

CITY OF LOCKPORT
CORPORATION PROCEEDINGS

Lockport Municipal Building

Regular Meeting
Official Record

October 6, 2010
6:00 P.M.

Mayor Michael W. Tucker called the meeting to order.

ROLL CALL

The following Common Council members answered the roll call:

Aldermen Pasceri, Smith, McKenzie, Chapman, and Genewick.

Absent: Alderman Kibler

RECESS

Recess for public input.

100610.1

APPROVAL OF MINUTES

On motion of Alderman Pasceri, seconded by Alderman McKenzie, the minutes of the Regular Meeting of September 15, 2010 are hereby approved as printed in the Journal of Proceedings. Ayes 5. Carried.

FROM THE MAYOR

Appointments:

10/6/10 Charlene Seekins-Smith, 77 Collidge Avenue, Lockport, NY – re-appointed as a member of the Planning and Zoning Board. Said term expires October 14, 2013. Received and filed.

10/6/10 Craig Hugill, 23 Utica Street, Lockport, NY – re-appointed as a member of the Planning and Zoning Board. Said term expires October 14, 2013. Received and filed.

FROM THE CITY CLERK

The Clerk submitted payrolls, bills for services and expenses, and reported that the Department Heads submitted reports of labor performed in their departments. Referred to the Finance Committee.

Communications (which have been referred to the appropriate City officials)

9/10/10 Jeff Tracy, Race Director, Lockport Family YMCA, 19 East Avenue, Lockport, NY – request permission to conduct their 40th annual Open Road Race on February 12, 2011. Referred to the Committee of the Whole

9/14/10 Debra VanDusen, Festival Chair, Emmanuel United Methodist Church, 75 East Avenue, Lockport, NY – request permission to conduct their annual Fall Festival and auction on October 16, 2010. Referred to the Committee of the Whole

10/4/10 Richard P. Mullaney, City Clerk – notification that the Lockport Municipal Offices will be closed on Monday, October 11, 2010 in observance of the Columbus Day holiday. Garbage scheduled to be collected on Monday, October 11th, will be picked-up on Tuesday, October 12th. Referred to the Media.

Notice of Defect:

9/28/10 697 East Avenue, Lockport, NY - tree
Referred to the Highways & Parks Department.

Decision: (Small Claims Assessment Review)

10/1/10 Ryan Mulvey, 385 Elmwood Avenue, Lockport, NY
10/1/10 Dominic Saraceno, 461 Willow Street, Lockport, NY

MOTIONS & RESOLUTIONS

100610.2

By Alderman McKenzie:

Resolved, that the Mayor and City Clerk be authorized to issue orders in favor of the claimants for payrolls, bills, and services to be paid on October 8, 2010.

Seconded by Alderman Pasceri and adopted. Ayes 5

100610.3

By Alderman Pasceri:

Resolved, that claims authorized for payment by the Director of Community Development, and subsequently paid from the Community Development Escrow Account, be and the same are hereby approved.

Seconded by Alderman McKenzie and adopted. Ayes 5.

100610.4

By Alderman Chapman:

Resolved, that the Mayor and Common Council do hereby extend condolences to the family of John P. Geier, a retired City of Lockport Water Department employee who recently passed away.

Seconded by Alderman Genewick and adopted. Ayes 5.

100610.5

By Alderman Pasceri:

Whereas, the Common Council on March 3, 2010, authorized and directed the Mayor to submit to the New York State Division of Housing and Community Renewal (DHCR) an application for assistance under the New York State HOME Program, and

Whereas, the Mayor has been notified by DHCR that said application has been approved for funding in the amount of \$200,000.00 and has been forwarded a Grant Agreement for execution, now, therefore, be it

Resolved, that the Mayor is hereby authorized and directed to execute and deliver said Grant Agreement to DHCR, and to take all acts and execute and deliver any and all documents.

Seconded by Alderman Genewick and adopted. Ayes 5.

100610.6

By Alderman Pasceri:

Whereas, the City of Lockport is engaged in the administration of the Federal HOME Investment Partnership Program, and

Whereas, the City has established as a primary goal the provision of safe, decent and sanitary housing, and

Whereas, the Lockport Common Council is desirous of establishing a HOME Housing Rehabilitation Program to further the City's primary goal, now, therefore, be it

Resolved, that said HOME Housing Rehabilitation Program be hereby adopted and that the Director of Community Development be authorized to administer those 2010 funds budgeted for said program.

Seconded by Alderman Genewick and adopted. Ayes 5.

100610.7

By Alderman Pasceri:

Whereas, On June 1, 2003 the First Presbyterian Church of Lockport entered into a lease agreement with the City of Lockport and the Greater Lockport Development Corporation to lease the Erie Canal Discovery Center f/k/a the Hamilton House, 24 Church Street, Lockport, New York 14094 to the City and the GLDC, and

Whereas, on June 1, 2003 the City and the GLDC entered into a sublease agreement with the Niagara County Historical Society to operate the Canal Discovery Center, and

Whereas, the parties wish to make the following changes:

1. Increase rent from \$1.00 per year to \$1,500 per year;
2. Historical Society will be responsible for utilities for the apartment;
3. Historical Society will pay for broad form fire insurance for subtenant operations;
4. Subtenant shall have a right of first refusal if Landlord offers building for sale.

Now therefore, be it

Resolved, that the Mayor be and is hereby authorized to execute an addendum to the above June 1, 2003 lease agreement amending the above terms.

Seconded by Alderman McKenzie and adopted. Ayes 5.

By Alderman McKenzie:

Resolved, that the reading of the foregoing resolution be and the same is hereby waived.

Seconded by Alderman Pasceri and adopted. Ayes 5.

100610.8

By Alderman Pasceri:

Resolved, that the following Local Law be and the same is hereby adopted:

City of Lockport
Local Law No. 6 of the year 2010

A local law amending the City of Lockport Hotel Occupancy Tax Law

Be it enacted by the Common Council of the City of Lockport as follows:

**SECTION 1
TITLE**

This local law shall be known as the City of Lockport Hotel Occupancy Tax Law.

**SECTION 2
DEFINITIONS**

When used in this enactment the following terms shall mean:

“Hotel or Motel” A building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" or "motel" includes an apartment hotel, a motel, boarding house or club, bed and breakfast, inns, and tourist homes, whether or not meals are served.

“Occupancy” The use or possession, or the right to the use or possession, of any room in a hotel.

“Occupant” A person who, for 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.

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

“Rent” The consideration received for occupancy valued in money, whether received in money or otherwise.

“Room” Any room or rooms of any kind in any part or portion of a hotel, which is available for or let out for any purpose other than a place of assembly.

SECTION 3 IMPOSITION OF SALES TAX

On and after December 1, 2010, there is hereby imposed and there shall be paid a tax of 4 percent upon the rent for every occupancy of a room or rooms in a hotel in this state, except that the tax shall not be imposed upon (1) a permanent resident, or (2) where the rent is not more than at the rate of two dollars per day.

The tax imposed herein shall be paid upon any occupancy on and after December 1, 2010, 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 herein to the extent that it covers any period on and after December 1, 2010 and such rent shall be apportioned on the basis of the ratio of the number of days falling within said period to the total number of days covered thereby.

SECTION 4 EXEMPT ORGANIZATIONS

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

- (1) The State of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement of compact with another state or Canada) or political subdivisions where it is the purchaser, user or consumer, or where it is a vendor of services or property of a kind not ordinarily sold by private persons;
- (2) The United States of America, and any of its agencies and instrumentalities, insofar as it is immune from taxation where it is the purchaser, user or consumer, or where it sells services or property of a kind not ordinarily sold by private person;
- (3) The United Nations or any international organization of which the United States of America is a member where it is the purchaser, user or consumer, or where it sells services or property of a kind not ordinarily sold by private persons;
- (4) Any corporation, association, trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, (except as otherwise provided in subsection (h) of section five hundred one of the United States internal revenue code of nineteen hundred fifty-four, as amended), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office;

- (5) A post or organization of past or present members of the armed forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization:
 - (a) organized in this state,
 - (b) at least seventy-five percent of the members of which are past or present members of the armed forces of the United States and substantially all of the other members of which are individuals who are cadets or are spouses, widows, or widowers of past or present members of the armed forces of the United States or of cadets, and
 - (c) no part of the net earnings of which inures to the benefit of any private shareholders or individual.
- (6) The following Indian nations or tribes residing in New York State: Cayuga, Oneida, Onondaga, Poospatuck, Saint Regis Mohawk, Seneca, Shinnecock, Tonawanda and Tuscarora, where it is the purchaser, user or consumer.
- (7) A not-for-profit corporation operating as a health maintenance organization subject to the provisions of article forty-four of the public health law.
- (8) Cooperative and foreign corporations doing business in this state pursuant to the rural electric cooperative law.

SECTION 5 TERRITORIAL LIMITATIONS

Any tax imposed under the authority of this enactment shall apply only within the territorial limits of the City of Lockport except that any establishment located partially within the City of Lockport and partially within a town or towns and receiving any services or utilities provided by the City of Lockport shall be deemed to be wholly within the City of Lockport for the purposes of the taxes imposed herein.

SECTION 6 REGISTRATION

Within ten days after the effective date of this local law or amendment, 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 a certificate of registration in a form prescribed by the City Clerk. The City Clerk 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 occupant and duplicate thereof for each additional hotel of such operator. Each certificate or duplicate shall state the hotel to which it is applicable. Such certificates 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 Certificates shall be non-assignable and non-transferable and shall be surrendered immediately to the City Clerk upon the cessation of business at the hotel named or upon its sale or transfer.

**SECTION 7
ADMINISTRATION AND COLLECTION**

- (1) The tax imposed by this local law shall be administered and collected by the City Treasurer.
- (2) 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 or charge 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 local law, and the operator shall have the same right in respect to collecting the tax from the occupant, or in respect to non-payment of the tax by the occupant as if the tax were a 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 may have in the event of non-payment of rent by the occupant.
- (3) The City Treasurer may, wherever he deems it necessary for the proper enforcement of this local law, provide by regulation that the occupant shall file returns and pay directly to the City Treasurer the tax herein imposed, at such times as returns are required to be filed and payment over made by the operator.
- (4) For the purpose of the proper administration of this local law 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 the occupant. Where an occupant claims exemptions from the tax under the provisions of section four hereof, the rent shall be deemed taxable hereunder unless the operator shall receive from the occupant claiming such exemption a copy of a certificate issued by the City Treasurer certifying that the corporation or association therein named is exempt from the tax under section four hereof, together with a certificate duly executed by the corporation or association named in the certificate of the City Treasurer certifying that the occupant is its agent, representative or employee and that his occupancy is paid or to be paid by, and is necessary or required in the course of or in connection with the affairs of said corporation or association.

**SECTION 8
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 Treasurer may by regulation require. Such records shall be available for inspection and examination at any time upon demand by the City Treasurer or his duly authorized agent or employee and shall be preserved for a period of three years, except that the City Treasurer may consent to their destruction within that period or may require that they be kept longer.

SECTION 9 RETURNS

- (1) Every operator shall file with the City Treasurer a return of occupancy and of rents, and of the taxes payable thereon for the periods ending March thirty-first, June thirtieth, September thirtieth, and December thirty-first of each year. Such returns shall be filed within twenty days from the expiration of the period covered thereby. The City Treasurer may permit or require returns to be made by other periods and upon such dates as he may specify. If the City Treasurer deems it necessary in order to insure the payment of the tax imposed by this local law, he 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 may specify.
- (2) The forms of returns shall be prescribed by the City Treasurer and shall contain such information as he may deem necessary for the proper administration of this local law. The City Treasurer may require amended returns to be filed within twenty days after notice and to contain the information specified in the notice.
- (3) If a return required by this local law is not filed, or if a return when filed is incorrect or insufficient on its face, the City Treasurer shall take the necessary steps to enforce the filing of such a return or of a corrected return.

SECTION 10 PAYMENT OF TAX

At the time of filing a return of occupancy and of rents each operator shall pay to the City Treasurer the taxes imposed by this local law 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 in this local law. 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 Treasurer on the date limited 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 the taxes due thereon. Where the City Treasurer in his discretion deems it necessary to protect revenues to be obtained under this local law he may require any operator required to collect the tax imposed by this local law to file with him 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 the solvency and responsibility, in such amount as the City Treasurer may fix 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 Treasurer determines that an operator is to file such bond he 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 Treasurer at which the necessity, propriety and amount of the bond shall be determined by the City Treasurer. Such determination shall be final and shall be complied with within fifteen days after the giving of notices thereof. In lieu of such bond, securities approved by the City Treasurer or case in such amount as he may prescribe may be deposited which shall be kept in the custody of the City Treasurer who may at any time without notice to the depositor apply them to any tax and/or interest or penalties due, and for that purpose the securities may be sold by him at public or private sale without notice to the depositor thereof.

SECTION 11 DETERMINATION OF TAX

If a return required by this 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 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, location, scale or 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 thirty days after giving of notice of such determination, shall apply to the City Treasurer for a hearing, or unless the City Treasurer of his own motion shall redetermine the same. After such hearing, the City Treasurer shall give notice of his determination to the person against whom the tax is assessed. The determination of the City shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the Civil Practice Law and Rules, provided however, that such proceeding is instituted in the Supreme Court within thirty days after the giving of the notice of such determination. A proceeding under article seventy-eight of the Civil Practice Law and Rules shall not be instituted unless (a) the amount of any tax sought to be reviewed, with penalties and interest thereon, if any, shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or (b) at the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, penalties and interest thereon stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, penalties and interest as a condition precedent to the application.

SECTION 12 REFUNDS

- (1) In the manner provided in this section the City Treasurer shall refund or credit without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the City Treasurer for such refund shall be made within one year from the payment thereof. Whenever a refund is made by the City Treasurer, he shall state his reason therefore in writing. Such application may be made by the occupant, operator or other person who has actually paid the tax. Such application when made by an operator who has collected and paid over such tax to the City Treasurer, provided that the application is made within one year of the payment by the occupant to the operator, shall be acted upon and refunded any moneys due, only after such operator shall first establish to the satisfaction of the City Treasurer, under such regulations as the City Treasurer may prescribe, that he has repaid or will simultaneously repay to the occupant the amount for which the application for refund is made. The City Treasurer may, in lieu of any refund required to be made, allow credit therefore on payments due from the petitioner.

- (2) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the City Treasurer, and such City Treasurer shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the Civil Practice Law and Rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that final determination of tax due was not previously made, and that an undertaking be filed with the City Treasurer in such amount and with such sureties as a Justice of the Supreme Court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.
- (3) A person shall not be entitled to a revision, refund or credit under this section of a tax, interest or penalty which had been determined to be due pursuant to the provisions of section thirteen of this local law where he 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 Treasurer made pursuant to section thirteen of this local law unless it be found that such determination was erroneous or unconstitutional or otherwise improper by the City Treasurer after a hearing or of his own motion or in a proceeding under article seventy-eight of the Civil Practice Law and Rules, pursuant to the provisions of said section, in which event or refund or credit without interest shall be made of the tax, interest or penalty found to have been overpaid.

SECTION 13 DISPOSITON OF REVENUES

All revenues from the imposition of the tax under this local law shall be paid into the treasury of the City of Lockport and shall be credited to and deposited in the General Fund Account of the City of Lockport. Five percent (5%) of said revenue shall be retained by the City of Lockport for administration and collection costs. The disposition of the remaining "net" revenues shall be as follows: Twenty-five percent (25%) of the net revenue from the tax shall be used for the promotion of community and economic development in the City of Lockport; Seventy-five percent (75%) of the net revenue shall be allocated and paid to a not-for-profit Corporation under contract with the County for the promotion of tourism in the County. The terms "economic development" and "tourism" may be defined by resolution of the Lockport City Council.

SECTION 14 RESERVES

In cases where the occupancy or operator has applied for a refund and has instituted a proceeding under article seventy-eight of the Civil Practice Law and Rules to review a determination adverse to him on his application for refund, the City Treasurer shall set up appropriate reserves to meet any decision adverse to the City.

SECTION 15 REMEDIES EXCLUSIVE

The remedies provided in this local law shall be exclusive remedies available to any person for the review of tax liability imposed by this local law; 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 seventy-eight of the Civil Practice Law and Rules; provided, however, that a taxpayer may proceed by declaratory judgment if he institutes suit within thirty days after a deficiency assessment is made and pays the amount of the deficiency assessment to the City Treasurer prior to the institution of such suit and posts a bond for costs as provided in this local law.

SECTION 16 PROCEEDING TO RECOVER TAX

- (1) Whenever any operator or any officer of a corporate operator or any occupancy or other person shall fail to collect and pay over any tax and/or to pay any tax, penalty or interest imposed by this local law as therein provided, the Corporation Counsel shall, upon the request of the City Treasurer bring or cause to be brought an action to enforce the payment of the same on behalf of the City of Lockport in any court of the State of New York or of any other state or of United States. If, however, the City Treasurer in his 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 may declare such tax or penalty to be immediately due and payable and may issue a warrant immediately.
- (2) As an additional or alternate remedy, the City Treasurer may issue a warrant, directed to the sheriff commanding him to levy upon and sell the real and personal property of the operator or officer of a corporate operator or of the occupant or other person liable for the tax, which may be found within the City for the payment of the amount thereof, with any penalties and interest, and the cost of executing the warrant, and to return such warrant to the City Treasurer and to pay to him the money collected by virtue thereof within sixty days after the receipt of such warrant. The sheriff shall within five days after the receipt of the warrant file with the County Clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalties and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon any interest in real and personal property of the person against whom the warrant is issued. The sheriff shall then proceed upon the warrant, in the same manner, and with like effect, as that provided by law in respect to executions issued against property upon judgments of a court of record and for services in executing the warrant he shall be entitled to the same fees, which he may collect in the same manner. In the discretion of the City Treasurer a warrant of like terms, force and effect may be issued and directed to any officer or employee of the City Treasurer and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is

returned not satisfied in full, the City Treasurer may, from time to time, issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the City has recovered judgment therefore and execution thereon has been returned unsatisfied.

- (3) Whenever an operator shall make a sale, transfer, or assignment in bulk of any part or the whole of his hotel or his lease, license or other agreement or right to possess or operate such hotel, apartment hotel, or of the equipment, furnishings, fixtures, supplies or stock of merchandise, of the said premises or lease, license or other agreement or right to possess or operate such hotel, apartment hotel and the equipment, furnishings, fixtures, supplies and stock of merchandise pertaining to the conduct or operation of such hotel, otherwise than in the ordinary and regular prosecution of business, the purchaser, transferee or assignee shall at least ten days before taking possession of the subject of said sale, transfer or assignment, or paying therefore, notify the City 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 local law, and whether or not the purchaser, transferee or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing. Whenever the purchaser, transferee or assignee shall fail to give notice to the City Treasurer as required by the preceding paragraph or whenever the City Treasurer shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to 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 county, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferor or assignor any such sums of money, property or choses in action to the extent of the amount of the City's claim. For failure to comply with the provisions of this subdivision, 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 local law.

SECTION 17 GENERAL POWERS OF THE CITY TREASURER

In addition to the powers granted to the City Treasurer in this local law, he is hereby authorized and empowered:

- (1) To make, adopt and amend rules and regulations appropriate to the carrying out of this local law and the purposes thereof;
- (2) To extend for cause shown, the time of filing any return for a period not exceeding thirty days; and for cause shown, to waive penalties but not interest computed at the rate of six percentum per annum; and to compromise disputed claims in connection with the taxes hereby imposed;

- (3) 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, any other provision of this local law to the contrary notwithstanding;
- (4) To delegate his functions hereunder to a Deputy City Treasurer or any employee or employees of the office of City Treasurer;
- (5) To prescribe methods for determining rents for occupancy and to determine the taxable and non-taxable rents;
- (6) 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 local law, and to furnish such information upon request to the City Treasurer.
- (7) To assess, determine, revise and readjust the taxes imposed under this local law.

**SECTION 18
ADMINISTRATION OF OATHS AND COMPELLING TESTIMONY**

- (1) The City Treasurer or his employees or agents duly designated and authorized by him 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 local law. The City 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 duties hereunder and of the enforcement of this local law 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 or excused from attendance.
- (2) 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 from by the subpoena of the City Treasurer under this local law.
- (3) 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 Treasurer under this local law shall be guilty of a misdemeanor, punishment for which shall be a fine of no more than one thousand dollars or imprisonment for not more than one year, or both such fine and imprisonment.
- (4) The officers who serve the summons or subpoena of the City 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 County Sheriff and his duly appointed deputies or any officers or employees of the City Treasurer, designated to serve such process.

SECTION 19 PENALTIES AND INTEREST

- (1) Any person failing to file a return or to pay or pay over any tax to the City Treasurer within the time required by this local law shall be subject to a penalty of five percentum of the amount of tax due plus interest at the rate of one percentum of such tax for each month of delay excepting the first month after such return was required to be filed or such tax became due. Such penalties and interest shall be paid and disposed of in the same manner as other revenues from this local law. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this local law.
- (2) Any operator or occupant and any officer of a corporate operator or occupant failing to file a return required by this local law, 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 local law, 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 this local law, or failing to file a registration certificate and such data in connection therewith as the City Treasurer may by regulation or otherwise require or to display or surrender the certificate of authority as required by this local law or assigning or transferring such certificate or authority and any operator and 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 issued or employed by the operator, or willfully failing or refusing to collect such tax from the occupant, and any operator failing to keep the records required by section nine of this local law, shall, in addition to the penalties herein or elsewhere prescribed, be guilty of a misdemeanor, punishment for which shall be a fine of not more than one thousand dollars, or 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 local law, and subject to the penalties herein above imposed.
- (3) The certificate of the City 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 local law, shall be presumptive evidence thereof.

SECTION 20 RETURNS TO BE SECRET

Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the City Treasurer or any officer or employee of the office of City 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 local law. The officer 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 Treasurer in an action or proceeding under the provisions of this local law, or on behalf of any party to any action or proceeding under the provisions of this local law 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 duly authorized representative of a certified copy of any return filed in connection with his tax nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the Corporation Counsel or other legal representatives of the City or by the District Attorney of Niagara 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 Treasurer permits them to be destroyed.

SECTION 21 NOTICES AND LIMITATIONS OF TIME

- (1) Any notice authorized or required under the provisions of this local law may be given by mailing the same to the person for whom it is intended in a post paid envelope addressed to such person at the address given in the last return filed by him pursuant to the provisions of this local law, or in any application made by him 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 whom addressed. Any period of time which is determined according to the provisions of this local law by the giving of notice shall commence to run from the date of filing of such notice.
- (2) 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 local law. However, except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return; provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.
- (3) Where, before the 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.

SECTION 22 CONSTRUCTION AND ENFORCEMENT

This enactment shall be construed and enforced in conformity with articles twenty-eight and twenty-nine of the tax law of the State of New York pursuant to which the same is enacted.

**SECTION 23
SEPARABILITY**

If any provision of this enactment or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this enactment but shall be confined in its operation to the provisions thereof directly involved in the controversy in which such judgment shall have been rendered and the application of such provision to other persons or circumstances shall not be affected thereby.

**SECTION 24
EFFECTIVE DATE**

This enactment shall take effect on the first day of December, two thousand ten, except that certificates of registration may be filed and certificates of authority to collect tax may be issued prior to said date.

Seconded by Alderman McKenzie. A roll call vote was taken which resulted as follows:

Alderman Chapman	VOTING	Y
Alderman Genewick	VOTING	Y
Alderman Kibler	ABSENT	
Alderman McKenzie	VOTING	Y
Alderman Pasceri	VOTING	Y
Alderman Smith	VOTING	Y

The Local Law was thereupon declared duly adopted.

100610.9

By Alderman Pasceri:

Resolved, that pursuant to their request, the Lockport Family Y.M.C.A. is hereby granted permission to conduct their 40th Annual Y-10 Open Road Race and to close Market Street during the race and close East Avenue from Washburn Street to Elm Street at the beginning and end of the race on Saturday, February 12, 2011, subject to approval of the race route by the Police Chief and subject to filing a certificate of insurance with the City Clerk naming the City of Lockport as additional insured, and be it further

Resolved, that the Highways & Parks Department is hereby authorized and directed to salt the streets in the City's portion of the race route if necessary, and to deliver barricades, cones, and "street closed" signs as required, and be it further

Resolved, that the Traffic Captain is hereby directed to arrange for police support for said event.

Seconded by Alderman Genewick and adopted. Ayes 5.

100610.10

By Alderman Chapman:

Resolved, that the Superintendent of Public Utilities is hereby authorized and directed to sell via online auction, to the highest bidders, used vehicles and surplus equipment/supplies, and be it further

Resolved, that the City Clerk is authorized and directed to advertise for same.

Seconded by Alderman McKenzie and adopted. Ayes 5.

100610.11

By Alderman Genewick:

Resolved, that pursuant to their request, the United Auto Workers, Local 686 Veteran's Committee is hereby granted permission to conduct their Annual Veteran's Appreciation 5K run and barricade Vine Street from Walnut Street to Remick Parkway starting at approximately noon on November 6, 2010, subject to the U.A.W. Local 686 filing a certificate of insurance with the City Clerk naming the City of Lockport as additional insured and subject to approval of the race route by the Police Chief, and be it further

Resolved, that the Highways & Parks Department is authorized and directed to deliver barricades to said area prior to the event.

Seconded by Alderman McKenzie and adopted. Ayes 5.

100610.12

By Alderman Pasceri:

Resolved, that the 2010 General Fund Budget be amended by creating a temporary (one month- October 2010) position of Payroll and Benefits Administrator in account # 01 1320.100 in accordance with the CSEA Pay Plan *~~Grade 6~~ Grade 10 Step 2, and be it further

Resolved, that the Mayor, subject to Corporation Counsel approval, be authorized to execute a three month (November - December 2010 and January 2011) employment agreement with Sandra Mottorn at a cost of \$27.6907 per hour for the purposes of providing training services to the City of Lockport Accounting Department.

Seconded by Alderman Genewick and adopted. Ayes 5.

100610.13

By Alderman Smith:

Resolved, that pursuant to their request, Emmanuel United Methodist Church is hereby granted permission to barricade Wakeman Place and to conduct hayrides during their annual fall festival and auction on Saturday, October 16, 2010 from 1:00 p.m. to 3:30 p.m. Said permission is subject to Emmanuel United Methodist Church filing a certificate of insurance with the City Clerk naming the City of Lockport as additional insured and approval of the route by the Police Chief, and be it further

Resolved, that the Highways and Parks Department be and the same is hereby authorized and directed to deliver barricades to the area prior to the event.

Seconded by Alderman Genewick and adopted. Ayes 5.

100610.14

By Alderman Pasceri:

Resolved, that Sunday, October 31, 2010 is hereby designated as Halloween Day in the City of Lockport with the hours for trick or treating scheduled from 4:00 p.m. to 7:00 p.m.

Seconded by Alderman McKenzie and adopted. Ayes 5.

*CORRECTED 10/12/10

100610.15

By Alderman Chapman:

Resolved, that the Mayor and Common Council do hereby extend condolences to the family of John R. O'Malley, a retired City of Lockport Water Department employee who recently passed away.

Seconded by Alderman McKenzie and adopted. Ayes 5.

100610.16

By Alderman Pasceri:

Whereas, the City of Lockport desires to remove asbestos contamination from the Dussault Foundry Site at 2 & 10 Washburn Street, and

Whereas, the Niagara County Brownfields Cleanup Revolving Fund program will reimburse the City of Lockport for professional services and abatement costs up to \$200,000, and

Whereas, the Director of Engineering has prepared a request for proposals and received four proposals for professional consulting services, and

Whereas, the Director of Engineering has reviewed said proposals and recommends acceptance of the proposal received from Labella Associates, P.C., 300 State Street, Suite 201, Rochester, NY 14614 on a time and material basis not to exceed \$20,000, now therefore it be

Resolved, that the proposal from Labella Associates, P.C., 300 State Street, Suite 201, Rochester, NY 14614 received on September 10, 2010 be accepted in the amount of \$16,970.00 with a contingency amount of \$3,030.00, and further be it

Resolved, that the Mayor is authorized and directed to enter into a Contract with Labella Associates for said work. Cost of same to be charged to account # 004-0004-0520-0092.

Seconded by Alderman Genewick and adopted. Ayes 5.

100610.16A

By Alderman Pasceri:

Resolved, that pursuant to their request, Lockport High School is hereby granted permission to conduct a Homecoming Parade in the City of Lockport on Saturday, October 16, 2010, starting at 1 p.m., subject to approval of the parade route by the Police Chief and issuance of a parade permit by the City Clerk.

Seconded by Alderman McKenzie and adopted. Ayes 5.

100610.16B

By Alderman Chapman:

Whereas, the Cities of Lockport, North Tonawanda and Niagara Falls have completed a study aimed at achieving greater efficiencies and costs savings from sharing of water and wastewater services, and

Whereas, the initial study recommends merging the provision of water treatment services between the City of Lockport and the City of North Tonawanda, and

Whereas, additional funding is being sought to develop a specific implementation plan for the consolidation of water services and consistent with the study and in the spirit of cooperation, the Cities have agreed to merge the overall management of the water and wastewater services for a trial period of eighteen months by sharing a director, and

Whereas, in the interim, this will be achieved by North Tonawanda contracting with the City of Lockport to utilize the services of the City of Lockport's Director of Public Utilities, and

Whereas, this is begin done on a temporary basis as the Cities continue to cooperate in implementing the recommendations of the initial study.

Whereas, LKPT has a Director of Public Utilities, and

Whereas, NT desires to enter into a municipal cooperation agreement to share the services of said Director of Public Utilities, and

Whereas, the Director of Public Utilities shall remain the employee of the LKPT and the Director of Public Utilities shall not become an employee of the NT during the trial period, and

Whereas, the intermunicipal cooperation agreement provides that in the event the agreement is renewed after eighteen months by the parties the person holding the Director of Public Utilities position in LKPT will become an employee of NT, and

Whereas, the intermunicipal cooperation agreement further provides that either party may cancel the agreement upon 6 months notice, and

Whereas, the LKPT desires to share the services of its Director of Public Utilities with the NT by sharing the cost of said services (Director of Public Utilities) as follows:

	<u>Curr. Cost</u>	<u>New Position</u>	<u>Incremental Cost to be Shared</u>
Salary	\$64,505	\$90,000	\$90,000
Stipend	0	\$10,000	\$10,000
Overtime Stipend (4.5% of salary)	\$ 2,903	in stipend	in stipend
Health Insurance (\$1253/mo)	\$15,036	\$15,036	not in Yr 1
Longevity	\$1,250	\$1,250	NA
FICA/Medicare (7.65% of salary, OT and Long.)	\$5,252	\$7,746	\$2,494
Retirement Contr. (11.2% of adjust. Salary)	\$7,690	\$11,340	\$3,650
Workers Comp Contr.	\$500	\$500	NA
Education	0	in stipend	in stipend
Mileage	0	in stipend	in stipend
Vacation/Cash Out	0	in stipend	in stipend
<u>Total Costs to Be Shared</u>		<u>\$106,144</u>	

Now therefore be it

Resolved, that the Mayor be and is hereby authorized to execute an intermunicipal cooperation agreement with the City of North Tonawanda for a period of 18 months for the costs set forth above.

Seconded by Alderman Genewick and adopted. Ayes 5.

100610.16C

By Alderman Smith:

Whereas, Lockport Canal Homes Housing Development Fund Corp. ("Company") has been formed under Article XI of the Private Housing Finance Law as a redevelopment company to acquire, improve, maintain, own, operate and lease properties located in the City of Lockport, which properties shall after substantial rehabilitation, contain low-income housing units ("Project"); and

Whereas, the Company shall apply to the New York State Division of Housing and Community Renewal ("DHCR") for allocation of low-income housing tax credits under the Internal Revenue Code for the Project and in connection with that application, must demonstrate to the satisfaction of the DHCR that the Project is financially feasible; and

Whereas, under Section 577 of Article XI, the local legislative body of any municipality in which the Company maintains a project maybe contract agree to exempt from local and municipal taxes, other than assessments for local improvements, a portion of the value of the property; and

Whereas, the Project's financial feasibility will be greatly enhanced if the Company enters into this Agreement with the City under Section 577 of Article XI on the terms as set forth herein.

Whereas, the City of Lockport has determined that it is in the public interest to support the neighborhood rehabilitation and reconstruction to be undertaken by the Company and that it is an appropriate exercise of the City's authority to negotiate an agreement with the Company for the reduction of local property taxes in accordance with the Private Housing Finance Law; and

Whereas, the City of Lockport acts on behalf of the County of Niagara and the Lockport City School District in assessing real property for the purpose of taxation;

Now therefore be it resolved by the Common Council of the City of Lockport, New York.

The City of Lockport hereby grants to the Company an exemption from all City, County and School Taxes, other than assessments for local governments, of 100% of the value of such property, together with the improvements to be construed thereon.

Further resolved, this exemption is granted in accordance with Section 577 of the Private Housing Finance Law, substantially upon the terms and conditions of the Tax Agreement to be entered into between the City of Lockport and the Company, a copy of which is attached hereto, which agreement is hereby approved.

Further resolved, this Resolution shall take effect immediately, and the Assessor for the City of Lockport is hereby directed, upon receipt from the Company of recorded deeds for the properties covered by the Tax Agreement, to implement the exemption provisions set forth in the Tax on the tax rolls of the City of Lockport, in accordance with law.

Further resolved, that the Common Council hereby authorizes the Mayor, as Chief Executive of the City of Lockport to enter into a Tax Agreement pursuant to Section 577 of the Private Housing Finance Law with the Company substantially pursuant to the terms and conditions outlined in said contract.

Seconded by Alderman Genewick and adopted. Ayes 5.

100610.17

ADJOURNMENT

At 6:28 P.M. Alderman Pasceri moved the Common Council be adjourned until 6:00 P.M., Wednesday, October 20, 2010.

Seconded by Alderman McKenzie and adopted. Ayes 5.

RICHARD P. MULLANEY
City Clerk