

BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Ordinance

At a regular meeting of the York County Board of Supervisors held in York Hall, Yorktown, Virginia, on the 20th day of December, 2022:

Present

Vote

Sheila S. Noll, Chairman
Thomas G. Shepperd, Jr., Vice Chairman
W. Chad Green
G. Stephen Roane, Jr.

Yea
Yea
Yea
Yea

Absent

Walter C. Zaremba

On motion of Mr. Green, which carried 4:0, the following ordinance was adopted:

AN ORDINANCE TO REPEAL AND REPLACE YORK COUNTY
CODE SECTIONS 21-92 THROUGH 21-102 PERTAINING TO
TRANSIENT OCCUPANCY TAX

BE IT ORDAINED by the York County Board of Supervisors this 20th day of December, 2022, that York County Code section 21-92 through 21-102 are repealed, and that new sections 21-92 through 21-102 are adopted, as follows:

Sec. 21-92. - Definitions.

(a) For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Accommodations means any room or rooms, lodgings, or accommodations in any hotel, motel, inn, club, tourist camp, tourist cabin, camping grounds, tourist home, short-term rental, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients within the county for a consideration. "Accommodations" does not include rooms or space offered by a person in the business of providing conference rooms, meeting space, or event space if the person does not also offer rooms available for overnight sleeping.

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

Accommodations intermediary shall mean any person other than an accommodations provider that (i) facilitates the sale of an accommodation, and (ii) either (a) 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; (b) collects a room charge from the customer; or (c) 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, “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 an accommodations provider.

“Accommodations intermediary” does not include a person:

- (a) If the accommodations are provided by an accommodations provider operating under a trademark, trade name, or service mark belonging to such person;
- (b) Who facilitates the sale of an accommodation if (i) 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 accommodations and (ii) 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
- (c) 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.

Accommodations provider shall mean 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.

Commissioner. Commissioner of the Revenue of the County of York, Virginia, or any duly authorized deputies or agents.

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

Person shall mean the same as such term is defined in Code of Virginia section 58.1-602.

Retail sale means a sale to any person for any purpose other than for resale

Room charge means the full retail price charged to the customer for the use of the 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.

Transient. Any person who, for any period of fewer than thirty (30) consecutive days, either at his own expense or at the expense of another, obtains accommodation as hereinabove defined, for which accommodation a room charge is made.

Treasurer. The Treasurer of the County of York, Virginia, or any duly authorized deputies or agents.

(Ord. No. 05-16, 6-21-05)

Sec. 21-93. - Levy; amount of tax.

(a) In addition to all other taxes of every kind now or hereafter imposed by law, there is hereby imposed and levied a tax equivalent to 5% of the total room charge by or for any such transient for **accommodation** as defined above. Any tax revenues realized from the tax rate in excess of 2% shall be designated and spent solely for tourism and travel, marketing of tourism, and related initiatives, as was authorized by Code of Virginia § 58.1-3819 prior to January 1, 2020.

(b) In addition to the tax provided for in subsection (a) above, commencing July 1, 2004, as provide in § 58.1-3823(C) of the Code of Virginia, there is hereby levied and imposed an additional transient occupancy tax of \$2 per room night for the occupancy of any **accommodation** provided to a transient. Such additional tax shall be collected at the time and in the manner provided by this Article. The revenues collected from such additional tax shall be distributed and expended as provided in § 58.1-3823(C) of the Code of Virginia.

(Ord. No. 04-8, 5-18-04; Ord. No. 06-27, 10-17-06; Ord. No. 18-13, 7-17-18; Ord. No. 21-11, 8-17-21)

Sec. 21-94. - Exemptions.

No tax shall be payable hereunder on room rental paid to any hospital, medical clinic, convalescent home or home for the aged.

Sec. 21-95. - Collection of tax.

(1) For any retail sale of accommodations not facilitated by an accommodations intermediary, the accommodations provider shall collect the total tax levied pursuant to this Article, including the additional transient occupancy tax levied pursuant to section 21-93(b), from the transient, or from the person paying for the accommodation, at the time that payment for the accommodation is made, computed on the total price paid for the use or possession of the accommodation, and shall remit the same to the County and shall be liable for the same.

(2) For any accommodations facilitated by an accommodations intermediary, the accommodations intermediary shall be deemed to have made the retail sale of the

accommodation and is responsible for collecting the tax levied for the accommodation from the transient or the person paying for the accommodation, at the time that payment for the accommodation is made, computed on the room charge and shall remit the same to the County and shall be liable for the same.

(3) For any transaction for the retail sale of accommodations involving two or more parties that meet the definition of 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 with the County's commissioner of the revenue. 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 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 the accommodations provider that are not collected by the accommodations intermediary.

(5) In any retail sale of any accommodations in which an accommodations intermediary does not facilitate the sale of the accommodation, 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 accommodation. In any retail sale of any accommodation 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.

(6) Subject to applicable laws, an accommodations intermediary shall submit to this locality the property addresses, gross receipts and number of room nights rented for all accommodations facilitated by the accommodations intermediary in this locality. Such information shall be submitted monthly.

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

Sec. 21-96. - Report and remittance of tax.

(a) 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 the revenue may prescribe and require, showing the property address of the accommodation, total room charge paid by the customer 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 County Treasurer. If a person, including an accommodations intermediary is collecting taxes from, or on behalf of, multiple accommodations, the report shall also be sufficient to identify the total room charges, number of room nights rented and tax owed on accommodations at each individual accommodation, including the accommodation's address. 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. Accommodation 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 an accommodations intermediary. All remittances received under this article by the commissioner shall be promptly turned over to the treasurer.

Collector's reports

It shall be the duty of every accommodations provider or accommodations 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 accommodations, and tax thereon for which that accommodations provider or accommodations intermediary may have been responsible for collecting and paying to the county. Accommodation providers who have had taxes collected by a third party such as an accommodations intermediary are also obligated to keep records under this section showing the amounts that were collected on their behalf by the third party. All records kept under this section shall be sufficient to identify each individual place of accommodation with respect to which the accommodation charges were collected, and the tax owed from transient stays at that accommodation, including the address of the place of accommodation and, where taxes were collected and remitted by an accommodation intermediary, identifying the accommodation provider on whose behalf the taxes were collected. The commissioner shall have the right to inspect all such records at any reasonable time.

Sec. 21-97. - Interest and penalties upon failure or refusal to remit tax or file report.

(a) If any person shall fail or refuse to remit 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 the tax owed, by the treasurer, a penalty of ten

percent (10%) or ten dollars (\$10.00), whichever is greater, for each such failure or refusal to remit taxes, and interest thereon at the rate of ten percent (10%) per annum on the amount of the tax and penalty from the date upon

which the tax is due as provided in this article. No such penalty shall exceed the amount of the tax owed.

(b) If any person shall fail or refuse to file a report required to be filed by this article within the time specified, there shall be added to the tax owed, by the commissioner of revenue, a penalty of ten percent (10%) or ten dollars (\$10.00), whichever is greater, for each such failure or refusal to file a report, which penalty shall become part of the tax owed at the time the penalty is assessed. No such penalty shall exceed the amount of the tax owed.

Sec. 21-98. - When commissioner to determine the amount of tax due.

If any person shall fail or refuse to collect the tax imposed under this article and to make, within the time provided, the reports and remittances required in this article, the commissioner shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the commissioner shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax payable by any person who has failed or refused to collect such tax, and to make such report and remittance, he shall proceed to determine and assess against such person such tax, penalty and interest as provided for in this article, and shall notify such person, by certified mail sent to his last know place of address, of the amount of such tax, interest and penalty, and the total amount thereof shall be payable within ten (10) days from the date of the mailing of such notice.

Sec. 21-99. - Tax immediately due and payable upon cessation of business.

The provisions of section 21-96 notwithstanding, whenever any person required to collect and remit the tax imposed and levied by this article shall go out of business, dispose of his business or otherwise cease to operate, all of such taxes collected shall thereupon be reported and remitted to the commissioner and remitted to the treasurer within thirty (30) days thereafter.

Sec. 21-100. - Records to be kept.

It shall be the duty of every person liable for the collection and payment to the county of any tax imposed by this article to keep and to preserve for a period of four (4) years such suitable records as may be necessary to determine and show accurately the amount of such tax as he may have been responsible for collecting and paying to the county. The commissioner may inspect such records at all reasonable times.

Sec. 21-101. - Violation and penalty.

Any person violating any provision of this article shall be guilty of a Class 1 misdemeanor. Each violation shall constitute a separate offense, and no

conviction shall relieve any such person from the collection and payment of the tax and the making of the report required by this article.

Secs. 21-102—21-119. - Reserved.

A Copy Teste:

Heather L. Schott, MMC
Deputy Clerk