

APPROVED MINUTES of the Special
Meeting of the City Council of the City of Rye
held in City Hall on June 11, 2004 at 8:30 A.M.

PRESENT:

STEVEN OTIS, Mayor
MATTHEW FAHEY
DUNCAN HENNES
ROSAMOND LARR
Councilmen

ABSENT:

FRANKLIN J. CHU
ROBERT S. CYPHER
HOWARD G. SEITZ

1. Pledge of Allegiance

Mayor Otis called the meeting to order and invited the Council to join in the Pledge of Allegiance.

2. Roll Call

Mayor Otis asked the City Clerk to call the roll; a quorum was present to conduct official City business.

3. Consideration of Home Rule Message for S7377, to amend the tax law, in relation to the imposition of an occupancy tax in the City of Rye

Mayor Otis said there is pending State legislation amending the tax law, in relation to the imposition of an occupancy tax in the City of Rye. He said the proposed legislation numbers are Senate bill S.7377 and Assembly Bill A.11418 and a Home Rule Message needs to be approved by the Council.

Mayor Otis made a motion, seconded by Councilman Hennes, to approve the Home Rule Message that adds the following text to the tax law, in relation to the imposition of an occupancy tax in the City of Rye.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1202-v. Occupancy tax in the City of Rye. (1) Notwithstanding any other provision of law to the contrary, the city of Rye, in the county of Westchester, is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax, in addition to any other tax authorized and imposed

pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any tourist home, inn, club, hotel, motel or similar place of public accommodation in such city. The rates of such tax shall not exceed three percent of the per diem rental rate for each room provided, however, that such tax shall not be applicable to a permanent resident of such tourist home, inn, hotel or motel or to rooms in such lodging facilities having less than four rentable units.

(2) Such taxes may be collected and administered by the chief fiscal officer of the city of Rye by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge for the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied for and on account of the city of Rye imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the city, specified in such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

A. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state of the dominion of Canada), improvement district or other political subdivision of the state;

B. The United States of America, insofar as it is immune from taxation;

C. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit,

whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

A. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

B. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the city of Rye and shall be credited to and deposited in the general fund of the city. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

§ 2. This act shall take effect immediately.

ROLL CALL:

AYES: Mayor Otis, Fahey, Hennes, and Larr
NAYS: None
ABSENT: Councilmen Chu, Cypher and Seitz

4. Consideration of Home Rule Message for A11418, to amend the tax law, in relation to the imposition of an occupancy tax in the City of Rye

As the wording of Assembly Bill 11418 is identical to Senate bill S.7377, this agenda item was covered under Agenda Item #3 above.

5. Adjournment

As there was no further business to discuss, Councilman Hennes made a motion, seconded by Councilman Fahey and unanimously carried, to adjourn the meeting at 8:37 A.M.

Respectfully submitted,

Susan A. Morison
City Clerk