

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

 X Resolution or Ordinance (Blue) _____ *Waiver of First Requested*
_____ Recommendations of Boards, Commissions & Committees (Green)
_____ Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: March 25, 2005 (COW)(B of T) April 7, 2005

TITLE: Ordinance Amending Title 9, Chapter 98 of the Lombard Village Code in Regard to an Amusement Tax.

SUBMITTED BY: Timothy Sexton, Assistant Director of Finance

BACKGROUND/POLICY IMPLICATIONS:

As recommended in the FYE 2006 Proposed Budget, the attached ordinance will implement an amusement tax. The new tax becomes effective beginning June 1, 2005. Highlights of the new tax are as follows:

- The amount of the tax is five-percent (5%)
- The tax is placed on all amusement activities, as this was the consensus of the Board during the budget workshops.
- The tax is levied on the gross receipts received for witnessing, participating in, or utilizing any amusement.
- The tax will apply to all entities in the Village, except for bona fide religious, charitable or not-for-profit persons or organizations.

Staff will begin mailing information to business owners upon adoption of the tax and will be providing them all the information and forms necessary to make the implementation process as easy as possible.

Review (as necessary):

Village Attorney	X	_____	Date _____
Finance Director	X	_____	Date _____
Village Manager	X	<i>Sean Flood</i>	Date <u>3/30/05</u>

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.

LAW OFFICES
KLEIN, THORPE AND JENKINS, LTD.

SUITE 1660
20 NORTH WACKER DRIVE
CHICAGO, ILLINOIS 60606-2903

TELEPHONE (312) 984-6400
FACSIMILE (312) 984-6444
FACSIMILE (312) 606-7077

ORLAND PARK OFFICE
15010 S. RAVINIA AVE., SUITE 17
ORLAND PARK, IL 60462-3162
TELEPHONE (708) 349-3888
FACSIMILE (708) 349-1506

LANCE C. MALINA
MICHAEL A. MARRS
THOMAS M. MELODY
JANET N. PETSCH
DONALD E. RENNER, III
SCOTT F. UHLER
GEORGE A. WAGNER
ALLEN WALL
DENNIS G. WALSH
JAMES G. WARGO
BRUCE A. ZOLNA

OF COUNSEL
JAMES A. RHODES
RICHARD T. WIMMER

RINDA Y. ALLISON
TERRENCE M. BARNICLE
JAMES P. BARTLEY
THOMAS P. BAYER
GERARD E. DEMPSEY
MICHAEL J. DUGGAN
JAMES V. FEROLO
E. KENNETH FRIKER
BRIAN M. FUNK
CYNTHIA S. GRANDFIELD
KATHLEEN T. HENN
EVERETTE M. HILL, JR.
MICHAEL T. JURUSIK
JACOB H. KARACA
PATRICK A. LUCANSKY

WRITER'S DIRECT DIAL

WRITER'S E-MAIL

MEMORANDUM

VIA FAX (630) 620-8222 AND U.S. MAIL

TO: Len Flood, Finance Director

FROM: Thomas P. Bayer, Village Attorney

DATE: March 24, 2005

RE: Amusement Tax

Per our discussions, enclosed please find a draft of the following Ordinance, relative to the above-captioned matter, for your review:

AN ORDINANCE AMENDING TITLE 9, CHAPTER 98 OF THE
LOMBARD VILLAGE CODE IN REGARD TO AN AMUSEMENT TAX

Please provide me with your comments, and I will put the Ordinance in final form for the April 7, 2005 meeting (although depending upon when I receive your comments, the final draft may not be available until my return to the office on April 4th).

If you have any questions, please feel free to call.

TPB:cb

cc: Timothy Sexton, Assistant Finance Director (via fax and U.S. Mail)

ORDINANCE NO. _____

**AN ORDINANCE AMENDING TITLE 9, CHAPTER 98 OF THE
LOMBARD VILLAGE CODE IN REGARD TO AN AMUSEMENT TAX**

WHEREAS, Sections 5/11-42-2 and 5/11-42-5 of the Illinois Municipal Code, 65 ILCS 5/11-42-2 and 5/11-42-5, authorize the corporate authorities of a municipality to license, tax and regulate all places for amusement, as well as theatricals and other exhibitions, shows and amusements, including, but not limited to, pinball, bowling and billiards, within the municipality (hereinafter referred to as "Amusements"); and

WHEREAS, the corporate authorities of the Village of Lombard find that it is in the Village's best interests to levy a five percent (5%) tax on the gross receipts of Amusements 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 98.114 thereto, which shall read in its entirety as follows:

§98.114: AMUSEMENT TAX

(A) Definitions:

For the purposes of this Section 98.114, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- (1) "Amusement" means and includes both participative and exhibitivie entertainment, including, but not by way of limitation, the following activities and sports: any theatrical, dramatic, musical or spectator performance; motion picture show; movie; video; videotape; digital versatile disk (DVD), video or DVD game; video or DVD game system; flower, poultry or animal show; carnival; amusement rides; animal act; circus; rodeo; athletic contest, sport or game, including, but not limited to, boxing, wrestling, skating, dancing, swimming, racing or riding animals or vehicles, baseball, basketball, softball, football, tennis, racquetball, handball, golf, hockey, track and field games, soccer, rugby, bowling, billiards and pool games; including the giving of lessons or demonstrations of any of the above described activities characterized as amusements in this Section. The word "amusement" shall also include the use of coin-operated amusement devices, as said phrase is defined in the provisions of this Code regulating coin-operated amusement devices.
- (2) "Gross Receipts" means all fees or charges received or collected in the form of admission fees or other charges for admission to and/or for the use or rental of any amusement for the purpose of witnessing, participating in, or utilizing any

amusement regardless of whether such fees or charges are characterized as admission fees, membership fees, use charges, rent, rental or service charges, exclusive of any tax imposed by the United States government, the State of Illinois, the Village or any other governmental unit. A fee or charge which entitles the patrons in regard to any amusement operated within the corporate limits of the Village to bona fide services in addition to, or unrelated to, the witnessing or participating in the amusement, shall not be subject to the tax provided for in this Section, provided, however:

- (a) Where a fee or charge is comprised of identifiable components, packages or tiers, the tax provided for herein shall be imposed on any such components, packages or tiers which provide solely for admission to any facility and/or the use of any facility or equipment for the purposes of witnessing or participating in any amusement; and
- (b) Where a single fee or charge for admission to any facility and/or the use of any facility or equipment for the purpose of witnessing or participating in any amusement also entitles the patron of the amusement to the incidental use of parking, restaurant, bar, refreshment, locker room, changing room, washroom and/or shower facilities or services, the tax provided for herein shall be imposed on such fee or charge, provided the predominant activity of such facility is an amusement, unless an allocation order has been issued as provided for in subsection (G) below.

- (3) "Person" means any natural individual, firm, organization, society, foundation, institution, partnership, association, joint stock company, joint venture, limited liability company, public or private corporation, receiver, executor, trustee or other representative appointed by order of any court, or any other entity recognized by law.
- (4) "Owner" means any person having an ownership interest in or conducting the operation of a place which provides amusements.

(B) Tax Imposed:

- (1) A tax is hereby imposed upon all persons operating amusements within the corporate limits of the Village, and upon all persons operating places which provide amusements within the corporate limits of the Village, in an amount equal to five percent (5%) of the gross receipts for each amusement. Said tax shall be in addition to all other taxes imposed by law.
- (2) Any person subject to the amusement tax imposed herein may separately itemize and charge to patrons in addition to any admission fee or other charge, the amount of amusement tax attributable to such admission fee or other charge. In the event the tax imposed by this Section is not shown or collected as a separate charge, all admission fees or other charges shall be deemed exclusive of the amusement tax specified hereinabove.

(C) Books and Records; Inspection; Contents:

The Village Finance Director, the Village Treasurer or any person designated by either of them as their respective deputy or representative, may enter the premises of any place which provides amusements 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 98.114, and to assure the enforcement of the collection of the tax imposed by this Section 98.114. To the extent reasonably possible, said entry shall be done in a manner that is least disruptive to the business of the place providing amusements. 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 respective duties in the performance of this subsection. It shall be the duty of every owner of a place which provides amusements to keep accurate and complete books and records to which the Village Treasurer, the Village Finance Director or their respective 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 which provides amusements 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 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 which provides amusements 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 98.114 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 98.114 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 98.114, 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 transaction 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 transaction greater than the amount of the tax so imposed herein and does not for any reason return the same to the person 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 which provides amusements in the Village shall register with the Finance Department by June 1, 2005 or the date of becoming such an owner, whichever is later.

(G) Allocation Orders:

A person, obligated to pay the tax provided for in this Section may apply for an allocation order by submitting a written application to the Finance Department, on a form provided by the Finance Department, together with an application fee in such amount as shall be established from time to time by the Corporate Authorities. The Finance Director shall select a reasonable time and place for a hearing upon each application, provide the applicant with written notice thereof, by certified mail, not less than fifteen (15) days prior to such hearing, and shall preside over such hearing. Any party in interest may appear at such hearing in person or by attorney. The Finance Director shall forward written recommendations to the Village Manager within thirty (30) days of the close of such hearing. The Finance Director shall not recommend, and the Village Manager shall not issue an allocation order unless the applicant establishes, by clear and convincing evidence at said hearing, that a specific portion or portions of the fee or charge is/are attributable to nonamusement items, services or facilities. An allocation order shall set forth the specific portion or portions of the fee or charge which is/are attributable to nonamusement items, services or facilities and the specific portion or portions thereof attributable to amusement items, services or facilities. From and after the issuance of an allocation order, the owner of the place which provides amusements shall pay the tax specified hereinabove, with respect to the subject fee or charge, based only upon the portion or portions of the subject fee or charge attributable to amusement items, services or facilities.

(H) Exemptions: The provisions of this Section shall not apply to:

- (1) Any amusement sponsored or conducted by, and the proceeds of which inure exclusively and solely to the benefit of, any bona fide religious, charitable, or not-for-profit person or organization; provided, however, that such person or organization has received an exemption from the State of Illinois and the United States Internal Revenue Service exempting said person or organization from the payment of state and federal income taxes.

- (2) Any amusement whenever both of the following conditions exist:
 - (a) The amusement is operated or conducted by a municipality, park district, school district, or any other unit of local government, whether individually or jointly; and
 - (b) The place the amusement is conducted is owned by a municipality, park district, school district, or any other unit of local government, whether individually or jointly.

- (3) Any amusement whenever both of the following conditions exist:
 - (a) The amusement is operated or conducted by a bona fide religious, charitable, labor, fraternal, educational, veterans', not for profit, or homeowners' organization that operates without profit to its members and which has been in existence continuously for a period of five (5) years immediately before making application hereunder and which has had during that entire five (5) year period a bona fide membership engaged in carrying out its objects; and
 - (b) The place the amusement is conducted is owned by the same bona fide religious, charitable, labor, fraternal, educational, veterans', not for profit, or homeowners' organization that operates without profit to its members and which has been in existence continuously for a period of five (5) years immediately before making application hereunder and which has had during that entire five (5) year period a bona fide membership engaged in carrying out its objects.

(I) Collection:

Whenever any person shall fail to pay the tax imposed by this Section 98.114, 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.

(J) Suspension of Licenses:

If the Village Manager, after a hearing held by him or for him by his designee, shall find that any person has willfully avoided the payment of any tax imposed by this Section 98.114, he may suspend or revoke all Village licenses held by such tax evader. The person shall have an opportunity to be heard at such hearing to be held not less than fifteen (15) days after being mailed notice, by certified mail, of the time when and the place where the hearing is to be held, addressed to said person at said

person's last known place of business or home address. Any suspension or revocation of any license(s) shall not release or discharge the person from his civil liability for the payment of the tax nor from prosecution for such offense.

(K) 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 98.114, 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 98.114, or permit any such violation to exist after notification thereof, shall constitute a separate and distinct offense.
- (3) Any person subjected to the penalties provided for by this subsection shall not be discharged or released from the payment of any tax due.

(L) Separability:

If any subsection, sentence, clause, or phrase of this Section 98.114, 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 98.114, 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 ___ day of _____, 2005.

First reading waived by action of the Board of Trustees this ___ day of _____, 2005.

Passed on second reading this ___ day of _____, 2005, pursuant to a roll call vote as follows:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED by me this _____ day of _____, 2005.

William J. Mueller
Village President

ATTEST:

Barbara A. Johnson
Deputy Village Clerk

Published by me in pamphlet form this _____ day of _____, 2005.

ATTEST:

Barbara A. Johnson
Deputy Village Clerk

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