

## CHAPTER 27

### TAXATION

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### ARTICLE I. GENERAL PROVISIONS

#### SECTION 27-1. DEFINITIONS.

The following words and phrases, when used in this chapter, shall have the following respective meanings, except where the context clearly indicates a different or contrary meaning or there is an express provision to the contrary:

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- (a) *COMMISSIONER*. The term Commissioner shall mean the Commissioner of the Revenue of the City of Winchester, Virginia.
- (b) *TREASURER*. The term Treasurer shall mean the Treasurer of the City of Winchester, Virginia. (Ord. No. 017-92, 11-10-92)

### **SECTION 27-2. PENALTIES; FAILURE TO PAY, FAILURE TO FILE.**

- (a) Unless otherwise stated, the penalty for failure to pay any tax or installment under this chapter shall be ten percent (10%) of the tax past due or the sum of two dollars (\$2.00), whichever is greater and shall be assessed on the day after the first installment is due. Provided, however, that in no case shall the penalty exceed the amount of the tax assessable.
- (b) Unless otherwise stated, the penalty for failure to file any application or return required under this chapter shall be ten percent (10%) of the tax assessable on such return or two dollars (\$2.00), whichever is greater, and shall be assessed on the day after such return or application is due. Provided, however, that in no case shall the penalty exceed the amount of the tax assessable.
- (c) Any penalty, when so assessed, shall become a part of the tax due.
- (d) The assessment of any penalty shall not be deemed a defense to any criminal prosecution for failing to make return of taxable property as may be required by law or ordinance.
- (e) Penalty for failure to file a return or to pay a tax shall not be imposed if such failure was not of the fault of the taxpayer, or was the fault of the Commissioner or the Treasurer. Failure to file a return or to pay a tax due to a medically determinable physical or mental impairment on the date the return or tax is due shall be presumptive proof of lack of fault on the taxpayer's part, provided the return is filed or the taxes are paid within thirty days (30) of the due date; however, this provision shall not apply if there is a committee, legal guardian or other fiduciary handling the individual's affairs.  
(Ord. No. 017-92, 11-10-92; Ord. No. 009-95, 03-14-95)

**State Law Reference--** Code of Virginia, §58.1-3916.

### **SECTION 27-3. INTEREST.**

Interest shall commence the first day following the day any taxes under this chapter are due to be filed or paid, at the rate of ten percent (10%) per annum. (Ord. No. 017-92, 11-10-92)

**State Law Reference--** Code of Virginia, §58.1-3916.

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### **SECTION 27-4. CRIMINAL PENALTIES.**

Failure or refusal to file any return required under this chapter at the time or times required therein or for making false statements with intent to defraud in such returns shall constitute: (a) A Class 3 misdemeanor if the amount of the tax lawfully assessed in connection with the return is one thousand dollars (\$1,000.00) or less, or (b) A Class 1 misdemeanor if the amount of the tax lawfully assessed in connection with the return is more than one thousand dollars (\$1,000.00). (Ord. No. 017-92, 11-10-92)

**State Law Reference--** Code of Virginia, §58.1-3916.1.

### **SECTION 27-5. MANNER OF CREDITING PAYMENT.**

The Treasurer may credit any payment of local assessment herein prescribed, other than the assessment for real estate taxes, first against the most delinquent local account, the collection of which is not subject to a defense of an applicable statute of limitations, as provided by Section 58.1-3913 of the **Code** of Virginia. (Ord. No. 012-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 2010-55, 11-9-10)

### **SECTION 27-6. FAILURE TO PAY TAX; PENALTY AND INTEREST.**

- (a) As to all real estate taxes and tangible personal property taxes assessed for the tax year 1976 and tax years prior thereto, any person who shall have failed to pay to the said tax before December 5th of said year shall be assessed a penalty of five percent (5%) per annum of the amount of such unpaid tax.
- (b) As to all real estate taxes assessed for the tax year 1977 and tax years subsequent thereto, any person who shall fail to pay to the Treasurer on or before June 5th and December 5th of each year the semiannual installment of real estate taxes becoming due on or before such dates respectively, as provided for by Sections 27-10 of this ordinance, and any person who shall fail to pay to the Treasurer on or before December 5th of each year the whole of tangible personal property tax imposed by Section 27-40 and/or Section 27-50 of this ordinance for such year shall be assessed by the Treasurer and shall pay, along with such tax, a penalty of ten percent (10%) per annum of the amount of such unpaid installment on tax or taxes, as the case may be.
- (c) As to all real estate and/or personal property taxes remaining unpaid on April 1st of the year following the year of the levies of 1974, 1975 and 1976, there shall be added thereto interest at the rate of one percent (1%) of the unpaid amount of the tax, and there shall be an additional one percent (1%) of the unpaid amount of the tax added on the first of each succeeding month until paid.

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- (d) On and after July 1, 1977, real estate tax levies due without penalty on June 5, 1977 and all succeeding years through June 5, 1985, as provided by Section 27-121.1 of this ordinance which remain unpaid at June 30, 1977 and all succeeding years through June 30, 1985 shall have added thereto interest at the rate of eight percent (8%) per annum of the unpaid amount of the tax due until December 31, 1985, and thereafter at the rate of ten percent (10%) per annum of the unpaid amount of the tax until paid.
- (e) On and after January 1, 1978, real estate and personal property tax levies due without penalty on December 5, 1977 and all succeeding years through December 5, 1985 which remain unpaid at January 1, 1978 and all succeeding years through December 31, 1985 shall have added thereto interest at the rate of ten percent (10%) per annum of the unpaid amount of the tax until paid.
- (f) On and after July 1, 1986, real estate tax levies assessed by Sections 27-10 of this ordinance and due without penalty on June 5, 1986 shall on June 30, 1986 and each year thereafter as long as same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.
- (g) On and after January 1, 1986, real estate tax levies assessed by Sections 27-10 and 27-142 of this ordinance and due without penalty on December 5, 1986 shall have on January 1, 1987 and each year thereafter as long as same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.
- (h) On and after January 1, 1986, personal property and/or machinery and tools taxes respectively imposed by Section 27-40 and Section 27-50 of this ordinance and due without penalty on December 5, 1986 shall on January 1, 1987 and each year thereafter as long as same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.
- (i) On and after July 1, 1987, real estate tax levies assessed and due without penalty on June 5, 1987 shall on June 30, 1987 and each year thereafter as long as the same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.
- (j) On and after January 1, 1987, real estate tax levies assessed and due without penalty on December 5, 1987 shall on January 1, 1987 and each year thereafter as long as the same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.
- (k) On and after January 1, 1987, personal property and/or machinery and tools taxes respectively imposed by Section 27-40 and Section 27-50 of this ordinance and due without penalty on December 5, 1987 shall on January 1, 1988 and each year thereafter as long as same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.

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- (l) On and after July 1, 1988, real estate tax levies assessed and due without penalty on June 5, 1988 shall on June 30, 1988 and each year thereafter as long as the same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.
- (m) On and after January 1, 1988, real estate tax levies assessed and due without penalty on December 5, 1988 shall on January 1, 1988 and each year thereafter as long as the same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.
- (n) On and after January 1, 1988, personal property and/or machinery and tools taxes respectively imposed by Section 27-40 and Section 27-50 of this ordinance and due without penalty on December 5, 1988 shall on January 1, 1989 and each year thereafter as long as same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.
- (o) On and after July 1, 1989, real estate tax levies assessed and due without penalty on June 5, 1989 shall on June 30, 1989 and each year thereafter as long as the same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.
- (p) On and after January 1, 1989, real estate tax levies assessed and due without penalty on December 5, 1989 shall on January 1, 1990 and each year thereafter as long as the same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.
- (q) On and after January 1, 1989, personal property and/or machinery and tools taxes respectively imposed by Sections 27-40 and 27-50 of this ordinance and due without penalty on December 5, 1989 shall on January 1, 1990 and each year thereafter as long as same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum. (Ord. No. 012-88, 11-15-88; Ord. No. 017-92, 11-10-92)

### **SECTION 27-7. POWER TO SUMMON TAXPAYERS AND OTHER PERSONS; PENALTIES.**

- (a) The Commissioner may, for the purpose of assessing all taxes assessable by his office, summon the taxpayer or any other person to appear before him at his office, to answer, under oath, questions touching the tax liability of any and all specifically identified taxpayers. The Commissioner shall not, however, summon a taxpayer or other person for the tax liability of the taxpayer which is the subject of litigation.

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- (b) Any person who refuses to (i) furnish to the Commissioner access to books of account or other papers and records, (ii) furnish information to the Commissioner relating to the assessment of taxes, (iii) answer under oath questions touching any person's tax liability, or (iv) exhibit to the Commissioner any subject of taxation liable to assessment by the Commissioner, shall be deemed guilty of a Class 3 misdemeanor. Each day's refusal to furnish such access or information shall constitute a separate offense. (Ord. No. 017-92, 11-10-92)

**State Law References--**Code of Virginia, §§58.1-3110, 58.1-3111.

### **SECTION 27-8. REFUNDS OF ERRONEOUSLY PAID TAXES.**

Local taxes, including business license taxes pursuant to Chapter 28, which have been erroneously paid, shall be refunded to the taxpayer. No refund shall be made if application therefor is made more than three years after the last day of the tax year for which the taxes were assessed. Any funds received by the City are first presumed to be in remittance for any outstanding taxes owed by the taxpayer, regardless of any intent expressed with regard to such payment. Any remaining balance of funds remitted shall be considered for a refund as follows:

(a) **REFUNDS AS A RESULT OF ERRONEOUS ASSESSMENT.**

In order for a refund to be made, the Commissioner must first be satisfied that he has erroneously assessed the taxpayer with a local tax and the Treasurer must determine that the tax has been paid. The City Council shall, upon the certificate of the Commissioner with the consent of the City Attorney, direct the Treasurer to refund to the taxpayer the amount erroneously paid, together with any penalties and interest paid thereon. However, the City Council authorizes the Treasurer to approve and issue any refund up to \$2,500.00 as a result of an erroneous assessment.

(b) **REFUNDS AS A RESULT OF ERRONEOUS OVERPAYMENT.**

A refund as a result of erroneous overpayment is considered to be one for which the City and/or its constitutional officers have done nothing to precipitate the payment, and therefore funds for which the City has no legal claim. In such instance, the Treasurer, after confirming that the taxpayer has no currently outstanding taxes owed to the City, shall proceed forthwith to refund to the applicant the amount erroneously paid, together with any penalties and interest paid thereon. If it is determined that the taxpayer has a currently outstanding tax liability to the City, such funds shall be applied to such outstanding balances with priority afforded to the oldest outstanding liabilities being paid first. For any refund in excess of \$2,500.00, made pursuant to this subsection, the

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Treasurer shall provide written notice to the City Manager of the details of said refund not less than three business days prior to the issuance of said refund.

(Ord. No. 2010-52, 10-12-10; Ord. No. 2016-8, 3-8-16)

**State Law Reference--**Code of Virginia, §58.1-3990.

### **SECTION 27-9. PAYMENT OF ADMINISTRATIVE COSTS, ETC.**

- (a) There is hereby imposed upon each person chargeable with delinquent taxes or other delinquent charges, fees to cover the administrative costs and reasonable attorney's or collection agency's fees actually contracted for. These fees shall be in addition to all other applicable penalties and interest and shall not exceed the maximum amount permitted under Section 58.1-3958 of the Code of Virginia, 1950, as amended.
- (b) If the collection activity is to collect on a nuisance abatement lien, the fee for administrative costs shall be one hundred fifty dollars (\$150.00) or twenty-five percent (25%) of the cost, whichever is less; however, in no event shall the fee be less than twenty-five dollars (\$25.00).
- (c) No tax assessment or tax bill shall be deemed delinquent and subject to the collection procedures prescribed herein during the pendency of any administrative appeal under Section 58.1-3980, so long as the appeal is filed within ninety (90) days of the date of the assessment, and for thirty (30) days after the date of the final determination of the appeal, provided that nothing in this paragraph shall be construed to preclude the assessment or refund, following the final determination of such appeal, of such interest as otherwise may be provided by general law as to that portion of a tax bill that has remained unpaid or was overpaid during the pendency of such appeal and is determined in such appeal to be property due and owing.

(Ord. No. 030-2004, 8-10-04)

## **ARTICLE II. REAL PROPERTY TAX. DIVISION 1. IMPOSITION OF TAX**

### **SECTION 27-10. LAND, LOTS, AND BUILDINGS.**

On all tracts of land, lots, and improvements thereon not exempt from taxation there shall be a tax of ninety-one cents (\$0.91) for every one hundred dollars (\$100.00) of the

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assessed value thereof for general city and school purposes. All City taxes on real estate for each year shall be due and payable during the year for which the same are assessed in two approximately equal installments as follows:

- One-half on or before June fifth; and
- One-half on or before December fifth.

All taxes annually imposed on real estate shall be payable by the persons who on the first day of January in each and every year are the respective owners of record thereof.

(Ord. No. 044-88, 11-15-88; Ord. No. 011-91, 4-23-91; Ord. No. 017-92, 11-10-92; Ord. No. 015-93, 05-06-93; Ord. No. 017-94, 05-10-94; Ord. No. 010-96, 05-14-96; Ord. No. 006-99, 3-30-99; Ord. No. 007-2000, 04-11-00; Ord. No. 011-2001, 04-10-01; Ord. No. 012-2003, 4-22-03; Ord. No. 027-2003, 07-22-03; Ord. No. 013-2004, 4-28-04; Ord. No. 010-2005, 04-12-05; Ord. No. 10-2007, 4-24-2007; Ord. No. 2008-16, 4-8-2008; Ord. No. 2009-13, 4-21-09; Ord. No. 2011-06, 4-12-11; Ord. No. 2012-08, 4-17-12; Ord. No. 2015-08, 4-14-15).

**State Law References**--Code of Virginia, §§58.1-3200; 58.1-3916; 15.1-160; City Charter §5.01 (1994).

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### SECTION 27-10.1. AUTHORIZED.

(a) **BIENNIAL REASSESSMENT AND EQUALIZATION OF REAL ESTATE REQUIRED**

There shall be a biennial reassessment and equalization of real estate for local taxation in the City, which shall be effective as of January 1 of each corresponding year, to be made as provided in this article. Pursuant to §58.1-3275 of the Code of Virginia, such biennial reassessments shall be conducted by an independent Contractor holding valid certification issued by the Virginia Department of Taxation hereinafter “Contractor”.

Said Contractor shall be retained under contract in accordance with Chapter 21 of the Winchester City Code and the applicable provisions of the Virginia Public Procurement Act. Such assessments shall be conducted in accordance with all contractual obligations, the requirements of the Code of Virginia and any other requirements set forth in the City’s Code of Ordinances.

Unless otherwise specifically provided by the Constitution of Virginia, the Code of Virginia, the City Charter, or other general or special law, where the Code of Virginia refers to Commissioner of Revenue or other official performing the duties imposed on Commissioners of the Revenue or other assessing official for the purposes of real estate reassessments the Contractor shall be the other official or other assessing official and shall be designated to perform the duties for the City of Winchester.

A “Real Estate Administrator” (hereinafter “Administrator”) shall be appointed by the City Manager and come under the direct supervision of the Finance Director. The Administrator shall be responsible for ensuring that the Contractor satisfies all contractual requirements and complies with all applicable provisions of the Code of Virginia and general law with regard to the performance of the reassessments. Council may from time to time authorize the City to employ such assistants as deemed necessary to aid the Administrator in the performance of his duties.

(b) **DUTIES OF THE CONTRACTOR**

The “other official” or “other assessing official” (hereinafter “Contractor”) shall have all authority authorized for independent Contractors appointed pursuant to §58.1-3275 of the Code of Virginia, conducting assessments on behalf of a municipality as authorized under the applicable provisions of the Code of Virginia and general law.

1. The Contractor, as of January 1 of each assessment year, shall:

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- i. Make assessments of real estate and the equalization thereof on the same basis as real estate is required to be assessed under the provisions of general law and this Code; and
  - ii. Be charged with duties similar to those thereby imposed upon such independent Contractors; except that such assessments and the equalization thereof shall be made biennially and the assessments and the equalization so made shall have the same effect as if they had been made by assessors appointed under the provisions of general law.
2. A notice of any change in any such biennial assessment shall be given by regular mail forwarded directly to each property owner shown on the assessment records as of January 1 at the last-known mailing address as the address is shown on the most current mailing records of the City Treasurer. Such notice shall be postmarked on or before January 1 following the effective date of such biennial assessment and at least 15 days prior to the date of any hearing to protest such change. Assessment made in accordance with Code of Virginia, §58.1-3292, §58.1-3222 and §58.1-3601.

Nothing in this Section shall be construed to impede any duty imposed by statute or other law upon the Commissioner of the Revenue in the performance of his or her duties.

### (c) BOARD OF EQUALIZATION

1. The Circuit Court of the City of Winchester shall appoint a permanent Board of Equalization of real estate assessments to be composed of from three to five members, of whom all shall be residents, and a majority of whom shall be freeholders, of the City. The initial appointments shall be consistent with the term requirements of §58.1-3373 of the Code of Virginia. Thereafter each member shall serve a three year term. At least 30 percent of the members shall be commercial or residential appraisers, real estate professionals, builders, developers, or legal or financial professionals, and at least one such member shall sit in all cases involving commercial, industrial or multifamily property, unless waived by the taxpayer. All members shall attend courses of instruction as required by §58.1-3374 of the Code of Virginia, 1950, as amended. No person shall serve on the board more than nine consecutive years. Upon serving nine consecutive years, a board member shall not be eligible for reappointment for a period of three years.
2. Such Board of Equalization shall hear complaints of inequalities wherein the property owners allege a lack of uniformity in assessment or errors in acreage in such real estate assessment. The board also shall hear complaints that real property is assessed at more than its fair market value. The Board of Equalization shall have and may exercise all powers conferred to it by general law to revise, correct and amend a real estate assessment as necessary to equalize the burden of taxation among all citizens of the City. To this end, the board shall have authority

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to increase and decrease assessments, whether specific complaint is made or not. No assessment shall be increased until the owner has been notified and given an opportunity to show cause as to why the assessment should not be increased.

3. The board shall determine the fair market value of property as of January 1 for the tax year.
4. In all cases, the board shall operate under presumption that the valuation determined by the Contractor is correct. The board shall be advised that the taxpayer need not show that the assessment is the result of manifest error or disregard of controlling evidence. Instead, the board shall be advised that the taxpayer is required to produce substantial evidence that the Contractor's valuation is erroneous and was not arrived at in accordance with generally accepted appraisal practice. Mistakes of fact, including computation, that affect the assessment shall be deemed not in accordance with generally accepted appraisal practice.
5. The landowner or an appointed representative of the City may apply to the board to adjust an assessment to its fair market value or take such other action necessary to equalize an assessment. Complete applications for review of assessments by the board must be received by the Administrator on or before February 15 immediately preceding the June 5 date for which taxes on such contested assessed value will be levied. The application must be filed on forms provided by the Administrator and contain all requested information and attachments to be deemed complete. Late or incomplete applications will not be accepted and shall be deemed invalid.
6. The board shall finally dispose of all complete applications filed in a timely manner by the May 1 immediately preceding the June 5 date for which taxes or such contested assessed value will be levied. The Contractor shall notify all owners of real estate of such deadlines on the annual notice of assessment.
7. All meetings of the board shall be open to the public, with notice given at least ten days beforehand by publication in a newspaper having general circulation in the City. Minutes shall be kept of all meetings and written orders of the board sent to all applicants.
8. The equalization board shall receive such per diem compensation for the time they are actually engaged in the duties of their office as may be fixed by the City Council. The per diem compensation may be limited to such number of days as in the judgment of the Council is sufficient for the work of the board in any calendar year.

**State Law References--** Similar provisions, Code of Virginia, §58.1-3370 *et seq.*

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### (d) APPEAL TO CIRCUIT COURT

Any person aggrieved by a determination of the Board of Equalization may then appeal to the Circuit Court of the City of Winchester. Any person aggrieved by an assessment and who has missed the deadline to file with the Board of Equalization has the right to appeal directly to the Circuit Court of the City of Winchester.

**State Law References--** Similar provisions, Code of Virginia, §58.1-3382 and §58.1-3407.

### (e) CORRECTIONS OF ERRORS

The Administrator at any time upon notice of an inaccuracy or error in a property record, shall coordinate with the Contractor to review the property record and ensure that the appropriate correction is made and notify the property owner in writing, should that correction affect the property assessment.

(Ord. No. 2010-47, 10-12-10; Ord. No. 2011-24, 7-12-11; Ord. No. 2014-35, 9-9-14)

**State Law References--** Similar provisions, Code of Virginia, §58.1-3980 and §58.1-3981.

### **SECTION 27-11. ASSESSMENT OF NEW BUILDINGS SUBSTANTIALLY COMPLETED, ETC.; EXTENSION OF TIME FOR PAYING ASSESSMENT.**

All new buildings substantially completed or fit for use and occupancy prior to November 1 of the year of completion shall be assessed when so completed or fit for use and occupancy. The Commissioner shall enter in the books the fair market value of such building. No partial assessment as provided herein shall become effective until information as to the date and amount of such assessment is recorded in the office of the Treasurer and made available for public inspection. The total tax on any such new building for that year shall be the sum of (i) the tax upon the assessment of the completed building, computed according to the ratio which the portion of the year such building is substantially completed or fit for use and occupancy bears to the entire year, and (ii) the tax upon the assessment of such new building as it existed on January 1 of that assessment year, computed according to the ratio which the portion of the year such building was not substantially complete or fit for use and occupancy bears to the entire year. With respect to any assessment made under this section after September 1 of any year, the penalty for nonpayment by December 5 shall be extended to February 5 of the succeeding year. (Ord. No. 017-92, 11-10-92)

**State Law Reference--** Code of Virginia, §58.1-3292.

## **DIVISION 2. SPECIAL USE VALUATION.**

### **SECTION 27-12. EXCEPTION: AGRICULTURAL AND HORTICULTURAL LAND.**

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The City finds that the preservation of real estate devoted to agricultural and horticultural uses within the City is in the public interest and, having heretofore adopted a Land Use Plan, hereby ordains that such real estate shall be taxed in accordance with the provisions of this chapter and Article 4 of Chapter 32 of Title 58.1 of the **Code** of Virginia. (Ord. No. 012-89, 3-14-89; Ord. No. 017-92, 11-10-92)

### **SECTION 27-13. APPLICATION FOR SPECIAL USE TAXATION.**

- (a) The owner of any real estate meeting the criteria set forth in §§58.1-3230 of the **Code** of Virginia, and 58.1-3233(2)(i) of the Code of Virginia, for agricultural or horticultural use may, on or before November 1 of each year, apply to the Commissioner for the classification, assessment and taxation of such property for the next succeeding tax year on the basis of its use under the procedures set forth in §58.1-3236 of the **Code** of Virginia. Such application shall be on forms provided by the State Department of Taxation and supplied by the Commissioner, and shall include such additional schedules, photographs and drawings as may be required by the Commissioner.
- (b) A separate application shall be filed for each use for which qualification is sought. Upon payment of a late filing fee of fifteen dollars (\$15.00), such an application may be filed with the Commissioner not more than sixty days after November 1. (Ord. No. 012-89, 3-14-89; Ord. No. 017-92, 11-10-92)

### **SECTION 27-14. DETERMINATION OF PROPERTY VALUE.**

Promptly upon receipt of any application, the Commissioner, with the assistance of the city assessor, shall determine whether the subject property meets the criteria for taxation hereunder. If the Commissioner determines that the subject property does meet such criteria, he shall determine the value of such property for its qualifying use as well as its fair market value.

In determining whether the subject property meets the criteria for taxation hereunder, the Commissioner may request an opinion from the Director of the Department of Conservation and Historic Resources or the Commissioner of Agriculture and Consumer Services. Upon the refusal of the Director of the Department of Conservation and Historic Resources or the Commissioner of Agricultural and Consumer Services to issue an opinion, or in the event of an unfavorable opinion which does not comport with standards set forth by the respective Director or Commissioner, the party aggrieved may seek relief from any court of record wherein the real estate in question is located. If the court finds in his favor, it may issue an order which shall serve in lieu of an opinion for the purposes of this chapter. (Ord. No. 012-89, 3-14-89; Ord. No. 017-92, 11-10-92)

**State Law Reference--** Code of Virginia, §58.1-3240.

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### **SECTION 27-15. ROLL-BACK TAX.**

There is hereby imposed a roll-back tax in such amount as may be determined under §58.1-3237 of the Code of Virginia, including interest at a rate of five-sixths of one percent per month or fraction thereof, upon any property of which the use changes to a non-qualifying use. (Ord. No. 012-89, 3-14-89; Ord. No. 017-92, 11-10-92)

**State Law Reference--** Code of Virginia, §58.1-3237.

### **SECTION 27-16. PAYMENT OF ROLL-BACK TAX; MISSTATEMENTS OF FACT; PENALTY FOR DELINQUENCY.**

- (a) The owner of any real estate liable for roll-back taxes shall report to the Commissioner on forms to be prescribed, any change in the use of such property to a non-qualifying use and shall pay the roll-back tax then due. If such owner fails to so report and pay within sixty days following such change in use, such owner shall be liable for an additional penalty equal to ten percent of the amount of the roll-back tax, which penalty shall be collected as a part of the tax. In addition to such penalty, there is hereby imposed interest of five-sixths of one percent of the amount of the roll-back tax for each month or fraction thereof during which the failure continues.
- (b) Any person making a material misstatement of fact in any application filed pursuant hereto shall be liable for all taxes, in such amounts and at such times as if such property had been assessed on the basis of fair market value as applied to other real estate in the taxing jurisdiction, together with interest and penalties thereon, and he shall be further assessed with an additional penalty of 100 percent of such unpaid taxes. (Ord. No. 012-89, 3-14-89; Ord. No. 017-92, 11-10-92)

### **SECTION 27-17. APPLICATION OF STATE LAW.**

The provisions of Title 58.1 of the Code of Virginia, applicable to local levies and real estate assessment and taxation shall be applicable to assessments and taxation hereunder *mutatis mutandis* including, without limitation, provisions relating to tax liens and the correction of erroneous assessments. For such purposes, the roll-back taxes shall be considered to be deferred real estate taxes. (Ord. No. 012-89, 3-14-89; Ord. No. 017-92, 11-10-92)

### **SECTION 27-18. APPLICATION FEE; RENEWALS.**

All applications under this article shall be accompanied by an application fee payable to the Treasurer of thirty dollars (\$30.00) or thirty cents (\$.30) per acre per parcel or major

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part thereof for each acre sought to be classified, assessed or taxed under this chapter, whichever is greater. All such applications shall be renewed annually in accordance with the filing deadline stipulated in Section 27-13. Every sixth year from the date of the original application, such annual renewal shall be accompanied by a revalidation fee of thirty dollars or thirty cents (\$.30) per acre per parcel. An annual renewal may be filed up to sixty days after the filing deadline stipulated above upon payment of a late filing fee of fifteen dollars (\$15.00). (Ord. No. 012-89, 3-14-89; Ord. No. 017-92, 11-10-92)  
**State Law Reference--** Code of Virginia, §58.1-3234.

### DIVISION 3. EXEMPTION FOR ELDERLY AND DISABLED.

#### SECTION 27-19. GENERAL PROVISIONS.

- (a) The commissioner shall, upon application made upon the terms hereinafter provided, order exemption of tax on real property owned and occupied as the sole dwelling house of a person or persons either (i) at least sixty-five (65) years of age as of December 31st of the year preceding the year applied for; or (ii) permanently and totally disabled as defined in §58.1-3217 of the **Code** of Virginia, such exemption to be granted only upon the restrictions and conditions hereinafter established.
- (b) The total combined income received from all sources during the preceding calendar year by: (i) owners of the dwelling who use it as their principal residence and (ii) owners' relatives who live in the dwelling and (iii) nonrelatives of the owner who live in the dwelling except for bona fide tenants or bona fide paid caregivers of the owner, shall not exceed Forty Thousand Dollars (\$40,000.00). (Ord. No. 017-2004, 4-28-04; Ord. No. 2007-30, 9-11-07; Ord. No. 2010-45, 11-9-10; Ord. No. 2013-19, 8-13-13)
- (c) The net combined financial worth, including the present value of all equitable interests, as of December 31 of the immediately preceding calendar year, of the owners, and of the spouse of any owner, excluding the value of the dwelling, furnishings, and the land, not exceeding one acre, upon which it is situated shall not exceed the following amounts effective on the stated dates:

Effective January 1, 2006	\$150,000
Effective January 1, 2007	\$200,000
Effective January 1, 2014 and thereafter	\$ 75,000

Such furnishings shall include furniture, household appliances and other items typically used in a home.

- (d) For purposes of this article, any reference to real estate shall include manufactured homes.

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(Ords. of 1-14-75, 4-13-76, 12-14-76; Ord. Nos. 017-80, 10-14-80; 011-82, 7-13-82; 004-84, 3-14-84; 003-88, 1-12-88; 018-91, 4-23-91; 044-91, 11-12-91; Ord. No. 017-92, 11-10-92; Ord. No. 046-2001, 12-11-01-effective 1-1-02; Ord. No. 017-2004, 4-28-04; Ord. No. 015-2005, 5-10-05; Ord. No. 2007-30, 9-11-07; Ord. No. 2013-19, 8-13-13)

**State Law References--**Code of Virginia, §58.1-3210, §58.1-3211.1, §58.1-3212.

### **SECTION 27-20. ANNUAL APPLICATION AND AFFIDAVIT.**

- (a) The person claiming such exemption shall file annually with the Commissioner on forms supplied by the City, an affidavit setting forth (i) the names of the related persons occupying such real estate and (ii) that the total combined net worth, including equitable interests and the combined income from all sources, of the persons specified in Section 27-19 do not exceed the limits prescribed in that section.
- (b) If such person is under sixty-five years of age such form shall have attached thereto a certification by the Social Security Administration, the Department of Veterans Affairs or the Railroad Retirement Board, or if such person is not eligible for certification by any of these agencies, a sworn affidavit by two medical doctors who are either licensed to practice medicine in the Commonwealth or are military officers on active duty who practice medicine with the United States Armed Forces, to the effect that the person is permanently and totally disabled, as defined in Virginia Code §58.1-317; however, a certification pursuant to 42 U.S.C. 423 (d) by the Social Security Administration so long as the person remains eligible for such social security benefits shall be deemed to satisfy such definition in Virginia Code Ann. §58.1-3217. The affidavit of at least one of the doctors shall be based upon a physical examination of the person by such doctor. The affidavit of one of the doctors may be based upon medical information contained in the records of the Civil Service Commission which is relevant to the standards for determining permanent and total disability as defined in Code of Virginia, §58.1-3217.
- (c) Such application with affidavit shall be filed no later than the first day of April of each year, except that the Commissioner may accept up until April 15, later filings from owners otherwise meeting the provisions of this section who are unable to file by the first day of April due to personal or family illness or other ascertainable hardships, provided that such real estate tax exemption affidavit is accompanied by a sworn affidavit of a licensed medical doctor or other documentation deemed satisfactory by the Commissioner. The Commissioner may also accept later filings from owners at the time of a purchase of a house.  
(Ord. No. 044-88, 11-15-88; Ord. No. 044-91, 11-12-91; Ord. No. 017-92, 11-10-92; Ord. No. 2010-45, 11-9-10; Ord. No. 2013-19, 8-13-13)

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**State Law Reference--** Code of Virginia, §58.1-3213

**SECTION 27-21. INQUIRIES BY THE COMMISSIONER.**

The Commissioner shall make further inquiry of persons seeking such exemption as may be reasonably necessary in determining the qualifications therefor. The Commissioner may require production of certified tax returns to establish the financial worth or income of any applicant. Such further inquiries shall be answered under oath. (Ord. No. 044-88, 11-15-88; Ord. No. 044-91, 11-12-91; Ord. No. 017-92, 11-10-92)

**State Law Reference--**Code of Virginia, §58.1-3213-F.

**SECTION 27-22. NOTICE OF LOCAL REAL ESTATE TAX EXEMPTION PROGRAM FOR THE ELDERLY AND DISABLED.**

The Treasurer shall enclose written notice, in each real estate tax bill, of the terms and conditions of the real estate tax exemption program established in this article. The Treasurer shall also employ any other reasonable means necessary to notify residents of the City about the terms and conditions of the real estate tax exemption program for elderly and disabled residents of the City. (Ord. No. 017-92, 11-10-92; Ord. No. 2013-19, 8-13-13)

**State Law Reference--** Code of Virginia, §58.1-3213.1.

**SECTION 27-23. AMOUNT OF EXEMPTION.**

For eligible claimants, the amount of exemption from real estate tax for any taxable year shall be as follows:

Effective January 2006:

<u>Income Level</u>	<u>Exemption</u>
\$ 0 - \$25,000	100%
\$25,001 - \$30,000	80%
\$30,001 - \$35,000	60%
\$35,001 - \$40,000	40%
\$40,001 - \$50,000	20%

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Effective January 2007:

<u>Income Level</u>	<u>Exemption</u>
\$ 0 - \$30,000	100%
\$30,001 - \$35,000	75%
\$35,001 - \$40,000	50%
\$40,001 - \$50,000	25%

Effective January 2008:

<u>Income Level</u>	<u>Exemption</u>
\$ 0 - \$35,000	100%
\$35,001 - \$40,000	75%
\$40,001 - \$45,000	50%
\$45,001 - \$50,000	25%

Effective January 2009:

<u>Income Level</u>	<u>Exemption</u>
\$ 0 - \$40,000	100%
\$40,001 - \$45,000	75%
\$45,001 - \$50,000	50%

Effective January 2014 and thereafter:

<u>Income Level</u>	<u>Exemption</u>
\$ 0 - \$25,000	100%
\$25,001 - \$30,000	75%
\$30,001 - \$35,000	50%
\$35,001 - \$40,000	25%

At any qualifying level, the maximum exemption amount  
Shall be one thousand five hundred dollars (\$1,500.00)

(Ords. of 1-14-75, 4-13-76, 12-14-76; Ord. No. 018-80, 10-14-80; Ord. No. 011-82, 7-13-82; Ord. No. 004-84, 3-14-84; Ord. No. 003-88, 12-12-88; Ord. No. 018-91, 4-23-91; Ord. No. 044-91, 11-12-91; Ord. No. 017-92, 11-10-92; Ord. No. 046-2001, 12-11-01-effective 1-1-02; Ord. No. 017-2004, 4-28-04; Ord. No. 015-2005, 5-10-05; Ord. No. 2007-20, 6-26-07; Ord. No. 2013-19, 8-13-13)

**State Law Reference--** Code of Virginia, §58.1-3212.

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**SECTION 27-24. REPEALED** (Ord. No. 044-88, 11-15-88; Ord. No. 044-91, 11-12-91; Ord. No. 017-92, 11-10-92; Ord. No. 2013-19, 8-13-13)

### **SECTION 27-25. PROCEDURES.**

The Commissioner shall indicate on the land books of the City of Winchester the amount of tax exempted pursuant to the provisions of this article. He shall adopt and promulgate rules and regulations not inconsistent with the provisions of this article, as deemed necessary for the effective administration of this article. (Ord. No. 044-88, 11-15-88; Ord. No. 004-91, 11-12-91; Ord. No. 017-92, 11-10-92)

State Law Reference—Code of Virginia, §58.1-3213.1.

### **SECTION 27-26. ABSENCE FROM RESIDENCE.**

The fact that persons who are otherwise qualified for tax exemption by this article are residing in hospitals, nursing homes, convalescent homes or other facilities for physical or mental care for extended periods of time shall not be construed to mean that the real estate for which tax exemption is sought does not continue to be the sole dwelling of such persons during such extended periods of other residence so long as such real estate is not used by or leased to others for consideration. (Ord. No. 017-92, 11-10-92)

**State Law Reference--** Code of Virginia, §58.1-3214.

### **SECTION 27-27. CHANGE IN CIRCUMSTANCES.**

- (a) Changes in income, financial worth, ownership of property or other factors occurring during the taxable year for which an affidavit is filed and having the effect of exceeding or violating the limitations and conditions provided herein shall nullify any exemption for the remainder of the current taxable year and the taxable year immediately following.

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- (b) A change in ownership to a spouse, when such change resulted solely from the death of the qualifying individual or a sale of such property shall result in a prorated exemption for the then current taxable year. The proceeds of the sale which would result in the prorated exemption shall not be included in the computation of net worth or income as provided in subsection (a). Such prorated portion shall be determined by multiplying the amount of the exemption or deferral by a fraction with the number of complete months of the year such property was properly eligible for such exemption or deferral as the numerator and the number twelve as the denominator. (Ord. No. 017-92, 11-10-92)

**State Law Reference--** Code of Virginia, §58.1-3215.

### **DIVISION 3A. REAL ESTATE EXEMPTION FOR DISABLED VETERANS**

#### **SECTION 27-27.1. PURPOSE OF ARTICLE:**

It is hereby declared to be the purpose of this article to provide real estate tax exemptions for qualified property owners who have one hundred (100%) service connected, permanent, and total disability, and those who have a service-connected disability which renders them permanently and totally disabled within the definition prescribed under of the Code of Virginia.

#### **SECTION 27-27.2. DEFINITIONS:**

The following words, terms, and phrases, when used in this article, shall have the meanings prescribed to them when used in this article, except where the context clearly indicates a different meaning:

- (a) Disabled Veteran means any veteran who has been rated by the Department of Veteran Affairs or its successor agency pursuant to federal law to have a one hundred percent (100%) service-connected, permanent, and total disability, and who occupies the real property as his principal place of residence.
- (b) Exemption means a one hundred percent (100%) exemption from real property tax imposed by the City allowable under the provisions of this article.
- (c) Taxable year means the calendar year, from January first through December thirty-first, for which property tax exemption is claimed under this article.

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### SECTION 27-27.3. QUALIFICATIONS FOR EXEMPTION.

An exemption pursuant to this article shall be granted to certain persons who own and occupy residential real property, not exceeding one acre, where such persons comply with the following provisions:

- (a) The title to the residential property for which the exemption is claimed must be held by the person entitled to claim such exemption (“claimant”), or held jointly by the claimant and his or her spouse.
- (b) The property for which the exemption is claimed must be occupied as the principal place of residence.
- (c) The applicant must be a veteran declared to have a 100 percent (100%) service-connected, permanent, and total disability by the U.S. Department of Veterans Affairs.
- (d) The surviving spouse of a veteran eligible for the exemption set forth in this article shall also qualify for the exemption, so long as the death of the veteran occurs on or after January 1, 2011, the surviving spouse does not remarry, and the surviving spouse continues to occupy the real property as his or her principal place of residence.
- (e) Notwithstanding the provisions of paragraph (3) of this section, any disabled veteran who has a service-connected disability which renders him or her permanently and totally disabled within the definition prescribed under §58.1-3217 of the Code of Virginia shall be eligible to receive exemption under this article.

### SECTION 27-27.4. APPLICATION FOR EXEMPTION.

The veteran or surviving spouse claiming the exemption under this article shall file with the Commissioner of Revenue on forms to be supplied by the City, an affidavit or written statement

- (a) Setting forth the name of the disabled veteran and the name of the spouse, if any, also occupying the real property
- (b) Indicating whether the real property is jointly owned by a husband and wife, and
- (c) Certifying that the real property is occupied as the veteran’s principal place of residence

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- (d) Veterans qualifying under Section 27-27.3(c) shall also provide documentation from the U.S. Department of Veteran Affairs or its successor agency indicating that the veteran has a 100 percent service-connected, permanent, and total disability
- (e) Veterans qualifying under Section 27-27.3(e) shall provide documentation and other evidence to prove to the satisfaction of the Commissioner by a preponderance of the evidence that he or she is permanently and totally disabled as defined under §58.1-3217 of the Code of Virginia.

The veteran shall be required to refile the information required by this section only if the veteran's principal place of residence changes. In the event of a surviving spouse of a veteran claiming the exemption, the surviving spouse shall also provide documentation that the veteran's death occurrence on or after January 1, 2011.

(Ord. No. 2011-18, 7-12-11)

### **DIVISION 4. SUBSTANTIALLY REHABILITATED HISTORIC PROPERTY**

#### **SECTION 27-28. HISTORIC REHABILITATION DEFINITIONS.**

For the purpose of this division, the following words and phrases shall have the meanings, respectively ascribed to them:

- (a) **SUBSTANTIALLY REHABILITATED HISTORIC RESIDENTIAL REAL ESTATE**, shall mean any residential real estate within the Historic Winchester District (HW), as defined by Article 14 of the Zoning Ordinance of the City of Winchester, 1976, as amended, or included on the National Register of Historic Places, upon which there is an existing structure which is no less than twenty-five (25) years old, and which has been so improved as to increase the assessed value thereof by no less than forty percent (40%), without increasing the total square footage by more than fifteen percent (15%). For sites included on the National Register of Historic Places and outside the Historic Winchester zoning district, the exemption shall only be considered in conjunction with a project qualified for state and/or federal tax credits.
- (b) **SUBSTANTIALLY REHABILITATED HISTORIC COMMERCIAL, INDUSTRIAL OR MIXED-USE REAL ESTATE**, shall mean any commercial, industrial or mixed-use real estate within the Historic Winchester District (HW), as defined by Article 14 of the Zoning Ordinance of the City of Winchester, 1976, as amended, or included on the National Register of Historic Places, upon which there is an existing structure which is no less than twenty-five (25) years old, and which has been so improved as to increase the assessed value thereof by no less

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than sixty percent (60%), without increasing the total square footage by more than fifteen percent (15%). For sites included on the National Register of Historic Places and outside the Historic Winchester zoning district, the exemption shall only be considered in conjunction with a project qualified for state and/or federal tax credits.

- (c) **AMOUNT OF EXEMPTION**, shall mean an amount equal to the increase in assessed value resulting from the rehabilitation of the structure as determined by an on-site assessment by the assessing officer, and this amount only shall be applicable to assessment commencing on the first day of January of the year following the rehabilitation. An increase in assessment occurring after the first year of such rehabilitation exemption shall not result in an increase in such exemption.
- (d) **TAXABLE YEAR** shall mean the calendar year from January first through December thirty-first for which such real property tax is imposed or exemption claimed. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 2014-03, 2-25-14; Ord. No. 2016-13, 4-26-16)

### **SECTION 27-28.1. HISTORIC REHABILITATION EXEMPTIONS DECLARED.**

The purpose of this division shall be to provide real estate tax exemptions for substantially rehabilitated residential, commercial, industrial or mixed-use real estate for a period of ten (10) years, commencing on January first of the year following completion of such rehabilitation.

(Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 2011-28, 8-9-11; Ord. No. 2014-03, 2-25-14)

**State Law Reference--** Code of Virginia, §§58.1-3220, *et seq.*

### **SECTION 27-28.2. HISTORIC REHABILITATION EXEMPTION ELIGIBILITY REQUIREMENTS.**

Exemptions pursuant to this division shall not become effective unless the persons owning such property have:

- (a) Prior to commencement of a plan to rehabilitate the property, obtained the required building permit and applied for the herein prescribed exemption on a form approved by the Commissioner of the Revenue. Application for exemption must be filed before the work designated by the building permit is begun.

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- (b) Paid to the Treasurer an application processing fee in the amount of twenty dollars (\$20.00). No application for the exemption approved by this article shall be deemed to have been filed until the fee herein imposed has been paid.
- (c) Prior to commencement of a plan to rehabilitate the property, contacted the Real Estate Administrator to make an appointment to have the property assessed in its current condition. Site visits will be completed within ten (10) working days of receiving a completed application or the current assessment on file will be used.
- (d) After rehabilitation of the building, within ten (10) working days, contact the Real Estate Administrator to make an appointment to have assessed the fair market value of the renovation improvements, and such value will be reflected in the real estate tax assessment records within ten (10) working days.
- (e) Obtained the final assessment prior to January first of the taxable year for which such exemption is claimed.
- (f) Eligible projects must be completed within two (2) years from the date of acceptance by the Commissioner. Proof of completion must be in the form of a Certificate of Occupancy or Certificate of Completion from the Building Official and Zoning Administrator. An extension of one year to the two (2) year timeline may only occur upon resolution by City Council  
(Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 2011-28, 8-9-11; Ord. No. 2014-03, 2-25-14; Ord. No. 2016-13, 4-26-16)

### **DIVISION 4A. SUBSTANTIALLY REHABILITATED ENTERPRISE ZONE PROPERTY**

#### **SECTION 27-29. ENTERPRISE ZONE RAHABILITATION DEFINITIONS.**

For the purpose of this division, the following words and phrases shall have the meanings, respectively ascribed to them:

- (a) **SUBSTANTIALLY REHABILITATED ENTERPRISE ZONE RESIDENTIAL REAL ESTATE** shall mean any residential real estate within the North Loudoun Street District of the Enterprise Zone, but outside the boundaries of the Winchester Historic District, upon which there is an existing structure which is no less than fifteen (15) years old, and which has been so improved as to increase the assessed value thereof by no less than forty percent (40%). For structures that have been enlarged, the qualifying square footage includes the original structure and up to 50% additional square footage. If the total square footage of such rehabilitated, renovated, or replacement structure is larger than one hundred fifty percent (150%) of the square footage of the original structure, the square footage above said additional fifty percent

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(50%) shall not be entitled to the real estate tax exemption authorized by this Article. Rehabilitation, renovation, or replacement shall not include rehabilitation, renovation, or replacement occasioned by damage or destruction by fire, natural disaster or other acts of God.

(b) SUBSTANTIALLY REHABILITATED ENTERPRISE ZONE COMMERCIAL, INDUSTRIAL OR MIXED-USE REAL ESTATE shall mean any commercial, industrial or mixed-use real estate within the Enterprise Zone, upon which there is an existing structure which is no less than fifteen (15) years old, and which has been so improved as to increase the assessed value thereof by no less than sixty percent (60%). For structures that have been enlarged, the qualifying square footage includes the original structure and up to 50% additional square footage. Any commercial, industrial or mixed-use property that possesses or will possess not-for-profit enterprises that amount for more than forty percent (40%) of total improvement space is excluded from receiving this exemption. For properties that underwent complete replacement, the qualifying square footage includes the size of the original structure and up to an additional 50% of the structure's original square footage. If the total square footage of such rehabilitated, renovated, or replacement structure is larger than one hundred fifty percent (150%) of the square footage of the original structure, the square footage above said additional fifty percent (50%) shall not be entitled to the real estate tax exemption authorized by this Article. Rehabilitation, renovation, or replacement shall not include rehabilitation, renovation, or replacement occasioned by damage or destruction by fire, natural disaster or other acts of God. Applicant formally declines pursuance of this tax incentive should they pursue the Commercial and Mixed-use Rehabilitation Grant.

(c) AMOUNT OF EXEMPTION shall mean an amount equal to the increase in assessed value resulting from the rehabilitation or replacement of the structure as determined by the assessing officer, and this amount only shall be applicable to assessment, commencing on the first day of January of the year following the rehabilitation or replacement. An increase in assessment occurring after the first year of such rehabilitation or replacement exemption shall not result in an increase in such exemption.

(d) TAXABLE YEAR shall mean the calendar year from January first through December thirty-first for which such real property tax is imposed or exemption claimed.

(Ord. No. 2014-03, 2-25-14; Ord. No. 2016-4, 1-26-16)

**\*\*The amendments to this Ordinance adopted by Common Council on January 26, 2016 ("date of amendment") shall be effective as though enacted on February 18, 2015. Persons or entities participating in the program and receiving exemption under this Ordinance prior to the "date of amendment" shall be entitled to proceed as "grandfathered" under the version of this Ordinance immediately preceding the**

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**“date of amendment” or at their election in writing to the program administrator, proceed under this revised version.**

### **SECTION 27-29.1 ENTERPRISE ZONE EXEMPTIONS DECLARED.**

The purpose of this division shall be to provide real estate tax exemptions for substantially rehabilitated residential, commercial, industrial or mixed-use real estate for a period of ten (10) years, commencing on January first of the year following completion of such rehabilitation. (Ord. No. 2014-03, 2-25-14; Ord. No. 2016-4, 1-26-16)

**\*\*The amendments to this Ordinance adopted by Common Council on January 26, 2016 (“date of amendment”) shall be effective as though enacted on February 18, 2015. Persons or entities participating in the program and receiving exemption under this Ordinance prior to the “date of amendment” shall be entitled to proceed as “grandfathered” under the version of this Ordinance immediately preceding the “date of amendment” or at their election in writing to the program administrator, proceed under this revised version.**

State Law Reference—Code of Virginia, §§59.1-542; 58.1-3220, *et seq.*

### **SECTION 27-29.2 ENTERPRISE ZONE REHABILITATION EXEMPTION ELIGIBILITY REQUIREMENTS.**

Exemptions pursuant to this division shall not become effective unless the persons owning such property have:

- (a) Prior to commencement of a plan to rehabilitate the property, obtained the required building permit and applied for the herein prescribed exemption on a form approved by the Commissioner of the Revenue. Application for exemption must be filed before the work designated by the building permit is begun.
- (b) Paid to the Treasurer an application processing fee in the amount of twenty dollars (\$20.00). No application for the exemption approved by this article shall be deemed to have been filed until the fee herein imposed has been paid.
- (c) Prior to commencement of a plan to rehabilitate the property, contacted the Commissioner of the Revenue to make an assessment of the property in its current condition.

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- (d) After rehabilitation of the building, contacted the Commissioner of the Revenue to assess the fair market value of the renovation improvements, and reflect such value in the real estate tax assessment records.
  
- (e) Obtained the final assessment prior to January first of the taxable year for which such exemption is claimed. (Ord. No. 2014-03, 2-25-14)

**SECTION 27-30. RESERVED.**

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### DIVISION 5. PROPERTY EXEMPT FROM TAXATION BY DESIGNATION AND CLASSIFICATION

#### SECTION 27-31. AUTHORIZED.

- (a) Pursuant to subsection 6(a)(6) of Article X of the Constitution of Virginia and to Section 58.1-3651 of the Code of Virginia, the City by ordinance may by designation or classification exempt from real or personal property taxes, or both, the real or personal property, or both, owned by a non-profit organization that uses such property for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes. The ordinance shall state the specific use on which the exemption is based, and the continuance of the exemption shall be contingent on the continued use of the property in accordance with the purpose for which the organization is classified or designated.
- (b) No exemption shall be provided to any organization that has any rule, regulation, policy, or practice the unlawfully discriminates on the basis of religious conviction, race, color, sex, or national origin.
- (c) The Commissioner of the Revenue is delegated the authority to promulgate guidelines to assist staff in the administration of this Division. The guidelines and any amendments shall be approved by the City Manager and City Attorney and shall be submitted to Council for information. (Ord. No. 2008-36, 9-09-08; Ord. No. 2012-31, 11-13-12)

#### SECTION 27-32. EXEMPTION BY DESIGNATION.

(a) **APPLICATION.**

Any organization seeking an exemption by designation pursuant to the provisions of this Division shall file an application with the Commissioner of the Revenue on such forms as the Commissioner shall prescribe. The applicant must submit a completed application with all supporting documentation on or before November 1 of the year preceding the tax year for which the property tax exemption is sought. The application shall be reviewed by the City Assessor, the Office of the Commissioner of Revenue, the Office of the Treasurer, the Office of the City Manager and the Office of the City Attorney. Each department shall review all applications and shall make a written comment where appropriate.

The City Manager or his designee shall thereafter present an ordinance proposal for any such tax exemption application or applications, together with the estimated revenue impact and any other pertinent information, to the City Council

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for its consideration at a public meeting prior to its consideration of the annual budget. (Ord. No. 2012-31, 11-13-12)

(b) **PUBLIC HEARING REQUIREMENT.**

An ordinance exempting property by designation pursuant to Section 27-31 shall be adopted only after holding a public hearing on the application at which citizens shall have the opportunity to be heard. The City shall publish notice of a hearing once in a newspaper of general circulation in the City of Winchester. The notice shall include the assessed value of all real and tangible personal property for which an exemption is requested, as well as the property taxes assessed against such property. The public hearing shall not be held until at least five (5) days after the notice is published in the newspaper. Prior to processing the application, the City shall collect a deposit of \$350.00 to cover a portion of the cost of publication of the notice from the requesting organization. Upon receipt by the City of the executed application and processing fee, the application cannot be withdrawn. Should the cost of the publication of notice exceed the deposit, the requesting organization shall pay the balance to the City. Should the cost of the notice be less than the deposit, the balance shall be remitted to the organization. The effective date of any ordinance adopted pursuant to this Section shall be governed by Section 27-37. (Ord. No. 2011-21, 10-11-11)

(c) **CRITERIA FOR EXEMPTION BY DESIGNATION.**

Before adopting any such ordinance exempting property by designation, the City Council shall consider the following questions:

1. Whether the organization is exempt from taxation pursuant to Section 501(C) of the Internal Revenue Code of 1954.
2. Whether a current alcoholic beverage license for serving of alcoholic beverage has been issued by the Virginia Alcoholic Beverage Control Board to such organization for use on such property;
3. Whether any director, officer, or employee of the organization is paid compensation in excess of a reasonable allowance for salaries or other compensation for personal services which such director, officer, or employee actually renders;
4. Whether any part of the net earnings of such organization inures to the benefit of any individual, and whether any significant portion of the service provided by such organization is generated by funds received from donations, contributions, or local, state or federal grants. As used in this subsection, donations shall include the providing of personal services or the contribution of in-kind or other material services;

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5. Whether the organization provides services for the common good of the public;
6. Whether a substantial part of the activities of the organization involves carrying on propaganda or otherwise attempting to influence legislation and whether the organization participates in, or intervenes in, any political campaign on behalf of any candidate for public office;
7. The revenue impact to the locality and its taxpayers of exempting the property; and
8. Any other criteria, facts, and circumstances that the governing body deems pertinent in the adoption of such ordinance. (Ord. No. 2008-36, 9-09-08)

### **SECTION 27-33. EXEMPTION BY CLASSIFICATION.**

- (a) Any organization that claims exemption by classification pursuant to Article X, Section 6(a) (1) through (4), or (7), of the Virginia Constitution, or pursuant to any ordinance adopted in accordance with this section, shall submit a letter to the Commissioner of the Revenue describing the basis of its claim. The Commissioner of the Revenue or his/her designees shall review the request to determine if the organization qualifies for a classification exemption.

Following a review and recommendation in accordance with Section 27-32(a), Council may by ordinance establish local classifications for common types of organizations that are not exempted directly by the self-executing provisions of Virginia Constitution Article X, Section 6(a) (1) through (4) or (7). A new classification shall only apply to property used by its owner for religious, charitable, patriotic, historical, benevolent, cultural or public park and playground purposes.

- (b) Any ordinance exempting property by classification pursuant to Section 27-31 and subsection B of this Section shall be adopted only after holding a public hearing with respect thereto, at which citizens shall have an opportunity to be heard. The City shall publish notice of the hearing once in a newspaper of general circulation in the City of Winchester. The public hearing shall not be held until at least five days after the notice of publication in the newspaper. (Ord. No. 2008-36, 9-09-08; Ord. No. 2012-31, 11-13-12)

### **SECTION 27-34. EXEMPTIONS STRICTLY CONSTRUED.**

All exemptions of property from taxation created under this Division shall be strictly construed in accordance with Article X, Section 6(f) of the Constitution of Virginia. (Ord. No. 2008-36, 9-09-08)

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### **SECTION 27-35. VALIDITY OF PREVIOUSLY GRANTED EXEMPTIONS.**

Nothing in Section 58.1-3651 of the Code of Virginia, or in this Division, or in any ordinance adopted pursuant to this Division, shall affect the validity of either a classification exemption or a designation exemption granted by the General Assembly, prior to January 1, 2003, pursuant to Article 2 (Section 58.1-3606 et seq.), Article 3 (Section 58.1-3609, et seq.), or Article 4 (Section 58.1-3650, et seq.) of Chapter 36 of Title 58.1 of the Code of Virginia. Previously granted discretionary exemptions (Section 58.1-3650, et seq.) may be revoked in accordance with the provisions of the Code of Virginia including but not limited to Section 58.1-3605. (Ord. No. 2008-36, 9-09-08)

If any property that was exempt from property taxation is sold or transferred to another person or entity that is not exempt from property taxes, or if such property is used by its owner for some purpose that is not consistent with the terms of the previous exemption, then that property shall lose its tax exemption as of the date of change. If another tax exemption applies to the new owner or the new use of the property, that owner shall be responsible for submitting an application for tax exemption. In any dispute concerning the revocation of any property tax exemption, the owner of the property shall have the burden of showing that any such property is exempt from property taxation. (Ord. No. 2012-31, 11-13-12)

### **SECTION 27-36. TRIENNIAL REVIEW OF EXEMPTIONS.**

- (a) Every organization except the Commonwealth, any political subdivision of the Commonwealth or the United States which owns real and personal property in the City of Winchester previously exempt pursuant to Chapter 36 of Title 58.1 of the Code of Virginia; and every organization exempt pursuant to Section 27-31; shall be required to file triennially an application with the Commissioner of the Revenue on such forms as the Commissioner shall prescribe as a requirement of retention of exempt status of the property.
- (b) The Commissioner of the Revenue shall give each organization sixty (60) days notice of the due date of the application. If the organization certifies that the ownership and the use of the property are the same as when the exemption was initially granted, and the financial status of the organization is substantially the same, the Commissioner of Revenue may accept that certification as the application; however, the Commissioner of Revenue may require a more complete application including one identical to the application required in Section 37-51. The application shall be filed within the next sixty (60) days preceding the tax year for which such exemption retention thereof is sought.
- (c) Failure to timely file the required triennial application shall result in termination of the exemption.

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- (d) The Commissioner of Revenue or his/her designees shall review the applications, and provided the ownership and use of the property remains the same as when the exemption was initially approved, the exempt status shall continue. (Ord. No. 2008-36, 9-09-08; Ord. No. 2012-31, 11-13-12)

### **SECTION 27-37. EFFECTIVE DATES.**

- (a) The effective date of the exemption by designation for all proratable property such as real estate and vehicles shall be the first day of the month following the later of the payment to the City of the full cost of the publication of notice and the adoption by City Council of the ordinance of exemption on second reading. The effective date of the exemption by designation for not-proratable property, such as certain tangible personal property shall be January 1<sup>st</sup> following the later of the payment to the City of the full cost of the publication of notice or the adoption by City Council of the ordinance of exemption on second reading.
- (b) The effective date of the exemption by classification for all proratable property such as real estate and vehicles shall be the first day of the month following the adoption by City Council of the ordinance of exemption on second reading. The effective date of the exemption by classification for non-proratable property, such as tangible personal property, shall be January 1<sup>st</sup> following the adoption by City Council of the ordinance of exemption on second reading.
- (c) For any organization that filed an application for an exemption by designation prior to the adoption of Division 5, Council may provide that the ordinance establishing the exemption by designation takes effective on or after January 1, 2008.

The effective date of an exemption by classification determined pursuant to Section 27-33(a) shall be determined by the Commissioner of Revenue.  
(Ord. No. 2008-36, 9-09-08; Ord. No. 2012-31, 11-13-12)

## **DIVISION 6. TAX EXEMPTION FOR SOLAR ENERGY EQUIPMENT, FACILITIES AND DEVICES**

### **SECTION 27-38. DEFINITIONS.**

The following words, terms and phrases, when used in this division shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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“*Certified solar energy equipment, facilities or devices*” means any property, including real or personal property, equipment, facilities or devices, certified by the Building Official to be designed and used primarily for the purpose of providing for the collection and use of incident solar energy for water heating, space heating or cooling or other application which would otherwise require a conventional source of energy such as petroleum products, natural gas or electricity.

### **SECTION 27-38.1. EXEMPTION GRANTED.**

Certified solar equipment, facilities and devices are hereby declared to be a separate class of property and constitute a classification for city taxation separate from other classifications of real or personal property. Residents with real property in the city to which is attached certified solar energy equipment, facilities or devices or owners of such equipment, facilities, or devices that are taxable as machinery are hereby granted an exemption from taxation on such certified solar energy equipment, facilities or devices, subject to the limitations and conditions prescribed by this division and by state law. (Code of Virginia §58.1-3661)

### **SECTION 27-38.2. ADMINISTRATION.**

The exemption provided by this division shall be administered by the Building Official. The Director of Planning, the Zoning Administrator, the City Assessor, Commissioner of Revenue, and the Treasurer are hereby authorized and directed to work with the Building Official to adopt and enforce such reasonable rules and regulations, not in conflict with the provisions of this division, as may be reasonably necessary to determine the value of qualifying solar energy equipment, facilities or devices including, without limitation, requiring the production of documents and the furnishing of answers under oath.

### **SECTION 27-38.3. REQUIREMENTS.**

The exemption provided by this division shall be granted to residents meeting the following requirements:

(1) The title to the property for which exemption is claimed is held, or partially held, by the person claiming the exemption.

(2) The Building Official has determined, after such solar energy equipment, facilities or devices have been installed and upon inspection thereof, that the subject property performs at least one (1) of the functions set forth in section 32-103.5 and that it has been installed in conformity with the Virginia Uniform Statewide Building Code and conforms to the requirements set by the regulations of the State Board of Housing and Community Development.

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### **SECTION 27-38.4. APPLICATION GENERALLY.**

(a) The person claiming an exemption under this division for solar energy equipment, facilities or devices must file an application with the Zoning & Inspections department on forms provided for that purpose.

(b) The application must be accompanied by a complete set of plans and specifications of the solar energy equipment, facilities or devices for which exemption is claimed. The application must also be accompanied by sworn statements of Contractors or suppliers attesting to the cost of the purchase and installation of the solar energy equipment, facilities or devices for which exemption is sought.

### **SECTION 27-38.5. APPEALS FROM DECISIONS OF THE DEPARTMENT OF PLANNING**

Any person aggrieved by a decision of the Building Official under this division may appeal such decision to the Board of Building Code Appeals which may affirm or reverse such decision.

### **SECTION 27-38.6. APPROVAL AND CERTIFICATION OF APPLICATION.**

If after receipt of a completed application under this division and an inspection of the subject solar energy equipment, facilities or devices, the Building Official determines that the requirements for exemption have been met, he shall approve and certify the application and transmit the same to the City Assessor.

### **SECTION 27-38.7. DETERMINATION OF VALUE BY LOCAL ASSESSING OFFICER.**

Upon receipt of a certificate from the Building Official pursuant to this division, the City Assessor shall proceed to establish the value of qualifying solar energy equipment, facilities or devices to be exempted from taxation. The exemption provided by this section shall be determined by applying the local tax rate to the value of such equipment, facilities or devices and subtracting that amount either (i) from the total real property tax due on the real property to which such equipment, facilities or devices are attached or (ii) if such equipment, facilities or devices are taxable as machinery and tools under section 58.1-3507, [Code of Virginia], from the total machinery and tool tax due on such equipment, facilities or devices, at the election of the taxpayer.

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### **SECTION 27-38.8. PRESUMPTION AS TO VALUE.**

For purposes of the administration of this division, and for no other purposes, the value of certified solar equipment, facilities or devices qualifying for exemption shall be presumed to be not less than the normal cost of purchasing and installing such equipment, facilities or devices.

### **SECTION 27-38.9. EFFECTIVE DATE AND DURATION OF EXEMPTION.**

The exemption determined by the City Assessor as provided in this division shall be effective beginning the first day of the tax year next succeeding the certification of the Building Official and shall remain in effect for such tax year and the following four (4) tax years.

### **SECTION 27-38.10. TREASURER TO BE FURNISHED ANNUAL LIST OF EXEMPTIONS; CONTENTS OF LIST.**

Annually on or before August fifteenth in each tax year, the City Assessor shall furnish to the Treasurer a list of all exemptions under this division effective as of the beginning of such tax year. Such list shall show the value of each applicable exemption, multiplied by the tax rate established for the year in question and extended to show the amount of real estate tax on each such property or machinery and tool tax to be exempted each year.

### **SECTION 27-38.11. EXEMPTION TO BE CREDITED AGAINST REAL ESTATE TAXES OR AGAINST MACHINERY AND TOOL TAX.**

The Treasurer shall be entitled to credit the amounts certified by the City Assessor under section 32-103.15 against the total taxes for the tax year in question and shall indicate the amount of each such exemption as a credit on the tax tickets of each qualifying property.

### **SECTION 27-38.12. FALSE CLAIMS FOR EXEMPTION.**

(a) It shall be unlawful for any person falsely to claim an exemption under this division or knowingly make a false statement in connection with any application for such an exemption.

(b) A violation of this section shall constitute a Class 1 misdemeanor.  
(Ord. No. 2009-22, 8-11-09)

**State Law Reference**—Code of Virginia §58.1-3661

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### DIVISION 7. ABATED DERELICT PROPERTY

#### SECTIONS 27-39. DEFINITIONS.

For the purpose of this division, the following words and phrases shall have the meanings respectively ascribed to them:

- (a) **AMOUNT OF EXEMPTION FOR REHABILITATION OF DERELICT PROPERTY** shall mean an amount equal to the increase in assessed value resulting from the rehabilitation of the structure as determined by the assessing officer, and this amount only shall be applicable to assessment commencing on the first day of January of the year following the rehabilitation. A change in assessment occurring after the first year of such rehabilitation exemption shall not result in a change in such exemption.
- (b) **AMOUNT OF EXEMPTION FOR DEMOLITION OF DERELICT PROPERTY** shall mean the fair market value of the demolition costs.
- (c) **TAXABLE YEAR** shall mean the calendar year from January first through December thirty-first for which such real property tax is imposed or exemption claimed.  
(Ord. No. 2011-28, 8-9-11; Ord. No. 2011-51, 11-8-11)

#### SECTION 27-39.1. EXEMPTIONS DECLARED.

The real estate tax on an amount equal to the costs of demolition or an amount equal to the increase in the fair market value of the renovations shall be abated for a period of ten years, and is transferrable with the property. The abatement of taxes for demolition shall not apply if the structure demolished is a registered Virginia landmark or determined by the Department of Historic Resources to contribute to the significance of a registered historic district.

(Ord. No. 2011-28, 8-9-11; Ord. No. 2011-51, 11-8-11)

#### SECTION 27-39.2. ELIGIBILITY REQUIREMENTS.

Exemptions pursuant to this division shall not become effective unless the persons owning such property have:

- (a) Complied with the requirements of Section 6-134.

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- (b) Prior to commencement of a plan to demolish or renovate the derelict building, applied for the herein prescribed exemption on a form approved by the commissioner of the revenue.
- (c) Prior to commencement of a plan to demolish or renovate the derelict building, contacted the real estate assessor to make an assessment of the property in its current derelict condition.
- (d) After demolition or renovation of the derelict building, contacted the real estate assessor to assess the fair market value of the demolition costs or the fair market value of the renovation improvements, and reflect such value in the real estate tax assessment records.
- (e) Submitted the application for exemption prior to January first of the taxable year for which such exemption is claimed.  
(Ord. No. 2011-28, 8-9-11; Ord. No. 2011-51, 11-8-11)

**State Law Reference--** Code of Virginia, §15.2-907.1.

### ARTICLE III. PERSONAL PROPERTY TAX

#### SECTION 27-40. TANGIBLE PERSONAL PROPERTY.

- (a) Upon all personal property as defined in Section 58.1-3500 of the Code of Virginia, as amended, except those categories of personal property which are listed in Section 58.1-3503.A.1, 2, 13 and 14, and not exempt from taxation there shall be a tax of four dollars and fifty cents (\$4.50) for every one hundred dollars (\$100.00) of the assessed value thereof for general city and school purposes.
  - (i) All City taxes on personal property for each year shall be due and payable during the year for which same are assessed as follows:
    - (a) Personal property not listed in subsection (b) - total amount in one installment on or before December fifth.
    - (b) Personal property listed in subsection (b) - total amount in one installment on the last day of the twelfth month after such personal property has acquired situs within the City.

All taxes annually imposed on personal property except as set out in subsections b and c, below, shall be payable by the persons who on the first day of January in each and every year are the owners of record thereof. (Ord. No. 047-2004, 12-14-04)

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**Note: This Ordinance shall take effect on 1 January 2005.**

- (b) The personal property tax on motor vehicles, and trailers, hereinafter, taxable property or property, shall be assessed against such taxable property which acquires a situs within the City on January first of each year or which acquires a situs within the City on or after January the second of each year. When taxable property acquires a situs within the City on or after January second, the personal property tax for that year shall be assessed to the owner prorated on a monthly basis for the portion of the tax year during which the taxable property has situs within the City. When taxable property with a situs in the City is transferred to a new owner within the City, the personal property tax shall be assessed to the new owner prorated on a monthly basis for the portion of the tax year during which the new owner owns the taxable property. For purposes of proration, a period of more than one-half of a month shall be counted as a full month and a period of less than one-half of a month shall not be counted. All taxable property shall be assessed as of January first of each year or, if it acquires situs or has its title transferred after January first, as of the first day of the month in which the taxable property acquires situs within the City or has its title transferred. The owner of taxable property acquiring situs within the City or to whom taxable property is transferred shall file a declaration of property ownership to the Commissioner within forty-five (45) days of the date on which such property acquires a situs within the City or has its title transferred to such owner. (Ord. No. 042-2004, 10-12-04)
- (c) When any taxable property loses its situs within the City or its title is transferred to a new owner, the taxpayer shall from that time be relieved from personal property tax on such taxable property and receive a refund of personal property tax already paid, or a credit toward taxable property newly transferred to the taxpayer, or a credit against personal property taxes outstanding against the taxpayer, at the option of the Commissioner, on a monthly prorated basis, upon application to the Commissioner, provided that application is made within three (3) years from the last day of the tax year during which the taxable property lost situs or had its title transferred. The Commissioner shall make a reasonable effort to ascertain and notify any taxpayer entitled to a prorated refund of personal property taxes pursuant to this subsection.
- (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 038-93, 11-09-93; Ord. No. 2007-24, 07-10-07)
- (d) (i) Provided a previous personal property return for a motor vehicle or trailer not used or employed in a trade or business has been filed by the owner or owners of such property and there has been no change in name or address of the owner or owners nor has the motor vehicle had a change in status or situs since the previous filing, no tangible personal property tax return need be filed for succeeding years.

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(ii) However, the owner of a motor vehicle or trailer not used or employed in a trade or business shall file a new tangible personal property tax return within forty-five (45) days after occurrence of any of the following events:

- (a) a change in the name or address of the person or persons owning such motor vehicle or trailer taxable by the City;
- (b) a change in the situs of such motor vehicle or trailer;
- (c) any other change affecting the assessment or levy of the personal property tax on such motor vehicle or trailer for which a tax return was previously filed; or
- (d) any change in which a person acquires one (1) or more such motor vehicles or trailers and for which no personal property tax return has been filed. (Ord. No. 009-97, 4-8-97; Ord. No. 042-2004, 10-12-04)

**State Law References--**Code of Virginia, §§58.1-3500, *et seq.*, 58.1-3516, 58.1-3518.1.

**Note:** Ordinance No. 009-97 effective June 1, 1997.

### **SECTION 27-41. APPLICABILITY; DUTY OF COMMISSIONER; APPEAL.**

Each person, firm, and corporation engaged in business in the City, having an office in the City, or residing in the City shall file a return of his personal property for taxation to the Commissioner in accordance with forms supplied by said Commissioner or the Department of Taxation, Commonwealth of Virginia. The return for prorated personal property shall be filed by 31 January of each year, except as otherwise specified in Section 27-40 (d). Each return for non-prorated personal property shall be filed by 1 May of each year.

Returns will not be accepted by the Commissioner unless same are completed in accordance with the forms provided the taxpayers. It shall be the duty of the Commissioner to make such investigation as may be necessary to determine that returns are full and complete and, if necessary, to revise owner's appraisal of the original cost of the property to be assessed. Said original cost shall determine the total assessment.

The property owner, if dissatisfied with the determination of the Commissioner, shall pay the assessment made but shall have the right to appeal to the Common Council for a revised assessment only after exhausting their administrative appeals process described in Section 27-41(A). If such assessment is revised by the Common Council to a lower figure, the property owner shall be entitled to a refund of the over assessment so

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determined. If determined higher, additional balance shall immediately become due. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

(A) An administrative appeal may be filed with the Commissioner of the Revenue pursuant to this section within (30) days of issuance of his personal property tax assessment unless otherwise provided for by law.

1. The appeal shall be filed in writing, in good faith, and sufficiently identify the taxpayer, the tax period covered by the challenged assessment, the amount in dispute, the remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer relies, and any other facts relevant to the taxpayer's contention.
2. The Commissioner of the Revenue may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents, an audit or further audits, or other evidence deemed necessary for a proper and equitable determination of the application.
3. The assessment shall be deemed prima facie correct.
4. The Commissioner of the Revenue shall undertake a full review of the taxpayer's claims and issue a written determination to the taxpayer setting forth the facts and arguments in support of his decision within (90) days after such appeal is filed. Such determination shall be accompanied by a written explanation of the taxpayer's right to file an administrative appeal of the determination to the Tax Commissioner.
5. Any taxpayer whose administrative appeal to the Commissioner of the Revenue pursuant to this subsection has been pending for more than one year without the issuance of a final determination may, upon not less than 30 days' written notice to the Commissioner of the Revenue, elect to treat the application as denied.
6. Suspension of collection activity pending administrative appeal to Commissioner of the Revenue. Provided a timely and complete appeal is filed pursuant to this Section, collection activity shall be suspended by the Treasurer until a final determination is issued by the Commissioner of the Revenue, unless the Treasurer (i) determines that collection would be jeopardized by delay; or (ii) is advised by the Commissioner of the Revenue that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue, but no further penalty shall be imposed while collection action is suspended.  
(Ord. No. 2011-21, 10-11-11)

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### SECTION 27-42. MANUFACTURED HOMES.

- (a) A tax is hereby imposed on manufactured homes, as hereinafter defined as a separate class of tangible personal property, at the same rate as that stated in Section 27-10 of this Code.
- (b) “Manufactured homes”, as the term is used herein, are defined as vehicles without motive power, used or designed to be used as manufactured homes, as more specifically defined by Section 36-85.3 of the Code of Virginia, 1950, as amended. (Ord. No. 017-92, 11-10-92; Ord. No. 030-93, 10-12-93; Ord. No. 031-99, 11-9-99; Ord. No. 008-2000, 04-11-00)

**Cross reference--**§27-141 (mobile homes to be taxed at same rate as real property, Code of Virginia, §58.1-3506.B.(iii)).

**State Law References--**Code of Virginia, §36-85.3, §58.1-3506.

### SECTION 27-43. EXEMPTION OF CERTAIN HOUSEHOLD GOODS AND PERSONAL EFFECTS.

- (a) There is hereby exempted from local taxation, pursuant to the Code of Virginia, §58.1-3504, the household goods and personal effects defined as separate items of taxation and classified as follows:
  - 1. Bicycles.
  - 2. Household and kitchen furniture, including gold and silver plates, plated ware, watches and clocks, sewing machines, refrigerators, automatic refrigerating machinery of any type, vacuum cleaners and all other household machinery, books, firearms, and weapons of all kinds.
  - 3. Pianos, organs, and all other musical instruments; phonographs and record players, and records to be used therewith; and radio and television instruments and equipment.
  - 4. Oil paintings, pictures, statuary, curios, articles of virtue and works of art.
  - 5. Diamonds, cameos or other precious stones and all precious metals used as ornaments or jewelry.
  - 6. Sporting and photographic equipment.
  - 7. Clothing and objects of apparel.

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8. Antique motor vehicles as defined in §46.2-100 which may not be used for general transportation purposes.
  9. All-terrain vehicles and off-road motorcycles as defined in §46.2-100.
  10. All other tangible personal property used by individuals or a family or household incident to maintaining an abode.
- (b) The classification above set forth shall apply only to such property owned and used by an individual or by a family or household incident to maintaining an abode. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 2010-46, 9-14-10)

### **SECTION 27-44. CERTAIN COMPUTER HARDWARE**

- (a) Computer hardware used by a business primarily engaged in providing data processing services to other non-related or non-affiliated businesses is hereby designated as a separate class of personal property.
- (b) Computer hardware as defined in subsection (a) shall be valued on a percentage or percentages of the original cost of the hardware.
- (c) A tax is hereby imposed on such computer hardware at the rate of one dollar and nine cents (\$1.09) per every one hundred dollars (\$100.00) of assessed value. (Ord. No. 035-95, 9-12-95)

(Note: This ordinance effective 1 January 1996.)

**State Law References**--Code of Virginia §§58.1-3503A.16, 3506A.9, B

### **SECTIONS 27-45 - 27-49. RESERVED.**

## **ARTICLE IV. MACHINERY AND TOOLS.**

### **SECTION 27-50. MACHINERY AND TOOLS.**

Upon all machinery and tools used in a business, as defined in Section 58.1-3507 of the Code of Virginia, there shall be a tax of one dollar and thirty cents (\$1.30) for every one hundred dollars (\$100.00) of the assessed value thereof for general city and school purposes.

All City taxes on machinery and tools for each year shall be due and payable during the year for which same are assessed as follows:

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-Total amount in one installment on or before December Fifth.

All taxes annually imposed on machinery and tools shall be payable by the persons who on the first day of January in each and every year are the respective owners thereof. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 016-93, 05-06-93; Ord. 011-96, 05-14-96; Ord. No. 016-2004, 4-28-04)

**(Note: The effective date of this Ordinance shall be July 1, 2004.)**

**State Law References--**Code of Virginia, §§58.1-3507, *et seq.*

**SECTION 27-51. REPEALED.**  
(Ord. No. 2011-21, 10-11-11)

**SECTIONS 27-52 - 27-59. RESERVED.**

### ARTICLE V. UTILITY TAX

**SECTION 27-60. DEFINITIONS.**

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

- (a) **UTILITY SERVICES.** The phrase "utility services" shall include local exchange telephone service, local cellular mobile radio telecommunication service, electrical service, gas service and cable television service furnished within the corporate limits of the City of Winchester.
- (b) **PURCHASER.** The word "purchaser" shall include every person who purchases a utility service, and shall be deemed to include any consumer of such services, whether an individual, corporation, or other entity.
- (c) **SELLER.** The word "seller" shall include every person who sells or furnishes a utility service.
- (d) **RESIDENTIAL USER.** The term "residential user" shall mean the owner or tenant of private residential property who pays for utility service in or for said property, including, but not limited to, apartment houses and other multi-family dwellings.

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- (e) **COMMERCIAL OR INDUSTRIAL USER.** The term "commercial or industrial user" shall mean the owner or tenant of property used for commercial, industrial, and all other nonresidential purposes, who pays for utility service for said property.
- (f) **GROSS CHARGES.** The term "gross charges" means, subject to the exclusions of this section, the amount charged or paid for the taxable purchase of mobile local telecommunication services. However, "gross charges" shall not include the following:
  - 1. Charges or amounts paid that vary based on the distance and/or elapsed transmission time of the communication that are separately stated on the consumer's bill or invoice.
  - 2. Charges or amounts paid for customer equipment, including such equipment that is leased or rented by the customer from any source, if such charges or amounts paid are separately identifiable from other amounts charged or paid for the provision of mobile local telecommunication services on the service provider's books and records.
  - 3. Charges or amounts paid for administrative services, including, without limitation, service connection and reconnection, late payments, and roamer daily surcharges.
  - 4. Charges or amounts paid for special features that are not subject to taxation under § 4251 of the Internal Revenue Code of 1986, as amended.
  - 5. Charges or amounts paid that are (i) the tax imposed by § 4251 of the Internal Revenue Code of 1986, as amended or (ii) any other tax or surcharge imposed by statute, ordinance or regulatory authority.
  - 6. Bad debts.
- (g) **LOCAL CELLULAR MOBILE RADIO TELECOMMUNICATIONS.** The phrase "local cellular mobile radio telecommunications" means any two-way mobile or portable local telecommunication service, including cellular mobile radio telecommunication service and specialized mobile radio.
- (h) **MOBILE LOCAL TELECOMMUNICATION SERVICE.** The phrase "Mobile local telecommunication service" means any two-way mobile or portable local telecommunication service, including cellular mobile radio telecommunication service and specialized mobile radio.

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- (i) **MOBILE SERVICE CONSUMER.** The phrase "Mobile service consumer" means a person having a telephone number for mobile local telecommunication service who has made a taxable purchase of such service or on whose behalf another person has made a taxable purchase of such service.
- (j) **MOBILE SERVICE PROVIDER.** The phrase "Mobile service provider" means every person engaged in the business of selling mobile local telecommunication services to consumers.
- (k) **KILOWATT HOURS (kWh).** The phrase "kilowatt hours (kWh)" means a quantity of electricity, measured in units of 1000 watt-hours. A watt-hour is 1 watt of electricity delivered for one hour.
- (l) **CCF.** The abbreviation "CCF" means the volume of natural gas at standard pressure and temperature in units of 100 cubic feet.
- (m) **MONTHLY.** The term "monthly" refers to the amount of gas or electricity actually delivered by a seller to a purchaser, or the amount actually charged by a provider for other covered services, during a calendar month. Bills shall also be considered monthly bills if submitted by a seller to a purchaser twelve (12) times per year covering approximately equal periods of time. To the extent that a seller measures, delivers, or bills for gas, electricity, or other taxable monthly service on a billing cycle other than "monthly", as defined above, then the monthly charge or amount delivered for purposes of calculating the tax due for each month contained in the billing cycle shall be the whole charge or amount for the entire billing cycle, divided by the number of months contained in the billing cycle.

(Ord. of 6-10-69; Ord. No. 009-86, 6-10-86; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92, Ord. No. 017-93, 05-06-93; Ord. No. 005-96, 04-09-96; Ord. No. 020-2000, 10-10-00)

(Note – The effective date of this Ordinance is January 1, 2001.)

### **SECTION 27-61. LEVY AND RATE.**

- (a) **ELECTRIC UTILITY TAX.** There is hereby imposed and levied by the City of Winchester upon each and every purchaser of electric utility service a tax in the amount of \$0.012 on each kilowatt hour (kWh) delivered monthly to residential purchasers, not to exceed \$3.00 monthly, and \$0.011 on each kilowatt hour (kWh) delivered monthly to commercial or industrial purchasers, not to exceed a maximum of 10,700 kilowatt hours. In the case of any apartment house or other multi-family dwelling which is supplied electricity through one or more master meters, each dwelling unit shall be taxed at \$3.00 monthly, or at \$0.012 multiplied

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by the total number of kilowatt hours delivered to the master meter and divided by the total number of units served, whichever is less.

- (b) NATURAL GAS UTILITY TAX. There is hereby imposed and levied by the City of Winchester upon each and every purchaser of natural gas utility service a tax in the amount of \$0.22 on each CCF delivered monthly to residential purchasers, not to exceed \$3.00 monthly, and \$0.15 on each CCF delivered monthly to commercial or industrial purchasers, not to exceed a maximum of 800 CCF. In the case of any apartment house or other multi-family dwelling which is supplied natural gas through one or more master meters, each dwelling unit shall be taxed at \$3.00 monthly, or at \$0.22 multiplied by the total number of CCF delivered to the master meter and divided by the total number of units served, whichever is less.
- (c) TELEPHONE AND CABLE TELEVISION UTILITY TAX. There is hereby imposed and levied by the City of Winchester upon each and every purchaser of local exchange telephone and cable television utility services a tax in the amount of fifteen percent (15%) of the monthly charge for each such utility service, exclusive of any Federal tax thereon, the maximum such tax not to exceed fifteen percent (15%) of the first Seven Hundred Fifty Dollars (\$750.00) of any such monthly charge, exclusive of any Federal tax thereon. Provided, however, that whenever any monthly bill submitted by any seller for local exchange telephone and cable television utility service shall exceed fifteen dollars (\$15.00) for a residential user, there shall be no tax computed on the portion of each such bill in excess of fifteen (\$15.00). The charge for cable television service subject to this tax shall exclude any charge made for a remote control tuning devise.
- (d) LOCAL CELLULAR MOBILE RADIO TELECOMMUNICATION UTILITY TAX. There is hereby imposed a levy by the City of Winchester upon each and every local consumer of local cellular mobile radio telecommunications services a tax in the amount of ten percent (10%) of the gross charges for such local cellular service. Provided however, that in the case of any monthly bill submitted by a mobile service provider, there shall be no tax computed on the portion of each such bill in excess of thirty dollars (\$30.00).

(Ord. of 6-10-69; Ord. No. 009-86,6-10-86; Ord. 044-88, 11-15-88; Ord. No. 012-91, 4-23-91; Ord. No. 017-92, 11-10-92; Ord. No. 017-93, 05-06-93; Ord. No. 005-96, 04-09-96; Ord. No. 020-2000, 10-10-00)

(Note – The effective date of this Ordinance is January 1, 2001)

**State Law Reference--** Code of Virginia, §58.1-3812, §58.1-3814.

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### **SECTION 27-62. COLLECTION.**

It shall be the duty of every seller in acting as the tax collecting medium or agency for the City of Winchester to collect from the purchaser for the use of the City the tax hereby imposed and levied at the time of collecting the purchase price charged, and the taxes collected during each calendar month shall be reported by each seller to the Commissioner and each seller shall remit the amount of tax shown by said report to have been collected to the Treasurer on or before the last day of the first calendar month thereafter, together with the name and address of any purchaser who has refused to pay his tax. The required reports shall be in the form prescribed by the Commissioner. The tax levied or imposed under this ordinance with respect to the purchase of any utility service shall become effective on charges first appearing on bills rendered on September 1, 1969, and thereafter.

(Ord. of 6-10-69; Ord. No. 009-86, 6-10-86; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

### **SECTION 27-63. RECORDS.**

Each and every seller shall keep complete records showing all purchases in the City, which records shall show the price charged against each purchaser with respect to each purchase, the date thereof and 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 City at reasonable times, and the duly authorized agents of the City shall have the right, power and authority to make transcripts thereof. (Ord. of 6-10-69; Ord. No. 009-86, 6-10-86; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

### **SECTION 27-64. EXEMPTIONS.**

The United States of America, the Commonwealth of Virginia, and the political subdivisions, boards, commissions and authorities thereof, are hereby exempted from the payment of the tax imposed and levied by this ordinance with respect to the purchase of utility services used by such governmental agencies. (Ord. of 6-10-69; Ord. No. 009-86, 6-1-86; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

### **SECTION 27-65. APPLICABILITY TO TELEPHONE CHARGES-EXCEPTIONS.**

The tax hereby imposed and levied on purchases with respect to local exchange telephone service shall apply to all charges made for local exchange telephone service, except local messages which are paid for by inserting coins in coin-operated telephones.

(Ord. of 6-10-69; Ord. No. 009-86, 6-10-86; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

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### **SECTION 27-66. BOTTLED GAS; EXCEPTIONS.**

The tax hereby imposed and levied shall not apply to the purchase of bottled gas. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

### **SECTION 27-67. RESERVED.**

### **SECTION 27-68. VIOLATIONS.**

Any purchaser failing, refusing, or neglecting to pay the tax hereby imposed or levied and seller violating the provisions hereof, and any officer, agent, or employee of any seller violating the provisions hereof shall, upon conviction, be subject to a fine of not more than twenty-five dollars (\$25.00). Each failure, refusal, neglect or violation and each day's continuance thereof, shall constitute a separate offense. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

### **SECTION 27-69. RESERVED.**

## ARTICLE VI. MEALS TAX

### **SECTION 27-70. TAX ON MEALS PURCHASED FROM FOOD ESTABLISHMENTS.**

There is hereby imposed and levied by the City of Winchester, Virginia, a tax, as more fully described hereafter in Section 27-72, on the amount paid for meals purchased from any food establishment, whether prepared in such food establishment or not, whether consumed on the premises or not. (Ord. No. 018-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 005-2001, 02-13-01)

**State Law Reference--** Code of Virginia, §58.1-3840.

### **SECTION 27-71. DEFINITIONS.**

For the purposes of this section, the following words or phrases shall have the meanings respectively ascribed to them by this article.

- (a) *CATERER* shall mean a person who furnishes meals on the premises of another for compensation.

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- (b) **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.
- (c) **FOOD ESTABLISHMENT** shall mean any place in or from which food or food products are prepared, packaged, sold, or distributed in the City of Winchester, including but not limited to, any restaurant, dining room, grill, coffee shop, cafeteria, café, snack bar, lunch counter, convenience store, movie theater, delicatessen, confectionery, bakery, eating house, eatery, drugstore, ice cream/yogurt shop, lunch wagon or truck, pushcart or other mobile facility 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 sole for immediate consumption.
- (d) **MEAL** shall mean any prepared food and/or drink, including alcoholic beverages, offered or held out for sale by a food establishment for the purpose of being consumed by an individual or group of individuals at one time to satisfy the appetite, and which is ready for human consumption. All such food and/or drink shall be included, unless hereinafter specifically exempted, whether intended to be consumed on the seller's premises or elsewhere, whether designated as breakfast, lunch, dinner, supper, or by some other name, and without regard to the manner, time or place of service. By way of illustration, and without limitation, the term "meal" shall include individual donuts or other pastries, individual fountain drinks, individual cold soft drinks, a salad or food bar in a food or other store, individual sandwiches, prepared pizzas or slices of pizza, and individual servings of potato chips or other snack foods.
- (e) **PURCHASER** shall mean any person who purchases a meal.
- (f) **SALE** shall mean the final sale to the ultimate consumer.
- (g) **SELLER** shall mean any restaurant or caterer selling meals, or the person operating such business. (Ord. No. 018-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 024-91, 6-11-91; Ord. No. 017-92, 11-10-92; Ord. No. 005-2001, 02-13-01)

### **SECTION 27-72. LEVY AND RATE.**

In addition to all other taxes and fees of any kind now or hereafter imposed by law, there is hereby levied and imposed on the purchaser of every meal served, sold, or delivered in the City by a food establishment or a caterer a tax equivalent to percent (6%) of the amount paid for the meal, whether consumed on the premises or not, with one-half cent (\$0.005) or more being treated as one cent (\$0.01).

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This situs of taxation shall be the City, county or town in which sales are made, namely the locality in which each place of business is located without regard to the locality of delivery or possible use by the purchaser. (Ord. No. 018-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 013-91, 4-23-91; Ord. No. 017-92, 11-10-92; Ord. No. 005-2001, 02-13-01; Ord. No. 015-2004, 4-28-04; Ord. No. 2014-17, 6-10-14)

**(Note: The effective date of this Ordinance shall be July 1, 2014)**

**State Law Reference--** Code of Virginia, §58.1-3841.

### **SECTION 27-73. PAYMENT AND COLLECTION OF TAX.**

In every case the tax shall be collected by the seller and paid by the purchaser at the time the charge for the meal becomes due and payable, whether payment is to be made in cash, check or on credit by means of a credit card or otherwise. The seller shall add the tax to the amount charged for the meal, and shall pay the taxes collected to the City as provided by Section 27-75.

(Ord. No. 018-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 005-2001, 02-13-01; Ord. No. 2015-05, 3-24-15)

### **SECTION 27-74. COLLECTION IN TRUST FOR THE CITY.**

All amounts collected as taxes under this article shall be deemed to be held in trust by the seller collecting them, until remitted to the City as provided by Section 27-75.

(Ord. No. 018-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

### **SECTION 27-75. REPORTS AND REMITTANCES.**

The Commissioner may require all prospective sellers of meals licensed to do business in the City to register for collection of tax imposed by this article. Every seller shall make a report for each calendar month, showing the amount of charges collected for meals and the amount of tax required to be collected.

The monthly reports shall be made on forms prescribed by the Commissioner and shall be signed by the seller. They shall be delivered to the Commissioner on or before the twentieth (20th) day of the calendar month following the month being reported. Each report shall be accompanied by a remittance of the amount of tax due, made payable to the Treasurer. The Commissioner shall promptly transmit all taxes received to the Treasurer.

(Ord. No. 018-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

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### **SECTION 27-76. PROCEDURE WHEN TAX NOT REPORTED OR COLLECTED.**

If any person whose duty it is to do so shall fail or refuse to collect the tax imposed under this article, and make timely report and remittance thereof, or if the Commissioner has reasonable cause to believe that an erroneous statement has been filed, the Commissioner shall proceed in such manner as is practicable to obtain facts and information on which to base an estimate of the tax due the City, and in connection therewith shall make such investigations and take such testimony and other evidence as may be necessary; provided, however, that notice and opportunity to be heard be given any person who may become liable for the amount owing prior to any determination by the Commissioner .

As soon as the Commissioner has procured whatever facts and information may be obtainable upon which to base the assessment of any tax payable by any person who has failed to collect, report, or remit such tax, the Commissioner shall proceed to determine and assess against such person the tax, penalty and interest provided in this chapter, and shall notify the person by certified or registered mail sent to his or her last known address of the amount of such tax, penalty, and interest. The total amount thereof shall be payable ten (10) days after the date such notice is sent. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

### **SECTION 27-77. PRESERVATION OF RECORDS.**

It shall be the duty of every person liable for the collection and remittance of the taxes imposed by this article to keep and preserve for a period of two years, records showing all purchases taxable under this article, the amount charged the purchaser for each purchase, the date thereof, the taxes collected thereon, and the amount of tax required to be collected by this article. The Commissioner shall have the power to examine such records at reasonable times and without reasonable 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. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

### **SECTION 27-78. DUTY OF PERSON GOING OUT OF BUSINESS.**

Whenever any person required to collect and remit to the City any tax imposed by this article, shall cease to operate or otherwise dispose of his or her business, the tax shall immediately become due and payable and the person shall immediately make a report and remittance thereof. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

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### **SECTION 27-79. 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 a tax imposed under this article, will be paid or absorbed by the seller or by anyone else, or that the seller or anyone else will relieve any purchaser of the payment of all or any part of the tax. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

### **SECTION 27-80. TIPS AND SERVICE CHARGES.**

No such taxes on meals may be imposed on (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition to the sales price of the meal; (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 of the meal, but only to the extent that such mandatory gratuity or service charge does not exceed 20% of the sale price. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 2015-05, 3-24-15)

### **SECTION 27-81. EXEMPTIONS.**

The following classes of meals shall not be subject to tax under this article.

- (a) Meals furnished by restaurants to employees as part of their compensation when no charge is made to the employee.
- (b) Meals sold by day care centers, public or private elementary or secondary schools, or food sold by any college or university to their students or employees.
- (c) Meals purchased by agencies of federal, state or local governments or by officers or employees thereof while on official business.
- (d) Meals furnished by a hospital, medical clinic, convalescent home, nursing home, home for the aged, infirm or handicapped, or homes for battered women, narcotic addicts or alcoholics, or other extended care facility to patients or residents thereof.
- (e) Meals furnished by a non-profit charitable organization to elderly, infirm, blind, handicapped or needy persons in their homes or at central locations.
- (f) Meals furnished 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, blind, handicapped or needy persons in their homes or at central locations.
- (g) Meals furnished by a college fraternity or sorority to its members.

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- (h) Meals sold by volunteer fire departments and 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 meals (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.
- (i) Meals served by churches to their members as a regular part of their religious observances.
- (j) Meals served 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.
- (k) Meals sold by a blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Blind and Vision Impaired and located on property acquired and used by the United States for any military or naval purposes.
- (l) Meals or food sold from vending machines.
- (m) Any other sale of a meal which is exempt from taxation under the Virginia Retail Sales and Use Tax Act, or any administrative rule or regulation issued pursuant thereto.
- (n) Non-alcoholic beverages, popcorn, candy, and similar confections sold in theaters.
- (o) The following items shall not be subject to the tax created by this ordinance when served exclusively for off-premises consumption:
  - 1) Factory prepackaged candy, gum, nuts, and other items of essentially the same nature.
  - 2) Factory prepackaged snack foods such as donuts, ice cream, crackers, chips, cookies, and items of essentially the same nature.
  - 3) Food sold in bulk. For purposes of this provision, a bulk sale shall mean the sale of any item that would exceed the normal, customary, and usual portion sold for 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 non-alcoholic 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

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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 U.S.C., Section 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.
- (p) A grocery store, supermarket, or convenience store shall not be subject to the tax created by this ordinance EXCEPT for any portion or section therein designated as a delicatessen or designated for the sale of prepared food and beverages.

(Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 005-2001, 02/13/2001; Ord. No. 2011-21, 10-11-11; Ord. No. 2015-05, 3-24-15)

### **SECTION 27-82. ENFORCEMENT.**

- (a) It shall be the duty of the Commissioner to ascertain the name of every person operating a restaurant in the City liable for the collection of the tax imposed by this article who fails, refuses, or neglects to collect such tax or to make the reports and remittance required by this article. The Commissioner may have a summons issued for such person, and the summons may be served upon such person by any city law enforcement officer in the manner provided by law. One return of the original summons shall be made returnable to the General District Court for the City of Winchester.
- (b) In the event the purchaser of any meal refuses to pay the tax imposed by this article, the seller may call upon the police department for assistance and the investigating officer may, when probable cause exists, issue the purchaser a summons returnable to the General District Court as provided by law. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 2011-21, 10-11-11)

### **SECTION 27-83. VIOLATIONS.**

Any person violating or failing to comply with any of the provisions of this article, shall, Section 1-11 of this code. Convictions shall not relieve any person from the payment, collection, or remittance of the tax as provided in Article IX. Each violation or failure shall be a separate offense. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

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### **SECTION 27-84. COMMISSIONER OF THE REVENUE; OTHER POWERS AND DUTIES**

It shall be the duty of the Commissioner to ascertain the name of every person operating a business in the City liable for the collection of the tax levied in this article.

The Commissioner shall have the power to adopt rules and regulations not inconsistent with the provisions of this article for the purpose of carrying out and enforcing the payment, collection and remittance of the tax herein levied, and a copy of such rules and regulations shall be on file and available for public examination in the Commissioner's office. Failure or refusal to comply with any rules and regulations promulgated under this article shall be deemed a violation of this article.

(Ord. No. 2015-05, 3-24-15)

### **SECTIONS 27-85 - 27-89. RESERVED.**

## **ARTICLE VII. MOTEL TAX FOR TRANSIENTS**

### **SECTION 27-90. DEFINITIONS**

For the purpose of this article, the following words and phrases shall have the meanings respectively ascribed to them.

- (a) *MOTEL* shall mean any public or private hotel, inn, apartment hotel, hostelry, tourist home or house, motel, rooming house or other lodging place within the City of Winchester offering lodging for four (4) or more persons at any time, and the owner and operator thereof who, for compensation, furnishes lodging to any transients as hereinafter defined except those persons who are within the purview of the existing "boarding and lodging" house tax.
- (b) *ROOM RENTAL* shall mean the total charge made by any such motel for lodging and/or space furnished any such transient. If the charge made by such includes any charge for services or accommodations in addition to that of lodging, and/or use of space, then such portion of the total charge as represents only room and/or space rental shall be distinctly set out and billed to such transient by such motel as a separate item.
- (h) *TRANSIENT* shall mean any person who, for any period of not more than thirty consecutive days, either at his own expense or at the expense of another, obtains lodging or the use of any space in any motel as hereinabove defined, for which lodging or use of space, a charge is made. (Ord. No. 017-92, 11-10-92)

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### **SECTION 27-91. LEVY AND RATE.**

In addition to all other taxes of every kind now or hereafter imposed by law, there is hereby imposed and levied on each and every transient a tax equivalent to six percent (6%) of the total amount paid for room rental by or for such transient to any motel, with one-half cent (\$0.005) or more of tax being treated as one cent (\$0.01).

(Ord. No. 019-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 014-91, 4-23-91; Ord. No. 017-92, 11-10-92; Ord. No. 014-2004, 4-28-04; Ord. No. 2014-18, 6-10-14)

**(Note: The effective date of this ordinance shall be July 1, 2014.)**

**State Law Reference--**Code of Virginia, §58.1-3840.

### **SECTION 27-92. EXEMPTIONS.**

No tax shall be payable hereunder on room rental paid to any hospital, medical clinic, convalescent home, or home for the aged, provided that such rental is consistent with the primary business function of the respective entity. (Ord. No. 019-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 2011-21, 10-11-11)

### **SECTION 27-93. COLLECTION.**

Every person receiving any payment for room rental with respect to which a tax is levied under this article shall collect the amount of tax hereby imposed from the transient on whom the same is levied or from the person paying for such room rental at the time payment for such room rental is made, whether payment is made in cash, check or on credit by means of a credit card or otherwise. (Ord. No. 019-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

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### **SECTION 27-94. COLLECTIONS IN TRUST FOR THE CITY.**

All amounts collected as taxes under this article shall be deemed to be held in trust by the seller collecting them until remitted to the City as provided by Section 27-95. (Ord. No. 019-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

### **SECTION 27-95. REPORTS AND REMITTANCES.**

Every person receiving payment for a room rental for which a tax is levied under this article shall make a report for each calendar month showing the amount of charges collected for room rental and the amount of tax required to be collected.

The monthly reports shall be made on forms prescribed by the Commissioner and shall be signed by the seller. They shall be delivered to the Commissioner on or before the twentieth (20th) day of the calendar month following the month being reported. Each report shall be accompanied by a remittance of the amount of tax due, made payable to the Treasurer. The Commissioner shall promptly transmit all taxes received to the Treasurer. (Ord. No. 019-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

### **SECTION 27-96. COMMISSIONER OF THE REVENUE; OTHER POWERS AND DUTIES.**

It shall be the duty of the Commissioner to ascertain the name of every person operating a motel in the City liable for the collection of the tax levied in this article.

The Commissioner shall have the power to adopt rules and regulations not inconsistent with the provisions of this article for the purpose of carrying out and enforcing the payment, collection and remittance of the tax herein levied, and a copy of such rules and regulations shall be on file and available for public examination in the Commissioner's office. Failure or refusal to comply with any rules and regulations promulgated under this article shall be deemed a violation of this article. (Ord. No. 019-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 2011-21, 10-11-11)

### **SECTION 27-97. PROCEDURE WHEN TAX NOT REPORTED OR COLLECTED.**

If any person whose duty it is to do so shall fail or refuse to collect the tax imposed under this article and to make a timely report and remittance thereof, or if the Commissioner has reasonable cause to believe that an erroneous statement has been filed, the Commissioner shall proceed in such manner as is practicable to obtain facts and information on which to base an estimate of the tax due the City, and in connection

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therewith shall make such investigations and take such testimony and other evidence as may be necessary; provided, however, that notice and opportunity to be heard be given any person who may become liable for the amount owing prior to any determination by the Commissioner.

As soon as the Commissioner has procured whatever facts and information may be obtainable upon which to base the assessment of any tax payable by any person who has failed to collect, report, or remit such tax, the Commissioner shall proceed to determine and assess against such person the tax, penalty, and interest provided in this chapter, and shall notify the person by certified or registered mail sent to his or her last known address of the amount of such tax, penalty and interest. The total amount thereof shall be payable ten (10) days after the date such notice is sent. (Ord. No. 0-19-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

### **SECTION 27-98. PRESERVATION OF RECORDS.**

It shall be the duty of every person liable for collection and remittance of the taxes imposed by this article to keep and preserve, for a period of two (2) years, records showing all room rentals taxable under this article, the amount charged for each room rented, the date thereof, the taxes collected thereon, and the amount of tax required to be collected by this article.

The City 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. (Ord. No. 019-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 2011-21, 10-11-11)

### **SECTION 27-99. DUTY OF PERSON GOING OUT OF BUSINESS.**

Whenever any person required to collect and remit to the City any tax imposed by this article shall cease to operate or otherwise dispose of his or her business, the tax shall immediately become due and payable and the person shall immediately make report and remittance thereof. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

### **SECTION 27-100. ENFORCEMENT.**

- (a) It shall be the duty of the Commissioner or his designee to ascertain the name of every person operating a motel in the City liable for the collection of the tax imposed by this article who fails, refuses, or neglects to collect such tax or to make the reports and remittances required by this article. The Commissioner may have issued a summons for such person, and the summons may be served upon

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such person by any city law enforcement officer in the manner provided by law. One return of the original summons shall be made returnable to the General District Court for the City as provided by law.

- (b) In the event any person who has rented a room refuses to pay the tax imposed by this article, the motel employee on duty may call upon the police department for assistance and the investigating officer may, when probable cause exists, issue the person who has rented the room a summons returnable to the General District Court of the City as provided by law.  
(Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 2011-21, 10-11-11)

### **SECTION 27-101. VIOLATIONS.**

Unless otherwise specified, any person violating or failing to comply with any of the provisions of this article shall, upon conviction thereof, be guilty of a Class 3 misdemeanor. Conviction shall not relieve any person from the payment, collection, or remittance of the tax, penalties and interest as provided in this chapter. Each violation or failure shall be a separate offense. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 2011-21, 10-11-11)

### **SECTIONS 27-102 - 27-109. RESERVED.**

## **ARTICLE VIII. E-911 TAX**

### **SECTION 27-110. DEFINITIONS.**

For the purpose of this article, the following words and phrases shall have the meanings respectively ascribed to them:

- (a) *E-911 SYSTEM.* A telephone service which utilizes a computerized system to automatically route emergency telephone calls placed by dialing the digits 911 to the proper public safety answering point serving the jurisdiction from which emergency telephone call was placed. An E-911 system includes selective routing of telephone calls, automatic telephone number identification, and automatic location identification performed by computers and other ancillary control center communications equipment.
- (b) *PUBLIC SAFETY ANSWERING POINT.* A communications facility operated on a twenty-four (24) hour basis which first receives E-911 calls from persons in a E-911 service area and which may, as appropriate, directly dispatch

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safety services or extend, transfer, or relay E-911 calls to appropriate public safety agencies.

- (c) *LOCAL EXCHANGE TELEPHONE SYSTEMS.* As applied to an E-911 system, switched local exchange access service.
- (d) *PURCHASER.* Every person who purchases a local exchange telephone service.
- (e) *SELLER.* Every person who sells or furnishes local exchange telephone service.
- (f) *UTILITY SERVICES.* Local exchange telephone service or local cellular mobile radio telecommunications furnished within the corporate limits of the City of Winchester.
- (g) *LOCAL CELLULAR MOBILE RADIO TELECOMMUNICATIONS.* Any two-way mobile or portable local telecommunication service, including cellular mobile radio telecommunication service and specialized mobile radio.
- (h) *MOBILE SERVICE PROVIDER.* Every person engaged in the business of selling mobile local telecommunication services to consumers. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92, Ord. No. 004-96, 04-09-96; Ord. No. 2011-21, 10-11-11)

(Note: This ordinance effective 1 June 1996.)

### **SECTION 27-111. AMOUNT OF TAX ON TELEPHONE SERVICE.**

A tax in the amount of two dollars forty-five cents (\$2.45) per telephone line per month is hereby imposed and levied by the City of Winchester upon each purchaser of local exchange telephone service. This tax shall be paid by the purchaser to the seller of local exchange telephone service and shall, after collection, be forwarded to the Treasurer and used to pay the initial capital, installation and maintenance costs and recurring maintenance costs of the City's E-911 emergency telephone system. The taxes may also be used to offset the recurring maintenance, repair, and system upgrade costs, and salaries, or a portion of the salaries, of dispatchers paid by the City directly attributable to the E-911 program. (Ord. No. 044-88, 11-15-88; Ord. No. 029-89, 10-10-89; Ord. No. 012-92, 8-11-92; Ord. No. 017-92, 11-10-92; Ord. No. 028-93, 10-12-93; Ord. No. 004-96, 04-09-96; Ord. No. 015-99, 07-13-99; Ord. No. 010-2000, 05-09-00)

**(Note: This effective date of Ord. No. 010-2000 is October 1, 2000.)**  
**State Law Reference--Code of Virginia, §58.1-3813.**

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### **SECTION 27-112. EXEMPTIONS.**

The following entities and persons shall be exempt from the payment of the tax imposed by this article:

- (a) The United States of America, the Commonwealth of Virginia, and all political subdivisions, boards, agencies, commissions, and authorities of the state.
- (b) Purchasers or lessees of local exchange telephone service who utilize coin-operated telephones. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)
- (c) Purchasers of local cellular mobile radio telecommunications services and local cellular mobile service providers. (Ord. No. 015-99 of 07-13-99)

### **SECTION 27-113. COLLECTION AND REMITTANCE BY SELLER.**

It shall be the duty of every seller in acting as the tax collection agency for the City to collect from the purchaser for the use of the City, the tax hereby imposed and levied at the time of collecting the purchase price charged, and the tax imposed, levied, and collected during each calendar month shall be reported and paid by each seller to the Treasurer on or before the fifteenth (15th) day of the second calendar month thereafter, together with the name and address of any purchaser who has refused to pay this tax. The required report shall be in a form approved by the Commissioner.  
(Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

### **SECTION 27-114. RECORDS OF SELLER.**

Each seller shall keep complete records showing all purchases in the City and the price charged each purchaser with respect to each purchase, the date of purchase, date of payment, and the amount of tax imposed by this article. Such records shall be available for inspection by duly authorized representatives of the City of Winchester, and the City shall have the right to make any desired photocopies of the aforesaid records. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

### **SECTION 27-115. EFFECTIVE DATE.**

This article shall become effective sixty (60) days following written notice by certified mail to the registered agent of C & P Telephone Company, its successors and/or assigns. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

### **SECTIONS 27-116 - 27-119. RESERVED.**

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### ARTICLE IX. GENERAL RETAIL SALES TAX.

#### SECTION 27-120. LEVY.

There is hereby levied and imposed a general retail sales tax and a use tax at the rate of one per cent (1%) to provide revenue for the general fund. The rate of each tax shall be added to the rate of the state retail sales tax or use tax imposed by Title 58.1 of the Code of Virginia, (Virginia Retail Sales and Use Tax) and shall be subject to all the provisions of said chapter and all amendments thereof, and the rules and regulations published with respect thereto except that the applicable bracket of prices shall be as prescribed in Sections 58.1-627 and 58.1-628 of the Code of Virginia, for the combined tax, and except that no discount under Section 58.1-622 of the Code of Virginia, shall be allowed on the tax levied by this ordinance.

(Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

**State Law Reference**--Code of Virginia, §58.1-605.

#### SECTIONS 27-121 - 27-129. RESERVED.

### ARTICLE X. TAX ON PROBATE OF WILLS AND GRANTS OF ADMINISTRATION

#### SECTION 27-130. LEVY; RATE OF TAX.

In addition to the state tax imposed pursuant to §58.1-1712 of the Code of Virginia, a local tax is hereby imposed in an amount equal to one-third of the amount of the state tax on the probate of a will or grant of administration on the probate of every such will or grant of administration as provided in §58.1-3805 of the Code of Virginia; additionally, a \$25 fee for the recordation of a list of heirs pursuant to §64.1-134 of the Code of Virginia, or filing of an affidavit pursuant to §64.1-135 of the Code of Virginia is hereby further imposed.

(Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 028-96, 11-12-96; Ord. No. 2010-26, 8-10-10)

**State Law Reference**--Code of Virginia, §§58.1-3805, 58.1-1712, 58.1-1717.1, and 58.1-1718.

#### SECTION 27-131. REPEALED.

(Ord. No. 2010-26, 8-10-10)

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### **SECTION 27-132. FILING OF RETURN.**

When the value of an estate exceeds One Thousand Dollars (\$1,000.00), a return shall be made and filed with the clerk of court at the time the will is offered for probate or the grant of administration is sought in such court. Such return shall state, to the best knowledge and belief of the persons submitting the will for probate or requesting the grant of administration:

- (i) The value of the decedent's real estate as set forth in Section 27-131 based on the actual value, if known, or if actual value is not known, the appraised value of such property for local real estate tax purposes; and
- (ii) The estimated value of the decedent's personal property as of the date of the decedent's death.

Such return shall be subject to the provisions and penalties of Subsection 58.1-11 of the **Code** of Virginia, and the information set forth therein shall be entitled to the privilege and subject to the penalties for violation accorded by Subsection 58.1-3 of the Code of Virginia. For the purposes of Subsection 58.1-3, the information set forth in such return shall not be deemed to be required by law to be entered on any public assessment roll or book.

(Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

### **SECTION 27-133. PAYMENT OF TAX PREREQUISITE TO QUALIFICATION.**

No one shall be permitted to qualify and act as executor or administrator until the tax imposed by Section 27-130 has been paid.

(Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

**State Law Reference**--Code of Virginia, §58.1-1715.

### **SECTION 27-134. ESTATES COMMITTED TO COURT-APPOINTED ADMINISTRATORS**

When an estate is committed by order of the circuit court for the City, or clerk thereof, to any person on the motion of a creditor or other person pursuant to Subsection 64.1-131 of the Code of Virginia, the tax due under this article for such administration shall be paid by the party upon whose motion the estate was committed. The amount of the tax paid by such creditor or other person shall be repaid to him by the administrator so appointed out of the first funds received by him from the sale of such estate. If an estate is committed to a person without motion, the person shall be required to pay such tax as soon as assets of the estate sufficient to cover the tax due have come into his hands.

(Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

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### **SECTION 27-135. UNDEREVALUATION OF ESTATE; COLLECTION OF ADDITIONAL TAX; MINIMUM ADDITIONAL TAX OR REFUND PAYABLE.**

The clerk of the circuit court, following payment of the tax on the probate or administration of the estate, shall thereafter compare the total value probate estate as shown on the probate tax return with the total value shown on the inventory of such estate to determine whether the estate has been undervalued for tax purposes. If the clerk finds that such estate has been undervalued, he shall thereupon collect such additional tax as may be due. In the event of an overpayment of such tax, the personal representative may apply to the Treasurer for a refund. No additional tax shall be payable or no refund made if the payment or refund due would be less than five dollars (\$5.00).  
(Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

**State Law Reference--**Code of Virginia, §58.1-1717.

### **SECTIONS 27-136 - 27-139. RESERVED.**

## **ARTICLE XI. RECORDATION TAX.**

### **SECTION 27-140. RECORDATION TAX - IMPOSITION.**

There is hereby imposed a City recordation tax in an amount equal to one-third the amount of the state recordation tax collectible for the state on the first recordation of each taxable instrument as provided for Chapter 8, Title 58.1 of the Code of Virginia; provided however, that no tax shall be imposed under this section upon any instrument for which the state recordation tax is fifty cents (50c) specifically; and provided further, that where a deed or other instrument conveys, covers, or relates to property located partially in the City, the tax imposed under the authority of this section shall be computed only with respect to that portion of the property located in the City.  
(Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

**State Law References--**Code of Virginia, §58.1-3800, §58.1-3801.

### **SECTION 27-141. DUTY AND COMPENSATION OF CLERK OF CIRCUIT COURT OF THE CITY**

The clerk of the circuit court of the City collecting the tax imposed under section 27-140 shall pay the same into the treasury of the City. For his service in collecting the tax imposed by section 27-140, the clerk shall be compensated out of the treasury of the City in the amount of five percent (5%) of the amount so collected and paid over. Such

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compensation shall be paid out of the city treasury. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

**State Law Reference--** Code of Virginia, §58.1-3803.

**SECTIONS 27-142 - 27-149. RESERVED.**

### ARTICLE XII. DAILY RENTAL TAX

#### **SECTION 27-150. DAILY RENTAL TAX - LEVY AND AMOUNT.**

Beginning with the effective date of this ordinance, and for every tax year thereafter, there is hereby levied and imposed on the gross proceeds of every person engaged in the short-term rental business a tax of one percent (1%) of such gross proceeds. Such tax shall be in addition to the tax levied pursuant to Section 58.1-605 of the **Code** of Virginia. (Ord. No. 015-91, 4-23-91; Ord. No. 017-92, 11-10-92)

**State Law Reference--**Code of Virginia, §58.1-3510.1.A.

#### **SECTION 27-151. DEFINITIONS.**

- (a) *GROSS PROCEEDS.* For the purposes of this article, "gross proceeds" means the total amount charged to each person for the rental of daily rental property, excluding any state and local sales tax paid pursuant to the Virginia Retail Sales and Use Tax Act.
- (b) *DAILY RENTAL PROPERTY.* For purposes of this article, "daily rental property" means all tangible personal property held for rental by a person engaged in the short-term rental business, except trailers as defined in Section 46.2-100 of the Code of Virginia, and other tangible personal property required to be licensed or registered with the Department of Motor Vehicles, Department of Game and Inland Fisheries, or the Department of Aviation.
- (c) *SHORT-TERM RENTAL BUSINESS.* A "short-term rental business" is defined as a business in which not less than eighty percent (80%) of the gross rental receipts of such business in any year are from transactions involving rental periods of ninety-two (92) consecutive days or less, including all extensions and renewals to the same person or a person affiliated with the lessor.

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"*Affiliated*" for purposes of this section shall mean any common ownership interest in excess of five percent (5 %) of any officers or partners in common with the lessor and lessee. For purposes of this test, (i) any rental to a person affiliated with the lessor shall be treated as rental receipts but shall not qualify for purposes of the eighty percent (80%) requirement, and (ii) any rental of personal property which also involves the provision of personal services for the operation of the personal property rented shall not be treated as gross receipts from rental. For purposes of this section, the delivery and installation of tangible personal property shall not mean operation.

(Ord. No. 015-91, 4-23-91; Ord. No. 017-92, 11-10-92)

**State Law References--**Code of Virginia, §58.1-3510.1.A., §58.1-3510.B., §58.1-3510.C.

### **SECTION 27-152. SHORT-TERM RENTAL BUSINESS APPLICATION.**

Each person engaging in the business of short-term rental as defined in Section 27-151(c) of this ordinance shall file annually an application for a Certificate of Registration with the Commissioner for each place of business in the City from which short-term rental business will be conducted by the applicant. Such application shall be filed within thirty (30) days of the effective date of this ordinance. Subsequent application shall be filed by December 1 of the year preceding the tax year, or, for a new business, within thirty (30) days of the beginning of the operations of a short-term rental business. The application shall be on a form prescribed by the Commissioner and shall set forth the name under which the applicant intends to operate the rental business, the location, and such other information as the Commissioner may require.

The owner of the short-term rental business shall sign the application.

(Ord. No. 015-91, 4-23-91; Ord. No. 017-92, 11-10-92; Ord. No. 009-2000, 04-11-00)

**State Law Reference--**Code of Virginia, §58.1-3510.2.

### **SECTION 27-153. CERTIFICATE OF REGISTRATION.**

Upon approval of the application by the Commissioner, a Certificate of Registration shall be issued. This Certificate shall be conspicuously displayed at all times at the place of business for which it is issued.

The Certificate is not assignable and shall be valid only for the person in whose name it is issued and the place of business designated.

(Ord. No. 015-91, 4-23-91; Ord. No. 017-92, 11-10-9)

**State Law Reference--** Code of Virginia, §58.1-3510.2.

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### **SECTION 27-154. COLLECTION, RETURN. AND REMITTANCE OF TAX.**

Every person engaged in the short-term rental business as defined in SECTION 27-151 shall collect a daily rental property tax from the lessee of the daily rental property not later than at the end of the term of the rental. The lessor of the daily rental property shall transmit a quarterly return to the Commissioner, indicating the gross proceeds derived from the short-term rental business and shall remit therewith the payment of such tax as is due for that quarter. The quarterly returns and payment of tax shall be filed with the Commissioner on or before the 20th day of the month following the end of each quarter, representing the gross proceeds and taxes collected during the preceding quarter. The return shall be upon such forms and set forth such information as the Commissioner may require, showing the amount of gross proceeds and the tax required to be collected. The taxes required to be collected under this article shall be deemed to be held in trust by the business required to collect such taxes until remitted as required in this article. (Ord. No. 015-91, 4-23-91; Ord. No. 017-92, 11-10-92)

**State Law Reference**--Code of Virginia, §58.1-3510.2.

### **SECTION 27-155. RECORDS.**

- (a) The provisions of SECTION 27-9 of this chapter shall apply herein, *mutatis mutandis*, except that SECTION 27-9(b) shall not apply.
- (b) In addition to the information specified in subsection (a) of this section, every person engaged in a short-term rental business shall maintain a complete record of all exemptions from payment of this tax granted to renters of short-term rental property including:
  - 1. A copy of the Virginia Department of Taxation Tax Exemption Certificate; or
  - 2. A copy of the U.S. State Department Tax Exemption Certificate which U.S. State Department card must specify the renter by name as exempt from sales tax; or
  - 3. Other explanation and proof of claimant exemption.

(Ord. No. 015-91, 4-23-91; Ord. No. 017-92, 11-10-92)

### **SECTION 27-156. PROCEDURE UPON FAILURE TO FILE RETURN.**

If any person, whose duty it is so to do, shall fail or refuse to file within the time provided in this article, the returns required in this article, the Commissioner shall proceed in such

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manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the Commissioner shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax payable by any person who has failed or refused to make such return he shall proceed to determine and assess against such person the tax, penalty and interest provided for by this chapter and shall notify such person by registered mail, sent to his last known place of business, of the total amount of such tax, penalty and interest and the total amount thereof shall be payable within ten (10) days from the date of such notice. In the event such tax is not paid within ten (10) days from the date of the notice, the Commissioner shall proceed to collect same in accordance with Chapter 39 of Title 58.1 of the Code of Virginia. (Ord. No. 015-91, 4-23-91; Ord. No. 017-92, 11-10-92)

### **SECTION 27-157. EXEMPTIONS; PENALTIES.**

Provisions in §58.1-608 of Chapter 6 of the Code of Virginia, relating to exemptions, Code of Virginia, §§58.1-635 and 58.1-636 relating to penalties, and the Code of Virginia, §58.1-625 relating to the manner of collecting the local retail sales and use tax applicable in Chapter 6 (§58.1-600, *et seq.*) of Title 58.1 of the Code of Virginia, shall apply *mutatis mutandis* to the daily rental tax, except that the Commissioner shall assess the tax due, and the Treasurer shall collect the daily rental tax, instead of the Department of Taxation.

(Ord. No. 017-92, 11-10-92)

**State Law Reference**--Code of Virginia, §58.1-3510.3.

### **SECTION 27-158. UNCERTIFIED RENTERS PROHIBITED FROM COLLECTING TAX.**

No person renting any property or service to any other person shall collect from the lessee the daily rental property tax authorized by this article unless he has a valid Certificate of Registration issued for the current year by the Commissioner. Any payments collected in a manner not authorized by law shall be refunded to such lessees as can be identified with the remainder forfeited to the City.

(Ord. No. 015-91, 4-23-91; Ord. No. 017-92, 11-10-92)

### **SECTION 27-159. FAILURE TO FILE RETURN; FRAUDULENT RETURN; CIVIL PENALTIES.**

- (a) When any person fails to make any return and pay the full amount of the tax 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 six

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percent (6%) if the failure is for not more than one month, with an additional six percent (6%) for each additional month, or fraction thereof, during which the failure continues, not to exceed thirty percent (30%) in the aggregate. In no case, however, shall the penalty be less than ten dollars (\$10.00) and such minimum penalty shall apply whether or not any tax is due for the period for which such return was required. If such failure is due to providential or other good cause shown to the satisfaction of the Commissioner, such return with or without remittance may be accepted exclusive of penalties. In the case of a false or fraudulent return where willful intent exists to defraud the City of any tax due under this article, or in the case of a willful failure to file a return with the intent to defraud the City of any such tax, a specific penalty of fifty percent (50%) of the amount of the proper tax shall be assessed. All penalties and interest imposed by this chapter shall be payable by the person and collectible by the Commissioner in the same manner as if they were a part of the tax imposed.

- (b) It shall be prima facie evidence of intent to defraud the City of any tax due under this chapter when any person reports his gross proceeds at fifty percent (50%) or less of the actual amount.
- (c) Interest at a rate determined in accordance with the Code of Virginia, §58.1-15, shall accrue on the tax until the same is paid, or until an assessment is made, pursuant to the Code of Virginia, §58.1-15, after which interest shall accrue as provided therein.  
(Ord. No. 017-92, 11-10-92)

**State Law Reference--** Code of Virginia, §58.1-635.

### **SECTION 27-160. PENALTY FOR FAILURE TO FILE RETURN OR MAKING FALSE RETURN.**

Any person subject to the provisions of this article failing or refusing to file a return herein required to be made, or failing or refusing to file a supplemental return or other data required by the Commissioner, or who makes a false or fraudulent return with intent to evade the tax hereby levied, or who makes a false or fraudulent claim for refund, or who gives or knowingly receives a false or fraudulent exemption certificate, or who violates any other provision of this article, punishment for which is not otherwise herein provided, shall be guilty of a Class 1 misdemeanor.  
(Ord. No. 017-92, 11-10-92)

This ordinance will be effective as of June 1, 1991.

**SECTIONS 27-161 - 27-169. RESERVED.**

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### ARTICLE XIII. CIGARETTE TAX

#### SECTION 27-170. DEFINITIONS.

- (a) *GENERALLY.* Certain words and phrases, when used in this article, shall, for the purposes of this article, have the meanings ascribed to them by this section, except where the context clearly indicates a different meaning.
- (b) *CARTON.* Any container, regardless of material used in its construction, in which ten (10) packages of cigarettes are placed.
- (c) *CIGARETTE.* Any roll of any size or shape for smoking, whether filtered or unfiltered, with or without a mouthpiece, made wholly or partly of cut, shredded or crimped tobacco or other plant or substitute for tobacco, whether the same is flavored, adulterated or mixed with another ingredient, if the wrapper or cover is made of any material other than leaf tobacco or homogenized leaf tobacco, regardless of whether the roll is labeled or sold as a cigarette or by any other name.
- (d) *CITY.* Winchester, Virginia.
- (e) *DEALER.* Every manufacturer, manufacturer's representative, self-wholesaler, wholesaler, retailer, vending machine operator, public warehouseman or other person who shall sell, receive, store, possess, distribute or transport cigarettes within or into the City.
- (f) *PACKAGE.* Any container, regardless of the material used in its construction in which separate cigarettes are placed without such cigarettes being placed into any container within the package. Packages are those containers of cigarettes from which individual cigarettes are ordinarily taken when they are consumed by their ultimate user.
- (g) *PURCHASER.* Means every person to whom title to any cigarettes is transferred by a seller within the corporate limits of the City.
- (h) *SALE.* Means every act or transaction, irrespective of the method or means employed, including the use of vending machines and other mechanical devices, whereby title to any cigarettes shall be transferred from the seller to any other person within the corporate limits of the City.
- (i) *SELLER.* Means every person who transfers title to any cigarettes, or in whose place of business title to any cigarettes is transferred, within the corporate limits of the City, for any purpose other than resale. The term shall be synonymous with the term Retail Dealer.

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- (j) *STAMP*. Means a small heat set of paper or decalomania to be sold by the Treasurer or as authorized by the Commissioner and to be affixed to every package of cigarettes sold to retail in the City. (Ord. No. 035-91, 9-10-91; Ord. No. 017-92, 11-10-92)

**State Law References**--Authority of city to levy cigarette tax and permitted provision of ordinance providing for administration and enforcement of such tax, Code of Virginia, §§ 58.1-3830, 58.1-3832, 58.1-3840; City Charter §1.01.

### **SECTION 27-171. LEVIED; AMOUNT; TAX ADDITIONAL TO OTHER TAXES.**

- (a) In addition to all other taxes of every kind now or hereafter imposed by law, there is hereby levied and imposed by the City upon every person who sells or uses cigarettes within the City, from and after the effective date of the ordinance from which this section is derived, an excise tax equivalent to thirty-five cents (\$0.35) per each package containing twenty five (25) or fewer cigarettes. The tax shall be paid and collected in the manner and at the time hereinafter prescribed; provided, that the tax payable for each cigarette or cigarette package sold or used within the City shall be paid but once. The tax hereby levied shall not apply to free distribution of sample cigarettes in packages containing five (5) or fewer cigarettes.
- (b) The tax levied and imposed by this article shall be in addition to all other taxes of every kind levied and imposed by any other ordinance or law. (Ord. No. 035-91, 9-10-91; Ord. No. 017-92, 11-10-92; Ord. No. 2010-17, 4-13-10; Ord. No. 2014-19, 6-10-14)

### **SECTION 27-172. METHODS OF COLLECTION.**

- (a) The tax imposed by this article shall be evidenced by the use of a stamp and shall be paid by each dealer or other person liable for the tax at the time the stamps are purchased from the Treasurer. The stamps shall be affixed in such a manner that their removal will require continued application of water or steam. Each dealer or other person liable for the tax is hereby required, and it shall be his duty, to collect and pay the tax.
- (b) It shall be the duty of each dealer or other person liable for the tax to report monthly to the Commissioner separately the following information:
1. The quantity of stamped cigarettes sold or delivered during the period requested by the Commissioner to:
    - (a) each dealer,

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- (b) each seller and,
  - (c) each separate person or place of business within the City.
2. The quantity of stamps on hand, both affixed and unaffixed on the first day of the period of request and the quantity of stamps or stamped cigarettes received during the period,
  3. Such further information as the Commissioner may require for the proper administration and enforcement of this article for the determination of the exact number of cigarettes in the possession of each dealer or user.
- (c) The Commissioner is authorized to enter into an arrangement with the Virginia Department of Taxation to allow a dealer who is a tobacco wholesaler to use a dual die or stamp to evidence the payment of both the City and the state cigarette tax. The Commissioner shall have the authority to determine the procedures by which such an arrangement may be agreed upon by the City and the Department of Taxation.
  - (d) When, upon examination and audit of any invoices, records, books, canceled checks or other memoranda touching on the purchase, sale, receipt, storage or possession of tobacco products taxed herein, any dealer or other person liable for the tax is unable to furnish evidence to the Commissioner of sufficient tax payments and stamp purchases to cover cigarettes which were sold, used, stored, received, purchased or possessed by him, the prima facie presumption shall arise that such cigarettes were received, sold, used, stored, purchased or possessed by him without the proper tax having been paid. The Commissioner shall, from the results of such examination and audit based upon such direct or indirect information available, assess the tax due and unpaid.
  - (e) The dealer or other person liable for the tax shall be notified by certified mail or hand delivery of such deficiency and such tax, penalty and interest assessed shall be due and payable within ten days after notice of such deficiency has been issued.
  - (f) It shall be the duty of every dealer and seller in the City to maintain and keep, for a period of two (2) years, complete records of all cigarettes delivered or sold by such dealer or seller and to make all such records available for examination by the Commissioner, upon demand, at any and all reasonable times. (Ord. No. 035-91, 9-10-91; Ord. No. 017-92, 11-10-92)

### **SECTION 27-173. PREPARATION AND SALE OF STAMPS GENERALLY; DISCOUNTS.**

For the purpose of making stamps available for use, the Commissioner shall prescribe, prepare, and furnish to the Treasurer, and the Treasurer shall sell, stamps of such

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denomination and in such quantities as may be necessary for the payment of the taxes imposed by this article. In the sale of such stamps, the Treasurer shall allow a discount of five percent (5%) of the denominational or face value of the stamps to cover the costs incurred in affixing the stamps to packages of cigarettes.  
(Ord. No. 035-91, 9-10-91; Ord. No. 017-92, 11-10-92)

### **SECTION 27-174. NOTICE BY RETAIL DEALERS.**

Retail dealers who shall sell, offer for sale, store, possess, distribute, purchase, receive or transport cigarettes in or into the City, shall notify the Commissioner, in writing, upon request by the Commissioner, of the supplier of such cigarettes and the name and address and the Virginia Retail Sales and Use Certificate of Registration number for each separate place of business.  
(Ord. No. 035-91, 9-10-91; Ord. No. 017-92, 11-10-92)

### **SECTION 27-175. DISPLAY OF STAMPS - SEIZURE.**

- (a) Stamps shall be placed upon each package of cigarettes in such manner as to be readily visible to the purchaser.
- (b) Any seller found to possess any cigarettes without the tax paid stamp affixed who is not in the process of affixing such stamps thereto, shall be presumed to be in possession of untaxed cigarettes in violation of this article. If such person has received the cigarettes within the preceding forty-eight (48) hours, and has not offered them for sale, such presumption shall not apply.
- (c) Any cigarettes placed in any coin operated vending machine shall be presumed for sale within the City. Any vending machine located within the City containing cigarettes upon which the stamp has not been affixed or containing cigarettes placed so as to not allow visual inspection of the stamp through the viewing area as provided for by the vending machine manufacturer shall be presumed to contain untaxed cigarettes in violation of this article.
- (d) Any cigarettes, coin operated vending machines, counterfeit stamps, or other property found in violation of this article shall be declared contraband goods and may be seized by the Commissioner. In addition to any tax due, the dealer or other person liable for the tax possessing such untaxed cigarettes shall be subject to civil and criminal penalties herein provided.
- (e) In lieu of seizure, the Commissioner may seal such vending machines to prevent continued illegal sale or removal of such cigarettes. The removal of such seal from a vending machine by any unauthorized person shall be a violation of this

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article. Nothing in this article shall prevent the seizure of any vending machine at any time after it is sealed.

- (f) All cigarette vending machines shall be plainly marked with the name, address and telephone number of owner of said machine.
- (g) Any seized and confiscated cigarettes, vending machines or other property used in the furtherance of any illegal evasion of the tax may be disposed of by sale or other method deemed appropriate by the Commissioner after thirty (30) days after notice to the person from whom the items were seized. No credit from any sale of cigarettes, vending machines or other property seized shall be allowed toward any tax, penalties or interest assessed.  
(Ord. No. 035-91, 9-10-91; Ord. No. 017-92, 11-10-92)

### **SECTION 27-176. REIMBURSEMENT FOR UNUSED OR DAMAGED STAMPS OR METER IMPRINTS.**

- (a) Should any person, after acquiring from the Treasurer any stamps provided for in this article, cease to be engaged in a business necessitating the use of the stamps, or should the stamps or meter imprints be damaged to the extent that they are unusable, such person shall be entitled to a reimbursement of the denominational or face amount of any such stamps, less any discount, upon presenting the stamps to the Commissioner and furnishing the Commissioner with an affidavit showing, to his satisfaction, that the stamps were acquired by such person but not used, and the reason for requesting the reimbursement.
- (c) Any and all reimbursement for unused or damaged stamps provided for under this section may be made on vouchers approved by the Commissioner. Such reimbursement shall be charged against the sums collected for the sale of said stamps and for the use of such imprints. Payment to the person requesting the reimbursement shall be made within twenty (20) days of the request.  
(Ord. No. 017-92, 11-10-92; Ord. No. 2014-21, 7-8-14)

### **SECTION 27-177. RULES AND REGULATIONS.**

The Commissioner is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to the methods and means of cancellation of the stamps provided for in this article and to any and all other matters pertaining to the administration and enforcement of the provisions of this article. The Commissioner is further authorized and empowered to examine the books, records, invoices, papers and any and all cigarettes in and upon any premises where the same are placed, stored, sold, offered for sale, or displayed for sale by a seller. The Commissioner is authorized to

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delegate any of the powers and duties set out in this article to one or more deputies or assistants, except as may be prohibited by law. (Ord. No. 017-92, 11-10-92)

### **SECTION 27-178. VIOLATIONS OF ARTICLE - GENERALLY.**

- (a) Any person violating any of the provisions of this article shall be guilty of a Class 1 misdemeanor. Conviction and punishment for such violation shall not relieve any person from the payment of any tax imposed by this article. In addition, any person who shall perform any fraudulent act or fail to perform any act for the purpose of evading the payment of any tax imposed by this article shall be required to pay a penalty in the amount of fifty (50) percent, and interest at the rate of ten percent (10%) per year upon any tax found to be overdue and unpaid.
- (b) Each day's violation of, or noncompliance with, any of the provisions of this article shall be and constitute a separate offense. (Ord. No. 035-91, 9-10-91; Ord. No. 017-92, 11-10-92)

### **SECTION 27-179. VIOLATIONS OF ARTICLE - PROHIBITED ACTS ENUMERATED.**

- (a) It shall be unlawful and a violation of this article for any person:
  - 1. To perform any act or fail to perform any act for the purpose of evading he payment of any tax imposed by this article or of any part thereof, or for any dealer or seller, with intent to violate any provision of this article, to fail or refuse to perform any of the duties imposed upon him under the provisions of this article or to fail or refuse to obey any lawful order which the Commissioner may issue under this article.
  - 2. To falsely or fraudulently make, forge, alter or counterfeit any stamp, invoice or reports, or the printed markings of any meter machine, to procure or cause to be made, forged, altered or counterfeited any such stamp or printed markings of a meter machine, or knowingly and willfully to alter, publish, pass or tender as true any false, altered, forged or counterfeited stamp or stamps or printed markings or a meter machine.
  - 3. To sell any cigarettes upon which the tax imposed by this article has not been paid and upon which evidence of payment thereof is not shown on each package of cigarettes.
  - 4. To reuse or refill with cigarettes any package from which the cigarettes have been removed, for which the tax has been paid.

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5. To remove from any package any stamp or the printed markings of a meter machine with intent to use or cause the same to be used after the same have already been used, or to buy, sell or offer for sale or give away, any used, removed, altered or restored stamps or printed markings of a meter machine, to any person, or to reuse any stamp or printed markings of a meter machine which has theretofore been used for evidence of the payment of any tax prescribed by this article, or, except as to the Treasurer, to sell or offer to sell any stamp or printed markings of a meter machine provided for herein.

6. To possess, store, use, authorize or approve the possession, storage or use for sale or resale of any cigarettes in quantities of more than sixty (60) packages upon which the stamp has not been affixed; or

7. To transport, authorize or approve the transportation of any cigarettes, in quantities of more than sixty packages into or within the City upon which the stamp has not been affixed, if they are:

(a) Not accompanied by a bill of lading or other document indicating the true name and address of the consignor or seller and the consignee or purchaser and the brands and quantity of cigarettes transported; or

(b) Accompanied by a bill of lading or other document which is false or fraudulent in whole or part; or

(c) Accompanied by a bill of lading or other document indicating:

(i) A consignee or purchaser in another state or the District of Columbia who is not authorized by the law of such other jurisdiction to receive or possess such cigarettes on which the taxes imposed by such other jurisdiction have not been paid, unless the tax of the state or District of destination has been paid and the said cigarettes bear the tax stamps of that state or District; or

(ii) A consignee or purchaser in the Commonwealth of Virginia but outside the taxing jurisdiction who does not possess a Virginia Sales and Use Tax Certificate, a Virginia Retail Tobacco License and, where applicable, both a business license and a retail tobacco license issued by the local jurisdiction of destination.

(Ord. No. 035-91, 9-10-91; Ord. No. 017-92, 11-10-92)

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## ARTICLE XIV. ADMISSIONS TAX

### SECTION 27-180. DEFINITIONS.

The following words and phrases, when used in this article, shall, for the purposes of this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) *ADMISSION CHARGE*. "Admission charge" means the charge made for admission to any amusement or entertainment, exclusive of any federal tax thereon, including a charge made for season tickets.
- (b) *PLACE OF AMUSEMENT OR ENTERTAINMENT*. "Place of amusement or entertainment" means any place in the City wherein or whereat any of the following, or amusements or entertainment's similar to the following, are located, conducted, performed, exhibited and operated: Circuses, carnivals, menageries, amusement parks, moving picture shows, fairs, shows and exhibitions of all kinds; dances; basketball, football, wrestling, boxing and sports of all kinds; swimming pools, bowling alleys, roller rinks, golf courses, miniature golf, charter boats, drift boats, party boats, party boats solely operated within the corporate limits and within one mile into the adjacent waters, and other such things of a similar nature; concerts, theatrical, vaudeville, dramatic, operatic and musical performances and performances similar thereto; lectures, talks, literary readings, and performances similar thereto; such attractions as merry-go-rounds, Ferris wheels, roller coasters, leap-the-dips and the like, and all other public amusements, performances and exhibitions not specifically named herein; and any roof garden, cabaret or other similar place furnishing a public performance for profit, which shall include any room in any hotel, restaurant, hall or other public place where music and dancing privileges or any other entertainment is offered the patron in connection with serving or selling of food, refreshments or merchandise. A performance shall be regarded as being furnished for profit for purposes of this article even though the charge made for admission, refreshment service or merchandise is not increased by reason of the furnishing of such performance. (Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

**State Law References--** Code of Virginia, §§ 58.1-3817, 58.1-3840. (Ord. No. 2015-05, 3/24/15.)

### SECTION 27-181. LEVIED; AMOUNT.

There is hereby imposed and levied a tax of five percent (5%) of the amount paid for admission to any place of amusement or entertainment, to be paid by every person who pays an admission charge to such place. Except as otherwise provided in Section 27-182,

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if any person is admitted free to any place of amusement or entertainment at any time when an admission charge is made to other persons, an equivalent tax is hereby levied and shall be collected based on the price charged to such other persons of the same class for the same or similar accommodations, such tax to be paid by the person so admitted. (Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92; Ord. No. 2015-05, 3-24-15)

### **SECTION 27-182. EXEMPTION FOR CERTAIN FREE ADMISSIONS.**

No tax shall be payable under this article by the following, if admitted to any place of amusement or entertainment free:

- (a) Bona fide officers and employees of such place. The word "officers" shall include any director, if such place is operated by a corporation.
- (b) Any federal, state, city, county or city official or employee on official business.
- (c) Any person whose admission to such place is required for the performance of some duty to or work for the proprietor thereof.
- (d) Any newspaper reporter, photographer, telegrapher, radio announcer or person performing a similar vocation who is admitted for the performance of special duties in connection with any event and whose special duties are the sole reason for his presence.
- (e) Children twelve (12) years of age and under.

(Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92; Ord. No. 2015-05, 3-24-15)

### **SECTION 27-183. EXEMPTION FOR CERTAIN EVENTS.**

- (a) Notwithstanding any other section of this article, there shall be no tax payable on charges made for participating in participatory sports such as, but not limited to: Golf courses, tennis, bowling, swimming, and roller skating. However, admission charges for observing these sports shall be subject to the tax.
- (b) No tax shall be payable on charges for admissions to the following categories of events:
  - 1. Admissions charged for attendance at any event, the gross receipts of which go wholly to charitable purpose or purposes.
  - 2. Admissions charged for attendance at public and private elementary, secondary, and college school-sponsored events, including events sponsored by school-recognized student organizations.

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3. Admissions charged for entry into museums, botanical or similar gardens, and zoos.
4. Admissions charged for attendance at events sponsored by a tax-exempt nonprofit organization classified by the United States Internal Revenue Code as a 501(c) organization, provided that the purpose of the event is solely to raise money for the stated mission of that organization.

(Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92; Ord. No. 2015-05, 3-24-15)

**State Law Reference--** Code of Virginia, §58.1-3817.

### **SECTION 27-184. COMMISSIONER OF THE REVENUE; OTHER POWERS AND DUTIES.**

It shall be the duty of the Commissioner to ascertain the name of every person operating a business in the City liable for the collection of the tax levied in this article.

The Commissioner shall have the power to adopt rules and regulations not inconsistent with the provisions of this article for the purpose of carrying out and enforcing the payment, collection and remittance of the tax herein levied, and a copy of such rules and regulations shall be on file and available for public examination in the Commissioner's office. Failure or refusal to comply with any rules and regulations promulgated under this article shall be deemed a violation of this article. (Ord. No. 2015-05, 3-24-15)

### **SECTION 27-185. COLLECTION.**

Every person receiving any payment for admission to any place of amusement or entertainment or for refreshments, service or merchandise on which a tax is levied under this article shall collect the amount of tax imposed by this article from the person making the payment, at the time of the payment of such admission or purchase, or from the person admitted free, at the time of such admission. If tickets or cards of admission are issued, the tax shall be collected at the time for the issuance of such tickets or cards. The taxes required to be collected under this section shall be deemed to be held in trust by the person required to collect the same until remitted as provided in this article.

(Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

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### **SECTION 27-186. REPORTS AND REMITTANCES GENERALLY.**

- (a) The person collecting any tax as provided in Section 27-185 shall make out a report, upon such forms and setting forth such information as the Commissioner may prescribe or require, showing the amount of admission charges collected, exclusive of the federal tax thereon, and the tax from the admission or purchases for which he is liable, and shall sign and deliver such report to the Commissioner with a remittance of such tax. Such reports and remittances shall be made on or before the twentieth day of each month covering the amount of tax collected during the preceding month.
- (b) If the remittance under this section is by check or money order, such check or money order shall be payable to the Treasurer.  
(Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

### **SECTION 27-187. REPORTS, REMITTANCES AND DEPOSITS BY TEMPORARY OR TRANSIENT PLACES OF AMUSEMENT OR ENTERTAINMENT.**

- (a) Whenever any place of amusement or entertainment of a temporary or transitory nature makes an admission charge which is subject to the tax levied by this article, or does not make such an admission charge but does sell refreshments, services or merchandise which is subject to the tax levied by this article, the Commissioner may require the report and remittance of the requisite tax to be made on the day following the conclusion of a series of performances or exhibitions, or at such other reasonable time or times as he shall determine. Failure to comply with any such requirement of the Commissioner as to the report and remittance of the tax so required shall be unlawful.
- (b) Before any temporary or transient place of amusement or entertainment mentioned in subsection (a) above shall begin operation and before any license shall be issued therefor, if a license is required, the person operating the same shall deposit with the Treasurer a sum of money, to be determined by the Treasurer, sufficient to cover the tax required to be collected by such person under the provisions of the article, as security for the collection and payment to the City of such tax. At the conclusion of such temporary or transient operation in the City, such person shall file with the Commissioner the report required by this article and pay such tax collected to the City. Upon the filing of such report and the making of such payment, the Treasurer shall refund such deposit. Should any such person fail to file such report and pay such amount of tax collected within five (5) days from the termination of the operation of such amusement or entertainment, the Commissioner may thereupon assess such person with such tax at the amount of such deposit and the Treasurer shall retain such deposit in full payment of the tax collected by and due the City by such person.

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(Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

### **SECTION 27-188. COLLECTOR'S RECORDS.**

It shall be the duty of every person liable for the collection and payment to the City of any tax imposed by this article to keep and to preserve, for a period of two (2) years, such suitable records as may be necessary to determine the amount of such tax he may have been responsible for collecting and paying to the City. The Commissioner may inspect such records at all reasonable times.

(Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

### **SECTION 27-189. DUTY OF COLLECTOR GOING OUT OR DISPOSING OF BUSINESS.**

Whenever any person required to collect and pay to the City a tax under this article shall quit business or otherwise dispose of his business, any tax payable under this article to the City shall become immediately due and payable and such person shall immediately make a report and pay the tax due.

(Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

### **SECTION 27-190. PROCEDURE UPON FAILURE TO COLLECT, REPORT, ETC., TAXES.**

- (a) If any person, whose duty it is so to do, shall fail or refuse to collect the tax imposed under the article and to make, within the time provided in this article, any report and remittance required by this article, the Commissioner shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the Commissioner shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax payable by any person who has failed or refused to collect such tax and to make such report and remittance, he shall proceed to determine and assess against such person the tax and penalties provided for by this article and shall notify such person, by registered mail, of the total amount of such tax and penalties and the total amount thereof shall be payable within ten (10) days from the date of such notice.
- (b) It shall be the duty of the Commissioner to ascertain the name of every person operating a place of amusement or entertainment in the City, liable for the collection of the tax levied by this article, who fails, refuses or neglects to collect the tax or to make, within the time provided by this article, the reports or remittances required in this article. The Commissioner may have a summons

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issued for such person in the manner provided by law and shall make one return of the original to the general district court of the City.

(Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

### **SECTION 27-191. VIOLATIONS OF ARTICLE.**

Any person violating or failing to comply with any provision of this article shall be guilty of a Class 1 misdemeanor. Each such violation or failure to pay shall constitute a separate offense, but conviction thereof shall not relieve any person from the payment, collection or remittance of the taxes, penalties and interest provided for in this chapter.

(Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

This ordinance will be effective as of June 1, 1991.

### **ARTICLE XV. PUBLIC RIGHTS-OF-WAY USE FEE**

### **SECTION 27-192. IMPOSITION OF RIGHTS-OF-WAY USE FEE.**

There is hereby imposed within the city limits of the City of Winchester, Virginia, a “public rights-of-way use fee”, exactly as described in Section 56-468.1 of the Code of Virginia, 1950, as amended, which said Section is incorporated herein by reference.

### **SECTION 27-193. EFFECTIVE DATE; REPEAL OF PREVIOUS FRANCHISE.**

The fee imposed by this Article shall become effective on and after July 1, 2001. On and after July 1, 2001, the provisions of this Article shall supersede and repeal those portions and provisions of all existing Ordinances and franchise agreements which impose franchise fees on any “certificated provider of telecommunications services”, as such term is defined by Section 56-468.1(A) of the Code of Virginia, 1950, as amended, but shall not alter, in any way, any and all other terms, requirements, and conditions of any such Ordinances or franchise agreements.

(Ord. No. 006-2001, 3-13-01)

### **SECTIONS 27-194 - 27-199. RESERVED.**