

**TOWN OF IRVINGTON**  
**ORDINANCE # 2023-\_\_\_\_\_**

**An Ordinance to Adopt a Meals Tax**

**WHEREAS**, the Town Council believes that adopting and levying a meals tax will help to secure and promote the public health, safety, and general welfare of the Town and its citizens, and provide a diversified tax base which will benefit its citizens; and

**WHEREAS**, the Town Council wishes to amend the Town Code to adopt a meals tax; and

**WHEREAS**, the legal authority for Town Council to adopt a meals tax is the Town Charter and § 58.1-3840 *et. seq.* of the Code of Virginia;

**NOW, THEREFORE, BE IT ORDAINED AND ENACTED** by the Town Council of the Town of Irvington, Virginia, as follows:

- 1. THAT the Irvington Town Code is amended to adopt and enact §§ 34.30 through 34.42 to be added to Chapter 34 (Finance), as provided below:**

MEALS TAX

Sec. 34.30 - 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:

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

*Collector* means the treasurer or designee and any duly designated deputies, assistants, inspector or other employees.

*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 or vehicle 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 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.

Sec. 34.31 - Taxes levied.

There is hereby imposed and levied by the town on each person a tax at the rate of three percent (3%) 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.

Sec. 34.32 - Collection procedure.

(a) 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, that 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.

(b) All tax collections shall be deemed to be held in trust for town.

Sec. 34.33 - 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) Food sold in bulk. For the purposes of this article, 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 Women, Infants, and Children.
  - (6) Any food or food product purchased for home consumption as defined in the Federal Food Stamp Act of 1977, 7 USC 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 subsection (c)(3), (4) and (5) of this section.
- (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 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. 34.34 - Gratuities and service charges.

(a) Where a purchaser provides a gratuity for an employee of 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.

(b) An amount or percent, whether designated as a gratuity, tip or service charge, that is added to the price of the 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 and is subject to the tax imposed by this article.

Sec. 34.35 - 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 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 taxes collected during each calendar month shall be reported to the town and remitted by each seller to the town on or before the 20th day of the following calendar month.

Sec. 34.36 - Interest and penalty for failure to remit tax.

If any person shall fail or refuse to remit the taxes collected as required by this article, there shall be imposed, in addition to other penalties provided herein, a specific penalty to be added to the tax in the amount of five percent for each month or fraction thereof, during which the failure continues, not to exceed 25 percent in the aggregate. In addition, interest at the rate of 10 percent per annum shall be computed and collected upon the taxes and penalty from the date such taxes are due and payable. Whenever imposed, the interest and penalty shall be considered a part of the taxes due.

Sec. 34.37 - Failure or refusal to collect and report tax.

If any person shall fail or refuse to collect the tax imposed and levied by this article and to make within the time provided in this article the report remittance required, the town shall proceed in such manner as it may deem best to obtain facts and information on which to base the tax due. As soon as the town shall procure such facts and information as it is able to obtain upon which to base the assessment of any tax due and payable by any person who has failed or refused to collect such tax and to make such report and remittance, it shall proceed to determine and assess against such person such tax and penalty and interest as are provided for in this article and shall notify such person by registered mail, sent to his last known address, of the amount of such tax, penalty and interest, and the total amount thereof shall be payable within ten days from the date of such notice.

Sec. 34.38 - Taxes due upon cessation of business.

Whenever any person required to collect and remit the tax imposed and levied by this article shall go out of business, dispose of his business or otherwise cease to operate, all such taxes collected shall thereupon be reported and remitted to the town.

Sec. 34.39 - Records required to be kept; open for inspection.

Every seller shall keep complete sales records for a period of four years showing all such purchases, which records shall show the charge made against each purchaser with respect to each purchase, the date thereof, the date of payment thereof, and the amount of tax imposed hereunder, and such records shall be kept open for inspection by the duly authorized agents of the town at reasonable times, and the duly authorized agents of the town shall have the right, power and authority to make such transcripts thereof during such times as they may desire.

Sec. 34.40 - Violation of article provisions; penalty.

It shall be unlawful for any person to violate any of the provisions of this article, and any person violating any of the provisions of this article shall be guilty of a class 1 misdemeanor and, upon conviction thereof, shall be punished in accordance with the other provisions of this Code. Each violation and each day's continuance thereof shall constitute a separate offense. Such conviction shall not relieve any person from the payment, collection or remittance of the taxes provided in this article.

Sec. 34.41 - Suspension or nonissuance of business license.

In addition to any other penalties provided in this article and the Code, the town shall immediately suspend the business license of any person violating any of the provisions of this article and shall refuse to issue any further license to such person to do business in the town until such person shall be in compliance with the provisions of this article.

Sec. 34.42 - Severability.

The provisions of this article are hereby declared to be severable. If any part, section, subsection, provision, sentence, clause or phrase, or the application thereof to any person or circumstance, is for any reason adjudged to be unconstitutional or invalid, the remainder of the article shall remain in full force and effect and its validity shall not be impaired, it being the legislative intent now hereby declared that this article would have been adopted even if such invalid matter had not been included in it or if such invalid application had not been made.

**2. THAT this Ordinance shall be effective September 1, 2023; and**

**3. THAT this Ordinance shall sunset and be repealed automatically and of no further force or effect on August 31, 2024, unless further amended by Town Council.**

**ADOPTED: \_\_\_\_\_, 2023**

**AYES:**

**NAYS:**

**ABSTENTIONS:**

**ABSENT:**

**ATTEST:**

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Mayor, Town of Irvington, Virginia