

ORDINANCE NO. 09- 070

AN ORDINANCE CREATING THE AMENDED, RESTATED AND CONSOLIDATED LOCAL BUSINESS TAX ORDINANCE OF 2009; PROVIDING FOR AUTHORITY; PROVIDING FOR SCOPE; PROVIDING FOR DEFINITIONS; PROVIDING FOR LEVYING OF TAX; PROVIDING FOR CLASSIFICATIONS SUBJECT TO TAX; PROVIDING FOR INITIAL, RENEWAL AND INTERIM APPLICATIONS; PROVIDING FOR TRANSFER OF OCCUPATIONAL LICENSE, CHANGES OF LOCATION AND NAME CHANGES; PROVIDING FOR TRANSFER OF ADMINISTRATIVE DUTIES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR PENALTIES AND ENFORCEMENT FOR NON-COMPLIANCE; PROVIDING FOR USES OF THE LOCAL BUSINESS TAX REVENUE; PROVIDING FOR A COMMISSION TO BE PAID TO THE TAX COLLECTOR; PROVIDING FOR THE REPEAL OF ORDINANCES 08-022, 06-091, 04-032, AND 04-05; PROVIDING FOR A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to the statutory authority granted in Section 205.0535, Florida Statutes, Polk County established an equity study commission and reclassified businesses, professions and occupations and established new rate structures for purposes of levying and collecting a Local Business Tax; and,

WHEREAS, Section 205.0535(4), Florida Statutes, grants authority to any county that has so reclassified businesses and revised rate structures to increase or decrease such rates by up to five percent (5%) every year thereafter upon a vote of a majority plus one of the Board of County Commissioners; and,

WHEREAS, Section 205.033(4), Florida Statutes, contemplates the payment of the cost of collection of local business taxes, which payment was codified in previous Polk County local business tax ordinances but was deleted in Ord. 04-05 by scrivener's error; and

WHEREAS, Section 205.033(7), Florida Statutes, provides that revenues received from Polk County's local business tax may be used for overseeing and implementing a comprehensive economic development strategy through advertising, promotional activities, and other sales and marketing techniques; and

WHEREAS, To provide consistency between Polk County's Local Business Tax Ordinance and the procedures set out in Chapter 205, Florida Statutes, it is necessary to revise the Polk County Ordinance as it pertains to collections, prorated taxes, renewals, interim applications, transfers and name changes.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF POLK COUNTY, FLORIDA:

Section 1. Short Title.

This Ordinance shall be named the Polk County Local Business Tax Ordinance.

Section 2. Authority.

This Ordinance is enacted under the authority of the Polk County Charter and Chapters 125 and 205, Florida Statutes.

Section 3. Scope.

This Ordinance shall be applied and enforced within all areas of Polk County pursuant to section 205.032, Florida Statutes.

Section 4. Use of local business tax revenues.

Pursuant to Section 205.033(7), all revenues received from Polk County's local business tax shall be used for overseeing and implementing a comprehensive economic development strategy through advertising, promotional activities, and other sales and marketing techniques.

Section 5. Definitions.

Pursuant to Section 205.022 (2), Florida Statutes, the following definitions are hereby incorporated herein:

"Receipt" means the document that is issued by the local governing authority 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 chapter relating to the business tax.

"Local business tax" means the fees charged and the method by which a local governing authority grants the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction. It does not mean any fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection. Unless otherwise provided by law, these are deemed to be regulatory and in addition to, but not in lieu of, any local business tax imposed under the provisions of this ordinance.

Section 6. Levy of tax; general penalty for non-payment; disallowance of refunds.

(a) As authorized by chapter 205, Florida Statutes, Polk County hereby levies a local business tax for the privilege of engaging in or managing any business, profession, or occupation within Polk County and authorizes the Tax Collector or their designee to issue local business tax receipts as proof of compliance. All local business tax receipts issued under this Ordinance shall be for annual tax receipts which shall commence running on October 1, on which date they shall have been paid for, and shall expire on September 30 of the following year. The issuance of such tax receipts shall commence on the date set forth by section 205.053 (1), Florida Statutes, or any successor statute, and shall be due and payable as prescribed by section 205.053 (1), Florida Statutes. If a local business tax receipt is issued after October 1, but before July 1 of the following year, the applicant shall pay the entire appropriate annual license tax. If a local business tax receipt is issued after June 30, but before October 1 of the year in which the tax elapses, the applicant shall pay one-quarter (1/4) the annual appropriate business tax due rounded to the nearest nickel, provided they also pay the entire annual local business tax due for the following year and that no delinquency or non-compliance with the local business tax ordinance exists related to the current standing of their business in relation to the local business tax.

(b) All persons subject to this Ordinance who fail to comply or pay the local business tax prior to October 1st or all persons who fail to comply or pay the local business tax prior to entering into business are subject to the provisions found in section 205.053(1), Florida Statutes or any successor statute. In the event, the Tax Collector enters into an interlocal agreement with any municipality for the transfer of administrative duties relative to issuance of County business taxes and collection of related taxes as authorized hereinafter, such interlocal agreement may allow for the municipality to retain such delinquency penalties, including other applicable amounts as provided in section 205.035, to help defray the administrative costs attributable to its duties under that agreement.

(c) Business taxes paid shall not be refundable for any reason other than denial of an application for a tax receipt or renewal thereof or clerical error.

Section 7. Classifications of Business, Occupations and Professions Subject to Tax.

Unless specifically exempted in whole or in part from the levy and collection of business taxes by Federal or State Law or specifically exempt in whole or in part in this Section, the following classifications shall be subject to business tax in the manner set forth below.

There shall be three (3) classifications of businesses, professions and occupations for purposes of business tax levy and collection as follows:

(a) There shall be a Class "A", Non-State Regulated Business, Profession, or Occupation. This classification shall include all business, professions, or occupations which are not required to hold any license, certification, or registration with any branch, department, agency or authorized licensing board of the State of Florida. The annual business tax for all Class "A" licenses shall be THIRTY-ONE AND 50/100 DOLLARS (\$31.50).

(b) There shall be a Class "B", State Regulated Business, Profession or Occupation. This classification shall include all businesses, professions, and occupations for which a license, certification, or registration is required by any branch, department, agency or authorized licensing board of the State of Florida. The annual business tax for all Class "B" licenses shall be FIFTY-SEVEN AND 75/100 DOLLARS (\$57.75).

(c) There shall be a Class "C", Declared Business, Profession or Occupation. This classification shall include all businesses, professions, and occupations for which a declaration shall be published by the Tax Collector upon approval of application and receipt of tax payment. The declaration shall consist of the business name, owner name, location, telephone number, and activity. The annual local business tax for all Class "C" licenses shall be THREE HUNDRED-FIFTEEN AND NO/100 DOLLARS (\$315.00). Applications for a Class "C" business tax receipt shall be submitted by those engaging in the following activities:

(1) Special Event - Any transient or temporary entertainment such as fairs, circuses, carnivals, festivals and outdoor or tented entertainment events.

(2) Stall Market - A market place where transient businesses, professions, and or occupations engage in commerce.

(3) Casual Loan Operation - Those who act as pawn brokers or those who provide check cashing loan services.

(4) Fortune Telling - Those who are fortune tellers, clairvoyants, soothsayers, tarot card readers, palm readers, or any other such practice.

(5) Graphic Entertainment - Those which provide a live display of adult oriented nude or sexually suggestive entertainment.

(6) Extreme Entertainment - Any dance and/or concert which is performed outside the confines of a recognized dance hall, restaurant, night club, civic club, community facility, convention hall or government facility.

(7) Fireworks - Any manufacturers, distributors, wholesalers, or retailers of fireworks or sparklers as defined in Chapter 791, Florida Statutes.

(d) All business entities and individuals engaging in any occupation or profession shall only be required to purchase one (1) business tax receipt from the County for each business location, even if such individual person or business entity shall engage in more than one (1) business, profession, or occupation under his, her, or its name at that location. For the purposes of this section business location shall mean each non-adjacent physical location of the business. If at least one of that entity's or person's business, occupational, or professional activities qualifies as a Class "B" regulated business, profession, or occupation, then he, she, or it shall be issued a Class "B" occupational license tax receipt.

(e) All new applicants for a Class "B" business tax receipt whose business or profession is required to be verified pursuant to Chapter 205, Florida Statutes or successor statutes thereto shall be required to exhibit all State licenses, certifications, or registrations or proof of copy of same as a condition precedent to the issuance of any business tax receipt. Additionally, all applicants licensed, certified or registered by the State Department of Business and Professional Regulations as a building contractor, general contractor, electrical contractor or any other type of contractor engaged in construction activities shall be required to exhibit all State licenses, certifications, or registrations or proof of copy of same as a condition precedent to the issuance of any business tax receipt. Subsequent production of such other licenses, certifications, or registrations or copy of proof thereof for renewal of a business tax receipt shall be required contingent upon the Florida Statutes in effect at the time of renewal.

(f) The business obtaining the business tax receipt shall keep the same displayed conspicuously at the place of business and in such a manner as to be open to the view of the public and subject to the inspection of all duly authorized officers of the Tax Collector and County. Upon failure to do so, that person shall be subject to the payment of another business tax for engaging in or managing the business or occupation for which the business tax was obtained.

(g) All persons eighteen (18) years of age or younger or those persons less than twenty (20) years of age who are enrolled full-time in a daytime high school program in Polk County and who are acting as a sole proprietorship with no persons in their employment shall be exempt from the provisions of this Ordinance.

Section 8. Initial application, renewal application and interim application.

(a) No initial or original business tax receipt shall be issued except upon written application of the person applying for the same. The Tax Collector, before issuing an initial or original tax receipt shall require the person applying for such business tax receipt to file a statement listing the business owner(s) or principal(s), the physical location of the business, mailing address of the business, type of business, and, when applicable, information related to the required exhibit of all applicable State licenses, certifications, or registrations or proof of copy of same. Initial or original applications for an business tax receipt shall be retained as a part of the records of the Tax Collector's Office.

(b) No renewed business tax receipt shall be issued except upon written application of the person applying for the same. The Tax Collector, before issuing a renewed tax receipt shall require the person applying for such business tax receipt to file a statement listing the business owner(s) or principal(s), the physical location of the business, mailing address of the business, type of business, and, when applicable, information related to the required exhibit of all applicable State licenses, certifications or registrations, or proof of copy of same. Renewal applications for a business tax receipt shall be retained as a part of the records of the Tax Collector's Office.

(c) After a business has been issued a tax receipt it may seek to change the occupations or activities listed on the applicable tax receipt by submitting an interim application. The Tax Collector, before issuing an updated tax receipt shall require the person applying for such updated business tax receipt to file a statement listing the current business owner(s) or principal(s), the physical location of the business, mailing address of the business, type of business, and any changes in the occupations or activities of record, including information related to the required exhibit of all applicable State licenses, certifications or registrations, or proof of copy of same. The business seeking an updated tax receipt shall pay a prorated tax of twenty percent (20%) of the applicable annual tax. Also, when the updated tax receipt falls into a higher tax classification, then the difference between the higher classification and lower classification shall also be paid prior to the issuance of an updated tax receipt.

Section 9. Transfer of business tax receipt, change of location, and name changes.

(a) It shall be the duty of every person taking over or purchasing an existing business which is required to obtain a business tax receipt in Polk County to notify the Tax Collector of the change in ownership within thirty (30) days, and upon failure to do so, the person shall be deemed to be in violation of this article. All business tax receipts may be transferred to a new owner with the approval of the Tax Collector and upon the presentation of a transfer application and a fee of ten percent (10%) of the annual business tax, but not less than three dollars (\$3.00) nor more than twenty-five dollars (\$25) provided there is a bona fide sale of the business. The new owner must present evidence of the sale and the original business tax receipt with the new application.

(b) Upon written request and presentation of the business tax receipt, the

business tax receipt may be transferred from one location to another location within Polk County with the approval of the Tax Collector and a fee of ten percent (10%) of the annual business tax, but not less than three dollars (\$3.00) nor more than twenty-five dollars (\$25). Such transferred business tax receipt shall be of the same force and effect and for the same period as the original business tax receipt.

(c) In lieu of applying for a new county local business tax receipt and upon written request and presentation of the business tax receipt, the business name of record may be changed with the approval of the Tax Collector and a fee of ten percent (10%) of the annual business tax, but not less than three dollars (\$3.00) nor more than twenty-five dollars (\$25). Such name change request shall reflect the owner's legal name and/or their legal fictitious name. When changing to a fictitious name the following is required to be submitted to the Tax Collector: A copy of the owner's current fictitious name registration, issued by the Division of Corporations of the Department of State or a written statement, signed by the business owner, which sets forth the reason that the applicant or new owner need not comply with the Fictitious Name Act.

Section 10. Transfer of Administrative Duties.

Pursuant to the authority of 205.045, Florida Statutes (2002), the Tax Collector may hereafter enter into an interlocal agreement with any municipality within Polk County for the purpose of having the municipality issue the County's business tax receipts, collect and remit the taxes thereon. Such interlocal agreement may allow for reasonable compensation to the municipality for its expenses in assuming such duties and responsibilities. No transfer of administrative duties shall occur prior to the time the prerequisite interlocal agreement becomes effective.

Section 11. Codification.

It is the intention of the Board of County Commissioners that the appropriate provisions of this Ordinance shall become and be made a part of the Polk County Code and that the word "ordinance" may be changed to "chapter", "section", "article", or other applicable word or phrase and the sections of this Ordinance may be renumbered or re-lettered to accomplish such intention.

Section 12. Severability.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, it is the intent of the Board of County Commissioners that the invalidity shall not affect other provisions or applications of this 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 13: Penalties and Enforcement for Non-Compliance

(a) Any person who engages in a business, profession or occupation for

which a business tax is established in this article, without having obtained such business tax receipt, shall be guilty of the violation of a county ordinance and such violation shall be punishable as provided herein.

(b) A penalty of 25 percent of the tax due, in addition to any costs incurred as a result of collection efforts.

(c) A continued violation of the provisions of this article or failure to secure a business tax receipt required by this Ordinance within 150 days after the initial notice of tax due shall be deemed a misdemeanor punishable by a fine of TWO HUNDRED-FIFTY AND NO/100 DOLLARS (\$250.00).

(d) In lieu of penalties set forth in Section 14(b), the provisions of this Ordinance and the rules and regulations adopted herein pertaining to the Local Business Tax may be enforced by the Polk County Code Enforcement Special Magistrate ("Special Magistrate") as enumerated herein:

- (1). The provisions of this Ordinance, and the rules and regulations adopted herein pertaining to the Local Business Tax, shall be investigated by the Polk County Tax Collector, and his/her duly authorized agent or agents ("Deputy Tax Collector") and are also designated code enforcement officers for purposes of Florida Statutes Section 162.21 and the Polk County Code Enforcement Special Magistrate Ordinance when enforcing provisions of this Ordinance.
- (2). If, upon personal investigation, a Deputy Tax Collector finds that a violation of this Ordinance has occurred, the Deputy Tax Collector shall notify the violator of the tax due and provide 150 days to correct the violation. Should the violation continue beyond the time specified for correction, the Deputy Tax Collector may notify the clerical staff of the code enforcement special magistrates and request a hearing. Written notice of such hearing shall be given in accordance to the requirements of the Polk County Code Enforcement Special Magistrate Ordinance.
- (3). Upon finding a violation of this Ordinance, the Special Magistrate is expressly given the ability to impose a fine up to the maximum civil penalty allowed under Florida Statute Chapter 205.

Section 14. Commission for Tax Collector.

The Tax Collector shall receive fifteen percent (15%) of the local business taxes collected pursuant to this ordinance as his commission for collecting these business taxes, the same being hereby established as the cost of collecting the local business taxes.

Section 15. Repeal of prior ordinances.

The provisions of Ordinances 08-022, 06-091, 04-32, and 04-05 are repealed in their entirety on the Effective Date of this Ordinance.

Section 16. Savings clause.

All local business taxes due and owing to the County pursuant to Ordinances 08-022, 06-091, 04-32, and 04-05, but not collected on the Effective Date of this Ordinance shall continue to be debts owed to the County and the County may collect said debts by the procedures set out in this Ordinance or by any other means authorized by law.

Section 17. Effective date.

This Ordinance shall take effect upon receipt of the official acknowledgment from the Office of the Secretary of State of Florida that this ordinance has been filed with said office and shall apply to all local business tax receipts applied for, issued, renewed transferred or otherwise modified on or after January 1, 2010.

Enacted this _____ day of _____, 2009.

STATE OF FLORIDA)

COUNTY OF POLK)

I Richard M. Weiss, Clerk of the Board of County Commissioners of Polk County, Florida hereby certify that the foregoing is a true and correct copy of Ordinance No. 09-070 adopted by the Board on December 1, 2009.

WITNESS my hand and official seal of said Board this 10th day of December, 2009.

**Richard M. Weiss
Clerk to the Board**

By *Kathryn Courtney*
Kathryn Courtney
Deputy Clerk





FLORIDA DEPARTMENT OF STATE

CHARLIE CRIST
Governor

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KURT S. BROWNING
Secretary of State

December 17, 2009

Ms. Kathryn Courtney
Clerk of the Board
Polk County
Post Office Box 988
Bartow, Florida 33831-0988

Dear Ms. Courtney:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated October 29, 2009 and certified copies of Polk County Ordinance Nos. 09-069 through 09-084, which were filed in this office on December 14, 2009.

Sincerely,

Liz Cloud
Program Administrator

LC/srd

RECEIVED
12-22-09
Clerk Of The Board

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