



Village of Glen Ellyn

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Ordinance No. 6629-VC

AN ORDINANCE ADDING TITLE 3, CHAPTER 44 (FOOD  
AND BEVERAGE TAX) TO THE CODE OF ORDINANCES  
FOR THE VILLAGE OF GLEN ELLYN, ILLINOIS

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Adopted by the  
President and the Board of Trustees  
Of the Village of Glen Ellyn  
DuPage County, Illinois  
This 27 Day of Sept, 2018.

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Published in pamphlet form by the authority  
of the President and Board of Trustees of the  
Village of Glen Ellyn, DuPage County, Illinois,  
this 25 day of Sept, 2018.

PREPARED BY AND MAIL TO:  
VILLAGE OF GLEN ELLYN  
ATTN: VILLAGE CLERK  
535 DUANE STREET  
GLEN ELLYN, IL 60137

**Ordinance No. 6629 -VC**

AN ORDINANCE ADDING TITLE 3, CHAPTER 44 (FOOD AND BEVERAGE TAX) TO THE CODE OF ORDINANCES FOR THE VILLAGE OF GLEN ELLYN

**Whereas**, the Village of Glen Ellyn is a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

**Whereas**, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals, and welfare; and

**Whereas**, the Village has determined that a new revenue source is necessary to fund capital improvements to the Village; and

**Whereas**, in furtherance of its home rule powers, it is necessary and desirable for the Village of Glen Ellyn to establish a food and beverage tax.

**Now, therefore, be it ordained by the President and Board of Trustees of the Village of Glen Ellyn, DuPage County, Illinois**, in exercise of its home rule powers as follows:

**SECTION ONE**: Title 3 of the Glen Ellyn Village code shall be amended by adding a new Chapter 44 in the form attached as Exhibit "A".

**SECTION TWO**: All ordinances or parts of ordinances thereof in conflict with this Ordinance are hereby repealed to the extent of any such conflict.

**SECTION THREE**: Any section or provision of this Ordinance that is construed to be invalid or void shall not affect the remaining sections or provisions that shall remain in full force and effect thereafter.

**SECTION FOUR**: This Ordinance shall be in full force and effect upon its passage, and publication in pamphlet form; however, the tax shall not take effect until March 1, 2019.

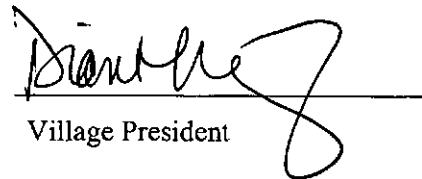
Passed by the President and Board of Trustees of the Village of Glen Ellyn, Illinois this 27 day of Sept 2018.

Ayes:  Diane McGinley       Pete Ladesic       Mark Senak  
 Craig Pryde       Bill Enright       Gary Fasules  
 John Kenwood

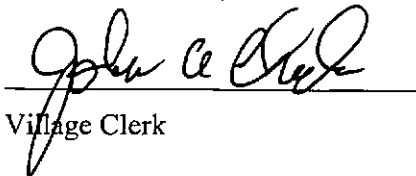
Nays:  Diane McGinley       Pete Ladesic       Mark Senak  
 Craig Pryde       Bill Enright       Gary Fasules  
 John Kenwood

Absent:  Diane McGinley       Pete Ladesic       Mark Senak  
 Craig Pryde       Bill Enright       Gary Fasules  
 John Kenwood

Approved by the Village President of the Village of Glen Ellyn, Illinois this 27 day of Sept 2018.

  
Village President

Attest:

  
Village Clerk

AFFIX VILLAGE SEAL

(Published in pamphlet form and posted on the 27 day of Sept, 2018.)

## Chapter 44

# FOOD AND BEVERAGE TAX

**3-44-1: DEFINITIONS:**

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**3-44-11: VIOLATIONS:**

### **3-44-1: DEFINITIONS:**

For purposes of this chapter, the following words and phrases shall have the following meanings:

**ALCOHOLIC LIQUOR:** Any alcohol, spirits, wine, or beer sold at retail for consumption on the premises where sold.

**FOOD AND BEVERAGE:** 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.

**PREPARED FOOD ITEM:** Any and all commodities, whether solid, semi-solid, or liquid (including both alcoholic and non-alcoholic liquid) used or intended to be used for human consumption, enjoyment or nourishment of the human body, whether simple compound or mixed and which has been prepared for immediate consumption.

**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:** Any place at which food items are served and/or prepared where said food items are intended to be, or are permitted to be, consumed on the premises, 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, tea room, delicatessen, movie theatre, mobile food or beverage or ice cream vehicle, hotel, motel, or club, where a facility 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.

**RETAIL LIQUOR FACILITY:** Any establishment licensed under Chapter 19 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 at a retail food facility or retail liquor facility. Includes an individual, corporation, partnership, limited partnership, or an officer or employee of any such entity, or such officer, employee or member is performing the act in respect of which any violation occurs.

### **3-44-2: TAX IMPOSED:**

Commencing on March 1, 2019, 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 Village at the rate of one and one half percent (1.5%) 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.

The tax will be administered in accordance with the Local Government Taxpayers' Bill of Rights Act, 50 ILCS 45/1, *et seq.*

The tax will terminate the month after final retirement and repayment of any bonds issued to finance a parking garage, CBD street and streetscape, train station, and/or Civic Center HVAC improvement. The bonds will be issued with a term of 20 years or less.

### **3-44-3: EXEMPTIONS:**

No such tax shall be levied or imposed upon purchasers for the privilege of purchasing:

(A) Food and beverages which are exempt from tax under the provisions of the retailers' occupation tax or the Illinois service occupation tax, as amended from time to time.

(B) Prepared food items for immediate consumption purchased in hermetically sealed containers and not reasonably expected or intended by the seller for immediate on-premise consumption.

(C) Prepared food items for immediate consumption purchased from institutions such as churches, day care establishments, schools, hospitals, 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 medical treatment centers and transitional shelters.

(E) Prepared food items, excluding alcohol, for immediate consumption by students purchased from community college cafeteria and food establishments

(D) Prepared food items for immediate consumption purchased from the park district, library, and not for profit associations or corporations. However, when these entities make any portion of their facility(ies) available to a for profit organization, this exemption does not apply and the tax must be paid as otherwise required.

(E) Food or beverages purchased from vending machines.

(F) Food and beverages purchased from vendors at community wide festivals and events, including, but not limited to the Village Fair, Taste of Glen Ellyn, and JazzUp, except to the extent that such vendor has a brick and mortar location.

### **3-44-4: COLLECTION OF TAX(ES) BY RETAILER:**

The owner and operator of each Retail Food and Liquor Facility within the Village 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.

### **3-44-5: BOOKS AND RECORDS:**

Each person required to pay the tax provided for hereunder shall, personally or through his/her authorized agents, maintain complete books and records covering the operation of the Retail Food Facility and Retail Liquor Facility so taxed, indicating therein all receipts from the operation of said

facilities. Said records shall include the gross receipts for sales of food, beverages and alcoholic liquor and taxes collected each day pursuant to the food and beverage tax, purchase orders, invoices and receipts, and other documents listing, summarizing or pertaining to the transactions that gave rise, or may have given rise, to the tax liability or exemption that may be claimed and copies of the Illinois retailers' occupation tax and Illinois service occupation tax returns filed with the Illinois Department of Revenue (IDOR). Such books shall be maintained on the premises and shall be subject to inspection and audit by the Village and its duly authorized agents, following written notice specifying the tax and time frame to be audited, at all reasonable hours during business hours of the day.

No person shall prevent, hinder or interfere with the Village and its duly authorized agent(s) in the discharge of his/her duties in the performance of this Article.

### **3-44-6: FILING OF RETURN, PENALTY FOR FAILURE:**

The owner and the operator of each retail food facility and each retail liquor facility within the Village 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 Village. Said return shall be prepared and submitted on forms prescribed by the Village. 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 Village of all taxes imposed by this chapter which are due and owing for the period covered by said return, except that one percent (1%) 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.

The failure to file a timely Return shall lead to the imposition of a penalty of up to twenty-five percent (25%) of the total tax due for the applicable filing period for which the Return was due, in the discretion of the Village.

### **3-44-7: DETERMINATION OF IMPROPER TAX PAYMENT**

In the event that the Finance Director makes a determination that a tax payment properly due and owing has not been remitted in full, the Finance Director will issue by United States Registered or Certified Mail a written Notice of a tax assessment determination to the Retail Food Facility or Retail Liquor Facility. The Retail Food Facility or Retail Liquor Facility shall pay the tax assessment or file an Appeal or protest of the assessment within 45 days of service of the Notice. The Appeal shall be conducted in accordance with Title 1, Chapter 11, of the Glen Ellyn Municipal Code, as amended from time to time.

### **3-44-8: AMENDMENT TO FOOD AND BEVERAGE TAX RETURNS:**

In the event the retailer which has made payment of any Food and Beverage Tax to the Village and believes that said payment was in excess of what was legally required to be paid, that party shall have a period of one (1) year from the date of payment to amend its Food and Beverage Tax returns. Upon confirmation of overpayment, the Village shall process said amendment and repay any excess amount paid to the Village for any fees collected within one (1) year of the request being made. In the event the Village determines that no excess payment of the tax legally required to be paid, the Village shall notify the retailer in writing of its determination.

### **3-44-9: LATE PAYMENT PENALTY:**

### **3-44-9: 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 retailer 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.

In addition, the failure to collect, account for, and pay over said tax and any penalty shall be cause for suspension or revocation of any Village license or permit issued for such Retail Food Facility or Retail Liquor Facility.. Any suspension or revocation of any license or permit shall not release or discharge the owner or operator from any liability for the payment of the tax nor from prosecution for such offense.

Whenever any person shall fail to pay any tax as herein provided, the Village shall have the right to bring, or cause to be brought, an action in accordance with Title 1, Chapter 13A, *et seq.* to enforce the payment of the tax(es) on behalf of the Village, or may bring an action in any court having competent jurisdiction.

### **3-44-10: 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 Village along with the tax properly collected.

### **3-44-11: REGISTRATION:**

Every owner and operator of any Retail Food Facility and Retail Liquor Facility within the Village shall register with the Finance Director on a form prescribed by the Village no later than March 1, 2018, or the date of becoming such an owner and operator, whichever is later.

The form shall designate an individual, either by name or job title, to receive any written communication from the Village regarding the Food and Beverage Tax. Each person so designated shall be employed at a facility located within the Village of Glen Ellyn 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 Village to receive the same information or inquiries provided to the person so designated within the Village. It shall be the obligation of each owner or operator of the facility to notify the Village in writing via certified mail of any change of person so designated within ten (10) days of any change.

### **3-44-12: VIOLATIONS:**

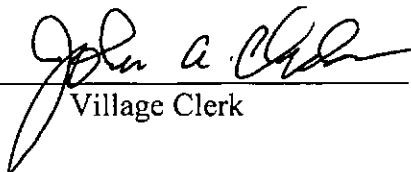
Any owner or operator found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this chapter shall be punished, upon conviction thereof, by a fine of not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00) for the 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.

CERTIFICATION

I, John Chereskin, duly elected Village Clerk of the Village of Glen Ellyn, Illinois, do hereby certify that the attached is a true and correct copy of Ordinance No. 6629-VC, passed by the Board of Trustees of the Village of Glen Ellyn, Illinois, at the Regular Meeting of said Board held on the 27 day of Sept 2018, and that the same was signed and approved by the President of said Village on the 27 day of Sept 2018.

I do further certify that the original, of which the attached is a true and correct copy, is entrusted to me as Village Clerk of said Village for safekeeping and that I am the lawful custodian and keeper of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Village of Glen Ellyn, Illinois, this 27 day of September, 2018.

  
Village Clerk

CORPORATE SEAL