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| 1 st Reading: 9-28-2009 | Publication: 10-20-2009 |
| 2 nd Reading: 10-12-2009 | Effective: 11-19-2009 |

Council Member Stoltz moved for adoption of the following ordinance:

CITY OF LINO LAKES

ORDINANCE NO. 07-09

AN ORDINANCE CREATING CHAPTER 607 OF THE CITY CODE RELATING TO TAX IMPOSED UPON LODGING

The City Council of the City of Lino Lakes does hereby ordain as follows:

Section 607.1. PURPOSE. The Legislature has authorized the imposition of a tax upon lodging at the hotel, motel, rooming house, tourist court or other use of space by a transient; and

The imposition of such a tax would provide funding for a convention and tourism bureau to promote the City as a tourist and convention center.

Section 607.2. DEFINITIONS. As used in this Chapter, the following words and terms shall have the meaning as stated:

1. The term "Director" means the Finance Director of the City.
2. The term "City" means the City of Lino Lakes.
3. The term "lodging" means the furnishing for a consideration of lodging by a hotel, motel, rooming house, tourist court, resort, bed and breakfast, private campground except where lodging shall be for a continuous period of thirty (30) days or more to the same lodger(s). The furnishing of rooms owned by religious, educational or nonprofit organizations for self-sponsored activities shall not constitute "lodging" for purposes of this article.

4. The term "Operator" means the person who provides lodging to others or any officer, agent or employee of such person.
5. The term "Person" means any individual, firm, corporation, partnership, association, estate, trustee, executor, administrator, assignee, syndicate, lessee, or receiver or any other combination of individuals. Whenever the term "person" is used in any provision of this chapter prescribing and imposing a penalty, the term as applied to a corporation, association, or partnership shall mean the officers, or partners thereof as the case may be.
6. The term "rent" means the Gross Receipts from the furnishing of lodging.
7. The term "Lodger" means the person obtaining lodging from an operator.
8. The term "Lodging Tax" means a tax imposed by the City of three percent (3%) of the gross receipts from the furnishing for consideration of lodging.

Section 607.3 IMPOSITION OF LODGING TAX. Pursuant to M.S.A. § 469.190, there is hereby imposed a three percent (3%) lodging tax on the gross receipts from the furnishing for consideration of lodging within the City of Lino Lakes on or after January 1, 2010. The lodging tax shall be stated and charged separately and shall be collected by the operator from the lodger. The tax collected by the operator shall be a debt owed by the operator to the City and shall be extinguished only by payment to the City. In no case shall the lodging tax imposed by this section upon an operator exceed the amount of lodging tax that the operator is authorized and required by this chapter to collect from the lodger.

Section 607.4 COLLECTIONS. Each operator shall collect the tax imposed by this chapter at the time the rent is paid. The tax collections shall be deemed to be held in trust by the operator for the City. The amount of tax shall be separately stated from the rent charged for the lodging.

Section 607.5. ADVERTISING NO LODGING TAX. It shall be unlawful for any operator to advertise or hold out or state to the public or any customer, directly or indirectly, that the lodging tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent or that, if added, it or any part thereof will be refunded. In computing the tax to be collected, amounts of tax less than one cent shall be considered an additional cent.

Section 607.6 PAYMENT AND RETURNS. The taxes imposed by this chapter shall be paid by the operator to the city monthly not later than 25 days after the end of the month in which the taxes were collected. At the time of payment, the operator shall submit a return upon such forms and containing such information as the director may require. At the minimum, the return shall contain the following information:

- A. The total amount of rent collected for lodging during the period

covered by the return;

- B. The amount of lodging tax required to be collected and due for the period;
- C. The signature of the person filing the return or that of his/her agent duly authorized in writing;
- D. The period covered by the return;
- F. The amount of uncollectible rental charges subject to the lodging tax.

The operator may offset against the lodging taxes payable with respect to any reporting period, the amount of taxes imposed by this chapter previously paid as a result of any transaction the consideration for which became uncollectible during such reporting period, but only in proportion to the portion of such consideration which became uncollectible.

Section 607.7 EXAMINATION OF RETURN, ADJUSTMENTS, NOTICES AND DEMANDS. The director may rely upon the Minnesota sales tax return filed by the operator with the State of Minnesota in determining the accuracy of a return filed under this ordinance. However, the director shall be authorized to make any investigation or examination of the records and accounts of the person making the return if the director reasonably determines that such steps are necessary for determining the correctness of the return. The lodging tax computed on the basis of such examination shall be the lodging tax due. If the lodging tax due is found to be greater than that paid, such excess shall be paid to the City within ten (10) days after receipt of a notice thereof given either personally or sent by registered mail to the address shown on the return. If the lodging tax paid is greater than the lodging tax found to be due, the excess shall be refunded to the person who paid the lodging tax to the city within ten (10) days after determination of such refund.

Section 607.8 REFUNDS Any person may apply to the director for a refund of taxes paid for a prescribed period in excess of the amount legally due for that period, provided that no application for refund shall be considered unless filed within one year after such tax was paid, or within one year from the filing of the return, whichever period is the longer. The director shall examine the claim and make and file written findings thereon denying or allowing the claim in whole or in part and shall mail a notice thereof by registered mail to such person at the address stated upon the return. If such claim is allowed in whole or in part, the director shall credit the amount of the allowance against any taxes due under this chapter from the claimant and the balance of said allowance, if any, shall be paid by the director to the claimant.

Section 607.9. FAILURE TO FILE RETURN.

Subd. 1 The director shall notify any operator of a facility who fails to file a return or who files an incorrect, false or fraudulent return of such fact. Such operator shall file such return or corrected return within five (5) days of the receipt of such written

notice and pay any lodging tax due thereon. If such persons shall fail to file such return or corrected return, the director shall make a return or corrected return for such person from such knowledge and information as the director can obtain, and assess the lodging tax due on the basis thereof, which said lodging tax shall be paid within five (5) days of the receipt of written notice and demand for such payment. Any such return or assessment made by the director shall be prima facie correct and valid, and such person shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

Subd. 2 If any portion of a tax imposed by this chapter, including penalties thereon, is not paid within 30 days after is required to be paid, the City Attorney may institute such legal action as may be necessary to recover the amount due plus interest, penalties, the costs and disbursements of any action.

Subd. 3 Upon a showing of good cause, the director may grant an operator one 30 (30) day extension of time within which to file a return and make payment of taxes as required by this chapter provided that interest during such period of extension shall be added to the taxes due at the rate of 10 percent per annum.

Section 607.10 PENALTIES.

Subd. 1. Calculated Penalty. The following penalties shall apply in the given situations:

- A.** Failure to file a return or pay lodging tax to the City within thirty (30) days of the due date: a penalty of ten percent (10%) of the unpaid lodging tax.
- B.** Failure to file a return or pay lodging tax imposed by the City by more than thirty (30) days but less than sixty (60) days of the due date: a penalty of fifteen percent (15%) of the unpaid lodging tax.
- C.** Failure to file a return or pay lodging tax imposed by the City by more than sixty (60) days but less than ninety (90) days of the due date: a penalty of twenty percent (20%) of the unpaid lodging tax.
- D.** Failure to file a return or pay lodging tax imposed by the City by more than ninety (90) days of the due date: a penalty of twenty-five percent (25%) of the unpaid lodging tax.

Subd. 2. Minimum Penalty. If the penalty as computed does not exceed Ten Dollars (\$10.00), a minimum penalty of Ten Dollars (\$10.00) shall be assessed. The penalty shall be collected in the same manner as the lodging tax.

Subd. 3. Interest. The amount of lodging tax not timely paid, together with any penalty, shall bear interest at the rate of eight percent (8%) per annum from the time such

lodging tax should have been paid until paid. Any interest and penalty shall be added to the lodging tax and be collected as part thereof.

Section 607.11 APPLICATION OF PAYMENTS. All payments shall be credited first to penalties, next to interest and then to the lodging tax due.

Section 607.12 ENFORCEMENT. If any portion of the lodging tax imposed by the city, including penalties thereon, is not paid within thirty (30) days after it is required to be paid, the City Attorney may institute legal action as may be necessary to recover the amount due plus interest penalties, the costs and disbursement of any action.

Section 607.13 ADMINISTRATION OF LODGING TAX. The director is authorized to confer with the Minnesota commissioner of revenue to the end that an agreement between the City and the commissioner of revenue may be entered into for the purpose of providing for the administration and collection of the taxes imposed by this chapter. Such an agreement shall not become effective until presented to the council for its approval and when so approved the tax imposed by this chapter shall be collected and administered pursuant to the terms of said agreement.

Section 607.14 EXAMINATION OF RECORDS. The director and those persons acting on behalf of the director authorized in writing by the director may examine the books, papers, and records of any operator of a facility subject to the lodging tax imposed by the city in order to verify the accuracy of any return made, or if no return was made, to ascertain the lodging tax imposed by the city through this ordinance. Every such operator is directed and required to give the director the means, facilities and opportunity for such examination and investigations as are hereby authorized.

Section 607.15 VIOLATIONS. Any person who shall willfully fail to make a return required by this chapter, or who shall fail to pay the tax after written demand for payment, or who shall fail to remit the taxes collected or any penalty or interest imposed by this chapter after written demand for such payment or who shall refuse to permit the director or any duly authorized agents or employees to examine the books, records and papers under his or her control, or who shall willfully make any incomplete, false or fraudulent return shall be guilty of a misdemeanor.

Section 607.16 APPEAL

Subd. 1 Any operator aggrieved by any notice, order or determination made by the director under this ordinance may file with the director a petition for review of such notice, order or determination detailing the operator's reasons for contesting the notice, order or determination. The petition shall contain the name of the petitioner, the petitioner's address and location of the lodging subject to the order, notice or determination.

Subd. 2 The petition for review shall be filed with the city clerk within ten (10) days after the notice, order or determination for which review is sought has been mailed or served upon the person requesting review.


Subd. 3 Upon receipt of the petition, the City Administrator, or his designee, shall set a date for a hearing and shall give the petitioner at least five (5) days prior written notice of the date, time and place of such hearing.

Subd. 4 At the hearing, the petitioner shall be given an opportunity to show cause why the notice, order or determination should be modified or withdrawn. The hearing shall be conducted by the City Administrator or his designee, provided only that the person conducting the hearing shall not have participated in the drafting of the order, notice or determination for which the review is sought. The person conducting the hearing shall make written findings of fact and conclusions based upon the applicable sections of this chapter and evidence presented. The person conducting the hearing may affirm, reverse or modify the notice, order or determination made by the director.

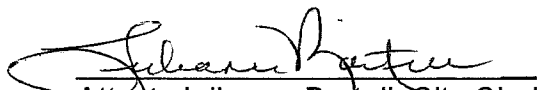
Subd. 5. Any decision rendered by the City Administrator pursuant to this subdivision may be appealed to the City Council. A petitioner seeking to appeal a decision must file a written notice of appeal with the City Clerk within ten (10) days after the decision has been mailed to the petitioner. The matter will thereupon be placed on the council agenda as soon as is practical. The City Council shall make written findings of fact and conclusions based upon this ordinance and the evidence presented. The City Council may modify, reverse or affirm the notice, or order or determination that is subject to the review. All requests for review must be made within one (1) year of the date of notice, order or determination.

Section 607.17. USE OF PROCEEDS. The Ninety-five (95) percent of the gross proceeds obtained from the collection of lodging taxes shall be used by the City in accordance with Minnesota Statutes 469.190 as the same may be amended from time to time to fund a local convention or tourism bureau for the purpose of marketing and promoting the city as a tourist or convention center.

Section 607.18 EFFECTIVE DATE. The lodging tax imposed by this ordinance shall apply to all lodging furnished on or after January 1, 2010.



John Bergeson, Mayor



Attest: Julianne Bartell, City Clerk

Adopted by the Lino Lakes City Council this 10th day of Oct, 2009.

The motion for the adoption of the foregoing ordinance was duly seconded by

Council Member O'Donnell and upon a vote being taken thereon, the following voted in favor thereof:

Stoltz, O'Donnell, Reinert, Gallup, Bergeson

The following voted against same:

none

Whereupon said ordinance was declared duly passed and adopted.