

TOWN OF ONLEY, VIRGINIA
MEALS TAX ORDINANCE
Ordinance No.004-07
August 2007

WHEREAS, the Town Council of the Town of Onley enacted an excise tax of 2% on meals in 2004 pursuant to Virginia Code § 58.1-3840, and

WHEREAS, it is declared to be in the public interest to increase the rate of the excise tax from 2% to 4% within the Town of Onley,

WHEREAS, under the authority of § 58.1- 3833 of the Code of Virginia, the Town of Onley may enact ordinances to impose such excise taxes on meals; and

WHEREAS, the Town Council of the Town of Onley hereby repeals the ordinance of 2004 entitled, "Town of Onley Meals Tax Ordinance, Virginia";

BE IT THEREFORE ORDAINED, by the Town Council of the Town of Onley that the following ordinance be enacted imposing an excise tax of 4% on meals as defined herein within the Town of Onley.

***State law reference:**

Locality may enact an excise tax on meals, Code of Virginia, § 58.1 - 3833.

Sec. 1. Definitions.

The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Cater: The furnishing of food, beverages, or both on the premises of another, for compensation.

Collector: The Mayor of the Town of Onley or an employee empowered by the Town Council to collect taxes.

Food: 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: 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, café, 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, or 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 that 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 food.

Sec. 2. Regulations for administration and enforcement.

The Town Council may issue regulations for the administration and enforcement of this Ordinance.

Sec. 3. Enforcement.

This Ordinance, in addition to enforcement as otherwise permitted by law, may also be enforced by way of injunctive relief to enjoin a violation by the circuit court of the county or any other court of competent jurisdictions on complaint by the Town acting by and through the Mayor.

Sec. 4. Penalty for violation.

(a) Any person who willfully fails or refuses to file a return as required under this Ordinance 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 Ordinance shall be guilty of a class 1 misdemeanor.

(b) Except as provided in subsection (a) above, any corporate or partnership officer as defined in Virginia Code §58.1-3906, or any other person required to collect, account for, or pay over the meals 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 Ordinance shall constitute a separate offense. Conviction of any such violation shall not relieve any person from the payment, collection or remittance of the tax as provided in this Ordinance.

Sec. 5. Levy and rate.

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 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 paid is twenty-five cents (\$0.25) or less; on larger amounts a fractional cent of tax shall be rounded up to the next higher cent.

Sec. 6. Exemptions.

The following classes of transactions involving meals shall not be subject to tax under this Ordinance:

- (1) Food and beverages sold through vending machines.
- (2) Factory-prepackaged candy, gum, nuts, or other items of essentially the same nature.
- (3) Food sold in bulk. For the purpose 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) Meals furnished by a 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.
- (5) Alcoholic or non-alcoholic beverages sold in factory sealed containers.
- (6) 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.
- (7) 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.

- (8) Food and beverages furnished by food establishments to employees as part of their compensation when no charge is made to the employee.
- (9) Food or 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.
- (10) 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.
- (11) Food and beverages furnished by a hospital, medical clinic, convalescent home, nursing home, home for the aged, inform handicapped, battered women, narcotic addicts or alcoholics, or other extended care facility to patients or residents thereof.
- (12) Food and beverages furnished by a public or private local non-profit charitable organization or establishment or by a private establishment that contracts with the appropriate agency of the Commonwealth to offer meals at concession prices to elderly, inform, blind, handicapped or needy persons in their homes or at central locations.
- (13) Food or beverages sold on occasional basis, by local non-profit education, 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 non-profit educational, charitable, or religious purposes.

Sec. 7. Payment and collection.

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 ordinance 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. 8. Collections in trust for Town.

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

Sec. 9. Reports and remittances.

It shall be the duty of every person required by this Ordinance to pay to the Town the taxes imposed by this Ordinance. Every corporation, partnership, firm, association, or group of individuals acting as a unit shall designate in writing to the Town an officer or employee of such corporation, partnership, firm, association, or group whose duty it is to collect, report, and remit. The person or entity collecting the tax levied under this Ordinance shall make a report upon such forms as may be prescribed by the Town Council, which report in any event shall show the amount of charges collected for meals and the amount of tax required to be collected for the designated reporting and collection period. Such report shall be signed and delivered to the Town with the full remittance of such tax due. Such reports and remittances shall be made monthly on or before the 20th day of each said month and shall cover the amount of charges for meals and the tax collected during the month immediately preceding the month in which such report and remittance is required. If the remittance is by check or money order, the same shall be payable to the Town of Onley. Such records shall be kept and preserved for a period of five (5) years. The Mayor or his duly authorized agents shall have the power to examine such records at reasonable time and without unreasonable interference with the business of such person, for the administering and enforcing the provisions of this Ordinance, and to make transcripts of all or any parts thereof.

Sec. 10. Penalty and interest.

If any person whose duty it is to do so shall fail or refuse to make the report or remit the tax required under this Ordinance, there shall be added to the tax by the Mayor a penalty in the amount of ten percent (10%) of the tax and interest thereon at the rate of ten percent (10%) per annum, which shall be computed upon the tax and penalty from the date such were due and payable.

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

- (a) If any person shall fail or refuse to collect tax imposed under this Ordinance and to make, within the time provided for in this Ordinance, the reports and remittances required, the Mayor shall cause to be prepared a notice thereof to such person, giving such person ten days in which to make the necessary reports and remit the appropriate tax, plus any applicable penalty and interest. The notice shall be posted to such person by registered or certified mail, return receipt requested, to the address on file with the Town or last known address of such person and/or shall be delivered by the police department. Failure to report and/or remit the appropriate tax, plus any applicable penalty and interest, within the ten-day period after posting and/or delivery of such notice, shall result in the immediate suspension of the business license of such person or the entity for which such person is charged for the collecting, reporting, and remitting of taxes, as well as the right of such business to operate with the Town.

- (b) Upon the failure of refusal of any such person to thereafter report and remit the appropriate tax, plus any applicable penalty and interest as required under this Ordinance, the Mayor shall then proceed in such a manner as he may deem best to obtain facts and information on what to base his estimate of the proper amount of such tax due, plus penalty and interest. The Mayor shall then proceed, based on the best information then available to him, to assess the amount of such tax, penalty and interest and shall cause such person to be notified thereof by registered or certified mail, return receipt requested, at the address on record with the Town of the last known address of such person and/or delivery by the police department.
- (c) Upon the submission of any necessary report and the remitting of the appropriate tax, plus any applicable penalty and interest, or the payment of the tax if assessed by the Mayor, plus any applicable penalty and interest, such business license of the person or entity for which such person is charged for the collection, reporting, and remitting of such taxes shall be deemed to be reinstated.

Sec. 12. Preservation of records.

- (a) *Generally.* It shall be the duty of every person liable for collection and remittance of the taxes imposed by this Ordinance to preserve for a period of four years records showing all purchases taxable under this Ordinance, 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 Ordinance. The Mayor shall have the authority and 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 this Ordinance and to make transcripts of all or any parts thereof.
- (b) *Inspection of records by Mayor.* The Mayor shall have the authority to inspect the records of any restaurant after notifying the Town Attorney in writing prior to each examination of the records of any establishment. Such examination shall be for the purpose of administering and enforcing this Ordinance and transcripts may be made of any parts thereof or all such records. Further, such inspection shall be made at reasonable time without unreasonable interference with the business of such person.

Sec. 13. Duty upon cessation of business.


Whenever any person required to collect and remit to the Town any tax imposed by this Ordinance shall cease to operate or otherwise dispose of his business, the tax shall become due and payable, and the person shall make to the Mayor a report and remittance thereof within 30 days following which the business was terminated or disposition made thereof.

Sec. 14. Advertising payment or absorption of tax prohibited.

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

Sec. 15. Tips and service charges.

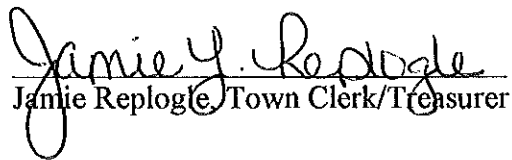
Where a purchaser provides a tip for an employee of a seller, the tip is not subject to the tax imposed by this Ordinance, whether paid in cash to the employee or added to the bill and charged to the purchaser's account, provided in the latter case the full amount of the tip is turned over to the employee by the seller. Tips, gratuities and service charges on meals which are left on the table or where added to the bill and otherwise turned over in their entirety by the employer or the employee shall not be subject to this tax.


John Willis Kellam, Mayor

Attest:


Jamie Replogle, Town Clerk/Treasurer

I certify that the foregoing is a true copy of an ordinance adopted on August 6, 2007 by the Onley Town Council.


Jamie Replogle, Town Clerk/Treasurer

Council Voting:

Zember	<u>yes</u>
Pierson	<u>yes</u>
Lowe	<u>yes</u>
Thornes	<u>yes</u>
Hurst	<u>yes</u>
Ferguson	<u>Absent</u>