

**TOWN OF IRVINGTON
ORDINANCE AMENDMENT # 2023-03**

**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 information received about best practices in this regard, and Town Council wishes to amend its ordinance as a result and at the same time, make other non-substantive changes; 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 portion of the Town Code (§§ 34.01, *et seq.*), 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 portion of the Town Code (§§ 34.01, *et seq.*), the following definition shall apply unless the context clearly indicates or requires a different meaning.

Accommodation means any room or space for which tax is imposed on the retail sale pursuant to this portion of the Town Code (§§ 34.01, *et seq.*) and includes but is not limited to, any public or private hotel, inn, apartment, hostelry, tourist home or house, motel, rooming house, or other lodging place within the town offering lodging, and the owner and operator thereof, who for compensation, furnishes lodging to any transients as hereinafter defined.

“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:

1. If the accommodations are 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 (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
3. 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 or disposition of use or possession or the sale or disposition of the right to use or possess.

“Person” shall mean, but is not limited to, individuals, firms, partnerships, associations, corporations, persons acting in representative capacity, and combinations of individuals of whatever form and character.

“Retail sale” shall mean the sale or charges for any room or rooms, lodgings, or accommodations furnished to transients for less than 90 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space, or other accommodations are regularly furnished to transients for a consideration.

“Room charge” shall mean the full retail price charged to the transient 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. Any additional charges made in connection with the charging for accommodations are deemed to be a part of the charge for the room and are subject to the tax. For example, additional charges for movies, local telephone calls and similar services are subject to the tax.

Town Treasurer means the Town Treasurer, an agent thereof, 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 the use or possession of a room or space occupied for lodging in any accommodations as hereinabove defined for which lodging or use of space a price is charged.

§ 34.03 AMOUNT OF LEVY.

There is hereby imposed and levied by the town on each transient a transient occupancy tax in the percentage of gross receipts or amount set by Council from time to time of the total charge made for each room or space occupied for lodging by or for any such transient to any accommodations. Such tax shall be

collected from such transient at the time and in accordance with this portion of the Town Code (§§ 34.01, et seq.) and applicable state law.

§34.04

COLLECTION.

- (1) For any retail sale of accommodations not facilitated by a lodging intermediary, the accommodations provider shall collect the tax levied pursuant to this portion of the Town Code (§§ 34.01, et seq.) from the transient, or from the person paying for the lodging, at the time that payment for the lodging is made, shall remit the same to the town and shall be liable for the same.
- (2) For any retail sale of accommodations facilitated by an accommodations intermediary, the following shall apply:
 - a. the accommodations intermediary shall be deemed to have made the retail sale of an accommodation and is responsible for collecting the tax levied pursuant to this portion of the Town Code (§§ 34.01, et seq.) from the transient or the person paying for the lodging, at the time that payment for the accommodations is made. The accommodations intermediary shall collect the tax imposed pursuant to this portion of the Town Code (§§ 34.01, et seq.), computed on the room charge and shall remit the same to the town and shall be liable for the same. 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.
 - b. 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 as a dealer with the locality. In such an 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.
- (3) For any retail sale of accommodations facilitated by an accommodations intermediary, nothing herein shall relieve the accommodations provider from liability for any taxes on any amounts charged directly to the customer by the accommodations provider that are not collected and remitted to the town by the accommodations intermediary.

- (4) 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 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.
- (5) 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 portion of the Town Code (§§ 34.01, *et seq.*).

§ 34.05 REPORTS AND REMITTANCES.

- (1) Every person collecting any tax levied by this portion of the Town Code (§§ 34.01, *et seq.*) shall make out a report thereof, upon such forms and setting forth such information as the Town Treasurer 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, 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. The requirements of this section shall expressly apply to an accommodations intermediary, in addition to others collecting the tax.
- (2) The Town Treasurer shall determine whether the report is in proper form, accept the tax on behalf of the town, promptly deposit in the proper town bank account, and make an accounting to Council monthly.
- (3) Accommodations intermediaries shall include the property addresses and monthly gross receipts for each of the accommodations in the town which they facilitate. Such information shall be submitted monthly. For auditing and accuracy purposes, a combined or collective

amount of gross receipts does not comply with the report and remittance requirements of this section.

- (4) Said reports and remittances shall be made on or before the twentieth day of the month following each month and covering the amount of tax collected during the preceding month. Provided, however, any person making reports and remittances not involving either accommodations facilitated by an accommodations intermediary, or accommodations in hotels, inns, motels or tourist houses under a conditional use permit under the zoning ordinance, may instead elect to make such reports and remittances quarterly (on or before January 20, April 20, July 20, and October 20) covering the amount of tax collected during the preceding quarter (January 1 – March 31, April 1 – June 30, July 1 – September 30, and October 1 – December 31, as applicable).

§ 34.06 FAILURE TO REMIT TAXES OR MAKE REPORTS.

(a) Penalties. If any person, whose duty it is to do so, shall fail or refuse to make a report and/or remit the tax as required by this portion of the Town Code (§§ 34.01, *et seq.*) within the time and in the amount required, there shall be added to such tax by the Town Treasurer on the day after the report and remittance is due a penalty in the amount of ten (10) percent of such tax, or a minimum of two dollars (\$5.00 Such penalty shall be added to, and considered part of, the taxes due.

(b) Interest. Beginning on the day after the report and remittance is due, or taxes are otherwise due, interest shall accrue on all taxes due and unpaid at the rate of ten (10) percent per annum of the amount of taxes due and unpaid.

(c) Estimate of Assessment. 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/or 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 article, 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.

- (d) Collection. It shall be the duty of the Town Treasurer to ascertain the name of every accommodations provider and accommodations intermediary providing lodging in the town, 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 portion of the Town Code (§§ 34.01, et seq.). The Town Treasurer may cause to be 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 the duty of every accommodations provider or lodging intermediary liable for taxes under this portion of the Town Code (§§ 34.01, et seq.) or for the collection and remittance of any tax imposed by this portion of the Town Code (§§ 34.01, et seq.), 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 accommodations provider or lodging intermediary may have been responsible for collecting and paying to the town.

Accommodations providers who have the taxes owed on their accommodation collected by a third party such as a accommodations 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 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 accommodations intermediary, identifying the accommodations 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 portion of the Town Code (§§ 34.01, et seq.) 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.

§ 34.09 PENALTY

Any person intentionally failing to file a report required by this portion of the Town Code (§§ 34.01, *et seq.*) shall be guilty of a misdemeanor, and upon conviction thereof, punishment shall not exceed that prescribed for a Class 3 misdemeanor as provided in Section 18.2-11 of the Code of Virginia (1950), as amended. Each such failure shall constitute a separate offense. Such conviction shall not relieve any such person from the payment, collection or remittance of such tax, penalties and interest, as provided in this portion of the Town Code (§§ 34.01, *et seq.*).

2. BE IT FURTHER ORDAINED AND ENACTED, that this ordinance shall take effect beginning immediately.

ADOPTED:

AYES:

NAYS:

ABSTENTION:

ABSENT:

ATTEST:

Mayor of Irvington, Virginia