



## **ORDINANCE # (13-12-2021)**

**PETITION TO AMEND FRANKLIN COUNTY CODE – THE FRANKLIN COUNTY BOARD OF SUPERVISORS PROPOSAL TO AMEND SECTION 20, TAXATION, ARTICLE VIII: LICENSE TAXES, DIVISION 7: TRANSIENT OCCUPANCY TAX OF THE FRANKLIN COUNTY CODE, BY AMENDING SECTIONS 20-240, 20-241, 20-243, 20-244, 20-245 AND 20-248 OF THE FRANKLIN COUNTY CODE. THESE PROPOSED AMENDMENTS WOULD, IN PART, CLARIFY EXISTING TERMS AND ADD NEW TERMS FOR ACCOMMODATIONS, ACCOMMODATION'S FEE, ACCOMMODATION'S INTERMEDIARY, ACCOMMODATION'S PROVIDER, RETAIL SALE AND TRAVEL CAMPGROUNDS. PROPOSED AMENDMENTS ALSO REFLECT AUTHORIZATION RECENTLY APPROVED BY THE VIRGINIA GENERAL ASSEMBLY UNDER SECTION 58.1-3826 OF THE CODE OF VIRGINIA TO FURTHER DEFINE THAT THE TRANSIENT OCCUPANCY TAXES ON ACCOMMODATIONS SHALL BE COMPUTED UPON THE BASIS OF THE TOTAL CHARGES OR THE TOTAL PRICE PAID FOR USE OR POSSESSION OF THE ROOM. FURTHERMORE, WHERE AN ACCOMMODATIONS PROVIDER CONTRACTS WITH AN INTERMEDIARY TO FACILITATE THE SALE OF ACCOMMODATIONS AND THE INTERMEDIARY CHARGES THE CUSTOMER FOR THE ROOM AND ALSO AN ACCOMMODATIONS FEE, THE INTERMEDIARY WOULD BE DEEMED THE DEALER FOR THE TRANSACTION AND WOULD BE REQUIRED TO SEPARATELY STATE THE TAXES ON THE INVOICE AND TO COLLECT THE TAXES ON THE ENTIRE AMOUNT PAID FOR THE USE OR POSSESSION OF THE ROOM.**

**WHEREAS**, the Franklin County Board of Supervisors did propose to amend Section 20, Taxation Article VIII: License Taxes, Division 7: Transient Occupancy Tax of the Franklin County Code by amending sections 20-240, 20-241, 20-243, 20-244, 20-245 and 20-248 of the Franklin County Code to clarify existing terms and add new terms for Accommodations, Accommodation's fee, Accommodation's intermediary, Accommodation's provider, Retail sale and travel campgrounds, and

**WHEREAS**, the proposed amendments also reflect authorization recently approved by the Virginia General Assembly under Section 58.1-3826 of the Code of Virginia to further define that the transient occupancy taxes on accommodations shall be computed upon the basis of the total charges or the total price paid for use or possession of the room; and

**WHEREAS**, after due legal notice as required by Section 15.5-2204-2205 of the Code of Virginia of 1950, as amended, the Board of Supervisors did hold a public hearing on December 21, 2021 at which time all parties in interest were given an opportunity to be heard, and

**WHEREAS**, after holding a public hearing, the Board of Supervisors has APPROVED of this amendment to the County Code after finding that public necessity, health, safety, convenience, and general welfare would be achieved by this amendment as follows:

**Sec. 20-240. - Definitions.**

For the purposes of this division, the following words and phrases shall have the meanings respectively ascribed to them by this section:

**Accommodations - shall mean, any room or space for which tax is imposed on the retail sale pursuant to this Chapter 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 County of Franklin 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.**

**Accommodations intermediary - shall mean any person other than an accommodations provider that 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. 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.**

**Accommodation's intermediary does not include a person:**

- 1. If the accommodations are provided by an accommodation's 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.**

**Accommodations provider - shall mean 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.**

*Apartment house* means a building used or intended to be used as the residence of three (3) or more families living independently of each other; a multifamily dwelling.

*Commissioner of revenue* means the commissioner of revenue of Franklin County, Virginia, or any of his duly authorized deputies or agents.

*Condominium* means a single unit in a multiple unit residential or commercial structure that is offered for sale and shall be a part of a condominium project with general common elements as defined in section 55-79.2, Code of Virginia, 1950.

*Hotel* means includes, but is not limited to, any public or private hotel, inn, apartment hotel, hostelry, tourist home or house, motel, rooming house, or other lodging place within Franklin County offering lodging and the owner and operator thereof, who, for compensation, furnishes lodging to any transients as hereinafter defined [sic].

**Lodging includes, but is not limited to any space or room furnished to any transient**

*Person* means and includes 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 accommodations are regularly furnished to transients for a consideration.

*Room rental* means the total charge shall mean the full retail price charged to the transient for the use of the accommodations, including any accommodations fee, before taxes. 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. Toll charges for long-distance calls are not subject to the tax. by any such apartment, condominium, hotel, townhouse or like buildings for lodging or space furnished any such transient. If the charge made to such transient includes any charge for services or accommodations in addition to that of lodging, or the use of space, then such portion of the total charge as represents only room or space rental shall be distinctly set out and billed to such transient by such as a separate item.

*Townhouse* means a residential unit in a series from more than one to twelve (12) single-family attached dwellings separated from one another by common vertical walls with no openings.

*Transient* means any person who, for any period which is less than thirty (30) continuous days, either at his own expense or at the expense of another, obtains lodging or the use or possession of any a room or space occupied for lodging in any apartment, condominium, hotel, townhouse, private home, travel campground or like buildings for rent to transients as hereinabove defined, for which lodging or use of space a price is charged.

*Travel campground* means any area, site, lot, field or tract of land offering spaces for recreational vehicles or campsites for transient dwelling purposes, or temporary dwelling during travel, or recreational or vacation uses.

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

Sec. 20-241. - Levy and rate.

- (a) In addition to all other taxes of every kind now or hereafter imposed by law, there is hereby imposed and levied on each and every transient a tax equivalent to seven (7) percent of the total amount paid by the customer for the use or possession of a room or space occupied for lodging rental by or for any such transient.
- (b) Four-sevenths (4/7) of the revenue generated by this tax shall be used for the general operation of county government and three-sevenths (3/7) shall be designated and spent for promoting tourism, travel or business that generates tourism in this locality.

Sec. 20-242. - Exceptions.

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

Sec. 20-243. - Collection.

For any retail sale of accommodations not facilitated by an accommodation's intermediary, the accommodations provider shall collect the amount of tax hereby imposed from the transient, 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.

For any retail sale of accommodations facilitated by an accommodation's intermediary, the accommodations intermediary shall be deemed under this chapter 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. When the accommodations are at a hotel, the accommodations intermediary shall remit the taxes on the accommodations fee to the locality and shall remit any remaining taxes to the hotel, which shall remit such taxes to the County. When the accommodations are at any other accommodations, the accommodations intermediary shall remit the taxes on the room charge to the County.

An accommodations intermediary shall not be liable for taxes under this chapter remitted to an accommodations provider but that are then not remitted to the County by the accommodation's provider. For any retail sale of accommodations facilitated by an accommodation's intermediary, an accommodations provider shall be 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 accommodation's provider. 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. All taxes collected pursuant to this chapter are deemed to be held in trust for the County.

Sec. 20-244. - 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 commissioner of revenue may prescribe and require. Such reporting shall show the total price paid by the customer (excluding any taxes) 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 signed and delivered to the commissioner of revenue.
- (b) The commissioner of revenue shall determine whether the report is in proper form and upon such determination shall cause a copy to be delivered to the treasurer.
- (c) Such 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.
- (d) Any business or persons collecting, accounting for and remitting the tax imposed hereunder to Franklin County is hereby allowed a commission of three (3) percent which may be itemized and deducted from the monies remitted to the treasurer. No commission shall be allowed if the monies due are delinquent.

Sec. 20-245. - Interest and penalties.

If any person shall fail or refuse to remit to the treasurer the tax required to be collected and paid under this division within the time and in the amount specified in this division, there shall be added to such tax by the treasurer a late payment penalty of ten (10) percent and interest shall accrue at the rate of ten (10) percent per annum from the first day following the day such tax is due upon the amount of the tax for each year or portion thereof from the date upon which the tax is due as provided in this division.

Sec. 20-246. - Determination of tax due by the commissioner of revenue.

If any person required to collect and remit the tax imposed by this division fails to file a report, or if the commissioner of revenue has reasonable cause to believe that an erroneous report has been filed, the commissioner of 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 report his determination to the treasurer; provided, however, that notice and opportunity to be heard shall be given any person who may become liable for the amount owing prior to any determination by the commissioner of revenue.

Sec. 20-247. - Cessation of business; report and tax due immediately.

Whenever any person required to collect and pay to the county a tax under section 20-241 of this division, shall quit or otherwise dispose of his business, any tax under the provisions of this division shall become immediately due and such person shall immediately make a report and pay the tax due.

**Sec. 20-248. - Commissioner of the revenue, other powers and duties.**

It shall be the duty of the commissioner of revenue to ascertain the name of every person operating an apartment, condominium, hotel, townhouse, travel campground or like buildings in the county liable for the collection of the tax levied by section 20-241 of this division. The commissioner of revenue shall have the power to adopt rules and regulations not inconsistent with the provisions of this division for the purpose of determining the amount due to the county under this division, and a copy of such rules and regulations shall be on file and available for public examination in the commissioner of revenue's office. Failure or refusal to comply with any rules and regulations promulgated under this section shall be deemed a violation of this division.

**Sec. 20-249. - Penalty.**

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

**Secs. 20-250—20-274. - Reserved.**

**WHEREAS**, the Board of Supervisors in adopting this ordinance expressly adopts, ratifies, and affirms the action stated above.

**NOW, THEREFORE, BE IT ORDAINED**, by the Board of Supervisors of Franklin County, Virginia, that it hereby APPROVES to amend Section 20, Taxation Article VIII: License Taxes, Division 7: Transient Occupancy Tax of the Franklin County Code by amending sections 20-240, 20-241, 20-243, 20-244, 20-245 and 20-248 of the Franklin County Code, and

**BE IT FURTHER ORDAINED**, that a copy of this ordinance be transmitted to the Zoning Administrator to reflect this change in the official zoning records of Franklin County and to the Commissioner of Revenue to reflect this change in the real estate records of Franklin County.

This ordinance shall take effect upon adoption.

**ADOPTED**, on the motion of Lorie Smith and seconded by Tim Tatum upon the following recorded vote.

**VOTING ON THE MOTION WAS AS FOLLOWS:**

AYES: Carter, Cundiff, L. Mitchell, R. Mitchell, Smith, Tatum, Thompson

\*Roll call was taken\*

Madeline L. Sefcik

Madeline L. Sefcik, CMC, Clerk  
Franklin County Board of Supervisors



1/27/22

Date

