

Chapter 12 BUSINESS TAX ACT

Sec. 12-1. Imposition of Business Tax.

A local business tax in the amount specified in this Chapter is hereby levied for the privilege of operating, engaging in or managing any business, profession or occupation within the City of Punta Gorda, Florida unless the business, profession, occupation or person is exempt from the levy of a local business tax under the provisions of Chapter 205, Florida Statutes, as the same may from time to time be amended. Unless expressly exempt under the provisions of Chapter 205, Florida Statutes, as same may from time to time be amended, a business tax shall be levied upon:

- (a) Any person who maintains a permanent business location or branch office within the City of Punta Gorda, Florida, for the privilege of engaging in or managing any business within the jurisdiction of the City.
- (b) Any person who maintains a permanent business location or branch office within the City of Punta Gorda, Florida, for the privilege or engaging in or managing any profession or occupation within the jurisdiction of the City.
- (c) Any person who does not qualify under subsection (a) or (b) above, and who transacts any business or engages in any occupation or profession in interstate commerce, if the business tax is not prohibited by Section 8, Article 1 of the United States Constitution. Examples of such persons include, but are not limited to solicitors, peddlers and insurance agents.

It shall be unlawful for any person who maintains a permanent business location or branch office, within the City of Punta Gorda, Florida to engage in or manage any profession, business or occupation within the City of Punta Gorda, Florida, without a currently valid business tax receipt issued by the City of Punta Gorda, Florida. No person who transacts any business or engages in any occupation or profession in interstate commerce within the City of Punta Gorda, Florida, shall engage in or manage any profession, business or occupation within the City of Punta Gorda, Florida without a currently valid business tax receipt issued by the City of Punta Gorda, Florida, unless the business tax is prohibited by Section 8, Article 1 of the United States Constitution.

(Ord. No. 1464-07, <sec>1, 1-17-07; Ord. No. 1660-10, <sec> 1, 12-1-10)

Sec. 12-2. Definitions.

“Business,” Profession,” and “Occupation”. These terms do include independent contractors, but do not include the customary religious, charitable or educational activities of nonprofit religious, nonprofit charitable and nonprofit educational institutions as more particularly described in Chapter 205, Florida Statutes.

Independent Contractor. In order to meet the definition of independent contractor, who is not engaged in the construction industry, at least four of the following criteria must be met:

- (a) The independent contractor maintains a separate business with his or her own work facility, truck, equipment, materials or similar accommodations;
- (b) The independent contractor holds or has applied for a federal employer

identification number, unless the independent contractor is a sole proprietor who is not required to obtain a federal employer identification number under state or federal regulations;

- (c) The independent contractor receives compensation for services rendered or work performed and such compensation is paid to a business rather than to an individual;
- (d) The independent contractor holds one or more bank accounts in the name of the business entity for purposes of paying business expenses or other expenses related to services rendered or work performed for compensation;
- (e) The independent contractor performs work or is able to perform work for any entity in addition to or besides the employer at his or her own election without the necessity of completing an employment application or process; or
- (f) The independent contractor receives compensation for work or services rendered on a competitive-bid basis or completion of a task or a set of tasks as defined by a contractual agreement, unless such contractual agreement expressly states that an employment relationship exists.

If four of the criteria listed in sub-subparagraph do not exist, an individual may still be presumed to be an independent contractor and not an employee based on full consideration of the nature of the individual situation with regard to satisfying any of the following conditions:

- (a) The independent contractor performs or agrees to perform specific services or work for a specific amount of money and controls the means of performing the services or work.
- (b) The independent contractor incurs the principal expenses related to the service or work that he or she performs or agrees to perform.
- (c) The independent contractor is responsible for the satisfactory completion of work or services that he or she performs or agrees to perform.
- (d) The independent contractor receives compensation for work or services performed for a commission or on a per-job basis and not on any other basis.
- (e) The independent contractor may realize a profit or suffer a loss in connection with performing work or services.
- (f) The independent contractor has continuing or recurring business liabilities or obligations.
- (g) The success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

Receipt. Receipt means the document that is issued by the local governing authority which bears the words "Local Business Tax Receipt" and evidences that the person in whose name the document is issued has complied with the provisions of this chapter relating to the business tax.

Classification. Classification shall mean the method by which a business or group of businesses is identified.

Employee. In those instances where the business tax is based on number of employees, employee includes, but is not limited to, partners, principals, full-time, part-time, temporary and subcontractors and independent contractors working exclusively for this business, who receive a W-2 or 1099 for \$3,600 or more in the previous year.

Flea Market. For the purposes of this Chapter, the term "Flea Market" shall mean a market, often outdoors, consisting of a number of individual stalls rented by vendors to sell old or used articles, curios, antiques and inexpensive merchandise. The term shall also include "Farmers' Markets".

New businesses are based on the number of employees at the date of opening.

Local Business Tax. A local business tax shall mean the fees charged and the method by which a local governing authority grants the privilege of engaging in or managing any business, profession or occupation within its jurisdiction. It shall not mean any fees or licenses paid to any board, commission or officer for permits, registration, examination or inspection. Unless otherwise provided by law, these are deemed to be regulatory and in addition to, and not in lieu of, any local business tax imposed under the provisions of this ordinance.

Person. Person shall mean any individual, firm, partnership, joint venture, syndicate or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver or other fiduciary, and shall include the plural as well as the singular.

Professional/Profession. For purposes of this Chapter "Professional/Profession" shall mean a person or calling rendering any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license, certificate, registration, permit or other legal authorization from the State of Florida Department of Business and Professional Regulation, State of Florida Department of Health, State of Florida Agency for Health Care Administration, State of Florida Department of Agriculture and Consumer Services, State of Florida Office of Financial Regulation, the Florida Bar, and any other State or Federal Regulatory body, and any agency, board, division or commission of the foregoing.

Taxpayer. Taxpayer shall mean any person liable for taxes imposed under the provisions of this ordinance; any agent required to file and pay taxes imposed under the provisions of this ordinance and the heirs, successors, assignees and transferees of any such person or agent.

(Ord. No. 1464-07, <sec>. 1, 1-17-07; Ord. No. 1537-08, <sec> 1, 1-2-08; Ord. No. 1548-08, <sec> 3, 5-21-08; Ord. No. 1630-10, <sec> 1, 3-17-10; Ord. No. 1660-10, <sec> 1, 12-1-10; Ord. No. 1684-11, <sec> 1, 7-13-11)

Sec. 12-3. Business Tax Receipts; dates due and delinquent; penalties.

The burden of securing a business tax receipt rests with the principal of a business.

A receipt is not valid for more than one (1) year and all receipts expire on September 30 of each year, except as otherwise provided by law or ordinance.

All receipts shall be sold by the City Clerk beginning August 1 of each year and all receipts shall be due and payable on or before the 30th day of September of each year. If September 30 falls on a weekend/holiday, the receipt shall be due and payable on or before the next working day following September 30.

Those receipts not renewed by September 30 shall be considered delinquent and subject to a delinquency penalty of ten percent (10%) for the month of October, plus an additional five percent (5%) penalty for each month of delinquency thereafter until paid. However, the total delinquency penalty shall not exceed twenty-five percent (25%) of the business tax fee for the delinquent business, occupation or profession.

Any person who engages in or manages any business, occupation, or profession without first obtaining a business tax receipt, if required, is subject to a penalty of twenty-five percent (25%) of the tax due, in addition to any other penalty provided by law or ordinance, including but not limited to Chapter 9A of the City Code of Ordinances as amended from time to time.

Any person who engages in any business, occupation or profession covered by this Chapter, who does not pay the required business tax within one hundred fifty (150) days after the initial notice of the tax due, and who does not obtain the required business tax receipt is subject to civil actions and penalties, including court costs, reasonable attorneys' fees, additional administrative costs incurred as a result of collection efforts, and a penalty of up to Two Hundred Fifty Dollars (\$250.00). The City Attorney shall, at the direction of the City Clerk, institute such civil action in the name of the City.

Unless otherwise provided, when a business, profession or occupation requiring a business tax receipt is started between October 1 and March 31 the full tax for one (1) year shall be paid. When a business, profession or occupation requiring a business tax receipt is started between April 1 and September 30, one-half (1/2) of the full tax for one (1) year shall be paid.

(Ord. No. 1464-07, <sec> 1, 1-17-07; Ord. No. 1660-10, <sec> 1, 12-1-10; Ord. No. 1684-11, <sec> 2, 7-13-11)

Sec. 12-4. Classification determination.

In the event of a disagreement on the question of proper classification of any business, occupation or profession for receipt purposes, the City Clerk shall decide the proper classification, with the right of the applicant to appeal within thirty (30) days from such decision to the City Council, whose decision upon the point shall be final.

(Ord. No. 1464-07, <sec> 1, 1-17-07)

Sec. 12-5. Application; oath.

Prior to the issuance of any business tax receipt, a written application signed by the applicant and sworn to and notarized under oath shall be filed with the City Clerk upon the prescribed forms. The furnishing of all information necessary to the establishment of the proper business tax for such receipt is required, including any prerequisites for business tax receipts required by Chapter 205 Florida Statutes. Where any business, occupation or profession regulated by the State of Florida requires an active license, certification, permit or other authorization issued by a State regulatory agency prior to engaging in such business, occupation or profession, the applicant shall be required to provide evidence to the City Clerk that the applicant possesses

such an active license, certification, permit or other authorization as a prerequisite to obtaining a business tax receipt. The failure to maintain an active license, certification, permit or other authorization required by the State of Florida shall be grounds for the revocation of an issued business tax receipt.

An application for a business tax receipt shall be made to the City Clerk which shall contain at least the following information:

- (a) The name of the individual or entity applying for a business tax receipt;
- (b) The signature of the applicant;
- (c) The full name, local residence address and home phone number of the applicant;
- (d) The permanent residence address of the applicant;
- (e) The name and address of the applicant's business and the business phone number. The name of the business shall include any fictitious name registered with the State of Florida, Department of State, Division of Corporations. The applicant shall provide with the application a copy of the applicant's current fictitious name registration issued by the State of Florida or a written statement, signed by the applicant, which sets forth the reason the applicant need not comply with the State of Florida Fictitious Name Act;
- (f) The sex and race of the applicant;
- (g) The date of birth of the applicant;
- (h) A statement as to whether or not the applicant has been convicted of or has pled guilty or nolo contendere to any crime, the nature of the crime, the nature of the offense and the punishment or penalty assessed therefore. The failure to truthfully answer this question shall be grounds for the revocation of an issued business tax receipt and prosecution for perjury under Section 837.012, Florida Statutes;
- (i) A copy of a current photo identification of the applicant;
- (j) For door-to-door solicitors, sales persons, hawkers, peddlers and canvassers requiring a business tax receipt, the application shall include an up-to-date certified criminal background history report which shall be obtained by the applicant;
- (k) A statement, to be followed by signature of the applicant which reads, "Under penalties of perjury, I declare that I have read the foregoing and that the facts stated in it are true."

A receipt may not be issued unless the federal identification number or social security number is obtained from the person to be taxed.

(Ord. No. 1464-07, <sec> 1, 1-17-07; Ord. No. 1660-10, <sec> 1, 12-1-10)

Sec. 12-6. Inspections.

Prior to the issuance of a business tax receipt, the structure or site designated as the location of the business, occupation or profession to be taxed shall be in compliance with zoning regulations, and may require inspection by the City Fire

Marshal's office and/or building inspector to verify compliance with City building and fire codes.

The fee for such inspection shall be collected by the appropriate department prior to the issuance of the business tax receipt. A business tax receipt shall not be issued where the structure or site designated as the location of the business, occupation or profession has been found to be out of compliance with the requirements of the City's zoning, building or fire codes.

(Ord. No. 1464-07, <sec> 1, 1-17-07; Ord. No. 1660-10, <sec> 1, 12-1-10)

Sec. 12-7. Receipt for each location.

Any person operating any of the businesses, occupations or professions provided for in this Chapter at more than one (1) location within the City shall pay a fee equal to one-half of the business tax fee of the primary location.

Additional receipts may be required in certain categories of businesses to accommodate development standards and are set forth more specifically in the business tax receipt schedule Sec. 12-21 of this Chapter.

Unless otherwise provided, a separate receipt shall be obtained in the manner prescribed for each branch establishment or location of the business engaged in, as if such branch establishment or location were a separate business.

(Ord. No. 1464-07, <sec> 1, 1-17-07; Ord. No. 1660-10, <sec> 1, 12-1-10)

Sec. 12-8. Duplicate receipt.

A duplicate receipt shall be issued by the City Clerk to replace any receipt previously issued, which has been lost, stolen, defaced, or destroyed, without any willful conduct on the part of the receipt holder, upon the filing by the receipt holder of an affidavit sworn to before a notary public of this state attesting to such fact and paying to the City Clerk a fee of Five Dollars (\$5.00).

(Ord. No. 1464-07, <sec> 1, 1-17-07)

Sec. 12-9. Transfer.

As provided by law, any business tax receipt may be transferred to a new owner when there is a bona fide sale of the business upon payment of a transfer fee of ten percent (10%) of the annual business tax, and presentation of the original receipt and evidence of the sale and applicable inspection fees.

Upon written request and presentation of the original receipt, any receipt may be transferred from one location to another location in the City upon payment of a transfer fee of ten percent (10%) of the annual business tax and applicable inspection fees.

(Ord. No. 1464-07, <sec> 1, 1-17-07)

Sec. 12-10. Receipt display.

A current receipt shall be posted in a conspicuous place in the business for which it is issued. No receipt which has expired or become ineffective for any other reason

shall remain posted. Every person engaged in a business, occupation or profession subject to the provisions of this Chapter but not operating from a fixed place of business, shall keep their business tax receipt upon their person at all times while engaging in the business, occupation or profession for which it was issued.
(Ord. No. 1464-07 <sec> 1, 1-17-07; Ord. No 1660-10, <sec> 1, 12-1-10)

Sec. 12-11. City Clerk; Authority; Duties.

It shall be the duty of the City Clerk to enforce each and all of the provisions of this Chapter. The City Clerk is authorized to prescribe such reasonable rules and regulations as may be necessary to effectuate the provisions of this Chapter.

Officials of the City Clerk's office and designated code enforcement officers shall have the authority to enter all businesses, occupations and professions in the City, and make such inquiry as shall be necessary to determine compliance with this Chapter and applicable law.

Designated code enforcement officers inspecting businesses, occupations and professions in the City shall report all violations of this Chapter and applicable law to the City Clerk and shall submit such reports as the City Clerk shall require, and such violations shall be subject to penalties set forth in Sec. 12-3 above.

(Ord. No. 1660-10, <sec> 1, 12-1-10)

Sec. 12-12. Compliance by Receipt Holders.

Issuance of a receipt by the City Clerk shall in no way relieve the receipt holder of responsibility for compliance with applicable law, as well as all provisions of this Chapter or other City codes or parts thereof heretofore passed or which may hereafter be passed by the City Council regulating the conduct of business.

(Ord. No. 1464-07, <sec> 1, 1-17-07; Ord. No. 1660-10, <sec> 1, 12-1-10)

Sec. 12-13. Evidence of Engaging in Business.

The fact that any person represents himself/herself/itself as being engaged in any business, occupation or profession for which a business tax receipt is required under this Chapter shall be evidence of the liability of such person to pay a business tax, regardless of whether such person or entity actually transacts business or practices a profession. Displaying a sign or advertisement indicating the conduct of business or profession at a given location, advertising a business or profession in the classified section of a telephone directory or city directory or other media shall be evidence that such person is engaged in or managing a business, occupation or profession within the City of Punta Gorda, Florida.

(Ord. No. 1660-10, <sec> 1, 12-1-10)

Sec. 12-14. Revocation.

Any receipt obtained under the provisions of this Chapter upon a misrepresentation of a material fact; conviction of the receipt holder for violation of the criminal law of Florida in connection with the operation of the business for which the City has issued a receipt; or failure of the receipt holder to comply immediately with all state and local rules, regulations and ordinances governing the conduct of the

business, occupation or profession, after being notified to do so, shall be revoked by the City Clerk, with the right of appeal to City Council within thirty (30) days from the date of said revocation. Any person whose business tax receipt is revoked pursuant to this Section shall be afforded due process to contest said revocation.

Upon revocation, receipt holder shall immediately cease all business at all places under such receipt and no refund of any portion of the receipt fee shall be made to the receipt holder.

(Ord. No. 1464-07, <sec> 1, 1-17-07; Ord. No. 1660-10, <sec> 1, 12-1-10)

Sec. 12-15. Exemptions.

Any persons exempt from the levy of a local business tax under the provisions of Chapter 205, Florida Statutes, as the same from time to time be amended, are hereby exempt from the requirements of this Chapter except that such persons shall obtain a fee exempt receipt confirming their exemption from the local business tax. An individual who engages in or manages a business, profession or occupation as an employee of another person is not required to obtain a local business tax receipt nor apply for any such exemption.

An applicant for a fee exempt receipt shall submit an application to the City Clerk, upon forms prescribed by and furnished by the City Clerk and shall furnish such additional information and make such affidavits as the City Clerk shall require.

A person or organization operating under a fee exempt receipt shall conform to all state and local requirements, including applicable inspections and zoning regulations and pay all inspection and other fees which are not subject to waiver.

No business tax receipt shall be required of any person for any mere delivery in the City of any property purchased or acquired from such person at his regular place of business outside the City or for advertising in the City any business conducted entirely outside of the City. Similarly, vehicles used by any receipt holder under this Chapter for the sale and delivery of property at either wholesale or retail from his place of business on which a receipt is paid shall not be construed to be separate places of business.

(Ord. No. 1464-07, <sec> 1, 1-17-07; Ord. No. 1660-10, <sec> 1, 12-1-10; Ord. No. 1684-11, <sec> 3, 7-13-11)

Sec. 12-16. Rate structure revisions.

The City, having complied with the requirements of F.S. 205.0535, may every other year hereafter, increase by ordinance the rates of local business taxes receipts by up to five percent (5%). The increase, however, may not be enacted by less than a majority plus one (1) vote of the City Council.

(Ord. No. 1464-07, <sec> 1, 1-17-07)

Sec. 12-17. Vending and amusement machines.

The business premises wherein a coin-operated or token-operated vending machine that dispenses products, merchandise or services or where an amusement or game machine is operated must assure that any required business tax receipt for the machine is secured.

No outside display of vending or amusement machines are allowed unless permitted by special exception.

In addition to the business tax charged pursuant to Section 12-19 of this Chapter, the business tax receipt for vending and amusement machines located within the City of Punta Gorda shall include a business tax of One Dollar and 00/100 (\$1.00) per machine, per year which shall be assessed based on the highest number of machines located on the business premises on any single day during the previous receipted year or in the case of new businesses, be based on an estimate for the current year.

Replacement of one vending machine with another machine during a receipted year does not affect the license tax for that year.

Each business owning machines located in the City must notify the City, upon request, of the location of such machines.

Each business owning machines must provide notice of the provisions of this Chapter to each affected business premises where the machines are located.

The business premises must secure the receipt if it is not otherwise secured.

(Ord. No. 1464-07, <sec> 1, 1-17-07; Ord. No. 1548-08, <sec> 1, 5-21-08; Ord. No. 1660-10, <sec> 1, 12-1-10; Ord. No. 1788-14, <sec> 1, 07-02-2014)

Sec. 12-18. Flea Markets.

Flea Markets shall pay to the City one local business tax for each retail merchant selling goods or products at the Flea Market based upon the average number of merchants on the business premises (total merchants divided by weeks of operation) during the previous receipted year, or in the case of new businesses, be based on an estimate for the current year.

Flea Markets shall provide to the City Clerk's Office a certified copy of the weekly list of merchants or any other person renting a portion of the business premises within five (5) days of the end of each calendar month. The City Clerk's Office reserves the right to conduct reasonable inspections of Flea Markets under applicable law for the purpose of calculating the average number of vendors.

It is the City's intent to eliminate the fees, taxes, and administrative costs associated with merchants who may transfer, add, delete or change locations within the business premises and base the business tax upon the average number as aforesaid.

Nothing in this Chapter shall excuse Flea Markets or any merchants on the business premises from the requirement of any other license, permit, inspection, development order, or any applicable laws, rules and regulations of the City, County, State and Federal Governments.

By this Chapter, the City has not assigned or given permission to Flea Markets to collect business taxes directly from merchants; however, Flea Markets are not prohibited from collecting from any merchants any funds Flea Markets deem appropriate regarding the operation of its business.

(Ord. No. 1464-07, <sec> 1, 1-17-07; Ord. No. 1660-10, <sec> 1, 12-1-10; Ord. No. 1912-18, <sec> 1, 11-21-2018)

Sec. 12-19. Business tax schedule.

The amount of business tax which shall be paid by persons engaging in or managing businesses, professions or occupations within the City under the following classifications are as follows:

Non-resident insurance companies transacting business in the City	\$105.00
Licensed Professionals.....	\$105.00
Non-Professionals, based on number of employees as defined in Sec. 12-2.....	\$ 63.00
Twenty to Thirty-nine employees	\$131.25
Forty or more employees.....	\$157.50

- Amusement/Recreation
- Animal Services
- Automotive
- Automotive Rentals
- Construction
- Financial
- Health Care
- Limited Home Occupation
- Lounge/Bar/Package
- Manufacturing
- Marina/Services
- Office
- Office/Professional
- Rentals/Housing
- Retail Merchant
- Restaurant/Food Service
- Schools
- Service
- Soliciting
- Utilities
- Vending Machines (See Sec. 12-17)
- Miscellaneous

(Ord. No. 1129-95 <sec> 1, 7-7-95; Ord. No 1464-07, <sec> 1, 1-17-07; Ord. No. 1548-08, <sec> 2, 5-21-08)

Sec. 12-20. Conflicts.

It is the intention of the City Council of the City of Punta Gorda, Florida that this Chapter be consistent with the provisions of Chapter 205, Florida Statutes, the "Local Business Tax Act". Any provision of this Chapter which is in conflict with any provision of Chapter 205, Florida Statutes, as the same may from time to time be amended, are hereby repealed to the extent of such conflict.

(Ord. No. 1660-10, <sec>1, 12-1-10)