

ORDINANCE NO. 062, 2017
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING ARTICLE IV OF CHAPTER 25 OF THE CODE OF THE
CITY OF FORT COLLINS CONCERNING THE CITY'S LODGING TAX

WHEREAS, the City of Fort Collins, as a home rule municipality, is granted in Article XX, § 6.g. of the Colorado Constitution all powers necessary to levy and collect taxes for municipal purposes, subject to any limitations in the Colorado Constitution; and

WHEREAS, on February 21, 1984, the City Council, in the exercise of its home rule taxing powers, adopted Ordinance No. 20, 1984, adding a new chapter to the City Code to levy, collect and enforce a three percent (3%) tax on the price of lodging accommodations provided in the City (the "Lodging Tax Code");

WHEREAS, the Lodging Tax Code is found in Article IV of City Code Chapter 25 and has existed in substantially its current form since its adoption in 1984 with only minor amendments since that time; and

WHEREAS, since early 2016, City staff has worked with the Colorado Municipal League on a statewide effort to update and make more consistent the definitions that municipalities around state use for the imposition and collection of their respective sales and use taxes; and

WHEREAS, in connection with this effort, City staff has also reviewed the other provisions of the City's sales and use tax provisions found in Article III of Code Chapter 25 (the "Sales and Use Tax Code") to update and revise those provisions for clarification and consistency with the current practices and regulations that the Financial Officer and the City's Sales Tax Department follow in administering the Sales and Use Tax Code; and

WHEREAS, as the result of these efforts, City staff has presented to City Council for its consideration Ordinance No. 061, 2017, which significantly changes the Sales and Use Tax Code related to not only definitions, but also to the City's administrative processes for the collection and enforcement of its sales and use taxes; and

WHEREAS, City staff has also conducted the same review of the Lodging Tax Code which does not currently have the same degree of specificity and clarity with respect the Financial Officer's authority and powers to collect, enforce and administer the Lodging Tax Code as are now found in the Sales and Use Tax Code and as amended if Ordinance No. 061, 2017 is adopted; and

WHEREAS, City staff therefore proposes in this Ordinance most of these same changes to the Lodging Tax Code so both codes will be administered in essentially the same manner and with the same requirements; and

WHEREAS, the City Council hereby finds that collecting and enforcing the Sales and Use Tax Code and the Lodging Tax Code in substantially the same manner is in the City's and its taxpayers' best interests and necessary for the public's health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Article IV of Chapter 25 of the Code of the City of Fort Collins is hereby amended to read as follows:

**ARTICLE IV.
LODGING TAX**

Sec. 25-241. - Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

...

Collection costs shall mean all of the City's costs incurred to enforce the provisions of this Article, which shall include, without limitation, all costs of audit, assessment, hearings, execution, lien filings, distraint actions, litigation, locksmith fees, auction costs, bank fees, prosecution costs and related attorney fees.

...

Dwelling unit shall mean a building or any portion of a building designed for occupancy as complete, independent living quarters for one (1) or more persons, having direct access from the outside of the building or through a common hall and having living, sleeping, kitchen and sanitary facilities for the exclusive use of the occupants.

Financial Officer shall mean the Financial Officer of the City of Fort Collins or such other individual person designated by the Financial Officer.

Lodging accommodation shall mean the furnishing of a room or other accommodation by any person to another person who for consideration uses, possesses or has the right to use or possess that room or accommodation in a hotel, motel, inn, bed and breakfast residence, apartment hotel, lodging house, motor hotel, guest house, guest ranch, trailer coach, mobile home, auto camp, trailer court or park, dwelling unit, or any similar establishment or accommodation, for a period of less than thirty (30) consecutive days under any lease, rental, concession, permit, right of access, license to use or other agreement.

...

Lodging price shall mean the gross price paid, exclusive of other taxes paid and charges separately stated including, without limitation, pet fees, cleaning fees, security deposits and in-room charges for food, beverages, and telephone and video services, by the lodging customer for the provision of a lodging accommodation.

Lodging provider shall mean any person furnishing a lodging accommodation or such person's authorized agent.

...

Lodging tax deficiency shall mean any amount of lodging tax, penalties, interest, collection costs and other charges owed under this Article that is not reported or not paid on or before the date that any return or such payment is required under this Article.

...

Lodging transaction shall mean the furnishing of a lodging accommodation to any person who, for consideration, uses, possesses or has the right to use or possess that accommodation.

Person shall mean any individual, firm, partnership, joint venture, corporation, limited liability company, estate, trust, receiver, trustee, assignee, lessee or any person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, or any group or combination acting as a unit.

...

Sec. 25-242. - Tax levied.

On and after 11:59 p.m. March 31, 1984, there is levied and shall be paid and collected an excise tax of three (3) percent on the lodging price paid for the leasing, rental or furnishing of any lodging accommodation located in the City. This tax shall be in addition to the sales and use tax as established pursuant to Article III of this Chapter. It shall be a violation of this Code for any lodging customer of a lodging accommodation located in the City to fail to pay, or for any lodging provider of such accommodation to fail to collect, the tax levied pursuant to this Section.

Sec. 25-243. - Transactions exempt from tax.

The following lodging transactions are exempt from taxation under this Article:

- (1) All lodging accommodations provided to the United States Government and to the State of Colorado, its departments or institutions and political subdivisions in their governmental capacities only, including the City;
- (2) All lodging accommodations provided to charitable organizations;

(3) All lodging accommodations provided to persons which the City is prohibited from taxing under the Constitution or laws of the United States or Colorado Constitution;

(4) All lodging accommodations provided to any person for a period of at least thirty (30) consecutive days; and

(5) Any lodging transaction, if the price of such lodging accommodation is paid in advance on a weekly basis and does not exceed the total sum of seventy-five dollars (\$75.) per week.

Sec. 25-244. - Use of tax.

(unchanged)

Sec. 25-245. - License required for lodging providers.

(a) It shall be unlawful for any person to engage in the business of providing lodging accommodations without first having obtained a license, which license shall be granted and issued without fee by the Financial Officer and shall be in force and effect until revoked.

(b) When a lodging accommodation business is transacted at two (2) or more separate places by one (1) person, a separate license for each place of business shall be required.

(c) Such license shall be granted only upon application stating the name and address of the person desiring such license, the name and type of lodging accommodations to be provided, the location of the business, including the street number, and such other information as may be reasonably required by the Financial Officer.

(d) If an application for a license is submitted by a person that previously held a license under this Article, the Financial Officer may require that any lodging tax deficiency being owed and due under the previous license be paid and a bond posted in an amount set by the Financial Officer to ensure payment of lodging taxes under the new license prior to the issuance of such new license.

(e) Each license shall be numbered and shall show the name, mailing address and place of business of the licensee and shall be posted in a conspicuous place in the place of business for which it is issued. No license shall be transferable.

Sec. 25-246. - Exception to licensing requirement.

(unchanged)

Sec. 25-247. - Revocation of license.

(unchanged)

Sec. 25-248. - Appeal of revocation; procedure.

Any finding and order of the Financial Officer revoking the license of any person shall be subject to review by the Larimer County District Court or the City's Municipal Court, upon application of the aggrieved party. The procedure of the review shall be in accordance with Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

Sec. 25-249. - Engaging in business without license to be a violation.

Any person engaged in the business of providing lodging accommodations in the City without having secured a license, except as specifically provided herein, shall be guilty of a violation of this Article and upon conviction shall be punished pursuant to § 1-15.

Sec. 25-250. - Payment of tax.

(a) Every lodging provider shall be liable and responsible for the payment of the lodging tax, an amount equal to three (3) percent of the lodging price derived from the providing of lodging accommodations as established pursuant to § 25-242. Any such lodging provider shall file a return each month with the Financial Officer on or before the twentieth day of each month for the preceding month and remit any amount equivalent to the lodging tax collected to the Financial Officer.

(b) The returns to be filed by the lodging provider shall contain such information and be on such forms as the Financial Officer may prescribe. The Financial Officer may extend the time for filing returns and paying the lodging taxes due under such reasonable rules and regulations as the Financial Officer may prescribe, but no such extension shall be for a greater period than is permitted in § 25-253.

(c) The burden of proving that any lodging provider is exempt from collection of the lodging tax and paying the same to the Financial Officer or from making such returns shall be on the lodging provider under such reasonable requirements of proof as the Financial Officer may prescribe.

(d) The lodging provider shall add the lodging tax imposed or the average equivalent to the lodging price, showing such tax as a separate and distinct item and when added such tax shall constitute a part of such price and shall be a debt from the lodging customer to the lodging provider until paid and shall be recoverable at law in the same manner as other debts.

(e) No person other than the City may take enrichment from the collection or payment of the lodging tax or from liability for payment of the full amount of the tax as levied by § 25-242, except as otherwise provided by law.

Sec. 25-251. - Formulation and promulgation of rules and regulations.

To provide uniform methods of adding the lodging tax or the average equivalent to the lodging price, it shall be the duty of the Financial Officer, with the approval of the City Manager, to

formulate and promulgate appropriate rules and regulations to effectuate the purposes of this Article.

Sec. 25-252. - Advertisement of assumption or absorption of tax prohibited.

(unchanged)

Sec. 25-253. - Remittance of tax on other than monthly basis.

If the accounting method regularly employed by the lodging provider in the transaction of business, or other conditions, is such that filing lodging tax returns on a calendar month basis will impose unnecessary hardship, the Financial Officer may upon written request of the lodging provider accept the filing of returns at such intervals as will, in the Financial Officer's opinion, will better suit the convenience of the lodging provider and will not jeopardize the collection of the lodging tax. The Financial Officer may by rule permit a taxpayer whose monthly tax collected is less than three hundred dollars (\$300.) to make returns and pay taxes at intervals greater than one (1) month.

Sec. 25-254. - Consolidation of returns.

A lodging provider providing lodging accommodations in two (2) or more places or locations taxable hereunder may file one (1) return covering all such business activities.

Sec. 25-255. - Excess collections; failure to remit collections.

If any lodging provider shall during any reporting period collect as a lodging tax an amount in excess of three (3) percent of the total sales on lodging accommodations as imposed in § 25-242, the lodging provider shall remit to the City the full amount of the tax collected. The retention by the lodging provider of any excess lodging tax collections over three (3) percent of the total taxable sales of lodging accommodations by such lodging provider or the intentional failure to remit punctually to the Financial Officer the full amount required to be remitted by the provisions of this Article is hereby declared to be a violation of this Article.

Sec. 25-256. - Bad debts.

Lodging taxes paid on the amount of lodging price which are represented by accounts which are found to be worthless and are actually and properly charged off as bad debts for the purpose of the income tax imposed by the laws of the State may be credited upon a subsequent payment of the lodging tax as provided in this Article, but if any such accounts are thereafter collected by the lodging provider, a lodging tax shall be paid upon the amounts so collected.

Sec. 25-257. - Disputes over exemption from tax; application for refund.

If a dispute arises between the lodging customer and lodging provider as to whether or not any lodging transaction is exempt from taxation, the lodging provider shall collect and the lodging customer shall pay such lodging tax, and the lodging provider shall issue to the lodging customer

a receipt or certificate on forms prescribed by the Financial Officer showing the names of the lodging customer and lodging provider, the lodging accommodation furnished, the date, the price, the amount of lodging tax paid and a brief statement of the claim of exemption. The lodging customer may apply to the Financial Officer for a refund of such taxes. It shall be the duty of the Financial Officer to determine the question of exemption subject to review by the courts as herein provided. It shall be a violation of the Article for any lodging provider to fail to collect, or for any lodging customer to fail to pay, a tax levied by this Article on the provision of lodging accommodation on which exemption is disputed.

Sec. 25-258. - Procedure for refund of disputed tax.

(a) A refund shall be made or credit allowed for the tax paid under dispute by any person who claims one (1) or more exemptions as provided by this Article. Such refund shall be made by the Financial Officer after compliance with the following conditions precedent in this Section.

(b) Applications for refunds must be made within three (3) years after the lodging transaction for which the exemption is claimed and must be supported by the affidavit of the person, accompanied by the original paid invoice or sales receipt and a certificate issued by the lodging provider, and must be made upon such forms as shall be prescribed and furnished by the Financial Officer. The applicant must provide such other relevant information as the Financial Officer may require.

(c) The burden of proving that any person is exempt from paying the lodging tax shall be upon the person asserting such claim for exemption under such reasonable requirements or proof as the Financial Officer may prescribe.

(d) Upon receipt of such application, the Financial Officer shall examine it promptly and shall give notice to the applicant by an order in writing of the decision.

(e) An aggrieved applicant may, within twenty-one (21) days after such decision is mailed, petition the Financial Officer for a hearing on the claim in the manner provided in Section 25-276(c) of this Article.

Sec. 25-259. - Right of refund not assignable.

The right of any person to a refund under this Article shall not be assignable, and application for a refund must be made by the person who acquired lodging accommodation and paid the lodging tax as shown in the invoice of the sale.

Sec. 25-260. - False statements to be a violation.'

Any applicant for a refund under the provisions of this Article or any other person who shall make any false statement in connection with an application for a refund of lodging tax shall be deemed guilty of a violation of this Article and punished as provided in this Article.

Sec. 25-261. - Conviction to be evidence of fraudulent intent.

If any person is convicted under the provisions of § 25-260, such conviction shall be prima facie evidence that all refunds received by such person during the current year were obtained unlawfully, and the Financial Officer is hereby empowered and directed to bring appropriate action for recovery of such refund. A brief summary of the provisions of §25-260 and this section shall be printed on each application form for refund.

Sec. 25-262. - Information to be confidential.

(b) The persons charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained therein in any action or proceeding in any court, except on behalf of the Financial Officer in an action under the provisions of this Article to which the Financial Officer or the City is a party or on behalf of any party to an action or proceeding under the provisions of this Article or to punish a violator thereof when the report of facts shown by such report is 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 the returns or of the facts shown thereby as are pertinent to the action or proceeding and no more.

(d) Reports and returns shall be preserved for three (3) years from the date of filing with the Financial Officer, after which time the Financial Officer may orders them destroyed.

Sec. 25-263. - Keeping of records and accounts.

It shall be the duty of every person engaged or continuing in business in the City, for the transaction of which a license is required under this Article, to keep and preserve suitable records of all lodging transactions made by such person and such other books or accounts as may be necessary to determine the amount of lodging tax for the collection of which such person is liable under this Article. All such books, invoices and other records shall be preserved for each lodging transaction for a period of three (3) years after the later of: (1) the date that the return for the lodging transaction was required to be filed under this Article; or (ii) the date the return was filed. These records shall be open for examination in the City at any time by the Financial Officer.

Sec. 25-264. - Examination of returns; recomputation; credits; deficiencies.

As soon as practicable after the return is filed, the Financial Officer shall examine it. If it then appears that the correct amount of lodging tax to be remitted is greater or less than that shown in the return, the tax shall be recomputed by the Financial Officer. If the amount paid exceeds that which is due, the excess shall be refunded or credited against any subsequent remittance from the same person. If the amount paid is less than the amount due, the difference, together with interest thereon at the rate of one (1) percent per month from the time the return was due shall be paid by the taxpayer within twenty-one (21) days after written notice of determination, assessment and

demand for payment from the Financial Officer is sent to the taxpayer as provided in § 25-276(b). The taxpayer may protest the notice of determination, assessment and demand for payment issued under this section as provided in § 25-276(c).

Sec. 25-265. - Penalty for deficiencies due to negligence.

If any part of the deficiency in the payment of lodging tax is due to negligence, but without the intent to defraud, there shall be added as a penalty ten (10) percent of the total amount of the deficiency. Interest in such case shall be collected at the rate of one (1) percent per month on the amount of such deficiency from the time the return was due from the person required to file the return until paid, which additional amount and interest shall become due and payable within twenty-one (21) days after written notice of determination, assessment and demand for payment is issued by the Financial Officer as provided in § 25-276(b). The taxpayer may protest the notice of determination, assessment and demand for payment issued under this section as provided in § 25-276(c).

Sec. 25-266. - Penalty for deficiencies with intent to defraud.

If any part of the deficiency in the payment of the lodging tax is due to the intent by the taxpayer to evade the tax, then there shall be added as a penalty fifty (50) percent of the total amount of the deficiency, and in such case the whole amount of the tax unpaid, including this addition and an additional one (1) percent per month of interest on such amounts shall be added from the date the return was due until paid. This additional amount and interest shall become due and payable within twenty-one (21) days after written notice of determination, assessment and demand for payment is issued by the Financial Officer as provided in § 25-276(b). The taxpayer may protest the notice of determination, assessment and demand for payment issued under this section as provided in § 25-276(c).

Sec. 25-267. - Investigation of tax records.

For the purpose of ascertaining the correctness of a return or for the purpose of determining the amount of tax due from any person, the Financial Officer may hold investigations and hearings concerning any matters covered by this Article, and may examine any relevant books, papers, records or memoranda of any such person. The Financial Officer may require by subpoena the attendance of such person or any officer or employee of such person or of any person having knowledge of such transactions and may take testimony and proof for the information. The Financial Officer shall have power to administer oaths to such persons.

Sec. 25-268. - Subpoenas and witness fees.

(unchanged)

Sec. 25-269. - Attendance of witnesses and production of evidence.

(unchanged)

Sec. 25-270.- Depositions.

(unchanged)

Sec. 25-271. - Unpaid tax a prior lien; satisfaction of liens.

(a) The tax imposed by this Article, together with the interest, penalties, collection costs and other charges imposed under this Article, including the City's reasonable attorney fees, shall be and until paid remain a first and prior lien superior to any other liens on all the tangible personal property of the taxpayer, lodging customer or lodging provider which is located within the City and may be foreclosed by seizing under distraint warrant and selling so much thereof as may be necessary to discharge said lien. Such distraint warrant may be issued by the Financial Officer whenever the taxpayer, lodging customer or lodging provider is in default in the payment of the tax, interest, penalties, collection costs or other charges imposed under this Article. Such warrant may be served and the goods subject to such lien seized by the Financial Officer and may be sold by the Financial Officer at a public auction to be held ten (10) days after notice thereof has been published in a newspaper published in the City.

(b) The Financial Officer shall forthwith levy upon sufficient tangible personal property of the taxpayer, lodging customer or lodging provider as is necessary to satisfy the lien. The property so levied upon shall be sold in all respects with like effect and in the same manner as is prescribed by law in respect to executions against personal property upon judgment of a court of record, and the remedies of garnishment shall apply.

(c) The tax imposed by this Article, together with all penalties, interest, collection costs and other charges owed under this Article, including the City's reasonable attorney fees, shall also be a first and prior lien on the real property of the lodging provider, except as to preexisting liens or claims of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights have attached prior to the filing of the notice of lien provided for in paragraph (d) below, on the real property of the lodging provider.

(d) The Financial Officer may issue a notice setting forth the name of the lodging provider, the amount of the lodging tax, penalties, interest, collection costs or other charges, the date of their accrual, and the fact that the City claims a first and prior lien therefor on the real property of the lodging provider, except as to preexisting liens or claims of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights have attached prior to the filing of this notice on the real property of the lodging provider. The notice of lien shall be made on forms prescribed by the Financial Officer and verified by the Financial Officer and may be filed in the office of the clerk and recorder of any county in the State in which the lodging provider owns real property. The Financial Officer shall release any lien as shown on the records of the county clerk and recorder as herein provided upon payment of all taxes, penalties, interest and costs of collection covered thereby, in the same manner as mortgages and judgment liens are released. The lien authorized by this Section may be foreclosed and executed upon by the City in the district court of the county in which the lodging provider's real property is located in the same manner as mortgages and judgment liens are so foreclosed and executed upon under state law.

Sec. 25-272. - Settlement of taxes after sale of business.

Any lodging provider who sells or closes its business shall be required to complete and file a return as provided in this Article within ten (10) days after the date the provider sells or closes that business, and if the business is sold, the purchaser of the business is required to withhold a sufficient amount of the purchase money to cover the amount of any lodging tax deficiency due and unpaid until such time as the former owner shall produce a receipt from the Financial Officer showing that the taxes have been paid or a certificate that no taxes are due.

Sec. 25-273. - Purchase of business subject to tax lien.

If the purchaser of a business fails to withhold the amount of purchase money required in § 25-272, and the lodging tax deficiency shall remain due and unpaid after the ten-day period allowed, the purchaser, as well as the seller, shall be personally liable for the payment of the lodging tax deficiency unpaid by the seller. Likewise, anyone who takes any tangible business assets of or used by any lodging provider under lease, title retaining contract or otherwise takes the same subject to the liens on property provided in § 25-271 for any lodging tax deficiency owed by such provider under this Article, and shall be liable for the payment of the prior owner's lodging tax deficiency, but not to exceed the value of the property so taken or acquired.

Sec. 25-274. - Unpaid taxes in cases of bankruptcy or receivership.

Whenever the business or property of any taxpayer subject to the provisions of this Article shall be placed in a receivership, bankruptcy or assignment for the benefit of creditors, or is seized under distraint for property taxes, all lodging taxes, penalties, interest, costs of collection and other charges imposed by this Article, for which any lodging provider is in any way liable under the terms of this Article, shall constitute a prior and preferred lien against all the property of the taxpayer except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights shall have attached prior to the filing of the notice of lien as provided in § 25-271 on the property of the taxpayer, other than the lien on the taxpayer's tangible personal property, which lien shall be prior and superior to all other liens and preexisting claims. No sheriff, receiver, assignee or other officer shall sell the property of any person subject to this Article under process or order of any court without first ascertaining from the Financial Officer the amount of any lodging tax deficiency due and payable. If there are any such lodging tax deficiency due, owing and unpaid, it shall be the duty of such officer to first pay the amount of the lodging tax deficiency out of the proceeds of such sale before making payment of any monies to any judgment creditor or other claimants of whatsoever kind or nature, except the costs of the proceedings and other preexisting claims or liens as above provided.

Sec. 25-275. - Tax money to be held in trust.

All sums of money paid by the lodging customer to the lodging provider as lodging taxes imposed by this Article shall be and remain public money and the property of the City in the hands of such lodging provider. The lodging provider shall hold the same in trust for the sole use and benefit of the City until paid to the Financial Officer as herein provided. If the money is not

paid to the Financial Officer as required by this Article, such lodging provider may be charged with a violation of this Article, punishable as provided in Code Section 1-15.

Sec. 25-276. - Failure to make return; estimate of taxes; penalty; collection costs; notices; audit; appeal.

(a) If any person fails, neglects or refuses to collect, file a return for or pay the lodging tax as required by this Article, the Financial Officer shall make an estimate, based upon such information as may be available, of the amounts of the taxes due for the period or periods for which the taxpayer is delinquent and, upon the basis of such estimated amount, shall compute and assess in addition thereto a penalty equal to ten (10) percent thereof, together with interest on such delinquent taxes at the rate of one (1) percent per month from the date when the tax assessed was due. The Financial Officer may also assess against the taxpayer any penalties, interest, collection costs and other charges due and owing under this Article, including, without limitation, the City's reasonable attorney fees.

(b) The Financial Officer shall then serve upon the delinquent taxpayer a written notice of determination, assessment and demand for payment of such estimated taxes, penalties, interest, collection costs and other charges, which notice must be served either personally or by first class or certified mail directed to the last address of the taxpayer on file with the City. Payment of the assessment stated in the notice shall be due and payable by the taxpayer to the City within twenty-one (21) days from the date the notice is mailed.

(c) The Financial Officer may at any time within three (3) years of the date any lodging tax is due, serve upon any taxpayer personally or by first-class mail or certified mail directed to the last address of the taxpayer on file with the City, a written notice of audit notifying the taxpayer that the Financial Officer will be conducting an audit of the taxpayer's books and records to determine the exact amount of any tax, penalty, interest, collection costs and other charges, due. Within thirty (30) days of that notice or within such longer time period as permitted by the Financial Officer, the taxpayer shall make available to Financial Officer all of the taxpayer's relevant books and records requested by the Financial Officer for the audit. If as a result of the audit the Financial Officer determines the taxpayer owes the City any additional tax, penalties or interest, collection costs or other charges, the Financial Officer shall serve upon the taxpayer a notice of determination, assessment and demand for payment as provide in paragraph (b) above and payment shall be due and payable twenty-one (21) days from the date such notice is mailed.

(d) A taxpayer may protest a notice of determination, assessment and demand for payment issued to a taxpayer for failure to file a return, underpayment of tax owed or as a result of an audit by submitting the protest in writing to the Financial Officer within twenty-one (21) days from the date the notice of determination, assessment and demand is mailed to the taxpayer. Any such written protest shall identify the amount disputed, the basis for the protest and be given under oath by the taxpayer or the taxpayer's authorized representative. Such protest may include a request for a hearing. It shall also include a physical, post office box or email address to which the taxpayer wishes the Financial Officer's written order issued in paragraph (e) below to be sent when issued.

(e) In response to the taxpayer's written protest, if a hearing is requested, the Financial Officer shall notify the taxpayer in writing of the time and place of the hearing. After such hearing, or after a consideration of the facts and figures contained in the written protest if no hearing is requested, the Financial Officer shall make such written order in the matter as he or she deems just and proper and shall furnish a copy of that order to the taxpayer by first class or certified mail or by email as directed in the protest filed by the taxpayer.

(f) The Financial Officer's order issued under paragraph (e) above shall be considered final and reviewable in Larimer County District Court or the City's Municipal Court in accordance with the procedures in Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

Sec. 25-277. - Jeopardy assessment.

(a) If the Financial Officer finds that collection of the lodging tax will be jeopardized for any reason, the Financial Officer may declare the taxable period immediately terminated, determine the lodging tax deficiency and issue a notice of determination, assessment and demand for payment. Notwithstanding the provisions of § 25-276, the lodging tax deficiency shall then be due and payable forthwith, and the Financial Officer may proceed to collect the deficiency as provided in § 25-278 or pursue such other remedies authorized under this Article or by law.

(b) If the taxpayer subject to a jeopardy assessment provides security for payment of the lodging tax deficiency satisfactory to the Financial Officer, the Financial Officer may forego the jeopardy assessment collection proceedings.

Sec. 25-278. - Enforcing the collection of taxes due.

(a) The Financial Officer may issue a warrant directed to any employee, agent or representative of the City or any sheriff of any county of the state, commanding such person to distrain, seize and sell any personal property in which the taxpayer has an ownership interest, except such property as is exempt from the execution and sale by any state statute, for the payment of lodging tax due together with interest, penalties, collection costs and other charges thereon in the following circumstances:

(1) When any assessed lodging tax deficiency is not paid within twenty-one (21) days from the date of mailing of the notice of determination, assessment and demand for payment and no hearing or extension has been requested in a timely manner;

(2) When any assessed lodging tax deficiency is not paid within twenty-one (21) days from the date of the notice of determination, assessment and demand for payment and no appeal from such notice has been docketed within twenty-eight (28) days after such notice in a court having jurisdiction, except that if the Financial Officer finds that collection of the tax will be jeopardized during such period, the Financial Officer may immediately issue a distraint warrant;

(3) When any assessed lodging tax deficiency is not paid within the time prescribed in judgment and order of court on any appeal to a court having jurisdiction;

- (4) Immediately upon making a jeopardy assessment or issuing a demand for payment upon jeopardy assessment as provided in § 25-277; or
 - (5) After or concurrently with the filing of a notice of lien as provided in § 25-271(d).
- (b) The Financial Officer may apply to the Judge of the City's Municipal Court for a warrant authorizing the Financial Officer to search for and seize property located within the City limits for the purpose of enforcing the collection of lodging tax deficiency owed under this Article. The Municipal Judge shall issue such warrant after the Financial Officer demonstrates that:
- (1) The premises to which entry is sought contain property that is subject to levy and sale for taxes due; and
 - (2) At least one (1) of the preconditions of (a) above has been satisfied; but if a jeopardy assessment has been declared under § 25-277, the Financial Officer must set forth the reasons that collection of the tax will be jeopardized.
- (c) The procedures to be followed in issuing and executing a warrant pursuant to (b) above shall comply with Rule 241(c) and (d) of the Colorado Municipal Court Rules of Procedure.
- (d) The taxpayer may contest a warrant issued under this section using the procedure provided for in Rule 241(e) of the Colorado Municipal Court Rules of Procedure, except that no proceeding to contest such warrant may be brought after five (5) days prior to the date fixed for sale of the distrained property.
- (e) The agent charged with the collection shall make or cause to be made an account of the goods or effects distrained, and shall leave a copy of such account, signed by the agent making such distraint, with the owner or possessor of the property, at the owner's or possessor's usual place of abode with some family member over the age of eighteen (18) years, at the owner's or possessor's usual place of business with a stenographer, bookkeeper or chief clerk, or, if the taxpayer is a corporation or other business entity, with any officer, manager, general agent or agent for process, with a statement of the sum demanded and the time and place of sale. The agent charged with collection shall forthwith cause to be published a notice of the time and place of sale and a description of the property to be sold in a newspaper within the county wherein distraint is made or, in lieu thereof and in the discretion of the Financial Officer, the agent or sheriff shall cause such notice to be publicly posted at the county courthouse wherein such distraint is made and copies thereof shall be posted in at least two (2) other public places within the county. The time fixed for the sale shall not be less than ten (10) days nor more than sixty (60) days from the date of such notification to the owner or possessor of the property and the publication or posting of such notices. The sale may be adjourned or postponed from time to time by the agent or sheriff, if the agent or sheriff deems it advisable, to a date certain but not for a time to exceed in all ninety (90) days from the date first fixed for the sale. When any personal property is advertised for sale under distraint, the agent or sheriff making the seizure shall proceed to sell such property at public auction, offering the property at not less than a fair minimum price that includes the expenses of making the seizure and of advertising the sale. If

the amount bid for the property at the sale does not equal the fair minimum price so fixed, the agent or sheriff conducting the sale may declare the same to be purchased for the City. The property so purchased may then be sold by the agent or sheriff under such regulations as may be prescribed for disposing of City property. The goods, chattels or effects so distrained shall be restored to the owner or possessor if, prior to the sale, the amount due is paid together with the fees and other charges, or they may be redeemed by any person holding a chattel mortgage or other evidence of right of possession.

(f) In all cases of sale, the agent or sheriff making the sale shall issue a certificate of sale to each purchaser, and such certificate is prima facie evidence of the right of the agent or sheriff to make such sale and conclusive evidence of the regularity of the proceedings in making the sale; it transfers to the purchaser all right, title and interest of the delinquent taxpayer in and to the property sold. Where such property consists of certificates of securities or other evidence of indebtedness in the possession of the agent or sheriff, the taxpayer shall endorse such certificates to the purchaser thereof and supply the purchaser with proof of the taxpayer's authority to transfer the same or with any other requisite that may be necessary to obtain registration of the transfer of the certificate. Any surplus remaining above first the City's taxes, penalties, interest, collection costs and other charges and expenses of making the seizure and of advertising the sale and then the amounts distributed pro rata to other jurisdictions under recorded sales and use or personal property ad valorem tax liens shall be returned to the property owner or such person having a legal right to the property; and, on demand, the Financial Officer shall render an accounting in writing of the sale.

(g) In the case where a taxpayer has refused or neglected to pay any lodging tax deficiency due to the City under this Article and a lien has been filed as provided in § 25-271(d), the Financial Officer may, in addition to pursuing other collection remedies, certify the amount of the tax, penalties, interest, collection costs and other charges due, together with ten (10) percent of the delinquent amount for costs of county collection, to the county treasurer to be levied against the person's property for collection by the County in the same manner as delinquent general taxes upon such property are collected. Before certifying such amounts to the county for collection, the Financial Officer shall provide to the property owner an opportunity for a hearing to contest the authority of the City to impose and collect the lodging tax deficiency, or the amount thereof. The Financial Officer shall mail the notice to the property owner by first class mail addressed to the last known owner of the property in the records of the county assessor. If the Financial Officer's decision after a hearing affirms the imposition of the lodging tax deficiency, the decision shall include notice that the deficiency is due and payable within fourteen (14) days of the date of the decision and that, if not paid when due, they will be certified to the county treasurer for collection, along with ten (10) percent of the charges for the cost of county collection. Whenever the Financial Officer certifies any such amounts to the county treasurer for collection, the Financial Officer shall record notice of such certification with the county clerk and recorder.

Sec. 25-279. - Recovery of unpaid taxes by action at law or in equity.

(a) The Financial Officer may also treat any lodging tax deficiency due and unpaid under this Article as a personal debt due the City from the lodging provider.

(b) In case of any failure to pay the taxes, penalties, interest, collection costs and other charges due under this Article, the Financial Officer may recover at law the amount of such taxes, penalties, interest, collection costs and other charges in any county or district court of the county wherein the taxpayer resides or has his or her place of business.

(c) The City Attorney, upon the request of the Financial Officer may seek injunctive or other equitable relief in any court of competent jurisdiction to enforce provisions of this Article.

(d) The return of the taxpayer or the assessment made by the Financial Officer as herein provided shall be prima facie proof of the amount due.

(e) The City Attorney is hereby authorized upon request by the Financial Officer to commence any legal action or suit for the recovery of any lodging tax deficiency due pursuant to this Article.

Sec. 25-280. - City may be party in title actions.

(unchanged)

Sec. 25-281. - Compromise and settlement by Financial Officer.

(a) The Financial Officer may for good cause compromise and settle any actually assessed or potential claim to lodging taxes, penalties, interest, collection costs and other charges due to the City under this Article. Such *good cause* may include, without limitation, legal and factual considerations, considerations of fairness and justice, and the financial inability of the taxpayer to pay a greater amount.

(b) The Financial Officer shall prepare and retain in the files of Financial Services for each settlement a written opinion explaining the good cause for the settlement. The opinion shall also include a statement of: (i) the amount of the lodging tax, penalties, interest, collection costs and other charges that were assessed or that could potentially be assessed; and (ii) the amount paid by the taxpayer in accordance with the terms of the settlement agreement. In a circumstance where the amount of the lodging tax, penalties, interest, collection costs and other charges that could potentially be assessed cannot be reasonably determined, the Financial Officer shall state in the written opinion the reason why these amounts cannot be reasonably determined.

...

(d) Notwithstanding the foregoing, the Financial Officer may not compromise and settle a claim that waives more than one hundred thousand dollars (\$100,000.) of assessed lodging tax, penalties, interest, collection costs and other charges or that waives an amount of tax, penalties, interest, collection costs and other charges that could potentially be assessed but the amount of that assessment cannot be reasonably determined, unless the City Manager approves the Financial Officer's written opinion.

Sec. 25-282. - Review bond required.

Before making application to the District Court or the City's Municipal Court, the party making such application shall file with the Financial Officer a bond in twice the amount of the lodging taxes, penalties, interest, collection costs and other charges stated in the Financial Officer's order. The bond shall be issued by a good and sufficient surety reasonably acceptable to the Financial Officer or such other security acceptable to the Financial Officer.

Sec. 25-283. - Notices.

Except as otherwise expressly provide in this Article, all notices required to be given to any taxpayer under the provisions of this Article shall be in writing and hand delivered or mailed by prepaid first class or certified to the taxpayer's last-known address on file with the City, and such notice shall be deemed to have been received by the taxpayer when so delivered or mailed.

Sec. 25-284. - Tax in addition to other taxes.

The lodging tax imposed by this Article shall be in addition to all other taxes imposed by law except as herein otherwise provided.

Sec. 25-285. - Administrative officer designated.

The administration of all provisions of this Article is hereby vested in and shall be exercised by the Financial Officer who shall prescribe forms and reasonable rules and regulations in conformity with this Article for the making of returns, for the determination, assessment and collection of lodging tax and other amounts imposed under this Article and for such other proper administration and enforcement of this Article.

Sec. 25-286. - Statute of limitations.

(a) Except as otherwise provided in this section or as waived by the taxpayer, none of the following actions shall be taken by the City to collect any amount of lodging tax due and owing under this Article, together with any applicable interest, penalties, collection costs and other charges imposed by this Article, more than three (3) years after the later of (i) the date on which the tax return for that tax was filed, regardless of whether such return was filed on or after the date required by this Article, or (ii) the last date the return for that tax was required to be filed by this Article:

- (i) issuance of notice of audit;
- (ii) issuance of notice of determination, assessment and demand for payment;
- (iii) notice of lien filed;
- (iv) issuance of jeopardy assessment;
- (v) issuance of distraint warrant;
- (vi) bond collected upon;

- (vii) collection lawsuit commenced; or
- (viii) any other formal legal action taken.

If the Financial Officer takes any of the foregoing listed actions to determine, collect or enforce any lodging tax deficiency under this Article before the expiration of said three (3) year period, any such action shall stop the running of the period of limitation established in this section with regard to any other determination, collection or enforcement action authorized under this Article thereafter taken by the Financial Officer to recover that lodging tax deficiency. However, no lien shall continue after this limitation period, except for taxes assessed before the expiration of that period and regarding which a notice of lien was filed prior to the expiration of that period. In such event the lien shall continue in effect for three (3) years after it is filed as provided in § 25-271.

(b) In case of a false or fraudulent return with intent to evade the tax and in the case of failure to file a return, the tax together with interest, penalties and collection costs and other charges, including reasonable attorney fees, may be assessed or proceedings for the collection of such taxes may be begun at any time.

(c) Notwithstanding the foregoing provisions of this section, the taxpayer and the Financial Officer may agree in writing to an extension of any period of limitation imposed in this section, and the period agreed on may be extended by subsequent agreement in writing.

Sec. 25-287. – Violations and penalty.

(a) It shall be unlawful for any lodging provider to fail to collect or for any lodging customer to fail to pay any lodging tax, penalty, interest, collection costs or other charges levied by this Article regardless of whether the tax liability is disputed or an exemption is claimed.

(b) It shall be unlawful for any lodging provider to retain any lodging tax collected in excess of the rate stated in § 25-242 or to fail to remit punctually to the Financial Officer the full amount required by the provisions of this Article, including penalties, interest, collection costs and other charges.

(c) It shall be unlawful for any person to fail or refuse to make or file any return required to be made or filed by this Article or to make any false or fraudulent return or any false or fraudulent statement in any return.

(d) It shall be unlawful for any person to do business as a lodging provider without the license required by this Article or to continue to provide a lodging accommodation after such license is revoked.

(e) It shall be unlawful for any applicant for a tax refund under this Article to make a false statement in connection with such application.

(f) It shall be unlawful for any lodging provider to advertise or hold out or state to the public or to any lodging customer, directly or indirectly, that the tax or any part thereof imposed by this

Article will be assumed or absorbed by the lodging or that it will not be added to the lodging price of the lodging accommodation to be provided, or, if added, that it or any part thereof will be refunded.

(g) It shall be unlawful for any person other than the City to become enriched or to gain any benefit from the collection or payment of the taxes levied by this Article, unless otherwise authorized by law.

(h) It shall be unlawful for any person to aid or abet another in any attempt to evade the payment of the lodging tax imposed by this Article.

(i) It shall be unlawful for any officer, agent or employee of the City to divulge or make known in any way any information classified in this Article as confidential, except in accordance with a court order or as otherwise provided by this Article or other applicable law.

(j) It shall be unlawful for any person to interfere with the actions of any employee or agent of the City relating to the distraint warrant procedures in § 25-278, such interference to include but not be limited to the removal of signs or tags placed on the premises or items of property which are to be sold by the City pursuant to such procedure.

(k) It shall be unlawful for any person to violate any other mandatory provision of this Article.

(l) The penalty for violating any mandatory provision of this Article shall be as provided in § 1-15.

Introduced, considered favorably on first reading, and ordered published this 18th day of April, A.D. 2017, and to be presented for final passage on the 16th day of May, A.D. 2017.



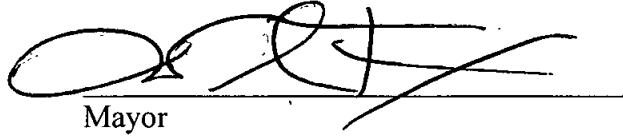

Mayor

ATTEST:



City Clerk

Passed and adopted on final reading on this 16th day of May, A.D. 2017.



Mayor

ATTEST:



City Clerk