

Chapter 12.

OCCUPATION TAXES, ADMINISTRATIVE FEES, AND REGULATORY FEES

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ARTICLE I. IN GENERAL

Section 12.1 **Definitions.**

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

Administrative Fee is the component of the occupation tax which approximates the reasonable cost of handling and processing the occupation tax.

City means the City of Poulan, Georgia.

Employee is any individual who, for compensation, exerts substantial effort within the State of Georgia for the purpose of soliciting business or serving customers or clients.

Location or Office means a fixed place located within the City of Poulan from which a person conducts business but shall not include a work site located in the City for less than six months for the purpose of serving a single customer or project.

Occupation Tax means a tax levied for revenue purposes on persons, partnerships, corporations, or other entities for engaging in an occupation, profession, or business in the City of Poulan.

Occupation Tax Certificate means a document issued by the City of Poulan acknowledging payment of the occupation tax and administrative fee.

Practitioners of Professions and Occupations are those individuals listed in O.C.G.A. § 48-13-9(c)(1)-(18) but does not include a practitioner who is an employee of a business if such business pays an occupation tax.

Regulatory Fee means a fee which approximates the cost of regulatory activity by the City.

Regulatory Fee Certificate means a document issued by the City of Poulan acknowledging payment of a regulatory fee.

Section 12.2 **Administrative Fee.**

A non-prorated, non-refundable administrative fee of \$40 is required on all occupation tax accounts for the initial registration, annual renewal, or reopening of such accounts.

Section 12.3 **Regulatory Fee.**

- a. Businesses and individuals engaging in the occupations or businesses set forth in

Appendix A must pay a non-refundable regulatory fee in accordance with the rate set forth in Appendix A.

b. If a business of individual initially engages in an activity regulated by the City on or after July 1 in any year, the regulatory fee for the remaining portion of the year shall be 50 percent of the regulatory fee for the entire year.

c. Every business, individual, and location subject to payment of a regulatory fee levied by this ordinance shall display a current regulatory fee certificate in a conspicuous place at the location for which such certificate was issued. If the taxpayer does not have a permanent location within the City, the regulatory fee certificate or an unaltered duplicate of such certificate shall be shown to any police officer or city clerk upon request.

Section 12.4 **Occupation Tax Levied; Limitations.**

a. An occupation tax based upon number of employees in the State of Georgia is levied upon businesses and practitioners of professions and occupations with one or more locations or offices within the corporate limits of the City and, pursuant to O.C.G.A. § 48-13-7, upon out-of-state businesses with no location or office in the City but with employees or agents engaging in substantial efforts to solicit business or serve customers or clients in the State of Georgia.

b. Each business or practitioner of professions or occupations shall be assessed an administrative fee as provided in the scheduled attached hereto as Appendix B.

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

d. A business or practitioner which is subject to an occupation tax by another local government and claiming an exemption from or limitation to the occupation tax imposed by this ordinance shall submit documentation as to current payment of the occupation tax to the other local government and the basis of such tax.

1. 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 which purports to tax the business's or practitioner's sales or services in this state, then the business or practitioner shall be exempt from this occupation tax.
2. 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. This limitation shall only apply when the business

or practitioner has provided to the City satisfactory proof of as to the applicability of this subsection.

3. A business or practitioner which has locations in Georgia subject to occupation tax by more than one local government in Georgia shall only be subject to the occupation tax by the City of Poulan for the number of employees who are employed within the corporate limits of the City. 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).

4. If an employee works for the same business or practitioner in more than one municipal corporation or county and the business or practitioner submits proof of this, the employee shall be counted as an employee in the City only if the City is the jurisdiction where such employee works for the longest period of time within the calendar year.

e. If a business or practitioner commences business in the city on or after July 1 in any year, the occupation tax for the remaining portion of the year shall be 50 percent of the tax imposed for the entire year. The administrative fee shall not be reduced.

f. If a business or practitioner does not know how many employees which are the basis of this occupation tax will be employed by the business or practitioner during the current calendar year, then the business or practitioner shall file a return estimating the number of employees who are the basis of this occupation tax. If such estimate is not accurate, then no later than December 31 the business or practitioner shall file an amended return indicating the actual number of employees during the previous calendar year. Any overpayment of the occupation tax may be credited to the business or practitioner's account for future tax liability, offset against other amounts due and owing to the City for any reason or paid to the business or practitioner at the discretion of the City Clerk.

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

Section 12.5 **Occupation Tax Certificate.**

Every business, practitioner, and location subject to payment of the occupation tax levied by this ordinance shall display a current occupation tax certificate in a conspicuous place at the location for which such certificate was issued. If the taxpayer does not have a permanent location with the City, the occupation tax certificate shall be shown to any police officer upon request.

Section 12.6 **Practitioners of Professions and Occupations.**

Practitioners or professionals and occupations as defined in this ordinance shall pay the occupation tax as set forth in Section 12.4 above or shall pay an occupation tax of \$75 per practitioner. On the tax return for 2006 or such later time as the practitioner first commences business in the City the practitioner shall elect a method of taxation. Such election shall be changed for subsequent calendar years only by a written request filed by the practitioner on or before February 1 of the year in which the election is to be changed.

Section 12.7 **Exemptions.**

- a. No occupation tax shall be levied on the following:
 1. 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;
 2. Those businesses regulated by the Georgia Public Service Commission;
 3. Those electrical service businesses organized under Chapter 3 of Title 46 of the Official Code of Georgia;
 4. Any farm operation for the production from or on the land of agricultural products, but not including any agribusiness;
 5. Non-profit, agricultural product cooperative marketing associations pursuant to O.C.G.A. § 2-10-105;
 6. Motor common carriers pursuant to O.C.G.A. § 46-7-15;
 7. Persons purchasing guano, meats, meal, flour, bran, cottonseed, or cottonseed meal or hulls in carload lots for distribution among the purchasers for use and not sale pursuant to O.C.G.A. § 48-5-355;
 8. 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 90 days of the introduction of the product into the City;
 9. Depository institutions pursuant to O.C.G.A. § 48-6-93; or
 10. Any business where 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, or other fees or taxes otherwise allowed by law.

Section 12.8 **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 or regulatory fee certificate may be issued.

Section 12.9 **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 or a regulatory fee certificate, show evidence of such qualification.

b. Any business required to submit an annual application continuance of the business shall do so before the registration is issued.

Section 12.10 **Filing Returns; Other Information Required or Requested.**

a. On or before October 1 of each year, an individual, business, or practitioner subject to this occupation tax ordinance shall file with the City Clerk on a form approved by and available from the City a signed return attesting to the number of employees of such business or practitioner during the calendar year.

b. Individuals, businesses, and practitioners doing business in the City shall submit to the City Clerk or make available within 30 days such information as may be required or requested by the City to determine the applicability and amount of the occupation tax or regulatory fee or to facilitate levying or collection of the occupation tax and/or regulatory fee(s).

Section 12.11 **Confidentiality.**

Information provided by a business or practitioner to the City for the purpose of determining the applicability and amount of the occupation tax or levying or collecting the occupation tax is confidential and exempt from disclosure under Article 4 of Chapter 18 of Title 50 of the Official Code of Georgia. Such information may be provided to the governing authority of another local government for occupation tax purposes or pursuant to court order or for the purpose of collecting occupation tax or prosecution for failure or refusal to pay occupation tax.

Section 12.12 **Date Due; Penalty.**

a. Any occupation tax or regulatory fee due pursuant to this ordinance shall be due and

payable annually on January 1. In the event that any person commences business or initially engages in a regulated activity in the City after January 1 in any year, the tax and/or fee shall be due and payable on the date of the commencement of the business or regulated activity.

b. Any individual, business, or practitioner subject to any occupation tax or regulatory fee imposed by this ordinance which is unpaid for 90 days after the date on which payment was due shall be subject to a penalty of 10 percent of the tax or fee due.

Section 12.13 **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 to summon violators of this ordinance to appear before the Municipal Court. The City Clerk may issue executions against individuals, businesses, and practitioners for taxes and fees which are due and owing.

b. The City Clerk shall issue executions against individuals, businesses, and practitioners for taxes and fees which are due and owing. Such executions shall bear interest at the rate authorized by O.C.G.A. § 48-2-40 or, if such statute should be repealed, one percent per month. The lien shall cover the property of the individual, business, or practitioner liable for payment of the delinquent occupation tax or regulatory fee and become fixed as of the date and time the occupation tax or regulatory fee became delinquent. The execution shall be levied by the City Clerk 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. When a nulla bona entry has been entered upon an execution, the person against whom the entry is made shall not be allowed or entitled to have or collect any fees or charges whatever for services rendered after the entry of the nulla bona. If, at any time after the nulla bona entry has been made, the person against whom the execution issues pays the tax in full together with all interest and costs accrued on the tax, the person may collect any fees and charges due to such person as if such person had never defaulted in the payment of the tax.

d. Individuals, businesses, and practitioners who fail or refuse to pay any occupation tax or regulatory fee charged pursuant to this ordinance shall be subject to a fine not to exceed \$500 or imprisonment for up to 30 days, or both, or in lieu of imprisonment, it may sentence an offender, upon conviction, to labor for this City on the streets, sidewalks, squares, or other public places for a period not to exceed 90 days.

e. Individuals, businesses and practitioners who fail or refuse to make a timely or

truthful tax return or make available truthful and accurate information the City request or requires for determining applicability or amount of occupation tax or regulatory fee, or for levying or collecting such occupation tax or regulatory fee shall be subject to suspension of the right to conduct business.

f. All persons subject to the occupation tax or regulatory fee 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 persons, businesses, or practitioners shall be subject to the same penalty imposed on the persons, businesses, or practitioners who fail to make a return for or pay the applicable occupation tax or regulatory fee.

Section 12.14 **Public Hearing.**

After adoption of this ordinance, 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 12.4b and Appendix B.

Section 12.15 **Prior Ordinance.**

To the extent that any occupation taxes or regulatory fees are owed pursuant to an ordinance passed prior to this one, such amounts remain due and owing and the provisions of that prior ordinance will remain in effect with respect to such unpaid occupation taxes or regulatory fees until such time as they are paid in full.

Section 12.16 **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 Poulan 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.

Sections 12.17 - 12.19 **Reserved.**

ARTICLE II. INSURERS; LICENSE FEES

Section 12.20 Insurers License Fees.

There is hereby levied for the year 2006 and for each year thereafter an annual license fee upon each insurer doing business within the City in the amount of \$15. For each separate business location in excess of one not covered by the following Section 12.21, which is operating on behalf of such insurer within the City, there is hereby levied a license fee in the amount of \$15. For the purposes of this article, the term "insurer" means a company which is authorized to transact business in any of the classes of insurance designated in O.C.G.A. §33-3-5.

Section 12.21 License Fees for Insurers Insuring Risks at Additional Business Locations.

For each separate business location, not otherwise subject to a license fee hereunder, operated and maintained by a business organization which is engaged in the business of lending money or transacting sales involving term financing and in connection with such loans or sales offers, solicits or takes application for insurance through a licensed agent of an insurer for insurance, said insurer shall pay an additional license fee of \$10 per location for the year 2006 and for each year thereafter.

Section 12.22 Insurers Agency License Fees; Independent Insurance Agencies, Brokers, Etc., Not Otherwise Licensed.

There is hereby levied for the year 2006 and for each year thereafter an annual license fee upon independent agencies and brokers for each separate business location from which an insurance business is conducted and which is not subject to the company license fee imposed by preceding Section 12.20 hereof in the amount of \$15 for each such location within the City.

Section 12.23 Gross Premium Tax Imposed on Life Insurers.

There is hereby levied for the year 2006 and for each year thereafter an annual tax based solely upon gross direct premiums upon each insurer writing life, accident, and sickness insurance within the State of Georgia in an amount equal to one percent of the gross direct premiums received during the preceding calendar year in accordance with O.C.G.A. §33-8-8.1. Gross direct premiums as used in this section shall mean gross direct premiums as used in O.C.G.A. §33-8-4. The premium tax levied by this section is in addition to the license fees imposed by Section 12.20 of this article.

Section 12.24 Gross Premiums Tax; All Other Insurers.

There is hereby levied for the year 2006 and for each year thereafter an annual tax based solely upon gross direct premiums upon each insurer, other than an insurer transacting business in the class of insurance designated in subsection 1 of O.C.G.A. §33-3-5, doing business within the State of Georgia in an amount equal to 2.5 percent of the gross direct premiums received during the

preceding calendar year in accordance with O.C.G.A. §33-8-8.2. Gross direct premiums as used in this section shall mean gross direct premiums as used in O.C.G.A. §33-8-4. The premium tax levied by this section is in addition to the license fees imposed by Section 12.20 of this article.

Section 12.25 **Due Date for License Fees.**

License fees imposed in Sections 12.20 and 12.21 of this article shall be due and payable on the first day of each subsequent year.

Section 12.26 **Administrative Provisions.**

The City Clerk is hereby directed to forward a duly certified copy of this article to the Insurance Commission of the State of Georgia within 45 days of its enactment.

Sections 12.27 - 12.30 **Reserved.**

ARTICLE III. CABLE FRANCHISES.

Section 12.31 **Franchise Fee for State Issued Cable or Video Franchise.**

a. *Franchise fee specified.* The City hereby requires a franchise fee of 5% of gross revenues generated within the City for any cable or video state franchise issued in its corporate boundaries by the State of Georgia.

b. *Authorized designee.* The City hereby authorizes the City Clerk, upon receipt of notice to the City of its right to designate a franchise fee for an applicant for or holder of an existing state franchise, to provide written notice to the Secretary of State and each applicant for or holder of a state franchise within a service area that is wholly or partially located within the city limits of the 5% franchise fee rate applicable to such applicant or holder of a state franchise.

Sections 12.32 - 12.35 **Reserved.**

ARTICLE IV. TELEPHONE COMPANIES.

Section 12.36 Due Compensation for Telephone Companies with End User Retail Customers Within the City.

a. The city hereby requires due compensation of 3 percent of actual recurring local service revenues, as defined in paragraphs (8) and (9) of subsection (b) of Section 46-5-1 of the Official Code of Georgia Annotated; provided, however, that any company which pays in excess of 3 percent of actual recurring local service revenues pursuant to an existing franchise agreement shall continue to pay in accordance with the agreement until the expiration of the franchise agreement or December 31, 2012, whichever occurs first, and any company which pays in excess of 3 percent of actual recurring local service revenues in accordance with an occupational license tax arrangement shall continue to pay in accordance with such payment schedule until December 31, 2012.

b. Regarding any telephone company that does not have retail, end user customers located within the city's municipal boundaries, the payment by such company to a municipal authority in accordance with the rates set by regulations promulgated by the Department of Transportation for the use of its rights of way shall be considered the payment of due compensation.

Section 12.37 Authorized Designee.

The City Clerk shall, on behalf of the city, exercise day-to-day administrative duties necessary to fulfill the regulatory authority of the city under OCGA 46-5-1, et seq. and shall perform the following duties:

a. Review application information submitted by a telephone company to the city and, if an application is incomplete, notify the telegraph or telephone company within 15 business days of the receipt of such application, identifying in such notice all application deficiencies.

b. Report the receipt of a completed application to the Council within 60 calendar days of the receipt of such completed application.

c. Review payments of due compensation submitted by the company to ensure compliance with the provisions of the amended law and this ordinance.

d. Provide a coordination function between a telephone company and all city departments on any matter relating to the amended law and this ordinance.

e. Arrange and evaluate, no more than once a year, a comprehensive review of the records of a company which is reasonable related to the calculation and payment of due compensation.

f. Provide to all telegraph and telephone companies located in its rights of way written notice of annexations and changes in municipal corporate boundaries.

Sections 12.38 - 12.40 Reserved.

APPENDIX A

Examples of businesses or practitioners of professions or occupations which may be subject to regulatory fees of local governments include, but are expressly not limited to, the following:

Auctions	\$100
Billiard and Pool Rooms	\$100 + \$25 per table
Bonding Companies	\$150
Burglar and Fire Alarm Installers	\$75
Carnivals/Circus	\$250 (Council may waive)
Contractors, General	\$100
Contractors, Electrical & Electricians	\$100
Contractors, HVAC & HVAC Technicians	\$100
Contractors, Plumbing & Plumbers	\$100
Gas Fitters	\$50
Other Subcontractors	\$50
Firearm Dealers	\$50
Flea Markets	\$100
Fortune Tellers	\$500
Game Rooms	\$100 + \$25 per video machine
Garbage Collectors, Private	\$100
Hotels and Motels	\$100
Hypnotists	\$250
Junk Dealers, Salvage Companies	\$100
Pawn Brokers	\$100
Peddlers	\$150
Private Investigators	\$200
Recycling Firms	\$50
Taxicab and Limousine Operators	\$50
Used Clothing	\$50

APPENDIX B

An occupation tax based upon the number of employees in the state is levied upon businesses and practitioners of professions and occupations with one or more locations or offices within the corporate limits of the City and, pursuant to O.C.G.A. § 48-13-7, upon out-of-state businesses with no location or office in the City but with employees or agents engaging in substantial efforts to solicit business or serve customers or clients in the state in accordance with the following schedule:

<u>Tax Class</u>	<u>Number of Employees</u>	<u>Tax Rate per Employee</u>	<u>Flat Rate</u>
1	1 - 10	\$15	
2	11 - 40	\$14	
3	41 and over		\$600