

**TOWN OF IRVINGTON
ORDINANCE AMENDMENT # 202__ - __**

An Ordinance Amendment Regarding Transient Occupancy Taxes

WHEREAS, Town Council levies a transient occupancy tax on transients staying at lodgings and accommodations in the Town of Irvington; and

WHEREAS, state laws have changed about collection and remittance of certain transient occupancy taxes; and

WHEREAS, Town Council seeks to better levy and assess transient occupancy taxes and ensure better records thereof; and

WHEREAS, the legal authority for the proposed amendment is the Town Charter and § 15.2-1427 of the Code of Virginia (1950), as amended, and the Town Charter; and

NOW, THEREFORE, BE IT ORDAINED AND ENACTED, that the Town Council of the Town of Irvington, Virginia does hereby amend the Town Code as follows:

- 1. The following amendments are hereby adopted:**

TRANSIENT OCCUPANCY TAX

§ 34.01 STATEMENT OF INTENT.

A transient occupancy tax to be collected as set forth in this subchapter, for the general good and benefit of the citizens and the town; to better the life for its citizens and, among other things, to maintain and improve its infrastructure; said funds to be allocated and disbursed as solely determined by the Town Council.

§ 34.02 DEFINITION.

For the purpose of this subchapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

~~**TRANSIENT PERSON.** One who for a period of not more than 90 consecutive days, either at his or her own expense or at the expense of another, lodges or obtains lodging at any room, hotel, motel, tourist home, inn, bed and breakfast or other facility.~~

Accommodation means any public or private hotel, inn, hostelry, short-term rental, motel or rooming, boarding or lodging house within the Town 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, 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 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 (1) 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.

Town Treasurer means the Town Treasurer or other person designated by the Council to administer the transient occupancy tax for the town.

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.

§ 34.03 AMOUNT OF LEVY.

There is hereby imposed and levied by the town on each transient a transient occupancy tax in the amount set by Council from time to time of the charge made for each room rented to such transient. Such tax shall be collected from such transient at the time and in accordance with this subchapter and applicable state law.

§ 34.04 COLLECTION.

~~Every person, firm or corporation receiving any payment for lodging with respect to which a tax is levied under this subchapter 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 tax required to be collected under this section shall be deemed to be held in trust by the person, firm or corporation required to collect such taxes as provided in this subchapter.~~

For any lodging not facilitated by a lodging intermediary, the lodging provider shall collect the tax levied pursuant to this subchapter 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 town and remit the remainder, if any, to the hotel, which shall directly remit said remaining tax to the town. When the lodging occurs at a short-term rental, as defined in this subchapter, or any other accommodation that is not a hotel, the lodging intermediary is responsible for remitting the full amount of tax to the town. The taxes collected by any person shall be deemed to be held in trust for the town by the person required to collect them, until they have been remitted to the town as provided in this subchapter.

§ 34.05 REPORTS REQUIRED.

~~The person, firm or corporation collecting any tax as provided in this subchapter shall make a report thereof on such forms and setting forth such information as the Town Treasurer may prescribe and require, showing the amount of lodging charges collected, and taxes required to be collected. Such person shall sign and deliver such report to the Town Treasurer with remittance of the taxes collected.~~

~~Such report and remittance is required by the Town Treasurer covering taxes collected for each calendar month, on or before the twentieth day of the month following the month in which the taxes are collected.~~

Every person collecting any tax levied by this subchapter shall make out a report thereof, upon such forms and setting forth such information as the Town Treasurer 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 Town Treasurer together with a remittance of such tax, made payable to the Town of Irvington. 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 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 quarter, covering the amount of tax collected during the preceding quarter; provided, however, that transient occupancy tax reports and remittances for Inns, Hotels, Motels or Tourist Houses with a valid conditional use permit shall be made on or before the twentieth of each month, covering the amount of tax collected during the previous quarter. Lodging providers shall be required to file such reports with the Town Treasurer 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 subchapter by the Town Treasurer shall be promptly deposited in the proper town bank account and an accounting made to Council monthly.

§ 34.06 FAILURE TO COLLECT TAXES OR MAKE REPORTS.

~~If any person, firm or corporation, whose duty it is to do so, shall fail or refuse to collect the tax imposed under this subchapter and make timely report and remittance thereof, the Town Treasurer 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 Treasurer has procured whatever facts and information may be obtainable, upon which to base the assessment of any tax payable by any person, firm or corporation who has failed to collect, report or remit such tax the Treasurer shall proceed to determine and assess against such person, firm or corporation the tax, penalty and interest provided in this subchapter, and shall notify the person, firm or corporation by registered mail sent to his or her last known address of the amount of such tax, penalty and interest. The total amount thereof shall be payable ten days after the date such notice is sent.~~

(a) Penalties. 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 subchapter within the time and in the amount required, there shall be added to such tax by the Town Treasurer a penalty in the amount of ten (10) percent of such tax, or a minimum of two dollars (\$5.00), if such failure is for not more than thirty (30) days in duration.

(b) Assessment of Penalties. If any person, whose duty it is to do so, shall fail or refuse to collect the tax imposed under this subchapter and make timely report and remittance thereof, the Town Treasurer 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 Town Treasurer 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 Town Treasurer shall proceed to determine and assess against such person the tax, penalty and interest provided in this subchapter, 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.

(c) Collection. It shall be the duty of the Town Treasurer to ascertain the name of every lodging provider and lodging intermediary providing lodging in the town, liable for the collection of the tax imposed by this subchapter, who fails, refuses or neglects to collect such tax or to make the reports and remittances required by this subchapter. The Town Treasurer may have issued for such person a summons or warrant, which may be served upon such person in the manner and proceed as provided by law.

§ 34.07 RECORDS REQUIRED.

~~It shall be duty of every person, firm or corporation liable for the collection and payment to the town of any tax imposed by this subchapter to keep and preserve for a period of four years all suitable records as may be necessary to determine the amount of tax due to have been collected and paid to the town. The Town~~

~~Manager, or a designated representative, may inspect such records at all reasonable times.~~

It shall be the duty of every lodging provider or lodging intermediary liable for taxes under this subchapter or for the collection and remittance of any tax imposed by this subchapter, 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 Town. 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 Town Treasurer or other town agent shall have the right to inspect all such records at any reasonable time.

§ 34.08 DUTY OF COLLECTOR GOING OUT OF BUSINESS.

Whenever any person required to collect and remit to the town any tax imposed by this subchapter 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.

- 2. BE IT FURTHER ORDAINED AND ENACTED, that this ordinance shall take effect beginning with any transient occupancy for January 2023 or the first quarter of 2023 (January, February, and March 2023), as may be applicable.**

ADOPTED:

AYES:

NAYS:

ABSTENTIONS:

ABSENT:

ATTEST:

Mayor of Irvington, Virginia