



Legislation Text

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File #: 18-7093, Version: 2

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City of Alexandria, Virginia

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MEMORANDUM

**DATE:** NOVEMBER 13, 2017

**TO:** THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

**FROM:** MARK B. JINKS, CITY MANAGER /s/

**DOCKET TITLE:**

Public Hearing, Second Reading and Final Passage of an Ordinance to Amend Section 3-2-141 (Transient Lodging Definitions) and to adopt Section 3-2-152 (Short-Term Residential Registry) of the Code of the City of Alexandria, Virginia.

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**ISSUE:** Should the City require registration of short-term residential rental properties, as well as clarify the applicability of the City's Transient Lodging Tax to such rentals?

**RECOMMENDATION:** That City Council pass the proposed ordinance on second reading and final passage at the November 18, 2017.

**DISCUSSION:** Effective July 1, 2017, Section 15.2-983 of the Code of Virginia was enacted by the General Assembly, giving localities the authority to establish a registry to identify properties being offered as short-term residential rentals. This activity is also referred to as "home sharing," and is typically marketed through online computer platforms, such as those maintained by Airbnb, Expedia, Flipkey and others.

The 2017 enabling legislation was preceded in 2016 by deliberations of a Virginia Housing Commission work group on this subject, including representatives from the hotel industry, hosting platform providers, local government, state and local tax officials, property owners, and other interested parties. The final legislation was supported by the Virginia Restaurant, Lodging and Travel Association. This state law is also consistent with the position of the City's 2017 Legislative Package, calling for short-term residential rentals to be "registered so that the City knows their location;" require them "to pay all appropriate taxes;" and, "to abide by appropriate zoning regulations."

The most applicable tax is the Transient Lodging tax, applying the rate of 8.5% plus \$1 per night to short-term residential rentals (this includes the 2% rate charged by the Northern Virginia Transportation Authority). A slight technical amendment is proposed to the City's ordinance, clarifying that an existing definition that lodgings such as hotels can lodge "four or more persons at one time" does not apply to short-term residential rentals. In other words, whether a person rents a house, or a one-bedroom condominium, the rental would still

be subject to the Transient Lodging tax.

The Business, Professional and Occupational License (BPOL) tax only applies if the owner generates more than \$10,000 in gross receipts per year, and the owner is renting more than four separate dwelling units.

Finally, state and local sales tax of 6% is applicable on all short-term residential rentals, but this tax is exclusively administered and collected by the Virginia Department of Taxation. The City's Department of Finance would be able to share registry information with the Commonwealth's Department of Taxation.

Subject to penalties that may be imposed for noncompliance, the registry simply enables the City to require all providers of short-term residential rentals to identify the name of the owners and the address of the properties being offered for rental. This process better positions the City to be able to collect applicable taxes.

The new state legislation which authorizes registration also allows localities to assess a registration fee. Since Transient Occupancy and State Sales Tax Collection are the more financially important goals, no short-term new tax registration fee is recommended.

The Department of Finance is exploring options to facilitate the efficient and effective administration of the Transient Lodging tax among a diffuse population of residential owners conducting short-term residential rentals. One such option involves a Voluntary Collection Agreement (VCA) offered by Airbnb. Pursuant to this agreement, Airbnb proposes to collect and remit the Transient Lodging tax upfront from each renter at the time they rent a property through Airbnb's reservation platform. This agreement would significantly reduce the anticipated workload impact to the City's Department of Finance, and would vastly simplify the reporting and payment process for most home sharing residents. The downside is that Airbnb will only agree to provide this information to the City and nearly all of the local governments in the U.S. seeking AirBnB information on an anonymous account level basis (i.e., tax payments would not be attributable back to specific individuals and addresses). Airbnb would provide a specific tax accounting to each homeowner renting via its platform. This of course limits the City's ability to audit accounts from Airbnb.

The VCA would provide an automated process to ensure compliance at time of rental, somewhat analogous to the way Consumer Utility taxes are collected by utility companies. Additionally, the City can still conduct audits, if necessary, based on other sources of information, such as the registry and state income tax information. If the City decides to adopt the VCA, which is likely the recommendation that the Finance Department will make to the City Manager, Finance staff could test the process on a trial basis, and cancel it later if necessary.

It has been estimated that Airbnb covers a significant majority of the short-term residential rental market, but some 20% - 30% may rent using different platforms. If a VCA is used for Airbnb, The City's Finance staff will still need to work with the owners renting from other platforms to ensure they are in compliance with this Transient Lodging ordinance. The registry provides one tool. City Finance staff are also studying the use of data analytic vendors in this market who manually scrub data they obtain from the various platforms, seeking to identify specific properties being listed for short-term rental within a given locality. Virginia Beach uses one such vendor and reports positive results in helping the city identify these properties. This data service would be a fee-based service to the City, based on the number of properties researched and identified.

As provided by state law, the local registry is to be "ministerial in nature." As such, it is specifically stated within the statute that "nothing herein shall be construed to prohibit, limit or otherwise supersede existing local authority to regulate the short-term rental of property through general land use and zoning authority." Again, this is consistent with the City's 2017 Legislative Package. Within the City, short-term rental properties do not require zoning or permitting approvals solely on that basis, but any normal zoning or permitting provisions

(e.g., maximum occupancy, construction permits) would still apply.

Registration will also add a new tool for zoning enforcement in that the City will be collecting the name of the lessor, address and contact information as part of the registration. This will facilitate contact the lessor if issues arise, as well as begin to provide the City with more information about short-term rental activity in the City. While the City has received only a few complaints about short-term rental issues in recent years, from public testimony at the City's October 17 community meeting, it appears that more incidents have arisen that have not been brought to the City's attention. Registration information will add one more resource for the City to use in better addressing issues that may arise in the future.

Similarly, the enabling legislation does nothing to supersede, limit or change contractual agreements, covenants or declarations, such as may be found in homeowner associations or condominiums. If home sharing is prohibited by those documents, for example, the proposed ordinance to establish the registry does not in any way lift or change those restrictions.

Finally, prior to drafting the proposed ordinance, staff advertised and held a public meeting on October 17, 2017, to obtain community input on this subject. See Attachment 4 for the staff presentation provided at that time. The meeting was well attended, and community comments are summarized in Attachment 5.

**FISCAL IMPACT:** There is no immediate cost to implement the proposed ordinance. The City's Department of Finance will determine how to prioritize the registration workload with existing resources. There is no anticipated cost if the City elects to enter a VCA with Airbnb. Should staff determine it prudent to utilize a data analytics vendor, costs are not expected to exceed \$15,000, which would be covered by the estimated increased Transient Lodging taxes.

Some companies have estimated that the home sharing market within the City could range from just over 200 properties, to nearly 500 properties, but staff currently lacks data to validate these estimates. Staff also lacks information on the percentage of time units are rented, or the amount of revenue generated. The registry should provide a starting point to help gain more insight.

If these estimates are correct, a reasonable order of magnitude might envision \$100,000 - \$200,000 in additional Transient Lodging revenue before costs of monitoring and collection are considered. Staff will monitor and report as appropriate on subsequent revenue trends should Council approve the proposed ordinance.

#### **ATTACHMENTS:**

Attachment 1 - Proposed Ordinance Cover

Attachment 2 - Proposed Ordinance Amendment

Attachment 3 - Copy of Enabling Legislation, Va. Code § 15.2-983

Attachment 4 - Staff Presentation at Community Input Meeting, 10/17/17

Attachment 5 - Summary of Citizen Comments from Community Input Meeting

#### **STAFF:**

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