

ORDINANCE NO. O-23-17

**AN ORDINANCE AMENDING THE CITY CODE, CHAPTER 2
ARTICLE 2 SECTION 7 REGARDING HOTEL OPERATORS' OCCUPATION TAX**

WHEREAS, the City of Prospect Heights ("City") is an Illinois Municipal Corporation pursuant to the Illinois Constitution of 1970 and the Statutes of the State of Illinois; and

WHEREAS, the City has enacted a City Code for the purpose of improving and protecting the public health, safety, comfort, convenience and general welfare of the people; and

WHEREAS, the City of Prospect Heights, pursuant to law, presently has in effect certain provisions in regard to a hotel/motel rental unit tax within the City Code in Section 2-2-7; and

WHEREAS, the City Council of the City deems it to be an appropriate exercise of the municipal corporate authority of the City granted by the Illinois Constitution and relevant statutes, including, but not necessarily limited to, the power to impose utility taxes and the power to promote and protect the public health, safety and welfare to amend the present hotel/motel and transient occupancy rental unit tax as provided herein; and

WHEREAS, the Mayor and City Council have determined that the amendment of the Code promotes and furthers the public health, safety, comfort, convenience and general welfare of the people;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PROSPECT HEIGHTS, COOK COUNTY, ILLINOIS as follows:

SECTION ONE. The City Council hereby finds and determines that the facts and statements set forth in the above recitals are true and correct, and do hereby, by reference, incorporate and make them a part of this ordinance.

SECTION TWO. That the purposes of this ordinance shall include amending Chapter 2 Article 2 Section 7A and 7B of the City Code as provided herein.

SECTION THREE. That prospectively, 2-2-7A and 2-2-7B of the City Code of the City of Prospect Heights are hereby amended, with deletions in strikethrough and additions in bold, underline text, which shall prospectively provide as follows:

2-2-7: HOTEL OPERATORS' OCCUPATION TAX:

A. Definitions:

Certain words or terms herein shall have the meaning ascribed to them as follows:

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| FACILITATOR: | Any person or entity who provides a means through which a person may book a hotel room and/or transient occupancy rental unit to lessees, regardless of whether payment is transferred through or processed by such facilitator. Facilitators are considered lessors, as used herein. |
| GROSS RENT: | The total amount of consideration for occupancy, valued in money, whether received in money or otherwise, including all receipts, cash, credits, and property or services of any kind or nature, including but not limited to, amounts charged for the making, booking, facilitating or servicing of reservations. Gross rent means both (a) the "net rate" paid to the hotel or motel by a Facilitator for room occupancy by the consumer; and (b) the amount retained by the Facilitator for travel-related services provided to the consumer (sometimes referred to as a "facilitation fee"), and any additional amounts retained by the Facilitator as compensation for its services to the consumer for the individual transaction, or, in the instance of a consumer's direct rental of a room with the hotel or motel, gross rent shall mean the amount charged by the hotel or motel directly to the consumer for the occupancy of the room. |
| HOTEL: | A structure kept, used or maintained as or advertised or held out to the public to be an inn, motel, hotel, apartment, home, lodging house, dormitory or place where sleeping, rooming, office, conference or exhibition accommodations are furnished for lease or rent, whether with or without meals. For avoidance of doubt, transient occupancy rental units are hotels under this definition. |
| LESSEE: | Any person who pays for the privilege of occupying all or part of a hotel. |
| LESSOR: | Any person having a sufficient proprietary interest in conducting the operation of a hotel or receiving the consideration for the rental of all or part of such hotel, so as to entitle such person to all or a portion of the net receipts thereof, including facilitators, as defined herein. |
| ONLINE TRAVEL COMPANY: | An organization that books, reserves, or rents hotel or motel rooms and makes other travel arrangements for consumers via the World Wide Web, internet or other digital means. Online travel companies are considered facilitators, as used herein. |
| PERMANENT RESIDENT: | Any person who has occupied or has the right to occupy all or part of a hotel for more than (30) consecutive days. |
| PERSON: | Any natural person, 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 |

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| | individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, whenever the term "person" is used in any clause prescribing and imposing a penalty, the term as applied to associations shall mean the owners or part-owners thereof, and as applied to corporations, the offices thereof, or any other entity recognized by law as the subject of rights and duties. |
| TRANSIENT OCCUPANCY RENTAL UNIT: | A dwelling unit or a habitable unit that is offered, in whole or in part, for rent, lease or hire that is rented, leased or hired for which a lessor receives consideration from a person for a period of thirty (30) days or less and that person has the right to use, occupy or possess all or part of the dwelling unit or habitable unit for said period. |

B. Hotel Use Tax Imposed:

1. There is levied and imposed a tax of five percent (5%) of the gross rent charged for the privilege and use of renting a hotel room within the City for each twenty-four (24) hour period or any portion thereof for which a room charge is made.

~~2. Accommodations within said buildings or structures which are leased to the same occupant for a period of more than thirty (30) consecutive days shall be exempt from the tax provisions of this article.~~

~~3.~~ Lessors renting or leasing hotel rooms within the City are required to collect the hotel use tax; however, the ultimate incidence of any liability for payment of the tax is to be borne by the lessee.

34. The hotel use tax shall be paid in addition to any and all other taxes and charges.

45. It shall be the duty of every lessor of every hotel within the City to separately state such tax at the five (5) percent rate upon the total amount of compensation charged for the use of the hotel. The lessor shall also state separately the amount of tax on the invoice for the transaction that will be tendered to the Lessee.

56. It shall be the duty of every lessor of every hotel within the City to collect the tax from the lessee at the time the lessee pays for the privilege of occupying all or part of a hotel transient occupancy rental unit, and to remit to the City the tax under procedures provided for in this chapter or otherwise prescribed by the City. If more than one person is the lessor as related to a particular transaction, the lessors are jointly and severally responsible for collecting and remitting the tax.

67. It shall not be a defense to this ordinance that the lessor is not licensed by the City to rent hotels and the lessor will still be required to remit the proper tax to the City.

78. All funds collected by the City under this tax shall be expended solely to promote tourism and conventions within the City or otherwise to attract nonresident overnight visitors to the municipality. No funds received under this tax shall be used to advertise for or otherwise promote new competition in the hotel business within the City.

SECTION FOUR. If any provision of this Ordinance or application thereof to any person or circumstances is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Ordinance is severable.

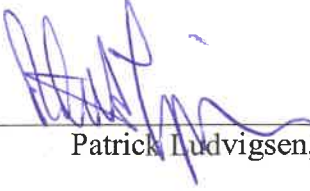
SECTION FIVE. That this ordinance shall be liberally construed and administered to supplement all of the City tax ordinances. To the extent that any ordinance is in conflict with or inconsistent with this ordinance, this ordinance shall be controlling.

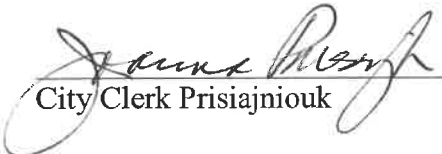
SECTION SIX. The City Clerk of the City of Prospect Heights is directed hereby to publish this Ordinance in pamphlet form.

SECTION SEVEN. That this Ordinance shall be in full force and effect from and after its passage, approval and publication in the manner provided by law.

PASSED and APPROVED this 26th day of June, 2023.

ATTEST:


Patrick Ludvigsen, Mayor


City Clerk Prisiajniouk

AYES: Dash, Cameron, Dolick, Morgan-Adams
NAYS: None
ABSENT: Anderson



Published in pamphlet form: June 26, 2023

receives consideration from a person for a period of thirty (30) days or less and that person has the right to use, occupy or possess all or part of the dwelling unit or habitable unit for said period.

B. Hotel Use Tax Imposed:

1. There is levied and imposed a tax of five percent (5%) of the gross rent charged for the privilege and use of renting a hotel room within the City for each twenty-four (24) hour period or any portion thereof for which a room charge is made.

X 2. Accommodations within said buildings or structures which are leased to the same occupant for a period of more than thirty (30) consecutive days shall be exempt from the tax provisions of this article.

3. Lessors renting or leasing hotel rooms within the City are required to collect the hotel use tax; however, the ultimate incidence of any liability for payment of the tax is to be borne by the lessee.

4. The hotel use tax shall be paid in addition to any and all other taxes and charges.

5. It shall be the duty of every lessor of every hotel within the City to separately state such tax at the five (5) percent rate upon the total amount of compensation charged for the use of the hotel. The lessor shall also state separately the amount of tax on the invoice for the transaction that will be tendered to the Lessee.

6. It shall be the duty of every lessor of every hotel within the City to collect the tax from the lessee at the time the lessee pays for the privilege of occupying all or part of a hotel transient occupancy rental unit, and to remit to the City the tax under procedures provided for in this chapter or otherwise prescribed by the City. If more than one person is the lessor as related to a particular transaction, the lessors are jointly and severally responsible for collecting and remitting the tax.

7. It shall not be a defense to this ordinance that the lessor is not licensed by the City to rent hotels and the lessor will still be required to remit the proper tax to the City.

8. All funds collected by the City under this tax shall be expended solely to promote tourism and conventions within the City or otherwise to attract nonresident overnight visitors to the municipality. No funds received under this tax shall be used to advertise for or otherwise promote new competition in the hotel business within the City.

C. Rules and Regulations: The City Treasurer may promulgate rules and regulations not inconsistent with the provisions of this chapter concerning enforcement and application of this chapter. The phrase "rules and regulations" includes, but is not limited to, case-by-case determination of whether or not the tax imposed by this chapter applies.

D. Transmittal Of Tax Revenue:

1. The lessor of each hotel within the City shall file returns and remit collected taxes, to the Finance Department showing tax receipts received with respect to each hotel during each monthly period commencing on May 1, 2021 and continuing on the first day of every month thereafter on forms prescribed by the City. The return shall be due on or before the tenth day of the calendar month succeeding the end of the monthly filing period. Each lessor shall file an application with the city clerk for a city taxpayer Identification Number prior to filing its first tax return.

2. The first taxing period for the purpose of this chapter shall commence on May 1, 2021; and the tax return and payment for such period shall be due on or before June 10, 2021. Thereafter, reporting periods and tax payments shall be in accordance with the provisions of this chapter. At the time of filing such tax returns, the owner shall pay to the City all taxes due for the period to which the tax return applies.

E. Disposition Of Hotel Tax Funds: All hotel tax revenue derived under the provisions of this section shall be kept in a separate fund held by the city and used only for the purpose of promoting meetings, tourism, conventions or other projects and events within the city, or otherwise to attract nonresidents to visit the city and to patronize all businesses, as set forth in this chapter. No funds received pursuant to this section shall be used directly to advertise or otherwise promote new competition in the hotel business. The hotel tax funds collected shall be used as follows:

1. Promotional Grants: The city council shall budget and expend a sum not to exceed forty-two and one-half percent (42.5%) of the annual hotel tax revenue to be used for promotional grants as recommended by the tourism board as set forth below.

2. Police Services: The city council shall budget and expend a sum not to exceed forty-two and one-half percent (42.5%) of the annual hotel tax revenue to be used for the hiring and compensation of police officers and the purchase of related police department equipment for the purpose of providing police services in the tourism zone.



To: Mayor Ludvigsen and Members of the City Council

From: Joe Wade, City Administrator

Subject: Ordinance Amending City Code Regarding Hotel Operators' Occupation Tax

Date: June 7, 2023

Background

Recently, City staff became aware of an exemption for the collection of hotel/motel tax for individuals occupying a hotel/motel room for more than 30 consecutive days. Specifically, the City Code has stated:

“Accommodations within said buildings or structures which are leased to the same occupant for a period of more than thirty (30) consecutive days shall be exempt from the tax provisions of this article.”

Analysis

This exemption eliminates the payment of hotel/motel taxes for individuals staying in a room for more than 30 days. The exemption is puzzling as there is no difference of the City's interest of 30 individuals renting a room over 30 days and one individual renting a room for 30 days. The City's interest isn't who or how many individuals rent a room, but the rental of the room itself.

Theoretically, hotel/motel taxes are intended to address demands on City services related to travelers staying in the town. If competitive discounts are needed for longer-term occupants, it seems that should be between the hotel and the customer.

As a non-home rule community, the loss is minimized. The City's Tourism District ordinance provides that forty-two per cent of collected hotel/motel taxes are returned to the hotel, forty-two per cent to police service and 15 per cent for streetscapes and road repair.

There is no fundamental fairness to exempting some from this obligation while it is borne by others.

Recommendation

Staff recommends the deletion of this exempt status from the hotel/motel tax ordinance.