

OPTION B

FIRST READING: August 4, 2009

SECOND READING: August 18, 2009

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 3 OF THE LOVELAND MUNICIPAL CODE BY THE ADDITION OF A NEW CHAPTER 3.24 TO LEVY A LODGING TAX OF THREE PERCENT (3%) ON THE LODGING PRICE PAID FOR LODGING SERVICES PROVIDED IN THE CITY; AND SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY OF LOVELAND COLORADO, AT THE REGULAR MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 3, 2009, THE BALLOT QUESTION OF WHETHER THE CITY SHALL BE AUTHORIZED TO INCREASE TAXES BY THE LEVY OF A LODGING TAX OF THREE PERCENT (3%) ON THE LODGING PRICE PAID FOR LODGING SERVICES PROVIDED IN THE CITY; TO CREATE A COMMUNITY MARKETING COMMISSION; AND PROVIDING THAT THE TAXING AND THE COMMUNITY MARKETING COMMISSION PROVISIONS OF THIS ORDINANCE SHALL NOT TAKE EFFECT UNLESS THE BALLOT QUESTION IS APPROVED BY THE CITY'S REGISTERED ELECTORS AT SAID REGULAR ELECTION.

WHEREAS, the City Council finds and determines that persons who visit the City of Loveland ("the City") on business, as tourists and while traveling through the City provide significant economic benefits to the City and its citizens by increasing tax revenues and by creating and sustaining jobs for Loveland citizens who provide services to these visitors in the lodging, restaurant, arts and other tourism-related businesses in the City; and

WHEREAS, pursuant to Section 12-2 of the City of Loveland Charter, the City Council is authorized to adopt such taxes as are not prohibited for home rule municipalities by the Colorado Constitution, subject to any applicable voter approval requirements; and

WHEREAS, the City Council finds that levying a new lodging tax of three percent (3%) on the lodging price paid for lodging services provided in the City will permit the City to utilize the revenues derived from the lodging tax for the purpose of promoting tourism, conventions and related activities within the City by marketing the City and sponsoring community events, both in support of this purpose; and

WHEREAS, establishing a new lodging tax on the lodging price paid for any lodging services provided in the City requires voter approval in advance pursuant to Article X, Section 20 of the Colorado Constitution; and

WHEREAS, the City Council finds that it is in the best interests of the present and future citizens of the City to submit to the registered electors of the City the question of levying a lodging tax of three percent (3%) on the lodging price paid for any lodging services provided in the City for the purpose of promoting tourism, conventions and related activities within the City by marketing the City and sponsoring community events, both in support of this purpose, at a City regular election to be held on November 3, 2009 in accordance with the provisions of Article X, Section 20 of the Colorado Constitution; and

WHEREAS, the City Council further finds that a Community Marketing Commission should be established to advise Council and to make recommendations to it concerning the specific uses of the lodging tax revenues consistent with the purpose described herein and that the members of the Commission should be made up of persons appointed by City Council, three of whom are to be representatives of businesses that provide lodging services in Loveland, one of whom is to be a representative from the Loveland Chamber of Commerce and three of whom are to have backgrounds in the fields and businesses of tourism, the arts, marketing, economic development or community development.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That Title 3 of the Loveland Municipal Code is amended by the addition of a new Chapter 3.24 to read in full as follows:

Chapter 3.24

LODGING TAX

Section 3.24.005 Purpose.

The city council declares that the purpose of the levy of the tax imposed by this chapter is for the raising of funds to promote tourism, conventions and related activities within the city by marketing the city and sponsoring community events, both in support of this purpose.

Section 3.24.010 Definitions.

Unless the context requires otherwise, the following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section:

- (a) **City manager** shall mean the City Manager of the City of Loveland, or his or her designee.
- (b) **Finance department** shall mean the duly constituted finance department of the City of Loveland.

- (c) **Lodging services** shall mean the providing of rooms or accommodations, except meeting rooms, by any person to any other person who for consideration uses, possesses, or has the right to use or possess any room, except a meeting room, in a hotel, inn, bed and breakfast residence, apartment, lodging house, motor hotel, guest house, guest ranch, trailer coach, mobile home, automobile camper trailer court and park, or similar establishment, for a period of less than thirty consecutive days under any concession, permit, right of access, license to use or other agreement, or otherwise.
- (d) **Lodging customer** shall mean any person who, through a taxable lodging transaction, acquires lodging services from a lodging provider.
- (e) **Lodging price** shall mean the gross price paid or value given, exclusive of other taxes paid, by the lodging customer for the provision of lodging services.
- (f) **Lodging provider** shall mean any person providing lodging services or such provider's authorized agent.
- (g) **Lodging tax or tax** shall mean the excise tax imposed by this chapter payable by the purchaser of lodging services or the aggregate amount of taxes due from a lodging provider during the period for which such person is required to report the collections of this tax as herein specified.
- (h) **Lodging transaction** shall mean the providing of lodging services.
- (i) **Person** shall mean any individual, entity, firm, partnership, joint venture, corporation, estate or trust, receiver, trustee, assignee, lessee, limited liability company, or any person or entity acting in a fiduciary or representative capacity for any individual or entity, whether appointed by the court or otherwise, or any group or combination acting as a unit, and includes the plural as well as the singular number.
- (j) **State** shall mean the State of Colorado.
- (k) **Taxpayer** shall mean any person obligated to account to the city for taxes collected or to be collected under the terms of this chapter.

Section 3.24.020 Tax levied.

On and after 12:00 a.m. January 1, 2010, there is levied and shall be paid and collected an excise tax of three (3%) percent on the lodging price paid for any lodging services provided in the city. This tax shall be in addition to the sales and use tax as established pursuant to Chapter 3.16 of this Title. It shall be a violation of this Code for any lodging customer provided lodging services in the city to fail to pay, or for any lodging provider of such lodging services to fail to collect, the tax levied pursuant to this section.

Section 3.24.030 Transactions exempt from tax.

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

1. All lodging services provided to the United States Government; to the state, its departments or institutions and political subdivisions in their governmental capacities only, including the city and any department thereof;
2. All lodging services provided to religious and charitable non-profit corporations and associations, provided the corporation or association holds a tax exempt status under Internal Revenue Code Section 501(c), but only in the conduct of their religious and charitable functions and activities;
3. All lodging services provided to persons which the city is prohibited from taxing under the United States Constitution or laws of the United States or under state law;
4. All lodging services 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 services are paid in advance on a weekly basis and does not exceed the total sum of seventy-five dollars per week.

Section 3.24.040 License required for lodging providers.

(a) It shall be unlawful for any person to engage in the business of providing lodging services without first having obtained a license from the city as provided in this chapter, which license shall be granted and issued without fee by the city manager and shall be in force and effect until revoked.

(b) In case business is transacted at two or more separate places by one person, a separate license for each place of business shall be required.

Section 3.24.050 Exception to licensing requirement.

No license shall be required for any person engaged exclusively in the business of providing lodging services that are exempt from taxation under this chapter.

Section 3.24.060 Application.

A lodging license shall be granted only upon application stating the name and address of the person desiring such license, the name of such business, the location, including the street number of such business and such other facts as may be reasonably

required by the city manager for collection and enforcement of the lodging tax under this chapter.

Section 3.24.070 Form of license; nontransferability.

Each lodging license shall be numbered and shall show the name, mailing address and place of the 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.

Section 3.24.080 Revocation of license.

The city manager, after giving reasonable notice and after full hearing, may revoke the lodging license of any person found by the city manager to have violated any provision of this chapter.

Section 3.24.090 Appeal of revocation; procedure.

Any finding and order of the city manager revoking the lodging license of any person shall be subject to review by the District Court of Larimer County upon petition 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.

Section 3.24.100 Engaging in business without license to be a violation.

Any person engaged in the business of providing lodging services in the city without having secured the lodging license required by this chapter, except as specifically provided herein, shall be guilty of a violation of this chapter and upon conviction shall be punished pursuant to Code Section 1.12.010.

Section 3.24.105 Use of Lodging Tax.

All revenues received by the city from the lodging tax established by this chapter shall be placed in a separate lodging tax fund and used by the city only for the following purpose: to promote tourism, conventions and related activities within the city by marketing the city and sponsoring community events, both in support of this purpose. None of the revenue shall be allocated to the general fund or to any other separate city fund. In addition, the city council shall not budget, appropriate or spend any funds from this lodging tax fund without first receiving a recommendation from the community marketing commission established pursuant to Code Section 2.60.075 concerning the proposed use of such funds. The city council shall not, however, be bound by the commission's recommendation and may spend the funds in any way consistent with the purpose authorized in this section. However, nothing in this chapter shall prohibit the city council from approving the use of any other available city funds to fund, in whole or part, the purpose set forth in this section.

Section 3.24.110 Payment of tax.

(a) Every lodging provider shall be liable and responsible for the payment of an amount equal to three (3%) percent of all proceeds derived from the providing of lodging services as established pursuant to Section 3.24.020 and any such lodging provider shall file a return each month with the finance department on or before the twentieth day of each month for the preceding month and remit an amount equivalent to the lodging tax collected to the finance department. Every lodging provider shall be entitled to withhold each month an amount equal to the lesser of three and one-third percent (3 1/3%) of the amount of the tax to be paid by such lodging provider under this chapter or three hundred dollars (\$300) to cover the expense of collection and remittance of the tax to the finance department.

(b) The returns to be filed by the lodging provider shall contain such information and be made in such manner upon any such forms as the city manager may prescribe. The city manager may extend the time for making returns and paying the taxes due under such reasonable rules and regulations as the city manager may prescribe, but no such extension shall be for a greater period than is provided in Section 3.24.140.

(c) The burden of proving that any lodging provider is exempt from collection of the lodging tax and paying the same to the finance department or from filing the returns required by this section shall be on the lodging provider under such reasonable requirements of proof as the city manager may prescribe.

(d) Except as provided in subsection (f) below, the lodging provider shall add the tax imposed 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) The lodging provider shall be entitled, as the city's collecting agent, to apply and credit the amount authorized to be withheld by the lodging provider pursuant to subsection (a) above, remitting the excess of collections over that amount to the finance department in the lodging provider's next monthly lodging tax return. If, however, the lodging provider is delinquent in remitting the tax collected, other than in unusual circumstances shown to the satisfaction of the city manager, the lodging provider shall not be entitled to apply this credit and shall pay to the finance department the full three percent (3%) of tax collected.

(f) No person other than the city may take enrichment from the collection or payment of such tax or from liability for payment of the full amount of the tax as levied by Section 3.24.020 as such amount is adjusted pursuant to subsection (e) above.

Section 3.24.120 Formulation and promulgation of rules and regulations.

To provide uniform methods of adding the lodging tax to the lodging price, for collecting the tax, and for enforcing the tax, the city manager may formulate and promulgate appropriate rules and regulations to effectuate the purposes of this chapter.

Section 3.24.130 Advertisement of assumption or absorption of tax prohibited.

It shall be unlawful for any lodging provider to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by this chapter will be assumed or absorbed by the lodging provider or that it will not be added to the lodging price of the lodging services provided or, if added, that it or any part will be refunded.

Section 3.24.140 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 reports of sales made on a calendar month basis will impose unnecessary hardship, the city manager may, upon written request of the lodging provider, accept reports at such intervals as will, in the city manager's opinion, better suit the convenience of the lodging provider and will not jeopardize the city's collection of the tax. The city manager may by rule permit a taxpayer whose monthly tax collected is less than twenty dollars to make returns and pay taxes at intervals greater than one month.

Section 3.24.150 Consolidation of returns.

A lodging provider doing business in two or more places or locations taxable under this chapter may file one return covering all such business activities.

Section 3.24.160 Excess collections; failure to remit collections.

If any lodging provider during any reporting period collects as a tax an amount in excess of three (3%) percent of the total sales on lodging services, the lodging provider shall remit to the city the full amount of the tax collected less the amount retained as a collection expense under Section 3.24.110(e). The retention by the lodging provider of any excess tax collections over three (3%) percent of the total taxable sales of such lodging provider or the intentional failure to remit promptly to the finance department the full amount required to be remitted by this section is hereby declared to be a violation of this chapter.

Section 3.24.170 Bad debts.

Lodging taxes paid on the amount of lodging price which are represented by accounts that 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 tax as provided in this chapter, but if any such accounts are thereafter collected by the lodging provider, a lodging tax shall be paid upon the amounts so collected.

Section 3.24.180 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 tax, and the lodging provider shall issue to the lodging customer a receipt or certificate on forms prescribed by the city manager showing the names of the lodging customer and lodging provider, the lodging services furnished, the date, the price, the amount of tax paid and a brief statement of the claim of exemption. The lodging customer may apply to the finance department for a refund of such taxes. It shall be the duty of the city manager to determine the question of exemption subject to review by the courts as herein provided. It shall be a violation of this chapter for any lodging provider to fail to collect, or for any lodging customer to fail to pay, a tax levied by this chapter on the provision of lodging services on which an exemption is disputed.

Section 3.24.190 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 or more exemptions as provided by this chapter and who proves, in the manner set forth in this section, that the person is entitled to the claimed exemption. Such refund shall be made by the city manager after compliance with all of the following conditions in subsections (b), (c), (d) and (e) below.

(b) Applications for refunds must be filed with the finance department within sixty days after the lodging transaction on which the exemption is claimed and must be supported by the affidavit of the person seeking the exemption, accompanied by the original paid invoice or sales receipt and a certificate issued by the lodging provider, and the application and the certificate must be made upon such forms as shall be furnished by the finance department, which forms shall contain such information as the city manager may prescribe.

(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 city manager may prescribe.

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

(e) An aggrieved applicant may, within fifteen days after such decision is mailed, petition the city manager for a hearing on the claim in the manner provided in this chapter.

Section 3.24.200 Right of refund not assignable.

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

Section 3.24.210 False statements to be a violation.

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

Section 3.24.220 Conviction to be evidence of fraudulent intent.

If any person is convicted under the provisions of Section 3.24.210, such conviction shall be prima facie evidence that all refunds received by such person during the current year were obtained unlawfully, and the city manager is hereby empowered and directed to bring appropriate action for recovery of such refund. A brief summary of the above-mentioned penalties shall be printed on each application form for refund.

Section 3.24.230 Information to be confidential.

(a) Except in accordance with judicial order, state law, or as otherwise provided in this chapter, the city manager and the city manager's employees and agents, shall not divulge any information gained from any return filed under the provisions of this chapter.

(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 city or the city manager in an action under the provisions of this chapter to which the city or the city manager is a party or on behalf of any party to an action or proceeding under the provisions of this chapter 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.

(c) Nothing in this section shall be construed to prohibit the delivery to a person or his or her duly authorized representative of a copy of any return or report filed in connection with that person's tax nor to prohibit the publication of statistics so

classified as to prevent the identification of particular reports or returns and the items thereof, nor to prohibit the inspection by the city attorney, or any other legal counsel for the city, of the report or return of any person who brings an action to set aside or review the tax based thereon or against whom an action or proceeding is contemplated or has been instituted under this chapter.

(d) Reports and returns shall be preserved for three years and thereafter until the city manager orders them destroyed.

Section 3.24.240 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 lodging license is required hereunder, 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 tax for the collection of which such person is liable under this chapter. All such books, invoices and other records shall be preserved for a period of three years and shall be open for examination at any time by the city manager.

Section 3.24.250 Divulging of confidential information to be a violation.

Any city officer or employee, or any member of the office of, or officer or employee of, the city manager who shall divulge any information classified herein as confidential, in any manner, except in accordance with proper judicial order or as otherwise provided by law, shall be guilty of a violation of this chapter.

Section 3.24.260 Examination of returns; recomputations; credits; deficiencies.

As soon as practicable after the return is filed, the city manager shall examine it. If it then appears that the correct amount of tax to be remitted is greater or less than that shown in the return, the tax shall be recomputed by the city manager. 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-half of one percent per month from the time the return was due, shall be paid by the taxpayer to the finance department within ten days after written notice and demand to the taxpayer from the city manager.

Section 3.24.270 Penalty for deficiencies due to negligence.

If any part of the deficiency in payment of the lodging tax is due to negligence, but without the intent to defraud, there shall be added ten percent of the total amount of the deficiency. Interest in such case shall be collected at the rate of one percent per month on the amount of such deficiency from the time the return was due from the person required to file the return. The deficiency interest and penalty shall become due and

payable to the finance department within ten days after written notice and demand by the city manager.

Section 3.24.280 Penalty for deficiencies with intent to defraud.

If any part of the deficiency in payment of lodging tax is due to the intent by the taxpayer to evade the tax, then there shall be added fifty percent of the total amount of the deficiency. Interest in such case shall be collected at the rate of one and one-half percent per month on the amount of the deficiency from the time the return was due from the person required to file the return. The deficiency interest and penalties shall be due and payable to the finance department within ten days after written notice and demand by the city manager.

Section 3.24.290 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 city manager may hold investigations and hearings concerning any matters covered by this chapter, and may examine any relevant books, papers, records or memoranda of any such person. The city manager may require 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 city manager shall have power to administer oaths to such persons.

Section 3.24.300 Subpoenas and witness fees.

All subpoenas issued under the terms of this chapter may be served by any person of eighteen years of age or older. The fees of witnesses for attendance under the subpoenas shall be the same as the fees of witnesses before the state district court, such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the city manager, such fees shall be paid in the same manner as other expenses under the terms of this chapter. When a witness is subpoenaed at the instance of any party to any such proceeding, the city manager may require that the cost of service of the subpoena and the fee of the witness be borne by the party at whose instance the witness is summoned. In such case, the city manager may require a deposit to cover the cost of such service and witness fees. A subpoena issued as aforesaid shall be served in the same manner as a subpoena issued out of a court of record.

Section 3.24.310 Attendance of witnesses and production of evidence.

Any district judge of the Larimer County District Court, upon the application of the city manager, may issue a subpoena to compel the attendance of witnesses, the production of books, papers, records and memoranda and the giving of testimony before the city manager, and to enforce those subpoenas as provided in the Colorado Rules of Civil Procedure. Alternatively, the city manager may issue subpoenas, enforceable in

Loveland Municipal Court under C.R.S. §13-10-112(2) and Rule 217 of the Colorado Municipal Court Rules of Procedure, to compel the attendance of witnesses, the collection of books, papers, records and memorandum and the giving of testimony before the city manager.

Section 3.24.320 Depositions.

The city manager or any party in an investigation or hearing before the city manager, may cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in courts of this state and to that end compel the attendance of witnesses and the production of books, papers, records and memoranda pursuant to the provisions of Sections 3.24.300 and 3.24.310.

Section 3.24.330 Unpaid tax a prior lien; satisfaction of liens.

(a) The tax imposed by this chapter, together with the interest and penalties herein provided and the cost of collection which may be incurred by the city, including reasonable attorney's fees, shall be and until paid remain a first and prior lien superior to any other liens on all the real property and tangible personal property of the taxpayer, lodging customer or lodging provider that 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 city manager whenever the taxpayer, lodging customer or lodging provider is in default in the payment of the tax, interest and penalty. Such warrant may be served and the goods subject to such lien seized by the city manager and may be sold by the city manager at a public auction to be held ten days after notice thereof has been published in a newspaper published in the city.

(b) The city manager shall forthwith levy upon sufficient real property and 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 respect with like effect and in the same manner as is prescribed by law in respect to executions against property upon judgment of a court of record, and the remedies of garnishment shall also apply.

Section 3.24.340 Settlement of taxes after sale of business.

Any lodging provider who shall sell or quit the business providing lodging services shall be required to make out a return as provided in this chapter within ten days after the date the provider sold the business or quit the business, and the successor in business shall be required to withhold sufficient funds of the purchase money to cover the amount of the lodging tax due and unpaid to the city under this chapter until such time as the former owner shall produce a receipt from the finance department showing that the taxes have been paid or a certificate from the finance department that no taxes are due.

Section 3.24.350 Purchase of business subject to tax lien.

If the purchaser of a business providing lodging services shall fail to withhold the amount of purchase money, as provided in Section 3.24.340, and the tax shall be 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 taxes unpaid by the former owner. 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 lien for any delinquent lodging taxes owed by such provider, and shall be liable for the payment of all delinquent lodging taxes of such prior owner, not, however, to exceed the value of the property so taken or acquired.

Section 3.24.360 Unpaid taxes in cases of bankruptcy or receivership.

Whenever the business or property of any taxpayer subject to the provisions of this chapter shall be placed in a receivership, bankruptcy or assignment for the benefit of creditors, or is seized under distraint for property taxes, all taxes, penalties and interest imposed by this chapter, for which any lodging provider is in any way liable under the terms of this chapter, shall constitute a prior and preferred lien against all the real and tangible personal 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 as hereinafter provided on the property of the taxpayer, other than the tangible business assets of such taxpayer. No sheriff, receiver, assignee or other officer shall sell the property of any person subject to this chapter under process or order of any court without first ascertaining from the finance department the amount of any lodging taxes due and payable to the city. If there are any such taxes due, owing and unpaid, it shall be the duty of such officer to first pay the amount of the taxes 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.

Section 3.24.370 Tax money to be held in trust.

All sums of money paid by the lodging customer to the lodging provider as taxes imposed by this chapter 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 finance department as herein provided. If the money is not paid to the finance department, such lodging provider shall be deemed in violation of this section.

Section 3.24.380 Failure to make return; estimate of taxes; penalty; notice; appeal.

(a) If any person neglects or refuses to make a return in payment of the taxes as required by this chapter, the city manager 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 percent thereof together with interest on such delinquent taxes at the rate of one percent per month from the date when due.

(b) Promptly thereafter, the city manager shall give to the delinquent taxpayer written notice of such estimated taxes, penalty and interest, which notice must be served on the delinquent taxpayer either personally or by certified mail.

(c) Such estimate shall thereupon become an assessment and such assessment shall be final and due and payable from the taxpayer to the finance department ten days from the date of service of the notice or the date of mailing by certified mail. Within the ten-day period, such delinquent taxpayer may petition the city manager for a revision or modification of such assessment and shall within such ten-day period furnish the finance department the correct facts and figures showing the correct amount of such taxes.

(d) Such petition shall be in writing, and the facts and figures submitted shall be submitted either in writing or orally and shall be given under oath of the taxpayer. The city manager may modify such assessment in accordance with the facts submitted. Such assessment shall be considered the final order of the city manager and may be reviewed in Larimer County District Court under Rule 106(a)(4) of the Colorado Rules of Civil Procedure, as provided in this chapter provided that the taxpayer gives written notice to the city manager of the intent to seek review within five days after receipt of the final order of assessment.

Section 3.24.390 Notice of tax lien.

(a) If any taxes, penalty or interest imposed by this chapter and shown by returns filed by a taxpayer, or as shown by assessments duly made as provided in this chapter, are not paid within five days after the same are due, the city manager shall issue a notice, setting forth the name of the taxpayer, the amount of the tax, penalties and interest, the date of the accrual and that the city claims a first and prior lien on the real and tangible personal property of the taxpayer, except as to preexisting claims or liens of a bona fide mortgagee, pledgee or judgment creditor prior to the filing of the notice as hereinafter provided on property of the taxpayer.

(b) Such notice shall be on forms prepared by the city manager and shall be verified by the city manager and may be filed in the office of the clerk and recorder of any county in this state in which the taxpayer owns real or tangible personal property.

The filing of such notice shall create such lien on such property in that county and constitute a notice thereof.

Section 3.24.395 Distraint, Seizure and Sale.

(a) In addition to any other collection remedies provided in this chapter, after the notice contemplated in Section 3.24.390 has been filed or at any time when taxes due are unpaid, whether such notice is filed or not, the city manager may issue a warrant under the city's official seal directly to any city employee or to the sheriff of any county of this state, commanding them or their designated agents to distraint, levy upon, seize and sell sufficient of the real and personal property of the taxpayer found within the city, within the county where the sheriff is situated, for the payment of the amount due, together with interest, penalties and costs of collection including, without limitation, the direct and indirect personnel costs of the city employee's time incurred in the collection and the city's reasonable attorney's fees.

(b) Such city employee, agent or representative or the sheriff of any county of the state, or their designated agents as have received a warrant as provided in subsection (a), shall levy upon sufficient property of the taxpayer, or any property used by such taxpayer in conducting his or her retail business, except property made exempt from lien under C.R.S. §39-26-117(1) and the property so levied upon shall be sold in all respects with like effect in the same manner as prescribed by law for executions against property upon judgment of a court of record. The remedies of garnishment shall also be available. The city employee, agent or representative, or the sheriff of any county, shall be entitled to such fees in executing such warrant as are allowed by law for similar services.

(c) In addition to publishing the notice of sale, as provided by state statutes for execution of sales, the notice of sale, specifying the name and address of the taxpayer, the property to be sold, the amount of the unpaid taxes, penalty, interest and costs of collection for which the property is to be sold, the name and address of the officer conducting the sale, and the time and place of the sale, shall be mailed or otherwise provided to the taxpayer and record holder of each outstanding interest in the property to be sold, according to the records of the clerk and recorder of the county where the property is located, the Colorado Secretary of State, the Colorado Department of Revenue, Motor Vehicles Division, or the successor to the recording functions of any of these offices. Such notice shall be mailed or otherwise given no later than ten days before the sale.

(d) If the taxpayer, before the beginning of the sale, pays to the finance department in cash or certified funds, acceptable to the city manager, the unpaid taxes, penalty, interest and the city's costs of collection, the taxpayer shall receive from the city manager a release of lien for the taxes and the sale shall abate. If any person other than the taxpayer pays, such person shall receive a quitclaim assignment of the city's interest in and to the property upon which a lien is claimed, and the sale shall abate, subject to reinstatement of proceedings executed upon such lien by the third party. Thereafter, no city

employee or official shall be obligated to perform any further action to foreclose or execute upon the tax lien, but the purchaser of said lien shall have all of the rights and remedies provided hereunder at the purchaser's sole option and expense.

Section 3.24.396 Chief of Police to act in aid of distraint.

The Loveland Chief of Police or his or her designee shall, upon request, assign necessary police officers to accompany authorized city officials and act in aid of distraint. Said officers shall be authorized, upon request of an authorized city official acting under a distraint warrant, to use all reasonable measures, including, without limitation, reasonable appropriate physical force, to distraint or levy upon property and preserve the peace.

Section 3.24.400 Release of lien.

Any lien for taxes as shown on the records of all county clerks and recorders as herein provided shall, upon the payment of all taxes, penalties and interest covered thereby be released by the city manager in the same manner as mortgages or judgments are released.

Section 3.24.410 Recovery of unpaid taxes by action at law.

(a) The city manager may also treat any taxes, penalties, interest and costs of collection due and unpaid under this chapter as a debt due the city from the lodging provider.

(b) In case of failure to pay the taxes, or any portion thereof, and to pay any penalty, interest, and costs of collection due thereon, when due, the city manager may recover at law the amount of such taxes, penalties, interest and costs of collection in any county or district court of the county wherein the taxpayer resides or has his or her place of business.

(c) The return of the taxpayer or the assessment made by the city manager as herein provided shall be prima facie proof of the amount due.

(d) The city attorney is hereby authorized, upon request by the city manager, to commence any legal action or suit in the name of the city for the recovery of the tax, penalty, interest and costs of collection due pursuant to this chapter.

Section 3.24.420 City may be party in title actions.

In any judicial or legal action affecting the title to real estate or the ownership or right to possession of personal property, the city may be made a party to such action for the purpose of obtaining a judgment or determination of its lien upon the property involved therein.

Section 3.24.430 Waiver of penalties by city manager.

The city manager is hereby authorized to waive, for good cause shown, any penalty assessed as provided in this chapter. For this purpose, any interest imposed in excess of six percent (6%) per annum shall be deemed a penalty.

Section 3.24.440 Petition and hearing of aggrieved taxpayer.

If any taxpayer, having made a return and paid the tax provided for in this chapter, deems himself or herself aggrieved by the assessment made upon him or her by the city manager, the taxpayer may apply to the city manager by petition, in writing, filed with the finance department within ten days after the notice is mailed to him or her for a hearing and a correction of the amount of the tax so assessed. The taxpayer shall set forth the reasons why such hearing should be granted and the amount by which such tax should be reduced. The city manager shall notify the petitioner, in writing, of the time and place fixed for such hearing. After such hearing, the city manager shall make such order in the matter as is just and proper and shall furnish a copy of such order to the petitioner.

Section 3.24.450 Decision of city manager.

Every decision of the city manager shall be in writing, and the written decision shall be mailed to the taxpayer within ten days after issuance of the written decision. All such decisions shall become final upon the expiration of thirty days after issuance.

Section 3.24.460 Review of decisions.

The taxpayer may apply for a review of the decision by the city manager in Larimer County District Court in accordance with Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

Section 3.24.470 Review bond required.

Before making application to the District Court, the party making such application shall file with the finance department a bond in twice the amount of the taxes, penalty, interest and costs of collection as stated in the city manager's decision with good and sufficient surety, or at the city manager's option, may deposit lawful money with the finance department in the total amount owed under this chapter.

Section 3.24.480 Notices to be sent by certified and first class mail.

All notices required to be given to any taxpayer under the provisions of this chapter shall be in writing and, if mailed, sent by certified mail, return receipt requested, and by regular first class mail, both to the taxpayer's last-known address, and such mailing of the notice shall be sufficient for the purposes of this chapter.

Section 3.24.500 Tax in addition to other taxes.

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

Section 3.24.510 Hearings to be held in City.

Every hearing before the city manager shall be held in the city.

Section 3.24.520 Administrative officer designated.

The administration of all provisions of this chapter is hereby vested in and shall be exercised by the city manager who shall prescribe forms and reasonable rules and regulations in conformity with this chapter for the making of returns, for the ascertainment, assessment and collection of taxes imposed under this chapter and for the proper administration and enforcement thereof.

Section 3.24.540 Compromise and settlement.

The city manager may for good cause compromise or settle any claim to the lodging tax, penalties, interest and costs of collection due to the city under this chapter. Whenever a settlement by the city manager results in a compromise of twenty-five hundred dollars or more, there should be placed on file in the finance department the written opinion of the city manager stating the reasons for the settlement, which may include financial inability of the taxpayer to pay a greater amount, with a statement of: (i) the amount of the tax assessed; (ii) the amount of the penalty, interest and costs of collection assessed; and (iii) the amount paid by the taxpayer in accordance with the terms of the settlement. Notwithstanding anything herein to the contrary, no such opinion shall be required with respect to any compromise of less than twenty-five hundred dollars.

Section 3.24.550 Statute of limitations.

(a) The taxes for any period, together with interest and penalties imposed by this chapter shall not be assessed nor shall any notice of lien be filed, or distraint warrant be issued or suit for collection be instituted or any other action to collect the same be commenced more than three years after the date on which the tax was or is payable. No lien shall continue after such period, except for taxes assessed before the expiration of such period, a notice of lien with respect to which has been filed prior to the expiration of such period, and in such cases, such lien shall continue only for two years after the filing of notice thereof.

(b) In case of false or fraudulent return with intent to evade the tax, the tax together with interest and penalties may be assessed or proceedings for the collection of such taxes may be begun at any time.

(c) Before the expiration of such period of limitation, the taxpayer and the city manager may agree in writing to an extension, and the period agreed on may be extended by subsequent agreement in writing.

Section 3.24.560 Violations.

It shall be a violation of this chapter for any lodging provider or any other person subject to the tax levied herein to refuse to make any return required in this chapter or to make any false or fraudulent return or any false statements in any return; or to fail or refuse to make payment to the finance department of any taxes collected or due the city, or in any manner to evade the collection and payment of the tax; or to violate any other provision of this chapter. It shall be unlawful for any person or lodging customer to fail or refuse to pay such tax or evade the payment or to aid or abet another in any attempt to evade the payment of the tax imposed by this chapter. Any person making a false return or a return containing a false statement shall also be guilty of a violation of this chapter. The penalties for violations of this chapter shall be as provided in Code Section 1.12.010.

Section 2. That Chapter 2.60 of the Loveland Municipal Code shall be amended to add a new Section 2.60.075 to read in full as follows:

Section 2.60.075 Community marketing commission

(a) There is established a community marketing commission consisting of seven members appointed by the city council. Three members on the commission shall be representatives from businesses that provide lodging services in Loveland, one member shall be from the Loveland Chamber of Commerce and the three other members shall have backgrounds in the fields and businesses of tourism, the arts, marketing, economic development or community development. The term for two of the initial members appointed shall be for one year, two other initial members shall be appointed for a term of two years, and the remaining initial three members shall be appointed for three-year terms. The city council shall decide in its initial appointments which appointed member shall serve which term. After these initial terms expire, members shall be appointed for a three-year term.

(b) The purpose of the community marketing commission shall be to serve as an advisory body to the city council concerning the city's use of the revenues received from the lodging tax levied under Code Chapter 3.24. The commission shall make recommendations to the city council as to how the funds should be specifically spent consistent with the purpose authorized in Code Section 3.24.005 and Section 3.24.105.

Section 3. That pursuant to C.R.S. §31-11-111(2), there shall be submitted to the vote of the City’s registered electors at the regular municipal election to be held in the City of Loveland on Tuesday November 3, 2009, the question of whether the City Council of the City of Loveland shall be authorized to increase the City’s taxes by the establishment of a lodging tax of three percent (3%) on the lodging price paid for lodging service provided in the City.

Section 4. That the ballot for the City’s regular municipal election on November 3, 2009, as part of a coordinated election with Larimer County, shall include the following question, in addition to any other valid questions that may be submitted, to read as follows:

QUESTION NO.1: INCREASE IN CITY OF LOVELAND TAX BY THE LEVY OF A LODGING TAX

"SHALL CITY OF LOVELAND TAXES BE INCREASED \$400,000 FOR THE FIRST FULL FISCAL YEAR (2010), AND ANNUALLY THEREAFTER BY SUCH AMOUNTS AS MAY BE GENERATED FROM THE LEVY OF A LODGING TAX OF THREE PERCENT (3%) ON THE LODGING PRICE PAID FOR THE LEASING, RENTAL OR FURNISHING OF ANY LODGING SERVICES IN THE CITY, FOR THE PURPOSE OF RAISING FUNDS TO PROMOTE TOURISM, CONVENTIONS AND RELATED ACTIVITIES WITHIN THE CITY BY MARKETING THE CITY AND SPONSORING COMMUNITY EVENTS, BOTH IN SUPPORT OF THIS PURPOSE; AND SHALL A COMMUNITY MARKETING COMMISSION APPOINTED BY CITY COUNCIL BE ESTABLISHED TO MAKE RECOMMENDATIONS TO CITY COUNCIL CONCERNING THE SPECIFIC USE OF LODGING TAX REVENUES CONSISTENT WITH THIS PURPOSE; AND SHALL THE CITY OF LOVELAND BE AUTHORIZED TO COLLECT, RETAIN AND SPEND SUCH LODGING TAX REVENUES EACH YEAR, INCLUDING ANY INVESTMENT EARNINGS AND INTEREST ON SUCH REVENUES, AS A VOTER APPROVED REVENUE CHANGE UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?"

Yes _____

No _____

Section 5. That if a majority of the registered electors voting at the November 3, 2009, election vote “Yes” in favor of "Question No. 1: INCREASE IN CITY OF LOVELAND TAX BY THE LEVY OF A LODGING TAX," as stated in Section 4 above, Sections 1 and 2 of this Ordinance shall become effective on January 1, 2010.

Section 6. That if a majority of the registered electors voting at the November 3, 2009, election vote “No” against "Question No. 1: INCREASE IN CITY OF LOVELAND TAX

BY THE LEVY OF A LODGING TAX,” as stated in Section 4 above, Sections 1 and 2 of this Ordinance shall not take effect.

Section 7. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. That except as provided in Sections 5 and 6 above, this Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

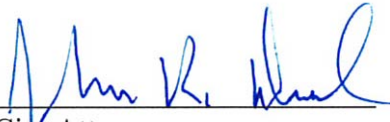
Signed this ____ day of _____, 2009.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney