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County Administrator

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MEMORANDUM

TO: Code & Ordinance Committee
FROM: John R. Riley, Jr., County Administrator
DATE: December 6, 2013
RE: Committee Meeting

There will be a meeting of the Code & Ordinance Committee on **Monday, December 16, 2013, 3:00 P.M., Closed Session Room, County Administration Building, 107 North Kent Street.** The following will be discussed:

1. Discussion of Proposed Amendments to County Code, Chapter 155, Taxation, Various Articles/Sections; and Chapter 112 Massage Parlors and Health Clubs. **(See Attached)**
2. Discussion of Proposed Amendments to County Code, Chapter 155, Taxation, Article XXV Exemption for Nonprofit Organizations, Section 155-153, Property Exempted from Taxation by Designation. **(See Attached)**
3. Such other business as may come before the committee.

JRR/tjp

Attachments

cc: Kris C. Tierney, Asst. County Admin.
Ellen E. Murphy, Comm. of Revenue
C. William Orndoff, Jr., Treasurer
Sheriff Robert T. Williamson
Board of Supervisors
WINC
Winchester Star
Northern Virginia Daily

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COUNTY OF FREDERICK

Roderick B. Williams
County Attorney

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MEMORANDUM

TO: Code and Ordinance Committee

FROM: Roderick B. Williams
County Attorney

DATE: November 14, 2013

RE: Frederick County Code, Chapter 155 (Taxation), Sections 155-32, 155-35, 155-47, 155-96, 155-100, and 155-113
and
Frederick County Code, Chapter 112 (Massage Parlors and Health Clubs)

Attached please find draft proposed ordinance amendments concerning the above-referenced Chapters of the County Code. The reasons in support of these proposed amendments are as follows:

Chapter 155 (Taxation), Section 155-32 (Retail Sales Tax/Administration and Collection) – proposed amendment

The proposed amendment would delete the words “with the adjustments required by § 58.1-628” from the provision concerning administration and collection of the sales tax. The General Assembly repealed § 58.1-628 of the Code of Virginia, which concerned the calculation of the sales tax for sale amounts of \$5.00 and under, in 2004 and deleted the “with the adjustments” language from the other sections of state law regarding the sales tax. With the 2004 changes and the fact that the sales tax is actually administered by the state, there is no reason to retain the obsolete reference in the County Code.

Chapter 155 (Taxation), Section 155-35 (Utility Tax/Local User Fee) – proposed amendment

This section currently refers to § 58.1-3813A of the Code of Virginia. Section 58.1-3813 was repealed by the Acts of 2000, c. 1064. It was replaced in substantial part by § 58.1-3813.1. Therefore, in County Code § 155-35, § 58.1-3813A should be changed to § 58.1-3813.1.

Chapter 155 (Taxation), Section 155-47 (Home Heating Oil Local Option Sales and Use Tax) – proposed repeal

This authority for this section was § 58.1-609 of the Code of Virginia, which was repealed in 1993. At the same time, the General Assembly enacted § 58.1-609.10, which exempted home heating oil from the sales tax. Therefore, § 155-47 of the County Code should be repealed.

Chapter 155 (Taxation), Section 155-96 (Business License Fee and Tax) – proposed amendments

These are limited changes identified by the Commissioner of the Revenue. The County had not previously had any wine wholesalers and, therefore, had not established a tax for such establishments. The County now has at least one wine wholesaler. The proposed tax amount corresponds with the amount permitted under § 4.1-233 of the Code of Virginia. Also, the current County Code section contains two amounts (for wineries and for beer wholesalers) that exceed the amounts provided for under state law and, accordingly, the draft proposes conforming amendments.

Chapter 155 (Taxation), Section 155-100 (Business License Fee and Tax/Itinerant and Distressed Merchandise Vendors) – proposed amendment

This is a limited change identified by the Commissioner of the Revenue. The recent revisions to this section exempted businesses that already hold County business licenses from further licensing if they appear at festivals in the County, but did not address the issue of businesses that hold business licenses issued by the Town of Stephens City or the Town of Middletown. The suggestion here is that it is appropriate to exempt such businesses from the festival business license requirement and the draft reflects that.

Chapter 155 (Taxation), Section 155-113 (Business License Fee and Tax/Contractor to Provide List of Subcontractors) – proposed amendment

The Commissioner of the Revenue has requested the explicit inclusion of authority to require contractors to provide lists of subcontractors to the Commissioner. This assists the Commissioner in enforcement of business license matters. Va. Code § 58.1-3109 provides the authority for this amendment. The proposed provision is based upon similar provisions in force in Spotsylvania County and the City of Newport News.

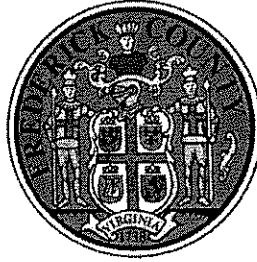
Chapter 112 (Massage Parlors and Health Clubs) – proposed repeal

The minutes of the Board of Supervisors indicate that the provisions of this Chapter were first passed as an ordinance on September 14, 1977. In the intervening years, this particular industry has evolved significantly from what it was in 1977 and, today, it can be considered to be an established medically-related practice. Toward that end, in 1997, the General Assembly amended the Code of Virginia to permit the Board of Nursing to regulate massage therapy. State law defines “massage therapy” as “the treatment of soft tissues for therapeutic purposes by the application of massage and bodywork techniques based on the manipulation or application of pressure to the muscular structure or soft tissues of the human body. The terms "massage therapy" and "therapeutic massage" do not include the diagnosis or treatment of illness or disease or any service or procedure for which a license to practice medicine, nursing, chiropractic therapy, physical therapy, occupational therapy, acupuncture, or podiatry is required by law.” Va. Code § 54.1-3000.

With respect to local regulation of the practice, the Code of Virginia contains no express authority for local regulation. This fact, combined with the General Assembly’s 1997 assignment of the responsibility to the Board of Nursing, suggests that localities may not separately regulate the practice. Toward this end, Arlington County, Virginia repealed its massage regulation ordinance in 2011.

State law regulation of the practice is presumably adequate to protect the public health, safety, and welfare. As well, local law enforcement officers are always empowered to enforce state laws. Accordingly, repeal of the County’s regulation (Chapter 112) is appropriate.

Attachments



ORDINANCE
___, 201_

The Board of Supervisors of Frederick County, Virginia hereby ordains that Sections 155-32, 155-35, 155-96 and 155-100 of Chapter 155 (Taxation) of the Code of Frederick County, Virginia be, and the same hereby are, amended by enacting amended Sections 155-32, 155-35, 155-96 and 155-100 of Chapter 155 (Taxation) of the Code of Frederick County, Virginia, as follows and to take effect immediately, that a new Section 155-113 of Chapter 155 (Taxation) of the Code of Frederick County, Virginia be, and the same hereby is, enacted as part of Article XVI of Chapter 155, as follows and to take effect immediately, and that Section 155-47 of Chapter 155 (Taxation) of the Code of Frederick County, Virginia be, and the same hereby is, repealed effective immediately (deletions are shown in **bold strikethrough** and additions are shown in **bold underline**):

CHAPTER 155 TAXATION

Article VII Retail Sales Tax

§ 155-32 Administration and collection.

Pursuant to Title 58.1, Chapter 6, § 58.1-605 of the Code of Virginia, the local general retail sales tax levied pursuant to this article shall be administered and collected by the State Tax Commissioner of the commonwealth in the same manner, subject to the same penalties provided for the state sales tax, ~~with the adjustments required by § 58.1-628.~~

Article VIII Tax on Purchasers of Utility Service

§ 155-35 Local user fee.

- A. An E-911 local user fee to each Verizon Telephone Company user is hereby adopted. The purpose of this fee is to allow for the implementation of the Enhanced 911 Emergency Telephone System. The fee shall be as prescribed by ordinance of the Board of Supervisors.

- B. The local user fee for Star Tannery area residents served by the Shenandoah Telephone Company shall be as established by the Shenandoah County E-911 Emergency Telephone System Ordinance, as prescribed in a joint agreement pursuant to Code of Virginia, § ~~58.1-3813A~~ 58.1-3813.1.

~~Article XII Home Heating Oil Local Option Sales and Use Tax~~

~~§ 155-47 Tax imposed.~~

~~Effective upon adoption and pursuant to § 58.1-609 of the Code of Virginia 1950, as amended, purchases of home heating oil by an individual purchaser for domestic consumption shall be subject to the one-percent local option sales and use tax.~~

Article XVI Business License Provisions

§ 155-96 License fee and tax.

[Subsections A and B remain unchanged.]

- C. Instead of the license fees specified in Subsections A and B above and except as provided in Subsection C(9)(f), every other such person or business subject to licensure under this article shall be assessed and required to pay a license tax as set forth below for the class of enterprise listed:

[Paragraphs 1 through 8 remain unchanged.]

(9) For sale of alcoholic beverages:

- (a) Every person who shall engage in the business of manufacturing, bottling, wholesaling or retailing alcoholic beverages shall obtain a license therefor and shall pay therefor the license tax hereinafter provided.

[1] Distiller's license. For each distiller's license, the license tax shall be \$500 per annum, provided that no license shall be required of any distiller manufacturing not more than 5,000 gallons of alcohol or spirits, or both, during such license year.

[2] Winery license. For every winery license, the license tax shall be ~~\$500~~ \$50 per annum, provided that no license shall be required of any winery

manufacturing not more than 5,000 gallons of wine during such license year.

[3] Brewery license. For each brewery license, the license tax shall be \$500 per annum.

[4] Bottler's license. For each bottler's license, the license tax shall be \$150 per annum.

[5] Wholesale beer and wine license. For each wholesale beer license, the license tax shall be ~~\$200~~ \$75 per annum. **For each wholesale wine license, the license tax shall be \$50 per annum.**

[6] Retail on-premises wine and beer license. For each retail on-premises wine and beer license, the license tax shall be \$20 per annum.

[7] Retail off-premises wine and beer license. For each retail off-premises wine and beer license, the license tax shall be \$20 per annum.

(b) For each mixed beverage license for restaurants, including restaurants located on premises of and operated by hotels and motels, the license tax shall be:

[1] One hundred dollars per annum for each restaurant with a seating capacity at tables for 50 to 100 persons.

[2] One hundred fifty dollars per annum for each restaurant with a seating capacity at tables for more than 100 but not more than 150 persons.

[3] Two hundred dollars per annum for each restaurant with a seating capacity at tables for more than 150 persons.

[4] Two hundred dollars per annum for each private, nonprofit club operating a restaurant on the premises of such club.

(c) The aforesaid license shall be as respectively defined by the Act of the General Assembly, known as the "Alcoholic Beverage Control Act," and the terms "alcoholic beverages," "alcohol," "spirits" and "wine," wherever used in this article, shall reflect the meanings respectively ascribed to them by such Act.

(d) No license shall be issued under this section to any person unless such person shall hold or secure simultaneously therewith the proper state license required by the Alcoholic Beverage Control Act, which state license shall be exhibited to the Commissioner of the Revenue, and all dining rooms,

restaurants, lunchrooms and clubrooms wherein the beverages herein defined are sold for consumption on the premises shall at all times be open to inspection by the State Police and the police or Sheriff's authorities of this County; provided, further, that all storerooms or other buildings from which deliveries are made, either at wholesale or retail, whether they are bottlers, wholesalers or retailers, shall at all times be open to inspection by State Police and police or Sheriff's authorities of the County. Any violation of the terms of this provision shall be sufficient grounds for the revocation of the license issued in accordance with this section.

(e) No alcoholic beverage license shall be prorated or transferable.

(f) This tax shall be in addition to applicable license taxes based on gross receipts or gross purchases. In imposing retail merchant license taxes measured by gross receipts, the term "gross receipts" shall be construed to include receipts from the sale of alcoholic beverage by persons licensed under this section. In computing gross receipts, alcoholic beverages shall be included in the base for measuring such license taxes the same as if the alcoholic beverages were nonalcoholic. No alcoholic beverage license levied under this section shall be construed as exempting any license from any merchant license tax, and such merchant license tax shall be in addition to the alcoholic beverage taxes levied under this section.

§ 155-100 Itinerant and distressed merchandise vendors.

- A. Each person who shall engage in or transact any temporary or transient business in this County for the sale of goods, wares and merchandise and who, for the purpose of carrying on such business, shall hire, lease, use or occupy any building or structure, motor vehicle, tent, car or public room or any part thereof, including rooms in hotels, lodging houses or houses of private entertainment, or in any street, alley or other public place for a period of less than a year for the exhibition or sale of such goods, wares or merchandise shall pay for such privilege a license tax of \$500 per year, which license shall not be prorated or transferable.
- B. Each person who or which has not been licensed for at least one year to sell or to offer for sale goods, wares or merchandise before the adoption of this section and who shall hereafter apply for a license to sell or offer for sale, goods, wares or merchandise within the County shall file with such application a statement from the owner of the building, structure, etc., to be used by such applicant, indicating consent to use the premises for such sales, or no license shall be issued unless and until such statement is attached to the application.

- C. On each transient vendor for the sale of bankrupt, assignee, trustee, fire-wreck stock or salvage stock, a license tax shall be paid of \$500 per year, which license shall not be prorated or transferable.
- D. No persons shall be exempt from the payment of the license tax imposed by this section by reason of associating temporarily with any local merchant, dealer or trader or by reason of conducting such business in the name of any local merchant, dealer, trader or auctioneer.
- E. No license tax shall be required under this section for any itinerant merchant participating in an event, not to exceed ten consecutive days in length, conducted by a nonprofit organization, when the purpose of such event is in furtherance of the nonprofit nature of such organization, and the sale of any goods, wares or merchandise is merely ancillary to such event and not the primary purpose therefor, and any such itinerant merchant shall have registered with and been approved by such nonprofit organization. The provisions of this subsection E do not create any exemption from the provisions of this Code regarding the meals tax or from the provisions of the Code of Virginia regarding the sales and use tax.
- F. Notwithstanding subsections A through D of this section, each person who shall engage in or transact any business in this County for the sale of goods, wares and merchandise at a festival, as that term is defined in Section 86-2 of this Code, or at any other pre-arranged event at a single location, whether indoors or outdoors, of more than 100 individuals, shall pay for such privilege a license tax of \$30 per festival or event, which license shall not be prorated or transferable, and any such person shall have registered with and been approved by the person conducting the festival or event. No license shall be required under this subsection for (i) vendors at flea markets under Section 155-112 of this Code, who are to be licensed under that section; or (ii) vendors who have otherwise obtained or are otherwise required to obtain a license pursuant to Section 155-73 of this Code **or pursuant to the laws or ordinances of any incorporated town located in Frederick County**. The provisions of this subsection F do not create any exemption from the provisions of this Code regarding the meals tax or from the provisions of the Code of Virginia regarding the sales and use tax.
- G. "Conducting" shall, for purposes of this section, mean organizing, sponsoring, promoting, hosting, or otherwise being responsible for a festival or event under this section.

§ 155-113 Contractor to provide list of subcontractors.

The commissioner, in performing the duties of such office, shall have authority to require any person doing business in the county to furnish, as to each subcontractor to whom any part of a contract is sublet, a list of, among other things, the names and addresses of each subcontractor and the amount of each subcontract performed in the county.

Enacted this ____ day of ____, 201_.

Richard C. Shickle, Chairman _____

Gary A. Lofton _____

Robert A. Hess _____

Robert W. Wells _____

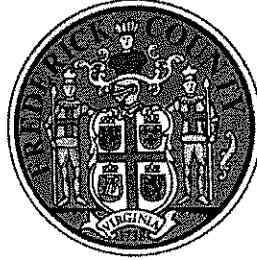
Christopher E. Collins _____

Gene E. Fisher _____

Charles S. DeHaven, Jr. _____

A COPY ATTEST

John R. Riley, Jr.
Frederick County Administrator



ORDINANCE
_____, 201_

The Board of Supervisors of Frederick County, Virginia hereby ordains that Chapter 112 (Massage Parlors and Health Clubs) of the Code of Frederick County, Virginia be, and the same hereby is, repealed in its entirety, effective immediately.

Enacted this ____ day of _____, 201_.

Richard C. Shickle, Chairman _____

Gary A. Lofton _____

Robert A. Hess _____

Robert W. Wells _____

Christopher E. Collins _____

Gene E. Fisher _____

Charles S. DeHaven, Jr. _____

A COPY ATTEST

John R. Riley, Jr.
Frederick County Administrator

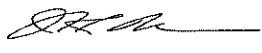


COUNTY of FREDERICK

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MEMORANDUM

TO: Code & Ordinance Committee Members

FROM: John R. Riley, Jr., County Administrator 

SUBJECT: Amendments to Section 155-153 Property Exempted from Taxation by Designation

DATE: November 21, 2013

Attached please find a draft ordinance to address the changes to our tax exemption ordinance necessary to clean it up and put the triennial filing requirement in place, so that we could in turn then petition the GA for any revocations. The genesis of this amendment was a request from The Village at Orchard Ridge seeking a tax exempt designation for their facility located on Route 50 West.

By way of background:

- March 20, 2013 – Finance Committee discussed a request from The Village at Orchard Ridge seeking a tax exemption. The Committee recommended postponement of this request pending the receipt of additional information.
- April 17, 2013 – Finance Committee received additional information regarding the request from The Village at Orchard Ridge. The Committee recommended denial of this tax exempt request.
- April 24, 2013 – The Board of Supervisors considered the tax exempt request from The Village at Orchard Ridge. The Board voted to deny the request. During the discussions leading to the vote, some supervisors wished to look at entities which had previously received a tax exempt designation.

Virginia Code §58.1-3605 outlines the process the Board must follow in order to remove a tax exempt designation that was either granted by the locality or by the General Assembly. The proposed code amendment would allow Frederick County to begin the process to enable the removal of certain tax exempt designations.

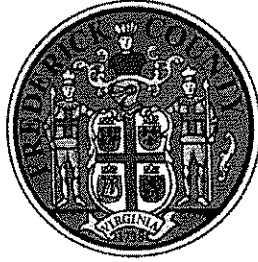
Below the County Attorney has outlined items in the proposed amendment for additional explanation:

- The sentence at the end of 155-153(A) is proposed to be deleted because it relates to GA exemptions and the rest of the subsection relates to BOS exemptions. Therefore, the ordinance need not include that reference. A locality can itself revoke a locality-granted exemption in the same manner as it granted the exemption. 2004 Op. Va. Att’y Gen. 224.
- The new 155-153(B) is drawn from the language of Va. Code 58.1-3605 and would apply both to GA exemptions and BOS exemptions (the only difference being that, after receipt of the filings from the entities, the BOS would need to forward a request to the GA to revoke a GA exemption). November 15 as the application deadline comes from 58.1-3605’s statement that “Such application shall show the ownership and usage of such property and shall be filed within the next sixty days preceding the tax year for which such exemption, or the retention thereof, is sought.”
- The deletion of 155-154 has been proposed for two reasons:
 - First, while the BOS did grant those exemptions, the BOS minutes do not reflect the particular codification of them.
 - Second, the list is not necessarily complete. For this reason and for the first reason, I think it best simply to have the exemption list be uncodified.
- The last paragraph of the ordinance (which would likewise be uncodified) is for “comfort”, namely, to assure everyone that the exemptions of the named entities are not being revoked by the amendments.

Should you have any questions, please do not hesitate to contact me.

JRR/jet

Attachment



ORDINANCE
_____, 201__

The Board of Supervisors of Frederick County, Virginia hereby ordains that:

1. Section 155-153 of Article XXV (Exemption for Nonprofit Organizations) of Chapter 155 (Taxation) of the Code of Frederick County, Virginia be, and the same hereby is, amended by enacting an amended Section 155-153 of Article XXV (Exemption for Nonprofit Organizations) of Chapter 155 (Taxation) of the Code of Frederick County, Virginia, as follows (deletions are shown in **bold strikethrough** and additions are shown in **bold underline**):

CHAPTER 155 TAXATION

Article XXV Exemption for Nonprofit Organizations

§ 155-153 Property exempted from taxation by designation.

A. The real property of an organization designated by the Board of Supervisors a ~~section within this article~~ and used by such organization exclusively for a ~~religious, charitable, patriotic, historical, benevolent, cultural or public park and playground~~ one or more of the purposes as set forth in Article X, Section 6(a), of the Constitution of Virginia, ~~the particular purpose of which such organization is classified being specifically set forth within each section,~~ shall be exempt from taxation so long as such organization is operated not for profit and the property so exempted is used in accordance with the purpose(s) for which the organization is classified. ~~In addition, such exemption may be revoked in accordance with the provisions of § 58.1-3605, Code of Virginia.~~

B. Each organization which owns real property exempt from taxation pursuant to designation of the Board of Supervisors or pursuant to designation of the General Assembly shall file triennially, commencing on November 15, 2014, an application with the Commissioner of the Revenue as a requirement for retention of the exempt status of the property. The Commissioner of the Revenue shall send notice of this requirement to each

such organization by not later than September 15 preceding the November 15 on which such application is due. Such application shall show the ownership and usage of such property, and such other information as the entity deems desirable, for the property for which retention of such exemption is sought.

~~B.C.~~ Exemptions of property from taxation under this article shall be strictly construed in accordance with the provisions of Article X, Section (6)(f) of the Constitution of Virginia.

2. Section 155-154 of Article XXV (Exemption for Nonprofit Organizations) of Chapter 155 (Taxation) of the Code of Frederick County, Virginia be, and the same hereby is, repealed (deletions are shown in ~~bold strikethrough~~):

~~§ 155-154 Organizations granted exemption.~~

~~A. Fort Collier Civil War Center, Inc. (Property Identification Number 54-A-81G).~~

~~B. Young Life – Northern Shenandoah Valley.~~

~~C. Fort Colvin – The Association for the Preservation of Virginia Antiquities (Property Identification Number 62-A-51-A).~~

~~D. The Nature Conservancy (Property Identification Numbers 83-2-1; 83-2-2; 83-2-3; 83-2-4; 83-2-5; 83-A-61; 83-A-61C; 83-A-61D; 83-A-61E; 83-A-61F; and 83-A-61G.)~~

~~E. Blue Ridge Hospice.~~

3. The repeal herein of Section 155-154 of the Code of Frederick County, Virginia shall not affect the tax exemption of any organization as such tax exemption was in existence immediately prior to the adoption of this ordinance, but all such organizations are otherwise subject to the provisions of Section 155-153 of the Code of Frederick County, Virginia, as amended herein, and each such organization must comply with such provisions following the adoption of the ordinance in order to maintain its respective tax exemption(s).

4. The provisions of this ordinance shall take effect immediately.

Enacted this ____ day of ____, 201_.

Richard C. Shickle, Chairman _____

Gary A. Lofton _____

Robert A. Hess _____

Robert W. Wells _____

Christopher E. Collins _____

Gene E. Fisher _____

Charles S. DeHaven, Jr. _____

A COPY ATTEST

John R. Riley, Jr.
Frederick County Administrator