

CHAPTER 60

RESTAURANT, BAR AND PACKAGE LIQUOR TAX

LATEST REVISION: March 26, 2020 (Ordinance 2020-022)

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60.01 DEFINITIONS

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

"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 non-alcoholic liquor beverages. The term shall include and be limited to:

1. Food items purchased at establishment where facilities are provided for on-premise consumption, but such term shall not include food items 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; such term shall also not include food items purchased at establishments where facilities are provided for on-premise consumption where twenty percent (20%) or less of the establishment's food item sales are reasonably expected or intended by the seller for immediate on-premise consumption and where such establishment sells food items primarily in quantities greater than individual sized servings.

2. Food items purchased from concession stands, snack shops and other establishments that 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-premise consumption; and
3. Food items that 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 Section, "food items prepared off the premises" means food items that 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 that are precooked and then heated or warmed-up off the premises or food items that 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.

"Package Liquor Store" means a place of business in which the premises are used primarily or exclusively for the retail sale of alcoholic liquor in original package for consumption of the premises where sold.

"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.

"Mandatory Gratuity" means the imposition of a required surcharge, fee, obligation or tip for service in a restaurant or bar.

60.02 IMPOSITION OF TAX

- a) There is hereby levied and imposed upon the privilege of purchasing food items prepared for immediate consumption and alcoholic liquor served or prepared at either a restaurant or bar in the City of DeKalb and upon the privilege of purchasing alcoholic liquor at retail at any package liquor store, a tax of two (2%) 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 food items prepared for immediate consumption served or prepared at:
 - 1. A restaurant owned by a church, grade school, junior high school or high school within the City of DeKalb;
 - 2. Restaurants used primarily in conjunction with institutional living establishments within the City of DeKalb, including, but not limited to dormitories, fraternities, sororities, residential care facilities and hospitals;
 - 3. Premises or operations of not-for-profit organizations who serve food on an occasional and irregular basis.

60.03 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 package liquor store, 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 60.02 a) from each consumer at the time that the consideration for such purchase is paid and shall remit the same to the City in the manner set forth in this Chapter. Such retailers shall be the trustee for the City in the collection and remittance of said taxes.

60.04 COLLECTION OF TAX

Every person required to collect the tax levied by this Section 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 Section shall be stated separately on said documents or combined with the amount of the Illinois Retailer's Occupation Tax Act.

60.05 RULES AND REGULATIONS

The Comptroller/Treasurer of the City of DeKalb may promulgate rules and regulations not inconsistent with the provisions of this Chapter 60 concerning the enforcement and application of this Chapter 60. The term "rules and regulations" includes, but is not limited to, a case by case determination whether or not the tax imposed by this Chapter 60 applies.

60.06 FILING OF APPLICATION

- a) The owner of each restaurant, bar or package liquor store shall complete a City of DeKalb Application for Registration within thirty (30) days of opening for business and

shall update the same annually at the time of their application for a Fire-Life Safety license with the City. In the event that any information set forth on the Application changes during the course of a year, the owner shall report such changes in writing to the City within fifteen (15) days of their occurrence. The Application and any changes thereto shall be filed with the Finance Division of the City. A failure to file the Application, either initially, annually or to report changes in the information contained therein, shall be a basis for a revocation of any City license of such retailer or applicable to the premises thereof, in addition to any other penalty provided in this Ordinance. (01-33)

- b) If the owner fails to file the Application as required by this Chapter, either initially, annually or fails to report changes in the information contained therein, the retailer shall be subject to a penalty in the amount of One Hundred Dollars (\$100.00).

60.07 FILING OF RETURN

- a) All retailers shall pay to the City all taxes collected. The owner of each restaurant, bar or package liquor store within the City of DeKalb shall file monthly tax returns showing tax receipts received during each monthly period on forms prescribed by the Comptroller/Treasurer. The return shall be filed on or before the 20th day of the calendar month next succeeding the month for which the return is made and shall be accompanied by a copy of the State of Illinois sales tax return for the corresponding period and payment of all taxes, fees and penalties, if any, due and owing for the month covered by said return.
- b) The first taxing period for the purpose of this Section shall commence on July 1, 1990, and the tax return and payment for such period shall be due on or before August 31, 1990. Thereafter, reporting periods and tax payments shall be in accordance with the provisions of this Section.
- c) After January 1, 1991, retailers may submit a written request to the Comptroller/Treasurer to submit tax returns on a quarterly, semi-annual or annual basis, in conformance with the method in which such returns are filed with the State of Illinois. Whether or not to approve such request shall be within the sole discretion of the Comptroller/Treasurer.
- d) Any payment made by check which is returned to the City because of insufficient funds may result in the Comptroller/Treasurer requiring the retailer to make future payments by cashier's check or money order.

60.08 FAILURE TO FILE RETURN AND PAY TAX

- a) If for any reason any tax is not paid when due, a penalty at the rate of five percent (5%) per thirty (30) day period or portion thereof, from the day of delinquency, shall be added and collected.
- b) In addition to the penalty assessed under Section 60.08 a) and the late fee assessed under Section 60.08 c), any amount of tax which is not paid when due shall bear

interest at the rate of two percent (2%) per month or fraction thereof from the date when such tax becomes past due until such tax is paid or a judgment thereof is obtained by the City of DeKalb.

- c) If the retailer fails to file the return as required by this Chapter, a late fee in the amount of \$100.00 per month or a portion thereof shall be assessed for the first month's violation and said late fee shall increase by Fifty Dollars (\$50.00) for each and every month thereafter until paid, up to a maximum late fee of Five Hundred Dollars (\$500.00) per month. Said late fee shall be in addition to any penalties and interest set forth in this Chapter.
- d) A failure to file the Application, either initially, annually or to report changes in the information contained therein, shall be a basis for a revocation of any City license of such retailer or applicable to the premises thereof, in addition to any other penalty provided in this Ordinance..

60.09 RECORD

- a) All retailers shall cause complete and accurate books, records and accounts showing the gross receipts for sales of taxable food items and alcoholic liquor and the taxes collected each day, which shall be made available in the City for examination by the City upon reasonable notice and during customary business hours.
- b) The financial records of any restaurant, bar or package liquor store submitted pursuant to this article or any rule and regulation promulgated thereunder shall not be made available for public inspection in order to protect the owner's right to privacy.

60.10 FAILURE TO REMIT; LICENSING

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

60.11 VIOLATIONS; PENALTIES; DISCLOSURE OF MANDATORY GRATUITY

- a) 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 Chapter, except when otherwise specifically provided, upon conviction thereof shall be deemed to have committed an offense and punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) for the first offense, and not less than Two Hundred Fifty Dollars (\$250.00), nor more than One Thousand Dollars (\$1,000.00) for the second offense, and not less than Five Hundred Dollars (\$500.00) nor more than One Thousand (\$1,000.00) for the third and each subsequent offense within a two (2) year period, or five (5) times the amount of the tax imposed, if any, whichever is higher, for the second and each subsequent offense. A separate and distinct offense shall be regarded as committed each day that said retailer

shall continue any such violation or permit any such violation to exist after notification thereof.

- b) No retailer shall impose a mandatory gratuity without disclosing the same by exhibiting a sign within ten (10) feet of the entrance of the retailer reflecting the amount of the mandatory gratuity in both words and numbers and any conditions for the imposition of the mandatory gratuity and by setting forth such disclosure on any menu customarily used by the retailer, whether individual or posted on a wall board or sign. A violation of this section shall be an offense punishable by a fine of not less than Fifty Dollars (\$50.00), nor more than Five Hundred Dollars (\$500.00). A separate and distinct offense shall be regarded as committed each day that said retailer shall continue any such violation or permit any such violation to exist after notification thereof.

Chapter 60
“Restaurant, Bar and Package Liquor Tax”
Table of Amendments

The following table provides for the amendments made to this Municipal Code Chapter since its original effective date of May 29, 1990 (Ordinance 1990-055).

Effective Date	Ordinance No.	Description of Amendment
5/29/1990	1990-055	Amending the Municipal Code by Adding Chapter 60 "Restaurant, Bar and Package Liquor Tax".
5/29/2001	2001-033	Amending Chapter 60 “Restaurant, Bar and Package Liquor Tax” by Inserting a New Section 60.06 “Filing of Application” and Amending Section 60.10 “Violations; Penalties”.
3/13/2006	2006-013	Amending Chapter 60 “Restaurant, Bar and Package Liquor Tax”.
11/24/2008	2008-067	Amending Chapter 60 “Restaurant, Bar and Package Liquor Tax”, Section 60.02 “Imposition of Tax”, by Increasing the Tax to 2.5% Effective July 1, 2009.
6/8/2009	2009-037	Amending Chapter 60 “Restaurant, Bar and Package Liquor Tax”, Section 60.02 “Imposition of Tax”, by Decreasing the Tax to 2%.
3/26/2020	2020-022	Amending Chapter 55 “Hotels and Motels”, Section 55.04 “Transmittal of Tax Revenue”, and Chapter 60 “Restaurant, Bar and Package Liquor Tax”, Section 60.08 “Failure to File Return and Pay Tax” to Provide Economic Relief Related to COVID-19.