AN ORDINANCE AMENDING CHAPTER 4 OF THE FAIRFAX COUNTY CODE, RELATING TO A FOOD AND BEVERAGE TAX

Draft of March 5, 2025

AN ORDINANCE to amend the Fairfax County Code by amending Chapter 4 by adding a new Article 31 relating to a Food and Beverage Tax.

Be it ordained by the Board of Supervisors of Fairfax County:

1. **That Article 31 of Chapter 4 of the Fairfax County Code is adopted as follows:**

CHAPTER 4 – Taxation and Finance.

Article 31. – Food and Beverage Tax.

Section 4-31-1 – Title.

This ordinance shall hereafter be known, cited and referred to as the Fairfax County "Food and Beverage Tax".

Section 4-31-2 - Definitions.

The following words and phrases, when used in this Article, have, for the purposes of this Article, the following respective meanings except where the context clearly indicates a different meaning:

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

(b) *Caterer* means a person who furnishes food on the premises of another for compensation.

(c) *County* means the County of Fairfax, Virginia.

(d) *Director* means Director of the Department of Tax Administration or any duly authorized deputies or agents of the Director.

(e) *Food* means any and all edible refreshments or nourishment, liquid or otherwise, purchased in or from a restaurant or from a caterer, whether or not prepared in such restaurant or by such caterer, and whether or not consumed on the premises

of such restaurant or caterer, and without regard to the manner, time, or place of service.

(f) *Grocery items* mean 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, include, by way of illustration and not limitation, sugar, flour, spices, dry pasta, loaves of bread, ground coffee, coffee beans, loose or bagged tea, cooking oils, and canned, bottled and jarred goods.

(g) *Meal* means all food and beverages, including alcoholic beverages, offered or held out for sale for the purpose of consumption by a single person or a group, whether or not eaten in the place where it is bought or prepared including prepared food ready for human consumption at delicatessen counters of grocery and convenience stores in the County. "Meal" does not include grocery items, or snack foods alone or beverages alone.

(h) *Person* means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, firm, or any other legal or commercial entity and any successor, representative, agent, agency or instrumentality thereof.

(i) *Purchaser* means any person who purchases a meal in exchange for money or other legal consideration.

(j) *Restaurant* means any 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, 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 Va. Code § 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 b 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 care centers or schools, regardless of whether the receiving day care 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.

(k) *Seller* means any person who sells food in or from a restaurant or as a caterer.

(l) *Snack food* means pre-packaged doughnuts, chewing gum, candy, popcorn, peanuts, cookies and unopened cans of soda, bags of chips, or similar items sold separately, and not as part of a meal.

Section 4-31-3 – Amount and levy of tax.

Except as set forth in Section 4-31-16 below, there is hereby levied by the County a tax on food and beverages sold as meals by restaurants and caterers. The rate of the tax shall be a designated percent of the amount paid for such food and beverages, which rate will be set annually by the Fairfax County Board of Supervisors through a resolution. In the computation of this tax, any fraction of one-half cent ($0.005) or more shall be treated as one cent ($0.01).

Section 4-31-4 - Situs.

The tax imposed by this Article shall be levied on food and beverages sold as meals by a restaurant or caterer within Fairfax County. Meals delivered by third party delivery services will be taxed based on the location of the restaurant preparing the meal regardless of whether deliveries are inside or outside the County.

Section 4-31-5 - Collection of trust tax by the seller.

(a) Every seller, or the agent thereof, must collect the amount of such tax from the purchaser of such food and beverage at the time the payment is made, 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 cost of the food by the seller who must remit the taxes collected to the county as provided in this Article. Taxes collected by the seller shall be held in trust by the seller until remitted to the County.

(b) The taxes required to be collected under subsection (a) shall be deemed to be held in escrow by the owner or operator required to collect such tax, jointly and severally, until remitted to the County as provided in this Article.

Section 4-31-6 - Authority of Director.

The Director has the power and the duty of enforcing this Article including the authority to adopt reasonable procedures and regulations for the administration of the tax levied by this Article, including enforcing the payment, collection and remittance of the tax.

Section 4-31-7 - Reports and remittances generally.

(a) Every seller collecting the tax imposed by this Article must prepare a report for each calendar month, upon such forms and setting forth such information as the Director may prescribe and require, showing the amount of food and beverage charges collected and the tax required to be collected, and must sign and deliver such report to the Director with a remittance of such tax.

(b) Such reports and remittances must be submitted to the Director monthly on or before the twentieth (20^{th}) day of the calendar month covering the amount of tax collected during the preceding month.

Section 4-31-8 – 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 collects and remits the tax levied under this Article in a timely manner shall be allowed three percent (3%) of the amount of the tax due and accounted for in the form of a deduction on his return for the first two years after implementation of the food and beverage tax. Subsequently, beginning on January 1, 2028 and beyond, the discount allowed will be one percent (1%) of the tax levied if filed, remitted and paid in a timely manner.

Section 4-31-9 – Penalty and interest for failure to remit taxes when due.

Any seller who fails or refuses to remit taxes to the Director as set forth in this Article will be liable for a penalty equal to ten percent of the amount of the taxes required to be remitted. Additionally, interest will be charged on the unpaid balance at the applicable interest rate specified in County Code § 4-20-3. Such interest shall accrue from the first day following the date on which the tax was due and will continue to accrue until the date on which such payment is made in full.

Section 4-31-10 - Penalty for late remittance or false return.

If any seller fails or refuses to collect the taxes or to make the report and remittance required by this Article, the Director shall determine and assess against the seller the taxes that are due plus the penalties and interest computed upon the basis of the best information available to him and shall notify the seller by mail of the total amount of such taxes, interest, and penalties charged. The seller shall pay the total amount of taxes, interest, and penalties or the Director shall proceed to collect the taxes by other lawful means.

Section 4-31-11 - Preservation of records.

Except as may be provided by the Director, it shall be the duty of every person required to collect and remit the taxes levied under this Article to keep and preserve, for a period of at least the current year and the three prior years, all records as are necessary to enable the Director to determine the amount of taxes such seller was responsible for collecting and remitting to the County. The Director shall have all rights to summon, inspect, and copy such records as permitted by Title 58.1 of the Code of Virginia in order to administer or enforce the terms of this Article.

Section 4-31-12 - Duty of seller going out of business.

Whenever any seller required to collect and remit the taxes imposed under this Article disposes of or otherwise ceases to operate its business, all taxes payable to the County under this Article shall become immediately due and payable, and such seller must immediately make a report and remit the taxes due.

Section 4-31-13 – Criminal penalties for violation of Article.

(a) Any person willfully violating, failing, or refusing to comply with any provision of this Article shall be guilty of a Class 1 misdemeanor except that any person failing to file shall be guilty of a Class 3 misdemeanor if the amount of tax lawfully assessed in connection with a return is one thousand dollars ($1,000.00) or less. Conviction of such violation shall not relieve any person from the payment, collection or remittance of the taxes provided for in this Article. Any agreement by any person to pay the taxes provided for in this Article by a series of installment payments shall not relieve any person of criminal liability for violation of this Article until the full amount of taxes agreed to be paid by such person is received by the Director. Each failure, refusal, neglect or violation, and each day's continuance thereof, shall constitute a separate offense.

(b) Except as provided in subsection (a) above, any corporate, partnership or limited liability company officer, as defined in Code of Virginia § 58.1-3906, or any other person required to pay, collect, or truthfully account for and pay over the tax

imposed under this Article, who willfully fails to collect or truthfully account for or pay over such tax, or who willfully evades or attempts to evade or defeat such tax or payment thereof, shall, in addition to any other penalties imposed by law, be guilty of a Class 1 misdemeanor.

Sec. 4-31-14 - Tips, gratuities and service charges.

(a) Where a purchaser provides a gratuity for an employee or employees of a seller, and 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) A mandatory gratuity or service charge that is added to the price of the meal by the seller, and required to be paid by the purchaser, is not a part of the selling price of the meal and is exempt from the tax imposed by this Article, but only to the extent that such mandatory charge does not exceed 20% of the sale price.

Section 4-31-15 – Exemptions from tax.

The following transactions are not subject to the tax under this Article:

(a) Food and beverages sold through vending machines;

(b) Food and beverages sold by boardinghouses that do not accommodate transients;

(c) Food and beverages sold by cafeterias operated by industrial plants for employees only;

(d) Food and beverages sold by restaurants to their employees as part of their compensation when no charge is made to the employee;

(e) Food and beverages sold by volunteer fire departments and volunteer emergency medical services agencies (i.e. rescue squads); 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;

(f) Food and beverages sold by churches that serve meals for their members as a regular part of their religious observances;

(g) Food and beverages sold by public or private elementary or secondary schools or institutions of higher learning to their students or employees;

(h) Food and beverages sold by hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or residents thereof;

(i) Food and beverages sold by day care centers;

(j) Food and beverages sold by homes for the aged or infirm individuals, individuals with disabilities, battered women, narcotic addicts, or alcoholics;

(k) 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;

(l) Food and beverages sold by 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, 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.

(m) 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;

(n) Food and beverages 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;

(o) 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, or needy individuals or individuals with blindness or other disabilities in their homes or at central locations;

(p) Alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption; and

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, will not be subject to tax under this Article 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.

2. That for the time period from January 1, 2026 until June 30, 2026 the tax rate imposed by this ordinance will be ([6] *or* [5] *or* [4] *or* [3] *or* [2]) percent of the amount paid for food and beverages sold as meals by restaurants and caterers, subject to the provisions of this Article 31 of Chapter 4 of the Fairfax County Code.

3. That the provisions of this ordinance shall take effect on January 1, 2026.

GIVEN under my hand this ____ day of _____, 2025.

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Jill G. Cooper