



Staff Report

City of Manhattan Beach

TO: Honorable Mayor Ward and Members of the City Council

FROM: Robert V. Wadden Jr., City Attorney
Bruce Moe, Finance Director

DATE: March 21, 2006

SUBJECT: Adoption of Ordinance No. 2083 Clarifying Business License Tax

RECOMMENDATION:

Staff recommends that the City Council adopt Ordinance No. 2083.

FISCAL IMPLICATION:

There are no fiscal implications associated with the recommended action.

BACKGROUND:

The City's business license was adopted in roughly its present form in 1971. However, the code was amended in 1976 to allow tax rates to be set by resolution. When this was done the language of the code was not adequately amended to clarify which types of businesses were subject to the tax. In addition, while many municipal business license codes clarify that corporate owners could be personally responsible for the tax, the Manhattan Beach ordinance lacked such language even though collection efforts were made against individuals. On March 7, 2006 the City Council introduced and waived further reading of Ordinance No. 2083 which amends Manhattan Beach Municipal Code sections 6.01.010 and 6.01.020 in order to remedy these deficiencies.

DISCUSSION:

Section 6.01.290 establishes the authority to set business license fees by resolution. Prior to this time the specific tax rates for each type of business or profession were set forth in the code itself. However when section 6.01.290 was added to the code, the language of section 6.01.020, which imposed the tax, was not amended to reflect the change. Nor were the definitions in section 6.01.010 amended to correspond to the changed process. The resulting inconsistency, while technical and minor, should be corrected so that the code is consistent and clear. The proposed ordinance accomplishes this by amending section 6.01.020 and the definition of "business" in section 6.01.010. The scope of the City's business license has, since 1971, always encompassed virtually all commercial activity conducted within City boundaries (except for activities specifically exempted under section 6.01.280).

The other change implemented by the proposed ordinance involves enforcement. Under the current code it is not clear that corporate officers or owners may be held legally responsible for payment of the tax. Since it is not possible to criminally prosecute a corporation, criminal

enforcement of the license tax is problematic where the holder of the business license is a corporate entity. The proposed ordinance changes the definition of “person” to make any majority shareholder or manager with fiscal decision making power responsible for paying the tax, a practice which is common in municipalities and in State and Federal tax collection enforcement.

The proposed changes do not constitute an expansion or imposition of a tax and do not require voter approval under propositions 13, 62 or 218.

Attachment: Ordinance 2083

ORDINANCE NO. 2083

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA AMENDING SECTIONS 6.01.010, 6.01.020 OF THE MANHATTAN BEACH MUNICIPAL CODE REGARDING CLARIFICATION OF BUSINESS LICENSE TAX

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby makes the following findings:

- A. Presently the City's business license tax contains vague and confusing language regarding its application and the parties responsible for making payment;
- B. This ordinance does not impose a new tax, raise existing tax rates or in any way change the scope of the existing tax but is intended to clarify the original intent of Title 6 of the Manhattan Beach Municipal Code.

SECTION 2. The City Council of the City of Manhattan Beach hereby amends Sections 6.01.010 and 6.01.020 of the Manhattan Beach Municipal Code as follows:

"6.01.010 Definitions

For the purposes of this chapter, certain words and phrases used herein are defined as follows:

- A. "Average number of persons employed" means the average number of persons employed daily in the applicant's business during the previous year within the City shall be determined by ascertaining the total number of hours of service performed by all employees of applicant within the City during the previous year, and dividing the total number of hours of service thus obtained by the number of hours of service constituting a year's work of one full-time employee according to the custom or laws governing such employment. In computing the average number of persons employed, fractions of numbers shall be excluded.
- B. "Business" shall include any type of commerce, business, trade, calling, vocation, profession, exhibition, show, enterprise, provision of service, activity and occupation, including, for example but not limited to, the sale of goods, contracting for labor, renting or leasing commercial real property, manufacturing, maintaining or repairing any goods or premises, provision of entertainment or refreshment or any other service or activity for which remuneration is provided whether or not carried on for profit.
- C. "Conduct" shall include commence, conduct, transact, maintain, prosecute, practice, operate and carry on.
- D. "Employee" means all persons engaged in the operation or conduct of any business, whether as member of the owner's family, agent, manager, solicitor, and any and all other persons employed or working in said business. For purposes of computing tax based on employees, the average number of employees, as defined in paragraph (A) above, will be used.
- E. "Engaged In business" means the conducting, carrying on, managing, or operating of any business whether done as owner, or by means of an officer, agent, manager, employees, servant or lessee of any of them.
- F. "Fixed place of business" means and includes any place actually occupied continually during the term of such license by a person or individual engaged in a business where the books and records of such person or individual are kept, and at which a large part of the business of such person or individual is transacted.
- G. Gross Receipts. Except as otherwise specifically provided, "gross receipts" shall mean the gross receipts of the calendar year preceding the beginning of the annual license period, and shall include the total amount of the sales price of all sales and the total amount charged or received for the performance of any act or service, of whatever nature it may be, including any rental, lease, lease consideration, exchange of value or values, or considerations for the leasing, renting, bailing or otherwise authorizing, permitting or contracting for the use, possession, enjoyment or right to use, control, possess or enjoy, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the

sale of materials, goods, wares, or merchandise. Included in "gross receipts" shall be all receipts, cash credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of the material used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever. Excluded from "gross receipts" shall be cash discounts allowed and taken on sales; credit allowed or property sold; any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser, and such part of the sales price of property returned by purchasers upon rescission of the contract of sale as is refunded either in cash or by credit.

- H. "Person" means any natural person, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, limited liability company, domestic or foreign corporation, association, syndicate, society or any group of individuals acting as a unit, and any natural person, who as an individual or with a spouse owns fifty-one percent (51%) or more of the capital stock of a corporation whose activities are governed by this Title, an individual who has the power to control the fiscal decision making process by which a corporation allocates funds to creditors. Whenever the term "person" is used in this Title in any clause prescribing and imposing tax liability or imposing a penalty the term as applied to an association or corporation shall mean the owners or part owners thereof, and as applied to corporations, also the officers thereof.
- I. "Vehicle" means and includes every device in, upon or by which any person or property is or may be transported or drawn upon a public street or highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

6.01.020 License Required

It shall be unlawful for any person to commence or conduct in the City any business activity of any kind without first having procured a license from the City, unless specifically exempted by this chapter, as provided in this chapter or without complying with each law of the City, County or State which refers or relates to such business. The commencing or conducting of any such business without having first procured such license, or without having complied with any and all such requirements or provisions shall constitute a separate violation of this chapter for each and every day that such business is so commenced or conducted.

The applicant is required to submit a certification to the Licensing Authority that all laws of the City, County or State relating to the operation of the proposed business have been met. Failure to provide such certification or the making of any false statement in said certification shall be grounds for revocation of the business license. The Licensing Authority may refuse to issue a license if he is not satisfied that the business sought to be conducted in the City has complied in all respects with all requirements or provisions of the laws of the City, County or State."

SECTION 3. If any sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 4. Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other Ordinance of the City, to the extent that they are inconsistent with this Ordinance, and no further, are hereby repealed.

SECTION 5. This Ordinance shall go into effect and be in full force and operation from and after thirty days after its final passage and adoption.

SECTION 6. The City Clerk shall cause this Ordinance or a summary thereof to be published and, if appropriate, posted, as provided by law. Any summary shall be published and a certified copy of the full text of this Ordinance posted in the Office of the City Clerk at least five (5) days prior to the City Council meeting at which this Ordinance is to be adopted. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall cause a summary to be published with the names of those City Council members voting for and against this Ordinance and shall post in the Office of the City Clerk a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against the Ordinance.

PASSED, APPROVED and ADOPTED this 21st day of March, 2006.

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor, City of Manhattan Beach, California

ATTEST:

City Clerk