

TOWN OF JUPITER



DATE: May 5, 2009
TO: Honorable Mayor and Members of Town Council
THRU: Andrew D. Lukasik, Town Manager *Andrew D. Lukasik*
FROM: John Sickler, Director of Planning and Zoning *JS*
SUBJECT: Business Tax Receipt – Code text amendment to Section 18-26 entitled, “Business tax receipt required; prerequisites to issuance”, to require zoning approval prior to issuance. (PZ # 09-033)

EXECUTIVE SUMMARY:

The Town Magistrate in ruling on a recent notice of violation case noted that zoning approval of a business use was not listed in the Code as a prerequisite to the Town issuing a Business Tax Receipt. The text amendment will ensure that any intended business use conforms to the zoning regulations prior to the Town issuing a Business Tax Receipt. As part of the sign off process, the zoning division checks the following, as applicable:

1. If the zoning of the subject property allows the intended business.
2. If the certificate of occupancy has been issued.
3. If a site plan exists for the property, staff confirms that the use is consistent with the approval. If not, a change in use or site plan amendment request will be required.
4. If a site plan does not exist, staff confirms the use is consistent with the prior use occupying the space. If it is not consistent, a change in use or site plan amendment request will be required.
5. If a change in use or site plan amendment is required, that review will ensure there will be adequate parking for the use, any additional traffic impacts are authorized, and any additional impact fees are assessed as applicable.

RECOMMENDATION:

At the April 14, 2008 meeting, the Planning Commission voted 7-0 recommend approval with modifications.

Strategic Priority: Jupiter As A Livable Community

Attachments:

Staff Report | Ordinance No. 15-09

Funding Source:

<input type="checkbox"/> Approved in Budget	\$ _____	Sources: _____
<input type="checkbox"/> Additional Funding Required	\$ _____	Sources: _____

**TOWN OF JUPITER
TOWN MANAGER'S OFFICE**



DATE: May 5, 2009
TO: Honorable Mayor and Members of Town Council
THRU: Andrew D. Lukasik, Town Manager
FROM: John Sickler, Director of Planning and Zoning JS
SUBJECT: **BUSINESS TAX RECEIPT – CODE TEXT AMENDMENT TO SECTION 18-26 ENTITLED, “BUSINESS TAX RECEIPT REQUIRED; PREREQUISITES TO ISSUANCE”, TO REQUIRE ZONING APPROVAL PRIOR TO ISSUANCE.**

Ordinance No. 15-09
PZ# 09-033
DDB

Applicant:
Request:

Meeting dates: **PZ** **4/14/09**
 TC **5/19/09 – 1st Reading**
 TC **6/16/09 – 2nd Reading**

Town initiated
To amend Section 18-26 entitled, “Business tax receipt required; prerequisites to issuance” to require zoning approval prior to issuance.

Staff Update

The Town Attorney reviewed the proposed ordinance and provided the following modifications to the text amendment recommended by the Planning and Zoning Commission to further clarify that an application for a business tax receipt shall be reviewed for compliance with zoning regulations prior to issuance of a business tax receipt:

- (l) Any person applying for a local business tax receipt to maintain a permanent business location or branch office within the Town of Jupiter must shall demonstrate be subject to review to ensure that the property has met all applicable zoning regulations prior to issuance of a business tax receipt for that the intended use complies with the zoning regulations applicable to the site of the permanent business location or branch office.

Staff has incorporated the above noted modifications into the proposed ordinance.

Planning and Zoning Commission Action

At the April 14, 2009 meeting, the Planning and Zoning Commission voted 7-0 to recommend approval with the following modifications:

- (l) Any person applying for a local business tax receipt to ~~operate~~ maintain a permanent business location or branch office within the Town of Jupiter shall must demonstrate ~~that the zoning regulations are met for the intended use~~ prior to issuance of a business tax receipt that the intended use complies with the zoning regulations applicable to the site of the permanent business location or branch office.

The Planning and Zoning Commission felt the modified text was more consistent with the existing code text and clarified that the intended use must comply with the applicable zoning regulations prior to issuance of the business tax receipt. Staff agrees with the modifications.

Staff Recommendation.

The Department of Planning and Zoning recommends **approval** of the following as indicated in a ~~strike through~~ and underline format:

Sec. 18-26. Business tax receipt required; prerequisites to issuance.

(a) The definitions as set forth in F.S. 205.022, as amended from time to time, are incorporated herein by reference.

(b) A business tax shall be levied on:

- (1) Any person who maintains a permanent business location or branch office within the Town for the privilege of engaging in or managing any business within the jurisdiction of the Town;
- (2) Any person who maintains a permanent business location or branch office within the Town for the privilege of engaging in or managing any profession or occupation within its jurisdiction; and
- (3) Any person who does not qualify under the provisions of subsection (b)(1) or (2) of this section and who transacts any business or engages in any occupation or profession in interstate commerce, where such business tax is not prohibited by section 8 of article 1 of the United States Constitution.
- (4) The tax provided in the business tax schedule for architects, auditors or accountants, dentists, engineers, lawyers, physicians and surgeons, real estate salesmen, or other professions shall be construed to mean that each individual shall pay the tax, whether practicing individually or in partnership or association with other individuals.

[(c) Reserved.]

Business tax receipt

Page 3 of 4

- (d) As a prerequisite to receiving a local business tax receipt under section 18-31, the applicant or new owner must present to the Town either:
 - (1) A copy of the applicant's or new owner's current fictitious name registration, issued by the Division of Corporations of the Department of State; or
 - (2) A written statement, signed by the applicant or new owner, which sets forth the reason that the applicant or new owner need not comply with the Fictitious Name Act.
- (e) Any person applying for a local business tax receipt to practice any profession regulated by the Department of Business and Professional Regulation, or any board or commission thereof, must produce an active state certificate, registration, or license, or proof of copy of the same, before a business tax receipt may be issued.
- (f) Any person applying for a business tax receipt to operate a pharmacy must produce a current permit issued by the Board of Pharmacy; however, no such receipt is required to practice the profession of pharmacy.
- (g) Any person applying for a business tax receipt to operate an assisted living facility pursuant to Part III of Chapter 400, F.S., must produce a current license issued by the Agency for Health Care Administration to operate such facility at the specified location or locations.
- (h) Any person applying for a business tax receipt to operate a pest control business regulated under Chapter 482, F.S., must produce a current license issued by the Department of Agriculture and Consumer Services for each of its business locations in the Town.
- (i) Any person applying for a business tax receipt to operate a health studio pursuant to F.S. 501.012-501.019 or ballroom dance studio pursuant to F.S. 501.143, must produce a current license, registration, or letter of exemption from the Department of Agriculture and Consumer Services.
- (j) Any person applying for a business tax receipt to engage in business as a seller of travel pursuant to Part XI of Chapter 559, F.S., must produce a current registration or letter of exemption from the Department of Agriculture and Consumer Services.
- (k) Any person applying for a business tax receipt to operate a telemarketing business under F.S. 501.604 and 501.608, must produce a current license or registration from the Department of Agriculture and Consumer Services or a current affidavit of exemption.
- (l) Any person applying for a local business tax receipt to operate a permanent location or branch office within the Town of Jupiter shall demonstrate that the zoning regulations are met for the intended use prior to issuance of a business tax receipt.

Analysis.

Background/History. The Town Magistrate in ruling on a recent notice of violation case noted that zoning approval of the business use was not listed in the code as a prerequisite to the Town issuing a Business Tax Receipt. Town policy in issuing a Business Tax Receipt is to ensure that the proposed use conforms to the zoning regulations. In light of the ruling by the Magistrate, staff is recommending the proposed code text amendment. The amendment will ensure that any intended business use conforms to the zoning regulations prior to the Town issuing a Business Tax Receipt.

Conclusion

Staff recommends **approval** of the subject code text amendment based on the above justification.

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ORDINANCE NO. 15-09

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF JUPITER, FLORIDA, AMENDING CHAPTER 18 ARTICLE II, SECTION 18-26 OF THE TOWN CODE, ENTITLED, "BUSINESS TAX RECEIPT REQUIRED; PREREQUISITES TO ISSUANCE", ADDING A NEW SUBSECTION TO REQUIRE CONFIRMATION OF PROPER ZONING PRIOR TO THE ISSUANCE OF A BUSINESS TAX RECEIPT.

WHEREAS, the Town of Jupiter, Florida ("Town") is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town has adopted general provisions pertaining to business tax receipts for businesses and professions operating within the Town; and

WHEREAS, the Florida legislature has recognized that local governments have a bona fide interest in protecting their residents from consumer fraud; and

WHEREAS, past experience has demonstrated that a business may sometimes seek a business tax receipt from the town without having first secured all of the necessary zoning approvals to legally operate a business on their property; and

WHEREAS, the Town Council hereby determines that an amendment to Section 18-26 to add subsection (l) to require zoning approval prior to issuance of a business tax receipt is necessary and appropriate to ensure that any intended business use conforms to the zoning regulations in furtherance of the public's health, safety and general welfare; and

1 **WHEREAS**, Town staff and the Jupiter Planning and Zoning Commission have
2 reviewed the proposed Town Code amendments, and have made their respective
3 recommendations to the Town Council; and

4 **WHEREAS**, the Jupiter Town Council, after due notice and public hearings has
5 determined that the adoption of the proposed amendments would further the public's
6 health, safety and general welfare.

7 **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE**
8 **TOWN OF JUPITER, FLORIDA AS FOLLOWS:**

9 **Section 1.** The whereas clauses are incorporated herein as the legislative
10 findings of the Town Council.

11 **Section 2.** Chapter 18, Article II, Section 18-26 of the Town Code is hereby
12 amended to read:

13 **Sec. 18-26. Business tax receipt required; prerequisites to issuance.**

14 (a) The definitions as set forth in F.S. 205.022, as amended from time to time,
15 are incorporated herein by reference.
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17 (b) A business tax shall be levied on:
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19 (1) Any person who maintains a permanent business location or branch office
20 within the Town for the privilege of engaging in or managing any business
21 within the jurisdiction of the Town;
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23 (2) Any person who maintains a permanent business location or branch office
24 within the Town for the privilege of engaging in or managing any profession
25 or occupation within its jurisdiction; and
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27 (3) Any person who does not qualify under the provisions of subsection (b)(1)
28 or (2) of this section and who transacts any business or engages in any
29 occupation or profession in interstate commerce, where such business tax
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- 1 is not prohibited by section 8 of article 1 of the United States Constitution.
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3 (4) The tax provided in the business tax schedule for architects, auditors or
4 accountants, dentists, engineers, lawyers, physicians and surgeons, real
5 estate salesmen, or other professions shall be construed to mean that each
6 individual shall pay the tax, whether practicing individually or in partnership
7 or association with other individuals.
8
9 [(c) Reserved.]
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11 (d) As a prerequisite to receiving a local business tax receipt under section 18-
12 31, the applicant or new owner must present to the Town either:
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14 (1) A copy of the applicant's or new owner's current fictitious name registration,
15 issued by the Division of Corporations of the Department of State; or
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17 (2) A written statement, signed by the applicant or new owner, which sets forth
18 the reason that the applicant or new owner need not comply with the
19 Fictitious Name Act.
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21 (e) Any person applying for a local business tax receipt to practice any
22 profession regulated by the Department of Business and Professional
23 Regulation, or any board or commission thereof, must produce an active
24 state certificate, registration, or license, or proof of copy of the same, before
25 a business tax receipt may be issued.
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27 (f) Any person applying for a business tax receipt to operate a pharmacy must
28 produce a current permit issued by the Board of Pharmacy; however, no
29 such receipt is required to practice the profession of pharmacy.
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31 (g) Any person applying for a business tax receipt to operate an assisted living
32 facility pursuant to Part III of Chapter 400, F.S., must produce a current
33 license issued by the Agency for Health Care Administration to operate
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1 such facility at the specified location or locations.

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3 (h) Any person applying for a business tax receipt to operate a pest control
4 business regulated under Chapter 482, F.S., must produce a current
5 license issued by the Department of Agriculture and Consumer Services for
6 each of its business locations in the Town.
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11 (i) Any person applying for a business tax receipt to operate a health studio
12 pursuant to F.S. 501.012-501.019 or ballroom dance studio pursuant to
13 F.S. 501.143 must produce a current license, registration, or letter of
14 exemption from the Department of Agriculture and Consumer Services.
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19 (j) Any person applying for a business tax receipt to engage in business as a
20 seller of travel pursuant to Part XI of Chapter 559, F.S., must produce a
21 current registration or letter of exemption from the Department of
22 Agriculture and Consumer Services.
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27 (k) Any person applying for a business tax receipt to operate a telemarketing
28 business under F.S. 501.604 and 501.608, must produce a current license
29 or registration from the Department of Agriculture and Consumer Services
30 or a current affidavit of exemption.
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35 (l) Any person applying for a local business tax receipt to maintain a
36 permanent business location or branch office within the Town of Jupiter
37 shall be subject to review to ensure that the property has met all applicable
38 zoning regulations prior to the issuance of a business tax receipt for the
39 intended use.
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45 **Section 3. Severability.** If any section, subsection, sentence, clause, phrase or
46 portion of this Ordinance is for any reason held invalid or unconstitutional by any court of
47 competent jurisdiction, such portion shall be deemed a separate, distinct and

1 independent provision and such holding shall not affect the validity of the remaining
2 portions thereof.

3 **Section 4. Repeal of laws in conflict.** All Ordinances or parts of Ordinances in
4 conflict herewith are hereby repealed to the extent of such conflict.

5 **Section 5. Codification.** The Sections of the Ordinance may be renumbered or
6 re-lettered to accomplish such, and the word "Ordinance" may be changed to "Section",
7 "Article", or any other appropriate word.

8 **Section 6. Effective Date.** This Ordinance shall take effect immediately upon
9 adoption.

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