

ORDINANCE NO 2014-9558

AN ORDINANCE AMENDING THE CODE OF CIVIL AND CRIMINAL ORDINANCES OF THE CITY OF IRVING, TEXAS, BY AMENDING CHAPTER 16G, "IRVING ENTERTAINMENT CENTER AND HOTEL PROJECT ADMISSIONS TAX"; PROVIDING DEFINITIONS; PROVIDING FOR THE LEVY, IMPOSITION AND USE OF A 10 PERCENT TAX ON EACH TICKET SOLD AS AN ADMISSION TO AN EVENT HELD AT IRVING ENTERTAINMENT CENTER; PROVIDING COLLECTION, REPORTING, PAYMENT, AND RECORDKEEPING REQUIREMENTS AND PROCEDURES; PROVIDING FOR INTEREST AND CIVIL PENALTIES; PROVIDING FOR A FINE OF UP TO \$500 FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; PROVIDING THIS ORDINANCE BE CUMULATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Chapter 334, Texas Local Government Code, as amended (the "Act") authorizes the City of Irving to impose certain specific taxes for the purpose of financing all or a portion of the cost of a convention center and entertainment venue project to be located in the City if the venue project and the taxes are approved at an election held in accordance with the Act; and

WHEREAS, at an election held within the City on November 6, 2007, a majority of the voters of the City voting at said election voted in favor of a proposition authorizing the City to provide for the planning, acquisition, establishment, development, construction and financing of a community venue project within the Las Colinas Urban Center of the City of the type described and defined in Section 334.001(4)(B), Texas Local Government Code, as amended, or under other law as authorized by Section 334.003 of the Act, described in summary form as a convention center (the "Convention Center") and a related multi-functional theater, performance hall, music hall, and community and entertainment venue, and related infrastructure, including hotel, retail, restaurant and parking facilities (the "Irving Entertainment Center" and together with the Convention Center, the "Project"), and (i) to impose a tax, not to exceed three dollars (\$3.00) on each parked motor vehicle parking in a parking facility of the Project, as and to the extent authorized by Subchapter G of the Act, (ii) to impose a tax on each ticket sold as admission to an event held at the Project, at a rate not to exceed ten percent (10%) of the price of the ticket sold as admission, as and to the extent authorized by Subchapter F of the Act; and (iii) to impose a tax on the occupancy of a room in a hotel located within the City, at a rate not to exceed two percent (2%) of the price paid for such room, as and to the extent authorized by Subchapter H of the Act; and

WHEREAS, the City has established the Convention Center and intends to construct the Irving Entertainment Center for public use and purposes under and in accordance with the Act; and

WHEREAS, the City Council has by resolution established the venue project fund entitled the "Venue Project Fund," and various accounts therein, required by Section 334.042 of the Act; and

WHEREAS, the City Council by Ordinance No. 2010-9202, adopted August 25, 2010, levied and imposed an admission tax under and in accordance with the Act; and such ordinance by the judgment of the 192nd Judicial District Court, Dallas County, Texas, Cause No. 10-11029, has been declared duly and validly enacted by the City Council, and the City is authorized to enforce the collection thereof pursuant to such ordinance and in accordance with its terms; and

WHEREAS, the City Council has found and determined that it is in the best interests of the City to impose the tax on tickets for admission to certain events held at the Irving Entertainment Center as and to the extent authorized by and in accordance with Subchapter F of the Act;

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF IRVING, TEXAS:

SECTION. 1. That Chapter 16G, "Irving Entertainment Center and Hotel Project Admissions Tax," of The Code of Civil and Criminal Ordinances of the City of Irving, Texas, is hereby amended in its entirety to read as follows:

## **CHAPTER 16G**

### **IRVING ENTERTAINMENT CENTER PROJECT ADMISSIONS TAX**

#### **Sec. 16G-1. Definitions.**

For the purposes of this chapter:

*Act* means Chapter 334, Texas Local Government Code, as amended.

*Admissions tax* means an amount equal to 10 percent of the price of each ticket sold as admission to an event held at the Irving Entertainment Center and imposed under Section 16G-2 hereof.

*City* means the City of Irving, Texas.

*Director* means the director of the department designated by the city manager of the city to enforce and administer this chapter, or the director's designated representative.

*Event* means all revenue-producing entertainment, cultural, civic and other activities and events which are conducted at Irving Entertainment Center and for which admission tickets are sold.

*Lessee* means the tenant under entertainment center lease agreement where city is landlord, and as may be amended.

*Net admissions tax* means the admissions tax less an amount equal to 1 percent of the admissions tax collected, such 1 percent being reimbursement for collection of the admissions tax as authorized pursuant to section 16G-3.

*Person* means any individual, partnership, trust, company, corporation, association, or other entity.

*Project fund* means the "venue project fund" created pursuant to the resolution.

*Resolution* means Resolution No. 3-13-08-113 adopted by the city council on March 13, 2008, establishing the project fund.

**Sec. 16G-2. Tax imposed.**

(a) There is hereby levied and imposed a tax at the rate of 10 percent on the price of each ticket sold as admission to an event held at the Irving Entertainment Center.

(b) The admissions tax imposed under this section shall be collected on every ticket sold in connection with an event held at the Irving Entertainment Center and shall continue to be collected for so long as any bonds or other obligations that are issued by the city under Section 334.043 of the act for the purpose of financing a portion of the costs of the Irving Entertainment Center, and any bonds or other obligations refunding or refinancing those bonds or other obligations, are outstanding and unpaid.

**Sec. 16G-3. Collection of admissions tax.**

(a) Every seller of a ticket of admission to an event to be held at the Irving Entertainment Center shall collect or cause to be collected, on behalf of the city, the admissions tax. Lessee shall be entitled to retain 1 percent of the gross collections of the admissions tax as reimbursement for the costs of collection thereof.

(b) Every seller of a ticket of admission to an event held at the Irving Entertainment Center shall add, on behalf of the city, the admissions tax to the price of each ticket sold to such event.

(c) The lessee shall collect, on behalf of the city, from each person responsible for collecting the admissions tax, the admissions tax for each event.

(d) An attorney acting on behalf of the city may bring suit against any person who fails to collect the admissions tax and against any person, other than the lessee, who fails to pay the admissions tax over to the lessee, as required by this chapter.

(e) An attorney acting on behalf of the city may bring suit against the lessee for failure to pay the net admissions tax to the city at the time and in the manner required by this chapter.

**Sec. 16G-4. Reports; payment to the city; records.**

(a) On or before the last calendar day of the month following each month in which an admissions tax is imposed under this chapter, the lessee shall file a report with the director showing:

- (1) The total number of tickets sold and the total consideration paid therefor with respect to each event in the preceding calendar month;
- (2) The amount of the admissions tax collected on the tickets for admission to such events; and
- (3) Any other information the director may reasonably require.

(b) At the time of filing the report required under subsection (a) of this section, the lessee shall pay the net admissions tax received on all event tickets sold in the preceding calendar month to the city. Such amount shall be paid by the lessee by fed wire in immediately available funds pursuant to instructions of the city or in such other manner as may be prescribed or approved by the city.

(c) The lessee and any other ticket sellers subject to this chapter shall keep or cause to be kept for four years records and supporting documents containing the following information:

- (1) The dates and type of events at which tickets of admission were sold;
- (2) The number of tickets sold to each event;
- (3) The gross amount of ticket sales received for each event;
- (4) The amount of admissions tax collected with respect to each event; and
- (5) The amount of net admission tax paid to the city and the dates on which such amounts were paid.

**Sec. 16G-5. Use of revenue derived from imposition of tax.**

The revenue derived from the net admissions tax shall be deposited by the city in the project fund, in an account titled “maintenance and operations fund.” Funds in the maintenance and operations fund shall be used for maintenance and operating expenses of the Irving Entertainment Center, as determined by the city council in the annual budget. Funds from the maintenance and operations fund may not be used for any purpose other than expenditures for the maintenance, repair, replacement and operation of the Irving Entertainment Center (excluding any general overhead and administrative expenditures), as defined under Treasury Regulation Section 1.141-4(c)(2)(i)(C). Expenditures from the maintenance and operations fund will not include expenditures that add to the value, or substantially prolong the useful life, of the Irving Entertainment Center (i.e., capital expenditures).

**Sec. 16G-6. Rules and regulations.**

The director shall have the power to make any rules and regulations necessary to effectively collect the admissions tax. The director and lessee shall, upon giving reasonable notice, have access to all books and records necessary to enable the director and lessee to determine the correctness of any report filed as required by this chapter and the amount of net admissions taxes due under this chapter. All audits conducted by the director or lessee must be conducted diligently during normal business hours so as to minimize interference with business operations of the entity being audited. No accountant or other consultant used by the director or lessee to conduct an audit may be compensated on any contingent fee or other similar basis.

**Sec. 16G-7. Penalties.**

(a) The seller of a ticket of admission to an event held at Irving Entertainment Center commits an offense if that person knowingly:

- (1) Fails to collect or cause to be collected the admissions tax;
- (2) Fails to file a report as required by this chapter;
- (3) Files a false report; or
- (4) Fails to make and retain complete records as required by section 16G-4(c) of this chapter.

- (b) The lessee commits an offense if the lessee knowingly:
  - (1) Commits an offense under subsection (a) of this section; or
  - (2) Fails to pay the city the net admissions tax when due.

(c) An offense committed under subsection (a) of this section is punishable by a fine not to exceed five hundred dollars (\$500.00), and each twenty-four (24) hours of any such violation shall constitute a separate offense.

(d) In addition to any criminal penalties imposed under subsection (c) of this section, if the lessee fails to pay the net admissions tax to the city, by the last day of the month following the month in which the admissions tax is required by this chapter to be collected, the lessee shall pay an amount equal to 5 percent of the amount of net admissions tax due until said net admissions tax is thirty (30) days delinquent, which shall be a minimum amount of \$1.00. After said net admissions tax is thirty (30) days delinquent, such person shall pay an additional penalty an amount equal to 10 percent of the amount of net admissions tax due, provided, however, that the penalty shall never be less than \$1.00. Delinquent net admissions tax payments, but not any applicable fines or penalties, shall, in addition, draw interest at the rate of 9 percent per annum beginning sixty (60) days from the date due.

#### **Sec. 16G-8. Enforcement.**

The director, or his/her designee, shall enforce the terms and conditions of this chapter when violations occur.

SECTION 2. Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed \$500 for each offense. Each 24 hours of any such violation shall constitute a separate offense.

SECTION 3. This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Irving, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

SECTION 4. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

SECTION 5. All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Irving in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

SECTION 6. Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Irving in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in The Code of Civil and Criminal Ordinances of the City of Irving, Texas.

SECTION 7. The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Irving, in compliance with the provisions of Chapter IV, Section 23, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

SECTION 8. This ordinance shall become effective from and after the date on which bonds or other obligations that are payable from the revenues of the Admissions Tax are issued and outstanding.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF IRVING, TEXAS,  
on March 20, 2014.

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BETH VAN DUYNE  
MAYOR

ATTEST:

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Shanae Jennings  
City Secretary

APPROVED AS TO FORM:

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Charles R. Anderson  
City Attorney