Chapter 12

TAXATION

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ARTICLE I. TAX ON THE SALE OF PREPARED FOOD

Sec. 12-1. Definitions.

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

Cater means the furnishing of food, beverages, or both on the premises of another, for compensation.

Collector means the treasurer or designee.

Food means all food, beverages or both, including alcoholic beverages purchased in or from a food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not, and without regard to the manner, time or place of service.

Food establishment means any place in or from which food or food products are prepared, packaged, sold or distributed in the town, 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 shops, 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,

Meal means that any prepared food or drink offered or held out for sale by a food establishment for the purpose of being consumed by any person to satisfy the appetite and is ready for immediate consumption. All such food and beverage, unless otherwise specifically exempted or excluded herein shall be included, whether intended to be consumed on the seller's premises or elsewhere, whether designated as breakfast, lunch, snack, dinner, supper or by some other name, and without regard to the manner, time or place of service.

Sec. 12-2. Levy.

There is hereby imposed and levied by the Town on the purchaser of any meal sold in the Town, in or from a food establishment, whether prepared in such establishment or not and whether consumed on the premises or not. The rate of this tax shall be six (6%) percent of the amount paid for meal.

Sec. 12-3. Collection of tax by seller.

Every person receiving any payment for food with respect to which a tax is levied hereunder shall collect and remit the amount of the tax imposed by this article from the person on whom the same is levied or from the person paying for such food at the time payment for such food is made. However, no blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Blind and Vision Impaired or a vending stand or other

business enterprise located on property acquired and used by the United States for any military or naval purpose shall be required to collect or remit such taxes. All tax collections shall be deemed to be held in trust for the town.

Sec. 12-4. Exemptions; limits on applications.

A. The tax imposed under this article shall not be levied on factory-prepackaged candy, gum, nuts, or other items of essentially the same nature served for on or off-premises consumption.

B. The tax imposed under this article shall not be levied on the following items when served exclusively for off-premises consumption:

1. Donuts, ice cream, crackers, nabs, chips, cookies and factory-prepackaged items of essentially the same nature.

2. Food sold in bulk. For the 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 on premises consumption (e.g. 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,

3. Alcoholic and nonalcoholic beverages sold in factory sealed containers.

4. 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.

5. Any food or food product purchase for home consumption as defined in the federal Food Stamp Act of 1977, 7 USC 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 purchase 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. This subsection shall not affect provisions set for in subparagraphs D. 3., 4., and 5. herein below.

C. A grocery store, supermarket or convenience store shall not be subject to the tax except for any portion or section therein designated as a delicatessen or designated for the sale of prepared food and beverages.

D. The tax imposed hereunder shall not be levied on the following purchases of food and beverages:

1. Food and beverages sold by day care centers, public or private elementary or secondary schools or food sold by any college or university to its students or employees.

2. Food and beverages for use or consumption and which are paid for directly by the Commonwealth, any political subdivision of the Commonwealth or the United States.

3. Food and beverages furnished by a hospital, medical clinic, convalescent home, nursing home, home for the aged, infirm, handicapped, battered women, narcotic addicts or alcoholics, or other extended care facility to patients or residents thereof and the spouses and children of such persons.

4. Food and beverages furnished by a public or private nonprofit charitable organization or establishment or an establishment that contracts with the appropriate agency of the commonwealth to offer meals at concession prices to elderly, infirm, blind, handicapped or needy persons in their homes or at central locations.

5. Food and beverages sold on an occasional basis, [not exceeding three (3) times per calendar year], by a nonprofit educational, charitable or benevolent organization, church, or religious body as a fundraising activity, the gross proceeds of which are to be used by such organization exclusively for nonprofit educational, charitable, benevolent or religious purposes.

6. Food and beverages sold through vending machines.

Sec. 12-5. Gratuities and service charges.

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

Sec. 12-6. Report of taxes collected; remittance; preservation of records.

It shall be the duty of every person required by this article to pay to the town the taxes imposed by this article to make a report thereof setting forth such information as the treasurer may prescribe and require, including all purchases taxable under this article, the amount charged the purchaser for each such purchase, the date thereof, the taxes collected thereon and the amount of tax required to be collected by this article, and shall sign and deliver such report to the treasurer with the remittance of such tax. Such report and remittance shall be made as required by the treasurer, which shall be at least once in every thirty-day period and shall be filed no later than the twentieth (20_{th}) day of each month. Failure to remit the tax due by the twentieth (20_{th}) day of each month shall create a presumption that the responsible person has lawfully converted the tax due to his own use and has committed larceny thereof.

Any such tax records shall be kept and preserved for a period of five (5) years. The treasurer or his duly authorized agents 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.

Sec. 12-7. Discount.

For the purpose of encouraging timely submission of taxes imposed by this article, each person required to collect such taxes and remit such to the Town shall be allowed a deduction of one (1%) percent of the amount of tax due when said amount is paid on or before the date of payment as established in this article.

Sec. 12-8. Penalties; interest on delinquent taxes.

If any responsible person shall fail or refuse to remit to the treasurer the tax required to be collected and paid under the provisions of this article within the time and in the amount required, there shall be added to such tax by the treasurer a penalty in the amount of ten (10%) percent thereof, and interest thereof at the rate often (10%) percent per annum which shall be computed upon the taxes and penalty from the date such taxes are due and payable.

Sec. 12-9. Penalty for violation of article.

A. Any person willfully failing or refusing to file a return as required under this article shall, upon conviction thereof, be guilty of a class 1 misdemeanor except that any person failing to file such a return shall be guilty of a class 3 misdemeanor if the amount of tax lawfully assessed in connection with the return is one thousand dollars ($1,000.00) or less. Any person violating or failing to comply with any other provision of this article shall be guilty of a class I misdemeanor.

B. Except as provided in the subsection A. above, any corporate or partnership officer, as defined in the Code of Virginia § 58.1-3906, or any other person required to collect, account for, or pay over the meals tax imposed under this article, who willfully fails to collect or truthfully account for or pay over such tax, or who willfully evades or attempts to evade such tax or payrnent thereof, shall, in addition to any other penalties imposed by law, be guilty of a class I misdemeanor.

C. Each violation of failure to comply with this article shall constitute a separate offense. Conviction of any such violation shall not relieve any person from the payment, collection or remittance of the tax as provided in this article.

Sec. 12-10. Enforcement.

If any responsible person shall fail or refuse to collect the tax imposed by the provisions of this article and to make payment within the time required according to the reports and remittances required by this article, the treasurer shall proceed in such manner as may be deemed best to obtain the facts and information on which to base his estimate of the tax due, As soon as the treasurer procures such facts and information as he is able to obtain upon which to base the assessment of any tax payment by any person who shall fail or refuse to collect such tax to make such report and remittance, he shall proceed to determine and assess against such responsible person such tax and penalty and interest provided by this article and shall notify such responsible person by registered mail sent to his last known place of address of the amount of such tax and penalty and interest, and the total amount thereof shall be payable within ten (10) days from the date of such notice. The

treasurer shall have the power to examine such records for the purpose of administering and enforcing the provisions of this section. If any responsible person fails to comply with this article or any provision of it, the treasurer may terminate the business license issued by the Town of Keysville, may require the responsible person to place a deposit with the treasurer equal to the greater of one thousand dollars ($1,000.00) or the equivalent of one (1) month's tax imposed under this article. Said deposit is to serve as security for the payment of future taxes due hereunder.

(Adopted June 2004, amended June 2014)

ARTICLE II. CIGARETTE TAX

Sec. 12-11. 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:

Agent means every local dealer and other person who shall be authorized by the town treasurer to purchase and affix stamps to packages of cigarettes under the provisions of this article.

Dealer means every manufacturer, jobber, wholesale dealer or other person who supplies a seller with cigarettes.

Package means every package, box, can or other container of any cigarettes to which the Internal Revenue Stamp of the United States Government is required to be affixed by and under federal statutes and regulations and in which retail sales of such cigarettes are normally made or intended to be made.

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, as defined in this section, to any other person within the town.

Seller means every person engaged in the business of selling cigarettes who transfers title or in whose place of business title to any such cigarettes is transferred within the town for any purpose other than resale.

Stamp means the small gummed piece of paper or decalcomania to be sold by the town treasurer and to be affixed by the agent to every package of cigarettes; it shall also denote any insignia or symbol printed by a meter machine upon any such package under authorization of the town treasurer.

Treasurer means the town treasurer and every person duly authorized by him to serve as his representative.

Sec. 12-12. Levied; amount.

There is hereby levied and imposed by the town, in addition to any other taxes which may be or have been imposed, a tax to be paid and collected as provided in this article on each and every sale of cigarettes made in the town. The tax is to be paid by the seller, local dealer or other agent

by affixing a stamp, or causing a stamp to be affixed to every package of cigarettes, in the kind and manner required in this article and at the applicable rates as follows: The rate or amount of tax levied or imposed on cigarettes shall be at the initial rate of fifteen cents ($0.15) for each twenty (20) cigarettes or fractional part thereof. This rate shall become effective February 1st, 2020 and shall remain effective until December 31st, 2020. Beginning on January 1st, 2021, the rate shall increase by two and a half cents annually until reaching a final rate of twenty-seven and a half cents ($0.275) on January 1st, 2025.

Sec. 12-13. Preparation, sale, etc., of stamps; duties of treasurer generally.

(a) The town treasurer shall acquire, keep and sell necessary stamps to local dealers and other agents, the stamps to be of such denominations and quantities as may be necessary for the payment of the tax imposed in this article.

(b) In the sale of such stamps to a local dealer or other agent, the treasurer shall allow a discount of two and a half cents ($0.025) per stamp of the face value thereof to cover the cost which will be incurred by such dealer or agent in affixing the stamps to packages of cigarettes.

(c) The town treasurer may, from time to time and as often as he deems advisable, provide for the issuance and exclusive use of stamps of a new design and forbid the use of stamps of any other design. The treasurer is empowered to make and carry into effect such reasonable rules and regulations relating to the preparation, furnishing, sale and redemption of stamps as he may deem necessary. In redeeming stamps or making refunds for destroyed stamps, he shall not in any case refund more than ninety (90) percent of the face value of such redeemed or destroyed stamps. He is further authorized and empowered to prescribe the method to be employed, the conditions to be observed, and any other necessary requirements not contrary to this article in the use of meter machines for printing upon packages of cigarettes an insignia to represent the payment of the tax and in lieu of stamps.

(d) In addition to powers granted in subsections (a) through (c) of this section, the town treasurer is further authorized and empowered to:

(1) Prescribe, adopt, promulgate and enforce rules and regulations relating to the method and means to be used in the cancellation of stamps;

(2) Delegate his powers to agents or others, including the Mayor of the Town of Keysville;

(3) Act in any other matters pertaining to the administration and enforcement of the provisions of this article.

Sec. 12-14. Inspection of records, premises, etc.

The town treasurer, or his duly authorized agent, is empowered to examine books, records, invoices and papers related to purchases, sales, etc., of cigarettes, and to examine all cigarettes in

and upon any premises where cigarettes are placed, sold, stored, offered for sale or displayed for sale by a seller.

Sec. 12-15. Seizure and disposition of untaxed cigarettes, etc.

(a) If the town treasurer or his agent discovers any cigarettes subject to the tax imposed under this article, but upon which such tax has not been paid and upon which stamps have not been affixed or evidence of payment is not shown thereon by printed markings of a meter machine in compliance with the provisions of this article, then the treasurer or duly authorized agents or officers, any of them, may seize and take possession forthwith of such cigarettes, which shall thereupon be deemed to be forfeited to the town. Such cigarettes may, within a reasonable time thereafter, and after written notice is posted at the front door of the town office at least five (5) days before the date given therein for sale, shall sell such cigarettes in the place designated in such notice.

(b) Any property, other than motor vehicles, used in the furtherance of any illegal evasion of the tax may be seized, confiscated and disposed of as provided in subsection (a) of this section. No credit from any sale or other disposition shall be allowed toward any tax or penalties owed.

(c) The seizure and sale of any property shall not be deemed to relieve any of the persons of any other penalties provided in this article.

Sec. 12-16. Obligation of dealers and agents regarding stamps.

(a) Every local dealer in cigarettes and every agent appointed under this section shall purchase necessary stamps from the town treasurer to pay the tax imposed under this article and shall affix or cause to be affixed a stamp of the monetary value provided by this article to each package of cigarettes prior to delivering or furnishing such cigarettes to any seller who is not also an agent.

(b) Nothing contained in this section shall be deemed to preclude any dealer from authorizing and employing any agent to purchase and affix such stamps in his behalf or to have a stamp meter machine used in lieu of stamps to effectuate the provisions of this article.

(c) Stamps or printed markings of a meter machine shall be placed upon each package of cigarettes in such a manner as to be readily visible to the purchaser.

(d) It shall be the responsibility of every seller to determine that each package of cigarettes offered for sale shall have a proper stamp affixed thereto in compliance with the provisions of this article.

(e) If inspection by the agents of the town discloses unstamped or improperly stamped packages of cigarettes, the seller, when such cigarettes were obtained from a local dealer, shall immediately notify such dealer and upon such notification such dealer shall forthwith either affix to the unstamped or improperly stamped package, container or item the proper amount of stamps or he shall replace such package, container or item with others to which stamps have been properly affixed. If a seller, who is not also an agent, acquires or has in his possession unstamped or

improperly stamped cigarettes, the seller shall forthwith notify the treasurer of such fact. The treasurer shall thereupon affix or cause to be affixed the proper stamps to such cigarettes. The cost of such stamps at face value shall be advanced by such seller.

(f) The treasurer, by proper rules and regulations, may require every local dealer, agent or seller to cancel stamps upon all packages of cigarettes in his possession.

(g) Every local dealer and seller shall maintain and keep for a period of at least two (2) years such records of cigarettes received and sold by him as may be required by the treasurer; such records shall be made available for examination in the town by the treasurer upon demand, and the means, facilities and opportunities for making any such examination shall be made available at all reasonable times.

Sec. 12-17. Presumptions based on quantity.

Cigarettes found in quantities of more than six (6) cartons within the town shall be conclusively presumed for sale therein and may be seized and confiscated if:

(1) They are in transit, and are not accompanied by a bill of lading or other document indicating the true name and address of the consignor or seller and of the consignee or purchaser, and the brands and quantity of cigarettes so transported, or they are in transit and accompanied by a bill of lading or other document which is false or fraudulent, in whole or in part;

(2) They are in transit and are accompanied by a bill of lading or other document indicating:

a. 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 products bear the tax stamps of that state or district; or

b. A consignee or purchaser in the commonwealth but outside the town who does not possess a state sales and use tax certificate, a state retail cigarettes license and, where applicable, both a business license and retail cigarettes license issued by the local jurisdiction of destination; or

(3) They are not in transit and the tax has not been paid, nor have approved arrangements for payment been made, provided that this subsection shall not apply to cigarettes in the possession of distributors or public warehouses which have filed notice and appropriate proof with the town that those cigarettes are temporarily within the town and will be sent to consignees or purchasers outside the jurisdiction in the normal course of business.

Sec. 12-18. Presumption based upon stamps or markings.

If any package of cigarettes is found in the possession of a seller without proper stamps or authorized printed markings thereon, and the seller is unable to submit evidence establishing that he received such packages, containers or items within the immediately preceding forty-eight (48) hours, and that he has not offered the same for sale, then it shall be presumed that such packages, containers, or items are being kept in violation of the provisions of this article, and the seller shall be subject to the pre-discount tax and a penalty in the amount of fifty (50) percent thereof, even though such seller is also an agent.

Sec. 12-19. Disposition of revenue.

Revenue derived from the tax imposed in this article shall be deposited by the town treasurer to the credit of the general fund of the town. The revenue generated from the tax shall be utilized for the specific purposes listed below:

(1) Costs related to implementation of cigarette tax, including additional stamps;

(2) Paying off town grants and loans;

(3) Capital improvement projects; and

(4) Establishment of a town police force.

Other than the listed purposes above, the Town Council may not utilize cigarette tax revenue for any other purpose without a unanimous vote from the Councilmembers. Such vote must be conducted for every instance where cigarette tax revenue is utilized.

Sec. 12-20. Illegal acts.

It shall be unlawful and a violation of this article for any dealer or other person liable for the tax to:

(1) Perform any act or fail to perform any act for the purpose of evading the payment of any tax imposed by this article or of any part thereof, or to fail or refuse to perform any of the duties imposed under him under the provisions of this article or to fail or refuse to obey any lawful order which may be issued under this article;

(2) Falsely or fraudulently make, or cause to be made, any invoices or reports, or to falsely or fraudulently forge, alter or counterfeit any stamp, or to procure or cause to be made, forged, altered or counterfeited any such stamp or knowingly and willfully to alter, publish, pass or tender as true any false, altered, forged or counterfeited stamp or stamps;

(3) Sell, offer for sale or authorize or approve the sale of any cigarettes upon which the town stamp has not been affixed;

(4) Possess, store, use, authorize or approve the possession, storage or use of any cigarettes in quantities of more than sixty (60) cigarettes upon which the town stamp has not been affixed;

(5) Transport, authorize or approve the transportation of any cigarettes in quantities of more than sixty (60) packages into or within the town upon which the town 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;

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:

1. 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 tobacco products on which the taxes imposed by such other jurisdiction have not been paid unless the tax on the jurisdiction of destination has been paid and such cigarettes bear the tax stamps of the jurisdiction; or

2. A consignee or purchaser in the state but outside the taxing jurisdiction who does not possess a state sales and use tax certification, a state retail tobacco license and, where applicable, a business license and a retail tobacco license issued by the local jurisdiction of destination;

(6) Reuse or refill with cigarettes any package from which cigarettes have been removed, for which the tax imposed has been theretofore paid; or

(7) Remove from any package any stamp with intent to use or cause the package to be used after such package has already been used or to buy, sell or offer for sale or give away any used, removed, altered or restored stamps to any person, or to reuse any stamp which had therefore been used for evidence of the payment of any tax prescribed by this article or to sell, or offer to sell, any stamp provided for in this article.

Sec. 12-21. Penalty.

Any persons violating any of the provisions of this article shall be guilty of a Class 1 misdemeanor. Any fine and/or imprisonment pursuant to conviction of a Class 1 misdemeanor shall not relieve any such person from the payment of any tax, penalty or interest imposed by this article.

Sec. 12-22. Each violation a separate offense.

The sale of any quantity or the use, possession, storage or transportation of more than sixty (60) packages of cigarettes upon which the town stamp has not been affixed shall be and constitutes

a separate violation. Each continuing day of violation shall be deemed to constitute a separate offense.

Sec. 12-23. Adoption and enactment date.

The foregoing ordinance was adopted by the Keysville Town Council at their regular monthly meeting following a public hearing held on November 11th, 2019. The ordinance enactment date is February 1st, 2020.