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MEMORANDUM

TO: Mayor Michael Wilkinson
Deputy Mayor Tom Kurey
Commissioner Tom Shelly
Commissioner Coleen Chaney
Commissioner Thomas Nessler

FROM: Jay Daigneault, Esq., Town Attorney

CC: JP Murphy, Town Manager
Christine Nicole, Town Clerk

DATE: February 10, 2022

RE: Proposed revision to Chapter 54, Article II, Code of Ordinances

Dear Mayor, Deputy Mayor, and Commissioners:

As you know, the expected passage of SB 280 in this year's legislative session will change substantially the way municipal ordinances are prepared and adopted as of October 1, 2022. In working with Town staff since my appointment as Town Attorney, a number of existing portions of the Town's code have been identified as requiring attention due to changes in prevailing law or other circumstances. Amongst them is Chapter 54, Article II – Occupational License Tax, a revision to which is presented for your review and consideration. The ordinance effects two primary changes to the present code section: first, it repeals the existing Chapter 54, Article II and replaces it with a new section entitled "Business Tax"; second, it removes the classifications and taxes authorized by the section from the fee schedule found in Appendix B of the code. The accompanying resolution will re-establish those classifications and taxes upon separate adoption.

The existing code section was adopted in 1980 and was the subject of a minor revision in 1990. In the meantime, multiple changes in statutory and case law have occurred which are not reflected in the present code. By way of example but not limitation, the chapter of the Florida Statutes upon which the code section is based, Chapter 205, has been amended multiple times and in substantial ways since 1980-1990. Most importantly, it was amended in 2007 to extinguish the term "occupational license" because unscrupulous contractors and other service persons were presenting such "licenses" to unwary consumers as proof of their competency to perform the services reflected by the "license." Thus, what used to be called the "Local Occupational License Tax Act" in Chapter 205 was changed to the "Local Business Tax Act." The proposed new code section reflects this change throughout to provide that "business taxes" are authorized to be levied

and a “business tax receipt” is obtained by the person or entity to whom the code section applies. While I am not independently aware that any Belleair resident has been victimized by a contractor presenting an “occupational license” in the fifteen years since the statute was changed, it is, nevertheless, good practice to keep the Town’s code consistent with state statutes to the greatest degree possible. Other changes in law impacting this code section concern the definition of businesses (and exemptions to such definition) and the development of case law on the matter of administrative inspections pursuant to the Fourth Amendment. The proposed new code section reflects the current state of the law, both state and federal, to the best of my understanding.

The second substantive change made by the proposed ordinance is to remove the classifications and amount of business taxes authorized by Chapter 54, Article II from Appendix B of the Town’s code. Chapter 205, Fla. Stat., permits these classifications and taxes to be established either by ordinance or by resolution. I recommend removing the business taxes from the code of ordinances so that, in the future, they can be amended without having to meet the onerous requirements of SB 280, which do not apply to resolutions. This will permit the Town to revisit the classifications and taxes every two years hereafter so that changes can be made, within certain limitations, without having to prepare the business impact estimate anticipated to be required by SB 280.

It is also my understanding that the amounts of the “occupational license” taxes imposed by the existing code section and their classifications have not been modified since the code section was adopted in 1980. The Town Commission’s direction is requested on the resolution, particularly as it concerns the amount of the taxes levied.

Based on the foregoing, it is my recommendation that the Town Commission adopt the ordinance on first reading.

As always, please do not discuss the matter outside a properly noticed public meeting and do not hesitate to contact me directly should you have any questions or concerns about this ordinance or any other matter.

Respectfully,

TRASK DAIGNEAULT, LLP.



/s/ Jay Daigneault, Esq.
Town Attorney