

2015-05

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: 02/24/2015 **CUT OFF DATE:** _____

RESOLUTION ___ **ORDINANCE** X **PUBLIC HEARING** ___

ITEM TITLE: Amendments to City Code Regarding Local Meals and Admissions Excise Taxes

STAFF RECOMMENDATION: Approve

PUBLIC NOTICE AND HEARING:

ADVISORY BOARD RECOMMENDATION:

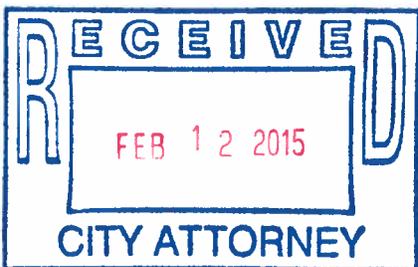
FUNDING DATA:

INSURANCE:

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda. The Director's initials for approval or disapproval address only the readiness of the issue for Council consideration. This does not address the Director's recommendation for approval or denial of the issue.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Finance	<i>JB</i>		2/12/15
2. Treasurer	<i>JB</i>		2/12/15
3. _____			
4. _____			
5. City Attorney	<i>W</i>		2/12/2015
6. City Manager	<i>HT</i>		17 Feb 2015
7. Clerk of Council			

Initiating Department Director's Signature: *Chris T. Bell* Date: 02/12/2015



APPROVED AS TO FORM:

[Signature]
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Ann T. Burkholder, Commissioner of the Revenue
Date: February 12, 2015
Re: Changes to City Code regarding Excise Taxes for Meals and Admissions

THE ISSUE: Updates to City Code in compliance with applicable State Code, and recommended Code amendments specifically in regard to exemption of non-profit organizations from certain local meals and admissions taxes.

RELATIONSHIP TO STRATEGIC PLAN: Recognizing the value that non-profit organizations bring to the City's overall well-being relates to each of the City's stated goals.

BACKGROUND: Historically non-profit entities within the City have not been held liable for meals and admissions taxes for a variety of reasons, including varying interpretations of existing code, the concern that the cost of resources required for such assessment may outweigh the resulting revenue received, and a desire to generate good will with nonprofit organizations. Many local nonprofits provide services on a volunteer basis which reduce the need for corresponding City services while others provide social or intellectual benefits. Finally, many of these organizations pay a fee to local restaurants or hotels to host their events. Deterring such activity would have a negative economic impact on these businesses.

Meals Tax: A recent update to Code of Virginia §58.1-3840 has been incorporated in corresponding City Code. Of note, this code exempts most nonprofits from meals taxes on meals sold as fundraising activity, up to a certain limit. The intent is to minimize the competitive advantage over for-profit restaurants which such activity becomes frequent.

Admissions Tax: Most notably is the proposed exemption for IRS 501(c) organizations, provided that the proceeds of the event are directly solely toward the mission of the organization.

Other changes are to improve consistency of administration amongst the various excise taxes and for compliance with corresponding Code of Virginia sections.

Fiscal Impact: There is minimal fiscal impact in adopting these changes as there is no loss of existing revenue, and a potentially high cost of collecting revenue were the existing Code interpreted in the strictest sense.

RECOMMENDATION: It is the recommendation of the Commissioner of the Revenue that City Council adopt the proposed amendments to City Code.

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.
- (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 sold 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).

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, ~~provided, however, no blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Visually Handicapped and located on property acquired and used by the United States for any military or naval purpose shall be required to collect or remit such tax.~~ 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)

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)

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)

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.

~~Where a purchaser provides a tip for an employee of a seller, and the amount of the tip is wholly in the discretion of the purchaser, the tip is not subject to the tax imposed by this article, whether paid in cash to the employee or added to the bill and charged to the purchaser's account; provided, in the latter case, the full amount of the tip is turned over to the employee by the seller. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92) 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 prices of the meal, but only to the extent that such mandatory gratuity or service charge does not exceed 20% of the sales price.~~

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.
- (e)(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.
- ~~(f)~~(g) Meals furnished by a college fraternity or sorority to its members.
- (h) Meals sold by a non-profit educational, religious, charitable or benevolent organization on an occasional basis as a fundraising activity. 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.
- (g)(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.
- ~~(h)~~(l) Meals or food sold from vending machines.
- ~~(i)~~(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.
- ~~(j)~~(n) Non-alcoholic beverages, popcorn, candy, and similar confections sold in theaters.

~~(k)~~(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 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 non-factory sealed beverages.
- (l) 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)

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, upon conviction thereof, be guilty of a Class 3 misdemeanor punishable as provided in 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)

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.

SECTIONS 27-845 - 27-89. RESERVED.

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--~~Admissions tax~~, Code of Virginia, §§ 58.1-3817, 58.1-3840.

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 ~~27-322182~~, 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)

SECTION 27-182. ~~EXCEPTION~~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)

SECTION 27-183. ~~EXCEPTION~~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.
 - 3. Admissions charged for entry into museums, botanical or similar gardens, and zoos.
 - 4. Admissions charged for attendance at events sponsored by ~~any governmental agency~~ 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)
State Law Reference-- Code of Virginia, §58.1-3817.

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

(Ord. No. 2011-21, 10-11-11)

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.

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)

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.
(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 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