

135-O-18

AN ORDINANCE

Amending Section 3-2-4 “Hotel-Motel and Vacation Rental Tax” to Add Bed and Breakfast Establishments and Amend the Definition of “Hotel” and “Motel” to Reduce the Number of Rooms to Qualify an Establishment

WHEREAS, the City of Evanston (“City”), as a home rule unit of local government as provided by Article VII, Section 6 of the Illinois Constitution of 1970 has the authority to exercise any power and perform any function pertaining to its government and affairs except as limited by Article VII, Section 6 of the Illinois Constitution of 1970; and

WHEREAS, pursuant to its home rule powers and Section 8-11-6a of the Illinois Municipal Code, 65 ILCS 5/8-11-6a, the City may enact a tax based on the use of a hotel or motel room or similar facility; and

WHEREAS, pursuant to said authority and the City’s home rule powers, the City has determined to amend Section 3-2-4 “Hotel-Motel and Vacation Rental Tax” of the City of Evanston Code of 2012, as set forth in this Ordinance,

NOW BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: Section 3-2-4 “Hotel-Motel and Vacation Rental Tax” of the Evanston City Code of 2012, as amended, is hereby further amended to fully replace the Section with the text provided below:

3-2-4. - HOTEL-MOTEL, BED AND BREAKFAST ESTABLISHMENTS, AND VACATION RENTAL TAX.

3-2-4-1. - DEFINITIONS.

(A) "Hotel" and "motel" shall mean and refer to every building or structure kept, used, maintained, advertised and held out to the public to be a place where lodging or lodging and food, or apartments, or suites, or other accommodations are offered for a consideration to guests, which does not include vacation rental units separately defined below, in which four (4) or more rooms, apartments or suites, or other accommodations are used for the lodging or lodging and food for such guests. A building or structure, such as a convention center, or executive conference facility, not open to the public but otherwise meeting the criteria set forth in the previous sentence, shall be subject to the hotel-motel tax.

(B) "Operator" shall mean and refer to persons engaged in the business of selling or reselling the right to occupy hotel, motel and/or vacation rental unit accommodations, whether online, in person or otherwise to the public. For bed and breakfast establishments, the term "operator" shall mean the owner of the bed and breakfast establishment, or the owner's agent, who is required to reside in the bed and breakfast establishment, or on contiguous property.

(C) "Person" means any natural person, receiver, administrator, executor, conservator, assignee, trust in perpetuity, trust, estate, firm, co-partnership, 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 shall mean the owners or part-owners thereof, and as applied to corporations shall mean the officers thereof.

(D) "Vacation Rental Unit" means a dwelling unit or a habitable unit that is offered for rent, lease or hire that is rented, leased or hired for which an owner or operator receives consideration from a person and that person has the right to use, occupy or possess the dwelling unit or habitable unit for said period.

(E) "Bed and Breakfast Establishment" means an owner-occupied, single-family or two-family dwelling providing accommodations for a charge to the public with no more than five (5) guest rooms for rent, in operation more than ten (10) nights in a twelve (12) month period. Only the breakfast meal may be provided to registered guests. The service of food to the public for a charge is otherwise prohibited. Bed and breakfast establishments shall not include motels, hotels, boarding houses, or food service establishments.

3-2-4-2. - TAX IMPOSED.

A tax is hereby levied and imposed upon the use and privilege of renting, leasing, or letting of rooms in a motel, hotel, bed and breakfast establishment, or vacation rental in the City at a rate of seven and one-half percent (7.5%) of the gross rental receipts from such rental, leasing or letting. The ultimate incidence of, and liability for, payment of said tax shall be borne by the user, lessee or tenant of said rooms or vacation rental unit. The tax herein levied shall be in addition to any and all other taxes. It shall be the duty of every owner, manager, and/or operator of hotel, motel,

bed and breakfast establishment, or vacation rental unit accommodations to secure said tax from the user, lessee or tenant of the hotel, motel, bed and breakfast establishment, or vacation rental unit accommodations and issue payment to the City.

3-2-4-3. - PAYMENT AND COLLECTION.

The owner and operator of each hotel, motel, bed and breakfast establishment, or vacation rental unit and the person to whom the license to operate said business shall have been issued by the City, shall bear, jointly and severally, the duty to collect the tax from each user, lessee or tenant of rooms in such hotel, motel, bed and breakfast establishment, or vacation rental unit. Every person required to collect the tax levied by ordinance shall secure said tax from the user, lessee or tenant of a room(s) or vacation rental unit at the time that he/she collects the price, charge or rent to which it applies.

3-2-4-4. - ADMINISTRATION AND ENFORCEMENT.

The City Manager or his/her designee is hereby designated as the administration and enforcement officer of the tax hereby imposed on behalf of the City. It shall be the responsibility and duty of the City Manager or his/her designee to collect all amounts due the City from the owners, operators and licensees of the businesses subject to this tax within the City.

A sworn quarterly hotel, motel, bed and breakfast establishment, and vacation rental occupancy tax return shall be filed by each owner, operator or licensee of each hotel, motel and vacation rental in the City with the City Manager or his/her designee, on forms prescribed by him/her, showing all receipts from each renting, leasing or letting of rooms or vacation rental units during the preceding three (3) months. The dates upon which said quarterly returns are to be filed shall be provided by rules and regulations promulgated by the City Manager or his/her designee.

Each return shall be accompanied by payment to the City of all taxes due and owing for the quarter covered by the return.

The City Manager or his/her designee, or any person certified by him/her as his/her deputy or representative, may enter the premises of any hotel, motel, bed and breakfast establishment, or vacation rental for the purposes of inspection and examination of its books and records for the proper administration of this Section, and for the enforcement of collection of the tax hereby imposed. It is unlawful for any person to prevent, hinder or interfere with the City Manager or his/her designee or his/her duly authorized deputy or representative in the discharge of his/her duties hereunder.

3-2-4-5. - ENFORCE PAYMENT OF TAX.

(A) *Failure to Pay.* Whenever any person shall fail to pay any taxes herein provided, or when any owner, operator or licensee of a hotel, motel, bed and breakfast establishment, or vacation rental in the City shall fail to collect the tax hereby imposed

from any person who has the ultimate liability for payment of the same, the Corporation Counsel shall, upon request of the City Manager or his/her designee, 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.

If the City Manager, after a hearing held by or for him/her, shall find that any hotel, motel or vacation rental owner, operator or licensee has willfully evaded his/her responsibility to collect the tax imposed by this Section, he/she may suspend or revoke all City licenses held by such tax evader. Said person shall have an opportunity to be heard at such hearing, to be held not less than five (5) days after notice of the time and place thereof, addressed to him/her at his/her last known place of business. Any suspension or conviction resulting from such hearing shall not relieve or discharge any civil liability for nonpayment of the tax due.

(B) *Interest and Penalties.* In the event of failure by any hotel, motel, bed and breakfast establishment, or vacation rental owner, operator or licensee to collect and pay to the City Manager or his/her designee the tax required hereunder within thirty (30) days after the same shall be due, interest shall accumulate and be due upon said tax at the rate of one percent (1%) per month. In addition, a penalty of ten percent (10%) of the tax and interest due shall be assessed and collected against any owner, operator or licensee who shall fail to collect and remit the tax imposed by this Section.

3-2-4-6. - DISPOSITION OF TAX MONEYS.

All proceeds resulting from the imposition of the tax under this Section, including interest and penalties, shall be paid to the City Collector and shall be credited to and deposited in the General Fund of the City.

3-2-4-7. - EXEMPTION.

The tax imposed under Subsection 3-2-4-2 of this Section shall not apply to the renting, leasing or letting of accommodations in a hotel, motel or vacation rental to permanent residents. For the purpose of this Section a "permanent resident" means any person who occupies or has the right to occupy any room or rooms in the hotel or motel for at least thirty (30) consecutive days. If a hotel, motel or vacation rental provides accommodations for both permanent residents and other guests, the rental obtained from permanent residents shall not be included in the computation of the tax due.

3-2-4-8. - PENALTY.

Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with or resisting or opposing the enforcement of any provision of this Section, except when otherwise specifically provided, shall be fined not less than two hundred and fifty dollars (\$250.00) for the first offense, and not less than seven hundred and fifty dollars (\$750.00) for the second and each subsequent offense in any one hundred

eighty (180) day period; each day of violation shall constitute a separate and distinct offense.

SECTION 2: The findings and recitals contained herein are declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

SECTION 3: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: If any provision of this Ordinance or application thereof to any person or circumstance is held unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid application or provision, and each invalid application of this Ordinance 135-O-18 is severable.

SECTION 5: This Ordinance 135-O-18 shall be in full force and effect on after its passage, approval, and publication in the manner provided by law.

Introduced: November 12, 2018

Approved:

Adopted: November 19, 2018

December 7, 2018

Stephen H. Hagerty
Stephen H. Hagerty, Mayor

Attest:



Devon Reid, City Clerk

Approved as to form:

Michelle L. Masoncup
Michelle L. Masoncup, Corporation
Counsel