

ORDINANCE NO. 2014-002
AN ORDINANCE OF THE CITY OF SIMPSONVILLE, KENTUCKY

ESTABLISHING A RESTAURANT TAX AND PROVIDING ASSESSMENT
AND COLLECTION IN ACCORDANCE WITH THE PROVISIONS OF KRS 91A.400

WHEREAS, the City of Simpsonville has previously created by ordinance number 2012-014, Code of Ordinance, Chapter - a Tourism Commission for the promotion of these activities within the City of Simpsonville, County of Shelby, known as the "Shelby County Tourist & Convention Commission; and,

WHEREAS, KRS 91A.400 authorizes the imposing of a three percent (3%) tax on the gross retail sales of restaurants doing business within the City of Simpsonville, a fifth class city, for the purpose of funding of authorized activities of the tourism commission and City of Simpsonville as authorized and permitted by KRS 91A.350 thru 91A.400;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SIMPSONVILLE, SHELBY COUNTY, KENTUCKY, AS FOLLOWS:

Section One (1): Definitions.

Unless the context specifically indicates otherwise, the following terms and phrases as used in this chapter shall have the meaning hereinafter designated.

"CITY" means City of Simpsonville, Kentucky.

"TOURISM COMMISSION" means the Shelby County Tourist and Convention Commission.

"RESTAURANT" means any fixed or mobile commercial establishment that engages in the preparation and serving of ready-to-eat foods in portions to the consumer, including, but not limited to: restaurants, coffee shops, cafeterias, short order cafes, luncheonettes, grilles, tea rooms, sandwich shops, soda fountains, roadside stands, food trucks, street vendor, catering kitchens, delicatessen, grocery stores, taverns, cocktail lounges, nightclubs or similar places in which food is prepared for sale for consumption on the premises or elsewhere.

DOES NOT INCLUDE THE FOLLOWING:

1. School cafeterias which are operated by the school system and not an independent corporation, food vending machines, establishments serving beverages only in single service original containers.
2. Temporary food stands, operated by non-profit organizations. Temporary food stands operated by an entity other than a non-profit organization if such temporary food stand is operated in conjunction with any organized festival or other public event which is sponsored either partly or entirely by the City, but only if such temporary food stand is operated under license from the City or agency or department thereof.
3. Hospital cafeterias owned by a governmental entity and not an independent corporation.

4. Cafeterias which are located inside industrial factories in which services are limited to employees only.
5. A cafeteria which is located inside any governmental criminal correctional facility in which services are limited to employees thereof and/or inmates incarcerated therein.

Section Two (2) Imposition and Payment of Tax:

On and after April 1, 2014, every person, company, corporation or other like or similar persons, groups or organizations doing business as restaurants, cafes, fast food business or food vendors or like or similar business where food is prepared for human consumption in the City of Simpsonville, Kentucky shall pay monthly to the Tourism Commission a tax of three percent (3%) of the gross retail sales of all food and beverage, which is defined to mean gross sales excluding state sales tax, collected by them during the preceding month. Such tax shall be due and payable to the Tourism Commission thirty (30) days after the last day of each month, together with a completed return on a form furnished or obtained from the Tourism Commission, setting forth an aggregate amount of gross sales charged, and collected during the period to which the tax applies, together with such other pertinent information as the Tourism Commission may require. Restaurants will begin collecting the tax on April 1, 2014, and make the first payment before May 31, 2014.

Section Three (3) Enforcement:

All taxes collected pursuant to this ordinance that are not remitted to the Tourism Commission as required herein shall bear interest at the rate of twelve percent (12%) per annum on the whole or any part left unpaid which said amount shall be added to the principal amount due when paid.

- A. In the event that any restaurant taxes collected pursuant to this ordinance are not remitted to the Tourism Commission as required herein within sixty (60) days of coming due, the Tourism Commission may seek enforcement and collection through the Simpsonville or Shelby County Attorney's office or any civil proceedings available to the City of Simpsonville.
- B. Any person, owner, corporate officer, director, member partner or any other individual or entity having an ownership interest in any facility subject to this ordinance is deemed responsible for insuring that all taxes due and owing pursuant to this ordinance are paid in a timely manner, Sixty (60) days or more delinquency on the part of the establishment charged with collecting and paying the restaurant tax shall be prima facie evidence of a willful intent not to pay same.

Section Four (4) Criminal Penalties:

Any person who shall purposely or willfully refuse or fail to file a return as provided for herein, or pay the tax due, or who shall knowingly file a false or fraudulent return as required herein, shall be subject to a fine of not less than \$100 nor more than \$500 and/or imprisoned in the county jail for up to twelve (12) months.

Section Five (5) Information Deemed Confidential: Penalty for Disclosure: Exceptions:

Any information, including returns, documents, or payments made pursuant hereto and any other information gained by the Tourism Commission or any other official, agent, or employee of the City/Tourism Commission as a result of any return, investigation, hearing or verification required or authorized by this chapter shall be confidential except in accordance with proper judicial order, or as reasonably necessary in order to prosecute civil or criminal litigation for collection of the tax imposed herein.

- A. Any person or agent divulging such information shall, upon conviction, be subjected to a fine of not less than one hundred (\$100) nor more than five hundred (\$500).
- B. Provided, however, such person may disclose to the Commissioner of the Revenue Cabinet of the state or his or her duly authorized agent, or the Commissioner of Internal Revenue Service, or his or her duly authorized agent, all such information and extend the right of the state and/or to said Commissioner of the Internal Revenue Service, but only upon the condition that such agency must grant the Tourism Commission the reciprocal right to obtain information from the files and records of such other agency, and maintains the privileged character of the information so furnished to them by the Tourism Commission.

Section Six (6) Records:

- A. It shall be the responsibility of the restaurant to maintain books, records, and papers in support of all amount reported on the monthly return. The Tourism Commission and/or City shall be permitted to examine the books, records, and papers of the restaurant upon notification in writing to the restaurant establishment, giving at least three (3) days' notice of such examination. Upon request, any restaurant subject to paying the tax imposed herein shall provide a copy of such restaurant's Kentucky Sales and Use Tax Return for any period which may be in question. Provided, however, that the restaurant shall not be obligated to provide a sales and use tax return for any period longer than five (5) years prior to the date of the request.
- B. The Tourism Commission will be permitted to examine the books, records and papers of the restaurant upon notification in writing to the restaurant.

Section Seven (7):

- A. Restaurant taxes collected in the City of Simpsonville shall only be expended within the guidelines of KRS 91A.350. The Tourism Commission shall retain fifty percent (50%) of the tax receipts and the City of Simpsonville shall receive fifty percent (50%) of the tax to be used for tourism-related "quality of life" initiatives in the City of Simpsonville. These initiatives shall be reviewed by the Tourism Board to ensure the activity falls within KRS 91A.350. Potential "quality of life" initiatives that directly impact the tourism industry include, but are not limited to, the following: Fall Festival, Light Up Simpsonville, downtown development, and anything that promotes tourism in Simpsonville.
- B. The Tourism Commission will remit a check each month to the City of Simpsonville for 50% of the restaurant taxes collected in Simpsonville along with a report and the City will deposit those monies in a separate account entitled "Simpsonville Tourism Development Account". These monies will be used for tourism-related "quality of life" initiatives. The City would then submit an accounting of those monies monthly to the Tourism Commission.

Section Eight (8) Severability:

If any part of this ordinance shall be held invalid that part shall be deemed severable and the invalidity thereto shall not affect the remaining parts of this chapter.

This ordinance shall be effective upon adoption by the Simpsonville City Commission and publication in accordance with Chapter 424 of the Kentucky Revised Statutes.

FIRST READING: January 15, 2014

SECOND READING: Feb 6, 2014

PASSED & APPROVED: Feb 6, 2014

APPROVED:


STEVE EDEN, MAYOR

ATTEST:


CITY CLERK