

ORDINANCE
TO AMEND AND RE-ORDAIN CHAPTER 30 (TAXATION), ARTICLE IX
(TRANSIENT OCCUPANCY TAX), OF THE CODE OF THE CITY OF
CHARLOTTESVILLE (1990), AS AMENDED, TO INCORPORATE STATE
LEGISLATIVE CHANGES PERTAINING TO COLLECTION OF TAX REVENUES
FROM LODGING INTERMEDIARIES, AND TO UPDATE DEFINITIONS OF TERMS
USED IN ARTICLE IX

WHEREAS the Virginia General Assembly has enacted legislation to address the collection of transient occupancy tax by lodging intermediaries; and

WHEREAS the Commissioner of Revenue recommends that the City Council should update its transient occupancy tax ordinance, to incorporate the state legislative changes, and to clarify terms that may have become outdated; NOW, THEREFORE,

BE IT ORDAINED by the Council of the City of Charlottesville, Virginia, THAT

Section 1. Chapter 30 (Taxation), Article IX of the Code of the City of Charlottesville (1990), as amended, is hereby amended, re-ordained and re-enacted, as follows:

ARTICLE IX. TRANSIENT OCCUPANCY TAX

Sec. 30-251. Violations of article.

Any person violating or failing to comply with any of the provisions of this article shall be guilty of a Class 3 misdemeanor. Conviction of such violation shall not relieve any person from the payment, collection or remittance of the tax provided for in this article.

Sec. 30-252. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accommodation means any public or private hotel, inn, hostelry, short-term rental, motel or rooming, boarding or lodging house within the city offering lodging as defined in this section, for compensation, to any transient as defined in this section.

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

Hotel means any structure or group of structures for rent or for hire that is primarily kept, used, maintained, advertised, or held out to the public as a place where sleeping accommodations are offered to transients in return for compensation.

Lodging means the rental of room or space to any transient for compensation, in an accommodation as defined in this section, by a lodging provider or lodging intermediary, or the occupancy of such room or space by such transient. If the charge for the accommodation made by any person to such transient includes any charge for meals, parking or other services not related to the occupancy of the room in addition to lodging or the use of such room or space, then such portion of such total charge as represents only room or space rental shall be distinctly set out and billed to such transient by such person as a separate item.

Lodging fee means the room charge less the discount room charge, if any, provided that the lodging fee shall not be less than zero dollars (\$0.00).

Lodging intermediary means any person other than a lodging provider that (i) facilitates the sale of an accommodation, and (ii) either (a) charges a room charge to the customer, and charges a lodging fee to the customer, which fee it retains as compensation for facilitating the sale; or (b) collects a room charge from the customer; or (c) charges a fee, other than a lodging fee, to the customer, which fee it retains as compensation for facilitating the sale. For purposes of this definition, "facilitates the sale" includes brokering, coordinating, or in any other way arranging for the purchase of the right to use accommodations via a transaction directly, including via one (1) or more payment processors, between a customer and a lodging provider. The term "lodging intermediary" does not include a person:

1. Who provides lodging while operating under a trademark, trade name, or service mark belonging to such person;

2. Who facilitates the sale of lodging if (i) the price paid by the customer to such person is equal to the price paid by such person to the lodging provider for the use of the lodging and (ii) the only compensation received by such person for facilitating the sale of the lodging is a commission paid from the lodging provider to such person;

3. Who is licensed as a real estate licensee pursuant to Article 1 (§ 54.1-2100 et seq.) of Chapter 21 of Title 54.1, when acting within the scope of such license.

Lodging provider means any person that furnishes accommodations to the general public for compensation. The term "furnishes" includes the sale of use or possession or the sale of the right to use or possess.

Room charge means the full retail price charged to the transient for the use of the accommodation, including any lodging fee, before taxes. Room charge includes any fee charged to the customer and retained as compensation for facilitating the sale, whether described as a lodging 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.

Short-term rental means any building, structure, or unit, on the same tax parcel, sharing the same mailing address, that is used, or is intended to be used, as a residence or home for one (1) or more persons available for rent or for hire to transients.

Transient means any person who, for a period of fewer than thirty (30) consecutive days, either at their own expense or at the expense of another, obtains lodging for which a charge is made at an accommodation, as defined in this section.

Sec. 30-253. Levied.

There is hereby imposed and levied upon every transient obtaining or occupying lodging within the city, in addition to all other taxes and fees of every kind now imposed by law, a tax equivalent to eight (8) percent of the total room charge price paid for the lodging by the transient, or on the transient's behalf.

Sec. 30-254. Exemptions.

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 that term is defined in City Code Chapter 34, Sec. 34-1200 educational institution.

Sec. 30-255. Collection.

(1) For any lodging not facilitated by a lodging intermediary, the lodging provider shall collect the tax levied pursuant to this article from the transient, or from the person paying for the lodging, at the time that payment for the lodging is made, **computed on the total price paid for the use or possession of the lodging, and shall remit the same to the City and shall be liable for the same.**

(2) For any lodging facilitated by a lodging intermediary, the lodging intermediary shall be deemed to have made **a retail** the sale of the lodging and is responsible for collecting the tax levied for the lodging from the transient or the person paying for the lodging, at the time that payment for the lodging is made, **computed on the room charge and shall remit the same to the City and shall be liable for the same.** When the lodging occurs at a hotel, the lodging intermediary shall remit the taxes on the lodging fee to the city and remit the remainder, if any, to the hotel, which shall directly remit said remaining tax to the city. When the lodging occurs at a short-term rental, as defined in this article, or any other accommodation that is not a hotel, the lodging intermediary is responsible for remitting the full amount of tax to the city.

(3) **For any transaction for the retail sale of accommodations involving two or more parties that meet the definition of lodging intermediary, nothing in this section shall prohibit such parties from making an agreement regarding which party shall be responsible for collecting and remitting the tax, so long as the party so responsible is registered as a dealer with the locality. In such event, the party agreeing to collect and remit the tax shall be the sole party liable for the tax, and the other parties to such agreement shall not be liable for such tax.**

(4) **For any retail sale of lodging facilitated by a lodging intermediary, nothing herein shall relieve the lodging provider from liability for retail sales and use taxes on any amounts charged directly to the customer by the lodging provider that are not collected by the lodging intermediary.**

(5) **In any retail sale of any lodging in which a lodging intermediary does not facilitate the sale of the lodging, the lodging provider shall separately state the amount of the tax in the**

bill, invoice, or similar documentation and shall add the tax to the total price paid for the use or possession of the lodging. In any retail sale of any lodging in which a lodging intermediary facilitates the sale of the lodging, the lodging intermediary shall separately state the amount of the tax on the bill, invoice, or similar documentation and shall add the tax to the room charge; thereafter, such tax shall be a debt from the customer to the lodging intermediary, recoverable at law in the same manner as other debts.

The taxes collected by any person shall be deemed to be held in trust for the Ceity by the person required to collect them, until they have been remitted to the Ceity as provided in this article.

Sec. 30-256. Reports and remittances generally.

Every person collecting any tax levied by this article shall make out a report thereof, upon such forms and setting forth such information as the Ceommissioner of the Revenue may prescribe and require, showing the total room charge paid by the customer ~~amount of lodging charges collected~~ and the amount of tax required to be collected thereon, and shall ~~sign and~~ deliver the same to the Ceommissioner together with a remittance of such tax, made payable to the Ceity Treasurer. If a person, including a lodging intermediary is collecting taxes from, or on behalf of, multiple accommodations, the report shall also be sufficient to identify the total lodging charges and tax owed on lodging at each individual accommodation, including the accommodation's address ~~and, in cases where a lodging intermediary is responsible for collecting and remitting the taxes, information sufficient to identify the lodging provider connected to the accommodation.~~ Such reports and remittances shall be made on or before the twentieth of each month, covering the amount of tax collected during the preceding month. Lodging providers shall be required to file monthly reports with the Ceommissioner even in the event no tax is due and regardless of whether they collected the tax or if it was done on their behalf by a lodging intermediary. All remittances received under this article by the Ceommissioner shall be promptly turned over to the Treasurer.

Sec. 30-257. Collector's records.

It shall be the duty of every lodging provider or lodging intermediary liable for taxes under this article or for the collection and remittance of any tax imposed by this article, to keep and preserve for the current year and the three (3) prior years such suitable records as may be necessary to determine the amounts paid for lodging, and tax thereon for which that lodging provider or lodging intermediary may have been responsible for collecting and paying to the Ceity. Lodging providers who have the taxes owed on their accommodation collected by a third party such as a lodging intermediary are also obligated to keep records under this section on the amounts that were collected on their behalf by said third party. All records kept under this section should be sufficient to identify each individual accommodation ~~for from~~ which the lodging charges were collected, and the tax owed for transient stays at that accommodation, including the accommodation's address ~~and, where taxes were collected and remitted by a lodging intermediary, identifying the lodging provider connected with the accommodation on whose behalf the taxes were collected.~~ The Ceommissioner of the Revenue shall have the right to inspect all such records at any reasonable time.

Sec. 30-258. Duty of collector going out of business.

Whenever any person required to collect and remit to the city any tax imposed by this article shall cease to operate or otherwise dispose of their business, such tax shall immediately become due and payable, and such person shall forthwith make a report and remittance thereof.

Sec. 30-259. Penalty for late remittance.

If any person, whose duty it is to do so, shall fail or refuse to make a report and remit the tax as required by this article within the time and in the amount required, there shall be added to such tax by the Commissioner of the Revue a penalty in the amount of five (5) percent of such tax, or a minimum of two dollars (\$2.00), if such failure is for not more than thirty (30) days in duration.

Sec. 30-260. Procedure upon failure to collect, report, etc.

- (a) If any person, whose duty it is to do so, shall fail or refuse to collect the tax imposed under this article and make timely report and remittance thereof, the Commissioner of the Revue shall proceed in such manner as is practicable to obtain facts and information on which to base an estimate of the tax due. As soon as the Commissioner has procured such facts and information as may be obtainable, upon which to base the assessment of any tax payable by any person who has failed to collect, report or remit such tax, the Commissioner shall proceed to determine and assess against such person the tax, penalty and interest provided in this article, and shall notify such person by certified or registered mail sent to their last known address, of the amount of such tax, penalty and interest, and the total amount thereof shall be payable within ten (10) days from the date such notice is sent.
- (b) It shall be the duty of the Commissioner of the Revue to ascertain the name of every lodging provider and lodging intermediary providing lodging in the city, liable for the collection of the tax imposed by this article, who fails, refuses or neglects to collect such tax or to make the reports and remittances required by this article. The Commissioner may have issued a summons for such person, which summons may be served upon such person by any city police officer in the manner provided by law, and one (1) return of the original thereof shall be made to the general district court for the city.

Section 2. The requirement of City Code Sec. 2-97 for a second reading of this ordinance is hereby waived, and this ordinance shall be and become effective upon its adoption by a recorded four-fifths vote of City Council.