

# City of Folly Beach Hospitality Ordinance

## FINDINGS.

City Council makes the following specific findings:

(A) Tourism is a major industry in the city, the growth and development of which the city has encouraged and supported in order to enhance its economic development and tax base and to provide a stable economy for its citizens. The city has supported this major industry by budgeting town funds, the single largest component of which is ad valorem property taxes, to meet costs necessary to provide services and facilities that are required for the well being, security, comfort and convenience of visitors.

(B) The cost of providing the special services and facilities required by the tourism industry should be apportioned more equitably between the city's taxpayers and those who visit the city and enjoy the special benefits the city provides them. It is necessary for the promotion of the common interests of the residents of the city, as well as those who are visitors to the city, to provide a method for paying certain costs by a means other than the levy of ad valorem property taxes.

(C) It is, and has been, the policy of City Council to decrease the burden of ad valorem property taxes on its citizens by assessing charges to those who impact, but also enjoy the benefits of, city services and facilities. It is only reasonable and appropriate that those who visit the city and who utilize and are advantaged by city facilities and services contribute a portion of the costs required to provide the same.

(D) (1) Article VIII of the state constitution, which became effective March 7, 1973, has been interpreted by the State Supreme Court for over 20 years. Commenting on why the voters of the state approved Home Rule, Justice Littlejohn in *Knight v. Salisbury*, stated in 1974:

These changes were prompted by the feeling that Columbia should not be the seat of county government, and that the General Assembly should devote its full attention to problems at the state level. It was against this background that Article VIII was written. It is clearly intended that home rule be given to the counties and that county government should function in the county seats rather than at the State Capitol. If the counties are to remain units of government, the power to function must exist at the county level. Quite obviously, the framers of Article VIII had this in mind.

(2) This understanding of the voter's support for Home Rule has dominated the court's reasoning in upholding, accommodations fees imposed by Charleston County and Hilton Head and a hospitality fee imposed by the City of Charleston. The State Supreme Court has consistently upheld the ability of local government to impose fees specifically designed to meet the special needs of such governments.

(E) Article VIII of the state constitution and S.C. § 5-7-30 authorizes the city to impose fees for certain municipal functions. This tax is enacted pursuant to S.C. §§ 6-1-700 through 6-1-770.

(F) The Council has determined that the imposition of the tax provided for herein is consistent with its longstanding attempt to provide property tax relief to city residents.

### **MUNICIPAL HOSPITALITY TAX.**

A uniform tax equal to 2% is hereby imposed on the gross proceeds derived from the sale of prepared meals, food, and beverages sold in establishments, or sales of prepared meals, food and beverages sold in establishments licensed for on-premises consumption of alcoholic beverages, beer or wine, and is imposed on every person engaged in the business of furnishing food and beverage services, whether dine in or take out, within the city. Further clarification of such activities is demonstrated in Appendix A of this chapter. However, Appendix A is not intended to be all inclusive. The local hospitality tax shall be imposed on all food and beverages prepared or modified by restaurants, convenience stores, fast food outlets, grocery stores, or other establishments within the town.

### **PAYMENT OF MUNICIPAL HOSPITALITY TAX.**

The tax imposed by this chapter shall be collected from any patron when he tenders payment for his meal, food, or beverage and shall be held in trust for the benefit of the city until the same is paid to the county as herein after provided. Every establishment subject to this hospitality tax shall, on the date or within the time period hereinafter prescribed, make a return to the county on forms provided by the office delineating gross proceeds of sales of prepared meals, food, and beverages for the previous month, and the amount of the tax due by virtue of this chapter. At the time the return is filed, the full amount of any tax due hereunder shall be remitted. Taxes and required reports shall be submitted to the county by the twentieth day of the month and shall cover sales of the previous month. Any taxes not timely remitted shall be subject to a penalty of 25%. The failure to collect from patrons shall not relieve any establishment subject to this chapter from making the required remittance.

### **ACCOUNT AND DISTRIBUTION OF FUNDS.**

A special account is to be established, to be known as the hospitality tax account, into which all monies remitted to the city under this chapter shall be deposited. Any and all funds in the hospitality tax account, including any interest as may accrue thereon, shall be used for the purposes as set forth in S.C. § 6-1-730, as the same may from time to time be amended.

### **INSPECTIONS, AUDITS AND ADMINISTRATION.**

For the purpose of enforcing the provisions of this chapter, the Business License Official or other authorized agent of the city is empowered to enter upon the premises of any person or entity subject to this chapter and to make inspections, and examine and audit books and records. It shall be unlawful for any person or entity to fail or refuse to make available the necessary books and records during normal business hours upon 24 hours written notice. In the event an audit reveals that false information has been filed by the remitter, the cost of the audit shall be added to the correct amount of fees determined to be due. The Business License Official may make systematic inspections of all

establishments within the city to ensure compliance with this chapter. Records of inspections shall not be deemed public records. The Business License Official shall administer the provisions of this chapter and make reasonable regulations relating to its administration.

## **VIOLATIONS.**

(A) It shall be a violation of this chapter to:

(1) Fail to collect the Municipal Hospitality Tax in connection with the sale of meals, food, and beverages;

(2) Fail to remit to the county or other designee taxes collected pursuant to this chapter on a monthly basis;

(3) Provide false information on the form of return submitted to the county or other designee;

(4) Fail to provide books and records to the city or other authorized agent for the purpose of an audit upon 24 hours written notice; or

(5) Fail to comply with any other specific provision/requirement of this chapter.

(B) The failure of an establishment subject to this chapter to remit to the county the taxes required hereunder, as and when due, shall constitute a misdemeanor, punishable by a fine of not more than \$500 or imprisonment for up to 30 days, or both. Notwithstanding the foregoing, any misrepresentation of the information required by returns as set forth in this chapter or the failure to collect or timely remit to the county the taxes imposed by this chapter may result in the suspension and/or revocation of the business license of the offending establishment, as may be determined, after a hearing by the Finance Committee. Appeals shall be governed by the requirements of the county's business license requirements.

## **SEVERABILITY.**

If any section, phrase, sentence or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.