

ORDINANCE NO. 2019-42

AN ORDINANCE AMENDING CHAPTER 4 OF THE CITY CODE RELATING TO TAXES  
ON SALES, HOTELS, FOOD AND BEVERAGES, AND ADMISSIONS

The City Council of the City of Bloomington, Minnesota does hereby ordain:

Section 1. That Chapter 4 of the city code is amended by deleting the phrase “Department of Staff Services” and replacing it with “Finance Department.”

Section 2. That Chapter 4 of the city code is amended by adding those words that are underlined to read as follows:

CHAPTER 4: TAXES

ARTICLE I: TAX ON HOTEL, MOTEL AND ADMISSIONS

\*\*\*

ARTICLE II: TAX ON RETAIL ON-SALES OF INTOXICATING LIQUOR

\*\*\*

ARTICLE III: SPECIAL AREA TAXES

§ 4.40 PURPOSE.

The purpose of this Article III is to allow for the imposition of a lodging tax, admissions and recreation tax, and food and beverage tax within the Special Taxing District for the sole purpose of financing public improvements for any phase of the Mall of America, including financing the Waterpark and paying the debt service and funding reserves with respect to the Bonds. The Special Area Taxes shall only be imposed in accordance with the terms and conditions of the Special Taxes Pledge Agreement or any other agreement under which the Special Area Taxes are pledged by the city to support the financing for public improvements for any phase of the Mall of America.

§ 4.41 DEFINITIONS.

The following words and terms when used in this Article III shall have the following meanings unless the context clearly indicates otherwise.

BONDS: The conduit revenue bonds issued by the Issuer the proceeds of which are loaned to the Owner to finance the acquisition, construction, and equipping of the Waterpark and related costs including but not limited to, payment of costs of issuing the Bonds, funding reserves, payment for credit support, and payment of initial operating costs of the Waterpark, and any bonds issued to refund any bonds.

ENTERTAINMENT FACILITY. Any facility for which persons pay money in order to be admitted to the premises and to be entertained including, but not limited to, theaters, recreational facilities, and sporting venues.

HOTEL. The furnishing, for consideration, of lodging at a hotel, motel, rooming house, tourist court, or resort and the granting of any similar license to use real property other than the licensing or leasing thereof for a continuous period of 30 days or more.

ISSUER. The Arizona Industrial Development Authority and any other state, political subdivision of a state, or other governmental unit or constituted authority that issues Bonds.

OPERATOR. The person who is the proprietor of the hotel or establishment providing the lodging, food and beverages, entertainment, or other taxable transactions whether in the capacity of owner, lessee, sublessee, licensee or any other capacity as an operator.

OWNER. Provident Group – Old Met Properties, Inc. and any successors or assigns.

PLACE OF REFRESHMENT. As defined herein and by Resolution 2019-\_\_\_, to be any premises location where alcoholic beverages, non-alcoholic beverages, or food items are sold at retail for consumption at or near the premise or location. A place of refreshment includes but is not limited to, bars, saloons, clubs, pubs, coffee houses, dance clubs, teen centers, concession stands, sidewalk vendors, and any combination thereof.

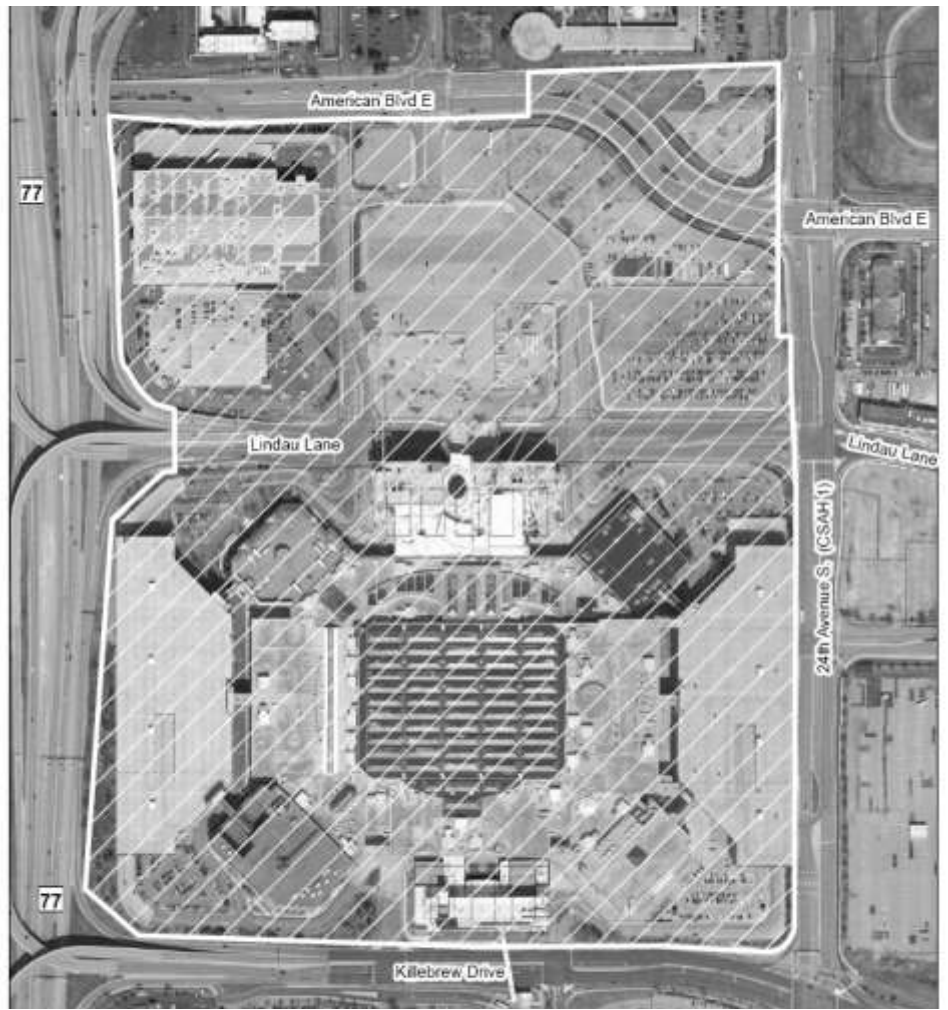
RECREATION FACILITY. A place designed and equipped for the conduct of sports, leisure time activities and other customary and usual recreation activities.

RESTAURANT. As defined herein and by Resolution 2019-\_\_\_, to be an establishment engaged in the preparation and on-site retail sale of readily consumable food and beverages, and characterized by sit down table, counter or drive through service to customers. A restaurant includes, but is not limited to, a coffee shop, cafeteria, fine dining, bar, fast food, take out, drive-in or sandwich stand serving food, licensed brewpub, and all other eating or drinking establishments.

SPECIAL AREA TAXES: The special taxes imposed and collected in accordance with the terms of § 4.42 of Article III and Article IV.

SPECIAL TAXES PLEDGE AGREEMENT: The Special Taxes Pledge Agreement between the city and the Issuer or the Trustee, or both, under the terms of which the city will impose and collect the Special Area Taxes and transfer such revenues to the Trustee for the purposes of paying debt service or funding reserves with respect to the Bonds.

SPECIAL TAXING DISTRICT: Those parcels contained in Tax Increment Districts No. 1-C and 1-G in the City of Bloomington, which are collectively roughly bounded by Killebrew Drive, Minnesota Highway 77, American Boulevard/vacated 79<sup>th</sup> Street, and 24<sup>th</sup> Avenue South/Hennepin County Road 1, and depicted below:



TRUSTEE. The financial institution with trust powers that acts as trustee with respect to the Bonds, and any successor or assign.

WATERPARK. A water recreation themed facility located within the Special Taxing District and including one or more wave pools, waterslides, lazy rivers, locker room facilities, related facilities, and related site improvements.

#### § 4.42 IMPOSITION AND COLLECTION OF SPECIAL AREA TAXES.

(a) A lodging tax shall be imposed and collected under the following terms.

(i) On and after the sale of the Bonds and upon written notification by the Trustee to the city that the terms and conditions in the Special Taxes Pledge Agreement have been satisfied for the imposition and collection of the tax authorized by this subsection (a) there shall be imposed and collected a tax on the gross receipts in the Special Taxing District from the furnishing for consideration of lodging for a period of less than 30 days at a Hotel in the amount of up to 1%. All persons to whom lodging is furnished under this subsection (i) shall pay the tax to the Operator of the establishment at the time payment for lodging is made. The tax, whether collected or not, shall constitute a debt owed to the city by the Operator and shall be extinguished only by payment to the city. The tax collected under this paragraph shall be expended pursuant to Laws of Minnesota 2008, Chapter 366, Article 5, Section 28, Subdivisions 1 and 3, as amended by Laws of Minnesota 2010, Chapter 216, Section 48, and the requirements of the Special Taxes Pledge Agreement.

(ii) Subsection (a)(i) above shall take effect upon publication, notwithstanding the deferred imposition date of the tax as provided for in the Special Taxes Pledge Agreement.

(iii) Upon receipt by the city of written notification from the Trustee stating that the terms and conditions in the Special Taxes Pledge Agreement have been satisfied for the termination of the tax imposed by this subsection (a), the tax shall be terminated until another notification is received under the provisions of subsection (a)(i).

(b) An admissions and recreation tax shall be imposed and collected under the following terms.

(i) On and after the sale of the Bonds and upon written notification by the Trustee to the city that the terms and conditions in the Special Taxes Pledge Agreement have been satisfied for the imposition and collection of the tax authorized by this subsection (b) there shall be imposed and collected, for the privilege of admittance to any entertainment and recreation facilities and for the rental of recreation equipment within the Special Taxing District, a tax in the amount of up to 1% of the admission price charged by the Operator. The tax, whether collected or not, shall constitute a debt owed to the city by the Operator and shall be extinguished only by payment to the city. The tax collected under this paragraph shall be expended pursuant to Laws of Minnesota 2008, Chapter 366, Article 5, Section 28, Subdivisions 1 and 4, as amended by Laws of Minnesota 2010, Chapter 216, Section 48, and the requirements of the Special Taxes Pledge Agreement.

(ii) Subsection (b)(i) above shall take effect upon publication, notwithstanding the deferred imposition date of the tax as provided for in the Special Taxes Pledge Agreement.

(iii) Upon receipt by the city of written notification from the Trustee stating that the terms and conditions in the Special Taxes Pledge Agreement have been satisfied for the termination of the tax imposed by this subsection (b), the tax shall be terminated until another notification is received under the provisions of subsection (b)(i).

(c) A food and beverages tax shall be imposed and collected under the following terms.

(i) On and after the sale of the Bonds and upon written notification by the Trustee to the city that the terms and conditions in the Special Taxes Pledge Agreement have been satisfied for the imposition and collection of the tax authorized by this subsection (c) there shall be imposed and collected a sales tax in the amount of up to 3% on the gross receipts on all sales of food and beverages by a Restaurant or Place of Refreshment, that are located within the Special Taxing District. The tax, whether collected or not, shall constitute a debt owed to the city by the Operator of the Restaurant or Place of Refreshment and shall be extinguished only by payment to the city. The tax collected under this paragraph shall be expended pursuant to Laws of Minnesota 2008, Chapter 366, Article 5, Section 28, Subdivisions 1 and 5, as amended by Laws of Minnesota 2010, Chapter 216, Sections 48, and the requirements of the Special Taxes Pledge Agreement.

(ii) Subsection (c)(i) above shall take effect upon publication, notwithstanding the deferred imposition date of the tax as provided for in the Special Taxes Pledge Agreement.

(iii) Upon receipt by the city of written notification from the Trustee stating that the terms and conditions in the Special Taxes Pledge Agreement have been satisfied for the termination of the tax imposed by this subsection (c), the tax shall be terminated until another notification is received under the provisions of subsection (c)(i).

#### § 4.43 EXEMPTIONS.

No exemption from the tax imposed under this Article III shall be granted except as allowed by federal or state law or regulation.

#### § 4.44 COLLECTIONS.

(a) Operator's duties. Each Operator shall collect the tax imposed by this Article III at the time the gross receipt or admission price is paid. The amount of tax shall be separately stated from the gross receipt or admission price charged. Those persons paying the tax shall receive a receipt of payment from the Operator.

(b) Reports. Each Operator collecting such tax shall make a report upon forms distributed to the operation by the Finance Department. Such reports shall contain, at a minimum:

(1) The amount of room rentals collected in the case of Hotel and the amount of admissions, equipment rentals, and food and beverages sales collected in the case of Entertainment Facility, Recreation Facility, Place of Refreshment, or Restaurant;

(2) The amount of tax required to be collected and due for the period;

(3) The signature of the Operator and that of Operator's agent if the Operator has not made the report;

(4) The period the return covers; and

(5) Such additional information as the city, may, in its discretion, from time to time require.

(c) Payment to the city. Payment of the tax shall be submitted by the Operator to the city along with the required reports. Payment shall cover the tax due for the preceding calendar month, or any alternative four-week accounting period, whichever the case shall be, and such payment shall be made not later than 25 days after the end of such calendar month or such alternative accounting month.

(d) Uncollectible charges. The Operator may offset against the tax due with respect to any reporting period, the amount of the taxes imposed by § 4.42 of this Article III previously paid as a result of any transaction which becomes uncollectible during such reporting period but only in proportion to the portion of such amount which becomes uncollectible.

(e) Examination of return. After a return is filed, the Finance Department may make any examination of the records and accounts of the person making the return that it deems necessary for determining its correctness. The tax computed on the basis of such examination shall be the tax to be paid. If the tax due is found to be greater than that paid, such excess shall be paid within ten days after receipt of notice. Such notice shall be given either personally or sent by regular mail to the address listed on the return. If the tax paid is greater than the tax found to be due, the excess paid shall be refunded to the address listed on the return.

#### § 4.45 REFUNDS.

(a) Any person may file for a refund for taxes paid in excess of the amount legally due for that period; provided that no such claim shall be entertained unless filed within one year after such tax was paid.

(b) Upon application, the Finance Department shall determine the correctness of the claim and return any excess paid. If no excess is found, the city clerk shall so inform the Operator. The Operator may make written application for a City Council hearing within five days after receipt of notice that his or her claim has been denied. The Operator shall be informed at least five days in advance of the scheduled City Council hearing.

#### § 4.46 PENALTIES.

(a) Original deficiency. Any Operator failing to make payment within the 25-day period specified in § 4.44(c) of this Article III shall be required to pay a penalty of 5% of the tax amount remaining unpaid. The amount of said tax not timely paid, together with said penalty shall bear interest at the rate most recently established by the city for unpaid special assessments, from the time such tax should have been paid, until paid. Any interest and penalty shall be added to the tax and be collected as a part thereof.

(b) Continuing deficiency. If payment of the tax and the 5% penalty imposed under subsection (a) above is not paid within 30 days as of the date the tax is due as specified in § 4.44(c) of this Article III, an additional 10% penalty shall be imposed upon the amount of tax due plus the original deficiency penalty of 5%. If the delinquency continues beyond 30 days after the tax is due as specified in § 4.44(c) of this Article III, the city attorney may commence such action necessary to collect the tax penalties due.

(c) Abatement of penalties. The city manager shall have the power to abate penalties when, in his or her opinion, their enforcement would be unjust and inequitable. All requests for abatement of penalties shall be in writing and shall set forth the reasons for the failure to file the return and pay the tax timely. The city manager shall report all penalty abatements in excess of \$100 to the City Council at the next regular City Council meeting.

#### § 4.47 TAX DETERMINED BY THE CITY COUNCIL.

(a) If the Operator refuses to collect the tax imposed or fails to make the required reports, the Finance Department shall obtain facts and information and make an estimate of the amount of tax due and report to the City Council for approval. After approval by the City Council, the Finance Department shall give the Operator a statement of the tax according to its estimate and give notice personally or through regular mail to such Operator of the amount due. Depending upon the time periods as specified in § 4.46 of this Article III, the amount of tax estimated shall include the applicable penalties and interest. Payments shall be made within ten days after receipt of notice. For the purpose of carrying out the provisions of this section, the Finance Department shall have the right of access to the books and records of the Operator.

(b) The Operator shall have ten days after receipt of notice to make a written application for a hearing on the assessed tax to the Finance Department. If no request is made during this ten-day period, the amount specified in the statement of the Finance Department, including penalties and interest, becomes final and payable within ten days.

(c) If a hearing is properly requested, the running of the time periods described in § 4.46 of this Article III are automatically stayed. Notice of the hearing shall be given to the Operator at least ten days in advance. All hearings are to be held before the City Council. The council may then determine the amount due, when it shall be paid and whether or not the penalty time period under § 4.46 of this Article III should resume running until payment. Once the amount due becomes fixed under either subsections (a), (b) or (c) of this section, any further steps necessary to ensure collection may be taken by the city attorney.

#### § 4.48 ADMINISTRATION.

The city manager shall be charged with the responsibility for enforcement and administration of this Article III.

#### § 4.49 VIOLATIONS.

Violation of any provision of this Article III or tendering a false report shall be a misdemeanor.

#### § 4.50 REVOCATION OR SUSPENSION OF LICENSE.

Whenever an Operator fails to comply with any of the provisions of this Article III the City Council may, after a hearing, suspend or revoke any licenses issued to the Operator by the city. Before any such hearing the Operator shall be given ten days' written notice and the hearing shall be published in the legal newspaper of the city not less than ten days before the date of the hearing.

§ 4.51 SEVERABILITY.

If any section, subsection, paragraph, sentence or clause of this Article III is held to be unconstitutional, the remaining portions shall remain valid and in force. The City Council hereby declares that it would have passed each section, subsection, sentence, paragraph, and clause despite the finding of unconstitutionality of one or more of the sections, subsections, paragraphs, sentences or clauses.

Section 3. That Chapter 4 of the city code is amended by adding those words that are underlined to read as follows:

ARTICLE IV: BLOOMINGTON SPECIAL TAXING AUTHORITY

§ 4.60 AUTHORIZATION.

As authorized by Laws of Minnesota 2008, Chapter 366, Article 5, Section 28, Subdivisions 1 and 2, and Resolution 2008-172, as amended by Laws of Minnesota 2010, Chapter 216, Sections 48 and 49, and Resolution 2010-59, the City Council is hereby authorized to establish, by resolution, a special taxing authority as a separate political subdivision the governing body of which is the City Council with the authority to impose a general sales tax of not more than one percent within the boundaries of the Special Taxing District, as defined in Article III of this chapter.

Section 4. Effective Date. This Ordinance shall be effective upon publication, but the Special Area Taxes shall not be effective until the Special Taxes Pledge Agreement, as defined in this Ordinance, is executed by the city and the Issuer and the Trustee, or both, and a fully-executed original is delivered to the city.

Passed and adopted this 12<sup>th</sup> day of November, 2019.

/s/ Gene Winstead  
Mayor

ATTEST:

APPROVED:

/s/ Denise M. Christenson  
Secretary to the Council

/s/ Melissa J. Manderschied  
City Attorney