

ORDINANCE 14-08

AN ORDINANCE AMENDING TITLE 3 OF THE MUNICIPAL CODE OF THE VILLAGE OF WEST DUNDEE, TO ADD NEW CHAPTER 19, FOOD AND BEVERAGE TAX

WHEREAS, the Village of West Dundee (hereinafter “the Village”) is a home-rule unit of government pursuant to Section 6(a), Article VII of the 1970 Illinois Constitution; and

WHEREAS, pursuant to its home rule power, the Village may exercise any power and perform any function relating to its government and affairs that is not specifically precluded by the State; and

WHEREAS, in addition the Illinois Statutes provide at 65 ILCS 5/8-11-6a, that home-rule municipalities may impose additional taxes on food and alcohol; and

WHEREAS, the Village Board of the Village of West Dundee hereby finds that imposing such a tax on certain food and beverages will raise needed revenue and is in the best interests of the residents of the Village of West Dundee.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE BOARD OF THE VILLAGE OF WEST DUNDEE, as follows:

SECTION 1: The above and foregoing recitals are hereby incorporated herein and made a part of the body of this Ordinance as if they were set forth again.

SECTION 2: Title 3 of the Municipal Code of the Village of West Dundee is hereby amended to add the following:

CHAPTER 19: FOOD AND BEVERAGE TAX

3-19-1. Food and Beverage Tax. A tax shall be imposed on the sale at retail of prepared food, alcoholic liquor, and certain food items which are sold in the Village. The tax imposed in the chapter shall be known and cited as the “Food and Beverage Tax”.

3-19-2. Definitions. For the purposes of this chapter, unless the context otherwise requires, the following words or terms shall have the following meanings:

(A) *Prepared food:*

(1) “Prepared food” means any solid, liquid (including alcoholic and nonalcoholic 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) "Prepared food" includes any such item purchased for consumption within or upon the premises where it is sold or where such item may be purchased for consumption off the premises. Also included are those food items that are required to pay the higher sales tax rate as outlined in Title 86, Chapter I, Part 130 of the Illinois Department of Revenue Code pertaining to the Retailers' Occupation Tax.

(3) "Prepared food" shall include food items which are purchased hot or are otherwise purchased prepared from establishments such as, but not limited to catering establishments or food takeout/delivery establishments, for immediate on-premises or off-premises consumption.

(B) *Alcoholic Liquor* means any alcohol, spirits, wine, beer, or ale as defined, set forth and regulated in Title 3, Chapter 2 of this Code, which is sold at retail either for consumption on premises where sold or is sold in its original package for consumption off the premises.

(C) *Alcoholic liquor facility* means any establishment licensed under the provisions of Title 3, Chapter 2 of this Code and that sells alcoholic liquor on a retail basis.

(D) *Person* means any individual, firm, corporation, limited liability company or similar representative or entity.

(E) *Purchase at retail* means to obtain for use or consumption in exchange for consideration, whether in the form of money, credits, barter or in any other nature, and not for resale.

(F) *Retailer* means a person as defined herein that sells or offers for sale prepared food in/or alcoholic liquor for use or consumption and not for resale.

(G) *Prepared food facility*:

(1) "Prepared food facility" means any person or establishment which sells at retail, food prepared for immediate consumption and whether or not such prepared food facility use is conducted along with any other use(s) in a common premises or business establishment.

(2) A "prepared food facility" includes, but is not limited to, those persons or establishments, commonly called an inn, restaurant, grocery store, eating place, drive-in restaurant, bakery, buffet, cafeteria, café, lunch-counter, fast food outlet, catering service, coffee shop, diner, sandwich shop, service station mini market; soda fountain, tavern, bar, cocktail lounge, soft drink parlor, ice cream parlor, tea room, delicatessen, movie theater, mobile food or beverage or ice cream vehicle, hotel, motel or club, or other establishment which sells at retail, food which has been prepared for immediate consumption.

(3) A “prepared food facility” does not include coin operated automatic food item dispensing machines, churches, public or private schools, boarding houses, hospitals, day care centers, nursing homes, retirement centers or similar residential care facilities or programs for the central preparation of meals to be delivered and consumed at private residences of invalids or the elderly, and other facilities of not-for-profit associations or corporations.

3-19-3. Tax Imposed.

Effective as set forth in Section 4 of this Ordinance, a tax, in addition to any and all other taxes, is imposed upon the purchase of prepared foods , alcoholic liquor at retail at any prepared food facility or alcoholic liquor facility, and those food/drink items that are required to pay the higher sales tax rate as outlined in Title 86, Chapter I, Part 130 of the Illinois Department of Revenue Code pertaining to the Retailers’ Occupation Tax, within the Village at a rate of one percent of the purchase price of such prepared foods, alcoholic liquor, and other applicable food/drink items as herein outlined. The liability for payment of the tax shall be borne by the purchaser.

3-19-4. Collection of tax by retailer.

The owner and the operator of each prepared food facility and each alcoholic liquor facility , grocery store, and other applicable retail establishment within the Village shall jointly and severally have the duty to collect and account for said tax from each purchaser at the time that the consideration for such purchase is paid.

3-19-5. Responsibility of owner to keep daily records; right of Village to inspect.

The owner and operator of each facility required to impose this additional tax within the Village shall jointly and severally have the duty to maintain complete and accurate books, records and accounts showing the gross receipts for sales of prepared food, alcoholic liquor, and other included items , the taxes collected each day. The applicable records shall be made available to the Village for examination and for audit by the Village upon reasonable notice and during customary business hours.

3-19-6. Transmittal of tax collection.

Each prepared food facility and alcoholic liquor facility within the Village shall jointly and severally have the duty to cause to be filed a sworn return with the Village for each such facility for each such licensed premises located in the Village. Said return shall be prepared and submitted in forms prescribed by the Village. Said returns shall be filed with the Village by the 20th day of the succeeding calendar month. Said return shall be accompanied by payment to the Village of all taxes imposed by this article which are due and owing for the period covered by the return. The return shall also be accompanied with a copy of the return filed with the Illinois

Department of Revenue for sales within the Village of West Dundee covering the same reporting period. In the event that the retail establishment is allowed to file sales tax returns on a schedule that is less than on a monthly basis, the schedule allowed by the State will also be acceptable to the Village of West Dundee.

3-19-7. Transmittal of excess tax collections.

If any person collects an amount in excess of the tax imposed by this chapter, but which amount is purported to be a collection thereof, and does not return the same to the purchaser who paid the tax, the person who collected the tax shall account for and pay over the excess amounts to the Village along with the tax properly collected.

3-19-8. Late payment fee.

If any tax imposed by this chapter is not paid when due, a late payment penalty equal to two percent of the unpaid tax shall be added for each month, or any portion thereof, that such tax remains unpaid, and the total of such late payment shall be paid along with the tax imposed by this article.

3-19-9. Action to enforce payment.

Whenever any person shall fail to pay any tax as provided in this article, the Village attorney shall, upon request of the Village, bring or cause to be brought an action to enforce the payment of such tax on behalf of the Village in any court of competent jurisdiction.

3-19-10. Penalties

(A) Any person found guilty of violating, disobeying, omitting, neglecting, failing to submit a correct tax return by the date or refusing to comply with any of the provisions of this article, except when otherwise specifically provided, upon conviction thereof shall be punished by a fine of not less than \$100.00 nor more than \$1,000.00 for the first offense and not less than \$200.00, nor more than \$1,000.00 for the second and subsequent offenses. Each act of violation and each day upon which a violation occurs constitutes a separate offense.

(B) Failure to comply with any provision of this chapter can result in the suspension, revocation, or refusal to renew alcoholic liquor licenses as defined in Title 3, Chapter 2 of this Code.

3-19-11. Confidentiality.

All information received by the Village from returns filed pursuant to this chapter or from any investigations conducted pursuant to this article, except for official Village purposes, or as required by the Freedom of Information Act, shall be confidential.

SECTION 3: All ordinances or parts of ordinances in conflict herewith are hereby repealed, to the extent of such conflict.

SECTION 4: This ordinance shall be reviewed by the Village Board of the Village of West Dundee during the month of January, 2016 in order to determine whether to continue this tax or discontinue it at a yet to be determined date.

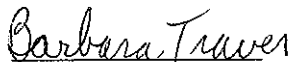
SECTION 5: This ordinance shall be in full force and effect June 1, 2014 after its passage, approval, and publication in pamphlet form as provided by law.

AYES: Trustees Kembitzky, Price, Yuscka, Pflanz and Wilbrandt

NAYS:

ABSENT: Trustee Hanley

ATTEST:



Barbara Traver

Village Clerk



Christopher Nelson

Village President