

City of St. Charles, Illinois

Ordinance No. 2010-M-28

**An Ordinance Amending Title 3 "Revenue and Finance"
of the St. Charles Municipal Code - Adding a New
Chapter 3.42 "Alcohol Tax"**

**Adopted by the
City Council
of the
City of St. Charles
April 19, 2010**

**Published in pamphlet form by
authority of the City Council
of the City of St. Charles,
Kane and Du Page Counties,
Illinois, April 23, 2010**

Nancy Garrison
City Clerk



DATE OF PUBLICATION 4/23/10
RECEIVED *pampallat*

RECEIVED BY
EXPIRES 4/19/10
PAGE

**City of St. Charles, Illinois
Ordinance No. 2010-M-28**

**An Ordinance Amending Title 3 "Revenue and Finance" of the St. Charles
Municipal Code – Adding a New Chapter 3.42 "Alcohol Tax"**

BE IT ORDAINED by the City Council of the City of St. Charles, Kane and DuPage
Counties, Illinois as follows:

SECTION ONE: That Title 3, "Revenue and Finance", of the St. Charles Municipal
Code be and is hereby amended by adding a new Chapter 3.42 entitled "Alcohol Tax", as
follows:

"Chapter 3.42

ALCOHOL TAX

Sections:

3.42.010	Title.
3.42.020	Definitions.
3.42.030	Imposition of tax.
3.42.040	Liability for payment.
3.42.050	Collection.
3.42.060	Notices.
3.42.070	Rules and regulations.
3.42.080	Filing of return; payment of tax.
3.42.090	Late payment and/or filing; failure to pay and/or file.
3.42.100	Schedule of certain rates.
3.42.110	Records.
3.42.120	Exemptions.
3.42.130	Suspension of revocation of licenses for failure to pay tax; hearing.
3.42.140	Disposition of proceeds.
3.42.150	Notice of tax liability; demand for payment of tax; period of limitations; suit.
3.42.160	Hearings.
3.42.170	Preparation; service of citations.

3.42.010 Title.

This chapter shall be known and cited as the "St. Charles Alcohol Tax Ordinance". The
tax imposed in this chapter shall be known and cited as the "St. Charles Alcohol Tax".

3.42.020 Definitions.

For the purposes of this chapter whenever any of the following words, terms or phrases
are used, they shall have the meaning ascribed to them in this section.

- A. Alcoholic liquor is defined in the same manner as the term is defined in section 5.08.010 of this code.
- B. Liquor establishment means any premises required to obtain a retail liquor license pursuant to chapter 5.08 of this code.
- C. Owner means any person having a sufficient proprietary interest in conducting the operation of a restaurant or liquor establishment so as to entitle such a person to all or a portion of the net receipts thereof.
- D. Person means any natural person, receiver, administrator, executor, conservator, assignee, trust in perpetuity, trust, estate, firm, copartnership, joint venture, club, company, business trust, domestic or foreign corporation, association, syndicate, society or any group of 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 means the owners or part-owners thereof, and as applied to corporations, the officers thereof.

3.42.030 Imposition of tax.

- A. There is levied and imposed upon the privilege of purchasing alcoholic liquor served or prepared at a liquor establishment in the city, a tax of two percent (2%) of the purchase price, exclusive of any other tax imposed on such alcoholic liquor.
- B. There is levied and imposed upon the privilege of purchasing alcoholic liquor in original packages only for consumption off the premises at retail at any liquor establishment in the city, a tax of two percent (2%) of the purchase price, exclusive of any other tax imposed on such alcoholic liquor at retail.

3.42.040 Liability for payment.

- A. The ultimate incidence of and liability for payment of the tax imposed by this chapter shall be borne by the person who seeks the privilege of purchasing alcoholic liquor served at such liquor establishment or the privilege of purchasing alcoholic liquor at retail at any liquor establishment, such person hereinafter referred to as "consumer."
- B. The tax levied in this chapter shall be paid in addition to any and all other taxes and charges. It shall be the duty of the owner, manager or operator of every liquor establishment to collect the tax from the consumer and pay the tax to the city under the rules and regulations prescribed by the mayor and as otherwise provided in this chapter.

3.42.050 Collection.

Every person required to collect the tax levied by this chapter shall collect the tax from the consumer at the time he collects payment for the service of alcoholic liquor or the sale of alcoholic liquor at retail. The amount due under the tax imposed in this chapter shall be stated separately on the invoice receipt or other statement or memorandum of the payment given to the consumer at the time of payment.

3.42.060 Notices.

Any notice or other written communication from the city regarding the tax imposed by this chapter shall be sent to the owner at the address provided in the liquor license application form.

3.42.070 Rules and regulations.

The mayor of the city may promulgate rules and regulations not inconsistent with the provisions of this chapter concerning the enforcement and application of this chapter. The term "rules and regulations" includes, but is not limited to, a case-by-case determination whether or not the tax imposed by this chapter applies.

3.42.080 Filing of return; payment of tax.

The owner of each liquor establishment within the city shall file tax returns showing tax receipts received during each monthly period on forms prescribed by the mayor. The returns shall be due on or before the last day of the calendar month next succeeding the end of the monthly filing period.

At the time of filing such returns, the owner shall pay to the city all taxes due for the period to which the tax return applies, less a commission of one percent (1%) of the amount of the tax, which is allowed to reimburse the owner for the expenses incurred in keeping records, billing, preparing and filing returns, remitting the tax and supplying data to the city upon request. No commission may be claimed by an owner for taxes not timely remitted to the city.

3.42.090 Late payment and/or filing; failure to pay and/or file.

- A. If for any reason a tax imposed under this chapter is not paid when due, a penalty of five percent (5%) on the amount of tax which remains unpaid shall be added and collected. Whenever any person shall fail to pay any tax as provided in this chapter, the city attorney upon the request of the finance director shall bring or cause to be brought an action to enforce the payment of the tax on behalf of the city in any court of competent jurisdiction.
- B. If no return is filed or tax paid before the Finance Director issues a notice of tax liability under section 3.42.150, a penalty of twenty-five percent (25%) of the full amount of tax claimed due shall be added thereto. If a penalty is assessed under this subsection, no penalty shall be assessed under subsection A.

3.42.100 Interest.

Interest shall accrue on any late payment, underpayment or nonpayment of tax at the rate of one and one-quarter percent (1.25%) added per month to the amount of tax unpaid and uncollected.

3.42.110 Records.

- A. Every owner, manager or operator of a liquor establishment in the city shall keep books and records for a period of at least forty-eight (48) months, unless otherwise authorized by the city, which at a minimum shall include a daily sheet showing:
 - 1. The amount of taxable receipts within the twenty-four-hour period;

2. The actual liquor establishment tax receipts collected for the date in question.
- B. The mayor or his designee shall at all reasonable times have full access to such books and records.
- C. To the fullest extent permitted by law, the financial records of any liquor establishment submitted pursuant to this chapter or any rule and regulation promulgated thereunder shall not be available for public inspection in order to protect the owners' right to privacy.

3.42.120 Exemptions.

The tax imposed under this chapter shall not apply to or be imposed upon any federal, state or local governmental bodies.

3.42.130 Suspension or revocation of licenses for failure to pay tax; hearing.

If the mayor or other city official responsible for the issuance of a city license, permit or other approval, including, but not limited to, a liquor license, after hearing held by or for him, shall find that any person has willfully evaded payment or collection and remittance of the tax imposed by this chapter, he may suspend or revoke such city license, permit or other approval held by such tax evader. The person shall have an opportunity to be heard at such hearing to be held not less than seven (7) days after notice is given to him of the time and place of the hearing to be held, addressed to him at his last known place of business. Pending said notice, hearing and finding, any license, permit or other approval issued by the city to the person may be temporarily suspended. No suspension or revocation hereunder shall release or discharge said person from his civil liability for the payment or collection and remittance of the tax, nor from prosecution for such offense. Notwithstanding the foregoing, any suspension or revocation of a liquor license shall follow the procedures set forth in, and otherwise comply with, the provisions of chapter 5.08 of this code.

3.42.140 Disposition of proceeds.

All proceeds resulting from the imposition of the tax under this chapter, including penalties, shall be paid into the treasury of the city, and shall be credited to and deposited in the corporate fund of the city.

3.42.150 Notice of tax liability; demand for payment of tax; period of limitation; suit.

- A. In the event any person fails to file a return when and as herein required, or if it shall appear to the Finance Director that the amount of any tax payment is incorrect in that it does not include all taxes payable for such calendar period, or if the Finance Director shall find that the collection of any taxes which have accrued but are not yet due will be jeopardized by delay, and declares said taxes to be immediately due and payable, or if it shall appear to the Finance Director that he had made any final assessment which did not include taxes payable for the periods involved, or if it appears to the Finance Director that any person has, by reason of any act or omission or by operation of any law, become liable for any taxes, interest or penalties not originally incurred by him, the Finance Director may in any of the above events determine and assess the amount of such taxes or deficiency, as the case may be, together with the interest and penalties due and unpaid. Any such determination and assessment shall be made by the Finance

Director upon his best judgment and information, and it shall be permissible for the Finance Director to show a figure that represents the tax due for any given six (6) months instead of showing the amount of tax due for each month separately. The Finance Director shall immediately serve notice of tax liability upon such person and make a demand for payment of the tax together with interest and penalties thereon. If the person incurring any such liability has died, such demand may at the discretion of the Finance Director be made against his personal representative. Such determination and assessment by the Finance Director shall be final at the expiration of forty-five (45) days from date of the service of such written notice thereof and demand for payment, unless such person shall have filed with the Finance Director a written petition pursuant to section 3.42.160, specifying its objections thereto.

- B. The Finance Director may amend his determination and assessment at any time before it becomes final. In the event of such amendment the person affected shall be given notice and an opportunity to be heard in connection therewith.
- C. Except with the consent of the person to whom the notice of the tax liability, assessment or other determination is to be issued, or in the case of any amended return (which a notice of tax liability or assessment may be issued for an amended return filed not more than four (4) years prior to the date of such amended return), no notice of tax liability, assessment or other determination shall be issued covering the amount of tax due for any month or period of time more than four (4) years prior to the date of such tax liability, assessment, or other determination of taxes due. Notwithstanding the foregoing, in the event a tax return is not filed, or if during any four (4) year period for which a notice of tax liability, assessment or other determination may be issued, the tax paid was less than 75% of the tax due, the statute of limitations shall be six (6) years after the end of the calendar year in which the return for the applicable period was due or end of the calendar year in which the return for the applicable period was filed. No statute of limitations shall apply if a fraudulent tax return is filed.
- D. Whenever any person shall fail to pay any tax herein provided, the city attorney shall, upon the request of the Finance Director, bring or cause to be brought, an action to enforce the payment of the tax on behalf of the city in any court of competent jurisdiction. Such action shall be in addition to any other remedy afforded the city under this chapter or under any other law, including a prosecution for violation of this chapter.

3.42.160 Hearings.

- A. Any person issued a notice of tax liability pursuant to section 3.42.150, or otherwise aggrieved by any determination of the Finance Director made pursuant to this chapter, shall have the right to seek a redetermination by the Finance Director, subject to the provisions stated herein below.
- B. Any person seeking a redetermination by the Finance Director shall file a written petition for redetermination within forty-five (45) days after receipt of the applicable notice. The petition must be received by the Finance Director or in the Finance Department prior to the expiration of the forty-five (45)-day period, or on the first date the Finance Department is open for business after such date if closed

on such date. Mailing such petition on such date shall be insufficient. If the petition is not filed within this time period, then the determination of the Finance Director shall become final and not subject to further review, and the Finance Director may proceed with enforcement as provided under this chapter.

- C. The petition shall state the reason or reasons why the determination by the Finance Director is incorrect or invalid, as the case may be, and state the relief sought from the Finance Director. Upon receipt of the petition, the Finance Director shall promptly set a time and date for a hearing on the petition and shall notify the petitioner of the same not less than fourteen (14) days prior to the date set for hearing. A hearing date may be continued by the Finance Director for any reason provided for in this chapter, or for other good cause. All such hearings shall be held in the City Hall, if feasible.
- D. At such hearing, the Finance Director shall give the petitioner an opportunity to be personally heard and present whatever information or witnesses as he considers pertinent and relevant to the issue. Upon conclusion of such hearing, and after consideration of any information presented by the petitioner and such other information as may be available to the Finance Director, a decision shall be made by the Finance Director either cancelling, increasing, modifying, or affirming such determination, and notice of such decision shall be given in writing to the petitioner. Such notice shall contain a statement by the Finance Director of the cost of the certification of the record computed at the rate of five cents (\$0.05) per one hundred (100) words, which cost shall be charged to the petitioner if the determination or assessment is affirmed. The record shall consist of the notices and demands caused to be served by the Finance Director, the original determination and/or assessment of the Finance Director, the written petition for redetermination, the information and exhibits introduced at such hearing or certified copies thereof, the decisions of the Finance Director and such other documents filed in the proceeding.
- E. The decision of the Finance Director reached at the conclusion of such hearing shall be final, and the Finance Director may enforce such decision in the manner provided for under this chapter or such other manner as may be available by law.

3.42.170 Preparation; service of citations.

The Finance Director and his designees are deemed peace officers and may prepare and serve citations personally or by certified mail for violations of this chapter."

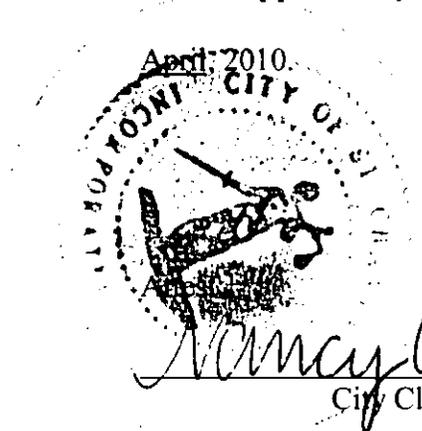
SECTION TWO: That after the adoption and approval hereof this Ordinance shall be printed or published in book or pamphlet form, published by the authority of the City Council.

SECTION THREE: That this Ordinance shall be in full force and effect on June 1, 2010.

Presented to the City Council of the City of St. Charles, Illinois this 19th day of April, 2010.

Passed by the City Council of the City of St. Charles, Illinois this 19th day of April, 2010.

Approved by the Mayor of the City of St. Charles, Illinois this 19th day of



Sal P. Sella
Mayor

Nancy Garrison
City Clerk

Council Vote:

Ayes: 8
Nays: 1
Abstain: 1
Absent: _____

Approved as to Form:

City Attorney

Date: _____

State of Illinois)
) ss.
Counties of Kane and DuPage)

Certificate

I, NANCY GARRISON, certify that I am the duly elected and acting Municipal City Clerk of the City of St. Charles, Kane and DuPage Counties, Illinois.

I further certify that on April 19, 2010, the Corporate Authorities of such municipality passed and approved Ordinance No. 2010-M-28, entitled

"An Ordinance Amending Title 3 "Revenue and Finance" of the St. Charles Municipal Code – Adding a New Chapter 3.42 "Alcohol Tax","

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

The pamphlet form of Ordinance No. 2010-M-28, including the Ordinance and a cover sheet thereof was prepared, and a copy of such Ordinance was posted in the municipal building, commencing on April 23, 2010, 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 19th day of April 2010.



Nancy Garrison
Municipal Clerk