

A LOCAL LAW EXTENDING THE LODGING TAX OF THE CITY OF HUDSON

SECTION 1. TITLE This Local Law shall be known as Local Law No. _____ for the year 2022.

SECTION 2. LEGISLATIVE HISTORY

WHEREAS, the New York State legislature has heretofore authorized the City of Hudson to enact a local law imposing a lodging tax in accordance with Section 1202-dd of the Tax Law, as set forth in Chapter 465 of the New York laws of 2006; and

WHEREAS, the City of Hudson has heretofore enacted local laws consistent with such authority and received a necessary financial benefit as a result thereof and believes that the continuation and renewal of the tax would result in a benefit to the residents of the City; and

WHEREAS, Local Law Number 3 of 2019 will expire pursuant to its terms on December 1, 2022, and

WHEREAS, the City of Hudson has received legislative authorization from the State of New York to extend the City's Lodging Tax in accordance with Section 1202-dd of the Tax Law, as set forth in Chapter 465 of the New York laws of 2006 until December 1, 2022;

NOW, THEREFORE, it is hereby enacted as follows:

SECTION 3. ENACTMENT

This Local Law shall become effective on December 1, 2022, in accordance with the provisions of §1202-dd of the Tax Law, and upon the expiration of Local Law No. 3 of 2019, so that there is a non-interrupted and continuing imposition of the Lodging Tax in the City of Hudson.

Article VIII Short-Term Lodging Tax

§ 275-22 Definitions.

As used in this article, the following terms shall have the meanings indicated, unless the context clearly requires otherwise:

“City” shall mean the City of Hudson.

“Host” shall mean the person who owns, or otherwise is in possession of, and thereby offers to the public, by any means whatsoever now existing or hereinafter arising, a room or rooms for short-term lodging within the City. A host is the person entitled to be paid the rent or charge for the room let for short-term lodging provided, however, this term shall not include a booking agent or like instrumentality including, by way of illustration and without limitation, AirBnB, VRBO, and similar services regardless of the methodology such instrumentality may use to communicate with its customers and others.

“Lodging tax” shall mean the short-term lodging tax imposed pursuant to this Article, which is sometimes referred to as “tax” herein.

“Net tax revenues” shall mean the amount of lodging tax collected by the City, exclusive of registration fees, penalties and interest, less the expenses incurred by the City to administer the lodging tax or to set up reserves referred to in §275-32 and §275-38 of this article.

“Noncompliant structure” shall mean (i) any structure that lacks a permanent foundation compliant with applicable building and fire prevention codes such as a tent, a recreational vehicle or camper, a gazebo or other structure that lacks a sanitary facility (providing, at a minimum, potable running water, a sink and a toilet each with a connection to the City’s sewer system) that is part of such structure, and (ii) any structure defined in §325-42 of this code (or successor thereto) as a “trailer.”

“Occupancy” shall mean the use or possession, or the right to the use or possession of any room for short-term lodging.

“Occupant” shall mean a person who, for consideration, uses, possesses or has the right to use or possess any room subject to the lodging tax.

“Rent” shall mean the charge, bill and/or consideration received for occupancy valued in money, whether received in money, or otherwise, including without limitation, cleaning fees, linen fees, key fees and like charges and fees.

“Room” shall mean a room or suite of rooms, with access to a

sanitary facility (providing, at a minimum, potable running water, a sink and a toilet each with a connection to the City's sewer system), that may be shared by one or more persons and that is made available for short-term lodging by the host thereof. Neither a noncompliant structure nor any part thereof is a room as herein defined.

“Short-term lodging” shall mean any room let by the host thereof to a third party or parties for use as a lodging for a period of not more than 29 consecutive days.

§275-23 Tax Imposed; applicability.

- A. In addition to any other tax authorized by any other taxing jurisdiction on the provision of short-term lodging within the City, there is hereby imposed a tax of four percent (4%) per day of the rent for a room used to provide short-term lodging and any and all charges and fees ancillary thereto including, without limitation, cleaning fees, linen fees, key fees and like charges and fees. The tax imposed hereby shall be paid by the person liable therefor to the host of the room occupied or to the person entitled to be paid the rent or charge for the room occupied for and on account of the City of Hudson imposing the tax, and that such host shall be liable for the collection and payment of the tax; and that such host or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room, or in respect to nonpayment of the tax by the person occupying the room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge for such room; provided, however, that the City Treasurer shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

- B. Notwithstanding anything in this article to the contrary, the tax imposed by this article shall not apply to a single room (that may include an en suite bathroom) occupied for short-term lodging provided that (a) such single room is in the host's sole residence within the City of Hudson and which is such host's primary residence, (b) no more than one such room is offered for short-term lodging within such residence, and; (c) access and egress (except for emergency egress) to such single room is solely through the host's primary residence and identical to the access and egress portal used by the host to access and exit such primary residence.

- C. Notwithstanding anything in this article to the contrary, any entity exempt from paying New York State sales taxes shall, upon providing their host with reasonably adequate proof of such exemption, be exempt from the tax established by this article.

§ 275-24 Transitional Provisions.

The tax imposed by this local law shall be paid upon any occupancy on or after June 1, 2017, although such occupancy is pursuant to a prior contract, lease or other arrangement. Where rent is paid on a weekly or other term basis, the rent shall be subject to the tax imposed by this local law to the extent it covers any period on or after June 1, 2017.

§275-25 Exempt Organizations.

Except as otherwise provided in this article, any use or occupancy by any of the following shall not be subject to the tax imposed by this article:

- A. The State of New York or any of its agencies, 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;

§275-26 Territorial Limitations.

The tax imposed by this local law shall only apply within the territorial limits of the City of Hudson, New York.

§ 275-27 Registration; certificate of authority.

- A. Within twenty (20) days after the effective date of this local law, or in the case of host entering into the marketplace after such effective date, within three (3) days after offering short term lodging, every host shall file a registration application with the City Treasurer on the form prescribed by that official.

- B. Thereafter, all hosts shall annually register with the City Treasurer on the form prescribed by the City Treasurer, which form may require a separate registration form for each real property legal parcel for which the host rents out rooms, or require that all such legal parcels be separately identified on one registration form. With respect to each real property legal parcel, such registration application form shall identify the host, the owner of the real property, the lessee of the real property (if any), the social security number or employment identification number of the host, the mailing address, phone number and email address of the host, owner and lessee, the number and identity of each distinct address where the host offers short-term lodging within the City, the number of rooms at each such location, and over the course of the calendar year, the maximum and the minimum gross nightly rate that is anticipated to be charged for a room therein (gross nightly rate includes the total amount charged therefor before application of any government-mandated taxes that the host charges for the room). If a real property location has more than one room, and the rates vary by room, only the maximum and the minimum rate charged at the location shall be provided, as opposed listing the rates for each room. Such annual registration form shall be filed by the host between March 1 and March 31 of each year. Upon the filing of each annual registration form, a host shall pay to the City Treasurer such application fees as established by resolution of the Hudson Common Council and available for inspection in the City Clerk's Office. The fees for a first-time registration shall be prorated relative to the renewal date therefor.

- C. Upon filing the annual registration application form and paying the fee associated therewith, the City Treasurer shall issue to the registering host a certificate of authority to levy and collect the tax established by this article on a form prescribed by that official. Each such certificate of authority shall be specific to the address for which it pertains, shall recite the name of the host, the address of the short-term lodging license issued pursuant to

this Article, and the number of rooms available for short-term lodging therein. Each certificate of authority shall be non-transferable and non-assignable.

- D. Upon receipt of its certificate of authority pursuant to this article, the host named thereon shall post the same at the location to which it pertains in the same manner required of a certificate of authority to collect sales tax issued by New York State.
- E. Every certificate of authority issued pursuant to this article shall be renewed no later than a date established by the City Treasurer, provided that: (i) such date shall be conspicuously posted on the City's Web site in a manner reasonably calculated to adequately inform hosts of their obligation in this regard, and; (ii) that the renewal deadline date shall not be changed less than 60 days prior to such date.

§ 275-28 Administration and Collection

- A. The tax imposed by this article shall be administered and collected by the City Treasurer by such means and in such manner as are other taxes that are now collected and administered or as otherwise provided by this article.
- B. The tax to be collected by the host shall be stated and charged separately from the rent and shown separately on any record thereof at the time when the occupancy is arranged, contracted, and/or charged for and upon every evidence of occupancy or any bill or statement or charge made for said occupancy issued or delivered by the host, and the tax shall be paid by the occupant to the host as trustee for and on account of the City, and the host shall be liable for the collection thereof and for the tax. The host and any officer of any corporate operator shall be personally liable for the tax collected or required to be collected under this article, and the host 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 judgment in the event of nonpayment of rent by the occupant; provided, however, that the City Treasurer and the City of Hudson shall be joined as a party in any action or proceeding brought by the host to collect or enforce collection of the tax.
- C. Each host obligated to pay the tax created by this article shall file with the City Treasurer a return therefor on a form promulgated by the City Treasurer for such purpose. Each host filing the return for which shows a tax due to the City shall pay the tax thereon shown to the City Treasurer with such

return. The return required by this section shall be filed whether it shows a tax due or not.

- D. For the purpose of the proper administration of this article 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 host or occupant. Where an occupant claims exemptions from the lodging tax under the provisions of subsection B of § 275-25 of this article, the rent shall be deemed taxable hereunder unless the host shall receive from the occupant claiming such exemption a certificate duly executed by an exempt entity certifying that the occupant is its agent, representative of employee, together with a certificate executed by the occupant that his or her 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, the host may further require that any occupant claiming exemption from the lodging tax furnish a copy of a certificate duly issued by the City Assessor certifying that the corporation or association therein named is exempt from the tax under § subsection B of §275-25 of this article.
- E. Every host shall file with the City Treasurer a return of occupancy and of rents and of the taxes payable thereon quarterly. The quarterly periods for which such tax shall accrue shall end on the last day of February, May, August and November of each year, and the tax return shall be filed, and the tax that accrued for such quarterly period paid, within one (1) month after the end of each such quarterly period.
- F. If the host is a New York State sales tax vendor, it shall attach a copy of its same-period New York State sales tax return to its return pursuant to this article.
- G. If a host is not a New York State sales tax vendor, it shall maintain, in form and detail, business records sufficient to enable such host to file a New York State sales tax return for each period in which it is offering short-term lodging within the City of Hudson as if such host were a New York State sales tax vendor. Such records shall be maintained for a minimum of three years after the return required by this §275-28 shall or should have been filed with the City Treasurer as provided by this §275-28.
- H. If a return required by this article is not filed or if a return, when filed, is incorrect or insufficient on its face, the City Treasurer shall take the necessary steps to enforce the filing of such a return or of a corrected return.

§275-29 Records to be kept by host.

Every host 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 City Treasurer may require. Such records shall be available for inspection and examination at any time upon demand by the City Treasurer or its duly authorized agent or employee and shall be preserved for a period of three years, except that the City Treasurer may consent to their destruction within that period or may require that they be kept longer.

§ 275-30 Payment of Tax.

- A. At the time of filing a return of occupancy and of rents, each host shall pay to the City Treasurer the taxes imposed by this article upon the rents required to be included in such return, as well as all other moneys collected by the host acting or purporting to act under the provisions of this article.

- B. Where the City Treasurer, in its discretion, deems it necessary to protect revenues to be obtained by this article, it may require any host required to collect the tax imposed by this article to file with it 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 City Treasurer may fix to secure the payment of any tax and/or penalties and interest due or which may become due from such host. In the event that the City Treasurer determines that a host is to file such bond, it shall give notice to such host to that effect, specifying the amount of the bond required. The host shall file such bond within five days after the giving of such notice unless within five (5) such days, the host shall request, in writing, a hearing before the City Treasurer at which the necessity, propriety and amount of the bond shall be determined by the City Treasurer. Such determination shall be final and shall be complied with within 15 days after the giving of notices thereof. In lieu of such bond, securities approved by the City Treasurer or cash in such amount as it may prescribe may be deposited, which shall be kept in the custody of the City Treasurer, 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 the City Treasurer at public or private sale without notice to the depositors thereof.

§ 275-31 Determination of Tax.

If a return required to be filed by this law is not filed or if a return, when filed, is incorrect or insufficient, the amount of tax due shall be determined by the City Treasurer 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, comparable lodging rates, type of accommodations and service and/or other

factors. Notice of such determination shall be given to the person or entity liable for the collection and payment of the tax, and the owner of the real property against whom it is assessed. Such determination shall finally and irrevocably fix the tax unless the host and owner of the real property against whom it is assessed, within thirty (30) days after giving notice of such determination, shall apply to the City Treasurer for a hearing or unless the City Treasurer on its own motion shall re-determine the same. After such hearing, the City Treasurer shall give notice of its determination to the host, owner and/or lessee of the real property against whom the tax is assessed. The determination of the City Treasurer 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 thereof is made to the Supreme Court within thirty (30) days after the date of such determination. A proceeding under Article 78 of the Civil Practice Law and Rules shall not be instituted unless:

- A. The amount of any tax sought to be reviewed, with penalties and interest thereon, if any, shall be first deposited with the City Treasurer and there shall be filed with the City Treasurer 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 such proceeding, or;
- B. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests, and penalties stated in such determination, plus the costs and charges which may accrue against such petitioner in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interests or penalties as a condition precedent to the application.

§ 275-32 Disposition of Revenues.

Subject to the provisions § 275-38 of this article, all moneys received by the City Treasurer under this article shall be paid into the treasury of the City and shall be credited to and deposited in the general fund thereof for allocation during the annual budget process for any municipal purpose including a portion of which may be allocated for the purpose of marketing the City Hudson as a destination for overnight and day-trip visitors.

§ 275-33 Proceedings to Recover Tax.

- A. Whenever any owner and/or lessee shall fail to collect and pay over any tax and/or to pay any tax, penalty or interest imposed by this law as therein provided, the City Corporation Counsel shall, upon the request of the City Treasurer, bring or cause to be brought an action to enforce the payment of the same on behalf of the City of Hudson in any court of the State of New York or of any other state or of the United States. The proceeds of any judgment obtained in any such action shall be paid to the City Treasurer. Each such tax

and penalty shall be a lien upon the property of the person liable to pay the same. If, however, the City Treasurer in its discretion believes that any such host, 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 City Treasurer may direct the City Assessor to, in the preparation of the next assessment roll, assess the amount of such tax or penalty upon the property occupied by the short-term lodging 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. As a further remedy, where the lodging tax upon rents included in a return is not paid at the time of filing such return or an assessment of lodging tax made is not paid within 10 days from the date of the notice of such assessment or where the City Treasurer believes that any host, occupant or other person subject to the provision of this article is about to cease business, leave the state or remove or dissipate assets, or for any other similar reason he deems it necessary in order to protect revenues under this article, he may issue a warrant directed to a sheriff of the County of Columbia or to the Sheriff of any other county commanding said Sheriff, to levy upon and sell the real and personal property of the host or occupant or other person liable for the tax which may be found within the City for the payment of the amount thereof, with any penalties and interest and the cost of executing the warrant, and to return such warrant to the City Treasurer and to pay to the City Treasurer the money collected by virtue thereof within 60 days after the receipt of such warrant. The sheriff shall, within five days after the receipt of the warrant, file with the City Clerk a copy thereof, and thereupon such City Clerk shall enter in the judgment docket the name of the person mentioned 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 title to and 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 upon judgments of a court of record, and for services in executing the warrant, the sheriff shall be entitled to the same fees which he may collect in the same manner. In the discretion of the City Treasurer, a warrant of like terms, force and effect may be issued and directed to any officer or employee of the City, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs 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 City Treasurer, may, from time to time, issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the City had recovered judgment therefor and execution thereon had been returned unsatisfied.

- D. Whenever a host shall make a sale, transfer, or assignment in bulk of any part of the whole of a hotel, motel, or lease, or of such host's business assets, otherwise than in the ordinary course of business, the purchaser, transferee or assignee shall at least ten (10) days before taking possession of the subject of the said sale, transfer or assignment, or paying therefor, notify the City Treasurer 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 any tax is owed 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.

- E. Whenever the purchaser, transferee or assignee shall fail to give notice to the City Treasurer as required by sub-section D of this section or whenever the Treasurer 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 of any such taxes theretofore or thereafter determined to be due 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 choses in action to the extent of the amount of the City's claim. For failure to comply with the provisions of this sub-section, 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 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.

§275-34 Administration of oaths and compelling testimony.

- A. The City Treasurer, or the City Treasurer's duly designated and authorized employees or agents, shall have the power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of the City's powers and duties under this article.

- B. The City Treasurer 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/her duties hereunder and of the enforcement of this 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/her or excused from attendance.
- C. A Justice of the Supreme Court, either in court or at chambers, shall have the power to summarily 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 City Treasurer under this law.
- D. A person who shall refuse to testify or to produce books or records or who shall testify falsely in any material matter pending before the City Treasurer under this article shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than one thousand dollars (\$1,000) or imprisonment for more than one year, or both fine and imprisonment.
- E. The officers who serve the summons and subpoenas of the City Treasurer 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.
- F. The City of Hudson Chief of Police, the County Sheriff, their duly appointed deputies, and any officer or employee of said police agencies, are hereby authorized and empowered to serve any summons, subpoena, order, notice, document, instrument, or other process to enforce or carry out this article.

§275-35 General powers of City Treasurer.

In addition to the powers granted to the City Treasurer by the City Charter, City Code and/or this article, the City Treasurer is hereby authorized and empowered to:

- A. Make, adopt and amend rules and regulations appropriate to the carrying out of this article and the purposes thereof;
- B. Extend, for good cause shown, the time of filing any return for a period not exceeding 30 days; and, for good cause shown, to waive penalties, but not interest, and to compromise disputed claims in connection with the taxes hereby imposed;
- C. 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 article to the contrary notwithstanding;

- D. Delegate the functions hereunder to any employee or employees of the City Treasurer.
- E. Prescribe methods for determining the rents for occupancy and to determine the taxable and nontaxable rents;
- F. Require any host within the City to keep detailed records of the nature and type of lodging facility maintained, the nature and type of service rendered, the rooms available and rooms occupied daily, the leases or occupancy contracts or arrangements, the rents received, charged or accrued, and the names and addresses of the occupants, whether or not any occupancy is claimed to be subject to the tax imposed by this article, and to furnish such information upon the request of the City Treasurer.
- G. Assess, determine and readjust the taxes imposed pursuant to this article.

§ 275-36 Penalties and Interest.

- A. Failure to file an annual registration as required by § 275-27 of this article shall result in a fine to the noncompliant host equal to the greater of:
 - 1. all revenue derived by such host while operating without an annual registration on file; or
 - 2. Three thousand dollars (\$3,000) per quarter during which the City can show the host was offering short-term lodging in the City.
- B. Any person failing to file a return or corrected return or to pay any tax or any portion thereof within the time required by this article shall be subject to a penalty of 5% of the amount of tax due, plus interest in the amount of 1% of such tax due for each month of delay or fraction thereof excepting the first month, after such return was required to be filed or such tax became due provided, however, that the City Treasurer may waive all or any portion of such penalty, but not the interest owed, if the City Treasurer is satisfied that such delay was excusable.
- C. Any host that fails to conspicuously post a certificate of authority issued pursuant to this article as required by §275-27(D) hereof shall be fined not less than \$100.00 nor more than \$250.00 for violation of such section. For purposes of this section, each day that a certificate of authority is not so posted shall be deemed a separate violation.

- D. Failure to comply with a demand for records pursuant to §275-29 shall be punishable by a fine of not less than \$100.00 nor more than \$250.00 per violation. For purposes of this §275-36(D), each day that a host fails to comply with such a demand shall be deemed a separate violation.
- E. The certificate of the City Treasurer 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.

§275-37 Refunds.

- A. In the manner provided in this article, the City Treasurer shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the City Treasurer for such refund shall be made within one year from the payment hereof. Whenever a refund is made by the City Treasurer, it shall state the reason therefor in writing. Such application may be made by the occupant, owner, lessee, or other person who has actually paid the tax. Such application may also be made by a host who has collected and paid over such tax to the City Treasurer, provided that the application is made within one year of the payment by the occupant to the host, but no actual refund of moneys shall be made to such host until it shall first establish to the satisfaction of the City Treasurer, under such regulations as the City Treasurer may prescribe, that host has repaid to the occupant the amount for which the application for refund is made. The City Treasurer may, in lieu of any refund that is required to be made, allow credit therefor on payments 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 City Treasurer may receive evidence with respect thereto. After making its determination, the City Treasurer 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 City Treasurer 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 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 article of a tax, interest or penalty which had been determined to be due pursuant to the provisions of this section where it has a hearing or an opportunity for a

hearing, as provided in said section, or has failed to avail itself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the City Treasurer made pursuant to § 275-31 of this article unless it is found that such determination was erroneous, illegal or unconstitutional or otherwise improper by the City Treasurer after a hearing or of the City Treasurer's own motion or in a proceeding timely commenced under Article 78 of the Civil Practice Law and Rules, pursuant to the provisions of section §275-31, in which event a refund or credit without interest shall be made of the tax, interest or penalty found to have been overpaid.

§275-38 Reserves.

In cases where the occupant or host has applied for a refund and has instituted a proceeding under Article 78 of the Civil Practice Law and Rules to review an adverse determination on its application for refund, the City Treasurer shall set up appropriate reserves to meet any decision adverse to the City.

§275-39 Remedies Exclusive.

The remedies provided by §275-31 and §275-37 shall be the exclusive remedies available to any person for the review of tax liability imposed by this article, 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 an action or proceeding other than a proceeding in a nature of a certiorari proceeding commenced under Article 78 of the Civil Practice Law and Rules; provided, however, that a taxpayer may proceed by declaratory judgment if it institutes a suit within 30 days after a deficiency assessment is made and pays the amount of the deficiency assessment to the City Treasurer prior to the institution of such suit and posts a bond for costs as provided in §275-31.

§ 275-40 Disclosure of information prohibited; penalty.

Section 275-13 of article I of this chapter, as the same exists on the date this article becomes law, shall apply to this article as if it were set forth herein in its entirety.

§ 275-41 Notices of Limitation 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 post-paid envelope addressed to such person at the address given in the last return filed by him pursuant to the provisions of this local law, or in any application made by him, 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 it is addressed. Any period of time, which is determined according to the provisions of the local law giving of notice, shall commence to run from the date 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 penalty provided by this local law. However, except in the case of a willfully false or fraudulent return with the 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 described 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

§ 275-42 Rules and Regulations.

The City Treasurer, in consultation with the Legal Advisor and City Clerk, may promulgate such rules and regulations as are necessary and proper to carry out the provisions of this article.

275-44 Sunset.

This local law shall remain in full force and effect until December 1, 2025; except nothing shall prohibit or prevent the adoption and enactment of subsequent local laws continuing or imposing the tax authorized hereby after the expiration of this article.

§ 275-45 Severability.

If any section or sections of this article shall be declared unconstitutional or otherwise void and ineffective, the validity of the remainder of the provisions hereof and their application shall not be affected thereby.

SECTION 4. SUPERCESSION

Pursuant to the authority granted in Section 10 of the Municipal Home Rule Law, to the extent this local law is inconsistent with any state statute or regulation including if otherwise applicable, any sections of the New York State Building and Fire Prevention Code, this local law shall supersede any such inconsistent provisions. Notwithstanding, construction of Dwelling Units and Studio Apartments shall be subject to the minimal requirements of the New York State Building and Fire Prevention Code and any other State, County or City Laws that may be applicable.

SECTION 5. EFFECTIVE DATE

This local law shall take effect pursuant to its terms and upon its filing in the office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

Introduced _____

Seconded _____

Approved _____

By: _____
Kamal Johnson, Mayor