

ORDINANCE 2023- 12

AN ORDINANCE OF THE CITY OF COLUMBIA CITY, WHITLEY COUNTY, INDIANA  
ADOPTING THE CITY OF COLUMBIA CITY FOOD AND BEVERAGE TAX

WHEREAS, on or around May 4, 2023, Governor Holcomb signed P.L.236 (fka HEA 1454) (the "Act"), which, among other items, amended Ind. Code §§6-9 to add Ind. Code §6-9-54 as a new chapter, allowing the fiscal body of the City of Columbia City, Whitley County, Indiana ("City") to impose an excise tax, known as the city food and beverage tax ("Food & Beverage Tax") by or before December 31, 2023;

WHEREAS, in accordance with the Act, the Food & Beverage Tax applies to a transaction in which food or beverage is furnished, prepared, or served: (1) for consumption at a location or on equipment provided by a retail merchant; (2) in the City; and (3) by a retail merchant for consideration;

WHEREAS, the Food & Beverage Tax also applies to a transaction in which food or beverage is (1) served by a retail merchant off the merchant's premises; (2) food sold in a heated state or heated by a retail merchant; (3) made of two or more food ingredients, mixed or combined by a retail merchant for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); or (4) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (a plate does not include a container or package used to transport the food);

WHEREAS, the Food & Beverage Tax does not apply to the furnishing, preparing, or serving of a food or beverage in a transaction that is exempt, or to the extent the transaction is exempt, from the state gross retail tax imposed by Ind. Code §6-2.5;

WHEREAS, the Food & Beverage Tax rate may not exceed one percent (1%) of the gross retail income received by the merchant from a qualifying food or beverage transaction, and the gross retail income received by the retail merchant from a transaction does not include the amount of tax imposed on the transaction under Ind. Code §6-2.5;

WHEREAS, amounts received from the Food & Beverage Tax shall be paid monthly by the treasurer of state to the Clerk Treasurer upon warrants issued by the auditor of the state;

WHEREAS, pursuant to the Act, money in the Food & Beverage Tax receipts fund shall be used by the City (1) for park and recreation purposes, including the purchase of land for park and recreation purposes; and (2) for the pledge of money under Ind. Code §5-1-14-4 for bonds, leases, or other obligations for a purpose described in subdivision (1);

WHEREAS, on July 25, 2023, the Common Council for the City of Columbia City, Whitley County, Indiana ("Common Council") held a duly noticed public hearing in which a discussion of the proposed ordinance to impose the Food & Beverage Tax was the only substantive issue on the agenda for the public hearing; and

WHEREAS, the Common Council now desires to adopt the Food & Beverage Tax as further described herein.

NOW, THEREFORE, BE IT ORDAINED, by the Common Council for the City of Columbia City, Whitley County, Indiana, meeting in regular session as follows:

Section 1. Adoption. The Common Council hereby adopts a Food & Beverage Tax at one percent (1%) of the gross retail income received by the merchant from qualifying food or beverage transactions.

Section 2. Taxable Transactions. Pursuant to Ind. Code §6-9-54-4(a), the Food and Beverage Tax shall apply to a transaction in which food or beverage is furnished, prepared, or served:

- (1) for consumption at a location or on equipment provided by a retail merchant;
- (2) in the City; and
- (3) by a retail merchant for consideration.

Transactions described in subsection (a)(1) include transactions in which food or beverage is:

- (1) served by a retail merchant off the merchant's premises;
- (2) food sold in a heated state or heated by a retail merchant;
- (3) made of two or more food ingredients, mixed or combined by a retail merchant for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); or
- (4) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or package used to transport the food).

The Food & Beverage Tax does not apply to the furnishing, preparing, or serving of a food or beverage in a transaction that is exempt, or to the extent the transaction is exempt, from the state gross retail tax imposed by Ind. Code §6-2.5.

**Section 3. Establishment of Food & Beverage Tax Receipt Fund.** The Common Council hereby instructs the Clerk Treasurer to establish a food and beverage tax receipts fund. The Clerk Treasurer shall deposit in this fund all amounts received by the imposition of the Food & Beverage Tax. Money earned from the investment of money in the fund becomes a part of the fund.

**Section 4. Distribution and Collection of Tax Revenue.** The Food & Beverage Tax shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under Ind. Code §6-2.5. The amounts received from the imposition of the Food & Beverage Tax shall be paid monthly by the treasurer of the state to the Clerk Treasurer upon warrants issued by the auditor of the state.

**Section 5. Use of Tax Revenue.** Money in the food and beverage tax receipts fund shall be used by the City (1) for park and recreation purposes limited to Eagle Park, including but not limited to, the purchase of land for park and recreation purposes, the purchase of playground and sporting equipment, and for construction and improvement of Eagle Park facilities; and (2) for the pledge of money under Ind. Code §5-1-14-4 for bonds, leases, or other obligations for a purpose described in subdivision (1). As further limitation to the purposes described in (1), revenues may (a) only be used for Eagle Park; (b) may not be used for staffing; and (c) may only be used where other funding sources are not available. Revenue derived from the imposition of the Food & Beverage Tax may be treated by the City as additional revenue for the purpose of fixing its budget for the budget year during which the revenues are to be distributed to the City.

**Section 6. Covenant.** With respect to obligations for which a pledge has been made under Ind. Code §6-9-54-9, the general assembly covenants with the holders of the obligations that Ind. Code §6-9-54-1, *et. seq.*, will not be repealed or amended in a manner that will adversely affect the imposition or collection of the Food & Beverage Tax if the payment of any of the obligations is outstanding.

**Section 7. Effective Date of Tax.** In accordance with Ind. Code §6-9-54-3(c), the Food & Beverage Tax shall apply to transactions that occur after the last day of the month that succeeds the month in which the ordinance is adopted. Pursuant to the Act, Ind. Code §6-9-54 shall expire July 1, 2045 but for City purposes, the twenty (20) year period will begin January 1, 2024 and expire December 31, 2044.

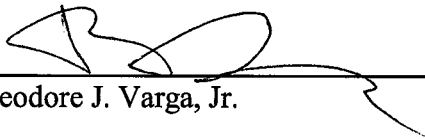
**Section 8.** The City shall immediately send a certified copy of the ordinance to the department of state revenue.

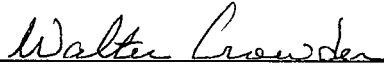
**Section 9.** This Ordinance shall be of full force and effect from and upon its adoption and in accordance with Indiana law.

PASSED AND ADOPTED by the Common Council of the City of Columbia City, Indiana,  
this 8 day of August, 2023.

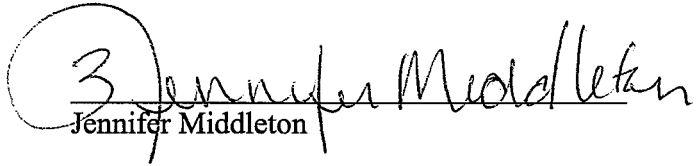
COMMON COUNCIL OF THE CITY OF  
COLUMBIA CITY, INDIANA, BY:

  
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Daniel Weigold

  
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Theodore J. Varga, Jr.

  
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Walter C. Crowder

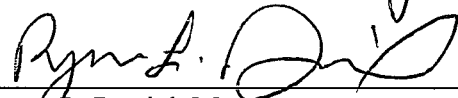
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Jennifer B. Zartman-Romano

  
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Jennifer Middleton

Attest:

  
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Rosie Coyle, Clerk-Treasurer

Approved this 8 day of Aug, 2023.

  
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Ryan L. Daniel, Mayor  
City of Columbia City