

ORDINANCE NO. 258

AN ORDINANCE OF UPSON COUNTY, GEORGIA TO AMEND THE CODE OF UPSON COUNTY, AMENDING APPENDIX A, THE ZONING ORDINANCE OF UPSON COUNTY, TO ADD DEFINITIONS, TO ADD PROVISIONS REGARDING OUTDOOR FLEA MARKETS, YARD AND ESTATE SALES, PROVIDING FOR REPEAL/CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

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WHEREAS, OCGA §36-1-20, empowers County governments to protect and preserve the public health, safety and welfare, through the adoption of ordinances, and

WHEREAS, Section 410 of the Upson County Zoning Ordinance (UCZO) lists the procedures by which the Zoning Ordinance may be amended; and

WHEREAS, the Board of Commissioners of Upson County has determined that outdoor flea markets, yard sales and estate sales require a uniform set of standards to operate and be regulated by ; and

WHEREAS, the Upson County Board of Commissioners has determined that the standards meet the required zoning power review standards and serve to enhance the public health, safety, morality or general welfare of Upson County, Georgia, therefore:

BE IT ORDAINED by the Board of Commissioners of Upson County, Georgia, as follows:

SECTION ONE

That the Code of Upson County, Georgia, is hereby amended by adding definitions to Appendix A, the Zoning Ordinance of Upson County, Georgia, Section 202, adding Article 26 and amending Sections 1604, 1804 and 1904, which shall read as follows:

APPENDIX A, ARTICLE 2 DEFINITIONS OF TERMS USED

Section 202 General Definitions *(Re-Letter Accordingly)*

(A) *Estate Sale, Professional*: Professional estate sale shall mean a sale or liquidation for purposes of estate planning. Professional estate sales are coordinated and conducted by professional liquidators. A "yard sale" named an "estate sale", not meeting these criteria is not a professional estate sale.

(B) *Flea market*:

(1) Per the Code of Georgia Section 10-1-360, a flea market means any event:

- a) At which two or more persons offer personal property for sale or exchange; and
- b) At which a fee is charged for the privilege of offering or displaying new and/or used personal property for sale or exchange from a building, portion of a building or open-air market area where individual market stalls or spaces are provided (rented or leased); or
- c) At which a fee is charged to prospective buyers for admission to the area where new and/or used personal property is offered or displayed for sale or exchange from a building, portion of a building or open-air market area where individual market stalls or spaces are provided (rented or leased); or
- d) Regardless of the number of persons offering or displaying personal property or the absence of fees, at which new and/or used personal property is offered or displayed for sale or exchange if the event is held more than six times in any 12 month period.

(2) The term "flea market" is interchangeable with and applicable to "swap meet", "indoor swap meet" or other similar terms regardless of whether these events are held inside a building or outside in the open. The primary characteristic is that these activities involve a series of sales sufficient in number, scope, and character to constitute a regular course of business.

(3) The term "flea market" shall not mean and shall not apply to:

- a) A short-term event which is organized for the exclusive benefit of any federally or state government-recognized, not-for-profit community chest, fund, foundation, association or corporation organized and operated for religious, educational, or charitable purposes, provided that no part of any admission fee or parking fee

charged vendors or prospective purchasers or the gross receipts or net earnings from the sale or exchange of personal property, whether in the form of a percentage of the receipts or earnings, as salary or otherwise inures to benefit of any private shareholder or person participating in the organization or conduct of the event; or

- b) Any event at which all of the personal property offered for sale or displayed is new and all persons selling, exchanging or offering or displaying personal property for sale or exchange are manufacturers or licensed retail or wholesale merchants.
- c) Antique stores, junk stores, auction houses or similar businesses, where all components of the business are established on a permanent basis and no stalls or spaces for rent or lease or the like are included.

(4) In addition to the standards set forth in Georgia Code Section 10-1-360, flea markets typically contain outdoor product display areas on a continuous or near-continuous basis. Flea markets are deemed not to be the same as "auction galleries", "auction houses", or "auction markets".

(C) *Flea market, indoor:* A flea market which is wholly contained within a fully enclosed structure.

(D) *Flea market, outdoor:* A flea market which is partially or wholly conducted outside an enclosed structure.

(E) *Joint Yard Sale:* Joint yard sale shall mean a yard sale held at a specific location by a group of residents, tenants or by an organization (religious, charitable or otherwise).

(F) *Nuisance:* A nuisance is anything that causes hurt, unreasonable inconvenience or damage to another and the fact that the act done may otherwise be lawful shall not keep it from being a nuisance. The inconvenience complained of shall not be fanciful or such as would affect only one of fastidious taste, but shall be such as would affect an ordinary, reasonable person with impacts beyond what one would normally and typically expect.

(G) *Personal Property:* Personal property shall mean property, which is owned, used and maintained by an individual or members of his/her household and acquired in the normal course of living in or maintaining a dwelling. It does not include merchandise which was purchased for resale or obtained on consignment.

(H) *Yard Sale:* Yard sale shall mean the sale, offering for sale, exchange or trading of new, used and/or secondhand items of primarily personal property such as clothing furniture, household items, food dishes, antiques and similar personal property, goods or merchandise. Such sales are held by individuals not regularly engaged in the business of such sales which are held on a residentially zoned lot or parcel in the A-R, P-R, R-1, R-2, R-4, R-5 etc. zoning districts. Yard sales may include all sales entitled and also known as *garage sale, tag sale, porch sale, lawn sale, attic sale basement sale, rummage sale, junk sale, estate sale, moving sale, barn sale* or any similar casual sale or primarily personal property, which is advertised by any means whereby the public at-large is or can be aware of such sale. Yard sales shall not be subject to permits or occupation tax.

APPENDIX A, ARTICLE 26 – YARD SALES, ESTATE SALES AND FLEA MARKETS

Purpose and Intent

Applicability of Regulations

Flea Markets

Yard and Estate Sales

Parking

Enforcement and Penalty

Severability

Section . PURPOSE AND INTENT

It is the purpose and intent of this Chapter to allow individuals and organizations the opportunity to have regulated yard and/or estate sales for the purpose of selling personal property, while generally maintaining the expected peace, tranquility and safety of the County's residential neighborhoods. Further, it is the intent of this ordinance to set standards for outdoor flea markets as may be allowed in accordance with zoning districts of this Ordinance.

Section APPLICABILITY OF REGULATIONS

Yard sales, estate sales and outdoor flea markets shall be permitted as defined and as described in the following sections, except as may be limited or prohibited by other Upson County code regulations. Indoor flea markets shall be regulated as other indoor, retail commercial businesses.

Section OUTDOOR FLEA MARKETS

- (A) An outdoor flea market may not be considered a home occupation. Outdoor flea markets shall be strictly prohibited in any and all agricultural (A-R) and residential districts (P-M, O-1, P-R, R-1, R-2, R-4, R-5, etc.) and are prohibited from the C-1 and C-3 commercial districts. Outdoor flea markets are only permitted in the C-2, M-1 and M-2 zoning districts. Approved outdoor flea markets and their independent flea market vendors/booth operators are subject to the Upson County occupation tax. Any structures associated with the flea market, built for the purposes of public sales and access, shall be properly permitted and inspected, in accordance with all appropriate building codes.
- (B) The minimum size of an outdoor flea market shall be one (1) acre.
- (C) Outdoor flea market booths shall be located on individual stands and shall contain no more than 100 square feet of area, separated from each other and from other buildings by at least ten feet of open space.
- (D) Setbacks, screening.
 - 1. All outdoor flea market structures and booths shall be located at least twenty-five (25) feet from all property lines.
 - 2. All outdoor flea markets adjacent to residential uses and/or residential zoning districts, including A-R, shall be provided with screening of a well-maintained opaque, six foot tall, minimum, fence or wall along the boundary line separating the market and such residential uses and residential zoning districts.
- (E) Off street parking areas will be provided in all outdoor flea markets. Such areas will be furnished at the rate of five and one half (5 ½) spaces per 1,000 square feet of gross floor area.
- (F) Each booth shall be numbered in a uniform, clear, legible, orderly manner.

Section YARD AND ESTATE SALES

- (A) Yard sales, as defined in Article 2, Section 202, shall be subject to the following restrictions:
 - 1) No yard sale shall be conducted for more than seventy-two (72) consecutive hours over three (3) days,
 - 2) Yard sales shall be open for business during daylight hours only, opening no earlier than sunrise and closing by sunset.
 - 3) A maximum of four yard sales is allowed during any one calendar year on any property or parcel.
 - 4) Items offered for sale and associated signage shall not be displayed within any public rights-of-way.
 - 5) Yard sales shall not create a nuisance to neighbors, shall not block driveways, sidewalks or other access ways and shall not create dangerous traffic conditions on adjacent and/or nearby roads.
 - 6) Open outdoor storage of yard sale items and display tables, except during the specified times of the sale, is strictly prohibited. The storage of yard sale items before and after the specified time of the sale shall be accordance with the Code of Ordinance for Upson County. Tarps, blankets, or other similar coverings shall not be considered adequate enclosures for outdoor storage of yard sale items.

- 7) All signage related to yard and estate sale events and flea markets shall be in accordance with the Upson County Sign Ordinance. Signage associated with yard and estate sales shall be removed within twenty-four hours of the end of the yard sale.
- 8) Yard sales, including joint yard sales, may be allowed on other properties not owned by the primary organizer of the joint yard sale; provided that written permission is obtained from the property owner and that the other established restrictions set forth in this ordinance are observed.
- (B) Professional estate sales, as defined in Article 2, Section 202 of this ordinance, shall be subject to the restrictions in (A)-(1-8) above, except that true professional estates sales are exempt from the sales duration restrictions in (A)-(1-2) above for the purposes of achieving a more efficient liquidation of personal property.
- (C) Yard sales, including joint yard sales, conducted by government-recognized tax-exempt, organizations, are exempted from the frequency restrictions established in A.3 and the zoning district restrictions, as long as they are held on the not-for-profit organization's property. Proof of not-for-profit status must be available on-site for enforcement staff inspection.

Section PARKING

No parking related to yard sales, estate sales or flea markets shall occur within any public right-of-way. The person responsible for holding the yard sale, estate sale or flea market and the owner of the property hosting such sale shall be responsible for and shall control the parking of vehicles of vendors and patrons/customers of the sale so as to avoid traffic congestion and hazardous conditions. Failure to foster and create the safe parking of vehicles shall be sufficient cause for the yard sale to be immediately shut down by the sponsor, property owner and/or the proper governmental authorities.

Section ENFORCEMENT AND PENALTY

Any person(s) in violation of this article may be issued a cease and desist order and/or a citation and shall be subject to prosecution and upon conviction, may be fined up to \$50.00 daily for each day a violation occurs.

Section SEVERABILITY

Any portion of this ordinance that may be deemed void, invalid or otherwise unconstitutional and/or illegal shall be severed from the ordinance without invalidating the remaining provisions of this ordinance.

ADD "Outdoor flea markets" to the *Permitted Uses* sections of C-2 (Section 1604), M-1 (Section 1804) and M-2 (Section 1904).

SECTION TWO

The Official Code of Upson County, Georgia is hereby amended and shall be accessible to the public.

SECTION THREE

All ordinances or parts thereof in conflict with the terms and provisions of this Ordinance are, and the same hereby, are repealed


SECTION FOUR

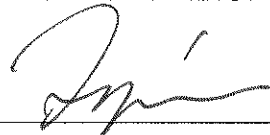
Should any sentence, paragraph or section of this Ordinance be declared to be invalid, for any reason, such declaration shall not affect the validity of any other sentence, paragraph or section of this Ordinance and all such remaining sentences, paragraphs and sections hereof shall remain valid and of full force and effect, and the Board of Commissioners of Upson County, Georgia, hereby declares that such continuing validity of the remaining portions hereof is its intent as of the date of the enactment hereof.

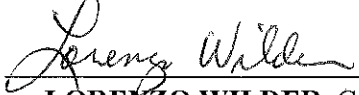
The foregoing ordinance this day adopted by the Board of Commissioners of Upson County, Georgia, and effective, this 10th day of October, 2017.


**BOARD OF COMMISSIONERS
OF UPSON COUNTY**

BY: 
NORMAN ALLEN, Chairman

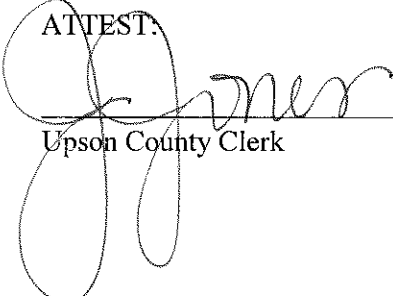
BY: 
RALPH ELLINGTON, Vice Chairman

BY: 
FRANK SPRAGGINS, Commissioner

BY: 
LORENZO WILDER, Commissioner

BY: 
JAMES ELLINGTON, Commissioner

ATTEST:


Upson County Clerk