Be it remembered that the South Bend Common Council, Mishawaka Common Council and St. Joseph County Council met in the Council Chambers of the County-City Building on Wednesday, June 29, 2016 at 6:00 p.m. to discuss the food and beverage tax. The meeting was called to order by South Bend Common Council President Tim Scott and Pledge to the flag was given.

ROLL CALL

COUNCIL MEMBERS:

PRESENT:

Tim Scott	1st District, President
Regina Williams-Preston	2nd District
Jo M. Broden	4th District
Oliver J. Davis	6th District, Vice President
John Voorde	At-Large
Karen L. White	At-Large (late)

ABSENT:

Randy Kelly	3rd District
Dr. David Varner	5th District
Gavin Ferlic	At-Large, Chairperson Committee of the Whole

MISHAWAKA COMMON COUNCIL MEMBERS PRESENT:

Dale "Woody" Emmons
Ross Deal
Kate Voelker
Mike Compton
Ronald S. Banicki
Joe Canarecci
Brian Tanner

ABSENT:

Mike Bellovich

Matt Mammolenti

ST. JOSEPH COUNTY COUNCIL MEMBERS PRESENT:

Robert Kruszynski
Corey Noland (late)
Jaimie O'Brien (late)

Diana Hess
Raphael Morton
Mark Catanzarite
Robert McCahill

ABSENT:

Mark Root

Mark Telloyan

OTHERS PRESENT:

Kareemah Fowler	City Clerk
Jennifer Coffman	Chief Deputy Clerk
Debbie Ladyga-Block	Mishawaka City Clerk
Jennifer Prawat	County Council Executive Secretary
Rhonda Cook	Indiana Association of Cities and Towns
Kathleen Cekanski-Farrand	Council Attorney
Michael Trippel	Council Attorney
Adriana Rodriguez	Legal Research Assistant

President Scott announced that the speaker was running late. He thanked the public and the other councils for being here, and Presidents Morton and Banicki for their collaboration. This is an informational meeting with the idea that all three entities **would** pass a resolution with an interest in a food and beverage tax, and to find out what that would mean for St. Joseph County. **He stated they are** starting off with an informational meeting now, then **take** public input during the next meeting in July.

Mishawaka Common Council President Ron Banicki thanked everyone for coming, and stated that the Mishawaka City Council is trying to get the pulse of their citizens to see what their interest is in the food and beverage tax. He explained that they need to find out if this is something that is going to move forward. If it moves forward, **they** are just going to be making a recommendation to the legislature, it **will not** be a done deal after **they** vote on it. The legislature **would have** to approve **the Councils** to vote on it sometime down the road. One of the former governors stated that by lowering the property taxes, **municipalities** would be given more local control. With **the taxes municipalities are** getting dwindling**, something is needed to keep going**. Mishawaka doesn't have anything very specific that we would do, but we have millions of reasons that we need it. It would keep us going and keep us moving forward.
St. Joseph County Council President Raphael Morton thanked everyone for coming, and stated that this is a very important subject, and it will show the state that we've done our due diligence and we've reached out to see how the public and all three (3) Councils feel about this subject.

The Councils took a five (5) minute break to allow the presenter time to prepare.

Council President Scott introduced Rhonda Cook, Deputy Director and Chief Federal and State Policy Officer, Indiana Association of Cities and Towns.

Ms. Cook stated that there is no blanket authority for localities to adopt a food and beverage tax. Each municipality and county that wants to pursue a food and beverage tax needs to go to the General Assembly and have a bill passed with enabling legislation specifically for their entity.

The code for food and beverage taxes is Title Six (6) Article Nine (9), then you'll find several chapters there. They list the various communities that have adopted a food and beverage tax, and each one has their own chapter.

Currently there are thirteen (13) counties and fourteen (14) municipalities that have adopted a food and beverage tax.

In general, a one (1) percent food and beverage tax is asked for on the gross retail income received from taxable food and beverage transactions. Some places end up paying a two (2) percent tax, and that is when a county adopts a one (1) percent tax, and a municipality within that county adopts a one (1) percent tax.

Depending on how you decide to compose your legislation, it usually dictates specifically how the revenue is to be used. When you go through those chapters, you're going to find that every entity that has adopted the tax distributes the revenue differently.

The taxes apply to any transaction in which food or beverage is furnished, prepared or served by a retail merchant for consumption at a location or on equipment provided by a retail merchant in a county or a municipality that has adopted the tax.

These transactions would include food or beverage that is served by a retail merchant, off the merchant's premises, heated or reheated by the retail merchant, and made up of two or more food ingredients that are combined by the retail merchant. Food that is sold with eating utensils is also included.

Taxable transactions include food sold and served by a retail merchant that is performing catering activities. If the county or municipality has adopted the tax in the location where the catering occurs, then the tax would be applied. It is not where the caterer's home office is located, it is where they are serving the food.

Taxable transactions include food that is part of catering, food sold at a deli counter at a grocery store that is cooked or heated on the premises of a retail merchant, or where the seller provides eating utensils. Transactions that are not covered by the tax are sales of food that is only cut, prepackaged, or repackaged, or pasteurized by the seller, the sale of eggs, fish, meat, and poultry, require cooking by the consumer, and food that is exempt from sales tax.

Taxes are imposed, paid and collected in the same manner as the sales tax, so in almost all cases retailers are submitting returns to the Department of Revenue, with one (1) exception to the rule.

The filing of the return and the remittance of the tax collected are due thirty (30) days after the end of the month in which the transaction occurs. The retailer that is required to collect and remit the tax may file a consolidated food and beverage tax return if the retailer operates in

multiple locations within the same county. A separate return is required if the retailer has locations in different adopting counties, and also if there is a municipality within a county and each have adopted their own tax. That requires a separate return.

Johnson County chose to write their legislation in such a way that allows them to collect their own tax locally at the county level.

Ms. Cook referred to a chart of the counties that have adopted a food and beverage tax, and the entire presentation is on file in the South Bend City Clerk's Office **and Mishawaka City Clerk's Office**.

There was a projection in one of the reports to the legislature for each county of how much money might be generated by the food and beverage tax. Ms. Cook had figures for Elkhart County, and was going to add the projections for St. Joseph County after the presentation.

The Indiana municipalities that have adopted the food and beverage tax saw revenue between $117,700 and $1.8 million in 2014 and 2015.

A lot of communities point to the 2005 legislation that allowed the food and beverage tax that paid for the Indianapolis football stadium and convention center when they are talking about fairness. We needed to come up with the revenue from somewhere, so we needed the help of the surrounding counties around Marion County, which we call the donut counties. At that time, the legislature tried to put together a sweet deal for the donut counties to persuade them to adopt the tax because they needed the revenue for the people that were pushing for the Lucas Oil Stadium. At that time, Marion County had an additional one (1) percent, and that revenue went to the capital improvements board, and then the donut counties (Hancock, Hendricks, Johnson, Shelby, Boone, Hamilton, and Morgan) were given the option to adopt a one (1) percent food and beverage tax where fifty (50) percent of the revenue would go to the capital improvements board to pay for Lucas Oil Stadium, and fifty (50) percent could be used for any governmental purpose.

There was some question about whether or not to trust the state to collect the funds, or whether they should collect locally. Under the 2005 legislation, the counties had the choice. In addition, municipalities in those counties were able to pass another one (1) percent tax to be used for specific purposes. In towns it could be used for sewers, waste water treatment plants, parks and recreation, drainage and water treatment. Cities used it for City Hall renovations, new police and fire stations, sewers, wastewater treatment, storm water, drainage and water systems.

In terms of passing legislation, in 2011 IACT took a new approach to its legislative initiative planning for the session. We established two cornerstone initiatives, issues that we knew were challenging and more difficult to get passed at the legislature, but we would keep chipping away at them every year.

In 2011, we wanted to level the playing field for the food and beverage tax by allowing all cities and towns to have local authority to adopt a tax to be used for any municipal purpose. We were looking for blanket authority so that localities could have the discussion locally about whether or not you wanted to adopt the food and beverage tax without having to go to the General Assembly

and hire a lobbyist and procure enabling legislation. It would just be on the books, and if you chose to do it locally, it would be an option.

It was difficult at first to even get someone to carry the bill for us because it is a tax increase and politically that is not very favorable. Even though it is not the General Assembly increasing the tax, it is still enabling legislation and viewed as one in the same. In 2011 we didn't have a standalone bill that was introduced, but we were hoping to get some language amended in another bill that was moving. Ms. Cook went on to explain bills in the Senate and the House that would have given localities the authority to implement a food and beverage tax in 2011 and 2012. None of these bills passed.

When asked why the blanket authority was voted down, the legislators stated that they still prefer having each community come before them to explain the uses of the revenue, the local situation, and to keep that control at the state level.

Ms. Cook also explained that in the language of the enabling legislation of some bills, there was a time frame for the expiration of the authority. If the locality does not pass the food and beverage tax during that timeframe, the authority completely expires.

We asked our IACT members who would put this tax in place if they had the authority, and we came up with seven (7) communities who were willing to pass a resolution to show that they were on board.

In 2014 the City of Rockville is home to covered bridges that draw tourists and the Amish whose horses are hard on the roads. They had a unique reason for needing the funds, and the bill was granted a hearing but did not get a vote.

In 2015 IACT put forward HB 1368, another blanket authority bill. The bill received a hearing but it did not pass out of committee. That year, however, the Town of Rockville and Orange County were granted the authority to impose a one (1) percent food and beverage tax.

It urged study by the legislative council to look at the topic of whether a uniform food and beverage tax should be enacted into law to allow local governments to adopt the tax. Greenwood also tried to put forth a food and beverage tax that year and it did not pass. Allen County tried to get the distribution of their tax changed, and that did not pass.

In 2016, HB 1191 was the uniform food and beverage tax bill that IACT initiated. It did not receive a hearing. Allen County's change in distribution to its food and beverage tax passed in 2016. That night, there were a lot of communities who were given the chance to stand up and make their case from a local standpoint. It was like a town hall meeting, it was a very local discussion. It makes you stop and wonder why the legislature is handling this, because it seems like a local matter.

Joe Canarecci, Mishawaka City Council At-Large, asked if every time a municipality wants to change how they spend that tax, they need to go back to the state.

Ms. Cook answered that if that is the way your legislation is written, if it doesn't give you the flexibility to change it on your own, you would have to come back.

Councilmember Canarecci stated that if we are going to enact a tax, we need to know how we're going to spend it, and we need to know where we are collecting it from. He asked if there is a way to pinpoint more specifically where the sales tax will be collected throughout St. Joseph County.

Ms. Cook stated that the Department of Revenue came up with the sales tax figures for each of the counties, so it should also be able to narrow it down further.

Kate Voelker, 4th District Mishawaka City Council, asked if St. Joe County passed a food and beverage tax, South Bend and Mishawaka could both pass them and then we could have a three (3) percent tax.

Ms. Cook stated that it hasn't happened so far.

President Scott clarified that it would just be a two (2) percent tax in Mishawaka, and a two (2) percent tax in South Bend, and anywhere else in the county would only pay one (1) percent.

Ms. Cook stated that you are only going to live in one city out of the two. The county-wide tax would only be one (1) percent, then whichever city you are in would have an additional one (1) percent tax.

Bryan Tanner, City of Mishawaka Councilman At-Large, asked Ms. Cook regarding the cases of the legislation that have passed, has it been for a very specific entity, and has there been a board that decided the distribution of those funds at the local level. We have a Hotel Motel Tax Board that determines how that money is to be divided. He asked if other legislation passed in that fashion.

Ms. Cook stated that there were a couple of examples where there was a board that would decide what projects would be funded by the tax.

Councilmember Tanner asked if that has to be established before this moves down state, and Ms. Cook responded that it would probably be a good idea to have the board established ahead of time.

Oliver Davis, South Bend Common Council 6th District, asked Ms. Cook if all three (3) of our entities could have three (3) different projects that we could put together.

Ms. Cook stated that the Councils can draft the legislation however they want, then take it to the legislator that will be most agreeable to it and see if they will file it for you as it was drafted. Then it's all subject to the negotiation at the legislature of how the bill may change and whether it passes at all. Sometimes it takes more than one year to get a bill passed, Greenwood has been trying for several years now.

Councilmember Davis asked what the biggest challenge has been that has prevented them from being successful when others have been successful.

Ms. Cook responded that it is political and it also has to do with the use of the revenue and the perception that there is not a need.

Council President Morton stated that the chart is very negative as far as getting the enabling legislation passed. He asked how the municipalities and counties got it passed. Was it a matter of a different political makeup downstate, because even Elkhart County got a hearing but didn't even get a vote. He stated doesn't understand why the state would potentially put us through all of that and not even give us a vote.

President Morton continued that he didn't know that all of these localities had attempted and had been turned down left and right. Earlier Ms. Cook said that it is very political and that's pretty obvious now.

Ms. Cook explained that if your legislator will back this, that is the first step. Other legislators are going to be asking yours what they think since it is their home district. Sometimes, politically, when the legislators make a vote that is enabling legislation for the locals to pass a new tax, it is viewed in those records that a lot of organizations keep as though they voted for a tax increase. That is why the legislators are hesitant to even pass an enabling piece of legislation that enables the locals to adopt it.

Ms. Cook gave the example of the Town of Rockport, where tourists visited often, and the town needed help paying for its roads. Their legislator was completely behind the enabling legislation, so his colleagues were willing to help him pass it. Even those that passed were close votes.

Councilmember John Voorde, South Bend Councilmember At-Large, asked Ms. Cook if she has a sense for the legislature itself, and whether or not it is becoming more receptive to the idea of food and beverage taxes, and in these efforts to get the enabling legislation passed in the other counties and municipalities, have there been outside organizations that have come in and signed on like a Chamber of Commerce or a Zoological Society, and does she think that might help.

Ms. Cook stated that there are legislators that are opposed to food and beverage taxes, namely the Chairs of the Ways and Means and Tax and Fiscal Policy Committees. Their feelings toward food and beverage taxes seem to be changing, because it seems like there is more discussion and they've given hearings to bills that have come forward. Being able to demonstrate need for road funding helps, too. Also, as other groups get behind it, the legislators become more receptive. The Indiana Restaurant Association will come and tell their side of the story and say that this is a tax on family meals, and they'll tell their story about why this shouldn't pass.

County Councilmember Jaime O'Brien asked if Ms. Cook's reference to Elkhart was for the City of Elkhart or the County of Elkhart, and Ms. Cook answered that it was the City of Elkhart.

Councilmember O'Brien stated that the political makeup of the City of Elkhart is much different than the County of Elkhart, and asked Ms. Cook if this isn't a tax on family meals.

Ms. Cook stated that it depends on where you live. If you have an interstate nearby and visitors are eating in your restaurants and using your roads and emergency services, the food and beverage tax is the way to recoup that money.

Councilmember Oliver Davis asked how we could tax the visitors to the community without taxing the locals.

Ms. Cook has not seen a bill pass like that, but stated that the Councils could get creative in the way the legislation is drafted. It may be more difficult to collect it, and that's where we may see pushback from the legislators.

Councilmember Davis asked what have been the stronger arguments against the food and beverage tax.

Ms. Cook stated that the localities that come down to make their case for their community do not have it easy, even if it is for police and fire services. Sometimes it takes several years to get done, and we have communities that are never able to get it passed.

Councilmember Davis said that it seems like the Councils would fight back and forth among each other, the side that wins would go to Indianapolis, and then nothing would happen. He asked if it is worth it when you consider the track record of so many people that have failed down there. Even the Republican counties seem to have challenges getting this passed.

Ms. Cook said that she has been around the legislature for many years, and it all depends on the dynamics. We hadn't seen road funding for a long time and we had been asking and asking, and now this year we finally got some grant money. It is really about telling our story about the needs our communities have, and why the food and beverage tax is a better option than other taxes we could impose.

Councilmember Canarecci asked Ms. Cook if she is aware of any studies that have been done that looked at how frequently people were going out to eat and how many dollars were spent going out to eat before and after a food and beverage tax was imposed.

Ms. Cook said that anecdotally, she heard a restaurant owner testify and answer that question, and he said that a food and beverage tax had not affected his business.

Councilmember Canarecci asked if she has heard anything anecdotally from wait staff about how the food and beverage tax has affected tips.

Ms. Cook has not heard any wait staff testify on this legislation.

Council President Scott asked if any community has funded projects, closed them out, then gone to the legislature and had their food and beverage tax repealed.

Ms. Cook stated that you can draft the legislation to have an expiration date.

Council President Scott clarified that if we add in an expiration date and it expires, we would have to go back to the legislature and start the process over again if we wanted it again.

Council President Scott asked if Ms. Cook could explain the Capital Improvement Board for Indianapolis and how it was formed, and how the decisions were made.

Ms. Cook is not very familiar with how the Capital Improvement Board for Indianapolis works, other than the fact that it is the citizen board that controls the projects and the development in downtown Indianapolis, but she stated that she would get more information on it. She is going to

search through the statute and pull out the example where they have a convention center board that handles those matters, but she believes it is Allen County.

Council President Banicki asked if there is anyone that would be exempt from the tax like Notre Dame, non-profits or other tax-exempt entities.

Ms. Cook stated that it would all depend on how the legislation was drafted, and whether or not you wanted to exempt someone. The Department of Revenue will determine whether or not it can collect the tax the way it is written, and if they can't it will hurt your chances of getting it passed. Again you are just coming up with the concept, but the legislator who is going to author the bill can draft it however they want to see it drafted. It is just a matter of convincing them of your approach.

Council President Banicki asked if churches that are selling food would pay taxes on the food that they sell.

Ms. Cook said that a church would not be considered a retail merchant. The tax will only apply to retail merchants.

St. Joseph County Councilmember Mark Catanzarite, District G, asked Ms. Cook if any examples of the communities that have passed a food and beverage tax had federally recognized tribal land with a gaming casino, and whether or not it is exempted from the collection of a state tax, or if it is negotiated on a compact.

Council President Scott stated that since they're their own entity, they are exempt. They would do it through a compact or something like that.

Councilmember Tanner asked if there is any indication of why the communities were successful in 2005 and not after 2005.

Ms. Cook explained that 2005 was a year when we had a Republican Governor and a Republican Legislature, and they were all on board with the idea of Lucas Oil Stadium, so they were trying to get the donut counties to pass the tax because they wanted the project. Those people in the localities didn't even come to the legislature to ask for it, they were given the authority for something that everyone was on board with.

Councilmember Tanner clarified that if all three (3) entities make a coordinated effort, they will have a better chance of success with the legislature than if only two (2) are on board, or each entity attempts it separately.

Ms. Cook agreed, and said that it would demonstrate to the legislature that there is consensus and that the locals are all on board.

Councilmember Tanner stated that they should try to get all of their local legislators sign on to the bill and help push it.

Council President Morton asked if in 2005, one of the reasons they were successful is that they were pushing Lucas Oil Stadium, and that if our legislators were to sign on and go to

Indianapolis and push in favor of it, their colleagues might not help them because it would go on their record as voting for a tax. That's absolutely amazing.

Councilmember Davis asked if two of the three entities have to agree in order to pass the food and beverage tax. What I'm hearing is that two of the three have to pass something in order for it to come back home, but it could be that Mishawaka has something, South Bend has something, and St. Joseph County has something, but they are all a different kind of thing. Typically if it is two (2) out of three (3), one (1) of the entities didn't pass it but they still get the benefits.

Ms. Cook clarified that the chances are better if all three entities go to the legislature together to say they are on board. Nothing can stop each one of you individually from going to Indianapolis to pursue the food and beverage tax on their own. It is stronger if they do it together. There are options to go it alone or together with the three (3) entities.

Councilmember Tanner clarified that anyone can try to convince a legislator to include the legislation. We are only involved in this process in hopes of having a concerted effort. The two (2) out of three (3) is irrelevant until the legislation would potentially pass next year. The point here is that if we don't have a concerted effort now, not only will we not get the enabling legislation, but we also won't have the two (2) out of three (3) when it comes back. That's why it is important to have a consensus throughout the entire process.

Councilmember Davis asked if all three presidents will submit their ideas of what each Council is considering to see if everyone is on the same page in terms of different options and ideas for the use of the tax. This will help us float it with our constituents to see what they would like us to consider.

Council President Scott explained that this is what this whole process is for, it is an educational process. The goal of the next two (2) meetings is to have input from the public. We need to see if they are in favor of this or not, and if they are in favor of this, what would they want to see. The good thing about having all three (3) entities together is to get that information and hear from the public. More will come on this and we don't know where it will go.

Council President Morton stated that there is a major misconception in the public that this is a Zoo Tax. That is untrue. Council President Morton stated he has to give the Zoological Society credit for their perseverance and their passion based upon their master plan, but I believe when the discussion first came up, we looked at one (1) percent, and there was feedback that one (1) percent would never fly, and the Zoo asked us to at least consider a quarter (.25) of a percent, and it has been misconstrued in the media as a zoo tax.

Council President Scott commended the Zoological Society for bringing this about. Their courage and coming to us with this idea is why we're all here and why we're discussing it. We don't know what the feedback is going to be from the public until we start having these meetings.

The next meeting is July 27th at 6:00 p.m. in the Council Chambers.

Councilmember Jo M. Broden asked if Ms. Cook could make projections available to us for Elkhart, Marshall, and the other counties around us.

Ms. Cook stated that she can get projections for the county for if St. Joseph County would have adopted the tax for 2016 and 2017. She hasn't seen a report that would give city by city numbers right now, but it could be generated by the Department of Revenue.

Councilmember Broden asked if it is possible for the IACT to detail the use of the taxes by category for all of the counties and municipalities that have enacted this. She asked if that is something your organization could provide. She stated she wants to see if there are any patterns there.

Ms. Cook explained that she should go to Indiana Code Title Six (6), Article Nine (9) and in this article it explains Innkeeper's Tax and the Food and Beverage Tax. It would help to see what the other communities have done and how they've drafted their legislation.

Council President Scott asked Ms. Cook to leave a copy of her presentation, and announced that the South Bend City Clerk's Office will create a Dropbox for all food and beverage tax information. It will be made available on the South Bend City website.

Council President Scott adjourned the meeting at 7:20 p.m.

Minutes prepared by South Bend City Clerk Staff