

**CITY OF NIAGARA FALLS
NEW YORK**

LOCAL LAW NO. 3 – 2006

Imposing a 5% Occupancy Tax

Occupancy Tax Regulations



I hereby certify that the following Local Law was adopted at a meeting of the City Council held on August 7, 2006.

NIAGARA FALLS LOCAL LAW NO. 3 FOR THE YEAR 2006

A local law to amend the Niagara Falls City Charter as amended, by amending Section 215 of Article VIII of the Charter, entitled "Taxation and Assessment".

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF NIAGARA FALLS, NEW YORK, as follows:

Section 1. The Niagara Falls City Charter, as amended, is hereby amended by amending Section 215-b of Article VIII to read as follows:

Section 215 HOTEL ROOM AND OCCUPANCY TAX

. . . .

215-b IMPOSITION OF TAX

On and after the 1st day of January, nineteen hundred ninety-two, and ending on August 31, 2006, there is imposed and there shall be paid a tax of four percentum (4%) per day upon the rent for every occupancy of a room or rooms in a hotel in this City except that the tax shall not be imposed upon a permanent resident of a hotel or exempt organizations as hereinafter set forth.

On and after the 1st day of September, two thousand six, there is imposed and there shall be paid a tax of five percentum (5%) per day upon the rent for every occupancy of a room or rooms in a hotel in this City except that the tax shall not be imposed upon a permanent resident of a hotel or exempt organizations as hereinafter set forth.

. . . .

215-m DISPOSITION OF REVENUES.

[All revenues resulting from the imposition of the tax under this local law shall be paid into the treasury of the City of Niagara Falls and shall be credited to and deposited in the General Fund account of the City of Niagara Falls. Eighty percent (80%) of the revenue from the tax shall be used for the promotion of convention activities in the City of Niagara Falls, for which the City may contract with the Niagara Falls Convention and Visitors Bureau for periods of not more than three (3) years; fifteen percent (15%) of said revenue shall be divided equally between and used for the promotion of tourism and for maintenance and repairs of convention facilities; and the remaining five percent (5%) of said revenue shall be retained by the City of Niagara Falls for administration and collection costs. The terms "convention facilities" and "tourism" may be defined by resolution of the City Council.]

All revenues resulting from the imposition of the tax under this local law shall be paid into the treasury of the City of Niagara Falls and shall be credited to and deposited in the General Fund account of the City of Niagara Falls and shall be used as follows:

(A) From the first four percentum (4%), eighty percent of such revenue from this tax shall be allocated and paid to a not-for-profit corporation under contract with the county for the promotion of tourism in the county; fifteen percent of such revenue shall be retained by the City of Niagara Falls for any City purpose; and the remaining five percent of said first four percentum (4%) of revenue shall be retained by the City of Niagara Falls for administration and collection costs.

(B) The additional one percentum (1%) of such revenue from this tax shall be dedicated to the continuation of a trolley service for the purpose of transporting guests of hotels and motels to area tourism attractions.

The terms "convention facilities" and "tourism" may be defined by resolution of the City Council.

Section 2. This local law shall take effect as provided in the Municipal Home Rule Law.

Underlining and **Bold** indicate additions.

Bold and [Brackets] indicate deletions.

Witness my hand and seal this 8th day of August, 2006.

Carol A. Antonucci
Carol A. Antonucci
City Clerk

MAYOR'S APPROVAL Vincenzo V. Anello

MAYOR'S VETO _____

DATE August 15, 2006

**CITY OF NIAGARA FALLS
NEW YORK**

LOCAL LAW NO. 5 - 1991

Imposing a 4% Occupancy Tax

Occupancy Tax Regulations



I hereby certify that the following Local Law was adopted at a Meeting of the City Council held on December 2, 1991.

NIAGARA FALLS LOCAL LAW NO. 5
FOR THE YEAR 1991

A LOCAL LAW IMPOSING A TAX ON THE OCCUPANCY OF HOTEL ROOMS
PURSUANT TO CHAPTER 598 OF THE LAWS OF 1991 OF THE STATE OF NEW YORK

BE IT ENACTED BY THE COUNCIL OF THE CITY OF NIAGARA FALLS

Section 1. Short Title. This local law shall be known as the City of Niagara Falls Hotel Room Occupancy Tax Law.

Section 2. Definitions. When used in this Local Law, the following terms shall mean:

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

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

(c) Hotel. A building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes a motel, motor court, motor lodge or inn, or similar hotel or motel type of accommodations by whatever name designated.

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

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

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

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

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

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

(j) City Controller. The controller of the City of Niagara Falls, New York.

Section 3. Imposition of Tax.

On and after the 1st day of January, nineteen hundred ninety-two, there is imposed and there shall be paid a tax of four percentum (4%) per day upon the rent for every occupancy of a room or rooms in a hotel in this City except that the tax shall not be imposed upon a permanent resident of a hotel or exempt organizations as hereinafter set forth.

Section 4. Transitional Provisions.

(a) Any tax imposed on persons occupying hotel rooms under the provisions of Local Law No. 3 for the year 1973, as amended (Niagara Falls Charter Section 215 et seq), which has accrued up to the date on which the tax imposed by this Local Law takes effect shall continue to be collected and paid by the owner of the hotel room occupied or by the person entitled to be paid the rent or charge for the hotel room occupied, and such owner or person entitled to be paid the rent or charge shall report the amount of tax so collected on the return filed for the period ending on the thirty-first day of December, nineteen hundred ninety-one, or, in the case of such tax collected during a subsequent period, on the return filed for such subsequent period, and shall pay the tax imposed by said Local Law No. 3 for the year 1973, as amended, at the time of the filing of the return.

(b) The provisions of this local law respecting records, returns, penalties and interest, the assessment, payment and refund of tax, and all other provisions of such law respecting the administration, collection, enforcement, recovery of tax, disposition of revenues and all other powers of the City Controller shall apply to all taxes imposed under the provisions of Niagara Falls Local Law No. 3 for 1973, as amended, which have accrued up to the date on which the tax imposed by this local law takes effect.

Section 5. Exempt Organizations.

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

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

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

(3) The United Nations or other world-wide international organization of which the United States is a member; and

(4) 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 6. Territorial Limitations. The tax imposed by this local law shall apply only within the territorial limits of the City of Niagara Falls.

Section 7. Registration. Within ten days after the effective date of this local law, or in the case of operators commencing business after such effective date, within three days after such commencement or opening, every operator shall file with the City Controller a certificate of registration in a form prescribed by the City Controller. The City Controller shall, within five days after such registration, issue without charge to each operator, a certificate of authority empowering such operator to collect the tax from the occupant and duplicate thereof for each additional hotel of such operator. Each certificate or duplicate shall state the hotel

to which it is applicable. Such certificates of authority shall be prominently displayed by the operator in such manner that it may be seen and come to the notice of all occupants and persons seeking occupancy. Such Certificates shall be non-assignable and non-transferable and shall be surrendered immediately to the City Controller upon the cessation of business at the hotel named or upon its sale or transfer.

Section 8. Administration and Collection.

(a) The tax imposed by this local law shall be administered and collected by the City Controller.

(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 city, and the operator shall be liable for the collection thereof and for the tax. The operator and any officer of any corporate operator shall be personally liable for the tax collected or required to be collected under this local law, and the operator 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 for the occupancy payable at the time such tax shall become due and owing, including all rights of eviction, dispossession, repossession and enforcement of any innkeeper's lien that he may have in the event of non-payment of rent by the occupant; provided, however, that the City Controller shall be joined as a party in any action or proceeding brought by the operator to collect or enforce collection of the tax.

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

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

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

(f) For the purpose of the proper administration of this local law and to prevent evasion of the tax hereby imposed, it shall be presumed that all rents are subject to tax until the contrary is established, and the burden of proving that a rent for occupancy is not taxable hereunder shall be upon the operator or the occupant. Where an occupant claims exemptions from the tax under the provisions of section five hereof, the rent shall be deemed taxable hereunder unless the operator shall receive from the occupant claiming such exemption a copy of a certificate issued by the City Controller certifying that the corporation or association therein named is exempt from the tax under section five hereof, together with a certificate duly executed by the corporation or association named in the certificate of the City Controller certifying that the occupant is its agent, representative or employee and that his occupancy is paid or to be paid by, and is necessary or required in the course of or in connection with the affairs of said corporation or association.

Section 9. Records to be kept. Every operator shall keep records of every occupancy and of all rent paid, charged or due thereon and of the tax payable thereon, in such form as the City Controller may by regulation require. Such records shall be available for inspection and examination at any time upon demand by the City Controller or his duly authorized agent or employee and shall be preserved for a period of three years, except that the City Controller may consent to their destruction within that period or may require that they be kept longer.

Section 10. Returns.

(a) Every operator shall file with the City Controller a return of occupancy and of rents, and of the taxes payable thereon for the periods ending March thirty-first, June thirtieth, September thirtieth and December thirty-first of each year, on and after April first, nineteen hundred ninety-two. Such returns shall be filed within twenty days from the expiration of the period covered thereby. The City Controller may permit or require returns to be made by other periods and upon such dates as he may specify. If the City Controller deems it necessary in order to insure the payment of the tax imposed by this local law, he may require returns to be made for shorter periods than those prescribed pursuant to the foregoing provisions of this section and upon such dates as he may specify.

(b) The forms of returns shall be prescribed by the City Controller and shall contain such information as he may deem necessary for the proper administration of this local law. The City Controller may require amended returns to be filed within twenty days after notice and to contain the information specified in the notice.

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

Section 11. Payment of tax. At the time of filing a return of occupancy and of rents each operator shall pay to the City Controller 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 in this local law. Even though it be judicially determined that the tax collected is invalidly required to be filed, it shall be due from the operator and payable to the City Controller 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 the taxes due thereon. Where the City Controller in his discretion deems it necessary to protect revenues to be obtained under this local law he may require any operator required to collect the tax imposed by this local law to file with him 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 Controller may fix to secure the payment of any tax and/or penalties and interest due or which may become due from such operator. In the event that the City Controller 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. The operator shall file such bond within five days after the giving of such notice unless within such five days the operator shall request in writing a hearing before the City Controller at which the necessity, propriety and amount of the bond shall be determined by the City Controller. Such determination shall be final and shall be complied with within fifteen days after the giving of notices thereof. In lieu of such bond, securities approved by the City Controller or cash in such amount as he may prescribe, may be deposited which shall be kept in the custody of the City Controller who may at any time without notice to the depositor apply them to any tax and/or interest or penalties due, and for that purpose the securities may be sold by him at public or private sale without notice to the depositor thereof.

Section 12. Determination of tax. If a return required by this local law is not filed, or if a return when filed is incorrect or insufficient the amount of tax due shall be determined by the City Controller from such information as may be obtainable and, if necessary, the tax may be estimated on the basis of external indices, such as number of rooms, location, scale of rents, comparable rents, type of accommodations and service, number of employees and/or other factors. Notice of such determination shall be given to the person liable for the collection and/or payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within thirty days after giving of notice of such determination, shall apply to the City Controller for a hearing, or unless the City Controller of his own motion shall redetermine the same. After such hearing, the City Controller shall give notice of his determination to the person against whom the tax is assessed. The determination of the City Controller shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the Civil Practice Law and Rules, provided however, that such proceeding is instituted in the supreme court within thirty days after the giving of the notice of such determination. A proceeding under article seventy-eight 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 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 (b) at the option

of the petitioner such undertaking may be in a sum sufficient to cover the taxes, penalties and interest thereon 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, penalties and interest as a condition precedent to the application.

Section 13. Refunds.

(a) In the manner provided in this section the City Controller shall refund or credit without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the City Controller for such refund shall be made within one year from the payment thereof. Whenever a refund is made by the City Controller, he shall state his reason therefore in writing. Such application may be made by the occupant, operator or other person who has actually paid the tax. Such application when made by an operator who has collected and paid over such tax to the City Controller, provided that the application is made within one year of the payment by the occupant to the operator, shall be acted upon and refunded any moneys, due, only after such operator shall first establish to the satisfaction of the City Controller, under such regulations as the City Controller may prescribe, that he has repaid or will simultaneously repay to the occupant the amount for which the application for refund is made. The City Controller may, in lieu of any refund required to be made, allow credit therefore on payments due from the petitioner.

(b) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the City Controller, and such City Controller shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight 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 be filed with the City Controller in such amount and with such sureties as a Justice of the Supreme Court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

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

Section 14. Disposition of Revenues. All revenues resulting from the imposition of the tax under this local law shall be paid into the treasury of the City of Niagara Falls and shall be credited to and deposited in the General Fund account of the City of Niagara Falls. Eighty percent (80%) of the revenue from the tax shall be used for the promotion of convention activities in the City

of Niagara Falls, for which the City may contract with the Niagara Falls Convention and Visitors Bureau for periods of not more than three (3) years; fifteen percent (15%) of said revenue shall be divided equally between and used for the promotion of tourism and for maintenance and repairs of convention facilities; and the remaining five percent (5%) of said revenue shall be retained by the City of Niagara Falls for administration and collection costs. The terms "convention facilities" and "tourism" may be defined by resolution of the City Council.

Section 15. Reserves. In cases where the occupant or operator has applied for a refund and has instituted a proceeding under article seventy-eight of the Civil Practice Law and Rules to review a determination adverse to him on his application for refund, the City Controller shall set up appropriate reserves to meet any decision adverse to the city.

Section 16. Remedies Exclusive. The remedies provided by sections twelve and thirteen 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 shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than a proceeding in a nature of a certiorari proceeding under article seventy-eight of the Civil Practice Law and Rules; provided, however, that a taxpayer may proceed by declaratory judgment if he institutes suit within thirty days after a deficiency assessment is made and pays the amount of the deficiency assessment to the City Controller prior to the institution of such suit and posts a bond for costs as provided in section twelve of this local law.

Section 17. Proceedings to recover tax.

(a) Whenever any operator or any officer of a corporate operator or any occupant or other person shall fail to collect and pay over any tax and/or to pay any tax, penalty or interest imposed by this local law as therein provided, the Corporation Counsel shall, upon the request of the City Controller bring or cause to be brought an action to enforce the payment of the same on behalf of the City of Niagara Falls in any court of the State of New York or of any other state or of United States. If, however, the City Controller in his discretion believes that any such operator, officer, occupant or other person is about to cease business, leave the state or remove or dissipate the assets out of which the tax or penalties might be satisfied, and that any such tax or penalty will not be paid when due, he 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 Controller may issue a warrant, directed to the sheriff commanding him to levy upon and sell the real and personal property of the operator or officer of a corporate operator or of the 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 Controller and to pay to him the money collected by virtue thereof within sixty days after the receipt of such warrant. The sheriff shall within five days after the receipt of the warrant file with the County Clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person 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 any 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 he shall be entitled to the same fees, which he may collect in the same manner. In the discretion of the City Controller a warrant of like terms, force and effect may be issued and directed to any officer or employee of the City Controller 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 Controller 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 has recovered judgment therefore and execution thereon has been returned unsatisfied.

(c) Whenever an operator shall make a sale, transfer, or assignment in bulk of any part or the whole of his hotel or his lease, license or other agreement or right to possess or operate such hotel, apartment hotel, or of the equipment, furnishings, fixtures, supplies or stock of merchandise, of the said premises or lease, license or other agreement or right to possess or operate such hotel, apartment hotel and the equipment, furnishings, fixtures, supplies and stock of merchandise pertaining to the conduct or operation of said hotel, otherwise than in the ordinary and regular prosecution of business, the purchaser, transferee or assignee shall at least ten days before taking possession of the subject of said sale, transfer or assignment, or paying therefore, notify the City Controller by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferrer or assignor, has represented to or informed the purchaser, transferee or assignee that it owes any tax pursuant to this local law, and whether or not the purchaser, transferee or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing. Whenever the purchaser, transferee or assignee shall fail to give notice to the City Controller as required by the preceding paragraph or whenever the City Controller 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, transferrer or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferrer or assignor to the county, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferrer 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 subdivision, the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of section 6-101 through 6-111 of the Uniform Commercial Code, shall be personally liable for the payment to the city of any such taxes theretofore or thereafter determined to be due to the city from the seller, transferrer, or assignor, and such liability may be assessed and enforced in the same manner as the liability for tax under this local law.

Section 18. General powers of the City Controller. In addition to the powers granted to the City Controller in this local law, he is hereby authorized and empowered:

(a) To make, adopt and amend rules and regulations 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 thirty days; and for cause shown, to waive penalties but not interest computed at the rate of six percentum per annum; 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 a Deputy City Controller or any employee or employees of the office of City Controller;

(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 city to keep detailed records of the nature and type of hotel maintained, nature and type of service rendered, the rooms available and rooms occupied daily, leases or occupancy contracts or arrangements, rents received, charged and accrued, the names and addresses of the occupants, whether or not any occupancy is claimed to be subject to the tax imposed by this local law, and to furnish such information upon request to the City Controller.

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

Section 19. Administration of oaths and compelling testimony.

(a) The City Controller or his employees or agents duly designated and authorized by him shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this local law. The City Controller 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 him or excused from attendance.

(b) A justice of the Supreme Court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the City Controller under this local law.

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

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

Section 20. Reference to tax. Wherever reference is made in placards or advertisements or in any other publications to this tax, such reference shall be substantially in the following form: "Tax on occupancy of hotel rooms", except that in any bill, receipt, statement or other evidence or memorandum of occupancy or rent charge issued or employed by the operator, the words "occupancy tax" will suffice.

Section 21. Penalties and Interest.

(a) Any person failing to file a return or to pay or pay over any tax to the City Controller within the time required by this local law shall be subject to a penalty of five percentum of the amount of tax due; plus interest at the rate of one per centum of such tax for each month of delay excepting the first month after such return was required to be filed or such tax became due; but the City Controller, if satisfied that the delay was excusable, may waive all or any part of such penalty, but not interest at the rate of six per cent per year. Such penalties and interest shall be paid and disposed of in the same manner as other revenues from this local law. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this local law.

(b) Any operator or occupant and any officer of a corporate operator or occupant failing to file a return required by this local law, or filing or causing to be filed, or making or causing to be made or giving or causing to be given any return, certificate, affidavit, representation, information testimony or statement required or authorized by this local law, which is willfully false, and any operator and any officer of a corporate operator willfully failing to file a bond required to be filed pursuant to section twelve of this local law, or failing to file a registration certificate and such data in connection therewith as the City Controller may be regulation or otherwise require or to display or surrender the certificate of authority as required by this local law or assigning or transferring such certificate or authority and any operator and any officer of a corporate operator willfully failing to charge separately from the rent the tax herein imposed, or willfully failing to state such tax separately on any evidence of occupancy and on any bill of statement or receipt of rent issued or employed by the operator, or willfully failing or refusing to collect such tax from the occupant, and any operator and any officer of a corporate operator who shall refer or cause reference to be made to this tax in a form or manner other than that required by this local law, and any operator failing to keep the records required by section nine of this local law, shall, in addition to the penalties herein or elsewhere prescribed, be guilty of a misdemeanor, punishment for which shall be a fine of not more than one thousand dollars, or imprisonment for not more than one year, or both such fine and imprisonment. Officers of a corporate operator shall be personally liable for the tax collected or required to be collected by such corporation under this local law, and subject to the penalties herein above imposed.

(c) The certificate of the City Controller 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 22. Returns to be Secret.

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

(b) Any violation of subdivision (a) of this section shall be punishable by a fine not exceeding one thousand 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 city he shall be dismissed from office and be incapable of holding any public office for a period of five years thereafter.

Section 23. Notices and Limitations of Time.

(a) Any notice authorized or required under the provisions of this local law may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by him 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 addressed. Any period of time which is determined according to the provisions of this local law by the giving of notice shall commence to run from the date of mailing of such notice.

(b) The provisions of the Civil Practice Law and Rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the city to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this local law. However, except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three 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.

