

City of Hallandale Beach City Commission Agenda Cover Memo

Meeting Date:	Item Type:		1 st Reading	2 nd Reading
6/15/2022	<input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Other	Ordinance Reading	5/18/2022	6/15/2022
File No.:		Public Hearing	<input type="checkbox"/>	<input type="checkbox"/>
22-061		Advertising Required	<input type="checkbox"/>	<input type="checkbox"/>
		Quasi Judicial:	<input type="checkbox"/>	<input type="checkbox"/>
Fiscal Impact (\$):	Account Balance (\$):	Funding Source:	Project Number :	
N/A	N/A	N/A	N/A	
Contract/P.O. Required	RFP/RFQ/Bid Number:	Sponsor Name:	Department:	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	N/A	Vanessa Leroy, Director	Community Enhancement & Sustainable Development	
Strategic Plan Focus Areas:				
<input type="checkbox"/> Finance & Budget		<input checked="" type="checkbox"/> Organizational Capacity	<input type="checkbox"/> Infrastructure/Projects	
Implementation Timeline:				
Estimated Start Date: 5/18/2022 Estimated End Date: 9/30/2022				

SHORT TITLE:

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF HALLANDALE BEACH, FLORIDA, AMENDING CHAPTER 32 – ZONING AND LAND DEVELOPMENT TO ENACT A REQUIREMENT FOR AN ANNUAL CERTIFICATE OF USE FOR ALL BUSINESSES LOCATED IN THE CITY INCLUDING HOME BASED BUSINESSES; CREATING SECTIONS 32-10 THROUGH SEC. 32-20 TO PROVIDE FOR DEFINITIONS, APPLICATIONS, INSPECTIONS, FEES, ENFORCEMENT, AND OTHER RELEVANT PROVISIONS; PROVIDING FOR CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

STAFF SUMMARY:

Summary:

Staff is proposing an ordinance to establish a Certificate of Use (CU) Program. The proposed CU program would be applicable to new and existing businesses within the City. For new businesses, the CU will be a prerequisite to the issuance of a business tax receipt (BTR). Additionally, amendments are being proposed to regulations pertaining to home-based businesses.

Background:

CU - On January 6, 2021, the City Commission approved the creation of the Business Tax and Regulations Division, which included the concept of a CU program that would apply to new and existing businesses. The CU program is a centralized compliance tool that ensures that all businesses, existing and new, abide by applicable regulations while promoting building safety and environmental standards among other principles. The program would include verification of parking, solid waste services, grease traps, safety measures, and address hazards and unsafe conditions, as well as track and reduce delinquent businesses.

Home-Based Businesses – On June 29, 2021, Governor DeSantis signed House Bill 403 (HB403) into law through Florida Statute 559.955 (Exhibit 2 and Exhibit 3). The bill preempts areas of regulation for home-based businesses to the state. It forbids counties and municipalities from enacting or enforcing any ordinance, regulation, or policy, or taking any action to license or otherwise regulate a home-based business in violation of the bill's provisions.

On March 22, 2022, the Planning and Zoning Board considered the proposed ordinance. The Board recommended approval of the ordinance by a vote of 3 to 1. Please refer to the Planning and Zoning Board Cover Memo dated March 22, 2022 (Exhibit 4) and the Meeting Minutes (Exhibit 5).

Current Situation:

CU - The Certificate of Use program is not a new concept to South Florida. This program exists in more than 25 cities between Broward and Miami-Dade counties; however, the City of Hallandale Beach had not yet caught up to this form of business compliance verification. The City of Hallandale Beach has been struggling from failing infrastructure and has resorted to very costly reactive measures, instead of preemptively addressing rags, fats, oils, and grease that are clogging and breaking the City's pipes and other infrastructure. A certificate of use program can help address the environmental concerns, as well as life safety issues such as illegal construction, and overall quality of life. The CU program can serve as a proactive approach to protect home-rule in light of recent preemptions and continued efforts from Tallahassee to reduce local municipalities' abilities to regulate businesses, including those located within residential neighborhoods.

Currently, businesses within the City of Hallandale Beach are required to apply solely for a Business Tax Receipt (BTR). While the BTR is a tax on business activity, it does not regulate the use in a particular location. A CU would confirm that the particular commercial operation within the structure is compliant with the City's regulations including, but not limited to, having the appropriate Building Certificate of Occupancy, not having opened code violations or unpermitted construction, and meeting parking requirements. The CU would also ensure that the proposed business complies with any applicable county, state, and federal regulations, and verifies that the use is permitted at the proposed location.

To determine the best practices regarding the CU program, staff reviewed CU applications and fees, then examined the review process implemented by other local governments, including the cities of Miramar, Miami Gardens, North Miami, Weston, and West Park. Generally, staff found that their CU processes were similar. Each requires a fee for the CU application and additional fees for subsequent changes related to business or ownership.

Some municipalities charge annual renewal fees for the CU, while other municipalities only issue the CU for a one-time fee. In the latter case, subsequent fees would be incurred only if there are changes related to the business service, location, occupancy, or ownership.

Most of the municipalities require an inspection process in tandem with the CU. Once the application is reviewed and the use is confirmed to be appropriate based on the zoning district, the City performs inspections to determine if there are any code violations to address before issuing the CU. Such inspections are performed by the Building Department, Code Compliance, Zoning, and/or the Fire Department. Each City has slightly different requirements, but the common component is that an inspection must be conducted prior to final approval.

Some cities renew the CU annually. Others institute a one-time application for the CU that does not expire if the business information remains the same from year to year. Staff is proposing the City of Hallandale Beach's CU Program be an annual fee and annual inspection to ensure that businesses remain in compliance with City regulations.

The proposed Certificate of Use Program will follow the process below:

Step 1. Application – Applicants wishing to open a new business within the City of Hallandale Beach would be required to submit an online CU application, upload all required documents, and pay the application fee. The CU application will be comprehensive, used for both the CU and BTR. The submitted application and associated documentation will be reviewed by staff for completeness, to ensure that all requirements for the CU and BTR are met before transmitting the application to the required reviewers. As part of this review, any outstanding code violations that would need to be resolved prior to the issuance of the CU and BTR would be identified.

Step 2. Reviews – Once the application is submitted and it is confirmed that all required documents have been uploaded, the application would be routed to all required disciplines for review and approval or to provide comments. Based on the type of business proposed, the application would be routed to the following department/divisions:

- Planning & Zoning, to confirm the use is permitted and meets all applicable zoning regulations, including parking requirements.
- Building, to confirm that the space has the appropriate certificate of occupancy.
- Environmental (DPW), to ensure that space is compliant with all environmental regulations. For example, if the proposed use is a restaurant, during the environmental review, staff will confirm that the grease trap has sufficient capacity for the size of the restaurant.
- Police, to conduct background checks, as required by code.

Step 3. Trade Inspections – All applications, except for home-based businesses and individual rental units, will be routed to Fire for a Fire Inspection. The requirement of a Fire inspection is currently part of the BTR process. Additionally, any of the reviewing disciplines that may need to visit the site will conduct inspections at this time. This step of the process will happen concurrently with Step 2 above.

Step 4. CU Inspection – Once all approvals are received from the applicable reviewing disciplines, the applicant will be able to request the CU inspection. The CU inspection, conducted by the Business Tax & Regulations Inspector, will verify that the business is consistent with the application, identify any potential code/building violations, and will set a baseline for future inspection by documenting the site conditions at the time of application. If minor issues are identified in the field, such as illegal signage, the applicant will be issued conditional approval and be allowed to resolve the issue without it affecting the opening of the business. However, if major issues are identified, such as work without a permit or hazardous conditions, the application will be stopped. The CU and BTR will not be issued until the issues are addressed. A Standard Operating Procedure Manual will establish the parameters that qualify conditions and minor or major issues.

Step 5. Payment of Fees – Once the CU inspection is approved, or approved with conditions, the final invoice will be generated for the CU fee as well as the applicable BTR fee(s). once these fees are paid, the application will be issued a CU and BTR.

Renewal

Similar to the existing BTR process, the CU will expire on September 30th of each year, with the renewal fee due no later than October 1st of each year. Every business will have an annual CU inspection. The purpose of this inspection is to verify that the business is still consistent with the original approval and that there are no major code violations.

Additionally, the annual CU inspection will occur regardless of the status of the renewal fee. This will help the City reduce the BTR delinquency rate as well as identify businesses that have gone out of business without providing notice. Moreover, these inspections will help identify a business that has opened without obtaining approval.

Fees

The following fee schedule is proposed for the Certificate of Use program:

Application Fee (only applicable to initial application)	\$60*
Certificate of Use Fee, Based on Use	
Home-Based Businesses	\$200
Vacation Rentals (any rental less than 30 days)	\$200
Residential Apartment Buildings	\$150 +\$10 per unit
Rental Units (including single-family homes, rented for 30 days or more)	\$100
All Other Commercial Uses	\$200
Other Fees	
Modification to CU	\$60
After-the-Fact Penalty	2x the Certificate of Use Fee
Late Renewal Penalty, 90 days or less	25% of Certificate of Use Fee
Late Renewal Penalty, 91 days to 180 days	50% of Certificate of Use Fee
Late Renewal Penalty, 181 days or more	100% of the Certificate of Use Fee
Reinspection Fee	\$30

*Application fee is non-refundable.

Applicability

The proposed CU program would apply to all businesses located within the City, including commercial properties, individual rental units, and home-based businesses. Upon adoption, after the effective date of the ordinance, all new businesses will be required to apply for a CU to obtain

a BTR and operate. Businesses that do not have a physical location in the City and professionals holding an individual license, such as a doctor, attorney, or barber, would not require a CU. However, their office or salon would be required to participate in the CU program.

As currently drafted, upon adoption of the effective date of the ordinance, all existing businesses in the City which hold a valid business tax receipt shall be considered to have a valid CU. However, these businesses will still be required to apply. For these applicants, the application fee will be waived.

Marketing

If approved, a public education and outreach campaign will be developed to inform existing businesses of the requirement to obtain a CU. Outreach will include advertisement in the local paper, mailed notices to existing business owners, email notices, and web-based announcements on the City's website and social media.

Prior to this Commission meeting, notices were sent to Businesses and affected property owners advising of the consideration of the CU program.

Home-Based Businesses – Currently, the City regulates and limits business activities conducted in residential properties through Section 32-370 of the City's Code of Ordinances. However, since the passing the HB403 many of these regulations are no longer enforceable as they are inconsistent with the bill's prohibitions. The bill provides that a home-based business may operate in an area zoned for residential use and may not be prohibited, restricted, regulated, or licensed in a manner different from other businesses within the City, except as otherwise provided by the bill.

The proposed amendments to Section 32-370 of the City Code align the regulations for home-based businesses with the Florida Statute 559.955. This statute limits the City's ability to regulate these types of uses. The following amendments are proposed:

1. Renaming the section from "home occupation" to "home-based businesses".
2. Allowing up to two (2) employees that reside in the home to work at the home-based business.
3. Increasing the percentage of the residence that may be utilized for the home-based business from 25% to 49%.
4. Eliminating the prohibition on customers and supplies.
5. Prohibiting vehicles and trailers associated with the home-based business from parking in the right-of-way.
6. Allowing commercial vehicles and equipment to be stored on the site, provided they are not visible from the right-of-way or adjacent properties.
7. Removing regulations that prohibit a home-based business from using their residential address and phone number in advertisements.
8. Specifying that an annual CU and BTR are required for home-based businesses.
9. Eliminating regulations for live/work dwelling units, as this use must comply with the home-based business regulations.

Comprehensive Plan Considerations - The proposed amendments are consistent with the City's Comprehensive Plan. For example, Objective 1.2 of the Comprehensive Plan states the City shall continuously review and reevaluate existing and potential land-use conflicts and recommend solutions, to enhance land use compatibility and quality of life. Additionally, the proposed amendments will assist in furthering the following policies and objectives of the City's Comprehensive Plan:

GOAL 1: To provide a coordinated and compatible mix of land uses that encourages a high quality of life meeting the social, economic, and physical needs of the present and future population of Hallandale Beach while insuring reasonable environmental protection and timely and efficient provision of services.

POLICY 1.3.3: The City shall maintain land development regulations intended to preserve and protect existing single-family neighborhoods from the negative impacts of incompatible land uses and nuisances.

POLICY 1.10.11: The City shall continue to protect its natural resources and maintain its environmental quality through the provision of land use regulations that are consistent with the policies of this Comprehensive Plan.

Why Action is Necessary:

Pursuant to Article V, Division I, Section 5.01 of The City of Hallandale Beach City Charter, a City Ordinance is to be adopted to amend an existing Ordinance.

Cost Benefit:

In the City's 5-year plan and strategies from the FY22 budget, the Certificate of Use was presented as a new program to address several of the City's challenges and would contribute approximately \$2.1 million over five years to help address the budget shortfall.

As proposed, the fees associated with the CU program would offset the staff time needed to process the applications and conduct the annual inspections. As a result of the annual inspection, staff believes that there will be a decrease in delinquent BTR payments. As of January 2022, there were 319 delinquent businesses (businesses with physical addresses in the City) in the City's system. The fact is that many of these businesses have closed and did not notify the City. Once the CU program is established, this number would be reduced because an inspector would have noted these closed businesses or cited the delinquent business sooner.

Currently, the City has about 1,600 active businesses that would be required to participate in the CU program. Additionally, based on trends from the past few years, on average the department received about 25 applications for new businesses per month. Based on United States Census data, only 51% of the City's individually owned residential units, such as single-family homes and condo units, are owner-occupied. This means, out of the total of 22,273 applicable residential units in the City of Hallandale Beach, 10,913 (49%) residential units could potentially be rental properties, which would be required to participate in the CU program and obtain a BTR. These numbers exclude units located in multifamily apartment buildings under single ownership.

Potential Fiscal Impact (Revenue) – FY22-23

	#	Fee	Total
Application Fees – New Businesses Only	800	\$60	\$48,000
CU Fee – New Businesses Only	300	\$200	\$60,000

CU Fee – Rental Units (New)	500	\$100	\$50,000
CU Fee – Existing Businesses	1560	\$200	\$312,000
CU Fee – Existing Home-Based Businesses	40	\$200	\$8,000
Total			\$478,000

Please note, the revenue projections above are best-case scenarios, which assume all existing businesses apply for the required CU during FY22-23. Additionally, out of the potential 10,913 rental units that would be required to obtain a CU and BTR, it is recognized that all of these units may not be rentals and it will take time to obtain compliance from those properties that are true rentals. As such, the estimate for this category considers a very conservative number of 500 applicants for FY22-23.

PROPOSED ACTION:

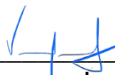
Staff recommends the City Commission approve the proposed Ordinance on first reading and schedule second reading for June 15, 2022.

A fee Resolution adopting the proposed fee will be presented upon second reading of the attached Ordinance.

ATTACHMENT(S):

Exhibit 1 – Proposed Ordinance
Exhibit 2 – House Bill 403
Exhibit 3 – House Bill 403 Summary
Exhibit 4 – Planning and Zoning Board Cover Memo dated March 22, 2022
Exhibit 5 – Planning and Zoning Board Draft Minutes of the March 22, 2022 Meeting
Exhibit 6 – Presentation

Prepared By: 
Steven Williams
Assistant Director

Reviewed By: 
Vanessa Leroy
Director

Reviewed By: Sharon Ragoonan
Sharon Ragoonan
Assistant City Manager

Reviewed By: Noemy Sandoval
Noemy Sandoval
Assistant City Manager

Approved By: Jeremy Earle
Dr. Jeremy Earle
City Manager