

MINUTES OF THE CANANDAIGUA CITY COUNCIL MEETING
THURSDAY, DECEMBER 5, 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 Robert O'Brien
Councilmember-at-Large James Terwilliger
Councilmember-at-Large Stephen Uebbing
Mayor Ellen Polimeni

Absent: Councilmember-at-Large David Whitcomb (Work Obligation) (Arrived at 7:37)

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

Review of Community Core Values: Councilmember-at-Large Uebbing 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: November 21, 2019
Moved: Councilmember-at-Large Terwilliger
Seconded: Council Member Ward 1 Cutri
Vote Result: Carried unanimously by voice vote (8-0)

Recognition of Guests:

- Edward Bowman, Waterloo NY, written federal legislation called “Clara’s Law” that would require hospitals and healthcare facilities to report within 30 days all allegations of sexual offence by a healthcare practitioner that involves a patient. The legislation would also require those reports to be sent to the Department of Health and the Education Department. The legislation is named after Bowman’s late wife, Clara, who was sexually assaulted by an intensive-care-nurse in 2006. The abuser was able to work at another hospital an abuse another patient and the hospital was unaware of the allegations when he was hired. He is working to get this law passed in home state of Florida and would like to see such legislation passed in New York and the rest of the states. Both Kolb and Helming promised to introduce this law and he is asking people to contact politicians to urge passage of this bill.
- State Senator Helming – Thanked Mayor Polimeni for her 28 years of service to the City of Canandaigua and the entire region. She has and will continue to be dedicated and committed to the City. She read a Proclamation to Mayor Polimeni.

- State Assemblyman Kolb – Also read a proclamation thanking Mayor Polimeni for her service to the City of Canandaigua. He stated that he appreciated working together to do what was best for the City of Canandaigua.
- Doug Finch, Town Manager for the Town of Canandaigua - Also gave Mayor Polimeni an proclamation on behalf of the Town of Canandaigua. He stated that the Mayor never gave up with her efforts to work with the Town. The City and Town has started working on shared services and gives the Mayor credit for making that happen.
- Peter Baynes, NYCOM Executive Director – honored Mayor Polimeni for the last 25 years been a part of NYCOM, serving on the executive committee and president. She has been a tireless advocate for Canandaigua, children and economic development. Mayor Polimeni was previously presented with the John H. Galligan Award which is given to Mayors and other officials in special circumstances that have made an impact not only to the communities, they serve but state wide.
- Robert Green, Town of Bristol Supervisor – Mayor Polimeni was recognized by the Watershed Council at their meeting last night for her many years of service and leadership on the council. She has worked tirelessly for the lake, for water quality and the environment.
- David Baker, Ontario County Supervisor for the City of Canandaigua – first met Mayor Polimeni when she was his 5th grade teacher and who know how their lives would intersect over the years on behalf of the community. Things have changed over time but not the effectiveness of City Council which is largely responsible to the leadership at the top. Although the day to day operations are led by the City Manager and his staff, the vision and tone for the City comes from Council which is led by the Mayor.
- Mike Yarger, Rochester NY, property owner in Canandaigua and administers Canandaigua 2020 Facebook page – it has been an honor working together for 10 years. Even though we have not seen eye to eye on many issues the Mayor has always treated me with respect. Can't find anyone more accessible and met with Citizens every month. She has always been very supportive of local businesses.
- Mayor Polimeni read the following statement:

Preparing for tonight's meeting was most difficult, for it is likely my last meeting as Mayor. I do not often speak about my role or the number of years I have been involved with government. but tonight, I would like to take a few minutes to talk about my service in government. For many years I have told people when asked to speak at events – I'll keep it short for the shorter the speech – the more likely you will be asked to speak again. Well, tonight I may violate that. Tonight, I have many thank yous. First and foremost, my late husband John F Polimeni. John served on Council in the late 50's and early 60's. He was on the Council that enacted sales tax, the Council that changed our local form of government from Commission to Council Manager format. When I was approached to become involved, he was most supportive and remained so to his passing.

A special thank you to my family, My daughter, my son, son-in-law, nieces, nephews, eleven brothers and sisters and large extended family has remained supportive and tolerant of me through my many trials and tribulations.

Thanks also to all of my supporters over the years. I have received hundreds of messages, cards, emails and visits of thanks for service and reminding me of things I have forgotten as a teacher or legislator. I will cherish all of the messages.

Thanks to all who have served on City Council Planning Commission with me, as Alderman at Large with me, and with me during my tenure as Mayor. I have learned from all of you – that is what is great about being involved – you learn. You learn and you serve.

The City workforce over the years must be thanked from the City Manager to the part-time employees. There have been a lot of them. The current staff and the many past employees of the city = they all work darn hard to keep Canandaigua a wonderful place to live work and play.

Now I could go on with so many others to thank but I'm exceeding my rule about keeping it short.

My last thank you is to the current and upcoming Council and new Mayor. We've had some challenges and I leave knowing we have met most of them and knowing continuous improvement is one of our core values. I have enjoyed working with each of you. Bob, special thanks to you for stepping forward when I was seeking people to serve on the Charter Revision Committee, you stepped up, served admirably and then became interested in Council. You ran for Council and then decided to run for Mayor. As an educator your path is just what one would like to see happen. As you assume the position feel free to call upon me or seek information you might feel would be helpful to you.

Council you have many things coming to fruition like completed hotels, new subdivisions possibilities, continued concerns regarding the health of the lake, our green initiative and things you haven't even dreamed of yet. I know you are up to the challenges.

My feeling regarding government and governance has always been that it is Community Service. As I started to write this ending, I started to pontificate on what I see as service and the importance of consensus and civility. So, I stopped for it sounded like one of my state and local government classes.

I want you to know, I will continue to serve the community – just not in government.

Thank you, Canandaigua, for the wonderful years of service you have allowed me.

Committee Reports:

Planning/Development Committee: No Meeting

Environmental/Parks Committee: No Meeting

Ordinance/PUD Committee: No Meeting

Finance/Budget Committee: Budget Meetings for Month of November

Resolutions:

Resolution #2019-096

Moved: Councilmember Ward 1 Cutri

Seconded: Councilmember-at-Large Uebbing

A RESOLUTION RECOGNIZING AND THANKING DAVID WHITCOMB FOR HIS DEDICATED SERVICE TO THE CITY OF CANANDAIGUA

WHEREAS, since 2010, David Whitcomb has served the City of Canandaigua with distinction as a member of City Council; and

WHEREAS, through his work on Council, Canandaigua has elevated its reputation as a community of choice, attracting greater numbers of investors, businesses, new residents and visitors; and

WHEREAS, as chair of the Ordinance Committee and member of the Environmental/Parks Committee, David successfully championed key initiatives to improve the overall quality of life in the community; and

WHEREAS, David also served as chair of the Planned Unit Development (PUD) Committee which reviewed notable projects such as Pinnacle North, the Canandaigua Finger Lakes Resort, Cottages at Canandaigua and Factory 243 (Lisk); and

WHEREAS, in the course of these and other accomplishments, David Whitcomb diligently collaborated with the full City Council to maintain the fiscal health of the City of Canandaigua while ensuring that essential City services are provided; and

WHEREAS, David has never shied away from sharing his opinion and provide a voice of reason, even when it might not be popular to do so; and

WHEREAS, elected office requires personal sacrifice, long hours and dedication, which is often unrecognized;

NOW, THEREFORE, BE IT RESOLVED, that the Canandaigua City Council, on behalf of the residents of the City, recognize and thank David Whitcomb for his dedicated service to the City of Canandaigua.

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

Resolution #2019-097

Moved: Councilmember-at-Large Terwilliger

Seconded: Councilmember Ward 4 Sutton

A RESOLUTION RECOGNIZING AND THANKING ELLEN POLIMENI FOR HER DEDICATED SERVICE TO THE CITY OF CANANDAIGUA

WHEREAS, Ellen Polimeni has served the City of Canandaigua for over 43 years, having served on the City Planning Commission from 1976-1982; as a member of City Council from 1982-1991 and as Mayor from 1992-2019; and

WHEREAS, through her principled leadership, Ellen has consistently guided City Council to govern the City with civility and decorum; and

WHEREAS, Ellen served as President of the New York Conference of Mayors and on its Executive Board, was Vice Chair and Chair of the Small Cities Council for the National League of Cities, has earned the respect and admiration of colleagues across the State and has used her relationships and connections with municipal leaders, State and National representatives to bring to fruition projects to better Canandaigua; and

WHEREAS, Ellen has been extremely generous both with her time and financial support, has always put the community first, never seeking any personal aggrandizement or gain from her position while helping to ensure that countless projects and activities took place for the betterment of students, residents and/or the community at large; and

WHEREAS, it would be impossible to completely describe the impact that Ellen Polimeni has had on the City of Canandaigua and its residents, or list the innumerable projects that Ellen has championed; however, it is indisputable that through her years as an educator, as a member of City Council, her commitment to countless community/civic organizations, and as Mayor, Ellen Polimeni has positively touched the lives of all

Canandaigua residents, is the finest example of a true public servant, and a person of historical importance to the City of Canandaigua; and

WHEREAS, the City Council may assign a new name to any existing named street if it determines that it is in the public interest to do so, and streets may be named after a person of historical importance to the City of Canandaigua;

NOW, THEREFORE, BE IT RESOLVED, that in recognition of her dedicated service to the City of Canandaigua, that City Council hereby renames North Shore Boulevard as Ellen Polimeni Boulevard.

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

Resolution #2019-098

Moved: Councilmember-at-Large Terwilliger

Seconded: Councilmember Ward 4 Sutton

A RESOLUTION ADOPTING THE 2019 BUDGET OF THE CITY OF CANANDAIGUA

WHEREAS, in accordance with Chapter 14 of the City Charter, the City Council of the City of Canandaigua has met and considered the City Manager’s proposed budget for the 2019 fiscal year; and

WHEREAS, a duly noticed public hearing on the proposed 2020 budget was held on November 21, 2019; and

WHEREAS, various changes to the proposed budget were put forward by the City Manager and City Council resulting in the following for the City’s major funds:

Fund	Expenditures & Transfers	Revenues & Transfers	Fund Balance Appropriation
General	\$15,795,927	\$15,128,524	\$667,402
Water	5,202,632	5,066,437	136,195
Sewer	6,094,143	5,838,618	255,525

; and

WHEREAS, City Council reviewed and approved all other funds and reserves;

NOW, THEREFORE, BE IT RESOLVED, that the 2020 budget, a copy of which is on file with the Clerk/Treasurer, is hereby adopted; and

BE IT FURTHER RESOLVED, that said budget, as adopted by the City Council of the City of Canandaigua, shall be effective for the fiscal year commencing January 1, 2020.

The motion CARRIED UNANIMOUSLY on the following vote:

AYES: Councilmember Ward 1 Cutri, Councilmember 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

Resolution #2019-099

Moved: Councilmember-at-Large Uebbing

Seconded: Councilmember-at-Large Terwilliger

A RESOLUTION ESTABLISHING THE 2020 TAX LEVY AMOUNT AND AUTHORIZING THE CLERK/TREASURER TO SPREAD AND COLLECT THE SAME

WHEREAS, the City Council of the City of Canandaigua has adopted the 2020 Budget; and

WHEREAS, said budget calls for a property tax levy of \$5,414,136; and

WHEREAS, said budget also includes a special assessment levy of \$9,000, which is spread and extended upon properties that are within the boundaries of the Parking Lot Assessment District;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Canandaigua that the amount of \$5,414,136 shall constitute a levy of the amount to be raised by taxation in 2020 for the City of Canandaigua, and a warrant to the Clerk/Treasurer to spread and extend such levy upon the current assessment tax roll, and to collect the same; and

BE IT FURTHER RESOLVED, that the amount of \$9,000 shall constitute a levy of the amount to be raised by the Parking Lot Assessment, and a warrant to the Clerk/Treasurer to spread and extend such levy upon the properties in the Parking Lot Assessment District.

The motion CARRIED UNANIMOUSLY on the following vote:

AYES: Councilmember Ward 1 Cutri, Councilmember 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

Resolution #2019-100

Moved: Councilmember-at-Large O'Brien

Seconded: Councilmember Ward 4 Sutton

A RESOLUTION AUTHORIZING COLLECTION OF COUNTY TAXES

BE IT RESOLVED, that the Canandaigua City Clerk/Treasurer is hereby directed to collect from the several persons and corporations named in the Assessment Roll to which this warrant is annexed, the several sums of money mentioned in the column thereof, to wit: the one marked "County Taxes" and set opposite to the name of such persons or corporations respectively, together with your fee thereon, as hereinafter provided; and further

RESOLVED, that upon delivery of said Roll and Warrant, the Clerk/Treasurer shall mail to each taxpayer against whom any tax shall be charged on such roll, at last known post office addresses, a statement of the amount of such tax, designating the Clerk/Treasurer's Office in said City, as the place for receiving payment of the taxes from January 2nd to January 31st, both dates inclusive, from nine o'clock in the morning until four o'clock in the afternoon, and any person may pay her/his tax at the time and place designated; and further

RESOLVED, that upon all taxes collected after January 31, 2020 such Clerk/Treasurer shall collect one per centum; and after the expiration of said last day of February, collection of unpaid taxes shall proceed in the manner provided by the Statutes of the State of New York.

The motion CARRIED UNANIMOUSLY on the following vote:

AYES: Councilmember Ward 1 Cutri, Councilmember 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

Resolution #2019-101

Moved: Councilmember-at-Large Uebbing

Seconded: Councilmember-at-Large Whitcomb

A RESOLUTION APPROVING THE 2020 BUSINESS IMPROVEMENT DISTRICT (BID) BUDGET, ESTABLISHING THE 2020 BID CHARGE LEVY, AND AUTHORIZING THE CLERK/TREASURER TO SPREAD AND COLLECT THE SAME

WHEREAS, the Downtown Business Improvement District (BID) was established by the City Council on July 9, 1992 by Local Law No. 4; and

WHEREAS, the operation of the BID is governed by the provisions set forth in Article 19-A of the General Municipal Law, Section 980j of which requires that the expense incurred in the operation of the district shall be financed in accordance with the district plan upon which the establishment of the district was based, and that the district charge upon benefited real property shall be imposed as provided in the district plan; and that the charge shall be determined, levied, and collected in the same manner and at the same time and by the same officers as the general municipal taxes are levied and collected; and

WHEREAS, the proposed 2020 BID budget will be accepted by the Board of Directors of the Downtown Canandaigua Business Management Association, Inc. at its meeting of December 18, 2019; and

WHEREAS, the BID's 2020 budget, a summary of which is attached hereto, includes an amount not to exceed \$36,466 in anticipated revenue to be generated by the BID charge;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Canandaigua that the proposed 2020 BID budget is hereby approved; and

BE IT FURTHER RESOLVED an amount not to exceed \$36,466 shall constitute a levy of the amount to be raised by the district charge, and a warrant to the Clerk/Treasurer to spread and extend such levy upon the properties in the Business Improvement District in accordance with the district plan, and to collect the same.

The motion CARRIED UNANIMOUSLY on the following vote:

AYES: Councilmember Ward 1 Cutri, Councilmember 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

Resolution #2019-102

Moved: Councilmember Ward 2 Palumbo

Seconded: Councilmember Ward 1 Cutri

Councilmember Ward 4 Sutton moved to amend the resolution to draft anew contract for the Chamber of Commerce to include a provision for the Chamber to report to Council quarterly on recruitment for new businesses in the City. Councilmember-at-Large Uebbing seconded the motion.

Vote on Amendment:

The motion CARRIED UNANIMOUSLY on the following vote:

AYES: Councilmember Ward 1 Cutri, Councilmember 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

As Amended

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO CONTRACTS WITH SELECTED OUTSIDE AGENCIES AS APPROVED IN THE 2020 BUDGET

WHEREAS, the organizations, made a part of this resolution, have agreed to administer and provide individual or group programs for the citizens of the Canandaigua area; and

WHEREAS, said programs complement City goals through public safety, promotion of economic development, personal development, and social enrichment;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Canandaigua that the City Manager is authorized to execute contracts with these organizations as required and in accordance with the amounts appropriated in the 2020 Budget.

AND BE IT FURTHER RESOLVED, City Council directs the City Manager to draft a new contract, for review and approval by Council, between the City of Canandaigua and the Chamber of Commerce to include a provision that the Chamber will report on a quarterly basis a summary of their efforts to identify and recruit new businesses to locate within the City of Canandaigua.

Amended Resolution:

The motion CARRIED UNANIMOUSLY on the following vote:

AYES: Councilmember Ward 1 Cutri, Councilmember 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

Resolution #2019-103

Moved: Councilmember Ward 3 White

Seconded: Councilmember Ward 2 Palumbo

A RESOLUTION ADOPTING THE CITY OF CANANDAIGUA FEE SCHEDULE

WHEREAS, in accordance with the Municipal Code of the City of Canandaigua, various fees pertaining to applications, permits, inspections, and services shall be set by resolution of the City Council, and;

WHEREAS, the City Council has reviewed the proposed “City of Canandaigua Fee Schedule” as part of its 2020 budget process;

NOW, THEREFORE, BE IT RESOLVED by the Canandaigua City Council that:

Section 1. The “City of Canandaigua Fee Schedule” shall be adopted as attached.

Section 2. Said fees shall take effect January 1, 2020.

The motion CARRIED UNANIMOUSLY on the following vote:

AYES: Councilmember Ward 1 Cutri, Councilmember 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

Resolution #2019-104

Moved: Councilmember-at-Large Whitcomb

Seconded: Councilmember-at-Large Uebbing

A RESOLUTION AWARDING A CONTRACT FOR SLUDGE POLYMER AT THE WATER RESOURCE RECOVERY FACILITY

WHEREAS, Sludge Polymer is a critical component of the Waste Water Treatment Process at our Water Resource Recovery Facility; and

WHEREAS, a bid to supply Sludge Polymer to the Water Resource Recovery Facility was opened on Thursday, November 21st; and

WHEREAS, two vendors responded, with the lowest responsible bid coming from Polydyne Inc., located at 1 Chemical Plant Road in Riceboro, GA for \$1.18 per pound; and

WHEREAS, Staff recommends awarding this contract so that the facility can continue to operate without disrupting service to the community;

NOW, THEREFORE, BE IT RESOLVED, City Council hereby awards a contract for Sludge Polymer at the Water Resource Recovery Facility to Polydyne Inc. for the amount of \$1.18 per pound.

The motion CARRIED UNANIMOUSLY on the following vote:

AYES: Councilmember Ward 1 Cutri, Councilmember 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

Resolution #2019-105

Moved: Councilmember Ward 2 Palumbo

Seconded: Councilmember Ward 4 Sutton

A RESOLUTION AWARDING A CONTRACT FOR POLYALUMINUM CHLORIDE AT THE WATER TREATMENT PLANT

WHEREAS, Polyaluminum Chloride is a critical component of the Water Treatment Process used by the City of Canandaigua; and

WHEREAS, a bid to supply Polyaluminum Chloride to the Water Treatment Plant was opened on Tuesday, November 12th; and

WHEREAS, two vendors responded, with the lowest responsible bid coming from Holland Company Inc., located in Adams, MA in the amount of \$3.56 per gallon for the first 2500 gallons and then \$3.36 for the next 4500 gallons; and

WHEREAS, Staff recommends awarding this contract so that the facility can continue to operate without disrupting service to the community;

NOW, THEREFORE, BE IT RESOLVED, City Council hereby awards a contract Polyaluminum Chloride at the Water Treatment Plant to Holland Company Inc. for the amount of \$3.56 per gallon for the first 2500 gallons and then \$3.36 for the next 4500 gallons

The motion CARRIED UNANIMOUSLY on the following vote:

AYES: Councilmember Ward 1 Cutri, Councilmember 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

Resolution #2019-106

Moved: Councilmember Ward 1 Cutri

Seconded: Councilmember Ward 3 White

A RESOLUTION AWARDING A CONTRACT FOR POLYALUMINUM CHLORIDE 50% BASICITY AT THE WATER TREATMENT PLANT

WHEREAS, Polyaluminum Chloride 50% Basicity is a critical component of the Water Treatment Process used by the City of Canandaigua; and

WHEREAS, a bid to supply Polyaluminum Chloride 50% Basicity to the Water Treatment Plant was opened on Tuesday, November 12th; and

WHEREAS, the lowest responsible bid was submitted by Slack Chemical, located at 456 South Clinton Street in Carthage, NY for \$2.60 per gallon for the first 2500 gallons and \$1.82 for the next 4500 gallons; and

WHEREAS, Staff recommends awarding this contract so that the facility can continue to operate without disrupting service to the community;

NOW, THEREFORE, BE IT RESOLVED, City Council hereby awards a contract for Polyaluminum Chloride 50% Basicity at the Water Treatment Plant to Slack Chemical for the amount of \$2.60 per gallon for the first 2500 gallons and \$1.82 for the next 4500 gallons.

The motion CARRIED UNANIMOUSLY on the following vote:

AYES: Councilmember Ward 1 Cutri, Councilmember 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

Resolution #2019-107

Moved: Councilmember Ward 4 Sutton

Seconded: Councilmember Ward 1 Cutri

A RESOLUTION AUTHORIZING THE PURCHASE OF A PNEUMATIC VEHICLE EXHAUST EXTRACTION SYSTEM FOR FIRE STATION #1

WHEREAS, in 2012, the World Health Organization classified diesel engine exhaust as a Group 1 carcinogen to humans, placing diesel exhaust in the same deadly category as asbestos, arsenic and tobacco; and

WHEREAS, these hazardous vehicle exhaust emissions in a fire station creates a significant health risk, but these concerns can be eliminated by installing a Pneumatic Vehicle Exhaust Extraction System (PVEES) in the fire station; and

WHEREAS, Fire Station #1 had a PVEES, however the 30-year-old system is original to the building, no longer in service, and needs to be replaced; and

WHEREAS, bids for the Pneumatic Vehicle Exhaust Extraction System opened on December 2, 2019, with only bid coming from Air Cleaning Supply Systems, located at 8 Sunset Drive in Latham, NY in the amount of \$61,991; and

WHEREAS, sufficient funds for this project were included in the 2019 Capital Budget, and Staff recommends authorizing the purchase of the Pneumatic Vehicle Exhaust Extraction System allowing Fire Station #1 to stay properly vented and ensure the safety of the City's firefighters;

NOW, THEREFORE, BE IT RESOLVED, that City Council hereby authorizes the purchase of a Pneumatic Vehicle Exhaust Extraction System from Air Cleaning Supply Systems, located at 8 Sunset Drive in Latham, NY for an amount not to exceed \$61,991.

The motion CARRIED UNANIMOUSLY on the following vote:

AYES: Councilmember Ward 1 Cutri, Councilmember 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

Resolution #2019-108

Moved: Councilmember Ward 3 White

Seconded: Councilmember Ward 4 Sutton

A RESOLUTION SETTING THE TIME AND PLACE OF A PUBLIC HEARING

**REGARDING LOCAL LAW #2020-001 AMENDING CHAPTER 612
OF THE CANANDAIGUA MUNICIPAL CODE**

WHEREAS, the City Council of the City of Canandaigua enacted Local Law #2019-004 on November 21, 2019, which imposed a tax of (3%) on the occupancy of a hotel or motel room in the City;

WHEREAS, Local Law #2019-004 contained a clerical/scrivener's error in that the effective date was incorrectly listed as February 1, 2011, when it should have been listed as March 1, 2020; and

WHEREAS, it is the intent of the City Council of the City of Canandaigua to correct the clerical/scrivener's error in Local Law #2019-004 to reflect the intended effective date of March 1, 2020 which requires the adoption of a local law to correct the error; 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 #2020-001 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 Monday, January 6, 2020.

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

Resolution #2019-109

Moved: Councilmember Ward 4 Sutton

Seconded: Councilmember Ward 1 Cutri

**A RESOLUTION REQUESTING THE ONTARIO COUNTY BOARD OF SUPERVISORS
CHANGE THE IDA APPOINTMENT PROCESS**

WHEREAS, the Ontario County Industrial Development Agency (OCIDA) was formed by the New York State Legislature by the enactment of NYS General Municipal Law §892-f to provide incentives to qualifying businesses that made significant capital investments in Ontario County and create and retain jobs; and

WHEREAS, the incentives provided by the OCIDA include real property tax, sales tax and mortgage recording tax abatements which impact revenues used by municipalities to provide municipal services expected and desired by residents; and

WHEREAS, the Ontario County Board of Supervisors (BOS) and its Planning and Research Committee provide oversight to the governance of the OCIDA and appoint members to the OCIDA Board which has a statutory limit of seven (7) members; and

WHEREAS, the seven (7) members of the OCIDA Board traditionally have been appointed by the BOS to represent the economic development sectors of the County's Economic Development Strategic Plan which include: manufacturing, agriculture & food, financial services, health & medical, information technology & communications, organized labor, and government; and

WHEREAS, recent incentives provided to projects within the City of Canandaigua have caused a community conversation about the OCIDA and concerns about representation on the OCIDA Board have been raised; and

WHEREAS, the Canandaigua City Council is interested in working with the BOS and the OCIDA;

NOW, THEREFORE, BE IT RESOLVED, that the Canandaigua City Council respectfully requests that the Ontario County Board of Supervisors change its OCIDA Board appointment process to include a board member that represents the City of Canandaigua.

Discussion: City Manager Goodwin stated that NYS law states the Ontario County Board of Supervisors as the appointing authority. Mayor Palumbo spoke to the supervisors and they are in favor of a dialog to make appointments. Councilmember-at-Large Uebbing stated that this is a complex issue and should be tabled. Councilmember at-Large Sutton withdrew the motion and this resolution remains on the table.

Ordinances:

Ordinance #2019-007: *(Tabled at the November 7, 2019 Council Meeting)*

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

Lifted from the Table: Councilmember-at-Large Whitcomb

Seconded: Councilmember Ward 4 Sutton

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

Discussion:

Mayor Polimeni state that the Planning Commission is not in favor of this ordinance and the “grandfathering” exception for the current owners.

Councilmember at-Large Sutton understands the importance of preserving the historical district but has driven by these 68 parcels and does not feel they detract nor impose a threat to the character of the neighborhood. This seems to be a solution in search of a problem.

Councilmember-at-Large Whitcomb stated the importance of passing this legislation is for the future of the neighborhood and to make sure it retains the character and feel of the neighborhood.

Councilmember-at-Large O’Brien stated that the Planning Commission has been very reasonable to homeowners in the historic district and will not make you go back to historic standards with improvements already made on your home.

Councilmember Ward 2 Palumbo does not feel this is needed and there are already standards in place when improvements are done to a property.

Councilmember-at-Large Uebbing and Councilmember Ward 3 White understands that this is an important issue and sees merit on both sides of the argument but we did hear from many residents that they are not in favor of this ordinance.

Terry Fisher, 110 Washington St. – Does not understand why this ordinance change is being discussed if it did not come from the Planning Commission in the first place. The City ordinance on amendments to Historic District states that “*Pursuant to the provisions of this Chapter 850, Zoning, the Planning Commission shall file with the City Clerk/Treasurer its report of any proposed amendment, supplementation or repeal of this article after such proposal has been referred to the Planning Commission or its approval thereof shall be deemed to have been made.*” Mr. Fisher also stated that 80% of the properties must meet the criteria upon public inspection of the properties. Also, he did not think residents were given enough time to respond to this or understand the implications of such legislation. The City Attorney clarified that all changes to the City code originates with Council. This section is saying that the planning commission has as obligation to file a report making recommendations.

Brian McCarthy, 126 and 136-138 Washington St. - When we purchased these properties, one of our goals was maximum flexibility at time of sale. An ordinance of this type will hamper our ability to sell these properties. We also would like the flexibility to leave the properties to our son without burdening him with these regulations. This neighborhood has maintained these properties over the years without burdensome regulations. We have been good stewards of these homes. If this does go forward then we should be given the opportunity to opt out of this.

Council discussed if the 80% criteria was actually done and can we just accept the State designation of the properties. Some councilmembers wanted to table this ordinance but others wanted to move if for a vote.

Moved for adoption: Councilmember Ward 4 Sutton

Seconded: Councilmember-at-Large Whitcomb

The motion FAILED on the following vote:

AYES: Councilmember-at-Large O'Brien, and Councilmember-at-Large Whitcomb

NOES: Council Member Ward 1 Cutri, Council Member Ward 2 Palumbo, Councilmember Ward 3 White, Councilmember Ward 4 Sutton, Councilmember-at-Large Terwilliger, Councilmember-at-Large Uebbing and Mayor Polimeni.

Local Laws:

Local Law #2019-005: *(Tabled at the November 7, 2019 Council Meeting)*

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

Lifted from the Table: Councilmember-at-Large O'Brien

Seconded: Councilmember Ward 4 Sutton

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

Amendment: Councilmember-at-Large O'Brien moved to amend Local Law to adjust the sewer rate to \$4.50 per 1000 gallons for a minimum quarterly charge of \$50.40. Councilmember Ward 4 Sutton seconded the motion.

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

Amended Local Law:

Moved for adoption: Councilmember-at-Large O'Brien

Seconded: Councilmember Ward 4 Sutton

The motion CARRIED UNANIMOUSLY on the following vote:

AYES: Councilmember Ward 1 Cutri, Councilmember 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 #2020-001:

The following local law was placed 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;

WHEREAS, the City Council of the City of Canandaigua enacted Local Law #2019-004 on November 21, 2019, which imposed a tax of (3%) on the occupancy of a hotel or motel room in the City;

WHEREAS, Local Law #2019-004 contained a clerical/scrivener's error in that the effective date was incorrectly listed as February 1, 2011, when it should have been listed as March 1, 2020; and

WHEREAS, it is the intent of the City Council of the City of Canandaigua to correct the clerical/scrivener's error in Local Law #2019-004 to reflect the intended effective date of March 1, 2020.

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 ~~the first day of February 2011~~ March 1, 2020, there is hereby imposed and there shall be paid a tax of 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~~ March 1, 2020, 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~~ March 1, 2020.

§ 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~~ **March 1, 2020**, 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~~ **March 1, 2020**. 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~~ **March 1, 2020**. 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.

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

- Reminds residents of the Snow and Ice policy in effect. Sidewalks need to be clear of snow and ice by 24 hours after a snow event.

Appointments:

Part-time City Court Judge: Councilmember-at-Large Uebbing moved to appoint Judge Schuppenhauer to the Part Time City Judge Position for a six (6) year term. Councilmember-at-Large Whitcomb seconded the motion.

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

Zoning Board of Appeals: Councilmember Ward 1 Cutri moved that Joe Bader be re-appointed to a second term and Julie Harris re-appointed to a first full term on the Zoning Board of Appeals. Councilmember Ward 4 Sutton seconded the motion.

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

Board of Assessment Review: Councilmember Ward 4 Sutton moved the appointment of Ryan Wilmer to the Board of Assessment Review. Councilmember Ward 2 Palumbo seconded the motion.

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

Mayor Polimeni appoints Councilmember Ward 3 White to the Middle Cheshire and Hospital Corridor Active Transportation Steering Team.

Mayor Polimeni appoints Elizabeth Hanes and Shawn Kenaley to the Tree Advisory Board.

Miscellaneous: None

Adjournment

Councilmember-at-Large O'Brien moved to adjourn the regular session at 9:25 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