

LOCAL LAW NO. 6-13
CHAUTAUQUA COUNTY
Print 2

A LOCAL LAW AMENDING LOCAL LAW 2-08 OF THE COUNTY OF CHAUTAUQUA
IMPOSING A TAX ON THE OCCUPANCY OF HOTEL OR MOTEL ROOMS

BE IT ENACTED, by the County Legislature of the County of Chautauqua, New York,
as follows:

1. Purpose. Pursuant to a home rule request by the Chautauqua County Legislature, the New York State Legislature adopted Chapter 128 of the Laws of 2013 authorizing the County of Chautauqua to continue a 5% tax on the occupancy of hotel or motel rooms until November 30, 2015. This local law amends Local Law 2-08 of the County of Chautauqua to confirm the extension of the 5% occupancy tax. This local law also amends Local Law 2-08 to modify the definition of “hotel and motel,” clarify the authority of the County’s Director of Finance to adjust amounts due under the local law, including penalties and interest, and make minor edits and correct typographical errors in the original law.

2. Amendment of Local Law 2-08.

Local Law 2-08 of the County of Chautauqua is hereby amended by substitution to read as follows:

SECTION 1. SHORT TITLE

This local law shall be known as the Chautauqua County Occupancy Tax Law.

SECTION 2. INTENT

The intent of this local law shall be to promote Chautauqua County in order to increase tourism and convention business in the County.

SECTION 3. TEXT

1. Definitions
2. Imposition of Tax
3. Transitional Provisions
4. Exempt Organizations
5. Territorial Limitations
6. Registration
7. Administration and Collection
8. Records to be Kept
9. Returns
10. Payment of Tax
11. Determination of Tax
12. Disposition of Revenues
13. Refunds

14. Reserves
15. Remedies Exclusive
16. Proceedings to Recover Tax
17. General Powers of the Director of Finance
18. Administration of Oaths
19. Reference to Tax
20. Penalties and Interest
21. Returns to be Secret
22. Notice of Limitations of Time
23. Separability

1. Definitions.

When used in this local law, the following terms shall mean:

(a) Person. An individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of the foregoing.

(b) Operator. Any person operating a hotel or motel in the County of Chautauqua, including but not limited to, the owner or proprietor of such premises, lessee, sublessee, mortgagee in possession, licensee, management company, or any other person otherwise operating such hotel or motel.

(c) Hotel/Motel. A building or portion of it, which is used for the lodging of guests on an overnight basis for greater than fourteen (14) days per calendar year, and which is advertised in any manner for such use. The term "hotel" or "motel" shall include, but not be limited to, apartment hotels, motor courts or inns, boarding houses, cottages, apartments, condominiums and those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

(d) Occupancy. The use or possession, or the right to use or possession of any room in a hotel or motel.

(e) Occupant. A person who, for a consideration, uses, possesses, or has the right to use or possess, any room in a hotel or motel under any lease, concession, permit, right of access, license to use or other agreement, or otherwise.

(f) Permanent Resident. Any Occupant of any room or rooms in a hotel or motel for at least thirty (30) consecutive days shall be considered a permanent resident with regard to the period of such occupancy.

(g) Rent. The consideration received for occupancy valued in money, whether received in money or otherwise.

(h) Room. Any room or rooms of any kind in any part or portion of a hotel or motel, which is available for or let out for any purpose other than a place of assembly.

(i) Return. Any return filed or required to be filed as herein provided.

(j) Director of Finance. The Director of Finance of Chautauqua County.

2. Imposition of Tax.

On and after January 1, 2008 until November 30, 2015, there is hereby imposed and there shall be paid a tax of five percent (5%) upon the rent for every occupancy of a room or rooms in a hotel or motel unit in the County except that the tax shall not be imposed upon (1) a permanent resident, or (2) exempt organizations as hereinafter set forth. Thereafter, the occupancy tax imposed shall continue to be the maximum percentage amount authorized by the New York State Legislature.

3. Transitional Provisions.

The tax imposed by this local law shall be paid upon any occupancy on and after the first day of January, two thousand eight, although such occupancy is pursuant to a prior contract, lease or other arrangement. Where rent is paid on a weekly, monthly, or other term basis, the rent shall be subject to the tax imposed by this local law to the extent that it covers any period on and after the first day of January, two thousand eight.

4. Exempt Organizations.

(a) Except as otherwise provided in this section, any use or occupancy by any of the following shall not be subject to the tax imposed by this local law.

(1) The State of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the State;

(2) The United States of America, insofar as it is immune from taxation;

(3) Any corporation, or association, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(b) Where any organization described in paragraph (3) of subdivision (a) of this subsection carries on its activities in furtherance of the purposes for which it was organized, in premises in which, as part of said activities, it operates a hotel or motel, occupancy of rooms in the premises and rents therefrom received by such corporation or association shall not be subject to tax hereunder.

5. Territorial Limitations.

The tax imposed by this local law shall apply only within the territorial limits of the County of Chautauqua.

6. Registration.

Within ten (10) days after the effective date of this local law, or in the case of Operators commencing business after such effective date, within three (3) days after such commencement or opening, every Operator shall file with the Director of Finance a certificate of registration in a form prescribed by the Director of Finance. The Director of Finance shall within five (5) days after such registration issue without charge to each Operator a certificate of authority empowering such Operator to collect the tax from the Occupant and a duplicate thereof for each

additional hotel or motel of such Operator. Each certificate or duplicate shall state the hotel or motel to which it is applicable. Such certificate of authority shall be prominently displayed by the Operator in such manner that it may be seen and come to the notice of all Occupants and persons seeking occupancy. Such certificate shall be non-assignable and non-transferable and shall be surrendered immediately to the Director of Finance upon the cessation of business at the hotel or motel named or upon its sale or transfer.

7. Administration and Collection.

(a) The tax imposed by this local law shall be administered and collected by the Director of Finance, or such other fiscal officers of the County as he or she may designate, by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise provided by this local law.

(b) The tax to be collected shall be stated and charged separately from the rent and shown separately on any record thereof, at the time when the occupancy is arranged or contracted for and charged for, and upon every evidence of occupancy or any bill or statement or charge made for said occupancy issued or delivered by the Operator. The tax shall be paid by the Occupant to the Operator as trustee for and on account of the County, and the Operator shall be personally liable for the tax collected or required to be collected under this local law. The Operator shall have the same right in respect to collecting the tax from the Occupant, or in respect to nonpayment of the tax by the Occupant as if the tax were a part of the rent for the occupancy payable at the time such tax shall become due and owing, including all rights of eviction, dispossession, repossession, and enforcement of any innkeeper's lien that s/he may have in the event of non-payment of rent by the Occupant; provided, however, that the Director of Finance or other fiscal officer or officers, employees or agents duly designated by him or her shall be joined as a party in any action or proceeding brought by the Operator to collect or enforce collection of the tax.

(c) Where the Occupant has failed to pay and the Operator has failed to collect a tax as imposed by this local law, then in addition to all other rights, obligations and remedies provided, such tax shall be payable by the Occupant directly to the Director of Finance, and it shall be the duty of the Occupant to file a return thereof with the Director of Finance and to pay the tax imposed thereon to the County Director of Finance within fifteen (15) days after such tax was due.

(d) The Director of Finance may, whenever he or she deems it necessary for the proper enforcement of this local law, provide by regulation that the Occupant shall file returns and pay directly to the Director of Finance the tax herein imposed, at such times as returns are required to be filed and payment made over by the Operator.

(e) The tax imposed by this local law shall be paid upon any occupancy on and after January 1, 2008, although such occupancy is had pursuant to a contract, lease or other arrangement made prior to such date. Where rent is paid or charged or billed, or falls due on either a weekly, monthly or other term basis, the rent so paid, charged, billed or falling due shall be subject to the tax herein imposed to the extent that it covers any portion of the period on and after January 1, 2008. Where any tax has been paid hereunder upon any rent which has been ascertained to be worthless, the Director of Finance may by regulation provide for credit and/or refund of the amount of such tax upon application therefor as provided in subsection thirteen of Section 3 this local law.

(f) For the purpose of the proper administration of this local law and to prevent evasion of the tax hereby imposed, it shall be presumed that all rents are subject to tax until the contrary is established, and the burden of proving that a rent for occupancy is not taxable hereunder shall be upon the Operator, except that, where by regulation pursuant to subdivision seven (d) of this section, an Occupant is required to file returns and pay directly to the Director of Finance the tax herein imposed, the burden of proving that a rent for occupancy is not taxable shall be upon the Occupant. Where an Occupant claims exemption from the tax under the provisions of subdivision four of this section, the rent shall be deemed taxable hereunder unless the Operator shall receive from the Occupant claiming such exemption a certificate duly executed by an exempt corporation or association certifying that the Occupant is its agent, representative, or employee, together with a certificate executed by the Occupant that his occupancy is paid or to be paid by such exempt corporation or association, and is necessary or required in the course of or in connection with the Occupant's duties as a representative of such corporation or association. Where deemed necessary by the Operator, he may further require that any Occupant claiming exemption from the tax furnish a copy of a certificate issued by the Director of Finance of the Occupant, certifying that the corporation or association herein named is exempt from the tax under subdivision four of this section.

8. Records to be Kept.

Every Operator shall keep records of every occupancy and of all rent paid, charged or due thereon and of the tax payable thereon, in such form as the Director of Finance may by regulation require. Such records shall be available for inspection and examination at any time upon demand by the Director of Finance or his or her duly authorized agent or employee and shall be preserved for a period of three (3) years, except that the Director of Finance may consent to their destruction within that period or may require that they be kept longer.

9. Returns.

(a) Every Operator shall file with the Director of Finance a return of occupancy and of rents, and of the taxes payable thereon for the periods ending the last day of March, June, September and December of each year, on and after April first, two thousand eight. Such returns shall be filed within twenty (20) days from the expiration of the period covered thereby. The Director of Finance may permit or require returns to be made by other periods and upon such dates as he or she may specify. If the Director of Finance deems it necessary in order to ensure the payment of the tax imposed by this local law, he or she may require returns for a particular registrant to be made for shorter periods than those prescribed pursuant to the foregoing provisions of this section and upon such dates as he or she may specify.

(b) The forms of returns shall be prescribed by the Director of Finance and shall contain such information as he or she may deem necessary for the proper administration of this local law. The Director of Finance may require amended returns to be filed within twenty (20) days after issuance of a notice of error or deficiency in a return.

(c) If a return required by this local law is not filed, or a return when filed is incorrect or insufficient on its face, the Director of Finance shall take the necessary steps to enforce the filing of such a return or of a corrected return.

10. Payment of Tax.

At the time of filing a return of occupancy and of rents each Operator shall pay to the Director of Finance the taxes imposed by this local law upon the rents required to be included in such return, as well as all other moneys collected by the Operator acting or purporting to act under the provisions of this local law even though it be judicially determined that the tax collected is invalidly required to be billed. All taxes shall be due from the Operator and payable to the Director of Finance by the date specified for the filing of the return for such period, without regard for whether a return is filed or whether the return which is filed correctly shows the amount of rents and the taxes due thereon. Where the Director or Finance in his or her discretion deems it necessary to protect revenues to be obtained under this local law he or she may require any Operator which is required to collect the tax imposed by this local law to file with the County a bond, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as the Director of Finance may fix to secure the payment of any tax and/or penalties and interest due or which may become due from such Operator. In the event that the Director or Finance determines that an Operator is to file such bond, he or she shall give notice to such Operator to that effect specifying the amount of the bond required. The Operator shall file such bond within fifteen (15) days after the giving of such notice, unless within such fifteen (15) days the Operator shall request in writing a hearing before the Director of Finance at which the necessity, propriety and amount of the bond shall be determined by the Director of Finance. Such determination shall be final and shall be complied with within fifteen (15) days after the giving of notice of the determination. In lieu of such bond, securities approved by the Director of Finance or cash in such amount as he or she may prescribe, may be deposited with and kept in the custody of the Director of Finance who may at any time without notice to the depositor apply them to any tax and/or interest or penalties due, and for that purpose the securities may be sold by him or her at public or private sale without notice to the depositor thereof.

11. Determination of Tax.

If a return required by this local law is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the Director of Finance from such information as may be obtainable and, if necessary, the tax may be estimated on the basis of external indices, such as number of rooms, location, scale of rents, comparable rents, type of accommodations and service, number of employees and/or other factors. Notice of such determination shall be given to the person liable for the collection and/or payment of the tax.

Such determination shall finally and irrevocably fix the tax unless, within thirty (30) days of the date of issuance of notice of such determination, the person against whom it is assessed applies to the Director of Finance for a hearing, or unless the Director of Finance of his or her own motion re-determines the same. After such hearing or re-determination, the Director of Finance shall give notice of his or her final determination to the person against whom the tax is assessed.

The final determination of the Director of Finance shall be reviewable for errors, illegality or unconstitutionality or any other reason whatsoever, by proceeding under article seventy-eight of the Civil Practice Law and Rules. Such application shall be made to the Supreme Court no later than thirty (30) days after the giving of the notice of such final determination. A proceeding under article seventy-eight of the Civil Practice Law and Practice Law and Rules of the State of New York shall not be instituted unless:

(a) the amount of any tax sought to be reviewed, with penalties and interest, if any, shall be first deposited with the Director of Finance and there shall be filed with the Director of Finance an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as a justice of the Supreme Court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of the proceeding; or

(b) at the option of the applicant, such undertaking filed with the Director of Finance may be in a sum sufficient to cover the taxes, penalties and interest stated in the final determination plus the costs and charges which may accrue against it in the prosecution of the proceeding in such amount as a justice of the Supreme Court shall approve, in which event the applicant shall not be required to deposit such taxes, penalties and interest as a condition precedent to the application.

12. Disposition of Revenues.

All revenues resulting from the imposition of the occupancy tax of five percent (5%) shall be allocated for any of the purposes and uses authorized by Section 1202-j of the New York State Tax Law, as it may be amended from time to time, and such resolutions as may be adopted by the County Legislature consistent therewith, including, but not limited to, the retention of up to a maximum of ten (10) percent of such revenue to defer the necessary expenses of the County in administering such tax and such programs.

13. Refunds.

(a) In the manner provided in this section the Director of Finance shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if written application to the Director of Finance for such refund shall be made within one (1) year from the payment thereof. Whenever a refund is made by the Director of Finance, he or she shall state his or her reason therefore in writing. Such application may be made by the Occupant, Operator or other person who has actually paid the tax. Such application may also be made by an Operator who has collected and paid over such tax to the Director of Finance provided the application is made within one (1) year of the payment by the Occupant to the Operator, but no actual refund of moneys shall be made to such Operator until he or she shall first establish to the satisfaction of the Director of Finance, under such regulations as the Director of Finance may prescribe, that he or she has repaid to the Occupant the amount for which the application for refund is made. The Director of Finance may, in lieu of any refund required to be made, establish the refund as a credit in applicant's name.

(b) An application for a refund or credit made as herein provided shall be deemed an application for a revision of any tax, penalty or interest complained of and the Director of Finance may receive evidence with respect thereto. After making his or her determination, the Director of Finance shall give notice thereof to the applicant. The applicant shall be entitled to a review of such determination by a proceeding pursuant to article seventy-eight of the Civil Practice Law and Rules, provided such proceeding is instituted within thirty (30) days after the giving of notice of such determination, and provided that a final determination of tax due was not previously made. Such a proceeding shall not be instituted unless an undertaking is filed with the Director of Finance in such amount and with such sureties as a justice of the Supreme Court

shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(c) A person shall not be entitled to a revision, refund or credit under this subsection of a tax, interest or penalty which had been determined to be due pursuant to the provisions of subsection eleven of Section 3 of this local law where he or she has had a hearing or an opportunity for a hearing, as provided in said section or has failed to avail himself or herself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the Director of Finance made pursuant to subsection eleven of Section 3 of this local law unless it be found that such determination by the Director of Finance was erroneous, illegal or unconstitutional or otherwise improper after a hearing or of his or her own motion or in a proceeding under article seventy-eight of the Civil Practice Law and Rules, pursuant to the provisions of said subsection, in which event refund or credit without interest shall be made of the tax, credit or penalty found to have been overpaid.

14. Reserves.

In cases where the Occupant or Operator has applied for a refund and has instituted a proceeding under article seventy-eight of the Civil Practice Law and Rules to review a determination adverse to him or on his or her application for refund, the Director of Finance shall set up appropriate reserves to meet any decision adverse to the County.

15. Remedies Exclusive.

The remedies provided by subsections eleven and thirteen of Section 3 of this local law shall be the exclusive remedies available to any person for the review of tax liability imposed by this local law, and no determination or proposed determination of tax or determination on any application for refund shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than a proceeding in a nature of a certiorari proceeding under article seventy-eight of the Civil Practice Law and Rules, provided, however, that a taxpayer may proceed by declaratory judgment if he or she institutes suit within thirty (30) days after notice of a deficiency assessment is made and pays the amount of the deficiency assessment to the Director of Finance prior to the institution of such suit and posts a bond for costs as provided in subsection eleven of Section 3 of this local law.

16. Proceedings to Recover Tax.

(a) Whenever there is a failure to collect and pay over any tax and/or pay any tax, penalty or interest imposed by this local law as herein provided, the County Attorney shall, upon the request of the Director of Finance bring or cause to be brought an action against the entity named in the Certificate of Registration, and/or any Operator, officer, Occupant or other responsible person, to enforce the payment of the same on behalf of the County of Chautauqua in any court of the State of New York, or of any other state or of the United States.

(b) As an additional or alternative remedy, the Director of Finance may issue a warrant against the entity named in the Certificate of Registration, and/or any Operator, officer, Occupant or other responsible person, following the procedure set forth in Paragraph (c) of this subsection, directed to the Sheriff and commanding him to levy upon and sell the real and personal property of the entity named in the Certificate of Registration, and/or any Operator, officer, Occupant or other responsible person liable for the tax.

(c) A warrant issued as provided for in Paragraph (b) of this subsection shall be directed to the Sheriff and shall command the Sheriff to levy upon and sell the real estate, bank accounts and other assets which may be found in this County and which belong to the individual(s) and entity named in the warrant, for payment of the amount of the warrant including any penalties and interest, and the cost of executing the warrant, and to return such warrant to the Director of Finance and to pay him or her the money collected by virtue thereof within sixty (60) days after the receipt of such warrant.

The Sheriff shall within five (5) days after the receipt of the warrant file with the County Clerk a copy thereof, and thereupon such Clerk shall enter in the judgment docket the name of the person or entity named in the warrant and the amount of the tax, penalties and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the interest in real and personal property of the person against whom the warrant is issued. The Sheriff shall then proceed upon the warrant, in the same manner, and with like effect, as that provided by law in respect to executions issued against property judgments of a court of record and for services in executing the warrant he shall be entitled to the same fees, which he may collect in the same manner.

A copy of the warrant entered in the County Clerk's office shall be mailed to the subject of the warrant by the Director of Finance, using First-Class mail with a Certificate of Mailing, within ten (10) days of the entry of the warrant by the Clerk.

In the discretion of the Director of Finance, a warrant of like terms, force and effect may be issued and directed to any officer or employee of the Director of Finance and in the execution thereof such officer or employee shall have all the powers conferred by law upon the Sheriff, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the Director of Finance may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the County has recovered judgment therefore and execution thereon has been returned unsatisfied.

(d) Whenever an Operator shall make a sale, transfer, or assignment of any part or the whole of his hotel or motel or his lease, license or other agreement or right to possess or operate such hotel or motel or of the equipment, furnishings, fixtures, supplies or stock of merchandise, or the said premises or lease, license or other agreement or right to possess or operate such hotel or motel and the equipment, furnishings, fixtures, supplies and stock of merchandise pertaining to the conduct or operation of said hotel or motel, otherwise than in the ordinary and regular prosecution of business, the purchaser, transferee or assignee shall at least ten (10) days before taking possession of the subject of the sale, transfer or assignment, or paying therefore, notify the Director of Finance by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferor or assignor, has represented to or informed the purchaser, transferee or assignee that it owes any tax pursuant to this local law, and whether or not the purchaser, transferee or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing.

Whenever the purchaser, transferee or assignee shall fail to give notice to the Director of Finance as required by the preceding paragraph or whenever the Director of Finance shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferor or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the

seller, transferor or assignor to the County, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferor or assignor any such sums of money, property or choses in action to the extent of the amount of the County's claim. For failure to comply with the provisions of this subdivision, the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of article six of the Uniform Commercial Code, shall be personally liable for the payment to the County of any such taxes theretofore or thereafter determined to be due to the County from the seller, transferor, or assignor, and such liability may be assessed and enforced in the same manner as the liability for tax under this local law.

17. General Powers of the Director of Finance.

(a) In addition to the powers granted to the Director of Finance in this local law, he or she is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this local law and the purposes thereof;
2. To extend for good cause shown, the time of filing any return for a period not exceeding thirty (30) days; and if in the best interest of the County, to remit penalties and interest; and to compromise disputed claims in connection with the taxes hereby imposed;
3. To request information from the Tax Commissioner of the State of New York or the Treasury Department of the United States relative to any person; and to afford information to such tax commission or such treasury department relative to any person, any other provision of this local law to the contrary notwithstanding;
4. To delegate his or her functions hereunder to a deputy Director of Finance or any employee or employees of the Department of Finance;
5. To prescribe methods for determining the rents for occupancy and to determine the taxable and non-taxable rents;
6. To require any Operator within the County, whether or not any occupancy is claimed to be subject to the tax imposed by this local law, to keep detailed records of the nature and type of hotel maintained, nature and type of service rendered, the rooms available and rooms occupied daily, leases or occupancy contracts or arrangements, rents received, charged and accrued, the names and addresses of the Occupants, and to furnish such information upon request to the Director of Finance;
7. To assess, determine, revise and readjust the taxes imposed under this local law.

18. Administration of Oaths and Compelling Testimony.

(a) The Director of Finance or his or her employees or agents duly designated and authorized by him or her shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this local law. The Director of Finance shall have power to subpoena and require the attendance of witnesses and the production of books, papers, and documents to secure information pertinent to the performance of his or her duties hereunder and to the enforcement of this local law and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before him or her, or excused from attendance.

(b) A justice of the Supreme Court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the

production and examination of books, papers and documents called for by the subpoena of the Director of Finance under this local law.

(c) Any person who shall refuse to testify or to produce books or records or who shall testify falsely in any material matter pending before the Director of Finance under this local law shall be guilty of a misdemeanor, punishment for which shall be a fine of one thousand dollars (\$1,000.00) or imprisonment for not more than one (1) year, or both such fine and imprisonment.

(d) The officers who serve the summons or subpoena of the Director of Finance, and witnesses attending in response thereto, shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as otherwise provided herein . Such officers shall be the County Sheriff and his or her duly appointed deputies or any officers or employees of the Department of Finance, designated to serve such process.

19. Reference to Tax.

Whenever reference is made in placards or advertisements or in any other publications to this tax, such reference shall be substantially in the following form: "Tax on occupancy of hotel or motel rooms", except that in any bill, receipt, statement or other evidence or memorandum of occupancy or rent charge issued or employed by the Operator, the words "occupancy tax" will suffice.

20. Penalties and Interest.

(a) Any person failing to file a return or to pay over any tax to the Director of Finance within the time required by this local law shall be subject to a penalty of ten percent (10%) of the amount of tax due; plus interest at the rate of one percent (1%) of such tax for each month of delay excepting the first month after such return was required to be filed or such tax became due; but the Director of Finance, if satisfied that the delay was excusable, may remit all or any part of such penalty or interest. Such penalties and interest shall be paid and disposed of in the same manner as other revenues from this local law. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this local law.

(b) Any Operator or Occupant and any officer of a corporate Operator or Occupant failing to file a return required by this local law, or filing or causing to be filed, or making or causing to be made or giving or causing to be given any return, certificate, affidavit, representation, information, testimony, or statement required or authorized by this local law, which is willfully false, and any Operator and any officer of a corporate Operator willfully failing to file a bond required to be filed pursuant to subsection eleven of Section 3 of this local law, or failing to file a registration certificate and such data in connection therewith as the Director or Finance may by regulation or otherwise require or to display or surrender the certificate of authority as required by this local law or assigning or transferring such certificate of authority and any Operator and any officer of a corporate Operator willfully failing to charge separately from the rent the tax herein imposed, or willfully failing to state such tax separately on any evidence or occupancy and on any bill or statement or receipt or rent issued or employed by the Operator, or willfully failing or refusing to collect such tax from the Occupant, and any Operator and any officer of a corporate Operator who shall refer or cause reference to be made to this tax in a form or manner other than that required by this local law, and any Operator failing to keep the records required by subsection eight of Section 3 of this local law, shall, in addition to the penalties herein or elsewhere prescribed, be guilty of a misdemeanor, punishment for which shall be a fine of not more than one thousand dollars (\$1,000.00) or imprisonment for not more

than one (1) year, or both such fine and imprisonment. Officers of a corporate Operator shall be personally liable for the tax collected or required to be collected by such corporation under this local law, and subject to the penalties herein above imposed.

(c) The certificate of the Director of Finance to the effect that a tax has not been paid, that a return, bond or registration certificate has not been filed, or that information has not been supplied pursuant to the provisions of this local law, shall be presumptive evidence thereof.

21. Returns to be Secret.

(a) Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the Director of Finance or any officer or employee of the Department of Finance to divulge or make known in any manner the rents or other information relating to the business of a taxpayer contained in any return required under this local law. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the Director of Finance in an action or proceeding under the provisions of this local law, or on behalf of any party to any action or proceeding under the provisions of this local law when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or his or her duly authorized representative of a certified copy of any return filed in connection with his tax nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the County Attorney or other legal representatives of the County or the District Attorney of the return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted for the collection of a tax or penalty, or whom is the subject of a pending criminal investigation. Returns shall be preserved for three (3) years and thereafter until the Director of Finance permits them to be destroyed.

(b) Any violation of subdivision (a) of this subsection shall be punishable by a fine not exceeding one thousand dollars (\$1,000.00) or by imprisonment not exceeding one (1) year or both, in the discretion of the court.

22. Notices and Limitations of Time.

(a) Any notice authorized or required under the provisions of this local law may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by him or her pursuant to the provisions of this local law, or in any application made by him or her, or if no return has been filed or application made, then to such address as may be obtainable. Mailing shall be made by First-Class mail with a Certificate of Mailing. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this local law by the giving of notice shall commence to run from the date of mailing of such notice.

(b) The provisions of the Civil Practice Law and Rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the County to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this local law. However, except in the case of a willfully false or

fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three (3) years from the date of the filing of a return; provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(c) Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

23. Separability.

If any provisions of this local law, or the application thereof to any person or circumstances, is held invalid, the remainder of this local law, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

Section 3. Effective Date. This Local Law shall take effect upon filing with the Secretary of State.

Mailed: 10/10/13 – Print 2

Adopted by Legislature: 10/23/13

Public Hearing by Executive: 10/30/13

Adopted as LL 6-13