

**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date:	September 20, 2021
Action Required:	Approval of Amended Transient Occupancy Tax Ordinance
Presenter:	Todd Divers, Commissioner of the Revenue
Staff Contacts:	Todd Divers, Commissioner of the Revenue
Title:	ORDINANCE TO AMEND AND REENACT ARTICLE IX OF CHAPTER 30 (TRANSIENT OCCUPANCY TAX) OF THE CODE OF THE CITY OF CHARLOTTESVILLE (1990)

Background:

Chapter 30, Article IX of the Charlottesville City Code, containing the City’s transient occupancy tax provisions, requires changes to align the ordinance with changes in legislation adopted by the 2021 General Assembly. In addition, the amendment clarifies the language related to reporting requirements in the event that no tax is due.

Discussion:

The proposed ordinance amendments, consistent with the changes enacted by the 2021 General Assembly, will require transient occupancy tax to be based on the total charge to the customer, including accommodation fees charged to the customer by online travel companies. Prior to this update, transient occupancy tax was calculated based on the charge for the room collected by the lodging establishment. The impetus for the change reflects a desire on the part of the General Assembly that the Commonwealth not allow online travel companies to avoid collecting and paying transient occupancy tax and retail sales and use tax on the accommodation fees charged to customers for the rental of rooms. These amendments will remedy that issue by requiring the assessment of the tax on the total room charge paid by the consumer.

Further, consistent with the changes enacted by the 2021 General Assembly, the proposed amendments specify the instances under which the tax is to be remitted by a lodging establishment itself or by a third-party intermediary, including online short-term rental agencies. We anticipate this requirement will pose significant administrative challenges because the online entities have declared their intention to withhold documentation that would substantiate such remittances. Despite this, third party intermediaries will be required to submit a report with their remittances sufficient to identify the lodging charges and tax owed by each individual property, including addresses and owners. Lodging providers will be required to submit a monthly return regardless of whether a third party intermediary will be remitting the tax on their behalf.

Finally, the proposed amendments strengthen the language requiring that a lodging tax return be submitted to the Commissioner of the Revenue each month regardless of whether tax is due or not.

This is already our longstanding practice, but we believe that extra specificity is warranted. Requiring a zero return in such instances aligns with the Department of Taxation's practices with respect to sales tax reporting, and is necessary in order to efficiently distinguish between delinquent taxpayers and those who legitimately had no sales to report.

Alignment with City Council's Vision and Strategic Plan:

n/a

Budgetary Impact:

These changes will likely result in a positive impact on revenues as, 1) transient occupancy tax will now be based on the total charge paid by the customer and not just on the cost of the room rental paid to the lodging facility, and 2) online short-term lodging purveyors will now be required to remit taxes on all stays of less than thirty days not only on the room rental but on the premium that they charge for facilitating the stay. However, without knowing the amount of additional fees and charges not previously included in the gross revenues for tax calculation, and without knowing the amount of short term rental tax revenue not currently being reported, the exact amount is difficult to calculate. At this time, we do not believe the impact will be significant. The administrative changes will have no impact on revenues, though there may be some administrative burden in compelling compliance with the reporting requirements for online lodging intermediaries.

Recommendation:

Approval the ordinance amendments.

Alternatives:

n/a

Attachments:

Ordinance to Amend and Reenact Chapter 30 (Taxation), Article IX (Transient Occupancy Tax) of the Code of the City of Charlottesville (1990), as Amended, to Conform the City's Process for Collection and Reporting of Transient Occupancy Tax with Changes in State Enabling Legislation

AN ORDINANCE TO AMEND AND REENACT CHAPTER 30 (TAXATION), ARTICLE IX. (TRANSIENT OCCUPANCY TAX) OF THE CODE OF THE CITY OF CHARLOTTESVILLE (1990) AS AMENDED, TO CONFORM THE CITY'S PROCESS FOR COLLECTION AND REPORTING OF TRANSIENT OCCUPANCY TAX WITH CHANGES IN STATE ENABLING LEGISLATION

BE IT ORDAINED by the Council of the City of Charlottesville that the provisions of Chapter 30 (Taxation), Article IX (Transient Occupancy Tax) are hereby amended and re-ordained as follows:

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.

Cross reference— Penalty for Class 3 misdemeanor, § 1-11.

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:

~~Hotel~~ Accommodation means any public or private hotel, inn, hostelry, short-term rental~~tourist home or house~~, 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.

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, by in an hotel 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 hotel-person to such transient includes any charge for meals, parking or other services or accommodations 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 hotel-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).

Lodging Intermediary means any person other than a lodging provider that facilitates the sale of an accommodation, 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. 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 or more payment processors, between a customer and a lodging provider.

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.

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 ~~not more~~fewer than thirty (30) consecutive days, either at his own expense or at the expense of another, obtains ~~lodging~~Lodging for which a charge is made at a ~~hotel~~n Accommodation, as defined in this section.

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 30-253. - Levied.

There is hereby imposed and levied upon every ~~transient~~Transient obtaining or occupying ~~L~~odging 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 price paid for the Lodging by the Transient, or on the Transient's behalf.~~amount charged for such lodging.~~

State Law reference— Authority of city to impose tax on transient room rentals, Code of Virginia, § 58.1-~~3840~~3819.

Sec. 30-254. - Exemptions.

No tax shall be payable under this article on any charge for ~~lodging~~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 educational institution.

Sec. 30-255. - Collection.

~~Every person receiving any payment for lodging with respect to which a tax is levied under this article shall collect the amount of such tax so imposed from the transient on whom such tax is levied, or from the person paying for such lodging at the time payment for such lodging is made. The taxes so collected shall be deemed to be held in trust for the city by the person required to collect them, until they have been remitted to the city as provided in this article.~~

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.

For any Lodging facilitated by a Lodging Intermediary, the Lodging Intermediary shall be deemed to have made 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. 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.

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

State Law reference— Scope of Transient Tax, Code of Virginia, § 58.1-3826.

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 Commissioner of revenue may prescribe and require, showing the amount of lodging charges collected and the amount of tax required to be collected thereon, and shall sign and deliver the same to the Commissioner together with a remittance of such tax, made payable to the city Treasurer. If a person, including an Accommodation Lodging Intermediary is collecting taxes from, or on behalf of, multiple Accommodations, the report shall also be sufficient to identify the lodging charges and tax owed byon Lodging at each individual property 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 20th of each month, covering the amount of tax collected during the preceding month. Lodging Providers shall be required to file monthly reports with the Commissioner 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 eommissioner Commissioner shall be promptly turned over to the treasurer Treasurer.

Editor's note— It should be noted that the provisions of an ordinance adopted April 10, 2012 become effective January 1, 2013.

Sec. 30-257. - Collector's records.

It shall be the duty of every person 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 a period of the two three (23) prior years such suitable records as may be necessary to determine the amounts of charges paid for lodging, and tax thereon as for which he that Lodging Provider or Lodging Intermediary may have been responsible for collecting and paying to the city. 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 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 ~~commissioner~~ Commissioner of ~~revenue~~ 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 his 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 ~~e~~ Commissioner of ~~R~~ revenue 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 ~~C~~ eommissioner of ~~R~~ revenue 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 ~~C~~ eommissioner 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 ~~C~~ eommissioner 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 ~~his~~ 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 ~~C~~ eommissioner of ~~R~~ revenue to ascertain the name of every ~~person operating an Accommodation~~ person operating an Accommodation ~~hotel~~ 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 ~~C~~ eommissioner 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.

Sec. 30-261. - Reserved.

Editor's note— An ordinance adopted Nov. 15, 2004, § 6, repealed § 30-261, which pertained to application of correction. See also the Code Comparative Table.