

**AN ORDINANCE AMENDING ARTICLE VII AND CREATING ARTICLE XVIII OF
CHAPTER 27 OF THE CODE OF THE CITY OF PEORIA PROVIDING FOR THE
REGULATION OF AND TAXATION OF ALCOHOLIC LIQUOR SOLD AT RETAIL
ESTABLISHMENTS**

WHEREAS, the City of Peoria is a Home Rule Municipality as established in Article VII, Section 6 of the Constitution of the State of Illinois (Illinois Constitution); and,

WHEREAS, Article VII, Section 6(a) of the Illinois Constitution provides that a Home Rule Municipality may exercise any power and perform any function pertaining to its government and affairs; and,

WHEREAS, Article VII, Section 6(m) of the Illinois Constitution provides that the powers and functions of Home Rule units of government shall be construed liberally; and,

WHEREAS, the City of Peoria currently imposes a tax on the privilege of purchasing alcoholic beverages served at a restaurant and tavern in the City at a tax of two percent (2%) of the purchase price; and,

WHEREAS, the City Council now desires to impose a tax on the privilege of purchasing packaged alcoholic beverage that are to be sold for the consumption off the premises where they are sold; and

WHEREAS, the City Council has determined this will bring consistency to the tax on alcoholic beverages and between retailers.

NOW, THEREFORE, be it ordained by the corporate authorities of the City of Peoria as follows:

Section 1. Chapter 27, Article VIII of the Code of the City of Peoria is hereby amended by deleting the stricken language:

Sec. 27-177. - Tax.

- (a) There is hereby levied and imposed upon the privilege of purchasing food items or alcoholic beverages served or prepared at either a restaurant or tavern in the city a tax of two percent of the purchase price, exclusive of any other tax, charged for such food items and/or alcoholic beverages; provided, however, that such tax shall not apply or be imposed upon persons purchasing food items or alcoholic beverages served or prepared at restaurants owned by any grade, junior high or high school within the city.
- (b) No such tax shall be levied and imposed upon the purchase of ~~an alcoholic beverage or food item~~ which is both purchased and taken from the premises of purchase in the hermetically sealed container of its manufacturer or wholesaler.
- (c) The ultimate incidence of and liability for payment of such tax shall be borne by the person who purchases food items or alcoholic beverages so served or prepared at any such restaurant or tavern, such person hereinafter referred to as "consumer."

- (d) The tax levied in this article shall be paid in addition to any and all other taxes and charges. It shall be the duty of the owner, manager or operator of every restaurant or tavern to act as trustee for and on account of the city, and to secure such tax from the consumer of a restaurant or tavern and pay over to the city comptroller such tax under procedures prescribed by the city treasurer or as otherwise provided in this article.
- (e) Every person required to collect the tax levied by this article shall secure such 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 rent given to the renter at the time of payment, the amount due under the tax provided in this article shall be stated separately on such documents.

Section 2. Chapter 27, Article XVIII of the Code of the City of Peoria is hereby created by adding the following underlined language:

ARTICLE XVIII. - ALCOHOLIC LIQUOR SOLD AT RETAIL ESTABLISHMENTS

Sec. 27-330. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alcoholic liquor is defined in the same manner as the term is defined in section 3-1.

Owner means any person or persons having a sufficient proprietary interest in conducting the operation of a retail establishment so as to entitle such a person or persons to all or a portion of the net receipts 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 officer, agent, employee or other representative, acting either for himself or for any other person in any capacity; or any other entity recognized by law as the subject of rights and duties.

Retail establishment means and includes any place kept, used and maintained as a place at which alcoholic liquor is sold to be consumed off the premise where it is sold.

Sec. 27-331. – Imposition of Tax.

(a) A tax is hereby imposed upon all persons in the city engaged in the business of selling alcoholic liquor to be consumed off the premise where it is sold a tax of two percent (2%) of the purchase price, exclusive of any other tax, charged for such alcoholic beverages.

(b) The ultimate incidence of and liability for payment of such tax shall be borne by the person who purchases alcoholic liquor, such person hereinafter referred to as "consumer."

(c) The tax levied in this article shall be paid in addition to any and all other taxes and charges. It shall be the duty of the owner, manager or operator of every retail establishment to act as trustee for and on account of the city, and to secure such tax from the consumer and pay over to the city comptroller such tax under procedures prescribed by the city treasurer or as otherwise provided in this article.

(d) Every person required to collect the tax levied by this article shall secure such tax from the consumer at the time he collects payment for the alcoholic liquor. Upon the invoice receipt the time of payment, the amount due under the tax provided in this article shall be stated separately on such documents.

Sec. 27-332. - Rules and regulations.

The comptroller may promulgate rules and regulations not inconsistent with the provisions of this article concerning the enforcement and application of this article. The term "rules and regulations" includes, but is not limited to, a case-by-case determination whether or not the tax imposed by this article applies.

Sec. 27-333. - Books and records.

The comptroller or any person certified as his delegate may enter the premises of the retail establishment for inspection and examination of books and records in order to effectuate the proper administration of this article and to assure the enforcement of the collection of the tax imposed. It shall be unlawful for any person to prevent, hinder or interfere with the comptroller or his duly authorized delegate in the discharge of his duties and the performance of this article. It shall be the duty of every owner to keep accurate and complete books and records to which the comptroller or his delegate shall at all times have full access, which records shall include a daily sheet showing:

- (1) The amount of taxable receipts within the 24-hour period; and
- (2) The actual retail establishment tax receipts collected for the date in question.

Sec. 27-334. - Transmittal of tax revenue.

(a) The owner of each retail establishment within the city shall file tax returns showing tax receipts received during each month by period on forms prescribed by the comptroller. The returns shall be due on or before the 30th day of the calendar month succeeding the end of the monthly filing period. Such owner shall file an application with the city finance department for a city taxpayer identification number prior to filing the first tax return.

(b) The first taxing period for the purpose of this article shall commence on October 1, 1976; and the tax return and payment for such period shall be due on or before November 30, 1976. Thereafter, reporting periods and tax payments shall be in accordance with the

provisions of this article. At the time of filing such tax returns, the owner shall pay to the city comptroller all taxes due for the period to which the tax return applies.

(c) In case any person who is required under this article to file a tax return to the city fails to file a return when and as required under this article, such person shall pay to the city, in addition to the amount of tax required to be transmitted, a penalty of five percent of the tax that such person is required to transmit to the city; provided, however, a 20-percent penalty shall be imposed for any fraudulent failure to transmit such tax.

(1) In case any person who is required under this article to file a tax return to the city files a return at the time required but fails to transmit the tax proceeds, or any portion thereof, to the city when due, a penalty of five percent of the amount of tax not transmitted to the city shall be added thereto; provided, however, the fraudulent failure to pay such tax shall result in a 20-percent penalty.

(2) In addition to any penalty for which provision is made in this article, any amount of tax not transmitted when due shall bear interest at the rate of two percent per month, or fraction thereof, until fully transmitted.

(d) Any officer or employee of any corporation which is an owner subject to the provisions of this article who has the control, supervision or responsibility of collecting tax proceeds, filing returns and transmitting collected tax proceeds of the tax imposed by this article and who willfully fails to file such return or to transmit any tax proceeds so collected to the city shall be personally liable for any such amounts collected, including interest and penalties thereon, if after proper proceedings for the collection of such amount such corporation is unable to pay such amounts to the city, and the personal liability of such officer or employee, as provided in this article, shall survive dissolution of the corporation. For purposes of this subsection, a person willfully fails to act if he takes any conscious and voluntary action intending not to perform any of his obligations hereunder, including, but not limited to, the utilizing of tax proceeds collected for the city to pay any other corporate obligations.

(e) The person filing such return shall attach thereto a copy of its Illinois Sales and Use Tax returns for the month for which a return is made under this article.

Sec. 27-335. - Collection.

Whenever any person shall fail to pay any tax as provided in this article, the corporation counsel shall, upon the request of the city comptroller, bring or cause to be brought an action to enforce the payment of such tax on behalf of the city in any court of competent jurisdiction.

Sec. 27-336. - Proceeds of tax and fines.

All proceeds resulting from the imposition of the tax under this article, including penalties, shall be paid into the treasury of the city and shall be credited to and deposited in the corporate fund of the city.

Sec. 27-337. - License required, suspension of licenses

(a) It shall be unlawful for any person to establish, operate or maintain, or permit to be established, operated or maintained, upon any property owned or controlled by him or her a retail establishment within the city without having first obtained a license therefor from the city comptroller or without complying with all provisions of this article. For purposes of this article, a Class C, C-1 or C-G liquor license shall be deemed to be licensed to operate the retail establishment and need not file a separate retail establishment license application.

(b) The annual fee for such license for a retail establishment as required in the above subsection shall be \$25.00. The license shall be valid for one year.

(c) If the mayor, after a hearing held by or for him, shall find that any person has willfully avoided payment of the tax imposed by this article, he may suspend or revoke all city licenses held by such tax evader. The owner, manager or operator of the retail establishment shall have an opportunity to be heard at such hearing to be held not less than five days after notice of the time and place of the hearing to be held, addressed by him at his last known place of business.

Sec. 27-338. - Penalty.

(a) Any person 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, upon conviction thereof, shall be punished by a fine of not less than \$200.00 nor more than \$300.00 for the first offense and not less than \$300.00 nor more than as provided in section 1-5 of this Code for the second and each subsequent offense in any 180-day period.

(b) Repeated offenses in excess of three within any 180-day period may also be punishable as a misdemeanor by incarceration in the county jail for a term not to exceed six months. A separate and distinct offense shall be regarded as committed each day upon which such person shall continue any such violation or permit any such violation to exist after notification thereof.

Sec. 27-185. - Purpose of penalties.

The purpose of imposing penalties for the violation of this article is to insure the integrity of the collection process established pursuant to this article.

Sec. 27-339. - Content of the license application.

(a) An applicant for a retail establishment license as required under section 27-183 shall submit to the city comptroller, an application in writing under oath, stating:

(1) The name, age and address of the applicant in the case of an individual; in the case of a corporation, the date of incorporation and the name, age and address of its president and secretary; in the case of a partnership, corporation for profit or club, the date of incorporation and the names, addresses and ages of the officers, directors, managers and any stockholders owning or controlling the voting rights to more than five percent of the stock of such corporation.

(2) That the applicant will not violate any ordinances of the city or laws of the state or of the United States in the conduct of his place of business.

(3) Reserved.

(b) If such application is made in behalf of a partnership, firm, association, club or corporation, then the same shall be signed and sworn to by at least two members of such partnership or the president and secretary of such corporation or club.

Sec. 27-340. - Furnishing false or misleading information or withholding information on application.

No person shall knowingly furnish false or misleading information or withhold any relevant information on any application for any license required by this article nor knowingly cause or suffer another to furnish or withhold such information on his behalf. No person shall knowingly furnish any false or misleading information to the mayor, the superintendent of police or any person authorized to act in their behalf in the investigation of any application for a license required by this chapter; nor shall any person willfully withhold any information that is relevant to any such investigation when called upon by the superintendent of police or a person acting in their behalf to furnish such information.

Section 3. This ordinance shall be in full force and effect from _____, after its passage and publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF PEORIA, ILLINOIS this _____ day of _____, 2018.

APPROVED:

Mayor

ATTEST:

City Clerk

EXAMINED AND APPROVED:

Corporation Counsel