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Approved on a motion by: _____

Chapter 165, Article XXII: The Clarke County Board of Supervisors shall consider amending Clarke County Code Chapter 165, creating a new Article XXII Food and Beverage Tax. The new article would levy a food and beverage tax equivalent to two percent of the amount paid for food and beverages, as defined by §58.1-3833 in the Code of Virginia, effective July 1, 2021. The new article also provides definitions, methods of collection and reporting requirements, exemptions to the tax, a commission rate for operators, violations and penalties, and other provisions related to the levy of this tax.

Chapter 165 Taxation

Article XXII Food and Beverage Tax

§165-100. Definitions The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

CATERER – A business or person who furnishes meals on the premises of another.

COMMISSIONER – The Commissioner of Revenue of the County of Clarke, Virginia.

FOOD – Any food, beverage, 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. Included in the term “food” are prepared foods ready for human consumption sold by grocery stores and convenience stores at a delicatessen, for that portion of the grocery store or convenience store selling such items.

FOOD ESTABLISHMENT – Any place in or from which food or food products are prepared, packaged, sold, or distributed in Clarke County, except those establishments located in the Town of Berryville corporate

limits, including but not limited to, any restaurant, dining room, grill, coffee shop, cafeteria, café, snack bar, lunch counter, convenience store, movie theater, delicatessen, confectionary, 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.

PURCHASER – Any person who purchases a meal.

SALE – The final sale to the ultimate customer.

SELLER – Any food establishment or caterer selling food, or the person operating such business.

TREASURER – The Treasurer of the County of Clarke, Virginia.

§165-101. Tax levied; amount of tax
In addition to all other taxes and fees of any kind now or hereafter imposed by law, and pursuant to authority contained in § 58.1-3833 of the Code of Virginia, there is hereby imposed and levied on purchasers a tax equivalent to 2% of the amount paid for food sold by a seller.

§165-102. Payment and collection of tax
In every case the tax shall be collected by the seller and paid by the purchaser at the time of the charge for the food 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 County as provided in this article.

§165-103. Collections in Trust for County
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 County as provided in this article.

§165-104. Reports and remittances
The Commissioner may require all prospective sellers of food licensed to do business in the County 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 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.

§165-105. Penalty and interest for failure to pay tax when due

There shall be a penalty of 10% added to all food taxes imposed under the provisions of this article that are unpaid on the due dates as provided in this article.

In addition to such penalty, interest at the rate of 10% per annum shall accrue and be added to all due and unpaid taxes and penalties beginning with the first day following the imposition of the penalty; provided, however, that the second and subsequent years of delinquency, such interest shall be at the rate established pursuant to Section 6621 of the United States Internal Revenue Code of 1986, 26 U.S.C. § 6621, as amended, or its successor statute(s), but not less than 10%. Taxes and penalties herein provided shall be assessed and collected in the manner provided by law for the enforcement of the collection of other taxes.

§165-106. Failure to collect or remit tax

If any person whose duty it is to do so shall fail or refuse to collect the tax imposed under this article or to 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 County 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 shall 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 article and shall notify the person, by certified or registered mail sent to his or her address listed on the registration required in 165-104 or the last known address, of the amount of such tax, penalty and interest. The total amount thereof shall be payable 10 days after the date such notice is given.

§165-107. 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 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 unreasonable interference from the business of such person, for the purpose of administering and enforcing the provisions of this article and to make transcripts or copies of all or any parts thereof.

§165-108. Duty of person going out of business

Whenever any person required to collect and remit to the County 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.

§165-109. Advertising payment or absorption of tax unlawful

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.

§165-110. Tips and service charges

Where a purchaser provides a tip or gratuity for an employee of a seller and the amount of the tip or gratuity is wholly in the discretion of the purchaser, the tip or gratuity is not subject to the tax imposed by this article, whether paid in cash to the employee or added to the bill and charged to the purchaser's account, provided that, in the latter case, the full amount of the tip or gratuity is turned over to the employee by the seller.

§165-111. Exemptions

The following classes of food shall not be subject to the tax under this article:

Food and beverage sold through vending machines.

Alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption.

Food purchased for off-premise human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C. 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and non-factory sealed beverages.

Provided by boardinghouses that do not accommodate transients.

Provided by cafeterias operated by industrial plants for employees only.

Provided by restaurants to their employees as part of their compensation when no charge is made to the employee.

Provided by volunteer fire departments and volunteer emergency medical services agencies, nonprofit churches or other religious bodies, or educational, charitable, fraternal, benevolent organizations, or churches that serve meals for their members as a regular part of their religious observances.

Provided by public or private elementary or secondary schools or institutions of higher education to their students or employees.

Provided by hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or residents thereof.

Provided by day care centers.

Provided by homes for the aged, infirm, handicapped, battered woman, narcotic addicts, or alcoholics.

Provided 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.

Provided by sellers at local farmers' markets and roadside stands.

Also, the tax shall not be levied on food when used or consumed and paid by the Commonwealth, any political subdivision of the Commonwealth, or the United States, or provided by a public or private nonprofit charitable organization or establishment to elderly, infirm, blind, handicapped, or needy persons in their homes, or at central locations, or provided by private establishments that contract with the appropriate agency of the Commonwealth to offer food, food products, or beverages for immediate consumption at concession prices to elderly, infirm, blind, handicapped, or needy persons in their homes or at central locations.

§165-112. Enforcement It shall be the duty of the Commissioner to ascertain the name of every person operating a food establishment in the County liable for the collection of the tax imposed by this article who fails, refuses or neglects to collect such tax or make the reports and remittances required by this article. The Commissioner may have a summons issued for such person, and the summons shall be served upon such person by any County Sheriff or Deputy Sheriff in the manner provided by law. One

return of the original summons shall be made returnable to the General District Court for the County.

In the event that the purchaser of any food refuses to pay the tax imposed by this article, the seller may call upon the Sheriff's Office 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.

§165-113. 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 by a maximum fine of \$500. Conviction shall not relieve any person from the payment, collection, or remittance of the tax as provided in this article. Each violation or failure shall be a separate offense.

§165-114. Commissioner of Revenue It shall be the duty of the Commissioner to ascertain the name of every person operating a business in the County 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.

§165-115. Commission for Collection Every seller who collects, accounts for and remits taxes imposed herein to the County shall receive a commission at the rate of five percent (5%) of the amount of the tax due and accounted for by the seller. Said commission shall be paid in the form of a deduction from the tax so remitted. No commission shall be paid to any operator in the event that the amount due from said seller, or any part thereof, is delinquent under the provisions of this article.