

AN ORDINANCE

AMENDING Marietta City Code Part 8 (Business Licenses, Occupational Taxes, and Regulations).

WHEREAS, Chapter 8-4 of the Code of Ordinances of the City of Marietta regulates businesses and provides for the issuance, denial, suspension, and revocation of occupation tax certificates and other licenses to operate businesses in the city in order to protect the health, safety, and general welfare of the community; and

WHEREAS, the city council finds it is in the best interest of the City of Marietta to adopt the recommended amendments to Chapter 8-4 as set forth herein.

NOW, THEREFORE BE IT HEREBY ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MARIETTA, GEORGIA, THAT:

Section 1: Subsections 8-4-020(B)(20), (21), and (22) of the Code of Ordinances of the City of Marietta, Georgia, are amended to read as follows:

20. "Applicant" means any person or entity seeking an occupation tax certificate for a business, as well as all persons and entities with an influential interest in the business.
21. "Influential interest" means the ability to control or influence the operation, management, or policies of a business or legal entity involved in the operation of a business. Without limiting the foregoing, and by way of example only, a person or entity shall be deemed to have an "influential interest" if the person or entity: (1) is a manager of the business, (2) has a financial interest of ten percent or more in a legal entity operating the business, or (3) holds an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity operating the business.
22. "Hearing officer" means an attorney, not otherwise employed by the city, who is licensed to practice law in Georgia, and retained to serve as an independent tribunal to conduct hearings under this chapter.

Section 2: Section 8-4-030 of the Code of Ordinances of the City of Marietta, Georgia is amended to read as follows:

8-4-030 – Occupation tax certificate required.

- A. Every business within this city or any business doing or engaging in business within the city is required to have a business license or occupation tax certificate from the city prior to, and

for the privilege of, engaging in a business, profession or occupation within the corporate limits, unless city licensing or taxing is prohibited under state law or the activity is exempted by this Code.

- B. Every person required to pay an occupation tax or business license fee or a renewal of a business license or occupation tax certificate under the provisions of this Code shall submit an application to the business license manager, which application shall conform to the requirements of this section in addition to any other provisions of this Code. The business license manager shall prepare and provide the necessary forms, in paper or electronic format, for the registration or application for a business license. The application or registration shall give a detailed description of the business's activities, identify all lines of business that the business conducts, and identify the applicant's dominant line of business.
- C. If a submitted application fails to include required information or evidence of qualification for the type of business license sought, the business license manager shall notify the applicant (by email, personal delivery, or certified mail to an address for the applicant currently on file with the business license manager) what information is necessary to make the application complete. If the application is still incomplete 30 days after such notice, then the application, if not previously denied, will be deemed withdrawn and treated as though no application had been filed.

Section 3: Section 8-4-080 of the Code of Ordinances of the City of Marietta, Georgia is amended to read as follows:

8-4-080 – Review and approval or denial of applications; appeals.

- A. *Licenses deemed a privilege.* In general, an occupation tax certificate serves as a business license, and the terms are used interchangeably. Businesses that are regulated under other provisions of state or local law may require additional approvals or licenses. The granting of a business license or occupation tax certificate under any provisions of this Code shall be deemed a privilege only, and nothing herein contained shall be construed as granting any person whose business is subject to municipal regulation any legal right to engage in that business.
- B. *Applications requiring approval by the business license manager.* If any provision of this part of the code provides for the review and approval of an application for a business license or occupation tax certificate by the business license manager, and does not require approval from the city manager or city council, the business license manager shall act on the application as required by this Code.
- C. *Applications requiring approval by the city manager.* If any provision of this part of the code provides for the review and approval of an application for a business license or occupation tax certificate by the city manager, and does not require approval from the city council, the city manager shall act on the application only after the public hearing described in this subsection.

1. *Public hearing.* Upon completion of an investigation of an application requiring a public hearing, the city manager shall conduct at least one public hearing to consider the application. A public hearing shall be held on the first or third Wednesday of each month as needed and advertised. The date, time and place of all hearings will be posted in Marietta City Hall five calendar days prior to said hearing.
2. *Immediate issuance if no objection.* If there is no written or verbal objection to an application at or prior to the public hearing, the city manager may issue the business license/occupation tax certificate immediately, provided that all requirements for issuance of the business license are met.
3. *Issuance after objection resolved.* If written or verbal objection is made or filed at or prior to the public hearing, the city manager shall hold the hearing and shall render a decision on the application. However, the city manager shall not issue any business license/occupation tax certificate upon which objection has been made until the appeal period has run or until a timely appeal from the decision has been decided, whichever is later.

D. *Applications requiring approval by the city council.* If any provision of this part provides for review and approval of an application for a business license or occupation tax certificate by the city council, the city manager shall forward the application together with a recommendation to the city council for consideration at its next regularly scheduled public meeting. The city council shall act on the application as required by this Code.

E. *Grounds for denial.*

1. The business license manager, the city manager, or the city council shall deny a business license or occupation tax certificate if one or more of the following grounds exists:
 - a. The business is not authorized to operate at the subject location or is otherwise not qualified to obtain the requested occupation tax certificate;
 - b. The business would constitute a nuisance as defined in Section 10-8-010 of this Code; or
 - c. In the 24 months preceding the application, the business or an applicant has been found by a court of law to be operating a business unlawfully and has been enjoined by the court from operating contrary to law at the location, or upon the same parcel, for which the business license or occupation tax certificate is sought.
2. The business license manager, the city manager, or the city council may deny a business license or occupation tax certificate if one or more of the following grounds exists:
 - a. The business or applicant has failed to provide information required for issuance of the business license or occupation tax certificate or has answered a question or request for information with false, misleading, or incomplete information;
 - b. Any ground for suspension or revocation listed under Section 8-4-405(B);
 - c. The business or applicant is neither the owner of the premises wherein the business will be operated, nor the holder of a lease thereon for the period to be covered by the business license or occupation tax certificate.
3. When the business license manager or the city manager denies a business license or occupation tax certificate, the deciding official shall send a written decision stating the

grounds for such action to the applicant by personal delivery, certified mail, or email to an address for the applicant currently on file with the business license manager.

- F. *Issuance of license upon approval.* Upon the express approval of the council, when so required by this Code, or otherwise upon a determination by the business license manager or the city manager that the application is in order and all requirements have been met, the city manager or the business license manager shall issue a business license or occupation tax certificate to the applicant therefor, which license or certificate shall state the nature of the business authorized and bear the date of issuance and the signature of the business license manager or the city manager. As per Section 8-4-110, an occupation tax certificate shall note the line or lines of business that the business registers with the business license and revenue division.
- G. *Appeal of decision.* A person aggrieved by a decision of the business license manager or city manager to grant or deny an occupation tax certificate may appeal the decision pursuant to Section 8-4-500(C).

Section 4: Section 8-4-380 of the Code of Ordinances of the City of Marietta, Georgia is amended to read as follows:

8-4-380 – Tax registration 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 make any of said returns within the time required herein, or upon failure to make a true return, or upon failure to amend a return to set forth the truth, or upon failure to permit inspection of its books as provided, any occupation tax registration or certificate granted by the City of Marietta under this Code permitting the owner of said business to do business in the city for the current year shall be subject to suspension or revocation. No new occupation tax registration shall be granted by the city 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 business license manager in accordance with provisions found in Section 8-4-270. In the case of those practitioners of professions listed in O.C.G.A. § 48-13-9(c), where the local government cannot suspend the right of the practitioner to conduct its business, the imposition of civil penalties shall be permitted and pursued by the local government in the case of delinquent occupation tax.

Section 5: Section 8-4-405 of the Code of Ordinances of the City of Marietta, Georgia is hereby amended to read as follows:

8-4-405 – Suspension, revocation and appeal.

- A. The business license manager shall be authorized to suspend or revoke an occupation tax certificate or any other business license previously granted by the City of Marietta for one or more reasons stated in this section.

- B. The business license manager shall be authorized to suspend or revoke an occupation tax certificate in the event of any one or more of the following:
1. An applicant gave false, misleading, or incomplete information in the original application process;
 2. An applicant or licensee has knowingly or recklessly allowed possession, use, or sale of controlled substances on the premises and/or knowingly allowed possession, use or sale of controlled substances to a minor on the premises;
 3. An applicant or licensee has knowingly or recklessly allowed the violation of an ordinance of the city, or knowingly or recklessly allowed a violation of any criminal law of the State of Georgia (a misdemeanor or a felony) to occur on the premises; and such violation is materially related to the operation of said business;
 4. An applicant or licensee has been convicted of any drug-related, alcohol-related, or sex-related crime by the State of Georgia or the City of Marietta regarding an offense which was committed on the premises or which would otherwise violate the provisions of this chapter;
 5. An applicant or licensee fails to pay any fee, occupation tax, fine or other amount of money due to the City of Marietta under this chapter or any other taxing ordinance of the City of Marietta, or is otherwise subject to suspension, revocation, or denial under Section 8-4-380; or
 6. An applicant or licensee or the owner alters or allows to be altered, the business license or occupation tax certificate (license document), or the applicant or the owner changes the information, defaces, destroys, misuses, abuses, or improperly alters or misrepresents the business license or occupation tax certificate.
- C. The city manager shall approve any proposed action prior to proceeding toward any suspension or revocation of any occupation tax certificate and/or business license.
- D. When the business license manager suspends or revokes an occupation tax certificate, the business license manager shall send a written decision stating the grounds for such action to the licensee by personal delivery, certified mail, or email to an address for the licensee currently on file with the business license manager. Any suspension shall be for a period of not less than one day nor more than 365 days, within the discretion of the business license manager. The suspension or revocation shall take effect on the eleventh business day after it is issued, unless the licensee files a notice of appeal as set forth in Section 8-4-500(C), per Subsection E below.
- E. *Appeal of decision.* A person aggrieved by a decision of the business license manager to suspend or revoke an occupation tax certificate may appeal the decision pursuant to Section 8-4-500(C). Upon the filing of such an appeal, the licensee shall be authorized to continue its business operations as allowed by its occupation tax certificate until the date of the hearing scheduled in accordance with Subsection 8-4-500(C).

Section 6: Section 8-4-500 of the Code of Ordinances of the City of Marietta, Georgia is hereby amended to read as follows:

8-4-500 – Administration of chapter—License inspectors—Appeals.

- A. The business license manager shall administer and enforce the provisions of this chapter for the levy, assessment and collection of occupation taxes and penalties imposed herein.
- B. Under the direction of the city manager, one or more license or tax inspectors or other city employees designated by the city manager shall seek out violations of the city code, particularly the taxing and regulation portions thereof.
- C. Any person aggrieved (“petitioner”) by any action of the business license manager or city manager (“official”) in the enforcement of this Part 8 of the code, or rules and regulations adopted pursuant to this Part 8 of the code, including a denial, suspension, or revocation of an occupation tax certificate, or a grievance concerning the amount of taxes assessed or the classification of the business, may appeal the action under this Subsection C to the mayor and city council. An appeal under this Subsection C shall stay all legal proceedings with regard to the collection of the occupation tax and penalties from the petitioner.
 - 1. *Hearing officer authorized.* The mayor and city council may appoint one or more hearing officers to hear and decide appeals under this chapter. Where the mayor and council have designated that a hearing officer hear and decide an appeal, references to mayor and city council in this subsection shall be deemed references to the hearing officer.
 - 2. *Time, manner for appeal.* To initiate an appeal, the petitioner shall file a written notice of appeal with the official who rendered the decision within ten (10) business days of the date of the decision. The notice of appeal shall identify the bases for such appeal. The official who rendered the decision shall transmit to the city clerk all papers constituting the record upon which the action appealed from was taken.
 - 3. *Scheduling of hearing; notice.* The city clerk shall schedule a hearing on the appeal to occur within 45 days of the filing of the notice of appeal. The city clerk shall notify the petitioner of the date, time and place of the hearing, at least five business days before the hearing. The city clerk shall send the written hearing notice by personal delivery, certified mail, or email to an address for the petitioner currently on file with the business license manager.
 - 4. *Recording the hearing.* The city shall make an audio recording of the hearing. Any party may request that the city arrange for a court reporter take down the hearing, provided that the requesting party agrees to share equally in the cost of the take down pursuant to O.C.G.A. § 5-3-14(c).
 - 5. *Hearing procedure.* At the hearing, the parties, including the official whose decision is under review, shall have the opportunity to present relevant arguments and to be represented by counsel, present evidence and witnesses, and cross-examine opposing witnesses. The hearing shall take no longer than two hours, unless extended upon request to meet the requirements of due process.
 - 6. *Burden of proof; standard of decision.* The petitioner shall have the burden of proving by a preponderance of the evidence that no substantial evidence supports the official’s decision. The mayor and city council may, in conformity with this chapter, reverse or affirm, wholly or partly, or may modify the opinion, requirement, decision or determination appealed from, and to that end shall have all the powers of the business license manager and city manager. The mayor and city council may direct any action as it may deem proper in conformity with this article and it shall be the duty of the business

license manager and city manager to carry out the decisions of the mayor and city council in conformity with this chapter.

7. *Judicial review; costs.* The action of the mayor and city council, or the hearing officer, shall be final and may be appealed to superior court by a petition for review in accordance with O.C.G.A. § 5-3-1 et seq. If a petition for review is filed, the petitioner in superior court shall share equally in the cost of transcribing the evidence and proceedings pursuant to O.C.G.A. § 5-3-14(c). The city will notify the petitioner in superior court of the costs accrued in the appeal pursuant to O.C.G.A. 5-3-16.

Section 7: Section 8-4-510 of the Code of Ordinances of the City of Marietta, Georgia is hereby deleted.

Section 8: It is hereby declared to be the intention of this Ordinance that its sections, paragraphs, sentences, clauses, and phrases are severable and if any section, paragraph, sentence, clause, or phrase of this Ordinance is declared to be unconstitutional or invalid, it shall not affect any of the remaining sections, paragraphs, sentences, clauses, or phrases of this Ordinance.

Section 9: All Ordinances and parts of Ordinances in conflict with this Ordinance are hereby repealed.

Section 10: This Ordinance shall be effective upon signature or without the signature of the Mayor, subject to Georgia laws 1983, page 4119.

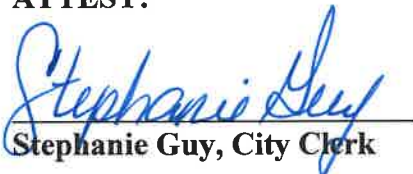
Approved by City Council:

APPROVED:

DATE: May 8, 2024


R. Steve Tumlin, Jr., Mayor

ATTEST:


Stephanie Guy, City Clerk

Approved as to Form:


Doug Haynie, City Attorney