

ORDINANCE #23-03

TRANSIENT OCCUPANCY TAX

WHEREAS, after a duly advertised and held public hearing on the 8th day of June 2023, the Board of Supervisors of Essex County believes it is appropriate to adopt ARTICLE XIV – Transient Occupancy Tax.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED, that the Board of Supervisors of Essex County does hereby adopt Article XIV – Transient Occupancy Tax.

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ARTICLE XIV. – TRANSIENT OCCUPANCY TAX

Sec. 28-321. - Purpose.

This article requires Lodging Facilities, including Accommodations Intermediaries, operating in Essex County, Virginia to collect and remit a Transient Occupancy Tax (TOT).

Sec. 28-322. - Authority.

This article is adopted pursuant to the authority granted by Code of Virginia, Title 58.1, Chapter 38, Article 6, as amended.

Sec. 28-323. - Definitions.

The following words and phrases when used in this Article, for the purposes of this Article, have the meanings respectively ascribed to them in this Section, except in those instances where the context clearly indicates a different meaning:

Accommodations means any room or rooms, lodgings, accommodations, or space at a Lodging Facility for which tax is imposed on the retail sale of the same pursuant to this Article.

Accommodations fee means the room charge less the discount room charge, if any, provided that the accommodations fee must not be less than **\$0**.

Accommodations intermediary means 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

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the purchase of the right to use accommodations via a transaction directly, including 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 accommodation provider operating under a trademark, trade name, or service mark belonging to that 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 accommodation 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 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 to use or possess.

County means the County of Essex, Virginia.

Commissioner shall mean the Commissioner of the Revenue of the County of Essex, Virginia, or any of his/her duly authorized deputies or agents.

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

Lodging Facility means any public or private hotel, lodge, inn, apartment hotel, hostelry, tourist camp, tourist cabin, tourist home or house, camping grounds, club, motel, rooming house, any place that offers Short-Term Lodging, or other place within the County offering accommodations for one or more persons at any one time, and the owner and operator thereof, who, for compensation, furnishes accommodations to any transients as hereinafter defined.

Person means individuals, firms, partnerships, associations, corporations, persons acting in representative capacity and combinations of individuals of whatever form and character.

Room charge means the total charge made to, or total price paid by or for, a transient in a retail sale for the use or possession of accommodations at any such Lodging Facility before taxes. “Room charge” includes any fee charged to the customer and

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retained as compensation for facilitating the sale, whether described as an accommodations fee, facilitation fee, or any other name.

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

Transient means any person who, for any period of less than thirty consecutive days either at his/her own expense or at the expense of another, obtains accommodations in any Lodging Facility as hereinabove defined, for which a charge is made.

Treasurer shall mean the Treasurer of the County of Essex, Virginia, or any of his/her duly authorized deputies or agents.

Sec. 28-324. - Levy; amount of tax.

- (a) Pursuant to Virginia Code § 58.1-3819, in addition to all other taxes, there is hereby imposed and levied a tax equivalent to **six (6) percent** of the total room charge paid by or for any such transient for the use or possession of accommodations; provided however, that the tax imposed by this subsection will not be imposed on any transient occupancy in any Lodging Facility that is located within any town that has imposed a tax on transient occupancy.
- (b) Any excess from a rate over two percent but not exceeding five percent shall be designated and spent solely for tourism and travel, marketing of tourism or initiatives that, as determined after consultation with the local tourism industry organizations, including representatives of lodging properties located in the county, attract travelers to the locality, increase occupancy at lodging properties, and generate tourism revenues in the locality.
- (c) Any excess over five percent, combining the rates of all taxes imposed pursuant to this article, shall not be restricted in its use, and may be spent in the same manner as general revenues.

Sec. 28-325. - Exemptions.

No tax is payable hereunder on the total room charge paid for accommodations to any hospital, medical clinic, convalescent home, or home for the aged.

Sec. 28-326. - Collection of tax.

- (a) For any retail sale of accommodations facilitated by an accommodation intermediary, the accommodations intermediary will be deemed a facility making a retail sale of an accommodation. The accommodations intermediary must collect the tax imposed pursuant to this Article, computed on the total room charge, from the person paying for the accommodations at the time payment for such accommodations is made and shall be liable for the same. The accommodations

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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.

(b) For any retail sale of accommodations not facilitated by an accommodation intermediary, the accommodations provider must collect the tax imposed pursuant to this Article, computed on the total room charge, from the person paying for the accommodations at the time payment for such accommodations is made and shall be liable for the same. 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.

Sec. 28-327. - Report and remittance of tax.

(a) For any retail sale of accommodations facilitated by an accommodations intermediary, the accommodations intermediary must remit the tax imposed pursuant to this Article to the Commissioner.

(b) For any retail sale of accommodations not facilitated by an accommodations intermediary, the accommodations provider must remit the tax imposed pursuant to this Article to the Commissioner.

(c) For any transaction for the retail sale of accommodations involving two or more parties that meet the definition of accommodations intermediary, nothing in this Article prohibits such parties from making an agreement regarding which party will be responsible for collecting and remitting the tax, so long as the party so responsible is registered with the Commissioner for purposes of remitting the tax. In such event, the party that agrees to collect and remit the tax will be the sole party liable for the tax, and the other parties to such agreement will not be liable for such tax.

(d) The person collecting any such tax required pursuant to this Article must make out a report on such forms and setting forth such information as the Commissioner may prescribe and require, showing the amount of total room charges collected, and the tax required to be collected, and must sign and deliver the same to the Commissioner with a remittance of such tax.

(e) Such reports and remittances must be made monthly on or before the 20th day of the month and covering the amount of tax collected during the preceding month. If the remittance is by check or money order; it must be payable to the County and all remittances received hereunder by the Commissioner must be promptly delivered to the Treasurer.

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(f) Each accommodations intermediary must submit to the Commissioner the property addresses and gross receipts for all accommodations facilitated by the accommodations intermediary in the County on a monthly basis.

Sec. 28-328. - Discount.

For the purpose of compensating the owner of any Lodging Facility collecting the tax imposed by this article, such owner shall be allowed **three (3) percent** of the amount of the tax due and accounted for in the form of a deduction on his/her monthly return, provided that the amount due is not delinquent at the time of payment.

Sec. 28-329. - Interest and penalties upon failure or refusal to remit tax.

If any accommodations provider or accommodations intermediary fails or refuses to remit to the Commissioner, the tax required to be collected and paid under this Article within the time and in the amount specified in this Article, the Commissioner will add a penalty of **ten (10) percent**, and if the tax remains delinquent and unpaid for a period of one month from the date the same is due and payable, interest will be charged on the unpaid balance at the applicable interest rate for unpaid taxes under Section 28-2, as amended. Such interest will accrue from the date on which the tax was due and payable.

Sec. 28-330. - When the Commissioner to determine the amount of tax due.

If any person required to collect and remit the tax imposed by this Article fails to file a statement and a remittance, or if the Commissioner has reasonable cause to believe that an erroneous statement has been filed; the Commissioner may proceed to determine the amount due to the County pursuant to Va. Code § 58.1-3903.

Sec. 28-331. - Tax immediately due and payable upon cessation of business.

Whenever any person required to collect and pay to the County a tax under Section 28-326 et seq. quits or otherwise disposes of the business, any tax payable under the provisions of this Article to the County becomes immediately due and payable, and such person must immediately make a report and pay the tax due.

Sec. 28-332. - Powers and duties of Commissioner generally; rules and regulations.

The Commissioner will ascertain the name of every person operating a Lodging Facility in the County liable for the collection of the tax levied by this Article. The Commissioner or Treasurer has the power to adopt rules and regulations not inconsistent with the provisions of this Article and the Code of Virginia for the purpose of carrying out and enforcing the payment, collection and remittance of the tax herein levied; and a copy of such rules and regulations will be on file and available for public examination in the

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Commissioner’s office during regular office hours. Failure or refusal to comply with any rules and regulations promulgated under this Section is a violation of this Article.

Sec. 28-333. - Penalty for violation of Article.

Any person convicted of willful failure or refusal to file a tax return at the times required by this Article will be subject to criminal penalties. If the tax lawfully assessed in connection with the return that was not filed is **\$1,000 or less**, then such failure or refusal to file will be punishable as a Class 3 misdemeanor. If the tax lawfully assessed in connection with the return that was not filed is **more than \$1,000**, then such failure or refusal to file will be punishable as a Class 1 misdemeanor. In determining the penalty to be applied in the event that a person has not filed a tax return as required by this Article, the penalty will be based on the amount due to the County as determined by the Commissioner. Each such failure or refusal will constitute a separate offense. Such conviction will not relieve any such person from the payment, collection, or remittance of such tax, plus penalties and interests, as provided in this Article.

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ADOPTED: this 8th day of June 2023.

CERTIFICATION of ADOPTION RESOLUTION

The undersigned Clerk of the Board of Supervisors of the County of Essex, Virginia certifies that the Ordinance set forth above was duly adopted during an open public meeting on the 8th day of June 2023 by a majority of the members of the Essex County Board of Supervisors with the following votes:

- AYE: Akers, Gill, Johnson, Magruder, Smith
- NAY: N/A
- ABSTENTION: N/A
- ABSENT: N/A

Signed this 9th day of June 2023.

ATTEST:

April L. Rounds, Clerk
Board of Supervisors of the County of Essex, Virginia