

PRESENTED: June 6, 2023

ADOPTED: June 6, 2023

ORDINANCE NO. 2023 – 06 . 06

AN ORDINANCE REPEALING AND REORDAINING IN ITS ENTIRETY ARTICLE VI, ENTITLED "TAX ON TRANSIENT LODGERS" OF CHAPTER 37, ENTITLED "TAXATION" OF THE CODE OF THE CITY OF DANVILLE, VIRGINIA, 1986, AS AMENDED.

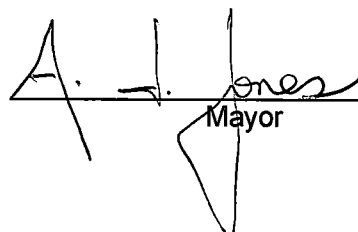
WHEREAS, the current ARTICLE VI, entitled "TAX ON TRANSIENT LODGERS", of CHAPTER 37, entitled "TAXATION", of the Code of the City of Danville, Virginia, 1986, as amended, needs to be repealed and reordained; and

WHEREAS, the current language of Article VI, entitled "Tax on Transient Lodgers", of Chapter 37, entitled "Taxation" of the Code of the City of Danville, Virginia, 1986, as amended, needs to be replaced and reordained to add new definitions, give clarification to taxpayer responsibilities, and harmonize the City Code with the new model language to assist in the proper documentation and collection of TOT.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Danville, Virginia, that ARTICLE VI, entitled "TAX ON TRANSIENT LODGERS", of CHAPTER 37, entitled "TAXATION", of the Code of the City of Danville, Virginia, 1986, as amended, be, and is hereby, repealed in its entirety; and

BE IT FURTHER ORDAINED, by the Council of the City of Danville, Virginia, that ARTICLE VI, entitled "TAX ON TRANSIENT LODGERS", of CHAPTER 37, entitled "TAXATION", of the Code of the City of Danville, Virginia, 1986, as amended, be, and is hereby, repealed, replaced, and reordained as attached hereto, and made apart hereof as if fully set out herein.

Approved:



Mayor

Attest:



City Clerk

Approved as to
Form and Legal Sufficiency:



Deputy City Attorney

ARTICLE VI. TAX ON TRANSIENT LODGERS

Sec. 37-96. Definitions.

Except where the context clearly indicates a different meaning, the following words and phrases, when used in this article, shall, for the purposes of this article, have the following meanings:

Accommodations means any room or space for which tax is imposed on the retail sale pursuant to this chapter and includes but is not limited to, any public or private hotel, inn, apartment, hostel, tourist home or house, motel, rooming house, or other lodging place within the City of Danville offering lodging, and the owner and operator thereof, who for compensation, furnishes lodging to any transients as herein defined.

Accommodations fee means the room charge less the discount room charge, if any; provided, that the accommodations fee shall not be less than \$0.00.

Accommodations intermediary means any person other than an accommodations provider that facilitates the sale of an accommodation and either: (1) charges a room charge to the customer, and charges an accommodations fee to the customer, which fee it retains as compensation for facilitating the sale; (2) collects a room charge from the customer; or (3) charges a fee, other than an accommodations fee, to the customer, which fee it retains as compensation for facilitating the sale. For purposes of this definition, *facilitating 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 an accommodations provider. *Accommodations intermediary* does not include a person: (1) if the accommodation is provided by an accommodations provider operating under a trademark, trade name, or service mark belonging to such person; (2) who facilitates the sale of an accommodation if the price paid by the customer to such person is equal to the price paid by such person to the accommodations provider for the use of the accommodation and the only compensation received by such person for facilitating the sale of the accommodation is a commission paid from the accommodations provider to such person; or (3) who is licensed as a real estate licensee pursuant to §§54.1-2100 *et seq.* of the Virginia Code, when acting within the scope of such license.

Accommodations 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 use or possess.

Retail sale means the sale or charges for any room, lodging, or accommodation furnished to transients for less than sixty (60) continuous days by any hotel, motel, inn, hostel, tourist camp, tourist cabin, camping ground, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for consideration.

Room Charge means the full retail price charged to the transient for the use of accommodations, before taxes. *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, including but not limited to, additional charges for local telephone calls, internet access, and access to subscription-based online services.

Transient means any person who, for any period of fewer than sixty (60) consecutive days, either at his own expense or at the expense of another, obtains the use or possession of a room or space occupied for lodging in any accommodations, for which possession or use of such space a price is charged.

Sec. 37-97. Levy and rate.

- (a) There is hereby levied and imposed upon each transient, in addition to any and all other taxes and fees of every kind imposed by law, a tax equivalent to eight (8) percent of the total amount paid by or for such transient for the use or possession of a room or space occupied for lodging to any accommodations as well as an additional tax of two dollars (\$2.00) per night of lodging.

Sec. 37-98. Collections.

- (a) For any retail sale of accommodations not facilitated by an accommodations intermediary, the accommodations provider shall collect the tax imposed pursuant to this article, computed on the total price paid for the use and possession of the accommodations, and shall remit the same to the City and shall be liable for the same.
- (b) For any retail sale of accommodations facilitated by an accommodations intermediary, the accommodations intermediary shall be deemed under this article as a facility making a retail sale of an accommodation. The accommodations intermediary shall collect the tax imposed pursuant to this article, computed on the room charge and shall remit the same to the City and shall be liable for the same.
- (c) For any transaction for the retail sale of accommodations involving two (2) or more parties that meet the definition of an accommodations 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.
- (d) For any retail sale of accommodations facilitated by an accommodations intermediary, nothing herein shall relieve the accommodations provider from liability for retail sales and use taxes on any amounts charged directly to the customer by an accommodations provider that are not collected by the accommodations intermediary.
- (e) In any retail sale of any accommodations in which an accommodations intermediary does not facilitate the sale of the accommodations, the accommodations 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 accommodations. In any retail sale of any accommodations in which an accommodations intermediary facilitates the sale of the accommodations, 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.
- (f) All taxes collected pursuant to this article are deemed to be held in trust for the City.

Sec. 37-99. Reports and remittances.

- (a) The person collecting any tax levied under this article shall make out a monthly report thereof, upon such forms and setting forth such information as the Commissioner may prescribe and require, showing the total room charge paid by the customer for the use or possession of a room or space occupied for lodging by or for a transient and the tax required to be collected. Such person shall sign such report and shall deliver such report to the Commissioner with a remittance of such tax. The Commissioner shall determine whether the report is in proper form and upon such determination shall transmit a copy to the Treasurer. Such monthly reports and remittances shall be made on or before the twentieth day following the close of each month covering the amount of tax collected during the preceding month. Subject to applicable laws, an accommodations

intermediary shall, each month, submit to the Commissioner the property addresses and gross receipts for all accommodations facilitated by the accommodations intermediary in the City.

- (b) It shall be the duty of every person liable for the collection and payment to the City of any tax imposed by this article to keep and to preserve, for a period of two (2) years, such suitable records as may be necessary to determine the amount of such tax as he may have been responsible for collecting and paying to the City. The Commissioner may inspect such records at all reasonable times.

Sec. 37-100. Interest and penalties.

- (a) If any person, whose duty it is so to do, shall fail or refuse to remit to the City the tax required to be collected and paid under this article, within the time and in the amount specified in this article, there shall be added to such tax interest in the amount of ten percent (10%) per annum from the first day following the day such tax is due upon the amount of the tax for each year or portion thereof from the date upon which the tax is due as provided in this article.
- (b) In the case of a false or fraudulent return with intent to defraud the City of any tax due under this article, a penalty of fifty (50) percent of the tax shall be assessed against the person required to collect such tax.

Sec. 37-101. Cessation of business.

Whenever any person required to collect and pay to the City a tax under this article shall cease to operate or otherwise dispose of his business, any tax payable under this article to the City shall become immediately due and payable and such person shall immediately make a report and pay the tax due.

Sec. 37-102. Determination of tax due by Commissioner.

If any person required to collect or remit the tax imposed by this article fails to file a report, or if the Commissioner has reasonable cause to believe that an erroneous report has been filed, the Commissioner may proceed to determine the amount due to the City and in connection therewith shall make such investigations and take such testimony and other evidence as may be necessary and he shall report his determination to the treasurer; provided however, that written notice and an opportunity to be heard shall be given to any person who may become liable for the amount owing prior to any final determination by the Commissioner.

Sec. 37-103. Commissioner rulemaking powers.

It shall be the duty of the Commissioner to ascertain the name of every person operating a hotel in the City that is liable for the collection of the tax levied by this article. The Commissioner shall have the power to adopt rules and guidelines not inconsistent with this code for the purpose of determining the amount due to the City. A copy of any such rule or guideline shall be on file and available for public examination at the Commissioner's office. Failure or refusal to comply with any rule or guideline promulgated under this section shall be deemed a violation of this article,

Sec. 37-104. Violations of article.

Any person intentionally failing to file a report required by this article or otherwise violating or failing to comply with any provision of this article shall be guilty of a Class 1 misdemeanor. Each such failure shall constitute a separate offense. Conviction of such violation shall not relieve any person from the payment, collection, or remittance of the taxes provided in this article.

Cross reference(s)—Penalty for Class 1 misdemeanor, § 1-11.

Secs. 37-105—37-115. Reserved.