

**A RESOLUTION BY THE FORSYTH COUNTY BOARD OF COMMISSIONERS
MODIFYING FORSYTH COUNTY'S BUSINESS OCCUPATION TAX ORDINANCE,
ORDINANCE 72, AS CODIFIED AS CHAPTER 22 OF THE CODE OF FORSYTH
COUNTY**

WHEREAS, the Constitution of the State of Georgia, approved by the voters of the State in November 1982, and effective July 1, 1983, provides in Article IX, Section 2 Paragraph 1 thereof, that the governing authority of the County may adopt reasonable ordinances, resolutions, and regulations; and

WHEREAS, O.C.G.A. § 36-1-20 authorizes the County to adopt ordinances preserving the public health, safety, and welfare, and to adopt appropriate measures to enforce those ordinances; and

WHEREAS, O.C.G.A. § 48-13-13(5) provides that nonprofit organizations and vendors operating under contract with a tax-exempt agricultural fair, as that term is defined in O.C.G.A. § 2-2-8, are exempt from the levy of any County occupation tax, regulatory fee, or administrative fee; and

WHEREAS, subject to the requirements of O.C.G.A. § 42-12-1 *et seq.*, certain disabled veterans and blind persons are exempt from the levy of any County occupation tax, regulatory fee, or administrative fee; and

WHEREAS, Section 12.1 of the County's codified local laws authorizes the County to adopt ordinances exercising the police powers of the State of Georgia; and

WHEREAS, in the interest of the health, safety, and general welfare of the citizens of Forsyth County, Georgia, the Board of Commissioners of Forsyth County desires to exercise its authority to adopt the amendment attached hereto as Exhibit A; and

WHEREAS, appropriate notice and hearing on the amendments contained herein having been undertaken according to general and local law.

NOW THEREFORE, the Board of Commissioners of Forsyth County, Georgia, hereby ordains as follows:

BE IT RESOLVED this ___day of _____, 2020.

FORSYTH COUNTY BOARD OF COMMISSIONERS

Laura Semanson, Chairman

Cindy J. Mills, Vice Chairman

Dennis T. Brown, Secretary

Molly Cooper, Member

Todd Levent, Member

Attest:

Clerk to the Board

Exhibit A

ARTICLE II. - OCCUPATION TAXES AND REGULATORY FEES

Sec. 22-31. - Occupation tax required for business dealings in county.

For each year, every person engaged in any business, trade, profession or occupation in the unincorporated areas of the county, whether with a location in the county or in the case of an out-of-state business with no location in the state exerting substantial efforts within the state pursuant to O.C.G.A. § 48-13-7, shall pay an occupational tax for such business, trade, profession or occupation unless otherwise exempt pursuant to this article. Any applicable registration shall be displayed in a conspicuous location in the place of business if the taxpayer has a permanent business location in the county. If the taxpayer has no permanent location in the county, such business registration shall be shown to the revenue collection office of the county upon request.

Sec. 22-32. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

Administrative fee means a component of an occupation tax which approximates the reasonable cost of handling and processing the occupation tax and accompanying returns.

Business means any person who, within the unincorporated areas of the county, engages in or causes to be engaged in and/or represents himself to be engaged in any occupation or activity with the object of gain, benefit or advantage either directly or indirectly. Any person advertising by any means, including but not limited to signs, cards, circulars and newspapers, that he is engaged in any business of any kind shall be liable for the appropriate occupation tax required under this article and the appropriate fee therefor.

Business registration means a business license. This business license is obtained from the revenue collection office after the requisite occupation tax and/or regulatory fees has been paid to the revenue collection office.

Date of commencing operations means the date on which a business becomes engaged in business in the county.

Dominant line means the type of business, within a multiple line business, that the greatest amount of income is derived from.

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. The term "employee" also includes owners, partners, officers or managers who work for a business, whether or not such person is salaried.

Location of office means a physical location and shall not include a temporary work site which serves a single customer or project.

Number of employees of the business or practitioner means as computed on a full-time position basis or a full-time position equivalent basis, provided that for the purposes of this

computation an employee who works 40 hours or more weekly shall be considered a full-time employee and that the average weekly hours of employees who work less than 40 hours weekly shall be added and such sum shall be divided by 40 to produce full-time position equivalents.

Nonprofit means an organization exempt from federal income taxation under section 501(c)(3) or section 501(c)(4) of the United States Internal Revenue Code.

Occupation tax means a tax levied on persons, partnerships, corporations or other entities for engaging in an occupation, profession or business for revenue raising purposes.

Person means and shall include sole proprietors, corporations, partnerships, or any other form of business organization.

Practitioner of profession or occupation means a practitioner of a profession or occupation who by state law requires state licensure regulating such profession or occupation but does not include a practitioner who is an employee of a business if the business pays an occupation tax.

Regulatory fee means payments, whether designated as license fees, permit fees or by any other name, which are required by the county as an exercise of its police power and as a part of or an aid to regulation of an occupation, profession or business. The amount of a regulatory fee shall approximate the reasonable cost of the actual regulatory activity performed by the county and may not include an administrative fee.

Revenue collection office means the county department of business license.

Sec. 22-33. - Administration and regulatory fee structure; occupation tax structure.

- (a) A non-prorated, nonrefundable administrative fee of \$25.00 shall be required on all business and occupation tax accounts for the initial start-up, renewal and reopening of those accounts, except that a non-prorated, nonrefundable administrative fee of \$50.00 shall be required on all business and occupation tax accounts for the year 2021 and all subsequent years for the initial start-up, renewal, and reopening of those accounts.
- (b) A regulatory fee will be imposed as provided under O.C.G.A. § 48-13-9 on those applicable businesses.

Sec. 22-34. - Occupation tax levied; restrictions.

- (a) *Levy.* An occupation tax shall be levied upon those businesses and practitioners of professions and occupations with one or more locations or offices in the unincorporated part of the county and/or upon the applicable out-of-state businesses with no location or office in the state pursuant to O.C.G.A. § 48-13-7 based upon the number of employees of the business or practitioner.
- (b) *Occupation tax schedule.* The tax rate determined by the number of employees for each business, trade, profession or occupation shall be as follows and will be developed and updated from time to time by the county department of business license:

Employees	Tax Liability
1	\$ 75.00

2	150.00
3—9	150.00 + \$12.50 per employee over 2
10—99	237.50 + \$15.00 per employee over 9
100—499	1,587.50 + \$17.50 per employee over 99
500 or more	8,587.50 + \$20.00 per employee over 499

(c) *Restrictions.*

- (1) No business or practitioner shall be required to pay more than one occupation tax for each of its locations.
- (2) No occupation tax shall be required from real estate brokers, agents or companies whose offices are located outside the taxing jurisdiction and who sell property inside the taxing jurisdiction.
- (3) An occupation tax shall not be levied in any other manner except as described in this section.
- (4) Out-of-state businesses with no location in the state shall be assessed occupation taxes based on the number of employees engaged in substantial efforts in the state.
- (5) Newly established businesses shall be required to estimate the number of employees from the date of commencement to the end of the calendar year, and such fee shall be paid within 30 days from the date of commencing operations.

Sec. 22-35. - Paying occupation tax of business with no location in state.

- (a) Registration and assessment of an occupation tax shall be imposed on those businesses and practitioners of professions with no location or office in the state if the business's largest dollar volume of business in the state is in the county and the business or practitioner:
 - (1) Has one or more employees or agents who exert substantial efforts within the jurisdiction of the county for the purpose of soliciting business or serving customers or clients; or
 - (2) Owns personal or real property which generates income, and which is located within the jurisdiction of the county.
- (b) Any business or practitioner of a profession with no location or office in the state shall be exempt from assessment of an occupation tax under this article if such business or practitioner submits proof of payment of a local business or occupation tax in another state on the business's or practitioner's sales or services in the state.

Sec. 22-36. - Each line of business to be identified on business registration.

The business registration of each business operated in the county's jurisdiction shall identify the line or lines of business it conducts. Unless eligible for an exemption under this article, no business shall conduct any line of business without first having that line of business registered with the revenue collection office and that line of business being noted by the revenue collection office upon the business registration form which is to be displayed by the business owner.

Sec. 22-37. - Number of businesses considered to be operating in the county.

When a person conducts business at more than one fixed location, each location or place shall be considered a separate business for the purpose of an occupation tax.

Sec. 22-38. - Practitioners exclusively practicing for a government.

No occupation tax, regulatory fee, or administrative fee shall be levied upon any practitioner whose office is maintained by and who is employed in practice exclusively by the United States, the state, a municipality or county of the state, instrumentalities of the United States, the state, a municipality or county of the state. No individual, organization, or entity excluded from occupational taxes, regulatory fees, and administrative fees under this subsection shall be required to obtain a business registration but may elect to register pursuant to the terms of this article, at no cost.

Sec. 22-39. - Purpose and scope of tax.

The occupation tax levied in this article 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 such profession, trade or calling. The occupation tax only applies to those businesses and occupations which are covered by the provisions of O.C.G.A. §§ 48-13-5—48-13-26. All other applicable businesses and occupations are taxed by the local government pursuant to the pertinent general and/or local law and ordinance.

Sec. 22-40. - When tax due and payable; effect of transacting business when tax delinquent; penalties.

- (a) Each occupation tax shall be for a calendar year unless otherwise specifically provided. Such registration and occupation tax shall be payable January 1 of each year and shall, if not paid by March 31 of each year, be subject to penalties for delinquency as provided in this article. On any new profession, trade or calling begun in the county, the registration and occupation tax shall be considered delinquent if not obtained immediately upon beginning business. A penalty of ten percent of the amount of occupation tax payable shall be imposed upon payments made after March 31 in the case of businesses in operation on January 1 of such year and upon any payment for a new profession, trade or calling begun in the county if such occupation tax payment is not made immediately upon beginning business. The amount of occupation tax due under this article shall equal one-half that of a total year if business is begun after June 30 of that year. The business registration provided for in this article shall be issued by the department head of business license and if any person whose duty is to obtain a registration shall, after such registration or occupation tax becomes delinquent, transact or offer to transact, in the county, any kind of profession, trade or calling subject to this article

without having first obtained such registration, such offender shall, upon conviction by the county magistrate judge, be punished as provided in section 1-12 in the discretion of the magistrate judge presiding.

- (b) In addition to the above remedies, the sheriff's office may proceed to collect in the same manner as provided by law for tax executions.

Sec. 22-41. - Allocation of gross receipts of business with multiple intrastate or interstate locations.

- (a) For those businesses that have multiple operations inside and outside the county, the number of employees used to determine the occupation tax assessed will be only those employees who work in the county's jurisdiction.
- (b) Upon request, the business or practitioner with a location or office situated in more than one jurisdiction shall provide to the county information necessary to determine the number of employees who work in the county's jurisdiction.

Sec. 22-42. – Exemptions from payment of occupation tax regulatory fees, and administrative fees.

No occupation tax, regulatory fee, or administrative fee shall be levied on:

- (a) Any nonprofit organization;
- (b) Any vendor operating under contract with a tax-exempt agricultural fair, as that term is defined in O.C.G.A. § 2-2-8; and
- (c) Any disabled veteran of the armed services or blind persons holding a certificate of exemption, as provided for in O.C.G.A. § 43-12-1, *et seq.*

No individual, organization, or entity excluded from occupational taxes, regulatory fees, and administrative fees under this subsection shall be required to obtain a business registration but may elect to register pursuant to the terms of this article, at no cost.

Sec. 22-43. - Evidence of state registration required if applicable; state registration to be displayed.

- (a) Each person who is licensed by the secretary of state pursuant to O.C.G.A. title 43 shall provide evidence of proper and current state licensure before the county registration may be issued.
- (b) Each person who is licensed by the state shall post the state license in a conspicuous place in the licensee's place of business and shall keep the license there at all times while the license remains valid.

Sec. 22-44. - 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 a county business registration, show evidence that such requirements have been met.

Sec. 22-45. - Liability of officers and agents; registration required; failure to obtain.

All persons subject to the occupation tax levy pursuant to this article shall be required to obtain the necessary registration for such business as described in this article, and in default thereof the officer or agent soliciting for or representing such persons shall be subject to the same penalty as other persons who fail to obtain a registration. Every person commencing business in the county after January 1 of each year shall likewise obtain the registration provided for in this article before commencing the business. Any person transacting or offering to transact in the county any kinds of business, trade, profession or occupation without first having obtained such registration, shall be subject to penalties provided therefor.

Sec. 22-46. - Subpoena and arrest powers.

The county sheriff's office and deputies shall have full subpoena and arrest powers in conjunction with any violation pertaining to this article.

Sec. 22-47. - Businesses not covered by this article.

The following businesses are not covered by the provisions of this article, but may be assessed an occupation tax or other type of tax pursuant to the provisions of other general laws of the state or by local law:

- (1) Those businesses regulated by the state public service commission.
- (2) Those electrical service businesses organized under O.C.G.A. § 46-3-1 et seq.
- (3) Any farm operation for the production from or on the land of agricultural products, but not including agribusiness.
- (4) Cooperative marketing associations governed by O.C.G.A. § 2-10-105.
- (5) Insurance companies governed by O.C.G.A. § 33-8-8 et seq.
- (6) Motor common carriers governed by O.C.G.A. § 46-7-15.
- (7) Those businesses governed by O.C.G.A. § 48-5-355 (businesses that purchase carloads of guano, meats, flour, bran, cottonseed or cottonseed meal and hulls).
- (8) Agricultural products and livestock raised in the state governed by O.C.G.A. § 48-5-356.
- (9) Depository financial institutions governed by O.C.G.A. § 48-6-93, provided that the county, pursuant to the authority granted in O.C.G.A. § 48-6-93, hereby levies a tax on depository financial institutions located within the unincorporated portions of the county at the rate of 0.25 percent of Georgia gross receipts.
- (10) Facilities operated by a charitable trust governed by O.C.G.A. § 48-13-55.

Sec. 22-48. - When occupation tax due and payable.

The amount of occupation tax shall be payable to the county, at the business license department, on January 1 each year and shall be delinquent if not paid by March 31 of each year.

Sec. 22-49. - More than one place or line of business.

Where a business is operated at more than one place or where the business includes more than one line, such business shall be required to obtain the necessary registration for each

location and line and pay an occupation tax in accordance with the prevailing taxing method and tax rate for each location and line.

Sec. 22-50. - Returns confidential.

- (a) The applications and returns made to the county for an occupational tax payment certificate pursuant to this article shall be confidential and shall not be made public except in the event of litigation with respect thereto; nor shall they be subject to the inspection of any person except the county manager, county attorney, business license department head and their authorized and designated agents or representatives. All contents of the return shall be confidential and open only to the officials, employees, agents or clerks of the county using the returns for the purpose of the occupation tax levy and the collection of the tax. Independent auditors or bookkeepers employed by the county shall be classified as employees for purposes of this article and section. The board of commissioners shall have the right to open such returns to the inspection of a committee composed of the board of commissioners, or any portion thereof, to effect an analysis of the fee rates, or an investigation of the operation of the license fee department, or to secure dates regarding a case in litigation. It shall be unlawful for any person to make public or to inform any other person as to the contents of such application or return, or to permit inspection thereof by any person except as required by this section.
- (b) Any person violating the provisions of this section as it pertains to the number of employees of a business shall, upon conviction thereof, be punished as provided in section 1-12, as determined by the magistrate court judge. In addition, any employee of the county who divulges such information shall be subject to immediate discipline.
- (c) Nothing in this section shall be construed to prohibit the publication by the county of various statistics, so classified as to discourage the identification of particular returns and the items thereof, or the inspection of the records by duly qualified tax or investigative employees of the federal, state, county government.

Sec. 22-51. - Businesses and practitioners required to provide certain information; inspections of books and records.

- (a) All businesses and practitioners doing business in the county shall provide to the business license department head of the county:
 - (1) The address of any location or office maintained by such business or practitioner in the county jurisdiction;
 - (2) A description of the business or types of businesses conducted, or occupation or profession performed at such locations; and
 - (3) The payment of any business or occupation tax or regulatory fee to any other city or county.
- (b) In any case, the county, through its officers, agents, employees or representatives, may inspect the books of the business or person for which the returns are made. The county or its representatives shall have the right to inspect the books or records of the business of which the return was made in the county, and upon demand of the county such books or records shall be submitted for inspection by a representative of the county within 30 days. Failure to

submit such books or records within 30 days shall be grounds for revocation of the registration currently existing to do business in the county. Adequate records shall be kept in the county for examination by the county at the county's discretion. If, after examination of the books or records, it is determined that a deficiency occurs as a result of underreporting, a penalty of 15 percent of the correctly assessed business fee plus 125 percent of the prime interest rate times the amount of any deficiency will be assessed for the period delinquent. For purposes of this section, the prime interest rate shall be that which is published in The Wall Street Journal on the first business day of the year in which the underreporting is identified.

Sec. 22-52. - Business registration revoked for failure to pay tax, file returns, permit inspection of books.

Upon the failure of any business to pay the occupation tax or any part thereof before it becomes delinquent, upon failure to make any returns within the time required in this article, upon failure to make a true return, upon failure to amend a return to set forth the truth, or upon failure to permit inspection of its books, any business registration granted by the county under this article permitting the owner of the business to do business for the current year shall be, ipso facto, revoked. No new business registration shall be granted by the county for the operation of a business for which any part of the occupation tax is at that time unpaid, nor to an individual, firm or corporation who has failed to submit adequate records as requested by the revenue collection office in accordance with the provisions in this article. In the case of those practitioners where the local government cannot suspend the right of the practitioner to conduct business, the imposition of civil penalties shall be permitted and pursued by the county in the case of delinquent occupation taxes.

Sec. 22-53. - Effect of failure to comply with ordinance provisions; continuing in business after registration revocation.

Any persons, their managers, agents or employees who do business in the county after the registration for such business has been revoked as provided in section 22-52, hereby required to make occupation tax returns, and who fail to make such returns within the time and in the manner provided in this article, who refuse to amend such returns so as to set forth the truth, or who shall make false returns; and any persons, their managers, agents or employees who refuse to permit an inspection of books in their charge when the officers, agents, employees or representatives of the county request such inspection, during normal county business hours, for the purpose of determining the accuracy of the returns provided for in this article, shall be subject to penalties provided in this article. In the case of those practitioners where the local government cannot suspend the right of the practitioner to conduct business, the imposition of civil penalties shall be permitted and pursued by the local government in the case of delinquent occupation tax. A penalty of 100 percent of the assessed occupation tax will be imposed.

Sec. 22-54. - Lien taken for delinquent tax.

In addition to the other remedies provided for in this article for the collection of the occupation tax levied in this article, the county, upon any tax or installment of such tax becoming delinquent and remaining unpaid, shall issue execution for the correct amount of such tax against the persons, partnership or corporation liable for such tax, which such execution shall bear

interest at the rate of 18 percent annum from the date when such tax or installment becomes delinquent, and the lien shall cover the property in the county of the person, partnership or corporation liable for such tax, all as provided for in the laws and ordinances of the county and the laws of the state. The lien of such occupation tax shall become fixed on and date from the time when such tax or any installment thereof becomes delinquent. The execution shall be levied by the county upon the property of defendant located in the county, and sufficient property shall be advertised and sold to pay the amount of such execution, with interest and costs incurred. All other proceedings in relation thereto shall be had as provided by the laws and ordinances of the county and the laws of the state, and the defendant in execution shall have the rights of defense, by affidavit of illegality and otherwise, which are provided by the applicable laws in regard to tax executions. When a nulla bona entry has been entered by the proper authority upon an execution issued by the county against any person defaulting on the occupation tax, the person against whom the entry was made shall not be allowed or entitled to have or collect any fees or charges whatsoever for services rendered after the entry of the nulla bona. If at any time after the entry of nulla bona has been made, the person against whom the execution issues pays the tax in full together with all interest and cost accrued on the tax, the person may collect fees and charges due him as though he had never defaulted in the payment of taxes.

Sec. 22-55. - Amendment or repeal of article.

This article shall be subject to amendment or repeal, in whole or in part, at any time, and no such amendment or repeal shall be construed to deny the right of the board of commissioners to assess and collect any taxes or other charges prescribed. Such amendment may increase or lower the amounts and tax rates of any occupation and may change the classification thereof. The payment of any occupation tax provided shall not be construed as prohibiting the levy or collection by the jurisdiction of additional occupation taxes upon the same person, property or business.

Sec. 22-56. - Applications of provisions to prior ordinance.

This article does not repeal or affect the force of any part of any ordinance passed where taxes levied under such prior ordinance have not been paid in full. The parts of ordinances heretofore and hereinafter passed as provided for the issuing and enforcing of execution for any tax assessment required by such ordinances, or that imposed fines or penalties for the nonpayment of such tax, or for failure to pay regulatory fees provided for in such ordinance or ordinances, or failure to comply with any other provisions of this article, shall continue and remain in force until such tax, regulatory fee or assessment shall be fully paid.

Sec. 22-57. - Enforcement of article.

It is hereby made the duty of the department head of business license, or his or her designee, or the county sheriff's office to see that the provisions of this section relating to occupation taxes are observed; the county sheriff, or the department head of business license, or his or her designee, shall summon the violator by citation in magistrate court. It is hereby made the further duty of the county sheriff, or the department head of business license, or his or her designee, to inspect all registrations issued by the county, as often as in their judgment it may seem necessary to determine whether the registration held is a proper one for the business to be transacted thereunder.

Sec. 22-58. - Provisions to remain in full force and effect until changed by board of commissioners.

This article shall remain in full force and effect until changed by amendment adopted by the board of commissioners. All provisions hereto relating to any form of tax levied in this article shall remain in full force and effect until such taxes have been paid in full.

Sec. 22-59. - Requirement of public hearing before tax increase.

The board of commissioners shall conduct at least one public hearing before adopting any ordinance or resolution which will increase the rate of occupation tax as set forth in this article.

Sec. 22-60. - Options to establish exemption or reduction in occupation tax.

The board of commissioners may by subsequent ordinance or resolution provide for an exemption, reduction or cap in occupation tax to one or more types of businesses or practitioners of occupations or professions as part of a plan for economic development or attracting or encouraging selected types of businesses or practitioners of selected occupations or professions. Such exemptions or reductions in occupation tax shall not be arbitrary or capricious, and the reasons shall be set forth in the minutes of the board of commissioners.

Sec. 22-61. - Prohibition against unconstitutional application of penalties.

No penalties, whether criminal or civil in nature or effect, shall be unconstitutionally applied to any person, partnership, corporation or other entity licensed by the state pursuant to O.C.G.A. title 43, O.C.G.A. § 14-7-2(2), or O.C.G.A. § 14-10-2(2).

Secs. 22-62—22-89. - Reserved.