



# County of Erie

MARK C. POLONCARZ  
COMPTROLLER

June 26, 2007

Honorable Members  
Erie County Legislature  
92 Franklin Street, 4<sup>th</sup> Floor  
Buffalo, New York 14202

**Re: Potential Change to Local Law No. 12-1974 – Hotel Occupancy Tax**

Dear Honorable Members:

Last month my office released our audit of Erie County's (the "County") collection, monitoring and enforcement of the Hotel Occupancy Tax (the "Tax"). That Tax was established by your Honorable Body through Local Law No. 12-1974.

In our audit we revealed that two hotel operators failed to remit Tax revenues to the County and were (and still are) significantly delinquent in their obligations. The first hotel operator (identified as "Alpha") failed to pay approximately \$50,000 in collected taxes, and until recently, no action was taken by the County to collect on the debt.

The second hotel operator (identified as "Beta") failed to comply with the terms of three (3) separate payment agreements with the County, the first of which dated back to 1993. As a result, Beta owed the County more than \$500,000. I am pleased to announce that because of collection efforts effectuated by our office we have recently received \$42,704.00 in back taxes from Beta and are expecting additional taxes to be remitted to our office soon.

Under Local Law No. 12-1974 § 21 ("Returns to be secret."), any County official or employee is expressly prohibited from releasing certain data concerning the hotel establishments and/or hotel owners or operators who are required to remit tax to the County. Specifically, Section 21 (a) states in part:

Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the commissioner of finance or any officer or employee of the department of finance 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 the local law. The officers charged with the

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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 commissioner of finance in an 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...

The law also provides for severe sanctions against County officers or employees who violate the returns to be secret provision. Specifically, Section 21 (b) states:

Any violation of subdivision a of this section shall be punishable by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or both, in the discretion of the court, and if the offender by (sic) an officer or employee of the county he shall be dismissed from office and be incapable of holding any public office for a period of five years thereafter.

In conjunction with my release of our audit, we were asked by various parties, including media, to identify Alpha and Beta. Based on our understanding of the local law, and further upon our request for a written legal opinion from the Erie County Department of Law, we were advised by our counsel that if we provided identifying information on these two hotel owner-operators we would be in violation of Local Law No. 12-1974 and subject to the sanctions therein.

As an attorney, and as a public officer, I cannot and will not violate the law. Because my office's legal counsel has opined that identifying any hotel would violate the local law, I will not and cannot provide the identifying information.

That said I am concerned that the language of Local Law No. 12-1974 is too restrictive and I am recommending to your Honorable Body that you consider amending the law.

As you know, the County Comptroller is not part of the County's executive branch and has no legal ability to change or alter County policy<sup>1</sup>. That purview lies with your Honorable Body and the County Executive. When my office conducts audits of county government, we do so in the understanding that we cannot compel change in county practices and policies, but we can offer suggestions and recommendations for policymakers. Audits and reviews are only as valuable as the visibility they engender. In other words, the public visibility and scrutiny that follows audits render the audits valuable, through potentially compelling policymakers to react.

Under Local Law No. 12-1974, however, in the event an audit shows that a hotel owner/operator/establishment is violating the law and not timely collecting and remitting tax to

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<sup>1</sup> The Comptroller does maintain the ability under the Erie County Charter and Administrative Code to prescribe accounting methods and policies.

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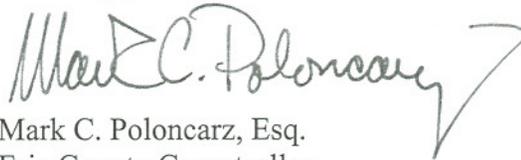
the County, the County is prohibited from publicizing the identity of that delinquent hotel entity. As such, a valuable tool – transparency – is removed from our arsenal in compelling a hotel to follow the law. In effect, violators of that law are shielded from public scrutiny by the very law itself.

Accordingly, I believe that Section 21 should be amended through the addition of a new sub-section (c) to enable certain County officials to publicize, in appropriate circumstances, the identity of delinquent hotel entities that are in violation of the law. The purpose of this is to help compel a hotel operator's adherence to the law, especially in cases where an operator has successfully evaded full compliance with the law for 14 years, as our audit revealed.

To that end, my office has developed some suggested text for the amended local law, which text is enclosed herein.

My office is willing to assist your Honorable Body and we look forward to your discussion of this matter.

Sincerely yours,

A handwritten signature in cursive script that reads "Mark C. Poloncarz". The signature is written in dark ink and includes a large, sweeping flourish at the end.

Mark C. Poloncarz, Esq.  
Erie County Comptroller

MCP/sa  
Encl.

cc: Hon. Joel A. Giambra, County Executive  
James A. Hartman, Director of Budget, Management and Finance  
Joseph L. Maciejewski, Director of Real Property Tax  
Laurence K. Rubin, Esq., County Attorney  
Erie County Fiscal Stability Authority

**Potential Amended Language<sup>1</sup>**

**Local Law No. 12-1974**

**A Local Law imposing a Tax on the Occupancy of Hotel Rooms pursuant to Chapter 614 of the Laws of 1974 of the State of New York**

PROPOSED NEW SUBDIVISION C OF SECTION 21

(c) In the event that any Person or Operator fails to timely and accurately file a Return and/or collect and remit the tax due and owing to the County, and/or fail to adhere to the terms and conditions of any agreement said party enters into with the County for the payment of taxes due hereunder, the restriction on county officers and employees contained in subdivision b of this section compelling them to keep certain information secret shall be lifted. Only authorized officers or employees of the Office of Comptroller, Division of Budget and Management, Division of Real Property Tax, and/or Department of Law are permitted to release limited identifying information regarding the delinquency, including, but not limited to, an Operator, Person or taxpayer's name, including the names of the principals of said Operator and/or taxpayer, and the amount of the delinquency.

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<sup>1</sup> Note: as a result of the changes to the Erie County Charter through a Charter Revision Commission, passage and adoption of local law, and approval at public referendum in 2006, the title "commissioner of finance" and "department of finance" no longer exist. Any amendments to Local Law No. 12-1974 should take this into account.