

MINUTES OF THE CANANDAIGUA CITY COUNCIL MEETING  
THURSDAY, NOVEMBER 7, 2019 7:00 P.M.  
City Council Chambers  
Hurley Building – 205 Saltonstall St., Canandaigua NY  
City Website: canandaiguanewyork.gov

**Pledge of Allegiance:**

**Roll Call:**

**Members Present:**

Councilmember Ward 1 Nick Cutri  
Councilmember Ward 2 Robert Palumbo  
Councilmember Ward 3 Karen White  
Councilmember Ward 4 Renée Sutton  
Councilmember-at-Large James Terwilliger  
Councilmember-at-Large David Whitcomb  
Mayor Ellen Polimeni

**Absent:**

Councilmember-at-Large Robert O'Brien (Arrived at 7:01)  
Councilmember-at-Large Stephen Uebbing (Work Obligation) (Arrived at 8:39)

**Also Present:**

City Manager, John Goodwin  
Clerk-Treasurer Nancy C. Abdallah  
Corporation Counsel Terence Robinson, Boylan Code  
Assistant City Manager Rob Richardson

Mayor congratulated all who won the elections and welcomed the new members to City Council.

**Public Hearing: A Local Law to Establish a Community Choice Aggregation (Energy) Program I the City of Canandaigua**

Mayor Polimeni opened the public hearing at 7:09 P.M.

- Danielle Lyons, West Gibson St. – in favor of this program because it enables residents a way to negotiate a discounted group rate.
- Ben Frevert from Rocricity gave a short presentation on what CCA is, the benefits of CCA and steps for a municipality to implement the program.
- Mayor Polimeni received an email from Thomas Lyons in support of this program.

Mayor Polimeni closed the public hearing at 7:23 P.M.

**Public Hearing: An Ordinance Amending Chapter 253 of the Municipal Code Adding New Article III Entitled Chickens**

Mayor Polimeni opened the public hearing at 7:24 P.M.

- Joel Freedman, North Main St., does not recommend passing this ordinance because there is no place for roosters to go. It is impossible to re-home the roosters and they are being abandoned. Would like City Council to consider grandfathering in people that already have Roosters and consider no further in backyard chicken operations. Someone cannot always make sure not to get roosters and use the noise ordinance to take this case by case.
- Mayor Polimeni received an email from Tricia Renshaw, Charlotte St., who has no issue with many of the requirements in the proposed legislation but has a concern with the number of hens permitted.

She currently has over the number allowed in the proposed legislation and would like to keep the flock together. She requests that this flock be grandfathered in and will not replace the hens until the flock gets below 6 hens per the proposed ordinance.

Mayor Polimeni closed the public hearing at 7:32 P.M.

**Review of Community Core Values:** Councilmember-at-Large Terwilliger read the Community Core Values: As residents, city staff and appointed & elected officials of the City of Canandaigua, our decisions and actions will be guided by these core values: Responsive, Participatory Governance; Caring & Respect; Integrity; Heritage; Stewardship; and Continuous Improvement.

**Approval of Minutes:** Approve at next meeting

**Recognition of Guests:**

- Denise Chaapel, BID Downtown Manager – spoke about all the events and activities that are planned for the BID District in November.
- Joel Freedman, North Main St., continued his fight for a pesticide ban on all City properties and right of ways.

**Committee Reports:**

***Planning/Development Committee:*** No Meeting

***Environmental/Parks Committee:*** October 8, 2019 (Appendix A)

- Special Event- Downtown Canandaigua Holiday Light Parade
- Municipal Waste Audit
- Canandaigua Lake Water Quality Update
- Dog Park Concerns
- Charlotte Street and Sonnenberg Park

***Ordinance/PUD Committee:*** October 15, 2019 (Appendix B)

- Expansion of Historic District
- Ordinance Reducing Single-Use Plastics

***Finance/Budget Committee:*** October 24, 2019 (Appendix C)

- Occupancy Tax
- Survey Work for Arsenal Terrace
- Fire Contract with the Town of Canandaigua
- Dedication of Utility Easements

**Resolutions:**

**Resolution #2019-088**

Moved: Council Member Ward 2 Palumbo

Seconded: Council Member Ward 1 Cutri

**A RESOLUTION AUTHORIZING A SPECIAL EVENT:  
DOWNTOWN CANANDAIGUA HOLIDAY LIGHT PARADE**

**WHEREAS**, the City Council of the City of Canandaigua has received the following application for a special event in the City of Canandaigua:

• ***Downtown Canandaigua Holiday Light Parade***

Date: November 30, 2019

Location: Main Street from the YMCA to Antis Street; Coach Street Parking Lot; and Common Park

Coordinator: Downtown Canandaigua Business Management Association

Time: 6:30 PM

Purpose: Celebrate Our Community; Recognize Donors from the Holiday Decorations Fundraiser; Promote & Draw Customers to Shop, Dine, and Explore Historic Downtown; Expand the Community's Tree Lighting and Arrival of Santa

Expected Number of Participants: 2,000-3,000

**WHEREAS**, this request was reviewed and approved at the September 17, 2019 Ordinance Committee meeting;

**NOW, THEREFORE, BE IT RESOLVED** by City Council that permission is granted to hold the abovementioned special event, in accordance with the submitted application, at the time and location listed, under the following conditions:

- 1) that no fee or admission shall be charged to the general public for admission to the special events; and
- 2) that alcoholic beverages are not permitted to be sold or consumed on public property; and
- 3) that if the event coordinators intend to place any signs in the Main Street median, such signs shall only be allowed by permit of New York State Department of Transportation; and
- 4) that the event coordinator will ensure that all tents that are required to be inspected will be inspected prior to the start of the special event; and
- 5) that a detailed summary of all costs under the City's special event policy will be provided to the event coordinators for reimbursement.

**BE IT FURTHER RESOLVED** that the organizers of the Special Events shall adhere to any regulations that the City Manager, or the City Police Department, shall establish to ensure the health and safety of Canandaigua residents and visitors throughout these events.

*The motion CARRIED UNANIMOUSLY on the following vote:*

*AYES: Council Member Ward 1 Cutri, Council Member Ward 2 Palumbo, Councilmember Ward 3 White, Councilmember Ward 4 Sutton, Councilmember-at-Large O'Brien, Councilmember-at-Large Terwilliger, Councilmember-at-Large Whitcomb and Mayor Polimeni.*

*NOES: None*

**Resolution #2019-089**

Moved: Council Member Ward 1 Cutri

Seconded: Councilmember Ward 4 Sutton

**A RESOLUTION SETTING THE TIME AND PLACE OF A PUBLIC HEARING ON  
AMENDMENTS TO THE ZONING ORDINANCE**

**WHEREAS**, Section 850-8 of the City of Canandaigua Municipal Code requires a public hearing on an amendment to the City's Zoning Ordinance, Chapter 850;

**NOW, THEREFORE, BE IT RESOLVED** by City Council that a public hearing regarding the proposed zoning amendment to add 68 properties upon sale to a new owner to the historic districts of the City be held during the City Council Meeting held at 7:00 p.m. on Thursday, November 21, 2019 in the City Council Chambers, the Hurley Building, 205 Saltonstall Street, Canandaigua, New York; and

**BE IT FURTHER RESOLVED** that the City Clerk shall cause notice to be given and published as required by law; and

**BE IT FURTHER RESOLVED** that the Zoning Officer shall cause a copy of the proposed Ordinance #2019-007 to be forwarded to the City Planning Commission in accordance with City Code Section 850-8(B).

*Vote Result: Carried unanimously by voice vote (8-0)*

**Resolution #2019-090**

Moved: Councilmember-at-Large Terwilliger

Seconded: Councilmember-at-Large O'Brien

**A RESOLUTION SETTING THE TIME AND PLACE OF A PUBLIC HEARING  
REGARDING LOCAL LAW #2019-004 AMENDING CHAPTER 612  
OF THE CANANDAIGUA MUNICIPAL CODE**

**WHEREAS**, the City Manager has recommended an increase on occupancy tax rate which may only be enacted through the adoption of a local law; and

**WHEREAS**, it is required that a public hearing be held prior to the adoption of a local law;

**NOW, THEREFORE, BE IT RESOLVED**, by City Council that a public hearing on Local Law #2009-002 amending Chapter 612 of the Canandaigua Municipal Code shall be held in the City Council Chambers, the Hurley Building, 205 Saltonstall Street, Canandaigua, New York beginning at 7:00 p.m. on Thursday, November 21, 2019.

*Vote Result: Carried unanimously by voice vote (8-0)*

**Resolution #2019-091**

Moved: Councilmember-at-Large O'Brien  
Seconded: Councilmember-at-Large Whitcomb

**A RESOLUTION SETTING THE TIME AND PLACE OF A PUBLIC HEARING ON LOCAL LAW #2019-01 ESTABLISHING AND IMPOSING SEWER RENTS IN THE CITY OF CANANDAIGUA**

**WHEREAS**, the City Manager has recommended an increase in sewer rents which may only be enacted through the adoption of a local law; and

**WHEREAS**, it is required that a public hearing be held prior to the adoption of a local law;

**NOW, THEREFORE, BE IT RESOLVED** by City Council that a public hearing on Local Law #2019-005 shall be held in the City Council Chambers, The Hurley Building, 205 Saltonstall Street, Canandaigua, New York beginning at 7:00 p.m. on Thursday, November 21, 2019.

*Vote Result: Carried unanimously by voice vote (8-0)*

**Resolution #2019-092**

Moved: Councilmember Ward 3 White  
Seconded: Council Member Ward 2 Palumbo

**A RESOLUTION APPROPRIATING FUNDS FOR SURVEYING SERVICES**

**WHEREAS**, at the September 24th Finance/Budget Committee meeting, City Council requested that a survey be completed of the properties up for sale as well as the paper streets (Virginia St., Clement St., Scott St., Arsenal Terrace) in the vicinity of Arsenal Terrace; and

**WHEREAS**, the City Manager requested proposals from local surveyors, with the lowest proposal being submitted by Freeland-Parrinello, L.S. for \$2,100; and

**WHEREAS**, funding for such work was not included in the Adopted 2019 Budget, and the City Manager recommends appropriating \$2,100 from the remaining contingency to fund the survey work; and

**WHEREAS**, this recommendation was reviewed and approved at the October 24<sup>th</sup> Finance/Budget Committee meeting;

**NOW, THEREFORE, BE IT RESOLVED** that City Council hereby appropriates \$2,100 from the contingency for the purposes of completing the survey work for City owned properties on Arsenal Terrace as well as the paper streets (Virginia St., Clement St., Scott St., Arsenal Terrace).

*The motion CARRIED UNANIMOUSLY on the following vote:*

*AYES: Council Member Ward 1 Cutri, Council Member Ward 2 Palumbo, Councilmember Ward 3 White, Councilmember Ward 4 Sutton, Councilmember-at-Large O'Brien, Councilmember-at-Large Terwilliger, Councilmember-at-Large Whitcomb and Mayor Polimeni.*

*NOES: None*

**Resolution #2019-093**

Moved: Council Member Ward 1 Cutri

Seconded: Councilmember Ward 4 Sutton

**A RESOLUTION AUTHORIZING A FIRE SERVICES CONTRACT  
WITH THE TOWN OF CANANDAIGUA**

**WHEREAS**, City Council asked Staff to pursue a long-term Fire Services Contract with the Town of Canandaigua; and

**WHEREAS**, a three (3) year agreement was prepared and negotiated with the Town of Canandaigua covering the years 2020, 2021, and 2022; and

**WHEREAS**, in 2020, the payment will be \$600,000, an increase from \$500,000, to partner with the City in adding two additional firefighters. In 2021, the payment will remain \$600,000 and in 2022, the payment will increase to \$650,000 to add one additional firefighter to bring the total number up to fifteen (15) as directed by City Council; and

**WHEREAS**, Staff recommends authorizing the agreement and this recommendation was reviewed and approved at the October 24<sup>th</sup> Finance/Budget Committee meeting;

**NOW, THEREFORE, BE IT RESOLVED**, that City Council hereby authorizes the City Manager to execute the Fire Services Contract with the Town of Canandaigua, in substantially the same form as attached hereto.

*The motion CARRIED UNANIMOUSLY on the following vote:*

*AYES: Council Member Ward 1 Cutri, Council Member Ward 2 Palumbo, Councilmember Ward 3 White, Councilmember Ward 4 Sutton, Councilmember-at-Large O'Brien, Councilmember-at-Large Terwilliger, Councilmember-at-Large Whitcomb and Mayor Polimeni.*

*NOES: None*

**Resolution #2019-094**

Moved: Councilmember Ward 3 White

Seconded: Council Member Ward 2 Palumbo

**A RESOLUTION ACCEPTING EASEMENTS TO REAL PROPERTY UPON CONDITIONS SET  
BY THE CITY OF CANANDAIGUA**

**WHEREAS**, Section 20(3) of the NYS General City Law authorizes the City to take by gift and to hold and administer real property upon such terms and conditions as may be prescribed by the grantor and accepted by the City; and

**WHEREAS**, The Cottages at Canandaigua has completed certain infrastructure work (i.e., water main, storm sewer, storm water management, etc.) for the 31 units that have been built, or are to be built, in Phase I of the development; and

**WHEREAS**, under Chapter 802-6 of the City of Canandaigua Code, the City Council is authorized to accept the easement dedications on behalf of the City of Canandaigua;

**WHEREAS**, the proposed easements have been reviewed by the Director of Public Works to ensure they correspond to the installed infrastructure, as listed below:

**NOW, THEREFORE, BE IT RESOLVED** that City Council hereby accepts the following permanent easements:

- Easement WE-1: water main
- Easement UE-1: storm sewer
- Easement UE-2: storm water management practice (stormwater pond)
- Easement UE-3: storm sewer
- Easement UE-4: storm sewer
- Easement AUE-1: storm water management practice and some storm sewer
- Easement AUE-2: storm sewer
- Easement AUE-3: storm sewer, sanitary sewer and water, and access to UE-4
- Easement OUE-1: water main; and

**BE IT FURTHER RESOLVED** that the City Manager is authorized to execute any documents necessary to effectuate said transfer of property interests.

*The motion CARRIED UNANIMOUSLY on the following vote:*

*AYES: Council Member Ward 1 Cutri, Council Member Ward 2 Palumbo, Councilmember Ward 3 White, Councilmember Ward 4 Sutton, Councilmember-at-Large O'Brien, Councilmember-at-Large Terwilliger, Councilmember-at-Large Whitcomb and Mayor Polimeni.*

*NOES: None*

### **Resolution #2019-095**

Moved: Councilmember-at-Large Terwilliger

Seconded: Council Member Ward 1 Cutri

## **A RESOLUTION SETTING THE TIME AND PLACE OF A PUBLIC HEARING ON THE CITY OF CANANDAIGUA'S PROPOSED 2020 CITY BUDGET**

**WHEREAS**, Section 14.6 of the Canandaigua City Charter requires that a public hearing be held at least two weeks prior to adoption of the annual budget; and

**WHEREAS**, the City Manager has prepared and distributed the proposed 2020 annual budget to the members of the City Council;

**NOW, THEREFORE, BE IT RESOLVED** by City Council that a public hearing pursuant to Chapter 14.6 of the Canandaigua City Charter shall be held in the City Council Chambers, The Hurley Building, 205 Saltonstall Street, Canandaigua, New York at 7:00 p.m. on November 21, 2019; and

**BE IT FURTHER RESOLVED** that the City Clerk shall cause notice to be given as required by Section 14.6 of the Canandaigua City Charter.

*Vote Result: Carried unanimously by voice vote (8-0)*

**Ordinances:**

**Ordinance #2019-006:** *(Tabled at the October 3, 2019 Council Meeting)*

**AN ORDINANCE AMENDING CHAPTER 253  
OF THE MUNICIPAL CODE ADDING NEW ARTICLE III ENTITLED CHICKENS**

Councilmember Ward 4 Sutton suggested that this should go back to committee due to concerns raised over the size of the flock.

**Ordinance #2019-007:**

Councilmember-at-Large Whitcomb read the following ordinance and placed it on the table.

**AN ORDINANCE AMENDING CHAPTER 850 OF THE MUNICIPAL CODE TO  
CREATE A NEW HISTORIC DISTRICT**

**WHEREAS**, it is the stated purpose of Section 850 of the City of Canandaigua Code to “safeguard the heritage of the City of Canandaigua by preserving districts and buildings in the City which reflect elements of its cultural, social, economic, political and architectural heritage;” and

**WHEREAS**, the City of Canandaigua Code currently designates ten (10) historic districts and twenty-nine (29) historic buildings and structures; and

**WHEREAS**, the City Council is authorized under Chapter 850-112(C) to create additional historic districts and designate additional historic buildings and structures; and

**WHEREAS**, in 2016 the New York State Office of Parks, Recreation, and Historic Preservation (OPRHP) determined that sixty-eight (68) additional parcels in the City of Canandaigua were eligible to be added to a historic district; and

**WHEREAS**, City Council has reviewed the additional parcels identified by the OPRHP and determined that they merit preservation because they reflect elements of the unique cultural, social, economic, political, and architectural heritage of the City of Canandaigua; and

**WHEREAS**, the City Council has also considered public comment regarding the impact to current property owners if the additional sixty-eight (68) parcels identified by the OPRHP were added to a new historic district and determined that a tolling of the requirements of Chapter 850 of the City of Canandaigua Code is appropriate for the current owners of the parcels to be added to the above-referenced historic district.

**THEREFORE, BE IT ENACTED** by the City Council of the City of Canandaigua as follows:

**Sec. 1** Chapter 850-112 is hereby amended as follows (*new language shown in italics, omitted language shown with strikethrough*):

- (11) The Register of Historic Places District – to include all land and structures in the City of Canandaigua not previously currently included in an historic district under this Chapter that are designated on the Register of Historic Places by the New York State Office of Parks, Recreation, and Historic Preservation as of January 1, 2020. Any land or structure included in this historic district shall be exempt from the requirements of Chapters 850 of the City of Canandaigua until the conveyance, transfer, or sale of the land or structure on or after January 1, 2020.

**Sec. 2 This Ordinance shall be effective thirty (30) days following its enactment.**

**Local Laws:**

**Local Law #2019-003:** *(Tabled at the October 3, 2019 Council Meeting)*

**A LOCAL LAW TO ESTABLISH A  
COMMUNITY CHOICE AGGREGATION PROGRAM  
IN THE CITY OF CANANDAIGUA**

Lifted from the Table: Councilmember Ward 4 Sutton

Seconded: Council Member Ward 1 Cutri

*Vote Result: Carried unanimously by voice vote (9-0)*

Moved for adoption: Councilmember Ward 4 Sutton

Seconded: Councilmember-at-Large Uebbing

*The motion CARRIED UNANIMOUSLY on the following vote:*

*AYES: Council Member Ward 1 Cutri, Council Member Ward 2 Palumbo, Councilmember Ward 3 White, Councilmember Ward 4 Sutton, Councilmember-at-Large O'Brien, Councilmember-at-Large Terwilliger, Councilmember-at-Large Uebbing, Councilmember-at-Large Whitcomb and Mayor Polimeni.*

*NOES: None*

**Local Law #2019-004:**

Councilmember Ward 4 Sutton read the following local law and placed it on the table.

**A LOCAL LAW AMENDING CHAPTER 612 OF THE CANANDAIGUA MUNICIPAL CODE,  
PROVIDING FOR A ROOM OCCUPANCY TAX IN THE CITY OF CANANDAIGUA PURSUANT  
TO SECTION 1202-L OF NEW YORK STATE TAX LAW.**

**WHEREAS**, in 1991 the New York State Legislature enacted enabling legislation authorizing the City of Canandaigua to impose a tax on the occupancy of a hotel or motel room in the City.

**NOW, THEREFORE, BE IT ENACTED** by the City Council of the City of Canandaigua, that Chapter 612, of the Municipal Code of the City of Canandaigua is amended as follows:

**ARTICLE IX Room Occupancy Tax**

**§ 612-33. Definitions.**

When used in this article, the following terms shall mean:

**CITY CLERK/TREASURER** — The City Clerk/Treasurer of the City of Canandaigua 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 article.

**EXEMPT OCCUPANT** — Any occupant of any room or rooms in a hotel whose rent is paid from public assistance from the County of Ontario 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, bed and breakfast establishments, clubs or similar facilities, 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 Canandaigua, including, but not limited to, an owner or proprietor of such premises, lessee, sub lessee, 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 CHIEF** — The Police Chief of the City of Canandaigua 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.

**§ 612-34. Imposition of tax.**

On and after the first day of February 2011, there is hereby imposed and there shall be paid a tax of ~~4.5%~~ 3% 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.

**§ 612-35. Transitional provisions.**

The tax imposed by this article shall be paid upon any occupancy on and after the first day of February 2011, 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 first day of February 2011.

**§ 612-36. 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 there from received by such corporation or association shall not be subject to tax hereunder;

**§ 612-37. Territorial limits.**

The tax imposed by this article shall apply only within the territorial limits of the City of Canandaigua.

**§ 612-38. Registration.**

- A. Within 10 days after the effective date of this article or, in the case of operators commencing business after such effective date, within three days after such commencement or opening, every operator shall file with the City Clerk/Treasurer a certificate of registration in a form prescribed by the City Clerk/Treasurer.
- B. The City Clerk/Treasurer 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 nontransferable and shall be surrendered immediately to the City Clerk/Treasurer upon the cessation of business at the hotel named or upon its sale or transfer.

**§ 612-39. Administration and collection.**

- A. The tax imposed by this article shall be administered and collected by the City Clerk/Treasurer 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 Clerk/Treasurer 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 Clerk/Treasurer 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 Clerk/Treasurer 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 February 1, 2011, although such occupancy is had pursuant to a contract, lease or other arrangement made prior to such date. Where rent is paid or charged or billed or falls due on either a weekly, monthly or other term basis, the rent so paid, charged, billed or falling due shall be subject to the tax herein imposed to the extent that it covers any portion of the period on and after February 1, 2011. Where any tax has been paid hereunder upon any rent which has been ascertained to be worthless, the City Clerk/Treasurer may, by regulation, provide for credit and/or refund of the amount of such tax upon application therefor as provided in § 612-45 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 § 612-36 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.

**§ 612-40. 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 Clerk/Treasurer may by regulation require. Such records shall be available for inspection and examination at any time upon demand by the City Clerk/Treasurer or his/her duly authorized agent or employee and shall be preserved for a period of three years, except that the City Clerk/Treasurer may consent to their destruction within that period or may require that they be kept longer.

**§ 612-41. Returns.**

- A. Every operator shall file with the City Clerk/Treasurer 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 February 1, 2011. Such returns shall be filed within 20 days from the expiration of the period covered thereby. The City Clerk/Treasurer may permit or require returns to be made by other periods and upon such dates as he/she may specify. If the City Clerk/Treasurer 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 Clerk/Treasurer and shall contain such information as he/she may deem necessary for the proper administration of this article. The City Clerk/Treasurer 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 Clerk/Treasurer shall take such steps as he/she deems necessary to enforce the filing of such return or of a corrected return.

**§ 612-42. Payment of tax.**

At the time of filing a return of occupancy and of rents, each operator shall pay to the City Clerk/Treasurer 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 Clerk/Treasurer on the date prescribed herein for the filing of the return for such period, without regard to whether a return is filed or whether the return which is filed correctly shows the amount of rents and taxes due thereon. Where the City Clerk/Treasurer 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 Clerk/Treasurer 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 Clerk/Treasurer 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 Clerk/Treasurer at which the necessity, propriety and amount of the bond shall be determined by the City Clerk/Treasurer. 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 Clerk/Treasurer 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 Clerk/Treasurer, 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.

**§ 612-43. 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 Clerk/Treasurer 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 Clerk/Treasurer for a hearing or unless the City Clerk/Treasurer on his/her own motion shall redetermine the same. After such hearing, the City Clerk/Treasurer shall give notice of his/her determination to the person against whom the tax is assessed. The determination of the City Clerk/Treasurer 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 therefor 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 Clerk/Treasurer and there shall be filed with the City Clerk/Treasurer 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 Clerk/Treasurer 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.

**§ 612-44. 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. The City shall be authorized to retain the necessary revenue to defer the expense of the City in administering such tax and the balance of such revenues shall be allocated to enhance the general economy of the City of Canandaigua

**§ 612-45. Refunds.**

- A. In the manner provided in this section, the City Clerk/Treasurer shall refund or credit, without interest, any tax penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the City Clerk/Treasurer for such refund shall be made within one year from the payment thereof. Whenever a refund is made by the City Clerk/Treasurer, he/she shall state his/her reason therefor in writing. Such application may be made by the occupant, operator or other person who has actually paid the tax. Such application may also be made by an operator who has collected and paid over such tax to the City Clerk/Treasurer, 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 Clerk/Treasurer, under such regulations as the City Clerk/Treasurer may prescribe, that he/she has repaid to the occupant the amount for which the application for refund is made. The City Clerk/Treasurer may, in lieu of any refund required to be made, allow credit therefor 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 Clerk/Treasurer may receive evidence with respect thereto. After making his/her determination, the City Clerk/Treasurer 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 Clerk/Treasurer 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 § 612-43 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 Clerk/Treasurer made pursuant to § 612-43 of this article unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper by the City Clerk/Treasurer 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.

**§ 612-46. 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 Clerk/Treasurer 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.

**§ 612-47. Remedies exclusive.**

The remedies provided by §§ 612-43 and 612-45 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 Clerk/Treasurer prior to the institution of such suit and posts a bond for costs as provided in § 612-43 of this article.

**§ 612-48. 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 Clerk/Treasurer, bring or cause to be brought an action to enforce the payment of the same on behalf of the City of Canandaigua in any court of the State of New York or of any other state or of the United States. If, however, the City Clerk/Treasurer 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 Clerk/Treasurer 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 10 days before taking possession of the subject of said sale, transfer or assignment or paying therefor, notify the City Clerk/Treasurer 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.
- D. Whenever the purchaser, transferee or assignee shall fail to give notice to the City Clerk/Treasurer as required by the preceding subsection or whenever the City Clerk/Treasurer shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or chose 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 chose 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.

**§ 612-49. General powers of City Clerk/Treasurer.**

In addition to the powers granted to the City Clerk/Treasurer 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 1% 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 Canandaigua 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 Clerk/Treasurer;
- 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.

**§ 612-50. Administration of oaths and compelling testimony.**

- A. The City Clerk/Treasurer 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 Clerk/Treasurer 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 Clerk/Treasurer 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 Clerk/Treasurer under this article shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than \$1,000 or imprisonment for not more than one year, or both such fine and imprisonment.
- D. The officers who serve the summons or subpoena of the City Clerk/Treasurer 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 Clerk/Treasurer designated by him/her to serve such process.

**§ 612-51. 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.

**§ 612-52. Penalties and interest.**

- A. Any person failing to file a return or to pay or pay over any tax to the City Clerk/Treasurer within the time required by this article shall be subject to a penalty of 5% of the amount of tax due per month or any fraction of a month to a maximum of 25% for each year; plus interest at the rate of 1% 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 Clerk/Treasurer, 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 § 612-43 of this article or failing to file a registration certificate and such data in connection therewith as the City Clerk/Treasurer may by regulation or otherwise require 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, 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 Clerk/Treasurer 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.

**§ 612-53. Returns to be confidential.**

- A. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the City Clerk/Treasurer or employee or designee of the City Clerk/Treasurer 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 Clerk/Treasurer 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 Clerk/Treasurer permits them to be destroyed.

- B. Any violation of Subsection A of this section shall be punishable by a fine not exceeding \$1,000 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.

**§ 612-54. 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.

**§ 612-55. 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.

This local law shall take effect upon its filing with the Secretary of State.

**Local Law #2019-005:**

Councilmember Ward 4 Sutton read the following local law and placed it on the table.

**A LOCAL LAW ESTABLISHING AND IMPOSING SEWER  
RENTS IN THE CITY OF CANANDAIGUA**

### Section 1. Statement of Policy.

As a means of producing revenue for operation and maintenance of the sewer system of the City of Canandaigua, it is necessary to establish and impose charges for the use of said system, or to any portion of said system. This sewer rent is enacted pursuant to Article 14-F of the General Municipal Law of the State of New York.

### Section 2. Definitions

- a. "Sewer System" - The sewer system of the City of Canandaigua includes all sewer pipes and other appurtenances which are used or are useful in connection with the collection, treatment, or disposal of sewage, industrial waste, and other wastes which are owned, operated or maintained by the City of Canandaigua, including sewage pumping stations and sewage treatment and disposal works and private on-site wastewater disposal, if any.
- b. "Part" - As used in relation to the term "sewer system" - all lateral sewers, or all branch sewers, or all interceptor sewers, or all trunk sewers, any sewage treatment and disposal works, and private on-site wastewater disposal systems, each part with necessary appurtenances including pumping systems.
- c. The terms "sewage", "industrial wastes", and "other waste" shall have meanings as set forth in Section 451 of the General Municipal law, as the same may be amended from time to time.

### Section 3. Basis for Sewer Rent Computation

- a. Sewer rent charges shall be based either (1) upon the consumption of water on the premises connected with and served by the sewer system, or any part or parts thereof, or (2) upon the basis of actual discharge to the sewer system. Such actual discharge shall be based upon the measurement of an actual flow measuring device recording the actual flow of sewage to the sewer system.
- b. No user may elect to pay sewer rent charges on the basis of actual discharge unless a flow measuring device and control manhole have been installed and approved by the Director of Public Works. Such approval of the flow measuring device and control manhole shall be based upon measuring devices shall be subject to periodic inspection, testing, and reading by the Director of Public Works. The cost of installation, maintenance and testing of the flow measuring device and control manhole shall be borne solely by the system user.
- c. Sewer rent charges shall be **\$5.00** per 1,000 gallons of (a) water consumption or (b) measured sewer discharge during the period for which any statement is rendered, provided, however, that the minimum quarterly charge shall be **\$56.00**.

### Section 4. Payment Dates; Penalties; And Enforcement.

- a. Billing of sewer rents shall be quarterly with bills due on the 1st day of the month in which the bill is mailed. Each bill shall be for the preceding quarter.
- b. Payment of the sewer rents shall be made within 20 days of rendering of the bill without penalty (or the next business day if the 20th falls on a weekend or holiday).
- c. Any payment received 20 days after billing shall accrue a 15% penalty of the amount due. Bills are considered rendered upon mailing.
- d. In April of each year, the amounts of all past due bills from the preceding year, plus penalties, shall be certified by the City Clerk/Treasurer and shall be collected and enforced in the same manner and at the same time as provided by law for the collection and enforcement of City taxes.

**Section 5. Sewer Rent Fund.**

- a. Revenues derived from sewer rents, including penalties, shall be credited to a special fund for the sewer system, to be known as the "City of Canandaigua Sewer Fund." Monies in such fund shall be used in the following order:

(1) For the payment of the costs of operation, maintenance, and repairs of the sewer system or such part or parts thereof for which sewer rents have been established and imposed.

(2) For the payment of the interest on and amortization of, or payment of, indebtedness which has been or shall be incurred for the construction of sewage treatment and disposal works with necessary appurtenances including pumping stations, or for the extension, enlargement, or replacement of, or addition to, such sewer system, or part or parts thereof.

(3) For transportation charges imposed by any other municipality or entity for the transport of sewage via such other municipalities sewer mains, interceptors or lines.

- b. Such revenues from sewer rents shall not be used (1) to finance the cost of any extension or any part of a sewer system (other than any sewage treatment or disposal works with necessary appurtenances including pumping stations) to serve unsewered areas if such part has been constructed wholly or partly at the expense of the real property especially benefited, or (2) for the payment of the interest on, and the amortization or payment of, indebtedness which is to be paid in the first instance from assessments upon the benefited real property.

**Section 6. Amendments**

Any amendments to or other action taken affecting such sewer rents shall be accomplished in the same manner as provided in Article 14-F of the General Municipal Law for the original establishment of sewer rents.

**Section 7. Effective Date**

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

**Manager's Report:** City Manager John D. Goodwin reported the following:

- Leaf collection program will continue throughout November. If time and weather permits DPW will make multiple rounds.
- Remind everyone of the snow and ice policy for the City of Canandaigua.
- Reviewed the City Manager's Recommended Budget. All the information is on the City's website and encourages anyone interested to attend the budget meeting.

**Miscellaneous:**

- Terence reviewed a letter to be sent to NYS concerning the local law banning pesticides on City property.

**Adjournment**

Councilmember Ward 3 White moved to adjourn the regular session at 9:05 PM. Councilmember Ward 4 Sutton seconded the motion.

*Vote Result: Carried unanimously by voice vote (9-0).*

Nancy C. Abdallah, Clerk Treasurer  
City of Canandaigua

**APPENDIX A**  
**ENVIRONMENTAL/PARKS COMMITTEE**  
**Tuesday, October 8, 2019**  
**7:00 PM**  
**Council Chambers- The Hurley Building**

**Committee:** Karen White -Chair, Bob Palumbo, Renée Sutton, Dave Whitcomb

**Other Councilmembers:** Mayor Polimeni, Robert O'Brien, Nick Cutri, Steve Uebbing

**Staff:** John D. Goodwin, Rob Richardson, Terence Robinson, James Sprague, Chief Hedworth

**1. Special Event- Downtown Canandaigua Holiday Light Parade**

The BID has submitted a special events application to host a Holiday Light Parade. The proposed date for the event is Saturday, November 30<sup>th</sup> at 6:30 p.m. that will run from West Avenue to Bristol Street. Because this is a new event it must be approved by City Council. Denise Chaapel from the BID has been invited to the meeting to discuss the event and answer questions for Council.

Denise was at the meeting to discuss the event. They are reaching out to the community for donations to purchase new holiday decorations for the new light poles downtown. They reached out to other communities who have held similar events, and they believe that can pull off a great event. This also falls on Small Business Saturday, which supports local businesses downtown. Santa will arrive on Saturday this year (instead of Friday) and he will help light the community tree. They are requesting the parking lane be closed from the Y down to Bristol St, and they are asking to close both south bound lanes of traffic like w/ the 4<sup>th</sup> of July parade for about 20-30 minutes. They will stage in the parking lot at the Y. Bob thinks is great, and asked how people can donate towards new decorations. Denise said they will send mailings, utilize the messenger post, and accept checks at the BID office. Renée asked how long it would be closed for, and John said about an hour.

**Dave moved to approve the event, Renée seconded.**

**4 in favor, 0 opposed. Motion carries to Full City Council.**

**2. Municipal Waste Audit**

At its July 11th meeting, City Council passed Resolution #2019-053 allowing the City to contract with Impact Earth for a Municipal Operations Solid Waste Audit. The Solid Waste Audit, which assessed the amount and composition of the waste generated by local government operations to measure waste diversion and reduction improvements over time, took place on August 27th, 28th, and September 18th and included City Hall, the Police Station, Fire Station #1, Fire Station #2, the Hurley Building, the Water Treatment Plant, and the Waste Water Treatment Plant. Cassidy Putney from Impact Earth will be at the meeting to share out the results of the audit and answer questions for Council.

Cassidy was at the meeting and provided an overview of the audit findings. Overall, the City is doing better than national averages but there is room to improve. She believes we could easily attain a 60% diversion rate with a few minor changes, educating staff, and composting food scraps. Rob said this will go back to the CSC to look at ways to reduce what is going to landfills. Renée asked what a reasonable time frame would be for an update on plans to implement some changes, and John said first quarter next year.

### **3. Canandaigua Lake Water Quality Update**

Recently, concerns have been raised regarding the health of Canandaigua Lake relative to the blue green algae toxin. Kevin Olvany from the Canandaigua Lake Watershed Authority and Lindsay McMillen from the Canandaigua Lake Watershed Association have been invited to the meeting to discuss their observations and findings from the countless samples taken during the Summer and Fall seasons.

Kevin Olvany was at the meeting to discuss the recent water quality update. The toxins are produced by muscles, which excrete blue green algae and phosphorous which are major concerns for the lake. Karen asked what we can do as a City and individually to address this, and Kevin said we're actually considered a leader and model for other communities. We can also look at reducing the frequency of lawn care. He added this is going to be a long-term effort, and they will continue to push the lake friendly lawn care initiatives. We also need to make sure people are picking up their dog waste. Steve asked about potential mechanical options, and Kevin said there are emerging technologies that need to be vetted by the DEC before exploring those options. Bob asked about the lifespan of the muscles, and Kevin said 3-5 years. The new muscles outcompeted the zebra mussels, and they do everything better than zebra mussels. The Mayor asked if we need to extend the pipe and Kevin said maybe- it's definitely a project we should look at. John pointed out it would be a project that would cost hundreds of thousands, and the return on investment isn't there yet. Renée asked what are the actions we need to take, and Kevin said that the information is all in the Watershed Plan. Renée asked if we should just ban pesticides, and Kevin said banning them is not the answer- it's about finding balance. Applying 4-5 times a year is completely unnecessary, but it's important to have strong turf. Renée worries about the future of Canandaigua and property values if we can't use the Lake year-round. Kevin said the City is doing a lot of things right already to mitigate these concerns.

### **4. Dog Park Concerns**

Recently, City Councilmember Renée Sutton was contacted by several concerned residents in the neighborhood by Canandaigua Canine Campus regarding landscaping, noise, and alleged fighting occurring at the park. This item was added to the agenda for further discussion to provide a forum for those residents to air their concerns.

Several residents were at the meeting to discuss the concerns. John addressed the landscaping issue- we intended to plant trees in the spring due to rain and more frequent mowing. Before thanksgiving we will be planting trees and the landscaping will be completed by then. They won't be fully mature and will take time to grow, but they will be planted. Margaret Post wants to know why we are planting on November- the last set of trees planted in November did not do well. John pointed out the trees failed but were planted and appear to be doing well. Some of the trees are also not suited for the soil, so we will be trying different varieties. David Porter moved into his home two years ago prior to the dog park being built, and no one told him the park was being built. He would have appreciated a heads up, and he would like to see a "SLOW" sign because there are people who tear in and out of the driveway which runs next to his house. He also wants the logs cleared- people hide behind them and can't be seen from the road. John said they were left there because someone will be using them for firewood, but that person passed away. He has directed code enforcement to get them moved or he will have the City pick them up. They also need to protect the sanitary sewer, which is why some of the trees were cut down. They will be adding a shade structure which should break up the visual concerns. David said if we planted on his property, he would maintain the plantings. Renée asked what residents concerned about noise can do, and John said they can call the police. They are also in the process of having the trees removed in total from the property. A woman spoke up in favor of the park, and pointed out that the more familiar the dogs become with each other the less intense the volume and play will be. Renée added she also hears owners, not just dogs, being loud. She said neighbors have the right to a peaceful home. Cal Wallace said he's been at the park everyday

since it opens, and part of the volume is the park is extremely well utilized. This problem will continue as more people use the park, and there needs to be consideration for dogs and owners as well. Patrick Rhoades suggested we bring in Off-Leash Canines to do a seminar for the community on working with their dogs and non-owners to understand we all need to coexist and share the space. Margaret Post reiterated the neighbor's concerns. She is concerned the shade structure will be a visual liability. She hopes we can find a way to make this all work. Renée wants an action item- Steve agrees.

#### **5. Charlotte Street and Sonnenberg Park**

Recently, the City proposed work along Charlotte Street and Sonnenberg Park. The work involved drainage improvements and sidewalk replacement along the park side of Charlotte St., removal of the sidewalk on the east side of Charlotte Street, and the removal of the hedge in the park. This work was proposed to protect the London Plane Trees that line Charlotte Street, provide a safe, ADA compliant sidewalk, improve drainage on Charlotte Street and in Sonnenberg Park, and reduce the maintenance workload of City Staff. At the September 10<sup>th</sup> Environmental/Parks Committee meeting, several residents raised concerns about the planned work which City Council agreed with. City Staff stated the work would not take place as proposed, but that the infrastructure issues still need to be addressed. At the request of City Council, Staff has developed an alternative plan which will be presented at the meeting.

John provided a brief summary of the issue and recapped what was presented at the last meeting. It was clear after the last meeting the Staffs plans needed to be revised. One new idea is to close Charlotte St up to Howell and make Charlotte a One-Way from Howell to Gibson. Karen points out we need to protect the trees, and John added we also need to make sure our infrastructure meets are up to par. John added we could do nothing and deal with trips and falls as the come up. John added at some point we will need to address the infrastructure on Charlotte St at some point, it's been way to long. John added we could put money into the budget to do a study on Sonnenberg Park to make comprehensive improvements, especially considering the new pickleball courts. Bob spoke to someone who said we could replace the sidewalks less invasively, or just raise it up, which would prevent having to dig into the foundation of the sidewalk. Dave asked how pressing this is, and John said there are some areas that really need to be addressed. Dave recommended waiting to make any decisions until we do a study like the one John suggested. If we are going to address this, Dave said we should look at this as a comprehensive project. The Mayor agreed we should know what Sonnenberg's plans are for the armory entrance before we make any decisions. Jerry Wilcox someone needs to talk to Sonnenberg because they are not good neighbors and need to maintain their property and sidewalk. He also thinks we should reopen East St and make the VA allow us access.

**Renée motioned to adjourn; Bob seconded.**

**Meeting adjourned at 9:15 p.m.**

**APPENDIX B  
ORDINANCE COMMITTEE  
Tuesday, September 17, 2019  
7:00 PM**

**Council Chambers- The Hurley Building**

**Committee:** Dave Whitcomb -Chair, Nick Cutri, Jim Terwilliger, Karen White

**Other Councilmembers:** Mayor Polimeni, Steve Uebbing, Bob Palumbo, Renée Sutton, Robert O'Brien

**Staff:** John D. Goodwin, Rob Richardson, Terence Robinson, Rick Brown

**1. Expansion of Historic District**

The Canandaigua Historic District includes 354 properties that constitute the historic core of the City. It encompasses the North Main Street Historic District, listed on the National Register in 1973, which included 86 residential, religious and civic properties along both sides of North Main Street between the New York Central Railroad tracks and the intersection of Buffalo and Chapel Streets. In 2016, the City received notification from the New York State Department of Parks, Recreation, and Historic Preservation that an additional 68 properties not originally included in the district (see attached map) were eligible to be added due to historic significance. At the time, the City Council chose not to incorporate these properties into the City's Historic District. At the request of Councilmember Dave Whitcomb, this item was added to the agenda for further discussion to reconsider adding these properties that have already been listed on the National and New York State Registers. At the September 17<sup>th</sup> Ordinance Committee meeting, City Council requested additional information including feedback from City Planning/Development Director Rick Brown. Rick has been invited to the meeting to provide input and answer questions for Council.

Rick Brown was at the meeting to discuss this topic, and said the above description was a good overview. Real preservation is done at the local zoning level, and although the State has identified these as historic, they were not included as of this time. The Comprehensive Plan committee added expanding the historic district in 2013, and the upcoming revised plan will recommend the same- they believe the City should be consistent with the State recommendation/list. Dave asked if there was a way to grandfather folks in who bought the property prior to this being enacted, and Rick said we could write the legislation anyway we want. Each alteration is determined on a case by case basis, and it really depends on what is being proposed. Generally, they adhere to the normal standards. The only time this would be an issue is if home owners wanted to make any aesthetic changes. Renée would only be comfortable with this if some structures were able to be designated non-contributing, she loves the historic buildings but is concerned about the potential burden for homeowners. Dave added his concern is consistency and preserving the district, and if we have donut holes in the district that historic feeling will erode. The Mayor said the Preservation Society played a role in why these donuts exist, and she has seen exceptions made for what needed to be done to meet the needs of the City. She also recalls the homeowners being polled in 2013, and they were not in favor of being added to the historic district. Dave suggested adding these properties subject to change in ownership so the current home owner isn't forced to adhere to these standards. Karen asked if we could do this via referendum or have an opt in or opt out, and Dave said that is what we did with the pesticides and that all we would be doing is creating smaller donuts. Renée added that as a homeowner, she would want some certainty that home owner rights would be protected- she's already made several alterations to her home that wouldn't conform. Rick added there are buildings in the district in the same situation- they are held to the appropriate standard but are still reviewed for any alterations. Jim is in favor of Dave's suggestion regarding change of ownership. Steve believes we should expand the historic district, as it will increase the value of neighboring homes. He has faith that the Planning Commission will make reasonable decisions.

He would like to see a process, similar to Renée's suggestion, to assure home owners who already own these homes will be able to make appropriate alterations to their homes. Rick said regarding of the language used, it will still always be a judgement call. The Mayor asked how often the Planning Commission turns down a home owner proposal with an outright no, and Rick says it depends on the case. Renée asked if this would require a public hearing, and Rick said in this case yes. Robert thinks notification falls on the Real Estate Agent to disclose, and the property owner should be aware when they purchase the property. The gentleman who attended the last meeting on this topic spoke again, and he bought this property because it wasn't in a historic district. The slope can go both ways, and requiring certain materials may price him out of his own home and force him to sell. Some of these homes are in disrepair because people can't afford the required changes. He strongly believes we should leave this as is. Mike said people just find workarounds.

**Jim moved to move forward with expanding the historic district, with the standards being enacted when the home changes ownership, Nick seconded.**

Renée added that blanket grandfathering isn't going to accomplish the goal- it should only pertain to the properties who have already made radical changes or aren't really historic. Dave said if we do nothing, the properties still don't protect the properties. This allows the current owners to avoid the hardship they didn't sign up for. Bob thinks people who purchase historic property know what they are getting into, and just because it isn't historic doesn't mean the people are going to intentional wreck the aesthetic. Robert thinks this is a forward-thinking law, because the next person who owns the house will be committed to retaining the historic value.

**4 in favor, 0 opposed. Motion carries to Full City Council.**

## **2. Ordinance Reducing Single-Use Plastics**

Last year, upon the request of Councilmember David Whitcomb, the Ordinance Committee began a discussion of an ordinance banning the use of plastic straws in the City. After much discussion the Committee decided to explore a more comprehensive approach and potentially adding other items such as plastic bags and polystyrene foam items in an effort to reduce waste and prevent pollution. At the February 19th Ordinance Committee meeting, Council decided more information was needed before taking any legislative action and directed Staff to invite community stakeholders who would be impacted by such a ban. At its March 19th meeting, representatives from Wegmans and Pactiv addressed Council and discussed how the proposed ordinance would impact their business operationally and economically. At its April 16th meeting, representatives from the Canandaigua City School District, Ontario County, and the Town of Canandaigua shared how the proposed ordinance could impact them. Members of the Merchants Association and local restaurant owners were invited to the May 14<sup>th</sup> meeting to discuss how the proposed ordinance would impact them; however, they were unavailable and sent feedback through the Mayor and the BID. Representatives from the New York State Association for Reduction, Reuse and Recycling (NYSAR3) were invited to the June 18<sup>th</sup> meeting, but did not attend or send feedback. At the August 6<sup>th</sup> Planning/Development Committee, Staff asked if this item should remain on the agenda, and Council requested it be included on this agenda for further discussion.

Dave asked if there is any interest in pursuing this further. He recommends to table this until next year, if picking it up at all. The Mayor commended Dave for bringing this issue to Council, but at this point she thinks we should let the State take the lead on this. We should stay informed, and when we have the ability to act, we can do so. Karen wants to see this move forward on some level- there is a long way to go. The Mayor believes we should allow Climate Smart Canandaigua to do some of the work the recent report recommended, and she doesn't think it always takes a law. She thinks we should continue to educate. Jim agrees with the Mayor, and Nick does too. Nick noted we are seeing changes in the City right now without

legislating, and we should see what the State does first. Renée agrees with Karen, and thinks it's an opportunity to take the lead on an issue and set an example for other municipalities. It's better to do something than nothing. Robert agrees with the Mayor, Jim, and Nick. He thinks we should focus on areas where we can be impactful. He thinks we should focus on acting locally, particularly in relation to diverting food scraps and food waste from the land fill. We could be leaders in that, which might give us a stronger position moving forward. Bob pointed out banning plastics create other issues, so attempting to solve this on might create other ones. Steve supports the notion of keeping the conversation going, but not legislating at the time. He wants to preserve our energy for the battles ahead regarding the Lake. Mike Yarger said this whole thing is ridiculous.

Renée sent out an article about governments preparing for 5G, and John said the things she is referring to are already in place. We will go through the normal process, and discussions with the Planning Commission have already taken place about further aesthetic requirements. Renée asked if the radiation increase is constant, and would they have to notify us if they increased the radiation on the existing installation. John said they notify us if it's on our property.

Jim is concerned the Inn on the Lake Construction does not match what the original rendering showed, and asked if the Planning Commissions is aware, and John said Code Enforcement is doing that.

**Karen motioned to adjourn, Nick seconded.**

**4 in favor, 0 opposed. Meeting adjourned at 8:17 p.m.**

**APPENDIX C**  
**FINANCE/BUDGET COMMITTEE**  
**Thursday, October 24, 2019**  
**7:00 p.m.**  
**Council Chambers- The Hurley Building**

**Committee:** James Terwilliger, Chairman, Robert O'Brien, Steve Uebbing, Nick Cutri (Absent)

**Other Councilmembers:** Mayor Polimeni, Karen White, Renée Sutton, Bob Palumbo

**Staff:** John D. Goodwin, Rob Richardson, Terence Robinson

**1. Occupancy Tax**

The City's current Occupancy Tax rate is 1.5%. The City Manager will be proposing in his Recommended 2020 Budget increasing this rate to 3%, which is the maximum allowed under New York State Law. Attached to the agenda is a proposed local law to facilitate this proposal.

John provided a brief view of the agenda item. John projects, based on the IDA numbers, he estimates we will be close to \$200,000 even with them opening in the Spring. Steve agrees with John's number are justified, and will reflect their ability to market and bring in conferences. We lost tax base from this pilot, so we have no choice but to move forward.

**Robert moved to adopt the increase, Nick seconded.**

The Mayor has heard the Inn on the Lake will not be open until Fall, but John has been told they have events in the Spring and Fall. Robert and a few others were concerned the numbers might be overestimated.

**4 in favor, 0 opposed. Motion carries to Full City Council.**

**2. Survey Work for Arsenal Terrace**

At the September 24<sup>th</sup> Finance/Budget Committee meeting, City Council requested that a survey be completed of the properties up for sale as well as the paper streets (Virginia St., Clement St., Scott St., Arsenal Terrace) in the vicinity of Arsenal Terrace. The City Manager requested proposals from local surveyors, with the lowest proposal being submitted by Freeland-Parrinello, L.S. for \$2,100. Funding for such work was not included in the Adopted 2019 Budget, and the City Manager recommends appropriating \$2,100 from the remaining contingency to fund the survey work.

John provided a brief synopsis of the agenda item.

**Robert moved to accept the proposal, Steve seconded.**

**4 in favors, 0 opposed. Motion carries to Full City Council.**

**3. Fire Contract with the Town of Canandaigua**

City Council asked Staff to pursue a long-term Fire Services Contract with the Town of Canandaigua, and a 3-year agreement has been prepared which will cover the years 2020, 2021, and 2022. In 2020, the payment will be \$600,000, an increase from \$500,000, to partner with the City in adding two additional firefighters. In 2021, the payment will remain \$600,000 and in 2022, the payment will increase to \$650,000

to add one additional firefighter to bring the total number up to fifteen (15) as directed by City Council. Staff recommends approving the agreement.

John provided a brief synopsis of the agenda item. Jim asked if the Town approved this agreement, and John said they did on Monday. Steve asked if we have heard about the SAFER Grant, and John said we haven't heard anything yet. Karen asked John what his thoughts are on how this will impact future costs, and John said it ratchets up per the collective bargaining agreement. John tried to get more from the town for help with long-term costs, but they were not willing. She asked if John's estimated \$100,000 cost includes everything, and John said yes. In year 4 and 5, it goes up to a \$135,000-\$140,000 cost.

**Steve moved to approve the contract, Nick seconded.**

Steve said we need to make sure the cost sharing discussion with the Town is had, because there will be longer term costs. John said the Town is aware of this, and Steve said we still need to let them know there is still a cost sharing discussion to be had. Robert asked if it's fair to bind a future Council, and Nick said we've done this in the past and it's in our best interests now. John added there are some termination clauses that would allow either side to end the agreement sooner.

**4 in favor, 0 opposed. Motion carries to Full City Council.**

#### **4. Dedication of Utility Easements**

The Cottages at Canandaigua has completed certain infrastructure work (i.e., water main, storm sewer, storm water management, etc.) for the 31 units that have been built, or are to be built, in Phase I of the development. The developer has proposed a series of 9 separate easements granting the City of Canandaigua legal access to inspect, observe, measure, sample, repair, and maintain the referenced infrastructure. Under Chapter 802-6 of the City of Canandaigua Code, the City Council is authorized to accept the easement dedications on behalf of the City of Canandaigua. The proposed easements, and the corresponding subdivision plat, are included for reference. The proposed easements have been reviewed by the Director of Public Works to ensure they correspond to the installed infrastructure, as follows:

Easement WE-1: water main

Easement UE-1: storm sewer

Easement UE-2: storm water management practice (stormwater pond)

Easement UE-3: storm sewer

Easement UE-4: storm sewer

Easement AUE-1: storm water management practice and some storm sewer

Easement AUE-2: storm sewer

Easement AUE-3: storm sewer, sanitary sewer and water, and access to UE-4

Easement OUE-1: water main

John provided a brief overview of the agenda item. We will maintain the storm water pond to ensure it is maintained. Terence added that we sat down with Jim Sprague to make sure everyone is on the same page, and he is in agreement. The Mayor asked when the easements will get filed, and Terence said once they are finalized. She is concerned there was a situation where easements weren't filed and she asked Terence to let them know when they are filed.

**Nick moved to accept, Steve seconded.**

**4 in favor, 0 opposed. Motion carries to Full City Council.**

Council gave John until the 1<sup>st</sup> to present the budget. Our first meeting will be Wednesday, November 6<sup>th</sup>.

**Nick motioned to adjourn; Steve seconded.**

**4 in favor, 0 opposed.**

**Meeting adjourned at 7:24 p.m.**