

**SCHEDULE "A"
COUNTY OF WARREN
LOCAL LAW NO. 5 OF 2018**

**A LOCAL LAW AMENDING THE WARREN COUNTY OCCUPANCY TAX AS
AUTHORIZED BY ACT OF THE NEW YORK STATE LEGISLATURE (CHAPTER 422 OF
THE LAWS OF 2003)**

BE IT ENACTED, by the Board of Supervisors of the County of Warren, New York, as follows:

Section 1. *Title & Statement of Intent.*

This local law shall be entitled "A Local Law Amending The Warren County Occupancy Tax as Authorized by Act of the New York State Legislature (Chapter 422 of the Laws of 2003)". The intent of this local law is to continue an occupancy tax authorized by act of the New York State Legislature (Chapter 422 of the Laws of 2003) and originally imposed by Warren County Local Law No. 4 of 2003 entitled "A Local Law to Enact an Occupancy Tax as Authorized by Act of the New York State Legislature (Chapter 422 of the Laws of 2003)" in addition to incorporating all of the amendments made to this Local Law since its original enactment as set forth above (the previous amendments being Local Law # 3 of 2006; Local Law #10 of 2006; Local Law #13 of 2011 and Local Law No. 6 of 2015). This local law is intended to incorporate all of the prior amendments, and to further amend Section 3, paragraph (c) so as to clarify that the definition of hotels and motels includes short-term vacation rentals, as well as adding a new paragraph (o) to define the term "short term vacation rental."

Section 2. *Authority.*

The authority for this local law is Chapter 422 of the Laws of 2003 of New York State. The authority to amend same exists by virtue of §1202-u of the New York State Tax Law and the Municipal Home Rule Law of the State of New York.

Section 3. *Definitions.*

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

- (a) *County* - Warren County, New York.
- (b) *Effective Date* - The date set forth in Section 29 of this local law.
- (c) *Hotel or Motel* - Any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast", "inn", "housekeeping cottages with four (4) or more units" and "tourist" facilities, "short-term vacation rentals", and any other similar accommodations by whatever name designated.
- (d) *Occupancy* - The use or possession, or the right to the use or possession, of any room in a hotel or motel. The right to the use or possession includes the right of a room remarketer as described in paragraph (n) of this section.

RESOLUTION NO. 367 OF 2018

PAGE 3 OF 19

- (e) *Occupant* - A person who, for a charge or any consideration, uses, possesses, or has the right to use or possess, any room in a hotel or motel under any lease, concession, permit, right, license, agreement, or otherwise. The right to use or possess includes the right of a room remarketer as described in paragraph (n) of this section.
- (f) *Operator* - The owner of the hotel or motel room occupied or if the owner is not operating the hotel or motel and not being paid the rent or charge for the room occupied, then any other person entitled to be paid the rent or charge for the hotel or motel room occupied, including but not limited to the proprietor, lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating such hotel or motel. Such term shall also include a room remarketer as such room remarketer shall be deemed to operate a hotel or motel, or portion thereof, thereby conferring the same rights and obligations of a hotel or motel operator on a room remarketer.
- (g) *Permanent Resident* - Any person occupying any room or rooms in a hotel or motel for at least thirty (30) consecutive days.
- (h) *Person* - An individual, partnership, society, association, joint stock company, corporation, limited liability company, general or limited liability partnership, estate, receiver, trustee, assignee, referee, and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and/or any combination of the foregoing.
- (i) *Rent* - The charge and/or consideration received for occupancy, including any and all service or charge or amount required to be paid as a condition for occupancy, valued in money, whether received in money or otherwise and whether received by the operator, including a room remarketer, or another person on behalf of either of them.
- (j) *Return* - Any document filed or required to be filed as herein provided.
- (k) *Room* - Any room or rooms of any kind in any part or portion of a hotel or motel, which is available for, rented or otherwise let out for the lodging of guests.
- (l) *Tax Imposition Date* - The date set forth in Section 4 of this local law.
- (m) *Treasurer* - The Warren County Treasurer, or such other fiscal officer(s) as may be designated by the Board of Supervisors.
- (n) *Room remarketer* - A person who reserves, arranges for, conveys or furnishes occupancy, whether directly or indirectly, to an occupant for rent in an amount to be determined by the room remarketer, directly or indirectly, whether pursuant to written or other agreement, such person's ability or authority to reserve, arrange for, convey or furnish occupancy, whether directly or indirectly, and to determine the rent therefor, shall be "the rights of the room remarketer". A room remarketer is not a permanent resident with respect to a room for

which such person has the rights of a room remarketer.

- (o) Short-term vacation rental - "Short-term vacation rental" is defined as the rental of any dwelling unit, or any portion thereof, for fewer than thirty (30) consecutive days, including single family residences, condominiums, duplexes, town homes, apartments and other residential units. Short-term vacation rentals shall include units rented directly by the owner, as well as those rented or leased through an owner's agent or room remarketer.

Section 4. Imposition of Tax.

(a) On and after January 1, 2007, and in addition to any other tax previously authorized and imposed pursuant to Article 28 or 29 of the Tax Law or any other law, there is imposed and there shall be paid a tax of four percent (4%) upon the rent for every occupancy of a room or rooms in a hotel or motel located within the County, except that such tax shall not be imposed upon (a) a permanent resident of a hotel or motel or (b) housekeeping cottages having less than four (4) rentable units and the tax herein imposed upon the rent received by a room remarketer shall hereby be imposed and paid on or after the 1st day of September, 2015.

(b) When occupancy is provided, for a single consideration, with property, services, amusement charges or other items, the separate sale of which is not subject to tax under this local law, the entire consideration shall be treated as rent subject to tax under paragraph (a) of this section; provided, however, that where the amount of the rent for occupancy is stated separately from the price of such property, services, amusement charges or other items, on any sales slip, invoice, receipt, or other statement given to the occupant, and such rent is reasonable in relation to the value of such property, services, amusement charges or other items, only such separately stated rent will be subject to tax under paragraph (a) of this section.

(c) (1) In regards to the collection of tax on occupancies by room remarketer, when occupancy is provided for a single consideration with property, services, amusement charges or any other items, whether or not such items are taxable, the rent portion of the consideration for such transaction shall be computed as follows: either the total consideration received by the room remarketer multiplied by a fraction, the numerator of which shall be the consideration payable for the occupancy by the room remarketer and the denominator of which shall be such consideration payable for the occupancy, plus the consideration payable by the remarketer for the other items being sold, or by any other method as may be authorized by the Commissioner of the New York State Department of Taxation and Finance for the tax imposed by subdivision (c) of section eleven hundred five of the Tax Law of the State of New York, or by any other method as may be authorized by the County Treasurer. If the room remarketer fails to separately state the tax on the rent so computed on a sales slip, invoice, receipt or other statement given to the occupant in the manner prescribed in subparagraph (2) of this paragraph or fails to maintain records of all prices of all components of a transaction covered by this paragraph, the entire consideration shall be treated as rent subject to tax under Section 4(a) of this local law. Nothing herein shall be construed to subject to tax or exempt from tax any service or property or amusement charge or other items otherwise subject to tax or exempt from tax pursuant to Articles 28 or 29 of the New York State Tax Law. A room remarketer's records of the consideration payable for all components of a transaction covered by this paragraph are the records required to be maintained by Section 10 of this local law.

(2) In regard to the collection of tax on occupancies by room remarketers, including a transaction described in subparagraph (1) of this paragraph, the requirements of paragraph(b) of this section shall be deemed satisfied if the remarketer gives the customer a sales slip, invoice receipt, or other statement of the price prior to the customer's completion of his or her occupancy, on which the amount of tax due under this local law is stated. The room remarketer must keep a copy of this invoice as required by Section 10 of this local law, or electronic records that accurately reflect the information that is on the invoice provided to the customer.

(3) In regards to the reporting and payment to the County Treasurer by room remarketers of tax due on occupancies, a room remarketer shall report such tax due, including transaction(s) described in subparagraph (1) of this paragraph, on the return due date for the filing period in which the occupancy ends, and at the time of filing such return to pay to the County Treasurer the total amount due.

Section 5. Transitional Provisions.

(a) Except as provided in paragraph (b) herein the tax imposed by this local law shall be paid upon any occupancy on and after the date set forth in Section 4 hereof, although such occupancy is pursuant to a prior contract, lease, or other arrangement. Except as provided in paragraph (b) herein, 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 that it covers any period on and after the date set forth in Section 4 hereof.

(b) The tax imposed by this local law upon the rent received by a room remarketer shall be paid upon any occupancy on and after the 1st day of September, 2015 although such occupancy may be pursuant to a prior contract, lease or other arrangement. Where rent is paid to a room remarketer on a weekly, monthly 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 the 1st day of September, 2015.

Section 6. 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 local law:

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

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

(c) 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.

Section 7. Territorial Limitations.

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

Section 8. Registration.

(a) Unless an operator is already registered with the Treasurer under the previous local law, within twenty (20) days after the effective date of this local law, or in the case of an operator commencing business after such effective date within three (3) days after such commencement or opening, or in the case of a room remarketer conducting business on or after the 1st day of September, 2015, within twenty days after such commencement, every such operator shall file with the Treasurer a registration application in a form prescribed by the Treasurer.

(b) The Treasurer shall, within five (5) days after receipt of a registration application, issue without charge to the operator a certificate of authority empowering such operator to collect the tax from the occupant for each additional hotel or motel of such operators.

(c) Each certificate shall state the hotel or motel or room remarketer for which it is applicable.

(d) Each certificate of authority shall be prominently displayed by the operators who are not room remarketers in such manner that it may be seen and brought to the notice of all occupants and persons seeking occupancy.

(e) Certificates shall not be assignable or transferable, and shall be surrendered immediately to the Treasurer upon the cessation of business at, or upon the sale or conveyance of the operator's business named in such certificate(s).

Section 9. Administration and Collection.

(a) The tax imposed by this local law shall be administered and collected by the Treasurer, or such other employees of the County as the Treasurer may designate, by such means and in such manner as other taxes which are now collected and administered or as is 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, and 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 liable for the collection thereof and payment of the tax.

(c) The operator and any officer of any corporate operator shall be personally liable for the tax collected or required to be collected under this local law, and the operator shall have the same right in

RESOLUTION NO. 367 OF 2018

PAGE 7 OF 19

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 rent shall become due and owing, including all rights of eviction, dispossession, repossession and enforcement of any innkeeper's lien that he may have in the event of non-payment of rent by the occupant; provided, however, that the Treasurer shall be joined as a party in any action or proceeding brought by the operator to collect or enforce collection of the tax.

(d) The Treasurer may, whenever he deems it necessary for the proper enforcement of this local law, provide by order that the occupant shall file returns and pay directly to the Treasurer the tax herein imposed, at such times as returns are required to be filed and payment made by the operator.

(e) The tax imposed by this local law shall be paid upon any occupancy on and after the tax imposition date, although such occupancy is had pursuant to a contract, lease or other arrangement made prior to such date; and where rent is paid, charged, 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 tax imposition date.

(f) Where any tax has been paid hereunder upon any rent which has been ascertained to be worthless, the Treasurer may by order provide for credit and/or refund of the amount of such tax upon application therefor as provided in Section 15 of this local law.

(g) 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 the directive pursuant to subdivision (d) of this section, an occupant is required to file returns and pay directly to the Treasurer the tax imposed, the burden of proving that a rent for occupancy if not taxable, shall be upon the occupant.

(h) Where an occupant claims exemption(s) from the tax under the provisions of Section 6 of this local law, the rent shall be deemed taxable hereunder unless the operator shall receive from the occupant claiming such exemption.

- (1) a copy of a certificate issued by the Treasurer certifying that the organization named therein is exempt from the tax pursuant to Section 6 of this local law, together with a certificate duly executed by the exempt organization setting forth the occupant's name and certifying that
 - (i) the occupant is a duly authorized agent, representative or employee of the exempt organization,
 - (ii) the occupant's occupancy is paid or to be paid by such exempt organization, and
 - (iii) the occupant's occupancy is necessary or required in the course and furtherance of, and/or in connection with, the affairs of said exempt organization; or

- (2) a properly completed, executed and certified Exemption Certificate from taxes imposed pursuant to Articles 28 and 29 of the New York State Tax Law, such certificate to be in the form and to contain the content approved and required by the New York State Department of Taxation.

Section 10. Records to be Kept.

(a) 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 Treasurer may by regulation or order require.

(b) All records shall be available for inspection and examination at any time upon demand by the Treasurer, or the Treasurer's duly authorized agent or employee, and shall be preserved for a period of not less than three (3) years, except that the Treasurer may consent in writing to their destruction within that period or may in writing require that such records be kept and maintained for a specified period in excess of three (3) years.

Section 11. Returns.

(a) After the date set forth in Section 4 of this local law, and except as provided in subdivision (b) of this section, every operator and occupant, directed by the Treasurer, shall file with the Treasurer a return of occupancy and of rents, and of the taxes payable thereon, for the same quarterly periods and on the same dates as returns for New York State Sales and Use Taxes are filed or to be filed, except for room remarketers the return for the month of September, 2015 shall be filed with the quarterly period filing which follows September, 2015.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Treasurer may by order require returns to be made and filed for shorter periods than those prescribed pursuant to subdivision (a) of this section, on such dates as the Treasurer may specify in such rule or order, where the Treasurer deems it necessary in order to insure the payment of the tax imposed by this local law.

(c) All returns shall be filed with the Treasurer within twenty (20) days from the expiration of the period covered thereby.

(d) The forms of returns shall be prescribed by the Treasurer and shall contain such information as the Treasurer may deem necessary for the proper administration of this local law.

(e) The Treasurer may require amended returns to be filed within twenty (20) days after notice and to contain the information specified in the notice.

(f) If a return required by this local law is not filed, or if a return when filed is incorrect or insufficient on its face or otherwise, the Treasurer shall take the necessary steps to enforce the filing of a properly completed and sufficient return or of a corrected return.

Section 12. Payment of Tax.

(a) Any tax imposed by this local law shall be paid by the occupant to the operator of the hotel or motel room occupied for and on account of the County, and such operator or person entitled to be paid the rent or charge shall be liable for the collection and payment of tax to the County.

(b) The operator of the hotel or motel room shall have the same right in respect to collecting the tax from the occupant, or in respect to non-payment of the tax by the occupant, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge. In any action or proceeding brought by an owner or a person entitled to be paid the rent or charge for the purpose of collecting the rent or charge, or the tax imposed by this local law, the Treasurer shall be joined as a party.

(c) At the time of filing a return of occupancy and of rents, each operator shall pay to the Treasurer 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.

(d) All taxes and other moneys required to be paid under and pursuant to this local law shall be due from the operator and paid to the Treasurer on the date limited 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.

(e) Notwithstanding paragraphs (a) and (b) of this section, the occupant shall pay the tax imposed by this local law directly to the Treasurer if so ordered by the Treasurer, in which case the operator shall be relieved of the responsibility and no right to collect the same until so authorized by the Treasurer

Section 13. Bonds & Security for Payment of Tax.

(a) Where the Treasurer, in the exercise of the Treasurer's discretion, deems it necessary to protect revenues to be obtained under this local law, the Treasurer may by rule or order require any operator required to collect the tax imposed by this local law to file with the Treasurer a bond to secure the payment of any tax and/or penalties and interest due or which may become due from such operator.

(b) Any bond so required by the Treasurer shall be 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 Treasurer may fix.

(c) In the event the Treasurer determines that an operator is to file such bond he shall give notice to such operator to that effect specifying the amount of the bond required.

(d) The operator shall file such bond within five (5) days after the issuance of such notice, unless within such five (5) days the operator shall serve upon and deliver to the Treasurer a written request for a hearing before the Treasurer at which the necessity, propriety and amount of the bond shall be determined by the Treasurer. Any determination by the Treasurer upon such hearing shall be final and shall be complied with by the operator within five (5) days after the giving of notices thereof.

- (e) In lieu of a bond the Treasurer, in the Treasurer's sole discretion, may accept or require
 - (1) securities approved by the Treasurer in such amount as the Treasurer may prescribe, with such securities to be kept in the custody of the Treasurer, and/or
 - (2) cash in such amount as the Treasurer may prescribe, with such cash to be deposited and kept in the custody of the Treasurer.

(f) The Treasurer shall have the right at any time without notice to the operator to apply all or any portion of the bond(s), securities and/or cash to the payment of any tax and/or interest or penalties due, and for such purpose the Treasurer may exercise all rights under the bond(s) and/or may sell the securities at public or private sale without notice to the depositors thereof.

Section 14. Determination of Tax.

(a) Upon the filing of a return, the Treasurer shall determine the amount of tax due under and pursuant to this local law.

(b) If a return required by this local law is not filed, or if a return when filed is incorrect or insufficient as to the amount of tax due, the amount of tax due under and pursuant to this local law shall be determined by the 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, location, scale of rents, comparable rents, type of accommodations and service, number of employees and/or other factors.

(c) Notice of a determination under subdivision (b) of this section shall be furnished in writing to the affected operator or occupant (if the occupant has been directed to pay the occupancy to the Treasurer).

(d) Any determination by the Treasurer under subdivision (b) of this section shall finally and irrevocably fix the tax, unless

- (1) within thirty (30) days after the issuance of the notice of such determination the operator or person against whom it is assessed shall apply in writing to the Treasurer for a hearing, or
- (2) the Treasurer shall, in the Treasurer's sole discretion, reconsider and re-determine the amount of tax due.

(e) Within fifteen (15) days after the conclusion of a hearing conducted pursuant to subdivision (d) (1) of this section, the Treasurer shall give written notice of the Treasurer's determination to the person against whom the tax is assessed.

(f) Except in the case of a wilfully 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

RESOLUTION NO. 367 OF 2018

PAGE 11 OF 19

the filing of a return; provided, however, that where no return has been filed as provided by this local law the tax may be assessed at any time.

Section 15. Refunds.

(a) (1) In the manner provided in this section the Treasurer shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid provided that written application for such refund shall be made to the Treasurer within one year from the payment thereof. Such application shall be in a form as the County Treasurer may prescribe.

(a) (2) Subject to the conditions and limitations provided in this section, a room remarketer shall be allowed a refund or credit against the amount of tax collected and required to be remitted under Section 4. of this local law in the amount of the tax it had previously paid to an operator or a hotel. Provided, however, that in order to qualify for a refund or credit under this section for any occupancy tax quarterly period, the room remarketer must, for that quarter, (A) be registered for occupancy tax purposes under Section 8 of this local law; (b) collect the taxes imposed by Section 4 of this local law; and furnish the certificate of authority number to the operator to whom the applicant paid the tax in its application for refund or credit if required on that form or upon request. Provided, however, that if the room remarketer requests the operator's certificate of authority number and is not provided with that number, the room remarketer may satisfy this requirement by providing the operator's name, business address, telephone number, and the address of the hotel where the occupancy took place. An application for a refund or credit under this paragraph must be filed with the County Treasurer within the time provided by subparagraph (a)(1) of this section. Where an application for credit has been properly filed, the applicant may immediately take the credit on the return due coincident with or immediately subsequent to the time the applicant files the application for credit. However, the taking of the credit on the return is deemed to be part of of the application for credit. The procedure for granting or denying the application for a credit or refund and review of these determinations shall be as provided in this section. An operator, including a room remarketer, who is paid tax by a room remarketer must upon request provide the other room remarketer with its certificate of authority number, provided that the operator's failure to do so does not change the requirement set forth in paragraph (c) herein.

(b) An application for refund or credit may be made only by the occupant, operator, or other person who has actually paid the tax.

(c) An application for a refund or credit made as herein provided shall not be complete unless the same includes copies of all documentation and evidence upon which the applicant relies in support thereof, but nothing shall prohibit or prevent the Treasurer from receiving any other evidence with respect thereto.

(d) No application for a refund or credit shall be accepted or considered unless such application has been actually received by the Treasurer within one (1) year of the payment of the tax.

(e) The determination to deny or allow a refund or credit shall be made by the Treasurer in writing, stating the reason(s) therefor, and the Treasurer shall give notice of such determination to the

applicant.

(f) No refund shall be made to an operator who has collected and paid over such tax to the Treasurer unless and until such operator shall first establish, to the satisfaction of the Treasurer under such regulations as the Treasurer may prescribe, that such operator has repaid to the occupant(s) the amount of tax for which a refund is sought.

(g) The Treasurer may, in the Treasurer's discretion and in lieu of the payment of any refund determined to be due, allow credit therefor on and against payments due from the applicant.

Section 16. Disposition of Revenues.

All revenues resulting from the imposition of the tax under this local law shall be paid into the Treasury of the County of Warren and shall be credited to and deposited in the general fund of the County, thereafter to be allocated only for tourism promotion and tourist and convention development; provided, however, that a portion of such revenue may be specifically allocated to the expense of the County in administering such tax. The revenues derived from such tax, after deducting the amount provided for administering such tax, shall be allocated to enhance the general economy of the County of Warren, and its city, towns and villages through the promotion of tourist activities, conventions, trade shows, special events and other directly-related and supported activities. The amount retained by Warren County with respect to administering said tax shall not exceed three percent (3%) of the revenues collected from the imposition of this tax.

Section 17. Reserves.

Whenever the occupant or operator has applied for a refund and has instituted a proceeding under Article 78 of the Civil Practice Law and Rules to review a determination adverse to such occupant or operator on such application for refund, the Treasurer shall set up appropriate reserves to meet any decision adverse to the County.

Section 18. Remedies Exclusive.

The remedies provided by Sections 14 and 15 of this local law shall be 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 or credit shall be enjoined, contested or reviewed by any action or proceeding, except by a proceeding under Article 78 of the Civil Practice Law and Rules pursuant to Section 24 of this local law.

Section 19. Proceedings to Recover Tax.

(a) Whenever any operator or other person shall fail to collect and pay over any tax and/or to pay any tax, penalty or interest imposed by this local law as herein provided, or whenever any occupant shall fail to pay any such tax, penalty or interest, the County Attorney shall, upon the request of the County Treasurer, bring or cause to be brought an action to enforce the payment of the same on behalf of Warren County in

RESOLUTION NO. 367 OF 2018

PAGE 13 OF 19

any court of the State of New York or of any other state or of the United States.

(b) Whenever an operator or other person shall make a sale, transfer, or assignment in bulk of any part or the whole of his hotel or motel or of such operator's business assets, other than in the ordinary course of business, the following provisions shall apply:

- (1) the purchaser, transferee or assignee shall at least twenty (20) days before taking possession of the subject of said sale, transfer or assignment, or paying therefor, notify the Treasurer by registered mail of the proposed sale and of the price, terms and conditions thereof and whether or not the operator 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;
- (2) for failure to comply with the provisions of this paragraph, including but not limited to subdivision (1) above, the purchaser, transferee or assignee 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 operator, 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;
- (3) whenever the purchaser, transferee or assignee shall fail to give notice to the Treasurer as required by subdivision (1) of this paragraph, 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 for any such taxes theretofore or thereafter determined to be due from the operator, seller, transferor or assignor to the County, and the purchaser, transferee or assignee is forbidden to transfer to the operator, seller, transferor or assignor, and shall withhold any such sums of money, property or choses in action, or other consideration, to the extent of the amount of the County's claim;
- (4) within fifteen (15) days of receipt of the notice of the sale, transfer or assignment from the purchaser, transferee or assignee, the Treasurer shall give notice to the purchaser, transferee or assignee and to the operator, seller, transferor or assignor, of the total amount of any tax or taxes, as well as of any penalties or interest due thereon, which the Treasurer claims to be due from the operator, seller, transferor or assignor, to the County;
- (5) whenever the Treasurer shall fail to give the notice required by subdivision (4) of this paragraph, within fifteen (15) days from receipt of notice of the sale, transfer and assignment required by subdivision (1) of this paragraph, such failure shall release the purchaser, transferee or assignee from any further obligation to withhold 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 operator, seller, transferor or assignor;

- (6) upon receipt of the Treasurer's notice issued pursuant to subdivision (4) above stating the total amount of the County's claim, the purchaser, transferee or assignee may make payment of such claim to the Treasurer from any sums of money, property, or choses in action withheld in accord with the provisions of subdivision (3) of this paragraph, and upon making such payment the purchaser, transferee or assignee shall be relieved of all liability for such amounts to the operator, seller, transferor or assignor, and such amounts paid to the Treasurer shall be deemed satisfaction of the tax liability of the operator, seller, transferor or assignee to the extent of the amount of such payment.

(c) Whenever the liability of any operator or other person, including that of any purchaser, transferee or assignee, covered by this section has been wholly paid or satisfied or no longer exists, except where the liability is discharged by an order or decree in bankruptcy, the Treasurer shall

- (1) mail to such operator or other person a notice, addressed to the last known address of such operator or other person, setting forth
 - (i) the amount of the tax liability paid or satisfied,
 - (ii) that such liability has been wholly paid or satisfied or no longer exists, and
 - (iii) a statement to the effect that consumer reporting agencies must delete from a credit file any reference to the particular tax lien or claim within thirty (30) days of receipt from such operator or other person of a copy of such notice.

Section 20. General Powers of the Treasurer.

In addition to the powers granted to the Treasurer by County Law and this local law, the Treasurer is hereby authorized and empowered:

(a) To make, adopt and amend rules and regulations, and to issue orders, appropriate to the carrying out of this local law 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 or waive penalties but not interest; 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 local law to the contrary notwithstanding;

(d) To delegate his functions hereunder to any employee or employees of the County Treasurer;

(e) To prescribe methods for determining the rents for occupancy and to determine the taxable

and non-taxable rents;

(f) To require any operator within the county to keep detailed records of the nature and type of hotel or motel 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 local law, and to furnish such information upon request to the County Treasurer;

(g) To assess, determine, revise and readjust the taxes imposed under this local law.

Section 21. Administration of Oaths and Compelling Testimony.

(a) The Treasurer, or the Treasurer's duly designated and authorized employee(s) or agent(s), shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of the Treasurer's powers and duties under this local law.

(b) The 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 duties hereunder and of 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 the Treasurer or excused from attendance.

(c) 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 Treasurer under this local law.

(d) 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 Treasurer under this local law shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than one thousand (\$1,000) dollars or imprisonment for not more than one (1) year, or both such fine and imprisonment.

(e) The officers who serve the summons or subpoena of the 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 County Sheriff, the Sheriff's duly appointed deputies, and any officer or employee of the Treasurer designated to serve process under this local law, are hereby authorized and empowered to serve any summons, subpoena, order, notice, document, instrument, or other process to enforce or carry out this local law.

Section 22. 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 or motel rooms"; except

RESOLUTION NO. 367 OF 2018

PAGE 16 OF 19

that in any bill, receipt, statement or other evidence or memorandum of occupancy or rent charge issued or employed by the operator, the word "tax" will suffice.

Section 23. Penalties, Interest & Violations.

(a) Any person failing to file a return or to pay or pay over any tax to the Treasurer within the time required by this local law shall be subject to

- (1) a penalty of five percent (5%) of the amount of tax due; plus
- (2) interest at the rate of one percent (1%) of the amount of tax due for each month of delay, except that no interest shall be charged for the first thirty (30) days immediately after the date such return was required to be filed or such tax became due.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Treasurer may, if satisfied that the delay was excusable, cancel and remit all or part of such penalty, but may not cancel or remit any portion of the interest.

(c) All penalties and interest shall be paid and disposed of in the same manner as other revenues from this local law.

(d) Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this local law.

(e) Officers and/or members of an owner or operator corporation, limited liability company, limited liability partnership, or partnership shall be personally liable for the tax collected or required to be collected and paid by such corporation under this local law, and shall also be personally liable for the penalties and interest herein imposed.

(f) In addition to the penalties herein or elsewhere prescribed, any person found to have committed any of the following acts shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than one thousand (\$1,000) dollars or imprisonment for not more than one (1) year, or both such fine and imprisonment:

- (1) failing to file a return required by this local law;
- (2) 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 wilfully false;
- (3) wilfully failing to file a bond required to be filed pursuant to this local law;
- (4) failing to file a registration certificate and such data in connection therewith as the Treasurer may by order, regulation or otherwise require;

RESOLUTION NO. 367 OF 2018

PAGE 17 OF 19

- (5) failing to display, or to surrender upon demand of the Treasurer, the certificate of authority as required by this local law;
- (6) assigning or transferring such a certificate of authority;
- (7) wilfully failing to charge separately from the rent the tax herein imposed, or wilfully failing to state such tax separately on any evidence of occupancy and on any bill or statement or receipt of rent issued or employed by the operator;
- (8) wilfully failing or refusing to collect any tax imposed by this local law from the occupant;
- (9) referring or causing reference to be made to this tax in a form or manner other than that required by this local law; or
- (10) failing to keep or maintain the records required by this local law.

(g) The certificate of the County 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.

Section 24. Judicial Review.

(a) Any final determination of the amount of any tax payable pursuant to this local law, as well as any final determination on an application for refund or credit under section 15 of this local law, shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under Article 78 of the Civil Practice Law and Rules if application therefor is made to the Supreme Court within thirty (30) days after the giving of the notice of such final determination, provided, however, that any such proceeding under Article 78 of the Civil Practice Law and Rules shall not be instituted unless:

- (1) The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed 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
- (2) 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 it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a

condition precedent to the application.

(b) Where any tax imposed pursuant to this section shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under Article 78 of the Civil Practice Law and Rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers 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.

Section 25. Returns to be Kept Confidential.

(a) Except in accordance with proper judicial order, or as otherwise provided by law,

- (1) it shall be unlawful for the Treasurer or any agent, employee or designee of the Treasurer to divulge or make known in any manner the rents or other information relating to the business of an operator contained in any return required under this local law; and
- (2) the officers charged with the custody of such returns shall not be required to produce any of such returns or evidence of anything contained therein in any action or proceeding in any court, except on behalf of the Treasurer 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, provided that 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.

(b) Notwithstanding the provisions of paragraph (a) of this section, nothing herein shall be construed to prohibit

- (1) the delivery to a taxpayer or such taxpayer's duly authorized representative of a copy of any return filed in connection with this local law; or
- (2) the publication of statistics so classified as to prevent the identification of particular returns and items thereof, or
- (3) the inspection by the county attorney or other legal representatives of the county, or by the district attorney of any county, of the return(s) 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.

(c) Returns shall be preserved by the Treasurer for not less than three (3) years or for such longer period of time as the Treasurer determines.

(d) Any violation of paragraph (a) of this section shall be punishable by a fine not exceeding one thousand (\$1,000) dollars, 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 county such officer or employee shall be disciplined in accordance with the Civil Service Law and/or any applicable collective bargaining agreements.

Section 26. 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 pursuant to the provisions of this local law, or in any application made by such person, or if no return has been filed or application made then to such address as may be obtainable.

(b) The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed.

(c) 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.

(d) 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.

Section 27. Effect of Local Law.

This local law shall remain in full force and effect until amended, rescinded or repealed by a local law adopted by the Board of Supervisors.

Section 28. Separability.

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

Section 29. Effective Date.

This local law shall take effect upon filing with the Secretary of State of New York.