

COUNTY OF YORK

MEMORANDUM

DATE: July 21, 2016 (BOS Mtg. 8/2/16)

TO: York County Board of Supervisors

FROM: Neil A. Morgan, County Administrator 

SUBJECT: Draft 2017 Legislative Requests – Priorities and Positions

Consistent with the format developed last year and endorsed by the Board, I am providing the attached Draft 2017 Legislative Priorities and Positions document for review and discussion at your August 2, 2016 work session. This draft proposes to arrange the Board's legislative requests into the following PRIORITIES:

- Meals Tax Parity with Cities and Towns
- Support for Public Schools
- Interstate 64 – Richmond to Williamsburg
- AirBnB Regulations

The four proposed PRIORITY statements address the issues that staff and I believe are of greatest importance to York County and the Virginia Peninsula. The six POSITION statements cover issues that are certainly important and I know are of great interest to the Board; however, if we are asked by our legislators to name the County's *priorities*, I believe it would be beneficial to limit the list to no more than four items.

Also attached is the Legislative Engagement Strategy that has been developed concerning the Meals Tax Authority. Various components of this strategy, which I have informally discussed with you previously, have been initiated by Chairman Wassmer, myself, and others, and we will be prepared to discuss the results of those initial efforts at the work session.

Staff and I stand ready to discuss this proposal with the Board at the August 2nd work session and to respond to the Board's directions and decisions.

Carter/3337

Attachments

- Draft – 2017 Legislative Priorities and Positions
- Meals Tax Authority – Legislative Engagement



2017 LEGISLATIVE PRIORITIES & POSITIONS

PRIORITIES

Meals Tax Parity with Cities and Towns

York County supports granting counties the same authority as available to cities and towns to enact, without referendum or special approvals by the General Assembly, a local meals tax. The County's request proposes an 8% cap on the rate that could be established, which matches the maximum rate set by any of the cities/towns that currently impose a meals tax. For example, a modest increase of York's current meals tax rate from 4% to 5% would generate enough new revenue to increase the amount of funding available for County and Schools capital improvement projects by almost 10%. In counties such as York, where population densities and service demands are similar to those of many cities, having the authority to enhance revenue by means other than through real estate or personal property taxation would be a beneficial option.

Support for Public Schools

York County supports full state funding for all components of public education including:

- Standards of Quality (SOQ) achievement
- Teacher salary increases
- Special education
- Support staff and operations
- Capital projects and maintenance

York County, like most other local school divisions, funds K-12 education significantly in excess of the SOQ requirements to meet citizen expectations. Also, like localities throughout Virginia, York County has proportionally increased local funding for school operations in recent years due, in part, to inadequate state funding for education as compared to historical norms.

Interstate 64 – Richmond to Williamsburg

York County urges the General Assembly to ensure that the Commonwealth Transportation Board (CTB) recognizes the statewide importance of widening of Interstate 64 to six (6) lanes between Williamsburg and Richmond. Linking the major metropolitan areas of Richmond and Hampton Roads with a continuous 6-lane interstate facility would help alleviate the congested conditions that threaten the viability of the corridor, which is so vitally important to the state economy, private industry, the military, tourists, and local citizens. The County urges the General Assembly to offer its influence and encouragement with respect to the Richmond to Williamsburg I-64 widening to the CTB as it deliberates on the selection and funding of improvement projects.

AirBnB Regulations

York County opposes any legislation that would exempt short-term rental of rooms or entire residences through booking platforms such as AirBnB from local zoning regulations. Many localities, including York County, have existing zoning provisions that allow such operations to be considered and approved, but with due consideration to the protection of the residential neighborhoods in which they wish to operate. York County supports measures to ensure that AirBnB rentals operate within the same taxation rules and regulations as other transient occupancy accommodations.



2017 LEGISLATIVE PRIORITIES & POSITIONS

POSITIONS

Unfunded Local Mandates

York County urges the General Assembly to oppose and reject legislation that would impose new unfunded mandates and fiscal responsibilities on local governments or reinstate any “local aid to the Commonwealth” measures. Moreover, the County supports a “First Day of Session Filing” requirement for any General Assembly Bills having a fiscal impact on localities.

Unfunded VRS Liabilities for Teachers

The County requests that the state pay its share of teacher retirement costs directly to VRS rather than as a pass-through to localities.

Support for Virginia’s Tourism Industry

York County urges that funding for the Virginia Tourism Corporation (VTC) be increased so that VTC can increase its efforts to promote the Commonwealth as a tourist destination and enhance participation in its Marketing Leverage Program and the Tourism Development Financing Program.

Transient Occupancy Tax

York County supports legislation that would allow transient occupancy taxes to be calculated based on the full price of lodging accommodations rather than the discounted rates paid by online travel and booking companies.

Equivalent Revenue Options

While the County’s highest priority with respect to revenue enhancement authority is the meals tax, as a general position York County supports granting counties the same authority cities and towns currently have to enact, without referendum or special approvals by the General Assembly, other local excise taxes including the cigarette tax, admissions tax, and transient occupancy tax.

Virginia Juvenile Community Crime Control Act (VJCCCA) Funds

The County urges that any savings realized from closing state-run juvenile detention centers be left in the DJJ budget to restore and enhance funding available to local governments that operate and provide locally-based residential or non-residential facilities and programs serving at-risk youth. Moreover, the County urges development of a process whereby unused VJCCA funds can be re-allocated to other localities.

Public Notice, Public Hearing, and Public Procurement

York County supports legislation that would give localities the option to use electronic or other forms of notification as an alternative to newspaper advertising for required notices of public hearings and public procurements.

Meals Tax Authority – Legislative Engagement

Introduction

Section 58.1-3833 of the Code of Virginia (see attached) authorizes counties to levy a tax on the purchase of all prepared and ready to eat food and beverages, at a rate not to exceed 4%, if approved in a voter referendum. The referendum may be initiated by a resolution adopted by the governing body or by a petition signed by at least 10% of the registered voters in the county. Five counties (Arlington, Roanoke, Rockbridge, Frederick, and Montgomery) have been granted an exemption from the referendum requirement, so their governing bodies can act on their own initiative. Meals taxes are assessed in addition to the retail sales tax, which in Hampton Roads is 6%.

Meals tax applies to:

- Prepared food and beverages (ready-to-eat) at restaurants, lunchrooms, cafeterias, coffee shops, cafes, taverns, delis, food trucks, etc.
- Alcoholic and non-alcoholic beverages served with a meal

Meals tax does not apply to:

- Groceries
- Food sold through vending machines

According to information compiled by the Weldon Cooper Center for Public Service for 2014, 47 of Virginia's 95 counties assessed a meals tax in 2014. Forty-six (46) counties reported a tax rate of between 3.1% and 4%, while one (Dickenson) reported a rate of 2%.¹ There are no restrictions on the use of the revenue generated by the meals tax; however, some localities earmark a portion or all of the revenue for a specific purpose.

It is important to note that towns and cities are not subject to the referendum process or the 4% cap on the meals tax rate. All 38 of Virginia's cities assess a meals tax, with the lowest rate being 4%, the highest 7.5%, and the median being 6%. The median rate assessed by the 104 towns with a meals tax is 5%, with a minimum of 2% and a maximum of 8%.

York County's meals tax rate is 4%, which will generate projected revenues of \$5.9 million in FY17. Each of the jurisdictions bordering York County imposes a meals tax (Hampton-7.5%, Newport News-7.5%, Poquoson-6%, Williamsburg-5%, James City County-4%, Gloucester-4%).

Issue

York County, like other Virginia counties, is heavily dependent on the real estate and personal property tax and, accordingly, has interest in alternative opportunities for revenue growth to meet increasing obligations and demands for County-funded programs and services. The constraint imposed by the current enabling legislation (4% rate cap) prevents the County from doing so and stands in contrast to the opportunities available to the four cities that border York

¹ Two other counties (Henrico and Middlesex) established a meals tax after the 2014 data was compiled, both at 4%.

Meals Tax Authority – Legislative Engagement

County. In a number of locations along those borders, restaurants are located on abutting properties (one in the county, one in the city) with differing meals tax rates. For many, and particularly in the case of the tourists and travelers, there likely is no awareness of the border or the different tax rate and, therefore, no impact (at least from a taxation standpoint) on which restaurant the prospective diner chooses to patronize (i.e., no competitive advantage or disadvantage). Undoubtedly, the same situation exists in many locations across the Commonwealth.

Real estate and personal property tax rate increases apply to all property-owning residents, regardless of their ability to pay. Conversely, dining out is largely a discretionary decision so the meals tax is paid by residents, as well as tourists and travelers, who dine out by choice, convenience, or other considerations.

As noted previously, York County's 4% meals tax is projected to generate \$5.9 million in revenue in FY2017. Increasing the County's rate from 4% to 5% (for example, to match the Williamsburg rate) would generate approximately \$1.4 million annually in additional revenue. If earmarked, for example, to enhance the Capital Improvements Program budget, the funding able to be devoted to County and School projects would be increased by almost 10%. In other words, a modest 5-cent increase in a \$5 fast food meal (20 cents meals tax @ 4% vs. 25 cents @ 5%) would help produce significant gains in the County's ability to address capital project needs.

York County has proposed and supported requests in past legislative sessions to amend the Code of Virginia to give counties the same taxing authority as towns and cities. This all-inclusive approach (which would add authority to tax cigarettes and admissions, and remove limitations on meals and transient occupancy) has not been supported by the General Assembly. Recognizing that opposition, the York County Board of Supervisors has determined that it would be prudent to focus on a proposal to provide counties with additional authority only for the meals tax.

Accordingly, the York County Board of Supervisors wishes to ascertain the interest of other counties and potential advocates in working cooperatively to engage, educate and influence members of the General Assembly regarding the disparity between cities/towns and counties regarding meals taxing authority with the objective of gaining support for legislation to equalize it in the 2017 session of the General Assembly. Specifically, the desired legislation would:

- Enable counties, on the initiative and action by their governing bodies (and without referendum), to establish a meals tax at a rate determined appropriate by the governing body, but not to exceed 8%.

Meals Tax Authority – Legislative Engagement

The following actions and timeframes are proposed to engage, educate and seek the support of potential partners in an effort to achieve favorable General Assembly action in the 2017 session:

June/July

- Explanatory letters from the York County Board of Supervisors Chairman to:
 - Chairpersons of all Virginia County Boards of Supervisors, with particular targeting to those from areas corresponding to the areas represented by members of the Senate Finance Committee and the House Appropriations Committee.
 - Presidents of the York County, Virginia Peninsula, and Williamsburg Chambers of Commerce .
 - Virginia Association of Counties Board of Directors .
 - Virginia Restaurant, Lodging and Travel Association (VRLTA) Board of Directors .
- Explanatory letters from the County Administrator to:
 - County Administrators of all Virginia counties , with particular targeting to those from areas corresponding to the areas represented by members of the Senate Finance Committee and the House Appropriations Committee.
- York County Board of Supervisors Chairman telephone or in-person discussion with:
 - Senator Norment, Co-Chair, Senate Finance Committee, to discuss York’s interest in his support for increased/amended authority (possibly with James City County Board Chairman joining the discussion), ideally in mid- to late-June or early July.
 - School Board Chairman, with a request that the York County School Board formally endorse the proposal and that the Chairman send a letter to all Virginia County School Board Chairs urging their Board’s to do the same and to communicate that support to the governing bodies in their respective counties, and the York County Parent-Teachers Association.
 - Economic Development Authority Chairman, with a request that the York County EDA endorse the proposal and that the Chairman send a letter to all Virginia County Economic/Industrial Authority Chairs urging their Board’s to do the same and to communicate that support to the governing bodies in their respective counties.
 - Sheriff, with a request that the Sheriff endorse the proposal and send a letter to all Virginia County Sheriff’s urging them to do the same and to communicate that support to the governing bodies in their respective counties.
 - Historic Triangle Collaborative members
 - Chairman of James City County Board of Supervisors
 - Peninsula Mayors and Chairs

Meals Tax Authority – Legislative Engagement

- Hampton Roads Mayors and Chairs
- President of the York Professional Firefighter’s Association

- York County Administrator telephone or in-person discussion with:
 - Dean Lynch, Executive Director, Virginia Association of Counties (VACo), and Beau Blevins, VACo Director of Intergovernmental Affairs.
 - VACo Finance Committee meeting – late June presentation and strategy discussion.
 - Colleagues attending the Virginia Local Government Management Association Summer Conference.
 - Sheriff, with a request that he endorse the proposal and seek support from the Sheriff’s Association.

July

- County Attorney prepares draft language for amendments to Section 58.1-3833 of the Code of Virginia that would establish the desired authority and coordinates with the Division of Legislative Services.
- York County Board member contacts and meetings with York’s delegation members (and with any other statewide legislative acquaintances) to discuss the proposal, describe the results of the June discussions and communications with other parties, and to seek their willingness to introduce and support legislation.

August / September

- Ensure that at least one York County Board of Supervisors member attends the VACo County Officials’ Summit on August 18-19 in Richmond at which there will be opportunities to discuss, consider and express advocacy for proposals to be included in VACo’s 2017 legislative program.
- Follow-up contacts by York County Board members with York’s legislative delegation and with any other statewide legislative acquaintances.
- Formal letters from York County Board Chair to all of York’s legislators transmitting draft bill and requesting that they introduce or endorse as a co-patron.
- Follow-up letters from Board Chair to all other Virginia County Board Chairs transmitting the draft proposed bill and reiterating the request that they include the proposal in their Legislative Program requests.
- Follow-up letters from Board Chair to other key contacts (VACo, Chambers of Commerce, Restaurant Association, etc.) transmitting proposed bill and reiterating the request for their support.

Meals Tax Authority – Legislative Engagement

- Work session and Board discussion concerning 2017 Legislative Priorities and Positions.
- Formal adoption of 2017 Legislative Priorities and Positions and transmittal to Legislative Delegation.

October

- Phone calls or personal visits to York’s legislators by individual Board members.
- Phone calls or personal visits to Chamber contacts and others.

November

- Ensure that at least one York County Board of Supervisors member attends the VACo Annual Conference to engage counterparts on the proposed legislation and support its inclusion in the VACo 2017 Legislative Program.

December

- Phone calls or personal visits to York’s legislators by individual Board members.
- Phone calls or personal visits to Chamber contacts and others.

January, 2017

Assuming that a bill is introduced.....

- Phone calls or personal visits to York’s legislators by individual Board members.
- Phone calls or personal visits to Chamber contacts and others.
- Discussions, communications, etc. by and from individual Board members requesting constituents and others (e.g. School Board members, asking them to communicate with parents and PTO’s) to support the initiative and to communicate their support with Delegates and Senators.

§ 58.1-3833. County food and beverage tax. (*Current*)

A. Any county is hereby authorized to levy a tax on food and beverages sold, for human consumption, by a restaurant, as such term is defined in subdivision 9 of § 35.1-1, not to exceed four percent of the amount charged for such food and beverages. Such tax shall not be levied on food and beverages sold through vending machines or by (i) boardinghouses that do not accommodate transients; (ii) cafeterias operated by industrial plants for employees only; (iii) restaurants to their employees as part of their compensation when no charge is made to the employee; (iv) volunteer fire departments and volunteer emergency medical services agencies; nonprofit churches or other religious bodies; or educational, charitable, fraternal, or benevolent organizations the first three times per calendar year and,

Meals Tax Authority – Legislative Engagement

beginning with the fourth time, on the first \$100,000 of gross receipts per calendar year from sales of food and beverages (excluding gross receipts from the first three times), as a fundraising activity, the gross proceeds of which are to be used by such church, religious body or organization exclusively for nonprofit educational, charitable, benevolent, or religious purposes; (v) churches that serve meals for their members as a regular part of their religious observances; (vi) public or private elementary or secondary schools, colleges, and universities to their students or employees; (vii) hospitals, medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or residents thereof; (viii) day care centers; (ix) homes for the aged, infirm, handicapped, battered women, narcotic addicts, or alcoholics; or (x) age-restricted apartment complexes or residences with restaurants, not open to the public, where meals are served and fees are charged for such food and beverages and are included in rental fees. Also, the tax shall not be levied on food and beverages: (a) when used or consumed and paid for by the Commonwealth, any political subdivision of the Commonwealth, or the United States; or (b) provided by a public or private nonprofit charitable organization or establishment to elderly, infirm, blind, handicapped, or needy persons in their homes, or at central locations; or (c) provided by private establishments that contract with the appropriate agency of the Commonwealth to offer food, food products, or beverages for immediate consumption at concession prices to elderly, infirm, blind, handicapped, or needy persons in their homes or at central locations.

Grocery stores and convenience stores selling prepared foods ready for human consumption at a delicatessen counter shall be subject to the tax, for that portion of the grocery store or convenience store selling such items.

This tax shall be levied **only if the tax is approved in a referendum within the county** which shall be held in accordance with § 24.2-684 and initiated either by a resolution of the board of supervisors or on 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, as appropriate on January 1 of the year in which the petition is filed with the court of such county. The clerk of the circuit court shall publish notice of the election in a newspaper of general circulation in the county once a week for three consecutive weeks prior to the election. If the voters affirm the levy of a local meals tax, the tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe. If such resolution of the board of supervisors or such petition 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 shall include language stating for what projects and/or purposes the revenues collected from the tax are to be used.

The term "beverage" as set forth herein shall mean alcoholic beverages as defined in § 4.1-100 and nonalcoholic beverages served as part of a meal. The tax shall be in addition to the sales tax currently imposed by the county pursuant to the authority of Chapter 6 (§ 58.1-600 et seq.) of this title. Collection of such tax shall be in a manner prescribed by the governing body.

B. Notwithstanding the provisions of subsection A of this section, **Roanoke County, Rockbridge County, Frederick County, Arlington County, and Montgomery County**, are hereby authorized to levy a tax on food and beverages sold for human consumption by a restaurant, as such term is defined in § 35.1-1 and as modified in subsection A above

Meals Tax Authority – Legislative Engagement

and subject to the same exemptions, not to exceed four percent of the amount charged for such food and beverages, provided that the governing body of the respective county holds a public hearing before adopting a local food and beverage tax, and the governing body by unanimous vote adopts such tax by local ordinance. The tax shall be effective in an amount and on such terms as the governing body may by ordinance prescribe.

C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town to levy a meals tax. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax levied under this section, mutatis mutandis. All food and beverage tax collections and all meals tax collections shall be deemed to be held in trust for the county, city or town imposing the applicable tax. The wrongful and fraudulent use of such collections other than remittance of the same as provided by law shall constitute embezzlement pursuant to § 18.2-111.

D. No county which has heretofore adopted an ordinance pursuant to subsection A of this section shall be required to submit an amendment to its meals tax ordinance to the voters in a referendum.

E. Notwithstanding any other provision of this section, no locality shall levy any tax under this section upon (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition to the sales price; (ii) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by the restaurant in addition to the sales price, but only to the extent that such mandatory gratuity or service charge does not exceed 20% of the sales price; or (iii) alcoholic beverages sold in factory sealed containers and purchased for off-premises consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.