

ORDINANCE NO. 5275

AN ORDINANCE to amend and reordain Section 3-2-248 (PENALTY AND INTEREST FOR FAILURE TO REMIT TAXES WHEN DUE) of Article N (TAX ON MEALS SOLD BY RESTAURANTS) and Section 3-2-146 (PENALTY AND INTEREST FOR NONPAYMENT) of Article K (TRANSIENT LODGING TAX) both of Chapter 2 (TAXATION), of Title 3 (FINANCE, TAXATION AND PROCUREMENT); and Section 9-1-10.1 (INSTALLMENT PAYMENTS WHEN TAX IS BASED ON GROSS RECEIPTS) and Section 9-1-12 (PENALTY FOR FAILURE TO PAY WHEN DUE) both of Article A (GENERAL PROVISIONS), Chapter 1 (BUSINESS LICENSES), of Title 9 (LICENSING AND REGULATION) of the Code of the City of Alexandria, Virginia, 1981, as amended.

WHEREAS, on March 12, 2020, the Governor of Virginia issued Executive Order Fifty-One (the “Governor’s Executive Order”) declaring a state of emergency for the Commonwealth of Virginia arising from the COVID-19 pandemic and further acknowledging the existence of a disaster, as defined by Virginia Code § 44-146.16, arising from the public health threat presented by this spreading communicable disease; and

WHEREAS, on March 14, 2020, effective at 5:00 p.m. and extending through June 10, 2020, at 5:00 p.m. (the “Emergency Period”), the City Manager, in his capacity as Director of Emergency Management, issued a Declaration of Local Emergency (the “City Declaration”) applicable throughout the entire City of Alexandria, Virginia (the “City”), pursuant to authority granted pursuant to City Code Section 4-3-5, Virginia Code Sections 44-146.21 and 15.2-1413, which City Declaration was unanimously consented to the by the City Council on March 14, 2020, pursuant to City Resolution No.2928, as required by applicable law; and

WHEREAS, there have been confirmed and suspected cases of COVID-19 within the Commonwealth of Virginia and the City, specifically; and

WHEREAS, pursuant to City Charter Section 3.12 and City Code Section 2-1-21, if the City Council finds there is an emergency, an ordinance pertaining to that emergency may be read a second time and passed with or without amendment at the same meeting at which it is introduced and no publication or specific time interval between introduction and passage is necessary.

NOW THEREFORE, THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 3-2-248 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is amended and reordained by adding the text shown in underline as follows:

Sec. 3-2-248 Penalty and interest for failure to remit taxes when due.

If any person whose duty it is to do so shall fail or refuse to remit to the director the tax required to be collected under this article within the time and in the amount specified in this article, there shall be added to the tax by the director a penalty of 10 percent of the tax past due or the sum of \$10, whichever is greater; provided, however, that the penalty shall in no case exceed the amount of tax due. In addition thereto, interest on the taxes and penalty shall commence on the first day following the day such taxes are due and shall continue until all such taxes and penalty are paid. Such interest shall accrue at the rate of 10 percent per annum for the first year such taxes and penalty remain unpaid and thereafter at the rate of five percent per annum.

Notwithstanding, the director may waive late payment penalties and interest if the failure to pay on time is due to no fault of the taxpayer. Furthermore, in response to the declaration of a state of emergency related to COVID-19, no late payment penalties or interest pursuant to this section shall be charged or payable on any late payment of taxes to the Department of Finance under Article N for meal sales made from February 1, 2020 and continuing through June 30, 2020. Such period shall be deemed the COVID-19 payment moratorium, and Sellers as defined herein may defer payment of such tax during the COVID-19 moratorium. If any Seller shall have already paid to the Department of Finance Meals tax based on February sales prior to the date of this ordinance amendment adoption, such Seller shall, upon request, be allowed to instead defer said payment and thus be entitled to an interim refund of such taxes paid. Such interim refund shall be without interest. Any such taxes so refunded shall be due and payable at the end of the moratorium as provided herein. Any such Meals tax payments that may be deferred during the moratorium shall be due and payable in full following the expiration of said moratorium. However, the Department of Finance shall accept such payment of deferred taxes pursuant to a monthly payment plan, if so elected by the Seller, without penalty or interest. The term of any such payment plan shall be no longer than June 30, 2021. Any monthly payment of deferred taxes under a payment plan shall be in addition to payment of the current month when due. Any late payments of the current month taxes due following expiration of the moratorium on June 30, 2020, shall incur late payment penalties and interest as provided herein.

Section 2. That Section 3-2-146 of The Code of the City of Alexandria,

Virginia, 1981, as amended, be, and the same hereby is amended and reordained by adding the text shown in underline as follows:

Sec. 3-2-146 Penalty and interest for nonpayment.

If any person any person shall fail or refuse to remit to the director the tax required to be collected and paid under this article within the time and in the amount specified in this article, there shall be added to such tax by the director a penalty of 10 percent of the tax past due or the sum of \$10, whichever is greater; provided, however, that the penalty shall in no case exceed the amount of tax due. In addition thereto, interest on the taxes and penalty shall commence on the first day following the day such taxes are due and shall continue until all such taxes and penalty are paid. Such interest shall accrue at the rate of 10 percent per annum for the first year such taxes and penalty remain unpaid and thereafter at the rate of five percent per annum.

Notwithstanding, the director may waive late payment penalties and interest if the failure to pay on time is due to no fault of the taxpayer. Furthermore, in response to the declaration of a state of emergency related to COVID-19, no late payment penalties or interest pursuant to this section shall be charged or payable on any late payment of taxes to the Department of Finance under Article K for transient lodging sales made from February 1, 2020 and continuing through June 30, 2020. Such period shall be deemed the COVID-19 payment moratorium, and Hotels as defined herein may defer payment of such tax during the COVID-19 moratorium. If any Hotel shall have already paid to the Department of Finance Transient Lodging tax based on February sales prior to the date of this ordinance amendment adoption, such Hotel shall, upon request, be allowed to instead defer said payment and thus be entitled to an interim refund of such taxes paid. Such interim refund shall be without interest. Any such taxes so refunded shall be due and payable at the end of the moratorium as provided herein. Any such Transient tax payments that may be deferred during the moratorium shall be due and payable in full following the expiration of said moratorium. However, the Department of Finance shall accept such payment of deferred taxes pursuant to a monthly payment plan, if so elected by the Hotel, without penalty or interest. The term of any such payment plan shall be no longer than June 30, 2021. Any monthly payment of deferred taxes under a payment plan shall be in addition to payment of the current month tax when due. Any late payments of the current month taxes due following expiration of the moratorium on June 30, 2020, shall incur late payment penalties and interest as provided herein.

Section 3. That Section 9-1-10.1 and Section 9-1-12 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is amended and reordained by adding the text shown in underline as follows:

Sec. 9-1-10.1 Installment payments when tax is based on gross receipts.

(a) In all cases where a license tax is based in whole or in part upon gross receipts, and the tax on such gross receipts is equal to or exceeds the sum of \$1,000, exclusive of any and all other types of tax, the tax may be paid in four equal installments during the license year, the first payment to be made on or before March 1, the second on or before May 1, the third on or before August 1 and the fourth on or before November 1, provided the taxpayer elects to do so by making his application for a license year and paying the first installment and any tax unpaid and owing for any previous license year on or before March 1 of the license year for which the application is being made.

(b) Upon a default in the payment of any license tax installment when it becomes due, the amount of such installment and all remaining installments shall be delinquent and shall become due and payable immediately, in addition to the applicable late payment penalty and interest.

(c) There is hereby imposed on payments made on installment charge which shall be calculated as follows:

- (1) first installment: none;
- (2) second installment: five percent of payment made;
- (3) third installment: six percent of payment made;
- (4) fourth and final installment: nine percent of payment made.

(d) Notwithstanding, in response to the declaration of a state of emergency related to COVID-19, payment of the second installment otherwise due May 1, 2020, may at the election of the business, be deferred to January 8, 2021, and the handling fee of five percent on this quarterly installment shall not be due and payable.

Sec. 9-1-12 Penalty for failure to pay when due.

(a) There shall be a penalty of 10 percent or \$10, whichever is greater, added to all license taxes levied under the provision of this chapter that are unpaid on the due dates thereof and, therefore, delinquent.

Notwithstanding, the director may waive late payment penalties if the failure to pay on time is due to no fault of the taxpayer. Furthermore, in response to the declaration of a state of emergency related to COVID-19, no late payment penalties pursuant to this section shall be charged or payable on any late payment of taxes for Tax Year 2020 to the Department of Finance under Article A for Business, Professional and Occupational License (BPOL) that are otherwise due to be paid from the date of adoption of this ordinance amendment and continuing through June 30, 2020. Such period shall be deemed the COVID-19 payment moratorium, and businesses as defined herein may defer payment of such tax not yet paid during the COVID-19 moratorium. Any such BPOL tax payments that may be deferred during the moratorium shall be due and payable in full following the expiration of said moratorium. However, the Department of Finance shall accept such payment of deferred taxes pursuant to a monthly payment plan, if so elected by the business, without penalty. The term of any such payment plan shall be no longer than June 30, 2021. Interest on such payments will continue to accrue as required by Section 58.1-3703.1(A)(2)(e) of the Code of Virginia. Any monthly payment of deferred taxes under a payment plan shall be in addition to payment of the current year BPOL taxes when due. Any late payments of the current year BPOL taxes due following expiration of the moratorium on June 30, 2020, shall incur late payment penalties and interest as provided herein.

Section 4. That this ordinance shall become effective upon the date and at the time of its final passage.

JUSTIN M. WILSON
Mayor

Final Passage: 04/18/2020