

**AN ORDINANCE AMENDING TITLE 9, CHAPTER 98 OF THE LOMBARD VILLAGE CODE IN REGARD TO PLACES FOR EATING**

WHEREAS, Section 5/11-42-5 of the Illinois Municipal Code, 65 ILCS 5/11-42-5, authorizes the corporate authorities of a municipality to license, tax and regulate all places for eating within the municipality, and

WHEREAS, the corporate authorities of the Village of Lombard find that it is in the Village's best interests to levy a one percent (1%) tax on the gross receipts of places for eating located within the Village of Lombard;

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village Lombard, DuPage County, Illinois, as follows:

SECTION 1: That Title 9, Chapter 98 of the Lombard Village Code is amended by adding new Section 98.111 thereto, which shall read in its entirety as follows:

§98.111: TAX ON THE GROSS RECEIPTS OF PLACES FOR EATING

(A) Definitions:

For the purposes of this Section 98.111, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- (1) "Prepared Food" means and includes any solid, liquid (including both alcoholic and non-alcoholic liquid), powder or item used or intended to be used for human internal consumption, whether simple, compound or mixed, and which has been prepared for immediate consumption.
- (2) "Person" or "Persons" means any natural individual, firm, partnership, association, joint stock company, joint venture, public or private corporation, limited liability company, club, fraternal organization, or a receiver, executor, trustee, conservator or other representative appointed by order of any court.
- (3) "Sold at Retail" means to sell for use or consumption in exchange for a consideration, whether in the form of money, credits, barter or any other nature, and not for resale, with said transaction being subject to either the Illinois Retailers' Occupation Tax (35 ILCS 120/1 et seq.) or the Illinois Service Occupation Tax (35 ILCS 115/1 et seq.)

- (4) "Places for Eating" or "Place for Eating"
- (a) "Places for Eating" or "Place for Eating" means all premises located within the corporate limits of the Village of Lombard 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.
- (b) "Places for Eating" or "Place for Eating" includes, but is not limited to, those establishments commonly called a restaurant, eating place, drive-in restaurant, buffet, bakery, banquet facility, cafeteria, cafe, lunch counter, fast food outlet, catering service, coffee shop, diner, sandwich shop, soda fountain, bar, cocktail lounge, soft drink parlor, ice cream parlor, tea room, delicatessen, hotel, motel, or club, or any other establishment which sells at retail prepared food for immediate consumption.
- (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 98.111, and do not include amounts paid as gratuities for the employees of the place for eating.
- (6) "Owner" means any person having an ownership interest in or conducting the operation of a place for eating.

(B) Tax Imposed:

- (1) There is hereby levied and imposed upon owners of places for eating a tax at the rate of one percent (1%) of gross receipts received for prepared food sold at retail by the owner on or after June 1, 2003.
- (2) 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 98.111.
- (3) The tax levied by this Section 98.111 shall be paid in addition to any and all other taxes and charges.
- (4) In the event the prepared food is sold at retail on credit, an owner shall not be liable for payment of the tax imposed by this Section 98.111 on such a sale until he/she/they/it receives payment for the sale.

## (C) Books and Records; Inspection; Contents:

The Village Finance Director, the Village 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 98.111, and to assure the enforcement of the collection of the tax imposed by this Section 98.111. 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 Village Finance Director, the Village 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 Village Treasurer, the Village Finance Director 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 that day.

## (D) Transmittal of Tax Revenue by Owner; Delinquency:

- (1) 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 Village Finance Director. Returns for each calendar month shall be due on or before the 20<sup>th</sup> day of the next calendar month, (e.g. the return for January shall be due on or before the 20<sup>th</sup> day of February; the return for February shall be due on or before the 20<sup>th</sup> 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 98.111 with the Village at said greater intervals. At the time of the filing of said tax returns, the owner shall pay to the Village Treasurer all taxes due for the period to which the tax return applies.
- (2) If, for any reason, any tax due pursuant to this Section 98.111 is not paid when due, penalties and interest thereon shall be imposed in accordance with the provisions of Section 98.110 of this Code.
- (3) Owners filing tax returns pursuant to this subsection shall, at the time of filing such return, pay to the Village the amount of the tax imposed by this Section 98.111, less a commission of one percent (1%) of the amount of the tax, which is allowed to reimburse the owners for the expenses incurred in keeping records, billing, preparing and filing returns, remitting the tax and supplying data to the Village upon request. No commission may be claimed by an owner for taxes not timely remitted to the Village.

(E) 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 Village along with the tax properly collected.

(F) Registration:

Every owner maintaining a place for eating in the Village shall register with the Finance Department by June 1, 2003 or the date of becoming such an owner, whichever is later.

(G) Collection:

Whenever any person shall fail to pay the tax imposed by this Section 98.111, the Village Attorney or Village Prosecutor shall, upon request of the Village Manager, bring or cause to be brought an action to enforce the payment of said tax on behalf of the Village in any court of competent jurisdiction.

(H) Suspension of Licenses:

If the Village Manager, after a hearing held by him or for him by his designee, shall find that any owner has willfully avoided the payment of any tax imposed by this Section 98.111, he/she may suspend or revoke all Village 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 his 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.

(I) Penalties:

(1) 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 98.111, 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.

(2) Each day upon which a person shall continue any violation of this Section 98.111, or permit any such violation to exist after notification thereof, shall constitute a separate and distinct offense.

subsequent offense in any one hundred eighty (180) day period.

(2) Each day upon which a person shall continue any violation of this Section 98.111, or permit any such violation to exist after notification thereof, shall constitute a separate and distinct offense.

(3) Any owner subjected to the penalties provided for by this subsection shall not be discharged or released from the payment of any tax due.

(J) Separability:

If any subsection, sentence, clause, or phrase of this Section 98.111, or the application thereof to any person or circumstance, is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Section 98.111, or the application of such portion to other persons or circumstances.”

SECTION 2: That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

Passed on first reading this 3<sup>rd</sup> day of April, 2003.

First reading waived by action of the Board of Trustees this     day of \_\_\_\_\_, 2003.

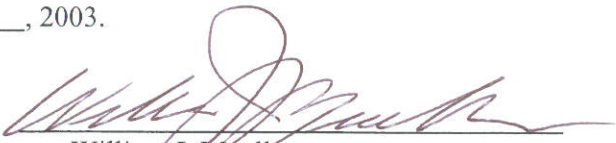
Passed on second reading this 17<sup>th</sup> day of April, 2003, pursuant to a roll call vote as follows:

AYES: Trustees Koenig, Sebby, Florey, Soderstrom


NAYS: Trustees DeStephano, Tross

ABSENT: None

APPROVED by me this 17<sup>th</sup> day of April, 2003.

  
William J. Mueller  
Village President

ATTEST:

  
Barbara A. Johnson  
Deputy Village Clerk

Published by me in pamphlet form this 21st day of April, 2003.

ATTEST:



Barbara A. Johnson  
Deputy Village Clerk

@PFDesktop\::ODMA/MHODMA/iManage;109209;1