

LOCAL LAW FILING

COUNTY OF DELAWARE

Local Law No. 13 of the Year 2022

TITLE: DELAWARE COUNTY OCCUPANCY TAX LAW FOR LODGING ESTABLISHMENTS AND SHORT-TERM RENTALS

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

Section 1. Title & Statement of Intent; Priority

This local law shall be known as the Delaware County Occupancy Tax Law. The intent of this local law shall be to promote tourism in Delaware County.

Section 2. Definitions.

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

- (a) County - Delaware County, New York.
- (b) Effective Date - the date set forth in Section 28 of this local law.
- (c) Lodging Establishments and Short-Term Rentals - Any facility or portion thereof which is regularly used and made available for the lodging of guests. A facility comes within the definition of a lodging establishment or short-term rental if, among other factors:
 - i. sleeping accommodations are provided for the lodging of paying occupants on a regular basis;
 - ii. the typical occupant is a transient or public traveler;
 - iii. the relationship between the operator of the establishment and the occupant of the accommodations is that of an innkeeper and guest and not of a landlord and tenant; and,
 - iv. the occupant does not have an exclusive right or privilege with respect to any particular room or rooms, but instead merely has an agreement for the use or possession of a particular room or rooms.
- (d) Occupancy - The use of possession, or the right to the use or possession, of any room in a lodging establishment or short-term rental.
- (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 lodging establishment or short-term rental under any lease, concession, permit, right, license, agreement, or otherwise.

- (f) Operator - Any person operating a lodging establishment or short-term rental in Delaware County including but not limited to the owner, proprietor, lessee, sub-lessee, mortgagee in possession, licensee, or any other person otherwise operating such lodging establishment or short-term rental.
- (g) Permanent Resident - Any person occupying any room or rooms in a lodging establishment or short-term rental for at least thirty-two (32) consecutive nights.
- (h) Person - An individual, partnership, society, association, joint stock company, corporation, limited liability company, general or limited 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) Property Manager – a person, as defined within this Law, who provides services relating to the management of a lodging establishment or short-term rental including, but not limited to, such services; as the taking of reservations, the collection of rents and/or fees, the marketing of a lodging establishment or short-term rental, the keeping of financial records or the filing of returns, when such services are being provided on behalf of an operator to aid or assist in the management of such facility, regardless of whether or not such services are provided for a fee.
- (j) Rent - The charge and/or consideration received for occupancy valued in money, whether received in money or otherwise, including any fees related to such occupancy including, but not limited to, fees and/or charges for registration, cleaning, linens, and pets.
- (k) Return – A document or form, as prescribed by the Treasurer, to be filed or required to be filed as herein provided to establish and report occupancy and rents received, and that contains financial information of the operator or property manager.
- (l) Room - Any room or rooms of any kind in any part or portion of a lodging establishment or short-term rental, which is available for, rented or otherwise, let out for the lodging of guests.
- (m) Tax Imposition Date - the date set forth in Section 3 of this local law.
- (n) Tourism Advisory Board – a committee, comprised of elected and/or public officials and appointed members, who are charged with the decision making process and reporting requirements regarding the manner in which Occupancy Tax revenues are utilized in the promotion and development of the tourism industry in Delaware County.
- (o) Treasurer - The Delaware County Treasurer or the Treasurer's designee.

Section 3. Imposition of Tax.

On and after the first day of March in the year two thousand and twenty-two, there is hereby imposed and there shall be paid a tax of two percent (2%) of the per diem rental rate for each room or rooms in a lodging establishment or short-term rental located within the County, except that such tax shall not be applicable to a permanent resident of a lodging establishment or short-term rental.

Section 4. Exempt organizations.

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

(a) 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 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 5. Territorial limitations.

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

Section 6. Registration of Operator.

(a) Any existing operator who is not currently registered shall file with the Treasurer a registration application in a form prescribed by the Treasurer within three (3) days after the effective date of this local law. In the case of an operator commencing business after such effective date every operator shall file with the Treasurer a registration application in a form prescribed by the Treasurer within three (3) days after such commencement or opening. Failure to register as an operator in a timely manner will result in the imposition of a \$100 penalty.

(b) The Treasurer shall within ten (10) 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 and duplicate thereof, for each additional lodging establishment or short-term rental of such operators.

(c) Each certificate shall state the lodging establishment or short-term rental to which it is applicable.

(d) Each certificate 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 person 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 lodging establishment or short-term rental named in such certificate(s).

(f) Thirty days prior to the cessation of business or sale or conveyance of a lodging establishment or short-term rental the certificate holder shall notify the Treasurer regarding the date of such cessation, sale or conveyance. Failure to make such notification on a timely basis shall result in the imposition of a penalty of \$100, in addition to any amount of tax, penalty and or interest due from such certificate holder.

Section 7. Property Manager

(a) Within twenty (20) days after the effective date of this local law, or in the case of a property manager commencing the provision of services to an operator after such effective date, within three (3) days after such commencement, every property manager shall file with the Treasurer a registration application in a form prescribed by the Treasurer. Failure to register as a property manager in a timely manner will result in the imposition of a \$100 penalty.

(b) Property managers are required to notify the Treasurer of any new clients within ten (10) days of commencement of any services for such client or clients which, in the discretion of the Treasurer, establishes them as a property manager under this Law. Failure to provide such notice in a timely manner will result in the imposition of a \$50 penalty per such newly acquired client or clients.

(c) Property managers are required to submit an annual report as of December 31st of each year to the Treasurer, to be submitted by January 20th of the following year. The annual report shall be in a form prescribed by the Treasurer, and at a minimum shall detail all of the lodging establishments and/or short-term rentals to whom they have provided services during such applicable year. Failure to provide such report in a timely manner will result in the imposition of a graduated penalty based upon the number of lodging establishments and/or short-term rentals to whom they have provided services during such applicable year, as set forth below:

- i. For property managers providing services to less than 10 lodging establishments and/or short-term rentals, the penalty shall be \$100.
- ii. For property managers providing services to 10 to 30 lodging establishments and/or short-term rentals, the penalty shall be \$500.
- iii. For property managers providing services to more than 30 lodging establishments and/or short-term rentals, the penalty shall be \$1,000.

Section 8. 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 are 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 for the tax. The operator shall be ultimately liable for the accuracy and collection of a tax due, whether or not such operator utilizes the services of a property manager for such tasks.

(c) The operator, any officer of any corporate operator and a property manager (as applicable) shall be personally liable for the tax collected or required to be collected under this local law, and the operator or property manager shall have the same right in respect to collecting the tax from the occupant, or in respect to nonpayment of the tax by the occupant as if the tax were part of the rent for the occupancy payable at the time such tax shall become due and owing, including all rights of eviction, dispossession, repossession and enforcement of any innkeeper's lien that he 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 or property manager to collect or enforce collection of the tax.

(d) The Treasurer may, whenever he or she 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 or property manager.

(e) The tax imposed by this local law shall be paid upon any occupancy on and after the tax imposition date, although if such occupancy was 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 therefore as provided in section fourteen 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, property manager and/or occupant.

(h) Where an occupant claims exemption(s) from the tax under the provisions of section five of this local law, the rent shall be deemed taxable hereunder unless the operator shall receive from the occupant claiming such exemption a properly completed, executed and certified Exemption Certificate from taxes imposed pursuant to Articles 28 and 29 of the New York 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 9. Records to be kept.

(a) Every operator, and where applicable as determined by the Treasurer, every property manager 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 10. Returns.

(a) After the date set forth in Section 3 of this local law, and except as provided in subdivision (b) of this section, every operator or property manager (as applicable) 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.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Treasurer may permit or require returns to be made by other periods and upon such other dates as the Treasurer may specify by rule or order so as to carry out the purposes of 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 of such requirement to file an amended return is given to such filer 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.

(g) Any operator required to file a return under this Law shall be allowed a credit against the taxes required to be reported on, and paid with, such return when such person files the return on or before the filing due date and pays or pays over with such return the full amount

shown on such return. The amount of the credit authorized by this paragraph shall be five percent of the amount of taxes (but not including any penalty or interest thereon) required to be reported on, and paid or paid over with such return, but not more than fifty dollars.

Section 11. Payment of Tax.

(a) Any tax imposed by this local law shall be paid by the occupant to the operator or property manager (as applicable) of the lodging establishment or short-term rental room occupied or to the person entitled to be paid the rent or charge for the lodging establishment or short-term rental room occupied for and on account of the County, and such operator, property manager 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 owner of the lodging establishment or short-term rental room or the person entitled to be paid the rent or charge for the lodging establishment or short-term rental 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 or property manager (as applicable) 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 or property manager 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 or property manager (as applicable) 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.

Section 12. Bonds & Security for Payment of Tax.

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 or property manager 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.

Section 13. Determination of tax.

(a) Upon the filing of a return, the Treasurer shall determine and verify 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 person liable for the collection and/or payment of the tax.

(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 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 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

- (1) where no return has been filed as provided by this local law the tax may be assessed at any time; and/or
- (2) where, before expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period or any extension(s) thereof.

Section 14. Refunds.

(a) 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.

(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 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) therefore, 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 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 therefore on and against payments due from the applicant.

Section 15. Disposition of Revenues.

(a) All revenues resulting from the imposition of the tax under this local law shall be paid into the treasury of the County and shall be credited and deposited into a special tourism development and promotion fund under the trust and care of the Treasurer, and thereafter to be allocated for the promotion and development of the tourism industry in Delaware County by a committee hereafter established (section 15, part b) as the Tourism Advisory Board; provided, however, that the County shall have the right to retain up to ten per cent (10%) of the gross revenues to cover the Treasurer's costs for administration and collection; and

(b) The Board of Supervisors shall establish a committee known as the Tourism Advisory Board which shall review and approve proposals for the use of the funds raised from this tax for the promotion and development of the tourism industry in Delaware County. The Tourism Advisory Board shall be comprised of no fewer than seven (7) persons, to be appointed by the Delaware County Board of Supervisors, for staggered terms of three years. Appointments shall be made upon the recommendation of the Director of Economic Development with effort to ensure geographical representation of the County, per the following:

1. The Director of Economic Development of Delaware County.
2. Two members of the County Board of Supervisors.
3. No fewer than four representatives of businesses actively engaged in the tourism industry, at least two of which should be representative of lodging operators.

The Tourism Advisory Board shall report quarterly to the Delaware County Board of Supervisors' Committee on Economic Development with regards to all expenditures, as well as all plans and marketing. Revenues paid from the Treasurer's Office and all expenditures shall be accepted, paid and recorded with the Treasurer's Office of Delaware County.

Section 16. Reserves.

Whenever 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 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 17. Remedies exclusive.

The remedies provided by sections thirteen and fourteen 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 seventy-eight of the civil practice law and rules pursuant to section twenty-three of this local law.

Section 18. Proceedings to recover tax.

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 Treasurer may utilize any and all remedies as provided by law to collect such sum, including but not limited to the imposition of a tax lien upon the real property and personal property of the owners or operator. The lien of this tax shall have priority over all other real and personal property liens in the same manner as a real property tax levied pursuant to the New York State Real Property Tax Law.

Section 19. 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 thirty 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 or her 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 or property manager (as applicable) within the county to keep detailed records of the nature and type of lodging establishment or short-term rental maintained, nature and type of service rendered, the rooms available and rooms occupied daily, lease's 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 20. 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 dollars or imprisonment for not more than one 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 21. 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 lodging establishment and short-term rental rooms"; except that in any bill, receipt, statement or other evidence or memorandum of occupancy or rent charge issued or employed by the operator or property manager, the word "tax" will suffice.

Section 22. 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 per centum (5%) of the amount of tax due; plus
- (2) interest at the rate of one per centum (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 which is a 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, whether operator, property manager or other 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 dollars or imprisonment for not more than one 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 willfully false,
- (3) willfully 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,
- (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) willfully failing to charge separately from the rent the tax herein imposed, or willfully failing to state such tax separately on any evidence of occupancy and on any bill or statement or receipt of rent issue or employed by the operator,
- (8) willfully failing or refusing to collect any tax imposed by this local law from the occupant, or
- (9) 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 23. Judicial Review.

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 14 of this local law, 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 if application therefore is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such 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 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

(b) At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against 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 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 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 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 24. Returns to be 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 financial 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 provision of statistics, so classified as to prevent the identification of particular returns and items thereof, to the Director of Economic Development when such information to be provided shall be utilized solely for the purpose of the development and/or promotion of the tourism industry 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 dollars, and if the offender be an officer or employee of the county such officer or employee shall be subject to appropriate discipline.

Section 25. Confidentiality of Registrant Information

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

(1) The Treasurer may keep certain information of operators and property managers confidential when making such information available to the public would potentially lead to harm of the business, person and/or the real or personal property of the same.

(2) Notwithstanding the provisions of paragraph (a) (1) of this section, the Treasurer shall provide, on an annual basis, a list of all properties registered under the Occupancy Tax Law to the Town Supervisor in which municipality the property is located, and/or to such municipal officials(s) as the Town Supervisor may designate. Such information shall include the name of the operator, property manager and/or owner, the contact information of the same (including address), business name, contact information of the business (including contact name and address), property location, date of registration, date of notice of cessation of business, sale or conveyance.

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

(1) the provision of any information contained on the certificate of authority, in the case of an operator, and/or the information contained on the registration form, in the case of a property manager, to a person requesting such information, when such person attests in writing that such information will not be used for the purpose of solicitation.

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. Limitation of Effect of Local Law.

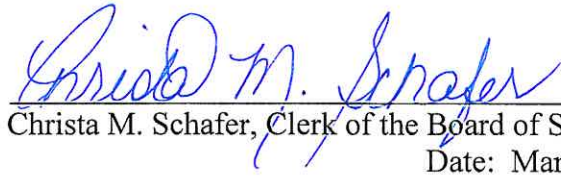
This local law shall remain in full force and effect for a period of three (3) years from the date of enactment by the Board of Supervisors; except that nothing shall prohibit or prevent the adoption and enactment of subsequent local laws continuing or imposing the tax authorized hereby after the expiration of this local law.

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.

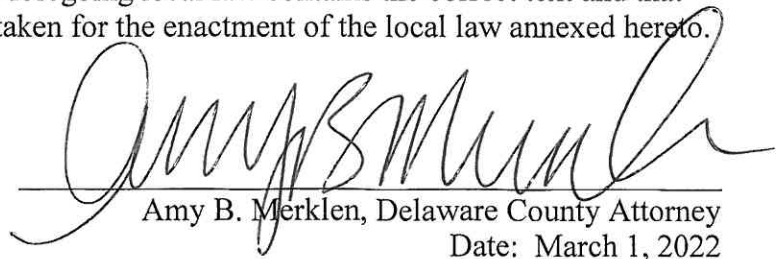
This local law shall take effect upon March 1, 2022.


Christa M. Schafer, Clerk of the Board of Supervisors
Date: March 1, 2022

(Seal)

STATE OF NEW YORK
COUNTY OF DELAWARE

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.


Amy B. Merklen, Delaware County Attorney
Date: March 1, 2022