

ECONOMIC DEVELOPMENT COMMITTEE
OF THE
SUFFOLK COUNTY LEGISLATURE
MINUTES

A meeting of the Economic Development Committee of the Suffolk County Legislature was held in the Rose Y. Caracappa Legislative Auditorium of the William H. Rogers Legislature Building, 725 Veterans Memorial Highway, Smithtown, New York on March 16, 2016.

MEMBERS PRESENT:

Leg. William J. Lindsay III, Chairperson
Leg. Steven H. Stern, Vice Chair
Leg. Kara Hahn
Leg. Kevin McCaffrey (excused absence)
Leg. Robert Trotta

ALSO IN ATTENDANCE:

George M. Nolan, Counsel to the Legislature
Sarah Simpson, Assistant Counsel/Legislature
Amy Ellis, Chief Deputy Clerk/Legislature
John M. Kennedy, Jr., Suffolk County Comptroller
Nerina Sperl, Audit & Control
Laura Halloran, Budget Review Office
Jennifer Hann, Aide to Leg. Lindsay
Deborah Harris, Aide to Leg. Stern
Zachary Baum, Aide to Leg. Hahn
Greg Atherton, Aide to Leg. McCaffrey
Katie Horst, County Executive's Office
Rick Brand, Newsday
John Stype, Aide to Leg. Krupski
Michael Pitcher, Communications Director/PO
And all other interested parties

MINUTES TAKEN BY:

Diana Flesher, Court Stenographer

THE MEETING WAS CALLED TO ORDER AT 2:06 PM

CHAIRPERSON LINDSAY:

If we could get all the Legislators to the horseshoe for the Economic Development Committee meeting.

Good afternoon. Welcome to the Economic Development Committee meeting. If we could all please rise for the Pledge of Allegiance led by Legislator Trotta.

SALUTATION

Thank you. Good afternoon. Madam Clerk, do we have any public comment cards?

MS. ELLIS:

No, we don't.

CHAIRPERSON LINDSAY:

Thank you. Anyone here from the public that would like to speak, please, come forward. Not seeing anyone, we'll close the public portion and we'll move right onto our presentations, if we could have our County Comptroller, Mr. Kennedy, if you wouldn't mind stepping forward.

PRESENTATION

COMPTROLLER KENNEDY:

Good afternoon, Mr. Chairman. Thank you very much for the opportunity to be here before the Committee.

For the record, as you know, my name is John M. Kennedy, Jr. I'm the Suffolk County Comptroller. And to my right I have my Chief of Tax Enforcement, Nerina Sperl.

We're here today to go ahead and speak to you and basically support Introductory Resolution 1006, which would implement some changes in the fines and penalties schedule associated with our Hotel/Motel Tax.

The members here of the Committee are familiar with it. For those who are not, you will recall Hotel/Motel Tax is a tax -- lodging tax; basically 3% associated with the price for the stay in any type of a commercial lodging room or opportunity. Suffolk County has had a Hotel/Motel Tax in existence since all the way back to 1994, I believe, it is. In the last six years, the rate has gone to 3%. It is a dedicated tax as we all know. It funds many different amenities in our communities. It also supports the Vanderbilt. It supports the Walt Whitman house. It supports our Hotel/Motel Long Island Visitors and Convention Bureau, who, by the way, I've had the opportunity to meet the new Director. And as a matter of fact, she will be joining us when we do our presentation on the East End on March 30th. And we also have funds that move into the Parks Department as well.

So it is a dedicated fund. It is a robust source for promotion of tourism and for the economy. And I think it's an important driver here in Suffolk County.

CHAIRPERSON LINDSAY:

Thank you, Mr. Comptroller. If you wouldn't mind just walking through the -- what the -- what the resolution 1006 does and what -- the genesis for the change in the law and why you requested that we make these changes.

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COMPTROLLER KENNEDY:

I'd be -- well, actually what I'm going to do, Mr. Chair, is I'm going to turn the microphone over to Miss Sperl. She can speak to the specific changes and generally some of what has led us to come to see you and seek the modifications.

MS. SPERL:

Okay, good afternoon, Chairman Lindsay. How are you?

CHAIRPERSON LINDSAY:

Well.

MS. SPERL:

And members of the Committee and Mr. Nolan and everyone else who I don't know.

So the Comptroller wrote -- sent a letter to the Committee, to Chairman Lindsay on November 4th, 2015 asking for certain changes to the law so that we would have a better -- we would be able to handle our enforcement better. There were two major things that we saw in the law that we thought could be better, if we had higher penalties. So we're asking that the penalties go from 5% to 10%. This way we would have more of -- we would have more of an arm over people who don't pay.

I mean, we have 350 registered hotels we started with. Now we have over 380 based on the work that we've been doing in enforcement. But some of these hotels don't think it's so important to pay on time. And if we had a better -- a higher penalty we would have a stricter enforcement code. And it's in keeping with what the State does with the New York State Department of Tax and Finance Sales Tax. They have a 10% late penalty.

And we're asking that the fines that we -- the law has fines of \$100 a day to be imposed upon any hotel, motel or lodging establishment that does not register with us and does not pay the tax. Those fines of \$100 a day in some of the cases that I've been handling have added up to \$150,000, an amount that we couldn't possibly charge someone and let them -- and have them stay in business. So we're suggesting a lower fine so that we can actually impose it. It's kind of not a fine that can be imposed that easily. In fact, we have really as a county not imposed a tax. We've put the tax into abeyance with a legal agreement when we find a noncompliant facility. And we make them sign a legal agreement that the fines are going to be in abeyance based on their future compliance and if they pay back taxes, penalties and interest.

So those are two of -- the two most important things that we ask for. We also ask that we insert the word "occupancy" next to hotel, motel, call it the Hotel/Motel Occupancy Tax so it's more descriptive as to what the tax does and makes it easier for us when we're explaining it to noncompliant facilities, owners.

COMPTROLLER KENNEDY:

Let me add another piece. So, Mr. Chairman, I think this is an important aspect for the Committee to go ahead and take notice of as well. While we're here before you asking for some latitude with the ability to deal with those entities that we found that are noncompliant, at the same time we have engaged in a robust public information campaign to make the lodging community out there aware. You know, our traditional multilevel corporate entities, by and large, we have had excellent compliance with. And they are all very much aware. However, many, many, many bed and breakfasts, seasonal homes, lodging homes start the conversation with, "we never knew." Well, you know, there's a variety of ways that we can approach that. One of them is, we all know, ignorance of the law is no excuse.

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But we have also taken it upon ourselves to reach out and work with the Suffolk County Bar Association, to work with LIBOR, the Long Island Board of Realtors, to work with various financial professional associations to put the information out in the first instance. As a matter of fact, I'll be approaching the Suffolk County Chapter of the Land Title Association because, in fact, unpaid Hotel/Motel Tax can actually serve as a lien against clean transfer of a property.

So it is a twofold type of effort, if you will. On March 30th we will be out in Riverhead at the invitation of Legislators Krupski and Fleming to do a presentation to a variety of the East End chambers and bed and breakfast associations to give the operators and give the merchants the information in the first instance. Remember, this is not money that is supposed to come out of the merchants' pocket. It is no different than escrow or any other type of thing in that it is a viable charge against a tenant or an occupant for the stay, for the overnight time that they're there.

And so that is really -- this will give us a much greater degree of flexibility. We'll continue to come back to you throughout the course of the year. Because as we've said, ultimately I would like to be able to see some offset for our enforcement efforts. We now have three staff dedicated to this work as well. And an extremely, extremely important modification to the state-enabling legislation, section 1202, sub O, of Tax Law would be the ability to utilize proceeds from Hotel/Motel Tax for capital improvements. As you know, we all struggle to keep up and to rehabilitate and maintain our historical properties. Unfortunately, right now the statute does not allow for the expenditure to go to offset and assist on the capital improvement side. So that's some of what our thinking is at this point.

CHAIRPERSON LINDSAY:

Great. Thank you, Mr. Comptroller. Thank you, Miss Sperl. A couple questions for you. How -- how do you locate or identify operations that aren't in compliance with the law? Is it -- are you going out being proactive, are they coming forward?

COMPTROLLER KENNEDY:

So, Mr. Chairman, I'll talk to you in a broad based theoretical conversation, if you will, because actual enforcement technique is not necessarily something that auditors typically reveal.

CHAIRPERSON LINDSAY:

I don't want you to give away any secrets.

COMPTROLLER KENNEDY:

Okay. So we have worked with what had been the Treasurer's registry and have updated it. We've made contact with all of our East End town supervisors and their respective building departments or whatever entity in town government may be maintaining a registry of rental properties. We have taken an opportunity to view various websites that may host properties that are offered for a short-term stay. Once a property is put into the chain of Commerce, then it falls under our purview for the purposes of collection. So we've had site visits to particular communities, particularly seasonal communities. We have done a tremendous amount of work to promote in the first instance and to make brokers and real estate agents and other folks aware of this obligation and responsibility. So let's say it's a myriad of activities; how's that?

CHAIRPERSON LINDSAY:

That works. My other question was what would you -- how would you handle someone who came forward voluntarily, you know, just, for example, a small mom and pop bed and breakfast that was -- you know, they were ignorant to the law and that that was their responsibility, but they want to be in compliance and they come forward, is there a hammer dropped on them when they walk into the door?

COMPTROLLER KENNEDY:

Not at all. As a matter of fact, again, let me begin by saying my office and this office in no way, shape or form will be the tool that puts any reputable merchant or vendor out of business. We pattern our activity directly off of the practices of New York State Department of Taxation and Finance. We do not have some of the same latitude that the Commissioner of Taxation and Finance has, although we have worked with Dennis Brown, we have sought legal guidance and we have implemented in every case consistently true tax and penalty because candidly, no place in the State of New York do you find that that will be waived. As to some of the other elements, predicated on good faith, predicated on a willingness to go forward, we can entertain some different arrangements.

CHAIRPERSON LINDSAY:

Okay. Any other questions for the Comptroller? Legislator Trotta.

LEG. TROTТА:

If I own a house on Ocean Beach and I rent it out every week, am I subject to this?

COMPTROLLER KENNEDY:

Yes.

LEG. TROTТА:

This big -- you know, I'm sure you've been on vacation rental by owners, there's hundreds of houses on Ocean Beach.

COMPTROLLER KENNEDY:

Yes.

LEG. TROTТА:

And that kind -- if you own it for -- and you rent it out for one week and you live in it the rest, what's the criteria?

COMPTROLLER KENNEDY:

The -- I don't want to paraphrase and I would refer to Counsel, but I would also encourage you to look directly at section 1202 sub O of tax law where the language is, any room or property that is offered for lodging purposes shall be subject to a lodging tax; a 3% lodging tax. So I suppose if somebody wanted to go ahead and put a trailer on their front lawn and offer it for rent, that'd be subject.

LEG. TROTТА:

That's not if you own a house and rent it, you know, for years on end.

COMPTROLLER KENNEDY:

Anything in excess of 30 days actually falls outside of the Hotel/Motel law. And that, again, is direct interpretation from the State Department of Taxation and Finance. The issue becomes, as you know, in some communities, it's popular for one individual to rent for maybe a 60 or a 90-day term and then sublet or give shares. So is it, in fact, a 90-day continuous rental? Or is it really an overnight or weekend or block rental that becomes subject?

LEG. TROTТА:

That Airbnb is a whole 'nother nightmare, too, I'm assuming.

COMPTROLLER KENNEDY:

Airbnb is interestingly something that has been a challenge for communities across the nation. And we have seen that New York City has entertained some opportunities to look at, engaging them.

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San Francisco recently approved some type of an arrangement, but the posture with Suffolk County has been one that has been extremely one way. They are a proprietary software operator, no different than Uber or Peapod or anything else. Their prospectus is they will remit to us as they choose, when they choose while maintaining anonymity for their members and limiting our ability to audit to a 12-month time period over a four-year cycle. That doesn't comport with the law.

LEG. TROTTA:

I don't know if you know this or not, what percentage of people who stay at hotels in Suffolk County are from Suffolk County?

COMPTROLLER KENNEDY:

You know, there has been some review by LICVB in the past. I don't have those numbers at my fingertip.

LEG. TROTTA:

Do you know what percent Nassau charges hotel tax or the City? I remember seeing --

COMPTROLLER KENNEDY:

Nassau, I believe, is at 3% as well. The City, I believe, has the 3% but they also levy a local city surcharge as well, which may be another 1 or 2% on top of that.

LEG. TROTTA:

It seems to me I've looked at my hotel bill, I've seen like 17% in places.

COMPTROLLER KENNEDY:

Well, remembers what happens is an operator who is actually collecting, as they're supposed to, has a sales tax that they must collect here in Suffolk County 8.625; and then another 3% for Hotel/Motel. So in that case you would see 11.625.

LEG. TROTTA:

I think I've seen it broken out where it says the hotel -- I don't know where I was.

COMPTROLLER KENNEDY:

There are communities up and down the eastern seaboard. You go to Maine and Maine charges 14%.

LEG. TROTTA:

Now, if we went up 1%, how much more money --

COMPTROLLER KENNEDY:

I'm sorry. Hello?

LEG. TROTTA:

Oh, that was your question. If we went up 1%, how much would we -- more money would we get?

COMPTROLLER KENNEDY:

That is to be determined at this point, Legislator Trotta, in that what I've just related to you is a relatively aggressive effort to achieve compliance with existing properties. I would be reluctant to give you an opinion on what the increase would be off of what we have now. Because my hopes are in six months from now, we'll be talking to you about another 50 to 100 properties. So there's two opportunities here, I believe, for you.

First of all is, establishing compliance and getting the universe of vendors out there who are not

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remitting. Then and only then would I encourage you to take a look at what the additional revenue would be off an increase.

LEG. TROTТА:

Off the old number, what would it be?

COMPTROLLER KENNEDY:

Three million.

LEG. TROTТА:

Per percent?

COMPTROLLER KENNEDY:

Ten million -- here, go ahead, tell it.

MS. SPERL:

I'm sorry. This year's tax revenues were \$10 million at the 3% tax. If we were to go up to a 4%, for just this year alone, it would be \$13 million.

LEG. TROTТА:

Okay.

CHAIRPERSON LINDSAY:

And, Legislator Trotta, just to answer your question, New York City includes sales tax. It's 14.75% plus \$3.50 per night. That's New York City hotel tax. Three dollars and fifty cents and then the -- and about 7% in addition to that.

Legislator Hahn, did you have a question as well?

LEG. HAHN:

No. I'm just frustrated.

CHAIRPERSON LINDSAY:

Well, thank you, Mr. Comptroller. Thank you for coming in and thank you, Miss Sperl, for coming in as well. We appreciate it.

COMPTROLLER KENNEDY:

Thank you very much, Mr. Chair. And I appreciate the support from the Legislature. This is the results of those efforts, or the willingness on your part, to support our operations in our office and grow some of our staff. Thank you.

CHAIRPERSON LINDSAY:

Anything we can do to help. Thank you.

TABLED RESOLUTIONS

Okay, moving onto our agenda to Tabled Resolutions, we have **1006, Adopting Local Law (No. -2016, A Local Law) to update and strengthen the hotel and motel tax statute. (Lindsay)** I'll make a motion to approve.

LEG. TROTТА:

Second.

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CHAIRPERSON LINDSAY:

Second by Legislator Trotta. All those in favor? Opposed? Abstentions? The motion carries unanimously. **(VOTE: 4-0-0-1. LEG. McCAFFREY NOT PRESENT)**

We don't have any Introductory Resolutions or Procedural Motions, so I will make a motion to adjourn. Thank you.

**THE MEETING CONCLUDED AT 2:25 PM
{ } DENOTES SPELLED PHONETICALLY**