

ORDINANCE NO. 255

**AN ORDINANCE OF THE CITY OF UNIVERSITY PLACE, WASHINGTON,
ESTABLISHING AN ADMISSION TAX ON EVERY PERSON WHO PAYS AN
ADMISSION CHARGE TO ANY MOVIE THEATER, ENTERTAINMENT OR SPECIAL
EVENTS ACTIVITY**

WHEREAS, RCW 35.21.280 authorizes cities to levy and fix an admission tax of not more than one cent on twenty cents or fraction thereof to be paid by the person who pays an admission charge to any place with the exception of an activity at an elementary or secondary school or events sponsored by non-profit tax-exempt organizations, and

WHEREAS, the City Council of the City of University Place does find that in order to provide revenues for the City an admission tax on persons who attend movie theaters or special temporary events should be levied in the amount of not more than one cent on twenty cents or fraction thereof, now, therefore,

**THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, DOES ORDAIN
AS FOLLOWS:**

Section 1. Admissions Tax Levied. There is hereby levied a five percent tax on admissions for entertainment purposes in the City of University Place. The tax shall be collected from every person, without regard to age, who pays an admission charge. Such tax shall be measured by applying the five percent tax rate to the admission charge. The tax herein levied shall be paid by the person paying the admission charge and shall be collected and remitted by the person to whom the admission charge is paid.

No tax shall be levied on any person who is admitted free and from whom no compensating payment is obtained. The tax on reduced admission charges shall be charged on such reduced charge and not the regular admission charge. Such tax is to continue indefinitely or until amended or repealed by the City of University Place City Council.

Section 2. Definitions.

A. Admissions Charge. "Admission charge," in addition to its usual and ordinary meaning is a monetary charge for an event open to the public, including, but not be limited to the following:

- 1) A cover charge or a charge made for the use of seats or tables, reserved or otherwise, and similar accommodations;
- 2) A charge made for season tickets or subscriptions;
- 3) A charge made for food and refreshments in any place where any free entertainment, recreation, or amusement is provided;
- 4) A charge made for admission to any theater, dance hall, cabaret, adult cabaret, amphitheater, club, haunted house, auditorium, stadium, athletic pavilion, park or field, baseball or athletic park, circus, amusement ride, or similar place;
- 5) A charge made for admission to or rental or use of equipment or facilities to any public golf course, facility, or driving range; if the rental of equipment or facilities is necessary to the enjoyment of the golf course, facility, driving range, at which a

general admission is charged, the combined charges shall be considered as the admission charge;

- 6) A charge made for automobile parking where the amount of the charge is determined according to the number of passengers in an automobile;
 - 7) A sum of money referred to as "a donation" or similar payment which must be paid before entrance is allowed;
 - 8) "Admission charge" does not include public school activities and other non-profit endeavors.
- B. Non-profit tax-exempt organization. An organization, corporation, or association organized and operated for the advancement, appreciation, public exhibition or performance, preservation, study and/or teaching of the performing arts, visual arts, history, science, or public charity providing human services, or public education, which is currently recognized by the United States of America as exempt from federal income taxation pursuant to Section 501(c)(1) or (3) of the Internal Revenue Code of 1954, as it may be amended or replaced from time to time.
- C. Secondary or elementary school. Any public or private primary, middle, junior high school, high school, or any accredited college, junior college, university, or the recognized student body association thereof.
- D. Special Temporary Event. Any spectator sporting event, entertainment event or activity, or construction, craft, or trade show that is open to the public in the City of University Place for less than 52 consecutive weeks shall be considered to be a special temporary event.
- E. For purposes of illustration only, the following table provides examples of activities subject to the admissions tax (this list is not all inclusive):

Taxable

1. for-profit theater
2. movie theater
3. cover charge in restaurant lounge
4. charge for admittance to adult entertainment cabaret
5. charge for entrance to a nonprofit organization's trade show, which is open to the public
6. charge for a golf course, which is open to the public

Not Taxable

1. annual dinner of a nonprofit organization, which is open to members only
2. tickets to a show performed for employees only of a for-profit company
3. Chamber of Commerce business fair, which is open to members only

Section 3. Exemptions. The following shall be exempt from any tax imposed under this ordinance:

- A. Admission charges for any activity of any elementary or secondary school.
- B. Events sponsored by non-profit tax-exempt organizations as defined in Section 2.

1. The admission tax levied and imposed pursuant to Section 2 shall not apply to any person paying an admission charge to an event that is sponsored by a non-profit tax-exempt organization, as defined in Section 2, when the conditions of both of the following are met:
 - a. The non-profit tax-exempt organization:
 - i. Publicly sponsors and through its members, representatives or personnel, promotes and publicizes the event; or
 - ii. Publicly sponsors the event and:
 - 1) Performs a major portion of the performance; or
 - 2) Supplies a major portion of the materials on exhibit; or
 - 3) When the event is part of a season or series of performances or exhibitions, performs the major portion of the performances or exhibitions in the season or series or supplies a major portion of the materials on exhibit.
 - b. The non-profit tax-exempt organization receives the use and benefits of the admission charges collected.
2. The exemption to the admission tax provided in this ordinance shall not apply to:
 - a. An event sponsored by a non-profit tax-exempt organization in which the fee paid for any one for-profit contract is greater than eighty percent (80%) of anticipated gross proceeds.
 - b. An event in which a non-profit tax-exempt organization lends its name as an endorsement to an ineligible person or organization for the purpose of invoking the tax exemption provided by this ordinance.

Section 4. Deductions. In computing the tax imposed by this ordinance, the following amounts may be deducted from the measure of the tax:

Amounts derived from business, which the City is prohibiting from taxing under the Constitution of this State or the Constitution or laws of the United States.

Section 5. Collection - Remittance to Finance Director.

- A. The tax imposed hereunder shall be collected from the person paying the admission charge at the time the admission charge is paid, and such taxes shall be remitted by the person collecting the tax to the Finance Director in monthly remittances on or before the last day of the month succeeding the end of the monthly period in which the tax is collected or received, and accompanied by such reports as the Finance Director shall require.
- B. Any person receiving any payment for admissions shall make out a return upon such forms and setting forth such information as the Finance Director may require, showing the amount of the tax upon admissions for which he or she is liable for the preceding monthly period, and shall sign and transmit the same to the Finance Director with a remittance for

the amount; provided, that the Finance Director may at his or her discretion require verified annual returns from any person receiving admission payments setting forth such additional information as he may deem necessary to determine correctly the amount of tax collected and payable.

- C. Whenever any theater, circus, show, exhibition, entertainment or amusement makes an admission charge which is subject to the tax herein levied, and the same is of a temporary or transitory nature or there exists a reasonable question of financial responsibility, of which the Finance Director shall be the judge, the report and remittance of the admission tax may be required immediately upon the collection of the same, at the conclusion of the performance or exhibition, or at the conclusion of the series of performances or exhibitions.
- D. Every person liable for the collection and payment of the tax imposed by this ordinance shall keep and preserve for a period of five years all unused tickets, ticket manifests, books and all other records from which can be determined the amount of admission tax which he was liable to remit under the provisions of this ordinance, and all such tickets, books and records shall be open for examination and audit at all reasonable times by the Finance Director or his or her duly authorized agent.

Section 6. Tax Delinquency - Unlawful Acts. If the return provided for herein is not made and transmitted and the tax is not collected and remitted to the City by the last day of the month succeeding the end of the month in which the tax was collected, the Finance Director shall add a penalty as outlined below for each month overdue, which shall be added to the amount of the tax due, and remitted in the same manner.

- A. Penalties and Interest. For each payment due, if such payment is not made by the due date thereof, there shall be added penalty and interest as follows:
 - 1. If paid 1 - 10 days late, there shall be a penalty of 10% added to the amount of tax due.
 - 2. If paid 11 - 20 days late, there shall be a penalty of 15% added to the amount of tax due.
 - 3. If paid 21 - 30 days late, there shall be a penalty of 20% added to the amount of tax due.
 - 4. If paid 31 - 60 days late, there shall be a penalty of 25% added to the amount of tax due.
 - 5. In addition to the above penalty, the City of University Place shall charge the taxpayer interest on all taxes due at the rate of one percent (1%) per month or portion thereof that said amounts are past due.
 - 6. The tax imposed by this ordinance, and all penalties and interest thereon, shall constitute a debt to the City of University Place, and may be collected by court proceedings in the same manner as any other debt which remedy shall be in addition to all other available remedies. Any judgment entered in favor of the City of University Place may include an award to the City of University Place of all court and collection costs including attorney's fees to the extent permitted by law. Amounts delinquent more than sixty days may be assigned to a third party for collection, in which case the

amount of any collection charges shall be in addition to all other amounts owed. Amounts due shall not be considered paid until the City of University Place has received payment for the full amount due or has discharged the amount due and not paid.

- B. Unlawful Acts. It is unlawful for any person liable for the tax imposed by this ordinance to fail to pay the tax when due or for any person, firm, or corporation to make any false or fraudulent return or any false statement in connection with the return.
- C. Criminal Penalties. Any person who intentionally violates any provision of this ordinance shall be guilty of a misdemeanor and upon conviction thereof punished pursuant to state law or City ordinance.
 - 1. Violation a misdemeanor. Each violation of or failure to comply with the provisions of this ordinance constitutes a separate offense and is a misdemeanor.
 - 2. Collection of tax by civil action. Any fee or tax due and unpaid and delinquent under the provisions of this ordinance and all penalties thereon, may be collected by civil action, which remedies shall be in addition to any and all other existing remedies.
 - 3. Violators designated. Any person who directly or indirectly performs or omits to perform any act in violation of the provisions of this ordinance, or aids or abets the same, whether present or absent, and every person who directly or indirectly counsels, encourages, hires, commands, induces or otherwise procures another to commit such violation is and shall be a principal under the terms of this ordinance and may be proceeded against as such.

Section 7. Application and Reporting.

- A. Any person, firm or corporation conducting or operating any place for entrance to which an admission charge is made shall procure from the City an annual certificate of registration, the fee for which shall be ten (10) dollars, and it shall be posted in a conspicuous place where tickets of admission are sold or the activity occurs. This charge will be in addition to any regular business license that may be required. Annual renewals will be provided without a fee.
- B. The applicant for a certificate of registration shall furnish the Finance Director with the application, with the name and address of the owner, lessee or the custodian of the premises upon which the amusement is to be conducted; and such owner, lessee or custodian shall be notified of the issuance of such certificate and of his or her joint liability for collection and remittance of such tax.
- C. The Finance Director shall have the power to adopt rules and regulations not inconsistent with the terms of this ordinance for carrying out and enforcing the payment, collection and remittance of the tax herein levied; and a copy of the rules and regulations shall be on file and available for public examination in the City Clerk's office.

Section 8. Temporary Special Events - Remittance.

- A. Immediate Remittance. Whenever any special temporary event makes an admission charge which is subject to the tax herein levied, the Finance Director may require the return and remittance of the admission tax immediately upon its collection, at the

conclusion of the series of performances or exhibitions or at such other times as the Finance Director shall determine.

- B. Liability of owner of premises where special temporary events are held. For special temporary events, the owner, lessee or custodian shall be responsible for payment of this tax if the person conducting the event fails to do so.

Section 9. Record Retention Requirements. It shall be the duty of every person required to obtain an occupation license and liable for payment of any tax imposed by this ordinance to keep and preserve for a period of five years such books and records as will accurately reflect the amount of gross income from the business, and from which can be determined the amount of any tax for which the person may be liable under the provisions of this ordinance. The term books and records as used in this section includes but is not limited to copies of the taxpayers Federal income tax returns, Federal excise tax returns, State of Washington excise tax returns, and copies of income tax and excise tax audits made by the United States or the State of Washington and furnished to such person. The taxpayer books and records shall be available for examination at all reasonable times by the Finance Director and his or her duly authorized.

In the case of any taxpayer that does not keep the necessary books and records within the City of University Place for examination, it shall be sufficient if such person produce the same within the City of University Place as instructed or required by the Finance Director

Any taxpayer who fails, neglects, or refuses to produce such books and records in accordance with this ordinance, or fails to file a return, in addition to being subject to other civil and criminal penalties provided by this ordinance, is subject to a tax assessment in an amount determined by the Finance Director in accordance with the provisions of this ordinance, which tax assessment shall be deemed prima facie correct and shall be the amount of fee or tax owing to the City of University Place by the taxpayer unless the person can prove otherwise by competent evidence. The taxpayer shall be notified by mail by the Finance Director of the amount of tax assessment imposed pursuant to this Section, together with any penalty and/or interest due, and the total of such amounts shall thereupon become immediately due and payable.

Section 10. Quitting, Selling, or Transferring Business. Whenever any taxpayer quits business, or sells out, exchanges, or otherwise disposes of such business, any tax payable under this Ordinance shall become immediately due and payable, and such taxpayer shall, within 10 days thereafter, make a return and pay the tax due; and any person who becomes a successor shall become liable for the full amount of any unpaid tax, interest, and penalties and shall withhold from the purchase price an amount sufficient to pay any tax due from the taxpayer until such time as the taxpayer shall produce a receipt from the City of University Place showing payment in full of any tax due or a certificate that no tax is due. If such tax, interest or penalty has not been paid by the taxpayer within 10 days from the date of such sale, exchange, or disposal, the successor shall become liable for the payment of the full amount of tax, interest and penalties. The successors liability shall be limited to the purchase price or fair market value of the business purchased if no cash transaction took place. No successor shall be liable for any tax due from the taxpayer from whom the successor has acquired a business or stock of goods if the successor gives written notice to the Finance Director of such acquisition and no assessment is issued by the Finance Director within six months of receipt of such notice against the former operator of the business. Taxpayers account will remain on an active status and be subject to all taxes, penalties, and interest until such time as the Finance Director is notified in writing that the taxpayer has discontinued business activity within the City of University Place. Nothing in this ordinance is intended nor shall it be construed to prohibit the successor from engaging in business in the City of University Place pending resolution of the successors tax liability.

Section 11. Tax Not Exclusive. The tax levied herein shall be additional to any license fee or tax imposed or levied under any other law or under any other ordinance of the City of University Place.

Section 12. Appeal Procedure. Any taxpayer aggrieved by the amount of the fee or tax found by the Finance Director to be required under the provisions of this ordinance may, upon full payment of the amount assessed, appeal from such finding by filing a written notice of appeal with the City Clerk within 14 days from the date such taxpayer was given notified in writing of such amount. The Clerk shall, as soon as practicable, fix a time and place for the hearing of such appeal before the Hearing Examiner, which time shall be not more than 60 days after the filing of the notice of appeal, and shall cause a notice of the time and place thereof to be delivered or mailed to the appellant. At such hearing before the Hearing Examiner, the taxpayer shall be entitled to be heard and to introduce evidence in his or her own behalf. The Hearing Examiner shall render a decision, together with findings of fact and conclusions of law, based upon the evidence presented at the time of the hearing and all material on file in the case. The Hearing Examiner's decisions shall indicate the correct amount of the fee or tax owing. The Hearing Examiner's decision shall be final. The appellant or the City of University Place may appeal the decision of the Hearing Examiner to the Superior Court of Washington in and for Pierce County within 30 days after the date of the Hearing Examiner's decision. The Hearing Examiner may, by subpoena, require the attendance of any person, and may also require him/her to produce any pertinent books and records. Any person served with such subpoena shall appear at the time and place therein stated and produce the books and records required, if any, and shall testify truthfully under oath administered by the Hearing Examiner as to any matter required of him/her pertinent to the appeal, and it shall be unlawful for him/her to fail or refuse so to do.

Section 13. Over or Underpayment of Tax. In the event that any person makes an overpayment, and within two years of the date of such overpayment makes application for a refund or credit, the persons claims shall be allowed and a refund made by the City of University Place upon determination by the Finance Director that no other sums are owed by the person to the City of University Place. If a person determines that the tax has been underpaid and without notice by any party pays the amount due to the City of University Place, such amount shall not be subject to penalty.

Section 14. Referendum Procedure. A referendum petition with respect to this ordinance may be filed with the City Clerk within seven days of the passage of this ordinance. The referendum procedures set forth in RCW 35.17.240 through 35.17.360, as hereafter amended, shall apply, with the following additions and amendments as required by RCW 35.21.706:

- A. Within ten days of the filing of the petition, the City Clerk will confer with the petitioner concerning the form and style of the petition, issue and identification number, and secure an accurate, concise and positive ballot title from the City Attorney;
- B. The petitioner shall have thirty days in which to secure the signatures of not less than 15% of the registered voters of the City of University Place, as of the last municipal general election, upon petition forms which contain the ballot title and full text of this ordinance; and
- C. The City Clerk shall verify the sufficiency of the signatures on the petition, and if sufficient valid signatures are properly submitted, shall certify the referendum measure to the next election ballot within the City of University Place, or at a special election as provided pursuant to RCW 35.17.260(2).

Section 15. Severability. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to other persons or circumstances.

Section 16. Publication and Effective Date. A summary of this ordinance consisting of its title shall be published in the official newspaper of the City. This ordinance shall take five days after publication, with fees effective December 31, 1999.

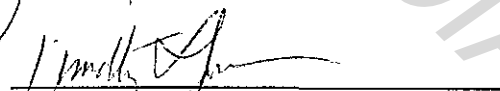
PASSED BY THE CITY COUNCIL ON NOVEMBER 15, 1999.


Debbie Klosowski, Mayor

ATTEST:


Susan Matthew, City Clerk

APPROVED AS TO FORM:


Timothy X. Sullivan, City Attorney

Date of Publication: November 19, 1999
Effective Date: November 24, 1999