

MINUTES OF THE BOARD OF TRUSTEES OF THE VILLAGE OF MEDINA HELD ON JANUARY 27, 2025, AT 6:00 P.M. IN THE RIDGEWAY TOWN HALL.

Present: Mayor Marguerite Sherman
Trustees Jess Marciano and Mark Prawel

Excused: Trustees Deborah Padoleski and Diana Baker
Attorney Matthew Brooks

Mayor Sherman called the meeting to order at 6:00 p.m.

Mayor Sherman said that the business meeting agenda had been scaled back and agenda items were moved to the February 10, 2025 meeting as board members were excused due to illness.

Mayor Sherman opened the public hearing at 6:03 p.m. on proposed Local Law 1-2025, § 172-1, known as the "Village of Medina Hotel Room Occupancy Tax Law." Mayor Sherman said the Village's request to instill an occupancy tax was signed by Governor Hochul and the next step in the process is to formally adopt a local law. This proposed local law would allow the Village of Medina to collect a 2% tax on rooms that are rented on a daily or longer basis. Mayor Sherman asked if anyone wished to speak. Mayor Sherman closed the public hearing at 6:04 p.m. as no interested persons wished to speak.

Mayor Sherman opened the first public comment period. Ms. Carol Collina asked if anyone addressed the letter that was submitted to the Orleans Hub from the Police Union. She said she has mentioned several times about the Police Blotter and that it needed to be addressed. Trustee Marciano said the Clerk at the Police Department was sending the information to the Orleans Hub and if they are not publishing it, her beef would be with the Orleans Hub. Mayor Sherman said she could schedule a time for Ms. Collina to come in and talk about her concerns.

Mr. Jim Mirand said he was concerned about the signage on one-way streets, particularly Proctor Place. He said people are turning down the street and heading the wrong way and that it is not adequately marked. He also asked how inappropriate murals had been passed. Mayor Sherman suggested he contact the Planning Board and the Code Enforcement Officer on the murals.

A motion was made by Trustee Marciano and seconded by Trustee Prawel. A motion to pass Local Law 1-2025 which reads as follows:

§ 172-1. Short title. This article shall be known as the "Village of Medina Hotel Room Occupancy Tax Law."

§ 172-2. Definitions.

As used in this article, the following terms shall have the meanings indicated:

HOTEL — Any facility consisting of rentable living space or spaces (units) and providing lodging on an overnight basis shall include those facilities designated and commonly known as "Bed-and-Breakfast", "Air B&B" and "tourist" facilities.

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 agreements, or otherwise.

OPERATOR — Any person operating a hotel in the Village of Medina, including but not limited to the owner or proprietor of such premises, lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating such hotel.

PERMANENT RESIDENT — Any occupant of any room or rooms in a hotel for at least 30 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.

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.

VILLAGE TREASURER — The Village Treasurer of Village of Medina.

§ 172-3. Imposition of tax.

Consistent with provisions of New York State Tax Law § 1202-hhh, a tax of 2% of the per-diem rental rate for each room, whether such room is rented on a daily or longer basis, shall be imposed upon the rent for every occupancy of any room within the Village of Medina, except that such tax shall not be imposed upon any exempt organizations as defined in § 172-5.

§ 172-4. Transactional provisions.

The tax imposed by this article shall be paid upon any occupancy on or after the first day of February 2025, 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 or after the first day of February 2025, 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.

§ 172-5. 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 public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state.
- B. The United States of America, insofar as it is immune from taxation.
- C. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational 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.
- D. A permanent resident of a hotel or motel. For the purposes of this section, the term "permanent resident" shall mean a natural person occupying any room or rooms in a hotel or motel for at least 30 consecutive days.

§ 172-6. Territorial limitations.

The tax imposed by this article shall apply only within the territorial limits of the Village of Medina.

§ 172-7. Registration; certificate of authority to collect.

- 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 Treasurer a certificate of registration on a form prescribed by the Treasurer.
- B. The 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 identify 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 non-assignable and non-transferable and shall be surrendered immediately to the Treasurer upon the cessation of business at the hotel named or upon its sale or transfer.

§ 172-8. Administration and collection.

A. The tax imposed by this article shall be administered and collected by the Treasurer or such other Village 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 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 Village. The operator shall be responsible for the collection of the tax and be liable to the Village for the tax due. 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 the rent by the occupant; provided, however, that the 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 Treasurer may, whenever 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 Treasurer the tax imposed at such times as returns are required to be filed and payment made over by the operator.

D. 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 § 172-5 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.

E. All of the provisions under Article 28 of the Tax Law of the State of New York relating to or applicable to the administration and collection of the taxes imposed by that article shall apply to the taxes imposed by this article, with the same force and effect as if those provisions had been incorporated in full into this article, except as otherwise provided in § 1250 of the Tax Law.

§ 172-9. Filing of returns.

A. Every operator shall file with the Village Treasurer a return of occupancy and of rents and of the taxes payable thereon for each quarterly period ending the last day of February, May, August and November of each year. Such returns shall be filed within 20 days from the final day of the period covered thereby. The Village Treasurer may permit or require returns to be made by other periods and upon such dates as she may specify. If the Village Treasurer deems it necessary in order to ensure the payment of the tax imposed by this article, 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 she may specify.

B. The forms of return shall be prescribed by the Village Treasurer and shall contain such information as she may deem necessary for the proper administration of this article. The Village Treasurer may require amended returns to be filed within 20 days after notice of any deficiency in the information required.

§ 172-10. Determination of tax; reviewability.

Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under Article 78 of the Civil Practice Law and Rules if application therefor is made to the Supreme Court within 30 days after giving the State of New York notice of such final determination; provided, however, that any such proceeding under Article 78 of the Civil Practice Law and Rules shall not be instituted unless:

A. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations, shall be first deposited and there shall be 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, interests and penalties 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, interests or penalties as a condition precedent to the application.

§ 172-11. Payment of taxes.

At the time of filing a return of occupancy and of rents, each operator shall pay to the 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 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 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 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 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 Treasurer, at which the necessity, propriety and amount of the bond shall be determined by the 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 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 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.

§ 195-51. Disposition of revenues.

All of the revenues resulting from the imposition of tax authorized by this article shall be paid into the treasury of the Village of Medina and shall be credited to and deposited in the general fund of the Village; and may thereafter be allocated at the discretion of the Medina Village Board for any Village purpose.

All ayes
Motion carried.

Mayor Sherman said a resident at 3 Brown Avenue has requested that the property be rezoned to R# Residential. She said it is currently zoned as LI, Light Industrial. Mr. Quintern, the owner of 3 Brown Avenue, addressed the board stating he had talked to Code Enforcement Officer Gardner asking for a copy of the Zoning Law to be placed on his letterhead listing the section of the law as it pertains to 3 Brown Avenue. Mr. Lance Mark said he represents Mr. and Mrs. Quintern and that he believed there should be a zoning law for non-conforming use as the home was built around 1950. He said he did not know if re-zoning is appropriate if there is a non-conforming use. Mr. Quintern said they would like to have it re-zoned.

A motion was made by Trustee Marciano and seconded by Trustee Prawel. To refer the request to re-zone 3 Brown Avenue from Light Industrial to Residential to the Planning Board for review.

All ayes

Motion carried.

A motion was made by Trustee Marciano and seconded by Trustee Prawl. The bills as submitted are authorized for payment.

All ayes
Motion carried.

A motion was made by Trustee Prawl and seconded by Trustee Marciano. The meeting is adjourned at 6:23 p.m.

All ayes
Motion carried.

Respectfully submitted,

Jada A. Burgess
Clerk-Treasurer

DRAFT