

Request for City Council Action

Date: June 14, 2016

Agenda Section: General Business No.	Originating Department: City Manager
Item: Ordinance amending Title 7 of the Carbondale Revised Code as it relates to food and beverage tax No. 6.3	Approved:

Background:

At the May 24, 2016 City Council meeting, the City Council held a discussion to consider new revenue sources that included additional motor fuel tax (MFT), a new food and beverage tax, and a package liquor tax. Collectively, the revenue that these taxes would produce could help the City finance community investment program projects and would also provide additional funding to reduce police and fire pension liability.

The Illinois Department of Revenue (IDOR) collects sales tax and segments it into ten different categories. One category, “drinking and eating places”, includes three standard industrial classifications (SIC); bars, restaurants, and hotels and motels. The tax collected within these three SIC codes is from sales of food and/or beverages sold at any business that maintains one of the three SIC codes assigned to the “drinking and eating places” category within the IDOR.

In calendar year 2015, the IDOR reports that \$837,571 was collected from Carbondale businesses within the “drinking and eating places category”. This total is 1% of the total revenue produced by bars, restaurants, and food/beverage sales of hotels and motels. Therefore, every additional 1% of tax from these SIC categories will produce an additional \$837,571 annually. At the May 24, 2016 Council meeting, it was suggested that a new food and beverage tax could be created with an initial tax rate set at 4%. Based on 2015 totals, a 4% food and beverage tax would produce an additional \$3,350,284 in annual revenue that could be used to fund community investment projects and to reduce unfunded pension liability in the police and fire pension funds.

Recommended Action:

It is recommended that the City Council adopt an ordinance to amend Title 7 of the Carbondale Revised Code as it relates to food and beverage tax.

Engineering Approval Obtained	Finance Approval Obtained	Legal Approval Obtained	Approval Obtained	Manager's Approval Obtained
-------------------------------------	---------------------------------	-------------------------------	----------------------	-----------------------------------

Council Action: Motion by _____ 2nd by _____ to _____

**CITY OF CARBONDALE, ILLINOIS
ORDINANCE NO. 2016-**

**AN ORDINANCE AMENDING TITLE SEVEN OF THE CARBONDALE REVISED
CODE AS IT RELATES TO FOOD AND BEVERAGE TAX**

**ADOPTED BY THE CITY COUNCIL
OF THE CITY OF CARBONDALE, ILLINOIS
THE 14TH DAY OF JUNE, 2016**

**Published in pamphlet form by authority of the City Council of the City of Carbondale,
Jackson County, Illinois, this 15th day of June, 2016.**

CERTIFICATE OF PUBLICATION

**I, Jennifer R. Sorrell, the duly qualified City Clerk of the City of Carbondale,
Illinois, and the official custodian of the records of said City, do hereby certify that this
Ordinance was published in pamphlet form by authority of the City Council on the 15th
day of June, 2016.**

Jennifer R. Sorrell, City Clerk

ORDINANCE NO. 2016-

AN ORDINANCE AMENDING TITLE SEVEN OF THE CARBONDALE REVISED CODE AS IT RELATES TO FOOD AND BEVERAGE TAX

WHEREAS, the City of Carbondale, Illinois is a home rule unit of local government under the Illinois Constitution, 1970, Article VII, Section 6; and

WHEREAS, pursuant to Article VII, Section 6(a), of the Illinois Constitution, 1970, the City of Carbondale may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; and

WHEREAS, Title Seven of the Carbondale Revised Code regulates the finance, taxation, and business affairs of the businesses within the city limits of the City of Carbondale; and

WHEREAS, the City Council of the City of Carbondale finds that it is in the best interest of the City of Carbondale to amend Title 7 of the Carbondale Revised Code to incorporate a food and beverage tax to be levied and imposed upon the purchase of prepared foods and alcoholic liquor at retail at any prepared food facility or alcoholic liquor facility within the city limits of the City of Carbondale.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CARBONDALE AS FOLLOWS:

SECTION 1. That a new Chapter 12 is hereby added to Title 7 of the Carbondale Revised Code, as set out in Exhibit "A" attached hereto and made a part hereof.

SECTION 2. All of the remaining sections of Title 7 of the Carbondale Revised Code shall remain in full force and effect.

SECTION 3. That all ordinances and parts thereof in conflict herewith are expressly repealed and are of no other force and effect.

SECTION 4. That repeal of any ordinance by this Ordinance shall not affect any rights accrued or liability incurred under said repealed ordinance to the effective date hereof. The provisions of this Ordinance insofar as they are the same or substantially the same as those of any prior ordinance, shall be construed as a continuation of said prior ordinances.

SECTION 5. That it is the intention of the City Council of the City of Carbondale that this Ordinance and every provision thereof shall be considered separable, and the invalidity of any section, clause, or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

SECTION 6. That the City Council of the City of Carbondale finds that the subject matter of this Ordinance pertains to the government and affairs of the City of Carbondale and is passed pursuant to authorities granted it by State statutes and the Home Rule powers of the City of Carbondale pursuant to the provisions of Article VII, Section 6(a) of the Illinois Constitution.

SECTION 7. That this Ordinance shall take effect upon its passage, approval, recording, and publication in pamphlet form in accordance with law.

APPROVED: _____
John M. Henry, Mayor

ATTEST: _____
Jennifer R. Sorrell, City Clerk

APPROVED AS TO LEGALITY AND FORM:

Lenoard "Jamie" Snyder, City Attorney

CHAPTER 12

FOOD AND BEVERAGE TAX

SECTION:

- 7-12- 1: Definitions
- 7-12- 2: Imposition of Tax
- 7-12- 3: Collection of Tax by Retailer
- 7-12- 4: Books and Records
- 7-12- 5: Transmittal of Tax Collection
- 7-12- 6: Transmittal of Excess Tax Collection
- 7-12- 7: Liability of Corporate Officer or Employee
- 7-12- 8: Disposition of Proceeds
- 7-12- 9: Penalty, Interest, Fines and Costs of Collection
- 7-12-10: Effective Date

7-12-1: **DEFINITIONS:** For the purposes of this Chapter, unless the context otherwise requires, the following words or terms shall have the meanings respectively applied to them:

ALCOHOLIC LIQUOR: Spirits, wine, beer, ale or other liquid containing more than one-half of one percent (0.5%) of alcohol by volume, which is fit for beverage purposes.

ALCOHOLIC LIQUOR FACILITY: Any establishment licensed under Title 2 of the Revised Code of Ordinances.

PERSON: Any individual, firm or corporation, representative, or entity.

PREPARED FOOD: Prepared Food means and includes any solid, liquid (including both 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.

"Prepared food" may be purchased for consumption within or upon the premises where it is sold or it may be purchased for Consumption off the premises where it is sold.

PREPARED FOOD FACILITY:

Any person or establishment which sells prepared food at retail which has been prepared for consumption, whether or not such prepared food facility use is conducted along with any other use(s) in a common premises or business establishment and is limited to those sales from retail facilities with US Department of Revenue Standard Industrial Classification (SIC) designation 5812, 5813 and 7011.

PURCHASE AT RETAIL:

To obtain for use or consumption in exchange for consideration, whether in the form of money, credits, barter or any other nature, and not for resale.

RETAILER:

Any person who sells or offers for sale, for use or consumption and not for resale.

7-12-2: **IMPOSITION OF TAX:** A tax, in addition to any and all other taxes, is imposed upon the purchaser for the purchase of prepared foods and alcoholic liquor at retail at any prepared food facility or alcoholic liquor facility within the City, at a rate of four percent (4.0%) of the purchase price of such prepared food and alcoholic liquor. The ultimate incidence of and liability for payment of which shall be borne by the purchaser thereof.

7-12-3 **COLLECTION OF TAX BY RETAILER:** The owner and the operator of each prepared food facility and each alcoholic liquor facility within the City 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.

7-12-4 **BOOKS AND RECORDS:** The owner and the operator of each prepared food facility and each alcoholic liquor facility within the City 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 and alcoholic liquor and the taxes collected each day, which shall be made available to the city for examination and for audit by the city upon reasonable notice and during customary business hours.

7-12-5 **TRANSMITTAL OF TAX COLLECTION:** The owner and the operator of each prepared food facility and each alcoholic liquor facility within the City shall jointly and severally, have the duty to cause to be filed a sworn return with the Finance Department for each such facility and for each such licensed premises located in the City. The return shall be prepared and submitted on forms prescribed by the City. The return shall be filed with the City by the twentieth day of the month following the end of the calendar quarter as per shown in the following table:

Calendar Quarter:
January, February, March
April, May, June
July, August, September
October, November, December

Due Date:
April 20th
July 20th
October 20th
January 20th

The return shall also be accompanied by payment to the City of all taxes imposed by this Chapter which are due and owing for the period covered by said return. The return shall also be accompanied with a copy of the return(s) filed with the Illinois Department of Revenue for sales within the City of Carbondale covering the same reporting period.

7-12-6 **TRANSMITTAL OF EXCESS TAX COLLECTION:** 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 City along with the tax properly collected.

7-12-7 **LIABILITY OF CORPORATE OFFICER OR EMPLOYEE:** Any officer or employee of any corporation subject to the provisions of this Chapter who has the control, supervision, or responsibility of filing returns or collecting and making payment of the amount of tax herein imposed and who fails to file such returns or to collect and to make payment to the City shall be personally liable for such amounts, including costs of collection. The personal liability of such officer or employee as provided herein shall survive the dissolution of the corporation.

7-12-8 **DISPOSITION OF PROCEEDS:** All proceeds resulting from the imposition of the tax under this Chapter, including penalties, interest, fines and costs of collection shall be paid into the Treasury of the City and shall be credited to and deposited into the General Corporate Fund of the City; all proceeds shall be expended be split evenly between capital expenditures and public pension contributions.

7-12-9 **PENALTY, INTEREST, FINES AND COSTS OF COLLECTION:** Any person who violates any provision of this Chapter shall be punishable by a fine of not less than One Hundred Dollars (\$100.00) or more than Seven Hundred Fifty Dollars (\$750.00). Each day during which the violation continues shall be recorded as a separate punishable offense.
If for any reason the tax is not paid when due, a penalty as set out in Chapter 11 of this Title 7, shall apply.

Whenever any person shall fail to pay the tax as provided herein, an action to enforce the payment shall be brought on behalf of the City of Carbondale in any court of competent jurisdiction to enforce this Chapter and collect any delinquent tax, interest, and penalties and also the reasonable attorney fees, court costs, and other expenses incurred by the City in enforcing any provision of this Chapter.

7-12-10 **EFFECTIVE DATE:** This Ordinance and the tax imposed herein shall be effective on August 1, 2016.