Ord. 2012-__

AN ORDINANCE TO AMEND ARTICLE VI, "MEALS TAX," SECTIONS 11-130, 11-134, 11-135, AND 11-138, OF CHAPTER 11, "FINANCE AND TAXATION" OF THE CHRISTIANSBURG TOWN CODE TO UPDATE THE PENALTY, INTEREST, AND MEALS TAX ENFORCEMENT PROVISIONS AUTHORIZED PURSUANT TO THE CODE OF VIRGINIA, 1950, AS AMENDED; PROVIDING AN EFFECTIVE DATE

WHEREAS, §§ 58.1-3840 et seq., and other applicable provisions of the Code of Virginia, 1950, as amended, authorizes the assessment of a meals tax and sets forth the means of enforcing the collection of the meals tax; and

WHEREAS, the Town has experienced difficulties in some instances of collecting the meals tax; and

WHEREAS, Council desires to amend §§ 11-130, 11-134, 11-135, 11-138, of the Town Code to formally adopt all meals tax enforcement provisions authorized pursuant to the Code of Virginia, and notify the public of the potential penalties and punishment which will be imposed for failing to remit the meals tax to the Town;

NOW THEREFORE, be it ordained by the Town Council of the Town of Christiansburg, Virginia that Sections §§ 11-130, 11-134, 11-135, 11-138 of the Town of Christiansburg Code, be amended and reenacted as follows:

ARTICLE VI. MEALS TAX*

***State law reference(s)--**Excise tax on meals, Code of Virginia, §§ 58.1-3700, 58.1-3833, 58.1-3840 et seq., 58.1-3906.

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Sec. 11-130. Penalty and interest.

A. If any person whose duty it is to do so shall fail or refuse to make the report ~~or remit the tax~~ required by this article within the time ~~and in the amount~~ required, there shall be added to the tax by the Treasurer a penalty in the amount of ten percent of the tax~~,~~ or $10, whichever is greater; provided, however, that the penalty shall in no case exceed the amount of the tax assessable.~~ and interest thereon at the rate of ten percent per annum, which shall be computed upon the tax and penalty from the date such were due and payable.~~

B. In the case of delinquent remittance of meals tax a penalty shall be imposed of 10 percent for the first month the taxes are past due, and five percent for each month thereafter, up to a maximum of 25 percent of the taxes collected but not remitted; or (v) $10, whichever is greater, provided, however, that the penalty shall in no case exceed the amount of the tax assessable.

C. The assessment of such penalty shall not be deemed a defense to any criminal prosecution for failing to make the report required by this article. Penalty for failure to file the report may be assessed on the day after such report is due; penalty for failure to pay any tax may be assessed on the day after the first installment is due. Any such penalty when so assessed shall become a part of the tax.

D. Interest shall also be imposed upon the delinquent tax and penalty at a rate of ten percent per annum and computed from the date such were due and payable.
(Ord. of 6-19-84, § 11-32; Ord. 2000-5 of 6-20-00, § 11-132)

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Sec. 11-134. 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 paid in cash to the employee or added to the bill and charged to the purchaser's account, provided in the latter case, the full amount of the gratuity is turned over to the employee by the seller.

An amount or percent in excess of 20% of the sales price, whether designated as a gratuity, tip or service charge, that is added to the price of the food and beverages by the seller, and required to be paid by the purchaser, as a part of the selling price of the food and beverages is subject to the tax imposed by this article.
(Ord. of 6-19-84, § 11-37; Ord. 2000-5 of 6-20-00, § 11-137)

Sec. 11-135. Enforcement.

A. It shall be the duty of the Treasurer to ascertain the name of every seller in the Town who is liable for the collection of the tax imposed by this article and any person who fails, refuses or neglects to collect such tax or to make the reports and remittances required by this article. The Treasurer may have issued a summons for such person, and the summons may be served upon such person by any Town police officer in the manner provided by law. The Treasurer may seek a conviction in the General District Court or Circuit Court of the County or other civil remedy, including injunction, against such person.

B. If the purchaser of any meal refuses to pay the tax imposed by this article, the seller may call upon the Police Department for assistance; and the investigating officer may, when probable cause exists, issue the purchaser a summons for his violation returnable to the General District Court as provided by law.
(Ord. of 6-19-84, § 11-39; Ord. 2000-5 of 6-20-00, § 11-139)

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Sec. 11-138. 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 $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 1 misdemeanor.

B. Except as provided in subsection (A) above, any corporate or partnership officer, as defined in 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 payment thereof, shall, in addition to any other penalties imposed by law, be guilty of a class 1 misdemeanor.

C. Each violation of or 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 provided in this article.

D. The wrongful and fraudulent use of meals tax collections other than remittance of the same as provided by law shall constitute embezzlement pursuant to § 18.2-111 of the Virginia Code, 1950, as amended.

E. Whenever a license is required by ordinance pursuant to the Town Code and whenever the Town shall impose a license fee or levy a license tax on any business subject to the meals tax, it shall be unlawful to engage in such business without first obtaining the required license. No business license shall be issued until the applicant has produced satisfactory evidence that all delinquent business license, personal property, meals, transient occupancy, severance and admissions taxes owed by the business to the Town have been paid which have been properly assessed against the applicant by the Town.

Any person who engages in a business without obtaining a required local license, or after being refused a license, shall not be relieved of the tax imposed by the ordinance.

(Ord. of 6-19-84, § 11-40; Ord. 2000-5 of 6-20-00, § 11-141)

Secs. 11-139--11-160. Reserved.

This ordinance shall become effective upon adoption. If any part of this ordinance is deemed unlawful by a court of competent jurisdiction all remaining parts shall be deemed valid. Ordinances or parts of any ordinances of the Town whose provisions are in conflict herewith are hereby repealed.

Upon a call for an aye and nay vote on the foregoing ordinance at a regular meeting of the Council of the Town of Christiansburg, Virginia held March ___, 2012, the members of the Council of the Town of Christiansburg, Virginia present throughout all deliberations on the foregoing and voting or abstaining, stood as indicated opposite their names as follows:

	Aye	Nay	Abstain	Absent
Mayor Richard G. Ballengee*				
D. Michael Barber				
Cord Hall				
Steve Huppert				
Henry Showalter				
Bradford J. Stipes				
James W. “Jim” Vanhoozier				

*Votes only in the event of a tie vote by Council.

SEAL:

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Michele M. Stipes, Town Clerk Richard G. Ballengee, Mayor