

1 STATE OF GEORGIA
2 COUNTY OF FULTON

ORDINANCE NO: 2023-19

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4 **AN ORDINANCE AUTHORIZING THE AMENDMENT OF THE CITY OF FAIRBURN, GEORGIA CODE OF ORDINANCES, CHAPTER 53 TAXATION, ADOPTING NEW ARTICLE IV, IMPOSING A RENTAL CAR EXCISE TAX; PROVIDING FOR TERMS AND PROVISIONS; PROVIDING FOR DEFINITIONS; PROVIDING FOR ENFORCEMENT AND ASSESSMENTS; PROVIDING FOR REPORTING REGULATIONS AND PENALTIES; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER RELATED PURPOSES.**

11 **WHEREAS**, Ordinance 5 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated authorizes counties and municipalities to levy and impose an excise tax on rental motor vehicles, with such tax revenue to be used to promote industry, trade, commerce and tourism and other purposes; and

15 **WHEREAS**, the City of Fairburn, Georgia (the “City”) seeks to impose such levy on rental motor vehicle businesses operating within the geographic limits of the City of Fairburn, Georgia and to dedicate such revenue to the promotion of industry, trade and commerce, and the support of economic development; and

19 **WHEREAS**, the Mayor and City Council in the exercise of their sound judgment and discretion, and in consultation with staff, after giving thorough thought to all implications involved, have determined it to be in the best interest of the citizens of the City that the City of Fairburn adopt the amendments set forth below; and

23 **NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF FAIRBURN**, as follows:

25 **Section 1.** Chapter 53, Article IV – Rental Motor Vehicle Excise Tax is adopted in the City Code and hereby to read as follows:

27 **Sec. 53-105. Definitions.**

28 For purposes of this article, the following terms shall have the following meanings respectively ascribed to them:

30 *Rental charge* means the total value received by a rental motor vehicle concern for the rental or lease for thirty-one (31) or fewer consecutive days of a rental motor vehicle, including the total cash and nonmonetary consideration for the rental or lease, including but not limited to, charges based on time or mileage and charges for insurance coverage or collision damage waiver, but excluding all charges for motor fuel taxes or sales taxes.

35 *Rental motor vehicle* means a motor vehicle designed to carry ten (10) or fewer passengers and used primarily for the transportation of persons that is rented or leased without a driver regardless of whether such vehicle is licensed in the State of Georgia.

38 *Rental motor vehicle concern* means a person or legal entity which owns or leases five (5) or more rental motor vehicles and which regularly rents or leases such vehicles to the public for value.

40 *Tax, excise tax or taxes* shall mean the tax imposed by this article.

41 **Sec. 53-106. Authority, rules and regulations, collection and records.**

42 (a) The Finance Director or their designee shall administer and enforce this article for the levy
43 and collection of an excise tax upon the rental charge collected by a rental motor vehicle
44 concern when such charge constitutes a taxable event for the purpose of state sales and use
45 tax, under O.C.G.A. § 48-13-90 – 97.

46 (b) The Finance Director or their designee shall have the power and authority to make and publish
47 reasonable rules and regulations not inconsistent with this article or other laws of the city and
48 the state or the Constitution of this state or the United States for the administration and
49 enforcement of this article and the collection of the tax under this article.

50 (c) Said tax shall be imposed upon the customer who pays the rental charge, and such customer
51 shall be liable for the tax until such tax is paid over to the rental motor vehicle concern by the
52 customer. (d) The owner or operator of the rental motor vehicle concern shall collect the excise
53 taxes as set forth in this article and shall remit the same to the city as hereinafter provided. Any
54 owner or operator who shall neglect, fail or refuse to collect the tax herein provided shall be liable
55 for, and shall pay the tax personally.

56 (e) Every rental motor vehicle concern subject to this article shall keep such records, receipts,
57 invoices and other pertinent papers in such form as the city clerk may require.

58 **Sec. 53-107. Assessment.**

59 (a) Within the corporate limits of the city there is hereby assessed and levied an excise tax upon
60 each rental charge collected by any rental motor vehicle concern when such charge constitutes
61 a taxable event for the purposes of the sales and use tax as provided for under O.C.G.A.
62 Article I, Chapter 8, as amended. The tax levied pursuant to this article shall be in the amount
63 of three (3) percent of the rental charge, as defined herein. The tax levied pursuant to this
64 article shall be imposed only at the time when, and the place where, a customer pays sales tax
65 with respect to the rental charge. The customer who pays a rental charge that is subject to the
66 tax levy, as provided in this article, shall be liable for the tax. The tax shall be paid by the
67 customer to the rental motor vehicle concern. The tax shall be a debt of the customer to the
68 rental motor vehicle concern until it is paid and shall be recoverable at law in the same manner
69 as authorized for the recovery for other debts.

70 (b) The rental motor vehicle concern collecting the tax shall remit the tax to the _____ and the
71 tax thus remitted shall be a credit against the tax imposed by this article on the rental motor
72 vehicle concern. Every rental motor vehicle concern subject to the tax levied by this article
73 shall be liable for the tax at the rate of three (3) percent upon the rental charges actually
74 collected or the amount of taxes collected from the customers, whichever is greater.

75 **Sec. 53-108 Expenditure of proceeds of tax.**

76 The following projects and purposes for which the proceeds of the tax levied by this article
77 are to be expended are specified as follows:

78 (1) Promoting industry, trade, commerce and tourism.

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- 79 (2) Capital outlay projects consisting of the construction and/or renovation of public safety
80 facilities; .
- 81 (3) Capital outlay projects consisting of the construction of convention, trade, sports, and
82 recreational facilities, or public safety facilities, including the acquiring, constructing,
83 renovating, improving, and equipping of parking facilities, pedestrian walkways, plazas,
84 conventions and other public improvements associated with such convention, trade,
85 sports, and recreational facilities or the retirement of debt issued with respect to such
86 capital outlay projects; and.
- 87 (4) The payment or prepayment of outstanding bonded indebtedness used to finance,
88 refinance or related to the above purposes. .

89 **Sec. 53-109. Exemptions.**

90 No tax shall be imposed pursuant to this article on the rental charge associated with the rental
91 or lease of a rental motor vehicle, if either:

- 92 (1) The customer picks up the rental motor vehicle outside the State of Georgia and returns
93 it within the State of Georgia;
- 94 (2) The customer picks up the rental motor vehicle in the State of Georgia and returns it
95 outside the State of Georgia.

96 **Sec. 53-110. Retention of partial tax for expenses.**

97 Each rental motor vehicle concern collecting the tax imposed by this article shall be allowed
98 to retain three (3) percent of the tax due and collected and may retain that amount in the form of
99 a deduction for expenses incurred in submitting, reporting and paying the amount of taxes due if
100 the amounts due are not delinquent at the time of payment.

101 **Sec. 53-111. Monthly report and remittance; penalties.**

102 On or before the twentieth day of each month following the month of June, 2024, the rental
103 motor vehicle concern liable for the tax provided for herein shall transmit to the __for the city a
104 statement showing the gross rental charges and gross taxes collected by authority of this article for
105 each preceding calendar month. Along with said statement, the rental motor vehicle concern shall
106 submit to the city clerk the net taxes due for that particular month.

107 Failure to remit taxes by the due date shall subject the rental motor vehicle concern to a
108 penalty of five (5) percent of the tax then due and, in addition to such penalty, interest thereon on
109 the unpaid principal amount due computed at the rate of one (1) percent per month.

110 **Sec. 53-112. Records.**

111 In order to aid in the administration and enforcement of the provisions of this article and to
112 collect all the tax imposed, all rental motor vehicle concerns are hereby required to keep a record
113 of all rental charges for rental motor vehicles and taxes collected which are related thereto. Said
114 records shall be open for inspection and copying by any duly authorized agent of the city during
115 regular business hours.

116 **Sec. 53-113. Deficiency determination.**

- 117 (a) If the Finance Director or their designee is not satisfied with the return or returns of the excise
118 tax provided for herein, or the amount of the tax required to be paid to the city by any rental
119 motor vehicle concern, they may compute and determine the amount required to be paid upon
120 the basis of any information within their possession or that may come into his possession.
121 One (1) or more deficiency determinations may be made of the amount due for one (1) or
122 more monthly periods.
- 123 (b) The amount of the determination made by the city clerk shall bear interest at the rate of one
124 (1) percent per month, or fraction thereof, from the due date of the taxes found to be due by
125 him.
- 126 (c) The Finance Director or their designee or their designated representative shall give to the
127 rental motor vehicle concern a written notice of any such determination. The notice may be
128 served personally or by mail and if by mail, the service shall be addressed to the operator or
129 the owner of the rental motor vehicle concern at the address as the same appears in the records
130 of the city clerk, as provided to him by each rental motor vehicle concern. Service by mail is
131 complete when delivered by certified mail with a receipt signed by an addressee or agent of
132 the addressee.
- 133 (d) Except in cases or failure to make a return, every notice of deficiency determination shall be
134 mailed within three (3) years after the twentieth day of the calendar month following the
135 monthly period in which the amount proposed to be determined, or within three (3) years after
136 the return is filed, whichever period shall expire last.

137 **Sec. 53-114. Failure to make a return.**

138 If any rental motor vehicle concern fails to make a return, the Finance Director or their
139 designee shall make an estimate of the excise tax due. The estimate shall be made for the period
140 or periods in respect to which the rental motor vehicle concern has failed to make the return and
141 shall be based upon such information which is, or may come into, the possession of the Finance
142 Director or their designee. Written notice shall be given in the manner as prescribed in section 10-
143 xxx.

144 **Sec. 53-115-. Audit authority.**

145 Duly authorized employees of the city, upon exhibition of identification and during regular
146 business hours, may examine and copy the books, papers, records, financial reports, equipment
147 and other facilities, if necessary, of any rental motor vehicle concern in order to verify the accuracy
148 of any return made pursuant to this article or if no return is made by the rental motor vehicle
149 concern, to ascertain or determine the amounts of tax required to be paid.

150 **Sec. 53-116. Withholding tax on sale of business.**

- 151 (a) If any rental motor vehicle concern liable for any amount under this article transfers or sells
152 its business or quits the business, its successors or assigns shall withhold sufficient amounts
153 from the purchase price to cover the amount required to be paid pursuant to this article until
154 the former owner or operator of the rental motor vehicle concern produces a receipt from the

155 city clerk or his designee showing that the indebtedness has been paid or a certificate stating
156 that no amount is due.

157 (b) If the purchaser of a business or rental motor vehicle concern fails to withhold from the
158 purchase price, as required herein, such purchaser shall be personally liable for the payment
159 of the amount of the outstanding tax required to be withheld by him to the extent of such
160 purchase price.

161 **Sec. 53-117. Penalty for violation.**

162 (a) In addition to the interest charges and delinquent penalties specified in this article, any person
163 violating any provision of this article shall be deemed guilty of an offense and upon
164 conviction thereof shall be punished by the municipal court for the city in accordance with
165 the limits established by the city Charter and Codes of Ordinances, which are one thousand
166 dollars (\$1,000.00) and/or six (6) months in jail per day, per violation. Such persons shall be
167 guilty of a separate offense for each and every day during which any violation of any
168 provision of this article is committed, continued, or permitted by that person and shall be
169 punished accordingly.

170 (b) The tax levied by this article shall be effective on the first day of June, 2024, and shall
171 continue until its permissible existence shall expire, as provided by law, or until otherwise
172 terminated by the Georgia General Assembly or the city council.

173 **Sec. 53-118. Severability.**

174 (a) In the event any section, phrase, clause or sentence of this article is deemed unconstitutional
175 by any court of competent jurisdiction, such determination shall not affect the remaining
176 sections, phrases, clauses and sentences of this article which shall continue in full force and
177 effect.

178 (b) All ordinances and parts of ordinances in conflict herewith, to the extent of such conflict, are
179 hereby repealed.

180 **Section 2.** In the event any section, subsection, sentence, clause, or phrase of this Ordinance shall
181 be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect
182 the previously existing provisions of the other sections, subsections, sentences, clauses or phrases
183 of this Ordinance, which shall remain in full force and effect as if the section, subsection, sentence,
184 clause or phrase so declared or adjudicated invalid or unconstitutional were not originally a part
185 thereof. The City Council declares that it would have passed the remaining parts of this Ordinance
186 or retained the previously existing Ordinance if it had known that such part or parts hereof would
187 be declared or adjudicated invalid or unconstitutional.

188 **Section 3.** This Ordinance shall become effective immediately upon signature of the Mayor.

189 **Section 4.** All Ordinances and parts of Ordinances in conflict with this Ordinance are repealed to
190 the extent of the conflict.

191 **[SIGNATURE PAGES TO FOLLOW]**

192 This 11th day of December, 2023.

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195 ATTEST:

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197 Brenda B. James, City Clerk



Mario B. Avery, Mayor

APPROVED AS TO FORM:



Rory K. Starkey, City Attorney