

**ORDINANCE 06-21**

**An Ordinance to  
Replace King William County Code, Chapter 70 Article VIII - Meals Tax with an  
ordinance for a Food and Beverage Tax that conforms with State Code**

**WHEREAS**, pursuant to Virginia Code Section 58.1-3833 the King William County Board of Supervisors is authorized to impose a local food and beverage tax; and

**WHEREAS**, the Board wishes to replace the current Meals Tax ordinance with a Food and Beverage tax ordinance that conforms to State Code:

**NOW, THEREFORE, BE IT ORDAINED AND ENACTED**, that the Board of Supervisors of King William County, Virginia, does this \_\_\_\_ day of \_\_\_\_\_, 2021, amend the King William County Code by amending Section 70 Article VIII to read as follows:

**Article VIII. Food and Beverage Tax**

**Sec. 70-325. - Definitions**

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

*Beverage* means alcoholic beverages as defined in § [4.1-100](#) and nonalcoholic beverages served as part of a meal.

*Commissioner* means the Commissioner of the Revenue of King William County.

*Food* means any and all food purchased in or from a restaurant, whether prepared in such restaurant or not, and whether consumed on the premises or not.

*Restaurant* means any place that meets the definition of "restaurant" as set forth in Code of Virginia § 35.1-1.

**Sec. 70-326. - Levy of tax; amount.**

A tax is hereby 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 that restaurant, or prepared by a caterer, subject to the limitations and conditions of Virginia Code § 58.1-3833.

The tax rate shall be four percent (4%) of the amount paid for the food and beverages.

**Sec. 70-327. - Payment and collection of tax.**

37 Every restaurant shall collect the amount of tax imposed under this article from the  
38 purchaser on whom the same is levied at the time payment for such food becomes due and  
39 payable, whether payment is to be made in cash or on credit by means of a credit card or  
40 otherwise. The amount of tax owed by the purchaser shall be added to the cost of the food by  
41 the seller who shall pay the taxes collected to the County as provided in this article. Taxes  
42 collected by the seller shall be held in trust by the seller until remitted to the County. The  
43 wrongful and fraudulent use of such collections other than remittance of the same as provided  
44 by law shall constitute embezzlement pursuant to Code of Virginia, § 18.2-111.

45 **Sec. 70-328. – Exemptions; limits on application.**

46 A. Such tax shall not be levied on:

- 47 1. food and beverages sold through vending machines;
- 48 2. boardinghouses that do not accommodate transients;
- 49 3. cafeterias operated by industrial plants for employees only;
- 50 4. restaurants to their employees as part of their compensation when no charge is made to  
51 the employee;
- 52 5. volunteer fire departments and volunteer emergency medical services agencies; nonprofit  
53 churches or other religious bodies; or educational, charitable, fraternal, or benevolent  
54 organizations the first three times per calendar year and, beginning with the fourth time,  
55 on the first \$100,000 of gross receipts per calendar year from sales of food and beverages  
56 (excluding gross receipts from the first three times), as a fundraising activity, the gross  
57 proceeds of which are to be used by such church, religious body or organization  
58 exclusively for nonprofit educational, charitable, benevolent, or religious purposes;
- 59 6. churches that serve food or beverages for their members as a regular part of their  
60 religious observances;
- 61 7. public or private elementary or secondary schools or institutions of higher education that  
62 serve food or beverages to their students or employees;
- 63 8. hospitals, medical clinics, convalescent homes, nursing homes, or other extended care  
64 facilities that serve food or beverages to patients or residents thereof;
- 65 9. day care centers;
- 66 10. homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics;
- 67 11. age-restricted apartment complexes or residences with restaurants, not open to the public,  
68 where meals are served and fees are charged for such food and beverages and are  
69 included in rental fees;
- 70 12. sellers at local farmers markets and roadside stands, when such sellers' annual income  
71 from such sales does not exceed \$2,500. For the exemption described in this subclause,  
72 the sellers' annual income shall include income from sales at all local farmers markets  
73 and roadside stands, not just those sales occurring in the locality imposing the tax.
- 74 13. when the food and beverages are consumed and paid for by the Commonwealth, any  
75 political subdivision of the Commonwealth, or the United States;
- 76 14. when the food or beverages are provided by a public or private nonprofit charitable  
77 organization or establishment to elderly, infirm, blind, handicapped, or needy persons in  
78 their homes, or at central locations; or
- 79 15. provided by private establishments that contract with the appropriate agency of the  
80 Commonwealth to offer food, food products, or beverages for immediate consumption at  
81 concession prices to elderly, infirm, blind, handicapped, or needy persons in their homes  
82 or at central locations.

83 B. Grocery stores and convenience stores selling prepared foods ready for human  
84 consumption at a delicatessen shall be subject to the tax for that portion of the grocery store  
85 or convenience store selling such items.

86 C. This tax shall not apply upon (i) that portion of the amount paid by the purchaser as a  
87 discretionary gratuity in addition to the sales price; (ii) that portion of the amount paid by the  
88 purchaser as a mandatory gratuity or service charge added by the restaurant in addition to the  
89 sales price, but only to the extent that such mandatory gratuity or service charge does not  
90 exceed 20 percent of the sales price; or (iii) alcoholic beverages sold in factory sealed  
91 containers and purchased for off-premises consumption or food purchased for human  
92 consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as  
93 amended, and federal regulations adopted pursuant to that act, except for the following items:  
94 sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads  
95 consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

96 **Sec. 70-329. - Reports and remittances generally.**

97 Every seller of food and/or beverages with respect to which a tax is levied under this  
98 article shall make out a report upon such forms and setting forth such information as the  
99 Commissioner may prescribe and require, showing the amount of food charges collected and  
100 the tax required to be collected, and shall sign and deliver such report to the Commissioner of  
101 the Revenue with the remittance of such tax payable to the Treasurer. Such reports and  
102 remittance shall be made on or before the 20th day of each month if filing electronically or in  
103 person, or postmarked on or before the 20<sup>th</sup> of each month, covering the amount of tax  
104 collected during the preceding month.

105 **Sec. 70-330. - Preservation of records.**

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

114 **Sec. 70-331. - Duty of seller when going out of business.**

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

119 **Sec. 70-332. - Enforcement; duty of the Commissioner.**

120 The Commissioner shall promulgate rules and regulations for the interpretation,  
121 administration, and enforcement of this article. It shall also be the duty of the Commissioner to  
122 ascertain the name of every seller liable for the collection of the tax imposed by this article  
123 who fails, refuses, or neglects to collect such tax or to make the reports and remittances  
124 required by this article or by the Commissioner pursuant to this article.

125 **Sec. 70-333. - Procedure upon failure to collect, report.**

126 If any seller whose duty it is to do so shall fail or refuse to collect the tax imposed under  
127 this article and to make, within the time provided in this article, the reports and remittances  
128 required by this article or by the Commissioner pursuant to this article, the Commissioner shall  
129 proceed in such a manner as he/she may deem best to obtain facts and information on which to  
130 base his/her estimate of the tax due. As soon as the Commissioner shall procure such facts and  
131 information upon which to base the assessment, he/she shall proceed to determine and assess  
132 against such restaurant the tax and penalties provided for by this article, and shall notify such  
133 restaurant, by registered mail sent to its last known address, of the total amount of such tax and  
134 penalties. The total amount of such tax and penalties shall be payable within ten days from the  
135 date such notice is sent.

136 **Sec. 70-334. - Penalty of late remittance or false return.**

137 If any person fails or refuses to file any report required by this article or by the  
138 Commissioner pursuant to this article or fails to remit to the county treasurer the tax required  
139 to be collected and paid under this article within the time and in the amount specified in this  
140 article, there shall be added to such tax by the county treasurer a penalty in the amount of ten  
141 percent if the failure is not for more than 30 days. In addition, there shall be assessed interest  
142 at the rate of ten percent per year on the amount of tax past due, which interest shall commence  
143 on the day following the day on which the tax was due and continue until paid.

144 In the case of a false or fraudulent return with intent to defraud the county of any tax due  
145 under this article, a penalty of fifty percent (50%) of the tax shall be assessed against the  
146 person required to remit such tax.

147 Any person violating, failing, refusing or neglecting to comply with any provision of this  
148 article shall, upon conviction thereof, be guilty of a Class 1 misdemeanor, except that if the  
149 amount of tax lawfully assessed in connection with the return is \$1,000.00 or less, then he/she  
150 shall be guilty of a Class 3 misdemeanor.

151 Each violation of or failure to comply with this ordinance shall constitute a separate  
152 offense. Conviction of any such violation shall not relieve any person from the payment,  
153 collection or remittance of the tax as provided in this article.

154 **Sec. 70-335. - Severability.**

155 The sections, paragraphs, sentences, clauses and phrases of this article are severable, and  
156 if any phrase, clause, sentence, paragraph or section of this article shall be declared  
157 unconstitutional or invalid by the valid judgment or decree of a court of competent jurisdiction,

158 the remaining phrases, clauses, sentences, paragraphs and sections of this article shall remain  
159 valid.