

## **ARTICLE 31**

### **FOOD AND BEVERAGE TAX**

#### **SECTION 31.1 DEFINITIONS**

For the purposes of this Article, 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 Article 6 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" does not mean or include any food which is sold in a closed or sealed bottle, can, carton or container of the manufacturer or wholesaler or which has not been prepared for immediate consumption.

#### **PREPARED FOOD FACILITY:**

Any person or establishment which sells food at retail which has been prepared for immediate consumption, whether or not such prepared food facility use is conducted along with any other use(s) in a common premises or business establishment.

A "prepared food facility" includes, but is not limited to, those establishments commonly called an inn, restaurant, eating place, drive-in restaurant, buffet, bakery, cafeteria, cafe, lunch counter, fastfood outlet, catering service, coffee shop, diner, sandwich shop, soda fountain, tavern, bar, cocktail lounge, soft drink parlor, ice cream parlor, tearoom, delicatessen, movie theater, mobile food or beverage or ice cream vehicle, hotel, motel, or club, or any other establishment which sells at retail food which has been prepared for immediate consumption.

A "prepared food facility" does not include churches, public or private schools, boarding houses, daycare centers, 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, or other facilities of not for profit associations or not for profit corporations.

**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.

### **SECTION 31. 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 one percent (1.0%) 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.

### **SECTION 31. 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.

### **SECTION 31. 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.

### **SECTION 31. 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 filing date and at the same time intervals or frequencies as the Retailers Occupation Tax Return, Form ST-1 is due to be filed with the Illinois Department of Revenue. The return shall also be accompanied by payment to the City of all taxes imposed by this Article which are due and owing for the period covered by said return. The return shall also be accompanied with a copy of the return filed with the Illinois Department of Revenue for sales within the City of Mt. Vernon covering the same reporting period.

### **SECTION 31. 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.

### **SECTION 31.7      LIABILITY OF CORPORATE OFFICER OR EMPLOYEE**

Any officer or employee of any corporation subject to the provisions of this Article 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.

### **SECTION 31.8      DISPOSITION OF PROCEEDS**

All proceeds resulting from the imposition of the tax under this Article, 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 solely for capital construction projects or for capital equipment purchases of the City.

### **SECTION 31.9      PENALTY, INTEREST, FINES AND COSTS OF COLLECTION**

Any person who violates any provision of this Article shall be punishable by a fine of not less than One Hundred Dollars (\$100.00) or more than Five Hundred Dollars (\$500.00). 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 of two percent (2%) per month on the amount of tax which remains unpaid shall be added and collected.

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 Mt. Vernon in any court of competent jurisdiction to enforce this Article 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 Article.

### **SECTION 31.10      EFFECTIVE DATE**

This Ordinance and the tax imposed herein shall be effective on September 1, 2008.