



CITY OF VIRGINIA BEACH AGENDA ITEM

ITEM: An Ordinance to Amend Sections 35-158 and 35-161 of the City Code Regarding the Tax on Transients Obtaining Lodging

MEETING DATE: September 20, 2022

■ **Background:** The City levies a transient occupancy tax upon hotel rooms and other room or home rentals. This tax includes both a rate and a per room night charge. The transient occupancy tax supports the General Fund, the Tourism Advertising Program (TAP), and the Tourism Investment Program (TIP). Additional revenues support the Central Business District TIF and the Sandbridge SSD.

The 2021 General Assembly enacted legislation that was intended to address disparate tax treatment of lodging transactions. This legislation addressed the retail sales and use tax as well as local and regional transient occupancy taxes. Prior to the legislation, a customer would pay a larger amount of sales and transient occupancy taxes when it booked a room directly with a hotel or motel than if the same transaction occurred online through an intermediary. Once the 2021 legislation was implemented, all lodging transactions are taxed on the entire room charge.

■ **Considerations:** The 2022 General Assembly made a few technical changes to the 2021 legislation. These include the following:

- Amends the definition of “accommodations intermediary” to include a party that collects room charges or imposes fees for facilitating an accommodations sale.
- The definition of “accommodations intermediary” was further amended to categorically exclude real estate licensees acting within the scope of their real estate license.
- Amends the definition of “room charge” to clarify that the “room charge” includes any accommodations fee or facilitation fee or fee of similar nature.
- Amends the procedure for collection to allow agreements between two or more accommodations intermediaries to remit the tax to the City.
- Requires monthly reports to the City providing the property addresses and gross receipts for all accommodations facilities by the accommodations intermediary.

The 2022 legislation is effective October 1, 2022, so this ordinance is necessary to conform the City Code to the Virginia Code.

Of note, the City's 2022 Legislative Agenda included a request to allow additional information sharing regarding short term rentals between the Commissioner of the Revenue and the Department of Planning. The 2022 legislation does not solve the information sharing issue entirely, but it does include a provision for monthly reporting to the “locality.” Accordingly, the attached ordinance requires accommodations

intermediaries to submit two monthly reports: a report for the Commissioner of Revenue of addresses and gross receipts, and a separate report for the Department of Planning with addresses conducting transient room rentals.

- **Public Information:** Normal Council agenda process.
 - **Recommendations:** Adopt the attached ordinance.
 - **Attachments:** Ordinance; 2022 Acts of Assembly c. 7
-

Recommended Action: Approval

Submitting Department/Agency: Commissioner of the Revenue

City Manager: 

1 AN ORDINANCE TO AMEND SECTIONS 35-158
2 AND 35-161 OF THE CITY CODE REGARDING
3 THE TAX ON TRANSIENTS OBTAINING
4 LODGING
5

6 SECTIONS AMENDED: 35-158; and 35-161
7

8 WHEREAS, 2022 Acts of Assembly cs. 7 and 640 (the "2022 Legislation") are
9 identical pieces of legislation that further the work of last year's overhaul of the retail sales
10 and use tax and local transient occupancy taxes to address the role of online retailers for
11 both hotels and short-term rentals;
12

13 WHEREAS, the 2022 Legislation is effective October 1, 2022; and
14

15 WHEREAS, the City Council desires to amend and reordain certain sections of the
16 City Code regarding the City's transient occupancy taxes to align with the 2022
17 Legislation;
18

19 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY
20 OF VIRGINIA BEACH, VIRGINIA, THAT:
21

- 22 1. Sections 35-158, and 35-161 of the City Code are hereby amended and reordained
23 as follows:
24

25 **Sec. 35-158. Definitions.**
26

27 Except where the context clearly indicates a different meaning, the following words
28 and phrases, when used in this article shall, for the purposes of this article, have the
29 meanings ascribed to them in this section:
30

31 *Accommodations.* "Accommodations" means any room or space for which tax is
32 imposed on the retail sale of the same pursuant to this article.
33

34 *Accommodations fee.* "Accommodations fee" means the room charge less the
35 discount room charge, if any, provided that the accommodations fee shall not be less than
36 \$0.
37

38 *Accommodations intermediary.* "Accommodations intermediary" means any
39 person other than an accommodations provider that (i) facilitates the sale of an
40 accommodation; and (ii) either (a) charges a room charge to the customer, and charges
41 an accommodations fee to the customer, which fee it retains as compensation for
42 facilitating the sale; (b) collects a room charge from the customer; or (c) charges a fee,
43 other than an accommodations fee, to the customer, which fee it retains as compensation
44 for facilitating the sale. For purposes of this definition, "facilitates the sale" includes
45 brokering, coordinating, or in any other way arranging for the purchase of the right to use
46 accommodations via a transaction directly, including via one or more payment
47 processors, between a customer and an accommodations provider. "Accommodations
48 intermediary" does not include a person (1) if the accommodations are provided by an

49 accommodations provider operating under a trademark, trade name, or service mark
50 belonging to such person; or (2) who facilitates the sale of an accommodation if (i) the
51 price paid by the consumer to such person is equal to the price paid by such person to
52 the accommodations provider for the use of the accommodations and (ii) the only
53 compensation received by such person for facilitating the sale of the accommodations is
54 a commission paid from the accommodations provider to such person; or (3) who is
55 licensed as a real estate licensee pursuant to Article 1 of Chapter 21 of Title 54.1, when
56 acting within the scope of such license.

57
58 *Accommodations provider.* "Accommodations provider" means any person that
59 furnishes accommodations to the general public for compensation. The term "furnishes"
60 includes the sale of use or possession or the sale of the right to use or possess. An
61 Accommodations provider may be any public or private hotel, inn, hostelry, tourist home
62 or house, tourist camp, tourist cabin, camping grounds, motel, rooming house or other
63 lodging place within the city offering lodging, for compensation, to any transient.

64
65 *Affiliate.* "Affiliate" means with respect to any person, any other person directly or
66 indirectly controlling, controlled by, or under common control with such person. For
67 purposes of this definition, "control" (including controlled by and under common control
68 with) shall mean the power, directly or indirectly, to direct or cause the direction of the
69 management and policies of such person through ownership or voting securities or by
70 contract or otherwise.

71
72 *City treasurer.* "City treasurer" means the treasurer of the city and any of his or her
73 duly authorized deputies and agents.

74
75 *Commissioner of revenue.* "Commissioner of revenue" means the commissioner
76 of revenue of the city and any of his or her duly authorized deputies and agents.

77
78 *Discount room charge.* "Discount room charge" means the full amount charged by
79 the accommodations provider to the accommodations intermediary, or an affiliate thereof,
80 for furnishing the accommodations.

81
82 *Retail sale.* "Retail sale" means a sale to any person for any purpose other than
83 for resale.

84
85 *Room charge.* "Room charge" means the full retail price charged to the customer
86 ~~by the accommodations intermediary for the use of the accommodations, including any~~
87 ~~accommodations fee, before taxes.~~ "Room charge" includes any fee charged to the
88 customer and retained as compensation for facilitating the sale, whether described as an
89 accommodations fee, facilitation fee, or any other name. The room charge shall be
90 determined in accordance with 23VAC10-210-730 and the related rulings of the Virginia
91 Department of Taxation on the same.

92
93 *Transient.* "Transient" means any person who, for any period of not more than
94 ninety (90) consecutive days, either at his own expense or at the expense of another,
95 obtains accommodations from any accommodations provider.

96

97 The Commissioner of the Revenue may rely upon the processes and procedures
98 promulgated by the Virginia Department of Taxation to implement 2021 Acts of Assembly
99 Special Session c. 383 or 2022 Acts of Assembly cs. 7 and 640 in the construction or
100 interpretation of any of the above definitions and the incidence of the tax authorized by
101 this Article VII of Chapter 35 of the City Code.
102

103

104
105 **Sec. 35-161. Collection.**
106

- 107 a. For any retail sale of accommodations not facilitated by an accommodations
108 intermediary, the accommodations provider shall collect the tax imposed pursuant
109 to this article, computed on the total price paid for the use or possession of the
110 accommodations, and shall remit the same to the City and shall be liable for the
111 same.
112
- 113 b. For any retail sale of accommodations facilitated by an accommodations
114 intermediary, the accommodations intermediary shall be deemed under this article
115 as a facility making a retail sale of an accommodation. The accommodations
116 intermediary shall collect the tax imposed pursuant to this article, computed on the
117 room charge and shall remit the same to the locality and shall be liable for the
118 same. ~~When the accommodations are at a hotel, the accommodations~~
119 ~~intermediary shall remit the taxes on the accommodations fee to the City and shall~~
120 ~~remit any remaining taxes to the hotel, which shall remit such taxes to the City.~~
121 ~~When the accommodations are at a short-term rental, as defined in § 15.2-083 of~~
122 ~~the Virginia Code, or at any other accommodations, the accommodations~~
123 ~~intermediary shall remit the taxes on the room charge to the City.~~
124
- 125 c. For any transaction for the retail sale of accommodations involving two or more
126 parties that meet the definition of accommodations intermediary, nothing in this
127 section shall prohibit such parties from making an agreement regarding which
128 party shall be responsible for collecting and remitting the tax, so long as the party
129 so responsible is registered with the locality for purposes of remitting the tax. In
130 such event, the party that agrees to collect and remit the tax shall be the sole party
131 liable for the tax, and the other party to such agreement shall not be liable for such
132 tax. ~~An accommodations intermediary shall not be liable for taxes under this article~~
133 ~~remitted to an accommodations provider but that are then not remitted to the City~~
134 ~~by the accommodations provider. For any retail sale of accommodations facilitated~~
135 ~~by an accommodations intermediary, an accommodations provider shall be liable~~
136 ~~for that portion of the taxes under this article that relate to the discount room charge~~
137 ~~only to the extent that the accommodations intermediary has remitted such taxes~~
138 ~~to the accommodations provider.~~
139
- 140 d. In any retail sale of any accommodations in which an accommodations
141 intermediary does not facilitate the sale of the accommodations, the
142 accommodations provider shall separately state the amount of the tax in the bill,
143 invoice, or similar documentation and shall add the tax to the total price paid for
144 the use or possession of the accommodations. In any retail sale of any

145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164

accommodations in which an accommodations intermediary facilitates the sale of the accommodation, the accommodations 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 accommodations intermediary, recoverable at law in the same manner as other debts.

e. The taxes required to be collected under this section shall be deemed to be held in trust by the person required to collect such taxes, until remitted as required in this article.

f. Any accommodations intermediary conducting transactions within the City shall submit to the Commissioner of the Revenue the property addresses and gross receipts for all accommodations facilitated by the accommodations intermediary in the City on forms promulgated by the Commissioner of the Revenue. A copy of this report containing only the property addresses shall be separately submitted by the accommodations intermediary to the Department of Planning. Such information shall be submitted monthly.

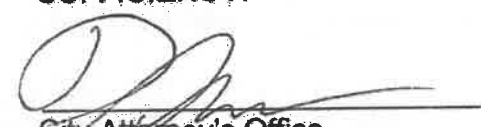
2. The effective date of this ordinance is October 1, 2022.

Adopted by the City Council of the City of Virginia Beach, Virginia, this _____ day of _____, 2022.

APPROVED AS TO CONTENT:

APPROVED AS TO LEGAL SUFFICIENCY:


Commissioner of the Revenue


City Attorney's Office

CA15921
R-2
September 9, 2022