

## SUB-ANALYSIS

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## CHAPTER 14

### LODGING TAX AND FRANCHISE FEES

**SECTION 14.01. DEFINITIONS.** The following terms, as used in this Chapter, shall have the meanings stated.

**Subd. 1. "City"** means the City of St. James, Minnesota.

**Subd. 2. "Lodging"** means the furnishing for a consideration of lodging by a hotel, motel, bed and breakfast, public/private campground except where such 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 non-profit organizations for self-sponsored activities shall not constitute "lodging" for purposes of this Program.

**Subd. 3. "Operator"** means the person who is the proprietor of the lodging facility, whether in the capacity of owner, lessee, sublessee, licensee, or any other capacity.

**Subd. 4. "Person"** means any individual, corporation, partnership, association, estate, receiver, trustee, executor, administrator, assignee, syndicate, 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.

**Subd. 5. "Rent"** means the total consideration valued in money charged for the lodging whether paid in money or otherwise, but shall not include any charges for services rendered in connection with furnishing lodging other than the room charge itself.

**Subd. 6. "Lodger"** means the person obtaining lodging from an operator.

### SEC. 14.02. LODGING TAX.

**Subd. 1. Imposition of Tax.** Pursuant to Minnesota Statutes, Section 469.190, there is hereby a tax imposed on the rent charged by an operator for providing lodging to any person. The lodging tax Program shall commence on January 1, 2007. A tax of one percent (1%) shall be imposed on the effective date of this Chapter. The tax collected by the operator shall be extinguished only by payment to the City. In no case shall the tax imposed by this Chapter upon an operator exceed the amount of tax which the operator is authorized and required by this Program to collect from a lodger.

**Subd. 2. Collections.** Each operator shall collect the tax imposed by this Program 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 and those persons paying the tax shall receive a receipt of payment from the operator.

**Subd. 3. Exceptions and Exemptions.**

**A. Exemptions.** An exemption shall be granted to any person as to whom or whose occupancy it is beyond the power of the City to tax. No exemption shall be granted except upon a claim therefor made at the time the rent is collected and such a claim shall be made in writing and under penalty of perjury on forms provided by the City. All such claims shall be forwarded to the City when the returns and collections are submitted as required by this Chapter.

**B. Exceptions.** Excluded from this Chapter are current and future agreements of local lodging establishments with Union Pacific Railroad and/or Corporate Lodging Consultants, Inc., or any other corporate guests that lease rooms for a continuous period of thirty (30) days or more.

**Subd. 4. Advertising No Tax.** It is unlawful for any operator to advertise or hold out or state to the public or any customer, directly or indirectly, that the 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.

**Subd. 5. Payment and Returns.** The taxes imposed by this Program shall be paid monthly by the operator to the City not later than twenty (20) 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 City Administrator may require. The operator may offset against the taxes payable with respect to any reporting period, the amount of taxes imposed by this Program 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. The return shall contain the following minimum information:

**A.** The total amount of rent collected for lodging during the period covered by the return.

**B.** The total amount of exceptions/exemptions.

C. The amount of tax required to be collected and due for the period.

D. The signature of the person filing the return or that of his/her agent duly authorized in writing.

E. The period covered by the return.

F. The amount of uncollectible rental charges subject to the lodging tax.

**Subd. 6. Examination of Return, Adjustments, Notices and Demands.** The City Administrator shall, after a return is filed, examine the same and make any investigation or examination of the records and accounts of the person making the return deemed necessary for determining its correctness. The tax computed on the basis of such examination shall be the tax to be paid. If the 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 tax paid is greater than the tax found to be due, the excess shall be refunded to the person who paid the tax to the City within ten (10) days after determination of such refund.

**Subd. 7. Refunds.** Any person may apply to the City Administrator for a refund of taxes paid in excess of the amount legally due for that period, provided that no application for a 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 City Administrator 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 City Administrator shall credit the amount of the allowance against any taxes due under this Program from the claimant.

**Subd. 8. Failure to File a Return.**

A. If any operator required by this Program to file a return shall fail to do so within the time prescribed or shall make, willfully or otherwise, an incorrect, false or fraudulent return, the operator shall, upon written notice and demand, file such return or corrected return within five (5) days of receipt of such written notice and shall at the same time pay any tax due on the basis thereof. If such person shall fail to file such return or corrected return, the City Administrator shall make a return or corrected return for such person from such knowledge and information as the Director can obtain, and assess a tax on the basis thereof, which tax (less any payments theretofore made on account of the tax for the taxable period covered by such return) shall be paid within five (5) days of the receipt of written notice and demand for such payment.

B. Any such return or assessment made by the City Administrator shall be prima facie correct and valid, and such person shall have the burden of establishing its correctness or invalidity in any action or proceeding with respect thereto.

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

D. Upon a showing of good cause, the City Administrator may grant an operator one thirty (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 ten percent (10%) per annum.

**Subd. 9. Penalties.**

A. If any tax imposed by this Chapter is not paid within the time herein specified for the payment, or any extension thereof, there shall be added thereto a specific penalty equal to ten percent (10%) of the amount remaining unpaid.

B. In case of any failure to make and file a return within the time prescribed by this Chapter, unless it is shown that such failure is not due to willful neglect, there shall be added to the tax in addition to the ten percent (10%) specific penalty provided in Subparagraph A, above, ten percent (10%) of the total tax if the failure is for not more than thirty (30) days, with an additional five percent (5%) for each additional thirty (30) days or fraction thereof during which failure continues, not exceeding twenty-five percent (25%) in the aggregate. If the penalty as computed does not exceed ten dollars (\$10.00), a minimum penalty of ten dollars (\$10.00) shall be assessed. The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the negligence, in which case the amount so added shall be collected in the same manner as the tax.

C. If any person willfully fails to file any return or make any payment required by this Chapter, or willfully files a false or fraudulent return or willfully attempts in any manner to evade or defeat any such tax or payment thereof, there shall also be imposed as a penalty an amount equal to fifty percent (50%) of any tax (less amounts paid on the basis of such false or fraudulent return) found due for the period to which such return related. The penalty imposed by this Subdivision shall be collected as part of the tax and shall be in addition to any other penalties provided by this Chapter.

D. All payments received shall be credited first to penalties, next to interest, and then to the tax due.

**Subd. 10. Administration of Tax.** The City Administrator shall administer and enforce the assessment and collection of the taxes imposed by this Chapter. The Director shall cause to be prepared blank forms for the returns and other documents required by this Chapter and shall distribute the same throughout the City and furnish them upon application; but failure to receive or secure them shall not relieve any person from any obligation required under this Chapter.

**Subd. 11. Examine Records.** The City Administrator may examine the books, papers and records of any operator in order to verify the accuracy of any return made, or if no return was made, to ascertain the tax as provided in this Program. Every such operator is directed and required to give to the City Administrator the means, facilities and opportunity for such examinations and investigations as are hereby authorized.

**Subd. 12. Use of Proceeds.**

A. Ninety-eight percent (98%) of the proceeds obtained from the collection of taxes pursuant to this Program shall be used in accordance with Minnesota Statutes, Section 469.190, as the same may be amended from time to time to fund a local convention/tourism bureau for the purpose of marketing and promoting the City as a tourist/convention center. The City may retain a maximum of two percent (2%) for administrative costs.

B. The City by and through an agreement entitled "Agreement for the Establishment of a Convention and Visitors Bureau Between the City of St. James and the St. James Area Chamber of Commerce" (hereinafter the "Agreement") with the St. James Area Chamber of Commerce (hereinafter "Chamber of Commerce") hereby permits the Chamber of Commerce to create the St. James Area Convention and Visitors Bureau (hereinafter "CVB"). CVB will be funded by the tax set forth herein and pursuant to Minnesota Statutes, Section 469.190. The Agreement sets forth the purpose and duties of CVB, and provides for its internal structure. Pursuant to the terms of the Agreement, and specifically incorporated herein without limiting the effect of the Agreement, are the following terms: CVB shall:

1. Establish and maintain separate books and records;
2. Establish separate bank accounts;

3. Not commingle its funds with the Chamber of Commerce or any other entity.

**C. Hold Harmless.** Any and all employees of the Chamber of Commerce or the CVB, or any other persons, while engaged in the performance of any service required by the Chamber of Commerce, shall not be considered employees of the City, and any and all claims that may or might arise under the Workers Compensation Act of the State of Minnesota on behalf of said employees or other persons while so engaged, and any and all claims made by the third party as a consequence of any act or omission on the part of the Chamber, or its agents or employees or other persons while so engaged in any of the services provided to be rendered herein, shall in no way be the obligation or the responsibility of the City. In connection therewith, the Chamber of Commerce hereby agrees to indemnify, save and hold harmless, defend the City and all its agents and employees thereof from any and all claims, demands, actions or causes of action of whatever nature or character arising out of or by reason of the execution or the performances of the services provided in accordance with this Agreement, excepting therefrom City Administrator duties and City duties relating to the collection of taxes.

**D.** The annual budget submitted by CVB to the Council for its approval shall be approved or disapproved in total.

**Subd. 13. Appeals.**

**A.** Any operator aggrieved by any notice, order or determination made by the City Administrator under this Chapter may file 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 the location of the lodging subject to the order, notice or determination.

**B.** The petition for review shall be filed with the Mayor 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.

**C.** Upon receipt of the petition, the Mayor or his/her designee shall set a date for a hearing and give the petitioner at least five (5) days prior written notice of the date, time and place of the hearing.

D. 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 petitioner may be represented by counsel of petitioner's choosing at petitioner's own expense.

E. Any disputes shall be conducted in accordance with principles and rules of the American Arbitration Association.

F. The Hearing Examiner conducting the hearing shall make written findings of fact and conclusions based upon the applicable provisions of this Chapter and the evidence presented. The person conducting the hearing may affirm, reverse or modify the notice, order or determination made by the City Administrator.

G. Any decision rendered by the Hearing Examiner pursuant to this Subdivision may be appealed to the Council. A petitioner seeking to appeal a decision must file a written notice of appeal with the Mayor 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 practicable. The Council shall then review the findings of fact and conclusions to determine whether they were correct. Upon a determination by the Council that findings and conclusions were incorrect, the Council may modify, reverse or affirm the decision of the Hearing Examiner or his/her designee upon the same standards as set forth in Subparagraph F, above.

**Subd. 14. Violations.** Any person who shall willfully fail to make a return required by this Program, or 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 City Administrator to examine the books, records and papers under his or her control, or who shall willfully make an incomplete, false or fraudulent return shall be guilty of a misdemeanor.

Source: Ordinance No. 198, 2<sup>nd</sup> Series

Effective Date: 08-18-2006



**SEC. 14.03. GAS FRANCHISE.** The City has entered into an exclusive franchise with Reliant Energy Minnegasco to construct, operate, repair and maintain facilities and equipment for the transportation, distribution, manufacture and sale of gas energy for public and private use and to use the public grounds of the City for such purpose. The franchise is in effect for a period of 20 years beginning March 4, 2002. The full text of the Gas Franchise Ordinance No. 172, 2<sup>nd</sup> Series, is on file and available to the public at the office of the City Clerk.

Source: Ordinance No. 172, 2<sup>nd</sup> Series  
Effective Date: 03-22-2002

**SEC. 14.04. CABLE TV FRANCHISE.** The City has entered into an exclusive franchise with Dakota Telecom, Inc. (DTI) to construct, operate, maintain and reconstruct Cable Television Systems within the City limits. The franchise is in effect for a period of 15 years beginning August 4, 1998. The full text of the Cable TV Ordinance No. 160, 2<sup>nd</sup> Series, is on file and available to the public at the office of the City Clerk.

Source: Ordinance No. 160, 2<sup>nd</sup> Series  
Effective Date: 11-20-1998

(Sections 14.05 through 14.98, inclusive, reserved for future expansion.)

**SEC. 14.99. VIOLATION A MISDEMEANOR.** Every person violates a section, subdivision, paragraph or provision of this Chapter when he/she performs an act thereby prohibited or declared unlawful, or fails to act when such failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as for a misdemeanor except as otherwise stated in specific provisions hereof.

Source: Ordinance No. 198, 2<sup>nd</sup> Series  
Effective Date: 08-18-2006

(Pages 225 through 231 reserved)