

VILLAGE OF LIBERTYVILLE

ORDINANCE 16-O- 81

AN ORDINANCE AMENDING CHAPTER 13  
OF THE LIBERTYVILLE MUNICIPAL CODE  
PERTAINING TO THE IMPOSITION OF A PLACES FOR EATING TAX

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Adopted by the  
President and Board of Trustees  
Of  
The Village of Libertyville  
Lake County, Illinois  
This 9 day of August 2016

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Published in pamphlet form by  
direction and authority of the  
Village of Libertyville  
Lake County, Illinois  
This 10 day of August 2016

**ORDINANCE NO. 16-O- 81**

**AN ORDINANCE AMENDING CHAPTER 13 OF THE LIBERTYVILLE VILLAGE  
CODE**

**PERTAINING TO THE IMPOSITION OF A PLACES FOR EATING TAX**

**WHEREAS**, Section 5/11-42-5 of the Illinois Municipal Code, 65 ILCS 5/11-42-5, authorizes the corporate authorities of a municipality to license, tax, and regulate all places for eating within the municipality; and

**WHEREAS**, the corporate authorities of the Village of Libertyville find that it is in the Village's best interests to levy a one percent (1%) tax on the gross receipts of places for eating located within the Village of Libertyville; and

**NOW THEREFORE BE IT ORDAINED**, by the President and Board of Trustees of the Village of Libertyville, Lake County, Illinois as follows:

**SECTION 1:** That Chapter 13 of the Village of Libertyville Municipal Code be and the same is hereby amended with the addition of the following language as Sections 13-17, which shall read in its entirety as follows:

**TAX ON THE GROSS RECEIPTS OF PLACES FOR EATING**

13-31	Definitions.
13-32	Tax imposed.
13-33	Books and records; inspection; contents.
13-34	Transmittal of tax revenue by owner; delinquency.
13-35	Transmittal of excess tax collections.
13-36	Registration.
13-37	Collection.
13-38	Suspension of licenses.
13-39	Penalties.
13-40	Severability

**13-31 DEFINITIONS.**

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- a. **Prepared food** means and includes any solid, liquid (including both alcoholic and non-alcoholic 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.

- b. **Person** or **persons** means any natural individual, firm, partnership, association, joint stock company, joint venture, public or private corporation, limited liability company, club, fraternal organization, or a receiver, executor, trustee, conservator or their representative appointed by order of any court.
- c. **Sold at retail** means to sell 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, with said transaction being subject to either the Illinois Retailers' Occupation Tax (ILCS Ch. 35, Act 120 §§ 1 et seq.) or the Illinois Service Occupation Tax (ILCS Ch. 35, Act 115 §§ 1 et seq.)
- d. **Places for eating** or **place for eating**
1. "Places for eating" or "place for eating" means all premises located within the corporate limits of the Village where prepared food is sold at retail' for immediate consumption, with seating provided for consumption of said prepared food on the premises, whether consumed on premises or not, and whether or not such places for eating use is conducted along with any other users) in a common premise or business establishment.
  2. "Places for eating" or "place for eating" includes, but is not limited to, those establishments commonly called a restaurant, eating place, drive-in restaurant, buffet, bakery, banquet facility, cafeteria, cafe, lunch counter, fast food outlet, catering service, coffee shop, diner, sandwich shop, soda fountain, bar, cocktail lounge, soft drink parlor, ice cream parlor, tea room, delicatessen, hotel, motel, or club, or any other establishment which sells at retail prepared food for immediate consumption.
- e. **Gross receipts** means the consideration received, valued in money, whether received in money or otherwise, including cash, credits, property and services, at a place for eating for prepared food furnished at the place for eating. Gross receipts do not include amounts paid for federal, state and local taxes, including the tax levied by this chapter, and do not include amounts paid as gratuities for the employees of the place for eating. With respect to catering services operated within the Village, gross receipts shall not include consideration received in money or otherwise for the food which is prepared within the corporate limits of the Village but is intended for delivery to and consumption at a location outside of the corporate limits of the Village. With respect to catering services located outside of the corporate limits of the Village, gross receipts shall include consideration received in money or otherwise for prepared food that is prepared outside the corporate limits of the Village but which is intended for consumption at a location within the Village. Gross receipts shall not include consideration received in money or otherwise for the sale of prepared food directly to consumers from automated vending machines or for prepared food which is provided to students of cooking classes where no charge is made for the prepared food other than the cost of enrollment in the class.
- f. **Owner** means any person having an ownership interest in or conducting the operation of a place for eating.

### **13-32 TAX IMPOSED.**

- a. There is hereby levied and imposed upon owners of places for eating a tax at the rate of one percent (1%) of gross receipts received for prepared food sold at retail by the owner on or after October 1, 2016.
- b. The owner of a place for eating may collect an amount from persons who purchase prepared food at the place for eating which shall reimburse the owner for the tax imposed on the owner by this chapter.
- c. The tax imposed by this ordinance shall expire at 11:59 p.m. on April 30, 2018, unless prior to that date an ordinance is adopted extending this tax to a later date.
- d. The tax levied by this chapter shall be paid in addition to any and all other taxes and charges.
- e. In the event the prepared food is sold at retail on credit, an owner shall not be liable for payment of the tax imposed by this chapter on such a sale until he, she, they, or it receives payment for the sale.
- f. This tax shall not be imposed upon any unit of local government that sells prepared foods within a facility owned or operated by such unit of local government, whether such sales are made directly by the unit of local government or by a third party selling prepared food on behalf of the unit of local government pursuant to a contract between the unit of local government and the third party.

### **13-33 BOOKS AND RECORDS; INSPECTION; CONTENTS.**

The Finance Director, the Village Treasurer or any person designated by either of them as their deputy or representative, may enter the premises of any place for eating for inspection, examination, copying and auditing of books and records including, but not limited to, Illinois Retailers' Occupation Tax and Illinois Service Occupation Tax returns filed with the Illinois Department of Revenue, in order to effectuate the proper administration of this chapter, and to assure the enforcement of the collection of the tax imposed by this chapter. To the extent reasonably possible, said entry shall be done in a manner that is least disruptive to the business of the place for eating. It shall be unlawful for any person to prevent, hinder, or interfere with

the Finance Director, the Village Treasurer or their deputies or representatives in the discharge of their duties in the performance of this subsection. It shall be the duty of every owner to keep accurate and complete books and records to which the Finance Director, the Village Treasurer or their deputies or representatives shall at all times have full access, which records shall include a daily sheet showing the amount of gross receipts during that day. In the event of a significant discrepancy, the Village may, in its discretion, hire an independent party to conduct an audit of said books and records. The costs of such audit shall be borne by the owner.

#### **13-34 TRANSMITTAL OF TAX REVENUE BY OWNER; DELINQUENCY.**

- a. The owner or owners of each place for eating shall file tax returns showing the gross receipts received during each calendar month period upon forms prescribed by the Finance Director or may be filed electronically, though such website and/or application as may be approved and implemented by the Finance Director. Returns for each calendar month shall be due on or before the twentieth day of the next calendar month, (e.g., the return for January shall be due on or before the twentieth day of February; the return for February shall be due on or before the twentieth day of March; etc.). Notwithstanding the foregoing, in the event that the owner of the place for eating is allowed to file Illinois Retailers' Occupation Tax and Illinois Service Occupation Tax returns with the Illinois Department of Revenue at intervals which are greater than monthly, said owner shall be allowed to file tax returns relative to the tax imposed by this chapter with the Village at said greater intervals. At the time of the filing of said tax returns, the owner shall pay to the Village all taxes due for the period to which the tax return applies.
- b. Any tax due pursuant to this chapter which is not paid when due, shall accrue interest at the rate of one percent (1%) monthly. In the event of collection proceedings initiated by the Village, the owner shall be responsible for paying the costs incurred by the Village, including but not limited to reasonable attorney fees and court costs. In addition, the owner shall be subject to suspension of licenses and penalties as set forth in Sections 13.17.7 through 13.17.9 below.

#### **13-35 TRANSMITTAL OF EXCESS TAX COLLECTIONS.**

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 Village along with the tax properly collected.

#### **13-36 REGISTRATION.**

Every owner maintaining-a place for eating in the Village shall register with the Finance Department by October 1, 2016 or the date of becoming such an owner, whichever is later.

### **13-37 COLLECTION.**

Whenever any person shall fail to pay the tax imposed by this chapter, the Village Attorney or Village Prosecutor shall, upon request of the Village Administrator, bring or cause to be brought an action to enforce the payment of said tax on behalf of the Village in any court of competent jurisdiction.

### **13-38 SUSPENSION OF LICENSES.**

If the Village President, after a hearing held by him or his designee, shall find that any owner has willfully avoided the payment of any tax imposed by this chapter, he may suspend or revoke all Village licenses held by such owner. The owner shall have an opportunity to be heard at such hearing to be held not less than ten (10) days after being mailed notice of the time when and the place where the hearing is to be held, addressed to the owner at its last known place of business. Any suspension or revocation of any licensers) shall not release or discharge the owner from his or her civil liability for the payment of the tax nor from prosecution for such offense.

### **13-39 PENALTIES.**

- a. Any person found guilty of violating, disobeying, omitting, neglecting, or refusing to comply with or unlawfully resisting or opposing the enforcement of any of the provisions of this chapter, except when otherwise specifically provided, upon conviction thereof shall be punished by a fine of not less than two hundred dollars (\$200.00) nor more than seven hundred fifty dollars (\$750.00) for the second and each subsequent offense in any 180 day period.
- b. Each day upon which a person shall continue any violation of this chapter, or permit any such violation exist after notification thereof, shall constitute a separate and distinct offense.
- c. Any owner subjected to the penalties provided for by this subsection shall not be discharged or released from the payment of any tax due.

**13- 40 SEVERABILITY.** Should any term, provision, clause, or section of this Ordinance be held invalid, void, or defective by a court of competent jurisdiction each holding or finding shall not effect any remaining term, provision, clause, or section of this Ordinance.

**SECTION 2.** This ordinance shall be in full force and effect following its passage, approval and publication in the manner provided by law.

**SECTION 3.** The Village Clerk be and is hereby directed to publish this Ordinance in Pamphlet form.

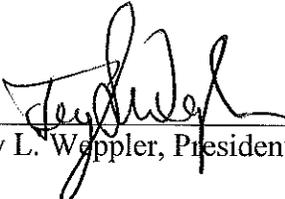
PASSED this 9 day of August, 2016

AYES: Moras, Justice, Adams, Garrity

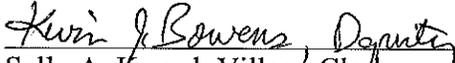
NAYS: Gaines

ABSENT: Johnson

APPROVED this 10 day of August, 2016

  
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Terry L. Weppeler, President

ATTEST:

  
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Sally A. Kowal, Village Clerk