

ORDINANCE NO. 23-2

AN ORDINANCE OF THE TOWN OF BEDFORD, VIRGINIA PROVIDING FOR AN UPDATE TO CHAPTER 54 (TAXATION) OF THE TOWN CODE

WHEREAS, the Town of Bedford, Virginia (the “Town”) desires to amend the Chapter 54 of the Bedford Town Code to update definitions and code requirements.

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF BEDFORD, VIRGINIA, that Chapter 54 (Taxation) of the Bedford Town Code are hereby amended as follows:

Chapter 54. – Taxation.

Article VII. – Transient Occupancy Tax

Sec. 54-187. – Definitions.

The following words and phrases, when used in this article, have the following meanings, except when the context clearly indicates a different meaning.

Accommodations means any rooms 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 Town offering lodging, and the owner or operator thereof who, for compensation, furnishes lodging to any transient.

Accommodations fee means the room charge less any discount; provided, however, that the accommodations fee shall 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 same, (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 a sale. For purposes of this definition “facilitates a sale” includes brokering, coordinating, or in any 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. An “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 persons;
2. Who facilitates the sale of the 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 of Chapter 21 of Title 54.1 of the Code of Virginia, 1950, as amended, 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.

Finance Director means the Town Manager or his or her designee undertaking the financial and/or tax administration of the Town on his or her behalf.

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 consideration.

Room charge means the full retail price charged to a transient for the use of accommodations, before taxes. A 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 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 considered to be room charges.

Transient means any person who, for any period of fewer than 30 consecutive days, either at his own expense or at the expense of another, obtains use or possession of a room or space occupied for lodging in any accommodations, for which lodging or use of space a price is charged.

Sec. 58-188. – Levy of tax and rate.

In addition to all other taxes and fees of any kind now or hereafter imposed by law, there is hereby imposed and levied by the town a tax equivalent to five percent of the total room charge paid by or for a transient for the use or possession of a room or space occupied for lodging by or for any such transient. Any fractional cent shall be rounded to the next highest cent.

Sec. 58-189. – Exemptions.

No tax shall be payable under this article for any of the following businesses:

1. On charges for lodging paid to any hospital, medical clinic, convalescent home or home for the aged.
2. On room rental paid by any federal, state, or town official or employee when on official business, and the government concerned either pays the rental or reimburses the employee or official.

Sec. 58-190. – Duty to collect tax.

- (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 total price paid for the use or possession of the accommodations, and shall remit the same to the Town and 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 Town and shall be liable for the same.
 - (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 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 Town. 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.
 - (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) All amounts collected as taxes pursuant to this Article shall be deemed to be held in trust by the person collecting the same, until remitted to the Town as provided in this article. If the amounts collected as taxes are not paid as and when due, they shall thereafter become a debt of the person collecting such tax due to the Town.

Sec. 58-191. – Reports and remittances and compensation of accommodations providers.

- (a) Any person collecting a tax pursuant to this Article shall register as such with the Finance Director for collection of the tax imposed in this Article.
- (b) Any person collecting such tax shall file a report with the Finance Director within 20 days after the last day of each calendar month on forms prescribed by the Finance Director, signed by such person, reporting the total room charges paid by each customer and the amount of taxes due thereon for the preceding month. Each such report shall be accompanied by a remittance of the amount of the taxes to the Town.
- (c) An accommodations intermediary shall submit to the Finance Director the property address and gross receipts for all accommodations facilitated by the accommodations intermediary in the Town within 20 days after the last day of each calendar month on forms prescribed by the Finance Director and the amount of taxes due thereon for the preceding month.
- (d) For the purpose of compensating any accommodations provider for accounting for and timely remitting the tax levied under this article, such accommodations provider shall be allowed a commission of two percent of the amount of tax due and accounted for in the form of a deduction of that amount in submitting his

monthly report and remittance, provided the amount paid was not delinquent at the time of payment.

Sec. 58-192. – Interest and penalties for failure to file a report or make remittances.

- (a) If any person shall fail to make any report or remit the tax required by this article, there shall be imposed, in addition to any other penalties herein provided, a specific penalty to be added to the tax in the amount of ten percent provided, however, in no case shall the penalty be less than \$10.00, and such minimum penalties shall apply whether or not any tax is due for the period for which the report was required.
- (b) Interest shall accrue on any unpaid taxes at the rate of ten percent per annum which shall be computed on the taxes and penalty commencing 30 days from the date the report or remittance is due.
- (c) If the failure to make any report is due to good cause shown to the satisfaction of the Finance Director, such report with or without remittances may be accepted exclusive of penalties.

Sec. 58-193. – Records to be kept.

Every person required to make a report or to pay and collect any tax under this Article shall keep and preserve, for a period of three years, such suitable records of revenues taxable pursuant to this Article and such other records of account as may be reasonably necessary to determine the amount of taxes due pursuant to this article. The Finance Director may inspect such records at reasonable times.

Sec. 58-194. – Obligations upon going out of business.

Whenever any person required to collect and pay to the Town a tax under this Article shall cease to operate or otherwise dispose of his business, any tax payable hereunder to the Town shall become immediately due and payable through such date, and the person shall make a report and remittance thereof within ten days of such date.

Sec. 58-195. – Assessments by Finance Director for failure to report tax properly.

- (a) If any person required to collect and remit the tax imposed by this Article shall fail or refuse to collect the tax levied by this article and to make, within the time provided in this article, any report and remittance required by this article, the Finance Director, based upon the best facts and information available to it, shall make an estimate for the taxable period of the amount of the tax due pursuant to this Article and shall assess the tax plus penalties and interest provided for in this Article. The Finance Director shall send a written notification by registered mail to the person stating the total amount of such tax, interest and penalties and stating that the total amount thereof shall be payable within ten days from the date of such notice.
- (b) Before the Finance Director shall make any determination and assessment that any person is liable for any tax, penalty, and interest under this section, the Finance Director shall give such hotel or person notice or an opportunity to be

heard concerning such possible determination and assessment. The assessment so made shall be deemed prima facie correct.

Sec. 58-196. – Civil warrant for collection of delinquent tax.

The Town Attorney is authorized, upon direction of the Finance Director, when any tax becomes delinquent under this article, to cause a civil warrant to be issued for the collection of the tax, penalty, and interest as soon as the tax becomes delinquent against the person liable for payment of the same.

Sec. 58-197. – Amount of tax to be stated on bill.

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 of the customer to the accommodations intermediary, recoverable at law in the same manner as other debts.

Sec. 58-198. – Promulgation of regulations.

- (a) The Finance Director shall monitor and oversee the accuracy, timeliness and completeness of the filing of reports and payment of taxes levied under this Article. The Finance Director may adopt and promulgate such rules and regulations and such forms not inconsistent with the provisions of this Article as deemed necessary for the effective administration of this section.
- (b) In administering the provisions of this Article, the Finance Director may give any person required to collect the tax imposed by this Article ten days' notice to appear before the Finance Director, with such books, records and papers as the Finance Director may require relating to the person's business for the taxable period in question. The Finance Director may require that such person or its agents and employees give testimony or answer interrogatories under oath administered by the Finance Director respecting the accommodations provided and the revenues therefrom which are or may be subject to the tax imposed hereby, or the failure to make a report thereof as herein provided.

Sec. 58-1. – Issuing bad check in payment of taxes. [Editor's Note: Section redesignated and reserved]

- (a) If any check tendered for any amount due under this chapter is not paid by the bank on which such check was drawn, the person for whom such check was tendered shall remain liable for the payment of such amount the same as if such check had not been tendered.
- (b) Any person who shall make, draw, utter or deliver a check tendered for any amount due under this chapter, knowing, at the time of such making, drawing,

- (c) uttering or delivery, that the account upon which such check, draft or order is drawn has not sufficient funds or credits with such bank, banking institution, trust company, or other depository for the payment of such check, draft or order, although no express representation is made in reference thereto, shall be guilty of a Class 1 misdemeanor.
- (d) The word "credit" as used herein shall be construed to mean any agreement or understanding with the bank, banking institution, trust company, or other depository for the payment of such check, draft or order.
- (e) If such person shall fail to pay to the treasurer the amount due together with interest within five days after receiving written notice that such check, draft or order has not been paid to the holder thereof, then in any prosecution under this section the making or drawing or uttering or delivery, payment of which is refused by the drawee because of lack of funds or credit, shall be prima facie evidence of intent to defraud or of knowledge of insufficient funds. Notice mailed by certified or registered mail, evidenced by return receipt, to the last known address of the maker or drawer, shall be deemed sufficient and equivalent to notice having been received by the maker or drawer, and all other provisions of Code of Virginia, § 18.2-183 shall be applicable to such prosecution.
- (f) In addition to the criminal penalty set forth herein, such person shall be personally liable in any civil action brought upon such check, draft or order.
- (g) Any check or draft payment returned for payment of taxes or other amounts due to the Town for insufficient funds, incorrect account, or closed account shall be assessed a fee as adopted in the fee schedule of the Town.

Sec. 58-200. – Criminal penalties for violation.

Any person subject to the provisions of this Article failing or refusing to collect the full amount of the tax levied hereby, failing to make payment thereof to the Town, failing or refusing to furnish any report herein required to be made, failing or refusing to furnish supplemental or other data required by the Finance Director, making a false or fraudulent claim for refund, or violating any other provision of this article shall be guilty of a Class 1 misdemeanor. Each failure, refusal, neglect or violation, and each day's continuance thereof, shall constitute a separate offense. Conviction of such violation shall not relieve such person from the liability for taxes, penalties, and interest or from the duty of collection and remittance of the tax provided for herein. An agreement by any person to pay the taxes provided for in this article by a series of installment payments shall not relieve any person of criminal liability for violation of this Article until the full amount of taxes agreed to be paid by such person is received by the Finance Director.

Section 2. This Ordinance shall be effective upon passage.

I hereby certify that the foregoing is a true and exact copy of an Ordinance adopted at a regularly scheduled meeting of the Council of the Town of Bedford, Virginia, held on March 14, 2023, at which meeting a quorum was present and voted.

Clerk of the Council

