



CITY OF DUNWOODY

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MEMORANDUM

To: Mayor and City Council
From: Christopher Pike, Finance Director
Date: September 13, 2010
Subject: **Amended Occupation Tax Ordinance Provisions**

ITEM DESCRIPTION

To approve the amendments to the Occupation Tax Ordinance (Chapter 10.)

BACKGROUND

On October 19, 2009, Council instructed staff to evaluate options to move to a flat gross receipts tax rate for all businesses. Subsequently, as not to move too quickly and make mistakes, Council decided to leave the current tiered structure in place for the 2010 tax year. At the annual retreat, Council instructed staff to return to this issue in 2010 well enough in advance of the 2011 year so staff could revisit past issues as well as discuss changes to the ordinance and revisions to the rate structure.

On July 12, 2010, Council supported a tiered structure currently in place. We discussed the added layer of work created with the reconciliation process. We also discussed cleaning up some language within the document.

ISSUES

Most importantly for this ordinance, it does not change the rates or fees of the local businesses. Those fees are assigned via a separate resolution referenced in the ordinance.

The attached ordinance revises a few key components of the occupation tax ordinance. First, it cleans up language such as references to the SIC manual; abolished over a decade ago. Second, it clarifies (but doesn't change) our ordinance as it relates to lawyers.

The ordinance includes three policy changes. It eliminates the reconciliation process for continuing businesses. A business will still go through this process after its first year of operation, but not each year thereafter (section 10-4.) It eliminates the administrative fee and references to the fee (section 10-5 and throughout.) Currently, the City charges \$50 for the first \$20,000 in gross receipts plus a \$75 administrative fee. The ordinance changes the fee to \$125 for the first \$20,000 in gross receipts without the administrative fee. This change has absolutely no affect whatsoever on the amount any business pays the city. It is merely an internal change to manage the risk of a challenge to our



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administrative fee amount. The last change is regarding the denial of a certificate. This change is language proposed by Lenny in order to have a more structured process in the event of a denial or revocation.

ALTERNATIVES

Council may choose to deny the recommendations and leave the existing ordinance in place or modify the proposed language.

RECOMMENDED ACTIONS

Staff recommends Council approve the ordinance amendment.

AN ORDINANCE AMENDING CHAPTER 10 OF THE CITY OF DUNWOODY CODE OF ORDINANCES BY CHANGING CERTAIN OCCUPATION TAX PROVISIONS; CLARIFYING DUE PROCESS REQUIREMENTS; AND FOR OTHER PURPOSES

WHEREAS, the Mayor and City Council of the City of Dunwoody are authorized to assess Occupation Taxes within the geographic boundaries of the City and to administer and enforce said requirements pursuant to State law; and

WHEREAS, the City of Dunwoody has heretofore adopted an ordinance for Occupation Taxes, as set forth in Chapter 10 of the Code of the City of Dunwoody (the "Code"); and

WHEREAS, the Mayor and City Council wish to amend Chapter 10 to change the way gross receipts are calculated, to clarify provisions related to attorneys, and to clarify and strengthen the due process requirements from licensure; and

WHEREAS, a Public Hearing has been held on September 27, 2010 pursuant to State Law to allow for comments to the proposed changes.

NOW, THEREFORE, Mayor and City Council of the City of Dunwoody hereby ordain as follows:

Section 1: Chapter 10 of the City of Dunwoody Code of Ordinances, is hereby amended by changing certain provisions in Article I (In General) to read as follows:

ADDITIONS = UNDERLINED
DELETIONS = ~~STRIKETHROUGHS~~

ARTICLE I. IN GENERAL

Sec. 10-1. Generally.

- (a) Each person engaged in a business, trade, profession or occupation, whether with a location within the city or in the case of an out of state business with no location in Georgia exerting substantial efforts within the city pursuant to O.C.G.A. § 48-13-7, 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) 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.

Sec. 10-2. Definitions.

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

~~*Administrative fee* means a component of an occupation tax that approximates the reasonable cost of handling and processing the occupation tax.~~

Business means 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.

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

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 W-2, but not a form IRS 1099.

Gross receipts.

- (1) The term "gross receipts" means the total revenue of the business or practitioner for the period, including, without being limited to, the following:
 - a. Total income without deduction for the cost of goods sold or expenses incurred;
 - b. Gain from trading in stocks, bonds, capital assets, or instruments of indebtedness;
 - c. Proceeds from commissions on the sale of property, goods, or services;
 - d. Proceeds from fees charged for services rendered; and
 - e. Proceeds from rent, interest, royalty, or dividend income.
- (2) The term "gross receipts" shall not include the following:
 - a. Sales, use, or excise taxes;
 - b. Sales returns, allowances, and discounts;
 - c. Interorganizational sales or transfers between or among the units of a parent subsidiary controlled group of corporations, as defined by 26 USC 1563(a)(2), or between or among wholly owned partnerships or other wholly owned entities;
 - d. Payments made to a subcontractor or an independent agent for services which contributed to the gross receipts in issue;
 - e. Governmental and foundation grants, charitable contributions or the interest income derived from such funds, received by a nonprofit organization which employs salaried practitioners otherwise covered by this chapter, if such funds constitute 80 percent or more of the organization's receipts; and
 - f. Proceeds from sales of goods or services which are delivered to or received by customers who are outside the state at the time of delivery or receipt.

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License means a permit or certificate issued by the city that allows an entity to operate lawfully in the city. A license does not create any rights to operate in violation of any provision of this Code 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.

Location or office means and includes any structure or vehicle where a business, profession, or occupation is conducted, but shall not include a temporary or construction worksite which serves a single customer or project or a vehicle used for sales or delivery by a business or practitioner of a profession or occupation which has a location or office. The 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 personal property's owner, lessor, or the agent of the owner or lessor. The site of real property which is rented or leased to 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 the 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.

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

Practitioner of professions and occupants means 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.

Regulatory fees means payments, whether designated as license fees, permit fees, or by another name, which are required by the city as an exercise of its municipal 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 does not include an administrative or registration fee. Regulatory fees do not include required occupation taxes for businesses and professions located in the city.

Tax collector means an individual duly appointed and named as tax collector to serve in that capacity. In the absence of a duly appointed tax collector, the finance director or city manager may perform the duties of the tax collector.

Sec. 10-3. Business license required.

- (a) Except as specifically exempted herein, all persons, firms, companies (including limited liability companies), corporations (including professional corporations) and other business entities, now or hereafter operating a business within the city, are hereby 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 thereon as authorized under the provisions of O.C.G.A. § 48-13-1 et seq., as amended.
- (b) Where a person conducts business at more than one fixed location or has multiple business trade names, 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 finance department in accordance with the provisions of this article.
- (c) The occupation tax certificate shall serve as a business license. Additional business

licenses may be required as established by the city.

- (d) Stock or manufacturing companies or other companies, subsidiaries, agencies, district offices, branch offices, corporations or individuals, having either their business proper or their general branch offices located within the city, and either represented by the officers of the company, or any agent, for the purpose of soliciting patronage for the same, or for the transaction of any business pertaining thereto, shall be required to obtain a occupation tax certificate.
- (e) All licenses granted under this article shall expire on December 31 of each year. Licensees shall be required to file an application in each ensuing year. The applicant shall be required to comply with all rules and regulations for the granting of licenses.

Sec. 10-4. 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 city and the taxpayer, those businesses subject to the occupational tax shall, on or before March 15, file with the finance department a return showing all gross receipts of that business during the preceding calendar year ending on December 31. This return showing preceding calendar year gross receipts shall be used as ~~an estimate~~the total 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 March 15 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 finance 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.~~ Differences shall be billed or credited to the business' occupation tax subsequent year's billing as required.

(d) Notwithstanding the foregoing, if a lawyer begins or continues 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 or continues. Any lawyer failing to pay the occupation tax ~~and administrative fee~~ within 120 days after December 31 shall be considered delinquent and shall be subject to and shall pay a ten 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~~the 121st day of

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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. The general penalty for continuing violations of this Code shall not apply to violations of this chapter by lawyers. Specifically, failing to comply with the ordinance will not result in the City closing the business or penalizing the continued practice of law by fining, imprisoning or criminalizing noncompliance.

(e) The city shall not require the payment of more than one occupational tax for each location that a business or practitioner shall have, nor shall the city require a business to pay an occupational tax for more than 100 percent of the business' gross receipts.

(f) Real estate brokers shall pay an occupational tax for each principal office and each separate branch office located in the city based upon gross receipts derived from transactions with respect to property located within the city. 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 of the O.C.G.A.

(g) For out-of-state businesses with no location in the state, occupation taxes include the gross receipts of business as defined in section 10-2.

(h) For purposes of this section, prima facie evidence of gross receipts generated during any period shall be a sworn statement under oath and penalty of perjury (affidavit) that the provided gross receipt information is true and correct as stated on the filed federal income tax return of the business for the applicable year, less allowed exemptions. If no federal tax return has been filed for the applicable year, the applicant must swear under oath and penalty of perjury that no federal tax return has been filed for the applicable year, and the gross receipts as presented to the city are true and correct to the best of the applicant's knowledge, ability and training.

Sec. 10-5. ~~Administrative and r~~Regulatory fees.

(a) ~~A non prorated, non refundable administrative fee shall be required on all business occupation tax accounts for the initial start up, renewal or reopening of those accounts.~~[CJP1]

(~~b~~) A regulatory fee will be imposed on those applicable businesses listed under O.C.G.A. § 48-13-9(b) that the city deems necessary to regulate.

Sec. 10-6. Renewal returns and applications; due date; penalty for late payment.

(a) On or before March 15 of each year, businesses liable for occupation taxes levied under this article for the year shall file with the finance department's business occupation tax section, on a form furnished by the finance department, a signed return setting forth the actual amount of the gross receipts of such business during the preceding calendar year ending December 31.

(b) Occupational taxes on businesses continuing from the preceding year shall be due and payable on January 1 of each subsequent year. Occupational tax due from businesses continuing operation in the current year from the preceding year shall be considered delinquent if not paid by April 15 of each year. Any business failing to pay the occupational taxes ~~and administrative fees~~ within 120 days after January 1 shall be subject to and shall pay a ten percent penalty of the amount of tax or fees due and interest as provided by state law. Such penalty shall be assessed in full on May 1 the 121st day of the tax year in addition to interest on delinquent occupation taxes, and regulatory fees ~~and administrative fees~~.

- (c) If any person or business whose duty it is to obtain a registration in the city 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 section 1-6.
- (d) The finance department may issue an execution 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. 10-7. 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 if the business' largest dollar volume of business in the state is in the city, and the business or practitioner:

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

Sec. 10-8. Professional occupation tax.

- (a) Notwithstanding any other provision of this article, practitioners of professions as described in O.C.G.A. § 48-13-9(c)(1) through (18) shall elect as their entire occupation tax one of the following:
 - (1) The occupation tax based-on number of employees and gross receipts combined with profitability ratios as set forth in this article; or
 - (2) \$400.00 for the year 2009 and subsequent years, but a practitioner paying according to this shall not be required to provide information relating to the gross receipts of such practitioner. The tax is for each professional described in O.C.G.A. §48-13-9(c)(1) through (18).
- (b) 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. 10-9. Evidence of state registration required if applicable; city and state registration to be displayed.

- (a) Each person who is licensed by the secretary of state pursuant to title 43 of the O.C.G.A. shall provide evidence of proper and current state licensure before the city registration may be issued.
- (b) Each person who is licensed by the state shall post the state license next to the City registrationOccupation Tax receipt in a conspicuous place in the licensee's place of business and shall keep both the state license and the City registrationOccupation Tax receipt there at all times while valid.
- (c) Any transient or nonresident person doing business within the city 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 city when so requested.

~~(d) Notwithstanding the foregoing, a lawyer shall not be required to post the City Occupation Tax receipt.~~^[R2]

Sec. 10-10. Change of location.

Any person moving from one location to another shall notify the finance department of this move and shall submit the new address in writing on a form provided by the finance 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 city.

Sec. 10-11. Transferability.

Occupational receipts shall not be transferable and a transfer of ownership shall be considered in the same light 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.

Sec. 10-12. 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 city registration, show evidence of such qualification.

Sec. 10-13. Inspections of books and records; audits; confidential information.

- (a) The finance department, through its officers, agents, employees or representatives, shall have the right to inspect the books or records of any business for which returns have been based upon the number of employees and gross receipts. Upon demand of the finance department, such books or records shall be submitted for inspection by a representative or agent of the city within 30 days. Independent auditors or bookkeepers employed by the city shall be classified as agents for the purposes of this article. Failure of submission of such books and records within 30 days shall be grounds for revocation of the occupation tax registration currently existing in the city. 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 this Code. Notwithstanding the foregoing, no attorney shall be required to disclose any information that would violate the attorney/client privilege.
- (b) Except as provided in subsection (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 under O.C.G.A. § 50-18-70 et seq..
- (c) Information provided to the city 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) Nothing herein shall be construed to prohibit the publication by the city of statistics, so classified as to prevent the identification of particular reports or returns and items thereof.

Sec. 10-14. 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~~ by the North American Industrial Classification System (NAICS), and profitability classes are assigned in accordance with Statistics of Income, Business Income Tax Returns, United States Treasury Department, or Internal Revenue Service. The finance 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 to be established by the city council are incorporated herein by reference and adopted for use in the application of this article. All separate businesses engaged in more than one 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 city to the business' profitability classification established for each business type. The gross receipts tax shall include a flat rate of ~~\$50~~125.00 for the first \$20,000.00 of gross revenue, and a fee per employee. Gross revenues above \$20,000.00 are taxed using a fee class table based on profitability.
- (d) A copy of business classifications shall be maintained in the office of the city clerk and shall be available for inspection by all interested persons.

Sec. 10-15. Casual and isolated transactions.

- (a) Nothing in this article shall be interpreted to require any person who may engage in casual or isolated activity and commercial transactions to register the business and pay occupational tax therefor, where the activity or commercial transactions:
 - (1) Involve personal assets;
 - (2) Are not the principal occupation of the individual; and
 - (3) Gross less than \$12,000 dollars per year.
- (b) 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. 10-16. 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 city occupational tax fee. Any such person claiming

an exemption shall secure evidence of qualification for the exemption from the proper authority and present it to the finance department.

- (b) Organizations which are exempt from federal income taxation under the United States Internal Revenue Code shall be eligible for exemption from the city occupational tax. Any such organization claiming an exemption shall provide to the finance department a federal tax exemption letter showing the code section under which an exemption is claimed unless filing for exempt status with the IRS is not required (such as a church.) 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 city occupation taxes, an exempt person or business under this section shall comply with the same laws and regulations as are required of other registered businesses.

Sec. 10-17. Special classification.

- (a) Registration and occupational tax payment is required from any satellite subscription television system. The term "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 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 city right-of-way. The provisions of this subsection shall not apply to any person that is franchised by the city council to own and operate a cable system.
- (b) Registration and occupational tax payment is required from any broadcast subscription television system. The term "broadcast subscription television system" means services provided to subscribers for sale where the provider of the services transmits premium programming from one or multiple sources by transmitting or retransmitting programs to the public.

Sec. 10-18. Denial, revocation or suspension; appeals.

- (a) An occupation tax certificate may be denied, suspended or revoked upon one or more of the following grounds:
 - (1) The applicant or certificate holder is guilty of fraud in the operation of the business or occupation he practices or fraud or deceit in being licensed to practice in that area;
 - (2) The applicant or certificate 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;
 - (3) The applicant or certificate holder is addicted to the habitual use of intoxicating liquors, narcotics, or stimulants to such an extent he is unable to perform his duties under the business or occupation;
 - (4) The applicant or certificate holder is guilty of fraudulent, false, misleading, or

deceptive advertising or practices;

- (5) The applicant or certificate holder has been convicted of or has pled guilty or nolo contendere to any sexual offense as set out in O.C.G.A. § 16-6-1 et seq., or to any offense involving the lottery, illegal possession or sale of narcotics or alcoholic beverages or possession or receiving of stolen property, for a period of five years immediately prior to the filing of the application. If, after having been granted a certificate, the applicant pleads guilty, is convicted of, or enters a plea of nolo contendere to any of the above offenses, said certificate shall be subject to suspension and/or revocation;
 - (6) The original application, or renewal thereof, contains materially false information, or the applicant has deliberately sought to falsify information contained therein;
 - (7) The business or establishment is not authorized to operate within the city, or within the zoning district within which it is located, or is otherwise not in conformity with locational requirements of any of the city's ordinances.
 - (8) The business or establishment is a threat or nuisance to public health, safety or welfare;
 - (9) The business or establishment has been found by a court of law to have been operating unlawfully;
 - (10) Any other violation of this Article; or
 - (11) Violation of another statute, ordinance, rule, or regulation that governs the operation of the business in question.
- (b) Within 45 days of the filing of a completed application, the finance department shall either issue an occupation tax certificate to the applicant or issue a written notice of intent to deny an occupation tax certificate for one or more reasons set forth in subsections (a)(1) through (a)(11) of this section. The notice shall be sent by certified mail, return receipt requested. The written notice shall also notify the applicant of the right to appeal said decision as designated in this section.
- (c) Should the City Manager or designee find cause for one or more reasons set forth in subsections (a)(1) through (a)(11) of this section for an occupation tax certificate to be suspended or revoked, the City Manager or designee shall notify the occupation tax certificate holder by written notice of intent to suspend or revoke said occupation tax certificate. The notice shall be sent by certified mail, return receipt requested. Such notice shall state the grounds for the suspension or revocation of said occupation tax certificate and notify the holder of the right to appeal said decision as designated in this section.
- (ed) The ~~tax collector~~City Manager or designee shall administer and enforce the provisions of this article. Should an aggrieved person or entity desire to appeal a decision under this article, the following procedure shall apply: a notice of appeal must be filed with the ~~director of finance~~City Manager or designee within 15 calendar days after receipt of the decision. 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 ~~finance director~~City. The notice of appeal shall also contain an address for receipt of future notices. Should the aggrieved person or entity fail to file

a notice of appeal within the time allowed, the right to appeal is lost.

- (~~de~~) Upon receipt of a timely and proper notice of appeal, the ~~director of finance~~City Manager or designee shall notify the appellant, in writing, of the date, time and place where a hearing will be held. The notice shall specify the time, place and date, not less than ten days nor more than 30 days after the date the notice is issued, on which the mayor and city council, or such ~~hearing officer~~^[R3] or board as the mayor and council may designate, shall conduct a hearing on the ~~tax collector~~City Manager or designee's written notice of intent to deny, suspend, or revoke the occupation tax certificate. Said hearing shall be conducted in accordance with the Administrative Hearing Procedures as adopted by Resolution of the City Council^[R4]. ~~At the hearing, the respondent shall have the opportunity to present all of the respondent's arguments and to be represented by counsel, present evidence and witnesses on his behalf, and cross-examine any adverse witnesses. The tax collector shall also be represented by counsel, and shall bear the burden of proving by a preponderance of the evidence the grounds for denying, suspending, or revoking the occupation tax certificate.~~
- (~~ef~~) ~~The hearing shall take no longer than two days, unless continued or extended at the request of the respondent to meet the requirements of due process and proper administration of justice.~~ The mayor and city council, or such hearing officer or board as the mayor and council may designate, shall issue a written decision, including specific reasons for the decision pursuant to this article, to the respondent within five days after the hearing. If the decision is to deny, suspend, or revoke an occupation tax certificate, the decision shall become final unless the applicant or certificate holder files an appeal by petition for writ of certiorari to the county superior court within 30 days of the date of the decision. In case of intent to deny, ~~If~~ the decision concludes that no grounds exist for denial, ~~suspension, or revocation~~ of the occupation tax certificate, the city tax collector shall, within three business days of the issuance of the decision, issue the occupation tax certificate to the applicant.
- (~~fg~~) This section shall not apply to attorneys in the practice of law.

Sec. 10-19. Proration of fee.

No license fee shall be prorated.

Sec. 10-20. Promulgation of rules and regulations.

The finance 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 city 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. 10-21. Intent of Article.

It is the intent of the Article to impose the taxes set forth in this article upon all businesses and practitioners operating in the city consistent with the requirements of the Constitution and laws of the state. In the event that the fees imposed hereby shall not be authorized on any business and practitioner, or taxes and fees shall be in excess of the maximum amount authorized by law, such taxes and fees shall be imposed only to the extent authorized by law.

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Sec. 10-22. Amendment of Article.

This Article may be amended so as to increase the occupation tax on any business or practitioner only after the conduct of at least one public hearing pertaining thereto.

~~Sec. 10-23. Repealer, exceptions:~~

~~All ordinances providing for occupation taxes and administrative fees in conflict with this article are hereby repealed, provided, however, that nothing herein shall affect any ordinance providing for regulation of taxicabs or shall affect any resolution providing for the regulation of the sale of any alcoholic beverages and taxes imposed thereon, or any mixed drink tax or any hotel-motel tax, such taxes being due and payable in addition to the taxes and fees imposed hereby.~~

Secs. 10-23--10-49. Reserved.

Section 2: This Amendment shall become effective immediately upon its adoption by the City Council, and incorporated into the Code of the City of Dunwoody, Georgia. This Amendment hereby repeals any and all conflicting ordinances and amendments.

SO ORDAINED AND EFFECTIVE, this the ____ day of September, 2010.

Approved:

Ken Wright, Mayor

Approved as to Form and Content

Attest:

Sharon Lowery, City Clerk
Seal

Brian Anderson, City Attorney

**A RESOLUTION TO ADOPT ADMINISTRATIVE HEARING PROCEDURES FOR
THE CITY OF DUNWOODY, GEORGIA**

WHEREAS, well organized hearings allow a hearing officer, Board or City Council to reach decisions in a fair and consistent manner; and

WHEREAS, efficiency is served when the process of conducting public meetings is clearly stated and understood by hearing officers, board members, public officials and citizens; and

WHEREAS, the City Council desires to adopt the City of Dunwoody Administrative Hearing Procedures (“Administrative Hearing Procedures”), which are attached hereto and incorporated herein, as the procedures for the hearings provided therein; and

WHEREAS, the Administrative Hearing Procedures shall only apply to those hearings enumerated therein;

WHEREAS, for the enumerated hearings provided in the Administrative Hearing Procedures only, the Administrative Hearing Procedures shall supersede any prior Resolution of the City Council that provides for rules and procedures for public hearings.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Dunwoody, Georgia that the Administrative Hearing Procedures are hereby adopted and approved.

SO RESOLVED AND EFFECTIVE, this the ____ day of September, 2010.

Approved:

Ken Wright, Mayor

Attest:

Sharon Lowery, City Clerk
Seal

CITY OF DUNWOODY ADMINISTRATIVE HEARING PROCEDURES

Upon commencement of a hearing on denial, suspension or revocation of any (i) alcohol license or permit pursuant to Chapter 4 of the City of Dunwoody Code of Ordinances (“Code”), (ii) licenses and occupation tax certificates pursuant to Chapter 10 of the Code, or upon the commencement of (iii) any other hearing for which the Code expressly refers to these procedures, the appropriate Hearing Officer, Board or City Council, as applicable, shall follow the following hearing procedures:

1. The Hearing Officer, Board Chair, or Mayor, or other presiding officer, (“Presiding Officer”) shall bring the hearing to order and announce the matter to be heard. The Presiding Officer shall then explain these hearing procedures to the two parties.
2. The two parties shall then be allowed to present their argument to the Hearing Officer, Board or City Council, including submission of any documentary evidence and examination of any witnesses. The Rules of Evidence of the State of Georgia shall not govern these proceedings and it shall be up to the reasonable discretion of the Hearing Officer, Board or City Council in their decision to determine the relevancy of any evidence submitted.
3. The Party having the burden of proof shall present its evidence first, followed by the Party not having the burden of proof. The Party having the burden of proof shall have the right to present a brief rebuttal after the evidentiary presentation of the other Party.
4. In presenting its evidence, each Party shall have the right to question witnesses and cross-examine each other’s witnesses, present any documentary evidence relevant to the subject matter of the hearing, and present their argument. During the evidentiary presentation, the Hearing Officer, Board or City Council shall have the right to ask questions of the Party currently presenting evidence, ask follow-up and/or cross-examination questions of the witnesses, and request clarification of certain points.
5. The Burden of Proof belongs to the City administrative officer in all license and permit denial, revocation or suspension hearings. The Burden of Proof shall be as defined in the appropriate code sections of the City of Dunwoody Code of Ordinances. If not otherwise stated elsewhere in the Dunwoody Code of Ordinances, State Law or Federal Law, the Burden of Proof shall be by the “preponderance of the evidence” (i.e. “more likely than not” standard).
6. At the close of both Parties’ evidentiary presentation, each Party shall be given a brief period of time to make a closing argument (if they choose to do so).

7. At the close of the closing arguments, the Hearing Officer, Board or City Council shall have the opportunity to discuss the matter amongst themselves prior to coming to a conclusion. As part of the discussion, the Hearing Officer, Board or City Council may ask questions of either Party and the Party may respond to such questions only, without any additional evidentiary presentations.
8. At the close of discussion, the Hearing Officer, Board or City Council shall either issue their decision on the matter (if a Board or City Council, then through motion, second and majority vote) or take the matter under advisement to make a decision no later than thirty (30) days from the date of the hearing (if a Board or City Council, a subsequent public hearing will be held in order to vote on the matter), or as otherwise indicated in the applicable Code provisions. In either case, the final decision must also be made in writing and parties notified pursuant to the applicable provisions of the City of Dunwoody Code of Ordinances.
9. The Presiding Officer may then adjourn the hearing.

If any procedure set out herein conflicts with the language of any applicable code sections of the City of Dunwoody Code of Ordinances, the provisions of the code section shall control.

A RESOLUTION APPOINTING HEARING OFFICER FOR THE APPEALS PROCESS RELATED TO VARIOUS LICENSING PROCESSES, AND OTHER FUTURE PURPOSES, TO NAME ONE OR MORE INDIVIDUALS TO SERVE AS HEARING OFFICERS AND TO ASSIGN OVERSIGHT RESPONSIBILITIES TO THE CITY MANAGER AND FOR OTHER PURPOSES OUTLINED IN THE RESOLUTION

WHEREAS, the Charter of the City of Dunwoody (“City”) grants the City power to license and regulate businesses within the City; and

WHEREAS, pursuant to its power under the Charter, the Mayor and Council of the City adopted an Ordinance that governs the Licensing and Regulation of businesses within the City, recorded as Chapter 10 of the Code of the City of Dunwoody (“Code”), as well as other licensing provisions; and

WHEREAS, City staff are charged with the responsibility of managing the occupation tax/business licensing process, and other licensing processes throughout the City, and making decisions of staff related to same; and

WHEREAS, the Mayor and Council have created an appeal process that applicants may use when they are dissatisfied with the decisions of staff related to the occupation tax/business licensing, alcohol licensing and other licensing processes; and

WHEREAS, certain appeals processes outlined in the City Code authorize the City Council to appoint a Hearing Officer to preside over appeals of any denials, suspensions and revocations of a license; and

WHEREAS, it has been determined that having an independent attorney serve as hearing officers for appeals of the process represents the most appropriate choice.

NOW THEREFORE BE IT RESOLVED by the Mayor and Council of the City of Dunwoody, Georgia that an attorney not otherwise involved with City business shall serve as Hearing Officer for appeals of decisions made by staff in cases where the City ordinances regulating licensing activities provide that the decisions may be appealed by the applicant to the City Council or designated Hearing Officer.

BE IT FURTHER RESOLVED that _____ is hereby named to serve as primary hearing officer, and _____ is hereby named as the Alternate hearing officer to serve as needed, for appeals related to the designated licensing processes.

BE IT FURTHER RESOLVED that the City Manager is charged with the responsibility for overseeing the time spent by the Hearing Officer(s) on each appeal, determining the reasonableness of the hours billed for services and approving payments based on invoices provided by the Hearing Officer(s). The maximum fee a Hearing Officer may be paid on each appeal is \$100/hour for each hearing and \$400 total for each appeal, including preparation and drafting and service of final orders upon appealing parties and the City.

**STATE OF GEORGIA
CITY OF DUNWOODY**

RESOLUTION 2010-09-XX

SO RESOLVED AND EFFECTIVE, this the _____ day of September, 2010.

Approved:

Ken Wright, Mayor

Attest:

Sharon Lowery, City Clerk
(Seal)