Town Council of Merrillville

7820 Broadway Ave - Merrillville, IN 46410

Special Town Council Meeting Minutes

December 20, 2023 - 4:30 P.M.

CALL TO ORDER: Councilor Bella called the meeting to order at 4:30 P.M.

PLEDGE OF ALLEGIANCE: Led by Councilor Hardaway.

ROLL CALL – Present at the meeting were Councilors Rhonda Neal, Richard Hardaway Jeffrey Minchuk, Leonard White, and Rick Bella. Madam Clerk-Treasurer *Pro Tempore* Angela Lewis was present to memorialize the proceedings. A quorum was attained.

Councilor Margaret Uzelac was absent at roll call but came in at 4:40 P.M.

PRESENTATION AND RATIONAL FOR THIS SPECIAL MEETING:

1. **Purpose of the Meeting**

The purpose of this special meeting is to consider the food and beverage tax for the Town of Merrillville found in I.C. 6-9-54.5 et. seq.

2. **Presentation Explaining the Merrillville Food and Beverage Tax, as authorized in I.C. 6-9-54.5 et seq.**

The Town Council President opened by offering remarks regarding the history of the enabling law and what its limitations are. The law is called the Merrillville Food and Beverage Tax, in I.C. 6-9-54.5 et. seq.

SPECIAL ORDERS:

1. **Public Hearing**

Seeking Public Comment on the Proposal for a Merrillville Food & Beverage Tax, pursuant to I.C. 6-9-54.5 et seq.

a) Honorable Clerk-Treasurer Elect Eric January, Merrillville, Indiana, voiced his concerns regarding the Food and Beverage Tax.
b) Bryon Mesarch, Merrillville, Indiana voiced his concerns regarding the Food and Beverage Tax.

There were no further discussion or comments. The President closed the hearing.

Upon the request of Councilor Bella, Interim Town Manager Griffin elaborated on where the tax money comes from to fund the Community School Corporation.

Councilor Pettit added to the Interim Town Manager's explanation.

2. **First Reading (Introduction): Consideration of Proposed Ordinance No. 23-32:** An Ordinance of the TOWN of MERRILLVILLE, LAKE COUNTY, INDIANA, ADOPTING THE TOWN of MERRILLVILLE FOOD and BEVERAGE TAX, pursuant to I.C. 6-9-54.5 et seq.

Councilor Bella asked Madam Clerk-Treasurer Pro Tempore Angela Lewis to read Ordinance 23-32 into the record:

ORDINANCE NO. 23-32

AN ORDINANCE OF THE TOWN OF MERRILLVILLE, LAKE COUNTY, INDIANA ADOPTING THE TOWN OF MERRILLVILLE FOOD AND BEVERAGE TAX

WHEREAS, On or around May 4, 2023 Governor Eric Holcomb signed P.L 236 (fka HEA 1454) (hereinafter referred to as the "Act"), which, among other items, amended I.C. 6-9 to add I.C. 56-9-54.5 as a new chapter, allowing the fiscal body of the Town of Merrillville, Lake County, Indiana (hereinafter referred to as the "Town") to impose an excise tax, called the Merrillville Town Food and Beverage Tax (hereinafter referred to as the "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 Town; 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 r 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 3-401.00 of its Food Code to prevent foodborne 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 that is exempt, or to the extent the transaction is exempt, from the state gross retail tax imposed by I.C. 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 I.C. 6-2.5;

WHEREAS, Amounts received from 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;

WHEREAS, Pursuant to the Act, money in Food & Beverage Tax receipts fund shall be used by the Town (l) for park and recreation purposes, including the purchase of land for park and recreation purposes; (2) for tourism related purposes or facilities, including the purchase of land for tourism related purposes; and/or for the pledge of money under I.C. 5-1-14-4 for bonds, leases, or other obligations incurred for a purpose described in subdivisions (1) and (2).;

WHEREAS, On December 20, 2023, the Town Council for the Town of Merrillville, Lake County, Indiana (hereinafter referred to as the "Town 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 Town Council now desires to adopt the Food & Beverage Tax as further described herein,

NOW, THEREFORE, BE IT ORDAINED, by the Town Council of the Town of Merrillville, Lake County, Indiana, meeting in regular session as follows:

Section 1. Adoption. The Town 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 I.C. 6-9-54.5-4(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 Town; and
(3) by a retail merchant for consideration.

Transactions described in subsection (a)(l) 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 food containing these raw animal food 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 in exempt, from the state gross retail tax imposed by I.C. 6-2.5.

Section 3. Establishment of Food & Beverage Tax Receipt Fund. The Town 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 I.C. 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 Town (l) for park and recreation purposes, including the purchase of land for park and recreation purposes; (2) for tourism related purposes or facilities, including the purchase of land for tourism related purposes; and/or for the pledge of money under I.C. 5-1-14-4 for bonds, leases, or other obligations incurred for a purpose described in subdivisions (l) and (2). Revenue derived from the imposition of the Food & Beverage Tax may be treated by the Town as additional revenue for the purpose of fixing its budget for the budget year during which the revenues are to be distributed to the Town.

Section 6. Covenant. With respect to obligations for which a pledge has been made under I.c. 6-9-54.5-9, the general assembly covenants with the holders of the obligations that I.C. 6-9-54.5-1, 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 I.C. 6-9-54.5-3(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, I.C. 6-9-54.5 shall expire July 1, 2045 but for Town purposes, the twenty (20) year period will begin January 1, 2024 and expire December 3 1, 2044.

Section 8. Authority to Codify. That the Town Manager and the Clerk Treasurer are authorized and instructed to cause this ordinance to be properly incorporated into the Merrillville Municipal Code, assigning the chapter and section as needed, notwithstanding the form.

Section 9. Instruction to Certify. The Town shall immediately send a certified copy of the Ordinance to the Department of State Revenue.

Section 10. Effectiveness. This Ordinance shall be of full force and effect from and upon its adoption and in accordance with Indiana law.

ALL OF WHICH IS RESOLVED THIS ___DAY OF _____2023, BY THE TOWN COUNCIL OF THE TOWN OF MERRIVILLE, LAKE COUNTY INDIANA

TOWN OF MERRILLVILLE,
LAKE COUNTY, INDIANA,
TOWN COUNCIL

_____
Rick Bella, Town Council President

_____
Richard Hardaway, Vice-President

_____
Rhonda Neal, Member

_____
Jeff Minchuk, Member

_____
Margaret A. Uzelac, Member

_____
Shawn Pettit, Member

_____
Leonard White, Member

ATTEST:

_____
Kelly White Gibson, Clerk-Treasure

It was moved by Councilor Pettit and seconded by Councilor Minchuk, to approve Ordinance 23-32 on the first reading.

Councilor White voiced his concerns about the delay of the Ordinance 23-32.

Upon a roll call vote, there were six affirmatives and one negative. With Councilors Neal, Hardway, Minchuk, Uzelac, Pettit, and Bella voting in the affirmative, and Councilor White voting in the negative, the motion passed. The ordinance was approved on the first reading.

3. **First Reading (Introduction): Consideration of Proposed Ordinance No. 23-33:** An Ordinance of the TOWN of MERRILLVILLE, LAKE COUNTY, INDIANA, ESTABLISHING THE TOWN of MERRILLVILLE FOOD and BEVERAGE TAX RECEIPTS FUND, pursuant to IC 6-9-54.5 et seq.

   Upon the request of Councilor Bella, Interim Town Manager Griffin gave a brief explanation of Ordinance 23-33.

   Councilor Bella asked Interim Town Manager Griffin to read Ordinance 23-33 into the record.

ORDINANCE NO. 23-33

AN ORDINANCE OF THE TOWN OF MERRILLVILLE, LAKE COUNTY, INDIANA ESTABLISHING A FOOD AND BEVERAGE TAX RECEIPTS FUND

WHEREAS, Pursuant to I.c. 6-9-54.5-3 and Ordinance No. 23-32, the Town Council of the Town of Merrillville (hereinafter referred to as "Town Council") adopted a 1% food and beverage tax applicable to certain food and beverage items within its boundaries (hereinafter referred to as "Food and Beverage Tax");

WHEREAS, Pursuant to I.c. 6-9-54.5-8, the Town fiscal officer is required to establish a food and beverage tax receipts fund;

WHEREAS, The fund established herein shall be entitle "Food and Beverage Tax Receipts Fund."

Now, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MERRILLVILLE, INDIANA AS FOLLOWS:

SECTION 1. The above recitals are incorporated by reference.

SECTION 2. This Ordinance shall be known as "Food and Beverage Tax Receipts Fund" in the Code of Municipal Ordinances of the Town of Merrillville, Indiana and be referenced as indicated.

SECTION 3. Fund established. The Town of Merrillville Food and Beverage Tax Receipts Fund ("Fund") is hereby established.

SECTION 4. Sources of funding. The Town of Merrillville shall deposit in the Fund all Food Beverage Tax amounts received under I.c. 6-9-54.5 et seq. Money earned from the investment of money in the Fund becomes a part of the Fund.

SECTION 5. Uses of funding. The Town shall use such revenues collected in the Fund (if available) for the following purposes:

(a) Park and recreation purposes, including the purchase of land for park and recreation purposes.

(b) Tourism related purposes or facilities, including the purchase of land for tourism related purposes.

(c) The pledge of money under I.C. 5-1-14-4 for bonds, leases, or other obligations incurred for a purpose described in subdivisions (1) and (2).

SECTION 6. Amendments. This Ordinance may be amended from time to time if additional guidance is received from any state agency.

SECTION 7. Termination. The Food and Beverage Tax Receipt Fund shall exist until terminated by Ordinance of the Town Council. The Fund shall be non-reverting. In the instance of Fund termination, the Fund balance shall be transferred to the Town of

Merrillville General Fund, after all outstanding debt obligations from the Fund have been satisfied.

SECTION 8. Prior Ordinance. All Ordinances and/or parts of ordinances in conflict herewith are hereby repealed.

SECTION 9. Separability. If any section, sub-section, sentence, clause, phrase or portion of this Ordinance shall for any reason be held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereunder.

SECTION 10. Authority to Codify. That the Town Manager and the Clerk Treasurer are authorized and instructed to cause this ordinance to be properly incorporated into the Merrillville Municipal Code, assigning the chapter and section as needed, notwithstanding the form.

SECTION 11. Effective date. This Ordinance shall be in full force and effect from and after notice, passage by the Town Council, and all in the manner as provided by law.

ALL OF WHICH IS RESOLVED THISDAY OF_____ DAY OF_____, 2023, BY THE TOWN COUNCIL OF THE TOWN OF MERRILLVILLE, LAKE COUNTY, INDIANA.

TOWN OF MERRILLVILLE,
LAKE COUNTY,
INDIANA, TOWN COUNCIL

_____
Rick Bella, Town Council President

_____
Richard Hardaway, Vice-President

_____
Rhonda Neal, Member

_____
Jeff Minchuk, Member

_____
Margaret A. Uzelac, Member

_____
Shawn Pettit, Member

_____
Leonard White, Member

ATTEST:

_____
Kelly White Gibson, Clerk-Treasurer

It was moved by Councilor Pettit and seconded by Councilor Minchuk, to approve Ordinance 23-33 on the first reading.

Councilor White stated he has concerns regarding the way the council votes and the bylaws language.

Attorney Svetanoff stated that Yes or Aye is an affirmative vote.

Upon a roll call vote, there were six affirmatives and one negative. With Councilors Neal, Hardway, Minchuk, Uzelac, Pettit, and Bella voting in the affirmative, and Councilor White voting in the negative, the motion passed. The ordinance was approved on the first reading.

ANNOUNCEMENTS

- The next Town Council Meeting will be on December 26th, at 6:30 p.m.

ADJOURNMENT

Having completed all items on the agenda, the President declared the meeting adjourned at 5:32 p.m.

Rick Bella, President

Kelly White Gibson, Clerk-Treasurer

Respectfully Submitted By Angela Lewis