



County of King William, Virginia

## Board of Supervisors

### ORDINANCE 07-24

#### AN ORDINANCE TO AMEND THE CODE OF THE COUNTY OF KING WILLIAM, VIRGINIA TO ADD ARTICLE X TO CHAPTER 70.

**WHEREAS**, pursuant to Virginia Code § 58.1-3819 the County, by duly adopted ordinance, may impose a transient occupancy tax; and

**WHEREAS**, the King William County Board of Supervisors wish to adopt such an ordinance;

**NOW, THEREFORE, BE IT ORDAINED AND ENACTED**, that the Board of Supervisors of King William County, Virginia, does this 20th day of May, 2024, amend the King William County Code by adding Article X, "Transient Occupancy Tax," to Chapter 70, "Taxation" and have such Article state as follows:

#### **"Article X. Transient Occupancy Tax**

##### **Sec. 70-363. – Definitions.**

For the purposes of this Article, the following words and phrases mean as follows, except where the context clearly indicates a different meaning:

*Accommodations* mean any room or space, suitable or intended for occupancy by transients for dwelling, lodging, or sleeping purposes, where a price is paid in a retail sale by or for a transient for the use or possession of the room or space in any hotel, motel, boarding house, travel campground, short-term rental, homestay or other facility offering guest rooms rented out for continuous occupancy for fewer than thirty (30) consecutive days.

*Accommodations fee* means the room charge less the discount room charge, if any, provided that the accommodations fee may 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 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; or
- (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 of the Virginia Code, when acting within the scope of such license.

*Accommodations provider* means any person who 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.

*Affiliate* means with respect to any person, any other person directly or indirectly controlling, controlled by, or under common control with such person. For purposes of this definition, "control" (including controlled by and under common control with) means the power, directly or indirectly, to direct or cause the direction of the management and policies of such person whether through ownership or voting securities or by contract or otherwise.

*Commissioner of the Revenue* means the commissioner of the revenue of King William County, 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.

*Operator* means the proprietor of any dwelling, lodging, or sleeping accommodations offered as an accommodation subject to this Article, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other possessory capacity.

*Person* includes, but is not limited to, an individual, firm, partnership, association, corporation, person acting in a representative capacity, or any combination of individuals of whatever form and character.

*Retail sale* means 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 accommodations are regularly furnished to transients for a consideration.

*Room charge* means the full retail price charged to the customer by the accommodations intermediary for the use of the accommodations, including any accommodations fee, 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. The room charge will be determined in accordance with state law and regulations, and related rulings of the Virginia Department of Taxation on the same.

*Short-term rental* means the provision of a room or space that is suitable or intended for occupancy for dwelling, sleeping, or lodging purposes, for less than thirty (30) consecutive days, in exchange for a charge for the occupancy.

*Transient* means the same person who, for a period of less than thirty (30) consecutive days, either at his own expense or at the expense of another, obtains the use or possession of a room or space occupied for lodging in any accommodation for which lodging or use of space a price is charged.

*Treasurer* means the treasurer of King William County, Virginia, or any duly authorized deputies or agents.

**Sec. 70-364. – Transient occupancy tax imposed; amount.**

There is hereby imposed and levied by the County of King William, Virginia on each transient a tax equal to seven percent of the total amount paid in a retail sale by the customer for any accommodation. Such tax must be collected from such transient at the time and in the manner provided in this Article.

(a) Any retail sale of accommodations facilitated prior to July 1, 2024, will not be subject to the New Transient Occupancy Tax. All retail sale of accommodations facilitated after July 1, 2024, will be subject to the Transient Occupancy Tax.

**Sec. 70-365. – Exemptions.**

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

**Sec. 70-366 – Collection and Billing of Tax.**

(a) For any retail sale of accommodations not facilitated by an accommodations intermediary, the accommodations provider must collect the tax imposed pursuant to this Article, computed on the total price paid for the use or possession of the accommodations and shall remit the same to the County and shall be liable for the same. The accommodations provider must separately state the amount of the tax in the bill, invoice, or similar documentation provided to the customer and must add the tax to the total price paid for the use or possession of the accommodations.

- (b) For any retail sale of accommodations facilitated by an accommodations intermediary, the accommodations intermediary will be deemed under this Article as a facility making a retail sale of an accommodation. The accommodations intermediary must collect the tax imposed pursuant to this Article, computed on the room charge and must remit the same to the County and is liable for the same. The accommodations intermediary must separately state the amount of the tax on the bill, invoice, or similar documentation provided to the customer and add the tax to the room charge; thereafter, such tax is a debt from the customer to the accommodations intermediary, recoverable at law in the same manner as other debts.
- (c) If the total price paid by the customer for any accommodation includes any charge for services in addition to that of use or possession of the room or space occupied, then such portion of the total charge as represents only use or possession of the room or space occupied must be distinctly set out and billed to such transient as a separate item.
- (d) 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.
- (e) 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 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.
- (f) Every person receiving any payment in accordance with the provisions of this section for any accommodation with respect to which a tax is levied under this Article must collect the amount of tax thereby imposed from the transient on whom the tax is levied, or from the person paying for such accommodation, at the time payment for such accommodation is made. Such tax will be deemed to be held in trust by the person required to collect the tax until remitted to the County as required in this Article.

**Sec. 70-367 – Advertising payment or absorption of tax.**

No person shall advertise or hold out to the public in any manner, directly or indirectly, that all or any part of a tax imposed under this Article will be paid or absorbed by anyone, or that any purchaser will be relieved of the payment of all or any part of the tax.

**Sec. 70-368 – Report of collection and remittance of tax.**

- (a) *Generally.* Except as provided in subsection (b), the person collecting the tax levied under this Article is liable for the tax and must make a report upon such forms and setting forth such information as the Commissioner of the Revenue may prescribe and require. Such reports must show the amount of room charges collected 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 must be signed and delivered to the Commissioner of the Revenue. The Commissioner of the Revenue shall determine whether the report is in proper form and upon such determination shall cause a copy to be delivered to the Treasurer. The person collecting any such tax shall remit the tax to the Treasurer. Such report and remittance must be made at least once in every 30-day period and not later than the twentieth day of the month next following the month in which such tax was collected.
- (b) *Limitation of liability for accommodations intermediaries.* Notwithstanding the provisions of subsection (a), an accommodations intermediary is not liable for taxes under this Article remitted to an accommodations provider but that are then not remitted to the county by the accommodations provider. For any retail sale of accommodations facilitated by an accommodations intermediary, an accommodations provider is liable for that portion of the taxes under this Article that relate to the discount room charge only to the extent that the accommodations intermediary has remitted such taxes to the accommodations provider.

**Sec. 70-369 – Collector's records.**

- (a) If any person required to collect and remit the tax imposed by this Article fails to file a report, or if the commissioner of the revenue has reasonable cause to believe that an erroneous report has been filed, the commissioner of the revenue may proceed to determine the amount due to the county and in connection therewith shall make such investigations and take such testimony and other evidence as may be necessary and shall report any determination to the treasurer; 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 commissioner of the revenue.
- (b) Every person liable for the collection and payment to the county of any tax imposed by this Article shall keep, for two years, all records necessary to determine the amount of the tax as he may have been responsible for collecting and paying to the county. The commissioner of the revenue may inspect such records at all reasonable times.

**Sec. 70-370 – Cessation of business; tax due immediately.**

Whenever any person required to collect and pay to the county a tax imposed by this Article shall cease to operate, go out of business, or otherwise dispose of his business, any tax under the provisions of this Article shall become immediately due and payable, and such person shall immediately make a report and pay the tax due to the tax due.

**Sec. 70-371 – Penalty for late remittance or false return and payment of tax.**

(a) If any person, whose duty it is so to do, shall fail or refuse to file with the commissioner of the revenue the report and remit the tax that is due as required under this Article to the treasurer within the time specified in this Article, there shall be added to such tax by the treasurer interest at the rate of ten percent per annum of the tax assessable. Such penalty shall be assessed on the day following the day on which the report and tax payment were due, unless otherwise provided by state law.

**Sec. 70-372 – Procedure upon failure to file return or pay tax.**

(a) If any person shall fail or refuse to collect the tax imposed under this Article or to make within the time provided in this Article the reports and remittance required in this Article, the treasurer shall make an estimate of the amount of taxes due the county by such person upon the best information available and shall proceed to determine and assess against such person such tax and penalty and interest as provided for in this Article. The treasurer shall notify such person by first class mail and certified mail, return receipt requested, sent to such person's last known place of address, of the amount of such tax and interest and penalty, and the total amount thereof shall be payable within ten days from the date of the notice or that the notice is mailed, whichever is later.

(b) The treasurer may have a summons issued for any person in the county who fails or refuses to collect the tax imposed by this Article or to make, within the time provided by this Article, the reports or remittances required in this Article.

**Sec. 70-373 – Criminal Penalties.**

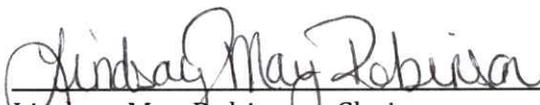
Any person intentionally failing to file a report required by this article shall be guilty of a misdemeanor, and upon conviction thereof, punishment shall not exceed that prescribed for a Class 3 misdemeanor as provided in Section 18.2-11 of the Code of Virginia (1950), as amended. Each such failure 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 article.”

**ADOPTED** this the 20th day of May, 2024.

The vote on the foregoing was as follows:

Supervisor, 1st District: William L. Hodges	Aye
Supervisor, 2nd District: Benjamin J. Edwards, III	Aye
Supervisor, 3rd District: Justin Catlett – Vice Chair	Aye
Supervisor, 5th District: Mary Sue Bancroft	Aye
Supervisor, 4th District: Lindsay May Robinson – Chair	Aye

ATTEST:

  
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Lindsay May Robinson, Chair  
King William County Board of Supervisors

  
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Percy C. Ashcraft  
Clerk of the Board of Supervisors