

**TITLE III ADMINISTRATION
CHAPTER 35: TAXATION**

ARTICLE I TAX ON REAL AND PERSONAL PROPERTY

35.01 LEVYING OF TAX 3
35.02-35.18 RESERVED 3

ARTICLE II HOTEL, MOTEL AND RESTAURANT TAX

35.19 DEFINITIONS 3
35.20 LEVY OF TAX..... 3
35.21 COLLECTION; WHEN PAYMENT DUE 3
35.22 APPLICATION OF RULES AND REGULATIONS 4
35.23 REPEALED..... 4
35.24 ADVERTISING AND PROMOTION FUND 4
35.25 PENALTIES AND ENFORCEMENT 4
35.26 EXAMINATIONS AND INVESTIGATIONS 4
35.27 RULES AND REGULATIONS..... 4
35.28-35.29 RESERVED 4

ARTICLE III PARKS HOTEL, MOTEL AND RESTAURANT TAX

35.30 DEFINITIONS 4
35.31 LEVY OF PARKS HMR TAX..... 5
35.32 DISPOSITION OF REVENUES 5
35.33 PENALTIES AND ENFORCEMENT 5
35.34 EXAMINATIONS AND INVESTIGATIONS 5
35.35 RULES AND REGULATIONS..... 5
35.36-35.39 RESERVED 6
35.40 ENFORCEMENT OF TAX LAWS AND CODE COMPLIANCE FOR OUTDOOR VENDORS
DURING THE BIKES, BLUES, AND BARBEQUE, INC. ANNUAL FESTIVAL..... 6
35.41-35.98 RESERVED 6

FAYETTEVILLE CODE OF ORDINANCES
TITLE III ADMINISTRATION

35.99 PENALTY 6

FAYETTEVILLE CODE OF ORDINANCES
TITLE III ADMINISTRATION

CHAPTER 35: TAXATION

**ARTICLE I
TAX ON REAL AND
PERSONAL PROPERTY**

35.01 Levying Of Tax

- (A) A tax is hereby levied on the real and personal property within the city.
- (B) The tax so levied and the rate provided therefor are hereby certified to the County Clerk, to be placed in the tax book by the County Clerk and collected in the same manner that the county and school district taxes are collected.
- (C) The City Clerk is hereby authorized and directed to file certified copies of this section in the office of the County Recorder, County Clerk, County Assessor, and the County Tax Collector.

(Ord. No. 3384, 10-18-88; Code 1991, §35.01)

State law reference(s)--Taxation generally, A.C.A. §26-73-101 et seq.; Levying of tax, A.C.A. §26-75-207.

35.02-35.18 Reserved

**ARTICLE II
HOTEL, MOTEL AND RESTAURANT TAX**

35.19 Definitions

Bakeries, donut shops and ice cream shop. These are included within the definitions of "similar businesses" of this ordinance and are therefore subject of this tax.

Beverage shops. Businesses that sell beverages prepared or dispensed at their business are included within the definition of "similar businesses" of this ordinance and are therefore subject to this tax.

Caterers. Caterers are for profit businesses or persons who deliver or serve catered food or beverages at a location within the city limits of Fayetteville.

Concession stands. Stands run by non-profit groups are excluded from this taxation, as well as stands operated on a short term basis, such as First Night, Springfest, Autumnfest and county fairs. Other stands operated on a recurring basis, such as for

athletic events, barbecue stands and other on-going stands, whether mobile or stationary, will collect the Parks HMR tax.

Convenience stores. All food and beverages prepared on site are taxable.

Delis. Delis shall include establishments selling prepared food or beverage as defined, however this tax shall not apply to sliced meat and/or cheese sold by the pound.

Prepared food or beverage. Any food or beverage product prepared or altered in a food/beverage establishment for sale.

(Ord. No. 4317, 6-5-01)

***Note**--The definitions section of this ordinance was assigned a new number to make it consistent with other definition sections throughout this code and arranged in alphabetical order by this codifier.

35.20 Levy Of Tax

There is hereby levied, effective, a tax of 1% (the tax) upon the gross receipts from the renting, leasing or otherwise furnishing of hotel or motel accommodations for profit in the city and upon the portion of gross receipts or gross proceeds received by restaurants, cafes, cafeterias, delis, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, grocery store-restaurants, caterers and similar businesses as may be defined from time to time by ordinance from the sale of prepared food and beverages for on or off-premises consumption, but such tax shall not apply to such gross receipts or gross proceeds of organizations qualified under §501(c)(3) of the Federal Internal Revenue Code. The levy of this tax shall also be applied to and include all items described in A.C.A. §26-75-602 *Levying authority* as currently enacted and as may be amended in the future.

(Code 1965, §18A-1(a); Ord. No. 2310, 3-1-77; Ord. No. 2648, 7-15-80; Ord. No. 2711, 3-24-81; Ord. No. 2869, 10-19-82, Ord. No. 4317, 6-5-01; Code 1991, §35.20; Ord. 5283, 10-20-09)

Cross reference(s)--Penalty, §35.99.

State law reference(s)--Authority generally, A.C.A. §26-75-602.

35.21 Collection; When Payment Due

The tax shall be collected from the purchaser or user of the food or accommodations by the person, firm,

FAYETTEVILLE CODE OF ORDINANCES
TITLE III ADMINISTRATION

corporation, association, trust, or estate (or other entity of whatever nature) selling such food or furnishing such accommodations (the taxpayer), and the taxpayer shall remit to the city by the 20th day of each month all collections of the tax for the preceding month, accompanied by reports on forms to be prescribed by the mayor.

(Code 1965, §18A-1(b); Ord. No. 2310, 3-1-77; Ord. No. 2648, 7-15-80; Ord. No. 2711, 3-24-81; Ord. No. 2869, 10-19-82; Code 1991, §35.21)

State law reference(s)--Gross receipts taxes authorized, A.C.A. §26-75-602.

35.22 Application Of Rules And Regulations

As provided in A.C.A. §26-52-301 et seq., as amended, together with the rules and regulations thereunder, shall, so far as practicable, apply to the administration, collection, assessment, and enforcement of the tax.

(Code 1965, §18A-1(c); Ord. No. 2310, 3-1-77; Ord. No. 2648, 7-15-88; Ord. No. 2711, 3-24-81; Ord. No. 2869, 10-19-82; Code 1991, §35.22)

State law reference(s)--Tax levied. §26-52-301 at seq 1.

35.23 Repealed See 33.311

35.24 Advertising And Promotion Fund

(A) There is hereby created the city Advertising and Promotion Fund, to which fund there shall be credited all collections of the tax.

(B) The city Advertising and Promotion Fund shall be used, in the manner determined by the city Advertising and Promotion Commission, exclusively for the advertisement and promotion of the city and its environs and/or for the construction, maintenance, repair, and operation of a convention center, including the pledge of revenues therein to the payment of bonds issued under A.C.A. §26-75-607. The Advertising and Promotion Fund may be used for any purpose authorized by state law within A.C.A. §26-75-606 as currently enacted and as may be amended in the future.

(Code 1965, §18A-1(d), (e); Ord. No. 2310, 3-1-77; Ord. No. 2648, 7-15-80; Ord. No. 2711, 3-24-81; Ord. No. 2869, 10-19-82; Code 1991, §35.24; Ord. 5283, 10-20-09)

State law reference(s)--A.C.A. §26-75-607, Authority to issue bonds.

35.25 Penalties And Enforcement

The city may assess penalties and interest against taxpayers who fail to timely report or pay the tax. The penalty shall be equal to five percent of the unpaid tax amount per month not to exceed a total assessment of 35% of the unpaid tax. Simple interest on unpaid taxes shall be assessed at the rate of 10% per annum. In addition, the city may exercise all powers listed under A.C.A. §26-75-603 (c) as may be amended from time to time and may utilize the provisions of A.C.A. §26-75-603 (d) and (e) amended from time to time in enforcing the tax.

(Ord. No. 4303, 3-20-01)

State law reference(s)--A.C.A. §26-75-603, collection of tax.

35.26 Examinations And Investigations

The collector of the tax in order to enforce the tax, by determining the accuracy of taxpayer reports and remittances, or fixing any liability under the ordinance, may make an examination or investigation of the place of business, the tangible personal property, equipment, and facilities, and the books, records, papers, vouchers, accounts, and documents of any taxpayer or other person. Every taxpayer or other person and his agents and employees shall exhibit to the collector these places and items and facilitate any examination or investigation.

(Ord. No. 4303, 3-20-01)

35.27 Rules And Regulations

The city after notice and public hearing may pass any rules and regulations necessary for carrying into effect the provisions for the enforcement of this ordinance.

(Ord. No. 4303, 3-20-01)

35.28-35.29 Reserved

ARTICLE III PARKS HOTEL, MOTEL AND RESTAURANT TAX

35.30 Definitions

Bakeries, donut shops and ice cream shop. These are included within the definitions of "similar businesses" of this ordinance and are therefore subject of this tax.

Beverage shops. Businesses that sell beverages

FAYETTEVILLE CODE OF ORDINANCES
TITLE III ADMINISTRATION

prepared or dispensed at their business are included within the definition of "similar businesses" of this ordinance and are therefore subject to this tax.

Caterers. Caterers are for profit businesses or persons who deliver or serve catered food or beverages at a location within the city limits of Fayetteville.

Concession stands. Stands run by non-profit groups are excluded from this taxation, as well as stands operated on a short term basis, such as First Night, Springfest, Autumnfest and county fairs. Other stands operated on a recurring basis, such as for athletic events, barbecue stands and other on-going stands, whether mobile or stationary, will collect the Parks HMR tax.

Convenience stores. All food and beverages prepared on site are taxable.

Delis. Delis shall include establishments selling prepared food or beverage as defined, however this tax shall not apply to sliced meat and/or cheese sold by the pound.

Prepared food or beverage. Any food or beverage product prepared or altered in a food/beverage establishment for sale.

(Ord. No. 4317, 6-5-01; Ord. No. 4318, 6-5-01)

State law reference(s)--Gross receipts tax authorized, A.C.A. §26-75-602(c)(2).

Fed law reference(s)--F.I.R.C. §501(c)(3)

35.31 Levy Of Parks HMR Tax

There is hereby levied, a tax of 1% (the tax) upon the gross receipts or gross proceeds from the renting, leasing, or otherwise furnishing of hotel or motel accommodations for profit in the city and upon the portion of the gross receipts or gross proceeds received by restaurants, cafes, cafeterias, delis, drive-in restaurants, carry-out restaurants, caterers and similar businesses as may be defined from time to time by ordinance from the sale of prepared food and beverages for on or off-premises consumption, but such tax shall not apply to such gross receipts or gross proceeds of organizations qualified under §501(c)(3) of the Federal Internal Revenue Code. The levy of this tax shall also be applied to and include all items described in A.C.A. §26-75-602 *Levying authority* as currently enacted and as may be amended in the future.

(Ord. No. 3900, §1, 7-5-95; Ord. No. 4318, 6-5-01; Code 1991, §35.31; Ord. 5283, 10-20-09)

State law reference(s)--Penalty, A.C.A. §26-75-601 et seq.

35.32 Disposition Of Revenues

(A) The revenues collected from the additional tax of 1% shall be used by the city parks and recreation department for the promotion and development of city parks and recreation areas.

(B) Proceeds of the additional 1% tax shall be deposited into a special fund established by the city to be used for the development, construction, and maintenance of city parks. The funds shall be disbursed by the mayor upon approval of the City Council.

(Ord. No. 3900, §2, 7-5-95; Code 1991, §35.32)

State law reference(s)--A.C.A Collection of tax § 26-75-603.

35.33 Penalties And Enforcement

The city may assess penalties and interest against taxpayers who fail to timely report or pay the tax. The penalty shall be equal to five percent of the unpaid tax amount per month not to exceed a total assessment of 35% of the unpaid tax. Simple interest on unpaid taxes shall be assessed at the rate of 10% per annum. In addition, the city may exercise all powers listed under A.C.A. §26-75-603 (c) as may be amended from time to time and may utilize the provisions of A.C.A. §26-75-603 (d) and (e) as may be amended from time to time in enforcing the tax.

(Ord. No. 4302, 3-20-01)

35.34 Examinations And Investigations

The collector of the tax in order to enforce the tax, by determining the accuracy of taxpayer reports and remittances, or fixing any liability under the ordinance, may make an examination or investigation of the place of business, the tangible personal property, equipment, and facilities, and the books, records, papers, vouchers, accounts, and documents of any taxpayer or other person. Every taxpayer or other person and his agents and employees shall exhibit to the collector these places and items and facilitate any examination or investigation.

(Ord. No. 4302, 3-20-01)

35.35 Rules And Regulations

The city after notice and public hearing may pass any rules and regulations necessary for carrying into

FAYETTEVILLE CODE OF ORDINANCES
TITLE III ADMINISTRATION

effect the provisions for the enforcement of this ordinance.

(Ord. No. 4302, 3-20-01)

35.36-35.39 Reserved

35.40 Enforcement Of Tax Laws And Code Compliance For Outdoor Vendors During The Bikes, Blues, And Barbeque, Inc. Annual Festival

- (A) During the annual Bikes, Blues and Barbeque festival; Bikes, Blues and Barbeque, Inc. shall ensure that all outdoor vendors have all necessary health permits and zoning compliance permits prior to issuing its permit to allow the vendor to operate.
- (B) Bikes, Blues and Barbeque, Inc. shall require all of its authorized vendors to conspicuously display its authorizing permit during all hours of operation.
- (C) Bikes, Blues and Barbeque, Inc. shall ensure that each authorized vendor shall remit all required sales and use taxes at the end of each day's operation and shall remove its authorizing permit from any vendor who fails to timely and completely remit these taxes.
- (D) If a vendor attempts to sell goods or services without all the required permits conspicuously displayed, such vendor shall be guilty of a violation and be subject to the penalty provided for in §35.99.
- (E) The above permit requirement shall not be applicable to vendors at the Fayetteville Farmer's Market, for merchants with an established physical address and building and established record of proper HMR tax remission to the City, or other vendors specifically exempted by state law from such permit requirements.

(Ord. 4912, 8-15-06)

35.41-35.98 Reserved

35.99 Penalty

It shall be unlawful for any taxpayer, as defined in §35.21, to fail to remit to the city by the twentieth day of each month all collections of the tax for the preceding month as levied by §35.20, and, upon conviction thereof, the taxpayer shall be punished by a fine of not more than \$500.00, or double that sum

for each repetition of such offense.

(Code 1965, §18A-(b); Ord. No. 2310, 3-1-77; Ord. No. 2648, 7-15-80; Ord. No. 2711, 3-24-81; Ord. No. 2869, 10-19-82)

Note--Ordinance No. 4318, adopted June 2001, enacts provisions to add a new section which is now included §35.30 definitions, to be consistent with this Code.