

Ordinance No. 1108 (Meals Tax)

Adopted by the Town Council of Jarratt: November 11, 2014

ORDINANCE – A four (4) percent Prepared Food and Beverage (Meals) Tax

In accordance with the Va. Code 58.1-3840, the Jarratt Town Council is electing to impose a four (4) percent tax on Prepared Food and Beverages. The Prepared Food and Beverage Tax will be known as the “meals” tax throughout this ordinance.

A meals tax will broaden our tax base, with non-residents paying a large percentage of the tax. The majority of our revenue now comes from real estate taxes, which places most of the tax burden on our home owners. The meals tax will diversify the sources of revenue for the Town and will help fund a variety of operational needs and the possibility of funding some capital projects.

1108-1 Definitions

Beverages: the term “beverage” means alcoholic beverages as defined in Code of Virginia 4.1-100 and nonalcoholic beverages as part of a meal.

Caterer: the term “caterer” means any person who furnishes food on the premises of another for compensation.

Food: the term “food” means any and all edible refreshments or nourishment, liquid or otherwise, including alcoholic beverages, purchased in or from a restaurant or from a caterer, except snack food.

Grocery items: the term “grocery items” means any food and foodstuffs, green groceries, including whole fruits and vegetables, beverages and household goods usually prepackaged or measured into quantities for household use from containers made for retail grocery or baking sales and usually not suitable for immediate consumption by the purchaser. Grocery items, sometimes called staples or dry goods, include, but not limited to, sugar, flour, spices, dry pasta, loaves of bread, whole chickens, ground coffee, coffee beans, bagged tea, cooking oils, and canned or jarred goods.

Meals: the term “meals” means any prepared food and beverage sold for human consumption, whether designated as breakfast, lunch, dinner, supper or by some other name, and without regard to the manner, time, and place of service or consumption, except that the following do not constitute meals: (1) grocery items, (2) snacks, (3) beverages alone, and (4) any combination consisting entirely of snack foods, beverages, or grocery items.

Occasional Sale: the term “occasional sale” means a sale by a person (seller) who is engaged in sales on three (3) or fewer separate occasions within one (1) calendar year.

Person: the term “person” means any individual, corporation, company, association, firm, partnership or any group of individuals acting as a unit.

Purchaser: the term “purchaser” means any person who purchases food in or from a restaurant or from a caterer.

Restaurant: the term “restaurant” means any one of the following:

1. Any place where food is prepared for service to the public on or off the premises, or any place where food is served. Examples of such places include but are not limited to lunchrooms, short order places, cafeterias, coffee shops, cafes, taverns, delicatessens, dining accommodations of public or private clubs, kitchen facilities of hospitals and nursing homes, dining accommodations of public and private schools and colleges, and kitchen areas of correctional facilities subject to standards adopted under Code of Virginia 53.1-68. Excluded from the definition are places manufacturing packaged or canned foods which are distributed to grocery stores or other similar food retailers for sale to the public.

2. Any place or operation which prepares or stores meals for distribution to persons of the same business operation or of a related business operation for service to the public. Examples of such places or operations include but are not limited to operations preparing or storing food for catering services, push cart operations, hotdog stands, and other mobile points of service. Such mobile points of service are also deemed to be restaurants unless the point of service and of consumption is in a private residence.

Seller: the term “seller” means any person who sells food in or from a restaurant or as a caterer.

Snack Food: the term “snack food” means any candy, chewing gum, peanuts and other nuts, popcorn, cookies, crackers, donuts, muffins, bagels, potato chips, ice cream or frozen yogurt.

1108-2 Levy of tax; amount

For the purpose of funding needs, there is hereby imposed and levied by the Town of Jarratt a tax on food and beverages sold as meals by restaurants and on prepared foods ready for human consumption at a delicatessen counter sold by grocery stores and convenience stores. The rate of the tax shall be four (4) percent of the sales price.

1108-3 Exemptions

The following transactions shall not be subject to the tax under this ordinance:

1. Food and beverages sold through vending machines
2. Food and beverages sold by boardinghouses that do not accommodate transients
3. Food and beverages sold by cafeterias operated by industrial plants for employees only
4. Food and beverages sold by restaurants to their employees as part of their compensation when no charge is made to the employee
5. Food and beverages sold by volunteer fire departments and rescue squads; nonprofit churches or other religious bodies; educational, charitable, fraternal, or benevolent organizations, on an occasional basis, not exceeding three (3) times per calendar year as a fundraising activity, the gross proceeds of which are to be used by such church, religious body or organization exclusively for nonprofit educational, charitable, benevolent, or religious purposes
6. Food and beverages sold by churches that serve meals for their members as a regular part of their religious observances
7. Food and beverages sold by public or private elementary or secondary schools, colleges, and universities to their students or employees
8. Food and beverages sold by hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or residents
9. Food and beverages sold by day care centers
10. Food and beverages sold by homes for the aged, infirm, handicapped, battered women, narcotic addicts or alcoholics
11. Food and beverages sold by age-restricted apartment complexes or residences with restaurants, not open to the public, where meals are served and fees are charged for such food and beverages and are included in rental fees
12. Food and beverages when used or consumed and paid for by the Commonwealth of Virginia, any political subdivision of the Commonwealth of Virginia, or the United States
13. Food and beverages provided by public or private nonprofit charitable organization or establishment to elderly, infirm, blind, handicapped, or needy persons in their homes, or at central locations
14. Food and beverages provided by private establishments that contract with the appropriate agency of the Commonwealth of Virginia to offer food, food products, or beverages for immediate consumption at concession prices to elderly, infirm, blind, handicapped, or needy persons in their homes or at central locations

15. That portion of the amount paid by the purchaser as a discretionary gratuity in addition to the sales price
16. That portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by the restaurant in addition to the sales price, but only to the extent that such mandatory gratuity or service charge does not exceed twenty (20) percent of the sales price
17. Alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption; and
18. Food purchased for human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U. S. C 2012, as amended, and federal regulations adopted pursuant to the Act, except for the following items; sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

1108.4 Certificate of registration

1. Every person responsible for the collection of the tax levied under this ordinance shall file an application for a certificate or registration with the Town office. The application shall be on a form prescribed by the Town office to provide information for the assessment and collection of this tax and for the enforcement of the provisions of this ordinance.
2. Upon approval of the application by the Clerk a certificate of registration authorizing the collection of this meals tax shall be issued to the applicant.
3. Each person with a certificate of registration pursuant to this ordinance shall notify the Clerk of Jarratt of any changes to the information provided on their application for the certificate within thirty (30) days of the change.

1108.5 Payment and collection of tax

1. Every seller of food and beverages with respect to which a tax is levied under this ordinance shall collect the amount of tax imposed under this ordinance from the purchaser on whom the same is levied at the time payment for such food and beverages become due and payable, whether payment is made in cash, by check, electronic funds transfer, 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 and beverages by the seller who shall pay the taxes collected to the Town as provided in this ordinance. Taxes collected by the seller shall be held in trust by the seller until remitted to the Town. The wrongful and fraudulent use of such collections other than remittance of the same as provided by law shall constitute embezzlement pursuant to Code of Virginia, 18.2-111.
2. Businesses located in the County of Greenville and located in the Town limits that are now required by the county to submit a meals tax to the county will not be required to submit said tax to the Town. Once the error of the county taxation is corrected, those businesses will be required to abide by this ordinance.

1108.6 Commission to seller for collection of tax

For the purpose of defraying some of the costs incurred by the seller in collecting the tax imposed by this article, every seller who files and pays the tax levied under this ordinance in a timely manner shall be allowed three (3%) percent of the amount of the tax due and accounted for in the form of a deduction on his/her return.

1108.7 Reports and remittances generally

Every seller of food and beverages with respect to which a tax is levied under this ordinance shall make out a report, upon such forms and setting forth such information as the Town may prescribe and require, and shall sign and deliver such report to the Town Clerk with a remittance of such tax. Such reports and remittance shall be made on or before the 20th day of each month, covering the amount of tax collected during the preceding month.

1108.8 Preservation of records

It shall be the duty of any seller of food and beverages liable for collection and remittance of the taxes imposed by this ordinance to keep and preserve for a period of five (5) years records showing gross sales of all food and beverages, the amount charged to the purchaser for each such purchase, the date of the purchase, the taxes collected on the purchase, and the amount of tax required to be collected under this ordinance. The Town Clerk 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 ordinance and to make copies of all or any parts of the records.

1108.9 Duty of seller when going out of business

Whenever any person required to collect or pay to the Town a tax under this ordinance shall cease to operate or otherwise dispose of a business required to collect and pay to the Town a tax under this ordinance, any tax payable under this ordinance shall become immediately due and payable, and such person shall immediately make a report and pay the tax due.

1108.10 Enforcement; duty of Town Clerk; powers of Clerk and Mayor

The Town Clerk shall promulgate rules and regulations for the interpretation, administration and enforcement of this ordinance. It shall also be the duty of the Town Clerk to ascertain the name of every seller liable for the collection of the tax imposed by this ordinance who fails, refuses or neglects to collect such tax or to make reports and remittances required by this ordinance. The Town Clerk shall have all of the enforcement powers authorized under Code of Virginia, title 58.1, chapter 31, article 1 (Code of Virginia 58.1-3100) for the purpose of this ordinance.

Police powers are conferred upon the Town Clerk and Mayor of Jarratt, appointed pursuant to Sec. 20-353 of Article XI of the Code. The Town Clerk and/or Mayor shall exercise all the powers and authority of police officers granted to them in performing those duties. They may have summons issued for any person, charging him/her with a violation of the provision of this ordinance and may serve a copy of such summons upon such person in the manner provided by law. He/she shall return the original to the general district court with the manner and time of service stated on the summons.

1108.11 Penalty for failure to file report or pay tax; interest on unpaid tax

1. If any person shall fail or refuse to file with the Town Clerk the report required under this ordinance within the time specified in this ordinance, there shall be assessed a penalty in the amount of ten (10%) percent of the tax assessable on such report. Such penalty shall be assessed on the day following the day on which the report was due. Any such penalty, when assessed, shall become a part of the tax. The imposition of such penalty shall not be deemed a defense to any criminal prosecution for failing to make any report required in this ordinance.
2. If any person shall fail or refuse to remit to the Town Clerk the tax required to be collected and paid under this ordinance within the time specified in this ordinance, there shall be a penalty of ten (10%) percent of the tax past due. Such penalty shall be assessed on the day following the day on which the tax was due. Any such penalty, when assessed, shall become a part of the tax.
3. In addition, there shall be assessed interest at the rate of ten (10%) percent per year on the amount of tax past due, which interest shall commence on the day following the day on which the tax was due and continue until paid.

1108.12 Procedure upon failure to file return or pay tax

If any person shall fail or refuse to collect the tax imposed under this ordinance or to make within the time provided in this ordinance the reports and remittance required in this ordinance, the Town Clerk shall make an estimate of the amount of taxes due the Town by such person upon the best information available and shall proceed to determine and assess against such person such tax and penalty and interest as provided for in this ordinance. The Town Clerk shall notify such person by registered mail, sent to his/her last known address, of the amount of such tax and interest and penalty, and the total amount thereof shall be payable within ten (10) days from the date of such notice.

1108.13 Bond or letter of credit

The Town Clerk shall require any seller with a record of late filling of the tax returns or of late remittance of the taxes required by this ordinance to post annually a bond in a form acceptable to the Town Council and payable to the Town of Jarratt to insure the seller's faithful performance of the requirements of this ordinance. The bond shall be in an amount which is three (3) times the taxes collected or which should have been collected by the seller during the preceding month, but in no case shall be less than \$1,000. An irrevocable letter of credit from a local bank approved by the Town Council with an expiration date not earlier than one year from the date of issuance in the amount specified in this section and payable to the Town of Jarratt may be accepted in lieu of the bond.

1108.14 Criminal penalties

Any person required to collect, account for, and pay over the tax levied in this ordinance who willfully fails to collect or truthfully account for and pay over such tax, and any such officer or person who willfully evades or attempts to evade any such tax or the payment thereof, shall be guilty of a class 1 misdemeanor. Any person who willfully violates any other provision of this ordinance shall be guilty of a class 3 misdemeanor.

1108.15 Severability

1. The sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional or invalid by the valid judgment or decree of a court of competent jurisdiction, the remaining phrases, clauses, sentences, paragraphs and section of this article shall remain valid.
2. That all revenues generated by the meals tax shall be dedicated to the operational needs of the Town of Jarratt's Property Maintenance Ordinance and capital improvements within the Town limits.
3. That this ordinance shall be in full force and in effect beginning on January 01, 2015, except that the Jarratt Code Sec. 1108.4 titled "Certificate of registration" shall be in full force and in effect immediately upon passage of this ordinance so that the Town Clerk can receive applications prior to January 01, 2015 and issue certificates of registration with an effective date of January 01, 2015.