

ORDINANCE NO. 15 – 160

**AN ORDINANCE REPEALING SECTION 1 (RETAILERS' OCCUPATION TAX)
AND SECTION 2 (SERVICE OCCUPATION TAX),
AMENDING SECTION 9 (FOOD AND BEVERAGE TAXES), AND
ADDING SECTION 11 (HOME RULE MUNICIPAL RETAILERS' OCCUPATION TAX
AND HOME RULE MUNICIPAL SERVICE OCCUPATION TAX) OF
CHAPTER 1 (MUNICIPAL OCCUPATION TAXES),
TITLE 3 (BUSINESS AND LICENSE REGULATIONS),
OF THE NAPERVILLE MUNICIPAL CODE**

WHEREAS, the City of Naperville is a home rule unit of local government pursuant to the provisions of Article VII, Section 6 of the Constitution of the State of Illinois; and

WHEREAS, pursuant to Article VII, Section 6(a), of the Illinois Constitution, the City of Naperville ("City") 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 which includes the broad general power to tax; and

WHEREAS, in 1988, Public Act 85-1135 repealed the statutory authority of municipalities to impose local retailers' and service occupation taxes thereby rendering Section 3-1-1 (Retailers' Occupation Tax) and Section 3-1-2 (Service Occupation Tax) of the Naperville Municipal Code obsolete; and

WHEREAS, the Home Rule Municipal Retailers' Occupation Tax Act (65 ILCS 5/8-11-1) and the Home Rule Municipal Service Occupation Tax Act (65 ILCS 5/8-11-5) authorizes the imposition of a "Home Rule Sales Tax" by a home rule municipality upon all persons engaged in the business of selling certain tangible personal property at retail in the municipality on the gross receipts from such sales made in the course of business while the home rule sales tax is in effect; and upon all persons engaged in the municipality in the business of making sales of service of the selling price of certain tangible personal property transferred by said serviceman as an incident to a sale of service; and

WHEREAS, taxes imposed under the Home Rule Municipal Retailers' Occupation Tax Act and the Home Rule Municipal Service Occupation Tax Act must be imposed jointly and at the same rate; and

WHEREAS, taxes imposed under Home Rule Municipal Retailers' Occupation Tax Act and the Home Rule Municipal Service Occupation Tax Act shall be administered, collected and enforced by the Illinois Department of Revenue; and

WHEREAS, an ordinance imposing a "Home Rule Sales Tax" per the Home Rule Municipal Retailers' Occupation Tax Act and the Home Rule Municipal Service Occupation Tax Act, must be adopted and filed with the Illinois Department of Revenue on or before October 1, 2015 in order for the Illinois Department of Revenue to administer and enforce the Home Rule Sales Tax as of January 1, 2016; and

WHEREAS, the City Council has determined that implementing a "Home Rule Sales Tax" per the Home Rule Municipal Retailers' Occupation Tax Act and the Home Rule Municipal Service Occupation Tax Act of one half of one percent (0.50%), the proceeds of which shall not be directed to the City's general fund but rather shall be restricted to being used to increase the City's cash reserves and reduce the City's debt, would be in the best interests of the City and the public; and

WHEREAS, the City's Downtown Food and Beverage Tax, pursuant to Section 3-1-9 of Naperville Municipal Code, requires an adjustment of said tax in the event of enactment of a Citywide "Home Rule Sales Tax" that is imposed for the purpose of financing parking facilities, and since it is foreseeable that the Home Rule Sale Tax may be used to reduce debt related to said parking facilities.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NAPERVILLE, DUPAGE AND WILL COUNTIES, ILLINOIS, in exercise of its home rule authority that:

SECTION 1: The Recitals set forth above are incorporated herein in their entirety by reference.

SECTION 2: Title 3 (Business and License Regulations), Chapter 1 (Municipal Occupation Taxes), Section 1 (Retailers' Occupation Tax) and Section 2 (Service Occupation Tax) of the Naperville Municipal Code is hereby repealed as follows:

3-1-1: - RETAILERS' OCCUPATION TAX:

1. ~~Tax Imposed: A tax is hereby imposed upon all persons engaged in the business of selling tangible personal property at retail in the City, at the rate of one percent (1%) of the gross receipts from such sales made in the course of such business while this Section is in effect, in accordance with the provisions of 65 Illinois Compiled Statutes 5/8-11-1 of the Illinois Municipal Code, and all amendments of or to said Section.~~
2. ~~Report: Every such person engaged in such business in the City shall file, on or before the twentieth day of each calendar month, the report to the State Department of Revenue required by Section 3 of "An Act In Relation To A Tax Upon Persons Engaged In The Business Of Selling Tangible Personal Property To Purchasers For Use Or Consumption" approved June 20, 1933, as amended, and shall file a duplicate of such report with the City Clerk.~~
3. ~~Payment To State: At the time such report is filed, there shall be paid to the State Department of Revenue the amount of tax hereby imposed on account of the receipts from sales of tangible personal property during the preceding month.~~
4. ~~Exemptions:~~
 - 4.1. ~~The exclusion contained in Section 2(d) of the "Retailers' Occupation Tax Act" approved June 28, 1933, as amended, shall not apply to property within the City.~~
 - 4.2. ~~Exclusion (2) contained in Section 2-5 of the "Retailers' Occupation Tax Act" approved June 28, 1933, as amended, shall not apply to persons engaged in the business of selling tangible personal property at retail within the City.~~

Reserved.

3-1-2: - SERVICE OCCUPATION TAX:

1. ~~Tax Imposed: A tax is hereby imposed upon all persons engaged in the business of making sales of services in the City at the rate of one percent (1%) of the cost price of all tangible personal property transferred by said servicemen either in the form of tangible personal property or in the form of real estate as an incident to a sale of service, in accordance with the provisions of 65 Illinois Compiled Statutes 5/8-11-5 of the Illinois Municipal Code, and all amendments of or to said Section.~~
2. ~~Report: Every supplier or serviceman required to account for municipal service occupation tax for the benefit of the City shall file, on or before the twentieth day of each calendar month, the report to the State Department of Revenue required by Section 9 of the "Service Occupation Tax Act" of the State of Illinois.~~
3. ~~Payment To State: At the time such report is filed, there shall be paid to the State Department of Revenue the amount of tax hereby imposed.~~
4. ~~Exemptions:~~
 - 4.1. ~~The exclusion contained in Section 2-5(14) of the "Service Occupation Tax Act" approved July 10, 1961, as amended, shall not apply to property within the City.~~
 - 4.2. ~~The farm machinery and equipment exclusion contained in Section 3-5(7) of the "Service Occupation Tax Act", approved July 10, 1961, as amended, shall not apply to persons engaged in the business of making sales of services within the City.~~

Reserved.

SECTION 3: Title 3 (Business and License Regulations), Chapter 1 (Municipal Occupation Taxes), Section 9 (Food and Beverage Taxes) is hereby amended by deleting the stricken language and adding the underlined language as follows:

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

1. Definitions: * * *

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.

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 ~~1.5 percent~~ 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.
- 2.2.2. 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 ~~one and one-half percent (1.5%)~~ one percent (1%) 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 a Citywide home rule sales tax for the purpose of financing parking facilities at any time that this downtown food and beverage tax is being collected, this downtown food and beverage tax shall be adjusted by the home rule sales tax revenue paid by those entities and that is intended for construction or maintenance of parking facilities in the downtown. Said adjustment shall not exceed the ~~one and one-half percent (1.5%)~~ one percent (1%) 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: through 10. Violations: * * *

SECTION 4: Title 3 (Business and License Regulations), Chapter 1 (Municipal Occupation Taxes), is hereby amended by adding Section 11 (Home Rule Municipal Retailers' Occupation Tax and Home Rule Municipal Service Occupation Tax) by adding the underlined language as follows:

3-1-11: - HOME RULE MUNICIPAL RETAILERS' OCCUPATION TAX AND HOME RULE MUNICIPAL SERVICE OCCUPATION TAX:

1. Tax Imposed: A tax is hereby imposed upon all persons engaged in the business of selling tangible personal property, other than an item of tangible personal property titled or registered with an agency of the government of the State of Illinois, at retail in the City of Naperville at the rate of one-half of one percent (0.50%) of the gross receipts from such sales made in the course of such business while this Ordinance is in effect; and a tax is hereby imposed upon all persons engaged in the City of Naperville in the business of making sales of service, at the rate of one-half of one percent (0.50%) of the selling price of all tangible personal property transferred by such serviceman as an incident to a sale of service. This "Home Rule Municipal Retailers' Occupation Tax" and this "Home Rule Municipal Service Occupation Tax" shall not be applicable to the sales of food for human consumption which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption) and prescription and non-prescription medicines, drugs, medical appliances and insulin, urine testing materials, syringes and needles used by diabetics.

The imposition of these home rule taxes is in accordance with and subject to the provisions of Sections 8-11-1 and 8-11-5, respectively, of the Illinois Municipal Code (65 ILCS 5/8-11-1 and 5/8-11-5).

2. Illinois Department of Revenue to Administer: The taxes hereby imposed, and all civil penalties that may be assessed as an incident thereto, shall be collected and enforced by the Department of Revenue of the State of Illinois. The Department of Revenue shall have full power to administer and enforce the provisions of this Ordinance.

SECTION 5: Except as specifically set forth in Section 7 hereof, all ordinances and resolutions, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of the conflict, expressly repealed on the effective date of this Ordinance.

SECTION 6: The City Clerk is hereby directed to file a certified copy of this Ordinance with the Illinois Department of Revenue on or before October 1, 2015 and the Illinois Department of Revenue shall administer and enforce the Home Rule Occupation Taxes herein as of January 1, 2016.

SECTION 7: 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%).

SECTION 8: The effective date of this Ordinance shall be in accord with the provisions set forth in 65 ILCS 5/1-2-4. Notwithstanding the foregoing, the Home Rule Municipal Retailers' Occupation Tax and Home Rule Municipal Service Occupation Tax established herein shall take effect on the first day of January next following its adoption by the City Council, or on January 1, 2016, so long as a certified copy of this Ordinance is filed with the Illinois Department of Revenue on or before October 1, 2015.

SECTION 9: If any section, paragraph, or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, or provision, shall not affect any of the remaining provisions of this Ordinance or any other City ordinance or resolution.

PASSED this 15th day of September, 2015.

AYES: KRUMMEN, OBARSKI, CHIRICO, ANDERSON, BRODHEAD, COYNE,
GALLAHER, GUSTIN, HINTERLONG

NAYS: NONE

ABSENT: NONE

APPROVED this 16th day of September, 2015.

Steve Chirico
Mayor

ATTEST:

Pam LaFeber, Ph.D.
City Clerk