

ORDINANCE ENACTING
ARTICLE XX
FOOD AND BEVERAGE TAX
OF THE CODE OF ORDINANCES
OF
SHENANDOAH COUNTY, VIRGINIA

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF SHENANDOAH COUNTY, VIRGINIA:

Sec. 146 - 109. Food and Beverage Tax Levied.

Pursuant to Section 58.1-3833 of the Code of Virginia, there is hereby imposed and levied a tax at the rate of six percent on the gross amount paid for Food and Beverages sold for human consumption by all Restaurants and Food Establishments as defined herein. This food and beverage tax shall be in addition to the sales tax.

Sec. 146 - 110. 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:

Beverage. As used herein, the term beverage shall mean alcoholic beverages as defined in Virginia Code Section 4.1-100 and nonalcoholic beverages served as a part of a meal.

Caterer (or to cater) shall mean: a Person who furnishes Food or Beverages, or both, on the premises of another, for compensation.

Corporate, partnership or limited liability company officer shall mean: an officer or employee of a corporation, or a member or employee of a partnership, or member, manager or employee of a limited liability company who, as such officer, employee, member or manager, is under a duty to perform on behalf of the corporation, partnership or limited liability company, the acts required under this Article and who (i) had actual knowledge of the failure or attempt to refrain from acting as required herein and (ii) had authority to prevent such failure or attempt.

Food shall mean: 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 shall mean Restaurant.

Meal shall mean: any prepared Food and Beverage as defined herein offered or held out for sale by a Food Establishment for the purpose of being consumed by any Person and is ready for immediate consumption. All such Food and Beverage, unless otherwise specifically exempted 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 services.

Person shall mean: any corporate, partnership, limited liability, sole proprietorship, or any other business entity, or natural person.

Restaurant means:

1. Any place where Food is prepared for service to the public on or off the premises, or any place where Food is served, including 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 institutions of higher education, and kitchen areas of local correctional facilities subject to standards adopted under § [53.1-68](#).
2. Any place or operation that prepares or stores Food for distribution to Persons of the same business operation or of a related business operation for service to the public, including operations preparing or storing Food for catering services, pushcart operations, hotdog stands, and other mobile points of service.
3. Mobile points of service to which Food is distributed by a place or operation described in subdivision 2 unless the point of service and of consumption is in a private residence.
4. Any place or operation that prepares or stores Food for distribution to child or adult day centers or schools, regardless of whether the receiving day center or school holds a restaurant license.

"Restaurant" does not include any place manufacturing packaged or canned foods that are distributed to grocery stores or other similar retailers for sale to the public.

Sec. 146 - 111. Exemptions.

Such tax shall not be levied on Food and Beverages sold through vending machines or by (i) boardinghouses that do not accommodate transients; (ii) cafeterias operated by industrial plants for employees only; (iii) restaurants to their employees as part of their compensation when no charge is made to the employee; (iv) volunteer fire departments and volunteer emergency medical services agencies; nonprofit churches or other religious bodies; or educational, charitable, fraternal, or benevolent organizations the first three times per calendar year and, beginning with the fourth time, on the first \$100,000 of gross receipts per calendar year from sales of Food and Beverages (excluding gross receipts from the first three times), 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;

(v) churches that serve meals for their members as a regular part of their religious observances; (vi) public or private elementary or secondary schools or institutions of higher education to their students or employees; (vii) hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or residents thereof; (viii) day care centers; (ix) homes for aged or infirm individuals, individuals with disabilities, battered women, narcotic addicts, or alcoholics; (x) 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; or (xi) sellers at local farmers markets and roadside stands, when such sellers' annual income from such sales does not exceed \$2,500. For the exemption described in clause (xi), the sellers' annual income shall include income from sales at all local farmers markets and roadside stands, not just those sales occurring in the locality imposing the tax. Also, the tax shall not be levied on Food and Beverages (a) when used or consumed and paid for by the Commonwealth, any political subdivision of the Commonwealth, or the United States; (b) provided by a public or private nonprofit charitable organization or establishment to elderly, infirm, or needy individuals or individuals with blindness or other disabilities in their homes, or at central locations; or (c) provided by private establishments that contract with the appropriate agency of the Commonwealth to offer Food, food products, or Beverages for immediate consumption at concession prices to elderly, infirm, or needy individuals or individuals with blindness or other disabilities in their homes or at central locations.

Additionally, this tax shall not be levied upon (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition to the sales price; (ii) 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 20 percent of the sales price; or (iii) alcoholic Beverages sold in factory sealed containers and purchased for off-premises consumption or 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 that 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 non-factory sealed beverages.

Sec. 146 - 112. Collection of tax by seller.

(a) Every Person receiving any payment for Food or Beverages with respect to which this tax is levied 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 or Beverage at the time payment for such Food or Beverage is made.

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

Sec. 146 - 113. Duties of the Commissioner of the Revenue.

(a) It shall be the duty of the Commissioner of the Revenue to ascertain the name of every Person operating a Restaurant in the County who may be liable for the collection of the tax levied by this article.

(b) If any Person required to collect and remit the tax imposed by this article fails to file a report, or if the Commissioner has reasonable cause to believe that an erroneous report has been filed, the Commissioner may proceed to determine the amount due to the County. In connection with such determination, the Commissioner shall make such investigations and take such testimony and other evidence as may be necessary and shall report the determination to the Treasurer. However, notice and opportunity to be heard shall be given to any Person who may become liable for the amount owing prior to any such determination by the Commissioner.

Sec. 146 - 114. Reporting of taxes collected; remittance; preservation of records.

(a) It shall be the duty of every Person required by this Article to collect the taxes imposed by this Article to make a report thereof to the Commissioner setting forth such information as the Commissioner may prescribe and require, including all purchases taxable under this Article, the amount charged for the purchase for each such purchase, the date thereof, the taxes collected thereon and the amount of tax required to be collected by this Article. Such reports shall be made to the Commissioner.

(b) The taxes required to be collected under this Article shall be remitted to the Treasurer.

(c) All reports and payments required under this Article shall be made on or before the 20th day of the month following each month and covering the amount of tax collected during the preceding month.

(d) All records related to the calculation and imposition of the tax shall be kept and preserved for a period of five years. The Commissioner or his duly authorized agents shall be entitled 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 copies of all or any parts thereof.

Sec. 146 - 115. Duty of seller when going out of business.

Whenever any Person required to collect and pay to the County the tax imposed by this Article shall cease to operate, go out of business or otherwise dispose of his business, any tax then payable to the County shall become immediately due and payable, and such Person shall immediately make a report and pay the tax due to the County.

Sec. 146 - 116. Interest, penalties, attorney's fees.

If any Person shall fail or refuse to remit to the Treasurer the tax required to be collected and paid under this Article within the time and in the amount specified in this Article, there shall be added to such tax by the Treasurer, interest at the rate of 10 percent for the first month the taxes are past due, and five percent for each month thereafter, up to a maximum of 25 percent of the taxes collected but not remitted; or \$10, whichever is greater, provided, however, that the interest shall in no case exceed the amount of the tax assessable.

If any Person shall fail or refuse to file a return required by this Article in the time specified, there shall be added to the tax by the Commissioner of Revenue a late filing penalty of 10% of the tax assessable on such return or \$10, whichever is greater; provided, however, that the penalty shall in no case exceed the amount of the tax assessable.

Penalty for failure to file an application or return may be assessed on the day after such return or application is due; penalty for failure to pay any tax may be assessed on the day after the first installment is due. Any such penalty and interest when so assessed shall become a part of the tax. If an attorney or collection agency is contracted to collect unpaid tax, Persons failing to pay such tax must all pay for all reasonable attorney's or collection agency's fees actually contracted for, not to exceed 20 percent of the delinquent taxes and other charges so collected. The assessment of such penalty and interest shall not be deemed a defense to any criminal prosecution for failing to comply with this Article.

Sec. 146 - 117. Violations and penalties.

(a) Any Person in violation of this Article shall be guilty of a Class 1 misdemeanor.

(b) Each violation of or failure to comply with this Article 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 Article.

(c) All Food and Beverage tax collections shall be deemed to be held in trust for the County. The wrongful and fraudulent use of such collections other than remittance of the same as provided herein shall constitute embezzlement pursuant to § 18.2-111.

Sec. 146 - 118. Application within towns.

The tax imposed by this Article shall not apply within the limits of any town in Shenandoah County where such town imposes a town meals tax. However, if the governing body of a town provides that the County meals tax, as well as the town meals tax, applies within that town, then the tax imposed by this Article shall be imposed within that town.

This ordinance shall be effective January 1, 2026.

Adopted this ___ day of _____, 2025.

Chairman

CERTIFICATION

The undersigned Clerk of the County of Shenandoah, Virginia hereby certifies that the foregoing constitutes a true and correct copy of an Ordinance Enacting Article XX Food and Beverage Tax of the Code of Ordinances of Shenandoah County, Virginia adopted by the Board of Supervisors at a meeting held on _____, 2025. A record of the roll-call vote by the Board of Supervisors is as follows:

<u>NAME</u>	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
Josh Stephens, Chairman				
Dennis Morris, Vice Chairman				
Steven A. Baker				
David E. Ferguson				
Karl Roulston				
Timothy F. Taylor				

_____ Date

_____ Clerk

ATTEST:

_____ Clerk

_____ Chairman, Board of Supervisors