

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date: October 17, 2022

Action Required: Adoption of proposed ordinance

Presenter: Todd Divers, Commissioner of the Revenue

Staff Contacts:

Title: To amend, re-ordain and re-enact Chapter 30, Article 9 of the City Code (Transient Occupancy Tax), to incorporate state legislative changes pertaining to collection of tax revenues from lodging intermediaries, and to update definitions of terms used in Article 9 (1 reading)

Background

1. In 2021, the General Assembly enacted changes to Virginia Code §§ 58.1-602, 58.1-612.2 and 58.1-3826 related to the application of State retail sales and use tax and local transient occupancy tax to Online Travel Agencies (OTS's) and online platforms offering temporary lodging in residential dwellings (see SB1398, 2021 first special session).

In September and October of 2021, we brought to your attention a number of recommended changes to our local ordinance to bring it into alignment with that recently enacted State legislation. You adopted those recommendations on October 4, 2021.

In 2022, the General Assembly again amended the process by which the retail sales and use tax and transient occupancy taxes are collected from sales involving lodging intermediaries (see SB651, 2022 regular session). These newer amendments require us to further modify our definitions in order to align them with State Code. Additional changes are also necessary to the provisions for collection and remittance. There is some urgency to have these changes incorporated into our ordinance since the new legislation requires online intermediaries to begin collecting local lodging taxes in October for remittance in November.

2. After a recent conversation with a taxpayer and discussion with colleagues around the state, we realize that there is room for some confusion as to the proper interpretation of our ordinance with regard to what charges are subject to the tax. We seek to remove that confusion by adding two definitions to our ordinance: "room charge" and "discount room charge".

3. With the University of Virginia contemplating construction of a hotel within the City limits, we thought it advisable to address a potential area of confusion with regard to one type of transaction that is exempted by our Code. Currently, charges for lodging in educational institutions are exempt from the City's transient occupancy tax. This exemption is not required by State Code, and we

believe that it was meant to apply to lodging provided to students in school dormitories. We recommend changing the language in our code such that the distinction is made explicit.

4. We are also proposing a number of minor housekeeping edits.

Discussion

2022 Changes

The changes enacted by the General Assembly in 2022 require lodging/accommodations intermediaries to collect sales and occupancy taxes and remit them to the Department of Taxation or a locality as applicable, eliminating the requirement (enacted in 2021) to remit a portion to a hotel (lodging/accommodations provider) who would in turn remit it to the State or to the City. These amendments further require intermediaries to submit to a locality each month the property addresses and gross receipts for all lodging facilitated by the intermediary in such locality. The changes proposed here reflect similar language in State Code.

Room charge versus discount room charge

One of the shared goals of SB1398 and SB651 was to clarify the role of OTA's and online platforms in the collection and remittance of local lodging tax. This was accomplished partly by defining the various rolls of the parties involved in a lodging transaction. For instance, our code defines the parties to such transactions as: "lodging provider" ("accommodations provider" in State Code), "lodging intermediary" ("accommodations intermediary" in State Code), and "transient".

State Code provides further clarity by describing and defining the various parts of the transactions themselves. Our ordinance currently only partially accomplishes this. It defines "lodging fee" (which is essentially the mark-up that a lodging intermediary charges to a transient) as *the room charge less the discount room charge*.

However, in order to fully describe the transactions taking place among transients, lodging/accommodations intermediaries, and lodging/accommodations providers, our ordinance needs to include definitions for "room charge" and "discount room charge". Therefore, we propose the following (which largely mirror language in State Code):

Room charge means the full retail price charged to the transient for the use of the accommodation. Room charge includes any fee charged to the customer and retained as compensation for facilitating the sale, whether described as an accommodations fee, facilitation fee, or any other name. Any additional charges made in connection with the rental of accommodations are deemed to be a part of the charge for the room and are subject to the tax. For example, additional charges for movies, parking, local telephone calls and similar services are subject to the tax. Toll charges for long-distance telephone calls are not subject to the tax.

Discount room charge means the full amount charged by the accommodations provider to the accommodations intermediary, or an affiliate thereof, for furnishing the lodging.

We will also take this opportunity to align other terminology with the terminology used in State Code:

Lodging fee becomes accommodation fee;

Lodging intermediary becomes accommodations intermediary;

Lodging provider becomes accommodations provider.

All charges associated with a booking are subject to lodging tax

The impetus behind SB1398 was concern among many in the lodging and travel industry that OTA's and online platforms (those who we would come to define as "accommodations intermediaries" were not collecting and paying State sales tax and local lodging tax on the various mark-ups that they charged to transients (booking fees, pet fees, cleaning fees, etc.), some of which could be more expensive than the lodging itself. As such, the legislation made it abundantly clear that ALL charges associated with the booking of an accommodation are subject to sales and lodging tax. This is reflected in the proposed definition of "room charge":

...Any additional charges made in connection with the rental of accommodations are deemed to be a part of the charge for the room and are subject to the tax. For example, additional charges for movies, parking, local telephone calls and similar services are subject to the tax. Toll charges for long-distance telephone calls are not subject to the tax.

Unfortunately, since our existing definition for "lodging" reflects the prior conception that literally only charges for lodging itself could be subject to the tax, it undercuts the new interpretation and intent of the General Assembly. As such, we recommend removing the definition of *lodging* altogether and updating the definition of *accommodations*.

Charges for lodging in dormitories to be exempt

In order to avoid confusion, we propose the following change to Sec. 30-254:

No tax shall be payable under this article on any charge for lodging in, and during care or treatment in, any hospital, medical clinic, nursing or convalescent home, extended health care facility, sanatorium or sanitorium, home for the aged, infirmed, orphaned, disabled, or mentally retarded or other like facility; or in any dormitory as defined in Sec. 34-1200 of this Code ~~educational institution~~.

Sec. 34-1200 of the City Code defines a *dormitory as a building, or portion thereof, owned or operated by an educational facility, which provides boarding-house style accommodations exclusively to students, faculty and employees of such institution.*

Alignment with City Council's Vision and Strategic Plan

N/A

Community Engagement

N/A

Budgetary Impact

None

Recommendation

Approval of the amended ordinance. It is requested that Council vote and approve this ordinance on First Reading, by four-fifths vote (see "section 2, last page of the proposed ordinance), waiving the requirement for a second reading.

Suggested Motion: "I move the ORDINANCE to amend, re-ordain and re-enact Chapter 30, Article 9 of the City Code (Transient Occupancy Tax), to incorporate state legislative changes pertaining to collection of tax revenues from lodging intermediaries, and to update definitions of terms used in Article 9, and the requirement for a second reading is waived"

Alternatives

None

Attachments

1. SB1398
2. SB651
3. Ordinance No. O-21-138
4. Proposed ordinance Amend TOT