



DeKalb County Government

Manuel J. Maloof Center
1300 Commerce Drive
Decatur, Georgia 30030

Agenda Item

File ID: 2018-1533

Substitute

8/14/2018

Public Hearing: YES NO

Department: Planning and Sustainability

SUBJECT:

Commission District(s): All

An Ordinance to Amend Chapter 15 of the DeKalb County Code regarding Business Occupancy Taxes

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PURPOSE:

To establish the Department of Planning and Sustainability and the Director of Planning and Sustainability as the department and individual responsible for administration of the Business License Code and create a clear process to revoke, suspend, or deny a license, including notice requirements and appeal procedures.

NEED/IMPACT:

In 2014, the Business License unit was transferred from the Finance Department to the Department of Planning and Sustainability to enhance customer service and to establish a seamless and effective approach to issuing permits and business license, yet the County Code has not been changed to reflect this transfer. The revised ordinance establishes the Department of Planning and Sustainability and the Director of Planning and Sustainability as the department and individual responsible for administration of the Business License Code. Additionally, the ordinance replaces the existing Certificate Review Board with a Hearing Officer to administer appeals from decisions by the Director of Planning and Sustainability to revoke, suspend, or deny a business license.

FISCAL IMPACT:

N/A

RECOMMENDATION:

To approve the attached ordinance to amend Chapter 15 of the DeKalb County code

AN ORDINANCE

**AN ORDINANCE TO AMEND THE CODE OF DEKALB COUNTY, GEORGIA,
CHAPTER 15, ARTICLE II, BUSINESS OCCUPATION TAXES, AND FOR OTHER
PURPOSES.**

WHEREAS, the Governing Authority desires to clarify the process and procedures for levying and collecting business occupation taxes; and

WHEREAS, the Governing Authority desires to simplify and streamline the process for approving, denying, revoking, and suspending business occupation tax certificates; and

WHEREAS, the Governing Authority desires to empower the Planning Department to levy, collect, and administer the registration of businesses and the collection of business occupation taxes; and

WHEREAS, the Governing Authority desires to relieve the Finance Department of certain of its duties and responsibilities under this Article;

WHEREAS, the Governing Authority desires to encourage legitimate business practice within the County and induce compliance under this article to protect the health, safety and public welfare of its citizens.

NOW, THEREFORE, BE IT ORDAINED by the Governing Authority of DeKalb County, Georgia, and it is hereby ordained by the authority of the same, that Chapter 15 of the Code of DeKalb County, as Revised, 1988, be and the same is hereby amended as follows:

PART I: ENACTMENT

Article II of Chapter 15 shall be deleted in its entirety and a new Article II shall be inserted in lieu thereof to read as follows:

ARTICLE II. - BUSINESS OCCUPATION TAXES

Sec. 15-26. Generally.

- (a) Each person engaged in a business, trade, profession or occupation whether with a location within the county, exclusive of incorporated municipalities, or in the case of an out of state business with no location in Georgia exerting substantial efforts within the unincorporated

part of the county pursuant to O.C.G.A section 48-13-7, now and as it may be amended hereafter, shall pay an occupational tax for said business, trade, profession or occupation.

- (b) Occupation taxes shall be based upon gross receipts in combination with profitability ratio and number of employees. The profitability ratio for the type of business will be determined from nationwide averages derived from statistics, classifications or other information published by the United States Office of Management and Budget, the United States Internal Revenue Service or successor agencies of the United States.
- (c) A schedule of specific business occupation tax rates and fees, as adopted from time to time by the Governing Authority, is on file in the office of the clerk of the Governing Authority, and shall be levied and collected in the amount and manner specified by this article.

Sec. 15-27. Definitions of terms.

- (a) Wherever the term "county" is used in this article, it shall be construed to mean the unincorporated area of DeKalb County, Georgia.
- (b) Words or phrases not defined in this chapter, but defined in applicable state law or the code of DeKalb County, as Revised 1988, shall be given that meaning. All other words or phrases shall be given their common ordinary meaning unless the context requires otherwise. The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them below except where the text clearly indicates a different meaning:
 - (1) *Administrative fee* is a component of the occupational tax which approximates the cost of handling and processing the occupational tax levied and collected pursuant to the requirements of state law and this article.
 - (2) *Applicant* or *holder* means the applicant for, or holder of, a business occupation tax certificate, and shall include the business and any legally or organizationally related entity to which the occupational tax certificate applies.
 - (3) *Business* where used in this article shall be held to mean any person, sole proprietor, partnership, corporation, trade, profession, occupation or other entity and the efforts or activities associated thereby for the purposes of raising revenue or producing income.
 - (4) *Business occupation tax certificate* or *certificate* means that document issued by the Director, which, when properly annotated or validated by the Director shall serve as evidence of compliance with the applicable provisions of this article.
 - (5) *Department* means the Department of Planning and Sustainability or other department designated by the Chief Executive Officer.
 - (6) *Director* means the director of the Department of Planning and Sustainability, his or her designee, or the director of another department designated by the Chief Executive Officer.
 - (7) *Dominant line* means the type of business within a multiple line business that the greatest amount of income is derived from.
 - (8) *Employee* means an individual whose work is performed under the direction and supervision of the employer and whose employer withholds FICA, federal income tax, or state income tax from such individual's compensation or whose employer issues to such individual for purposes of documenting compensation a form I.R.S. W-2 but not a form

I.R.S. 1099. This shall include, but not be limited to, permanent, seasonal, and part-time employees.

- (9) *Gross receipts* means total revenue of the business or practitioner for the period, including without being limited to the following: total income without deduction for the cost of goods sold or expenses incurred; gain from trading in stocks, bonds, capital assets, or instruments of indebtedness; proceeds from commissions on the sale of property, goods, or services; proceeds from fees charged for services rendered; proceeds from rent, interest, royalty, or dividend income; and from all other income whatsoever arising from or growing out of the conduct of the business, trade, profession or occupation without any deduction whatsoever, except that gross receipts shall not include the following: sales, use, or excise taxes; sales returns, allowances, and discounts; inter-organizational sales or transfers between or among the units of a parent-subsidiary controlled group of corporations as defined by 26 U.S.C. section 1563 (a)(1), between or among the units of a brother-sister controlled group of corporations as defined by 26 U.S.C. section 1563 (a)(2), or between or among wholly owned partnerships or other wholly owned entities; payments made to a subcontractor or independent agent; governmental and foundation grants, charitable contributions or the interest income derived from such funds, received by a non-profit organization which employs salaried practitioners otherwise covered by this article, if such funds constitute eighty (80) percent or more of the organization's receipts; and proceeds from sales to customers outside the geographical boundaries of the State of Georgia.
- (10) *Hearing Officer* shall mean an individual permitted to hear appeals of denials, suspensions, or revocations of a business occupation tax certificate pursuant to section 15-46.
- (11) *Letter of Entertainment* shall mean a sworn statement from the owner or authorized agent of a restaurant, late-night establishment, nightclub, or adult entertainment establishment concerning the activities allowed, hours of operation, and other information relevant to the operation of the business submitted as part of the application for a business occupation tax certificate to be verified by the Director or his/her designee.
- (12) *Location* or *office* shall include any structure or any vehicle of a business or practitioner of a profession or occupation which has a location or office where a business, profession, or occupation is conducted or where services are provided, but shall not include a temporary or construction work site which serves a single customer or project or delivery vehicles of a business or practitioner of a profession or occupation which has a location or office.
- (13) *Non-profit organization* shall mean a non-profit, civic, educational or charitable organization.
- (14) *Occupation tax* means a tax levied on persons, partnerships, corporations or other entities for engaging in an occupation, trade, profession or business for revenue raising or income producing purposes.
- (15) *Occupation tax rate* shall mean the percentage of the gross receipts, less any relevant exemptions, collected from each business in the County as part of the occupation tax

- (16) *Person* wherever used in this article shall be held to include sole proprietors, corporations, partnerships, nonprofit or any other form of business organization.
- (17) *Practitioner of profession or occupation* is one who by state law requires state licensure regulating such profession or occupation. This definition shall not include a practitioner who is an employee of a business, if the business pays an occupation tax.
- (18) *Regulatory fees* means payments, whether designated as license fees, permit fees or by another name, which are required as an exercise of police power and as a part of or as an aid to regulation of an occupation, profession or business. Regulatory fees shall not include an administrative fee. Regulatory fees do not include development impact fees as defined by paragraph 8 of O.C.G.A. section 36-71-2 or other costs or conditions of zoning or land development.
- (19) *Transient business* or *transient vendor* means a person or business that temporarily sets up business out of a vehicle, trailer, boxcar, tent, other portable shelter, or empty store front for the purpose of selling goods. Individuals may not remain in one location for more than fourteen (14) consecutive days.

Sec. 15-28. Registration of name of business; payment of taxes required.

- (a) No person shall be engaged in, pursue, operate, or carry on any business within the unincorporated portion of the county, in any manner, without having registered the name of the business with the department. In addition, each person is required to either pay the taxes as provided by this article, produce evidence of occupation tax payment to another jurisdiction in the State of Georgia, or provide proof of payment of a local business occupation tax in another state that purports to tax the person's or business's sales or services in this state. The county shall not require an occupation tax on those receipts that were taxed by occupation tax in other states or another jurisdiction in the State of Georgia. The county shall also not require payment of an occupation tax by any state or local authority or nonprofit organization, but state and local authorities and nonprofit organizations are required to pay the Administrative Fee.
 - (1) Applicants that are corporations, partnerships, nonprofit or any other form of business organization registered with the Georgia Secretary of State must list the name of the legal entity registered with the Secretary of State, not a trade name, fictitious name, or Doing Business as (DBA) name, in the application. The legal entity must be active and in compliance with all Secretary of State Requirements. The application must also include the name and address of a corporate officer of the business.
 - (2) Applicants that are corporations, partnerships, nonprofits or any other form of business organization registered outside the state of Georgia must list the name of the legal entity and the state or other jurisdiction in which it is registered in the application. Such person must provide proof of registration with the state or jurisdiction in which it is registered. The application must also include the name and address of a corporate officer of the business.
 - (3) Applicants that are sole proprietorships or individuals must include a copy of his or her driver's license with the application.

- (4) Applicants who seek to operate out of a property zoned for residential use or using a residential address as a physical address or location of business is subject to zoning requirements, and may be subject to relevant Special Land Use Permit (SLUP) requirements, under Chapter 27 of this Code. Applicants must receive zoning approval, including Special Land Use Permits (SLUP) requirements, before such business license is approved.
- (5) An application shall be on a form provided by the department. The applicant shall provide the following on the application:
 - (a) Federal Employer's Identification Number;
 - (b) The business name, as reported on the Georgia income tax return;
 - (c) Georgia's Sales Tax Number, if applicable;
 - (d) The applicant's Driver's License Number
 - (e) Physical address of business or location of business within county limits of DeKalb County
 - (f) Submission of previous year's tax return (in accordance with Sec 15-29);
 - (g) A notarized covenant whereby the applicant swears to maintain the business premises in accordance with all applicable property maintenance regulations under this Code as it currently exists or is hereafter amended, including but not limited to sign, debris, and vegetation regulations. This provision does not apply to applicants that rent or lease the premises on which the applicant's business will be conducted.
- (b) Other information reasonably necessary to carry out the purpose of this ordinance.
- (c) At the time of business registration, such person shall also identify to the department the line or lines of business that the business conducts. Classification of businesses for occupation tax purposes shall be based on the dominant line of business conducted.
- (d) Each separate business trade name shall be subject to the provisions of this article and shall fully comply with all county code requirements before engaging in, pursuing or carrying on any business within the county.
- (e) Failure or refusal to provide information requested by the county for the purpose of classification of a business, assessment, audit, or levying of occupation taxes, regulatory fees or administrative costs, or regarding the site of a location or office and taxes or fees paid to other local governments may result in the denial of such application and may be punished as provided in section 1-10 of this Code.
- (f) Upon compliance with subsections (a) through (d) of this section, the Director shall issue to the applicant or holder a business occupation tax certificate, without which no person shall be engaged in, pursue, or carry on any business within the unincorporated portion of the county. The business occupation tax certificate shall serve as a business license. Additional business licenses may be required as established in this code or in state law.
- (g) Engaging in, pursuing or carrying on any business within the unincorporated portion of the county, in any manner, without obtaining and subsequently maintaining a current and valid

business occupation tax certificate shall be punished as provided in section 1-10 of this Code. Each day that business is conducted without a valid certificate is a new violation.

(i) After the issuance of three (3) citations for operating without a valid business occupation tax certificate, or after a determination that unpermitted business activity presents a threat to public health and safety, the Director shall issue a cease and desist order prohibiting any further business activity on the premises until such business occupation tax certificate has been obtained or until the public health and safety concerns are remedied. The Director must tack the cease and desist order on the premises and send notice of the order to the business address.

(ii) The property owner or operator of a business in receipt of a cease and desist order may appeal the issuance of the order by providing notice of appeal in writing to the Director within fifteen (15) days of receipt of the order. If requested, a hearing will be conducted following the procedures outlined in Sec. 15-46. While the appeal is pending, the business operator or property owner must comply with the cease and desist order.

Sec. 15-29. Estimation of gross receipts; filing of returns.

- (a) All occupation taxes levied by this article are levied on the amount of business transacted during the current calendar year and the number of employees to be employed in the business conducted. However, for convenience of both the county and the taxpayer those businesses subject to the occupational tax shall, on or before February 1, file with the department a return showing all gross receipts of that business during the preceding calendar year ending on December 31. This return showing preceding calendar year gross receipts shall be used as an estimate of gross receipts for making payments on the occupation tax for the current calendar year. The number of employees reported for the current year's business operations may be based upon the number of employees employed in the business conducted during the previous year. Applicants or owners engaged in the business shall be reported as employees of the business. For continuing businesses, the return required on or before February 1 showing the business' preceding year's actual gross receipts and number of employees shall also be used to adjust the estimated return for the same period. Differences will be billed or credited to the business' occupational tax billing as required. Should a business not continue or terminate during the year, such business shall notify the department and file a final return reporting the actual number of employees and those gross receipts not previously reported.
- (b) At the time of application, applicants must provide previous year's tax returns showing gross receipts of the business from the date of commencement until the end of the calendar year. Where a business subject to the occupation tax for the calendar year has been conducted for only a part of the preceding year, the amount of gross receipts for such part shall be set forth in said return. Said return shall also show a figure putting the receipts for such part of a year on an annual basis with the part-year receipts bearing the same ratio to the whole-year gross receipts as the part year bears to the whole year. Said figure shall be used as the estimate of the gross receipts of the business for the current calendar year in establishing the business tax liability.
- (i) Where a business is unable to provide a tax return from the previous year, an estimated gross revenue amount must be provided. When a federal income tax return is filed, the tax

return must be provided to the department. The amount of estimated gross receipts for such part shall be equal to the next year's tax return. In the event of a discrepancy, adjustments will be made between estimated and actual amounts.

- (ii) Newly established businesses that have not had a full year revenue or have not filed a federal income tax return for the previous year will be allowed to estimate revenue and must provide federal income tax returns to the department indicating gross amounts once filed.
- (c) An applicant may be required to submit a random criminal background check, in accordance with a lottery system established in conjunction with policies and procedures of the department's Director to ensure fairness.
- (d) If a business is to begin on or after January 1 of the occupation tax year, the tax on such business shall be due and payable on the date of the commencement of the business and shall be based upon estimated gross receipts of the business from the date of commencement until the end of the calendar year. The business shall also file the required registration form and shall pay the administrative fee required by this article. Notwithstanding the foregoing, if a lawyer begins business after January 1 of the occupation tax year, the tax and administrative fee on such business shall be due and payable on December 31 of the year in which the business begins. Any lawyer failing to pay the occupation tax and administrative fee by April 30 of the following year shall be considered delinquent and shall be subject to and shall pay a ten (10) percent penalty of the amount of tax or fee due and interest as provided by Sec 2-112 and applicable provisions of state law. Such penalty shall be assessed in full on May 1 of the year following the tax year in addition to interest on delinquent occupational taxes and administrative fees. In addition, a list of all delinquent lawyers may be sent to the State Bar of Georgia. Section 1-10 of this Code shall not apply to violations of this chapter by lawyers.
- (e) The county shall not require the payment of more than one (1) occupational tax for each location that a business or practitioner shall have nor shall the county require a business to pay an occupational tax for more than one hundred (100) percent of the business' gross receipts.
- (f) Real estate brokers shall pay an occupational tax for each principal office and each separate branch office located in the unincorporated area of the county based upon gross receipts derived from transactions with respect to property located within the unincorporated area of the county. Payment of the occupation tax shall permit the broker, the broker's affiliated associates and salespersons to engage in all of the brokerage activities described in O.C.G.A. § 43-40-1 without further licensing or taxing other than the state licenses issued pursuant to chapter 40 of Title 43.
- (g) For out-of-state businesses with no location in Georgia, occupation taxes include the gross receipts of business as defined in section 15-33 of this article titled paying occupation tax of business with no location in Georgia.
- (h) For purposes of this section, prima facie evidence of gross receipts generated during any period shall be a copy of the business' federal income tax return or an affidavit of the business' accounting firm.

Sec. 15-30. Administrative and regulatory fees.

- (a) A non-prorated, non-refundable administrative fee set by the Governing Authority shall be required on all business occupation tax accounts for the initial startup, maintenance, renewal or reopening of those accounts.
- (b) A regulatory fee will be imposed on those applicable businesses listed under O.C.G.A. section 48-13-9(b) that the county deems necessary to regulate.

Sec. 15-31. Separate registration for separate locations or separate trade names.

Where a person conducts business at more than one (1) fixed location or has multiple business trade names, each location or place and each trade name shall be considered to be separate for the purpose of the occupation tax and the gross receipts of each will be returned on a form furnished by the department in accordance with the provisions of this article.

Sec. 15-32. Renewal returns and applications; due date; penalty for late payment.

- (a) On or before February 1st, businesses subject to occupation taxes levied under this article for the preceding year shall file a signed application furnished by the department. The signed application must include the actual amount of the gross receipts of such business during the preceding calendar year ending December 31st. Businesses that fail to file the signed application by February 1st will be subject to a \$100 late fee. Businesses that fail to file the signed application by March 1st will be subject a \$300 late fee. Businesses that fail to file the signed application by April 1st will be subject to a \$600 late fee. Occupation taxes on all businesses who hold an alcohol license shall be required to be renewed, in conjunction with the alcohol license, no later than December 31st of each year.
- (b) Occupation taxes shall be considered delinquent if not paid by April 15th of each year (the “Delinquency Date”). Any businesses failing to pay the occupation taxes and administrative fees by the Delinquency Date shall be subject to and shall pay a ten (10) percent penalty of the amount of tax or fee due and interest as provided by Sec. 2-112 and applicable provisions of state law. Such penalty shall be assessed in full on April 16th of the tax year in addition to interest on delinquent occupation taxes, regulatory fees and administrative fees.

Business License New and Renewal Timeline and Fee Structure			
Category	Due Date	Interest	Penalty
New Application	All Year	None	None
Renewal (application)	February 1 st	None	After Feb 1 st \$100 total
			After Mar 1 st \$300 total
			After Apr 1 st \$600 total
Renewal (payment)	April 15 th	1% (per month) ¹	10% ²
Renewal (with Alcohol License)	December 31 st (current year, along with alcohol renewal)	1% (per month) ¹	10% ²

¹ Interest is assessed and accrues at the rate of 1% per month for any businesses failing to pay by the due date (April 16th or January 1st)

² A one-time 10% penalty is assessed upon any business failing to pay by the due date (April 16th or January 1st)

- (c) If any person or business whose duty it is to obtain a registration in the county begins to transact or offers to transact any kind of business after said registration or occupation tax becomes delinquent, such offender shall be assessed interest according to the rate as provided

by state law and penalties under the provisions of county code and shall be punished as provided in section 1-10 of this Code.

- (d) On any new business begun in the county and not subject to payment of occupational taxes to DeKalb County, failure to register the name of the business and the line or lines of business that the business conducts shall be punished as provided in section 1-10 of this Code. Registration under this section is required for insuring business to be conducted complies with county codes or ordinances governing health, safety and other purposes.
- (e) Notwithstanding the foregoing, occupation taxes and administrative fees for lawyers shall be due and payable on December 31 of the year in which the tax is incurred. Any lawyer failing to pay the occupation tax and administrative fees by April 30 of the following year shall be considered delinquent and shall be subject to and shall pay a ten (10) percent penalty of the amount of tax or fee due and interest as provided by state law. Such penalty shall be assessed in full on May 1 of the year following the tax year in addition to interest on delinquent occupation taxes and administrative fees. In addition, a list of all delinquent lawyers may be sent to the State Bar of Georgia. Section 1-10 of this Code shall not apply to violations of this chapter by lawyers.
- (f) In addition to the above remedies, the department may obtain a lien for failure to pay taxes against the person so delinquent and against such person's property for the amount of the occupational tax required to be paid for the purpose of carrying on any of the businesses enumerated in this article.

Sec. 15-33. Paying occupation tax of business with no location in Georgia.

Registration and the assessment of an occupation tax is hereby imposed on those businesses and practitioners of professions and occupations with no location or office in the State of Georgia if the business' largest dollar volume of business in Georgia is in the unincorporated area of DeKalb County, Georgia, and the business or practitioner:

- (a) Has one (1) or more employees or agents who exert substantial efforts within the jurisdiction of unincorporated area of DeKalb County, Georgia, for the purpose of soliciting business or serving customers or clients; or
- (b) Owns personal or real property which generates income and which is located within the unincorporated area of DeKalb County, Georgia.

Sec. 15-34. Professionals classified in O.C.G.A. § 48-13-9(c).

Practitioners of professions as described in O.C.G.A. § 48-13-9(c), now and as it may be amended hereafter, shall elect as their entire occupation tax one (1) of the following:

- (a) The occupation tax based on the number of employees and the gross receipts combined with profitability ratios as set forth in this article; or
- (b) An established fee set by the county Governing Authority in accordance with authority granted by state law. Such fee is per practitioner who is licensed by the state to provide the service, such tax to be paid at the practitioner's office or location. Practitioners paying according to this paragraph shall pay the fee per practitioner and shall not be required to provide information relating to gross receipts or number of employees of the business or practitioner.

- (c) Any practitioner whose office is maintained by and who is employed in practice exclusively by instrumentalities of the United States, the state, a municipality or county of the state, shall not be required to register or pay an occupation tax for that practice.

Sec. 15-35. Purpose and scope of tax and applicability of state law.

The occupation tax levied herein is for revenue purposes only and is not for regulatory purposes, nor is the payment of the tax made a condition precedent to the practice of any profession, trade or calling. To the extent that any provision of this chapter conflicts with applicable state law, such provision is null, void, and unenforceable.

Sec. 15-36. - Evidence of state registration required if applicable; county and state registration to be displayed.

- (a) Each person who is licensed by the Secretary of State pursuant to Title 43 of the Official Code of Georgia Annotated shall provide evidence of proper and current state licensure before the county registration may be issued.
- (b) Each person required to obtain a Business Occupation Tax Certificate shall post the Business Occupation Tax Certificate in a conspicuous public place in the licensee's place of business. Each person who is licensed by the state shall also post the state license in a conspicuous public place in the licensee's place of business.
- (c) Any transient or nonresident person doing business within the county shall carry their occupational tax receipt either upon such person or in any vehicle or other conveyance which is used in such business, and such person shall exhibit it to any authorized enforcement officer of the county when so requested.

Sec. 15-37. Change of location.

Any business moving from one (1) location to another shall notify the department of this move and the new address in writing on a form provided by the department prior to the day of the moving. A new receipt for the occupational tax will be issued for the new location if the new location conforms to the zoning regulations of the county and the Building Official approves the occupancy pursuant to section 7-27(i) and all applicable codes.

Sec. 15-38. Transferability.

Business Occupation Tax Certificates shall not be transferable. Transfer of ownership of the business shall be considered as the termination of the business and the establishment of a new business. Filing a new registration application and payment of applicable fees and taxes shall be required of the new owner of the business. Failure to file a new registration application and to pay any applicable fees shall be grounds for revocation. Any attempt to transfer a business occupation tax certificate itself shall be punished as provided in section 1-10 of this Code.

Sec. 15-39. Evidence of qualification required if applicable.

Any business required to obtain health permits, bonds, certificates of qualification, certificates of competency or any other regulatory matter shall first, before the issuance of county registration, show evidence of such qualification.

Sec. 15-40. Inspections of books and records; audits; confidential information.

- (a)(1) The Director may inspect or audit the books or records of any business to ensure compliance with this chapter. The Director may issue an administrative subpoena describing the books or records sought and shall serve such subpoena. Failure to submit the requested books or records to the Director within thirty (30) days of service may result in the denial or revocation of an application or certificate. The recipient of an administrative subpoena may petition a court of competent jurisdiction to quash a subpoena within three (3) days of service.
 - (2) The Director may enter any building or property where business is conducted during business hours and at other reasonable times to ensure compliance with this chapter. Prior to entry, the Director shall present credentials, state the reason for the inspection, and request entry. If the building is unoccupied, the Director shall make reasonable efforts to locate any person having control of the building or property and request entry. If entry is refused or the Director is unable to obtain consent, the Director shall have recourse to every remedy provided by law to secure entry, including but not limited to application to a magistrate judge or any court of competent jurisdiction for an administrative search warrant.
 - (3) An administrative search warrant may be issued where the person seeking the warrant establishes under oath or affirmation that the property, records, or books to be inspected are to be inspected as a part of a legally authorized program of inspection which includes those records, books, or property, or that there is probable cause for believing that there is a condition, object, activity, or circumstance which legally justifies such an inspection.
 - (4) Notwithstanding the provisions above, whenever it appears to the Director that conditions exist requiring immediate inspection or other action to protect the public health, safety or welfare, or to preserve property, the Director is authorized to enter any building or property without first obtaining the consent, or when any other circumstance exists making such entry lawful under the common law. The right of entry set forth in this section is supplemental to any other right of entry provided by law.
- (b) If it is determined that a deficiency exists as a result of under reporting, additional payment of occupation taxes required to be paid under this article shall be assessed the interest as provided by state law.
 - (c) Information provided by a business or practitioner of an occupation or profession for the purpose of determining the amount of occupation tax for the business or practitioner is confidential and exempt from disclosure pursuant to the procedures laid out under O.C.G.A. § 50-18-70, et seq., except that such information may be disclosed to the governing authority of another local government for occupation tax purposes or pursuant to court order or for the purpose of collection of occupation tax or prosecution for failure or refusal to pay occupation tax. Nothing herein shall be construed to prohibit the publication by the Director of statistics, so classified as to prevent the identification of particular reports or returns and items thereof.
 - (d) Applicants and holders have a duty to update the department of any change in ownership, use, address, line of business, or any other information required to be submitted with the initial application or renewal. Unless otherwise specified, failure to update the department, within 60 days, of any such change may result in the suspension, revocation, or denial of the application or certificate.

- (e) An applicant or holder may be subject to a random audit to ensure accuracy and truthfulness, in accordance with a lottery system established in conjunction with policies and procedures of the department's Director to ensure fairness. The Director may hire outside auditors for this purpose.

Sec. 15-41. Business classifications for determining tax levy.

- (a) For the purpose of this article, every person engaged in business requiring the payment of occupational taxes is classified in accordance to the major line of business as defined in the Standard Industrial Classification Manual, Office of Management and Budget; and profitability classes are assigned in accordance with Statistics of Income, Business Income Tax Returns, United States Treasury Department, Internal Revenue Service. The department shall review assignment of businesses to profitability classes on a biannual basis and shall administratively reassign businesses as necessary to the then most accurate profitability class.
- (b) Classifications by business profitability have been established by the Governing Authority and are incorporated herein by reference and adopted for use in the application of this article. All separate businesses engaged in more than one (1) business activity shall be classified on the basis of their dominant business activity at each location where business is done; except, that a person whose dominant business activity is legally exempt as defined by this article shall be classified according to such person's principal subsidiary business, if any, which is subject to the levy and assessment of occupation taxes.
- (c) The occupation tax shall be determined by applying the business' gross receipts and number of employees returned to the Director to the business' profitability classification established for each business type.
- (d) A copy of business classifications shall be maintained in the office of the clerk of the Governing Authority and shall be available for inspection by all interested persons.

Sec. 15-42. Casual and isolated transactions.

Nothing in this article shall be interpreted to require any person who may engage in casual or isolated activity and commercial transactions, where they involve personal assets and are not the principal occupation of the individual, to pay occupation tax therefor. Street vendor, transient vendor or flea market vendor activities shall not be considered to be casual and isolated business transactions and shall be required to comply with the provisions of this article.

Sec. 15-43. Exemption for disabled veterans, disabled indigent persons, certain organizations.

- (a) Persons who qualify for a state veteran's or disabled indigent person's license shall be eligible for exemption from the county occupational tax fee. Any such person claiming an exemption shall secure evidence of qualification for the exemption from the proper authority and present it to the department.
- (b) Organizations that are exempt from federal income taxation under section 501(c)(3) or section 501(c)(4) of the United States Internal Revenue Code shall be eligible for exemption from the county occupational tax. This exemption does not extend to the Administrative Fee. Any such organization claiming an exemption shall provide to the department a federal tax exemption letter showing the code section under which an exemption is claimed. However,

with respect to any activity for which an organization otherwise entitled to an exemption under this section shall be liable for federal income tax on unrelated business income or shall be deemed to be a feeder organization under the United States Internal Revenue Code, the exemption from payment of occupational taxes shall not be available.

- (c) Notwithstanding the exemption from payment of county occupation taxes, an exempt person or business shall comply with the same laws and regulations as are required of other registered businesses.

Sec. 15-44. Exclusions from article; special classifications.

- (a) Pursuant to *DeKalb County v. Empire Distributors, Inc.*, 229 Ga. 497 (1972), wholesale dealers in liquor, wine, beer, and malt beverages who are licensed and domiciled outside of unincorporated DeKalb County are not required to pay the business occupation taxes provided for in this article.
- (b) Registration and occupation tax payment is required from any satellite subscription television system. Satellite subscription television system means services provided to subscribers for sale where the provider of the services utilizes a master antenna type system or earth dish system designed to receive and distribute satellite television signals; particularly, a system to provide service to one (1) or more multiple unit dwellings under common ownership wherein any wiring necessary to operate the system does not cross adjacent non owned property lines and does not cross county right-of-way in the unincorporated area of the county. The provisions of this paragraph shall not apply to any person that is franchised by the Governing Authority to own and operate a cable system under the provisions of chapter 8.
- (c) Registration and occupation tax payment is required from any broadcast subscription television system. Broadcast subscription television system means services provided to subscribers for sale where the provider of the services transmits premium programming from one (1) or multiple sources by transmitting or retransmitting programs to the public.
- (d) Any vendor or exhibitor who is a member of a group or collection of vendors or exhibitors that has come together at one (1) location for the purpose of selling arts, crafts, antiques, or other goods for a period not to exceed ten (10) consecutive days may be registered individually, or the group or collection may be registered as a "special event." Any applicant for a special event shall be considered as the promoter of the special event and shall be responsible for registration of the special event and paying the occupational taxes. Any special event group or collection of vendors or exhibitors shall comply with the same laws and regulations as required of other registered businesses, where applicable.
- (e) Pursuant to § 48-13-9(c) and *Moss v. City of Dunwoody*, 293 Ga. 858 (2013), Attorneys must comply with the requirements of this article subject to the following exceptions:
 - (1) Pursuant to state law, attorneys are not required to pay the business occupation taxes provided for in this article except as provided by Section 15-34
 - (2) Attorneys are not required to display a Business Occupation Tax Certificate pursuant to the requirements of this article in order to practice law in the County.
 - (3) Attorneys are required to register with the department as set out in Section 15-28.

(4) Attorneys shall not be subject to any criminal or civil penalties for failing to comply with this article, nor are they subject to having their Business Occupation Tax Certificates revoked.

(5) The Director may report any violations of this article to the State Bar of Georgia.

Sec. 15-45. Denial, revocation or suspension of business occupation tax certificate.

(1) A business occupation tax certificate application shall be denied upon determination by the Director that one or more of the following has occurred:

(A) The original application or renewal thereof contains materially false or misleading information, or the applicant omitted material facts in the application;

(B) The applicant or holder is engaged in the business or occupation under a false or assumed name, or is impersonating another practitioner of a like or different name;

(C) The premises covered by the certificate presents a threat to public health, safety, and welfare;

(D)(i) The applicant or holder has been convicted of or has pled guilty or nolo contendere to any felony offense, crime of moral turpitude, misdemeanor, or violation of this Code that directly relates to the business for which the certificate is sought.

(ii) In determining whether a felony, crime of moral turpitude, misdemeanor, or violation of this Code directly relates to the business for which the certificate is sought, the Director shall consider:

(a) The nature and seriousness of such violation;

(b) The relationship between such violation and the business for which the certificate is sought;

(c) The age of the individual at the time such violation was committed;

(d) The length of time elapsed since such violation was committed;

(e) The number of violations committed;

(f) The circumstances relative to such violation including, but not limited to, mitigating circumstances or social conditions surrounding such violation; and

(g) Evidence of rehabilitation and present fitness to operate the business for which the certificate is sought or held.

(2) (A) A business occupation tax certificate issued pursuant to this article shall be suspended upon determination by the Director that one or more of the following conditions has occurred but such condition may be remedied thereafter within a reasonable time:

(i) The original or renewal application contains materially false or misleading information, or the applicant omitted material facts in the application;

(ii) The premises covered by the certificate are found to be in violation of state law or any provision of the Code;

- (iii) The holder is operating under a business or trade name not listed on the current application on file with the Director;
 - (iv) The holder fails to maintain the initial requirements for obtaining the certificate;
 - (v) The applicant or holder fails to pay occupation taxes and administrative fees by the delinquency date;
 - (vi) The applicant or holder fails to comply with an inspection or audit conducted pursuant to Section 15-40;
 - (vii) The premises covered by the certificate presents a threat to public health, safety, or welfare;
 - (viii) The premises has moved locations without notifying the department; or
 - (ix) The premises has changed use under the zoning code without permission.
- (B) A certificate that is suspended under this subsection shall not be reinstated until the underlying violation is corrected or remedied as determined by the Director.
- (3) (A) A business occupation tax certificate issued pursuant to this article shall be revoked upon determination by the Director that one or more of the following has occurred:
- (i) The original or renewal application contains materially false or misleading information, or the applicant omitted material facts in the application;
 - (ii) The premises covered by the certificate are found to be in violation of federal or state law or any provision of the Code;
 - (iii) The applicant or holder is engaged in the business or occupation under a false or assumed name, or is impersonating another practitioner of a like or different name;
 - (iv) The applicant or holder is engaging in false, misleading, or deceptive advertising or practices;
 - (v) The holder is operating under a business or trade name not listed on the current application on file with the Director;
 - (vi) If after having been granted a certificate, the applicant or holder has been convicted of or has pled guilty or nolo contendere to any felony offense or crime of moral turpitude, misdemeanor, or violation of this Code that relates to the business for which the certificate was issued. (vii) The premises covered by the certificate presents a threat to public health, safety or welfare
- (B) An applicant or holder whose certificate is revoked may not apply for a new certificate within three hundred sixty five (365) days of the service of the Director's decision or, if appealed, within 365 days of the Hearing Officer's decision to affirm the revocation.
- (4) *False or misleading information.* No certificate shall be issued or renewed pursuant to any provisions of this article to any applicant, business or legally or organizationally related entity if within the twelve (12) months immediately preceding the filing with the department of planning of any application under this chapter the same applicant, business or legally or organizationally related entity has been denied a certificate or had a certificate revoked for

any location based in whole or in part upon having furnished false or misleading information in any application or having omitted material facts in any application.

- (5) *Violations of state or federal law or this Code committed by employees.* If an employee of an applicant or holder violates a federal or state law or a provision of this Code on the premises covered by the certificate, and the applicant or holder knew or should have known that the violation was likely to occur but did not take reasonable steps to prevent such violation from occurring, the certificate shall be suspended or revoked by the Director considering mitigating factors, including the severity of the violation, the relationship between the violation and the business for which the certificate was issued, the employee's past behavior, and the foreseeability of the violation occurring.

Sec. 15-46. Appeals of decisions of the director.

(a) Any person directly affected by a decision of the director under this article shall have the right to appeal to the Hearing Officer. Notwithstanding any contrary provision in this Code, all decisions concerning the denial, suspension, or revocation of an application or certificate under the Code shall be appealed in accordance with this section. An appeal shall be based on a claim that the director's decision was based on an erroneous finding of a material fact or an incorrect application of this code or other applicable laws and regulations.

(b) Unless otherwise indicated, all notices required to be served upon the appellant under this section shall be served by U.S. Mail. Notice shall also be sent via e-mail if appellant has provided the department with a valid e-mail address.

(c) Appeals regarding the denial, suspension, or revocation of an application or certificate.

(1) Upon determination that an application or certificate is subject to denial, suspension, or revocation, the director shall provide written notice of such decision and the grounds for such decision to the applicant or holder. The notice shall give the applicant or holder the option to request a pre-disciplinary meeting with the director. If the applicant or holder elects not to request a pre-disciplinary meeting, the applicant or holder may immediately appeal the director's decision via the appeal procedure set forth in subsection (a).

(2) If the applicant or holder elects to request a pre-disciplinary meeting, he or she must advise the Director within fifteen (15) calendar days of receiving notice and must be available for the pre-disciplinary meeting within fifteen (15) calendar days thereafter. The applicant or holder shall have the opportunity to explain or refute any alleged violation and describe efforts made to resolve the matter.

(3) Within fifteen (15) calendar days of the pre-disciplinary meeting, the Director shall serve the applicant or holder with a written decision explaining the rationale for such decision. The applicant or holder may appeal that decision via the appeal procedure set forth in subsection (c).

(d) Appeals regarding occupation tax assessment or classification.

(1) For decisions concerning the occupation tax assessed or the major line of business classification, the applicant or holder shall file an objection with the director within fifteen (15) days of receipt of the decision. The objection shall be in the form of a letter and shall identify the grounds on which the objection is based and shall include a mailing address and e-mail address for receipt of future notices and decisions.

(2) Within fifteen (15) calendar days of the pre-disciplinary meeting, the Director shall serve the applicant or holder with a written decision explaining the rationale for such decision. The applicant or holder may appeal that decision via the appeal procedure set forth in subsection (c).

(e) Appeals regarding cease and desist orders.

(1) For decisions concerning the issuance of a cease and desist order, the applicant or holder shall file a notice of appeal with the director within five (5) days of receipt of the order. The notice of appeal shall be in the form of a letter and shall identify the grounds for appeal, describe the efforts made to resolve the matter, and include a mailing address and e-mail address for receipt of future notices and decisions. Should the applicant or holder fail to file a notice of appeal within the time allowed, the right to appeal is lost.

(2) Within five (5) calendar days of the pre-disciplinary meeting, the Director shall serve the applicant or holder with a written decision explaining the rationale for such decision. The applicant or holder may appeal that decision via the appeal procedure set forth in subsection (d).

(3) While the appeal is pending, the business operator or property owner must comply with the cease and desist order.

(f) (1) Except as otherwise provided in this section, an appellant must file a notice of appeal with the Director within fifteen (15) calendar days of the decision being appealed. The notice of appeal shall be in the form of a letter, identify the grounds for appeal, and include a mailing address and e-mail address for receipt of future notices and decisions. Should the appellant fail to file a notice of appeal that contains the required information within the time allowed, the right to appeal is lost.

(2) Upon receipt of a timely and proper notice of appeal, the director shall send a notice of hearing to appellant of the date, time and place where a hearing will be held. The Director will designate a location for Grievances and Hearings which will be utilized to hold these hearings. The hearing shall be held before the Hearing Officer within thirty (30) calendar days of the date the notice of appeal is filed with the Director, but no sooner than five (5) calendar days of service of the notice of hearing.

(3) While an appeal is pending before the Hearing Officer under this section, the subject business may continue operating, but all legal proceedings with regard to collection of the occupation tax from the applicant or holder shall continue. The filing of a notice of appeal shall not preclude the Director from pursuing any and all other legal remedies to enjoin any violation of this article or of any other article of the Code or law.

(4) If the Director deems it necessary that an audit of the financial books/records of the applicant or holder be conducted, the Director shall notify the applicant or holder in writing of a reasonable date, time and place for the audit, which shall be conducted prior to the date of a hearing on the matter. The Director may hire outside auditors for this purpose.

(g) (1) Proceedings before the Hearing Officer shall be open to the public and recorded. All allegations of code violations and misconduct by the applicant or holder shall be read at the commencement of the hearing unless waived. Parties to an appeal may be represented by counsel and may present documentary evidence and sworn witness testimony. Any member of the public may submit written documents and sworn affidavits relevant to the proceeding. The rules of civil procedure and rules of evidence shall not apply, but the Hearing Officer shall control the proceeding in such a way as to ensure the fair and efficient administration of justice. No hearing

shall last more than three (3) hours unless the Hearing Officer determines there is good cause to extend the allotted time.

(2) The Hearing Officer shall affirm, modify or reverse the decision of the director. The Hearing Officer shall only modify or reverse a decision of the Director upon a determination that such decision was based on an erroneous finding of a material fact or an incorrect application of this code or other applicable laws or regulations. The Hearing Officer's decision must be supported by evidence presented at the hearing. If the Hearing Officer affirms the director's decision, the Hearing Officer may require the applicant or holder to reimburse the Director for any reasonable fees incurred in conducting an audit of the applicant or holder. The Hearing Officer shall issue a written decision and shall serve a copy of such decision on parties within thirty (30) calendar days of the date of the hearing. All documents and other evidence considered by the Hearing Officer shall be preserved as the record of the proceedings for not less than one hundred fifty (150) calendar days after the hearing and in accordance with the record retention requirements of law.

(3) Any person with legal standing may seek review of such decision by petitioning the Superior Court of DeKalb County for a writ of certiorari, setting forth plainly the alleged errors. Such petition shall be filed within thirty (30) days after the final decision of the hearing officer is rendered. Should the Hearing Officer fail to issue a timely decision, the applicant or holder may seek review as if a decision adverse to the applicant or holder had been rendered.

(h) Hearing Officer Qualifications; administration.

(1) A person serving as a Hearing Officer shall be admitted to the practice of law in the State of Georgia and an active member of the State Bar of Georgia, with a minimum of five (5) years of experience in the practice of law.

(2) A pool of at least four (4) Hearing Officers shall be established to hear all appeals under this section. The pool of hearing officers shall be established in the same manner as the hearing officer pool established under Article XVI of this Code and individuals serving as hearing officers under this chapter shall be compensated in the same manner as those individuals who serve as hearing officers in appeal hearings under Article XVI of this Code. In no event shall the hearing officer be a current appointed or elected official or employee of DeKalb County or have been an official or employee of DeKalb County within two years prior to serving as a hearing officer.

(3) The Hearing Office for each proceeding will be selected on a rotating basis based on availability.

Sec. 15-47. Promulgation of rules, regulations.

The department shall have the power and authority to make and publish reasonable rules and regulations not inconsistent with this article or other laws of the county and the state, or the constitution of this state or the constitution of the United States, for the administration and enforcement of the provisions of this article and the collection of the occupational tax.

Sec. 15-48. Requirement for public hearings.

The Director shall conduct at least one (1) public hearing before adopting any ordinance or resolution regarding the occupation tax. The Director shall also conduct at least one (1) public hearing in any year when revenue from occupational taxes is greater than revenue from occupational taxes for the preceding year in order to determine how to use the additional revenue.

Secs. 15-49—15-70. Reserved.

PART II. EFFECTIVE DATE

This ordinance shall become effective upon adoption by the Board of Commissioners and approval by the Chief Executive Officer.

PART III. SEVERABILITY

Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the ordinance as a whole, nor any part thereof, other than the part so declared to be invalid or unconstitutional. All ordinances or resolutions, or parts thereof, in conflict with this ordinance are repealed.

ADOPTED by the DeKalb County Board of Commissioners, this ____ day of _____, 2018.

JEFF RADER
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this ____ day of _____, 2018.

MICHAEL THURMOND
Chief Executive Officer
DeKalb County, Georgia

ATTEST:

BARBARA H. SANDERS, CCC
Clerk to the Board of Commissioners and
Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:

LUZ BORRERO
Deputy COO for Development
DeKalb County, Georgia

APPROVED AS TO FORM:

VIVIANE ERNSTES
Interim County Attorney
DeKalb County, Georgia

DRAFT