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**Strassburger McKenna
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January 14, 2020

Dear Council Members:

In connection with our meeting today regarding changes to the City Code of Ordinances, we have prepared the following summary.

Background

The City of Pittsburgh (the “City”) hired Strassburger McKenna Gutnick & Gefsky (“SMGG”) to rewrite the City’s business tax/fee regulations, forms, and portions of the City’s Code of Ordinances, as well as to be available on an as-needed basis to provide tax consultation services (the “Project”).

SMGG’s responsibilities on the Project included a review and rewrite of the regulations, associated tax forms, and respective portions of the City’s Code of Ordinances for the following six taxes: Amusement Tax, Institution and Service Privilege Tax, Local Services Tax, Parking Tax, Payroll-Expense Tax, and the Facility Usage Fee.

Process

SMGG used the following steps to update the regulations. First, we met with City Finance Department staff to understand their questions and concerns regarding compliance and implementation of the regulations. Then, we revised the regulations to ensure clarity, consistency, and adherence to applicable law. The City Finance Department staff provided their feedback and suggestion regarding the regulations. SMGG made further changes to incorporate that feedback.

After finalizing the regulations, SMGG then turned to updating and revising the related tax forms for each of the taxes. Again, these revisions were done with input from the City Finance Department staff.

Our next step is to ensure that the City’s Code of Ordinances supports the changes we made to the revised regulations and forms. SMGG already discussed the proposed changes with the City Finance Department staff.

Ordinances

SMGG updated the City’s Code of Ordinances and made changes to improve the clarity and consistency of the ordinances. The core substance of these ordinances did not change. Copies of the ordinances marked with the changes we made are enclosed herein. Below is a brief summary of the changes to the three ordinances that needed revisions:



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Amusement Tax Ordinance

- Addition of definitions of Exempt Amusements, Exempt Producers, Institutions of Purely Public Charity, and Taxpayers.
- Clarification of the definition of Established Price.

Parking Tax Ordinance

- Addition of definition of Residence.
- Clarification of definitions of Patron, Consideration, and Valet Parking Services

Payroll Tax Ordinance

- Addition of definitions of Partner, Partnership, and Self-Employed Person.
- Clarification of definitions of Compensation, Employee, Employer, Payroll Expense or Amounts, and Profits.

New Ordinance

In addition, SMGG drafted a proposed new ordinance to address miscellaneous administrative matters for taxes and fees. A copy of this ordinance titled "Administrative Matters for Taxes and Fees" in enclosed herein. This ordinance covers the following:

- an explanation that the people who collect the taxes or fees on behalf of the City cannot keep any refunds unless they prove to the City that the collector already has refunded the monies to the patron, fee payor, or employee.
- a more robust explanation of "responsible person" in the case of trust fund charges (parking, amusement, Usage Fee, and Local Services tax) that explains that the person with financial responsibility for the entity, which has the obligation to collect and remit trust fund charges, is a Responsible Person and can be found personally liable for any trust fund charges that have not be timely remitted to the City.
- a clarification of what will happen in the case of small refunds, based on feedback the City Finance staff provided to us earlier.

It is our understanding that the next step in the process will be to introduce these changes at Council. Then, the City Finance Department staff and SMGG will attend a briefing for Council where we will discuss the ordinance revisions in more detail. We thank you for the opportunity to work on this Project.

Sincerely,

S. John Kelly, Esq.

cc: Margaret Lanier, City Treasurer

Chapter _____

Administrative Matters for Taxes and Fees

§ ___ - DEFINITIONS

As used in this Chapter, certain terms are defined as follows:

- (a) **COLLECTED TAXES OR FEES** - The following taxes or fees are considered to be Collected Taxes or Fees under this Chapter: the Amusement Tax imposed under Title Two, Article VII, Chapter 241 of the City of Pittsburgh Code of Ordinances ("Code"); the Local Services Tax imposed under Title Two, Article VII, Chapter 252 of the Code; the Parking Tax imposed under Title Two, Article VII, Chapter 253 of the Code; and the Nonresident Sports Facility Usage Fee imposed under Title Two, Article X, Chapter 271 of the Code.
- (b) **PERSON** – any corporation, partnership, limited liability company, business trust, association, estate, trust, unincorporated entity, sole proprietorship, foundation, or natural person. Whenever used in any provision prescribing a fine or penalty, the word "person" as applied to partnerships shall mean the partners thereof, and as applied to corporations and unincorporated associations shall mean the officers thereof.
- (c) **RESPONSIBLE PERSON** – an officer of any corporation, an officer, director, or managing member of any unincorporated entity other than a partnership, the owner of a sole proprietorship, or the partner of a partnership, if: (a) such individual's job duties include the collection and remittance of the Collected Tax or Fee or signing the Collected Tax or Fee return; or (b) that individual has signing authority over the financial accounts of the entity and that person has the power or authority to decide which vendors get paid or not get paid and in what order vendors are paid. A *trustee ex maleficio* is a Responsible Person. An individual who has the power or authority to manage the day-to-day operations of the entity or hire and fire employees or agents is presumed to be a Responsible Person for that entity. An individual who has check signing authority and who signs the Collected Tax or Fee return is presumed to be a Responsible Person for that entity.
- (d) **TAX COLLECTOR** – any person charged with collecting and remitting any Collected Tax or Fee and filing any return, where the liability for the tax or fee is imposed on the Tax or Fee Payer.
- (e) **TAX OR FEE PAYER** – The person upon whom the Collected Tax or Fee is imposed. For example, the Parking and Amusement taxes are imposed on the Patron, the Nonresident Sports Facility Usage Fee is imposed on the Fee Payer, and the Local Services Tax is imposed on the Taxpayer, as those terms are defined in the applicable Chapters of the Code imposing such tax or fee.

§ ___ - REFUNDS OF COLLECTED TAXES OR FEES TO THE TAX COLLECTOR

A refund of Collected Taxes or Fees will not be issued to the Tax Collector unless: (i) the Tax Collector provides proof to the Treasurer that the over-collected Taxes or Fees has been refunded to the Tax or Fee Payer; or (ii) the Tax Collector provides proof to the Treasurer that it made a computation error on the return and the Collected Tax or Fee to be refunded was never collected from the Tax or Fee Payer in the first instance.

§ ___ - TRUST FUND LIABILITY OF RESPONSIBLE PERSONS

- (a) All Collected Taxes or Fees constitute a trust fund for the benefit of the City. Any Responsible Person of a Tax or Fee Collector who fails to remit, said Collected Taxes or Fees to the City, can be found personally liable to the City for said Collected Taxes or Fees under the common law doctrine of *trustee ex maleficio*. All Responsible Persons of the same legal entity are jointly and severally liable to the City for all withheld Collected Taxes. However, the City may not collect from all Responsible Persons of the same legal entity more than the total Collected Taxes or Fees withheld.

- (b) Any Tax or Fee Collector required to collect a Collected Tax or Fee under Title Two of the City of Pittsburgh Code of Ordinances, who shall fail to collect the Tax or Fee, shall be liable for the Tax or Fee upon the full amount charged the Patron for the Parking Tax or Amusement Tax, the Earned Income received by the Taxpayer with regard to the Local Services Tax, or the Earned Income received by the Fee Payer with regard to the Sports Facility Usage Fee. A Responsible Person of the Tax or Fee Collector shall be secondarily liable for any unremitted Tax or Fee.

- (c) Once the liability has been assessed against the Tax or Fee Collector has become final, no Responsible Person may challenge the amount of that liability when the assessment is made against a Responsible Person of the Tax or Fee Collector.

§ ___ - SMALL REFUNDS.

Any refund due for overpayment of any Tax or Fee, collected under Title Two, Article VII or Title Two, Article X of the City of Pittsburgh Code of Ordinances, which is less than one dollar (\$1) in amount shall be carried forward by the Treasurer as a credit toward future obligations of the Tax or Fee payer involved. Any refund due which is less than ten dollars (\$10) in amount shall likewise be carried as a credit, unless the refund is expressly requested by the Tax or Fee payer in writing.

CHAPTER 241: - AMUSEMENT TAX

§ 241.01 - DEFINITIONS.

As used in this Chapter, certain terms are defined as follows:

- (a) **AMUSEMENT.** All manner and forms of entertainment, including concerts, moving picture shows, vaudeville, circus, carnival and side shows; all forms of entertainment at fair grounds and amusement parks; athletic contests including wrestling matches, boxing and sparring exhibitions, football, basketball and baseball games, skating, golfing, tennis, hockey, bathing, swimming, archery, shooting, riding, dancing and all other forms of diversion, sport, recreation or pastime; shows, exhibitions, contests, displays and games, and all other methods of obtaining admission charges, donations, contributions or monetary charges of any character, from the general public or a limited or selected number thereof, directly or indirectly, in return for other than tangible property, or specific personal professional services; provided that the term **AMUSEMENT** shall not include any Exempt Amusement or any amusement located outside the City limits ~~private-annual-affairs sponsored by nonprofit organizations for members and their guests at which the admission charges or contribution equal or approximate the expenses.~~
- (b) **ESTABLISHED PRICE.** Regular monetary charge of any character, including donations and contributions, fixed and exacted or in any manner received by producers, as herein defined, from the general public or a limited or selected number thereof, directly or indirectly, for the privilege of attending or engaging in any entertainment or amusement, provided that:
- (1) When entertainment or amusement is conducted in any roof garden, night club, cabaret, bar, brewery, restaurant or other place where the charge for admission, wholly or in part, is included in the price paid for refreshment, service or merchandise, the amount paid for admission to the amusement shall be deemed to be ten (10) percent of the amount paid for refreshment, service and merchandise;
 - (2) When amusement is conducted at a social club or fraternal organization which also furnishes entertainment for which a separate charge is not made, the established price shall be fifty (50) percent of the gross receipts;
 - (3) Where admission is obtained to any amusement sponsored by a charitable nonprofit organization solely or partly by a contribution ~~or donation or other monetary charge~~, and ~~there is no fixed price for amusement and not less than seventy-five (75) of the proceeds of the amusement inure exclusively to the benefit of a charitable organization~~ when members of the general public are admitted, the established price for amusement for purposes of the tax shall be twenty-five (25) percent of the total donation, contribution and other monetary charge. ~~Where a fixed price has been established for the general public for a particular amusement which is sponsored by a charitable organization, the fixed price shall be the established price for the tax without regard to the foregoing seventy-five (75) percent requirement.~~ Events or affairs sponsored by nonprofit organizations only for members and their guests at which the admission charges or contribution approximate the expenses, and the net proceeds benefit the nonprofit organization, are Exempt Amusements.
- (c) **EXEMPT AMUSEMENTS**
- (1) The term amusement shall not include private affairs sponsored by nonprofit organizations for members and their guests at which the admission charges or contribution approximate the expenses and the net proceeds benefit the nonprofit organization. However, if members of the general public are invited to the private affair, the event is not an Exempt Amusement.
 - (2) The term amusement shall not include admissions paid for Performing Arts events offered by Exempt Producers.

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(3) The term amusement shall not include admissions to places of amusement where the primary purpose of the admission or event is to provide scientific, historical, or educational material to the patron so long as no material entertainment or recreation is provided. Admission charges to lectures of a scientific, historical or educational nature, such as continuing education courses, when such lectures are produced or conducted by nonprofit associations or clubs are not subject to the tax. However, admission fees to places that provide food or drink, including alcoholic beverages, but do not otherwise provide entertainment or recreation, are not Exempt Amusements if the primary purpose of the event is to market or showcase one or more commercial products, even if ancillary historical, scientific or educational material also is provided to the patron. Admission fees to tasting events that offer food or drink, but do not offer entertainment or recreation, are Exempt Amusements if the Producer collects sales or drink taxes from the patron based on the admission charge or contribution.

(4) The term amusement shall not include any admission fee or charge paid for the sale of admission to or for the privilege of admission to a bowling alley or bowling lane to engage in one or more games of bowling. The term amusement shall not include real property rented for camping purposes. The term amusements shall not include membership dues, fees or assessments paid by patrons to engage in activities, the predominant purpose or nature of which is exercise, fitness, health maintenance, improvement or rehabilitation, health or nutrition education, or weight control. However, the patron must participate in this health related activity to qualify for the exemption. The term amusements shall not include membership dues, fees or assessments of charitable, religious, beneficial or nonprofit organizations paid by patrons, such as sportsmen, recreational, golf or tennis clubs.

(5) The term amusement shall not include any activity that the City is prohibited from taxing by reason of the U S Constitution, federal law, or laws of the Commonwealth. Should any Producer claim that any amusement is exempt from the tax under this subsection (c), the Producer shall note the exemption on its filed return and provide a reference to the governing law.

(d) **EXEMPT PRODUCERS.** The Established Price of Performing Arts events offered by institutions of Purely Public Charity are exempt from Amusement Tax so long as the net proceeds therefrom inure to the Institution of Purely Public Charity.

(e) **INSTITUTION OF PURELY PUBLIC CHARITY.** A charitable organization that qualifies for tax exemption pursuant to "Institutions of Purely Public Charity Act", 10 P.S. § 371. Generally, the charity must show that it has a Pennsylvania sales tax exemption to qualify as an Institution of Purely Public charity, 10 P.S. § 376(a).

(f) **PATRON.** Anyone participating in the privilege of engaging in the amusement.

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(Ord. 15-1979, eff. 5-29-79)

(dg) **PERFORMING ARTS.** Artistic performances of live concerts, dance, ballet, opera, traditional forms of drama, including both comedy and tragedy, repertoire works and dramatic recitation of recognized works of literary art of the kind and in the nature normally associated with traditional and contemporary American theater.

(eh) **PERSON.** A corporation, partnership, self-employed individual, business trust, association, estate, trust, foundation or natural person. Whenever used in any provision prescribing a fine or penalty the

word "person" as applied to partnerships, shall mean the partners thereof, and as applied to corporations and unincorporated associations, shall mean the officers thereof.

- (fi) **PLACE OF AMUSEMENT.** Any place indoors or outdoors within the City where the general public or a limited or selected number thereof may, upon payment of an established price, attend or engage in any amusement as herein defined, including among others, theaters, opera houses, moving picture houses, amusement parks, skating rinks, circus or carnival tents or grounds, fairgrounds, social sporting, athletic riding, gun and country clubs, golf courses bathing and swimming places, dance halls, tennis courts, rifle or shotgun ranges, roof gardens, cabarets, night clubs and other like places.
- (fig) **PRODUCER.** Any person conducting any place of amusement, as herein defined, where the general public or a limited or selected number thereof, may, upon the payment of an established price, attend or engage in any amusement.
- (k) TAXPAYER Because the tax is imposed on the patron, the patron is the taxpayer. The Producer is merely the collection agent for the City.
- (ih) **TEMPORARY AMUSEMENT.** Any amusement that is conducted in the City for a period of time not exceeding thirty (30) days.

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(Ord. 15-1979, eff. 5-29-79; Am. Ord. 46-2005, § 1, eff. 12-30-2005)

§ 241.02 - PERMIT, FEES AND TAX PAYMENT REQUIRED.

No producer shall begin or continue to conduct any form of amusement at any permanent or temporary place of amusement, or any itinerant form of amusement within the city, unless an amusement permit has been issued, the fees paid therefor as prescribed by law and the tax herein imposed paid in accordance with law.

§ 241.03 - PERMIT APPLICATION, ISSUANCE AND USE.

- (a) **Applications.** Every producer desiring to begin or continue to conduct any amusement within the City shall file an application for a permanent, temporary or itinerant amusement permit with the Treasurer.
 - (1) **Format.** Every application for a permit shall be made upon a form prescribed, prepared and furnished by the Treasurer, and shall set forth the name under which the applicant conducts or intends to conduct a permanent or temporary place of amusement, whether or not the applicant is the holder of a mercantile license in effect when the application is made, and, if so, the number of the license and other information as the Treasurer may require.
 - (2) **More than one (1) business location.** If the applicant has or intends to have more than one (1) place of amusement within the city, the application shall indicate the location of each place of amusement and, in the case of an itinerant form of amusement, the date and length of time the amusement is to be conducted at each place.
 - (3) **Temporary place of amusement.** In the case of an application for a permit for a temporary place of amusement, the application shall state the name and address of the owner, lessee or custodian of the premises upon which such amusement is to be conducted.
 - (4) **Associations or corporations.** If the applicant is an association or a corporation the names and addresses of the principal officers thereof and any other information prescribed by the Treasurer for purposes of identification shall be stated.
 - (5) **Signatures required.** The application shall be signed and verified by oath or affirmation by the producer if a natural person, and in the case of an association by a member or partner thereof, and in the case of a corporation by an executive officer thereof, or some natural person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of his or her authority.

- (b) *Issuance and use.* Upon approval of the application and payment of the fees required by law, the Treasurer shall issue to each applicant an amusement permit for each place of amusement within the City set forth in his or her application. Amusement permits shall not be assignable, shall be valid only for the persons in whose names issued and for the conduct of amusements at the places designated therein, and shall at all times be conspicuously displayed at the places for which issued.
- (c) *Permit suspension.* The Treasurer may suspend or after hearing revoke an amusement permit whenever he or she finds the permittee has failed to comply with any of the provisions of this Chapter. Upon suspending or revoking any amusement permit the Treasurer shall request the permittee to surrender to him or her immediately all permits or duplicates thereof issued to him or her, the permittee shall surrender promptly all permits to the Treasurer as requested. Whenever the Treasurer suspends an amusement permit, he or she shall notify the permittee immediately and afford him or her a hearing if desired. After the hearing and for good cause, the Treasurer shall either rescind or continue the order of suspension and revoke the permit.

(Am. Ord. 46-2005, § 2, eff. 12-30-2005)

§ 241.04 - AMUSEMENT TAX COMPUTATION.

- (a) *General rate.* A tax is hereby imposed upon the patron of any amusement for the privilege of attending or engaging in any amusement at the rate of ten (10) percent of the established price charged the general public or a limited or selected group thereof, by any producer for the privilege, which shall be paid by the person acquiring the privilege for any given calendar year prior to 1995. Effective January 1, 1995, applicable for all amusements which occur on or after that date, the tax rate shall be five (5) percent.
- (1) *Rate for certain performing arts.* For as long as the City of Pittsburgh may impose and collect a non-resident sports facility usage fee pursuant to the provisions of the Local Tax Enabling Act, the tax levied under this chapter shall be imposed and collected on admissions to places of amusement which are involved with performing arts for which the net proceeds therefrom inure exclusively to the benefit of an Institution of Purely Public Charity at the following rates: for tax years prior to 2006, the general rate specified in paragraph (a) shall apply; for the tax year 2006, the rate shall be two and one-half (2.5) percent; for the tax year 2007, the rate shall be one and one-quarter (1.25) percent; for the tax year 2008 and subsequent tax years, the rate shall be zero (0) percent. Regardless of rate, producers shall be required to file tax returns showing admissions collected and shall otherwise comply with the various provisions of this chapter.
- (b) *Tax computations for free admissions.* If persons are admitted free to any place of amusement at a time and under circumstances for which an established price is charged to other persons, the tax imposed herein shall be computed on the established price charged to other persons for the same or similar accommodations, to be paid by the person so admitted. If persons are admitted at a reduced rate, the tax imposed shall be computed on the reduced rate paid. However, children under twelve (12) years of age, disabled veterans and members of the armed services when on active duty and in uniform, who are admitted free of charge to any place of amusement, shall not be required to pay the tax imposed by this Chapter.
- (c) *Tax on boxes or other seating.* For persons having the permanent use or lease of boxes or seats in any place of amusement, the tax imposed shall be computed on the price or rental charged for boxes or seats in the place of amusement, the tax to be paid by the holder or lessee.

(Am. Ord. 33-1994, eff. 1-1-95; Am. Ord. 46-2005, § 3, eff. 12-30-2005; Ord. No. 25-2006, § 1, eff. 1-1-07; Ord. No. 27-2007, § 1, 1-1-08)

§ 241.05 - COLLECTION AND PAYMENT OF TAX.

- (a) *Producers.* Producers shall collect the tax imposed herein and shall be liable to the City agents thereof for the payment of the same to the city. If, however, any producer shall neglect or refuse to make any report and payment as herein required, an additional five (5) percent of the amount of the tax shall be added by the Treasurer and collected as a penalty for each month or fraction thereof during which the tax remains unpaid, together with interest at the rate set forth in Chapter 209. (Ord. 38-1991, eff. 11-25-91)
- (b) *Temporary amusements.* Where permits are obtained for conducting temporary amusements by persons who are not the owners, lessees or custodians of the places where the amusements are to be conducted, or where the temporary amusement is permitted by the owner, lessee or custodian of any place to be conducted without obtaining permits required herein, the tax imposed shall be paid by the owner, lessee or custodian of the place where the temporary amusement is conducted, unless paid by the producer conducting the amusement.
- (c) *Season tickets.* Where patrons have the use of boxes or seats pursuant to § 241.04(c) and are required to pay the entire season price at the time the seating is acquired, the producer shall collect the tax imposed herein and remit it at the time the reservation of the seating is made by the patron, that is, in advance of the season's amusement.
- (d) *Monthly report.* Every producer, except as hereinafter provided, conducting a place of amusement, on or before the fifteenth day of each month, shall transmit to the Treasurer, on a form prescribed and prepared by him, a report under oath or affirmation of the amount of tax collected by him during the preceding month.

(Ord. 38-1991, eff. 11-25-91)

- (e) *Performance report.* Every producer conducting a temporary place of amusement or itinerant form of amusement shall file a report promptly after each performance with the Treasurer or his duly authorized agent.
- (f) *Tax due date.* The amount of all taxes imposed under the provisions of this Chapter shall for places of permanent amusement be payable on the fifteenth day of the next succeeding month, and shall for temporary or itinerant forms of amusement be due and payable on the day such reports are required to be made under this section.

(Ord. 38-1991, eff. 11-25-91)

§ 241.06 - PENALTY AND INTEREST.

Editor's note— This section was repealed by Ordinance 27-1990, effective November 20, 1990)

§ 241.07 - TICKET LABELING.

- (a) *Delineating the Amusement Tax.* For each admission subject to the collection of a tax pursuant to the provisions of the Chapter, the producer shall cause to be printed clearly on the face of any ticket, receipt or any other token purchased by a patron for the purpose of admission to an amusement the following information:
 - (1) The established price of admission;
 - (2) The amount of amusement tax due on division (1); and
 - (3) The sum of divisions (1) and (2).
- (b) *Every place of amusement must maintain, conspicuously posted at the entrance, and near the box-office or place at which the established price is paid, one (1) or more signs accurately stating:*
 - (1) The established price of admission;

- (2) The amount of amusement tax due on division (1); and
 - (3) The sum total of the established price and the tax.
- (c) Failure to Comply. In the event that a producer fails to comply with the provisions of § 241.07(a), the producer shall be subject to the suspension and/or revocation of his amusement permit pursuant to § 241.03(c).

(Ord. 34-1994, eff. 12-30-94)

CHAPTER 253: - PARKING TAX

§ 253.01 - DEFINITIONS.

As used in this Chapter, certain terms are defined as follows:

- (a) **PATRON.** Any person entering into a transaction to park or store a motor vehicle at a non-residential parking place for any period of time for consideration excluding any transaction involving Exempt Valet Parking Services.
- (b) **PERSON.** Any corporation, partnership, business trust, association, estate, trust, foundation, or natural person.
- (c) **NONRESIDENTIAL PARKING PLACE or PARKING PLACE.**
 - (1) Any place within the city, whether wholly or partially enclosed or open, at which vehicles are parked or stored for any period of time in return for a consideration not including any parking area or garage to the extent that it is provided or leased to residents of the same or other premises; provided that the parking or storage of a vehicle by such resident is for use only in connection with, and as accessory to, the occupancy of a dwelling unit in the City; and
 - (2) Any parking area or garage operated exclusively by an owner or lessee of a hotel, and apartment hotel, tourist court or trailer park, to the extent that the parking area or garage is provided to guests or tenants of the hotel, tourist court or trailer park for no additional consideration.
- (d) **DWELLING UNIT.** (As defined in the Zoning Title.)
- (e) **RESIDENCE.** Any building designed and used for family living or sleeping purposes other than a hotel, apartment hotel, tourist court or trailer park, and any dwelling unit located in a hotel or apartment. ~~RESIDENT. Any natural person who has occupied a dwelling unit within the City for a period of more than thirty (30) consecutive days.~~
- (f) **HOTEL, APARTMENT HOTEL, TOURIST COURT, TRAILER PARK and DWELLING UNIT.** Hotel, apartment hotel, tourist court, trailer park and dwelling unit are used herein as defined in the Zoning Title.
- (g) **OPERATOR.** Any person conducting the operation of a parking place or receiving the consideration for the parking or storage of motor vehicles at parking places, including, but not limited to, any governmental body, governmental subdivision, municipal corporation, public authority, nonprofit corporation or any person operating as an agent of one (1) of the above.
- (h) **TRANSACTION.** The activity involved in the parking or storing of a motor vehicle at a nonresidential parking place for a consideration excluding Exempt Valet Parking Services within the geographic boundaries of the City of Pittsburgh valet parking services as defined below.
- (i) **CONSIDERATION.** The payment or compensation of any nature, received by the operator from the patron, upon an express or implied contract or under a lease or otherwise, whether or not separately stated, and whether paid in cash or credited to an account, for each transaction involving the parking or storing of a motor vehicle by the patron on whose behalf the motor vehicle is parked or stored by some other person. In the case of Taxable Valet Parking Services, consideration includes the payment of compensation of any nature, received by the provider from or on behalf of the Valet Parking Services Patron, upon an express or implied contract, whether or not separately stated and whether paid in cash or credited to an account. **CONSIDERATION** does not include the tax imposed and collected under this Chapter.
- (j) **MONTH.** A calendar month.

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(k) **VALET PARKING SERVICES.** ~~Where the area presents itself as having the need for it, Exempt Valet Parking Services refers to~~ a service providing attendants that take a patron's vehicle from the entrance of an establishment, park the vehicle in a facility that is owned or leased exclusively for use by the establishment, and later return the vehicle exclusively to the patron of the establishment. The parking facility must be open only during the hours of the establishment's operation, and the rate charged must be below the prevailing rate for comparable public lots in the area. ~~If the rate charged for this service is above the prevailing rate for the area, it will be assumed that a parking charge is being collected and the parking tax will be collected on the difference between the prevailing rate and the service charge.~~ A service providing attendants that take your vehicle from the entrance to an establishment and park the vehicle in a licensed, public facility, whether the facility is open to the public on a single fee transaction or a monthly fee basis, and pass along the charge for parking to the person whose vehicle they have taken, together with a service fee, the valet service shall not be liable for the parking tax but would be subject to business privilege tax on the service fee portion of the charge. Valet parking services shall not include a parking facility, open to the public, whether on a single fee transaction or monthly fee basis, where a patron drives his/her vehicle to the entrance of the parking facility and the attendant parks the vehicle. Any parking services provided to a patron that do not meet the definition of Exempt Valet Parking Services shall be considered Taxable Valet Parking Services. For example: (a) for any parking service provided to a patron by a valet, if the rate charged for this service is not lower than the prevailing parking rate for the area the service shall be considered Taxable Valet Parking Services and the transaction shall be subject to the parking tax. It will be assumed that a parking charge is being collected as part of the service charge, and the parking tax shall be imposed, collected and remitted to the Treasurer based upon the prevailing parking rate in the area, and (b) if the parking facility is used by multiple business establishments, or is open for use during hours when the business establishment otherwise is closed, the service shall be considered Taxable Valet Parking Services and the consideration paid by the patron shall be subject to tax.

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(Am. Ord. 40-1997, eff. 12-31-97; Ord. 16-2003, § 1, eff. 5-13-03; Ord. No. 47-2017, § 1, 12-8-17)

§ 253.02 - TAX LEVY AND RATE.

- (a) A tax for general revenue purposes is hereby imposed upon each parking transaction by a patron of a non-residential parking place, at the rate of thirty-one (31) percent effective January 1, 2004 and increased to fifty (50) percent effective February 12, 2004 of the consideration for each parking facility transaction. The tax shall be collected by the operator from the patron, and shall be paid over to the Treasurer as provided in this chapter. For all transactions occurring on or after January 1, 2007, the rate of tax shall be forty-five (45) percent. For all transactions occurring on or after January 1, 2008, the tax rate shall be forty (40) percent. For all transactions occurring on or after January 1, 2009, the tax rate shall be thirty-seven and one-half (37.5) percent.
- (b) All taxes collected by any operator in accordance with this Chapter shall constitute a trust fund for the benefit of the City and such trust shall be enforceable against the operator and any person receiving any part of such fund without consideration, or with knowledge that the operator is committing a breach of trust; provided however, that any person receiving payment of a lawful obligation of the operator from such fund shall be presumed to have received the same in good faith and without any knowledge of the breach of trust.
- (c) Any operator required under this Chapter to collect tax from a patron, who shall fail to collect the tax, shall be liable for the tax upon the full consideration received from the patron.

(Ord. 58-1991, eff. 1-1-92; Am. Ord. 40-1997, eff. 12-31-97; Ord. 43-2003, eff. 1-1-04; Ord. 1-2004, § 1, eff. 1-14-04; Ord. No. 27-2006, § 1, eff. 1-1-07; Ord. No. 28-2007, § 1, eff. 1-1-08; Ord. No. 31-2009, § 1, eff. 1-1-09)

§ 253.03 - REGISTRATION AND ANNUAL LICENSE.

- (a) Every operator who begins or intends to begin to operate a nonresidential parking place shall file with the Treasurer, before commencing operation of the parking place, a completed registration form prescribed by the Treasurer, and shall set forth therein his name, address, business location, identity of the owner of the property and other information as may be required.
- (b) No operator shall begin or continue to conduct the operation of a nonresidential parking place without obtaining for each parking place an annual license from the Superintendent of the Bureau of Building Inspection, as required under Chapter 763 of the Codified Ordinances. Any operator not possessing a license for each parking place for the current calendar year shall obtain a license within thirty (30) days after the effective date of this section, and any person who intends to begin conducting the operation of a nonresidential parking place thereafter shall obtain such a license before beginning the operation. Licenses shall not be transferable between one (1) operator and another or between one (1) parking place and another. Any operator who ceases to conduct the operation of a parking place shall notify the Treasurer and shall return the license applicable thereto to the Superintendent of the Bureau of Building Inspection. No operator shall conduct the transactions without complying with all of the provisions of this Chapter and without collecting the tax imposed herein and paying it over to the city.

(Ord. 11-1985, eff. 2-26-85)

§ 253.04 - RECORDS.

- (a) *In general.* Each operator shall maintain, separately with respect to each parking place, complete and accurate records of all transactions, reflecting the total amount of consideration received from all transactions and the total amount of tax collected on the basis of the considerations.
 - (1) *Preservation of records.* All books, records, daily record sheets and ticket stubs shall be retained by the operator of a parking facility or facilities for a period of five (5) years subsequent to the year of the transaction. This requirement will apply to all cases unless advance written permission to destroy such data has been obtained from the Treasurer.
- (b) *Tickets.* Each operator shall issue to all patrons, except those as to whom space is reserved by means of lease, contract or other similar basis, written evidence of all parking transactions in the form of tickets, which shall be issued in numerical sequence, without interruption.
 - (1) *Revenue Control Equipment.* Electro-mechanical devices which monitor and count the number of vehicles admitted to and leaving a nonresidential parking place or parking place.
 - A. Type A shall be of the type that has entrance and exit gate arms; synchronized ticket dispenser; fee computer inclusive of printer and fee indicator; counters. This equipment shall have the capability of recording the date and time that a vehicle entered and left a non-residential parking place and the amount of consideration and parking tax collected by an operator and meets the specifications of the License Officer.
 - B. Type B shall be of the type that counts every vehicle that enters and leaves a nonresidential parking lot; a count module; and computer and meets the specifications of the License Officer.
 - (2) Before any operator required to collect the tax imposed by this Chapter may use any tickets in the conduct of any nonresidential parking place, such person shall certify in writing to the Treasurer, at least five (5) days prior to the use of such tickets, the beginning and ending serial numbers, the location of the nonresidential parking place at which such tickets will be used, the location at which such tickets may be inspected by the Treasurer, and any other identifying information required by the Treasurer.

- (3) It shall be unlawful for any person who operates a residential parking place to use any tickets for which the information required in § 253 04(a)(2) has not been delivered to the Treasurer at least five (5) days prior to the use of such tickets.
- (4) Tickets issued manually.
- A. Tickets issued manually shall reflect the number and date of the transaction.
 - B. Written authorization of the Treasurer shall be required to change or alter the numerical sequence of any tickets.
 - C. Tickets shall be arranged so that, as to each transaction, a portion of the applicable ticket, reflecting the number, date, parking period and either the consideration or the total charge (including the tax collected), shall be retained as part of the operator's records.
 - D. When an operator conducts business at more than one (1) location, a separate set of tickets shall be issued for each parking place.
 - E. When a flat rate and an hourly rate are charged at a parking place, a separate set of tickets shall be issued for each rate.
 - F. When two (2) or more flat rates are charged at a parking place, a separate set of tickets shall be issued for each rate.
 - G. Physical evidence of a parking transaction shall be prominently displayed on each vehicle which enters the parking place.
- (5) Tickets issued by mechanical device.
- A. Tickets issued by mechanical device shall reflect the number and date of the transaction, and where the parking rate is determined by units of time, the time of entry.
 - B. Written authorization of the Treasurer shall be required to change or alter the numerical sequence of any tickets.
 - C. Tickets shall be arranged so that, as to each transaction, a portion of the applicable ticket, reflecting the number, date, time of entry, time of exit and either the consideration or the total charge (including the tax collected), shall be retained as part of the operator's records.
 - D. The ticket ejector of any mechanical device shall be synchronized with the registering or counting apparatus.
 - E. The counting apparatus or meter shall operate so as to register every vehicle which enters the parking place, without exception, and no part of such apparatus shall be rendered inoperable by switch, button or other means.
- (c) *Leases.* When space is reserved at a parking place by means of lease, contract or other similar basis, numbers shall be assigned to all leases or contracts in serial sequence, and physical evidence of the numbers shall be prominently displayed at all times upon all vehicles which enter the parking place. The evidence shall be in a form approved by the Treasurer.
- (d) *Consideration not separately stated.* When consideration in a transaction is not separately stated, the operator shall maintain evidence and records necessary to segregate the consideration applicable to the transaction for the benefit of the patron and the Treasurer, and so that the proper amount of tax may be determined and collected.
- (e) *Access to records.* Each operator shall afford the Treasurer and his or her designated agents access to all records and evidence at all reasonable times and shall provide verification or authentication of the same, as the Treasurer may require. The Treasurer and his or her agents are hereby authorized to examine the books, papers and records of any operator or suspected operator in order to verify the accuracy of any return made, or, if no return has been made, to estimate the tax due. Every operator is hereby required and directed to provide to the Treasurer and his designated agents the means, facilities and opportunity to conduct any examinations or investigations as are hereby authorized.

(Ord. 10-1985, eff. 2-26-85; Am. Ord. 40-1997, eff. 12-31-97)

§ 253.05 - RETURN AND PAYMENTS.

Each operator, on forms prescribed by the Treasurer, shall file by the fifteenth day of each month, returns for the preceding month showing the consideration received with respect to each parking place during the preceding month together with the amount of tax due and collected thereon. At the time of filing the return, the operator shall pay to the Treasurer all tax due and collected for the period to which the return applies. Each operator shall collect the tax imposed by this Chapter and shall be liable to the City as agents thereof for payment to the City Treasurer.

In addition, whenever any tickets or ticket stubs issued during the preceding month are missing or unaccounted for at the time of filing the return, the operator shall report, on a form prescribed by the Treasurer, the number of missing or unaccounted for tickets from the preceding month and shall pay to the Treasurer, by the fifteenth day of the subsequent month, a fee equal to the maximum daily rate for each ticket that is missing or unaccounted for from the preceding month.

(Am. Ord. 40-1997, eff. 12-31-97)

§ 253.06 - COLLECTION.

The Treasurer shall collect by suit or otherwise all taxes, interests, costs, fines and penalties due under this Chapter and unpaid. If the operator neglects, refuses or fails to file any report or make any payment as herein required, an additional five (5) percent of the amount of the tax shall be added by the Treasurer and collected as a penalty for every month or fraction of a month that the tax remains unpaid, the penalty not to exceed fifty (50) percent.

(Ord. 52-1981, eff. 1-1-82)

§ 253.07 - VIOLATIONS.

In addition to any other fines, penalties or charges specified in this Title, any operator who violates any provisions of this Chapter shall be subject to an additional penalty of one thousand dollars (\$1,000.00) for the first occurrence, two thousand dollars (\$2,000.00) for the second occurrence, and three thousand dollars (\$3,000.00) for every occurrence thereafter.

(Ord. 40-1997, eff. 12-31-97)

CHAPTER 258: - PAYROLL TAX

§ 258.01 - DEFINITIONS.

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The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

- (a) **BUSINESS** means any activity, enterprise, profession, trade or undertaking of any nature conducted or engaged in, or ordinarily conducted or engaged in, with the object of gain, benefit or advantages, whether direct or indirect, to the taxpayer or to another or others. The term shall include subsidiary or independent entities which conduct operations for the benefit of others and at no profit to themselves, nonprofit businesses, and trade associations. A person shall be deemed to be conducting business within the City who engages, hires, employs or contracts with one (1) or more individuals as employees or is self-employed and, in addition, does at least one (1) of the following: (1) maintains a fixed place of business within the City; (2) owns or leases real property within the City for purposes of such business; (3) maintains a stock of tangible, personal property in the City for sale in the ordinary course of business; (4) conducts continuous solicitation within the City related to such business; or (5) utilizes the streets of the City in connection with the operation of such business, other than for the mere transportation from a site outside the City, through the City, to a destination outside of the City. A person shall be deemed to be engaged in business who, in return for rental income, rents, leases or hires real or personal property to others. A person shall not be deemed to be engaged in business solely by reason of the receipt of income from passive investments for which no services were rendered.
- (b) **CHARITY** means a charitable organization that qualifies for tax exemption pursuant to the act of November 26, 1997 (P.L. 508, No 55), known as the "Institutions of Purely Public Charity Act."
- (c) **COMPENSATION** means salaries, wages, commissions, bonuses, net earnings, and incentive payments, whether based on profit or otherwise, fees, tips and any other form of remuneration earned for services rendered, whether paid directly or through an agent, and whether in cash or in property or the right to receive property. The compensation of a shareholder in an S Corporation does not include any dividends received from that S Corporation.
- (d) **EMPLOYEE** means any individual in the service of an employer, under an appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed. In addition, for purposes of this tax, and irrespective of the common law tests for determining the existence of an independent contractor relationship, an individual performing work or service for compensation shall be deemed to be an employee of the person for whom the work or service is performed unless: (1) such individual has been and will continue to be free from control or direction over the performance of such work or service, both under his/her appointment or contract of hire or apprenticeship; (2) such work or service is either outside the usual course of the business of the person for which such service is performed; or, (3) such individual is customarily engaged in an independently established trade, occupation, business or profession. A partner or a self-employed person is not an employee.
- (e) **EMPLOYER** means any person conducting business activity within the City, except for a governmental entity. A self-employed person or a partner in a partnership, which does not file payroll expense returns on behalf its partners, are treated as employers.
- (f) **INTERNAL REVENUE CODE** means the Internal Revenue Code of 1986 (Public Law 99-514), as amended.
- (g) **PAYROLL EXPENSE OR AMOUNTS** means all compensation earned by an employee or profits earned by a self-employed individual or a partner in a partnership. Profits earned by self-employed individuals or partners in a partnership shall be limited to the lesser of draws and distributions received by the individual from the business or net income of the business. Guaranteed payments received by partners shall be treated as profits earned and draws from

the business. When the partnership files on behalf of its partners, its payroll expense shall include: (a) all compensation paid to employees; (b) all guaranteed payments made to partners; and (c) the lesser of profits from the business or draws and distributions made to partners.

(h) PARTNER means an individual who performs services for a partnership. An individual who receives a Form W-2 from the partnership is not a partner but is an employee.

(i) PARTNERSHIP means an unincorporated entity, joint venture, business trust, partnership, or limited liability company, which has two or more owners, and is not classified as a corporation under the Tax Reform Act of 1971, 72 P.S. § 7401, and is not a charity.

(h) PERSON means a corporation, partnership, business trust, limited liability company, other association, estate, trust, foundation or natural person.

(k) PROFITS means a share of net income for services rendered from a partnership or received by a self-employed person, ~~—a limited liability company, a business trust or S corporation,~~ after provision for all costs and expenses incurred in the conduct thereof, determined either on a cash or accrual basis in accordance with accepted accounting principles and practices, and including, but not limited to, any amount treated as net earnings from self-employment for services rendered. Profits earned by self-employed individuals or partners in a partnership shall be limited to the lesser of draws and distributions received by the individual from the business or net income of the business. Guaranteed payments received by partners shall be treated as profits earned and draws from the business. The profits received by a partner or self-employed person does not include income that is classified as income from passive investments.

(l) SELF-EMPLOYED PERSON means an individual who operates a sole proprietorship or is the single member owner of an unincorporated entity, such as a business trust or limited liability company, that is not classified as a corporation under the Tax Reform Act of 1971, 72 P.S. § 7401, and which is not a charity.

(m) TAX YEAR means a twelve-month period from January 1 to December 31.

(n) TEMPORARY SEASONAL OR ITINERANT BUSINESS shall mean an employer whose presence in the City is of a duration of one hundred twenty (120) days or less.

(Ord. 26-2004, eff. 12-20-04; Ord. No. 3-2005, § 1, eff. 1-1-05)

§ 258.02 - LEVY AND RATE.

For general revenue purposes a tax is hereby levied at the rate of fifty-five hundredths (.55) of a percent on the amount of payroll expense generated as a result of an employer conducting business activity within the City.

(Ord. 26-2004, eff. 12-20-04; Ord. No. 3-2005, § 1, eff. 1-1-05)

§ 258.03 - COMPUTATION OF TAX.

(a) For purposes of computation of the tax imposed in Section 258.02, the payroll amount attributable to the City shall be determined by applying an apportionment factor to total payroll expense based on that portion of payroll which the total number of days an employee, partner, member, shareholder or other individual works within the City bears to the total number of days such employee or person works both within and outside the City.

(b) Tax base. The tax shall be computed on the payroll expense of the previous quarter attributable to the City.

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- (c) An employer, which conducts business in the City on a temporary, seasonal or itinerant basis, shall calculate the tax on the total compensation earned while in the City.
- (d) A charitable organization, as defined above, shall calculate the tax that would otherwise be attributable to the City, but shall only pay the tax on that portion of its payroll expense attributable to business activity for which a tax may be imposed pursuant to Section 511 of the Internal Revenue Code. If the charity has purchased or is operating branches, affiliates, subsidiaries or other business entities that do not independently meet the standards of the "Institutions of Purely Public Charity Act", the tax shall be paid on the payroll attributable to such for-profit branches, affiliates or subsidiaries, whether or not the employees are leased or placed under the auspices of the charity's umbrella or parent organization.

(Ord. 26-2004, eff. 12-20-04; Ord. No. 3-2005, § 1, eff. 1-1-05)

§ 258.04 - PAYMENTS.

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An employer subject to the tax shall make a return and shall pay the tax quarterly at such time or times and in such manner as provided in Section 258.06.

(Ord. 26-2004, eff. 12-20-04; Ord. No. 3-2005, § 1, eff. 1-1-05)

§ 258.05 - REGISTRATION.

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Registration. Every person having an office, factory, workshop, branch, warehouse, or other place of business, including banks, schools, hospitals, non-profit, and trade associations, located in the City or outside the City, who, during any tax year, performs work or renders services in whole or in part in the City, who has not previously registered, shall within fifteen (15) days, register with the Treasurer its name and address and shall provide such other information as the Treasurer may require.

(Ord. 26-2004, eff. 12-20-04; Ord. No. 3-2005, § 1, eff. 1-1-05)

§ 258.06 - RETURNS.

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The first quarterly return, which is due May 31 of the current year, shall be filed and the tax shall be paid based on the amount of payroll expense during the months of January, February, and March of the current year; the second quarterly return, which is due August 31 of the current year, shall be filed and the tax shall be paid based on the amount of payroll expense during the months of April, May, and June of the current year; the third quarterly return, which is due November 30 of the current year, shall be filed and the tax shall be paid based on the amount of payroll expense during the months of July, August, and September of the current year; the fourth quarterly return, which is due February 28 of the succeeding year, shall be filed and the tax shall be paid based on the amount of payroll during the months of October, November, and December of the current year.

An employer which conducts business in the City on a temporary, seasonal or itinerant basis shall file a return and pay the tax within ten (10) days of the completion of the temporary, seasonal, or itinerant business.

(Ord. 26-2004, eff. 12-20-04; Ord. No. 3-2005, § 1, eff. 1-1-05; Ord. No. 42-2015, § 1, eff. 11-10-15)

§ 258.07 - PENALTIES AND INTEREST.

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If for any reason the tax is not paid when due, interest at the rate of six (6) percent per annum on the amount of said tax and an additional penalty of one (1) percent of the amount of the unpaid tax for each month or fraction thereof during which the tax remains unpaid shall be added and collected.

In addition to any other penalties or enforcement proceedings provided for by ordinance for the collection and enforcement of taxes:

- (1) Any employer who willfully makes any false or untrue statement on the employer's return shall be guilty of a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not more than two thousand dollars (\$2,000.00) or to a term of imprisonment of not more than two years, or both;
- (2) Any employer who willfully fails or refuses to file a return required by this chapter shall be guilty of a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than one thousand dollars (\$1,000.00) or to a term of imprisonment of not more than one (1) year, or both, and
- (3) Any person who willfully fails or refuses to appear before the Treasurer or his agent in person with the employer's books, records or accounts for examination when required under the provisions of this Title to do so, or who willfully refuses to permit inspection of the books, records or accounts of any employer in the person's custody or control when the right to make such inspection by the Treasurer or his agent is requested, shall be guilty of a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than five hundred dollars (\$500.00) or to a term of imprisonment of not more than six (6) months, or both.

(Ord. 26-2004, eff. 12-20-04; Ord. No. 3-2005, § 1, eff. 1-1-05)

§ 258.08 - REPEALS.

All ordinances and parts of ordinances are repealed to the extent they are inconsistent with this ordinance.

(Ord. 26-2004, eff. 12-20-04; Ord. No. 3-2005, § 1, eff. 1-1-05)

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