

ORDINANCE 2021-01

AN ORDINANCE OF THE TOWN OF WHITESTOWN, INDIANA CONCERNING A FOOD AND BEVERAGE TAX

WHEREAS, in 2019, Ind. Code § 6-9-52 was enacted in order to enable the Town of Whitestown (“Whitestown”) to adopt an excise tax known as a food and beverage tax (“F&B Tax”) applicable to certain food and beverage items within its municipal boundaries; and

WHEREAS, numerous other communities, including communities neighboring Whitestown, have already imposed a F&B Tax that has at times impacted Whitestown and its residents; and

WHEREAS, a F&B Tax will allow Whitestown to help pay for services, capital improvements, amenities, and advance economic development through revenue generated by those using Whitestown’s services regardless of where they reside;

WHEREAS, on February 22, 2021, and prior to adoption of this Ordinance, the Whitestown Town Council held a duly noticed separate public hearing where the F&B Tax was the only substantive issue on the agenda; and

WHEREAS, to further enhance its community and economic development objectives, Whitestown now desires to adopt the F&B Tax.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Whitestown, Indiana, as follows:

Section 1. Pursuant to Ind. Code § 6-9-52-3 and -5, the Whitestown Town Council (“Council”) hereby adopts a F&B Tax that shall be one percent (1%) of the gross retail income received by the merchant from the food or beverage transactions described in Ind. Code § 36-9-52-4.

Section 2. Pursuant to Ind. Code § 6-9-52-4, the F&B Tax shall apply to a transaction in which food or beverage is furnished, prepared, or served:

- (a) for consumption at a location or on equipment provided by a retail merchant;
- (b) in the Town; and
- (c) by a retail merchant for consideration (“Transactions”).

Section 3. Consistent with Ind. Code § 6-9-52-4(b), Transactions shall include those where food or beverage is:

- (a) served by a retail merchant off the merchant’s premises;

- (b) food sold in a heated state or heated by a retail merchant;
- (c) made of two (2) 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
- (d) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this Ordinance, a plate does not include a container or package used to transport the food).

Section 4. Consistent with Ind. Code § 6-9-52-4(c), the F&B 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 5. The F&B Tax shall apply to Transactions that occur after the last day of the month following sixty (60) days after the date of the adoption of this Ordinance.

Section 6. Pursuant to Ind. Code § 6-9-52-6, the F&B Tax shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected pursuant to Ind. Code § 6-2.5.

Section 7. Pursuant to Ind. Code § 6-9-52-8, the Whitestown Clerk-Treasurer shall establish a fund known as the “Food and Beverage Tax Receipts Fund” and deposit all F&B Tax revenue received from the Indiana State Treasurer into the Food and Beverage Tax Receipts Fund. Money earned from the investment of money in the Food and Beverage Tax Receipts Fund shall become a part of the Fund.

Section 8. Pursuant to Ind. Code § 6-9-52-9, money in the Food and Beverage Tax Receipts Fund shall only be used for one or more of the following purposes:

- (a) to reduce Whitestown’s property tax levy for a particular year at the discretion of the Council;
- (b) for economic development purposes, including the pledge of money under Ind. Code § 5-1-14-4 for bonds, leases, or other obligations for economic development purposes;
- (c) construction, renovation, improvement, equipping, or maintenance of town capital improvements;
- (d) parks and recreation;

- (e) the pledge of money under Ind. Code § 5-1-4-4 for bonds, leases, or other obligations incurred for a purpose described in (c) through (d); or
- (f) any other use permitted by applicable law.

Section 9. Any ordinances or parts thereof in conflict herewith are hereby repealed. The terms and provisions of this Ordinance are severable, and the invalidity or unenforceability of any term or provision shall not affect the remaining portions of this Ordinance. This Ordinance shall be in full force and effect from and upon its adoption in accordance with the law.

Section 10. Pursuant to Ind. Code 6-9-52-3(b), a certified copy of this Ordinance shall be immediately sent to the Indiana Department of Revenue.

Adopted by the Town Council of the Town of Whitestown, Indiana, on _____, 2021, by a vote of _____ in favor and _____ against..

THE TOWN COUNCIL OF THE TOWN
OF WHITESTOWN, INDIANA

Clinton Bohm, President

ATTEST:

Matt Sumner, Clerk-Treasurer
Town of Whitestown, Indiana
3803958