

At a regular meeting of the Common Council of the City of Plattsburgh, New York held April 12, 1962.

Present: Mayor Tyrell, Alderman Booth, Beauvais, Quinn, Sabourin, Branon and Flynn

Absent: None

By Alderman Branon; seconded by Alderman Sabourin

LOCAL LAW NO. 4 OF 1962

A local law imposing a tax on occupancy of room or rooms in hotels, apartment hotels or lodging houses, as authorized by Paragraph I of Chapter 278 of the Laws of 1947, as amended, and making and appropriation for the administration thereof.

Be it enacted by the Common Council of the City of Plattsburgh as follows:

OCCUPANCY TAX

Section I. Definitions. When used in this local law the following terms shall mean or include:

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

(b) "Lodging House". Shall be deemed to mean a building or a portion of a building in which persons are lodged for hire, with or without meals, which building or portion of a building, is not in and of itself an Hotel or Apartment Hotel, and shall also include but not be limited to residences, clubs, rooming houses, furnished room houses, boarding houses and private clubs. Motels and tourist cabins which are not included in the definition of a Hotel or Apartment Hotel shall be deemed to be Lodging Houses.

(c) "Apartment Hotel". Shall mean any building wherein rooms or apartments are rented, furnished or unfurnished, and the owner or operator of such building supplies services, including but not limited to maid, telephone or linen services, or any multiple family building containing five or more apartments, which is regularly operated for a period of less than six consecutive months per calendar year. Motels and Tourist Cabins which are not included in the definition of Lodging Houses shall be deemed to be Apartment Hotels.

(d) "Hotel". The word "hotel" means buildings which are regularly used and kept open as such for the feeding and lodging of guests, where all who conduct themselves properly and who are able and ready to pay for such services are received if there be accommodations for them, and which derive the major portion of their operating receipts from the renting of rooms and the sale of food. Motels which are not included in the definition of Lodging House and Apartment Hotel shall

be deemed to be in this classification.

(e) "Operator." The word "operator" includes any person operating a hotel, apartment hotel, or lodging house including, but not limited to, the owner or proprietor of such premises, lessee, sub-lessee, mortgagee in possession, licensee, or any other person otherwise operating such hotel, apartment hotel, or lodging house.

(f) "Occupant." The word "occupant" means any person who, for a consideration, uses, possesses, or has the right to use or possess any room or rooms in a hotel, apartment hotel, or lodging house under any lease, concession, permit, right of access, license to use or other agreement, or otherwise,

(g) "Occupancy". The word "occupancy" means the use or possession, or the right to the use of possession of any room or rooms in a hotel, apartment hotel, or lodging house, or the right to the use of possession of the furnishings or to the services and accommodations accompanying the use and possession of the room or rooms. "Occupancy" includes the right to the use or possession as well as the exercise of that right; and there is an "occupancy" of a room whether or not the person entitled to the use or possession of the room actually uses or possesses it.

(h) "Rent". "Rent" is the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credit, and property or services of any kind or nature, and also any amount for which credit is allowed by the operator to the occupant, without any deduction therefrom whatsoever.

(i) "Permanent Resident" A person is a "permanent resident" as of a given date if he has occupied or has had the right to occupy a room or rooms in a particular hotel, apartment hotel, or lodging house for the ninety consecutive days next preceding such date.

(j) "Return". Includes any return filed or required to be filed as herein provided.

(k) "City Chamberlain." The City Chamberlain of this city.

Section 2. Imposition of Tax.

(a) Commencing July 1st., 1962, there shall be paid by any lessee, tenant, guest or licensee (known as ^{the} occupant) of any Hotel, Apartment Hotel, or Lodging House as defined by Section 1 of this law, and collected by the owner, or operator, of such Hotel, Apartment Hotel or Lodging House, a tax of 3% of the charge made by said operator or owner to said lessee, tenant, guest or licensee

(known as the occupant), except, however, that no tax shall be imposed when the rent is less than two dollars per day, or on the occupancy of any such room or rooms by a person having the right to occupancy thereof for ninety consecutive days.

(B) Transactions by or with the following shall not be subject to tax hereunder:

(i) The State of New York, or any public corporation, or its employees while on official business;

(ii) The United States of America or its employees while on official business;

(iii) The United Nations or its employees while on official business.

(iv) Any corporation or association, which may be known as a charitable corporation, or its employees while engaged upon its official business.

(c) Upon each charge to an occupant for occupancy subject to tax under this local law, the tax to be collected by the operator shall be stated and charged separately therefrom, provided, however, that the City Chamberlain shall permit an operator to combine the charge and the tax if the bill to the occupant indicates a method of determining the amount of the tax and if the operator maintains records satisfactory to the City Chamberlain showing such tax. The tax shall be paid by the occupant to the operator as trustee for and on account of this city and the operator shall be liable for the collection thereof. The operator shall be personally liable for the tax 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 nonpayment of the tax by the occupant, as if the tax were a part of the charge.

(d) Where the occupant has failed to pay and an operator has failed to collect a tax 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 Chamberlain and it shall be the duty of the occupant to file a return thereof with the City Chamberlain and to pay the tax imposed thereon to the City Chamberlain within thirty days after the bill to the occupant is rendered.

(e) The City Chamberlain may, whenever 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 Chamberlain the tax herein imposed, at such times as returns are required to be filed and payment over made by the operator.

(f) For the purpose of proper administration of this local law and to prevent evasion of the tax hereby imposed, it shall be presumed that all amounts received by an

operator from any occupancy of a kind specified in subdivision (2) of section two of this local law are subject to tax until the contrary is established, and the burden of proving that any such amount is not taxable hereunder shall be upon the operator or the occupant.

Section 3. Collection of tax from occupant. The City Chamberlain shall by regulation prescribe a method or methods or a schedule or schedules of the amounts to be collected from occupants in respect to any charge for occupancy with respect to which a tax is imposed by this local law so as to eliminate fractions of one cent.

Section 4. Records. Every operator shall keep records of charges, of the tax payable thereon and records of occupancy subject to tax under this local law in such form as the City Chamberlain may by regulation require. Such records shall be available for inspection and examination at any time upon demand by the city chamberlain or his duly authorized agent or employee and shall be preserved for a period of three years, except that the city chamberlain may consent to their destruction within that period or may require that they be kept longer.

Section 5. Returns.

(a) Every operator shall file with the city chamberlain a return of the taxes payable for the quarterly periods ending September thirtieth, December thirty-first, March thirty-first, and June thirtieth, of each year. Such returns shall be filed within twenty days from the expiration of the period covered thereby. The city chamberlain may permit or require a return to be made by shorter or longer periods and upon such dates as he may specify.

(b) The form of the return shall be prescribed by the city chamberlain and shall contain such information as he may deem necessary for the proper administration of this local law. The city chamberlain 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 chamberlain shall take the necessary steps to enforce the filing of such a return or of a corrected return.

Section 6. Payment of tax. At the time of filing a return each operator shall pay to the city chamberlain the taxes imposed by this local law, as well as all other moneys collected by the operator acting or purporting to act under the provisions of this local law. All the taxes for the period for which a return is required to be filed shall be due from the operator and payable to the City chamberlain on or before the date fixed 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 the taxes due.

Section 7. Assessment and 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 assessed by the city chamberlain from such information as may be obtainable. If an occupant refuses to pay the tax imposed by this local law or if for any reason it is impossible for the operator to collect the tax from the occupant, the operator shall report to the city chamberlain the name and address of such occupant, the nature of the occupancy, and the amount charged therefor. Upon receipt of such information the city chamberlain shall forthwith assess such tax directly against the occupant. Written notice of such assessment shall be given to the person liable for the collection or payment of the tax. Such assessment shall finally and irrevocably fix and determine the tax unless the person against whom it is assessed, within ninety days after the giving of notice of such assessment, shall apply in writing to the city chamberlain for a hearing, or unless the city chamberlain of his own motion, shall reassess the same. After such hearing the city chamberlain shall give written notice of his determination to the person against whom the tax is assessed. The determination of the city chamberlain shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice act if application therefor is made to the supreme court within ninety days after the giving of the notice of such determination. A proceeding under article seventy-eight of the civil practice act shall not be instituted unless the amount of any tax sought to be reviewed, with penalties and interest thereon, if any, shall be first deposited with the city chamberlain and an undertaking filed with the city chamberlain, 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 which may accrue in the prosecution of the proceeding.

Section 8. Refunds

(a) In the manner provided in this section the city chamberlain shall refund or credit any tax erroneously, illegally or unconstitutionally collected if written application to the city chamberlain for such refund shall be made within two years from the payment thereof. For like cause and within the same period a refund may be so made on the initiative and order of the city chamberlain. Whenever a refund is made, the reasons therefor shall be stated in writing. Such application may be made by the person upon whom such tax was imposed and who has actually paid the tax. Such application may also be made by an operator who has collected and paid such tax to the city chamberlain provided that the application is made within two years of the payment by the occupant to the operator, but no refund of money shall be made to the operator until he shall first establish to the satisfaction of the city chamberlain, under such regulations as the city chamberlain may prescribe, that he has repaid to the occupant the amount for which the application for refund is made. The city chamberlain, in lieu of any refund required to be made, may allow credit therefor on payments due from the applicant.

(b) An application for a refund or credit made as herein provided shall be deemed an application for a revision of any tax, penalty or interest complained of and the city chamberlain may receive evidence with respect thereto. After making his determination the city chamberlain shall give notice thereof to the applicant who shall be entitled to review such determination by a proceeding pursuant to article seventy-eight of the civil practice act provided such proceeding is instituted within ninety days after the giving of the notice of such determination and provided that a final determination of tax was not previously made. Such a proceeding shall not be instituted unless an undertaking is filed with the city chamberlain 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 which may accrue in the prosecution of such proceeding.

Section 9. Remedies exclusive. The remedies provided by sections seven and eight of this local law shall be the exclusive remedies available to any person for the review of tax liability imposed by this local law.

Section 10. Proceedings to recover tax.

(a) Whenever any operator or any occupant or other person shall fail to collect and pay over any tax 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 chamberlain bring an action to enforce the payment of the same. If, however, the city chamberlain believes that any person subject to the provisions of this local law is about to cease business, leave the state, or remove or dissipate assets, or for any other similar reason he deems it necessary in order to protect revenues under this local law, he may declare such tax or penalty to be immediately due and payable and may issue a warrant immediately.

(b) As an additional or alternative remedy, where the tax shown to be due upon a return is not paid at the time of filing such return, or an assessment of tax made under section seven of this local law is not paid within ten days from the date of the notice of such assessment, or where the city chamberlain believes that any person subject to the provisions of this local law is about to cease business, leave the state, or remove or dissipate assets, or for any other similar reason he deems it necessary in order to protect revenues under this local law, he may issue a warrant, directed to the sheriff of this county commanding him to levy upon and sell the real and personal property of the person liable for the tax which may be found within this 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 chamberlain and to pay 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 the title to and interest in real and personal property

of the person against whom the warrant is issued. The sheriff shall then proceed upon the warrant in the same manner, and with like effect, as that provided by law in respect to executions issued against property upon judgments of a court of record and for services in executing the warrant he shall be entitled to the same fees, which he may collect in the same manner. In the discretion of the city chamberlain a warrant of like terms, force and effect may be issued and directed to any officer or employee of this city, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the city chamberlain may from time to time issue new warrants and shall also have the same remedies to embrace the amount due thereunder as if the city had recovered judgment therefor and execution thereon had been returned unsatisfied.

Section 11. General powers of the city chamberlain. In addition to all other powers granted to the city chamberlain, 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 sixty days, and for cause shown, to waive, remit or reduce penalties or interest;

(c) To request information from the department of taxation and finance or the department of public service of the state of New York or the officials of any political subdivision of this state or the treasury department of the United States relative to any person; and to afford information to such departments, officials or treasury department relative to any person, any other provision of this local law to the contrary notwithstanding;

(d) to delegate his functions hereunder to the deputy chamberlain or other employee or employees of the city.

(e) To prescribe methods for determining the charges for property or services subject to tax under this local law or for the classification of such charges as taxable or non-taxable;

(f) To assess, reassess, determine, revise and readjust the taxes imposed by this local law.

Section 12. Administration of oaths and compelling testimony.

(a) The city chamberlain or his employees or agents duly designated and authorized by him in writing shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of his powers and duties under this local law. The city chamberlain shall have the power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of his duties hereunder and of the enforcement of this local law and to examine them in relation thereto.

(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 chamberlain 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 chamberlain 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 city chamberlain's summons or subpoena 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 this city designated to serve such process.

Section 13. Penalties and interest.

(a) Any person who, without intent to evade the tax imposed by this local law fails to pay the tax when due, shall pay interest at the rate of six per centum per annum from the due date of the tax to the date of payment or to the tenth day after the date of notice of assessment of such tax, whichever date is earlier. If such tax is assessed and is not paid within ten days from the date of the notice of assessment, such person, in addition to such interest, shall pay a penalty of five per centum of the amount of tax due plus interest at the rate of one per centum of such tax for each full month after the date of the notice of assessment during which the tax remains unpaid.

(b) Any person who, with intent to evade the tax imposed by this local law, fails to pay the tax when due, shall pay a penalty equal to the amount of tax due plus interest at the rate of one per centum of such tax for each full month from the due date of the tax to the date of payment.

(c) Any person wilfully 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 wilfully false, and any operator wilfully failing or refusing to collect such tax from the occupant, and any operator wilfully failing to keep the records required by 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 certificate of the city chamberlain to the effect that a tax has not been paid or that information has not been supplied pursuant to the provisions of this local law, shall be presumptive evidence thereof.

Section 14. Returns to be secret.

Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the city chamberlain or any officer or employee of this city to divulge or make known in any manner the charges, receipts, expenses or other information relating to or contained in any return required under this local law. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the city 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 courts 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 city chamberlain or other legal representatives of the city 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 under this local law may be instituted. Returns shall be preserved for three years and thereafter until the city chamberlain permits them to be destroyed.

It shall be a misdemeanor to violate any provisions of this section 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 or employment in the city for a period of five years thereafter.

Section 15. Notices and limitations of time.

(a) Any notice authorized or required under the provisions of this local law shall be in writing and shall be served personally or by mailing the same to the person for whom it is intended in a post-paid envelope addressed to such person at the address given in the last return filed by him pursuant to the provisions of this local law or in any application made by him, or, if no return has been filed or application made, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom 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.

Section 16. Disposition of revenues. Moneys collected from the tax imposed by this local law, after deducting therefrom expenses of administration and collection and amounts refunded or to be refunded, shall be paid in to the General Fund of the City of Plattsburgh.


Section 17. Construction and enforcement. This local law shall be construed and enforced in conformity with chapter two hundred seventy-eight of the laws of nineteen hundred forty-seven, as amended, pursuant to which it is enacted.

Section 18. The sum of one dollar is appropriated to the city chamberlain for his expenses in administering the tax imposed by this local law.

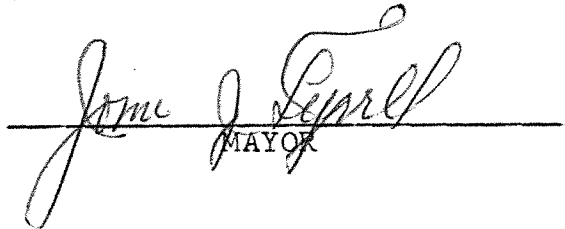
Section 19. This local law shall take effect immediately after a public hearing and approval by the Mayor.

On roll call, Aldermen Booth, Beauvais, Sabourin, Branon and Flynn voted in the affirmative; Alderman Quinn voted in the negative; CARRIED.

The foregoing Local Law certified to the Mayor this 20th day of April, 1962.


CITY CLERK

The foregoing Local Law is hereby approved this 20th day of April, 1962.


MAYOR