

Meeting Date: November 10, 2009

Agenda Item 14  
Memorandum No. 09-391

REQUESTED COMMISSION ACTION:

Consent     Ordinance     Resolution     Consideration     Workshop

SHORT TITLE OR MOTION: AN ORDINANCE OF THE CITY OF POMPANO BEACH, FLORIDA, BY AMENDING  
NUMEROUS SECTIONS OF CHAPTER 113, "BUSINESS TAX RECEIPTS," OF THE  
POMPANO BEACH CODE OF ORDINANCES.

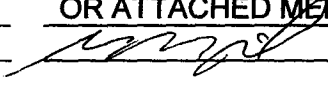
Summary of Purpose and Why:

The proposed amendment replaces the title "Zoning Director" with "Development Services Director or designee", eliminates the category for seafood festival vendor, creates a flat single fee for special event and public event promoters of \$52.09 per day, does not require individual vendors to obtain a Business Tax Receipt and provides language which provides consistency with State Statutes regarding enforcement.

Due to circumstances and in keeping with the wishes of the City Commission was necessary to schedule the item for second reading on this agenda with the advertised public hearing to follow at the next City Commission meeting of November 10th.

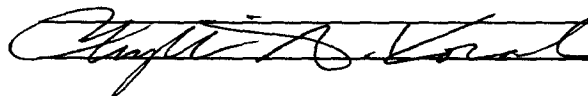
QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:

- (1) Origin of request for this action: Development Services Department
- (2) Primary staff contact: Ed Snyder / Robin M. Bird Ext. 4634
- (3) Expiration of contract, if applicable: N/A
- (4) Fiscal impact and source of funding: N/A

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE OR ATTACHED MEMO NUMBER
Development Services	10/16/09	Approval	

- Advisory Board
- Public Works Administrator
- Interim City Manager

Economic Development Council letter dated 10/15/09



ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	Workshop
1 <sup>st</sup> Reading <u>11/10/09</u>	1st Reading _____	Results: _____	Results: _____
2 <sup>nd</sup> Reading <u>10/27/09</u>	_____	_____	_____
APPROVED	_____	_____	_____

**CITY OF POMPANO BEACH**  
**Broward County, Florida**

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, AMENDING CHAPTER 113, "BUSINESS TAX RECEIPTS," OF THE POMPANO BEACH CODE OF ORDINANCES BY AMENDING SECTION 113.02, "DEFINITIONS," TO DELETE UNNEEDED DEFINITION; BY CREATING SECTION 113.04, "PENALTIES," TO PROVIDE PENALTY PROVISIONS TO APPLY TO ALL VIOLATIONS OF CHAPTER 113; BY AMENDING SECTION 113.12, "ISSUANCE; LIABILITY," TO MODIFY THE DESCRIPTION OF THE TIME PERIOD THAT A BUSINESS TAX RECEIPT IS VALID; BY CREATING A NEW SECTION 113.13, "COMPLIANCE WITH FLORIDA STATE STATUTES," TO REQUIRE COMPLIANCE WITH APPLICABLE STATE STATUTES; BY AMENDING SECTION 113.20, "BUSINESS TAX RECEIPT REQUIREMENT," TO DELETE UNNEEDED PROVISION; BY AMENDING SECTION 113.22, "APPLICATION," TO DELETE VIOLATION PROVISION; BY AMENDING SECTION 113.23, "CERTIFICATE OF COMPETENCY," SECTION 113.24, "DURATION; TRANSFER," AND SECTION 113.25, "FINANCIAL STATEMENTS," TO UPDATE DESCRIPTIONS OF APPLICABLE CITY PERSONNEL; BY AMENDING SECTION 113.27, "LATE PAYMENT," TO IMPOSE A LIMITED TIME PERIOD TO ASSESS VIOLATIONS AND TO MODIFY NOTICE REQUIREMENTS; BY AMENDING SECTION 113.32, "DISPLAY OF BUSINESS TAX RECEIPT," TO UPDATE DESCRIPTIONS OF APPLICABLE CITY PERSONNEL; BY AMENDING SECTION 113.39, "BUSINESS TAX RECEIPT SCHEDULE," TO SET NEW FEES FOR PUBLIC AND SPECIAL EVENTS; AND BY AMENDING SECTION 113.40, "TEMPORARY HOLIDAY SALES VENDORS," TO MODIFY BOND REQUIREMENTS AND UPDATE DESCRIPTIONS OF APPLICABLE CITY PERSONNEL; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

**BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:**

**SECTION 1.** That Section 113.02, "Definitions," of Chapter 113, "Business Tax Receipts," of the City of Pompano Beach Code of Ordinances is hereby amended to read as follows:

**§ 113.02 DEFINITIONS.**

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or require a different meaning.

...

~~**INITIAL NOTICE.** Annual notice of tax due which is mailed to an existing business tax receipt holder on August 1 as required by Florida Statutes.~~

...

**SECTION 2.** That Section 113.04, "Penalties for Violations of this Chapter," of Chapter 113, "Business Tax Receipts," of the City of Pompano Beach Code of Ordinances is hereby created to read as follows:

**§ 113.04 PENALTIES.**

Violations of this chapter shall be punishable by:

(A) Prosecution of the violator in the county court punishable by a fine of not more than \$500 or up to 60 days in the county jail, or by both; and

(B) Prosecution of the owner of the property where the business tax receipt is required before the city's Special Magistrate for Code Enforcement.

**SECTION 3.** That Section 113.12, "Issuance; Liability," of Chapter 113, "Business Tax Receipts," of the City of Pompano Beach Code of Ordinances is hereby amended to read as follows:

**§ 113.12 ISSUANCE; LIABILITY.**

Business tax receipts shall ~~be issued for the periods from October 1 through~~ not be issued for more than one year and shall expire September 30 of each year and be transferable as may be provided by ordinance. The agent or agents of ~~nonresident~~ proprietors shall be severally responsible for carrying on business as if they were proprietors. The fact that any person, firm, or corporation reporting himself or itself as engaged in any business calling, profession, or occupation for the transaction of which a business tax receipt is required, or that person, firm, or corporation exhibiting a sign or advertisement indicating engagement in that business calling, profession, or occupation, shall be conclusive evidence of the liability of the person, firm, or corporation to pay a business tax receipt.

**SECTION 4.** That Section 113.13, "Compliance with Florida Statutes," of Chapter 113, "Business Tax Receipts," of the City of Pompano Beach Code of Ordinances is hereby created to read as follows:

**§ 113.13 COMPLIANCE WITH FLORIDA STATE STATUTES.**

No business tax receipt shall be issued or renewed which does not meet the provisions or requirements of Chapter 205 of the Florida Statutes as presently enacted or as may be amended.

**SECTION 5.** That Section 113.20, "Business Tax Receipt Requirement," of Chapter 113, "Business Tax Receipts," of the City of Pompano Beach Code of Ordinances is hereby amended to read as follows:

***BUSINESS TAX RECEIPT REGULATIONS***

**§ 113.20 BUSINESS TAX RECEIPT REQUIREMENT.**

(A) It shall be unlawful for any person to engage in or manage any business, profession or occupation within the city limits without first obtaining a business tax receipt to do business under this chapter. Each days selling or

disposing of merchandise, managing or engaging in business or in an occupation or profession without ~~making the affidavit as required in this chapter, and~~ obtaining the proper business tax receipt, shall constitute a separate and distinct violation of this section.

...

~~(C) — Violations of subsections (A) or (B) shall be punishable by:~~

~~(1) — Prosecution of the violator in the county court with a fine of not more than \$500 or up to 60 days in the county jail, or by both; or~~

~~(2) — Prosecution of the owner of the property where the business tax receipt is required before the city's Special Magistrate for Code Enforcement.~~

**SECTION 6.** That Section 113.22, "Application," of Chapter 113, "Business Tax Receipts," of the City of Pompano Beach Code of Ordinances is hereby amended to read as follows:

**§ 113.22 APPLICATION.**

(A) Application.

(1) Every person engaged in or managing any business in the city is required to have a city business tax receipt, and ~~shall, on or before October 1 of each year, and always~~ before engaging in any business, profession, or occupation, make application for a business tax receipt by providing their names, professions, or occupation, and the location of the proposed place of business. The application shall be made by the individual, one of the partners, or an officer of the corporation, as the case may be, and no person shall engage in and manage the business, profession, or occupation until after having been so registered, and without first having obtained the required business tax receipt, and paid the amount of the business tax receipt.

(2) The application shall require a description of the proposed business activity on the premises by the applicant, and it shall be unlawful for any person to provide false information in any application for a business tax receipt, or to make a false statement or knowingly conceal a material fact regarding the operation or activity of the proposed business, or to otherwise commit a fraud in any such application. Violations of this sub-section shall also subject the business tax receipt to suspension or revocation by and through the procedures in § 113.38 of this Code, and by and through any other means available to the City.

~~(a) Violation of this section shall be punishable by a fine of up to \$500 or up to 60 days in the county jail or by both.~~

~~(b) In addition to the penalties listed in subsection (a) above, violations of this section shall also subject the business tax receipt to suspension or revocation by and through the procedures in § 113.38 of this Code, and by and through any other means available to the City.~~

(B) Location.

(1) Except provided herein each applicant for a business tax receipt shall state and set out the exact location or locations at which the business shall be operated.

(2) Before issuing a business tax receipt it shall be the duty of the ~~Zoning Director~~ Development Services Director or designee to check the zoning applicable to the listed place of business, and if the applicable zoning regulations do not permit the practice of the profession or the conduct of business at the intended business location, he or she shall refuse to issue a business tax receipt for a business in a prohibited zone, unless the applicant can show a vested right for nonconforming use or a Zoning Board of Appeals variance ~~permit~~. In such instances the particular exception must be endorsed on the application. Where a business tax receipt is issued for general use, and the applicant maintains no particular place of business, the business tax receipt should be marked: No Business Address – Pompano Beach.

...

**SECTION 7.** That Section 113.23, "Certificate of Competency," of Chapter 113, "Business Tax Receipts," of the City of Pompano Beach Code of Ordinances is hereby amended to read as follows:

**§ 113.23 CERTIFICATE OF COMPETENCY.**

Before issuing or renewing any business tax receipt to engage in business as a contractor or subcontractor, the ~~Zoning Director~~ Development Services Director or designee shall require the applicant to produce a current valid certificate of competency from the Broward County Central Board of Examiners or State Certification (DBPR). Each qualifier for each contracting business shall obtain a business tax receipt for each classification of construction engaged in.

**SECTION 8.** That Section 113.24, "Duration; Transfer," of Chapter 113, "Business Tax Receipts," of the City of Pompano Beach Code of Ordinances is hereby amended to read as follows:

**§ 113.24 DURATION; TRANSFER.**

...

(B) All business tax receipts may be transferred to a new owner when there is a bona fide sale of the business, upon payment of a transfer fee equal to 10% of the annual business tax receipt, but not less than \$3 nor more than \$25 and presentation of evidence of the sale and the original business tax receipt. Upon written request and presentation of the original business tax receipt, any business tax receipt may be transferred from one location to another location within the city upon payment of a transfer fee equal to 10% of the annual business tax receipt, but not less than \$3 nor more than \$25. All business tax receipts that are transferred from one location to another location within the city must first be checked by the ~~Zoning Director~~ Development Services Director or designee to insure compliance with the applicable zoning regulation of the new location.

**SECTION 9.** That Section 113.25, "Financial Statements," of Chapter 113, "Business Tax Receipts," of the City of Pompano Beach Code of Ordinances is hereby amended to read as follows:

**§ 113.25 FINANCIAL STATEMENTS.**

(A) In all cases where the amount required to be paid for a business tax receipt depends upon the amount of capital invested, or value of goods, stock, or property used in the business, it shall be the duty of the person applying for the business tax receipt to render to the ~~Zoning Director~~ Development Services Director or designee a sworn statement of the amount of the capital, or value of the stock, goods, or other property, and any other proof, including insurance carried. As a condition for the issuance of such a business tax receipt, the applicant shall be bound to submit for inspection and examination by the ~~Zoning Director~~ Development Services Director or designee either before or after the business tax receipt is issued, inventories last taken or stock books, to show the amount of capital invested, or the value of the stock of goods, wares, merchandise, or other property carried or used in the business. The ~~Zoning Director~~ Development Services Director or designee may refuse to issue the business tax receipt until the statement is filed, and the inspection and examination is permitted. It shall be unlawful for any tax receipt holder to refuse

to allow such inspection and examination by the ~~Zoning Director~~ Development Services Director or designee.

(B) It shall be unlawful for any person willfully to make any false written affidavit as to the amount of the capital invested, or of the value of stock, goods, or other property invested in the business, and file the affidavit with the ~~Zoning Director~~ Development Services Director or designee, or any other city official, for the purpose of procuring a business tax receipt for a less sum than is lawfully payable by the affiant, or his principal. Any business tax receipt so obtained shall be void.

**SECTION 10.** That Section 113.27, "Late Payment," of Chapter 113, "Business Tax Receipts," of the City of Pompano Beach Code of Ordinances is hereby amended to read as follows:

**§ 113.27 LATE PAYMENT.**

...

(C) The penalties as provided for in paragraphs (A) and (B) above shall be assessed for prior years if the business was operating without a valid business tax receipt as required by this chapter. However, the maximum number of prior years that may be assessed shall not exceed five.

(~~C~~D) Any person who engages in any business, occupation, or profession covered by this chapter, who does not pay the required business tax receipt within 150 days after ~~the initial~~ written notice of tax due, and who does not obtain the required business tax receipt is subject to civil actions and penalties including court costs, reasonable attorneys fees, additional administrative costs incurred as a result of collection efforts, and a penalty of \$250.

**SECTION 11.** That Section 113.32, "Display of Business Tax Receipt," of Chapter 113, "Business Tax Receipts," of the City of Pompano Beach Code of Ordinances is hereby amended to read as follows:

**§ 113.32 DISPLAY OF BUSINESS TAX RECEIPT.**

...

(C) Whenever a business tax receipt is required to be paid on any machine, trade board, vehicle, or the like, the business tax receipt or other

evidence of payment of the tax must be located in a prominent place upon the premises where the machine, trade board, vehicle or the like as designated by the ~~Zoning Director~~ Development Services Director or his designee.

(D) Whenever the ~~Zoning Director~~ Development Services Director or his designee finds a vending machine required to maintain a business tax receipt under this chapter being operated without a current business tax receipt, he shall attach to the machine a notice of delinquent taxes. Any person who removes a notice of delinquent taxes or who removes any monies from the machine before the business tax receipts are paid, shall be guilty of a violation.

**SECTION 12.** That Section 113.39, "Business Tax Receipt Schedule," of Chapter 113, "Business Tax Receipts," of the City of Pompano Beach Code of Ordinances is hereby amended to read as follows:

**§ 113.39 BUSINESS TAX RECEIPT SCHEDULE.**

Business tax receipts shall be issued to cover only one location and only one of the occupations or business classifications hereinafter set out unless permitted hereunder. The amounts assessed as business tax receipts against the various trades, businesses, and professions are hereby fixed as follows:

...		
145-000	PROPERTY MANAGEMENT (possible requirements)	115.76
145-250	<u>PUBLIC EVENT (as defined in § 98.07) Per day</u> <u>(City of Pompano Beach business tax receipt holders exempt)</u>	<u>52.09</u>
...		
<del>156-500</del>	<del>SEAFOOD FESTIVAL VENDORS</del> <del>(local city business tax receipt holders exempt)</del> <del>(flat rate)</del>	<del>110.25</del>
...		
165-000	SOLICITORS	202.59

For the purpose of this chapter, any business or occupation operating with a business tax receipt issued under any other subsection contained within this section shall be excluded from the assessment of this business tax receipt. A solicitor is defined as any individual attempting to sell goods, wares or merchandise from house to house or place to place, when delivery or delivery of the sale or item(s) are to be made in the future; however, this

shall not apply to any individual who attempts to gain entry to the premises at the request of the owner or occupant thereof.

165-500 SPECIAL EVENT (as defined in § 132.27 ) Per day 52.09  
(City of Pompano Beach business tax receipt holders exempt)

...

**SECTION 13.** That Section 113.40, "Temporary Holiday Sales Vendors," of Chapter 113, "Business Tax Receipts," of the City of Pompano Beach Code of Ordinances is hereby amended to read as follows:

**§ 113.40 TEMPORARY HOLIDAY SALES VENDORS.**

It shall be unlawful in the city for any person, firm, corporation, business or enterprise to sell, dispense, offer for sale, or distribute any item or items from other than within an enclosed building except as permitted in commercial zoning districts and as follows:

...

(C) Prior to receipt of a business tax receipt an applicant shall comply with all of the following:

(1) An applicant shall file with the Zoning Division, a performance bond or similar security acceptable to the city, naming the city as beneficiary, in the sum of \$1,000, executed by the applicant as principal, and a surety company authorized to do business in the state and on the list of the United State Treasury. ~~Such security shall be approved by the City Attorney and the Risk Manager.~~ The conditions of such security shall be that:

...

(E) No business tax receipt shall be transferred without written consent from the ~~Zoning Director~~ Development Services Director or designee of the city, as evidenced by an endorsement on the face of the business tax receipt by the ~~Zoning Director~~ Development Services Director or designee showing to whom the business tax receipt is transferred and the date of transfer. The transferee of a business tax receipt shall meet and be subject to all requirements set forth herein for the original business tax receipt holder.

...

**SECTION 14.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

**SECTION 15.** This Ordinance shall become effective upon passage.

**PASSED FIRST READING** this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**PASSED SECOND READING** this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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**LAMAR FISHER, MAYOR**

**ATTEST:**

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**MARY L. CHAMBERS, CITY CLERK**

MB/ds  
10/16/09  
l:ord/ch113/2010-38