

AN ORDINANCE TO REPEAL AND READOPT THE TAX ON
TRANSIENT ROOM RENTALS
AND
ON MEALS

BE IT ORDAINED by the Council of the Town of Washington, Virginia:

That the existing “Ordinance To Impose A Tax on Transient Room Rentals and on Meals Served in Restaurants” and all amendments thereto, are hereby REPEALED, and in its place, there is hereby enacted a new Article 58 to be known as “Tax on Transient Room Rentals and on Meals”, as follows:

TAX ON TRANSIENT ROOM RENTALS
AND
ON MEALS

Section 1. Definitions.

For the purposes of this Article, the following words or phrases shall have the meanings respectively ascribed to them by this section:

Caterer. A person or entity who furnishes Meals on the premises of another for compensation.

Food Establishment. Any place in or from which food or food products or a Meal are prepared, packaged, sold or distributed in the Town, including, but not limited to, any restaurant, dining room, grill, coffee shop, cafeteria, cafe, snack bar, lunch counter, convenience store, movie theater, delicatessen, confectionery, bakery, eating house, eatery, drugstore, ice cream/yogurt shop, lunch wagon or truck, pushcart or other mobile facility from which food is sold, public or private club, resort, bar, lounge, or other similar establishment, public or private, and shall include private property outside of and contiguous to a building or structure operated as a Food Establishment at which food or food products are sold for immediate consumption.

Meal. Any prepared food or drink offered or held out for sale by a Food Establishment for the purpose of being consumed by any person to satisfy the appetite and is ready for immediate consumption. All such food and beverage, unless otherwise specifically exempted or excluded herein shall be included, whether intended to be consumed on the Seller’s premises or elsewhere, whether designated as breakfast, lunch, snack, dinner, supper or by some other name, and without regard to the manner, time or place of service.

Purchaser. Any person who purchases: (1) occupancy in a Transient Room, or (2) a Meal.

Restaurant. Any place where food or drink is prepared for service to the public on

or off premises, or any place where food or drink is served. Examples of such places include, but are not limited to, lunchrooms, short order places, cafeterias, coffee shops, cafes, taverns, delicatessens, dining accommodations of public or private clubs, kitchen facilities of hospitals and nursing homes, dining accommodations of public and private schools and colleges, and kitchen areas of local correctional facilities subject to standards adopted in § 53.1-68 of the Va Code, as amended. Excluded from the definition are places manufacturing packaged or canned foods which are distributed to grocery stores or other similar food retailers for sale to the public.

Seller. Any person or entity which rents a room or space to transient occupants, or sells Meals, or the persons operating such business.

Town. The Town of Washington, Virginia.

Transient Room. A room or space in a hotel, motel, inn, boarding house, house, apartment or bed and breakfast establishment which is rented for occupancy by one or more persons for a period of time less than thirty (30) continuous days.

Treasurer. The Treasurer of the Town of Washington and/or his or her duly designated deputies, assistants, inspectors or clerks. During the unavailability of such persons, the Clerk, Mayor or Vice Mayor shall be authorized to act in all respects hereunder, provided all funds shall be received in the name of the Treasurer and deposited only in the designated account of the Town within seven (7) days of receipt.

Section 2. Levy of Tax.

In addition to all other taxes and fees of any kind now or hereafter imposed by law, a tax is hereby levied and imposed on the Purchaser of (1) each occupancy in a Transient Room in the Town, and of (2) every Meal or portion thereof served, sold, or delivered in the Town by a Food Establishment or Caterer. The rate of this tax shall be two and one-half percent of the amount paid for the room and/or the Meal or of its retail value. There shall be no tax if the total amount paid or the retail value is less than fifteen cents; on larger amounts a fractional cent of tax due shall be rounded to the next higher cent. This tax is separately levied for Transient Room rentals and for Meals; where Meals and occupancy in Transient Rooms are sold, the tax shall be collected for each sale; where only Meals or only occupancy in Transient Rooms are sold, the tax shall be collected for that which is sold.

Section 3. Payment and Collection of Tax.

In every case the tax shall be collected by the Seller and paid by the Purchaser at the time the charge for the room/and/or the Meal becomes due and payable, whether payment is to be made in cash or by means of a credit card or otherwise. The Seller shall add the tax to the amount charged for the room and/or the Meal, and shall pay the taxes collected to the Town as provided in this Article.

Section 4. Collections In Trust for Town.

All amounts collected as taxes under this article shall be deemed to be held in trust by the Seller collecting them, until remitted to the Town as provided by this Article.

Section 5. Reports and Remittances.

The Treasurer shall require all prospective Sellers under this Ordinance licensed or not to do business in the Town to register for collection of the tax imposed by this Article. Every Seller shall make a report for each calendar month, showing the amount of charges collected for rooms and/or Meals and the amount of tax required to be collected. The monthly reports shall be made on forms prescribed by the Treasurer and shall be signed by the Seller. They shall be delivered to the Treasurer on or before the last day of the calendar month following the month being reported. Each report shall be accompanied by a remittance of the amount of tax due, made payable to the Treasurer.

Section 6. Discount.

For the purpose of compensating Sellers for the collection of the tax imposed by this Article, every Seller shall be allowed three percent of the amount of the tax due and accounted for in the form of a deduction on his or her monthly return, provided that the amount due is not delinquent at the time of payment.

Section 7. Penalty and Interest.

If any Seller whose duty it is to do so shall fail or refuse to make the report or remit the tax required by this Article within the time and in the amount required, there shall be added to the tax by the Treasurer a penalty in the amount of ten percent of the tax, or a minimum of Thirty-Five dollars (\$35.00), and interest thereon at a rate of ten percent per annum.

Section 8. Procedure When Tax Not Reported or Collected.

If any person or entity whose duty is to do so shall fail or refuse to collect the tax imposed under this Article and make timely report and remittance thereof, the Treasurer shall proceed in such manner as is practicable to obtain facts and information on which to base an estimate of the tax due. As soon as the Treasurer has procured whatever facts and information may be ordinarily obtainable, upon which to base the assessment of any tax payable by any person who has failed to collect, report or remit such tax, the Treasurer shall proceed to determine and assess against such Seller the tax, penalty and interest provided in this Article, and shall notify the Seller by certified mail sent to such Seller's last known address or posted on any entry door to such Seller's place of business or delivered to the Seller personally, of the amount of such tax, penalty and interest. The

total amount thereof shall be payable ten days after the date such notice is sent, posted or delivered.

Section 9. Preservation of Records.

It shall be the duty of every Seller liable for collection and remittance of the taxes imposed by this Article to keep and preserve for a period of three years records showing all purchases taxable under this Article, the amount charged the Purchaser for each such purchase, the date thereof, the taxes collected thereon and the amount of tax required to be collected by this Article. The Treasurer shall have the power to examine such records at reasonable times and without unreasonable interference with the business of such person after 48 hours notice, for the purpose of administering and enforcing the provisions of this Article and to make transcripts of all or any parts thereof.

Section 10. Duty of Person Going Out of Business.

Whenever any Seller required to collect and remit to the Town any tax imposed by this Article shall cease to operate or otherwise dispose of his or her business, the tax shall immediately become due and payable, and such persons and/or entities shall immediately make a report and remittance thereof to the Treasurer.

Section 11. Advertising Payment or Absorption of Tax Prohibited.

No Seller shall advertise or hold out to the public in any manner, directly or indirectly, that all or any part of a tax imposed under this Article will be paid or absorbed by the Seller or by anyone else, or that the Seller or anyone else will relieve any Purchaser of the payment of all or any part of the tax.

Section 12. Discretionary Gratuities and Service Charges.

That portion of the amount paid by the Purchaser as a discretionary gratuity in addition to the sales price of the Meal, and/or that portion of the amount paid by the Purchaser as a mandatory gratuity or service charge added by the restaurant in addition to the sale price of the Meal, but only to the extent that such mandatory gratuity or service charge does not exceed 20% of the sale price, shall not be subject to the tax.

Section 13. Exemptions.

All exemptions now or hereafter set forth in §58.1-3840 of the 1950 Code of Virginia, as may be amended from time to time, (all such exemptions are hereby incorporated by reference) shall not be subject to the tax imposed by this Article and include, by way of illustration and not limitation, the following:

- (i) that portion of the amount paid by the Purchaser as a discretionary gratuity in addition to the sales price of the Meal;
- (ii) that portion of the amount paid by the Purchaser as a mandatory gratuity or service charge added by the Restaurant in addition to the sales price of the Meal, but only to the extent that such mandatory gratuity or service charge does not exceed 20% of the sales price;
- (iii) food and beverages sold through vending machines or on any tangible personal property purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children;
- (iv) No such taxes on Meals may be imposed when sold or provided by: (a) Restaurants, as such term is defined in subdivision 9 a of §35.1-1, to their employees as part of their compensation when no charge is made to the employee; (b) volunteer fire departments and rescue squads; nonprofit churches or other religious bodies; educational, charitable, fraternal, or benevolent organizations, on an occasional basis, not exceeding three times per calendar year as a fundraising activity, the gross proceeds of which are to be used by such church, religious body or organization exclusively for nonprofit educational, charitable, benevolent, or religious purposes; (c) churches that serve Meals for their members as a regular part of their religious observances; (d) public or private elementary or secondary schools, or public or private colleges and universities, to their students or employees; (e) hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or residents thereof; (f) day care centers; (g) homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics; or (h) age-restricted apartment complexes or residences with Restaurants, not open to the public, where Meals are served and fees are charged for such food and beverages and are included in rental fees.
- (v) The tax shall not be levied on Meals: (a) when used or consumed and paid for by the Commonwealth, any political subdivision of the Commonwealth, or the United States; or (b) provided by a public or private nonprofit charitable organization or establishment to elderly, infirm, blind, handicapped, or needy persons in their homes, or at central locations; or (c) provided by private establishments that contract with the appropriate agency of the Commonwealth to offer food, food products, or beverages for immediate consumption at concession prices to elderly, infirm, blind, handicapped, or needy persons in their homes or at central locations.
- (vi) As set forth in § 51.5-98, no blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Blind and Vision Impaired and located on property acquired and used by the United States for any military or naval purpose shall be required to collect and remit Meals taxes.

- (vii) No tax is levied under this Article upon alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

Section 14. Enforcement.

It shall be the duty of the Treasurer to ascertain the name of every Seller liable for the collection of the tax imposed by this Article, who fails, refuses or neglects to collect such tax or to make the reports and remittances required by this Article. The Treasurer may have issued a summons for such person, and the summons may be served upon such person in any manner provided by law. One return of the original summons shall be made to the General District Court for the County of Rappahannock.

Section 15. Violations and Penalties.

(a) Any person who willfully fails or refuses to file a return as required under this Article shall, upon conviction thereof, be guilty of a class 1 misdemeanor except that any person failing to file such a return shall be guilty of a class 3 misdemeanor if the amount of tax lawfully assessed in connection with the return of \$100.00 or less. Any person violating or failing to comply with any other provision of this Article shall be guilty of a class 1 misdemeanor.

(b) Except as provided in subsection (a) above, any corporate or partnership or limited liability company officer, partner or manager, including all those as defined in the 1950 Code of Virginia §58.1-3906, or any other Seller or person or entity required to collect, account for, or pay over the tax imposed under this Ordinance, who willfully fails to collect or truthfully account for or pay over such tax, or who willfully evades or attempts to evade such tax or payment thereof, shall, in addition to any other penalties imposed by law, be guilty of a class 1 misdemeanor.

(c) Each violation of or failure to comply with this Article shall constitute a separate offense; provided, when the total tax due in any 30 day period is less than \$500.00, such sums due may be included in a single summons or charge, and prosecuted as a single offense. Conviction of any such violation shall not relieve any person from the payment, collection or remittance of the tax as provided in this Article.

Section 16. Liability of Persons.

Each person who has any ownership interest in any business liable for the tax hereunder, whether such business be a sole proprietorship, partnership, limited liability company, corporation or any other form of entity or organization, shall be jointly and severally liable for any unpaid tax or assessment; provided, however, no such personal liability shall be imposed if the numbers of persons having an ownership interest exceeds 10 persons.

Section 17. Severability.

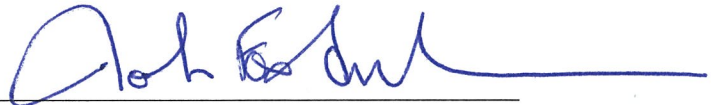
If any section or sections or portions of any section or sections of this Ordinance are adjudged invalid or unenforceable, such invalidity or unenforceability shall not affect the validity of the remaining sections or portions of sections. Further, should any of the subjects of the taxes levied in this Ordinance, or the amounts of the taxes levied under this Ordinance, be found to be invalid, then such invalidity shall not affect the validity or Ordinance as it applies to any of the other subjects of the taxes, or the amounts of the taxes which were lawfully collected.

Section 18.

This Ordinance shall be effective upon adoption.

DULY ADOPTED this 10th day of March, 2014, upon a roll call vote of the Town Council of Washington, Virginia.

TOWN OF WASHINGTON, VIRGINIA

BY: 
Mayor

ATTEST:


Clerk

Motion: Schwartz

Second: Gorecki

Voting aye: Spothman, Gosbel, Sullivan,
Kuku, O'Connell, Schwartz

Voting nay: None

Absent: Butler

Abstaining: None