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OFFICE OF THE
DEMOCRATIC MINORITY

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Inter-Departmental Memo

To: Mr. William Muller III, Clerk of the Legislature

From: Peter J. Clines, Esq., Minority Counsel

CC: Hon. Norma Gonsalves, Presiding Officer

Hon. Kevan Abrahams, Minority Leader

Date: October 27, 2015

Re: A LOCAL LAW TO AMEND THE NASSAU COUNTY ADMINISTRATIVE CODE, IN RELATION TO THE IMPOSITION OF A LIEN ON IN FAVOR OF THE COUNTY UPON PROPERTY OF THE OWNER OR OPERATOR OF A HOTEL AND/OR MOTEL FOR FAILURE TO PAY OR REMIT THE TAX ON THE RENTAL OF ROOMS WHEN DUE AS WELL AS THE A LIEN IN FAVOR OF THE COUNTY UPON PROPERTY OF THE OPERATOR OF A FACILITY PROVIDING COMMERCIAL AND/OR PROFESSIONAL ENTERTAINMENT FOR FAILING TO PAY THE ENTERTAINMENT SURCHARGE.

Attached please find the above referenced proposed local law which has been approved as to form per the Rules of the Legislature. Kindly distribute a copy to Presiding Officer Norma Gonsalves along with our request that this item be placed on the next available legislative agenda.

Kindly provide a time stamped hard copy acknowledgement of your receipt.

Thank you.

RECEIVED
NASSAU COUNTY
CLERK OF THE LEGISLATURE
2015 OCT 27 P 5:04

Introduced by: Legislator Siela Bynoe and Legislator Laura Curran

Co-sponsored by Minority Leader Kevan Abrahams and Legislators Judy Jacobs, Ellen Birnbaum, Delia DeRiggi-Whitton, and Carrié Solages

PROPOSED LOCAL LAW NO. - 2015

A LOCAL LAW to amend the Nassau County Administrative Code, in relation to the imposition of a lien on in favor of the County upon property of the owner or operator of a hotel and/or motel for failure to pay or remit the tax on the rental of rooms when due as well as the a lien in favor of the County upon property of the operator of a facility providing commercial and/or professional entertainment for failing to pay the entertainment surcharge.

APPROVED AS TO FORM

PETER J. CLINES MINORITY COUNSEL

RECEIVED
NASSAU COUNTY
CLERK OF THE LEGISLATURE
2015 OCT 27 P 5: 04

WHEREAS, Title 24 of the Miscellaneous Laws of Nassau County established the hotel and motel occupancy tax in 1994; and

WHEREAS, the tax on the daily rental of rooms levied by the implementation of the hotel and motel tax has been used for the primary purpose of funding services and activities to promote tourism, educational, and cultural programs that benefit the public as well as fulfill the general obligations of Nassau County; and

WHEREAS, this Legislature acknowledges that revenue collected over the past 21 years from hotel and motel taxes have benefitted numerous entities such as museums, libraries, and nonprofit artistic organizations that would have limited or cut services and activities if this funding did not exist; and

WHEREAS, this Legislature recognizes that the result of using the funding obtained from hotel and motel taxes to promote tourism and programs has enriched the lives of countless individuals and contributed to the growth of Nassau County's cultural landscape; and

WHEREAS, every person or entity required to collect the hotel and motel tax must secure the tax from the guest at the time payment for the room is collected, keep and maintain accurate records of the tax levied and collected, and remit said tax to the County Treasurer, as directed in Section 3 of Title 24.

WHEREAS, Chapter V, Title B, Article 3 imposes an entertainment surcharge on the operator of every facility providing commercial and/or professional entertainment; and

WHEREAS, the entertainment surcharge is an important source of revenue for County operations; and

WHEREAS, a more effective mechanism is required when owners and/or any other person responsible for collecting these taxes and remitting them to the County Treasurer fail to follow the law resulting in a burden to the County while significant sums of hotel and motel taxes as well as entertainment surcharges go uncollected.

BE IT ENACTED by the County Legislature of the County of Nassau as follows:

§1. Title 24 of the Miscellaneous Laws of Nassau County is hereby amended to read as follows:

[Section 8. **Severability.** If any clause, sentence, paragraph, subdivision, section or part of this Title or its application to any person or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this Title or its application to the person or circumstance directly involved in the controversy in which such judgment or ordered shall be rendered.]

Section 8. Recordkeeping Requirements and Auditing by County Treasurer.
A. An owner or operator of a hotel or motel shall be responsible for keeping accurate books and records as well as maintaining all written and electronic records relating to any room rental for a period of three years after such rental, including but not limited to:

(i.) books and records, including electronic records, relating to the returns as set forth in Section 3, subdivision E of this Title.
(ii.) all local, state, and federal tax reports and forms;
(iii.) all accounting records;
(iv) all rental receipts; and
(v.) all documentation related to any exemption.

B. Upon reasonable, written notice, an owner shall provide access to the documents listed in subparagraph A of this section during normal business hours for inspection by the County Treasurer or authorized representative for the purpose of conducting audits.

C. As a result of the audit, if there are any unpaid hotel and motel occupancy taxes due but not paid, the County may recover said taxes pursuant to Section 9 of this Title.

D. The County Treasurer shall establish a program and promulgate rules for conducting periodic audits of a sampling of hotel and motel owners and operators to assess compliance pursuant to this Title. Such audits shall be conducted for the purpose of maximizing compliance with the requirements of this Title. In addition, the County Treasurer shall conduct such an audit whenever in his or her judgment there is a reasonable ground for concluding that an owner or operator of a hotel or motel may not be in compliance with this Title.

Section 9. Recovery of the hotel and motel occupancy tax.

A. In addition to any other remedies and administrative procedures provided under this Title, the County may file a civil action in a court of competent jurisdiction against any owner and/or operator for recovery of unpaid hotel and motel occupancy taxes including unremitted taxes, penalties, interest, costs, and fees, that have not been paid or remitted when due.

B. Sales tax returns shall be prima facie proof of occupancy of hotel or motel rooms. Any person who is an agent of the owner is liable for the hotel and motel occupancy taxes, penalties, and interest due from such owner under this Title.

Section 10. Tax lien.

A. Notwithstanding Section 7 of this Title, the amount of any past due hotel and motel tax, penalties and interest shall be a lien upon the real property and improvements of the hotel or motel where such tax liability arose when recorded in the office of the Nassau County Clerk by the County Treasurer. Such lien shall be deemed a tax lien within the meaning of section 5-24.0 of this Code and may be collected, sold, enforced or foreclosed in any manner provided by law. If such taxes, penalties, and interest are not paid within thirty days from the date of entry, they shall bear interest thereon at the rate of interest applicable to such property for a delinquent tax on real property, to be calculated to the date of payment from the date of entry. The unpaid tax, penalties and interest prescribed in this paragraph may also be collected in an action brought against the owner of the hotel or motel in a court of competent jurisdiction. The institution of any such action shall not suspend or bar the right to pursue any other remedy provided by law for the recovery of such penalties.

Section 11. Severability. If any clause, sentence, paragraph, subdivision, section or part of this Title or its application to any person or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this Title or its application to the person or circumstance directly involved in the controversy in which such judgment or order shall be rendered.

§2. Chapter V, Title B, Article 3, § 5-80.0 of the Nassau County Administrative Code is hereby amended to two new subsections as follows:

e. After the lapse of thirty days from the date a return is required to be filed with the County Treasurer pursuant to the regulations under §5-94.0, the amount of any past due entertainment surcharge, penalties and interest shall be a lien upon the real property and improvements of the real estate of the operator when recorded in the office of the Nassau County Clerk by the County Treasurer. Such lien shall be deemed a tax lien within the meaning of section 5-24.0 of this Code and may be collected, sold, enforced or foreclosed in any manner provided by law. If such surcharge, penalties, and interest are not paid within thirty days from the date of entry, they shall bear interest thereon at the rate of interest applicable to such property for a delinquent tax on real property, to be calculated to the date of payment from the date of entry. The unpaid surcharge, penalties and interest prescribed in this paragraph may also be collected in an action brought against the operator of the facility providing commercial and/or professional entertainment in a court of competent jurisdiction. The institution of any such action shall not suspend or bar the right to pursue any other remedy provided by law for the recovery of such penalties.

§3. Severability. If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law, or in its application to the parson, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

§4. It is hereby determined, pursuant to the provisions of the State Environmental Quality Review Act, 8 N.Y.E.C.L, section 0101 at seq. and its implementing regulations, Part 617 of 6 N.Y.C.R.R., and Section 1611 of the County Government Law of Nassau County, that the adoption of this local law is a "Type II" Action within the meaning of Section 617.5(c)(20) and (27) of 6 N.Y.C.R.R., and, accordingly, is of a class of actions which do not have a significant effect on the environment, and no further review is required.

§4. This local law shall take effect immediately and the County Treasurer shall promulgate rules to effectuate these provisions no later than thirty (30) days after enactment.

Introduced by: Legislator Siela Bynoe and Legislator Laura Curran

Co-sponsored by Minority Leader Kevan Abrahams and Legislators Judy Jacobs, Ellen Birnbaum, Delia DeRiggi-Whitton, and Carrié Solages

LOCAL LAW NO. - 2015

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APPROVED AS TO FORM

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Section 11. Severability. If any clause, sentence, paragraph, subdivision, section or part of this Title or its application to any person or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this Title or its application to the person or circumstance directly involved in the controversy in which such judgment or order shall be rendered.

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