



Legislation Details (With Text)

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Title:	Ordinance to Amend and Reenact the City Code of the City of Hampton, Virginia by Amending Chapter 37 - Taxation, Article 1A - Property Exempt from Taxation By Designation and Classification, Sections 37-4, 37-5(a), 37-5(c), 37-6(b), and 37-9(d)				
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Date	Ver.	Action By	Action	Result
9/22/2021	1	City Council Legislative Session	approved	Pass

Ordinance to Amend and Reenact the City Code of the City of Hampton, Virginia by Amending Chapter 37 - Taxation, Article 1A - Property Exempt from Taxation By Designation and Classification, Sections 37-4, 37-5(a), 37-5(c), 37-6(b), and 37-9(d)

PURPOSE/BACKGROUND:

Hampton City Code Section 37-9 requires that organizations exempt from real and personal property tax pursuant to Chapter 36 of Title 58.1 (other than federal, state, and local governments) file triennially an application with the City Assessor as a requirement to retain exemption. The application requests information regarding any changes in an organization's ownership and use of the exempted real and personal property, and other similar information that is then reviewed by the Assessor and Commissioner of the Revenue to determine whether the organization continues to qualify for exemption. The City Code further provides that failure to timely file the required triennial application shall result in the termination of the exemption. Pursuant to that provision, the exempt status of an active church was revoked for failure to file the triennial application and taxes were imposed. That matter was brought to the attention of the City Attorney when the church property appeared on the list of properties proposed for judicial sale to satisfy delinquent taxes.

Real and personal property owned and exclusively occupied or used by churches or religious bodies for religious worship or for the residences of their ministers are exempt not only pursuant to Chapter 36 of Title 58.1 of the Code of Virginia, but also pursuant to Article X, Section 6(a)(2) of the Constitution of Virginia. That constitutional exemption is one of four that is referred to in the Hampton City Code as well as other literature as a self-executing provision. A self-executing provision is effective, without the need for any further action, and making it improper to revoke any of those self-executing exemptions solely because a triennial application was not filed.

To clarify this construction of those constitutional exemptions in the Hampton City Code, the City

Attorney's office has prepared for Council consideration an amendment to Hampton City Code Section 37-9(d) that will prohibit the revocation of the exemption for the failure to timely file the triennial application by churches and other entities exempt pursuant to those self-executing constitutional exemptions. It is recommend that that amendment be effective retroactively to January 1, 2017 to facilitate exoneration of those taxes previously imposed on the church mentioned in the first paragraph of this background statement. We are not aware of any other similar cases in need of correction and expect this amendment to have no fiscal impact. In addition, a few other clerical edits are proposed, all of which would be effective when enacted.

Discussion:

See Purpose/Background above.

Impact:

See Purpose/Background above.

Recommendation:

Approve the Ordinance.

BE IT ORDAINED by the City Council of the City of Hampton, Virginia, that Sections 37-4, 37-5(a), 37-5(c)(2), 37-6(b), and 37-9(d) of the City Code of the City of Hampton, Virginia be amended to read as follows:

CHAPTER 37 - TAXATION

ARTICLE IA. - PROPERTY EXEMPT FROM TAXATION BY DESIGNATION AND CLASSIFICATION

Sec. 37-4. - Authorized.

- (a) Pursuant to subsection 6(a)(6) of Article X of the Constitution of Virginia and to § 58.1-3651 of the Code of Virginia, the city by ordinance may by designation or classification exempt from real or personal property taxes, or both, the real or personal property, or both, owned by a non-profit organization, including a single member limited liability company whose sole member is a nonprofit organization that uses such property for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes. The ordinance shall state the specific use on which the exemption is based, and the continuance of the exemption shall be contingent on the continued use of the property in accordance with the purpose for which the organization is classified or designated.
- (b) No exemption shall be provided to any organization that has any rule, regulation, policy, or practice that unlawfully discriminates on the basis of religious conviction, race, color, sex, national origin, sex, national origin, sexual orientation, or gender identity.
- (c) The city assessor is delegated the authority to promulgate guidelines to assist staff in the administration of this article. The guidelines and any amendments shall be approved by the city manager and submitted to council for information.

Sec. 37-5. - Exemption by designation.

- (a) *Application.* Any organization seeking an exemption by designation pursuant to the provisions of this article shall file an application with the city assessor on such forms as the assessor shall prescribe. A committee consisting of the city assessor and a representative from the office of the commissioner of revenue, the office of the treasurer, the office of the city manager and the office of the city attorney, shall review all applications and shall make a written recommendation to the city manager, who shall make a recommendation to council.

...

- (c) *Criteria for exemption by designation.* Before adopting any such ordinance exempting property by designation, the city council shall consider the following questions:

...

- (2) Whether a current annual alcoholic beverage license for serving of alcoholic beverages has been issued by the Virginia Alcoholic Beverage Control Authority to such organization for use on such property;

...

Sec. 37-6. - Exemption by classification.

...

- (b) Following a review and recommendation by the committee established in section 37-5(a) and the city manager, council may by ordinance establish local classifications for common types of organizations that are not exempted directly by the self-executing provisions of Virginia Constitution Article X, Section 6(a)(1) through (4). A new classification shall only apply to property used by its owner for religious, charitable, patriotic, historical, benevolent, cultural or public park and playground purposes.

...

Sec. 37-8. - Validity of previously granted exemptions.

Nothing in § 58.1-3651 of the Code of Virginia, or in this Division, or in any ordinance adopted pursuant to this article, shall affect the validity of either a classification exemption or a designation exemption granted by the General Assembly, prior to January 1, 2003, pursuant to Article 2 (§ 58.1-3606 et seq.), Article 3 (§ 58.1-3609, et seq.), or Article 4 (§ 58.1-3650, et seq.) of Chapter 36 of Title 58.1 of the Code of Virginia. An exemption granted pursuant to Article 4 (§ 58.1-3650, et seq.) of Chapter 36 may be revoked in accordance with the provisions of Code of Virginia, § 58.1-3605.

Sec. 37-9. - Triennial review of exemptions.

...

- (d) Failure to timely file the required triennial application shall result in termination of the exemption, unless the property in question is the subject of the self-executing provisions of Virginia

Constitution Article X, Section 6(a)(1) through (4).

. . .

Sec. 37-10. - Effective dates.

. . .

- (c) For any organization that filed an application for an exemption by designation prior to the adoption of Article 1A, council may provide that the ordinance establishing the exemption by designation takes effective on or after January 1, 2003.

. . .

AND, BE IT FURTHER ORDAINED that the amendment to Section 37-9(d) shall be retroactively effective as of January 1, 2017, with all other amendments to be effective as of the date adopted.