

ORDINANCE NO. 63-2017

AN ORDINANCE REPEALING ORDINANCE NO. 109-2016, AS AMENDED, AND FURTHER REQUIRING AN AMUSEMENT LICENSE FOR AMUSEMENTS AND ENACTING AN AMUSEMENT TAX

WHEREAS, the City of Effingham, Illinois, is authorized, pursuant to 65 ILCS 5/11-42-1, to impose a tax on the sellers of tickets for theatricals, shows, amusements and athletic events and other exhibitions at a place other than the theatre or location where the theatricals, shows, amusements and athletic events and other exhibitions are given or exhibited; and,

WHEREAS, the City of Effingham, Illinois, is further authorized, pursuant to 65 ILCS 5/11-42-5, to impose a tax on theatricals, exhibitions, shows and amusements; and,

WHEREAS, the presentation of certain types of theatricals, shows, amusements and athletic events and other exhibitions is likely to draw additional people to the City of Effingham to view such theatricals, shows, amusements and athletic events and other exhibitions; and,

WHEREAS, the drawing of additional people to the City of Effingham to view such theatricals, shows, amusements and athletic events and other exhibitions places increased demand upon the City of Effingham to provide increased governmental services, such as police protection, fire protection, infrastructure and related services; and,

WHEREAS, in order to provide such increased governmental services and pay for the cost thereof, and further to provide general revenue for the City of Effingham, the City Council for the City of Effingham previously adopted Ordinance No. 109-2016 to provide for a tax equal to five percent (5%) of the gross receipts of the sale of tickets for theatricals, shows, amusements and athletic events and other exhibitions at a place other than the theatre or location where the theatricals, shows, amusements and athletic events and other exhibitions are given or exhibited, and to further impose a tax equal to five percent (5%) of the gross receipts of the sale of tickets for theatricals, shows, amusements and athletic events and other exhibitions to be given at the same location where the theatricals, shows, amusements and athletic events and other exhibitions are given or exhibited; and,

WHEREAS, the City of Effingham, Illinois, has further passed and approved Ordinance No. ____-2017, an Ordinance Imposing Temporary Moratorium on the Enforcement of Ordinance No. 106-2016, an Ordinance Repealing Ordinance No. 106-2005, as amended, and Further Requiring an Amusement License for Amusements and Enacting an Amusement Tax; and,

WHEREAS, it has been determined by the City Council, after careful investigation, deems it to be in the best interest of the citizens of the City of Effingham that the City of

Effingham Ordinance No. 106-2016, as amended by Ordinance No. 59-2017, be repealed and replaced with a more effective manner in which to impose and enforce said tax as provided for herein.

NOW THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF EFFINGHAM, ILLINOIS, THAT:

SECTION 1: REPEAL: Effective September 01, 2017, the provisions of City of Effingham Ordinance No. 106-2016, as amended by Ordinance No. 59-2017, are hereby repealed and replaced by the following.

SECTION 2: DEFINITIONS: The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

- A. **“Admission Fee”** shall mean to include, but is not limited to fees, charges, contributions, donations, or other consideration or property paid to or charged by an Amusement for the privilege of permitting a Person or Persons to enter, to witness, and/or to participate in such Amusement.
- B. **“Amusement”** shall mean to include any participative and exhibitiv entertainment, including, but not by way of limitation, the following activities and sports: any theatrical, dramatic, musical or spectator performance; book readings; lectures, readings or recitations; exhibitions of paintings or statuary or other exhibitions of art; dances; bazaars; motion picture show; movie; video; videotape; digital versatile disk (DVD), blu-ray, video or DVD game; video or DVD game system; flower, poultry, or animal show; carnival; amusement rides; animal act; circus; rodeo; fireworks; athletic contest, sport, or game, including but not limited to, archery, shooting galleries and shooting ranges, boxing, wrestling, skating, dancing, swimming, racing or riding animals or vehicles, baseball, basketball, softball, football, tennis, racquetball, handball, golf, hockey, track and field games, soccer, rugby, bowling, billiards and pool games; including the giving of lessons or demonstrations of any of the above-described activities characterized as Amusements in this Paragraph. The term “Amusement” shall not include coin-operated amusements, nor shall it include video gaming terminals as defined and authorized by the Illinois Video Gaming Act, 230 ILCS 40/1 *et. seq.*
- C. **“Gross Receipts”** shall mean all fees or charges received or collected in the form of Admission Fees or other charges for the admission to and/or for the use or rental of any Amusement for the purpose of witnessing, participating in, or utilizing any Amusement, regardless of whether such fees or charges are characterized as Admission Fees, fees for participation, membership fees, use charges, rental or

service charges. Gross receipts shall be exclusive of any tax imposed by the United States government, the State of Illinois, or any other governmental unit. A fee or charge which entitles the patrons in any Amusement operated within the corporate limits of the City to bona fide services in addition to or unrelated to the witnessing or participating in the Amusement shall not be subject to the Amusement Tax provided for in this Ordinance except, however:

1. Where a fee or charge is comprised of identifiable components, packages or tiers, the tax provided for in this Ordinance shall be imposed on any such components, packages or tiers which provide solely for admission to any facility and/or the use of any facility or equipment for the purposes of witnessing or participating in any Amusement; and,
2. Where a single fee or charge for admission to any facility and/or use of any facility or equipment for the purpose of witnessing or participating in any Amusement also entitles the patron of the Amusement to the incidental use of parking, restaurant, bar, refreshment, locker room, changing room, washroom and/or shower facilities or services, the tax provided for in this Ordinance shall be imposed on such fee or charge, provided the predominant activity of such facility is an Amusement.

D. “Person” shall mean any natural person, firm, partnership, joint venture, club, company, association, syndicate, society, business trust, organization, institution, agency, government corporation, municipal corporation, district or other political subdivision, corporation, limited liability company, proprietorship, contractor, supplier, vendor, vendee, operator, or other legal entity. It shall also include an executor, administrator, trustee, receiver or other representative appointed according to law. Whenever the word "Person" appears in any section of this Ordinance prescribing a penalty or fine, as to partnerships or associations, the word shall include the partners or members thereof, and as to corporations or limited liability company, shall include the officers, agents or members thereof who are responsible for any violation of this Ordinance.

E. “Owner” shall mean any Person having any proprietary interest in conducting the operation of an Amusement so as to entitle such a person or its organization to all or a portion of the net receipts thereof.

SECTION 3: LICENSE REQUIRED:

A. Requirement: No Person shall establish, carry on, produce, operate, conduct, give, exhibit, engage, host, or hold, directly or indirectly, an Amusement, or place, location or a business which offers for sale or actually sells tickets at a place, location, or

business other than where the Amusement is to be established, carried on, produced, operated, conducted, given, exhibited, hosted, or held, unless such Person, shall have first obtained a duly issued and authorized license issued by the City of Effingham, Illinois, authorizing such Amusement or the offering for sale or sells tickets for such Amusement (hereinafter referred to as the “Amusement License”).

- B. Application for License:** Any Person desiring to secure an Amusement License from the City of Effingham, Illinois, shall complete and file with the City Tourism Director an application for an Amusement License on such forms as prescribed by the City Tourism Director (hereinafter referred to as the “Amusement License Application”). The City Tourism Director is hereby authorized and directed to issue such Amusement Licenses in accordance with this Ordinance, and to further collect the annual Amusement License Fee imposed under Paragraph C of this Section and place the receipts thereof in a segregated line item account of the Hotel/Motel Fund (hereinafter referred to as the “Amusement Tax Fund”). The City Tourism Director shall issue to such Person submitting a completed Amusement License Application and Amusement License Fee an Amusement License if, and only if, all Amusement Taxes imposed pursuant to this Ordinance are paid in full.
- C. License Fee:** An annual license fee of \$100.00 is hereby imposed and shall be paid by the applicant to the City Tourism Director upon filing of the Amusement License Application (hereinafter referred to as the “Amusement License Fee”).
- D. Term of License:** Each Amusement License issued under the provisions of this Ordinance shall be valid for a period of up to one (1) year, provided however, that each Amusement License shall terminate on the thirty-first day of January next following its issuance, unless sooner revoked.
- E. Continuing Obligation to Supply Information:** The requirement to supply all information required in Application for License as provided for in Paragraph B of this Section is a continuing one. If any supplied information or statements become invalid, it is the duty of the holder of an Amusement License to provide updated information to the City of Effingham, Illinois.
- F. Renewal:**
1. Any holder of an Amusement License may renew an Amusement License at the expiration thereof provided, that the holder of an Amusement License is then qualified to receive an Amusement License. The requirements for and the procedures for obtaining a renewal of an Amusement License shall be the same as that provided for in case of an original application for an Amusement License, however, that any

application for renewal shall be filed with the City Tourism Director not less than thirty (30) days prior to the expiration of the Amusement License.

2. The failure to renew an Amusement License as prescribed or to pay the required annual Amusement License Fee before the expiration date shown on the Amusement License being renewed shall result in the lapse of the Amusement License.

G. Privilege Granted by Amusement License: An Amusement License issued under this Ordinance shall be purely a personal privilege, good for a period of time not to exceed one (1) year after issuance, unless sooner revoked. It shall not constitute property, nor shall it be subject to attachment, garnishment or execution, voluntarily or involuntarily, or subject to being encumbered or hypothecated. Such Amusement License shall not descend by the laws of testate or intestate devolution, but it shall cease upon the death of the holder of an Amusement License; provided that, the executor of the will or administrator of the estate of any deceased holder of an Amusement License and the trustee of any insolvent or bankrupt holder of an Amusement License, when such estate consists in part of the Amusement, may continue the business of the Amusement under order of the appropriate court, and may exercise the privileges of the deceased, insolvent, or bankrupt holder of an Amusement License until the expiration of such Amusement License or until six (6) months after the death, insolvency or bankruptcy of such holder of an Amusement License, whichever is the shorter period of time.

H. Transfer: All Amusement Licenses issued under this Ordinance shall be considered personal and may not be transferred to any Person.

I. License to be Posted: Every holder of an Amusement License under the provisions of this Ordinance shall cause the Amusement License to be hung in plain view in a conspicuous place at or near where the Amusement is held.

SECTION 4: TAX IMPOSED: A tax, in an amount equal to five percent (5%) of the Gross Receipts for each Amusement is hereby imposed upon:

1. All Persons establishing, carrying on, producing, operating, conducting, giving, exhibiting, hosting, or holding Amusements within the corporate limits of the City of Effingham, Illinois; and,
2. All Persons operating, conducting, or maintaining a place, location, or business within the corporate limits of the City, which offers for sale or sells tickets at a place, location, or business other than where the Amusement is to

be established, carried on, produced, operated, conducted, given, exhibited, hosted, or held,

(hereinafter referred to as the “Amusement Tax). Any Amusement Tax shall be in addition to all other taxes imposed by law.

SECTION 5: COLLECTION OF TAX:

- A. Time of Payment and Monthly Report:** Except as provided in Paragraph B of this Section, all holders of an Amusement License, and any other Owner of an Amusement, Person who establishes, carries on, produces, operates, conducts, gives, exhibits, hosts, or holds Amusements within the corporate limits of the City of Effingham, Illinois, or place, location or a business which offers for sale or actually sells tickets for Amusements shall, on a monthly basis, file an Amusement Tax Return on such forms as prescribed by the City Tourism Director, and shall collect and remit therewith to the City Tourism Director, the Amusement Tax for each calendar month. The Amusement Tax Return and Amusement Tax shall be due on or before the 20th day of the calendar month succeeding the end of the monthly filing period (e.g. the return for January shall be due on or before the 20th day of February). The City Tourism Director is hereby authorized and directed to collect the Amusement Tax and place the receipts thereof into the Hotel/Motel Fund. Except as provided in Paragraph B of this Section, no Amusement Tax shall be deemed due and payable until the Amusements occurs or is held.
- B. Non-Resident Amusements:** Any holder of an Amusement License or Owner of an Amusement or place, location, or a business which offers for sale or actually sells tickets for Amusements which does not have a principal business location within the corporate boundaries of the City of Effingham, Illinois, and which intends to establish, carry on, produce, operate, conduct, give, exhibit, engage, host, or hold, directly or indirectly, an Amusement, shall deposit certified funds to the City for a sum equal to the City Tourism Director’s estimate of the Amusement Tax to become due as provided in Section 4 of this Ordinance, not less than two (2) days in advance of the Amusement to be operated, conducted, given, exhibited, hosted, or held. Within forty-eight hours after the Amusement, the Licensee shall file an Amusement Tax Return and collect and remit to the City Tourism Director, the Amusement Tax actually due, less any certified funds previously deposited.
- C. Delinquency:** Any holder of an Amusement License, and any other Owner of an Amusement, or place, location or a business which offers for sale or actually sells tickets for Amusements who fails to collect and remit to the City Tourism Director all Amusement Tax due pursuant to Section 4 of this Ordinance, or fails to file a completed Amusement Tax Return with the City Tourism Director as required under

Paragraph A of this Section 5, shall pay to the City, in addition to the Amusement Tax to be paid, a penalty in an amount equal to the greater of (a) One Hundred Dollars (\$100.00); or, (b) five percent (5%) of the Amusement Tax that the Person is required to collect and remit to the City. In addition to the foregoing, any amount of the Amusement Tax not collected and/or remitted to the City shall bear interest at the rate of two percent per annum, until fully transmitted.

D. Books and records; inspection; contents: The City Administrator, the City Clerk, the City Tourism Director, and/or any other persons designated by either of them, may enter into any place which provides, establishes, carries on, produces, operates, conducts, gives, exhibits, engages, hosts, or holds, directly or indirectly, an Amusement, or place, location or a business which offers for sale or actually sells tickets for Amusements for inspection, examination, copying, and auditing of books and records, including, but not limited to, Illinois Retailers' Occupation Tax and Illinois Service Occupation Tax returns filed with the Illinois Department of Revenue, in order to effectuate the proper administration of this Ordinance and to assure the enforcement of the collection of the Amusement Tax imposed by this Ordinance. To the extent reasonably possible, said entry shall be done in a manner that is least disruptive to the business. It shall be unlawful for any person to prevent, hinder, or interfere with the City Administrator, the City Clerk, the City Tourism Director, and/or any other persons designated by either of them, in the discharge of their respective duties in the performance of this paragraph E. It shall be the duty of every Owner of an Amusement or place which provides, establishes, carries on, produces, operates, conducts, gives, exhibits, engages, hosts, or holds, directly or indirectly, an Amusement, or place, location or a business which offers for sale or actually sells tickets for Amusements to keep accurate and complete books and records to which the City Administrator, the City Clerk, the City Tourism Director, and/or any other persons designated by either of them shall at all times have full access, which records shall include a daily sheet showing the Gross Receipts received during that day.

E. Collection: Whenever any Person fails to obtain a license and/or pay the Amusement License Fee under Section 3, fails to file any Amusement Tax Return, fails to collect and remit the Amusement Tax due under Section 4, fails to pay any delinquency due under Paragraph C of this Section, or any portion thereof of said Amusement Tax or delinquency, the City Attorney shall, upon request of the City Administrator, bring or cause to be brought an action to enforce the payment of said Amusement License Fee and /or Amusement Tax on behalf of the City in any court of competent jurisdiction.

SECTION 6: AMUSEMENT LICENSE SUSPENSION OR REVOCATION:

A. The City Administrator may revoke or suspend any Amusement License issued by the City if the City Administrator determines that the Licensee has violated any of the

provisions of this Ordinance. No such Amusement License shall be so revoked or suspended except after a public hearing by the City Administrator and written notice to the Licensee affording the Licensee an opportunity to appear and defend. All such proceedings shall be instituted by a written citation. Said citation shall state the particular provision, rule, or regulation alleged to have been violated and shall be signed by the City Administrator, or his or her designee. Said citation and a notice of hearing shall be served on the Licensee named therein, not less than three (3) calendar days prior to the date specified in the notice of hearing. Service of the citation and notice of hearing on the agent or employee of the Licensee shall constitute service on the Licensee. If the Licensee's whereabouts are unknown or reasonable attempts to serve the Licensee have failed, service shall be by publication in a newspaper of general circulation within the City of Effingham. Said Licensee named in the citation and notice of hearing shall appear at the time and place designed in said citation and notice of hearing.

- B.** The hearing shall be conducted under the rules issued by the City Administrator. Such rules shall be consistent with the nature of the proceedings and shall ensure that each party may present evidence, cross-examine witnesses, and be represented by legal counsel. All such hearings shall be open to the public and the City Administrator shall reduce all evidence to writing and shall maintain an official record of the proceedings.
- C.** The City Administrator, within five (5) calendar days after such hearing, if he determines after such hearing that the Amusement License should be suspended or revoked, shall state the reason or reasons for such determination in a written order, and either the period of suspension for an Amusement License, or that the Amusement License has been revoked. The period of the suspension or the declaration of revocation, and all costs shall be clearly set forth in said written order. All costs of the public hearing incurred by the City shall be charged to the Licensee or upon a determination of a violation and the issuance of an order setting forth a suspension, or revocation. A copy of the written order shall be served on the Licensee within the five (5) calendar days after the hearing. Service of the written order on the agent or employee of the Licensee shall constitute service on the Licensee. If the Licensee's whereabouts are unknown or reasonable attempts to serve the Licensee have failed, service shall be by publication in a newspaper of general circulation within the City of Effingham.
- D.** Any review of decisions of the City of Administrator shall be as provided for in Section 5/3-101, *et. seq.* of the Illinois Code of Civil Procedure.

SECTION 7. EXEMPTIONS: The Amusement Tax imposed under Section 4 of this Ordinance, and any Amusement License obligations imposed under Section 3 of this Ordinance, shall not apply to the following:

- A.** Amusement or other exhibitions actually presented by any church organization or veteran's organization, which have their principal business location within the corporate boundaries of the City of Effingham, Illinois; and,
- B.** Amusements or other exhibitions actually presented by public or private schools; and,
- C.** Private or group instructional activities, including, but not limited to, cooking classes, art classes, dance instruction, music instruction, gymnastics, tumbling, fitness and/or aerobic instruction, martial arts, yoga, swimming lessons, and tennis lessons; and,
- D.** 5K races, half marathons, marathons, duathlon, triathlon, and similar racing events; and,
- E.** Amusements and other exhibitions sponsored or conducted by, and the proceeds of which inure exclusively and solely to the benefit of any bona fide, religious, charitable, or not-for-profit organization, provided that such organization has received federal tax exemption pursuant to the Internal Revenue Code, 26 USC Section 501(c). Notwithstanding the foregoing, this exemption shall not apply to any Amusement held or presented on property owned by the City of Effingham, Illinois; and,
- F.** Businesses or operations that have as its primary business the sale and/or rental of motion picture films, provided, however, that this exemption shall not apply to theatres that have as its primary business the presentation of motion picture films; and,
- G.** Trade shows or similar exhibits where the primary purposes are the exhibition of goods or services; and,
- H.** Any Amusement where both of the following conditions exist:
 - 1. The Amusement is operated, conducted, or actually presented by any governmental entity, whether individually or jointly; and,
 - 2. The place where the Amusement is operated, conducted, or actually presented is owned by any governmental entity, whether individually or jointly.

SECTION 8: PENALTIES.

- A. Pursuant to 65 ILCS 5/1-2-1, any Person violating, disobeying, omitting, neglecting, or refusing to comply with or unlawfully resisting or opposing the enforcement of any of the provisions of this Ordinance shall, upon conviction thereof, be deemed guilty of a civil ordinance violation and shall be fined not less than Two Hundred Fifty Dollars (\$250.00) nor more than Seven Hundred Fifty Dollars (\$750.00) for each offense. A separate offense shall be deemed to be committed on each day during or on which a violation occurs or continues.
- B. Every act or omission of whatsoever nature constituting a violation of any provision of this Ordinance, by any officer, director, manager or other agent or employee of any holder of an Amusement License or any Person subject to the provisions of this Ordinance, shall be deemed and held to be the act of such employer or holder of an Amusement License and the employer or holder of an Amusement License shall be punishable in the same manner as if the act or omission had been done or omitted by him personally.
- C. For violations of this Ordinance, the penalty provided in Paragraph A of this Section is in addition to, not in lieu of, any administrative action taken by the City Administrator as contained within Section 6 of this Ordinance. Furthermore, any Person subjected to the penalty provided in Paragraph A of this Section shall not be discharged or released from the payment of any Amusement Tax or delinquency due.

SECTION 9: INCORPORATION: The findings made in the prefatory portion of this Ordinance are hereby adopted by the City Council of the City of Effingham, Illinois.

SECTION 10: SEVERABILITY: If any provision of this Ordinance, or the application of any provision of this Ordinance, is held unconstitutional or otherwise invalid, such occurrence shall not affect other provisions of this Ordinance, or their application, that can be given effect without the unconstitutional or invalid provision or its application. Each unconstitutional or invalid provision, or application of such provision, is severable, unless otherwise provided by this Ordinance.

Placed on file this _____ day of _____, 2017.

Presented, passed and approved this _____ day of _____, 2017.

Commissioner Gillenwater: _____
Commissioner Willis: _____
Commissioner Althoff: _____
Commissioner Esker: _____
Mayor Bloemker: _____

YEAS: _____
NAYS: _____

CITY OF EFFINGHAM, ILLINOIS

Jeff T. Bloemker, Mayor

ATTEST:

Kelsey R. Lock, City Clerk