

ORDINANCE

AN ORDINANCE TO AMEND CHAPTER 32, SECTION 101 OF THE CODE OF ORDINANCES OF THE CITY OF BERKELEY LAKE TO ADD A NEW BUSINESS AND OCCUPATION TAX ORDINANCE; TO PROVIDE FOR DEFINITIONS; TO PROVIDE FOR OCCUPATION TAX LEVIED, OCCUPATION TAX SCHEDULE AND LIMITATIONS; TO PROVIDE FOR PRACTITIONERS OF PROFESSIONS AND OCCUPATIONS; TO PROVIDE FOR INSURANCE COMPANIES AND AGENTS; TO PROVIDE FOR EXEMPTIONS; TO PROVIDE FOR EVIDENCE OF STATE REGISTRATION; TO PROVIDE FOR EVIDENCE OF QUALIFICATION REQUIRED IF APPLICABLE; TO PROVIDE FOR THE FILING OF RETURNS AND OTHER INFORMATION REQUIRED OR REQUESTED; TO PROVIDE FOR A DATE DUE AND PENALTY AND INTEREST; TO PROVIDE FOR ENFORCEMENT AND VIOLATIONS; TO PROVIDE FOR PUBLIC HEARINGS; TO PROVIDE FOR PRIOR ORDINANCE; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR REPEAL OF CONFLICTING PROVISIONS; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF BERKELEY LAKE that Chapter 32 of the Code of Ordinances of the City of Berkeley Lake shall be amended to add Section 32-101 entitled "Business and Occupation Taxes" as follows:

32-101 Business and Occupation Taxes.

1. Definitions.

The following words, terms and phrases shall, for the purposes of this chapter, have the following meaning:

(A) "City" means the City of Berkeley Lake,

(B) "Administrative Fee" means a component of an occupation tax that approximates the reasonable cost of handling and processing the occupation tax.

(C) "License" means a permit or certificate issued by the City that allows an entity to operate lawfully in the City of Berkeley Lake. A license does not create any rights to operate in violation of any provision of this Code of Ordinances and it may be denied, suspended or revoked by the City at any time pursuant to the procedures set forth herein. This definition applies to any license issued pursuant to this Chapter.

- (D) "Occupational Tax" or "Occupation Tax" means a tax levied on persons, partnerships, corporations, or other entities for engaging in an occupation, profession or business in the City of Berkeley Lake and enacted by the City of Berkeley Lake for the purpose of raising revenue.
- (E) "Occupational Tax Certificate" or "Occupation Tax Certificate" means a document issued by the City of Berkeley Lake acknowledging payment of an occupational tax.
- (F) "Regulatory Fee" means payments, whether designated as license fees, permit fees or by another name, which are required by a local government as an exercise of its police power and as a part of or as 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 city. A regulatory fee may not include an administrative fee. 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 are not regulatory fees.
- (G) "Employee(s)"
- (1) Except as otherwise provided in subparagraph (2) of this paragraph, "employee" means an individual whose work is performed under the direction and supervision of an employer who 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.
- (2) An individual who performs work under the direction and supervision of one business or practitioner in accordance with the terms of a contract or agreement with another business which recruits such individual is an employee of the business or practitioner that issues to such individual for purposes of documenting compensation a form I.R.S. W-2.
- (3) With respect to the taxation of businesses or practitioners with no location or office in Georgia, "employees" may only include employees working substantially in Georgia.
- (H) "Full Time Position Equivalent" and "Full Time Employee Equivalent" are defined as the number of employees of the business or practitioner, provided that for the purposes of this computation 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 with this number to be added to the number of employee(s) who work forty (40) hours or more weekly.

(I) "Location or office" shall include any structure or vehicle 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 a vehicle used for sales or delivery by a business of practitioner or a profession or occupation which has a location or office. A renter's or lessee's location which is the site of personal property which is rented or leased from another does not constitute a location or office for the real property's owner, lessor, or the agent of the owner or lessor, unless the real property's owner, lessor, or the agent of owner or lessor, in addition to showing the property to prospective lessees or tenants and performing maintenance or repair of the property, otherwise conducts the business of renting or leasing the real property at such site or otherwise conducts any other business, profession, or occupation at such site.

(J) "Practitioners of professions and occupations" does not include a practitioner who is an employee of a business, if the business pays an occupation tax.

2. Business License Required

(A) All individuals, businesses and practitioners doing business in the City are required to register their business or office, obtain an occupation tax certificate for their business or office, and pay the amount now or hereafter fixed as taxes and fees as authorized under O.C.G.A. Section 13-48.

(B) The occupation tax certificate shall serve as a business license. Additional business licenses may be required as established by the City.

(C) All individuals, businesses and practitioners doing business in the City shall file an application within thirty (30) days of the commencement of business. All licenses granted under Section 4-103 shall expire on December 31 of each year and licensees shall be required to make a new application in each ensuing year pursuant to Section 7 of this Article. Such application shall be treated as an initial application and the applicant shall be required to comply with all rules and regulations for the granting of licenses as if no previous license had been held.

3. Fees, Occupation Tax Levied; Occupation Tax Schedule; Limitations.

(A) All individuals, businesses and practitioners, other than those listed in Section 4 of this Article, shall be assessed a nonrefundable administrative fee as set by resolution of Council for handling and processing business occupation tax registrations, which is a component of the occupation tax for new and existing businesses and is separately identified in the registration process.

(B) An occupation tax based upon number of full time employee equivalents is

levied upon businesses and practitioners of professions and occupations if the business or practitioner:

(1) Has one or more locations or offices within the corporate limits of the City;
or

(2) Is an out-of-state business or practitioner with no location or office in the City but:

(a) Has employees or agents engaging in substantial efforts to solicit business or serve customers or clients within the corporate limits of the City; or

(b) Owns personal or real property that generates income and is located within the corporate limits of the City.

(C) The occupational tax is levied in accordance with the following calculation: the full time position equivalent for the previous calendar year minus two, multiplied by \$50.00; with a tax not to exceed \$10,000. For calculations that total zero or less, the tax will be \$0.00. For businesses without prior year employees including businesses established in the City within the current calendar year, the occupational tax shall be \$0.00.

By way of example only, a taxable business with 3.4 full time equivalent employees in 2006 would be liable for an occupation tax of \$70.00 on March 1, 2007; a business with 1.5 full time equivalent employees in 2006 would be liable for an occupation tax of \$0.00 on March 1, 2007; a business with one hundred employees that was established in January 2007 would be liable for an occupation tax of \$0.00 on March 1, 2007.

(D) The City shall not require the payment of more than one occupation tax for each location of a business or practitioner.

(E) A business or practitioner that has locations in Georgia and is subject to occupation tax by more than one local government in Georgia shall only be subject to occupation tax by the City of Berkeley Lake for the number of employees who are employed within the corporate limits of the City.

(1) This limitation shall only apply when the business or practitioner has provided to the City satisfactory proof of current payment of the occupation tax of the other local government(s).

(2) If an employee works for the same business in more than one jurisdiction, the city or county in which the employee works the most in a calendar year may count the employee for occupation tax purposes.

(F) A business or practitioner with no location or office in Georgia shall only be required to pay occupation tax to the local government in Georgia where the largest dollar volume of business is done or service is performed by such business or practitioner.

(1) This limitation shall only apply when the business or practitioner has provided to the City satisfactory proof as to the applicability of this subsection.

(2) If a business or practitioner with no location or office in Georgia provides to the City proof of payment of a local business or occupation tax in another state that purports to tax the business or practitioner's sales or services in this state, then the business or practitioner shall be exempt from this occupation tax.

(G) Real estate brokers shall be subject to occupation tax pursuant to this ordinance only if they maintain a principal branch or office in the City.

3. Practitioners of Professions and Occupations. Practitioners of professions and occupations enumerated in O.C.G.A. 48-13-9(c) shall pay the occupation tax as set forth in Section 2 (B) above or shall pay an occupation tax of \$400.00 per practitioner. Upon initial filing with the City or when the practitioner first commences business in the City, the practitioner shall elect either method of taxation. Such election shall be changed for subsequent calendar years only by a written request filed by the practitioner on or before March 1 of the year in which the election is to be changed.

4. Occupation Tax Exemptions

(A) The following groups shall be exempt from paying occupation taxes:

(1) Disabled veterans of any war or armed conflict in which any branch of the United States armed forces was involved, whether under United States command or otherwise;

(2) Blind persons;

(3) Veterans of peace-time service in the United States armed forces who have a disability that was incurred during the time of service;

(4) 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, or instrumentality of the United States, the state, or a municipality or county of the state;

(5) Any state or local authority, nonprofit organization, or vendor acting pursuant to a contract with a tax-exempt agricultural fair.

(6) Real estate brokers, except at the principal or branch office of a real estate broker;

(7) Motor vehicles required to be registered with the Public Service Commission;

(8) Those businesses regulated by the Georgia Public Service Commission;

(9) Those electrical service businesses organized under Chapter 3 of Title 46 of the Official Code of Georgia;

(10) Any farm operation for the production from or on the land of agricultural products, but not including any agribusiness;

(11) Non-profit, agricultural product cooperative marketing associations pursuant to O.C.G.A § 2-10-105;

(12) Motor common carriers pursuant to O.C.G.A. § 46-7-15;

(13) Persons purchasing guano, meats, flour, bran, cottonseed, or cottonseed meal and hulls in carload lots for distribution among the purchasers for use and not sale pursuant to O.C.G.A § 48-5-355;

(14) Pursuant to O.C.G.A § 48-5-356 for persons selling or introducing into the City agricultural products or livestock, including animal products, raised in this state when the sale and introduction are made by the producer of the product and the sale is made within ninety (90) days of the introduction of the product into the City;

(15) Depository institutions pursuant to O.C.G.A § 48-6-93;

(16) A local board of education; or

(17) Any business on which the levy of such occupation tax is prohibited by the laws of the State of Georgia or the United States.

(B) The exemptions and limitations contained in this ordinance shall not be construed to repeal or otherwise affect in any way any franchise fees, business taxes, regulatory fees or other fees or taxes otherwise allowed by law.

5. Evidence of State Registration When Required.

Each person who is licensed under Title 43 of the Official Code of Georgia Annotated by the Examining Boards of the Secretary of State's Office shall provide evidence of proper and current State licensure before any City occupation tax certificate may be issued.

6. Evidence of Qualification Required If Applicable.
 - (A) 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 an occupation tax certificate, show evidence of such qualification.
 - (B) Any business required to submit an annual application for continuance of the business shall do so before the occupational tax certificate is issued.
7. Filing Applications; Other Information Required or Requested.
 - (A) On or before March 1 of each year, all individuals, businesses or practitioners doing business within the City shall file with the City Clerk on a form approved by and available from the City, a signed application and shall attest to the number of full time employee equivalents of such business or practitioner during the previous calendar year.
 - (B) Individuals, businesses and practitioners doing business in the City shall submit to the City Clerk or make available to the City within thirty (30) calendar days such information as may be required or requested by the City in order to determine the applicability and/or amount of the occupation tax or to facilitate levying or collecting the occupation tax.
8. Date Due; Penalty and Interest.
 - (A) Any occupation tax due pursuant to this ordinance shall be due and payable annually by March 31.
 - (B) Payment of an occupation tax shall not be required prior to the commencement of business, nor shall it in any other manner act as a precondition on the practice of law.
 - (C) Any individual, business or practitioner subject to any occupation tax imposed by this ordinance which is unpaid for sixty (60) days after the date on which payment was due shall be subject to a penalty of ten percent (10%) of the tax or fee due, and interest at the rate of 1.5 percent (1.5%) per month.
9. Enforcement; Violations.

- (A) It is the duty of the City Clerk to administer and enforce the provisions of this ordinance, to perform all functions necessary to administer and enforce this ordinance and the Ordinance Enforcement Officer shall summon violators of this ordinance to appear before the Municipal Court. The City Clerk may issue executions against individuals, businesses and practitioners for taxes or fees which are due and owing and any penalty and interest imposed by Section 8.
- (B) The City Clerk shall issue executions against individuals, businesses and practitioners for taxes or fees which are due and owing, penalties, or interest. Such executions shall bear interest at the rate authorized by O.C.G.A. § 48-2-40 or, if such statute should be repealed or ruled invalid by a court of competent jurisdiction, one percent (1%) per month. The lien shall cover the property of the individual, business or practitioner liable for payment of the delinquent occupation tax and become fixed as of the date and time the occupation tax became delinquent. The execution shall be levied by the City Clerk of the City upon property of the delinquent tax or fee payer located in the City and sufficient property shall be advertised and sold to pay the amount of the execution, including penalty, interest and costs. All other proceedings in relation thereto shall be as provided by the Code and Charter of the City and the laws of Georgia. The defendants at execution shall have the rights of defense, by affidavit of illegality of the tax or otherwise as provided by the Charter of the City and the laws of Georgia in regard to tax executions.
- (C) Individuals, businesses and practitioners who fail or refuse to pay any occupation tax charged pursuant to this ordinance shall be subject to a civil fine, to be imposed by the Municipal Court in an amount not to exceed \$500.00, to be paid in addition to the occupation tax owed and any penalty and interest as imposed by Section 8.
- (D) Individuals, businesses and practitioners who fail or refuse to make available truthful and accurate information the City requests or requires for determining applicability or amount of occupation tax or for levying or collecting such occupation tax shall be subject to a fine in an amount not to exceed \$500 to be paid in addition to the occupation tax owed and any penalty and interest imposed by Section 8.
- (E) All persons subject to the occupation tax imposed by this ordinance shall be required to file for and pay such tax or fee. For failure to do so, any officers or agents soliciting for or obtaining business for such person, business or practitioner shall be subject to the same penalty as other persons, businesses or practitioners who fail to make a return for or pay the applicable occupation tax.

10. Public Hearings.

After January 1, 2007 the City shall conduct at least one public hearing before adopting any ordinance or resolution which will increase the occupation tax rate specified in Section 2.

11. Severability.

In the event any portion of this ordinance shall be declared or adjudged invalid or unconstitutional, it is the intention of the City Council of the City of Berkeley Lake that such adjudication shall in no manner affect the other sections, sentences, clauses or phrases of this ordinance which shall remain in full force and effect as if the invalid or unconstitutional section, sentence, clause or phrase were not originally part of the ordinance.

12. Repeal of Conflicting Provisions.

All ordinances or parts of ordinance in conflict with this ordinance are hereby repealed.

13. Effective Date.

This ordinance shall become effective _____, 2007

SO ORDAINED this _____ day of September, 2007.

ATTEST:

Leigh Threadgill, City Administrator

Lois Salter, Mayor

First Read: 11/17/06 _____
Second Read: 6/21/07
Adoption: 9/20/07