# ORDINANCE 2024-14
# ORDINANCE AMENDING FOOD AND BEVERAGE TAX IN MONROE COUNTY

**WHEREAS,** on December 12, 2017, the Monroe County Council, pursuant to the authority of Indiana Code §6-3-41 et seq. adopted ordinance 2017-51, "An Ordinance Adopting a Food and Beverage Tax in Monroe County; and,

**WHEREAS,** during the 2023 State Legislative session code sections impacting the Food and Beverage Tax were added or changed; and

**WHEREAS,** the Monroe County Council recognizes the importance of amending the 2017 Ordinance establishing the Food and Beverage Tax to incorporate recently codified changes to the Food and Beverage statutes. Accordingly, the Monroe County Council wishes to readopt the Food and Beverage Tax in Monroe County, as previously established by Ordinance 2017-51, and incorporates the 2023 legislative changes.

**NOW, THEREFORE, BE IT ORDAINED** by the Monroe County Council of Monroe County that the following amendments:

**SECTION 1. ESTABLISHMENT OF TAX; APPLICATION OF TAX**

a) Pursuant to the authority granted to the Monroe County Council by the General Assembly of the State, under IC 6-9-41 et seq., and expressly referencing IC 6-9-41-5(a), there is hereby established a county food and beverage tax to be imposed upon any 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. within Monroe County; and
   3. by a retail merchant for consideration.

b) The transactions described in subsection A of this section 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. 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 food sold with eating utensils provided by a
   4. 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 packaging used to transport the food).

c) The county food and beverage tax does not apply to the furnishing, preparing, or serving of any food or beverage in a transaction that is exempt, or to the extent exempt, from the state gross retail tax imposed by IC 6-2.5.

d) **APPLICATION OF TAX.** The tax imposed by this ordinance applies to transactions that occur after the last day of the month that succeeds the month in which the ordinance codified in this chapter is adopted.

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**SECTION 2. RATE OF TAX**

The county food and beverage tax imposed on a food or beverage transaction described in Section 1 above equals one percent (1%) of the gross retail income received by the merchant from the transaction. For the purposes of this ordinance the gross retail income received by the retail merchant from the transaction does not include the amount of tax imposed on the transaction under IC 6-2.

**SECTION 3. COLLECTION OF TAX; DISTRIBUTION BY THE STATE**

a) Pursuant to IC 6-9-41-8, the tax imposed by this ordinance shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-2.5. However, the return to be filed for the payment of the tax under this chapter may be made separately or may be combined with the return filed for the payment of the state gross retail tax, as prescribed by the department of state revenue.

b) Pursuant to IC 6-9-41-10, the amounts received from the county food and beverage tax imposed under this ordinance shall be paid monthly by the Treasurer of the State to the County Treasurer upon warrants issued by the Auditor of the State.

**SECTION 4. ESTABLISHMENT OF NON-REVERTING FUND TO HOLD FOOD AND BEVERAGE TAX RECEIPTS**

a) Monroe County Fund
    1. The County Treasurer shall establish a Food and Beverage Tax Receipts Fund, which shall be a non-reverting fund (the "Tax Receipts Fund").
    2. The County Treasurer shall deposit in the Tax Receipts Fund the revenues allocated to the county pursuant to Section 5(a)(1) below.
    3. Any money earned from the investment of money in the Tax Receipts Fund becomes part of the Tax Receipts Fund.
    4. Money in the Fund at the end of the county fiscal year does not revert to the county general fund.
    5. Following establishment of the Tax Receipts Fund, the Monroe County Auditor shall inform the Controller of the City of Bloomington that the Tax Receipts Fund has been established, and request to be informed at such time as the City of Bloomington performs its duty under IC 6-9-41-12 to establish a similar fund for the City of Bloomington.

b) City of Bloomington Food and Beverage Fund (Pursuant to IC 6-9-41-12). Following the establishment of the Monroe County Food and Beverage Tax Receipts Fund, the County Auditor shall inform the City Controller that said action has been completed, and request that the City Controller provide notice to the County Auditor when the City of Bloomington Food and Beverage Fund has been established, pursuant to IC 6-9-41-12.

c) Monroe County Food and Beverage Fund, following the establishment of the Tax Receipts Fund, the County Auditor shall establish the Monroe County Food and Beverage Fund, a non-reverting fund for revenue deriving from tax receipts collected in part of the county that is outside the city.

**SECTION 5. ALLOCATION OF FOOD AND BEVERAGE TAXES BETWEEN MONROE COUNTY AND CITY OF BLOOMINGTON**

a) Each month, the County Auditor shall distribute the county food and beverage tax revenue received by the County Treasurer between the City of Bloomington and the County according to the location where the county food and beverage tax was collected. If the Food and Beverage tax was collected in the City of

Bloomington, the City must receive the revenue. If the Food and Beverage tax was collected in the part of the county that is outside the city, the County must receive the revenue.

b) Distribution of the food and beverage tax revenue to the City of Bloomington must be on warrants issued by the County Auditor.

**SECTION 6: COUNTY FOOD AND BEVERAGE TAX RECIPTS FUND; USE OF FUND**

a) The County's share of county food and beverage tax revenue deposited in the county food and beverage tax receipts fund may only be used to finance, refinance, construct, operate, or maintain a convention center, a conference center, or related tourism or economic development projects.

b) The County must develop a written plan before December 1st of each year that includes the:
   1. Proposed use of the funds for the upcoming year;
   2. Detailed use of funds in the current and prior calendar years; and
   3. Fund balance as of January 1 of the current calendar year.

c) The written plan must be submitted to State Board of Accounts and be made available on the department's computer gateway within thirty (30) days of submission.

d) The County must spend the money in the county food and beverage tax receipts fund in accordance with the written plan described above. If no funds have been expended from the county food and beverage tax receipts fund in accordance with the written plan before July 1, 2025, then Indiana Code §6-9-41-15.5 applies.

e) Indiana Code §6-9-41-15.5 is applicable only if the county and the city do not spend from the county and city food and beverage tax receipts fund as required by Indiana Code sections §6-9-41-14(c) and §6-9-41-15(c). When §6-9-41-15.5 applies, the ordinance adopted under Indiana code §6-9-41-5 to impose the food and beverage tax is void and food and beverage tax revenue may not be collected after June 30, 2025. The county may not adopt a new ordinance under section 5 of this chapter after June 30, 2025.

f) The following apply to the distribution of unexpended money in the county food and beverage and tax receipts fund and city food and beverage tax receipts fund:
   1. The county treasurer shall certify to the county auditor the balance in the county food and beverage tax receipts fund; and
   2. The city fiscal officer shall certify to the county auditor the balance in the city food and beverage tax receipts fund.

g) After the county auditor receives the certified fund balances from the county treasurer and city fiscal officer, the county auditor shall distribute before October 1, 2025, the money in each fund accordingly to the ratio that the maximum permissible ad valorum property tax levy under Indiana Code §6-1.1-18.5 for property taxes first due and payable in 2025 for each taxing unit in the county bears to the sum of all maximum permissible ad valorem property tax levies under Indiana Code §6-1.1-18.5 for property tax first due and payable in 2025 in the county.

**SECTION 7: CITY OF BLOOMINGTON FOOD AND BEVERAGE TAX RECEIPTS FUND: USE OF FUND.**

a) Money deposited in the city food and beverage tax receipts fund may be used only to finance, refinance, construct, operate, or maintain a convention center, a conference center, or related tourism or economic development projects.

b) The city must spend the money in the county food and beverage tax receipts fund in accordance with the written plan described above. If no funds have been expended form the county food and beverage tax receipts fund in accordance with the written plan before July 1, 2025, then Indiana Code §6-9-41-15.5 applies.

**SECTION 8: ADVISORY COMMISSION**

a) In order to coordinate and assist efforts of the County and City of Bloomington fiscal bodies regarding the utilization of food and beverage tax receipts, an advisory commission shall be established and be composed of the following individuals:
   1. Three (3) members shall be owners of retail facilities that sell food or beverages subject to the county food and beverage tax imposed under this ordinance appointed jointly by the City and County executive.
   2. The president of the county executive.
   3. A member of the county fiscal body appointed by the members of the county fiscal body.
   4. The city executive.
   5. A member of the city legislative body appointed by the members of the city legislative body.

b) The County and City legislative bodies must request the advisory commission's recommendations concerning the expenditure of any food and beverage tax funds collected under this ordinance.

**SECTION 9: ADVISORY COMMISSION REPORTS**

a) The Advisory Commission shall receive a copy of the annual report filed with the State Board of Accounts by the Auditor no later than March 31st of each year.

b) The Advisory Commission shall prepare a summary of the previous year's annual report for presentation to Council at its first meeting in May. This summary is recommended to include illustrative graphics summarizing the data contained within the annual report as well as any historical data the Commission elects to include to provide a better understanding of the use of the funds for the public and for transparency.

c) The Advisory Commission shall make an annual recommendations report outlining the Commission's recommendations to both the County and the City no later than October 31 of each year. The annual recommendations report should provide for projects the Advisory Committee recommends for consideration and for inclusion in the following year's plan which is to be filed in accordance with Section 6 and 7 of this Ordinance by the respective governing bodies.

d) The annual report shall be filed with the County Commissioners' Office and County Council Office for consideration by the County and the Mayor's Office and City Council's Office for consideration by the City.

**SECTION 10: ANNUAL FOOD AND BEVERAGE TAX REPORT**

a) In accordance with Indiana Code §6-1.1-30-19, the Auditor's Office shall, on behalf of the local unit that imposes the Monroe County Food and Beverage Tax, provide a report to the State Board of Accounts, in the format identified by the State Board of Accounts, before March of every year. The City shall be responsible for providing the Auditor's Office the necessary information by February 1st of each year. The annual food and beverage tax report shall include:

b) Every expenditure of funds by the local unit:
    1. Each local government entity, or instrumentality of a local governmental entity that received a distribution; and
    2. Evey expenditure of funds by each local government entity described above;
    3. from amounts received from the food and beverage tax imposed by the local unit during the previous year.
    4. The report must include for each check, expenditure, distribution, or payment
        i. The date and amount of the check, expenditure, distribution, or payment
        ii. The payee or recipient
        iii. The specific purpose, including whether the check, expenditure, distribution, or payment was for an employee salary or a capital project and
        iv. If applicable a description of the project for which the check, expenditure, distribution, or payment was made.

c) A copy of the annual report provided to the State Board of Accounts shall also be provided to the Advisory Committee by the Auditor no later than March 31st of each year.

Presented to the Monroe County Council of Indiana, read in full and adopted this **26th** day of **March, 2024**.

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**MONROE COUNTY COUNCIL**

☑ Aye ☐ Nay ☐ Abstain ☐ Not Present _____
Trent Deckard, President

☑ Aye ☐ Nay ☐ Abstain ☐ Not Present _____
Jennifer Crossley, President Pro Tempore

☑ Aye ☐ Nay ☐ Abstain ☐ Not Present _____
Marty Hawk, Councilor

☑ Aye ☐ Nay ☐ Abstain ☐ Not Present _____
Peter Iversen, Councilor

☑ Aye ☐ Nay ☐ Abstain ☐ Not Present _____
Geoff McKim, Councilor

☑ Aye ☐ Nay ☐ Abstain ☐ Not Present _____
Cheryl Munson, Councilor

☑ Aye ☐ Nay ☐ Abstain ☐ Not Present _____
L. Kate Wiltz, Councilor

**ATTEST:**

_____
Brianne Gregory, Auditor
Monroe County, Indiana

3/26/2024
Date