

**SPECIAL AD HOC COMMITTEE ON
Neighborhood Improvement and Community Enhancement**

AGENDA

Monday, October 5, 2015
4:00 p.m.
Council Chambers, 1st Floor, City Hall

Tape No. _____
Dana Farris, Chief of Legislative Services

Garrett Dennis, Chair
Bill Gulliford, Vice Chair
John Crescimbeni
Al Ferraro
Tommy Hazouri
Joyce Morgan

Legislative Assistant: Crystal Shemwell
Research: Yvonne Mitchell
Attorney: Paige Johnston
Auditor: Robert Campbell
Administration: Latanya Peterson
Administration: Denise Lee

Meeting Convened:

Meeting Adjourned:

1. Introduction of Committee Members
2. Presentation from Director of Blight

Certificate of Understanding
Public Awareness Campaign
3. Public Comments

Other items may be added or deferred at the discretion of the Chair.

Note: The next regular meeting will be held on October 19, 2015 @ 4pm, in Council Chambers

Certificate of Use - Summary

Ordinance 2005-1355 was enacted in March of 2006.

This legislation removed the requirement of an applicant for a county occupational license to obtain zoning approval. (Section 772.106).

Historically the practice of the City of Jacksonville was to require verification of zoning compliance prior to issuing of an occupational license. The Attorney General for the State of Florida opined that a local municipality can only limit or restrict the levying of an occupational license tax upon specific enumerated conditions. However contingency upon Zoning Code compliance was not one of the specific conditions within the Florida Statutes.

In response to the Attorney General opinion the City established the Certificate of Use requirement for any new business locating in the City of Jacksonville.

The legislation incorporated Certificates of Use into the responsibility of the Planning and Development Department creating "Subpart E".

The legislation outlined review requirements, established fees and procedures to obtain a Certificate of Use.

Certificate of Use means an official document issued by the City which verifies that a use of a structure, other than a single family residence or duplex, may be used or an existing use enlarged, or any new use made of land, body of water, or structure, complies with the Florida Building Code, the Zoning Code and F.S. Ch. 633 and the City Fire Prevention Code, Chapter 420, Ordinance Code.

Certificate of Use Review

The Building Inspection Division shall review each certificate of use application for any new uses, changes in use, expansion of square footage or inclusion of new uses, for compliance with the Florida Building Code, and Part 12 and Part 13 of Chapter 656, Ordinance Code.

The Fire Prevention Division shall review each certificate of use application for any new uses, changes in use, expansion of square footage or inclusion of new uses, for compliance with Chapter 633 of the Florida Statutes and Section 420, Ordinance Code.

The Planning and Development Department shall review each certificate of use application for any new uses, changes in use, expansion of square footage or inclusion of new uses, for compliance with Chapter 656, Ordinance Code.

Posting of certificate of use.

Any person conducting a business for which a certificate of use is required by this Chapter shall post the certificate of use in a conspicuous place in or about the place of business where it may be seen upon inspection by any official of the City. Failure to do so shall constitute a violation of Chapter 609, Ordinance Code. If a certificate of use is lost or stolen, a duplicate certificate of use may be issued by the Zoning Administrator, provided that a duplication fee shall be charged for each duplicate certificate of use.

The COU legislation furthered the following policies of the Comprehensive Plan

Ensure ability to monitor implementation of the FLUE

FLUE Policy 1.1.4 – Ensure ability to monitor implementation of the FLUE

The Land Development Regulations shall include locational criteria and standards for all zoning or subdivision site plan requests for densities or intensities of use for each future land use category including appropriate criteria related to development areas, street classification, availability of public facilities and services, land use compatibility, development and redevelopment potential, site design factors, ownership patterns, environmental impacts, relevant adopted plans and studies, and principal and secondary uses as described in the Plan Category Descriptions of the Operative Provisions. In order to ensure the development of a variety of neighborhoods and living environments, the Land Development Regulations shall include several zoning districts with different minimum lot size and density of development requirements in each residential land use category.

Promote gradual transition of densities and intensities

FLUE Policy 1.1.7

The Planning and Development Department shall monitor the implementation of the Future Land Use Element by ensuring that the allocation of the various residential zoning districts permissible within each functional land use classification does not exceed the projected holding capacity reflected in Background Report of this Element. The results of this analysis shall ensure that the allocation of residential zoning districts in the Land Development Regulations will be consistent with the range in density and holding capacity established in the above policy. Final Development Orders will not be issued where holding capacity is exceeded.

Promote the elimination of incompatible land uses and blighting influences

FLUE Policy 3.1.2

The City shall eliminate incompatible land uses or blighting influences from potentially stable, viable residential neighborhoods through active code enforcement and other regulatory measures.

Protect residential uses from non-residential use impacts

FLUE Policy 3.2.4

The City shall permit expansion of commercial uses adjacent to residential areas only if such expansion maintains the existing residential character, does not encourage through traffic into adjacent residential neighborhoods, and meets design criteria set forth in the Land Development Regulations.

Ordinance 2014-724

The legislation amended Chapter 656, Part1 - Subpart E Certificates of Use of the Zoning Code.

The legislation includes provisions, procedures, enforcement and penalties regarding the revocation and suspension of a Certificates of Use.

The bill amends Chapter 770 and 772 replacing the term "Occupational License Tax" with "County Business Tax" and "Municipal Business Tax." It also clarifies that the issuance of a business tax receipt does not constitute approval of any particular business activity or waive any other city or county ordinances or state or federal regulations.

Existing enforcement and compliance measures have not been sufficient to bring non-compliant businesses into compliance with the applicable codes. The new requirements will reduce the number of businesses that are operating illegally and protect the public health, safety, and welfare.

The Ad Hoc Committee on Neighborhood Blight unanimously passed (5-0) the Certificate of Use legislation draft for introduction at the regular Stand Up for Your Neighborhoods meetings on October 29, 2014. The purpose of the legislation is to provide consistency in the process and requires applicant to be in compliance with all inspections prior to receiving a COU. Additionally, these amendments provide for inclusion of revocation, increased enforcement, and consistency in verbiage throughout the Code regarding Business Tax Receipt.

CITY COUNCIL RESEARCH DIVISION
LEGISLATIVE SUMMARY

JEFFREY R. CLEMENTS
Chief of Research
(904) 630-1377



117 West Duval Street
City Hall, Suite 425
Jacksonville, FL 32202
FAX (904) 630-3403

Bill Type and Number: Ordinance 2005-1355

Sponsor: Council President at the request of the Mayor

Date of Introduction: November 8, 2005

Committee(s) of Reference: F, R, GOOHS

Date of Analysis: December 19, 2005

Type of Action: Amending Chapter 770 and 772 - occupational licenses taxes

Bill Summary: The bill amends Section 770.107 to remove the requirement of a applicant of an county occupational license to obtain zoning certification from the Planning Department and amends Section 772.106 to also remove the requirement of a applicant of an municipal occupational license to obtain zoning certification from the Planning Department.

Background Information: An opinion of the Attorney General opined that the Tax Collector should not perform regulatory functions for taxes that the office collects. Section 770.107 and 772.106 are regulatory in nature. Removing this requirement, however, places the City in a position wherein a new business looking to locate at a specific address may be granted an occupational license when zoning does not allow for that type of business activity at that location.

Policy Impact Area: Occupational licensing

Fiscal Impact: Undetermined

Analyst: Weiss

1 Introduced by the Council President at the request of the Mayor and
2 substituted on the Floor of the Council:
3
4

5 **ORDINANCE 2005-1355-E**

6 AN ORDINANCE AMENDING CHAPTER 320 (GENERAL
7 PROVISIONS), *ORDINANCE CODE*; AMENDING SECTION
8 320.402 (APPLICATION FOR PERMIT), *ORDINANCE*
9 *CODE*; AMENDING CHAPTER 656 (ZONING CODE),
10 *ORDINANCE CODE*; AMENDING SECTION 656.109,
11 *ORDINANCE CODE* AND AMENDING PART I (GENERAL
12 PROVISIONS) TO ESTABLISH SUBPART E
13 (CERTIFICATES OF USE), *ORDINANCE CODE*, TO
14 CREATE A CERTIFICATE OF USE APPLICATION
15 PROCESS; AMENDING SECTION 656.1601
16 (DEFINITIONS), *ORDINANCE CODE*, AMENDING
17 SECTION 770.107 OF CHAPTER 770 (COUNTY
18 OCCUPATIONAL LICENSE TAX) AND SECTION 772.106
19 OF CHAPTER 772 (MUNICIPAL OCCUPATIONAL LICENSE
20 TAX), *ORDINANCE CODE*, TO CLARIFY THE
21 MINISTERIAL DUTIES OF THE TAX COLLECTOR IN
22 CONNECTION WITH COLLECTING OCCUPATIONAL
23 LICENSE TAXES; PROVIDING FOR SEVERABILITY;
24 PROVIDING AN EFFECTIVE DATE.

25 **WHEREAS**, the City of Jacksonville has determined that it is in
26 the best interests of the citizens of the City of Jacksonville to
27 clarify the ministerial duties of the Tax Collector in collecting
28 occupational license taxes;

29 **WHEREAS**, the City of Jacksonville finds that in order to avoid
30 unnecessary confusion for new businesses, while not increasing City

resources expended for code compliance and enforcement matters, the City shall require each new business or each business expanding its operations, to obtain a certificate of use in order to determine compliance with the zoning code, building code and fire code, prior to commencement or expansion of its business; now therefore

BE IT ORDAINED by the Council of the City of Jacksonville:

Section 1. Amendment to Section 320.402, Ordinance Code.

Section 320.402, *Ordinance Code*, is amended as follows:

Chapter 320 GENERAL PROVISIONS

* * *

PART 4. PERMITS

* * *

Sec. 320.402. Application for permit.

* * *

(c) An application for a permit may be accepted from a contractor, however, no permit shall be issued for a use which requires a certificate of use, without first obtaining a valid certificate of use for the proposed use.

(ed) In addition to the foregoing procedures, the following procedures shall further govern applications for sign permits required under Chapters 320 and 326:

* * *

Section 2. Amendment to Section 656.109, Ordinance Code.

Section 656.109, *Ordinance Code*, is hereby amended as follows:

Chapter 656 ZONING CODE

PART I. GENERAL PROVISIONS

* * *

Subpart B. Administration

Sec. 656.109. Administration and enforcement; interpretation of Zoning Code; administrative deviations.

1 (a) It shall be the responsibility of the Department to
2 administer, enforce and interpret the Zoning Code, including
3 ordinances related to Planned Unit Development districts. The
4 Director shall have the duty and authority to interpret and enforce
5 the provisions of the Zoning Code, issue certificates of use, and
6 to promulgate the rules, regulations and procedures found necessary
7 for the implementation and enforcement of the Zoning Code. A
8 Written Interpretation may be requested by any resident, landowner
9 or any person having a contractual interest in land in the City,
10 and who is, or stands to be, an adversely affected person as a
11 result of the implementation of any provision of the Zoning Code.
12 Before a Written Interpretation is made by the Director, a Request
13 for Written Interpretation shall be submitted to the Director on
14 the form established by the Director, together with the required
15 fee, as specified in Section 656.147. Within five working days
16 after a Request for Written Interpretation has been received, the
17 Director shall determine whether the request is complete. If the
18 Director determines that the request is not complete, a written
19 notice shall be sent to the applicant specifying the deficiencies.
20 The Director shall take no further action on the Request for
21 Written Interpretation until the deficiencies are remedied. Within
22 30 days after a Request for Written Interpretation has been
23 determined to be complete, the Director shall review and evaluate
24 the request in light of the Comprehensive Plan, the Zoning Code,
25 the Zoning Atlas, and other statutes, codes, ordinances and
26 regulations, to the extent applicable, consult with the Office of
27 General Counsel, or other affected City staff, and then render an
28 interpretation. The interpretation shall be in writing, approved as
29 to form by the Office of General Counsel and mailed to the
30 applicant by certified mail, return receipt requested.

* * *

(c) Applications for rezonings and administrative deviations shall be made to the Department as provided herein. Applications for zoning exceptions, variances and waivers shall be made as provided in Subpart D. Applications for certificates of use shall be made as provided in Subpart E.

* * *

Section 3. Creation of new Subpart E (Certificates of Use) in Chapter 656 Ordinance Code. Chapter 656 (Zoning Code), Part 1 (General Provision), Ordinance Code is amended to create a new Subpart E (Certificates of Use), Sections 656.151, 656.152, 656.153 and 656.154 to read as follows:

Chapter 656 ZONING CODE

Part 1. General Provisions

* * *

Subpart E. Certificates of Use

Sec. 656.151. Certificates of Use

(a) No structure, other than a single family residence or duplex, shall be used or any existing use enlarged, or any new use made of any land, body of water, or structure, without first obtaining a certificate of use from the Department. Said certificate of use shall be required for each individual business and each multi-family building located within the City.

Notwithstanding any ordinance to the contrary, and notwithstanding any prior legal status of any multi-family residence and business, any new multi-family residence or business or any changes in; use, name, ownership, expansion of square footage occupied, or the inclusion of additional uses after May 29, 2006, will require a certificate of use.

(b) The Department shall have the right to periodically inspect premises at any reasonable time to ensure the existence of a current and valid certificate of use, and to ensure compliance with the terms and conditions under which a certificate of use was issued.

(c) A certificate of use shall cover all uses contained within a structure or permitted on the land. All uses within the structure or on the land that are consistent with those permitted in the certificate of use shall not require separate certificates of use. A new certificate of use will be required for all uses inconsistent with the uses permitted under a certificate of use.

(d) No certificate of use shall be utilized in a manner contrary to the regulations contained within the Ordinance Code.

Sec. 656.152. Certificate of Use Application and Fee

(a) An application for a certificate of use shall be filed with the Department. The Director is authorized and directed to establish a certificate of use application form, which shall contain the following information:

- (1) Applicant's name, address, phone number and email address;
- (2) Applicant's business name, address, phone number and email address;
- (3) The previous use of the structure;
- (4) The proposed use of the structure;
- (5) Seating capacity of the structure; and
- (6) Square footage of the use or structure
- (7) Any additional information deemed necessary by the Director.

(b) Except for those certificates of use issued solely for a

1 change in name and/or ownership, the fee for a certificate of use
2 is \$100. An applicant for a certificate of use shall pay the fee
3 to the Department upon receipt of the certificate of use. The fee
4 for certificates of use issued for a change in name and/or
5 ownership shall be \$25.

6 **Sec. 656.153. Certificate of Use Review**

7 The Building Inspection Division shall review each certificate
8 of use application for any new uses, changes in use, expansion of
9 square footage or inclusion of new uses, for compliance with the
10 Florida Building Code, and Part 12 and Part 13 of Chapter 656,
11 Ordinance Code. The Fire Prevention Division shall review each
12 certificate of use application for any new uses, changes in use,
13 expansion of square footage or inclusion of new uses, for
14 compliance with Chapter 633 of the Florida Statutes and Section
15 420, Ordinance Code. The Planning and Development Department shall
16 review each certificate of use application for any new uses,
17 changes in use, expansion of square footage or inclusion of new
18 uses, for compliance with Chapter 656, Ordinance Code. The Zoning
19 Administrator shall issue a certificate of use for any new uses,
20 changes in use, expansion of square footage or inclusion of new
21 uses, upon a positive recommendation from each department, however
22 in the event there is a question as to the legality of a use, the
23 Zoning Administrator may require inspections, affidavits and such
24 other information the Zoning Administrator may deem appropriate or
25 necessary to establish the legality of the use, before a
26 certificate of use will be issued.

27 **Sec. 656.154. Annual Renewal of Certificate of Use.**

28 Except for certificates of use required to be renewed annually
29 by the Ordinance Code, or by any zoning exception, variance,
30 waiver, or administrative deviation, certificates of use shall

1 remain valid for an unlimited time unless revoked for cause. The
2 certificate of use is only valid for the specific address, business
3 name, corporate name and type of business for which it was issued.
4 A new certificate of use shall be required for any changes in; use,
5 name, ownership, expansion of square footage occupied, or the
6 inclusion of additional uses.

7 **Sec. 656.155. Exemptions.**

8 In addition to those uses identified in Section 656.151, the
9 following uses do not require certificates of use:

10 (a) Auctioneer as defined by Section 250.101, *Ordinance Code*;

11 (b) Downtown Sidewalk vendor as defined by Section 250.101,
12 *Ordinance Code*;

13 (c) Home occupation;

14 (d) Peddler as defined by Section 250.101, *Ordinance Code*;

15 (e) Sidewalk vendor as defined by Section 250.101, *Ordinance*
16 *Code*;

17 (f) Street vendor as defined by Section 250.101, *Ordinance*
18 *Code*; and

19 (g) Transient merchant as defined by Section 250.101,
20 *Ordinance Code*.

21 **Sec. 656.156. Appellate Procedure.**

22 In the event the Zoning Administrator determines to deny any
23 application for a certificate of use, the Zoning Administrator
24 shall provide the applicant written notice of said denial along
25 with the reasons for said denial and any written documents
26 pertaining to the denial. Said notice of denial shall afford the
27 applicant an opportunity to appear before the Certificate of Use
28 Board by written appeal filed within 30 days of the denial so as to
29 allow the applicant to present additional information or otherwise
30 explain factors the applicant deems relevant. At said appeal the

1 Certificate of use board shall notify the applicant of the
2 Certificate of Use Board's final decision and shall confirm said
3 decision in writing within 30 days of the appeal. Said final
4 decision shall be the final action of the City and an applicant
5 shall thereafter have any remedies available at law.

6 * * *

7 **Section 4. Amendment to Section 656.1601, Ordinance Code.**

8 Section 656.1601, *Ordinance Code*, is hereby amended as follows:

9 **Chapter 656 ZONING CODE**

10 * * *

11 **Part 16. Definitions**

12 **Sec. 656.1601. Definitions.**

13 * * *

14 *Caliper* means the trunk diameter of existing or planted
15 trees. Caliper shall be measured six inches above the ground for
16 trees up to and including four inches in caliper, and measured 12
17 inches above the ground for trees exceeding four inches in caliper.
18 If the tree has a very enlarged irregular base, then the caliper
19 measurement shall be taken up where the trunk has a more regular
20 circumference, but in no case higher than four and one-half feet
21 above the ground. If the tree forks between ground level and two
22 feet above ground level, then the tree shall be considered a multi-
23 trunked tree. Caliper for multi-trunked trees shall be determined
24 by measuring each trunk immediately above the fork and adding the
25 total caliper of all trunks.

26 Certificate of Use means an official document issued by the
27 City which verifies that a use of a structure, other than a single
28 family residence or duplex, may be used or an existing use
29 enlarged, or any new use made of land, body of water, or structure,
30 complies with the Florida Building Code, the Zoning Code and

1 Florida Statutes Chapter 633 and the City Fire Prevention Code,
2 Section 420, Ordinance Code.

3 Certificate of Use Board means a committee consisting of the
4 Director and the Chief of Building Inspection and the Chief of the
5 Fire Prevention Division that shall review all appeals of denials
6 of certificates of use.

7 Change of occupancy means a discontinuance of an existing use
8 and the substitution therefor of a use of a different kind or
9 class. Change of occupancy is not intended to include a change of
10 tenants or proprietors unless accompanied by a change in the type
11 of use.

12 * * *

13 **Section 5. Amendment to Section 770.107, Ordinance Code.**
14 Section 770.107, Ordinance Code, is hereby amended as follows:

15 **CHAPTER 770. COUNTY OCCUPATIONAL LICENSE TAX**

16 **PART 1. GENERAL TAXING AND ADMINISTRATIVE PROVISIONS**

17 * * *

18 **Sec. 770.107. Issuance of license; application.**

19 No license shall be issued except upon written application of
20 the person applying for the same. ~~The applicant shall obtain a~~
21 ~~certification from the Planning and Development Department~~
22 ~~certifying that the location where the business, profession or~~
23 ~~occupation is to be conducted is properly zoned therefor in~~
24 ~~accordance with the Zoning Code, provided, that this certification~~
25 ~~shall not be necessary if the applicant, in his sworn statement,~~
26 ~~states that he will do business in a location that already has a~~
27 ~~license issued in the same classification under the provisions of~~
28 ~~this sentence, giving the name of the license holder and the~~
29 ~~address of the location. No license shall be issued without the~~
30 ~~certification of the Planning and Development Department as to~~

1 ~~zoning compliance, except as provided in the preceding sentence. An~~
2 ~~applicant seeking a license to engage in business as a peddler or~~
3 ~~transient merchant, as defined in Section 250.101, or in the~~
4 ~~business of selling through concession on a temporary or occasional~~
5 ~~basis in the City, or out of town insurance companies selling~~
6 ~~through a local agency which is properly zoned shall not be~~
7 ~~required to comply with these requirements as to zoning nor shall~~
8 ~~it be necessary for the license application to be certified by the~~
9 ~~Planning and Development Department. The Tax Collector, before~~
10 ~~issuing a license based wholly or in part upon capacity, number of~~
11 ~~persons employed, zoning or any other contingency, shall require~~
12 ~~the person applying for the license to file, under oath, a~~
13 ~~statement giving full and complete information relative to the~~
14 ~~capacity, number of persons employed, zoning or other contingency,~~
15 ~~as the case may be. The applications and statements required by~~
16 ~~this Section shall be retained for three years as a part of the~~
17 ~~records of the Tax Collector's Office. The Tax Collector shall~~
18 ~~furnish or approve the application forms required by this section.~~
19 ~~With respect to zoning certification, this Section shall apply only~~
20 ~~to an initial application for license and not to a subsequent year~~
21 ~~to year reissuance in the same classification at the same location~~
22 ~~thereof as may be provided for by law. The provisions of this~~
23 ~~section with respect to zoning certification shall not apply to~~
24 ~~Urban Services Districts Two through Five.~~

25 * * *

26 **Section 6. Amendment to Section 772.106, Ordinance Code.**

27 Section 772.106, Ordinance Code, is hereby amended as follows:

28 **CHAPTER 772. MUNICIPAL OCCUPATIONAL LICENSE TAX**

29 **PART 1. GENERAL TAXING AND ADMINISTRATIVE PROVISIONS**

30 * * *

1 **Sec. 772.106. Issuance of license; application.**

2 No license shall be issued except upon written application of
3 the person applying for the same. ~~The applicant shall obtain a~~
4 ~~certification from the Planning and Development Department~~
5 ~~certifying that the location where the business, profession or~~
6 ~~occupation is to be conducted is properly zoned therefor in~~
7 ~~accordance with the Zoning Code; provided, that this certification~~
8 ~~shall not be necessary if the applicant, in his sworn statement,~~
9 ~~states that he will do business in a location that already has a~~
10 ~~license issued in the same classification under the provisions of~~
11 ~~this sentence, giving the name of the license holder and the~~
12 ~~address of the location. No license shall be issued without the~~
13 ~~certification of the Planning and Development Department as to~~
14 ~~zoning compliance, except as provided in the preceding sentence. An~~
15 ~~applicant seeking a license to engage in business as a peddler or~~
16 ~~transient merchant, as defined in Section 250.101, or in the~~
17 ~~business of selling through concession on a temporary or occasional~~
18 ~~basis in the City, or out of town insurance companies selling~~
19 ~~through a local agency which is properly zoned shall not be~~
20 ~~required to comply with these requirements as to zoning nor shall~~
21 ~~it be necessary for the license application to be certified by the~~
22 ~~Planning and Development Department. The Tax Collector, before~~
23 ~~issuing a license based wholly or in part upon capacity, number of~~
24 ~~persons employed, zoning or any other contingency, shall require~~
25 ~~the person applying for the license to file, under oath, a~~
26 ~~statement giving full and complete information relative to the~~
27 ~~capacity, number of persons employed, zoning or other contingency,~~
28 ~~as the case may be. The applications and statements required by~~
29 ~~this Section shall be retained for three years as a part of the~~
30 ~~records of the Tax Collector's Office. With respect to zoning~~

1 ~~certification, this Section shall apply only to an initial~~
2 ~~application for license and not to a subsequent year-to-year~~
3 ~~reissuance in the same classification at the same location thereof~~
4 ~~as may be provided for by law.~~

5 * * *

6 **Section 7. Construction; Severability.** This ordinance
7 shall be construed and interpreted as nearly as practicable so as
8 to uphold the validity of the provisions hereof. Nevertheless, the
9 provisions of this ordinance are severable, and if any provision is
10 determined to be invalid, unlawful or contrary to public policy,
11 such provision shall be disregarded and the same shall have no
12 effect upon any other provisions hereof, which other provisions
13 shall continue in full force and effect.

14 **Section 8. Authorization.** The Tax Collector is hereby
15 authorized to take all actions in order to effectuate the purpose
16 of this ordinance.

17 **Section 9. Effective Date.** This ordinance shall become
18 effective upon signature by the Mayor or upon becoming effective
19 without the Mayor's signature.

20 Form Approved:

21 /s/ Dylan T. Reingold

22 Office of General Counsel

23 Legislation prepared by: Dylan T. Reingold

24 G:\shared\LEGIS.CC\2006\sub\2005-1355 Floor Sub (3-28-06).DOC

CITY COUNCIL RESEARCH DIVISION LEGISLATIVE SUMMARY



JEFFREY R. CLEMENTS
Chief of Research
(904) 630-1377

117 West Duval Street
City Hall, Suite 425
Jacksonville, FL 32202
FAX (904) 630-3403

Bill Type and Number: Ordinance 2014-724

Introducer/Sponsor(s): Council Members Lee, Jones, Love, Gulliford, Crescimbeni, Bishop and Anderson:

Date of Introduction: November 12, 2014

Committee(s) of Reference: R, F

Date of Analysis: November 12, 2014

Type of Action: Amending Ordinance Code

Bill Summary: This ordinance amends

1. Chapter 656 (Zoning Code), Ordinance Code 656.109(Administration and Enforcement; Interpretation of Zoning Code) , 656.110 (Enforcement), 656.151 , 656.153, Subpart E of 656.156 (Certificate of Use) and creates new sections 656.157 through 656.163 to amend various provisions and creates new provisions concerning the certificate of use application process, revocation and suspension of existing certificates of use, and enforcement of same;
2. Section 656.1601 (Definitions), *Ordinance Code*, amending the Title of Chapter 770 (County Occupational License Tax) and creating new section 770.126 (Application of Other Laws), *Ordinance Code*, and amending the Title of Chapter 772 (Municipal Occupational License Tax) and creating new section 772.127 (Application of Other Laws), *Ordinance Code*, to clarify that issuance of an occupational license tax receipt does not waive compliance with other applicable city, county or state regulations; and
3. Provides for severability.

Background Information: The Ad Hoc Committee on Neighborhood Blight unanimously passed (5-0) the Certificate of Use legislation draft for introduction at the regular Stand Up for Your Neighborhoods meetings on October 29, 2014. The purpose of the legislation is to provide consistency in the process and requires applicant to be in compliance with all inspections prior to receiving a COU. Additionally, these amendments provide for inclusion of revocation, increased enforcement, and consistency in verbiage throughout the Code regarding Business Tax Receipt.

Policy Impact Area: Ordinance Code, Tax Collector's Office, Planning & Development Department; Regulatory Compliance, Public Works

Fiscal Impact: Undetermined

Analyst: Mitchell

1 Introduced by Council Members Lee, Jones, Love, Gulliford,
2 Crescimbeni, Bishop, Anderson & Boyer:

3
4 **ORDINANCE 2014-724-E**

5 AN ORDINANCE AMENDING CHAPTER 656 (ZONING
6 CODE), *ORDINANCE CODE*; AMENDING SECTION
7 656.109 (ADMINISTRATION AND ENFORCEMENT;
8 INTERPRETATION OF ZONING CODE), *ORDINANCE*
9 *CODE*, AMENDING SECTION 656.110 (ENFORCEMENT),
10 *ORDINANCE CODE*, AMENDING SECTIONS 656.151,
11 656.153, AND 656.156 OF SUBPART E
12 (CERTIFICATES OF USE), *ORDINANCE CODE*, AND
13 CREATING NEW SECTIONS 656.157 THROUGH 656.163
14 TO AMEND VARIOUS PROVISIONS AND CREATE NEW
15 PROVISIONS CONCERNING THE CERTIFICATE OF USE
16 APPLICATION PROCESS, REVOCATION AND SUSPENSION
17 OF EXISTING CERTIFICATES OF USE, AND
18 ENFORCEMENT OF SAME; AMENDING SECTION 656.1601
19 (DEFINITIONS), *ORDINANCE CODE*, AMENDING THE
20 TITLE OF CHAPTER 770 (COUNTY OCCUPATIONAL
21 LICENSE TAX) AND CREATING NEW SECTION 770.126
22 (APPLICATION OF OTHER LAWS), *ORDINANCE CODE*,
23 AND AMENDING THE TITLE OF CHAPTER 772
24 (MUNICIPAL OCCUPATIONAL LICENSE TAX) AND
25 CREATING NEW SECTION 772.127 (APPLICATION OF
26 OTHER LAWS), *ORDINANCE CODE*, TO CLARIFY THAT
27 ISSUANCE OF AN OCCUPATIONAL LICENSE TAX
28 RECEIPT DOES NOT WAIVE COMPLIANCE WITH OTHER
29 APPLICABLE CITY, COUNTY OR STATE REGULATIONS;
30 PROVIDING FOR SEVERABILITY; PROVIDING AN
31 EFFECTIVE DATE.

1 BE IT ORDAINED by the Council of the City of Jacksonville:

2 Section 1. Amending Sections 656.109 (Administration and
3 enforcement; interpretation of Zoning Code; administrative
4 deviations) and 656.110 (Enforcement), Ordinance Code. Sections
5 656.109 and 656.110, Ordinance Code, are hereby amended to read as
6 follows:

7 CHAPTER 656. ZONING CODE

8 PART I. GENERAL PROVISIONS

9 * * *

10 SUBPART B. ADMINISTRATION

11 Sec. 656.109. Administration and enforcement; interpretation
12 of Zoning Code; administrative deviations.

13 (a) It shall be the responsibility of the Department to
14 administer, enforce and interpret the Zoning Code, including
15 ordinances related to Planned Unit Development districts. The
16 Director shall have the duty and authority to interpret and enforce
17 the provisions of the Zoning Code, issue, suspend or revoke
18 certificates of use, and to promulgate the rules, regulations and
19 procedures found necessary for the implementation and enforcement
20 of the Zoning Code. A Written Interpretation may be requested by
21 any resident, landowner or any person having a contractual interest
22 in land in the City, and who is, or stands to be, an adversely
23 affected person as a result of the implementation of any provision
24 of the Zoning Code. Before a Written Interpretation is made by the
25 Director, a Request for Written Interpretation shall be submitted
26 to the Director on the form established by the Director, together
27 with the required fee, as specified in Section 656.147. Within five
28 working days after a Request for Written Interpretation has been
29 received, the Director shall determine whether the request is
30 complete. If the Director determines that the request is not
31 complete, a written notice shall be sent to the applicant

1 specifying the deficiencies. The Director shall take no further
2 action on the Request for Written Interpretation until the
3 deficiencies are remedied. Within 30 days after a Request for
4 Written Interpretation has been determined to be complete, the
5 Director shall review and evaluate the request in light of the
6 Comprehensive Plan, the Zoning Code, the Zoning Atlas, and other
7 statutes, codes, ordinances and regulations, to the extent
8 applicable, consult with the Office of General Counsel, or other
9 affected City staff, and then render an interpretation. The
10 interpretation shall be in writing, approved as to form by the
11 Office of General Counsel and mailed to the applicant by certified
12 mail, return receipt requested.

13 * * *

14 **Sec. 656.110. Enforcement.**

15 The provisions of this Zoning Code shall be enforced as
16 follows:

- 17 (a) By the Director, through the Chief of Current Planning
18 Division, or his designee, or by the Chief of the Municipal
19 Code Compliance Division; provided however, that Parts 12,
20 and 13, and Subpart E of this Chapter shall be enforced
21 through the Chief of the Building Inspection Division, or
22 his designee.

23 * * *

24 **Section 2. Amending Subpart E (Certificates of Use),**
25 **Chapter 656, Ordinance Code.** Chapter 656 (Zoning Code), Part 1
26 (General Provision), Subpart E (Certificate of Use), *Ordinance*
27 *Code*, is amended to modify existing Sections 656.151, 656.153,
28 656.156 and create new Sections 656.157, 656.158, 656.159, 656.160,
29 656.161, 656.162 and 656.163 to read as follows:

30 **CHAPTER 656. ZONING CODE**

31 **PART 1. GENERAL PROVISIONS**

SUBPART E. CERTIFICATES OF USE

Sec. 656.151. Certificates of Use

* * *

(b) The City shall have the right to periodically inspect premises at any reasonable time to ensure the existence of a current and valid certificate of use, and to ensure compliance with the terms and conditions applicable zoning regulations, Florida Building Code, Florida Fire Prevention Code, solid waste regulations, and all applicable local and state regulations and other terms under which a certificate of use was issued.

* * *

(e) It shall be the duty of all officers and inspectors of the Building Inspection Division, the Municipal Code Compliance Division, Fire Prevention Division, Planning and Development Department, Solid Waste Division, and law enforcement officers, to report to the Director any apparent violation of this Subpart.

* * *

Sec. 656.153. Certificate of use review

The Building Inspection Division shall review each certificate of use application for any new uses, changes in use, expansion of square footage or inclusion of new uses, for compliance with the Florida Building Code, and Part 12 and Part 13 of Chapter 656, Ordinance Code. The Fire Prevention Division shall review each certificate of use application for any new uses, changes in use, expansion of square footage or inclusion of new uses, for compliance with Chapter 633 of the Florida Statutes and Section 420, Ordinance Code. The Planning and Development Department shall review each certificate of use application for any new uses, changes in use, expansion of square footage or inclusion of new uses, for compliance with Chapter 656, Ordinance Code. The

1 Zoning Administrator shall issue a certificate of use for any new
2 uses, changes in use, expansion of square footage or inclusion of
3 new uses, upon a positive recommendation from each department,
4 however in the event there is a question as to the legality of a
5 use, the Zoning Administrator may require inspections, affidavits
6 and such other information the Zoning Administrator may deem
7 appropriate or necessary to establish the legality of the use,
8 before a certificate of use will be issued. Contemporaneous with
9 the filing of an application for certificate of use, the applicant
10 shall provide a current fire inspection report to the Zoning
11 Administrator. The Zoning Administrator shall not issue a
12 certificate of use for any new use, change in use, expansion of
13 square footage or inclusion of new uses prior to final written
14 approval (including by electronic means) of the Building Inspection
15 Division, Fire Prevention Division, and Planning and Development
16 Department as to their relevant portion of review. In addition, no
17 conditional approval of a certificate of use shall be granted by
18 the Zoning Administrator. Failure to permit inspection of the
19 premises shall be grounds for denial of an application for a
20 certificate of use or revocation of an existing certificate of use.

21 * * *

22 **Sec. 656.156. Appellate procedure for denial of a**
23 **certificate of use.**

24 In the event the Zoning Administrator determines to deny any
25 application for a certificate of use, the Zoning Administrator
26 shall provide the applicant written notice of said denial, along
27 with the reasons for said denial and any written documents
28 pertaining to the denial. Said notice of denial shall afford the
29 applicant an opportunity to appear before the Certificate of Use
30 Board by written appeal filed within 30 days of the denial so as to
31 allow the applicant to present additional information or otherwise

1 explain factors the applicant deems relevant. At said appeal the
2 Certificate of ~~Use~~ ~~Board~~ shall notify the applicant of the
3 Certificate of Use Board's final decision and shall confirm said
4 decision in a final order prepared in writing within 30 days of the
5 ~~appeal. Said final decision shall be the final action of the City~~
6 The final order of the Certificate of Use Board shall be a final
7 action of the City and shall be effective as of date of issuance
8 and an applicant shall thereafter have any remedies available at
9 law.

10 Sec. 656.157. Revocation or suspension of a certificate of
11 use.

12 The Director is authorized to suspend or revoke a certificate of
13 use for cause. The following constitute adequate grounds for the
14 Director to suspend or revoke a certificate of use:

- 15 (a) The certificate holder has failed to disclose or has
16 misrepresented a material fact or information required by
17 this Chapter in the application;
- 18 (b) The certificate holder, as part of the certificate
19 holder's business activity within the City, is engaged in
20 conduct that is detrimental to the public health, welfare
21 or safety of the City;
- 22 (c) The certificate holder does not engage in the use
23 described in the application or has changed the use
24 without authorization through approval of a new
25 certificate of use for the changed use, as required
26 herein;
- 27 (d) The certificate holder is conducting business from
28 premises that do not possess a valid and current
29 certificate of occupancy as may be required by city,
30 county and state laws;
- 31 (e) The certificate holder has been convicted of violations

1 of city, county or state regulations or law (including
2 civil violations), on three (3) or more separate occasions
3 in less than five (5) years for activities occurring at
4 the certificate holder's premises;

5 (f) In the event of a conviction of any owner, operator,
6 manager, supervisor, or any employee acting at the
7 direction or with the knowledge of the owner, operator,
8 manager, or supervisor, by a court of competent
9 jurisdiction, for the violation of any criminal statute
10 committed in conjunction with the business operation;

11 (g) The certificate holder has violated any provision of this
12 Chapter and has failed or refused to cease or correct the
13 violation within thirty (30) days of receipt of
14 notification thereof or the building or structure has been
15 condemned as an unsafe structure on more than three
16 occasions over a two year period;

17 (h) The certificate holder, as part of their business
18 activity within the city, has used the premises or
19 knowingly lets, leases or gives space for unlawful
20 gambling purposes;

21 (i) The certificate holder, within the preceding five years
22 in this state or any other state or in the United States,
23 has been adjudicated guilty of or forfeited bond when
24 charged with soliciting for prostitution, pandering,
25 letting premises for prostitution, keeping a disorderly
26 place, or illegally dealing in, manufacturing or
27 processing of narcotics;

28 (j) The premises have been condemned by the local health
29 authority for failure to meet sanitation standards or the
30 premises have been condemned by the Municipal Code
31 Compliance Division, Building Inspection Division or the

1 Fire Prevention Division because the premises are unsafe
2 or unfit for human occupancy;

3 (k) The certificate holder's premises have been found to
4 constitute a public nuisance pursuant to Sections 823.01,
5 823.05, 823.10, or 823.13, Florida Statutes;

6 (l) The certificate holder has failed to satisfy any fines or
7 administrative fees imposed pursuant to Chapters 91 or
8 609, Ordinance Code;

9 **Sec. 656.158. Procedure for suspension or revocation; appeal**
10 **of suspension or revocation of a certificate of use.**

11 In the event the Director determines there are sufficient grounds
12 to suspend or revoke a certificate of use, the Director shall
13 provide the applicant written notice of said suspension or
14 revocation, along with the reasons for said suspension or
15 revocation and any written documents pertaining to the suspension
16 or revocation. Said notice of denial shall afford the applicant an
17 opportunity to appear before the Certificate of Use Board by
18 written appeal filed within 30 days of the suspension or revocation
19 so as to allow the applicant to present additional information or
20 to otherwise refute the findings of the Director. At said appeal,
21 the Certificate of Use Board shall notify the applicant of the
22 Certificate of Use Board's final decision and shall confirm said
23 decision in a final order prepared in writing within 30 days of the
24 appeal. The final order of the Certificate of Use Board shall be a
25 final action of the City and shall be effective as of date of
26 issuance and an applicant shall thereafter have any remedies
27 available at law.

28 **Sec 656.159. Application of other laws.**

29 A certificate of use issued under this Chapter does not waive
30 or supersede other city or county ordinances or state or federal
31 regulations or laws; does not constitute city approval of any

1 particular business activity or manner of conducting a business
2 activity; and does not excuse the taxes with other city, county,
3 state and federal regulations, ordinances and laws applicable to
4 any business and may not be used in any manner as a defense to any
5 enforcement action. All application materials prepared under this
6 Chapter shall so state. The approval of the certificate of use by
7 the Zoning Administrator and any reviewing agency shall not
8 authorize or legalize in any manner a violation of city, county,
9 state or federal ordinance, regulation or law.

10 **Sec. 656.160. Posting of certificate of use.**

11 Any person conducting a business for which a certificate of
12 use is required by this Chapter shall post the certificate of use
13 in a conspicuous place in or about the place of business where it
14 may be seen upon inspection by any official of the City. Failure
15 to do so shall constitute a violation of Chapter 609, Ordinance
16 Code. If a certificate of use is lost or stolen, a duplicate
17 certificate of use may be issued by the Zoning Administrator,
18 provided that a duplication fee shall be charged for each duplicate
19 certificate of use.

20 **Sec. 656.161. Penalties for failure to comply with**
21 **requirements of a certificate of use.**

22 In addition to the remedies available pursuant to Section
23 656.111, Ordinance Code, any person who shall violate a provision
24 of this subpart, or fails to comply therewith, or with any of the
25 requirements thereof, shall upon conviction thereof in County
26 Court, be punished by a fine not to exceed five hundred dollars
27 (\$500.00) or by imprisonment in the County Jail for not more than
28 sixty (60) days, or both such fine and imprisonment. Any person or
29 entity that violates or fails to comply with this subpart shall
30 also be subject to fines in accordance with Chapter 609, Ordinance
31 Code. Each day of violation or noncompliance shall constitute a

1 separate offense.

2 **Sec. 656.162. Penalty for failure to obtain a certificate of**
3 **use.**

4 (a) In addition to the penalties provided for in Section
5 656.111, Ordinance Code, and Section 656.161 above, whenever the
6 Building Inspection Division determines that a person or entity is
7 operating a business without a certificate of use when one is
8 required under this subpart, the Chief of the Building Inspection
9 Division may issue a notice of violation as provided herein to the
10 owner of the property (and the tenant, renter or lessee if
11 applicable), hereinafter referred to as the "alleged violator",
12 stating that they have thirty (30) days from receipt of the notice
13 to correct the violation and submit a completed application for
14 certificate of use, as determined by the Planning and Development
15 Department. The notice of violation shall also state the
16 ramifications for failing to comply with the notice of violation,
17 which may result in a cease and desist order from the Building
18 Inspection Division, which may be accompanied by an order to
19 terminate electrical power if the continuation of the illegal use
20 will endanger the public health, safety or welfare. The notice
21 shall be mailed by certified or express mail or hand delivered to
22 each alleged violator as shown by the public records of Duval
23 County and shall also be mailed to any owner's agent if such
24 agent's name and address is on file in the Property Appraiser's
25 Office as shown on the latest tax roll.

26 (b) If after the thirty (30) days from receipt of the notice
27 of violation, the alleged violator has not complied with the notice
28 of violation and has not submitted a completed application for
29 certificate of use, the Chief of the Building Inspection Division
30 shall issue a cease and desist order to cease business operations,
31 which may be accompanied by an order to terminate electrical power

1 if the continuation of the illegal use will endanger the public
2 health, safety or welfare, until a certificate of use is obtained.
3 The cease and desist order shall also include a statement of the
4 particular code violation(s) and detail the appeal mechanisms
5 available to the alleged violator.

6 (c) The cease and desist order may be contested upon appeal
7 of such determination within five (5) days of receipt by submitting
8 a request to a Special Magistrate. The hearing shall be held
9 within ten (10) days as provided in Chapter 91, Ordinance Code.
10 After hearing evidence, the Special Magistrate may quash the cease
11 and desist order (and order to terminate electrical power if
12 applicable) or may continue the order(s) in effect.

13 (d) The Special Magistrate shall issue his or her ruling on
14 the same day that the hearing is held and the final order shall be
15 effective as of that date. Upon entry of the final order, a copy
16 of the Special Magistrate's decision shall be mailed to the parties
17 by certified U.S. mail. The Special Magistrate's determination
18 shall be the final action of the City and the affected party shall
19 thereafter have any remedies available at law.

20 **Sec. 656.163. Injunctive relief; enforcement.**

21 Any person who violates a provision of this subpart or a
22 written order promulgated under this subpart is subject to
23 injunctive or other equitable relief to enforce compliance with or
24 prohibit the violation of this subpart. The Director of Planning
25 and Development is hereby authorized to institute actions on behalf
26 of the City in any court of competent jurisdiction in this State to
27 seek enforcement of this subpart and all remedies for violations
28 thereof.

29 **Section 3. Amending Section 656.1601 (Definitions),**
30 **Ordinance Code.** Section 656.1601, Ordinance Code, is hereby amended
31 to read as follows:

1 CHAPTER 656. ZONING CODE

2 * * *

3 PART 16. DEFINITIONS

4 Sec. 656.1601. Definitions.

5 * * *

6 *Certificate of Use Board* means a committee consisting of the
7 Director and the Chief of Building Inspection and the Chief of the
8 Fire Prevention Division that shall review all appeals of denials,
9 suspensions and revocations of certificates of use.

10 * * *

11 Section 4. Amending the title of Chapter 770 (County
12 Occupational License) and creating a new Section 770.126
13 (Application of other laws), Ordinance Code. A new Section 770.126,
14 Ordinance Code, is hereby created to read as follows:

15 CHAPTER 770. COUNTY OCCUPATIONAL ~~LICENSE~~ BUSINESS TAX

16 PART 1. GENERAL TAXING AND ADMINISTRATIVE PROVISIONS

17 * * *

18 Sec. 770.126. Application of other laws.

19 A business tax receipt issued under this Chapter does not
20 waive or supersede other city or county ordinances or state or
21 federal regulations or laws; does not constitute city approval of
22 any particular business activity or manner of conducting a business
23 activity; does not excuse the taxes with other city, county, state
24 and federal regulations, ordinances and laws applicable to any
25 business; and shall not be used as a defense in any enforcement
26 action. All application materials prepared under this Chapter shall
27 so state. Neither the payment of the local business tax nor the
28 procurement of a business tax receipt under this Chapter shall
29 authorize or legalize in any manner a violation of city, county,
30 state or federal ordinance, regulation or law.

31 Section 5. Amending the title of Chapter 772 (Municipal

Occupational License) and creating a new Section 772.127 (Application of other laws), Ordinance Code. A new Section 772.127, Ordinance Code, is hereby created to read as follows:

CHAPTER 772. MUNICIPAL OCCUPATIONAL-LICENSE BUSINESS TAX

PART 1. GENERAL TAXING AND ADMINISTRATIVE PROVISIONS

* * *

Sec. 772.127. Application of other laws.

A business tax receipt issued under this Chapter does not waive or supersede other city or county ordinances or state or federal regulations or laws; does not constitute city approval of any particular business activity or manner of conducting a business activity; does not excuse the taxes with other city, county, state and federal regulations, ordinances and laws applicable to any business; and shall not be used as a defense in any enforcement action. All application materials prepared under this Chapter shall so state. Neither the payment of the local business tax nor the procurement of a business tax receipt under this Chapter shall authorize or legalize in any manner a violation of city, county, state or federal ordinance, regulation or law.

Section 6. Construction; Severability. This ordinance shall be construed and interpreted as nearly as practicable so as to uphold the validity of the provisions hereof. Nevertheless, the provisions of this ordinance are severable, and if any provision is determined to be invalid, unlawful or contrary to public policy, such provision shall be disregarded and the same shall have no effect upon any other provisions hereof, which other provisions shall continue in full force and effect.

Section 7. Codification Instructions.

The Codifier is authorized to make all chapter "tables of contents" consistent with the changes set forth herein. Furthermore, the Office of General Counsel, working together with

1 and through the contracted Codifier of the City Ordinance Code, is
2 hereby authorized and directed to make such editorial changes
3 throughout the Ordinance Code to reflect the name changes of (1)
4 Chapter 770 County Business Tax and (2) Chapter 772 Municipal
5 Business Tax, in regard to all titles and sub-titles therein, and
6 to reflect such changes in corresponding references throughout the
7 *Ordinance Code* resulting from the renaming of Chapters 770 and 772
8 as set forth herein. Such editorial changes, and any others
9 necessary to make the *Ordinance Code* consistent with this renaming
10 are approved and directed herein, and changes to the *Ordinance Code*
11 shall be made forthwith and when inconsistencies are discovered.

12 **Section 8. Effective Date.** This ordinance shall become
13 effective upon signature by the Mayor or upon becoming effective
14 without the Mayor's signature.

15
16 Form Approved:

17
18 /s/ Paige Hobbs Johnston

19 Office of General Counsel

20 Legislation prepared by: Paige Hobbs Johnston

21 G:\SHARED\LEGIS.CC\2014\Ord\Ad Hoc Blight Committee Amend COU 10-13-14.doc