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DEPARTMENT OF  
FINANCE

BETTY MASUOKA  
DIRECTOR

CITY OF SACRAMENTO  
CALIFORNIA

October 11, 1989  
FA89145:BM:ldm

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DIVISIONS:  
ACCOUNTING  
BUDGET  
REVENUE  
RISK MANAGEMENT

Budget and Finance Committee  
Sacramento, California

Honorable Members in Session:

SUBJECT: CITY ADMISSIONS TAX

SUMMARY

This report requests that the Budget and Finance Committee recommend that the City Council adopt the attached ordinance that imposes a five percent tax on admission to live entertainment events in the city.

BACKGROUND

On Tuesday, September 12, 1989 the City Council approved, in concept, the imposition of a five percent tax on admission to live entertainment events in the city. The City Council directed staff to present, for Council consideration, an ordinance to impose the tax.

DISCUSSION

The attached ordinance imposes a five percent admissions tax on live entertainment events held on or after July 1, 1990 in the city when the cost of the admission price less the fair market value of meals provided exceeds \$10.00. The \$10.00 minimum admission charge was established for the following reasons.

1. Citizens with low and/or fixed income will have access to affordable entertainment including the admissions priced \$10.00 or less to events with tiered admission charges.
2. Generally, events with admissions priced \$10.00 or less are family oriented entertainment.
3. Many entertainment events with admissions priced \$10.00 or less are staged or promoted by multicultural and/or developing artists groups and such entertainment adds to the ambience and quality of city life.

4. Prior experience indicates that, in most cases, the administrative cost of collection and reporting by the group staging or promoting the event plus the City's administrative costs of collecting the tax would exceed the amount of revenue collected.

The exclusion of the cost of the fair market value of meals from the calculation for the base admission charge permits organizations to conduct nontaxable business meetings featuring a speaker if the entertainment value of the speaker does not exceed \$10.00. For example, a \$15.00 admission charge would be nontaxable for an event where a \$7.50 lunch is served in addition to a speaker presentation. However, a \$15.00 admission charge would be taxable for an event where a \$2.50 snack is served in addition to a speaker presentation.

The City intends to combine the Certificates of Participation (COP) issue to secure an NFL franchise with the FY 1989/90 COP issue which had already been planned to finance previously identified capital projects. The admissions tax ordinance recommended by this report is one of numerous sources of general fund revenues, which in the aggregate demonstrate that there are sufficient revenues to meet the expenditures of the General Fund, including the proposed COP issue. The receipts from the admissions tax would amount to a 2.3% increase in the General Fund. The receipts would be legally available for any valid public purpose and would be subject to the discretionary budget process each year. As with all monies in the General Fund, the receipts would not be limited to payments on the COP issue. Enactment of the admissions tax ordinance is necessary at this time in order to avoid delay in issuing the FY 1989/90 COP, which delay, in the opinion of the City Treasurer, might preclude the City from receiving the financial benefit of the current favorable investment market and the economics of scale from using a single financing issue.

The admissions tax will be imposed for all events held on or after July 1, 1990. The eight month period between the date the tax is adopted and becomes effective is necessary to provide organizations sufficient notice that the tax is due and should be included as a cost of admission. The deferred implementation date also allows organizations to include the tax on season admissions sold in advance.

#### FINANCIAL DATA

The following schedule summarizes the anticipated tax revenue from a five percent admissions tax on live entertainment which includes closed-circuit broadcast of such events for FY 1990/91 through FY 1994/95. The forecast includes the anticipated revenues from imposing the tax on professional football and other events held in a 70,000 seat stadium.

City of Sacramento  
5% Admissions Tax  
Estimated Annual Revenue  
\$ in thousands

<u>Fiscal Year</u>	<u>Estimated Taxable Admissions</u>	<u>Estimated Tax Revenue</u>
1990/91	\$44,721	\$2,236
1991/92	\$80,556	\$4,028
1992/93	\$85,885	\$4,294
1993/94	\$91,584	\$4,579
1994/95	\$97,680	\$4,884

POLICY CONSIDERATIONS

The attached ordinance fulfills the City Council's direction to staff on September 12, 1989 to present an ordinance, for Council consideration, imposing a five percent tax on admission to live entertainment events.

MBE/WBE EFFORTS

Not applicable.

RECOMMENDATION

It is requested that the Budget and Finance Committee recommend that the City Council adopt the attached ordinance that imposes a five percent tax on admission to live entertainment events in the city.

Respectfully submitted,



Betty Masuoka  
Director of Finance

RECOMMENDATION APPROVED:



JACK R. CRIST  
Deputy City Manager

CONTACT PERSON: Betty Masuoka, Director of Finance, 449-5736

Attachment

# ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF \_\_\_\_\_

AN ORDINANCE ADDING ARTICLE VIII TO CHAPTER 41 OF THE SACRAMENTO CITY CODE, RELATING TO IMPOSITION OF AN ADMISSIONS TAX ON LIVE ENTERTAINMENT EVENTS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

## SECTION 1.

Article VIII is hereby added to Chapter 41 of the Sacramento City Code, to read as follows:

### Article VIII. Admissions Tax

#### Sec. 41.90 Purpose.

The City Council of the City of Sacramento hereby declares that the tax imposed by this article is for revenue purposes exclusively. All funds derived from this admissions tax shall be paid to the general fund for the usual and current expenses of the City.

#### Sec. 41.91 Definitions.

When used in this article the following terms shall mean or include:

(a) Person: An individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate trust, business trust, receiver, trustee, syndicate or any other group or combination acting as a unit excepting the United States of America, the State of California, and any political subdivision of either thereof upon which the City is without power to impose the tax herein provided.

(b) Admission: The term "admission" shall mean any charge for the right or privilege to enter and occupy a seat or space in any facility as hereinafter defined. "Admission" shall include season passes or subscriptions but shall not be construed to include complimentary, promotional or otherwise free-of-charge admissions given by any operator or person.

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(c) Facility: The term "facility" shall mean and include any building, structure or place or location wherein or at which a live entertainment event as defined herein can be held.

(d) Live entertainment event: The term "live entertainment event" shall include but shall not be limited to theatrical performances, musical performances, dances, operas, athletic contests, sporting events, lectures, speeches, fairs, circuses, carnivals, menageries, or any other activity conducted in a facility for which admission is charged for the privilege of viewing or listening to such activity. The term "live entertainment event" shall also include the exhibition, by closed-circuit transmission or other technology, of an event which is occurring simultaneously with the exhibition but at another location, which event if viewed live would be a live entertainment event as defined herein, and as to which admission is charged for the privilege to enter and occupy a seat or space in any facility to view or listen to the exhibition.

(e) Operator: Any person conducting, operating, or maintaining in whole or in part as principal, agent, officer, employee or independent contractor any live entertainment event, admission to which is taxable under this article, within the limits of the city; provided, however, that the United States of America, State of California, or any political subdivisions or agencies thereof, the County of Sacramento, the City, school districts or special districts shall not be deemed an operator for purposes of this article.

(f) Patron: Includes any person who pays or on account of whom is paid any charge or admission price for the right or privilege of being admitted to any facility for the purpose of attending any live entertainment event thereat. The term "patron" shall not include:

(1) a bona fide employee of the person or operator conducting the event when admission to a facility is incident to said employee's duties, and

(2) an employee or official of the State of California, or any agency, instrumentally or department thereof, the City or United States government, whose official duty makes it necessary to gain admission to any live entertainment event.

(g) Tax: The tax imposed by this article.

(h) Director: Director shall include the director of finance, or the director's designee.

(i) City: The City of Sacramento.

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(j) Council: The council of the City of Sacramento.

Sec. 41.92 Imposition of tax.

There is hereby imposed a tax in an amount equal to five percent of the entire price of the admission for the privilege of being admitted to any live entertainment event held in a facility on or after July 1, 1990, where the admission charge is more than \$10.00. Such tax constitutes a debt owed by the patron to the City which is extinguished only by payment to the operator or to the City and is in addition to all other licenses, permits, taxes or fees provided for by the laws of the City.

Anytime a live entertainment event includes taxable and non-taxable activity within the meaning of this article, the amount charged, irrespective of additional goods and/or services given or rendered in consideration for the payment thereof, shall be deemed the price of admission for the purpose of this tax; provided, however, that if the operator can demonstrate to the director by a preponderance of the evidence that the excess of the highest admission charge over the fair market value of any food served as part of the live entertainment event at no additional charge is \$10.00 or less, then no tax shall be payable.

Anytime payment of a single admission charge grants the privilege of being admitted to facilities both within and outside the City, the entire amount charged shall be deemed subject to the tax imposed hereby.

Anytime a patron purchases a season pass or subscription, the per-event admission charge shall be determined by dividing the price of the season pass or subscription by the number of events to which the patron is entitled to be admitted; provided, however, that for the purpose of this determination, two or more events occurring on the same day shall be deemed to constitute only one event.

Sec. 41.93 Time of payment.

The patron shall pay the tax to the operator at the time the admission is purchased. If for any reason the tax due is not paid to the operator, the director may require that such tax be paid directly by the patron to the director.

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Sec. 41.94 Operator's duties.

Each operator shall collect the tax imposed by this article to the same extent and at the same time any patron purchases an admission. The amount of the tax shall be separately stated from the price of the admission. Every operator shall hold the tax imposed by section 41.92 in trust until the same is paid to the director as hereinafter provided.

Sec. 41.95 Reserved.

Sec. 41.96 Permit required.

Prior to conducting any live entertainment event within the limits of the city, any operator of such event shall obtain an Admissions Tax Collection Permit from the director to be at all times posted on the premises, or on file with the manager of the facility.

Sec. 41.97 Contents of permit.

The permit issued pursuant to section 41.96 shall include, among other things, the following:

- (a) the name of the operator,
- (b) address of the facility,
- (c) date upon which said permit was issued, and

(d) "This Admissions Tax Collection Permit signifies that the person named on the face hereof has fulfilled the requirements of the Admissions Tax Ordinance, Sacramento City Code section 41.90 et seq. by registering with the director for the purpose of collecting from patrons the admissions tax and remitting said tax to the director. This permit does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner."

Sec. 41.98 Term of permit.

All permits issued pursuant to section 41.96 shall be valid for a period of up to one year and may be renewed successively thereafter for periods of up to three years.

Sec. 41.99 Renewal of permit.

The director shall issue or renew a permit under this article except upon a finding that:

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(a) the applicant for such permit or renewal has willfully failed to remit or has expressed an intent to fail to remit the tax imposed by this article, or

(b) the applicant for such permit or renewal has failed to supply the director with any information requested pursuant to section 41.116.

Sec. 41.100 Accounting and return.

Except as otherwise provided herein, each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the director, make a return to the director on forms provided by the director, of the total admissions collected and received and the amount of tax collected from patrons. At the time the return is filed, the full amount of the tax collected shall be remitted to the director. Those amounts not paid shall immediately become delinquent. The director may establish shorter reporting periods for any permit holder if the director deems it necessary in order to insure collection of the tax and the director may require further information to be included in the return. Return and payments are due and payable immediately upon cessation of business for any reason. For the purposes of this article, payment and return are deemed to have been made when the director is in receipt thereof.

Sec. 41.101 Same--Season passes, subscription.

In the case of taxable admissions which are made upon season passes, subscriptions or other pass books entitling the holder thereof to admission on all or any of the days during which any live entertainment event is held, accounting and return shall be based upon the potential rights of the holder thereof to admission thereunder rather than on the basis of the actual admissions.

Sec. 41.102 Collection security.

The director, whenever the director deems it necessary to insure faithful compliance with this article, may require any operator subject to the provisions of this article to deposit with the director security for payment of taxes. The amount of the security shall be fixed by the director but shall not be greater than twice the estimated average liability for the period for which accounting and return are required under section 41.100. Such security may be in the form of cash, cashier's check made payable to the City, certified check made payable to the City, or a surety bond inuring to the benefit of the City, which bond shall be executed by a corporation authorized to do business in the State of California.

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Sec. 41.103 Penalty—Original delinquency.

Any operator who fails to remit any tax imposed by this article within the time required shall pay a penalty of ten percent of the amount of the tax in addition to the amount of the tax.

Sec. 41.104 Same—Continued delinquency.

Any operator who fails to remit any delinquent remittance on or before a period of thirty days following the date on which the remittance first became delinquent shall pay an additional delinquency penalty of ten percent of the amount of the tax and for each thirty day period or fraction thereof of delinquency thereafter. The total delinquency shall not exceed fifty percent of the tax imposed.

Sec. 41.105 Same—Fraud.

If the director determines that the nonpayment of any remittance due under this article is due to fraud, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to the penalties stated in sections 41.103 and 41.104 of this article.

Sec. 41.106 Same—Interest.

In addition to the penalties imposed, any operator who fails to remit any tax imposed by this article shall pay interest at the rate of one percent per month or fraction thereof on the amount of the tax exclusive of penalties and interest from the date on which the remittance first became delinquent until paid.

Sec. 41.107 Penalties merged with tax.

Every penalty imposed and such interest as accrues under the provisions of this article shall become a part of the tax herein required to be paid.

Sec. 41.108 Failure to collect and report tax; determination of tax due by director.

If any operator required to collect and remit the tax imposed by this article fails to file a return and a remittance, the director shall proceed in such manner as the director may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the director shall procure such facts and information as the director is able to obtain upon which to base the assessment of any tax imposed by this article and payable by any operator who has failed or refused to collect

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the same and to make such report and remittance, the director shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this article.

Sec. 41.109 Deficiency determination; recomputation of tax; authority to make.

If the director has reasonable cause to believe the return or returns of the amount of tax required to be paid to the City by any operator under this article are erroneous, the director may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within the director's possession or that may come into the director's possession. One or more deficiency determinations may be made of the amount due for one or more periods.

Sec. 41.110 Offsetting of overpayment.

In making a determination pursuant to sections 41.108 and 41.109, the director may offset any overpayments for a period or periods together with interest on the overpayments, against underpayments for another period or periods, against penalties, and against the interest on underpayments. Interest on overpayments and underpayments shall be computed in the manner set forth in section 41.106.

Sec. 41.111 Notice of director determination.

The director shall give to the operator written notice of any determinations made pursuant to sections 41.108 and 41.109 of this article. This notice may be served personally or by mail. Service by mail shall be addressed to the operator at the operator's address as it appears in the records of the director. In case of service by mail of any notice required under this article, the service is complete at the time of deposit in the United States Mail, first class postage prepaid. Failure of the operator to receive mailed notice shall not relieve the operator of any obligations.

Sec. 41.112 Hearing—Director determination.

Any operator served pursuant to section 41.111 of this article may within fifteen days after service or mailing of such notice, make application in writing to the director for a hearing to review the amounts determined and assessed under sections 41.108 and 41.109. If application by the operator for a hearing is not made within the time prescribed, the tax, interest, and penalties, if any, determined by the director shall become final and conclusive and immediately due.

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Sec. 41.113 Same—Interest and penalty.

Any operator against whom interest or penalties have been assessed pursuant to sections 41.103 through 41.107 of this article may make an application in writing for a hearing with the director to review the amounts of tax owing and accrued penalties and interest thereon within thirty days after notice of delinquency.

Sec. 41.114 Same—Order to show cause.

If such application is made the director shall give not less than five days written notice in the manner prescribed by section 41.111 to the operator to show cause at a time and place fixed in such notice why such amount specified therein should not be assessed including such tax, interest and penalties, if any. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing the director shall determine the proper tax together with interest and penalties thereon to be remitted and shall thereafter give written notice thereof to the operator in the manner prescribed in section 41.111. The amount determined to be due shall be payable after fifteen days unless an appeal is taken as provided in section 41.115.

Sec. 41.115 Appeal.

Any operator aggrieved by any decision of the director with respect to the amount of such tax or interest and penalties if any or any determination made pursuant to section 41.99 of this article may appeal to the council by filing a notice of appeal with the city clerk within fifteen days of the serving or mailing of the determination of tax due or within fifteen days of the denial of a permit pursuant to section 41.99. The council shall fix a time and place for hearing such appeal, and the city clerk shall give notice in writing to such operator at the operator's last known place of address. The council may determine to appoint a hearing examiner pursuant to sections 2.44 et seq. of the Sacramento City Code. The decision of the council or hearing examiner shall be final and conclusive and shall be served upon the appellant in the manner prescribed by section 41.111. Any amounts determined shall be due and payable upon the service of notice.

Sec. 41.116 Records.

Every operator liable for the collection and payment to the City of any tax imposed by this article shall keep and preserve all records as may be necessary to determine the amount of such tax as the operator may have been liable for the collection of and payment to the City.

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Sec. 41.117 Same—Examination by director.

The director or any person authorized in writing by the director may examine the books, papers, records and equipment of any operator liable for the tax imposed by this article and may investigate the character of the business of the operator in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid.

Sec. 41.118 Refunds—General.

Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the City under this article it may be refunded as provided in sections 41.119, 41.120 and 41.121 of this article; provided, that a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the director within one year of the date of payment. The claim shall be on forms furnished by the director.

Sec. 41.119 Same—Grounds.

An operator may claim a refund or take as credit against taxes collected and remitted any amount overpaid, paid more than once or erroneously or illegally collected or received.

Sec. 41.120 Same—Patron must receive.

Neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the patron or credited to admission subsequently payable by the patron to the operator.

Sec. 41.121 Same—Patron may claim.

A patron may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the City by filing a claim in the manner provided in section 41.118 of this article, but only when the tax was paid by the patron directly to the director or when the patron, having paid the tax to the operator, establishes to the satisfaction of the director that the patron has been unable to obtain a refund from the operator who collected the tax.

Sec. 41.122 Same--Limitation.

No refund shall be paid under the provisions of this article unless the claimant establishes a right thereto by written records showing entitlement thereto.

Sec. 41.123 Actions to collect.

Any tax required to be paid by any patron under the provisions of this article shall be deemed a debt owed by the patron to the City. Any such tax collected by an operator which has not been paid to the City shall be deemed a debt owed by the operator to the City. Any person owing money to the City under the provisions of this article shall be liable to an action brought in the name of the City for the recovery of such amount.

Sec. 41.124 Violations.

Any person violating any of the provisions of this article shall be guilty of an infraction.

Any operator or other person who fails or refuses to register as required herein, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the director, or who renders a false or fraudulent return or claim, is guilty of an infraction. Any person required to make, render, sign or verify any report or claim who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this article to be made, is guilty of an infraction.

The penalties provided herein are cumulative and supplemental to those otherwise provided by law.

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Sec. 41.125 Use of Tax Receipts.

All monies, including taxes and penalties, collected by the director pursuant to this article shall be paid into the general fund of the treasury of the City for the usual and current expenses of the City, including but not limited to meeting operating expenses, including wage rates and fringe benefits, purchasing or leasing supplies, equipment or materials, and meeting financial reserve needs and requirements.

DATE PASSED FOR PUBLICATION:

DATE ENACTED:

DATE EFFECTIVE:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

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