

APPROVED MINUTES of the Regular Meeting of the City Council of the City of Rye held in City Hall on October 4, 2006 at 8:00 P.M.

PRESENT:

STEVEN OTIS, Mayor
ANDREW C. BALL
MACK CUNNINGHAM
MATTHEW FAHEY
DUNCAN HENNES
GEORGE S. PRATT
Councilmen

ABSENT:

HOWARD G. SEITZ

The Council convened at 7:00 P.M. Mayor Otis made a motion, seconded by Councilman Pratt and unanimously carried, to adjourn to executive session at 7:01 P.M. to discuss the specifics of a real estate transaction, pending litigation and attorney/client matters. Councilman Ball made a motion, seconded by Councilman Hennes and unanimously carried, to close the executive session at 8:10 P.M. No decisions were made. The regular meeting reconvened at 8:11 P.M.

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.

Announcements

Mayor Otis announced that Commuter Parking Renewals for the Railroad Station had been mailed in their customary orange envelopes on September 25th. The firm deadline for renewal is Thursday, November 9 at 5:00 P.M. Anyone who has not received their renewal in the mail should contact the Clerk's Office.

3. Residents may be heard who have matters to discuss that do not appear on the agenda

There were no residents wishing to be heard on matters not on the agenda.

4. Public hearing on a local law to amend the “Parking Districts Map” of the City of Rye for the purpose of changing the designation of four City-owned properties to the “A” Parking District

Mayor Otis opened the public hearing on a local law to amend the “Parking Districts Map” of Rye so that the parking areas in the vicinity of City Hall (the Village Green, Rye Free Reading Room, City Hall and the former CVS building at 1037 Boston Post Road) would be considered an “A” parking district similar to the parking areas in the Central Business District. He said the proposal basically codifies existing practice. He noted that the Council and the public had received significant prior detail on the proposal. As there were no comments from either the public or from Council Members, the Mayor closed the public hearing.

The revised parking district map is attached at the end of these minutes.

Councilman Hennes made a motion, seconded by Councilman Pratt, to adopt the following resolution:

RESOLVED, that the Rye City Council finds the proposed determination will have no significant adverse effect on the environment and issues a negative declaration under SEQRA regarding the amendment of the “Parking District Map” of the City of Rye, New York for the purpose of changing the designation of four City-owned properties to the “A” Parking District.

Councilman Hennes made a motion, seconded by Councilman Pratt, to adopt the following local law:

LOCAL LAW NO. 10-2006

**A LOCAL LAW TO AMEND THE “PARKING DISTRICTS MAP”
OF THE CITY OF RYE, NEW YORK
FOR THE PURPOSE OF CHANGING THE DESIGNATION OF
FOUR CITY-OWNED PROPERTIES TO THE “A” PARKING DISTRICT**

Be it enacted by the City Council of the City of Rye as follows:

Section 1. The “Parking Districts Map” of the City of Rye is hereby amended to change the classification to the “A” Parking District four (4) properties known on the Rye City Tax Map as Section 146.07, Block 2, Lot 29; Section 146.07, Block 2, Lot 30; Section 146.07, Block 2, Lot 31; and Section 146.11, Block 1, Lot 4 and to the centerline of the portion of Boston Post Road where such lots have frontage on said road.

Section 2. **Severability.**
The invalidity of any word, section, clause, paragraph, sentence, part or provision of this Local Law shall not affect the validity of any other part

of this Local Law that can be given effect without such invalid part or parts.

Section 3. Effective Date.

This Local Law shall take effect immediately upon its adoption and filing with the Secretary of State.

ROLL CALL:

AYES: Mayor Otis, Councilmen Ball, Cunningham, Fahey, Hennes and Pratt

NAYS: None

ABSENT: Councilman Seitz

5. Public hearing on local law amending Chapter 177, Taxation, of the Code of the City of Rye by creating a new Article IX “City of Rye Room Occupancy Tax”

Mayor Otis opened the public hearing on a local law to amend Chapter 177, Taxation, of the Code of the City of Rye by creating a new Article IX “City of Rye Room Occupancy Tax. He said this was the final ministerial step necessary for the City to collect an occupancy tax, as approved by the NY State legislature. He thanked City Comptroller Michael Genito and Kristin Wilson from the Corporation Counsel’s office for their help in preparing the new law and thanked Councilman Seitz for persevering with the idea of an occupancy tax. As there were no comments from either the public or Council Members, the Mayor closed the public hearing.

Councilman Hennes made a motion, seconded by Councilman Pratt, to adopt the following local law:

**CITY OF RYE
LOCAL LAW NO. 9 - 2006**

**A local law adding Chapter 177: Taxation, Article IX
“City of Rye Room Occupancy Tax,”
to the Code of the City of Rye.**

Be it enacted by the Council for the City of Rye as follows:

Section 1. Chapter 177: Taxation, Article IX “City of Rye Room Occupancy Tax,” is hereby added as follows:

§ 177-42. Definitions.

A. When used in this Article the following terms shall mean:

CITY COMPTROLLER. The City Comptroller of the City of Rye or such other person as may be designated by the City Manager to administer and collect the tax provided for herein.

EFFECTIVE DATE. The date on which the Secretary of State files this local law.

EXEMPT OCCUPANT. Any occupant of any room or rooms in a hotel whose rent is paid from public assistance from the County of Westchester shall be deemed an “exempt occupant” with respect to the period of such occupancy, regardless of the length thereof.

HOTEL. A building or portion thereof, which is regularly used and kept open as such for the lodging of guests. For the purposes of this Article, the term “hotel” includes hotels, motels, tourist homes, motel courts, clubs or similar facilities with at least four rentable rooms for lodging, whether or not meals are served to guests or residents thereof.

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

OCCUPANT. A person who, for a consideration, uses, possesses or has the right to use or possess any room in a hotel under any lease, concession, permit, right of access, license to use or other agreement or otherwise.

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

PERMANENT RESIDENT. Any occupant of any room or rooms in a hotel at least 90 consecutive days shall be considered a “permanent resident” with regard to the period of such occupancy.

PERSON. An individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee and any other person acting in a fiduciary or representative capacity; whether appointed by a court or otherwise, and any combination of the foregoing.

POLICE COMMISSIONER. The Police Commissioner of the City of Rye or his/her successor in office.

RENT. The consideration received for occupancy valued in money, whether received in money or otherwise, for the occupancy of a room in a hotel for any period of time.

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

ROOM. Any room or rooms or suite of rooms with sleeping accommodations, whether or not such accommodations are used, of any

kind in any part or portion of a hotel which is available for or let out for any purpose.

§ 177-43. Imposition of tax.

On and after the fourth day of October 2006, there is hereby imposed and there shall be paid a tax of three percent upon the rent for every occupancy of a room or rooms in a hotel in this City, except that the tax shall not be imposed upon a permanent resident or an exempt occupant.

§ 177-44. Transitional provisions.

The tax imposed by this Article shall be paid upon any occupancy on and after the fourth day of October 2006, although such occupancy is pursuant to a prior contract, lease or other arrangement. Where rent is paid on a weekly, monthly or other term basis, the rent shall be subject to the tax imposed by this Article to the extent that it covers any period on and after the fourth day of October 2006.

§ 177-45. Exempt organizations.

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

- A. The State of New York, or any of its agencies or instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada), improvement districts or political subdivisions of the state;
- B. The United States of America, or any of its agencies and instrumentalities, insofar as it is immune from taxation;
- C. Any corporation, association, trust or community chest, fund or foundation, organized and operated exclusively for religious, charitable or education 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 subsection 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 subsection. Where any organization described in this subsection carries on its activities in furtherance of the purposes for which it was organized in premises in which, as part of said activities, it operates a hotel, occupancy of rooms in the premises and rents therefrom received by such corporation or association shall not be subject to tax hereunder;
- D. A hotel, as defined in this Article, having less than four rentable rooms.

§ 177-46. Territorial limits.

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

§ 177-47. Registration.

- A. Within ten days after the effective date of this Article or, in the case of operators commencing business after such effective date, within three days after such commencement or opening, every operator shall file with the City Comptroller a certificate of registration in a form prescribed by the City Comptroller.

- B. The City Comptroller shall, within five days after such registration, issue without charge to each operator a certificate of authority empowering such operator to collect the tax from the occupant and a duplicate thereof for each additional hotel of such operator. Each certificate or duplicate shall state the hotel to which it is applicable. Such certificate of authority shall be prominently displayed by the operator in such manner that it may be seen and come to the notice of all occupants and persons seeking occupancy. Such certificate shall be nonassignable and non-transferable and shall be surrendered immediately to the City Comptroller upon the cessation of business at the hotel named or upon its sale or transfer.

§ 177-48. Administration and collection.

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

- B. The tax to be collected shall be stated and charged separately from the rent and shown separately on any record thereof, at the time when the occupancy is arranged or contracted for and charged for, and upon every evidence of occupancy or any bill or statement of charges made for said occupancy issued or delivered by the operator, and the tax shall be paid by the occupant to the operator as trustee for and on account of the City, and the operator shall be liable for the collection thereof and for the tax. The operator and any officer of any corporate operator shall be personally liable for the tax collected or required to be collected under this Article, and the operator shall have the same right in respect to collecting the tax from the occupant, or in respect to nonpayment of the tax by the occupant, as if the tax were part of the rent for the occupancy payable at the time such tax shall become due and owing, including all rights of eviction, dispossession, repossession and enforcement of any innkeeper's lien that he/she may have in the event of nonpayment of rent by the occupant; provided, however, that

the City Comptroller or employees or agents duly designated by him/her shall be joined as a party in any action or proceeding brought by the operator to collect or enforce collection of the tax.

- C. The City Comptroller may, wherever he/she deems it necessary for the proper enforcement of this Article, provide by regulation that the occupant shall file returns and pay directly to the City Comptroller the tax imposed at such times as returns are required to be filed and payment over made by the operator.
- D. The tax imposed by this Article shall be paid upon any occupancy on and after October fourth, 2006, although such occupancy is had pursuant to a contract, lease or other arrangement made prior to such date. Where rent is paid or charged or billed or fails due on either a weekly, monthly or other term basis, the rent so paid, charged, billed or falling due shall be subject to the tax herein imposed to the extent that it covers any portion of the period on and after October fourth, 2006. Where any tax has been paid hereunder upon any rent which has been ascertained to be worthless, the City Comptroller may, by regulation, provide for credit and/or refund of the amount of such tax upon application therefore as provided in section 177-54 of this Article.
- E. For the purpose of the proper administration of this Article and to prevent evasion of the tax hereby imposed, it shall be presumed that all rents are subject to tax until the contrary is established, and the burden of proving that a rent for occupancy is not taxable hereunder shall be upon the operator or occupant. Where an occupant claims exemption from the tax under the provisions of subsection C of section 177-45 of this Article, the rent shall be deemed taxable hereunder unless the operator shall receive from the occupant claiming such exemption a copy of a New York State Sales Tax Exemption Certificate.

§ 177-49. Records to be kept.

Every operator shall keep records of every occupancy and of all rent paid, charged or due thereon and of the tax payable thereon, in such form as the City Comptroller may by regulation require. Such records shall be available for inspection and examination at any time upon demand by the City Comptroller or his/her duly authorized agent or employee and shall be preserved for a period of three years, except that the City Comptroller may consent to their destruction within that period or may require that they be kept longer.

§ 177-50. Returns.

- A. Every operator shall file with the City Comptroller a return of occupancy and of rents and of the taxes payable thereon for the three month periods ending the last day of March, June, September, and

December on and after October fourth, 2006. Such returns shall be filed within 20 days from the expiration of the period covered thereby. The City Comptroller may permit or require returns to be made by other periods and upon such dates as he/she may specify. If the City Comptroller deems it necessary in order to ensure the payment of the tax imposed by this Article, he/she may require returns to be made for shorter periods than those prescribed pursuant to the foregoing provisions of this section and upon such dates as he/she may specify.

- B. The forms of return shall be prescribed by the City Comptroller and shall contain such information as he/she may deem necessary for the proper administration of this Article. The City Comptroller may require amended returns to be filed within 20 days after notice and to contain the information specified in the notice.
- C. If a return required by this Article is not filed, or if a return is incorrectly filed or is insufficient on its face, the City Comptroller shall take such steps as he/she deems necessary to enforce the filing of such return or of a corrected return.

§ 177-51. Payment of tax.

At the time of filing a return of occupancy and of rents, each operator shall pay to the City Comptroller the taxes imposed by this Article upon the rents required to be included in such return, as well as all other moneys collected by the operator acting or purporting to act under the provisions of this Article; even though it be judicially determined that the tax collected is invalidly required to be filed, it shall be due from the operator and payable to the City Comptroller on the date proscribed herein for the filing of the return for such period, without regard to whether a return is filed or whether the return which is filed correctly shows the amount of rents and taxes due thereon. Where the City Comptroller in his/her discretion deems it necessary to protect revenues to be obtained under this Article, he/she may require any operator required to collect the tax imposed by this Article to file with him/her a bond, issued by a surety company authorized to transact business in this state and approved by the Superintendent of Insurance of this state as to solvency and responsibility, in such amount as the City Comptroller may find to secure the payment of any tax and/or penalties and interest due or which may become due from such operator. In the event that the City Comptroller determines that an operator is to file such bonds, he/she shall give notice to such operator to that effect, specifying the amount of the bond required. The operator shall file such bond within five days after the giving of such notice unless, within such five days, the operator shall request in writing a hearing before the City Comptroller at which the necessity, propriety and amount of the bond shall be determined by the City Comptroller. Such determination shall be final and shall be complied with within 15 days after the giving of notices thereof. In lieu of such bond, securities

approved by the City Comptroller or cash in such amount as he/she may prescribe may be deposited with him/her, which shall be kept in the custody of the City Comptroller, who may at any time, without notice of the depositor, apply them to any tax and/or interest or penalties due, and for that purpose the securities may be sold by him/her at public or private sale without notice to the depositor thereof.

§ 177-52. Determination of tax.

If a return required by local law is not filed or if a return, when filed, is incorrect or insufficient, the amount of tax due shall be determined by the City Comptroller from such information as may be obtainable, and, if necessary; the tax may be estimated on the basis of external indices, such as number of rooms, locations, scale of rents, comparable rents, type of accommodations and service, number of employees and/or other factors. Notice of such determination shall be given to the person liable for the collection and/or payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within 30 days after giving notice of such determination, shall apply to the City Comptroller for a hearing or unless the City Comptroller on his/her own motion shall redetermine the same. After such hearing, the City Comptroller shall give notice of his/her determination to the person against whom the tax is assessed. The determination of the City Comptroller shall be reviewable for error, illegality, unconstitutionality or any other recognizable basis whatsoever by proceeding under Article 78 of the Civil Practice Law and Rules if application therefore is made to the Supreme Court within 30 days after the giving of the notice of such determination. A proceeding under Article 78 of the Civil Practice Law and Rules shall not be instituted unless the amount of any tax sought to be reviewed, with penalties and interest thereon, if any, shall be first deposited with the City Comptroller and there shall be filed with the City Comptroller 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 proceedings be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue, including reasonable counsel fees, in the prosecution of the proceeding, or, at the option of the applicant, such undertaking filed with the City Comptroller may be in a sum sufficient to cover the taxes, penalties and interest thereon stated in such determination plus the costs and charges, including reasonable counsel fees, which may accrue against it in the prosecution of the proceedings, in which event the applicant shall not be required to deposit such taxes, penalties and interest as a condition precedent to the application.

§ 177-53. Disposition of revenues.

All revenue resulting from the imposition of the tax under this Article shall be paid into the treasury of the City and shall be credited to and deposited in the general fund of the City.

§ 177-54. Refunds.

- A. In the manner provided in this section, the City Comptroller shall refund or credit, without interest, any tax penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the City Comptroller for such refund shall be made within one year from the payment thereof. Whenever a refund is made by the City Comptroller, he/she shall state his/her reason therefore in writing. Such application may be made by the occupant, operator or other person who has actually paid the tax. Such application may also be made by an operator who has collected and paid over such tax to the City Comptroller, provided that the application is made within one year of the payment by the occupant to the operator, but no actual refund of moneys shall be made to such operator until he/she shall first establish to the satisfaction of the City Comptroller, under such regulations as the City Comptroller may prescribe, that he/she has repaid to the occupant the amount for which the application for refund is made. The City Comptroller may, in lieu of any refund required to be made, allow credit therefore on payments due or to become due from the applicant.
- B. An application for a refund or credit made as herein provided shall be deemed an application for a revision of any tax, penalty or interest complained of, and the City Comptroller may receive evidence with respect thereto. After making his/her determination, the City Comptroller shall give notice thereof to the applicant, who shall be entitled to review such determination by a proceeding pursuant to Article 78 of the Civil Practice Law and Rules, provided that such proceeding is instituted within 30 days after the giving of the notice of such determination, and provided that a final determination of tax due was not previously made. Such a proceeding shall not be instituted unless an undertaking is filed with the City Comptroller in such amount and with such sureties as a Justice of the Supreme Court shall approve to the effect that, if such proceedings be dismissed or the tax confirmed, the petitioner will pay costs and charges which may accrue in the prosecution of such proceeding.
- C. A person shall not be entitled to a revision, refund or credit under this section of a tax, interest or penalty which had been determined to be due pursuant to the provisions of section 177-52 of this Article where he/she has had a hearing or an opportunity for a hearing, as provided in said section, or has failed to avail himself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the City Comptroller made pursuant to

section 177-52 of this Article unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper by the City Comptroller after a hearing or on his/her own motion or in a proceeding under Article 78 of the Civil Practice Law and Rules, pursuant to the provisions of said section, in which event refund or credit without interest shall be made of the tax, interest or penalty found to have been overpaid.

§ 177-55. Reserves.

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

§ 177-56. Remedies exclusive.

The remedies provided by sections 177-52 and 177-54 of this Article shall be the exclusive remedies available to any person for the review of tax liability imposed by this Article, and no determination or proposed determination of tax or determination on any application for refund shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than a proceeding in a nature of a certiorari proceeding under Article 78 of the Civil Practice Law and Rules; provided, however, that a taxpayer may proceed by declaratory judgment if he/she institutes suit within 30 days after a deficiency assessment is made and pays the amount of the deficiency assessment to the City Comptroller prior to the institution of such suit and posts a bond for costs as provided in section 177-52 of this Article.

§ 177-57. Proceedings to recover tax.

A. Whenever any operator or any officer of a corporate operator or any occupant or other person shall fail to collect and pay over any tax and/or to pay any tax, penalty or interest imposed by this Article as therein provided, the City Corporation Counsel shall, upon the request of the City Comptroller, bring or cause to be brought an action to enforce the payment of the same on behalf of the City of Rye in any court of the State of New York or of any other state or of the United States. If, however, the City Comptroller in his/her discretion believes that any such operator, officer, occupant or other person is about to cease business, leave the state or remove or dissipate the assets out of which the tax or penalties might be satisfied, and that any such tax or penalty will not be paid when due, he/she may declare such tax or penalty to be immediately due and payable and may issue a warrant immediately.

B. As an additional or alternate remedy, the City Comptroller may direct the City Assessor to, in the preparation of the next assessment roll, assess the amount of such tax or penalty upon the property occupied by business giving rise to such tax or penalty, and this amount shall be levied, collected and enforced in the same manner as taxes upon said property for city purposes are levied collected, and enforced.

C. Whenever an operator shall make a sale, transfer or assignment in bulk of any part of the whole of his/her hotel or its assets or his/her lease, license or other agreement or right to possess or operate such facility or of the equipment, furnishings, fixtures, supplies or stock of merchandise or the said premises or lease, license or other agreement or right to possess or operate such hotel and the equipment, furnishings, fixtures, supplies and stock or merchandise pertaining to the conduct or operation of said hotel otherwise than in the ordinary and regular prosecution of business, the purchaser, transferee or assignee shall, at least ten days before taking possession of the subject of said sale, transfer or assignment or paying therefore, notify the City Comptroller by registered mail of the proposed sale and of the price, terms and conditions thereof, whether or not the seller, transferor or assignor has represented to or informed the purchaser, transferee or assignee that it owes any tax pursuant to this Article and whether or not the purchaser, transferee or assignee has knowledge that such taxes are owing and whether any such taxes are in fact owing. Whenever the purchaser, transferee or assignee shall fail to give notice to the City Comptroller as required by the preceding subsection or whenever the City Comptroller shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over, the seller, transferor or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferor or assignor to the City, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferor or assignor any such sums of money, property or choses in action to the extent of the amount of the City's claim. For failure to comply with the provisions of this subsection, the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of the Uniform Commercial Code, shall be personally liable for the payment to the City of any such taxes theretofore or thereafter determined to be due to the City from the seller, transferor or assignor, and such liability may be assessed and enforced in the same manner as the liability for tax under this Article.

§ 177-58. General powers of the City Comptroller.

In addition to the powers granted to the City Comptroller by the General City Law and this Article, he/she is hereby authorized and empowered:

- A. To make, adopt and amend rules and regulations appropriate to the carrying out of this Article and the purposes thereof;
- B. To extend, for cause shown, the time of filing any return for a period not exceeding 30 days; and, for cause shown, to remit penalties but not interest computed at the rate of one percent per annum per month or fraction thereof during which a tax is unpaid although due; and to compromise disputed claims in connection with the taxes hereby imposed;
- C. To request information from the Tax Commission of the State of New York or the Treasury Department of the United States relative to any person; and to afford information to such Tax Commission or such Treasury Department relative to any person, any other provision of this Article to the contrary notwithstanding;
- D. To delegate his/her functions hereunder to any employee or employees of the City of Rye as the City Manager may approve;
- E. To prescribe methods for determining the rents for occupancy and to determine the taxable and nontaxable rents;
- F. To require any operator within the City to keep detailed records of the nature and type of hotel maintained, nature and type of service rendered, the rooms available and rooms occupied daily, leases or occupancy contracts or arrangements, rents received, charged and accrued, the names and addresses of the occupants, whether or not any occupancy is claimed to be subject to the tax imposed by this Article, and to furnish such information upon request to the City Comptroller;
- G. To assess, determine, revise and readjust the taxes imposed under this Article;
- H. To require any operator to submit with the return required hereunder a copy of any tax return for sales, occupancy or use taxes submitted to the Tax Commission or other instrumentality of the State of New York.

§ 177-59. Administration of oaths and compelling testimony.

- A. The City Comptroller or his/her employees or agents duly designated and authorized by him/her shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this Article. The City Comptroller shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents, to secure information pertinent to the performance of his/her duties hereunder and of the enforcement of this Article and to examine them in relation thereto and

to issue commissions for the examination of witnesses who are out of the state or unable to attend before him/her or excused from attendance.

- B. A Justice of the Supreme Court, either in court or at chambers, shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the City Comptroller under this Article.
- C. Any person who shall refuse to testify or to produce books or records or who shall testify falsely in any material matter pending before the City Comptroller under this Article shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than \$1,000.00 or imprisonment for not more than one year, or both such fine and imprisonment.
- D. The officers who serve the summons or subpoena of the City Comptroller and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as herein otherwise provided. Such officers shall be the Police Commissioner and his/her duly appointed deputies or any officers, employees or other persons of the City Comptroller designated by him/her to serve such process.

§ 177-60. Reference to tax.

Wherever reference is made in placards or advertisements or in any other publications to this tax, such reference shall be substantially in the following form: "Tax on occupancy of hotel rooms," except that in any bill, receipt, statement or other evidence or memorandum of occupancy or rent charge issued or employed by the operator, the term "City tax" will suffice.

§ 177-61. Penalties and interest.

- A. Any person failing to file a return or to pay or pay over any tax to the City Comptroller within the time required by this Article shall be subject to a penalty of five percent of the amount of tax due per month or any fraction of a month to a maximum of 25 percent for each year; plus interest at the rate of one percent of such tax for each month of delay or fraction of a month after such return was required to be filed or such tax became due; but the City Comptroller, if satisfied that the delay was excusable, may remit all or any part of such penalty; but not interest. Such net penalties and interest shall be paid and disposed of in the same manner as other revenues from this Article. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this Article.
- B. Any operator or occupant and any officer of an operator or occupant failing to file a return required by this Article, or filing or causing to be

filed or making or causing to be made or giving or causing to be given any return, certificate, affidavit, representation, information, testimony or statement required or authorized by this Article which is willfully false, and any operator and any officer of a corporate operator willfully failing to file a bond required to be filed pursuant to section 177-52 of this Article or failing to file a registration certificate and such data in connection therewith as the City Comptroller may by regulation or otherwise require or to display or surrender the certificate of authority as required by this Article or assigning or transferring such certificate of authority; and any operator or any officer of a corporate operator willfully failing to charge separately from the rent the tax herein imposed or willfully failing to state such tax separately on any evidence of occupancy and on any bill or statement or receipt of rent issue or employed by the operator or willfully failing or refusing to collect such tax from the occupant, any operator or any officer of a corporate operator who shall refer or cause reference to be made to this tax in a form or manner other than that required by this Article, and any such person or operator failing to keep records required by this Article, shall, in addition to the penalties herein or elsewhere prescribed, be guilty of a misdemeanor, punishable by a fine of up to \$1,000.00, imprisonment for not more than one year, or both such fine and imprisonment. Officers of a corporate operator shall be personally liable for the tax collected or required to be collected by such corporation under this Article and penalties and interest thereon and subject to the fines and imprisonment herein authorized.

- C. The certificate of the City Comptroller to the effect that a tax has not been paid, that a return, bond or registration certificate has not been filed or that information has not been supplied pursuant to the provisions of this Article shall be presumptive evidence thereof.

§ 177-62. Returns to be secret.

- A. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the City Comptroller or employee or designee of the City Comptroller to divulge or make known in any manner the rents or other information relating to the business of a taxpayer contained in any return required under this Article. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the City Comptroller in an action or proceeding under the provisions of this Article or on behalf of any party to any action or proceeding under the provisions of this Article when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the delivery to a

taxpayer or his/her duly authorized representative of a certified copy of any return filed in connection with his/her tax nor to prohibit the publication of statistics so classified to prevent the identification of particular returns and items thereof or the inspection by the City Corporation Counsel or other legal representatives of the City or by the District Attorney of any County of the return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted for the collection of a tax or penalty. Returns shall be preserved for three years and thereafter until the City Comptroller permits them to be destroyed.

- B. Any violation of subsection A of this section shall be punishable by a fine not exceeding \$1,000.00 or by imprisonment not exceeding one year, or both, in the discretion of the court, and if the offender be an officer or employee of the City, he/she may be, at the discretion of the City Manager, dismissed from office and be incapable of holding any further City office as may be determined according to law.

§ 177-63. Notices and limitations of time.

- A. Any notice authorized or required under the provisions of this Article may be given to the person to whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by him/her pursuant to the provisions of this Article or in any application made by him/her or, if no return has been filed or application made, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to who addressed. Any period of time which is determined according to the provisions of this Article by the giving of notice shall commence five days after the date of mailing of such notice.
- B. The provisions of the Civil Practice Law and Rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the City to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this Article. However, except in the case of a willfully false, fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of filing of a return; provided, however, that, in the case of a return which should have been filed and has not been filed as provided by law, the tax may be assessed at any time.
- C. Where, before expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

§ 177-64. Severability.

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

Section 2. This local law shall take effect immediately upon filing in the Office of the Secretary of State.

ROLL CALL:

AYES: Mayor Otis, Councilmen Ball, Cunningham, Fahey, Hennes and Pratt
NAYS: None
ABSENT: Councilman Seitz

6. Authorization for City Manager to enter into a License Agreement with Robert and Mary Capaldi of 76 Apawamis Avenue for connection to a City storm drain

City Manager Paul Shew reported that the City grants requests on a case-by-case basis by citizens for connection to a City storm drain. He said the request by the Capaldis had been reviewed by the City and acceptance was recommended.

Mayor Otis made a motion, seconded by Councilman Hennes, to adopt the following resolution:

RESOLVED, that the City Manager is hereby authorized to enter into a license agreement with Robert and Mary Capaldi, residing at 76 Apawamis Avenue in Rye, NY to connect to a City storm drain by installing a PVC pipe in the right of way from said property to a catch basin located at the corner of Midland Avenue and Apawamis Avenue.

ROLL CALL:

AYES: Mayor Otis, Councilmen Ball, Cunningham, Fahey, Hennes and Pratt
NAYS: None
ABSENT: Councilman Seitz

7. Authorization to restructure positions in City Staff Allocation

City Manager Paul Shew said the staff is always looking for new and more efficient ways to perform the administrative functions of the City while looking at potential savings. He said this proposal requests 2.5 positions to replace 2.5 positions, but with a different configuration

which will result in approximately \$5,000 in savings to the City while providing better service for current needs. Assistant Manager Scott Pickup reported that increased demands in the Human Resources area (such as Medicare Part D) require a full-time employee, rather than part-time. Comptroller Michael Genito reported in the financial area that to improve customer service and also benefit the many departments involved in parking a new parking coordinator position would be beneficial. He also recommended a specific employee to collect cash from the meters, thus relieving the Finance Department of this task. In essence, Staff feels there is not only a \$5000 savings, but the City will be getting more for the money. In response to a questions from Councilman Ball, Mr. Pickup reported the CSEA (Civil Service Employees Association) has responded positively. Councilman Hennes remarked that the savings are important, but the potential improvement in service is equally good and having a person to focus on parking is a positive approach.

Mayor Otis made a motion, seconded by Councilman Hennes to adopt the following resolution:

RESOLVED, that the City Manager is authorized to restructure City staff as follows:

- A full-time Human Resources (HR) Director will replace the former part-time HR Clerk.
- The position of Deputy Comptroller will be filled
- The positions of Accountant and Senior Account Clerk will be eliminated and replaced by creating a Parking Office Manager and a part-time Parking Assistant.

ROLL CALL:

AYES: Mayor Otis, Councilmen Ball, Cunningham, Fahey, Hennes and Pratt

NAYS: None

ABSENT: Councilman Seitz

8. Resolution declaring certain Fire Department equipment as surplus

City Manager Shew reported that certain Fire Department equipment is scheduled for replacement and before donating any of them, the Council should declare them surplus and the City should attempt to sell them.

Mayor Otis made a motion, seconded by Councilman Hennes, to adopt the following resolution:

WHEREAS, the city has been provided with a list of equipment that the Fire Department has identified as being obsolete or will become obsolete during 2006; and

WHEREAS, the Fire Department has recommended that said equipment be declared surplus; now, therefore, be it

RESOLVED, that said equipment is declared surplus; and be it further

RESOLVED, that authorization is given to the City Comptroller to sell or dispose of said equipment in a manner that will serve in the best interests of the City.

ROLL CALL:

AYES: Mayor Otis, Councilmen Ball, Cunningham, Fahey, Hennes and Pratt
NAYS: None
ABSENT: Councilman Seitz

9. Bid award for reconstruction of Peck Avenue Sewer Pump Station

City Manager Paul Shew reported that two bids had been received for the reconstruction of the Peck Avenue Sewer Pump Station; that the bids had been reviewed by the City Engineer; and that the lowest bid meeting specifications is within the budgeted amount and should be accepted. 55% of the total cost of reconstructing the pump station will be reimbursed to the City under a Federal Clean Water/Clean Air Grant received from Nita Lowey's Office. This amount will be returned to the Capital Fund.

The bid tabulation is as follows:

**CONTRACT #2006-02
PECK AVENUE SEWER PUMP STATION**

| BIDDER | SECURITY | AMOUNT BID |
|----------------------------------|-----------------|-------------------|
| Bilotta Construction Corporation | Bid Bond | \$348,750.00 |
| | | |
| ELQ Industries | Bid Bond | \$386,000.00 |

Mayor Otis made a motion, seconded by Councilman Hennes, to adopt the following resolution:

RESOLVED, that Contract No 2006-02, Peck Avenue Sewer Pump Station, is hereby awarded to Bilotta Construction Corporation, being the lowest bidder meeting specifications, in the amount of \$348,750.

ROLL CALL:

AYES: Mayor Otis, Councilmen Ball, Cunningham, Fahey, Hennes and Pratt
NAYS: None
ABSENT: Councilman Seitz

10. One appointment to the Board of Assessment Review for a five-year term expiring September 30, 2011

This agenda item was deferred to the October 18th meeting.

11. Miscellaneous communications and reports

Councilman Cunningham mentioned that the Recreation Commission was looking for clarity concerning an offer to help convert the Nursery Field to an artificial surface. He wondered if the proximity of the field to wetlands made the offer impossible to accept or if there is a possibility that it could be done. The Mayor will talk to Corporation Counsel.

Councilman Ball reported that the new servers for Rye Cable TV are in place enabling the City to have more programming, easier maintenance and more staff time for community programming.

Councilman Cunningham reminded everyone there is a school bond issue vote taking place on Tuesday, October 17th.

Councilman Ball reminded everyone Saturday, October 14 is the traditional, but now ceremonial, Rye-Harrison football game.

Mayor Otis congratulated Russ Johnson and the Friends of Rye Nature Center on their successful fund raiser, citing the positive partnership with the City.

12. Old Business

There was no old business to be discussed.

13. New Business

City Manager Paul Shew reported on the large number of fire and burglar alarms which were triggered by the loss of power between September 2 and 9, 2006 during the visitation from Hurricane Ernesto and asked if the Council would consider waiving the charges. Councilman Pratt said billing people for these alarms would be “adding insult to injury” for those already enduring hardship as a result of the storm.

Councilman Fahey made a motion, seconded by Councilman Hennes, to adopt the following resolution:

RESOLVED, the charges for alarms for burglar and fire occurring between September 2 and 10, most likely triggered by Hurricane Ernesto, be waived.

ROLL CALL:

AYES: Mayor Otis, Councilmen Ball, Cunningham, Fahey, Hennes and Pratt
NAYS: None
ABSENT: Councilman Seitz

14. Draft unapproved minutes of the regular meeting of the City Council held September 6, 2006

Councilman Hennes made a motion, seconded by Councilman Fahey and unanimously carried, to approve the minutes of the regular meeting of the City Council held September 6, 2006 as amended.

15. Adjournment

There is no further business to discuss, Councilman Hennes made a motion, seconded by Councilman Pratt and unanimously carried, to adjourn the meeting at 8:45 P.M.

Respectfully submitted,

Susan A. Morison
City Clerk



Parking District
Change.pdf