

**TOWN OF HAMILTON  
IN  
LOUDOUN COUNTY, VIRGINIA**

**ORDINANCE NO. 02-03-2007**

**PRESENTED: September 10, 2007**

**ADOPTED: September 10, 2007**

**AN ORDINANCE: AMENDING ...OF THE TOWN CODE OF THE TOWN OF HAMILTON**

BE IT ENACTED AND ORDAINED BY THE COUNCIL OF THE TOWN OF HAMILTON THAT CHAPTER 27 OF THE TOWN CODE OF THE TOWN OF HAMILTON BE ENACTED, AS FOLLOWS:

Chapter 27

**MEALS TAX**

- Sec. 27-1. Definitions**
- Sec. 27-2. Levy of Tax**
- Sec. 27-3. Collection of Tax by Seller**
- Sec. 27-4. Exemptions: limits on application**
- Sec. 27-5. Gratuities and service charges.**
- Sec. 27- 6. Report of taxes collected; remittance; preservation of records.**
- Sec. 27- 7. Collections in trust for town.**
- Sec. 27- 8. Discount.**
- Sec. 27- 9. Duty of person going out of business.**
- Sec. 27- 10. Advertising payment or absorption of tax.**
- Sec. 27- 11. Procedure when tax not reported or collected.**
- Sec. 27- 12. Penalty, interest and administrative costs and attorney's or collection agency's fees.**
- Sec. 27- 13. Enforcement of article.**
- Sec. 27- 14. Regulations issued by Treasurer.**
- Sec. 27- 15. Penalty for violation of ordinance.**

CHAPTER 27. MEALS TAX

**Sec.27-1. Definitions.**

The following words and phrases, when used in this article, shall have, for the purposes of this article, the following respective meanings except where the context clearly indicates a different meaning:

*Caterer* means the furnishing of food, beverages, or both on the premises of another, for compensation.

*Collector* means the Treasurer or designee.

*Food* means all food, beverages or both, including alcoholic beverages, purchased in or from a food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not, and without regard to the manner, time or place of service.

*Food establishment* means any place in or from which food or food products 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 shops, 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* means meal shall mean 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.

**Cross references:** Code of Virginia, as amended, Sections 15.2-1104, 58.1-3840

### **Sec. 27-2. Levy of tax.**

There is hereby imposed and levied by the town on each person a tax at the rate of **four percent (4%)** on the amount paid for the meals purchased from any food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not. There shall be no tax if the total amount is \$0.50 or less. On larger amounts a fractional cent of tax due shall be rounded to the next higher cent.

### **Sec. 3. Collection of tax by seller.**

Every person receiving any payment for food with respect to which a tax is levied hereunder shall collect and remit the amount of the tax imposed by this article from the person on whom the same is levied or from the person paying for such food at the time payment for such food is made; provided, however, no blind person operating a vending stand or other business enterprise under the jurisdiction of the department for the visually handicapped and located on property acquired and used by the United States for any military or naval purpose shall be required to collect or remit such taxes.

#### **Sec. 4. Exemptions: limits on application.**

(a) The tax imposed under this article shall not be levied on the following items when served exclusively for off-premises consumption:

(1) Factory-prepackaged candy, gum, nuts and other items of essentially the same nature.

(2) Factory-prepackaged donuts, ice cream, crackers, nabs, chips, cookies and items of essentially the same nature.

(3) Foods sold in bulk. For the purposes of this provision, a bulk sale shall mean the sale of any item that would exceed the normal, customary and usual portion sold for on premises consumption (e.g. a whole cake, a gallon of ice cream); a bulk sale shall not include any food or beverage that is catered or delivered by a food establishment for off-premises consumption.

(4) Alcoholic and nonalcoholic beverages sold in factory sealed containers.

(5) Any food or food product 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 Woman, Infants and Children.

(6) Any food or food product purchased for home consumption as defined in the federal Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended except hot food or hot food products ready for immediate consumption. For the purposes of administering the tax levied hereunder, the following items whether or not purchased for immediate consumption are excluded from the said definition of food in the federal Food Stamp Act; sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages. This subsection shall not affect provisions set forth in subsections (c) (3), (4) and (5) hereinbelow.

(b) A grocery store, supermarket or convenience store shall not be subject to the tax except for any portion or section therein designated as a delicatessen or designated for the sale of prepared food and beverages.

(c) The tax imposed hereunder shall not be levied on the following purchases of food and beverages:

(1) Food and beverages furnished by food establishments to employees as part of their compensation when no charge is made to the employee.

(2) Food and beverages sold by day care centers, public or private elementary or secondary schools or food sold by any college or university to its students or employees.

(3) Food and beverages for use or consumption and which are paid for directly by the commonwealth, any political subdivision of the commonwealth or the United States.

(4) Food and beverages furnished by a hospital, medical clinic, convalescent home, nursing home, home for the aged, infirm, handicapped, battered women, narcotic addicts or alcoholics, or other extended care facility to patients or residents thereof.

(5) Food and beverages furnished by a public or private nonprofit charitable organization or establishment or a private establishment that contracts with the appropriate agency of the commonwealth to offer meals at concession prices to the elderly, infirm, blind, handicapped or needy persons in their homes or at central locations.

(6) Food and beverages sold on an occasional basis, by a nonprofit educational, charitable or benevolent organization, church, or religious body as a fundraising activity, the gross proceeds of which are to be used by such organization exclusively for nonprofit educational, charitable, benevolent or religious purposes.

(7) Food and beverages sold through vending machines.

#### **Sec. 5. Gratuities and service charges.**

Where a purchaser provides a gratuity for an employee or a seller, and the amount of the gratuity is wholly in the discretion of the purchaser, the gratuity is not subject to the tax imposed by this article, whether paid in cash to the employee or added to the bill and charged to the purchaser's account, provided in the latter case, the full amount of the gratuity is turned over to the employee by the seller.

An amount or percent, whether designated as a gratuity, tip or service charge, that is added to the price of food and beverages by the seller, and required to be paid by the purchaser, as a part of the selling price of the food and beverages is subject to the tax imposed by this article.

#### **Sec. 6. Report of taxes collected; remittance; preservation of records.**

It shall be the duty of every person required by this article to pay to the town the taxes imposed by this article to make a report thereof setting forth such information as the Treasurer may prescribe and require, including 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. Such records shall be kept and preserved for a period of five years. The Treasurer or his duly authorized agents shall have the power to examine such records at reasonable times and without unreasonable interference with the business of such person, for the purpose of administering and enforcing the provisions of this article, and to make transcripts of all or any parts thereof.

The monthly reports shall be made on forms prescribed by the Treasurer and shall be signed by the seller. The report shall be delivered to the Treasurer on or before the 20th day of the calendar month following the month being reported. Each report shall be accompanied by a remittance in the amount of tax due, made payable to the town.

#### **Sec. 7. Collections in trust for town.**

All amounts collected by the seller as taxes under this section shall be deemed to be held in trust by the seller collecting them until remitted to the town as provided by this article.

#### **Sec. 8. Discount.**

For the purpose of compensating sellers for the collection of the tax imposed by this article, every seller shall be allowed five percent of the amount of the tax due and

accounted for in the form of a deduction on his return; provided, however, that the amount due is not delinquent at the time of payment.

**Sec. 9. Duty of person going out of business.**

Whenever any person required to collect and remit to the town any tax imposed by this article shall cease to operate or otherwise dispose of his business, the tax shall immediately become due and payable, and the person shall immediately make to the Treasurer a report and remittance thereof.

**Sec. 10. Advertising payment or absorption of tax.**

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 anyone else, or that the seller or anyone else will relieve any purchaser of the payment of all or any part of the tax.

**Sec. 11. Procedure when tax not reported or collected.**

If any person whose duty it 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 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 person the tax, penalty and interest provided in this article, and shall notify the person by registered mail sent to his or her last known address, 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.

In addition to other remedies allowed by law, the Treasurer or the treasurer may apply in writing to any person indebted to or having in his hands any estate of a taxpayer or other debtor for payment of taxes, or other charges collected by the treasurer, more than 30 days delinquent out of such debt or estate. Payment by such person of such taxes, penalties and interest, or other charges either in whole or in part, shall entitle him to a credit against such debt or estate. The taxes, penalties and interest, or other charges shall constitute a lien on the debt or estate due the taxpayer from the time the application is received. For each application served the person applied to shall be entitled to a fee of \$20.00 which shall constitute a charge or credit against the debt to or estate of the debtor. The treasurer or collector shall send a copy of the application to the taxpayer or debtor, with a notice informing him of the remedies provided in this chapter.

If the person applied to does not pay so much as ought to be recovered out of the debt or estate, the treasurer or collector shall procure a summons directing such person to appear before the appropriate court, where proper payment may be enforced. Any person so summoned shall have the same rights of removal and appeal as are provided by law for the enforcement of demands between individuals. For purposes of this section, the term

"person" shall include but shall not be limited to individuals, corporations, partnership, institutions, and other such entities, as well as the commonwealth and its agencies and political subdivisions. However, in no event shall the commonwealth, its agencies, or its political subdivisions incur any liability for the failure to pay the treasurer's or other tax collector's application under this section.

**Sec. 12. Penalty, interest and administrative costs and attorney's or collection agency's fees.**

If any person 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 the following: Interest shall commence on the first day following the day such taxes are due by ordinance to be filed, at the rate of ten percent per year. Interest shall be imposed at the rate of interest established pursuant to section 6621 of the Internal Revenue Code of 1954, as amended, or ten percent annually, whichever is greater, for the second and subsequent years of delinquency. The penalty for failure to pay a tax or installment shall be ten percent of the tax past due on such property or the sum of \$10.00, whichever is the greater; provided, however, that the penalty shall in no case exceed the amount of tax due. No penalty for failure to file a return shall be greater than ten percent of the tax assessable on such return or \$10.00, whichever is greater; provided, however, that the penalty shall in no case exceed the amount of the tax assessable. The assessment of such penalty shall not be deemed a defense to any criminal prosecution for failing to make return of taxable property as may be required by law or ordinance. Penalty for failure to file an application or return shall be assessed on the day after such return or application is due, and penalty for failure to pay any tax shall be assessed on the day after the first installment is due. Any such penalty when so assessed shall become a part of the tax.

In addition to the penalty and interest as set forth hereinabove, the town may impose on delinquent taxpayers fees to cover the administrative costs and reasonable attorney's or collection agency's fees for which the town has actually contracted. The administrative costs shall be in addition to all penalties and interest, and shall not exceed \$20.00 for taxes collected subsequent to the filing of a warrant or other appropriate legal document but prior to judgment, and \$25.00 for taxes collected subsequent to judgment. The attorney's or collection agency's fees shall not exceed 20 percent of the taxes of other charges so collected.

No tax assessment or tax bill shall be deemed delinquent and subject to the collection procedures prescribed herein during the pendency of any administrative appeal under Section 58.1-3980, so long as the appeal is filed within 90 days of the date of the assessment, and for 30 days after the date of the final determination of the appeal, provided that nothing in this paragraph shall be construed to preclude the assessment or refund, following the final determination of such appeal, of such interest as otherwise may be provided by general law as to that portion of a tax bill which has remained unpaid or was overpaid during the pendency of such appeal and is determined in such appeal to be properly due and owing.

### **Sec. 13. Enforcement of article.**

It shall be the duty of the Treasurer to ascertain of every seller in the town, liable for the collection of the tax imposed by this article, that 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 by any town police officer in the manner provided by law. The Treasurer may seek a conviction or other civil remedy, including injunction, against such person.

In addition to the foregoing remedies, and any other remedies allowed by law, the Treasurer or the treasurer may apply in writing to any person indebted to or having in his hands any estate of a taxpayer or other debtor for payment of such taxes, or other charges collected by the treasurer, more than 30 days delinquent out of such debt or estate. Payment by such person of such taxes, penalties and interest, or other charges either in whole or in part, shall entitle him to a credit against such debt or estate. The taxes, penalties and interest, or other charges shall constitute a lien on the debt or estate due the taxpayer from the time the application is received. For each application served the person applied to shall be entitled to a fee of \$20.00 which shall constitute a charge or credit against the debt or estate of the debtor. The treasurer or collector shall send a copy of the application to the taxpayer or debtor, with a notice informing him of the remedies provided in this chapter.

If the person applied to does not pay so much as ought to be recovered out of the debt or estate, the treasurer or collector shall procure a summons directing such person to appear before the appropriate court, where proper payment may be enforced. Any person so summoned shall have the same rights of removal and appeal as are provided by law for the enforcement of demands between individuals. For purposes of this section, the term "person" shall include but shall not be limited to individuals, corporations, partnerships, institutions, and other such entities, as well as the commonwealth and its agencies and political subdivisions. However, in no event shall the commonwealth, its agencies, or its political subdivisions incur any liability for the failure to pay the treasurer's or other tax collector's application under this section.

### **Sec. 14. Regulations issued by Treasurer.**

The Treasurer may issue regulations for the administration and enforcement of this article not in conflict with this article.

### **Sec. 15. Penalty for violation of ordinance.**

(a) Any person willfully failing or refusing 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 is \$1,000.00 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 officer, as defined in Code of Virginia, § 58.1-3906, or any other person required to collect, account for, or pay over the meals tax imposed under this article, 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. Conviction of any such violation shall not relieve any person from the payment, collection or remittance of the tax provided in this article.

This ordinance is effective upon final passage.

PASSED this 10<sup>th</sup> day of September, 2007

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Mayor  
Town of Hamilton

ATTEST:

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Clerk of Council