

ORDINANCE C-450

AN ORDINANCE OF THE TOWN OF MEDLEY, FLORIDA, AMENDING CHAPTER 14 - BUSINESSES, ARTICLE II - “BUSINESS TAX RECEIPTS,” OF THE TOWN OF MEDLEY CODE OF ORDINANCES RELATING TO BUSINESS TAX RECEIPTS AND CERTIFICATES OF USE; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Chapter 205, Florida Statutes, the Town of Medley (“Town”) is authorized to require anyone seeking the privilege of engaging in or managing any business, profession, or occupation within its geographical limits to obtain a Business Tax Receipt (“BTR”) for such privilege and impose certain requirements, restrictions, and limitations related to such BTR; and

WHEREAS, under Article II, “Business Tax Receipts,” of Chapter 14, of the Town Code of Ordinances (“Code”), the Town requires business entities to obtain a certificate of use and a BTR prior to authorizing businesses to legally operate or manage a business within the Town; and

WHEREAS, the Town Council desires to amend Article II, Chapter 14, of the Town Code to: (1) clarify that home occupations require a BTR; (2) shift existing enforcement duties from the Office of the Town Attorney to the Town’s Building and Zoning Department and Code Compliance Departments; (3) provide for the revocation of BTRs when businesses violate laws in conducting business activities; and (4) provide for the application of code enforcement procedures under Chapter 2 of the Town Code when entities violate BTR regulations; and

WHEREAS, the Town Council further wishes to Amend Article II, Chapter 14, of the Town Code to modify administrative procedural requirements for the issuance of a certificate of use; and

WHEREAS, the Town Council finds that adoption of this ordinance is in the best interest and welfare of the Town.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MEDLEY, FLORIDA, AS FOLLOWS:¹

Section 1. **Recitals.** That the above recitals are true and correct and incorporated herein by this reference.

Section 2. **Town Code Amended.** That Article II - “Business Tax Receipts,” of Chapter 14 - “Businesses” of the Town Code is hereby amended to read as follows:

¹ Coding: ~~Strikethrough words~~ are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicted with **highlighted double-strikethrough and double underline**.

CHAPTER 14 – BUSINESSES.

ARTICLE II. - BUSINESS TAX RECEIPTS.

Section 14-26. - Payment of business tax receipt.

- (a) *Business defined.* The following definitions apply to the Code provisions of this chapter 14 only:
- (1) "Business" includes the work, vocation, profession, occupation, commercial enterprise or trade in which a person is engaged, and all activities and matters together with all devices, machines, vehicles and appurtenances used therein, any of which are conducted, either directly or indirectly, on or from any premises in the town.
 - (2) "Business" does not include nonprofit charitable institutions, nonprofit educational institutions, or nonprofit religious institutions.
 - (3) "Business" does not include a person that solely manages personal investments from a residential property.
 - (4) "Business" includes home occupations where any person is engaged in a profession or occupation by using their own personal residence, but does not involve the creation, maintenance, distribution, outdoor storage, or sale of any merchandise or goods, and which use of their personal residence is clearly incidental and secondary to residential purposes.
- (b) *Requirements to pay business tax.* No person shall engage in any business that is carried on within the town, and no business tax receipt shall be issued, until a business tax for the current year, and all prior outstanding business taxes have been paid for such business and the proper business tax receipt obtained.
- (c) *Dates due.* All business tax receipts shall be sold by the town beginning July 1 of each year, are due and payable on or before September 30 of each year, and expire on September 30 of the succeeding year. If September 30 falls on a weekend or holiday, the tax is due and payable on or before the first working day following September 30.
- (d) *Partial year payment.* Applicants for business tax receipts that apply after the beginning of the fiscal year (October 1) but before April 1 of that fiscal year shall pay the full tax for one year and applicants that apply on or after April 1 of the fiscal year but before September 30 of that fiscal year shall pay one-half the full tax for one year, except as herein otherwise provided.
- (e) *Amount of business tax.* Each business shall pay a business tax in the amount set forth by the Town Council.
- (f) *Separate location.* A separate business tax receipt shall be obtained for each location of any business located within the town.
- (g) *Separate business.*
- (1) Each business entity registered with the state shall constitute a single and separate business, requiring a business tax receipt for each registered business entity.
 - (2) A separate business tax receipt shall be obtained for each separate business at the same location.
 - (3) Each receipt obtained by a business shall be issued to cover only the business licensed thereby at the location and in the category designated in such receipt.
- (h) *Starting date of payment responsibility.* For purposes of this chapter of the Code, the starting date of a business and the starting date of a business's responsibility for payment of a business tax shall be as follows:
- (1) *Commercial locations.* Upon the later of:

- a. The effective date of the state filing; or, if applicable,
 - b. The issuance of a certificate of use; or, if applicable,
 - c. The effective date of a lease for commercial space.
- (2) *Home occupations*. Upon the earlier of:
 - a. The issuance of a business tax receipt for a home occupation; or
 - b. Upon transacting commerce from a residential property.
- (3) *Mailboxes*. Upon the earlier of:
 - a. The effective date of a state or federal filing indicating the mailbox location within the town; or
 - b. The mailbox lease effective date.
- (i) *Ending date of payment responsibility*. For purposes of this chapter of the Code, the ending date of a business and the ending date of a business's responsibility for payment of a business tax shall be upon the completion of:
 - (1) The filing of the articles of dissolution, as provided by the state, with the town; or
 - (2) The filing of confirmation with the town, as provided by the state, that the business has been administratively dissolved; and
 - (3) The signing and filing of a sworn affidavit with the town affirming that the business no longer transacts commerce within the town.
 - (4) For the purposes of this chapter of the Code, providing proof of an involuntary dissolution is insufficient evidence of proof of the ending date of a business.
- (j) *Receipt display*. Any person issued a business tax receipt shall post the business tax receipt in a conspicuous place in or about such person's place of business.
- (k) *Refund of fees*. If the ~~Town Attorney~~ Department of Building and Zoning finds that a business tax was collected incorrectly and a refund is warranted, the town may issue a refund up to the difference between the amount actually paid to the town and all amounts payable under a proper business tax receipt.

Section 14-27. - Business tax receipt application and term.

- (a) *Application*. To obtain a business tax receipt, businesses shall complete a business tax receipt form provided by the town and submit the form to the ~~Town Attorney~~ Department of Building and Zoning.
- (b) *Expiration*. All business tax receipts issued under this chapter shall expire on September 30 of each year. No business tax receipt shall be issued for more than one fiscal year.

Section 14-28. - Business tax exemptions and credits.

- (a) *Exemptions for certain disabled persons, the aged and widows with minor dependents*.
 - (1) 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, may engage in any business without being required to pay a business tax. The exemption provided by this section shall be allowed only upon the certificate of the County Physician, or other reputable physician, 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 business tax receipt that shall have plainly stamped or written across the face thereof the

fact that it is issued under this section, and the reason for the exemption shall be written thereon.

- (2) Neither this nor any other law exempts any person from the payment of any amount required by law for the issuance of a license to sell intoxicating liquors or malt and vinous beverages. Applicants granted a business tax receipt under this section shall not be exempt from the other provisions of this chapter or the Town Code.
- (b) *Nonresident temporary or transitory services exemption.* Any person engaging in a business regulated by the Department of Business and Professional Regulation who has paid a business tax for the current year to the county or municipality in the state where the person's permanent business location or branch office is maintained, shall be exempt from obtaining a business tax receipt from the town, for performing work or services on a temporary or transitory basis in the town.
- (c) *Charitable organization exemption.*
 - (1) A business tax receipt is not required of any charitable, religious, fraternal, youth, civic, service, or other similar organization that makes occasional sales or engages in fundraising projects that are performed exclusively by the members, and the proceeds derived from the activities are used exclusively in the charitable, religious, fraternal, youth, civic, and service activities of the organization.
 - (2) A person that is a nonprofit "charitable institution" as defined in the Town Code, and is therefore not a "business" subject to payment of a business tax, or a person that qualifies for the charitable organization exemption in this section, shall be exempt from payment of a business tax upon filing a sworn statement to the ~~Town Attorney~~ Department of Building and Zoning, under penalty of perjury and on a form provided by the town, that such person:
 - a. Is a nonprofit "charitable institution" as defined in the Town Code; or
 - b. Qualifies for the charitable organization exemption in subsection (c)(1) of this section.
- (d) *Religious exemption.* This chapter does not require a business tax receipt for practicing the religious tenets of any church.
- (e) *Motor vehicle exemption.* Vehicles used by any person receipted under this chapter for the sale and delivery of tangible personal property at wholesale or retail from his or her place of business on which a business tax is paid may not be construed to be separate places of business, and a business tax shall not be levied on such vehicles or the operators thereof as salespersons or otherwise, any other Law to the contrary notwithstanding. However, where a trucking business utilizes independent contractors, each truck owner must obtain a business tax receipt for his vehicle.
- (f) *Veteran's credit.* Any honorably discharged veteran of any branch of the armed forces of the United States who is disabled from performing manual labor and a permanent resident of the state shall receive a credit of \$50.00 on any business tax receipt granted under this chapter. The unmarried spouse of a deceased disabled veteran of any war in which the United States armed forces participated is entitled to the same exemptions as the disabled veteran.
- (g) ~~{Relocation; employment of town residents.}~~ Upon the recommendation of the ~~Town Attorney~~ Department of Building and Zoning, the Town Council may waive the fee for a business tax receipt for a period not to exceed three years, upon a determination that the business is both relocating to Medley from another municipality and that the relocating business will employ residents residing in the town. Such waiver is in the sole discretion of the Town Council.

Section 14-29. - Evidence of engaging in business.

- (a) *One act constitutes evidence of engaging in business.* For purposes of this chapter, any person shall be presumed to be engaged in business in the town and thus responsible for paying a business tax, when that person does any of the following:
- (1) Submits a state and/or federal filing indicating a business address located within the town. Such filings include, but are not limited to:
 - a. Filings with the Secretary of State;
 - b. Filings regarding a Federal Employer Identification Number (FEIN) or Taxpayer Identification Number (TIN); and
 - c. Filings regarding a sales tax certificate.
 - (2) Transacts commerce from a residential property within the town;
 - (3) Utilizes a residential property as a location for a business telephone, address for business correspondence or storage place for business records;
 - (4) Executes a commercial lease for a location within the town;
 - (5) Owns a commercial property within the town; or
 - (6) Holds an active license or permit issued by a governmental agency indicating that person is in business in the town.
- ~~(b) *Affidavit rebutting presumption*~~
- ~~(1) A person that is presumed to be engaged in business in the town pursuant to subsection (a) may rebut the presumption by filing a sworn statement to the Town Attorney, under penalty of perjury and on a form provided by the town, that such person is not engaged in business in the town (i.e. that the person is not, from or within the town: manufacturing, distributing, repairing, buying, selling, or offering for sale goods; providing, scheduling, selling or offering for sale services; leasing property for nonresidential purposes; or transacting any other commerce).~~
 - ~~(2) The sworn statement must be filed with the Town Attorney for each fiscal year in which a person desires to rebut the presumption of engaging in business. It shall be the duty of the person filing the sworn statement to notify the town of any changes that affect the continued accuracy of the sworn statement.~~
 - ~~(3) Existing businesses may rebut the presumption of engaging in business for the upcoming fiscal year by filing the sworn statement described in subsection (b)(1) above with the town prior to October 1 of the upcoming fiscal year.~~
 - ~~(4) New businesses may rebut the presumption of engaging in business for the current fiscal year by filing the sworn statement described in subsection (b)(1) above within 60 days after first engaging in any of the acts set forth in subsection (a) above.~~
 - ~~(5) A person may not retroactively rebut the presumption of engaging in business for current or prior fiscal years and no refunds will be issued for any fiscal year in which a person fails to file the sworn statement described in subsection (b)(1) above prior to October 1 of the applicable fiscal year.~~
- ~~(c)~~ (b) *Advertising with address located in town.* Any person who by use of signs, circulars, cards, websites, telephone books, electronic communications, newspapers, letterhead, or any other means, advertises, holds out, or represents that the person engages in business with a business address located within the town, is engaging in business in the town.

Section 14-30. - Business tax receipt transferability.

- (a) Upon application and presentation of the original business tax receipt, any business tax receipt may be transferred from one location to another location within the town upon payment of the transfer fee of ten percent of the annual business tax, not to exceed \$25.00.
- (b) Any business tax receipt may be transferred to a new owner when there is a bona fide sale of the business, upon payment of a transfer fee of ten percent of the annual business tax, not to exceed \$25.00.
- (c) No business tax receipt shall be transferred without submission of a new application in accordance with section 14-27.

Section 14-31. - Proof of state license or registration required for state regulated businesses.

- (a) *First-time applicants.* Any person applying for a business tax receipt for the first time, to engage in any business regulated by the Department of Business and Professional Regulation, or any board or commission thereof, must exhibit an active state certificate, registration, or license, or proof of copy of the same, before such business tax receipt may be issued.
- (b) *Non-renewal of business tax receipt.* If the town is notified by the Department of Business and Professional Regulation that an applicant is a person for whom a business tax receipt should not be renewed due to the suspension, revocation, or inactivation of such person's state license, certificate, or registration, the town shall not renew such business tax receipt unless such person can exhibit an active state certificate, registration, or license.
- (c) *Inapplicability of this section.* This section shall not apply to the contractor related businesses regulated under F.S. §§ 489.113, 489.117, 489.119, 489.131, 489.511, 489.513, 489.521 or 489.537.

Section 14-32. - Penalty for failure to pay business tax.

- (a) *Penalty.* Any person who engages in any business within the town without first obtaining a business tax receipt, if hereby required, is subject to a penalty of 25 percent of the business tax due, in addition to any other penalty provided by law or ordinance.
- (b) *Property owner liable.* If a person or business fails to comply with this chapter of the Code, the ~~Town Attorney~~ Department of Code Compliance may cite the non-complying person or business, the business entity occupying the premises where the non-complying person or business exists and the property owner of the premises where the non-complying person or business exists. Until all outstanding business taxes are paid, persons or businesses cited under this section of the Code are subject to the same penalties as the non-complying person or business.
- (c) *Delinquency.* Business tax receipts that are not renewed when due and payable are delinquent and subject to a delinquency penalty of ten percent for the month of October, plus an additional five percent penalty for each subsequent month of delinquency until paid. Each delinquency penalty shall be applied to the amount equal to the business tax due plus all previous outstanding delinquency penalties. However, the total delinquency penalty may not exceed 25 percent of the business tax for the delinquent establishment. Any money received shall be applied to the oldest delinquent business tax and penalties first.
- (d) *{Civil actions and penalties.}* Except as otherwise provided, any person who engages in any business covered by this chapter who does not pay the required business tax within 150 days after the initial notice of the 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 equal to the annual amount of the business tax or \$250.00, whichever is less.

- (e) Enforcement. In addition to any other remedies available by law, the Town may issue a civil violation notice for violations of this Chapter pursuant to Article II, "Code Compliance," of Chapter 2 of the Town Code.

Section 14-33. - Compliance with ~~building and zoning regulations~~ law required.

- (a) *Duty to comply with Town Code.* Each applicant for a business tax receipt shall state and set out the exact location at which such business shall be operated. It shall be the duty of the applicant to ensure the business location complies with the Town Code, rules and regulations, including, but not limited to, all building and zoning regulations. The issuance of a business tax receipt by the town shall not signify that the business location is in compliance with any Town Code, rule or regulation, other than the payment of the business tax, nor may it be relied upon by the applicant or any other person or entity as evidence of compliance with any code, rule or regulation other than payment of the business tax.
- (b) *Certificate of use.* No business tax receipt shall be issued until a certificate of use has been issued in accordance with the Town Code, ~~unless its business does not require a certificate of use.~~ The certificate of use shall be issued when the business is in compliance with the Town Code, including the requirement of site plan approval, a structure in compliance with the Florida Building Code, and adequate water, sewer and electric, as well as adequate parking and drainage.
- (1) Before any use of land, building or structure is established, or any established use of land, building, or structure is changed to a different use than that identified in the previously-issued certificate of use and/or business tax receipt which applies to the property, the person seeking to establish the use must obtain a certificate of use from the Town Attorney Department of Building and Zoning.
- ~~(2) The Town Council shall consider all certificate of use requests related to issuance of a final development order, variance requests, and for uses related to solid waste management, recycling and related uses.~~
- ~~(3 2) The Town Attorney Department of Building and Zoning shall develop an administrative procedure and forms for the application and administrative approval of certificates of use, not requiring Town Council approval, and The Department of Code Compliance is authorized to conduct inspections of the subject land, building, or structure prior to approving and issuing certificates of use administratively, or recommending certificate of use approval in those instances where Town Council approval is required.~~
- (4 3) Failure to secure a certificate of use before establishing a use of land, building or structure, or before changing the usage of the property from the use recognized in a duly-issued certificate of use to another use, shall be a violation of this Code, and punishable as such.
- ~~(5) No business may operate with obtaining a BTR and/or certificate of use, unless there is an exemption under state law or in the Medley Town Code. The Town Attorney is authorized to insure enforcement of these provisions through all available civil, administrative and other actions to forthwith enforce this article and insure that no business operates in Medley in violation of this Code.~~
- (c) Revocation of Business Tax Receipts. Upon a written recommendation from the Director of the Department of Building and Zoning that demonstrates that a business has violated the laws and/or regulations of the State of Florida, Miami-Dade County, and/or the Town, while engaging in that business's activities, the Town Mayor may revoke the violating business entity's business tax receipt until such violations are cured or resolved. Businesses may appeal

~~business tax receipt revocations to the Town Special Magistrate. Affidavit required. In order to obtain an annual business tax receipt, each applicant for a business tax receipt shall submit to the town an affidavit, on a form approved by the Town Attorney stating whether any alterations have been made to the physical space since the issuance of the certificate of use, and if so a description of the alterations, and the building permit number for the alterations, if any. It is a violation of this section and punishable as provided in this Code to falsify the affidavit.~~

Section 3. **Codification.** That it is the intent of the Town Council that the provisions of this ordinance shall become and be made a part of the Town’s Code, and that the sections of this ordinance may be renumbered or relettered and the word “ordinance” may be changed to “section,” “article,” “regulation,” or such other appropriate word or phrase in order to accomplish such intentions.

Section 4. **Severability.** That the provisions of this ordinance are declared to be severable and if any section, sentence, clause or phrase of this ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance but they shall remain in effect, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

Section 5. **Conflicts.** That all ordinances or parts of ordinances, resolutions or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 6. **Effective Date.** That this ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this ____ day of _____, 2021.

PASSED AND ADOPTED on second reading this ____ day of _____, 2021.

ROBERTO MARTELL, MAYOR

ATTEST:

VICTORIA MARTINEZ, FRP, CMC, TOWN CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

TOWN ATTORNEY
WEISS SEROTA HELFMAN
COLE & BIERMAN, P.L.

SUMMARY OF VOTE – FIRST READING

The motion to PASS the foregoing Ordinance on FIRST READING was made by

_____ and seconded by _____ and on roll call, the following
vote was had:

Mayor Roberto Martell	_____
Vice-Mayor Ivan Pacheco	_____
Councilperson Edgar Ayala	_____
Councilperson Lizelh Ayala	_____
Councilperson Lily Stefano	_____

SUMMARY OF VOTE – SECOND READING

The motion to ADOPT the foregoing Ordinance on SECOND READING IN FULL was made
by _____ and seconded by _____ and on roll call, the following
vote was had:

Mayor Roberto Martell	_____
Vice-Mayor Ivan Pacheco	_____
Councilperson Edgar Ayala	_____
Councilperson Lizelh Ayala	_____
Councilperson Lily Stefano	_____