



# **CITY OF PITTSBURGH**

## **NON-RESIDENT SPORTS FACILITY USAGE FEE**

### **REGULATIONS**

Issued Pursuant to the  
City of Pittsburgh Code  
Title II  
Article X, Chapter 271

Effective January 1, 2005

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# **NON-RESIDENT SPORTS FACILITY USAGE FEE REGULATIONS**

## **ARTICLE I GENERAL PROVISIONS**

### **SECTION 101 – DEFINITIONS**

The following words and phrases when used in these regulations shall have the meaning ascribed to them in this Section, except where the context clearly indicates a different meaning:

**CITY** – the City of Pittsburgh.

**CITY CODE** – City Code, Title II, Article X, Chapter 271

**CURRENT YEAR** – the calendar year for which the usage fee is imposed.

**DOMICILE** – the place where one lives and has a permanent home and to which one has the intention of returning whenever one is absent. Actual residence is not necessarily domicile, for domicile is the fixed place of abode which, in the intention of the person, is permanent rather than transitory. Domicile is the voluntarily fixed place of habitation of a person, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some event occurs to induce him to adopt some other permanent home. In the case of business or association, the domicile is that place considered as the center of business affairs and the place from which its functions are discharged.

**EARNED INCOME** – salaries, wages, commissions, bonuses, incentive payments, fees, tips and all other forms of compensation, whether based on profits or otherwise, earned by a person or a personal representative for services rendered, whether directly or through an agent, and whether in cash or in property; not including, however, wages or compensation paid to persons on active military service, periodic payments for sickness and disability other than regular wages received during a period of sickness or disability or payments arising under workers' compensation acts, occupational disease acts and similar legislation.

**EMPLOYER** – a person, partnership, association, corporation, institution, governmental body or unit or agency, or any other entity employing one or more persons for a salary, wage, commission, 1099 or other compensation.

**NONRESIDENT** – a person domiciled outside the City.

**PERSON** – a corporation, partnership, business trust, association, estate, trust, foundation or natural person. Whenever used in any provision prescribing a fine or penalty the word "person" as applied to partnerships, shall mean the partners thereof, and as applied to corporations and unincorporated associations, shall mean the officers thereof.

**RESIDENT** – a person domiciled within the City.

**PUBLICLY FUNDED FACILITY** – any sports stadium or arena in the City which has been constructed or maintained, in whole or in part, through the use of public funds, including but not limited to, PNC Park, Heinz Field, Mellon Arena, David L. Lawrence Convention Center and the Petersen Events Center.

**TREASURER** – for purposes of these regulations, refers to the Director and/or the Department of Finance. The Deputy Director of Finance serves as City Treasurer.

**USAGE FEE** – non-resident sports facility usage fee.

**USER** – a person required hereunder to file a return and pay the usage fee.

### **SECTION 102 – WHO MUST FILE A RETURN**

- a. Every employer who employs one or more non-resident employees who earn compensation as the result of services performed within the City, whose services require the use of a publicly funded facility to engage in an athletic event for which a non-resident receives remuneration, is required to withhold and remit to the Treasurer the usage fee. In the event the employer fails, refuses, or neglects to withhold or remit the usage fee, or any portion thereof, the employer shall be personally liable for payment of the usage fee and any applicable penalty.
- b. Any other user who engages in an event held at a publicly funded facility within the City, for which the user receives compensation, such as entertainers or performers, who are not residents of the City, are also subject to the usage fee.

### **SECTION 103 – OBLIGATIONS OF OWNERS, OPERATORS, TENANT AND/OR PROMOTER**

It shall be the obligation of the of the owners, operators, tenant, promoter or other person which schedules, conducts and/or sponsors an event at a publicly funded facility to provide to the employers of all participants, at least thirty (30) days in advance of an event, a registration or any other forms required to be filed with the Treasurer. In addition, for each such event, the owner, operator, tenant, promoter or other person shall provide to the Treasurer documentation which verifies it's compliance with this requirement, such as a copy of a cover letter to the employers forwarding copies of all forms required to be filed with the Treasurer.

## **ARTICLE II IMPOSITION OF USAGE FEE**

### **SECTION 201 – TIME FRAME**

The usage fee imposed under the City Code, Title II, Article X, Chapter 271 and authorized by the Local Tax Enabling Act as amended by Act 222 of 2004, shall be applicable to the calendar year beginning January 1 and ending December 31.

### **SECTION 202 – IMPOSITION AND RATE**

The City Code, Title II, Article X, Chapter 271 imposes a usage fee equal to three percent (3%) of earned income upon each non-resident who uses a publicly funded facility to engage in an athletic event or otherwise render a performance for which a non-resident

receives remuneration. The usage fee is a percentage of the individual's income attributable to such individual's usage of the facility.

## **SECTION 203 – COMPUTATION OF USAGE FEE**

### **a. ALLOCATION OF WAGES FOR PROFESSIONAL SPORTS TEAMS' PLAYERS**

Any player on a professional sports team, who is not a Pittsburgh resident, who engages in an athletic event that is held in a publicly funded facility within the City of Pittsburgh, and for which they are compensated, shall be subject to the usage fee. These include players on the professional, or major league level. Those on the practice squad or the minor league level will be categorized as "other employees" of a professional sports team. The compensation attributable to Pittsburgh is determined by using a ratio of games in Pittsburgh to the total games played by the team while the player is on the roster. Exhibition games, pre-season games, regular season, and post-season games are to be included. The calculation to determine the amount of the usage fee due for players, commonly known as the "duty day" method, shall be:

**Gross Wages x (Total duty days in Pittsburgh / Total duty days) x .03**

### **b. ALLOCATION OF WAGES FOR OTHER EMPLOYEES OF A PROFESSIONAL SPORTS TEAM**

Any employee of a professional sports team, who is not a Pittsburgh resident and is not a professional player, who travels to Pittsburgh with the team, to engage in an event held in a publicly funded facility within the City of Pittsburgh, and for which they are compensated, shall be subject to the usage fee. These include, but are not limited to, players of the minor league or practice squad, coaches, trainers, medical staff, equipment managers, scouts, and announcers paid by the team. The compensation attributable to Pittsburgh is determined by using a ratio of days spent in Pittsburgh to the total days worked in the year. The calculation to determine the amount of the usage fee due for other employees of a professional sports team shall be:

**Gross Wages x (Total days in Pittsburgh / Total work days) x .03**

### **c. ALLOCATION OF WAGES FOR NON-RESIDENT ENTERTAINERS, PERFORMERS, EMPLOYEES OF AMATEUR SPORTS AND OTHER USERS**

Any other person who engages in an event held in a publicly funded facility within Pittsburgh, for which compensation is earned, such as entertainers, performers or employees of amateur sports who are not residents of Pittsburgh, are also subject to the usage fee. The gross compensation attributable to Pittsburgh is determined by the specific amount received for each performance. A schedule should be attached showing the gross earned income, date of performance, and usage fee required to be paid.

d. Whenever the Treasurer shall determine, either upon his own initiative, or upon application by the user, that an apportionment is appropriate for a particular user, a class of users, or for the City, the Treasurer may authorize use of a method of apportionment with due regard to the nature of the business concerned.

## ARTICLE III PAYMENT OF USAGE FEE

### SECTION 301 – COLLECTION AT SOURCE

- a. Every employer not registered with the City shall, within 15 days after first becoming an employer, register with the Treasurer the employer's name, address and such other information as the Treasurer may require. Every return shall be made upon a form authorized or furnished by the Treasurer. Every person making a return shall certify the correctness thereof.
- b. Every employer who employs one or more non-residents who earn compensation as the result of services performed within the City, which services require the use of a publicly funded facility, shall deduct monthly, or more often than monthly, the usage fee imposed by this chapter based on the gross compensation paid or payable to any non-resident employee, and shall, on or before April 30 of the current year, July 31 of the current year, October 31 of the current year, and January 31 of the succeeding year, file a return on a form prescribed by the Treasurer and pay to the Treasurer the amount of usage fees deducted during the preceding three month periods ending March 31 of the current year, June 30 of the current year, September 30 of the current year and December 31 of the current year, respectively.
- c. **The usage fee should not be reported in the local tax box on the W-2 form, because this is a fee, not a tax.**
- d. Those individuals liable for the usage fee shall be exempt from any earned income tax imposed by a City of the second class pursuant to this act and any such tax imposed under Section 652.1 of the Act of March 10, 1949 (P.L. 30, No. 14), known as the "Public School Code of 1949".

### SECTION 302 – DIRECT PAYMENT

The failure of any employer to deduct the usage fee as prescribed in Section 271.03 shall not relieve any person from the duty to file a return and pay the usage fee directly to the Treasurer. This section shall not be construed to exempt any employer from the duty of collecting the fee at source from employees and paying the amount collected to the Treasurer.

**ARTICLE IV**  
**ADMINISTRATION AND ENFORCEMENT**

**SECTION 401 – POWERS AND DUTIES OF TREASURER (DIRECTOR)**

- a. It shall be the duty of the Treasurer to collect and receive the usage fees, fines, and penalties imposed by the City Code. It shall also be the duty of the Treasurer to keep a record showing the date of such receipt.
- b. The Treasurer is charged with the administration and enforcement of the provisions of the City Code, and is empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of the City Code, including provisions for the reexamination and corrections of declarations and returns, and of payments alleged or found to be incorrect, or as to which an overpayment is claimed or found to have occurred, and to prescribe forms necessary for the administration of the City Code.
- c. The Treasurer is authorized to issue a ruling upon written request of a user.

**SECTION 402 – EXAMINATION OF BOOKS AND RECORDS**

- a. Agents designated by the Treasurer are hereby authorized to examine the books, papers and records of any employer or supposed employer, in order to verify the accuracy of any declaration or return, or if no declaration or return was filed, to ascertain the amount due. Every employer or supposed employer and every person subject to the provisions of the chapter is hereby directed and required to give to the Treasurer, or to any agent designated by him, the means, facilities and opportunity for such examinations and investigations, as are hereby authorized.
- b. If records are not available in the City to support the returns which were filed or which should have been filed, the employer will be required to make them available to the Treasurer either by producing them in a City location or by paying for the expenses incurred by the Treasurer in traveling to the place where the records are regularly kept.
- c. Any information gained by the Treasurer, the Treasurer's agents, or by any other official or agent of the City, as a result of any declarations, returns, investigations, hearings or verifications required or authorized by the City Code, shall be confidential except for official purposes and shall not be divulged except in accordance with a proper judicial order, or as otherwise provided by law.

**SECTION 403 – RECORDS TO BE KEPT BY THE EMPLOYER**

Employers subject to the City Code are required to keep such records as will enable the filing of true and accurate returns of the usage fee and such records shall be preserved for a period of not less than three (3) years from the filing date or due date whichever is later in order to enable the Treasurer or any agent designated by him to verify the correctness of the declarations or returns filed.

## **SECTION 404 – AUDITS**

If, as a result of an examination conducted by the Treasurer, a return is found to be incorrect, the Treasurer is authorized to issue a deficiency notice and collect any underpayments of the usage fee. If no return has been filed and an amount is found to be due, the amount may be billed and collected with or without the formality of obtaining a return. Notices of deficiency (i.e., where the return has been filed, but found to be deficient) shall include deficiencies for up to three (3) years prior to the date when the notice is issued. Where no return was filed, there shall be no limit to the period of notification of deficiency.

## **ARTICLE V**

### **SUITS FOR COLLECTIONS, VIOLATIONS, FINES & PENALTY**

#### **SECTION 501 – REMEDIES NOT MUTUALLY EXCLUSIVE**

The remedies provided in Section 502 and Section 505 are not mutually exclusive. The utilization by the Treasurer of one remedy does not preclude utilization of the other. Moreover, use of either or both of the remedies provided in these Sections does not preclude the use by the City of any other legal or administrative procedure which can bring about compliance by the user with the provisions of Chapter 271 of the Pittsburgh Code and these regulations.

#### **SECTION 502 – SUITS FOR RECOVERY OF UNPAID USAGE FEES**

The Treasurer may sue in the name of the City, in law or in equity, for the recovery of those fees due and unpaid under the provisions of the usage fee, to compel the production of records or to enforce any other provisions of the law.

#### **SECTION 503 - LIMITATIONS**

- a. The following periods of limitations shall apply to suits for collection of usage fees.
  1. When a return has been filed but no usage fee paid, any suit brought to recover the usage fee due and unpaid shall be filed within three (3) years after the return was due or filed, whichever is later. Where no return was filed, there shall be no limit to file suit for the collection of usage fees.
  2. In the case of a notice of deficiency, suit shall be filed within three (3) years after the notification has been made.
- b. The limitations set forth in paragraph (a) should not prevent the institution of a suit for the collection of any usage fee due or determined to be due in the following cases:
  1. When no return was filed, there is no limitation.
  2. When the return is fraudulent, there is no limitation.
  3. When there is an understatement of liability of twenty-five percent (25%) or more, and not due to fraud, suit must be begun within six (6) years.
- c. A return filed before the due date is deemed to be filed on the due date.

## **SECTION 504 – PENALTY**

- a. If for any reason the usage fee is not paid when due, penalty at the rate of one percent (1%) per month on the amount of the usage fee during the period in which the usage fee remains unpaid shall be added to the usage fee.
- b. On any additional usage fee determined to be due as a result of a deficiency notice, penalty will be assessed from the day the usage fee should have been paid to the date of payment. Penalty is calculated as described above in Section 504(a).
- c. Where suit is brought for the recovery of such usage fee, the person liable therefore shall, in addition, be liable for the costs of collection and the penalties herein imposed. Once due and owing, penalty becomes part of the usage fee and shall be collected as such. A person's belief that no usage fee is due and owing, or the failure of any person to receive or obtain the forms required for making the returns required under the City Code is not a valid defense to the imposition of penalties herein for violation. Good faith shall not be a defense to the imposition of penalty.

## **SECTION 505 – FINES AND PENALTIES FOR VIOLATION OF APPLICABLE PROVISIONS OF TITLE TWO, PITTSBURGH CODE**

- a. Violations – No person shall:
  1. Fail, neglect, or refuse to make any declaration or file a return required under the City Code.
  2. Refuse to permit the Treasurer or the Treasurer's designee to examine the books, records or accounts of any business, taxable or otherwise, to determine liability.
  3. Make any incomplete, false or fraudulent return or attempt to do anything to avoid full disclosure of the amount of usage fee due or to avoid payment in whole or in part, of the usage fee.
  4. Divulge information, which is confidential under Chapter 201.06 of the Code.
  5. Fail to make any payment when it is due.
- b. Pursuant to the Local Tax Enabling Act as amended by Act 222 of 2004, in addition to any other penalties or enforcement proceedings provided for by ordinance for the collection and enforcement of fees:
  1. Any employer who willfully makes any false or untrue statement on the employer's return shall be guilty of a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not more than two thousand dollars (\$2,000) or to a term of imprisonment of not more than two years, or both;
  2. Any employer who willfully fails or refuses to file a return required by this chapter shall be guilty of a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than one thousand

dollars (\$1,000) or to a term of imprisonment of not more than one year, or both; and

3. Any person who willfully fails or refuses to appear before the Treasurer or his agent in person with the employer's books, records or accounts for examination when required under the provisions of Title Two of the City Code to do so, or who willfully refuses to permit inspection of the books, records or accounts of any employer in the person's custody or control when the right to make such inspection by the Treasurer or his/her agent is requested, shall be guilty of a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than five hundred dollars (\$500) or to a term of imprisonment of not more than six months, or both. When a person has been adjudged in violation of the applicable provisions of this Code by a member of the minor judiciary, the person shall be fined not more than five hundred (\$500.00) dollars and costs for each offense, and in default of payment thereof may be imprisoned for not more than fifty days.
4. The fines and terms of imprisonment, per the Local Tax Enabling Act as amended, imposed under this Section shall be in addition to any other relief granted to the City of Pittsburgh of a monetary nature under the provisions of this Article.
5. Each and every day that the violation continues shall constitute a separate offense for which a fine can be imposed.
6. Anyone found to be guilty of violations found in Section 505(b) shall be denied permission for future use of the publicly funded facility.

## **ARTICLE VI**

### **SAVINGS CLAUSE**

#### **SECTION 601 – SAVINGS CLAUSE AND SEVERABILITY**

- a. If a final decision of a court of competent jurisdiction holds any provision of these regulations, or the application of any provision to any circumstances, to be illegal or unconstitutional, the other provisions in these regulations, or the application of such provision to other circumstances, shall remain in full force and effect. The intent of the Treasurer is that the provisions of these regulations shall be severable and that they would have been adopted if any such illegal or unconstitutional provisions had not been included herein.
- b. Should a court of competent jurisdiction determine this provision to be invalid for any reason, persons subject to the non-resident sports facility usage fee shall not be exempt from any previously applicable earned income tax.