

ORDINANCE NUMBER 22 - 17

**AN ORDINANCE OF THE VILLAGE OF EAST DUNDEE, COOK
AND KANE COUNTIES, ILLINOIS, AMENDING THE VILLAGE OF EAST DUNDEE
VILLAGE CODE REGARDING THE AMUSEMENT TAX**

WHEREAS, the Village of East Dundee (“Village”) is a home rule unit of local government pursuant to Section 6 of Article VII of the Constitution of the State of Illinois, and has the authority to exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, amending the Village of East Dundee Village Code (“Village Code”) amusement tax to include digital streaming services best serves the public’s health, safety and welfare;

NOW THEREFORE BE IT ORDAINED BY THE VILLAGE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS, AS FOLLOWS:

SECTION 1: Incorporation. That the recitals above shall be and are hereby incorporated in this Section 1 as if restated herein.

SECTION 2: Amendment. That the Village Code is hereby amended as follows, with additions underlined:

Section 35.05 of the Village Code, titled “Amusement Tax” is hereby amended and shall read as follows, with additions underlined and deletions struck through:

(A) For the purpose of this Section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AMUSEMENT. Any event, exhibition, performance, presentation, or show for amusement purposes which is shown, exhibited, staged or conducted in the Village, including, but not limited to the following:

(1) Any theatrical dramatic or musical performance, circus, rodeo, animal act, athletic contest, sport or similar exhibition or activity in which an attendee participates, and includes, without being limited thereto, animal and flower shows, skating, dancing, swimming or other water activity, racing or riding on animals or vehicles or other devices or equipment, baseball, basketball, softball, football, tennis, golf, hockey, track and field games, bowling, billiard and pool mines, motion picture film projection;

(2) Any video streaming, audio streaming or remotely-accessed online games made available to persons on a rental or subscription basis, but not transactions where the person pays for the rights of permanent use, where the right of access is purchased by any person with a billing address in the Village of East Dundee; and

(3) Any other activity, exhibition, performance, participation, and entertainment not herein named, shown, exhibited, staged, or conducted in the Village, and for which an admission fee or other charge to the persons, spectators or participants is made.

PERSON. Any person, trustee, receiver, administrator, executor, conservator, assignee, trust in perpetuity, trust, estate, firm, co-partnership, joint venture, club, company, business trust, domestic or foreign corporation, association, syndicate, society or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise.

(B) (1) There is hereby levied and imposed a tax upon every person who pays a charge for admission to, or for the right to access, an amusement ~~located within the corporate limits of the Village,~~ at the rate tax of 5% of each admission fee or charge at the place, exclusive of state or federal taxes.

(2) The tax levied by this Section shall be collected from the person paying such at the time the admission fee or charge is collected, the person hereinafter being referred to as the “consumer.”

(3) The ultimate incidence of and liability for payment of the tax shall be borne by the consumer who seeks participation, access or admission to any amusement. It shall be the duty of every person receiving an admission fee or charge upon which a tax is levied under this Section to secure the tax from the consumer, to act as trustee for and on account of the Village and to pay over to the Village Treasurer the tax under procedures prescribed by the Village Treasurer or as otherwise provided in this Section, the person being referred to herein as the “taxpayer.”

(4) The tax hereby levied and imposed shall not apply to binding contractual commitments entered in by the

taxpayer prior to the effective date of this Section. It shall be the obligation of the taxpayer to provide documentation supporting this claim to the non-applicability of the tax to the pre-existing obligations.

(5) In the case of amusements that are delivered electronically to mobile devices, such as video streaming, audio streaming and / or online games, the requirements of the Illinois Mobile Telecommunications Source Conformity Act, 35 ILCS 638/1, et seq., as amended, shall be utilized for purposes of determining which customers and charges are subject to the tax imposed by this Section.

(C) The tax described in division (B) above shall not be applicable to any amusement shown, exhibited or staged by:

(1) A not-for-profit organization which is exempt from taxation pursuant to Section 501 of the Internal Revenue Code of 1986, as amended;

(2) Any school district;

(3) Any governmental entity;

(4) Any entity that charges a fee for admission to an amusement on less than 50% of the days the entity is open and operating its business during each quarter of the calendar year; and

(5) Any entity that generates a majority of its revenue through charging an admission fee for an instructional class or the participation by a person in the creation of any type of artwork.

(D) (1) The Village Treasurer is hereby designated as the administration and enforcement officer of the tax hereby imposed on behalf of the Village. It shall be the responsibility and duty of the Treasurer to collect all amounts due the Village from the taxpayer. A sworn monthly amusement tax return, on a calendar month basis, shall be filed by each taxpayer with the Treasurer, on forms prescribed by him or her, showing all receipts from all tickets or admissions sold during the preceding month. The returns are to be filed within 20 days after the end of the month covered by the return, with the tax herein imposed due and owing as of the

twentieth day of the month following the month covered by the return.

(2) Each return shall be accompanied by payment to the Village of all taxes due and owing for the month covered by the return.

(3) (a) During the normal business hours of any taxpayer, the Village Treasurer or any person certified by him or her as his or her deputy or representative may enter the premises of the taxpayer, or remotely inspect the books and records of the taxpayer, upon reasonable notice, for the purposes of inspecting and examining its books and records for the proper administration of this Section, and for the enforcement of the collection of the tax hereby imposed. It is unlawful for any person to prevent, hinder or interfere with the Treasurer or his or her duly authorized deputy or representative in the discharge of his or her duties hereunder.

(b) It shall be the duty of every taxpayer to keep accurate and complete books and records and to keep same at the taxpayer's principle place of business ~~within the Village~~, containing all information necessary for the collection of the tax hereby imposed, to which the Treasurer or his or her duly authorized deputy or representative shall, at all times, have full access, in-person or remotely, which records shall include a daily sheet showing:

1. All tickets or admissions sold, and amusement fees and charges collected, during the immediately preceding day and the then current day; and

2. The actual admission or ticket receipts collected for the dates in question.

(c) In the event that the inspection and examination by the Treasurer discloses a discrepancy in excess of 5% from the information furnished by the taxpayer, the cost of the Village's inspection and examination shall be borne by the taxpayer.

(E) (1) Whenever any taxpayer shall fail to pay any taxes herein provided, the Village Attorney shall, upon request of the Village President or the Village Administrator, bring or cause to be brought an action to enforce the payment of the tax on behalf of the Village in any court of competent jurisdiction. If the Village President, after a hearing held by or for him or her, shall find that any taxpayer has willfully evaded his or her responsibility to pay the tax imposed by this Section, he or she may suspend or revoke all Village licenses, including, but not limited to any liquor license issued under the municipal code, held by the person. Hearings to suspend or revoke a Village license shall be held as provided in Village ordinances creating and administering the licenses or as may be established by the Corporate Authorities from time to time.

(2) Any suspension or conviction resulting from the hearing shall not relieve or discharge any civil liability for non-payment of the tax due.

(F) (1) In the event of a failure by any taxpayer to pay to the Village Treasurer the tax required hereunder within ten days after the same shall be due, interest shall accumulate and be due upon the tax at the rate of 1% per month commencing as of the first day of the month following the month for which the tax was to have been collected. In addition, a penalty of 10% of the tax and interest due shall be assessed and collected against any taxpayer who shall fail to pay the tax imposed by this Section.

(2) In addition to the provision of this Section, any taxpayer found guilty in a court of competent jurisdiction of violating, disobeying, omitting, neglecting or refusing to comply with or resisting or opposing the enforcement of any provision of this Section, upon ~~conviction~~ a finding of liability therefor ~~thereof~~, shall be punished by a fine. Each day any violation of any provision of this Section shall continue to exist shall constitute a separate offense.

(G) It is unlawful for any person to show, exhibit, stage produce, present or conduct any amusement without payment of the tax accordance with the terms of this Section, except for amusements as described in Subsection ~~division~~ (C) above.

(H) The obligation to pay the tax, as herein described, shall commence for each and every amusement showed, exhibited,

~~staged produced, presented or conducted or otherwise shown~~
within the Village.

SECTION 3: Continuation. That all provisions of the Village Code not amended herein shall remain in full force and effect.

SECTION 4: Severability. That if any Section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such Section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 5: Repeal. That all ordinances, resolutions, motions or parts thereof in conflict with this Ordinance shall be and the same are hereby repealed.

SECTION 6: Effect. That this Ordinance shall be in full force and effect upon its adoption, approval and publication in pamphlet form as provided by law, except that the tax levied in this Ordinance shall take effect on July 1, 2022.

ADOPTED this 18th day of April, 2022 pursuant to a roll call vote as follows:

AYES: Mahony, Brittin, Saviano and Sauder

NAYES: Kunze and Treiber

ABSENT: None

APPROVED by me this 18th day of April, 2022.



Jeffrey Lynam, Village President

ATTEST:

Katherine Diehl
Katherine Diehl, Village Clerk

Published in pamphlet form this 22nd day of April, 2022, under the authority of the Village President and Board of Trustees.

Recorded in the Village records on April 22, 2022.