

INTRODUCED: May 8, 2023

AN ORDINANCE No. 2023-151

To repeal City Code §§ 26-724, concerning definitions for transient lodging taxes, 26-725, concerning levy of transient lodging taxes, 26-726, concerning collection of transient lodging taxes, 26-727, concerning violations, 26-728, concerning reports required, 26-729, concerning enforcement, and 26-730, concerning the effective date of ch. 26, art. X of the City Code; to amend ch. 26, art. X of the City Code by adding therein new §§ 26-724.1—26-732, concerning transient occupancy taxes; and to amend City Code § 26-430, concerning penalties for non-payment of property taxes, all for the purpose of aligning the City Code with state law pertaining to transient occupancy taxes.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: MAY 22 2023 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That sections 26-724 through 26-730 of the Code of the City of Richmond (2020) be and hereby are **repealed** as follows:

~~[Sec. 26-724. 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:~~

AYES: _____ NOES: _____ ABSTAIN: _____

ADOPTED: _____ REJECTED: _____ STRICKEN: _____

~~Day means any 24-hour period or portion thereof for which a room rental charge is made.~~

~~Hotel means any public or private hotel, inn, hostelry, tourist home or house, motel, roominghouse or other lodging place containing ten or more bedrooms within the City offering lodging, as defined in this section, for compensation to any transient, as defined in this section.~~

~~Lodging means space or room furnished any transient.~~

~~Transient means any person who, for a period of not more than 90 consecutive days, either at the person's own expense or at the expense of another, lodges or obtains lodging at any hotel. However, this term shall be deemed not to include a person enrolled in and attending full-time a school, college or university within the corporate City limits; nor shall it include a person who is in the City for the commercial production of a film or video and who commits in advance to lodging at a hotel and actually stays for a minimum of 30 consecutive days.~~

~~Sec. 26-725. Levy.~~

~~There is hereby imposed and levied by the City on each transient a lodging tax in the amount of eight percent of the charge made for each room rented to such transient in a hotel. Such tax shall be collected from such transient at the time and in the manner provided in this article.~~

~~Sec. 26-726. 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 required to be collected under this section shall be deemed to be held in escrow by the person required to collect such taxes until remitted to the City as required in this article.~~

~~Sec. 26-727. Violations.~~

~~(a) — It is unlawful not to remit the tax due under this article.~~

~~(b) — Each such violation or 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 article.~~

~~(c) — The City reserves the right to prosecute violations of the City's tax laws under the applicable criminal provisions of State law.~~

~~Sec. 26-728. Reports required.~~

~~The person collecting any tax as provided in this article shall make out a report thereof upon such forms and setting forth such information as the Director of Finance may prescribe and require, showing the amount of lodging charges collected and the tax required to be collected, and shall sign and deliver such report to the Collector with a remittance of such tax. Such report and remittance shall be made as required by the Director of Finance which shall be at least once in every 30-day period and not later than the 20th day of the month next following the month in which such tax was collected.~~

~~Sec. 26-729. Enforcement.~~

~~It shall be the duty of the Director or designee to enforce this article.~~

~~Sec. 26-730. Effective date.~~

~~This article shall be in force and effect July 1, 1970, and shall continue to be in force and effect until otherwise provided by law or ordinance.]~~

§ 2. That Chapter 26, Article X of the Code of the City of Richmond (2020) be and hereby is amended and reordained by **adding therein new sections** numbered 26-724.1 through 26-732 as follows:

Sec. 26-724.1. Definitions.

For the purposes of this article, the following words and phrases shall have the

meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accommodations means, any room or space for which tax is imposed on the retail sale pursuant to this article 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 city of Richmond offering lodging, and the owner and operator thereof, who for compensation, furnishes lodging to any transients as hereinafter defined.

Accommodations intermediary means any person other than an accommodations provider that (i) facilitates the sale of accommodations and (ii) either (a) charges to or collects from the transient a room charge or (b) charges a 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 transient and an accommodations provider.

The phrase “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 transient 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 of the Code of Virginia, 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 to use or possess.

Collector means the Director of Finance or the designee thereof.

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

Retail Sale means the sale or charges for any 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 accommodations are regularly furnished to transients for a consideration.

Room charge means 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 rental of 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.

Transient means any person who, for any period of fewer than 90 consecutive

days, either at his own expense or at the expense of another, obtains the use or possession of accommodations as herein above defined, for which lodging or use of space a price is charged.

Sec. 26-725.1. Levy and rate.

In addition to all other taxes of every kind now or hereafter imposed by law, there is hereby imposed and levied, for the purpose of funding the general operation of the city government, a tax equivalent to eight percent of the total room charge paid by the transient for the use or possession of a room or space occupied for lodging by or for any such transient to any accommodations.

Sec. 26-726.1. Exceptions.

No tax shall be payable hereunder on room charge paid:

- (a) To any hospital, medical clinic, convalescent home or home for the aged.
- (b) In the form of a space rental paid to any travel campground.
- (c) By any person enrolled in and attending full-time a school, college, or university within the corporate City limits.
- (d) By any person who is within the corporate City limits for commercial production of a film or video and who commits in advance to lodging at accommodations for a minimum of 30 days and who actually lodges at the accommodations for a minimum of 30 days.

Sec. 26-727.1. Collection.

- (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 room charge paid for the use or 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 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.

(d) 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.

(e) All taxes collected pursuant to this chapter are deemed to be held in trust for the City.

Sec. 26-728.1. Reports and remittances.

(a) The person collecting any such tax shall make out a report upon such forms and setting forth such information as the collector may prescribe and require, showing the total room charge paid by the transient 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. The report shall be submitted to the collector.

(b) The collector shall determine whether the report is in proper form.

(c) The person collecting any such tax shall remit the tax to the collector.

(d) Subject to applicable laws, an accommodations intermediary shall submit to the collector the property addresses and gross receipts for all accommodations facilitated by the accommodations intermediary within the corporate limits of the City. Such information shall be submitted monthly.

(e) 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.

Sec. 26-729.1. Determination of tax due by the collector.

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

Sec. 26-730.1. Cessation of business; report and tax due immediately.

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

Sec. 26-731. Collector; other powers and duties.

It shall be the duty of the collector to ascertain the name of every person operating accommodations within the corporate limits of the City that is liable for the collection of the tax levied by this article. The collector shall have the power to adopt rules and regulations not inconsistent with the provisions of this article for the purpose of determining the amount due to the City under this article; and a copy of such rules and regulations shall be on file and available for public examination in the collector's office. Failure or refusal to comply with any rules and regulations promulgated under this section shall be deemed a violation of this article.

Sec. 26-732. Penalty.

Any person intentionally failing to file a report required by this article 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 chapter.

§ 3. That section 26-430 of the Code of the City of Richmond (2020) be and is hereby **amended** and reordained as follows:

Sec. 26-430. Penalty.

(a) Whenever any taxpayer shall fail, refuse or neglect to pay any property taxes levied under Sections 26-458 and 26-460 on or before June 5 or within 60 days of acquiring a tax situs in the City in the year for which they are levied, there shall be added a penalty of ten percent of the total taxes due or \$10.00, whichever is greater. In no case shall the penalty exceed the amount of the tax.

(b) Whenever any person shall fail, refuse or neglect to pay any tangible personal property or machinery and tools taxes levied under Section 26-459 on or before June 5 of the tax year, there shall be added a penalty of ten percent of the taxes due or \$10.00, whichever is greater. In no case shall the penalty exceed the amount of the tax. Any tax remaining unpaid, in whole or in part, 60 days after the due date of each year shall incur an additional penalty of five percent of the tax due and unpaid.

(c) If any person shall fail, refuse or neglect to remit to the collector any [~~admissions, lodging, meals or short-term rental~~] taxes required to be collected and paid under Articles VIII through X and XVII of this chapter within the time and amount specified, there shall be added to such tax a penalty of ten percent or \$10.00, whichever is greater. In no case shall the penalty exceed the amount of the tax.

§ 4. This ordinance shall be in force and effect on July 1, 2023.



City of Richmond

Intracity Correspondence

O&R REQUEST

DATE: Tuesday, April 18, 2023

EDITION: 1

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor

THROUGH: J.E. Lincoln Saunders, Chief Administrative Officer

THROUGH: Sabrina Joy-Hogg, Deputy Chief Administrative Officer

Sabrina Joy-Hogg (Apr 21, 2023 09:06 EDT)

THROUGH: Kevin Vonck, Director of Planning and Development Review

THROUGH: Jason May, Director of Budget and Strategic Planning

Jason May (Apr 19, 2023 17:01 EDT)

FROM: Sheila White, Director of Finance

RE: Transient Occupancy Tax for Short-Term Rentals (AirBNB, etc.)

ORD. OR RES. No.

PURPOSE: To extend the collection of transient lodging taxes to short-term accommodation rentals administered by the accommodation provider or an accommodation intermediary (e.g., AirBNB, VRBO, etc.) pursuant to § 58.1-3826. of the Code of Virginia.

REASON: § 58.1-3826. of the Code of Virginia, effective October 1, 2022, extended the legal scope of the transient occupancy tax to include short-term accommodation rentals. This O&R Request and ensuing legislation will permit the City to collect said taxes from short-term accommodation providers and intermediaries.

RECOMMENDATION: The Administration recommends adoption of this ordinance.

BACKGROUND: The Code of Virginia's § 58.1-3819. Transient occupancy tax. provides the legislative authority that, "Any county, by duly adopted ordinance, may levy a transient occupancy tax on hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms rented out for continuous occupancy for fewer than 30 consecutive days. The tax shall be imposed on the total price paid by the customer for the use or possession of the room or space

occupied in a retail sale. Such tax shall be in such amount and on such terms as the governing body may, by ordinance, prescribe.” This is commonly referred to as the “Hotel Tax”.

As a result, the Code of Richmond, in Article X. – Transient Lodging Tax Sec. 26-725. - Levy., states, “There is hereby imposed and levied by the City on each transient a lodging tax in the amount of eight percent of the charge made for each room rented to such transient *in a hotel* [emphasis added].”

Non-hotel short-term room or home rentals are nothing new, but their popularity in recent years has increased thanks to the assistance of modern technology provided by a number of businesses that the Commonwealth now defines as “accommodation intermediaries”. Examples of these accommodation intermediaries include Airbnb, Vrbo, and any similar company which, “facilitates the sale of an accommodation, 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.”

In response to this increase in popularity of non-hotel short-term rentals, the Commonwealth, effective October 1, 2022 supplemented the transient occupancy tax legislation via § 58.1-3826. This addition extends the scope of transient occupancy tax with six sub-sections which are summarized as follows:

- A. Transient lodging tax is only imposed for rooms or spaces that are suitable or intended for occupancy for dwelling, lodging, and sleeping purposes;
- B. If the sale of the accommodation is not facilitated by an intermediary the provider will collect and remit the tax;
- C. If the sale of the accommodation is facilitated by an intermediary the intermediary will collect and remit the tax;
- D. If there are two intermediaries (e.g., an intermediary uses a third party to collect and remit the tax) they may make an agreement as to who will collect and remit the tax;
- E. Whoever collects and remits the tax must add the tax to the total price on the bill, invoice, etc. to the customer;
- F. Intermediaries must provide localities with property addresses and gross receipts for all accommodations that they facilitate in said locality on a monthly basis.

This legislative change is not unique to Richmond. A number of Virginia localities are taking advantage of the extended scope of the transient occupancy tax. In order to ensure the ease of payment and compliance of intermediaries the Treasurers’ Association of Virginia has provided draft ordinance language which the Administration has utilized as the basis of this proposed legislative change. It should be noted that this proposed change in code will retitle Article X. to Transient *Occupancy* Tax to better align with the enabling legislation.

The core purpose of this O&R Request is to amend the Code of Richmond to take advantage of Virginia Code § 58.1-3826. Scope of transient occupancy tax. This will engender equity between traditional hotels and short-term accommodations. Additionally, an equivalent tax structure for both traditional hotels and short-term rental accommodations will create additional revenues for the City, however, in a slightly circuitous fashion.

Increased revenues will be slightly circuitous due to the City's relationship with the Greater Richmond Convention Center Authority (GRCCA). The City and the surrounding counties of Chesterfield, Hanover, and Henrico form the authority. Under GRCCA's Hotel Tax Payment Agreement, a non-binding obligation subject to local appropriation, the City and its counterpart counties make monthly payments to GRCCA equal to the total amount collected from the 8% transient occupancy tax.

However, under the GRCCA Interlocal Agreement, the amount of tax remitted in excess of the participating jurisdictions' respective allocated share is rebated to the locality. While these rebates have recently been reduced given the impacts of COVID-19 on travel, from fiscal years 2018 through 2022 these rebates averaged nearly \$1 million, ranging from \$2.2 million prior to the pandemic to zero dollars in fiscal year 2022 as a result of the pandemic.

A preliminary revenue projection was performed utilizing short-term accommodation rental data for the Richmond market. This projection utilized two approaches to derive total taxable receipts and resulting revenues based on 2022 market average data by month. The results are detailed in the Table 1 below.

TABLE 1: Short-term Rental Transient Occupancy Tax Potential Revenue Projection

	Method	Receipts	Tax Rate	Revenue
<i>I</i>	Daily Rate x Average Occupancy x Active Listings =	\$40.8M	x 8.0%	\$3.3M
<i>II</i>	Monthly Revenue x Active Listings =	\$40.6M		\$3.2M

The average of the two projection approaches results in an anticipated additional revenue amount of \$3,250,000. As hotel based transient lodging taxes continue to improve post COVID, the addition of these short-term accommodation revenues will increase future rebates considerably.

FISCAL IMPACT / COST: Minimal. The transient lodging taxes will be collected through an already existing process. However, it is anticipated that there will be additional staff time to comply with the ensuing legislation (updating of forms, revisions to policies and standard operating procedures, editing City web pages, responding to accommodation provider/intermediary inquiries, auditing, and enforcement).

In future fiscal year budgets, additional FTEs may be requested to administer, audit, and enforce this expanded tax type.

FISCAL IMPLICATIONS: The expansion of transient lodging taxes to short-term rental accommodations will increase revenues to the City. However, transient lodging taxes must be remitted to the Greater Richmond Convention Center Authority to cover operating costs and the surplus is then refunded to the City. It is expected that this expanded tax type will increase the total amount of refunds the City receives in the future.

BUDGET AMENDMENT NECESSARY: Yes

REVENUE TO CITY: \$3,250,000

DESIRED EFFECTIVE DATE: Saturday, July 1, 2023

REQUESTED INTRODUCTION DATE: Monday, May 8, 2023

CITY COUNCIL PUBLIC HEARING DATE: Monday, May 22, 2023

REQUESTED AGENDA: Regular

RECOMMENDED COUNCIL COMMITTEE: Thursday, May 18, 2023 - Finance and Economic Development Standing Committee

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES:

AFFECTED AGENCIES:

- Department of Finance
- Department of Budget and Strategic Planning
- Department of Planning and Development Review

RELATIONSHIP TO EXISTING ORD. OR RES.: N/A

REQUIRED CHANGES TO WORK PROGRAM(S):

ATTACHMENTS: Proposed Legislative Draft Language

STAFF: Jeff Crawford, Program and Operations Manager – Department of Finance x3056