

ORDINANCE NO. O-09-04

**AN ORDINANCE AMENDING THE MUNICIPAL CODE OF THE
CITY OF PROSPECT HEIGHTS, ILLINOIS TO IMPLEMENT
A TAX ON PLACES FOR EATING**

WHEREAS, the Illinois Municipal Code (65 ILCS 5/11-42-5) authorizes the corporate authorities of each municipality to tax all places for eating and amusement;

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Prospect Heights as follows:

SECTION ONE. The Prospect Heights City Code is hereby amended by adding Section 2-2-10 to Chapter 2 of Title 2, which shall be read as follows:

2-2-10: Prospect Heights Tax on Places for Eating:

- A. Title: The tax imposed by this chapter shall be known as the Prospect Heights Tax on Places For Eating and is imposed in addition to all other taxes imposed by the City of Prospect Heights, the State of Illinois or any other municipal corporation or political subdivision of the State of Illinois.
- B. Definitions: When any of the following words or terms are used in this chapter, whether or not capitalized, and whether used in a conjunctive or connective form, they shall have the meaning ascribed to them in this section:
1. *Beverages* shall mean both alcoholic and non-alcoholic beverages.
 2. *Food or Prepared Food* shall mean all tangible personal property, whether solid or liquid, which is used or intended to be used for human consumption.
 3. *Place for eating* shall mean any restaurant or other business, by whatever name, that is a place for eating under 65 ILCS 5/11-42-5, including but not limited to all premises located within the corporate limits of the City of Prospect Heights where prepared food is sold at retail for immediate consumption, with seating provided for consumption of said prepared food on the premises, whether consumed on premises or not, and whether or not such places for eating use is conducted along with any other use(s) in a common premise or business establishment.
 4. *Sale at retail* shall mean sale at retail as that term is defined in the Illinois Retailers Occupation Tax Act, as amended, 35 ILCS 120/1 and following.

5. "Gross Receipts" means the consideration received, valued in money, whether received in money or otherwise, including cash, credits, property and services, at a place for eating for prepared food furnished at the place for eating. Gross receipts do not include amounts paid for federal, state and local taxes, including the tax levied by this Section, and do not include amounts paid as gratuities for the employees of the place for eating.
 6. All other words or terms used in this chapter that are not defined in Title 1, Chapter 3, Section 1-3-2, "Definitions, General," of this Code, as amended, shall have the meaning set forth in the Illinois Retailers Occupation Tax Act, as amended, 35 ILCS 120/1 et seq.
- C. Tax imposed: Pursuant to 65 ILCS 5/11-42-5, except as otherwise provided by this Section, a tax is hereby imposed on each place for eating located in the City. The rate of the tax shall be 1.50 per cent of the selling price of all food and beverages sold at retail by the place for eating. The tax levied by this Section shall be paid in addition to any and all other taxes and charges.
- D. Exemptions: Notwithstanding any other provision of this chapter, the following sales at retail shall be exempt from the tax imposed by this chapter:
1. All sales of food and beverages which are exempt from tax under the provisions of the Illinois Retailers Occupation Tax, as amended, 35 ILCS 120/1 et seq.
 2. All sales of food and beverages which may not be taxed by the City under applicable law.
- E. Occasional or *de minimis* sales: A place for eating whose liability for the tax imposed by this Section would, in the absence of this Section, be less than or equal to \$200.00 in an annual tax year (**May 1 through April 30**) shall not be required to file a return or make any payment of tax with regard to that tax and annual tax year; provided, however, that this Section shall not be available to any place for eating that has separately stated and charged the tax to its customers during that annual tax year.
- F. Tax payments and returns: The owner of a place for eating may collect an amount from persons who purchase prepared food at the place for eating which shall reimburse the owner for the tax imposed on the owner by this Section.
1. Transmittal of Tax Revenue by Owner; Delinquency: The owner or owners of each place for eating shall file tax returns showing the gross receipts received during each calendar month period upon forms prescribed by the City Administrator. Returns for each calendar month shall be due on or

before the 20th day of the next calendar month, (e.g. the return for January shall be due on or before the 20th day of February; the return for February shall be due on or before the 20th day of March; etc.). Notwithstanding the foregoing, in the event that the owner of the place for eating is allowed to file Illinois Retailers' Occupation Tax and Illinois Service Occupation Tax returns with the Illinois Department of Revenue at intervals which are greater than monthly, said owner shall be allowed to file tax returns relative to the tax imposed by this Section with the City at said greater intervals. At the time of the filing of said tax returns, the owners shall pay to the City Treasurer all taxes due for the period to which the tax return applies.

2. **Transmittal of Excess Tax Collections:** If any person collects an amount upon a sale not subject to the tax imposed hereby, but which amount is purported to be the collection of said tax, or if a person collects an amount upon a sale greater than the amount of the tax so imposed herein and does not for any reason return the same to the purchaser who paid the same before filing the return for the period in which such occurred, said person shall account for and pay over those amounts to the City along with the tax properly collected.

G. Rules and regulations.

1. **Registration:** Every owner maintain a place for eating in the City shall register with the City Administrator by June 1, 2009 or the date of becoming such an owner, whichever is later.
2. **Collection:** Whenever any person shall fail to pay the tax imposed by this Section, the City Attorney or City Prosecutor shall, upon request of the City Administrator, bring or cause to be brought an action to enforce the payment of said tax on behalf of the City in any court of competent jurisdiction.
3. **Suspension of Licenses:** If the City Administrator, after a hearing held by her or her designee, shall find that any owner has willfully avoided the payment of any tax imposed by this Section, he/she may suspend or revoke all City licenses held by such tax evader. The owner shall have an opportunity to be heard at such hearing to be held not less than ten (10) days after being mailed notice of the time when and the place where the hearing is to be held, addressed to him at last known place of business. Any suspension or revocation of any license(s) shall not release or discharge the owner from his civil liability for the payment of the tax nor from prosecution for such offense.

4. **Penalties:** Any person found guilty of violating, disobeying, omitting, neglecting, or refusing to comply with or unlawfully resisting or opposing the enforcement of any of the provisions of this Section, except when otherwise specifically provided, upon conviction thereof shall be punished by a fine of not less than \$200.00 nor more than \$750.00 for the first offense, and not less than \$500.00 nor more than \$750.00 for the second and each subsequent offense in any one hundred eighty (180) day period.
 - a. Each day upon which a person shall continue any violations of this Section, or permit any such violation to exist after notification thereof, shall constitute a separate and distinct offense.
 - b. Any owner subjected to the penalties provided for by this subsection shall not be discharged or released from the payment of any tax due.

H. Books and records.

1. Every person required to pay or remit the tax to the department shall keep accurate and complete books and records of its business or activity, including original source documents, such as purchase orders, invoices and receipts, and other documents listing, summarizing or pertaining to the transactions that gave rise, or may have given rise, to the tax liability or exemption that may be claimed. All such books, records and accounts shall be available for inspection by the City at all reasonable times during business hours of the day.
2. The City Administrator, the City Treasurer or any person designated by either of them as their deputy or representative, may enter the premises of any place for eating for inspection, examination, copying and auditing of books and records including, but not limited to, Illinois Retailers' Occupation Tax and Illinois Service Occupation Tax returns filed with the Illinois Department of Revenue, in order to effectuate the proper administration of this Section, and to assure the enforcement of the collection of the tax imposed by this Section. To the extent reasonably possible, said entry shall be done in a manner that is least disruptive to the business of the place for eating. It shall be unlawful for any person to prevent, hinder, or interfere with the City Administrator, the City Treasurer or their duly designated deputies or representatives in the discharge of their duties in the performance of this subsection. It shall be the duty of every owner to keep accurate and complete books and records to which the City Treasurer, the City Administrator or their deputies or representatives shall at all times have full access, which records shall include a daily sheet showing the amount of gross receipts received during the day.

SECTION TWO: That the City Clerk of the City of Prospect Heights be and is directed hereby to publish this Ordinance in pamphlet form, pursuant to the Statutes of the State of Illinois, made and provided.

SECTION THREE: If any provision of this Ordinance, the application of any provision of this Ordinance or the imposition of this tax on any particular transaction, person or item of tangible personal property is held unconstitutional or otherwise invalid, such occurrence shall not affect other provisions of this chapter or their application to other transactions, persons or items of tangible personal property. It is the express intention of the City Council that each unconstitutional or invalid provision, or application of such provision, is severable, unless otherwise provided by this Ordinance. It is also the express intention of the City Council that if any exemption contained in this Ordinance is held unconstitutional or otherwise invalid, then this Ordinance shall be applied as if such exemption had not been enacted.

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

AYES: Aldermen Ambruster, Hamen, Higgins, Styler, Vole

NAYS: None

ABSENT: None

PASSED this 2nd day of February, 2009.

APPROVED this 2nd day of February, 2009.

ATTEST:



City Clerk

Published in pamphlet form February 3, 2009.

