

**AN ORDINANCE TO ADD ARTICLE VII- FOOD AND BEVERAGE TAX,
SECTIONS 16-558 THROUGH 16-568, TO CHAPTER 16- LICENSES, TAXATION
AND MISCELLANEOUS REGULATIONS OF THE SURRY COUNTY CODE AS
ALLOWED BY STATE CODE**

WHEREAS, as result of the 2020 General Assembly Session, Section 58.1-3833 of the Code of Virginia has been amended to authorize counties to levy a tax at an amount not to exceed six percent on food and beverages sold by a restaurant and eliminates the referendum requirement; and

WHEREAS, imposing a meals tax will broaden the County’s tax base, diversify the sources of revenue for the County, as well as help fund a variety of operational needs; and

WHEREAS, the Board of Supervisors desires to impose a food and beverage tax and update the County Code to reflect the new state law.

NOW, THEREFORE, be it ordained by the Board of Supervisors of Surry County, that Article VII, Sections 16-558 through 16-568, is hereby adopted and added to Chapter 16-Licenses, Taxation and Miscellaneous Regulation in the Surry County Code as follows:

CHAPTER 16 – LICENSES, TAXATION AND MISCELLANEOUS REGULATIONS

ARTICLE VII. – FOOD AND BEVERAGE TAX

Sec. 16-558. - Definitions.

For the purposes of this article, the following words and phrases shall have the meanings ascribed to them by this section. Words and phrases used in this article that are not defined herein shall have the meanings ascribed to them under section 1-2 of this Code, if any, and, if not defined therein, the meanings commonly attributable to them in normal and customary usage.

Beverage: Any alcoholic beverages as defined in § 4.1-100 of the Code of Virginia, 1950, as amended, and nonalcoholic beverages, any of which are served as part of a meal.

Caterer: A person who furnishes meals on the premises of another, for compensation.

Commissioner: The commissioner of the revenue of the County and any of his or her duly authorized deputies, assistants, employees or agents.

Food: Any and all edible refreshments, foodstuffs or nourishment, liquid or otherwise, including beverages as herein defined, purchased in or from a restaurant or from a caterer, whether such food is intended to be, or actually is, consumed on the seller's premises or elsewhere, except snack foods.

Meal: the term “meal” means any prepared food and beverage, sold for human consumption, whether designated as breakfast, lunch, dinner, supper or by some other name, and without regard to the manner, time, and place of service or consumption.

Purchaser: Any person who purchases food in or from a restaurant, caterer or other vendor.

Restaurant:

(1) Any place where food is prepared for service to the public on or off the premises, or any place where food 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 under Code of Virginia, § 53.1-68. 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.

(2) Any place or operation which prepares or stores meals for distribution to persons of the same business operation or of a related business operation for service to the public. Examples of such places or operations include but are not limited to operations preparing or storing food for catering services, push-cart operations, hotdog stands, and other mobile points of service. Such mobile points of service are also deemed to be restaurants unless the point of service and of consumption is in a private residence. The term also includes any place or operation which prepares or stores food for distribution to persons of the same business operation or of a related business operation for service to the public. Examples of such places or operations include, but are not limited to, operations preparing or storing food for catering services, pushcart operations, hot dog stands and other mobile points of service. Such mobile points of service are also deemed to be restaurants unless the point of service and of consumption is in a private residence. The word "restaurant" shall not mean a grocery store, convenience store or supermarket except for any space or section therein designated or used as a delicatessen which sells prepared foods ready for human consumption or for the sale of prepared sandwiches and single-meal platters.

Seller: Any person who sells food in or from a restaurant and any caterer.

Snack foods: the term "snack foods" means any candy, chewing gum, peanuts and other nuts, popcorn, and unopened prepackaged cookies, crackers, donuts, potato chips and other items of essentially the same nature consumed for essentially the same purpose.

Treasurer: The Treasurer of the County, and any of his or her duly authorized deputies, assistants, employees, or agents.

Sec. 16-559. - Exemptions.

The following purchases of food shall not be subject to tax under this article:

- 1) Food sold by volunteer fire departments and rescue squads; nonprofit churches or other religious bodies; or educational, charitable, fraternal, or benevolent organizations the first three times per calendar year and, beginning with the fourth time, on the first \$100,000.00 of gross receipts per calendar year from sales of food and beverages (excluding gross receipts from the first three times), 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.
- 2) Food furnished or sold by boardinghouses that do not accommodate transients.
- 3) Food sold by cafeterias operated by industrial plants for employees only.

- 4) Food sold by day care centers, public or private elementary, secondary schools, colleges or universities to their students or employees.
- 5) Food furnished by restaurants to their employees as part of their compensation when no charge is made to the employee.
- 6) Food furnished by a hospital, medical clinic, convalescent home, nursing home, home for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics to patients or residents thereof.
- 7) Food sold by 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.
- 8) Food furnished by churches which serve meals for their members as a regular part of their religious observances.
- 9) Food and beverages sold through vending machines.
- 10) Food (i) when used or consumed and paid for by the Commonwealth of Virginia, any political subdivision of the Commonwealth of Virginia, or the United States; or (ii) 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 (iii) 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.
- 11) Food sold by grocery stores and convenience stores except for prepared foods ready for human consumption at a delicatessen counter shall be subject to the tax, for that portion of the grocery store or convenience store selling such items.
- 12) That portion of the amount paid by the purchaser as a discretionary gratuity in addition to the sales price;
- 13) 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, but only to the extent that such mandatory gratuity or service charge does not exceed twenty percent of the sales price;
- 14) Alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption; and
- 15) Food purchased for human consumption as “food” as defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to the 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 non-factory sealed beverages.

Sec. 16-560. - Levy of tax; amount.

In addition to all other taxes and fees of any kind now or hereafter imposed by law, a meals tax, pursuant to § 58.1-3833 of the Code of Virginia, 1950, as amended, is hereby levied

and imposed on the purchaser of all food and beverages served, sold or delivered for human consumption in the County in or from a restaurant, whether prepared in such restaurant or not, or prepared by a caterer. The rate of this tax shall be six percent of the amount paid for such food. In the computation of this tax, any fraction of one-half cent or more shall be treated as one cent \$0.01.

Sec. 16-561. - Payment and collection of tax.

Every seller of food with respect to which a tax is levied under this article shall collect the amount of tax imposed under this article from the purchaser on whom the same is levied at the time payment for such food becomes due and payable, whether payment is to be made in cash or on credit by means of a credit card or otherwise. The amount of tax owed by the purchaser shall be added to the cost of the food by the seller who shall remit the taxes collected to the county in accordance with section 16-562. Taxes collected by the seller shall be held in trust by the seller for the benefit of the county until remitted to the county. The wrongful and fraudulent use of such collections other than remittance of the same as provided by law shall constitute embezzlement pursuant to Code of Virginia, § 18.2-111.

Sec. 16-562. – Penalty for failure to report or pay tax; interest on unpaid tax

- a) If any person, whose duty it is so to do, shall fail to remit the tax required to be collected and paid under this article, within the time and in the amount specified in this article, there shall be added to such tax by the treasurer a penalty in the amount of ten percent, if the failure is for not more than 30 days, with an additional five percent for each additional 30 days or fraction thereof during which the failure continues, not to exceed 25 percent in the aggregate, with a minimum penalty of \$10.00, but in no event shall the penalty exceed the amount of the tax assessable. In addition, interest at the rate of ten percent per annum may be computed and collected upon the taxes and penalty by the treasurer beginning from the date such taxes were due and payable.
- b) If any person, whose duty it is to do so, shall fail to file a report required to be filed under this article within the time specified in this article, there shall be added to such tax by the commissioner of the revenue a penalty in the amount of ten percent with a minimum penalty of \$10.00.

Sec. 16-563. - Reports and remittances generally.

Every seller of food with respect to which a tax is levied under this article shall make out a report upon such forms and setting forth such information as the commissioner may prescribe and require, showing the amount of food charges collected and the tax required to be collected, and shall sign and deliver such report to the county treasurer with a remittance of such tax. Such reports and remittance shall be made on or before the twentieth day of each month, covering the amount of tax collected during the preceding month.

Sec. 16-564. - Duty of seller when going out of business.

Whenever any person required to collect or pay to the county a tax under this article shall cease to operate or otherwise dispose of a business required to collect or pay to the county a tax under this article, any tax payable under this article shall become immediately due and payable, and such person shall immediately make a report and pay the tax due.

Sec. 16-565. - Preservation of records.

It shall be the duty of any seller of food liable for a collection and remittance of the taxes imposed by this article to keep and preserve for a period of three years records showing gross sales of all food and beverages, the amount charged the purchaser of each such purchase, the date thereof, the taxes collected thereon and the amount of tax required to be collected by this article. The commissioner shall have the power to examine such records at reasonable times and without unreasonable interference with the business of the seller, for the purpose of administering and enforcing the provisions of this article and to make copies of all or any parts thereof.

Sec. 16-566. - Enforcement; duty of commissioner of the revenue.

The commissioner shall promulgate rules and regulations for the interpretation, administration, and enforcement of this article. It shall also be the duty of the commissioner 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 commissioner shall have all of the enforcement powers as authorized by article 1, chapter 31 of title 58.1 of the Code of Virginia (1950), as amended, for the purposes of this article.

Sec. 16-567. - Duty of county treasurer.

The county treasurer shall have the power and duty of collecting the taxes imposed and levied hereunder and shall cause the same to be paid into the general treasury for the county. The treasurer shall have all of the enforcement powers as authorized by article 2, chapter 31 of title 58.1 of the Code of Virginia (1950), as amended, for purposes of this article.

Sec. 16-568. - Violation of article.

Any person required to collect, account for, and pay over the tax levied in this article who willfully fails to collect or truthfully account for and pay over such tax, and any such officer or person who willfully evades or attempts to evade any such tax or the payment thereof, shall be guilty of a class 1 misdemeanor. Any person who willfully violates any other provision of this article shall be guilty of a class 3 misdemeanor. Conviction of such violation shall not relieve any person from the payment, collection or remittance of the taxes provided for in this article. Each failure, refusal, neglect or violation, and each day's continuance thereof, shall constitute a separate offense.

State Law Reference—Virginia Code Sections 58.1-3833, 35.1-1, 4.1-100, 58.1-3916, 15.2-1429.

This amended ordinance shall take effect July 1, 2020.