

ORDINANCE NO. 2019- 08

AN ORDINANCE CREATING CHAPTER 78, ARTICLE XIII OF THE VILLAGE OF STICKNEY MUNICIPAL CODE REGARDING THE ADOPTION OF A FOOD AND BEVERAGE TAX FOR THE VILLAGE OF STICKNEY, COUNTY OF COOK, STATE OF ILLINOIS.

WHEREAS, the Village of Stickney (the "Village") is a home rule municipal corporation in accordance with Article VII, Section 6(a) of the Constitution of the State of Illinois of 1970; and

WHEREAS, the Village has the authority to adopt ordinances and to promulgate rules and regulations that pertain to its government and affairs, and to review, interpret and amend its ordinances, rules and regulations; and

WHEREAS, the Village President (the "President") and the Board of Trustees of the Village (the "Village Board" and with the President, the "Corporate Authorities") are committed to ensuring the health, safety and welfare of individuals residing in, working in and visiting the Village; and

WHEREAS, pursuant to its home rule powers, the Corporate Authorities have determined that in order to compensate the Village for additional services and infrastructure and property repair, maintenance, and installation, it is in the best interests of the Village and its residents to adopt a certain tax on food and beverages sold and consumed on premises within the Village at a rate of one point seventy-five percent (1.75%), hereinafter referred to as the "Food and Beverage Tax"; and

WHEREAS, in light of the foregoing, the Corporate Authorities have determined that it is necessary, advisable and in the best interests of the Village and its residents to adopt Chapter 78, Article XIII of the Village Code as set forth herein;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF STICKNEY, COOK COUNTY, ILLINOIS, as follows:

**ARTICLE I.
IN GENERAL**

SECTION 1. INCORPORATION CLAUSE.

The Corporate Authorities hereby find that all of the recitals hereinbefore stated as contained in the preambles to this Ordinance are full, true and correct and do hereby, by reference, incorporate and make them part of this Ordinance as legislative findings.

SECTION 2. PURPOSE.

The purpose of this Ordinance is to create Chapter 78, Article XIII of the Village Code to adopt a Food and Beverage Tax of one-point seventy-five percent (1.75%), and to authorize the President or his designee to take all actions necessary to carry out the intent of this Ordinance.

**ARTICLE II.
CREATION OF CHAPTER 78, ARTICLE XIII OF THE MUNICIPAL CODE,
VILLAGE OF STICKNEY, ILLINOIS**

SECTION 3. CREATION OF CHAPTER 78, ARTICLE XIII

That the Village Code is hereby amended, notwithstanding any provision, ordinance, resolution or Village Code section to the contrary, by creating Chapter 78, Article XIII as follows:

ARTICLE XIII. - FOOD AND BEVERAGE TAX (NEW)

Sec. 78-341. – Definitions.

For purposes of this Article, whenever any of the following words, terms or definitions are used herein, they shall have the meaning ascribed to them in this Article:

"Alcoholic Liquor" means any spirits, wine, beer, ale or other liquid containing more than one-half of one percent of alcohol by volume, which is capable of being consumed as a beverage by a human being.

"Prepared Food Item for Immediate Consumption" means and includes any and all material, whether solid, semi-solid or liquid used or intended to be used for human consumption and for nourishment of the human body. The term defined herein includes any and all alcoholic liquor beverages, except for alcoholic liquor purchased in the original package for consumption off the premises where sold. The term shall include and be limited to:

- (1) Food items purchased at a restaurant, bar or other establishment where facilities are provided for on-premise consumption, but such term shall not include food items not intended for immediate consumption purchased from other areas of any such establishment where such facilities providing on-premise consumption utilize a separate means of collecting receipts for such food purchased for immediate consumption and are physically separated from such other areas in the establishment.
- (2) Food items purchased from concession stands, snack shops and other establishments which sell food items primarily in individual sized servings, such as ice cream cones, candy bars and individually serve sandwiches, for immediate on-premise or off-premises consumption; and
- (3) Food items which are purchased hot or are otherwise purchased prepared for immediate on-premise or off-premise consumption from catering establishments and restaurants with delivery services, except food items prepared off the premises.

For purposes of this Article, "food items prepared off the premises" means food items which are grilled, broiled, baked, fried or cooked in some other similar manner off the premises of the retailer. Such term shall not include food items which are precooked and then heated or warmed-up off the premises or food items which were previously cooked or prepared and then reheated off the premises.

"Retailer" means any person or persons having a sufficient proprietary interest in conducting a business which sells prepared food items for immediate consumption or alcoholic liquor so as to entitle such person or persons to all or a portion of the net receipts from the sale thereof.

"Person" means any natural person, trustee, court appointed representative, syndicate, association, partnership, firm, club, company, corporation, business trust, institution,

agency, government corporation, municipal corporation, district or other political subdivision, contractor, supplier, vendor, vendee, operator, user or owner, or any officers, agents, employees or other representative, acting either for himself or herself or for any other person in any capacity, or any other entity recognized by law as the subject of rights and duties. The masculine, feminine, singular or plural is included in any circumstance.

"Restaurant" means and includes any public place kept, used, maintained, advertised and held out to the public, as a place at which prepared food items for immediate consumption are served and/or prepared, whether or not consumed or intended to be consumed on the premises, but shall not include coin-operated automatic food dispensing machines.

"Bar" means and includes an establishment for the serving of alcoholic liquor.

Sec. 78-342. – Imposition of Tax.

(a) There is hereby levied and imposed upon the privilege of purchasing prepared food items for immediate consumption and alcoholic liquor served or prepared at a restaurant bar or other establishment covered by this Article in the Village of Stickney, a tax of one point seventy-five percent (1.75%) percent of the purchase price, exclusive of any other tax charged for such food items and/or alcoholic liquor.

(b) Exempt from the tax imposed above are persons purchasing:

- (1) Prepared food items for immediate consumption purchased in hermetically sealed containers and not reasonably expected or intended by the seller for immediate on-premises consumption;
- (2) Prepared food items for immediate consumption purchased at employee cafeterias, when entrance to such cafeteria is limited to employees and guests of employees;
- (3) Prepared food items for immediate consumption purchased from non-profit, inpatient medical, educational, philanthropic or public service institutions such as churches, day care establishments, residential halls, fraternities, sororities, schools, government entities, hospitals, nursing homes and other medical treatment centers and transitional shelters;
- (4) Food items from vending machines.

Sec. 78-343. – Liability for Payment.

(a) The ultimate incidence of and liability for payment of said tax shall be borne by the person who seeks the privilege of occupying any such restaurant, bar or other establishment covered by this Article, said person hereinafter referred to as "consumer".

(b) All retailers shall jointly and severally have the duty to collect and shall collect and account for the tax imposed in Section 78-342 from each consumer at the time that

the consideration for such purchase is paid. Such retailers shall be the trustee for the Village in the collection and remittance of said taxes.

Sec. 78-344. – Collection of Tax.

Every person required to collect the tax levied by this Article shall secure said tax from the consumer at the time he collects payment for the service of food or alcoholic beverage. Upon the invoice receipt or other statement or memorandum of the payment given to the consumer at the time of payment, the amount due under the tax provided in this Article shall be stated separately on said documents or combined with the amount of the Illinois Retailer's Occupation Tax.

If any retailer collects an amount upon a sale not subject to the tax imposed in this Article hereof but which amount is purported to be the collection of such tax, or if a retailer collects an amount upon a sale greater than the amount of the tax so imposed thereon and does not for any reason refund the same to the consumer who paid the same before filing the return for the period in which such improper collection occurred, such retailer shall account for and pay over all such amounts to the village along with the tax accurately collected without entitlement to refund of inaccurate collection thereafter. It is the duty of the retailer to refund any inaccurately collected amounts to consumer prior to the filing of a return; the filing of the return shall otherwise be deemed admission that the collection reported therein is properly remitted under this chapter and such admission shall not be disturbed by amendment of returns thereafter. This Chapter shall not create any liability to the purchaser in relation to returns which include inaccurate collection.

Sec. 78-345. – Rules and Regulations.

The Treasurer or other person designated by the Village President, with the advice and consent of the Village Board, may promulgate rules and regulations not inconsistent with any and all laws, ordinances, rules and regulations concerning the enforcement and application of this Article XIII. The term "rules and regulations" includes, but is not limited to, a case by case determination of whether or not the tax imposed by this Article XIII applies.

Sec. 78-346. – Filing of Application.

The owner of each restaurant, bar or other establishment covered by this Article shall complete an application for registration within thirty (30) days of opening for business. The application shall be filed with the Treasurer or designee.

Sec. 78-347 – Filing of Return.

(a) All retailers shall pay to the Village all taxes collected. The owner of each restaurant, bar or other establishment covered by this Article within the Village shall file monthly tax returns showing tax receipts received during each monthly period on forms prescribed by the Treasurer.

The return shall be filed on or before the 25th day of the calendar month next succeeding the month for which the return is made and shall be accompanied by payment of all taxes due and owing for the month covered by said return.

- (b) The first taxing period for the purpose of this Article shall commence on July 1, 2019, and the tax return and payment for such period shall be due on or before February 25, 2020. Thereafter, reporting periods and tax payments shall be in accordance with the provisions of this Article.
- (c) Any payment made by check which is returned to the Village because of insufficient funds may result in the Finance Director requiring the retailer to make future payments by cashier's check or money order.

Sec. 78-348. – Compensation for Collection Services.

As compensation for services rendered in the collection and payment of this tax, retailers filing a tax return may retain an amount of money equal to one percent (1%) of the tax due.

Sec. 78-349. – Financial Records.

- (a) All retailers shall cause complete and accurate books, records and accounts showing the gross receipts for sales of taxable prepared food items for immediate consumption and alcoholic liquor and the taxes collected each day, which shall be made available for examination by the Village upon reasonable notice and during customary business hours.
- (b) The financial records of any restaurant, bar or other establishment covered by this Article submitted pursuant to this Article or any rule and regulation promulgated thereunder shall be considered confidential proprietary information and shall not be disclosed except as permitted by law.

Sec. 78-350. – Failure to Remit; Licensing.

Payment and collection of said tax may be enforced by action in any court of competent jurisdiction. Failure to collect, account for and pay over any tax collected from purchasers of taxable items shall be cause for revocation of any Village license of such retailer or applicable to the premises thereof, in addition to any other penalty provided in this Ordinance.

Sec. 78-351. – Violations; Penalties.

Any retailer found guilty of violating, disobeying, omitting, neglecting or refusing to comply with, or resisting or opposing the enforcement of any of the provisions of this Article, except when otherwise specifically provided, shall be deemed to have committed a misdemeanor. In addition, a fine of not less than Seventy-five Dollars (\$75.00) nor more than Five Thousand Dollars (\$5,000.00) for the first offense, and not less than One Hundred Fifty Dollars (\$150.00), nor more than Five Thousand Dollars (\$5,000.00) for the second offense, and not less than Three Hundred Dollars (\$300.00) nor more than Five Thousand (\$5,000.00) for the third offense, and not less than One Thousand Dollars (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00) for the fourth and each subsequent offense, or five (5) times the amount of the tax imposed, if any, whichever is higher, for the second and each subsequent offense shall be imposed. A separate and distinct offense shall be regarded as committed each day upon which said retailer shall continue any such violation, or permit any such violation to exist after notification thereof.

Sec. 78-352. – Late Payment Penalty.

If any tax imposed by this Article is not paid when due, a late payment penalty equal to five percent (5%) of the unpaid tax shall be added for each successive thirty-day period, or any portion thereof without proration, that such tax remains unpaid or underpaid and the total of such late payment penalty shall be paid along with the tax imposed hereby. In addition to the penalty herein provided, there shall be paid over to the village fifty dollars (\$50.00) for each day a representative of the village attempts to make an in-person collection of the late payment in the event that attempted in-person collection of the late payment is required. Such attempted in-person collection by a village officer or employee is required and shall be undertaken if the payment of the tax has not been received by the village within ten (10) days beyond the due date.

SECTION 3.1. OTHER ACTIONS AUTHORIZED.

The officers, employees and/or agents of the Village shall take all action necessary or reasonably required to carry out, give effect to and consummate the amendments contemplated by this Ordinance and shall take all action necessary in conformity therewith. The officers, employees and/or agents of the Village are specifically authorized and directed to draft and disseminate any and all necessary forms or notices to be utilized in connection with the intent of this Ordinance.

**ARTICLE III.
HEADINGS, SAVINGS CLAUSES, PUBLICATION,
EFFECTIVE DATE**

SECTION 4. HEADINGS.

The headings of the articles, sections, paragraphs and subparagraphs of this Ordinance are inserted solely for the convenience of reference and form no substantive part of this Ordinance nor should they be used in any interpretation or construction of any substantive provision of this Ordinance.

SECTION 5. SEVERABILITY.

The provisions of this Ordinance are hereby declared to be severable and should any provision of this Ordinance be determined to be in conflict with any law, statute or regulation by a court of competent jurisdiction, said provision shall be excluded and deemed inoperative, unenforceable and as though not provided for herein and all other provisions shall remain unaffected, unimpaired, valid and in full force and effect.

SECTION 6. SUPERSEDER.

All code provisions, ordinances, resolutions, rules and orders, or parts thereof, in conflict herewith are, to the extent of such conflict, hereby superseded.

SECTION 7. PUBLICATION.

A full, true and complete copy of this Ordinance shall be published in pamphlet form or in a newspaper published and of general circulation within the Village as provided by the Illinois Municipal Code, as amended.

SECTION 8. EFFECTIVE DATE.

This Ordinance shall be in full force and effect ten (10) days after its passage, approval and publication, as provided by law.

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PASSED this 18th day of June, 2019.

AYES: Trustees Hrejsa, Kapolnek, Milenkovic, Savopoulos, Torres and White

NAYS: none

ABSENT: none

ABSTENTION: none

APPROVED by me this 18th day of June, 2019.

Jeff Walik, President

ATTESTED AND FILED in my
office this 19th day of June, 2019.

Audrey McAdams, Village Clerk