

ORDINANCE NO. O-24-19

**AN ORDINANCE AMENDING TITLE 2 OF THE PROSPECT HEIGHTS CITY CODE
REGARDING NON-HOME RULE RETAILERS' OCCUPATION TAX AND
SERVICE OCCUPATION TAX**

WHEREAS, the City of Prospect Heights, Cook County, Illinois (the "City") is a unit of local government under and pursuant to the Constitution of the State of Illinois and Illinois Municipal Code, 65 ILCS 5/1-2-1, and is authorized to exercise any power and perform any function pertaining to its government and affairs for municipal purposes in such manner as the President and the Board of Trustees (the "Corporate Authorities") of the City may authorize; and

WHEREAS, the City of Prospect Heights ("City") is a non-home rule Illinois municipality pursuant to the Constitution of the State of Illinois of 1970, as amended; and

WHEREAS, Section 8-11-1.1 of the Illinois Municipal Code (65 ILCS 5/8-11-1.1) empowers non-home rule Illinois municipalities to impose certain Municipal Retailers' Occupation Taxes as outlined at Section 8-11-1.3 of the Illinois Municipal Code (65 ILCS 5/8-11-1.3) (the "Non-Home Rule Municipal Retailers' Occupation Tax"); and

WHEREAS, Section 8-11-1.1 of the Illinois Municipal Code (65 ILCS 5/8-11-1.1) empowers non-home rule Illinois municipalities to impose certain Municipal Service Occupation Taxes as outlined at Section 8-11-1.4 of the Illinois Municipal Code (65 ILCS 5/8-11-1.4) (the "Non-Home Rule Municipal Service Occupation Tax"); and

WHEREAS, Section 8-11-1.3 of the Illinois Municipal Code (65 ILCS 5/8-11-1.3) empowers a non-home rule municipality to "impose a tax upon all persons engaged in the business of selling tangible personal property, other than on an item of tangible personal property which is titled and registered by an agency of this State's Government, at retail in the municipality" based upon the "gross receipts from such sales made in the course of such business" for "expenditure on public infrastructure or for property tax relief or both" as defined in Section 8-11-1.2 (65 ILCS 5/8-11-1.2); and

WHEREAS, Section 8-11-1.4 of the Illinois Municipal Code (65 ILCS 5/8-11-1.4) empowers a non-home rule municipality to "impose a tax upon all persons engaged, in such municipality, in the business of making sales of service . . . of the selling price of all tangible personal property transferred by such servicemen either in the form of tangible personal property or in the form of real estate as an incident to a sale of service;" and

WHEREAS, Section 8-11-1.3 of the Illinois Municipal Code (65 ILCS 5/8-11-1.3) and Section 8-11-1.4 of the Illinois Municipal Code (65 ILCS 5/8-11-1.4) empower the City to impose the Non-Home Rule Municipal Retailers' Occupation Tax and the Non-Home Rule Municipal Service Occupation Tax in 1/4% increments up to 1%; and

WHEREAS, Section 8-11-1.3 of the Illinois Municipal Code (65 ILCS 5/8-11-1.3) requires any municipality imposing a Non-Home Rule Municipal Retailers' Occupation Tax under Section 8-11-1.3 of the Illinois Municipal Code (65 ILCS 5/8-11-1.3) to impose a Non-Home Rule

Municipal Service Occupation Tax under Section 8-11-1.4 of the Illinois Municipal Code (65 ILCS 5/8-11-1.4) at “the same rate” as the rate imposed as the Non-Home Rule Municipal Retailers’ Occupation Tax being imposed; and

WHEREAS, any Non-Home Rule Municipal Retailers’ Occupation Tax imposed by the City under Section 8-11-1.3 of the Illinois Municipal Code (65 ILCS 5/8-11-1.3) shall be administered, collected and enforced by the Illinois Department of Revenue; and,

WHEREAS, any Non-Home Rule Municipal Service Occupation Tax imposed by the City under Section 8-11-1.4 of the Illinois Municipal Code (65 ILCS 5/8-11-1.4) shall be administered, collected and enforced by the Illinois Department of Revenue; and

WHEREAS, proceeds generated from the imposition of any Non-Home Rule Municipal Retailers’ Occupation Tax or Non-Home Rule Municipal Service Occupation Tax by the City must be used for “public infrastructure” or “property tax relief,” as those terms are defined at Section 8-11-1.2 of the Illinois Municipal Code (65 ILCS 5/8-11-1.2); and

WHEREAS, the Corporate Authorities of the City hereby declare that it is in the best interests of the City and its residents, that the City increase the Non-Home Rule Municipal Retailers’ Occupation Tax pursuant to Section 8-11-1.3 of the Illinois Municipal Code (65 ILCS 5/8-11-1.3) and a Non-Home Rule Municipal Service Occupation Tax pursuant to Section 8-11-1.4 of the Illinois Municipal Code (65 ILCS 5/8-11-1.4) so that the City can provide property tax relief and invest in public infrastructure, as those terms are defined at Section 8-11-1.2 of the Illinois Municipal Code (65 ILCS 5/8-11-1.2).

NOW, THEREFORE, be it ordained, by the Mayor and City Council of the City of Prospect Heights as follows:

Section 1. Incorporation of Recitals. The foregoing recitals shall be and are hereby incorporated as findings of fact as if said recitals were fully set forth herein.

Section 2. Non-Home Rule Municipal Retailers’ Occupation Tax and Service Occupation Tax Imposed. The City currently has a Non-Home Rule Retailers’ Occupation Tax and Service Occupation Tax of one half percent (1/2%) pursuant to 8-11-1.1, 8-11-1.2, 8-11-1.3 and 8-11-1.4 in Section 2-2-9 of the City Code.

Section 3. Amendment of Section 2-2-9 of the City Code. That Section 2-2-9 of the City Code, “Nonhome Rule Municipal Retailers' Service Occupation Taxes”, be amended as set forth below with deletions in strikethrough and additions in bold, underline text so that the same shall be read as follows:

2-2-9: NONHOME RULE MUNICIPAL RETAILERS' AND SERVICE OCCUPATION TAXES:

A. A tax is hereby imposed upon all persons engaged in the business of selling tangible personal property, other than an item of tangible personal property titled or registered with an

agency of this state's government, at retail in this municipality at the rate of ~~one-half of one percent~~ ^(~~1/2%~~) **one percent (1%)** of the gross receipts from such sales made in the course of such business while this section is in effect; and a tax is hereby imposed upon all persons engaged in this municipality in the business of making sales of service, at the rate of ~~one-half of one percent~~ ^(~~1/2%~~) **one percent (1%)** of the selling price of all tangible personal property transferred by such serviceman as an incident to a sale of service. Such "nonhome rule municipal retailers' occupation tax" and the "nonhome rule municipal service occupation tax" shall not be applicable to the sales of food for human consumption which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks and food that has been prepared for immediate consumption) and prescription and nonprescription medicines, drugs, medical appliances and insulin, urine testing materials, syringes and needles used by diabetics.

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Section 4. Illinois Department of Revenue to Administer Both Taxes. The taxes hereby imposed, and all civil penalties that may be assessed as an incident thereto, shall be collected and enforced by the Department of Revenue of the State of Illinois. The Department of Revenue shall have full power to administer and enforce the provisions of this Ordinance.

Section 5. Clerk to file Ordinance with Illinois Department of Revenue. As required under Section 8-11-1.3 of the Illinois Municipal Code (65 ILCS 5/8-11-1.3), the Clerk is hereby directed to file a certified copy of this Ordinance with the Illinois Department of Revenue on or before October 1, 2024.

Section 6. Limitation on Use of Proceeds. The City shall only expend the proceeds generated from any tax imposed by virtue of this Ordinance on: (a) expenditures related to "municipal roads and streets, access roads, bridges, and sidewalks; waste disposal systems; and water and sewer line extensions, water distribution and purification facilities, storm water drainage and retention facilities, and sewage treatment facilities[;]" (b) efforts to "reduce the levy for real estate taxes or avoid an increase in the levy for real estate taxes that would otherwise have been required" by the City; or (c) any other or further permitted uses under Section 8-11-1 of the Illinois Municipal Code (65 ILCS 5/8-11-1) as may now or hereafter be authorized therein.

Section 7. Qualified Exemption of Aviation Fuel from Both Taxes. No provision of this Ordinance shall be interpreted to impose any tax on aviation fuel, as defined in Section 3 of the Retailers' Occupation Tax Act (35 ILCS 120/3), unless the proceeds of said tax are expended for airport-related purposes, as that term is defined in Section 6z-20.2 of the State Finance Act (30 ILCS 105/6z-20.2), and said expenditures are made in compliance with the certification requirements for airport-related purposes under Section 2-22 of the Retailers' Occupation Tax Act (35 ILCS 120/2-22).

Section 8. Repeal of Conflicting Provisions. All ordinances, resolutions and policies or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of the conflict, expressly repealed on the effective date of this Ordinance.

Section 9. Severability. If any provision of this Ordinance or application thereof to any person or circumstances is ruled unconstitutional or otherwise invalid, such invalidity shall not

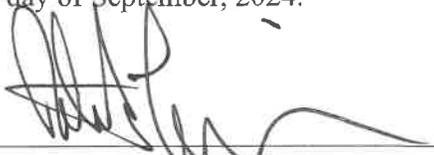
affect other provisions or applications of this Ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Ordinance is severable.

Section 10. Headings/Captions. The headings/captions identifying the various sections and subsections of this Ordinance are for reference only and do not define, modify, expand or limit any of the terms or provisions of the Ordinance.

Section 11. Publication. The Clerk is directed by the corporate authorities to publish this Ordinance in pamphlet form. This Ordinance shall be in full force and effect after its passage and publication in accordance with 65 ILCS 5/1-2-4.

Section 12. Effective Date. This Ordinance shall take effect on January 1, 2025 following the adoption and filing of this Ordinance with the Department of Revenue, if filed on or before October 1, 2024.

PASSED and APPROVED THIS 23 day of September, 2024.



Patrick Ludvigsen, City Mayor

ATTEST:



Joanna Bergant
City Clerk



AYES: Cameron, Andersen, Morgan-Adams, Dash, Delick

NAYS: None

ABSENT: None



To: Mayor Ludvigsen and Members of the City Council

From: Joe Wade, City Administrator

Subject: Ordinance Amending Title 2 of The Prospect Heights City Code Regarding Non-Home Rule Retailers' Occupation Tax and Service Occupation Tax

Date: September 18-2024

Background

During negotiations related to the State Fiscal Year 2025 budget with leaders of the General Assembly and Governor's Office, the Illinois Municipal League was able to secure non-home rule sales tax authority (without need for referendum approval) for applicable municipalities.

This proposed ordinance enables the City of Prospect Heights to avail itself of a 1 per cent local sales tax. This action adds a half per cent to the existing half per cent adopted by the City, via referendum, in 2004.

While the codified 2004 non-home rule sales tax ordinance does not provide use restrictions, following the recently adopted law, this ordinance requires that proceeds from this tax can only be expended on "municipal roads and streets, access roads, bridges, and sidewalks, waste disposal systems; and water and sewer line extensions, water distribution and purification facilities, storm water drainage and retention facilities, and sewage treatment facilities." As the City's identified capital improvement needs are greater than available revenues, this new source of revenue will assist in funding capital projects.

As Prospect Heights is primarily a residential community, with a limited commercial base, it is anticipated the implementation of this additional half per cent sales tax will yield \$350,000-\$400,000 annually.

Analysis

This legislative change enables the City to avail itself of an additional revenue source that has been implemented by area home rule communities for some time. Just as Prospect Heights residents presently pay local sales tax when shopping out of town. This tax will capture revenues from out-of-town shoppers as well as City residents.

The additional ½ per cent sales tax will provide \$350,000-\$400,000 in revenue that is not otherwise available. As noted above, this will provide some financial assistance for funding

identified and unfunded capital improvement needs. The Finance Department will track revenue from this tax and ensure they are earmarked to approved capital projects.

Recommendation

Staff recommends waiver of first reading of ordinance O-24-19 to meet State requirements for the initiation of this tax, January 1,2025. Adoption at the September 23 meeting enables the City to provide notice compliance to the Illinois Department of Revenue before the necessary October 1 deadline.