

AGENDA

**FORT SMITH BOARD OF DIRECTORS
SPECIAL MEETING**

JULY 28, 2011 ~ 12:00 NOON

**ELM GROVE COMMUNITY CENTER
OAK ROOM
1901 NORTH GREENWOOD AVENUE**

ROLL CALL

1. Ordinance repealing Ordinance No. 14-11 and providing for the levy of a one-percent (1%) tax on the gross receipts or gross proceeds received by restaurants, cafes, cafeterias, delicatessens, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, and grocery store-restaurants from the sale of prepared food and beverages for on-premises or off-premises consumption; and calling a special election in the City of Fort Smith, Arkansas, on the question of the approval or rejection of the levying of a one percent (1%) tax on the gross receipts or gross proceeds from the sale of prepared food and beverages; and prescribing other matters pertaining thereto

ADJOURN

MEMORANDUM

TO: Ray Gosack, City Administrator
FROM: Sherri Gard, City Clerk
DATE: July 26, 2011
RE: Special Meeting - July 28, 2011

At the July 26, 2011 study session, Directors Good, Hutchings, Weber and Settle called a special meeting for 12:00 Noon, Thursday, July 28, 2011 to consider the following item:

- Ordinance repealing Ordinance No. 14-11 and providing for the levy of a one-percent (1%) tax on the gross receipts or gross proceeds received by restaurants, cafes, cafeterias, delicatessens, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, and grocery store-restaurants from the sale of prepared food and beverages for on-premises or off-premises consumption; and calling a special election in the City of Fort Smith, Arkansas, on the question of the approval or rejection of the levying of a one percent (1%) tax on the gross receipts or gross proceeds from the sale of prepared food and beverages; and prescribing other matters pertaining thereto

The meeting will be held in the Oak Room at Elm Grove Community Center, 1901 North Greenwood Avenue.

ORDINANCE NO. _____

AN ORDINANCE REPEALING ORDINANCE 14-11 AND PROVIDING FOR THE LEVY OF A ONE PERCENT (1%) TAX ON THE GROSS RECEIPTS OR GROSS PROCEEDS RECEIVED BY RESTAURANTS, CAFES, CAFETERIAS, DELICATESSENS, DRIVE-IN RESTAURANTS, CARRY-OUT RESTAURANTS, CONCESSION STANDS, CONVENIENCE STORES, AND GROCERY STORE-RESTAURANTS FROM THE SALE OF PREPARED FOOD AND BEVERAGES FOR ON-PREMISES OR OFF-PREMISES CONSUMPTION; AND CALLING A SPECIAL ELECTION IN THE CITY OF FORT SMITH, ARKANSAS, ON THE QUESTION OF THE APPROVAL OR REJECTION OF THE LEVYING OF A ONE PERCENT (1%) TAX ON THE GROSS RECEIPTS OR GROSS PROCEEDS FROM THE SALE OF PREPARED FOOD AND BEVERAGES; AND PRESCRIBING OTHER MATTERS PERTAINING THERETO.

WHEREAS, the Board of Directors of the City of Fort Smith, Arkansas (the "City"), on February 24, 2011, enacted Ordinance 14-11 for the purpose of providing a means of financial support for the existing Fort Smith Convention Center and for providing a means for the continued upkeep to and improvements of that facility; and,

WHEREAS, subsequent to the enactment of Ordinance 14-11 a petition for referendum was filed which remains unresolved legally; and,

WHEREAS, Ordinance 14-11 did not contain an emergency clause resulting in the implementation of the ordinance being held in abeyance pending the outcome of the current referendum process; and,

WHEREAS, A.C.A. § 14-55-301(b) (Repl. 1998) permits a governing body to refer an ordinance to its electors for their acceptance or rejection, if done so at the time of adoption of an ordinance, or within thirty (30) days of the adoption of an ordinance; and,

WHEREAS, one of the purposes of this Ordinance is to repeal Ordinance 14-11 and then to submit to the electors of the City the question of approving or rejecting the levy of a one percent (1%) sales and use tax on the gross receipts or gross proceeds from the sale of prepared food and beverages, as levied by the Board of Directors in Section 2 below.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Board of Directors of the City of Fort Smith, Arkansas:

Section 1: Ordinance 14-11 is repealed effective immediately.

Section 2: (a) As authorized by A.C.A. § 26-75-602(c)(2) (Supp. 2009), and subject to

*Approved as to form
JSL
Publish/Print*

the further provisions of this Ordinance, there is hereby levied a tax at the rate of one percent (1%) upon the gross receipts or gross proceeds received by restaurants, cafes, cafeterias, delicatessens, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, and grocery store-restaurants from the sale of prepared food and beverages for on-premises or off-premises consumption within the City of Fort Smith, Arkansas.

(b) Prepared food and beverages, as used in this ordinance, shall have the same meaning as Prepared Food as defined and described by Emergency Rule 2007-3, in its entirety, promulgated by the Arkansas Department of Finance and Administration on May 11, 2007 (effective July 1, 2007), or as thereafter amended by the State of Arkansas. Furthermore, the tax levied in Section 2 shall not apply to gross receipts or gross proceeds of organizations qualified under 26 U.S.C. § 501(c)(3).

Section 3: This Ordinance adopting the tax levy described in Section 2 above is hereby referred to the electors of the City of Fort Smith pursuant to A.C.A. § 14-55-301(b) (Repl. 1998).

Section 4: A special election is hereby called to be held on November 8, 2011, at which election there shall be submitted to the electors of the City the question of approving or rejecting the levy of a tax on prepared food and beverages, as levied by Section 2 of this Ordinance, in the amount of one percent (1%) to be used for all lawful purposes.

Section 5: The ballot presentation of the issue to be presented in such election shall be substantially in the following form:

ISSUE

TAX ON PREPARED FOOD AND BEVERAGES

Vote by placing an X in the square opposite your choice.

FOR the approval of a tax, as levied by Ordinance No. ____, of one percent (1%) of the gross receipts or gross proceeds received by restaurants, cafes, cafeterias, delicatessens, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, or grocery store-restaurants from the sale of prepared food and beverages for on-premises or off-premises consumption for use for all lawful purposes.

AGAINST the approval of a tax, as levied by Ordinance No. ____, of one percent (1%) of the gross receipts or gross proceeds received by restaurants, cafes, cafeterias, delicatessens, drive-in restaurants, carry-out restaurants, concession

stands, convenience stores, or grocery store-restaurants from the sale of prepared food and beverages for on-premises or off-premises consumption for use for all lawful purposes □

Section 6: The election shall be held and conducted and the vote canvassed and the results declared under the law and in the manner now provided for municipal elections and only qualified voters of the City shall have the right to vote at the election.

Section 7: The results of the election shall be proclaimed by the Mayor, and his Proclamation shall be published one time in a newspaper having a general circulation in the City, which Proclamation shall advise that the results as proclaimed shall be conclusive unless attacked in the courts within thirty days after the date of publication.

Section 8: A copy of this Ordinance shall be given to the Sebastian County Board of Election Commissioners so that the necessary election officials and supplies may be provided. A certified copy of this Ordinance shall also be provided to the Commissioner of Revenues of the State of Arkansas as soon as practical.

Section 9: The Mayor and City Clerk, for and on behalf of the City, be and they are hereby authorized and directed to do any and all things necessary to call and hold the special election as herein provided and, if the levying of a prepared food and beverages tax is approved by the electors, to cause the prepared food taxes to be collected in accordance with the authorizing legislation, and to perform all acts of whatever nature necessary to carry out the authority conferred by this Ordinance.

Section 10: The provisions of this Ordinance are hereby declared to be severable and, if any provision shall for any reason be held to be illegal or invalid, such holding shall not affect the validity of the remainder of this Ordinance.

Section 11: All ordinances and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 12: The provisions of this Ordinance shall not be codified by the codifier of the City's ordinances.

Section 13: It is hereby ascertained and declared that there is an immediate need to provide a source for the maintenance and operation of the Fort Smith Convention Center in order to promote and protect the health, safety and welfare of the City and its inhabitants. It is therefore, declared that an emergency exists and this Ordinance being necessary for the immediate preservation of public peace, health and safety shall be in force and take effect immediately from and after its passage.

Section 14: The prepared food and beverages tax enacted by this Ordinance shall be reviewed by the Board of Directors no later than five (5) years after its enactment to determine if the tax shall continue, if the tax rate may be reduced, or if the tax should be otherwise modified as the board deems proper.

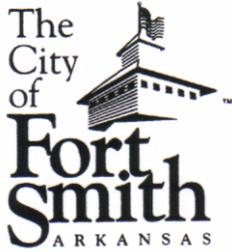
This Ordinance adopted this ____ day of _____, 2011.

APPROVED:

Mayor

ATTEST:

City Clerk



MEMORANDUM

July 26, 2011

TO: Mayor and Board of Directors

FROM: Ray Gosack, City Administrator

SUBJECT: Prepared Food Tax

Attached is the prepared food tax ordinance which was discussed at the July 19th board of directors meeting. The ordinance has 3 key provisions.

- 1) The first provision repeals the prepared food tax ordinance adopted in February (copy attached). In order for the February ordinance to have been referred to the voters, the decision to refer the ordinance to the voters had to occur within 30 days of passage of the ordinance.
- 2) The second provision re-adopts the prepared food tax just as the board did in the February ordinance.
- 3) The third provision refers the new ordinance and enactment of the prepared food tax to the voters at a special election to be held on November 8, 2011.

The new ordinance retains the board's future ability to review and lower the tax rate. The ordinance has been reviewed by the petition organizers' attorney, and is acceptable to him. State law requires that this new ordinance be passed by a two-thirds majority of the board (5 votes) since the ordinance is referred to the voters.

Upon passage of the ordinance, the staff will begin working with the Sebastian County Election Commission to prepare for the special election.

Attachments

cc: Brian Meadors, Attorney for Petition Organizers

Ray

SMI.

ORDINANCE NO. 14-11

AN ORDINANCE PROVIDING FOR THE LEVY OF A TAX ON THE GROSS RECEIPTS OR GROSS PROCEEDS RECEIVED BY RESTAURANTS, CAFES, CATERING CAFETERIAS, DELICATESSENS, DRIVE-IN RESTAURANTS, CARRY-OUT RESTAURANTS, CONCESSION STANDS, CONVENIENCE STORES, AND GROCERY STORE-RESTAURANTS FROM THE SALE OF PREPARED FOOD AND BEVERAGES FOR ON-PREMISES OR OFF-PREMISES CONSUMPTION; TO DECLARE AN EMERGENCY AND PRESCRIBING OTHER MATTERS PERTAINING THERETO.

BE IT ORDAINED AND ENACTED by the Board of Directors of the City of Fort Smith, Arkansas that:

Section 1: As authorized by Act 185 of the 1965 Acts of Arkansas, as amended, specifically that portion of the Act codified at A.C.A. § 26-75-602(c)(2) (Supp. 2009), there is hereby levied a tax of one percent (1%) upon the gross receipts or gross proceeds received by restaurants, cafes, cafeterias, delicatessens, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, and grocery store-restaurants or establishments of any kind or nature from the sale of prepared food and beverages for on-premises or off-premises consumption within the City of Fort Smith, Arkansas, said tax to be effective June 1, 2011.

(1) Prepared food and beverages, as used in this ordinance, shall have the same meaning as Prepared Food as defined and described by Emergency Rule 2007-3, in its entirety, promulgated by the Arkansas Department of Finance and Administration on May 11, 2007 (effective July 1, 2007), or as thereafter amended by the State of Arkansas.

(2) The tax levied by this subdivision of this Section shall not apply to gross receipts or gross proceeds of organizations qualified under 26 U.S.C. § 501(c)(3).

Section 2: All taxes, interest, penalties, and costs derived from the one percent (1%) tax levied by Section 1 of this Ordinance shall be deposited in the Fort Smith Advertising and Promotion Fund for purposes permitted by Act 185 of the 1965 Acts of Arkansas, as amended.

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Publish 1 time*

Section 3: This Ordinance and the tax levied herein are subject to referendum in the manner prescribed in Amendment 7 to the Arkansas Constitution.

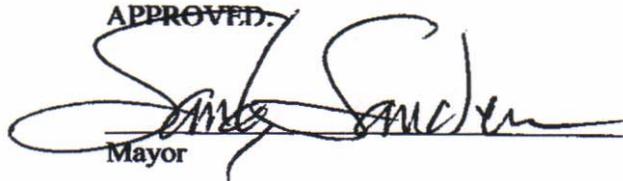
Section 4: If any provision of this Ordinance or the application thereof to any person, entity, or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 5: The codifier of the Fort Smith Code of Ordinances is instructed to codify Sections 1 and 2 within Chapter 13, Article V, of the Fort Smith Code of Ordinances.

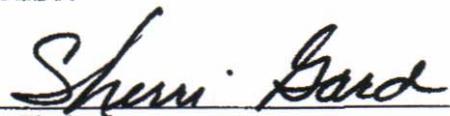
Section 6: The prepared food and beverages tax enacted by this Ordinance shall be reviewed by the Board of Directors no later than five (5) years after its enactment to determine if the tax shall continue, if the tax rate may be reduced, or if the tax should be otherwise modified as the board deems proper.

This Ordinance adopted this 24th day of February, 2011.

APPROVED.


Mayor

ATTEST:


City Clerk

AGENDA ~ *Summary*

**FORT SMITH BOARD OF DIRECTORS
SPECIAL MEETING**

JULY 28, 2011 ~ 12:00 NOON

**ELM GROVE COMMUNITY CENTER
OAK ROOM
1901 NORTH GREENWOOD AVENUE**

ROLL CALL

All present

1. Ordinance repealing Ordinance No. 14-11 and providing for the levy of a one-percent (1%) tax on the gross receipts or gross proceeds received by restaurants, cafes, cafeterias, delicatessens, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, and grocery store-restaurants from the sale of prepared food and beverages for on-premises or off-premises consumption; and calling a special election in the City of Fort Smith, Arkansas, on the question of the approval or rejection of the levying of a one percent (1%) tax on the gross receipts or gross proceeds from the sale of prepared food and beverages; and prescribing other matters pertaining thereto

Approved 7 in favor, 0 opposed / Ordinance No. 57-11

ADJOURN

MINUTES OF BOARD OF DIRECTORS SPECIAL MEETING

THURSDAY ~ JULY 28, 2011 ~ 12:00 NOON

ELM GROVE COMMUNITY CENTER

The special meeting was called by Directors Good, Hutchings, Weber and Settle at the July 26, 2011 study session to consider the following:

- Ordinance repealing Ordinance No. 14-11 and providing for the levy of a one-percent (1%) tax on the gross receipts or gross proceeds received by restaurants, cafes, cafeterias, delicatessens, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, and grocery store-restaurants from the sale of prepared food and beverages for on-premises or off-premises consumption; and calling a special election in the City of Fort Smith, Arkansas, on the question of the approval or rejection of the levying of a one percent (1%) tax on the gross receipts or gross proceeds from the sale of prepared food and beverages; and prescribing other matters pertaining thereto

The special meeting was called to order by Mayor Sandy Sanders, presiding.

On roll call the following members of the Board were present: Directors Steve Tyler, Andre' Good, Don Hutchings, George Catsavis, Pam Weber, Kevin Settle and Philip Merry. The Mayor declared a quorum present.

At the request of Mayor Sanders, Police Chief Kevin Lindsey announced that Mr. Kevin Wolfe, suspect in a triple homicide in Fort Smith on Monday, July 25, 2011, surrendered to authorities in Saginaw, Michigan and will soon be extradited to Fort Smith.

Regarding the proposed ordinance, City Administrator Ray Gosack briefed the board on the item citing such was requested at the July 19, 2011 regular meeting.

July 28, 2011 Special Meeting

Upon approval, such will accomplish the following:

- Repeal of Ordinance 14-11, adopted February 24, 2011, levying the 1% prepared food tax.
- Re-adopts the 1% prepared food tax as originally approved in February. *(Such is required in order to refer the ordinance to the electorate of Fort Smith because referral of an ordinance to the voters must be done within 30 days of passage.)*
- Refers the ordinance levying the 1% prepared food tax to a vote of the people and calls a special election to be held on November 8, 2011.

Settle, seconded by Catsavis, moved adoption of the ordinance. The motion included suspending the rule to allow the three (3) full readings of the ordinance to be by caption and for the readings to occur on the same date. The City Clerk read the ordinance for its readings and the members all voting affirmatively, the Mayor declared the motion carried. Settle, seconded by Tyler, moved adoption of Section 13 the emergency clause. The members all voting affirmatively, the Mayor declared the motion carried and the ordinance and emergency clause were adopted and given No. 57-11.

Director Merry extended much appreciation for the Board's action and conveyed his support for the tax and intent to help answer any questions citizens may have regarding the issue.

There being no further business to come before the Board, Settle moved that the meeting adjourn. The motion was seconded by Tyler, and the members all

July 28, 2011 Special Meeting

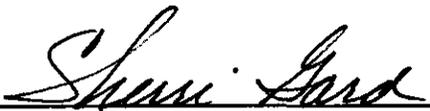
voting aye, the Mayor declared the motion carried, and the special meeting stood adjourned at 12:05 p.m.

APPROVED:



MAYOR

ATTEST:



CITY CLERK