

MEALS TAX ORDINANCE
TOWN OF IRON GATE, VIRGINIA
ORDINANCE NO. MT. 3-97

ADOPTED: 3/27/97
EFFECTIVE: 4/1/97

Under the authority of section 58.1-3840 of the Code of Virginia, (1950), as amended, permits the Town of Iron Gate to charge an excise tax on meals sold within the Town limits.

Section 1: Definitions: For the purpose of this ordinance the following words and phrases shall have the respective meanings ascribed to them herein except where the context clearly indicates a different meaning:

- (a) Caterer: A person who furnishes food on the premises of another for compensation.
- (b) Food: Any and all edible refreshments or nourishment, liquid or otherwise, including alcoholic beverages, purchased in or from a restaurant or from a caterer.
- (c) Person: Any individual, corporation, company, association, firm, partnership or any group of individuals acting as a unit.
- (d) Purchaser: Any person who purchases food in or from a restaurant or from a caterer.
- (e) Restaurant: Any place in or from which food is sold in the Town, including, but not limited to, 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, and dining accommodations of private schools and colleges. Excluded from the definition are places manufacturing packages or canned foods which are distributed to grocery stores or other similar food retailers for sale to the public.

The term also includes 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 such places or operations include, but are not limited to, operations preparing or storing food for catering services, pushcart operations, hot-dog 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. The word "restaurant" shall not mean a grocery store, convenience store, or supermarket except for any space or section herein designated as a delicatessen which sells prepared food ready for human consumption or for the sale of prepared sandwiches and singles-meal platters.

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

(g) Treasurer: The treasurer of the Town of Iron Gate and any duly authorized deputies, assistants, employees or agents.

Section 2. 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 in the Town in or from a restaurant, whether prepared in such restaurant or not and regardless of whether it is consumed on the premises.

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 (1/2) cent or more shall be treated as one (1) cent.

Section 3. Payment and collection of tax.

Every seller of food 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 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 costs of the food 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.

Section 4. Reports and remittances generally.

Every seller of food 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 Treasurer 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 Treasurer with a remittance of such tax. Such reports and remittance shall be made on or before the twentieth (20th) day of each month, covering the amount of tax collected during the preceding month.

Section 5. Preservation or records.

It shall be the duty of any seller of food liable for collection and remittance of the taxes imposed by this ordinance 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

of each purchase, the date thereof, the taxes collected thereon and the amount of tax required to be collected by this ordinance. The treasurer shall have the power to examine such records at reasonable times and without unreasonable disruption of 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 thereof.

Section 6. 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 ordinance will be paid or absorbed by the seller or by anyone else, or that the seller or anyone else will relieve the purchaser of the payment of all or any part of the tax.

Section 7. Tips and service charges.

Where a purchaser provides a tip for any employee of an 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 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.

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 ordinance.

Section 8. Duty of seller when going out of business.

Whenever any seller required to collect and pay to the Town a tax under this ordinance shall cease to operate or otherwise dispose of his business, any tax payable

under this ordinance shall become immediately due and payable and such persons shall immediately make a report and pay the tax due.

Section 9. Discount.

For the purpose of compensating sellers for the collection of the tax imposed by this ordinance, every seller shall be allowed three percent (3%) of the amount of the tax due and accounted for in the form of a deduction on his monthly return, provided the amount due is not delinquent at the time of payment.

Section 10. Enforcement; duty of Treasurer.

The treasurer shall promulgate rules and regulations for the interpretation, administration and enforcement of this ordinance. It shall be the duty of the Treasurer 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 the reports and remittance required by this ordinance. The Treasurer may have issued a summons for such person and may serve a copy of such summons upon such person in the manner provided by law. One return of the original summons shall be made to the General District Court of Alleghany County. Police powers are hereby conferred upon the Treasurer and Duly authorized deputies, assistants, employees and agents while engaged in their duties pursuant to this ordinance, and they shall exercise all the powers and authorities of police offices in performing such duties

Section 11. 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 ordinance and to make, within the time provided in this ordinance, the reports and remittances mentioned in this ordinance, the Treasurer shall proceed in such manner,

as may be deemed best, to obtain facts and information on which to base an estimate of the tax due. As soon as the Treasurer has procured such facts and information sufficient to establish an assessment of any tax payable by any seller, who has failed or refused to collect such tax and to make such report and remittance, shall proceed to determine and assess against such seller the tax and penalties provided for by this ordinance 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.

Section 12. Duty of Town 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 of the Town.

Section 13. Interest and penalty for late remittance or false return.

(a) Any seller who fails or refuses to file any report required by this ordinance or to remit to the Treasurer the tax required to be collected and paid under this ordinance shall be penalized as follows: The Treasurer shall add interest to such tax, at the rate of ten percent (10%) per annum on all amounts due, which shall accrue until paid in full, together with a penalty in the amount of ten percent (10%) if the failure is not more than thirty (30) days, with a additional penalty of ten percent (10%) of the total amount of tax owed along with all penalties for late payments previously levied for each addition thirty (30) days or fraction thereof during which the failure continues, not to exceed twenty-five percent (25%) in the aggregate, with minimum penalty of two dollars (\$2.00).

(b) In the case of a false or fraudulent return with intent to defraud the Town of any tax due under this ordinance, a penalty of fifty percent (50%) of the tax shall be assessed against the person required to collect such tax, together with interest at the rate of ten percent (10%) per annum shall continue to accrue until paid in full.

Section 14. Violations of ordinance.

Any person violating, failing, refusing or neglecting to comply with any provision of this ordinance shall be guilty of a Class 3 misdemeanor. Conviction of such violation shall not relieve any person from the payment, collection or remittance of the taxes provided for in this ordinance. An agreement by any person to pay the taxes provided for in this ordinance by a series of installment payments shall not relieve any person of criminal liability for violation of this ordinance until the full amount of taxes agreed to be paid by such person is received by the Treasurer. Each failure, refusal, neglect or violation, and each day's continuance thereof, shall constitute a separate offense.

Section 15. Exemptions.

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

(a) Food furnished by restaurants to employees as part of their compensation when no charge is made to the employee.

(b) Food sold by nonprofit day care centers, public or private elementary or secondary schools or food sold by any college or university to its students or employees.

(c) Food for such or consumption by the Commonwealth, any political subdivision of the Commonwealth or the United States.

(d) Food furnished by a hospital, medical clinic, convalescent home, nursing home, home for the aged, infirm or handicapped other extended care facility to patients or residents thereof.

(e) Food furnished by a nonprofit charitable organization to elderly, infirm, handicapped or needy persons in their homes or at central locations.

(f) Food sold by a nonprofit educational, charitable or benevolent organization on an occasional basis as a fund-raising activity or food sold by church or religious body on an occasional basis.

(g) Any other sales of food which is exempt from taxation under the Virginia Retail Sales and Use Tax Act, or administrative rules and regulations issued pursuant thereto.

(h) Food sold through vending machines.

MEALS TAX ORDINANCE NO. MT. 3-97

AT A REGULAR MEETING OF THE IRON GATE TOWN COUNCIL HELD ON THURSDAY, MARCH 27, 1997, AT 7:00 P.M. IN THE TOWN HALL IN IRON GATE, VIRGINIA

WHEREAS, Section 58.1-3840 of the Code of Virginia, (1950), as amended, permits the Town of Iron Gate to charge an excise tax on meals sold within the Town limits; and


WHEREAS, the Iron Gate Town Council finds it appropriate to adopt an ordinance imposing a tax on certain food and beverages sold within the Town of Iron Gate.

NOW THEREFORE, BE IT ORDAINED, by the Town Council of the Town of Iron Gate, Virginia, that the following ordinance is hereby adopted.

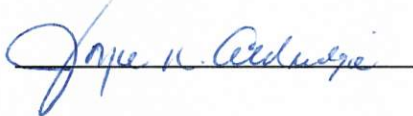
This ordinance is hereby adopted on motion made by council member Otis Payne, and seconded by Council Member Edna P. Lucado, with the following votes recorded.

AYES 4
NAYS 0
ADOPTED: 3/27/97

APPROVED:


Lethia C. Hammond, Mayor

ATTEST:



ADDENDUM A

AMENDMENT TO MEALS TAX ORDINANCE NO. MT. 3-97 OF THE TOWN OF IRON GATE

Section 16. Examples of Food and Beverage Taxable/Nontaxable items for Specific Businesses.

It shall be the responsibility of the seller of the food and beverage to maintain records detailing taxable receipts and nontaxable receipts.

A. Grocery Store/Supermarket/Convenience Store

The tax applies to the sale of prepared food and beverage items from a delicatessen section operated within the grocery and convenience stores.

Taxable items:

All sandwiches (hot or cold), all hot foods, hot dogs, salad bar items sold from a salad bar, single serving salads, non-factory sealed beverages, fountain beverages, a cup of hot coffee or hot chocolate.

Frozen or chilled factory packaged, single serving sandwiches, burrito, and the like, sold in an establishment that provides a heating device to render the item palatable, are meal taxable.

Nontaxable items:

Include but are not limited to factory sealed beverages such as beer and wine (for off-premise consumption), factory sealed soft drinks and bottled water.

Meats and seafood, sold by the pound, that provide employee operated steam cooking at no additional charge, is a non-meal taxable item.

Single and bulk servings of fruit.

Cakes, doughnuts, brownies, rolls, muffins, loose or prepackaged cookies, pastries, chips and the like.

Foods that are cooked and then chilled in accordance with health and food handling regulations, but packaged for home consumption.

B. Bakery

Taxable Items:

Non-factory sealed beverages. All sandwiches (hot or cold).

Nontaxable items:

Factory sealed soft drinks and bottled water.
Cakes, doughnuts, brownies, rolls, muffins, pastries, loose or prepackaged cookies, chips and the like.

Whole or half pies and cakes and non-food items..

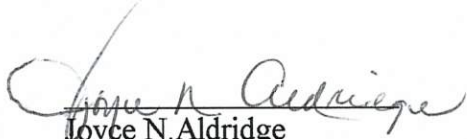
C. Buffets

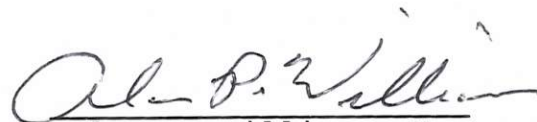
Taxable Items: All food and beverage items, all foods available for consumption sold at one price.

Nontaxable Items: Whole or half pies and cakes, non-food items, and factory-sealed beverages sold for a separate price.

Amended by Town Council at the Regular Meeting held on April 26, 2001.

TESTE:


Loyce N. Aldridge
Clerk of Council


Alan P. Williams, Mayor