

**BOARD OF SUPERVISORS
COUNTY OF NEW KENT
VIRGINIA**

O-01-05

At the regular meeting of the Board of Supervisors of the County of New Kent in the Board Room of the County Office Building in New Kent, Virginia, on the 10th day of January, 2005:

Present:	Vote:
Mark E. Hill	Aye
D. M. "Marty" Sparks	Aye
James H. Burrell	Aye
Stran L. Trout	Aye
W. R. Davis, Jr.	Aye

Motion was made by Mr. Burrell, which carried 5:0, to adopt the following Ordinance:

**AN ORDINANCE TO AMEND CHAPTER 66
OF THE CODE OF NEW KENT COUNTY
TO ADOPT AND LEVY A FOUR PERCENT (4%)
FOOD AND BEVERAGE TAX**

WHEREAS, on July 12, 2004, the Board of Supervisors adopted a resolution requesting that the Circuit Court for New Kent County order a special referendum election on November 2, 2004 in order to have the voters determine whether to levy a food and beverage tax in the County; and

WHEREAS, on November 2, 2004 a special referendum election was duly held and the voters overwhelmingly approved the proposed food and beverage tax; and

WHEREAS, the Board of Supervisors will use the additional tax revenue for economic development and tourism, school capital projects, and parks and recreation purposes; and

WHEREAS, the Board desires for this amendment to Chapter 66 to be codified in the Code of New Kent;

NOW THEREFORE BE IT ORDAINED that in order to promote the health, safety, and welfare of the citizens of the County and pursuant to the authority granted under §

58.1-3833 of the Code of Virginia, Chapter 66 of the Code of New Kent shall be amended to add new Article VII as follows:

CHAPTER 66
ARTICLE VII. FOOD AND BEVERAGE TAX

Sec. 66-340 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:

Beverage: Any alcoholic beverages as defined in Virginia Code § 4.1-100 and nonalcoholic beverages, any of which are served as part of a meal, excluding alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption.

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

Commissioner of the Revenue: The Commissioner of the Revenue of the County of New Kent, Virginia and any of his or her duly authorized deputies, assistants, employees or agents.

County: The County of New Kent, Virginia.

Food: Any and all edible refreshments or nourishment, liquid or otherwise, including beverages as herein defined, purchased in or from a restaurant or from a caterer, except snack foods.

Meal: Any food as herein defined, other than a beverage, sold for consumption on the 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.

Person: Any individual, corporation, company, association, firm, partnership or any group of individuals acting as a unit.

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

Restaurant:

- (1) Any place where food is prepared for service to the public whether on or off the premises;
- (2) Any place where food is served to the public; or

- (3) 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 a restaurant include, but are not limited to, a dining room, a delicatessen counter at a grocery store, grill, coffee shop, cafeteria, cafe, snack bar, lunch counter, lunchroom, short-order place, tavern, delicatessen, confectionery, bakery, eating house, eatery, drugstore, catering service, lunch wagon or truck, pushcart or other mobile facility that sells food, and a dining facility in a public or private school or college.

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

Snack food: Chewing gum, candy, popcorn, peanuts and other nuts, and unopened prepackaged cookies, donuts, crackers, potato chips and other items of essentially the same nature and consumed for essentially the same purpose.

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

Sec. 66-341 Levy of tax; amount.

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 all food 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. No such tax shall be imposed on any entity or activity exempted from same by Section 58.1-3833 of the Code of Virginia, 1950, as amended, as well as any other sale of food which is exempt from taxation under the Virginia Retail Sales and Use Tax Act, or the administrative rules and regulations issued pursuant thereto. The rate of this tax shall be four percent (4%) of the amount paid for such food. In the computation of this tax, any fraction of one-half cent (\$0.005) or more shall be treated as one cent (\$0.01).

Sec. 66-342 Exemptions.

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

- (a) Food for use or consumption by the Commonwealth, any political subdivision of the Commonwealth or the United States.
- (b) Food furnished by boardinghouses that do not accommodate transients.
- (c) Food sold by cafeterias operated by industrial plants for employees only.
- (d) Food sold by nonprofit cafeterias in public schools, nursing homes and hospitals.

- (e) Food sold to the public by churches, schools, fraternal and social organizations, volunteer fire departments and rescue squads, and other tax-exempt organizations that hold occasional dinners and bazaars and other fund raisers of up to a seven day duration.
- (f) Food furnished by churches which serve meals for their members as a regular part of their religious observance.
- (g) Food sold through vending machines.
- (h) Any food or food product purchased for home consumption as defined in the federal Food Stamp Act of 1977, 7 U.S.C. section 2012, or amended, except for salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and non-factory sealed beverages. This exemption does not include hot food or hot food products ready for immediate consumption.
- (i) 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 Women, Infants, and Children.
- (j) Any other sale of food which is exempt from taxation under the Code of Virginia, 1950, as amended, or any administrative rules and regulations issued pursuant thereto.

Sec. 66-343 Tips and service charges.

A. Where a purchaser provides a tip for an employee or employees of a seller, and the amount of the tip is wholly in the discretion of the purchaser, the tip 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 tip is turned over to the employee by the seller.

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

Sec. 66-344 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 pay the taxes collected to the County as provided in this article. Taxes collected by the seller shall be held in trust by the seller until remitted to the County.

Sec. 66-345 Registration; Reports and remittances.

A. The Commissioner of the Revenue may require all prospective sellers of meals licensed to do business in the County to register for collection of the tax imposed by this article.

B. 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 of the Revenue 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 Commissioner of the Revenue with a remittance of such tax. It shall be presumed that all food served, sold or delivered in the County in or from a restaurant is taxable under this article and the burden shall be upon the seller of food to establish by records what food is not taxable. 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. 66-346 Preservation of records.

It shall be the duty of any seller of food liable for collection and remittance of the taxes imposed by this article to keep and preserve for a period of three (3) years records showing gross sales of all food and beverages, 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 Commissioner of the Revenue 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. 66-347 Duty of seller when going out of business.

Whenever any seller required to collect or pay to the County a tax under this article shall cease to operate or otherwise dispose of his business, 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. 66-348 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 the 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 the purchaser of the payment of all or any part of the tax.

Sec. 66-349 Enforcement; duty of Commissioner of the Revenue.

The Commissioner of the Revenue shall promulgate rules and regulations for the interpretation, administration and enforcement of this article. It shall also be the duty of the Commissioner of the Revenue 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 of the Revenue shall have all of the enforcement powers as authorized by Article 1, Chapter 31 of Title 58.1 of the Code of Virginia for purposes of this article.

Sec. 66-350 Procedure upon failure to collect, report, etc.

If any seller whose duty it is to do so shall fail or refuse to collect the tax imposed under this article and to make, within the time provided in this article, the reports and remittances mentioned in this article, the Commissioner of the Revenue shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the Commissioner of the Revenue shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax payable by any seller who has failed or refused to collect such tax and to make such report and remittance, he shall proceed to determine and assess against such seller the tax and penalties provided for by this article and shall notify such seller, by registered mail sent to his last known place of address, of the total amount of such tax and penalties and the total amount thereof shall be payable within ten (10) days from the date such notice is sent.

Sec. 66-351 Collection; duty of Treasurer.

The Treasurer shall have the power and the duty of collecting the taxes imposed and levied hereunder and shall cause the same to be paid into the general treasury for the County.

Sec. 66-352 Penalty for late remittance or false return.

A. If any seller whose duty it is to do so shall fail or refuse to file any report required by this article or to remit to the Treasurer 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 Commissioner of the Revenue a penalty in the amount of ten percent (10%) of the total amount of the tax owed if the failure is not for more than thirty (30) days, with an additional penalty of ten percent (10%) of the total amount of the tax owed for each additional thirty (30) days or fraction thereof during which the failure continues, such penalty not to exceed thirty percent (30%) of the tax owed, provided, however, the minimum penalty shall be ten dollars (\$10.00).

B. In the case of a false or fraudulent return with intent to defraud the County of any tax due under this article, a penalty of fifty percent (50%) of the tax owed shall be assessed against the person required to collect such tax.

Sec. 66-353 Violations of article.

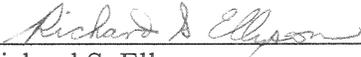
Any person required to collect, account for and pay over tax under this article, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully evades or attempts to evade any such tax or payment thereof, shall be guilty of a class 1 misdemeanor. Conviction of such violation shall not relieve any person from the payment, collection or remittance of the taxes or penalties provided for in this article. Any agreement by any person to pay the taxes or penalties provided for in this article by a series of installment payments shall not relieve any person of criminal liability for violation of this article until the full amount of taxes and penalties agreed to be paid by such person is received by the Commissioner of the Revenue. Each failure, refusal, neglect or violation, and each day's continuance thereof, shall constitute a separate offense.

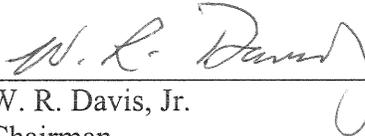
Sec. 66-354 Severability.

If any provision of this article, or any application of such provision to any person or under any circumstances, shall be invalid, the remainder of this article, or the application of such provisions to persons or under circumstances other than those to which it shall have been held invalid, shall not be affected thereby.

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This Ordinance shall become effective on May 1, 2005.


Richard S. Ellyson
Interim County Administrator


W. R. Davis, Jr.
Chairman