

The Town of Upper Marlboro

14211 School Lane • Upper Marlboro, Maryland 20772

BOARD OF COMMISSIONERS FOR THE THE TOWN OF UPPER MARLBORO

DRAFT

ORDINANCE: 2022-05

SESSION: Regular Town Meeting

INTRODUCED: May 24, 2022

AN ORDINANCE OF THE TOWN OF UPPER MARLBORO CREATING, DEFINING AND AUTHORIZING THE LEVY AND COLLECTION OF A STATE SHARED REVENUE KNOWN AS THE ADMISSIONS AND AMUSEMENT TAX FOR CERTAIN ENTERTAINMENT AND AMUSEMENT ACTIVITIES CONDUCTED WITHIN THE TOWN AND SUBJECT TO MUNICIPAL TAXATION, AND GENERALLY RELATING TO MUNICIPAL FINANCE AND TAXATION

WHEREAS, The Town of Upper Marlboro is an incorporated municipality governed pursuant to Article XI-E of the Constitution of Maryland; and

WHEREAS, pursuant to Section 5-202 of the Local Government Article of Md. Ann. Code, the legislative body of a municipality in this State shall have general power to pass such ordinances, not contrary to the Constitution of Maryland or public general law, as they may deem necessary in order to assure the good government of the municipality, to protect and preserve the municipality's rights, property, and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the municipality; and

WHEREAS, pursuant to Tax General Article, Sections 4-102 through 4-105, and Sections 2-201 and 2-202, municipalities may levy a tax on the gross receipts of a wide variety of entertainment and amusement activities which take place within their jurisdictions and the taxable activities generally include: 1.) Use of a game of entertainment, 2.) Amounts charged for admission within an enclosure in addition to the initial charge for admission, 3.) Amounts charged for the use or rental of sporting or recreational equipment or recreational facility, and 4.) Amounts charged for refreshment, service or merchandise at any hotel room, restaurant, hall, nightclub or other similar place where dancing privileges, live music or other entertainment is provided for the patrons; and

WHEREAS, pursuant to § 4-102 (Authorization to impose tax) of the Tax – General Article of Md. Ann. Code, a municipal corporation or county (See Admissions and Amusement Tax Rate

CAPITALS	:	Indicate matter to be added to existing law
[Brackets]	:	Indicate matter to be deleted from existing law
Asterisks * * *	:	Indicate that text is retained from existing law but omitted herein.

Schedule, attached hereto as Exhibit A) may impose, by ordinance or resolution, a tax on: 1.) the gross receipts derived from any admissions and amusement charge in that municipal corporation; and 2.) an admission in that municipal corporation for a reduced charge or at no charge to a place if there is a charge for other admissions to the place; and

WHEREAS, the Comptroller has divided the taxable entertainment and amusement activities into 37 categories (see a complete list of activity codes and descriptions attached hereto as Exhibit B), including: athletic events, concerts, nightclubs, and use of coin-operated amusement machines, where the gross receipts from these activities may be taxed at a rate of up to 10%; however, each category may be taxed at a different rate and State authorized exemptions permitted by a municipality currently include: bowling alleys, boxing and wrestling matches, certain bingo events, charter fishing, concerts, a variety of charitable, religious, and non-profit activities, and arts and entertainment enterprises; and

WHEREAS, if the activity is also subject to the State sales tax or use tax, the combined total tax on the gross receipts may not exceed 10%, and since the State sales tax is 6%, this means that the local admissions and amusement tax may not exceed 4% on such activities as the rental of boats, golf carts, horses, skates, skis, or the sale of refreshments and merchandise when offered in connection with live entertainment; and

WHEREAS, effective June 1, 2009, electronic bingo machines and electronic tip jars are subject to a state admissions and amusement tax of 30 percent on the taxable net proceeds, and the tax is in addition to any county or municipal admissions and amusement tax which may be levied, but if the proceeds subject to tax are also subject to a county or municipal corporation tax, then the tax rate when combined must not exceed 35 percent; and

WHEREAS, in terms of distribution of the tax collected by the Comptroller, each person or firm subject to the tax is required to pay its respective taxes to the State Comptroller by the 10th of each month and the Comptroller deducts and retains an amount of revenue sufficient to cover the cost of administering the program, but the balance of the taxes collected is paid back to the respective governments from which the revenues originated within 20 days of the end of each calendar quarter; and

WHEREAS, in terms of conditions placed on the tax collected by the Comptroller, 1.) the Town's officials must notify the Comptroller at least 60 days in advance of any change in the rate of taxation of on activity; and 2.) if a municipality levies an amusement tax, the county may not levy an amusement tax on activities within the municipal boundaries; and

WHEREAS, in pursuant to § 4-1059(g) (Tax rates) of the Tax – General Art., if a county, a municipal corporation, or the Stadium Authority changes an admissions and amusement tax rate or changes a class to which a rate applies, the county, municipal corporation, or Stadium Authority shall give the Comptroller notice of the change at least 60 days before the effective date of the change; and

WHEREAS, Town Board of Commissioners finds it to be in the best interest of the Town to impose a tax on the gross receipts derived from any admissions and amusement charge or for a reduced charge or at no charge to a place if there is a charge for other admissions to the place, subject to the conditions or exemptions stated herein below.

NOW, THEREFORE, THE BOARD OF COMMISSIONERS OF THE TOWN OF UPPER MARLBORO, STATE OF MARYLAND, DOES HEREBY ORDAIN AND ENACT THE FOLLOWING PROVISIONS REGARDING AN ADMISSIONS AND AMUSEMENT TAX TO BE LEVIED IN THE TOWN AND COLLECTED BY THE OFFICE OF THE STATE COMPTROLLER IN ACCORDANCE WITH STATE LAW AND THIS ORDINANCE:

ADMISSIONS AND AMUSEMENT TAX

Section 1. Definitions.

A. The term "admission and amusement charge," unless expressly provided otherwise, means a charge for:

1. Admission to a place, including any additional separate charge for admission within an enclosure;
2. Use of a game of entertainment;
3. Use of a recreational or sports facility;
4. Use or rental of recreational or sports equipment; and
5. Merchandise, refreshments or a service sold or served in connection with entertainment at a nightclub or room in a hotel, restaurant, hall, roof garden or other similar place, or other place where dancing privileges, music or other entertainment is provided.

B. The term "roof garden or other similar place" shall include any room in any hotel, restaurant, hall or other place where music or dancing privileges or other entertainment, except mechanical music, radio or television alone and where no dancing is permitted, is afforded the members, guests or patrons in connection with the serving or selling of food, refreshments or merchandise.

Section 2. Admissions and amusement tax levy.

A. Pursuant to the authority of § 4-102(a)(1) of the Tax - General Article of the Annotated Code of Maryland, as amended or recodified from time to time, there is levied a tax at the rate of 10% of gross receipts derived from any admission and amusement charge in the Town of Upper Marlboro.

B. If gross receipts subject to the admissions and amusement tax are also subject to the State of Maryland sales and use tax, the total combined admission and amusement tax and sales and use tax shall not exceed 10% of the gross receipts.

C. The admissions and amusements tax levied by this Ordinance shall be collected by the Comptroller of the State of Maryland.

Section 3. Additional tax for reduced charge or free admission.

A. There is levied an admission and amusement tax on a reduced charge or free admission at the following rates:

1. \$0.05, if the charge for any other admission is \$0.50 or less;
 2. \$0.10, if the charge for any other admission is more than \$0.50, but does not exceed \$1.00;
- and
3. \$0.15, if the charge for any other admission is more than \$1.00.

B. The additional tax levied by this section shall be collected by the Comptroller of the State of Maryland.

Section 4. Exemptions.

No admissions and amusement tax shall be levied or collected on gross receipts:

A. Derived from any charge for merchandise, refreshments or a service sold or served at a place where dancing is prohibited and the only entertainment provided is mechanical music, radio or television;

B. Derived from any charge for admission to a live boxing or wrestling match; or a concert or theatrical event presented or offered by a nonprofit group that is organized and operated to present or offer an annual series of scheduled musical concerts or is organized and operated for a cultural purpose and receives a grant directly or indirectly from the Maryland State Arts Council;

C. Derived from any charge for admission to or use of:

1. A facility or equipment in connection with a bingo game that is operated in accordance with Section 13-1803 of the Criminal Law Article of the Annotated Code of Maryland;
2. A bowling alley or lane; or
3. A charter fishing boat;

D. Derived from any charge for admission or for merchandise, refreshments or a service, if the gross receipts are used exclusively for:

1. A charitable, educational or religious purpose;
2. A volunteer fire company or nonprofit rescue squad;
3. A fraternal, service or veterans' organization chartered by a grant of Congress; or
4. The improvement, maintenance, or operation of an agricultural fair, if no net earnings

inure to the benefit of any stockholder or member of the association that conducts the fair;

E. Derived from any charge for admission or for merchandise, refreshments or a service, if the gross receipts are used exclusively for community or civic improvement by a nonprofit community association that is organized and operated to promote the general welfare of the community that the association serves and the net earnings of which do not inure to the benefit of any stockholder or member of the association;

F. Derived from any charge for admission to a concert or theatrical event of a nonprofit organization that is organized to present or offer any of the performing arts.

G. The admissions and amusement tax is not reduced because any customers may have a sales and use tax exemption certificate, diplomatic exemption card or other evidence of exemption.

H. The Town government and its agencies are exempt from the admissions and amusement tax.

AND BE IT FURTHER ORDAINED AND ENACTED, by the Board of Commissioners of the Town of Upper Marlboro, Maryland that any prior ordinances adopting and enacting any provision of this Ordinance or any other ordinance or resolution previously adopted pertaining to a subject or subjects embodied by the title of this Ordinance or the provisions found in conflict herein shall be deemed amended, repealed and/or superseded by the provisions of this Ordinance, as applicable, and should a previously enacted ordinance cover a provision or subject that is not covered by this Ordinance, it shall remain in full force and effect unless it directly conflicts with the express language of this Ordinance.

AND BE IT FURTHER ORDAINED AND ENACTED, by the Board of Commissioners of the Town of Upper Marlboro, Maryland that pursuant to § 4-1059(g) of the Tax – General Art., the Treasurer or Finance Office of the Town shall give the Comptroller notice of any change including this ordinance at least 60 days before the effective date of the change in taxation; and

AND BE IT FURTHER ENACTED AND ORDAINED by the Board of Commissioners of the Town of Upper Marlboro, Maryland that this ordinance shall become effective at the expiration of twenty (20) calendar days following approval by the Board of Commissioners; and

BE IT FURTHER ENACTED AND ORDAINED by the Board of Commissioners of the Town of Upper Marlboro, Maryland that this ordinance shall be posted in the Town Hall office, and this taxation ordinance or a fair summary of it shall be published once in a newspaper of general circulation in the Town.

AYES: ____

NAYES: ____

ABSENT: ____

ORDAINED, APPROVED AND finally passed by the Board of Commissioners of the Town of Upper Marlboro, Maryland on this ____ day of _____, 2022, by:

Attest:

THE TOWN OF UPPER MARLBORO

BOARD OF COMMISSIONERS

Sarah Franklin, President

Janice Duckett, Commissioner

Charles Colbert, Commissioner

Karen Lott, Commissioner

John Hoatson, Town Clerk

Thomas Hanchett, Commissioner

Reviewed and Approved for Legal Sufficiency

Kevin J. Best, Town Attorney

Date: _____

[Exhibits – (i) Admissions and Amusement Tax Rate Schedule, and (ii) List of activity codes and descriptions]