

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 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; and

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 the employee fee, 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 CEO.
 - (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; interorganizational sales or transfers between or among the units of a parent-subsidary 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 form filled out by any business or restaurant offering food and alcoholic beverages (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, 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

- (15) *Person* wherever used in this article shall be held to include sole proprietors, corporations, partnerships, nonprofit or any other form of business organization.
- (16) *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.
- (17) *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.
- (18) *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 of Planning and Sustainability. 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.

- (b) 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.
- (c) 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.
- (d) 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 shall be punished as provided in section 1-10 of this Code.
- (e) 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.
- (f) 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. When the Director determines, by physical inspection, that a business is being operated or an activity regulated by the Code is being conducted without a business occupation tax certificate, or with an expired business occupation tax certificate, he/she may order the person operating the business or conducting the activity to cease and desist from conducting such business or activity. The Director shall notify the person operating the business in person or using certified and United States mail. The Director will not lift the cease and desist order until the operator of the business obtains or regains his or her business occupation tax certificate.
- (g) The Director may, through a cease and desist order, compel the person who owns the real property on which the business is operated or activity is conducted to take whatever action may be necessary to prohibit such business from operating or to prohibit such activity from continuing on such premises. The order shall be delivered to the property owner as reflected in the records of the DeKalb County Tax Commissioner in person or using certified and United States mail.
- (h) Each day of violation constitutes a separate violation. An operator of a business or a holder will remain liable for any violations committed while operating the business even if the operator or holder sells or otherwise transfers ownership of the business.
- (i) 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 ten days of receipt of the order. If requested, a hearing will be conducted following

the procedures outlined in Sec. 15-46(e). 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's business occupation tax section 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's business occupation tax section and file a final return reporting the actual number of employees and those gross receipts not previously reported.
- (b) 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.
- (c) 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 section 2-112, subject to 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.

- (d) 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.
- (e) 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.
- (f) 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.
- (g) 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, 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 planning 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 1 of each subsequent year, businesses liable for occupation taxes levied under this article for the preceding year shall file with the planning department's business occupation tax section, on a form furnished by the Department, a signed return setting forth the actual amount of the gross receipts of such business during the preceding calendar year ending December 31. Businesses that fail to file the signed return by February 1 will be subject to a \$100 administrative penalty. Businesses that fail to file the signed return by March 1 will be subject to a \$200 administrative penalty. Businesses that fail to file the signed return by April 1 will be subject to a \$300 administrative penalty. Failure to file the signed return by February 1 shall not alter the Delinquency Date.

- (b) Occupation taxes on businesses continuing from the preceding year shall be due and payable on January 1 of each subsequent year. Occupation taxes due from businesses continuing operation in the current year from the preceding year shall be considered delinquent if not paid by April 30 of each year (the "Delinquency Date"). Any business 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 section 2-112, subject to state law. Such penalty shall be assessed in full on May 1 of the tax year in addition to interest on delinquent occupation taxes, regulatory fees and administrative fees.
- (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 planning 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. section 48-13-9(c).

Practitioners of professions as described in O.C.G.A. section 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. If a business changes location without notifying the department, the business shall pay a \$75 penalty and the department will

issue a temporary business occupation tax certificate for the business to display in the time period between notifying the department of the change of location and the approval by the Building Official.

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) The Department through its officers, agents, employees, representatives, or designees shall have the right to inspect the books or records of any business for which returns have been made and upon demand of the Finance Department such books or records shall be submitted for inspection by a representative or agent of the county within thirty (30) days. Independent auditors, contractors, or bookkeepers employed by the county shall be classified as agents for the purposes of this article. Failure of submission of any requested books and records within thirty (30) days shall be grounds for revocation of the occupation tax registration currently existing in the county. 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 and penalties provided for by county code.
- (b) Except as provided in paragraph (c) of this section, 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.*
- (c) Information provided to the county 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 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.
- (d) Applicants and holders have a duty to update the department of any change in ownership, address, line of business, or any other information required to be submitted with the initial application. Failure to update the department of any such change may result in the suspension, revocation, or denial of the applicant or holder's business occupation tax certificate.

- (e) Nothing herein shall be construed to prohibit the publication by the county of statistics, so classified as to prevent the identification of particular reports or returns and items thereof.

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 county 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. This exemption does not extend to the Administrative Fee unless the applicant presents a certificate of exemption from the commissioner of veterans service as provided in O.C.G.A. § 43-12-1. Any such person claiming an exemption shall secure evidence of qualification for the exemption from the proper authority and present it to the planning 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 planning 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) Wholesale dealers in liquor, wine, beer, and malt beverages 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) Attorneys must comply with the requirements of this article subject to the following exceptions:
 - (1) Attorneys are not required to pay the business occupation taxes provided for in this article.
 - (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 and must pay the fee required by Section 15-34.

(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 County 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.

- (a) A business occupation tax certificate shall be denied if the Director, after reviewing application materials and considering recommendations from the staff of the Department, determines that an applicant is ineligible for a business occupation tax certificate based on the criteria outlined in this Article.
- (b) A business occupation tax certificate shall be suspended if the Director, after reviewing pertinent evidence and considering recommendations from the staff of the Department, determines that a holder of a business occupation tax certificate has committed a minor violation of the provisions of this Article or has violated the provisions of this Article in a manner that cannot be remedied.
- (c) A business occupation tax certificate shall be revoked if the Director, after reviewing pertinent evidence and considering recommendations from the staff of the Department, determines that a holder of a business occupation tax certificate has committed a major violation of the provisions of this Article or has repeatedly violated the provisions of this Article.
- (d) *Grounds for denial, revocation, or suspension of tax certificate.*
 - (1) A business occupation tax certificate issued pursuant to any provision of this article may be denied, revoked or suspended by the Director, and considered void, upon one or more of the following grounds:
 - (A) The original application or renewal thereof contains false or misleading information, or the applicant omitted material facts in the application;
 - (B) The premises covered by the certificate are found to be in violation of state law or any provision of the Code;
 - (C) 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;
 - (D) The applicant or holder is engaging in false, misleading, or deceptive advertising or practices;
 - (E) The holder is operating under a business or trade name not listed on the current application on file with the county;
 - (F) The holder fails to maintain the initial requirements for obtaining the certificate;
 - (G) The applicant or holder is classified as, or becomes classified as, a habitual violator under Title 40, Chapter 5 of the Official Code of Georgia Annotated, or is found to be operating the business under the influence of alcohol or of illegal drugs or substances;

- (H) The applicant or holder has been convicted of or has pled guilty or nolo contendere to any sexual offense, the offense of false swearing, the offense of operating an adult entertainment establishment in violation of the distance requirements of Title 36, Chapter 60 of the Official Code of Georgia Annotated, or to any offense involving illegal sale of narcotics or possession or receipt of stolen property, for a period of five years prior to the filing of the application. If after having been granted a certificate, the applicant is convicted, pleads guilty or enters a plea of nolo contendere to any of the above offenses, said certificate shall be subject to suspension and/or revocation;
 - (I) The applicant or holder fails to pay occupation taxes and administrative fees by the Delinquency Date;
 - (J) The business has been declared a public or private nuisance based on the criteria set out in Section 18-1, *et seq.*;
 - (K) The applicant or holder has been convicted of or has pled guilty or nolo contendere to violating any provision of this Code or state law two (2) times in the previous five (5) years;
 - (L) The applicant or holder fails to comply with an inspection or audit conducted pursuant to Section 15-40;
 - (M) The applicant or holder provides false or misleading information on its letter of entertainment, or changes its business, operations, or practices so that they are inconsistent with its letter of entertainment; or
 - (N) Any other violation of this article by the applicant or holder.
- (2) *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.
- (3) *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 of the applicant or holder's location, the applicant or holder knew or should have known that the illegal activity occurred, and the applicant or holder did not take reasonable steps to prevent such activity, the following penalties shall apply:
- (A) When an employee commits a misdemeanor or ordinance violation on the premises of the holder's location within a calendar year, the Director may suspend the holder's certificate for one week.
 - (B) When an employee commits a third misdemeanor or ordinance violation on the premises of the holder's location, the Director may suspend the holder's certificate for six months.

(C) When an employee commits a felony on the premises of the holder's location, the Director may suspend the holder's certificate for one year.

(D) When an employee commits a second felony on the premises of the holder's location, the Director may revoke the holder's certificate.

(4) *Pre-disciplinary hearing.* Upon determining that a holder of a certificate has violated one of the provisions of this article or other applicable provisions of this Code, the Director shall provide written notice of the violation(s) to the holder and give the holder the option to attend a pre-disciplinary hearing with the Director. Attendance is not mandatory; however, if the holder elects to attend the pre-disciplinary hearing, the holder must advise the Director of his or her election within three (3) business days of receiving notice of the violation and must be available for the pre-disciplinary hearing within seven (7) business days of such election. The holder shall have the opportunity to explain or refute any alleged violation, which will be taken under consideration by the Director. The Director shall then make a decision.

(5) *Notice of denial, revocation or suspension of certificate.* Upon denial of an application seeking issuance or renewal of a certificate, or revocation or suspension of a business occupation tax certificate, the Director shall provide written notification of such decision to the applicant or holder of the certificate within five (5) calendar days. The written notification shall state the grounds for the denial, revocation or suspension, and shall be served via hand delivery to the applicant or holder at the business location listed on the certificate or application and sending a copy of such notice via registered mail, return receipt requested, to the address listed by the applicant or holder on the application for a certificate.

(e) Grievances regarding occupation tax assessment or classification.

For grievances regarding the occupation tax assessed or the major line of business classification other than denial, revocation, or suspension of a certificate, the applicant or holder shall first submit in writing to the Director a complaint which shall set forth in reasonable detail the matters complained of. The complaint shall take letter form, and it shall be the duty of the Director to review the complaint and issue a written reply to the taxpayer within thirty (30) calendar days from the date the complaint is received. The written reply shall state in reasonable detail the basis for the decision regarding the initial assessment and classification. Should the applicant or holder desire to seek review of such a decision, or if the Director fails to issue a written opinion to the taxpayer within the thirty (30) calendar day time period, the taxpayer shall be entitled to appeal to the Hearing Officer pursuant to the procedure set forth in section 15-46.

(f) Restoration of a suspended or revoked occupational tax certificate

Unless otherwise established in this code, the first time a business occupation tax certificate is suspended or revoked, the Director shall authorize the restoration of the business occupational tax certificate within 30 calendar days after the business has corrected the underlying code violations or other issues that precipitated the suspension or revocation. Unless otherwise established in this code, the second time a business occupation tax certificate is suspended or revoked, the business occupational tax certificate shall not be restored; however, the holder may apply for a new business occupational tax certificate the following year. The

license shall not be restored within 60 calendar days after being revoked for the second time under any circumstances. The Director may permit a business owner whose license was denied to re-apply for a new occupational tax certificate 30 calendar days after the denial occurred upon evaluation of evidence the business has remedied the circumstances on which denial was based.

Sec. 15-46. Administration; procedure for grievances and appeals.

The Director shall administer and enforce the provisions of this article. Should an applicant or holder desire to appeal a denial, revocation, or suspension decision or a grievance decision under this article, the following procedure shall apply:

- (a) A notice of appeal must be filed with the Director within seven (7) calendar days after receipt of the decision being appealed. The notice of appeal shall be in the form of a letter, and shall clearly identify all of the objections or exceptions taken to the decision of the Director. The notice of appeal shall also include a statement describing what efforts were made to resolve the matter and contain a mailing and email address for receipt of future notices and decisions of the Hearing Officer. Should the applicant or holder fail to file a notice of appeal within the time allowed, the right to appeal is lost.
- (b) Upon receipt of a timely and proper notice of appeal, the Director shall notify the applicant or holder, in writing, of the date, time and place where a hearing will be held. The hearing shall be held before the Hearing Officer within fifteen (15) calendar days of the date the notice of appeal is filed with the Director, but no sooner than five (5) calendar days after notice is sent to the applicant or holder at the address given by the applicant or holder pursuant to the requirements of subsection (a). The Director shall transmit to the Hearing Officer all County documents or materials constituting the record of the action or proceedings below.
- (c) If the Director deems it necessary that an audit of the financial books/records of the applicant or holder be conducted, the county 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. The expense of hiring outside auditors shall be borne by the county if the position of the applicant or holder is sustained by the audit. If not, the expense of the outside auditors shall be due and payable from the applicant or holder as part of the costs of appeal.
- (d) While an appeal is pending before the Hearing Officer under this section, the applicant's or holder's business may remain open, but all legal proceedings with regard to collection of the occupation tax from the applicant or holder shall continue. The filing of an appeal shall not preclude the county 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.
- (e) In all hearings pursuant to this section, the following procedures shall govern, and the proceeding shall be informal:
 - (1) A pool of at least three (3) Hearing Officers shall hear all appeals under this section. The Director of Human Resources shall retain the individuals to serve as Hearing Officers. Hearing Officers may be added to or removed from the pool at any time, with or without cause at the discretion of the Director of Human Resources. Within budgetary limitations, compensation of persons serving as hearing officers shall be the

same as those individuals who serve as hearing officers in appeal hearings initiated by merit-protected employees. In no event shall the hearing officer be a current appointed or elected official or employee of DeKalb County or have been such an official or employee of DeKalb County within two years prior to serving as a Hearing Officer.

- (2) 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.
- (3) The Hearing Officer in a proceeding will be selected from the pool of Hearing Officers as created by this section. The Hearing Officer for each proceeding will be selected for a particular proceeding on a rotating basis based on availability.
- (3) The proceeding before the Hearing Officers shall be recorded, and all documents and other materials considered by the Hearing Officer shall be preserved as the record of the proceedings. The record of the proceedings shall be preserved for not less than one hundred fifty (150) calendar days after the hearing and in accordance with the record retention requirements of law.
- (4) Any alleged violations or misconduct levied against the applicant or holder and scheduled for a hearing before the Hearing Officer shall be read completely to the applicant or holder at the commencement of the hearing, unless waived by the applicant or holder.
- (5) The Hearing Officer may receive evidence regarding grievance decisions or the alleged violations or misconduct as filed against the applicant or holder. Decisions of the Hearing Officer are to be supported by the evidence accepted and admitted during the hearing.
- (6) The county shall bear the burden of proof. The standard of proof shall be by a preponderance of the evidence, but these hearings are administrative in nature and the Hearing Officer is not bound by strict courtroom procedures or the rules of civil procedure or evidence. Witnesses who offer testimony will do so under oath, which will be administered by the Hearing Officer.
- (7) The order of proof shall be as follows: The county representative shall present the case-in-chief in support of the alleged violations or misconduct; the applicant or holder may present a case-in-chief, if desired. Each party may be allowed to present one (1) case-in-rebuttal.
- (8) The applicant or holder and county may be represented by counsel, may present evidence, and may examine and cross-examine witnesses. Additionally, the Hearing Officer is permitted to question witnesses. Presentation of arguments and evidence may be in oral or written form, except that affidavits of individuals who are unavailable for cross-examination shall not be accepted, admitted, or considered by the Hearing Officer.
- (9) Following the presentation of evidence, the Hearing Officer shall issue a written decision within fifteen (15) calendar days of the date of the hearing. A copy of the decision shall be sent to the county representative and, emailed and mailed, via registered or certified mail, to the applicant or holder at the address provided on the notice of appeal. Should the Hearing Officer(s) fails to issue a timely decision, on the

thirty-first day after the date of the hearing the applicant or holder may seek review as if a decision adverse to the applicant or holder had been rendered. If the Hearing Officer upholds the director's decision to revoke or suspend a business occupation tax certificate, the decision shall include a cease and desist order, which shall take effect immediately. The cease and desist order shall be posted on the premises of the business. Operating a business while a cease and desist order is in effect shall be an ordinance violation and shall be punished as provided in section 1-10 of this Code.

- (10) The findings of the Hearing Officer shall be final unless a party files a petition for writ of certiorari to the Superior Court of DeKalb County within thirty (30) calendar days of the decision of the Hearing Officer. Within five (5) business days of the date of the final written decision, the applicant or holder shall pay the contested business occupation tax or in the case of revocation or suspension of the certificate, the holder shall cease to operate the business at the location for which the business occupation tax certificate was issued for the period of time indicated in the final written decision.

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 county shall conduct at least one (1) public hearing before adopting any ordinance or resolution regarding the occupation tax. The county 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 _____, 2017.

KATHIE GANNON
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this ____ day of _____, 2017.

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:

APPROVED AS TO FORM:

LUZ BORRERO
Deputy Chief Operating Officer for Development
DeKalb County, Georgia

O.V. BRANTLEY
County Attorney
DeKalb County, Georgia

DRAFT