupational license taxes will be levied at the time the business tax receipt license is issued:

Section 15. Section 18-39, Article II, of Chapter 18 of the Code of Ordinances, City of Port Orange, Florida, is hereby created as follows:

Sec. 18-39. Definition of Local Business Tax and Business Tax Receipt.

"Local business tax" means the fees charged and the method by which the city grants the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction. Local business tax was formerly known as the "occupational license tax." Any references to "occupational license tax" within any code of the city shall mean local business tax.

"Business tax receipt" means the document issued by the city which bears the words "Local Business Tax Receipt" and evidences that the person in whose name the document is

issued has complied with the provisions of this Article. Any references to "occupational license" within any code of the city shall mean "business tax receipt."

Section 16. Section 18-56, Article III, of Chapter 18 of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Section 18-56. Required information.

No business tax receipt occupational license will be issued to any person in the city engaged in the business of fortunetelling, astrology, palmistry or other occupation professing to foresee or predict future or recall past events by any physical or spiritual means until such person shall furnish the community development director or his designee the following information:

- (1) The place or places of residence of the person, firm or corporation applying for said business tax receipt license for five years immediately preceding application.

Section 17. Section 18-57, Article III, of Chapter 18, of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 18-57. Investigation of applicant; reasons for denial.

(a) Upon receipt of the data set forth in section 18-56, the community development director or his designee shall forthwith direct an inquiry to the sheriff of the county and the chief of police at each city where applicant has resided and done business for five years immediately prior to the date of application for business tax receipt license for the purpose of ascertaining the general reputation of such applicant, the criminal record, if any, of the applicant, and the nature of any complaint received by such officers in connection with previous business enterprises.

Section 18. Section 18-60, Article III, of Chapter 18, of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 18-60. Issuance of business tax receipt license.

Should the applicant for a business tax receipt license under this article comply with the foregoing provisions of this article, the community development director or his designee shall issue an business tax receipt license for such business upon the payment of the business license tax prescribed by the city council. However, should the applicant fail to meet the requirements as set forth in this article, such business tax receipt license shall not be issued.

Section 19. Section 18.104, Article V, of Chapter 18, of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 18-104. Business tax receipt ~~Occupational license~~ and registration.

(a) In addition to obtaining the required business tax receipt ~~occupational license~~ from the city, each applicant, as part of the application package, must provide an affidavit stating that s/he understands that state laws regulate certain types of gambling machines. The affidavit must also certify that all machines are in full compliance with applicable state laws and will continue to remain in compliance with state laws as may be amended. Failure to comply with representations stated in the affidavit may result in revocation of the business tax receipt ~~occupational license~~ after a public hearing before the city council.

(b) An inventory of each coin-operated amusement device is required at the time of application for an business tax receipt ~~occupational license~~, or at any future date if required by the city. The machines identified in the inventory shall be the only machines operated on the premises. The inventory must include the manufacturer name, serial number, and the name of the owner of each machine, along with the owner's address and telephone number.

Section 20. Section 18-105, Article V, of Chapter 18, of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 18-105. Applications.

No person shall operate or conduct an adult arcade amusement center for use by the general public in the city without first obtaining an business tax receipt ~~occupational license~~. A person wishing such a business tax receipt ~~license~~ shall make an application therefore in writing, which application shall set forth the following:

Section 21. Subsections 18-106(8) and (10), Article V, of Chapter 18, of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 18-106. Operations.

(8) The violation of any of the provisions of this section may be sufficient reason for the city to revoke the business tax receipt ~~occupational license~~ issued for the business, following a public hearing before the city council.

(10) A complete inventory of all machines or devices must be maintained on file with the city business tax ~~occupational licensing~~. The inventory must be updated within ten days of a change of machine or device and must also be updated each year when the business tax receipt ~~occupational license~~ for the

business is renewed.

Section 22. Subsection 18-107(4), Article V, of Chapter 18, of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 18-107. Peace disturbances; gambling; intoxicated persons, minors.

- (4) Loud noise or music to emerge from the business tax licenses premises, which noise or music is disturbing to the surrounding area.

Section 23. Section 18-202, Article VII, of Chapter 18, of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 18-202. Business tax receipt License required.

Secondhand dealers, including precious metals dealers, pawnbrokers and junk dealers, shall pay to the city an annual business tax ~~occupational license~~ fee before engaging in business in the amounts required by article II of this chapter. Persons dealing primarily in new property and licensed by the city as such dealers shall not be required to pay the additional business tax license ~~fee~~ required by this section, but shall abide by all other provisions of this chapter.

Section 24. Section 18-227, Article VIII, of Chapter 18, of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 18-227. Liability insurance.

(a) *Required.* No business tax receipt ~~occupational license~~ required by the city for a wrecker or towing service shall be issued to an applicant therefor until he has deposited with the city the following insurance policies:

Section 25. Subsection 18-235(r), Article IX, of Chapter 18, of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 18-235. Findings of facts.

- (r) The potential dangers to the health, safety and general welfare of the people of the city posed by permitting establishments at which the activities described in subsections (a) and (b) occur to operate without meeting the requirements for obtaining a business tax receipt license under this article are so great as to require the taxing ~~licensing~~ of such establishments prior to their being permitted to operate.

Section 26. Subsections 18-236(c), (n) (o) and (q), Article IX, of Chapter 18, of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

- (c) *Adult entertainment establishment* means an adult theater, adult bookstore or adult performance establishment, operated for commercial or pecuniary gain. For purposes herein, "operated for commercial or pecuniary gain" shall not depend upon actual profit or loss. An establishment with an adult entertainment business tax receipt license shall be deemed to be an adult entertainment establishment.
- (n) Business tax receipt License means a business tax receipt license as required by this article.
- (o) Business tax recipient Licensee means any person whose application for an adult entertainment establishment has been granted and who owns, operates or controls the establishment.
- (q) *Operator* means any person who engages in or performs any activity necessary to or which facilitates the operation of an adult entertainment establishment, including but not limited to the business tax recipient licensee, or any manager, owner, doorman, bartender, disc jockey, sales clerk, ticket taker or movie projectionist.

Section 27. Section 18-236, Article IX, of Chapter 18, of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 18-239. Construction.

This article shall be liberally construed to accomplish its purpose of taxing licensing and regulating adult entertainment and related activities and prohibiting sexually oriented businesses.

Section 28. Subsections 18-240(a), (b) and (c), Article IX, of Chapter 18, of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 18-240. Adult entertainment business tax receipt license required; classifications.

- (a) *Requirement.* No adult entertainment establishment shall operate within the city without having been first granted an adult entertainment establishment business tax receipt license to operate in accordance with the requirements of this article.
- (b) *Classifications.* Adult entertainment establishment business tax receipts licenses shall be classified as follows:

(c) *Single classification of adult entertainment establishment business tax receipt licenses.* An adult entertainment establishment business tax receipt license shall be limited to one classification of business tax receipt license.

Section 29. Subsections 18-241 (a), (b)(3)(b), (b)(3)(c) and (b)(3)(d), (b)(4), 18-241 (d) (e) and (f) Article IX, of Chapter 18, of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 18-241. Application for business tax receipt license required; contents; attachments; application fee; consent by applicant.

(a) *Required.* Any person desiring to operate an adult entertainment establishment shall file with the city manager a sworn business tax license application on a standard application form supplied by the city manager.

(b) *Contents of application.* Every completed application shall contain the information and documentation specified in this subsection.

(3) The applicant shall provide information as to whether the applicant or any of the other individuals listed pursuant to subsection (b)(1) of this section:

b. Have had a previous business tax receipt license issued under this ordinance suspended or revoked, including the name and location of the business for which the business tax receipt license was suspended or revoked, as well as the date of the suspension or revocation;

c. Have been a partner in a partnership or an officer, director or stockholder of five percent or more of the voting shares of a corporation whose business tax receipt license was suspended or revoked, as well as the date of the suspension or revocation; and

d. Hold any other business tax receipts licenses required by this article and, if so, the names and locations of such other business tax receipt licensed businesses.

(4) The applicant shall specify the single classification of business tax receipt license for which the applicant is filing.

(c) *Attachments.* Along with the application the applicant shall provide the following:

(4) If the applicant is not the owner of the subject real property, a notarized statement from the owner of the subject property indicating that the owner has

approved of or consented to the application for an adult entertainment business tax receipt license.

(d) *Application fee.* Each application shall be accompanied by a nonrefundable fee of \$200.00. If the application for a business tax receipt license is approved and a business tax receipt license is granted, the fee shall be applied as a credit toward the annual business tax receipt license fee required for the first year.

(e) *Incomplete application.* In the event the city manager determines or learns at any time that the applicant has not properly completed the application the city manager shall promptly notify the applicant of such fact and shall allow the applicant ten days to properly complete the application. The time period for granting or denying a business tax receipt license under this article shall be stayed during the period in which the applicant is allowed a opportunity to properly complete the application.

(f) *Consent.* By applying for a business tax receipt license under this section, the applicant shall be deemed to have consented to the provisions of this article and to the exercise by the city manager of the responsibilities under this article.

Section 30. Subsections 18-242(c), (d), (e) and (f), of Article IX of Chapter 18, Code of Ordinance, City of Port Orange, Florida, are hereby amended as follows:

(c) *Time period for granting or denying business tax receipt license.* The city manager shall grant or deny an application for a business tax receipt license under this article within 30 days from the date of its proper filing. Upon the expiration of the thirtieth day, the applicant shall be permitted to begin operating the establishment as an adult entertainment establishment within the category for which a business tax receipt license is sought (provided all other required permits, business tax receipts licenses and certificates have been obtained), unless and until the city manager notifies the applicant of a denial of the application and states the reasons for the denial.

(d) *Granting application for business tax receipt license.*

(e) *Denial of application for business tax receipt license.*

(f) *Rejection of reapplication.* If a person applies for a business tax receipt license at a particular location within a period of nine months from the date of denial of a previous application for a business tax receipt license at the location, and there has not been an intervening change in the circumstances which will probably lead to a different decision regarding the former reasons for denial, the application shall be rejected.

Section 31. Section 18-243 of Article IX of Chapter 18, Code of Ordinances, City of Port Orange, Florida, is hereby amended as follows:

Sec. 18-243. Business tax receipt License contents, term, renewal, expiration and cancellation.

(a) *Contents.* A business tax receipt license granted under this article shall state the name of the business tax receipt recipient licensee, the name of the business, the street address of the business, the classification of the business tax receipt license, the date of issuance and the date of expiration.

(b) *Term.* All business tax receipts licenses issued under this article shall be annual business tax receipt licenses. The business tax receipt license term shall be from October 1 to September 30 of the following year.

(c) *Renewal.* Business tax receipts Licenses shall be renewed annually. Subject to other provisions of this article, any person or entity holding a business tax receipt license issued in accord with this section shall be entitled to renewal of the business tax receipt license from year to year by October 1 of each year, by presenting the current, valid business tax receipt license, restating and updating all information required for a business tax receipt license application, and paying the appropriate business tax receipt license fee.

(d) *Expiration.* A business tax receipt license that is not renewed by October 1 of each year shall expire. An expired business tax receipt license may be renewed by November 30 of the same year upon:

- (1) Presentation of an affidavit stating that the business has conducted no activity regulated by this article subsequent to expiration; and
- (2) Payment of the appropriate business tax receipt license fee and a penalty of ten percent of the appropriate business tax license fee for the month of October, or fraction thereof, plus an additional penalty of five percent of the appropriate business tax license fee for the month of November, or fraction thereof.

(e) *Cancellation.* All expired business tax receipts licenses not renewed by November 30 shall be cancelled summarily by the city manager.

Section 32. Section 18-244, Article IX, Chapter 18 of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 18-244. Reports and records.

Each business tax receipt recipient licensee shall keep such records and make such reports as may be required by the city manager to implement this article and to carry out its

purpose. Whenever the information required by or provided under section 18-241 has changed, the business tax recipient licensee shall promptly report to the city manager the changed information.

Section 33. Section 18-245, Article IX, Chapter 18 of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 18-245. Consent.

By holding a business tax receipt license under this section, the business tax receipt recipient licensee shall be deemed to have consented to the provisions of this article and to the exercise by the city manager of responsibilities under this article.

Section 34. Section 18-246 Article IX, Chapter 18 of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 18-246. Annual business tax receipt licensee fee.

(a) *Levy.* The city shall levy annual business tax licensee fees for all businesses taxed licensed under this article. The annual fee amounts shall be set by the city's fee resolution.

(b) *Initial term.* If the initial business tax receipt license is issued before April 1 of the business tax receipt license term the initial business tax licensee fee shall be the full amount listed in the city's fee resolution. If the initial business tax receipt license is issued on or after April 1 the initial business tax licensee fee shall be one-half of the amount listed in the city's fee resolution.

(c) *Fees regulatory.* The annual business tax licensee fees collected under this article are declared to be regulatory fees which are collected for the purpose of examination and inspection of adult entertainment establishments in accordance with the authority set forth in this article. These regulatory fees are in addition to and not in lieu of business occupational licensee taxes which may be imposed by the Code of Ordinances.

Section 35. Section 18-247, Article IX, Chapter 18 of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 18-247. Business tax receipt License transfers.

(a) *Requirements.* No adult entertainment establishment business tax receipt license shall be transferred to another person by surrendering or transferring possession, control or operation of the taxed licensed business, unless such transfer is in conformity with this subsection. For purposes of this provision a change in ownership of more than ten percent

interest of the business shall be considered a transfer of possession or control of the taxed licensed business. An adult entertainment establishment business tax receipt license shall be transferrable to another person only as follows:

- (1) The current business tax recipient licensee shall apply to transfer the business tax receipt license with the city manager, including in the application all of the information required by section 18-241 of this article and proof that control of the establishment has been or will be transferred through a bona fide sale, rental or other transaction;
- (2) The current business tax recipient licensee shall pay a transfer fee of ten percent of the annual business tax licensee fee paid; and

(b) *Effect of suspension or revocation procedures.* A business tax recipient licensee shall not transfer his business tax receipt license after receiving notice from the city that suspension or revocation proceedings have been or will be brought against the business tax recipient licensee.

(c) *No transfer to different location.* A business tax recipient licensee shall not transfer a business tax receipt license to another location.

(d) *Attempted improper transfer void.* Any attempted transfer of a business tax receipt license either directly or indirectly in violation of this section is hereby declared void, and the business tax receipt license shall be deemed void.

(e) *Changing name of business.* No business tax recipient licensee may change the name of an adult entertainment establishment unless and until the business tax recipient licensee:

Section 36. Section 18-248, Article IX, Chapter 18 of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

(a) *For violation of a building, fire, health or zoning statute, code, ordinance or regulation.* If the city manager learns or finds upon sufficient cause that a business taxed licensed adult entertainment establishment is operating in violation of section 18-233 of this article or any building, fire, health, or zoning statute, code, ordinance or regulation, whether federal, state or local, the city manager shall promptly notify the business tax recipient licensee of the violation and, unless the violation is a life-safety violation, provide the business tax recipient licensee a reasonable period in which to correct the violation. If the business tax recipient licensee fails to correct the violation before the expiration of the reasonable period or if the violation is a life-safety violation, the city manager shall immediately suspend the business tax receipt license and notify the business tax recipient licensee of the suspension. The suspension shall remain in effect until the city manager

finds that the violation of the provision in question has been corrected.

(b) *For illegal transfer.* In the event the city manager learns or finds upon sufficient cause that a business tax recipient licensee engaged in a business tax receipt license transfer contrary to section 18-247, the city manager shall immediately suspend the business tax receipt license and notify the business tax recipient licensee of the suspension. The suspension shall remain in effect until the city manager is satisfied that the ownership has been restored to the business tax recipient licensee.

(c) *For specified violations or criminal acts.*

(1) The city manager shall immediately suspend a business tax receipt licensee's license when:

a. Three or more specified violations or criminal acts occur at the taxed licensed establishment within a two-year period;

(2) The city manager shall immediately suspend the business tax receipt license of any business tax recipient licensee which has had its business tax receipt license previously suspended pursuant to subsection (c)(1) of this section when:

a. One or more specified violations or criminal acts occur at the business taxed licensed establishment within a period of two years from the date of specified violation or criminal act which resulted in the suspension under subsection (c)(1) of this section;

The two-year period shall not include the time during which the business tax receipt license was suspended pursuant to subsection (c)(1) of this section. The suspension authorized by this subparagraph shall remain in effect for a period of 90 days.

(3) The city manager shall immediately suspend the business tax receipt license of any business taxed licensed establishment within a period of two years from the date of the specified violation or criminal act which resulted in the suspension under subsection (c)(2) of this section.

The two-year period shall not include the time during which the business tax receipt license was suspended pursuant to subsection (c)(2) of this section. The suspension authorized by this subparagraph shall remain in effect for a period of 180 days.

(4) The transfer or renewal of a business tax receipt license pursuant to this article shall not defeat the terms of subsections (c)(1) through (c)(3) of this section.

Section 37. Portions of Section 18-249, Article IX, Chapter 18 of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 18-249. Revocation of business tax receipt license.

(a) *False information.* The city manager shall immediately revoke the business tax receipt license of any business tax recipient licensee which received its business tax receipt license in whole or in part based upon false information, misrepresentation of fact or mistake of fact, upon the city manager's receipt of evidence of such false information, misrepresentation of fact or mistake of fact.

(b) *Repeat convictions.* The city manager shall immediately revoke the business tax receipt license of any business tax recipient licensee which has had its business tax receipt license suspended pursuant to paragraph (c)(3) of this section when:

- (1) One of more specified violations or criminal acts occur at the business taxed licensed establishment after the suspension;

The renewal of a business tax receipt license pursuant to this article shall not defeat the terms of this subsection.

(c) *Notice and effective date of revocation.* The city manager shall immediately notify the business tax recipient licensee of the revocation. All periods of revocation shall begin ten days after the effective date of the notice.

(d) *Effect of revocation.* If a business tax receipt license is revoked, the business tax recipient licensee shall not be allowed to obtain another adult entertainment establishment business tax receipt license and no business tax receipt license shall be issued again to any other person for the location upon which the adult entertainment establishment was situated for a period of three years.

Section 38. Portions of Section 18-251, Article IX, Chapter 18 of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 18-251. Notice.

Where the city is required to provide notice by this article, the city shall provide notice by certified mail or by personal service or delivery to the applicant or business tax recipient licensee. The address set forth on the application for a business tax receipt license required by this article shall be deemed the correct address for purposes of meeting notice requirements unless the licensee provides the city manager with a different address in writing, in which case that address shall be deemed the correct address. The effective date

of such notice shall be five business days after mailing, if mailed, or the date of personal service or delivery.

Section 39. Portions of Section 18-252, Article IX, Chapter 18 of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 18-252. General operational requirements for adult entertainment establishments.

- (3) Keep its business tax receipt ~~license~~ posted in a conspicuous place at the taxed ~~licensed~~ location available for inspection by the public at all times; and
- (4) Install, construct, keep, maintain or allow only those signs at the taxed ~~licensed~~ location which comply with applicable city sign ordinances. No sign shall contain any flashing lights, photographs, silhouettes, drawings or pictorial representations of any manner (except for the logo of the establishment, provided the logo shall not contain any specified anatomical areas or any male or female forms at or below the clavicle).

Section 40. Subsection 18-253(c), Article IX, Chapter 18 of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 18-253. Additional operational requirements for adult theaters.

- (c) If an adult theater is designed to permit outdoor viewing by persons seated in automobiles, the business tax recipient ~~licensee~~ shall ensure that the screen cannot be viewed from any abutting property, right-of-way or easement, or any other location off premises. The business tax recipient ~~licensee~~ shall use fencing or shall change the positioning of the motion picture screen to meet this requirement.

Section 41. Section 18-257, Article IX, Chapter 18 of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

The operational requirements of this article shall apply regardless of whether the establishment is or is not taxed ~~licensed~~ under this article.

Section 42. Subsections 18-258(b)(1), (2), (4), (5), (6) and (8), Article IX, Chapter 18 of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

- (1) A person taxed ~~licensed~~ as a massage therapist or apprentice massage therapist pursuant to F.S. ch. 480, if providing massage services only in a

massage establishment ~~taxed~~ ~~licensed~~ under F.S. ch. 480;

- (2) A person ~~taxed~~ ~~licensed~~ under the laws of Florida to practice medicine, surgery, osteopathy, chiropractic, naturopathy, or podiatry, or persons licensed as a physician's assistant or holding a drugless practitioner's certificate;
- (4) A barber or beautician ~~taxed~~ ~~licensed~~ under the laws of Florida;
- (5) A cosmetologist ~~taxed~~ ~~licensed~~ under the laws of Florida;
- (6) A person performing services in any hospital, clinic, nursing home or sanitarium ~~taxed~~ ~~licensed~~ under the laws of Florida;
- (8) A physical therapist ~~taxed~~ ~~licensed~~ under the laws of Florida.

Section 43. Section 18-259, Article IX, Chapter 18 of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows

Sec. 18-259. Operation contrary to certain provisions prohibited.

(a) It shall be unlawful for any person to be an operator of an adult entertainment establishment which does not satisfy all of the general requirements of section 18-252 of this article regardless of whether the establishment is ~~taxed~~ ~~licensed~~ under this article.

(b) It shall be unlawful for any person to be an operator of an adult theater which does not satisfy all of the special requirements of section 18-253 of this article regardless of whether the establishment is ~~taxed~~ ~~licensed~~ under this article.

(c) It shall be unlawful for any person to be an operator of an adult performance establishment which does not satisfy all of the special requirements of section 18-254 of this article regardless of whether the establishment is ~~taxed~~ ~~licensed~~ under this article.

(d) It shall be unlawful for any person to be an operator of an adult bookstore which does not satisfy all of the special requirements of section 18-255 of this article regardless of whether the establishment is ~~taxed~~ ~~licensed~~ under this article.

(e) It shall be unlawful for any person to be an operator of an adult entertainment establishment while the entrance or exit of the establishment is locked when a person other than a worker is inside the establishment, regardless of whether the establishment is ~~taxed~~ ~~licensed~~ under this article.

Section 44. Portions of Section 18-260, Article IX, Chapter 18 of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 18-260. Additional prohibitions relating to adult entertainment establishments.

(a) *Operation of establishment without valid adult entertainment business tax receipt license.* It shall be unlawful for any person to be an operator of an adult entertainment establishment where the person knows or should know:

- (1) That the establishment does not have an adult entertainment business tax receipt license for any applicable classification;
- (2) That the establishment has a business tax receipt license which is under suspension;
- (3) That the establishment has a business tax receipt license which has been revoked or canceled; or
- (4) That the establishment has a business tax receipt license which has expired.

(b) *Engaging in prohibited acts at adult entertainment establishments.* It shall be unlawful for any worker of an adult entertainment establishment, regardless of whether it is taxed licensed under this article, to commit any of the following acts, or for operator of an adult entertainment establishment, regardless of whether it is taxed licensed under this chapter, to knowingly or with reason to know, permit, suffer, or allow any worker to commit the following acts:

(c) *Advertising prohibited activity.* It shall be unlawful for an operator or worker of an adult entertainment establishment, regardless of whether it is taxed licensed under this article, to advertise the presentation of, encourage or promote any activity prohibited by this article or any applicable state statute or local ordinance.

(d) *Minors prohibited.* It shall be unlawful for an operator or worker of an adult entertainment establishment, regardless of whether it is taxed licensed under this chapter, to knowingly, or with reason to know, permit, suffer, or allow:

(e) *Working at untaxed unlicensed establishment or at establishment which does not conspicuously display business tax receipt license.* It shall be unlawful for any person to act as a worker of an adult entertainment establishment that he knows or should know is not taxed licensed under this article, or which has a business tax receipt license which is under suspension, has been revoked or canceled, or has expired, or which does not have the adult entertainment business tax receipt license conspicuously displayed.

(f) *Failure to maintain, protect or display records.*

- (1) It shall be unlawful to be an operator or worker of an adult entertainment establishment, regardless of whether it is taxed licensed under this article, at which the business tax receipt license required by this article and each record required by this article have not be compiled, are not maintained, or are not produced for inspection by a law enforcement officer upon request when the establishment is open for business.
- (2) It shall be unlawful for a worker of an adult entertainment establishment, regardless of whether it is taxed licensed under this chapter, to fail to obtain, carry, and produce for inspection by a law enforcement officer upon request, an business tax receipt occupational license for the occupation in which the worker is engaged, if required.
 - (i) *Use of restrooms or dressing rooms.* Notwithstanding any provision indicating to the contrary, it shall not be unlawful for any worker or operator of an adult entertainment establishment, regardless of whether it is taxed licensed under this article, to expose any specified anatomical area during the worker's or operator's bona fide use of a restroom, or during the worker's bona fide use of a dressing room which is accessible only to workers and/or operators.
 - (k) *Alteration of business tax receipt license.* It shall be unlawful for any person other than the city manager to alter or otherwise change the contents of an adult entertainment business tax receipt license.
 - (l) *False or misleading statement or false or misleading information.* It shall be unlawful:
 - (1) For any person applying for an adult entertainment business tax receipt license to make a false or misleading statement which is intended to facilitate the issuance of a business tax receipt license, or to provide false or misleading information which is intended to facilitate the issuance of a business tax receipt license.
 - (m) *Solicitation or personal advertising.* It shall be unlawful for any worker of an adult entertainment establishment, regardless of whether it is taxed licensed under this article, while situated outside any structure at the adult entertainment establishment, or at a place at the adult entertainment establishment where the worker is visible from any public right-of-way or sidewalk, to display or expose specified anatomical areas or to engage in personal advertising, pandering, or solicitation, whether passive or otherwise, on behalf of the worker, any other worker, or the adult entertainment establishment. For purposes of this section, "personal advertising" means encouraging or enticing, by whatever direct or indirect means, potential customers beyond the adult entertainment establishment to enter the adult entertainment establishment. Additionally, it shall be unlawful for any worker to suffer,

permit, or allow any door that is visible from a public right-of-way or sidewalk to be opened or remain opened except when a person is entering or exiting the establishment.

(n) *Allowing customers to engage in specified sexual activity.* It shall be unlawful for a worker of an adult entertainment establishment, regardless of whether it is taxed licensed under this article, to knowingly, or with reason to know, permit, suffer or allow any person or customer to engage in any specified sexual activity at the establishment.

Section 45. Section 18-271, Article X, Chapter 18 of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows

Sec. 18-271. Adoption of body art code.

The City of Port Orange hereby adopts the Volusia County Health Department Body Art Code, dated November 1998, which is attached to Ord. No. 1999-17 and incorporated herein by reference (hereinafter referred to as the "body art code"). A copy of said body art code is on file in the office of the city clerk. The requirements of the body art code shall apply in addition to any other requirements of state and local law, including the requirements of the Code of Ordinances, City of Port Orange, Florida, and the Land Development Code, City of Port Orange, Florida. By way of illustration and not limitation, this article shall not be deemed to have any effect on the requirement to obtain site development plan approval or business tax receipt occupational licenses a circumstances may require.

Section 46. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 47. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

Section 48. This ordinance shall become effective immediately upon final passage by the City Council.

MAYOR ALLEN GREEN

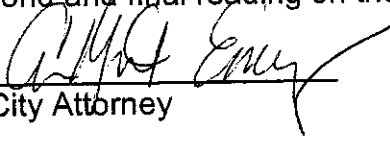
ATTEST:

Kenneth W. Parker, City Manager

Passed on first reading on the day of

Passed and adopted on second and final reading on the day of

Reviewed and Approved:



City Attorney