

VILLAGE OF DEERFIELD
LAKE AND COOK COUNTIES, ILLINOIS

ORDINANCE NO. O-17-2

AN ORDINANCE AMENDING CHAPTER 9 (“FINANCE AND
TAXATION”) OF THE MUNICIPAL CODE OF THE VILLAGE
OF DEERFIELD BY ADDING ARTICLE 12 THERETO
ENTITLED “FOOD AND BEVERAGE TAX”

PASSED AND APPROVED BY THE
PRESIDENT AND BOARD OF TRUSTEES
OF THE VILLAGE OF DEERFIELD, LAKE
AND COOK COUNTIES, ILLINOIS, this

3rd day of January, 2017.

Published in pamphlet form
by authority of the President
and Board of Trustees of the
Village of Deerfield, Lake and
Cook Counties, Illinois, this
3rd day of January, 2017.

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WHEREAS, the Village of Deerfield is a home rule unit of government pursuant to the provisions of Article VII, Section 6 of the Illinois Constitution of 1970; and

WHEREAS, as a home rule unit of local government, the Village may exercise any power and perform any function pertaining to its government and affairs except as limited by Article VII, Section 6; and

WHEREAS, the corporate authorities of the Village of Deerfield are authorized to license, tax and regulate places for eating pursuant to Section 11-42-5 of the Illinois Municipal Code (65 ILCS 5/11-42-1); and

WHEREAS, as a home rule unit of government the Village also has the power and authority pursuant to Section 8-11-6a of the Illinois Municipal Code (65 ILCS 5/8-11-6a) to impose a tax on food prepared for immediate consumption on and/or off the premises of the prepared food retailer, and on alcoholic beverages sold by businesses at retail for consumption on the premises of the alcoholic beverage retailer; and

WHEREAS, the corporate authorities of the Village of Deerfield have determined that it is in the best interests of the Village and its residents to impose a tax on food prepared for

immediate consumption on and/or off the premises of the prepared food retailer, and on alcoholic beverages sold by businesses at retail for on premise consumption of said alcoholic beverages.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF DEERFIELD, LAKE AND COOK COUNTIES, ILLINOIS, in the exercise of its home rule powers, as follows:

SECTION 1: Chapter 9 (“Finance and Taxation”) of the Municipal Code of the Village of Deerfield, as amended, be and the same is hereby further amended to add the following as Article 12 thereof entitled “Food and Beverage Tax”:

Article 12. Food and Beverage.

Sec. 9-83. General: This Article shall be known and cited as the "Village of Deerfield Food and Beverage Tax Ordinance". The tax imposed by this Article shall be known as the "Deerfield Food and Beverage Tax" and is imposed in addition to all other taxes imposed by the Village of Deerfield, the State of Illinois, or any other municipal corporation or political subdivision thereof.

Sec. 9-84. Definitions: As used in this Article, the following words or terms shall have the following meanings:

- (a) *Alcoholic Liquor:* Any spirits, wine, beer, ale or other liquid containing more than one-half of one percent (0.5%) of alcohol by volume and which is fit for human internal consumption as a beverage.
- (b) *Owner:* Any person having an ownership interest in or conducting the operation of a prepared food facility.
- (c) *Person:* Any natural individual, partnership, association, firm, corporation, limited liability company, representative or other legally recognized entity.
- (d) *Prepared Food:*
 - (1) *Prepared Food* means any and all solid, semi-solid, liquid, powder, non-alcoholic beverage or other food substance used or intended to be used for human internal consumption, whether simple, compound or mixed, and which has been prepared for immediate consumption on and/or off the premises.

(2) *Prepared Food* includes any alcoholic liquor used or intended to be used for human consumption and which has been sold for immediate consumption on the premises, but does not include alcoholic liquor which is sold in its original package for consumption off the premises of the Retailer.

(e) *Prepared Food Facility*:

(1) *Prepared Food Facility* includes any place, facility or food service establishment which sells prepared food at retail for immediate consumption on and/or off the premises of the facility, whether or not such facility is conducted in conjunction with any other use(s) in a common premises or business establishment, and includes, but is not limited to, restaurants, eating places, drive-in restaurants, bakeries, buffets, cafeterias, cafés, lunch counters, fast food outlets, catering services, coffee shops, diners, sandwich shops, soda fountains, taverns, bars, cocktail lounges, soft drink parlors, ice cream parlors, tearooms, delicatessens, banquet facilities, movie theaters, hotels, motels and clubs. Where a facility is only partially intended to permit on site consumption of food (such as a grocery store with a prepared food service area), only that portion of the facility selling prepared food shall be considered a prepared food facility.

(2) "*Prepared Food Facility*" does not include (a) food stores (except facilities therein which sell prepared food), (b) churches (c) public or private schools, (d) day care centers, (e) nursing homes, (f) retirement or similar residential care facilities, (g) hospitals or (h) coin-operated automatic food item dispensing machines.

(f) *Purchase at Retail*: To obtain for use or consumption in exchange for a consideration, whether in the form of money, credits, barter or any other nature, and not for resale.

(g) *Retailer*: Any person who sell or offers for sale prepared food for use or consumption and not for resale.

Sec. 9-85. Tax Imposed:

(a) Commencing on March 1, 2017, in addition to any and all other taxes, a tax is hereby imposed upon the privilege of purchasing at retail prepared food at any prepared food facility as herein defined within the Village at the rate of one percent (1.00 %) of the purchase price of such prepared.

(b) The ultimate incidence of and liability for payment of the tax imposed by this Article shall be borne by the purchaser of prepared food at a prepared food facility as herein defined.

Sec. 9-86. Exemptions:

- (a) All sales of food and beverages which are exempt from tax under the provisions of the Retailers' Occupation Tax, (35 ILCS 120/1 *et seq.*), as amended from time to time, are exempt from the Deerfield food and beverage tax.
- (b) The Deerfield food and beverage tax shall not be applied to the sale or purchase of "undispensed soft drinks", meaning any complete, finished, ready-to-use, non-alcoholic drink, whether carbonated or not, including but not limited to soda water, cola, fruit juice, vegetable juice, carbonated water, and all other preparations commonly known as soft drinks of whatever kind or description that are contained in any closed or sealed bottle, can, carton, or container, regardless of size. "Soft drinks" as defined herein, does not include coffee, tea, noncarbonated water, infant formula, milk or milk products as defined in the Grade A Pasteurized Milk and Milk Products Act (410 ILCS 635/1 *et seq.*) or drinks containing 50% or more natural fruit or vegetable juice.

Sec. 9-87. Collection of Tax by Retailer: The owner and operator of each prepared food facility within the Village shall, jointly and severally, have the duty to secure, collect and account for said tax from each purchaser at the time the consideration is paid for a purchase of prepared food.

Sec. 9-88. Books and Records; Inspections; Content: Each person required to secure and collect the tax provided for hereunder shall, jointly and severally, have the duty, personally or through their authorized agents, to maintain complete and accurate books, records and accounts covering the operation of the prepared food facility, showing the gross receipts for sales of prepared food and the food and beverage taxes collected each day, which books, records and accounts shall be made available in the Village for examination and audit by the Village and its authorized agents upon reasonable notice and during customary business hours.

Sec. 9-89. Transmittal of Tax Collections: The owner and the operator of each prepared food facility within the Village shall jointly and severally have the duty to file, or cause to be filed, a sworn food and beverage tax return with the Finance Director of the Village for each such facility. The return shall be prepared and submitted monthly on forms prescribed by the Village, by the 20th day of each month, at the same time intervals and frequencies as the retailer occupation tax return, Form ST-1, is due to Illinois Department of Revenue for the prepared food facility. Said return shall also be accompanied by payment to the Village of all food and beverage taxes imposed by this Article which are due and owing for the period covered by said return. Said return shall also be accompanied with a copy of the retailer occupation tax return filed with Illinois Department of Revenue covering the same reporting period.

Sec. 9-90. Late Payment Penalty: If the tax imposed by this Article is not paid when due, a late payment penalty equal to two percent (2%) of the unpaid tax shall be added for each month, or any portion thereof, that such tax remains unpaid or underpaid and the late payment penalty shall be paid along with the tax imposed herein.

Sec. 9-91. Transmittal of Excess Tax Collections: If any person collects an amount upon a sale not subject to the tax imposed herein, 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 sale occurred, said person shall account for and pay over those amounts to the Village along with the tax properly collected.

Sec. 9-92. Registration:

- (a) Every owner and operator of any prepared food facility within the Village shall register as retailer under this Article with the Finance Director no later than February 28, 2017, or the date of becoming such owner and operator, whichever is later.
- (b) A registration under this Article is not transferrable. Any change of name, of ownership, or of corporate or ownership structure, shall require a new or amended registration with the Finance Director.

Sec. 9-93. Enforcement; Suspension of Licenses: If the Village President or an agent designated by the President, after a hearing held by the President or his/her a designated agent, shall find that any person has willfully avoided payment of the tax imposed by this Article, the President or his/her designated agent may suspend or revoke all Village licenses, permits or other approvals held by such tax evader. The person liable for the payment of the food and beverage tax shall have an opportunity to be heard at such hearing to be held not less than five (5) working days after notification of the time and place of the hearing. The notice shall be addressed to such person at his/her last known place of business. Pending said notice, hearing and finding, any license, permit or approval issued by the Village to the person may be temporarily suspended. No suspension or revocation of any license, permit or approval shall release or discharge such person from his/her civil liability for the payment or collection and remittance of the tax, nor from prosecution for such offense.

Sec. 9-94. Proceeds of Tax Collections: All proceeds resulting from the imposition of the food and beverage tax imposed under this Article, including penalties, shall be paid into the treasury of the Village.

Sec. 9-95. Penalties:

- (a) Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Article, shall be punished by a fine of not less than Two Hundred Dollars (\$200.00) nor more than Seven Hundred Dollars (\$750.00) for the first offense, and not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00) for the second and each subsequent offense in any three hundred sixty (360) day period.
- (b) Each day upon which a person shall continue any violation of this Article, or permit any such violation to exist after notification thereof, shall constitute a separate and distinct offense.
- (c) Any person subjected to the penalties provided for in this subsection, shall not be discharged or released from the payment of any tax due hereunder.

Sec. 9-96. Severability: If any provision of this Article, the application of any provision of this Article, or the imposition of this tax on any particular transaction, person or item of tangible personal property is held unconstitutional or otherwise invalid, such occurrence shall not affect other provisions of this Article or their application to other transactions, persons or items of tangible personal property. It is the express intention of the corporate authorities of the Village that each unconstitutional or invalid provision, or application of such provision, is severable, unless otherwise provided by this Article. It is also the express intention of the corporate authorities of the Village that if any exemption contained in this Article is held unconstitutional or otherwise invalid, then this Article shall be applied as if such exemption had not been enacted.

SECTION 4: That this Ordinance, and each of its terms, shall be the effective legislative act of a home rule municipality without regard to whether such Ordinance should: (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law; or, (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the corporate authorities of the Village of Deerfield that to the extent that the terms of this Ordinance should be inconsistent with any non-preemptive state law, this Ordinance shall supersede state law in that regard within its jurisdiction.

SECTION 5: 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 this 3rd day of January, 2017.

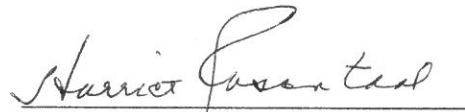
AYES: Farkas, Jester, Seiden, Shapiro, Struthers

NAYS: None

ABSENT: Nadler

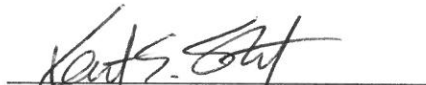
ABSTAIN: None

APPROVED this 3rd day of January, 2017.



Village President

ATTEST:



Village Clerk