

BOROUGH OF CALIFORNIA
COUNTY OF WASHINGTON
COMMONWEALTH OF PENNSYLVANIA

ORDINANCE NO. 537

AN ORDINANCE OF THE BOROUGH OF CALIFORNIA, WASHINGTON COUNTY, PENNSYLVANIA IMPLEMENTING A TEN PERCENT (10%) AMUSEMENT TAX; CONTAINING A DEFINITIONS SECTION; REQUIRING PROVIDERS OF AMUSEMENT EVENTS TO REGISTER WITH THE BOROUGH; DETAILING THE PROCEDURES FOR THE COLLECTION OF THE AMUSEMENT TAX BY PROVIDERS OR THE BOROUGH; REQUIRING PROVIDERS OF AMUSEMENT EVENTS TO FILE REPORTS WITH THE BOROUGH; PROVIDING FOR THE DISPOSITION OF TAXES, PENALTIES AND INTEREST; PROVIDING PENALTIES/REMEDIES FOR VIOLATION; REPEALING INCONSISTENT ORDINANCES AND/OR PORTIONS OF INCONSISTENT ORDINANCES; INCLUDING A SAVINGS CLAUSE, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, this Ordinance is enacted under the authority of the Local Tax Enabling Act, 53 P.S. § 6924.101, *et seq*; and

WHEREAS, the amusement tax will be for general revenue purposes by way of the levying of a ten percent (10%) tax on amusement events; and

WHEREAS, the estimated amount of revenue to be derived from the amusement tax will be \$30,000.00 annually; and

WHEREAS, the Borough Council believes that enacting this Ordinance, which provides for an amusement tax, will be in the best interest of the health, safety and welfare of its citizens.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Borough Council of the Borough of California, County of Washington, Commonwealth of Pennsylvania, and by this Ordinance it is hereby ordained and enacted as follows:

SECTION 1. DEFINITIONS.

a. ADMISSION FEES/CHARGES – gross receipts collected or a monetary charge of any character whatsoever including, but not limited to, donations, contributions, the price of tickets, including season tickets, or parking fees, charged or paid by persons for the privilege of attending or engaging in amusement events as defined below.

b. AMUSEMENT EVENT – all manner and forms of entertainment, including, but not limited to, theatrical performances, concerts, circuses, carnivals, side shows, all forms of entertainment at fairgrounds and amusement parks, floor shows, dancing exhibitions,

trade shows, craft shows, art shows and exhibitions, sporting events, any and all forms of live entertainment, and all other forms of diversion, sport, recreation, or pastime for which admissions fees/charges are obtained from the general public or a limited or selected number thereof, directly or indirectly. Except, however, the following shall not be subject to the tax: admissions to motion picture theaters; and, any other activities that constitute a “purely public charity,” as defined herein, or those which are exempted from tax liability in the Local Tax Enabling Act.

c. ASSOCIATION – any partnership, limited partnership or other form of unincorporated enterprise or entity.

d. PERSON - any natural person or persons, partnership, entity, firm, association, joint venture, or corporation. Whenever used in any clause prescribing and imposing a penalty, the term “person” as applied to a partnership or association shall mean the partners or members thereof, and as applied to a corporation, the officers or agents thereof. If applicable, the singular shall include the plural; the plural shall include the singular; and the masculine shall include the feminine.

e. PLACE OF AMUSEMENT – any place or location, indoors or outdoors, partly or totally located within the Borough, where the general public, or a limited or selected number thereof, attend or engage in any amusement event as defined herein.

f. PROVIDER – any person or association as defined herein that conducts any amusement event.

g. PURELY PUBLIC CHARITY – any amusement event that meets all of the following five (5) criteria: (1) advances a charitable purpose; (2) donates or renders gratuitously a substantial portion of its services; (3) benefits a substantial and indefinite class of persons who are legitimate subjects of charity; (4) relieves the government of some of its burden; and (5) operates entirely free from private profit motive.

h. SECRETARY – the Secretary of the Borough of California, Washington County, Pennsylvania.

i. BOROUGH – the Borough of California, Washington County, Pennsylvania.

SECTION 2. IMPOSITION OF AMUSEMENT TAX.

An amusement tax is levied, assessed and imposed, for general revenue purposes, upon the admission to any amusement event within the Borough, at the rate of ten percent (10%) of the admission fees/charges, such tax to be paid by the person charged or paying the admission fees/charges. However, if no fixed admission fees/charges are charged, the tax shall be paid upon the gross receipts collected, and shall be paid by the provider, if it is not paid by the person charged or paying such admission fees/charges.

The tax as set forth herein shall not be applicable to any amusement event where the age of the majority of the participants therein is under the age of eighteen (18) years old.

SECTION 3. REGISTRATION BY PROVIDERS REQUIRED.

a. As of the effective date of this instant Ordinance, every provider who at that time is conducting and every person who subsequently begins to conduct any amusement event within the Borough shall register with the Secretary/Treasurer of the Borough.

b. Both permanent amusement events and temporary amusements events are required to be registered. Permanent amusement events are conducted at one (1) location in excess of a period of one (1) month. Temporary amusement events are conducted at one (1) location for a period of one (1) month or less than one (1) month. The registration shall be made upon a form prescribed, prepared, and furnished by the Borough, and shall set forth the name under which the provider conducts or intends to conduct the amusement event, whether the amusement event is permanent or temporary, the place or location of the amusement event, the type of amusement event, and such other information as the Borough may require or deem appropriate. If the provider has or intends to have more than one (1) place of amusement event within the Borough, the provider shall register all places of amusement events and shall state the location of each. In the case of a registration for a temporary amusement event or for a temporary place of amusement, the provider shall also state the date or dates and length of time the amusement event is to be conducted at each place, and the name and address of the owner, lessee or custodian of the premises upon which that amusement event is to be conducted. If the provider is an association or a corporation, the names, phone numbers, and addresses of the principal officers thereof, and any other information prescribed by the Borough for purposes of identification must be given. The registration shall be signed and verified by oath or affirmation by the provider, if a natural person, and in the case of a corporation, by an executive officer, or some person specifically authorized to sign the registration, to which shall be attached the written evidence of the person's authority and shall state specifically what person(s) is responsible for the amusement event.

c. Upon completion of any registration form by a provider or the proper officer or agent, the Borough through its designated representative(s) or authorized agent(s) shall issue to the provider an annual or a temporary registration certificate for each of the provider's places of amusement events, within the Borough. The registration certificates shall be non-assignable and shall be valid only for the provider in whose name the certificate was issued and for the conduct of amusement events at the place or places designated in the certificate, and shall at all times be conspicuously displayed at the places for which issued. All registration certificates for permanent amusement events shall expire on December 31 of the calendar year for which they are issued. Registration certificates for temporary amusement events shall expire at the time specified on the certificate.

d. Every provider that is conducting a permanent amusement event shall register prior to commencing operations, and annually with the Borough before January 1st of each year.

e. Every provider that is conducting a temporary amusement event shall register at least thirty (30) days prior to commencing operations.

SECTION 4. COLLECTION BY PROVIDERS REQUIRED.

a. Providers shall collect and pay the tax imposed by this instant Ordinance and shall be liable to the Borough, as agents thereof, for the payment of the tax to the Borough or its designated representative.

b. If any temporary amusement event is conducted by any person who is not the owner, lessee, or custodian of the place of amusement or if any temporary amusement event is permitted by the owner, lessee or custodian of any place to be conducted without being registered with the Borough as required by Section No. 3 of this Ordinance, the collection of the tax imposed by this Ordinance shall be the responsibility of the owner, lessee or custodian of the place where the temporary amusement event is conducted and shall be collected and paid by the owner, lessee or custodian unless collected and paid by the provider conducting the temporary amusement event.

c. If any permanent amusement event is conducted by any person who is not the owner, lessee, or custodian of the place of amusement or if any permanent amusement event is permitted by the owner, lessee or custodian of any place to be conducted without being registered with the Borough as required by Section No. 3 of this Ordinance, the collection of the tax imposed by this Ordinance shall be the responsibility of the owner, lessee or custodian of the place where the permanent amusement event is conducted and shall be collected and paid by the owner, lessee or custodian unless collected and paid by the provider conducting the permanent amusement event.

d. The Borough, itself, reserves the right to collect the tax at any amusement event through its designated official(s) and/or agent(s). In this instance, the owner of the property where the amusement event is occurring and/or the provider of the amusement event must cooperate with the Borough in its collection efforts, including, but not limited to, allowing the Borough to collect the tax at the entrance(s) to the amusement event.

SECTION 5. REPORTS AND PAYMENT OF TAXES REQUIRED.

a. For the purpose of ascertaining the amount of tax collected and payable by permanent amusement event providers in the Borough, it shall be the duty of every provider, except as noted in Section 5 (B) below which pertains to temporary amusement events, conducting a place of amusement, on or before the tenth (10th) day of each month, to transmit to the Borough or its representative on forms prepared and approved by the

Borough, a report of the amount of the tax collected by the provider during the preceding month.

b. Every provider that is conducting a temporary amusement event shall file a report with the Borough or its representative within forty-eight (48) hours after each performance as directed at the time of registration.

c. All reports required under this Section shall show the information required by the Borough.

d. All taxes hereunder shall be recoverable as other debts of like amounts are by law recoverable.

e. Every provider, at the time of making any and all report(s) required by this Ordinance, shall compute and pay to the Borough or its representative, the taxes collected by the provider and due to the Borough during the period for which the report is made. The amount of all taxes imposed under this Ordinance, in the case of places of a permanent amusement event, shall be due and payable on or before the tenth (10th) day of the next succeeding month, and in the case of every temporary amusement event, shall be due and payable on the day the reports in those cases are required to be made under this Section, which is within forty-eight (48) hours, and all such taxes shall bear interest at the rate of one-half of one percent (1/2%) per month, or fractional part of a month, from the date they are due and payable, until paid.

SECTION 6. ADDITIONAL PENALTY FOR REFUSAL OF NEGLECT.

In addition to any other penalties which may be assessed for violation of this Ordinance, if any provider shall neglect or refuse to make any and all report(s) and payment(s) as required by this Ordinance, an additional Three Hundred Fifty Dollars (\$350.00) or ten percent (10%), whichever is larger, of the amount of the tax shall be added to the flat rate due and collected as a penalty of violation of the same.

SECTION 7. EXPRESS AUTHORITY OF BOROUGH TO ESTIMATE TAX FROM PROVIDERS NOT MAKING REPORT.

If any provider shall neglect or refuse to make any and all report(s) and payment(s) of tax required by this instant Ordinance, or, if, as a result of an investigation by the Borough or its representative, a report is found to be incorrect, the Borough or its representative shall estimate the tax due by that provider, and determine the amount due by the provider for taxes, penalties and interest.

SECTION 8. USE OF TAXES, INTEREST AND PENALTIES.

All taxes, interest and penalties received, collected or recovered under the provisions of this instant Ordinance shall be paid into the Borough general fund for the use and benefit of the Borough.

SECTION 9. ADMINISTRATION.

a. The Borough through its Secretary/Treasurer or other designated Borough official, or through its designated third-party collector, shall accept and receive payments of the amusement tax and keep a record thereof showing the amount received from each amusement event, with the date the same was received. When the Borough itself collects the amusement tax, a record will be made showing the amount collected from each amusement event, with the date the same was received.

b. The Borough through its Secretary/Treasurer or other designated Borough official, or through its designated third-party collector, is responsible for the administration and enforcement of this Ordinance, and is hereby empowered to proscribe, adopt and promulgate rules and regulations, that relate to any matter that pertains to the administration and enforcement of this Ordinance.

c. If the Borough Secretary/Treasurer or other designated Borough official, or through its designated third-party collector, is not satisfied with the report and payment of the tax made by any provider under the provisions of this instant Ordinance, the Borough representative is hereby authorized and empowered to make determination of the tax due by that provider, based upon the facts contained in the report, or upon any information within the Borough's possession, or that comes into the Borough's possession, and for this purpose the Borough or its representative is hereby authorized by all amusement event providers to examine the books, paper tickets, ticket stubs and records of any provider taxable under this Ordinance, in order to verify the accuracy of any report or payment made under the provisions of this Ordinance or to ascertain whether the taxes imposed by this Ordinance have been paid.

d. As part of every registration form, the provider will authorize the Borough to have access to the provider's records

e. In the event that the Borough designates a third-party collector of the amusement tax, said collector shall be appointed annually by the Borough to serve until he/she is removed or a successor is appointed. The collector shall receive such compensation for services as the Borough shall determine. The collector shall collect and receive all taxes levied under this instant Ordinance, shall furnish a receipt of their payment and shall keep a detailed record showing the amount received by the collector from each taxpayer under this Ordinance and the date of each receipt. The collector shall give bond to the Borough with a bonding company authorized by law to act as surety in the sum as the Borough by resolution shall direct. The surety bond shall be conditioned on the faithful performance of the collector's official duties.

SECTION 10. EXCESS MONIES COLLECTED.

In the event that tax monies levied and collected under the authority of this Ordinance or any other ordinance adopted under the Local Enabling Act, exceed the limitations imposed by law, that excess shall not be expended during that year, but shall be deposited in a separate account for expenditure in the following fiscal year, or the Borough Council may choose to temporarily suspend the collection of said tax at any time by simple resolution during any year so as to avoid collection of excess tax monies.

SECTION 11. PENALTIES / REMEDIES FOR VIOLATION.

Any person, firm, entity or corporation who shall violate any provision of this Ordinance shall, upon summary conviction thereof, be sentenced to pay a fine not exceeding Five Hundred (\$500.00), plus costs, reasonable attorney's fees and restitution; and, in default of payment of said fine and costs, to a term of imprisonment not to exceed thirty (30) days. The fine imposed by this Ordinance shall be in addition to any other penalty imposed by any other section of this Ordinance.

In addition to any summary criminal charges hereunder, the Borough reserves the right to bring any civil or equitable action to enforce the terms of this Ordinance, including therein reasonable attorney's fees for enforcement.

SECTION 12. REPEAL OF PRIOR ORDINANCES.

Any and all prior Ordinances or portions of prior Ordinances that are in conflict with this Ordinance are hereby repealed to the extent of such conflict. The remaining prior Ordinances and portions of prior Ordinances, not modified herein, shall remain the same.

SECTION 13. SAVINGS CLAUSE.

Should any section, provision or other part of this Ordinance be found to be illegal, unenforceable or void, such shall not affect the remainder hereof, which shall remain fully binding, valid and enforceable, and such section, provision or other part shall be modified to the extent necessary to so conform to the law.

The Borough Council of the Borough of California hereby declares its intention that should any section, provision or other part of this Ordinance be found to be illegal, unenforceable or void, it would have made the foregoing Ordinance without such part or with such part so modified so as to conform to the law.

SECTION 14. EFFECTIVE DATE.

This Ordinance shall become effective May 12, 2013, which is thirty (30) days from adoption in accordance with the Local Tax Enabling Act, 53 P.S. § 6924.101, *et seq.*

DULY presented and adopted at a meeting of the Borough Council of the Borough of California, Washington County, Commonwealth of Pennsylvania, this _____ day of _____, 2013.

ATTEST:

BOROUGH OF CALIFORNIA

Borough Secretary

By: _____
President of Council

EXAMINED AND APPROVED by me this _____ day
of _____, 2013.

BOROUGH OF CALIFORNIA

By: _____
Mayor