

**(PROPOSED) INTRODUCTORY LOCAL LAW NO. 3 OF 2021**

**A LOCAL LAW OF THE CITY OF PORT JERVIS, COUNTY OF ORANGE  
ENTITLED THE “CITY OF PORT JERVIS HOTEL ROOM OCCUPANCY TAX LAW”**

BE IT ENACTED BY THE COMMON COUNCIL OF THE CITY OF PORT JERVIS  
AS FOLLOWS:

**Section 1. Title**

This Local Law shall be referred to as the “City of Port Jervis Hotel Room Occupancy Tax Law.

**Section 2. Amendment**

The City Code of the City of Port Jervis is hereby amended to add a new Article IX to Chapter 475 entitled “Taxation” with the following text:

**Chapter 475. Taxation**

Article IX. Taxation of Hotel Room Occupancy

**§ 475-45. Title.**

This Article shall be known as the "City of Port Jervis Hotel Room Occupancy Tax Law."

**§ 475-46. Definitions.**

For purposes of this Article, the following definitions shall apply:

**EFFECTIVE DATE**

The date on which this Article is filed with the Secretary of State.

**HOTEL or MOTEL**

Any facility consisting of rentable living space or spaces (units) and providing lodging on an overnight basis and shall include those facilities designated and commonly known as "Bed-and-Breakfast", "Air B&B" and "tourist" facilities.

**OCCUPANCY**

The use or possession, or the right to the use or possession, of any room in a hotel.

**OCCUPANT**

A natural 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.

**OPERATOR**

Any person operating a hotel or motel in the City of Port Jervis, including, but not limited to, an owner or proprietor of such premises, lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating such hotel or motel.

**PERMANENT RESIDENT**

Any natural person occupying any room or rooms in a hotel for at least 90 consecutive days shall be considered a "Permanent Resident" with regard to the period of such occupancy.

**PERSON**

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, or any combination of the foregoing.

**RENT**

The per diem rental rate received for occupancy of each room, valued in money, whether received in money or otherwise, for the occupancy of a room in a hotel for any period of time.

**RETURN**

Any return filed or required to be filed as herein provided.

**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.

**MAYOR**

The City Mayor of the City of Port Jervis.

**§ 475-47. Imposition of tax.**

On or after the effective date of this Article, there is hereby imposed and there shall be paid a tax of 5% upon the rent for every occupancy of a room or rooms in a hotel or motel in this City, except that the tax shall not be imposed upon a permanent resident, or as otherwise provided herein.

**§ 475-48. 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 Article:

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;

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 section;

D. A permanent resident of a hotel or motel.

**§ 475-49. Territorial limits.**

The tax imposed by this Article shall apply only within the territorial limits of the City of Port Jervis.

**§ 475-50. Registration.**

A. Within 10 days after the effective date of this Article 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 mayor a certificate of registration in a form prescribed by the Common Council.

B. The Mayor 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 a duplicate thereof for each additional hotel of such operator. Each certificate or duplicate shall state the hotel to which it is applicable. Such 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 persons seeking occupancy. Such certificate shall be non-assignable and nontransferable and shall be surrendered immediately to the mayor upon the cessation of business at the hotel named or upon its sale or transfer.

**§ 475-51. Administration and collection.**

A. The tax imposed by this Article shall be administered and collected by the Mayor, or such other City employee as he/she may designate, by such means and in such manner as are other taxes which are now collected and administered or as otherwise provided by this Article.

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 of charges 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 Article, 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 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/she may have in the event of nonpayment of the rent by the occupant; provided, however, that the Mayor or employees or agents duly designated by him/her shall be joined as a party in any action or proceeding brought by the operator to collect or enforce collection of the tax.

C. The Mayor may, whenever he/she deems it necessary for the proper enforcement of this Article, provide by regulation that the occupant shall file returns and pay directly to the mayor the tax imposed at such times as returns are required to be filed and payment made over by the operator.

D. The tax imposed by this Article shall be paid upon any occupancy on and after the effective date of this Article, 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 the effective date of this Article. Where any tax has been paid hereunder upon any rent which has been ascertained to be worthless, the Mayor may, by regulation, provide for credit and/or refund of the amount of such tax upon application therefor as provided in § 475-57 of this Article.

E. For the purpose of the proper administration of this Article and to prevent evasion of the tax hereby imposed, it shall be presumed that all rents are subject to tax until the contrary is established, and the burden of proving that a rent for occupancy is not taxable hereunder shall be upon the operator or occupant. Where an occupant claims exemption from the tax under the provisions of § 475-48 of this Article, the rent shall be deemed taxable hereunder unless:

(1) The operator shall receive from the occupant claiming such exemption a copy of a New York State sales tax exemption certificate; or

(2) Unless the operator shall receive from the occupant claiming such exemption a certificate duly executed by an exempt corporation or association certifying that the occupant is its agent, representative, or employee, together with a certificate executed by the occupant that the occupancy is paid or to be paid by such exempt corporation or association, and is necessary or required in the course of or in connection with the occupant's duties as a representative of such corporation or association.

#### **§ 475-52. 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 mayor may by regulation require. Such records shall be available for inspection and examination at any time upon demand by the mayor or his/her duly authorized agent or employee and shall be preserved for a period of three years, except that the Mayor may consent to their destruction within that period or may require that they be kept together.

#### **§ 475-53. Returns.**

A. Every operator shall file with the mayor a return of occupancy and of rents and of the taxes payable thereon for the three-month periods ending the last day of March, June, September and December on and after the effective date of this Article. Such returns shall be filed within 20 days from the expiration of the period covered thereby. The Common Council may permit or require returns to be made for other periods upon such dates as it may specify. If the Common Council deems it necessary in order to ensure the payment of the tax imposed by this Article, it 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 it may specify.

B. The forms of return shall be prescribed by the Common Council and shall contain such information as it may deem necessary for the proper administration of this Article. The mayor may require amended returns to be filed within 20 days after notice and to contain the information specified in the notice.

C. If a return required by this Article is not filed, or if a return is incorrectly filed or is insufficient on its face, the mayor shall take such steps as he/she deems necessary to enforce the filing of such return or of a corrected return.

#### **§ 475-54. Payment of tax.**

At the time of filing a return of occupancy and of rents, each operator shall pay to the Mayor the taxes imposed by this Article upon the rents required to be included in such return, as well as all other moneys collected by the operator acting or purporting to act under the provisions of this

Article; 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 Mayor on the date prescribed herein 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. Where the Mayor in his/her discretion deems it necessary to protect revenues to be obtained under this Article, he/she may require any operator required to collect the tax imposed by this Article to file with him/her 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 Mayor may find 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 mayor determines that an operator is to file such bonds, he/she 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 mayor at which the necessity, propriety and amount of the bond shall be determined by the mayor. Such determination shall be final and shall be complied with within 15 days after the giving of notices thereof. In lieu of such bond, securities approved by the Mayor or cash in such amount as he/she may prescribe may be deposited with him/her, which shall be kept in the custody of the Mayor, who may at any time, without notice of the depositor, apply them to any tax and/or interest or penalties due, and for that purpose the securities may be sold by him/her at public or private sale without notice to the depositor thereof.

#### **§ 475-55. Determination of tax.**

Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under Article 78 of the Civil Practice Law and Rules if application therefor is made to the Supreme Court within thirty days after the giving of the notice of such final determination; provided, however, that any such proceeding under Article 78 of the Civil Practice Law and Rules shall not be instituted unless:

A. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law 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 the application.

**§ 475-56. Disposition of revenues.**

All revenue resulting from the imposition of the tax under this Article shall be paid into the treasury of the City and shall be credited to and deposited in the general fund of the City. Such revenues may be used for any lawful purpose.

**§ 475-57. Refunds.**

A. In the manner provided in this section, the mayor shall refund or credit, without interest, any tax penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the mayor for such refund shall be made within one year from the payment thereof. Whenever a refund is made by the mayor, he/she shall state his/her reason therefor, in writing. Such application may be made by the occupant, operator or other person who has actually paid the tax. Such application may also be made by an operator who has collected and paid over such tax to the Mayor, provided that the application is made within one year of the payment to the operator, but no actual refund of moneys shall be made to such operator until it shall first establish to the satisfaction of the Mayor, under such regulations as the mayor may prescribe, that it has repaid to the occupant, or other person who has actually paid the tax, the amount for which the application for refund is made. The mayor may, in lieu of any refund required to be made, allow credit therefor on payments due or to become due from the applicant.

B. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the Mayor, and such Mayor shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under Article 78 of the Civil Practice Law and Rules; provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the Mayor 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 of a tax, interest or penalty which had been determined to be due pursuant to the provisions of § 475-60 of this Article where it has had a hearing or an opportunity for a hearing, as provided in said section, or has failed to avail itself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the Mayor made pursuant to § 475-60 of this Article unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper by the Mayor after a hearing or on his/her own motion or in a proceeding under Article 78 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.

**§ 475-58. Reserves.**

In cases where the occupant or operator has applied for a refund and has instituted a proceeding under Article 78 of the Civil Practice Law and Rules to review a determination adverse to him/her on his/her application for refund, the mayor shall have the option of crediting future tax payments to meet the cost of any settlements or judgments or, at his/her option, may, in the first instance, set up appropriate reserves to meet any decision adverse to the City.

**§ 475-59. Remedies exclusive.**

The remedies provided by § 475-55 and § 475-57 of this Article shall be the exclusive remedies available to any person for the review of tax liability imposed by this Article, and no determination or proposed determination of tax or determination on any application for refund shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than a proceeding in a nature of a certiorari proceeding under Article 78 of the Civil Practice Law and Rules; provided, however, that a taxpayer may proceed by declaratory judgment if he/she institutes suit within 30 days after a deficiency assessment is made and pays the amount of the deficiency assessment to the Mayor prior to the institution of such suit and posts a bond for costs as provided in § 475-54 of this Article.

**§ 475-60. Penalties and interest.**

A. Any person failing to file a return or to pay or pay over any tax to the mayor within the time required by this Article shall be subject to a penalty of 5% of the amount of tax due plus interest at the rate of 1% 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. Such penalties and interest shall be paid and disposed of in the same manner as other revenues from this Article. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this Article.

B. Any operator or occupant and any officer of an operator or occupant failing to file a return required by this Article, 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 Article 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 § 475-54 of this Article, or failing to file a registration certificate and such data in connection therewith as the Mayor may by regulation or otherwise require, or failing to display or surrender the certificate of authority as required by this Article or assigning or transferring such certificate of authority; and any operator or 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 or statement or receipt of rent issued or employed by the operator or willfully failing or refusing to collect such tax from the occupant; any operator or 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 Article, and any such person or operator failing to keep records required by this Article, shall, in addition to the penalties herein or elsewhere prescribed, be guilty of a misdemeanor, punishable by a fine of up to \$1,000, 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 Article and penalties and interest thereon and subject to the fines and imprisonment herein authorized.

C. The certificate of the mayor 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 Article shall be presumptive evidence thereof.

#### **§ 475-61. Returns to be secret.**

It shall be unlawful, except in accordance with proper judicial order or as otherwise provided to the fullest extent permitted by law, for the mayor or employee or designee of the mayor 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 Article. 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 Mayor in an action or proceeding under the provisions of this Article or on behalf of any party to any action or proceeding under the provisions of this Article 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/her duly authorized representative of a certified copy of any return filed in connection with his/her tax nor to prohibit the publication of statistics so classified to prevent the identification of particular returns and items thereof or the inspection by the City's Corporation Counsel or other legal representatives of the City or by the District Attorney of any 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 mayor permits them to be destroyed.

#### **§ 475-62. Notices and limitations of time.**

A. Any notice authorized or required under the provisions of this Article may be given to the person to whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by him/her pursuant to the provisions of this Article or in any application made by him/her 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 who addressed. Any period of time which is determined according to the provisions of this Article by the giving of notice shall commence five days after 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 Article. However, except in the case of a willfully false, 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 filing of a return; provided, however, that where no return has been filed as provided by law, the tax may be assessed at any time.

C. Where, before 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. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

#### **§ 475-63. Proceedings to recover tax.**

Whenever any operator, any officer of a corporate operator, any occupant, or other person fails to collect and pay over any tax and/or penalty or interest as imposed by this Article, the City Corporation Counsel shall, at the request of the Common Council, bring or cause to be brought an action to enforce the payment of the same on behalf of the City in any court of the State of New York or of any other state or of the United States. If, however, the Mayor 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, such tax or penalty may be declared to be immediately due and payable, and the Mayor may issue a warrant immediately.

#### **§ 475-64. General powers of Mayor.**

In addition to the powers granted in this Article, the Mayor is hereby authorized and empowered to:

A. Extend for cause shown, the time of filing any return for a period not exceeding 30 days; and for cause shown, to remit penalties, but not interest; and to compromise disputed claims in connection with the taxes hereby imposed;

B. 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 Treasury Department relative to any person, notwithstanding any other provision of this Article;

C. Delegate functions hereunder to any employee of Mayor;

D. Prescribe methods for confirming the rents for occupancy and to confirm the accuracy of information on the taxable and nontaxable rents;

E. Require any operator within the City, if it is determined that adequate records are not being maintained, to keep detailed records of the nature and type of hotel maintained; nature and type of service rendered; number of rooms available and occupied; daily leases, 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 Article; and to furnish such information at the request of the Mayor;

F. Impose as a penalty upon any operator within the City any necessary costs of auditing services generated by discrepancies discovered upon audit, in the records of the operator; and

G. Make, adopt, and amend such other rules and regulations appropriate to the carrying out of this Article and the purposes thereof as may be approved by the City of Port Jervis Common Council.

**§ 475-65. Administration of oaths; compelling testimony.**

A. The Mayor or employees or agent(s) duly designated and authorized shall have the power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this Article. The mayor 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 the duties hereunder in the enforcement of this Article, and to examine them in relation thereto. The mayor shall also have the power to issue commissions for the examination of witnesses who are out of the state, unable to attend, or who are excused from attendance.

B. A Supreme Court Justice, either in court or in chambers, shall have the power to summarily enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers, and documents called for by the subpoena of the Mayor under this Article.

C. Any subpoenaed person who refuses to testify or produce books or records, or who testifies falsely in any material matter pending before the Mayor under this Article shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than \$1,000 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 mayor 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 provided otherwise. Such officers shall be the City of Port Jervis police, or any officers or employees of the mayor's office designated to serve such process.

## **§ 475-66. Accounting and reporting of tax.**

From time to time, but no less than quarterly each year, the mayor shall provide a report to the Common Council, for its audit and review, of all actions taken pursuant to this Article. The Mayor's report shall contain a list of all certificates of registration filed or issued to any operator in the City of Port Jervis, and for each operator shall state the returns filed all operators; the returns that have not been timely filed by any operator; the amount of tax determined to be payable by any operator; the tax paid and collected from any operator; any tax that may be due and owing or past due from any operator, and any enforcement action taken to collect any tax due under this Article.

### **Section 3. Authority**

This Local Law is enacted pursuant to special legislation adopted by the State of New York, authorizing the City of Port Jervis to enact a hotel, occupancy tax. If any provision of this article, or the application thereof to any person or circumstance, shall be held invalid, the remainder of this article and the application of such provision to other persons or, circumstances shall not be affected thereby.

### **Section 4. Separability**

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Common Council of the City of Port Jervis hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

### **Section 5. Construction and Enforcement**

This article shall be construed and enforced in conformity with Articles 28 and 29. of the Tax Law of the State of New York," including, but not limited to New York State Tax Law §1202-GG5 as added by L.2020, c. 373, §1, which expires and is deemed repealed on Sept. 1, 2023, pursuant to L.2020, c. 373, §2), pursuant to which the same is enacted. **Accordingly, this Local Law shall remain in effect for three (3) years from the date of its enactment.**

### **Section 6. Rules and Regulations**

The Common Council is authorized to adopt rules and regulations, by resolution, to further implement the provisions of this Local Law.

**Section 7. Repeal**

All ordinances, local laws and parts thereof inconsistent with this Local Law are hereby repealed.