

## 11. CONSIDERATION OF EXCISE TAXES ON MEALS AND TRANSIENT OCCUPANCY

### A. TRANSIENT OCCUPANCY TAX

As discussed at your strategic planning retreat, one of the Board priorities for FY 2010 was to identify alternative revenue sources to minimize future increases to property taxes.

As further discussed, § 58.1-3819 of the 1950 Code of Virginia provides that counties may levy a transient occupancy tax with a maximum tax rate of 2%. A voter referendum is not required and the tax may be levied by ordinance of the Board of Supervisors. Currently, 63 of the 95 Virginia counties impose such a tax. Locally, the counties of Greensville and Isle of Wight and the cities of Franklin, Suffolk and Emporia levy a transient occupancy tax. The amount of revenue generated by the tax obviously varies, based upon the number of lodging facilities in each locality. The tax would not apply to transient occupancy within the limits of any incorporated town unless the town grants specific authority to the county. While it is not likely to generate substantial revenue immediately, it is an untapped resource that can only grow as Southampton County continues to develop.

Attached for your consideration is an ordinance imposing the transient occupancy tax in Southampton County. If you are satisfied with the language and wish to proceed, it is necessary to direct me to advertise the matter for public comment at your meeting next month.

**MOTION REQUIRED:** If the Board is so inclined, a motion is required to direct the County Administrator to advertise the attached ordinance for public comment next month.

### B. MEALS TAX

The meals tax is a flat percentage imposed on the price of a meal. While cities and towns are authorized to levy the tax under the general taxing powers found in their respective charters, § 58.1-3833 of the 1950 Code of Virginia provides that counties may impose a meals tax only if approved in a voter referendum. Counties are further limited to imposing a maximum tax of 4%, while cities may go up to 6.5% and towns to 8%. Like the transient occupancy tax, counties are also restricted in their authority to levy the meals tax within the limits of an incorporated town unless the town grants the county the authority to do so. Currently, 40 of the 95 counties in Virginia levy a meals tax. Locally, the counties of Greensville and Isle of Wight and the cities of Franklin, Suffolk and Emporia have a meals tax.

In addition to food served at restaurants, a meals tax applies to grocery and convenience stores selling prepared food at a delicatessen. It does not apply to food and beverages sold through vending machines, food prepared and sold by churches,

civic organizations, fire departments and rescue squads, or cafeterias in public schools, nursing homes, and hospitals.

As previously mentioned, a meals tax can be levied only if it is approved in a referendum, conducted in accordance with § 24.2-684 of the Code of Virginia. A referendum may be initiated either by a resolution of the board of supervisors or by the filing of a petition signed by a number of registered voters of the county equal in number to 10 percent of the number of voters registered in the county. If the resolution of the board of supervisors seeking a referendum states for what projects and/or purposes the revenues collected from the tax are to be used, then the question on the ballot for the referendum will include language stating for what projects and/or purposes the revenues collected from the tax are to be used – that’s something to think about if you’re serious and may enhance your chances of success.

Meals tax referendums were held in seven Virginia counties in November 2008, but only one, in King William County, succeeded and there by the slimmest of margins (by only 45 votes with more than 7,800 voting):

<u>COUNTY</u>	<u>RESULT</u>
Bath County	Defeated 58% to 42%
Culpeper County	Defeated 62% to 38%
Fauquier County	Defeated 69% to 31%
King William County	Approved 50.28% to 49.71%
Loudoun County	Defeated 69% to 31%
Rockingham County	Defeated 53% to 47%
Smyth County	Defeated 72% to 28%

Contrary to the discussion at your retreat, this issue can be placed on the ballot for the November 2009 election if a resolution is properly prepared and submitted to the Clerk of the Court prior to June 1. It’s important to remember that approval by the voters only grants the Board *the authority* to levy a meals tax – a tax is not levied until a local ordinance is adopted following a successful referendum.

At this writing, I have no estimate on the amount of revenue a meals tax may generate. If this is something you wish to pursue, I can further research the matter and report back next month. A tentative timeline looks something like this:

April 28, 2009	Board consideration of resolution to initiate meals tax referendum
May 15, 2009	County Attorney forwards petition to Circuit Court for special election
November 3, 2009	Referendum held
November 6, 2009	Election results certified by Electoral Board
February 22, 2010	Public hearing on meals tax ordinance
July 1, 2010	Meals tax implemented

**DIRECTION REQUIRED:**

**I am open to your direction in researching the potential revenue generated by a meals tax and preparing a resolution for consideration next month to initiate a meals tax referendum.**