

Attachment No. 1 to City Council Resolution

AN ORDINANCE OF THE CITY OF ANAHEIM ADDING CHAPTER 2.15 (ADMISSIONS TAX) TO TITLE 2 (TAXES) OF THE ANAHEIM MUNICIPAL CODE TO ESTABLISH A TWO PERCENT ADMISSIONS TAX ON ATTENDEES OF ENTERTAINMENT AND SPORTING EVENTS AT PRIVATELY OPERATED OR MANAGED FACILITIES WITH A CAPACITY OF OVER 15,000 PEOPLE (MEASURE \_\_\_)

BE IT ORDAINED by the People of the City of Anaheim at the November 8, 2022 consolidated general election that chapter 2.15 (Admissions Tax) be added to Title 2 (Taxes) of the Anaheim Municipal Code in the following form:

SECTION 1: TEXT OF AMENDMENT TO ANAHEIM MUNICIPAL CODE.

**CHAPTER 2.15 -- ADMISSIONS TAX**

**2.15.000      SHORT TITLE**

This chapter shall be known and cited as the Admissions Tax Code.

**2.15.010      DEFINITIONS**

For purposes of this chapter, the following words, terms, phrases, and the derivations and variants thereof, shall have the meanings given herein:

- (1) “Admission charge” shall mean any charge, whether or not so designated for the right or privilege to enter, occupy, or use a seat or space in any facility as hereinafter defined, or to participate as a patron in any event. It shall also mean season passes or subscriptions but shall not be construed to include complimentary, promotional or otherwise free-of-charge tickets or passes given by any operator or person.
- (2) “Facility” shall mean and include any privately operated or managed building, structure, place or venue, with a capacity of at least 15,000 persons, wherein or at which any form of event is or can be held, carried on or conducted. A facility’s capacity is determined by the total number of persons it can hold, as opposed to any capacity limits imposed on the facility for specific events.
- (3) “Event” shall mean any entertainment, sporting, amusement or recreational activity, for which an admission charge is made, and shall include, but shall not be limited to: amusement rides, processions, sporting contests and athletic events, shows of all kinds, concerts, lectures, video or audio presentations, theatrical and musical performances, dances, speeches, carnivals, circuses, art or other displays or any other form of diversion, sport, pastime or recreation.
- (4) “License Collector” shall have the same meaning as the term is defined in Chapter 1, Section 1.01.305 of this Code.

(5) "Operator" shall mean any person conducting, operating, or maintaining in whole or in part as principal, agent, officer, employee or independent contractor any event, or facility, as defined in this chapter, taxable under this chapter.

(6) "Patron" shall mean any person who pays or on account of whom is paid any admission charge or admission price for the right or privilege of being admitted to or to use any facility, or to participate in any event. The term "patron" shall not include (i) a bona fide employee of the operator when admission to the facility is incident to said employee's duties, and (ii) any employee or official of the state of California, or any agency, instrumentality or department thereof, the city, or United States Government whose official duty makes it necessary to gain admission to any event.

(7) "City" shall mean the city of Anaheim.

#### **2.15.020 ADMISSIONS TAX. LEVY AND ASSESSMENT.**

.010 There is hereby established a tax in an amount equal to two percent (2%) of the price of the admission charge, including a season ticket or subscription, for the privilege of admission to any event in or at a facility. Such tax is a debt owed by the patron to the city, which debt shall be extinguished only by payment to the operator or to the city. Such tax shall be in addition to all other taxes or fees imposed by law.

.020 The License Collector shall issue forms and any additional regulations deemed necessary to implement the provisions of this section.

#### **2.15.030 COLLECTION AND PAYMENT.**

The tax levied and assessed pursuant to this Article is hereby imposed upon the patron paying for such admission and shall be paid at the time when and the place at which such admission charge is paid. Such tax shall be collected by the Operator charging for such admission.

#### **2.15.040 REPORTING AND REMITTING.**

.010 Each operator shall, on or before the close of City business on the last City business day of each month (hereinafter "due date"), file a return with the License Collector on forms provided by the License Collector stating the total admissions charged and the amount of tax collected during the immediately preceding calendar month. The full amount of the tax (minus any authorized credits) shall be remitted to the License Collector.

.020 Taxes are paid only upon receipt of both the tax return and the tax by License Collector. Failure of the operator to submit and the License Collector to receive both the completed return and payment on or before the due date constitutes non-payment.

.030 Tax returns filed with the City pursuant to this chapter, and information contained therein regarding amounts of gross receipts, adjustments, credits, over collections, tax, penalty and interest, shall be and remain confidential. Unauthorized disclosure or use of such

confidential information by any officer, agent or employee of the City shall constitute a misdemeanor; provided, however, this section shall not apply to any disclosures made in connection with any hearing, appeal, or any civil action or proceeding relating to the determination or recovery of the Tax, or any prosecution of any person for violation of any provision of this chapter or any criminal or civil proceeding pertaining to the Tax. This subsection shall not prohibit, nor be construed to prohibit, disclosure of statistical or cumulative information derived from tax returns, when the information disclosed does not identify or relate to any particular taxpayer. This subsection shall not prohibit, nor be construed to prohibit, any disclosure of tax returns or information contained therein which disclosure is compelled by an order of court or other judicial process.

#### **2.15.050 TAXES TO BE HELD IN TRUST.**

.010 All taxes collected by the operator shall be held in trust by such operator for the account of Anaheim until payment thereof is made to the License Collector.

.020 Upon non-payment by an operator, the License Collector may issue a Jeopardy Determination to require the operator to furnish additional information or provide adequate security as necessary to ensure collection of any Taxes due or to become due, and to remit taxes on a daily or weekly basis. The operator shall thereafter report and remit all taxes due under the terms and conditions prescribed by the License Collector. The License Collector shall cancel the Jeopardy Determination once timely accounting and remittance procedures have been established and the operator is satisfying all obligations imposed by law pertaining to the Tax.

#### **2.15.060 DELINQUENT TAX PAYMENTS — INTEREST AND PENALTIES.**

.010 Notwithstanding any other provisions hereof, upon non-payment, interest equal to one and one-half percent thereof per month calculated from the first day immediately following the due date to the date of payment shall be added to the tax. Interest may not be waived.

.020 Notwithstanding any other provisions hereof, upon non-payment, a penalty of ten percent for each month, or portion thereof, said payment is overdue, shall be added by the License Collector on the first day immediately following the due date; provided, however, that the amount of such penalty shall not exceed fifty percent of the tax. Penalties may not be waived.

.030 In the event of payment of the tax and non-payment of the interest and/or penalties, interest at the rate set forth in subsection 1.15.060.010 shall accrue upon the amount of the unpaid interest and penalties until the date of payment.

.040 In the event the Tax becomes final under Section 2.15.070, interest and penalties at the rate set forth in Section 2.12.050 shall accrue upon the amount of unpaid Tax until the date of payment of the full amount of Tax.

## **2.15.070 FAILURE TO COLLECT AND REPORT TAX — DETERMINATION OF TAX BY CITY AUDITOR — APPEAL.**

.010 If any operator shall fail or refuse to collect said tax and to make, within the time permitted, any report and remittance of tax the City Auditor shall proceed in such manner as the City Auditor may deem best to obtain facts and information on which to base an estimate of the tax and the City Auditor shall thereupon proceed to determine and assess the Tax against such operator. If any operator shall fail or refuse to collect the proper amount of tax due pursuant to this chapter as determined by the City Auditor pursuant to Section 2.15.100 hereof, the City Auditor shall proceed to determine and assess the Tax due against the operator. The City Auditor shall give notice of any amount so assessed under this subsection by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator at the operator's last known address.

.020 An operator who contests the amount assessed may, within ten days after the serving or mailing of such notice, make an Application for Hearing to the License Collector. The Application for Hearing shall specify the basis of the appeal and amount of Tax contested. The License Collector may request additional information pertaining to the appeal which information must be submitted prior to scheduling a hearing on the appeal. If Application for Hearing is not made within the time prescribed, the Tax assessed shall be final and conclusive and immediately due and payable.

.030 If Application for Hearing is timely made, a Hearing Officer shall be appointed by the License Collector in conformance with the provisions of subsection .050 within fifteen days of the receipt thereof to conduct a hearing within sixty days of the date of appointment of the Hearing Officer on and limited to the issues set forth in the Application for Hearing. The Hearing Officer shall give not less than fifteen days' written notice to the operator to show cause at a time and place fixed in the notice why the amount assessed should not be fixed for such Tax. At the hearing, the operator may appear and offer evidence why the Tax assessed should not be so fixed. A rebuttable presumption shall exist at the hearing that the amount of Tax assessed is correct and the burden of proof shall be upon the operator.

.040 Within thirty days after the conclusion of the hearing, the Hearing Officer shall determine the proper amount of the Tax and shall thereafter give written notice to the operator and the License Collector of such determination. The amount determined to be due shall be due and payable fifteen days from the date of service of the written notice. If the evidence to be considered is extensive or for other reasonable purpose, the Hearing Officer may utilize one additional thirty day period for preparing his or her determination, after informing the parties of his or her intention to do so.

.050 For matters involving an amount in controversy of \$50,000 or less, the License Collector shall appoint an Employee Hearing Officer, or subject to agreement of the parties, the City Hearing Officer, as said terms are defined in subsection 1.12.110.010 of this Code. For matters involving an amount in controversy in excess of \$50,000, the matter shall be referred to the City Hearing Officer.

.060 Notwithstanding the provisions of Section 1.12.110 of this Code, the decision of the Hearing Officer shall be final and conclusive and shall be the final administrative procedure available to the operator or to Anaheim. Any time limits provided in this section may be waived by the mutual agreement of the parties.

#### **2.15.080 PAYMENT UNDER PROTEST REQUIRED.**

Notwithstanding any provision to the contrary, any operator tendering payment of the Tax, or any portion thereof, shall for all purposes thereafter be precluded and barred from appealing, contesting or otherwise challenging the validity of such Tax pursuant to any procedure available in this chapter or any other legal remedy, unless the payment is made under written protest. Written protest shall be made only by the following methods:

.010 A written notation set forth on the check, money order or negotiable instrument by which payment is tendered, that the payment is made under protest; or,

.020 A written notice that the payment is made under protest delivered to the License Collector at the time of payment of the Tax.

#### **2.15.090 STATEMENT OF TAX NOT CONCLUSIVE ON CITY.**

.010 No reports or statements of an operator shall be conclusive as to the matters set forth therein, nor shall the filing of such reports or statements preclude Anaheim from collecting by appropriate action such sum as is actually due and payable. Each report or statement and each of the items therein shall be subject to audit and verification by the City Auditor, or authorized agents of the City, who are hereby authorized to examine, audit and inspect such books and records as may be necessary in their judgment to verify or determine the Tax due.

.020 Every operator shall keep and preserve for a period of not less than four years all records as may be necessary to determine the Tax, which records shall be made available upon demand of the City Auditor at all reasonable times. Records which shall be kept shall include, but are not limited to, records of admission on a daily basis by number and price and all cash register tapes, internal reports, bank deposits, other receipts of original entry, general ledgers, etc. The City Auditor may investigate the character of the business of the operator in order to verify the accuracy of any returns/refunds. Each operator shall permit an examination of such books and records at a location within Anaheim. In the event the books and records cannot be made available within Anaheim, the operator shall reimburse Anaheim for the cost of all transportation, lodging, meals, portal-to-portal travel time, and other incidental costs reasonably incurred by Anaheim in conducting the audit.

.030 Confidential or proprietary information furnished to or secured by Anaheim from an operator pursuant to this section or contained in any audit report or findings made pursuant to this section shall be confidential. Unauthorized disclosure or use of such confidential information by any officer, agent or employee of the City shall constitute a misdemeanor; provided, however, this section shall not apply to any disclosures made in connection with any hearing, appeal, or any civil action or proceeding relating to the determination or recovery of the Tax, or any

prosecution of any person for violations of any provision of this chapter or any criminal or civil proceeding pertaining to the Tax. This subsection shall not prohibit, nor be construed to prohibit, any disclosure of information which disclosure is compelled by an order of court or other judicial process.

#### **2.15.100        ADMISSIONS TAX A DEBT — CIVIL ACTION.**

.010 Any operator owing Tax to Anaheim shall be liable in an action brought by Anaheim for the recovery of such amount.

.020 Recording of a Certificate of Lien. If any Tax is not paid when due, the License Collector may record in the Office(s) of County Recorder(s) of such counties as the License Collector may determine, a Certificate which specifies the amount of Tax due and the name and address of the operator owing the Tax. The Certificate shall include a statement that the License Collector has complied with all legal requirements in the determination of the Tax owed and a legal description of the real property of the owner. Upon recording of the Certificate, the Tax constitutes a lien upon all real property owned or thereafter acquired by the operator. The lien has the force, effect and priority of a judgement lien.

.030 Warrant for Collection of Tax. At any time after the recording of a Certificate of Lien under subsection 1.15.100.020, the License Collector may issue a warrant directed to any sheriff or marshal for the enforcement of the lien and the collection of such Tax. The warrant shall have the same effect as a writ of execution, and be executed in the same manner and with the same effect as a levy and sale pursuant to writ of execution. The Finance Director shall, at the request of the License Collector, pay or advance to the sheriff or marshal such fees, commissions and expenses for services as are provided by law.

.040 Seizure and Sale. In lieu of issuing a warrant pursuant to subsection 2.12.090.030, after an assessment is issued or a Certificate of Lien is recorded, the License Collector may collect the delinquent amount by seizing or causing to be seized any property, real or personal, of the operator and selling non-cash or nonnegotiable property at public auction to pay the Tax due together with any costs of the seizure and sale. Any seizure made shall only be of property not exempt from execution under the provisions of the Code of Civil Procedure.

#### **2.15.110        REMEDIES CUMULATIVE.**

All remedies prescribed by this chapter or any other provisions of law and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

#### **2.15.120        ENFORCEMENT OF CHAPTER.**

The License Collector and Code Enforcement Manager shall have the duty of enforcing the provisions of this chapter. The License Collector and Code Enforcement Manager and each of their deputies are hereby authorized to obtain such process or warrant as may be required and thereupon to enter, free of charge, at any reasonable time, any place of business, or to approach

any person apparently conducting or employed in the operation of a business, to verify compliance with the provisions of this chapter.

Nothing in this section is intended to or shall operate to change or shall have the effect of changing the status of the License Collector or Code Enforcement Manager or their respective deputies from a public or miscellaneous officer or employee to an individual peace officer or safety member for purposes of retirement, workers' compensation or similar injury or death benefits, or any other employee benefits to which said officer or employee would not have been entitled as a public employee prior to adoption of this section.

#### **2.15.130. USE OF PROCEEDS.**

The proceeds arising from the tax established by this Article shall be credited to the General Fund of the City.

#### **SECTION 2: AUTHORITY OF CITY COUNCIL TO AMEND CODE**

The City Council of the City of Anaheim is hereby authorized to amend Chapter 2.12 of the Anaheim Municipal Code in any manner that does not increase the rate of any tax or otherwise constitutes a tax increase for which voter approval is required by Article XIII C of the California Constitution, including adopting exemptions, waivers, or reductions of the tax.

#### **SECTION 3: BALLOT DESCRIPTION.**

As provided in Government Code section 34458.5, the following ballot description is included in this proposed ordinance amending section 2.12.005 of the Anaheim Municipal Code:

This ordinance would add chapter 2.15 to the Anaheim Municipal Code to establish a two percent (2%) admissions tax to be added to the ticket price paid by patrons for events at privately operated/managed venues with a capacity of over 15,000 attendees. Currently, ticket sales for events at Angel Stadium, the Honda Center, and Disneyland would be covered by the proposed tax. This amendment does not give the City Council power to raise its compensation or that of other City officials without voter approval.

#### **SECTION 4: SEVERABILITY.**

It is the intent of the people that the provisions of this ordinance are severable and that if any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provision or application of this ordinance which can be given effect without the invalid provision or application.