

Local Law #05-2024

A Local Law enacting the City of Olean Room Occupancy Tax

Be It Enacted by the Common Council of the City of Olean as follows:

Section 1. Legislative Findings, Intent, and Purpose

On November 22, 2024, Governor Kathy Hochul signed Senate Bill S6671, which authorizes the City of Olean to adopt a local law relating to the implementation and assessment of tax on persons occupying hotel or motel rooms in such City. The Common Council makes the following findings of fact:

- A. The assessment of a City occupancy tax will promote tourism, economic development, and enhance the general economy of the City of Olean.
- B. Pursuant to the state enabling legislation, the City is authorized to charge up to 5% ad valorem tax on overnight accommodations. Such funds are earmarked for the promotion of tourism and economic development within the City of Olean.

The Common Council finds that the occupancy tax is critical to funding the promotion of tourism and economic development within the City of Olean.

Section 2. Code of Local Laws Amendment

The City of Olean Code of Local Laws is hereby amended to create and impose an occupancy tax within the City of Olean, inserting a new Chapter LL6.5 entitled “Room Occupancy Tax” as follows.

Chapter LL6.5. Room Occupancy Tax

§6.5-1 Definitions

When used in this chapter, the following terms shall mean:

AUDITOR – The Auditor of the City of Olean or such other person as may be designated by the Mayor to administer and collect the tax provided for herein

EFFECTIVE DATE – The date on which the Secretary of State files this chapter

EXEMPT OCCUPANT – Any occupant of any room or rooms in a hotel whose rent is paid from public assistance from the County of Cattaraugus shall be deemed an “exempt occupant” with respect to the period of such occupancy, regardless of the length thereof

HOTEL – A facility or portion thereof, which is regularly used and kept open as such for the lodging of guests. For the purposes of this chapter, the term “hotel” shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and

commonly known as “bed and breakfast” and “tourist” facilities, and shall include but not be limited to hotels, motels, tourist homes, motel courts, bed-and-breakfast establishments, short-term rentals, vacation rentals, clubs or similar facilities, whether or not meals are served to guests or residents thereof “hotel” or “motel”

OCCUPANCY – The use or possession or the right to the use or possession of any room in a hotel

OCCUPANT – A person who, for a consideration, uses, possesses or has the right to use or possess any room in a hotel under any lease, concession, permit, right of access, license to use or other agreement or otherwise

OPERATOR – Any person operating a hotel in the City of Olean, including, but not limited to, an owner or proprietor of such premises, lessee, sub lessee, mortgagee in possession, licensee or any other person otherwise operating such hotel

PERMANENT RESIDENCE – Any occupant of any room or rooms in a hotel for at least 30 consecutive days shall be considered a “permanent resident” with regard to the period of such occupancy

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

POLICE CHIEF – The Police Chief of the City of Olean or his/her successor in office

RENT – The consideration received for occupancy valued in money, whether received in money or otherwise, for the occupancy of a room in a hotel for any period of time

RETURN – Any return filed or required to be filed as herein provided

ROOM – Any room or rooms or suite of rooms with sleeping accommodations, whether or not such accommodations are used, of any kind in any part or portion of a hotel which is available for or let out for any purpose

§6.5-2. Imposition of Tax

Effective the date this law is filed with the Department of State, there is hereby imposed and there shall be paid a tax of 5% upon the per diem retail rental rate for every occupancy of a room or rooms in a hotel in this City, except that the tax shall not be imposed upon a permanent resident or exempt occupant.

§6.5-3. Transitional Provisions

The tax imposed by this chapter shall be paid upon any occupancy on and after the date of filing with the Department of State, although such occupancy is pursuant to a prior contract, lease or other arrangement. However, for any occupancy taking place on or after the date of filing with the Department of State, where rent for such occupancy has been pre-paid through a third party room remarketer or pre-paid in full to the hotel and where such rent is paid prior to the effective date, and for which the hotel has no other direct financial transaction with the occupant, that occupancy shall not be subject to the tax. Where rent is paid on a weekly, monthly or other term basis, the rent shall be subject to the tax imposed by this chapter to the extent that it covers any period on and after the date of filing with the Department of State.

§6.5-4. Exempt Organizations

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 chapter:

- A. The State of New York, or any of its agencies or instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada), improvement districts or political subdivisions of the State;
- B. The United States of America, or any of its agencies and instrumentalities, insofar as it is immune from taxation;
- C. Any corporation, association, 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 subsection 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 subsection. Where any organization described in 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, occupancy of rooms in the premises and rents therefrom received by such corporation or association shall not be subject to tax hereunder.

§6.5-5. Territorial Limits

The tax imposed by this chapter shall apply only within the territorial limits of the City of Olean.

§6.5-6. Registration; Certificates of Authority

- A. Within ten (10) days after the effective date of this chapter or, in the case of operators commencing business after such effective date, within three days after such

commencement or opening, every operator shall file with the Auditor a certificate of registration in a form prescribed by the Auditor.

- B. The Auditor shall, within five 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 therefor for each additional hotel of such operator. Each certificate or duplicate shall state the hotel to which it is applicable. Such certificate of authority shall be prominently displayed by the operator in such a manner that it may be seen and come to the notice of all occupants and persons seeking occupancy. Such certificate shall be nonassignable and nontransferable and shall be surrendered immediately to the Auditor upon the cessation of business at the hotel named or upon its sale or transfer.

§6.5-7. Administration and Collection

- A. The tax imposed by this chapter shall be administered and collected by the Auditor or such other City employee as he/she may designate by such means and in such manner as are other taxes which are now collected and administered or as otherwise are provided by this chapter.
- 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 of charges made for said occupancy issued or delivered by the operator, and the tax shall be paid by the occupant to the operator as trustee for and on account of the City, and the operator shall be liable for the collection thereof and for the tax. The operator and any officer of any corporate operator shall be personally liable for the tax collected or required to be collected under this chapter, and 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 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 he/she may have in the event of nonpayment of rent by the occupant; provided, however, that the Auditor or employees or agents duly designated by him/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. The Auditor may, wherever he/she deems it necessary for proper enforcement of this chapter, provide by regulation that the occupant shall file returns and pay directly to the Auditor the tax imposed at such times as returns are required to be filed and as payments are required to be made by the operator.

- D. Except as to and where the occupant has paid rent in full prior to the effective date, the tax imposed by this chapter shall be paid upon any occupancy on and after the date of filing with the Department of State, 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 the Date of filing with the Department of State. Where any tax has been paid hereunder upon any rent which has been ascertained to be worthless, the Auditor may, by regulation, provide for credit and/or refund of the amount of such tax upon application therefore as provided by this chapter.
- E. For the purpose of the proper administration of this chapter 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 or occupant. Where an occupant claims exemption from the tax under the provisions of subsection C of §6.5-4 of this chapter, the rent shall be deemed taxable hereunder unless the operator shall receive from the occupant claiming such exemption a copy of a New York State sales tax exemption certificate.

§6.5-8. 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 Auditor may by regulation require. Such records shall be available for inspection and examination at any time upon demand by the Auditor or his/her duly authorized agent or employee and shall be preserved for a period of three years, except that the Auditor may consent to their destruction within that period or may require that they be kept longer.

§6.5-9. Returns

- A. Every operator shall file with the Auditor a return of occupancy and of rents and of the taxes payable thereon for the three-month periods ending the last day of March (for January, February, and March), June (for April, May, and June), September (for July, August, and September), and December (for October, November, and December) on and after the date of filing with the Department of State. Such returns shall be filed within 20 days from the expiration of the period covered thereby. The Auditor may permit or require returns to be made by other periods upon such dates as he/she may specify. IF the Auditor deems it necessary in order to ensure the payment of the tax imposed by this chapter, he/she may require returns to be made for shorter periods

than those prescribed pursuant to the foregoing provisions of this section and upon such dates as he/she may specify.

- B. The forms of return shall be prescribed by the Auditor and shall contain such information as he/she may deem necessary for the proper administration of this chapter. The Auditor may require amended returns to be filed within 20 days after notice and to contain the information specified in the notice.
- C. If a return required by this chapter is not filed or if a return is incorrectly filed or is insufficient on its face, the Auditor shall take such steps as he/she deems necessary to enforce the filing of such return or of a corrected return.

§6.5-10. Payment of Tax

At the time of filing a return of occupancy and of rents, each operator shall pay to the Auditor the taxes imposed by this chapter 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 chapter; even though it may be later judicially determined that the tax collected is invalidly required to be filed, it shall be due from the operator and payable to the Auditor on the date prescribed herein for the filing of the return for such period, without regard to whether a return is filed or whether the return which is filed correctly shows the amount of rents and taxes due thereon. Where the Auditor in his/her discretion deems it necessary to protect revenues to be obtained under this chapter, he/she may require any operator required to collect the tax imposed by this chapter to file with him/her 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 Auditor may find 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 Auditor determines that an operator is to file such bonds, he/she shall give notice to such operator to that effect, specifying the amount of the bonds required. The operator shall file such bond within five days after the giving of such notice unless, within such five days, the operator shall request, in writing, a hearing before Auditor at which the necessity, propriety and amount of the bond shall be determined by the Auditor. Such determination shall be final and shall be complied with within fifteen (15) days after the giving of such notices thereof. In lieu of such bond, securities approved by the Auditor or cash in such amount as he/she may prescribe may be deposited with him/her, which shall be kept in the custody of the Auditor, who may at any time, without notice of the depositor, apply them to any tax and/or interest or penalties due, and for that purpose the securities may be sold by him/her at public or private sale without notice to the depositor thereof.

§6.5-11. Determination of Tax

If a return required by 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 Auditor 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, locations, 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 the person against whom it is assessed, within 30 days after giving notice of such determination, shall apply to the Auditor for a hearing or unless the Auditor on his/her own motion shall redetermine the same. After such hearing, the Auditor shall give notice of his/her determination to the person against whom the tax is assessed. The determination of the Assessor shall be reviewable for error, illegality, unconstitutionality or any other recognizable basis whatsoever by proceeding under Article 78 of the Civil Practice Law and Rules if application therefor is made to the Supreme Court within 30 days after the giving of the notice of such determination. A proceeding under Article 78 of the Civil Practice Law and Rules shall not be instituted unless the amount of any tax sought to be reviewed, with penalties and interest thereon, if any, shall be first deposited with the Auditor and there shall be filed with the Auditor 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 proceedings be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue, including reasonable counsel fees, in the prosecution of the proceeding, or, at the option of the applicant, such undertaking filed with the Auditor may be in a sum sufficient to cover the taxes, penalties and interest thereon stated in such determination plus the costs and charges, including reasonable counsel fees, which may accrue against it in the prosecution of the proceedings, in which event the applicant shall not be required to deposit such taxes, penalties and interest as a condition precedent to the application.

§6.5-12. Disposition of Revenues.

All revenue resulting from the imposition of the tax under this chapter shall be paid into the treasury of the City and shall be credited to and deposited in the general fund of the City. The City shall be authorized to retain the necessary revenue to defer the expense of the City in administering such tax and the balance of such revenues shall be allocated towards the promotion of tourism and economic development within the City of Olean.

§6.5-13. Refunds

- A. In the manner provided in this section, the Auditor shall refund or credit, without interest, any tax penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the Auditor for such refund shall be made within one year from

the payment thereof. Whenever a refund is made by the Auditor, he/she shall state his/her reason therefor 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 Auditor, provided that the application is made within one year of the payment by the occupant to the operator, but no actual refund of moneys shall be made to the operator until he/she shall establish to the satisfaction of the Auditor, under such regulations as the Auditor may prescribe, that he/she has repaid to the occupant the amount for which the application for refund is made. The Auditor may, in lieu of any refund required to be made, allow credit therefor on payments due or to become due from the applicant.

- 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 Auditor may receive evidence with respect thereto. After making his/her determination, the Auditor shall give notice thereof to the applicant, who shall be entitled to review such determination by a proceeding pursuant to Article 78 of the Civil Practice Law and Rules, provided that such proceeding is instituted within 30 days after the giving of the 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 Auditor in such amount and with such sureties as a Justice of the Supreme Court shall approve to the effect that, if such proceedings be dismissed or the tax confirmed, the petitioner will pay 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 section of a tax, interest or penalty which had been determined to be due pursuant to the provisions of §6.5-11 of this chapter where he/she has had a hearing or an opportunity for a hearing, as provided in said section, or has failed to avail himself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the Auditor made pursuant to §6.5-11 of this chapter unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper by the Auditor after a hearing or on his/her own motion or in a proceeding under Article 78 of the Civil Practice Law and Rules, pursuant to the provisions of said section, in which event refund or credit without interest shall be made of the tax, interest, or penalty found to have been overpaid.

§6.5-14. Reserves

In cases where the occupant or operator has applied for a refund and has instituted a proceeding under Article 78 of the Civil Practice Laws and Rules to review a determination adverse to him/her on his/her application for refund, the Auditor shall have the option of

crediting future tax payments to meet the cost of any settlement or judgments or, at his/her option, may, in the first instance, set up appropriate reserves to meet any decision adverse to the City.

§6.5-15. Remedies Exclusive

The remedies provided by §§6.5-11 and 13 of this chapter shall be the exclusive remedies available to any person for the review of tax liability imposed by this chapter, 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 an nature of a certiorari proceeding under Article 78 of the Civil Practice Law and Rules; provided, however, that a taxpayer may proceed by declaratory judgment if he/she institutes suit within 30 days after a deficiency assessment is made and pays the amount of the deficiency assessment to the Auditor prior to the institution of such suit and posts a bond for costs as provided in §6.5-11 of this chapter.

§6.5-16. Proceedings to Recover Tax

- A. Whenever any operator or any officer of a corporate operator or any occupant or other person shall fail to collect and pay over any tax and/or to pay any tax, penalty or interest imposed by this chapter as herein provided, the City Attorney shall, upon the request of the Auditor, bring or cause to be brought an action to enforce the payment of the same on behalf of the City of Olean in any court of the State of New York or of any other state or of the United States. If, however, the Auditor in his/her discretion believes that any such operator, officer, occupant or other person is about to cease business, leave the state or remove or dissipate the assets out of which the tax or penalties might be satisfied, and that any such tax or penalty will not be paid when due, he/she may declare such tax or penalty to be immediately due and payable and may issue a warrant immediately.
- B. As an additional or alternate remedy, the Auditor may in the preparation of the next assessment roll, assess the amount of such tax or penalty upon the property occupied by business giving rise to such tax or penalty, and this amount shall be levied, collected and enforced in the same manner as taxes upon said property for City purposes are levied, collected, and enforced.
- C. Whenever an operator shall make a sale, transfer, or assignment in bulk of any part of the whole of his/her hotel or its assets or his/her lease, license or other agreement or right to possess or operate such facility 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 and the equipment, furnishings,

fixtures, supplies and stock or merchandise pertaining to the conduct or operation of said hotel 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 said sale, transfer or assignment or paying therefor, notify the Auditor 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 chapter 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.

- D. Whenever the purchaser, transferee or assignee shall fail to give notice to the Auditor as required by the preceding subsection or whenever the Auditor shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or chose in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over, 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 City, and the purchaser, transferee, or assignee is forbidden to transfer to the seller, transferor or assignor any such sums of money, property or chose in action to the extent of the amount of the City's claim. For failure to comply with the provisions of this subsection, the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of the Uniform Commercial Code, shall be personally liable for the payment to the City of any such taxes theretofore or thereafter determined to be due to the City 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 chapter.

§6.5-17. General Powers of Auditor

In addition to the powers granted to the Auditor by General City Law and this chapter, he/she is hereby authorized and empowered:

- A. To make, adopt and amend rules and regulations appropriate to the carrying out of this chapter and the purposes thereof;
- B. To extend, for cause, shown, the time of filing any return for a period not exceeding 30 days; and, for cause shown, to remit penalties but not interest computed at the rate of 1% per annum per month or fraction thereof during which a tax is unpaid although due; and to compromise disputed claims in connection with the taxes hereby imposed;
- C. To request information from the Tax Commission 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 chapter to the contrary notwithstanding;

- D. To delegate his/her functions hereunder to any employee or employees of the City of Olean as the Mayor may approve;
- E. To prescribe methods for determining the rents for occupancy and to determine the taxable and nontaxable rents;
- F. To require any operator within the City 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, whether or not any occupancy is claimed to be subject to the tax imposed by this chapter, and to furnish such information upon request to the Auditor;
- G. To assess, determine, revise and readjust the taxes imposed under this chapter;
- H. To require any operator to submit with the return required hereunder a copy of any tax return for sales, occupancy or use taxes submitted to the Tax Commission or other instrumentality of the State of New York.

§6.5-18. Administration of Oaths; Authority to Compel Testimony and Produce Records; Penalties; Fees

- A. The Auditor or his/her employees or agents duly designated and authorized by him/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 chapter. The Auditor shall have the 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/her duties hereunder and of the enforcement of this chapter 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/her or excused from attendance.
- B. A Justice of the Supreme Court, wither in court or at chambers, shall have the 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 Auditor under this chapter.
- 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 Auditor under this chapter shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than \$1,000 or imprisonment for not more than one year, or both such fine and imprisonment.

- D. The officers who serve the summons or subpoena of the Auditor 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 herein otherwise provided. Such officers shall be the Police Chief and his/her duly appointed deputies or any officers, employees or other persons of the Auditor designated by him/her to serve such process.

§6.5-19. Reference to Tax

Wherever 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 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 term "City tax" will suffice.

§6.5-20. Penalties for Offenses; Interest

- A. Any person failing to file a return or to pay or pay over any tax to the Auditor within the time required by this chapter shall be subject to a penalty of 5% of the amount of tax due per month or any fraction of a month to a maximum of 25% for each year; plus interest at the rate of 1% of such tax for each month of delay or fraction of a month after such return was required to be filed or such tax became due; but the Auditor, if satisfied that the delay was excusable, may remit all or any part of such penalty; but not interest. Such net penalties and interest shall be paid and disposed of in the same manner as other revenues from this chapter. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this chapter.
- B. Any operator or occupant and any officer of an operator or occupant failing to file a return required by this chapter, or file 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 chapter 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 §6.5-11 of this chapter or failing to file a registration certificate and such data in connection therewith as the Auditor may by regulation or otherwise require to display or surrender the certificate of authority as required by this chapter or assigning or transferring such certificate of authority; and any operator or 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 of occupancy and on any bill or statement or receipt of rent issue or employed by the operator or willfully failing or refusing to collect such tax from the occupant, any operator or 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

chapter, and any such person or operator failing to keep records required by this chapter, shall, in addition to the penalties herein or elsewhere prescribed, be guilty of a misdemeanor, punishable by a fine of up to \$1,000, imprisonment for not more than one 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 chapter and penalties and interest thereon and subject to the fine and imprisonment herein authorized.

- C. The certificate of the Auditor 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 chapter shall be presumptive evidence thereof.

§6.5-21. Returns to be Completed; Preservation of Returns; Penalties

- A. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the Auditor or employee or designee of the Auditor 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 chapter. 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 Auditor in an action or proceeding under the provisions of this chapter or on behalf of any party to any action or proceeding under the provisions of this chapter 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/her duly authorized representative of a certified copy of any return filed in connection with his/her tax nor to prohibit the publication of statistics so classified to prevent the identification of particular returns and items thereof or the inspection by the City Attorney or other legal representatives of the City or by the District Attorney of any county 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. Returns shall be preserved for three years and thereafter until the Auditor permits them to be destroyed.
- B. Any violation of subsection A of this section shall be punishable by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both, in the discretion of the court, and if the offender be an officer or employee of the City, he/she may be, at the discretion of the Mayor or Common Council in accordance with the provisions of the

City Charter and Code dismissed from office and be incapable of holding any further City office as may be determined according to the law.

§6.5-22. Notices and Limitations of Time

- A. Any notice authorized or required under the provisions of this chapter may be given to the person to whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by him/her pursuant to the provisions of this chapter or in any application made by him/her or, if no return has been filed or application made, then to such address as may be obtainable. 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 chapter by the giving of notice shall commence five days after 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 City to levy, Appraise, assess, determine or enforce the collection of any tax or penalty provided by this chapter. However, except in the case of a willfully false, fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of filing of a return; provided, however, that, in the case of a return which should have been filed and has not been filed as provided by law, the tax may be assessed at any time.
- C. Where, before expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented to, 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.

§6.5-23. Severability

If any provision of this chapter, or the application therefor to any person or circumstance, is held invalid, the remainder of this chapter, and the application of such provision to other persons or circumstances, shall not be affected thereby.

§6.5-24. Expiration

Pursuant to the requirements of enabling legislation, this local law shall be in effect for three years from the effective date of its enactment. Upon expiration of this local law, another law may be enacted to take its place.

Section 3. Severability Clause

Severability is intended throughout and within the provisions of this Local Law. If any section, subsection, sentence, clause, phrase, or portion of this Local Law is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Local Law.

Section 4. Effective Date

This Local Law shall take effect upon filing in the office of the Secretary of State, and pursuant to the requirements of the enabling legislation, this local law shall be in effect for three years from the effective date of its enactment. Upon expiration of this Local Law, another local law may be enacted to take its place.