

CITY OF ST. CHARLES

ORDINANCE NO. 1995-M-19

AN ORDINANCE AMENDING CHAPTER 3.32,
"HOTEL OPERATORS' OCCUPATION TAX",
OF THE ST. CHARLES MUNICIPAL CODE

ADOPTED BY THE

CITY COUNCIL

OF THE

CITY OF ST. CHARLES

THIS 5TH DAY OF JUNE, 1995

PUBLISHED IN PAMPHLET FORM BY
AUTHORITY OF THE CITY COUNCIL
OF THE CITY OF ST. CHARLES,
KANE AND DU PAGE COUNTIES,
ILLINOIS, THIS 16TH DAY OF
JUNE, 1995



CITY CLERK

(S E A L)

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**AN ORDINANCE AMENDING CHAPTER 3.32,
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ST. CHARLES MUNICIPAL CODE**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ST. CHARLES,
KANE AND DU PAGE COUNTIES, ILLINOIS, in exercise of its home rule powers, as
follows:**

SECTION 1: Chapter 3.32 is hereby amended by deleting the same and
inserting the following therefor:

"Chapter 3.32

HOTEL OPERATORS' OCCUPATION TAX

Sections:

- 3.32.010 Definitions.
- 3.32.020 Rate - Exemption.
- 3.32.030 Books and records.
- 3.32.040 Return of taxpayer - Payment of tax.
- 3.32.050 Exemptions.
- 3.32.060 Interest.
- 3.32.070 Claims to recover erroneously paid tax.
- 3.32.075 Proceeds.
- 3.32.080 Separability.

3.32.010 Definitions.

As used in this chapter, unless the context otherwise requires:

- A. "Hotel" means any building or buildings in which the public may, for a consideration, obtain living quarters, sleeping or housekeeping accommodations. The term includes inns, motels, tourist homes or courts, lodging houses, rooming houses and apartment houses.
- B. "Operator" means any person operating a hotel.
- C. "Occupancy" means the use or possession, or the right to the use or possession, of any room or rooms in a hotel for any purpose, or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room or rooms.
- D. "Room" or "rooms" means any living quarters, sleeping or housekeeping

accommodations.

- E. "Permanent resident" means any person who occupied or has the right to occupy any room or rooms in a hotel for at least thirty consecutive days.
- F. "Rent" or "rental" means the consideration received 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; but does not include tax charges that are added to prices by hotel operators on account of the hotel operators' tax liability under Section 3.32.020 (E) of the St. Charles Municipal Code or on account of the hotel operators' tax liability under "The Hotel Operators' Occupation Tax Act," 35 ILCS 510/1 et seq. (1992), which tax charges are separately stated or stated in combination in a single amount.
- G. "Comptroller" means the office of St. Charles Comptroller.
- H. "Person" means any natural individual, firm, partnership, association, joint stock company, joint adventure, public or private corporation, or a receiver, executor, trustee, conservator or other representative appointed by order of any court.

3.32.020 Rate - Exemption.

- A. A tax is imposed upon persons engaged in the city in the business of renting, leasing or letting rooms in a hotel at the rate of three (3) percent of ninety-four (94) percent of the gross rental receipts from such renting, leasing, or letting; excluding, however, from gross rental receipts, the proceeds of such renting, leasing or letting to permanent residents of that hotel.
- B. No funds received pursuant to this chapter shall be used to advertise for or otherwise promote new competition in the hotel business.
- C. Nothing in this chapter shall be construed to authorize a tax to be imposed upon the privilege of engaging in any business which under the Constitution of the United States, may not be made the subject of taxation by the State of Illinois.
- D. Persons subject to the tax imposed by this chapter may reimburse themselves for their tax liability under this chapter by separately stating such tax as an additional charge, which charge may be stated in combination, in a single amount, with the state tax imposed under "The Hotel Operators' Occupation Tax Act," 35 ILCS 510/1 et seq. (1992).
- E. If any hotel operator collects an amount (however designated) which purports to reimburse such operator for a hotel operators' occupation tax liability measured by receipts which are not subject to hotel operators' occupation tax, or if any hotel operator, in collecting an amount (however designated) which purports to reimburse such operator for hotel operators' occupation tax liability measured by receipt which are subject to tax under this chapter, collects more from the customer than the operators' hotel operators' occupation tax liability in the transaction

is, the customer shall have a legal right to claim a refund of such amount from such operator. However, if such amount is not refunded to the customer for any reason, the hotel operator is liable to pay such amount to the comptroller.

3.32.030 Books and records.

Every operator shall keep separate books or records of his business as an operator so as to show the rents and occupancies taxable under this chapter separately from his transactions not taxable hereunder. If any such operator fails to keep such separate books or records, he shall be liable to tax at the rate designated in Section 3.32.020 hereof upon the entire proceeds from his hotel.

3.32.040 Return of taxpayer - Payment of tax.

- A. Except as provided hereinafter in this section, on or before the last day of each calendar month, every person engaged in the business of renting, leasing or letting rooms in a hotel in this city during the preceding calendar month shall file a return with the comptroller, stating:
1. The name of the operator;
 2. His residence and the address of his principal place of business and the address of the principal place of business (if that is a different address) from which he engages in the business of renting, leasing or letting rooms in a hotel in this city;
 3. The total amount of rental receipts received by him during the preceding calendar month from renting, leasing or letting rooms during such preceding calendar month;
 4. Total amount of rental receipts received by him during the preceding calendar month from renting, leasing or letting rooms to permanent residents during such preceding calendar month;
 5. Total amount of other exclusions from gross rental receipts allowed by this chapter;
 6. Gross rental receipts which were received by him during the preceding calendar month and upon the basis of which the tax is imposed;
 7. The amount of tax due;
 8. The amount of penalty due, if any;
 9. Such other reasonable information as the comptroller may require.
- B. If the operator's average monthly tax liability to the comptroller does not exceed one hundred dollars, the comptroller may authorize his returns to be filed on a quarter annual basis, with the return for January, February and March of a given year being due by April 30th of such year; with the return for April, May and June of a given year being due by July 31st of such year; with the return for July, August, and September of a given year being due by October 31st of such year, and with the return for October, November and December of a given year being due by January 31st of the following year.

- C. If the operator's average monthly tax liability to the comptroller does not exceed twenty dollars (\$20.00), the comptroller may authorize his returns to be filed on an annual basis, with the return for a given year being due by January 31st of the following year.
- D. Such quarterly and annual returns, as to form and substance, shall be subject to the same requirements as monthly returns.
- E. Notwithstanding any other provision of this chapter concerning the time within which an operator may file his return, in the case of any operator who ceases to engage in a kind of business which makes him responsible for filing returns under this chapter, such operator shall file a final return, under this chapter, with the comptroller not more than one (1) month after discontinuing such business.
- F. Where the same person has more than one (1) business registered with the comptroller under separate registrations under this chapter, such person shall not file each return that is due as a single return covering all such registered businesses, but shall file separate returns for each such registered business.
- G. In his return, the operator shall determine the value of any consideration other than money received by him in connection with the renting, leasing or letting of rooms in the course of his business and he shall include such value in his return. Such determination shall be subject to review and revision by the comptroller.
- H. Where the operator is a corporation, the return filed on behalf of such corporation shall be signed by the president, vice president, secretary or treasurer or by the properly accredited agent of such corporation.
- I. The person filing the return herein provided for shall, at the time of filing the return, pay to the comptroller the amount of tax imposed. All monies received by the comptroller, under the provisions of this chapter, shall be paid into the city treasury.
- J. The comptroller may, upon separate written notice to a taxpayer, require the taxpayer to prepare and file with the comptroller within not less than sixty (60) days after receipt of the notice an annual information return for the tax year specified in the notice. Such annual return to the comptroller shall include a statement of gross receipts as shown by the operator's last state income tax return. If the total receipts of the business as reported in the state income tax return do not agree with the gross receipts reported to the comptroller for the same period, the operator shall attach to his annual information return a schedule showing a reconciliation of the two amounts and the reasons for the difference. The operator's annual information return to the comptroller shall also disclose any additional reasonable information which the comptroller deems would be helpful in determining the accuracy of the monthly, quarterly or annual tax returns by such operator as hereinbefore provided for in this section.
- K. The chief executive officer, proprietor, owner or highest ranking manager

shall sign the annual return to certify the accuracy of the information contained therein. Any person who willfully signs the annual return containing false or inaccurate information shall be guilty of perjury and punished accordingly. The annual return form prescribed by the comptroller shall include a warning that the person signing the return may be liable for perjury.

- L. The foregoing portion of this section concerning the filing of an annual information return shall not apply to an operator who is not required to file an income tax return with the United States Government.

3.32.050 Exemptions.

- A. Any person engaged in the business of renting, leasing or letting hotel rooms in this city who fails to make a return, or to keep books and records as required herein, or who makes a fraudulent return, or who willfully violates any provision of this chapter, or any officer or agent of a corporation engaged in the business of renting, leasing or letting hotel rooms in this city who signs a fraudulent return made on behalf of such corporation shall, if found guilty, be fined not more than \$500.00. Each and every day such person is engaged in business in violation of this chapter shall constitute a separate offense.
- B. Any person who accepts money that is due to the comptroller under this chapter from a taxpayer for the purpose of acting as the taxpayer's agent to make the payment to the comptroller, but who fails to remit such payment to the comptroller when due, or who purports to make such payment but fails to do so because his check or other remittance fails to clear the bank or other depository against which it is drawn, shall, if found guilty, be fined not more than \$500.00.
- C. Any hotel operator who collects or attempts to collect an amount (however designated) which purports to reimburse such operator for hotel operators' occupation tax liability measured by receipts which such operator knows are not subject to hotel operators' occupation tax, or any hotel operator who knowingly over-collects or attempts to over-collect an amount purporting to reimburse such operator for hotel operators' occupation tax liability in a transaction which is subject to the tax that is imposed by this chapter, shall, if found guilty, be fined not more than \$500.00.

3.32.060 Interest.

In the event of failure by any person to pay to the comptroller the tax required hereunder within thirty (30) days after the same shall be due, interest shall accumulate and be due upon said tax at the rate of one percent (1%) per thirty (30) day period or fraction thereof.

3.32.070 Claims to recover erroneously paid tax.

- A. **The Filing of Claims.** Where an operator pays hotel operators' tax to the comptroller in error, either as a result of a mistake of fact or an error of law, the operator may file a claim with the comptroller upon a form which the comptroller prescribes and will issue on request.
- B. **Bearing the Burden of the Tax.** In addition to proving that he did not owe the tax for which recovery is sought, the claimant must also prove that he bore the burden of the amount of such tax, either by not shifting the burden of the tax to anyone else in the first instance, or by unconditionally refunding any amounts passed on because of the tax to his customers, who bore the burden thereof.
- C. **Statute of Limitations.** As to any claim filed with the comptroller on and after each January 1st and July 1st, no amount of tax or penalty erroneously paid (either in total or partial liquidation of a tax or penalty) under this chapter more than three years prior to such January 1st and July 1st, respectively, shall be credited or refunded.
- D. **Credit Memorandum or Refund.** When any claim is allowed, the City Council may issue a credit memorandum to the claimant for the amount so allowed or refund such amount in such manner as the City Council shall determine or as set forth in Section 3.32.070 (E) below.
- E. **Refunds.** In case the City Council determines that the claimant is entitled to a refund, such refund shall be made only from such budgeted amount as may be available for that purpose. If it appears unlikely that the amount budgeted would permit everyone having a claim allowed during the period covered by such budgeted amount to elect to receive a cash refund, the City Council will make such refunds only in hardship cases (i.e., in cases in which the claimant cannot use a credit memorandum.)

3.32.075 Proceeds.

All proceeds resulting from the imposition of the tax under this chapter, including interest and fines, shall be paid into the Treasury of the City of St. Charles and shall be credited to and deposited in the general fund of the City.

3.32.080 Separability.

If any provision, clause, sentence, paragraph, section, or part of this chapter, or application thereof to any person, firm, corporation, public agency or circumstance, shall for any reason be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, said judgment shall not affect, impair or invalidate the remainder of this chapter and the application of such provision to other persons, firms, corporation, public agencies or circumstances, but shall be confined in its operation to the provision, clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment has been rendered and to the person, firm, corporation, public agency, or circumstances involved. It is hereby declared to be the legislative intent of the City Council that this chapter would have

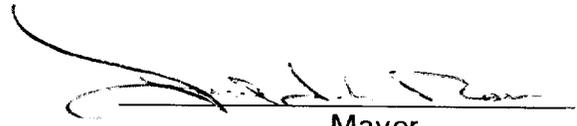
been adopted had such unconstitutional or invalid provision, clause, sentence, paragraph, section, or part thereof not been included."

SECTION 2: That after the adoption and approval hereof the Ordinance shall (i) be printed or published in book or pamphlet form, published by the authority of the Council, or (ii) within thirty (30) days after the adoption and approval hereof, be published in a newspaper published in and with a general circulation within the City of St. Charles.

PRESENTED to the City Council of the City of St. Charles, Illinois, this 5th day of June, 1995.

PASSED by the City Council of the City of St. Charles, Illinois, this 5th day of June, 1995.

APPROVED by the Mayor of the City of St. Charles, Illinois, this 5th day of June, 1995.


Mayor

ATTEST:


City Clerk

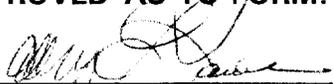
COUNCIL VOTE:

Ayes: 13

Nays: 0

Absent: 1

APPROVED AS TO FORM:



City Attorney

DATE: 2/95

STATE OF ILLINOIS)
) SS.
COUNTIES OF KANE AND DUPAGE)

C E R T I F I C A T E

I, KRISTIE A. DARULA, certify that I am the duly elected and acting municipal clerk of the city of St. Charles, Kane and DuPage Counties, Illinois.

I further certify that on June 5, 1995, the Corporate Authorities of such municipality passed and approved Ordinance No. 1995-M-19, entitled

"AN ORDINANCE AMENDING CHAPTER 3.32, 'HOTEL OPERATORS' OCCUPATION TAX', OF THE ST. CHARLES MUNICIPAL CODE",

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 1995-M-19, including the Ordinance and a cover sheet thereof was prepared, and a copy of such Ordinance was posted in the municipal building, commencing on June 16, 1995, and continuing for at least ten days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the municipal clerk.

DATED at St. Charles, Illinois, this 16 day of June, 1995.


Municipal Clerk

(S E A L)