

**LAMAR COUNTY BOARD OF COMMISSIONERS
ORDINANCE NO. 2019- 14**

AN ORDINANCE TO AMEND CHAPTER 2-12 OF THE LAMAR COUNTY CODE OF ORDINANCES ENTITLED "OCCUPATION TAX ORDINANCE"; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF
LAMAR COUNTY, GEORGIA**

SECTION 1. Code Chapter Amended. Chapter 2-12, Article II of the Code of Ordinances of the Lamar County, Georgia, entitled "Occupation Tax Ordinance" is hereby amended by deleting said Article and sections thereunder in their entirety and substituting in lieu thereof a new Article II to be entitled "Occupation Tax Ordinance" which shall read as follows:

ARTICLE II. - OCCUPATION TAX ORDINANCE

Sec. 2-12-21. - Occupation tax required; occupation tax required for business dealings in the County of Lamar.

For the year 1995 and succeeding years thereafter, each person engaged in any business, trade, profession, or occupation in Lamar County, Georgia, whether with a location in the county or in the case of an out-of-state business with no location in Georgia exerting substantial efforts within the state pursuant to O.C.G.A. § 48-13-7, shall pay an occupation tax for said business, trade, profession, or occupation to obtain a business license which shall be displayed in a conspicuous place in the place of business, if the taxpayer has a permanent business location in Lamar County, Georgia. If the taxpayer has no permanent business location in Lamar County, Georgia, such business license shall be shown to the zoning and building official or his deputies or to any deputy sheriff of said Lamar County, Georgia, upon request.

Sec. 2-12-22. - Construction of terms; definitions.

(a) Wherever the term *Lamar County* or *County* is used herein, such term shall be construed to mean the unincorporated area of Lamar County, Georgia

(b) As used in this article, the term:

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

Business license means the document issued by the Lamar County Administrator, or their designee, to all persons engaged in a business, trade, profession, or occupation in Lamar County subject to the occupation tax imposed hereby to evidence the payment of said occupation tax.

Employee means any person working at any time during the calendar year in any business, trade, profession, or occupation including the owner thereof.

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

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 shall be held to include sole proprietors, corporations, partnerships, nonprofits, or any other form of business organization, but specifically excludes charitable nonprofit organizations which utilize seventy-five (75) percent of their proceeds for charitable purposes.

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

Sec. 2-12-23. - Administrative fee.

A nonprorated, nonrefundable administrative fee of twenty-five (\$25.00) shall be required on all business and occupation tax accounts for the initial start-up, renewal, or reopening of those accounts.

Sec. 2-12-24. - Occupation tax levied; restrictions.

- (a) An occupation tax shall be levied upon those businesses and practitioners of professions and occupations with one (1) 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 Georgia 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 shall be determined by number of employees for each business, trade, profession, or occupation as follows:

Employees	Tax Liability
1	\$100
2-9	\$125
10-99	\$175
100+	\$250

The number of employees used in calculating the tax hereunder shall be not less than the total number of employees of the business during the preceding calendar year, unless the business can demonstrate a change in the nature of the business which would justify a reduction in the total number of employees.

In the case of a business subject to occupation tax for a calendar year, which was not conducted for any period of time in the unincorporated area of Lamar County in the preceding year, the owner, proprietor, manager, or executive officer of the business liable for the occupation tax shall estimate the number of employees from commencing date to the end of the calendar year and such tax shall be based on said estimate.

- (1) Where a business is conducted at more than one (1) fixed location, each location or place shall be considered a separate business for the purpose of the occupation tax hereby.
- (2) No occupation tax shall be required from those real estate brokers, real estate agents, or real estate companies whose offices are located outside the jurisdiction and who sell property inside the jurisdiction.

O.C.G.A. § 43-12-1 provides exemptions of payments for peddlers permits and transient permits to certain veterans of the armed forces and to blind persons. An applicant who wishes

to use this fee exemption must provide a sworn oath certified by the Probate Judge of Lamar County.

Sec. 2-12-25. - Issuance of license, display required.

Upon filing a business registration/renewal form and payment of all fees and taxes imposed hereunder, and confirmation that business type and location meets zoning, building, life safety, and health regulations, as well as notice from the office of the Lamar County Board of Tax Assessors that all business personal property schedule-A forms have been filed per O.C.G.A. § 48-5-299(a), then, when all of the above requirements have been met, the county administrator or their authorized designee shall issue a Lamar County Business License which shall be prominently displayed at all times in the business location for which it is issued.

Sec. 2-12-26. - Paying occupation tax of business with no location in Georgia.

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

- (1) Has one (1) or more employees or agents who exert substantial efforts within the jurisdiction of Lamar 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 Lamar County.

Sec. 2-12-27. - Each line of business to be identified on business registration.

The business registration of each business operated in the county shall identify the line or lines of business that the business conducts, and no business shall conduct any line of business without first obtaining a business license reflecting such line or lines of business.

Sec. 2-12-28. - Practitioners exclusively practicing for a government.

Any practitioner of a profession whose office is maintained by and who is employed in practice exclusively by the United States, the State of Georgia, a municipality or county of the state, instrumentalities of the United States, the state, or a municipality or county of the state shall not be required to obtain a license or pay in an occupation tax for that practice.

Sec. 2-12-29. - Purpose and scope of tax.

The occupation tax levied herein is for revenue purposes only and is not for regulatory purposes. The occupation tax only applies to those businesses and occupations which are covered by the provisions of O.C.G.A. §§ 48-13-5 to 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. 2-12-30. - When tax due and payable; effect of transacting business when tax delinquent; payment by newly established business.

- (a) Each such occupation tax shall be for the calendar year 1995 and succeeding calendar years thereafter unless otherwise specifically provided. Said registration and occupation tax shall

be payable January 1 of each year and shall, if not paid before April 1 of each year, be subject to penalties for delinquency as prescribed in this article. On any new profession, trade, or calling begun in Lamar County in 1995 or succeeding years thereafter, the registration and tax shall be delinquent if not obtained immediately upon beginning business. All delinquent accounts shall pay a ten (10) percent penalty in addition to the required administrative fee and occupation tax. The business license herein provided for shall be issued by the county administer or their designee and no person, firm, or corporation whose duty it is to obtain a license shall, after said registration or occupation tax becomes delinquent, transact or offer to transact, in Lamar County, any of the kind of profession, trade, or calling subject to this article without having first obtained said license.

- (b) When any person commences business on or after July 1 in any year, the occupation tax for the remaining portion of the year shall be fifty (50) percent of the tax imposed for the entire year.

Sec. 2-12-31. - Exemption on grounds that business is operated for charitable purpose.

No business on which a business registration or occupation tax is levied by this article shall be exempt from said registration or occupation tax on the ground that such business is operated for a charitable purpose unless seventy-five (75) percent or more of the entire proceeds from said business are devoted to such purpose.

Sec. 2-12-32. - 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 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 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. 2-12-33. - 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 license, show evidence that such requirements have been met.

Sec. 2-12-34. - 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 license for said 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 license. Every person commencing business in Lamar County after January 1 of each year shall likewise obtain the license herein provided for before commencing the same; and any person transacting, or offering to transact in Lamar County, any of the kinds of business, trade, profession, or occupation to which this article applies, without first having so obtained said license, shall be subject to penalties provided therefor.

Sec. 2-12-35. - Penalty for article violation.

Any person required to obtain a business license hereunder who fails to do so or any person violating any provisions of this article shall, upon conviction in the Magistrate Court of Lamar County, be fined in an amount not exceeding five hundred dollars (\$500.00) or imprisoned not exceeding thirty (30) days, either or both, in the discretion of the Magistrate. Each day of violation shall be considered a separate offense hereunder. Nothing in this provision shall be deemed to limit or preclude the use of civil remedies, through Magistrate or Superior Court, to enforce this article provide remedies for its violation.

Sec. 2-12-36. - Business 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 of Georgia or by local law:

- (1) Those businesses regulated by the Georgia Public Service Commission.
- (2) Those electrical service businesses organized under chapter 3 of title 46 of the Official Code of Georgia Annotated.
- (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 carload lots of guano, meats, meal, flour, bran, cottonseed meal and hulls.)
- (8) Agricultural products and livestock raised in the state of Georgia governed by O.C.G.A. § 48-5-356.
- (9) Depository financial institutions governed by O.C.G.A. § 48-6-93.
- (10) Facilities operated by a charitable trust governed by O.C.G.A. § 48-13-55.

Sec. 2-12-37. - Inspections of books and records.

In any case the office of the county clerk of Lamar County, through its officers, agents, employees, or representatives, may inspect the books of the business for which the returns are made. The county officer shall have the right to inspect the books or records for the business of which the return was made in Lamar County, Georgia, and upon demand of the county officer, such books or records shall be submitted for inspection by a representative of the county within thirty (30) days. Failure of submission of books or records within thirty (30) days shall be grounds for revocation of the business license currently existing to do business in the county.

Sec. 2-12-38. - Business license to be revoked for failure to pay tax, file returns, permit inspection of books.

Upon the failure of any business to pay said occupation tax or any part thereof before it becomes delinquent, or upon failure to file any business registration within the time required herein, or upon failure to make a true business registration return, or upon failure to amend a

return to set forth the truth, or upon failure to permit inspection of its books as above provided, any business licenses granted by the county under this article permitting the owner of said business to do business for the current year shall be, ipso facto, revoked. No new business license shall be granted by the county for the operation of a business for which any part of the occupation tax herein provided for is at that time unpaid, or to an individual, firm, or corporation who has failed to submit adequate records as requested by the office of the zoning administrator in accordance with provisions found in section 2-12-37.

Sec. 2-12-39. - Lien taken for delinquent occupation tax.

In addition to the other remedies herein provided for the collection of the occupation tax herein levied, the office of the zoning administrator of Lamar County, Georgia, upon any tax becoming delinquent and remaining unpaid, shall issue execution for the correct amount of said tax against the persons, partnership, or corporation liable for said tax, which said execution shall bear interest at the rate of twelve (12) percent per annum from the date when such tax becomes delinquent, and the lien shall cover the property in the county of the person, partnership, or corporation liable for said tax, all as provided by the ordinance of said county and the laws of Georgia. The lien of said occupation tax shall become fixed on and date from the time when such tax becomes delinquent. The execution shall be levied by the sheriff of said county upon the property of defendant located in said jurisdiction and sufficient property shall be advertised and sold to pay the amount of said execution, with interest and costs. All other proceedings in relation thereto shall be had as is provided by ordinances of said county and the laws of Georgia, and the defendant in said execution shall have rights of defense, by affidavit of illegality and otherwise, which are provided by the applicable laws in regard tax executions.

Sec. 2-12-40. - Enforcement of provisions.

It is hereby made the duty of the office of the zoning administrator to see that the provisions of this article relating to occupation taxes are observed and to summon all violators of the same to appear before the magistrate court. It is hereby made the further duty of the office of the zoning administrator to inspect all licenses issued by the county, as often as in its judgment it may seem necessary, to determine whether the license held is the proper one for the business sought to be transacted thereunder.

Sec. 2-12-41. - Requirement of public hearing before tax increase.

After January 1, 2020, the Lamar County Board of Commissioners shall conduct at least one (1) public hearing before adopting any ordinance or resolution which will increase the rates of occupation tax as set forth in this article.

Sec. 2-12-42. - Conflict between specific and general provisions.

Where there is an apparent conflict in this article between specific and general provisions, it is the intention hereof that the specific shall control.

Secs. 2-12-43—2-12-50. - Reserved.

SECTION 2. This ordinance shall be codified in a manner consistent with the laws of the State of Georgia.

SECTION 3.

A. It is hereby declared to be the intention of the Board of Commissioners that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are and were, upon their enactment, believed by the Board of Commissioners to be fully valid, enforceable and constitutional.

B. It is hereby declared to be the intention of the Board of Commissioners that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other Section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Board of Commissioners that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other Section, paragraph, sentence, clause or phrase of this Ordinance.

C. In the event that any section, paragraph, sentence, clause or phrase of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Board of Commissioners that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining sections, paragraphs, sentences, clauses, or phrases of the Ordinance and that, to the greatest extent allowed by law, all remaining Sections, paragraphs, sentences, clauses, or phrases of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

SECTION 4. Repeal of Conflicting Provisions. Except as otherwise provided herein, all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION 5. Effective Date. This ordinance shall become effective immediately upon its adoption by the Board of Commissioners of Lamar County, Georgia.

SO ORDAINED, this _____ day of _____, 2019.

CHARLES GLASS, Chairman

ROBERT HEINEY

BENNIE HORTON

NANCY THRASH

RYRAN TRAYLOR

ATTEST:

Carlette Davidson, County Clerk

(SEAL)

First Reading: _____

Second Reading/
Adoption: _____

