

3-1-9: - FOOD AND BEVERAGE TAXES:

1. Definitions: The following definitions shall apply unless the context clearly indicates or requires a different meaning:

ALCOHOLIC LIQUOR:	Any alcohol, "spirits", wine, or "beer" as defined in Section 3-3-1 of this Title sold at retail for consumption on the premises where sold.
AMENDMENT TO FOOD AND BEVERAGE TAX RETURNS:	In the event the owner and the operator of any retail food facility or retail liquor facility within the City which has made payment of any food and beverage tax to the City and believes that said payment was in excess of what was legally required to be paid, that party shall have a period of one year from the date of payment to amend its food and beverage tax returns. Upon confirmation of overpayment, the City shall process said amendment and repay any excess amount paid to the City for any fees collected within one year of the request being made.
DOWNTOWN:	That contiguous geographic portion less than one square mile in the City of Naperville, depicted on figure 1, on file with the City, and generally bound on the north by Franklin Avenue, the east by Ellsworth Street, the south by Aurora Avenue and the west by Eagle Street.
PREPARED FOOD ITEM FOR IMMEDIATE CONSUMPTION:	Any and all material or commodities, whether solid, semisolid, or liquid (including both alcoholic and nonalcoholic liquid) used or intended to be used for human consumption, for enjoyment or nourishment of the human body.
PURCHASE AT RETAIL:	To obtain food, beverages and alcoholic liquor 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.
RETAIL FOOD FACILITY:	1. Includes any place at which food items or beverages are served and/or prepared for immediate consumption by a business which provides for on premises consumption of said food or beverages, including, but not limited to, those establishments commonly called an inn, restaurant, eating place, drive-in restaurant, bakery, buffet, cafeteria, cafe, lunch counter, fast food outlet, catering service, coffee shop, diner, sandwich shop, soda fountain, tavern, bar, cocktail lounge, soft drink parlor, ice cream parlor, tearoom, delicatessen, movie theater, hotel, motel or club. 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 retail food facility.
	2. Includes all food and beverage sales by vendors at Ribfest, Last Fling, and Naper Days as well as such other communitywide festivals for which any permit is required and approved by Council and a condition is included therein imposing this tax.
RETAIL LIQUOR FACILITY:	Any establishment licensed under Chapter 3 of this Title with respect to the sale of liquor where the liquor sold is intended to be consumed on the premises.
RETAILER:	A person who sells or offers for sale food, beverages and alcoholic liquor for use or consumption and not for resale. Includes an individual, corporation, or partnership, or an officer or employee of any corporation (including a dissolved corporation), or a member or employee of any partnership, who as such officer, employee or member is under a duty to perform the act in respect of which the violation occurs.

2. Tax Imposed:

2.1.

Retail Food Facilities Throughout The City: Commencing on July 1, 2004, a tax, in addition to any and all other taxes, is hereby levied and imposed upon the privilege of the retail purchase of alcoholic liquor, food or beverages at any "retail food facility" or "retail liquor facility", as herein defined, within the City, at the rate of one percent (1%) of the purchase price of such alcoholic liquor, food or beverage, the ultimate incidence of and liability for payment of which shall be borne by the purchaser thereof.

2.2. Retail Food Facilities Within The Downtown:

- 2.2.1. Tax Imposed: Commencing November 1, 2008, a downtown food and beverage tax, in addition to any and all other applicable taxes, including the one percent (1%) food and beverage tax described in Subsection 3-1-9:2.1 of this Section, is levied and imposed upon the privilege of the retail purchase of alcoholic liquor, food or beverages at any "retail food facility", as herein defined, within the downtown, at the rate of three-quarters of one percent (0.75%) of the purchase price of such alcoholic liquor, food or beverage, the ultimate incidence of and liability for payment of which shall be borne by the purchaser thereof.
- 2.2.2. Use Of Funds; Expiration Of Tax: The funds raised by the downtown food and beverage tax are restricted for use as a funding source for construction and maintenance of parking facilities within the downtown and shall not be utilized for the payment of greater than sixty-six percent (66%) of the total cost of any individual parking facility. The downtown food and beverage tax shall terminate upon the expiration of twenty-five (25) years from the date of implementation of the tax.
- 2.2.3. Citywide Home Rule Sales Tax: Should the City enact or adjust a Citywide home rule sales tax at any time that this downtown food and beverage tax is being collected, this downtown food and beverage tax shall be decreased or increased proportionality by the incremental respective increase or decrease in the amount of home rule sales tax imposed on those entities. Said adjustment shall not exceed the three-quarters of one percent (0.75%) rate annually.
- 2.2.4. Downtown Parking Fee: Should the City enact a fee of general applicability in the downtown, which fee is imposed as a funding source for construction of parking facilities in the downtown, said fee shall be adjusted by the City in an equitable manner taking into consideration the revenue paid by those entities in the downtown subject to this downtown food and beverage tax and the capital needs for parking facilities in the downtown that can be attributed to the parking demand of those entities. For purposes of this section, a special service area tax shall not be considered a downtown parking fee.

3. Exemptions:

- 3.1. The food and beverage tax and the downtown food and beverage tax shall not be applied to coin operated automatic food item dispensing machines, confectionery stores, churches, public or private schools, mobile food or beverage or ice cream vehicles, boarding houses, hospitals, daycare centers, employee cafeterias, 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. However, when not for profit associations or corporations make any portion of the facility available to a for profit organization, this exemption does not apply and the tax must be paid as otherwise required.
- 3.2. The food and beverage tax and the downtown food and beverage tax shall not be applied to the sale or purchase of "undispensed soft drinks", meaning any complete, finished ready to use, nonalcoholic 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, or drinks containing fifty percent (50%) or more natural fruit or vegetable juice.
4. Collection Of Tax(es) By Retailer: The owner and the operator of each retail food facility and each retail liquor facility within the City shall jointly and severally have the duty to collect and account for said tax(es) from each purchaser at the time that the consideration for such purchase is paid.

Distribution of Collected Food and Beverage Taxes shall be as follows:

- 4.1. Recovery of the City's costs attributable to the collection of the food and beverage tax shall first be distributed, thereafter, fifty percent (50%) of the taxes collected pursuant to the food and beverage tax imposed herein, up to a maximum of one million nine hundred thousand dollars (\$1,900,000.00) a year shall be contributed to the Special Events and Community Arts (SECA) Grant Program which will increase annually beginning in 2019 at the lesser of a two-percent (2%) flat rate or the Chicago-Naperville-Elgin, Ill.-Ind.-Wis. Consumer Price Index (CPI) rate; and at least twenty-five percent (25%) of the taxes collected pursuant to the food and beverage tax imposed herein shall be split equally and contributed to the Naperville Police Pension Fund and the Naperville Firefighters Pension Fund, and said contribution may be used to meet the City's legally required funding obligations or to exceed the City's legally required funding obligations for the Pension Funds in any given year; and, up to twenty-five percent (25%) of the taxes collected pursuant to the food and beverage tax imposed herein, up to a maximum of one million dollars (\$1,000,000.00) a year shall be contributed to the Naper Settlement Fund which will increase annually beginning in 2025 at the lesser of a two-percent (2%) flat rate or the Chicago-Naperville-Elgin, Ill.-Ind.-Wis. Consumer Price Index (CPI) rate. Any remaining revenue available shall be first used as additional funding for the City's Social Service Grant Program up to a maximum of seven hundred and fifty thousand dollars (\$750,000.00); and any remaining revenue above that level will be used to reduce the City's long term debt obligations.
5. Books And Records: The owner and the operator of each retail food facility and each retail 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 food and beverage and alcoholic liquor and the taxes collected each day pursuant to the food and beverage tax and/or pursuant to the downtown food and beverage tax, which shall be made

available in the City for examination and audit upon reasonable notice and during customary business hours.

6. Filing Of Return:

6.1. The owner and the operator of each retail food facility and each retail liquor facility within the City shall jointly and severally have the duty to cause to be filed a sworn return(s) with the Finance Director for each retail facility located in the City. Said return shall be prepared and submitted on forms prescribed by the City. Said return shall be filed by the filing date or postmarked the filing date (either of which shall constitute timely payment), and at the same time intervals and frequencies as the retailers' occupational tax return, form ST-1, is due to be filed with the Illinois Department of Revenue. Said return shall also be accompanied by payment to the city of all taxes imposed by this Section which are due and owing for the period covered by said return, except that two percent (2%) of the amount due may be deducted if payment is made in a timely manner. Said return shall also be accompanied with a copy of the return filed with the Illinois Department of Revenue covering the same reporting period.

6.2. Any vendor participating in community festivals, as directed by City Council, must file a sworn return and pay the taxes within thirty (30) days of the event's conclusion. Alternatively a vendor may request an extension to file a sworn return, but pay a good faith estimate of the taxes due on the last day of participation at the event. An extension may only be granted for up to ninety (90) days. On or before the last day of the extension, a final sworn return must be filed by the vendor with the City which reflects actual taxes due. At the time the final sworn return is filed, the vendor shall pay the balance of the taxes due, if any. In the event of overpayment, a refund shall be sent to the vendor by the City. This Section will not apply to any vendor who also maintains a retail food facility in the City of Naperville and files returns in accordance with Subsection 3-1-9.6.1 of this Section.

7. Late Payment Penalty: If any tax imposed herein is not paid when due, a late payment penalty equal to five percent (5%) of the unpaid tax shall be added for each month, or any portion thereof, that such tax remains underpaid and the total of such late payment penalty shall be paid along with the tax imposed herein.

In addition to the five percent (5%) penalty imposed above, any vendor participating in community festivals whose tax(es) is not timely filed or paid, will be denied necessary permits to participate in any future community festivals.

8. 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 occurred, said person shall account for and pay over those amounts to the City along with the tax properly collected.

9. Agent Designation: Each and every owner and operator of any retail food facility and retail liquor facility within the City of Naperville shall designate an individual, either by name or job title, to receive any written communication from the City regarding the food and beverage tax and the downtown food and beverage tax. Each person so designated shall be employed at a facility located within the City of Naperville and for purposes of this Section may be referred to as "agent". Each owner and operator of each facility may additionally designate an individual, either by name or job title, outside of the corporate limits of the City of Naperville to receive the same information or inquiries provided to the person so designated within the City. It shall be the obligation of each owner or operator of the facility to notify the City in writing via certified mail of any change of person so designated within ten (10) days of any change.

10. Violations: Any owner or operator found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Section shall be punished, upon conviction thereof, by a fine of not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00) 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 180-day period. A separate and distinct offense shall be deemed committed each day upon which said violation shall continue.

(Ord. No. 04-051, 4-1-2004; Ord. No. 04-056, 4-6-2004; Ord. No. 04-103, 6-15-2004; Ord. No. 08-187, 10-7-2008; Ord. No. 09-061, 5-19-2009; Ord. No. 10-028, § 1, 3-15-2010; Ord. No. 13-029, § 1, 4-16-13; Ord. No. 15-160, § 3, 9-15-2015; Ord. No. 15-170, § 1, 10-6-2015; Ord. No. 16-166, § 1, 10-4-2016; Ord. No. 18-039, § 1, 5-1-2018; Ord. No. 18-046, § 1, 5-1-2018; Ord. No. 20-089, § 3, 8-18-2020; Ord. No. 23-149, § 2, 11-21-2023)

Note— Section 7 of Ord. No. 15-160 states the following: "The change of the food and beverage taxes rate for retail food facilities within the Downtown (3-1-9:2 et seq.) from one and one-half percent (1.5%) to one percent (1%) shall become effective on January 1, 2016. Until that date, the food and beverage taxes rate for retail food facilities within the Downtown (3-1-9:2 et seq.) shall remain at one and one-half percent (1.5%)."