

**RESOLUTION AMENDING RESOLUTION NO. 19 OF FEBRUARY 4, 2008, DELETING FROM SECTION 2, THE “AND MILEAGE WILL BE PAID TO THOSE INSPECTORS WHO TRAVEL IN EXCESS OF 30 MILES ROUND TRIP TO ATTEND TRAINING CLASSES” AND TO PROVIDE MILEAGE TO AND FROM THE TRAINING CLASSES**

The following resolution was offered by Supervisor French, who moved its adoption.

Upon the recommendation of the Public Safety Committee, with the approval of the Ways and Means Committee of this Body, and the same appearing proper and necessary.

**WHEREAS**, by Resolution No. 19 of February 4, 2008, the Essex County Board of Supervisors provided that election inspectors who are undergoing training would be paid only for mileage in excess of 30 miles round trip to attend training classes; and

**WHEREAS**, this Board has determined that this was unfair.

**BE IT RESOLVED**, that the Essex County Board of Supervisors hereby amends Resolution No. 19 of February 4, 2008, by amending Section 2 thereof to read as follows:

2. Inspector Training - The board of inspector’s training fees shall increase from \$25.00 to \$30.00, and inspectors shall be paid mileage for all travel to and from training classes.

**BE IT FURTHER RESOLVED**, that this Resolution shall be effective January 1, 2009.

This resolution was seconded by Supervisor Canon, and adopted upon a roll-call vote as follows:

**AYES: 2779 votes**  
**NOES: 0 votes**  
**ABSENT: 64 votes (McSweeney)**

**RESOLUTION AUTHORIZING AN INCREASE IN THE SALARY FOR TWO ASSISTANT DISTRICT ATTORNEYS BY \$2,646.50 EACH, IN ACCORDANCE WITH AN AWARD OF \$5,293.00 FROM THE DCJS RECRUITMENT AND RETENTION GRANT**

**EFFECTIVE JANUARY 1, 2009**

The following resolution was offered by Supervisor Connell, who moved its adoption.

Upon the recommendation of the Public Safety Committee, with the approval of the Ways and Means Committee of this Body, and the same appearing proper and necessary.

**WHEREAS**, the Essex County District Attorney's office received a Recruitment and Retention grant from DCJS in the amount of \$5,293.00; and

**WHEREAS**, the Essex County District Attorney has determined that as part of its recruitment and retention program it would be appropriate to divide these monies equally amongst two Essex County Assistant District Attorneys in the amount of \$2,646.50 each.

**BE IT RESOLVED**, that the Essex County Board of Supervisors hereby authorizes the Essex County District Attorney's office to increase the 2009 salary for each of the two Assistant District Attorneys in the amount of \$2,646.50 for a total amount of \$5,293.00 which monies to come from the DCJS Recruitment and Retention grant.

**BE IT FURTHER RESOLVED**, that when the grant ceases, the payment of these monies shall also cease.

This resolution was seconded by Supervisor Blades, and adopted upon a roll-call vote as follows:

**AYES:**                    **2779 votes**  
**NOES:**                    **0 votes**  
**ABSENT:**                **64 votes (McSweeney)**

*Resolution No. 363*

*December 1, 2008*  
*Regular Board Meeting*

**RESOLUTION OF CONDOLENCE TO THE FAMILY OF  
LTC. CHARLES H. GILLMAN**

The following resolution was offered by Supervisor Ferebee, who moved its adoption.

Upon the recommendation of the Public Safety Committee, with the approval of the Ways and Means Committee of this Body, and the same appearing proper and necessary.

**WHEREAS**, LTC Charles "Chuck" H. Gillman passed away on Sunday, November 9, 2008; and

**WHEREAS**, LTC Charles "Chuck" H. Gillman was born on March 19, 1933 in Jay, New York, the son of Charles H. And Arlene (Pelkey) Gillman; and

**WHEREAS**, LTC Charles "Chuck" H. Gillman graduated from Officer Candidate

School in 1954, U.S. Army Command and General Staff College in 1970 and Army Aviation Training as a pilot for both fixed wing and rotary wing planes; and

**WHEREAS**, LTC Charles “Chuck” H. Gillman was the Deputy Director of the U.S. Army Department of Fixed Wing Training from 1970 to 1971, the Provost Marshall from 1971 to 1972 and executive officer of the third U.S. Army Test Directorate from 1972 to 1973 at Fort Steward, Georgia; and

**WHEREAS**, LTC Charles “Chuck” H. Gillman served in aviation in the United States Army during the Korean Conflict and the Vietnam War; and

**WHEREAS**, LTC Charles “Chuck” H. Gillman was the Supervisor for the Town of Keene for ten years, and was regarded amongst his peers as having the highest degree of integrity, intelligence and sense of fair play and was a consummate gentlemen, both professionally and personally. He worked as a real estate broker, was a member of the Keene Fire Department and the American Legion; and was an avid outdoorsman who enjoyed hunting and golf; and

**WHEREAS**, “Chuck” will always be remembered for his pleasant and easy going demeanor, his compassion and concern for his fellow man, his work ethic and his sense of fairness; and

**WHEREAS**, the residents of Keene and Essex County have suffered a great loss upon Chuck’s untimely death; and

**WHEREAS**, LTC Charles “Chuck” H. Gillman is survived by his wife, Joan (Roy) Gillman of Keene; two sons, David A. and Christina Gillman and Paul N. Gillman; six grandchildren, Justin, Jordan, Brittany, Kelsie, Alicia and Kelli; and

**WHEREAS**, LTC Charles “Chuck” H. Gillman was a loving husband, father, grandfather, friend, statesman, and citizen of the community of Keene and the North Country who will be sorely missed but never forgotten; and

**BE IT RESOLVED**, that the Essex County Board of Supervisors, its Clerk of the Board, County Manager and County Attorney hereby express and extend their deepest sympathy and condolences upon the loss of their friend to the family of LTC Charles “Chuck” H. Gillman; and

**BE IT FURTHER RESOLVED**, that this Resolution be spread upon the minutes of this Board of Supervisors, with a suitably embossed copy thereof to be forwarded to the Gillman family.

This resolution was unanimously seconded and adopted.

**RESOLUTION AUTHORIZING BUDGET AMENDMENTS FOR  
VARIOUS DEPARTMENTS**

The following resolution was offered by Supervisor Merrihew, who moved its adoption.

Upon the recommendation of the various Committees, with the approval of the Ways and Means Committee of this body, and the same appearing proper and necessary.

**BE IT RESOLVED**, that the Essex County Board of Supervisors hereby amends the 2008 Essex County Budget as follows:

1. From the Human Services Committee

(a) For the Office for the Aging, amending contract and budget with ACAP for nutrition services, to increase the number of meals served for the Nutrition Program, and to increase budget by \$125,000 (Account No. 67724 5446 CIII-2) with such funds to be appropriated from 2008 unappropriated fund balance as follows:

(b) For the Department of Social Services, to increase revenues and appropriations by \$36,788.00 - pass-through food stamp grant as follows:

**REVENUES**

<b>Account Number</b>	<b>Account Name</b>	<b>Amount</b>
6010 44611	Federal Aid - FS	\$36,788.00

**APPROPRIATIONS**

<b>Account Number</b>	<b>Account Name</b>	<b>Amount</b>
60105 5COOP	Coop. Ext. FS	\$36,788.00

(c) From the Department of Social Services, to increase revenues and appropriations by \$8,056.00, from food stamps grant as follows:

**REVENUES**

<b>Account Number</b>	<b>Account Name</b>	<b>Amount</b>
6010 44611	Federal Aid - FS	\$8,056.00

**APPROPRIATIONS**

<b>Account Number</b>	<b>Account Name</b>	<b>Amount</b>
60105 5COOP	Coop. Ext. FS	\$8,056.00

2. From the Economic Development Committee

(a) For the Planning Department, to increase revenues and appropriations by

\$100,000.00 for quality destination study, with such funds to come from Smart Growth grant:

**REVENUES**

<u>Account Number</u>	<u>Account Name</u>	<u>Amount</u>
8020 4389 DMP	Destination Master Plan	\$100,000.00

**APPROPRIATIONS**

<u>Account Number</u>	<u>Account Name</u>	<u>Amount</u>
80204 54SMART	Destination Master Plan	\$100,000.00

3. From the DPW Committee

(a) For the Department of Public Works Department, to increase revenues and appropriations by \$17,411.56 for State snow removal

**REVENUES**

<u>Account Number</u>	<u>Account Name</u>	<u>Amount</u>
5144 42602	State Snow Removal	\$17,411.56

**APPROPRIATIONS**

<u>Account Number</u>	<u>Account Name</u>	<u>Amount</u>
51444.5408TN	Town Rental	\$17,411.56

4. From the Finance Committee:

(a.) For the Treasurer's Department, to increase revenues and appropriations by \$141,712.63 - Small Cities Grand funds as follows:

**REVENUES**

<u>Account Number</u>	<u>Account Name</u>	<u>Amount</u>
6989 4499711	CDBG Grant	\$141,712.63_

**APPROPRIATIONS**

<u>Account Number</u>	<u>Account Name</u>	<u>Amount</u>
69894 5400HP-06	Small Cities Grant - #382-H0111-06	\$141,712.63

This resolution was seconded by Supervisor Morency, and duly adopted upon a roll-call vote as follows:

**AYES:** 2779 votes  
**NOES:** 0 votes  
**ABSENT:** 64 votes (McSweeney)

*Resolution No. 365*

*December 1, 2008  
Regular Board Meeting*

**RESOLUTION INCREASING THE PRIVATE PAY RATE FOR**

**THE HORACE NYE HOME FOR NURSING HOME CARE  
TO \$250.00 PER DAY, EFFECTIVE JANUARY 1, 2009**

The following resolution was offered by Supervisor Merrihew, who moved its adoption.

Upon the recommendation of the Human Services Committee, with the approval of the Ways and Means Committee of this Body, and the same appearing proper and necessary.

**BE IT RESOLVED** that the Essex County Board of Supervisors hereby authorizing the Horace Nye Home to increase the private pay rate for nursing home care to \$250.00 per day, effective January 1, 2009.

This resolution was duly seconded by Supervisor Jackson, and adopted upon a roll-call vote as follows:

**AYES: 2779 votes**  
**NOES: 0 votes**  
**ABSENT: 64 votes (McSweeney)**

*Resolution No. 366*

*December 1, 2008  
Regular Board Meeting*

**RESOLUTION ESTABLISHING A RATE OF \$125.00 PER  
VISIT FOR THE CERTIFIED HOME HEALTH AGENCY  
NUTRITIONAL SERVICES**

The following resolution was offered by Supervisor Morency, who moved its adoption.

Upon the recommendation of the Human Services Committee, with the approval of the Ways and Means Committee of this Body, and the same appearing proper and necessary.

**WHEREAS**, the Public Health Department currently does not have an established rate for nutritional services for the Certified Home Health Agency and are requesting the rate of \$125.00 per visit; and

**BE IT RESOLVED** that the Essex County Board of Supervisors hereby authorizes the Public Health Department to charge \$125.00 per visit for the Certified Home Health Agency Nutritional Services, effective upon Board approval.

This resolution was duly seconded by Supervisor Merrihew, and adopted upon a roll-call vote as follows:

**AYES: ~~2779~~**  
**NOES: 0 votes**  
**ABSENT: ~~64~~ (McSweeney)**

*Resolution No. 367*

*December 1, 2008*  
*Regular Board Meeting*

**RESOLUTION ADOPTING AND APPROVING QUALITY  
ASSURANCE REVIEW FOR THE CERTIFIED HOME HEALTH  
AGENCY AS WELL AS POLICIES AND PROCEDURES FOR  
PREVENTIVE SERVICES**

The following resolution was offered by Supervisor Jackson, who moved its adoption.

Upon the recommendation of the Human Services Committee, with the approval of the Ways and Means Committee of this Body, and the same appearing proper and necessary.

**WHEREAS**, Dr. Richard McKeever, Medical Director has reviewed the Certified Home Health Agency reports for chart audit conducted on August 12, 2008 and adverse events for the first quarter of 2008 (01/08 - 03/08) researched September, 2008; and

**WHEREAS**, Dr. Richard McKeever, Medical Director has also reviewed CHHA policies and procedures and has issued a report dated August 12, 2008.

**BE IT RESOLVED**, that the Essex County Board of Supervisors hereby approves and accepts the Medical Director's review and reports dated August 12, 2008 and September, 2008 respectively relative to chart audit and adverse events and Essex County Public Health Department Medical Director Policy and Procedures.

This resolution was seconded by Supervisor Canon, and duly adopted.

*Resolution No. 368*

*December 1, 2008*  
*Regular Board Meeting*

**RESOLUTION OF CONGRATULATIONS AND APPRECIATION TO  
THE ESSEX COUNTY HISTORICAL SOCIETY FOR RECEIVING  
THE 2008 ANNUAL ARCHIVES AWARD FOR PROGRAM  
EXCELLENCE IN A HISTORICAL RECORDS REPOSITORY**

The following resolution was offered by Supervisor Connell, who moved its adoption.

Upon the recommendation of the Economic Development/Planning/Publicity Committee, with the approval of the Ways and Means Committee of this Body, and the same appearing proper and necessary.

**WHEREAS**, the Essex County Historical Society has been recognized by the Board of Regents and New York State Archives and has received their 2008 State Archives Award for excellence in a Historical Records Repository; and

**WHEREAS**, this annual award is in recognition of the Essex County Historical Society's archives, exhibitions and the excellent educational programs for school children.

**BE IT RESOLVED**, that the Essex County Board of Supervisors hereby extends their congratulations and appreciation to the Essex County Historical Society, Margaret Gibbs and staff on receiving the 2008 Archives Award for excellence in a Historical Records Repository; and

**BE IT FURTHER RESOLVED**, that the Essex County Board of Supervisors hereby directs its Clerk of the Board to forward a suitably embossed copy of this Resolution to the Essex County Historical Society.

This resolution was unanimously seconded and adopted.

*Resolution No. 369*

*December 1, 2008  
Regular Board Meeting*

**RESOLUTION AUTHORIZING A TRANSFER OF \$45,000 FROM  
THE CONTINGENCY ACCOUNT INTO THE DPW-ROAD  
MAINTENANCE ACCOUNT FOR A SHORTFALL IN TOWN  
RENTAL**

The following resolution was offered by Supervisor Morency, who moved its adoption.

Upon the recommendation of the Department of Public Works Committee, with the approval of the Ways and Means Committee of this Body, and the same appearing proper and necessary.

**BE IT RESOLVED**, that the Essex County Board of Supervisors hereby authorizes the transfer of \$45,000.00 from contingency account (19904-5487) into DPW-Road Maintenance account (51104.5408TN) to cover a shortfall in town rental.

This resolution was seconded by Supervisor Dobie, and adopted upon a roll-call vote as follows:

**AYES: 2779 votes**  
**NOES: 0 votes**  
**ABSENT: 64 votes (McSweeney)**

<b>BUDGET IMPACT STATEMENT:</b>	
Contingent Account Balance as of 11/3/08 :	\$277,391.10



<i>Reduction Impact of this resolution:</i>	\$ 45,000.00
<i>FY2008 Contingent Account Balance:</i>	\$232,391.10

*Resolution No. 370*

*December 1, 2008  
Regular Board Meeting*

**RESOLUTION URGING SENATOR LITTLE AND  
ASSEMBLYWOMAN SAYWARD AND ASSEMBLYWOMAN  
DUPREY TO MAINTAIN CURRENT LEVELS FOR CHIPS  
FUNDING IN THE 2009-2010 STATE BUDGET**

The following resolution was offered by Supervisor Morrow, who moved its adoption.

Upon the recommendation of the Department of Public Works Committee, with the approval of the Ways and Means Committee of this Body, and the same appearing proper and necessary.

**WHEREAS**, Senator Thomas Libous is promoting an effort to maintain current levels of CHIPS funding in the upcoming state budget; and

**WHEREAS**, Essex County, along with the municipalities within the County, are being hit with substantial increases in fuel, salt, asphalt and other materials utilized by the highway departments; and

**WHEREAS**, those increases are placing severe strain on limited funds available for needed highway construction, maintenance and repair activities; and

**WHEREAS**, decreases in the CHIPS program will require the County and municipalities within Essex County to forego needed highway improvements and ultimately result in increased safety concerns for the traveling public.

**BE IT RESOLVED**, that the Essex County Board of Supervisors hereby urges Senator Betty Little, Assemblywoman Teresa Sayward and Assemblywoman Janet Duprey to join Senator Libous in maintaining the integrity of the CHIPS Program and the current funding levels as established in the 2008-2009 State Budget.

This resolution was unanimously seconded and adopted.

*Resolution No. 371*

*December 1, 2008  
Regular Board Meeting*

**RESOLUTION ACCEPTING THE MORTGAGE TAX REPORT AND**

**ISSUING WARRANTS PURSUANT TO TAX LAW §261 FOR  
PAYMENT OF THE NET REVENUES TO THE TOWNS & VILLAGES**

The following resolution was offered by Supervisor Scozzafava, who moved its adoption.

Upon the recommendation of the Personnel Committee, with the approval of the Ways and Means Committee of this Body, and the same appearing proper and necessary.

**WHEREAS**, this Board is in receipt of the semi-annual Mortgage Tax Report jointly prepared by the County Treasurer and County Clerk, and showing the amounts to be credited to each tax district out of the County of the monies collected during the preceding six months ending September 30, 2008.

**BE IT RESOLVED**, that the Essex County Board of Supervisors hereby issues Tax Warrants, pursuant to Tax Law §261, for the payment to the respective tax districts of the amounts so credited, and does further authorize and direct the County Treasurer to make payment of said amounts to the respective districts in accordance with the report as follows:

<u>TOWNS &amp; VILLAGES</u>	<u>AMOUNTS</u>	<u>TOWNS &amp; VILLAGES</u>	<u>AMOUNTS</u>
Chesterfield		North Elba	
Town .....	16,387.30	Town .....	113,105.16
Village (Keeseville) .....	1,443.40	Village (Lake Placid) .....	41,345.12
Crown Point .....	38,881.26	Village (Saranac Lake) .....	4,790.52
Elizabethtown .....	11,551.97	North Hudson .....	6,693.09
Essex .....	4,386.24	St. Armand	
Jay .....	28,409.85	Town .....	11,388.82
Keene .....	21,781.76	Village (Saranac Lake) .....	936.15
Lewis .....	7,417.13	Schroon .....	46,947.20
Minerva .....	9,115.60	Ticonderoga .....	51,730.97
Moriah		Westport .....	11,291.90
Town .....	24,181.66	Willsboro .....	21,009.40
Village (Port Henry) .....	3,957.03	Wilmington .....	18,695.32
Newcomb .....	7,120.94		
		<b>TOTAL:</b>	<b><u>\$502,567.79</u></b>

This resolution was duly seconded by Supervisor Politi, and adopted upon a roll-call vote as follows:

**AYES: 2779 votes**  
**NOES: 0 votes**  
**ABSENT: 64 votes (McSweeney)**  
*Resolution No. 372*

*December 1, 2008*  
Regular Board Meeting

**RESOLUTION AUTHORIZING A CONTRACT WITH ARCH FOR A  
STUDY OF THE OLD ESSEX COUNTY JAIL IN THE AMOUNT OF  
\$2,225.00, AND APPROPRIATING THE SUM OF \$750.00 FROM**

**THE CONTINGENCY ACCOUNT TO COVER THE COST OF SUCH  
REPORT AFTER THE USE OF GRANT FUNDS**

The following resolution was offered by Supervisor Morrow, who moved its adoption.

Upon the recommendation of the Finance Committee, with the approval of the Ways and Means Committee of this Body, and the same appearing proper and necessary.

**WHEREAS**, Architectural Heritage and Preservation has proposed a study of the Old Essex County Jail to review historical documents for the building, make an inspection, assess the overall condition of the building, identify conditions requiring attention to preserve, identify any possible reuse of the building, prepare a preliminary code compliance, suggest appropriate new uses for the building and prepare a written report with the recommended steps; and

**WHEREAS**, the cost of the proposed study is \$2,225.00: \$1,500.00 is covered by a technical assistance grant from the New York State Council on the Arts and \$750.00 will need to be appropriated from the Contingency Account after the use of grant funds.

**BE IT RESOLVED**, that the Essex County Board of Supervisors hereby authorizes its County Manager and/or the Chairwoman to enter into a contract with ARCH to conduct a study of the old Essex County Jail at a cost of \$2,225.00; and

**BE IT FURTHER RESOLVED**, that the Essex County Board of Supervisors hereby authorizes the transfer of \$750.00 from contingency account (19904-5487) to the Jail Demo/Repairs account (H31514 5412) to cover the cost of the study after the use of grant funds.

This resolution was seconded by Supervisor Scozzafava, and adopted upon a roll-call vote as follows:

**AYES:** 2740 votes  
**NOES:** 0 votes  
**ABSENT:** 64 votes (McSweeney)  
**ABSTAIN:** 39 votes (Canon)

<b>BUDGET IMPACT STATEMENT:</b>	
Contingent Account Balance as of 11/3/08 :	\$232,391.10
Reduction Impact of this resolution:	\$ 750.00
<b>FY2008 Contingent Account Balance:</b>	<b>\$231,641.10</b>

**Resolution No. 373**  
**AMENDED**

**December 1, 2008**  
**Regular Board Meeting**

**RESOLUTION AUTHORIZING A BUDGET AMENDMENT, TO  
INCREASE APPROPRIATIONS BY \$90,000.00 FOR COMMUNITY  
COLLEGE EXPENSES ANNUAL CONTRIBUTIONS AND BY  
\$80,000.00 FOR COMMUNITY COLLEGE EXPENSES  
OPERATING COSTS, WITH SUCH FUNDS TO BE  
APPROPRIATED FROM 2008 UNAPPROPRIATED SURPLUS  
FUND ACCOUNT**

The following resolution was offered by Supervisor Morency, who moved its adoption.

Upon the recommendation of the Finance Committee, with the approval of the Ways and Means Committee of this Body, and the same appearing proper and necessary.

**BE IT RESOLVED**, that the Essex County Board of Supervisors hereby authorizes a transfer of \$90,000.00 for Community College Expenses annual contributions to account (24904 5477) and \$80,000.00 for Community College Expenses operating costs to account (24904 5478) from 2008 unappropriated surplus fund account to cover capital reserve and budget increases.

This resolution was seconded by Supervisor Merrihew, and adopted, as amended, upon a roll-call vote as follows:

**AYES: 2779 votes**  
**NOES: 0 votes**  
**ABSENT: 64 votes (McSweeney)**

*Resolution No. 374*

*December 1, 2008  
Regular Board Meeting*

**RESOLUTION AUTHORIZING THE REAL PROPERTY TAX  
SERVICE DEPARTMENT TO PURCHASE IMAGEMATE ONLINE  
SOFTWARE, INSTALLATION AND SUPPORT IN THE AMOUNT  
OF \$24,000, WITH SUCH PURCHASE TO BE PAID FOR BY A GIS  
GRANT**

The following resolution was offered by Supervisor Merrihew, who moved its adoption.

Upon the recommendation of the Finance Committee, with the approval of the Ways and Means Committee of this Body, and the same appearing proper and necessary.

**BE IT RESOLVED**, that the Essex County Board of Supervisors hereby authorizes the Real Property Tax Service Department to make final payment on Imagemate Online Software, installation and support services in the amount of \$24,000.00, with such payment to be paid for by a GIS grant.

This resolution was seconded by Supervisor Politi, and adopted upon a roll-call vote as follows:

**AYES: 2779 votes**

**NOES: 0 votes**  
**ABSENT: 64 votes (McSweeney)**

*Resolution No. 375*

*December 1, 2008*  
*Regular Board Meeting*

**RESOLUTION AUTHORIZING A ONE YEAR RENEWAL OF THE  
CONTRACT WITH VENESKY & COMPANY CONSULTING  
SERVICES FOR INDIRECT COST RECOVERY SERVICES FOR  
2009 IN THE AMOUNT OF \$9,500.00**

The following resolution was offered by Supervisor Jackson, who moved its adoption.

Upon the recommendation of the Finance Committee, with the approval of the Ways and Means Committee of this Body, and the same appearing proper and necessary.

**BE IT RESOLVED**, that the Essex County Board of Supervisors hereby authorizes a one year renewal of the contract with Jack Venesky & Company for consulting services for indirect cost recovery services in the amount of \$9,500.00 for the year 2009, and further authorizes the execution of this contract by the County Manager.

This resolution was seconded by Supervisor Dobie, and adopted upon a roll-call vote as follows:

**AYES: 2779 votes**  
**NOES: 0 votes**  
**ABSENT: 64 votes (McSweeney)**

*Resolution No. 376*  
*AMENDED*

*December 1, 2008*  
*Regular Board Meeting*

**RESOLUTION AUTHORIZING THE LEVY OF CHARGEBACKS**

The following resolution was offered by Supervisor , who moved its adoption.

Upon the recommendation of the Finance Committee, with the approval of the Ways and Means Committee of this Body, and the same appearing proper and necessary.

**BE IT RESOLVED** that the Clerk of the Board of Supervisors is hereby authorized and directed to levy, from towns as accumulated chargebacks accrued, consisting of chargebacks from corrections to the tax rolls, as well as any incidental charges to the towns of Essex County as follows:

**2009**

**2008**

**2008**

<u>TOWN</u>	<u>SELF-INSURANCE</u>	<u>TREASURERS</u>	<u>REAL PROPERTY</u>
Chesterfield	\$ .00	\$ .00	\$ .00
Crown Point	.00	.00	.00
Elizabethtown	.00	.00	.00
Essex	.00	.00	.00
Jay	22,013.66	.00	4,007.42
Keene	16,525.54	466.00	.00
Lewis	.00	.00	.00
Minerva	6,999.07	.00	.00
Moriah	.00	.00	.00
Newcomb	.00	.00	.00
North Elba	.00	1,424.63	.00
North Hudson	3,245.79	.00	.00
St. Armand	.00	.00	.00
Schroon	.00	.00	.00
Ticonderoga	.00	.00	.00
Westport	.00	.00	.00
Willsboro	.00	.00	.00
Wilmington	25,598.33	.00	1,214 .00

**BE IT FURTHER RESOLVED**, that no chargeback shall be made against any town which, prior to the close of business on December 1, 2008, furnishes the Essex County Real Property Tax Services Director with a written statement that such Town will be making payment of an amount above on or before December 31, 2008.

This resolution was duly seconded by Supervisor Morency, and adopted, as amended, upon a roll-call vote as follows:

**AYES: 2779 votes**  
**NOES: 0 votes**  
**ABSENT: 64 votes (McSweeney)**

*Resolution No. 377*

*December 1, 2008*  
*Regular Board Meeting*

**RESOLUTION AUTHORIZING COUNTY CLERK TO  
WITHHOLD NECESSARY EXPENSES INCURRED IN 2009 IN  
ADMINISTERING THE MORTGAGE TAX RECORDING LAW**

The following resolution was offered by Supervisor Morency, who moved its adoption.

Upon the recommendation and approval of the Ways and Means Committee of this Body, and the same appearing proper and necessary.

**WHEREAS**, by Section 262 of the Tax Law, recording officers are entitled to receive their necessary expenses for purposes of administration of mortgage taxes in their offices upon approval and allowance by the State Tax Commission; and

**WHEREAS**, the State Tax Commission did on July 1, 1946, by resolution duly adopted, determine that such mortgage tax expense be approved at the amount certified to the State Tax Commission by the County Board of Supervisors, provided it is a reasonable and necessary allowance for such expenses.

**BE IT RESOLVED**, that the sum of \$24,000.00 per annum be and hereby is determined to be a reasonable and necessary allowance of the Recording Officer of Essex County for the hire of clerks and assistants to perform the administration of the Mortgage Recording Tax Law in his office; and

**BE IT FURTHER RESOLVED**, that effective January 1, 2009, the County Clerk shall collect or withhold from his disbursements in twelve (12) equal monthly installments of \$2,000.00 per month, the total annual sum of \$24,000.00, which this Board does hereby certify to the New York State Tax Commission and the New York State Department of Audit and Control, as the reasonable and proper allowance for expenses; and

**BE IT FURTHER RESOLVED**, that the Clerk of this Board provide 3 original resolutions for submission to the Department of Taxation and Finance.

This resolution was duly seconded by Supervisors Canon and Dobie, and adopted

*Resolution No. 378*

*December 1, 2008*  
*Regular Board Meeting*

**RESOLUTION AUTHORIZING COUNTY CLERK TO  
FILL A VACANT POSITION OF RECORDS RETENTION AIDE**

The following resolution was offered by Supervisor Morency, who moved its adoption.

Upon the recommendation and approval of the Ways and Means Committee of this Body, and the same appearing proper and necessary.

**WHEREAS**, a position of Records Retention Aide in the County Clerk's Office has been vacated due to the transfer of an employee to the Real Property Tax Service Office; and

**WHEREAS**, the County Clerk had been filling this position on a temporary basis with Brianne Weber, whom he now wishes to hire permanently; and

**WHEREAS**, normally for the County Clerk to fill this position on a permanent basis the County Manager would sign the appropriate form(s); however, due to the fact that the employee is related to the County Manager, it is necessary to disclose such facts, and fill the position with authorization from the board.

**BE IT RESOLVED**, that the County Clerk is hereby authorized to fill a position of Records Retention Aide.

This resolution was duly seconded by Supervisors Jackson and Ferebee, and adopted with Mr. Scozzafava being opposed.

**Resolution No. 379**

**December 1, 2008**  
**Regular Board Meeting**

**RESOLUTION AUTHORIZING APPOINTMENTS TO BOARDS,  
COMMITTEES AND/OR COUNCILS**

The following resolution was offered by Supervisor Dedrick, who moved its adoption.

Upon the recommendation of the respective committees below, with the approval of the Ways and Means Committee of this Body, and the same appearing proper and necessary.

**BE IT RESOLVED** that the Essex County Board of Supervisors hereby makes the following appointments:

1. Appointing James Bowen to the IDA Board to replace Phyllis Rogers.

This resolution was duly seconded by Supervisor Spooner, and adopted.

**Resolution No. 380**

**December 1, 2008**  
**Regular Board Meeting**

**RESOLUTION OF CONGRATULATIONS TO  
RYAN JENKS OF SCHROON  
ON OBTAINING THE RANK OF EAGLE SCOUT**

The following resolution was offered by Supervisor Moses, who moved its adoption.

Upon the recommendation and approval of the Ways and Means Committee of this Body, and the same appearing proper and necessary.

**WHEREAS**, Ryan Jenks is a resident of the Town of Schroon and a member of Boy



Scout Troop 37; and

**WHEREAS**, Ryan Jenks is entitled to receive Scouting's highest honor, the rank of Eagle Scout; and

**WHEREAS**, the Eagle Scout recipient must prove his love for God, his dedication to Country, and concern for his fellow human beings; and

**WHEREAS**, an Eagle Scout award is a performance based achievement whose standards have been well maintained since 1911 and carries with it a special significance; and

**WHEREAS**, Eagle Scout is the highest rank which can be obtained by Scouts and only 4% of the youth who join scouting earn this honor.

**BE IT RESOLVED**, that the Essex County Board of Supervisors, its Clerk of the Board, County Attorney and County Manager hereby extend their heartiest congratulations to Ryan Jenks on a job well done for all his accomplishments as a Boy Scout and for receiving the Eagle Scout award; and

**BE IT FURTHER RESOLVED**, that this Resolution be spread upon the minutes of the Board of Supervisors, with a suitably embossed copy thereof to be awarded to Ryan Jenks.

This resolution was unanimously seconded and adopted.

**Resolution No. 381**

***December 1, 2008***  
***Regular Board Meeting***

**RESOLUTION ESTABLISHING THE ESSEX COUNTY LAST  
STOP HEATING ASSISTANCE PROGRAM AND  
AUTHORIZING ESSEX COUNTY TO ENTER INTO A  
CONTRACT WITH THE ADIRONDACK COMMUNITY ACTION  
PROGRAMS, INC. FOR THE ADMINISTRATION THEREOF**

The following resolution was offered by Supervisor Jackson, who moved its adoption.

Upon the recommendation and approval of the Ways and Means Committee of this body, and the same appearing proper and necessary.

**WHEREAS**, because of the tremendous increase in the costs of home heating fuel, propane and other heating utilities, many Essex County residents who exceed the current HEAP guidelines for assistance, find themselves unable to provide for their winter heating needs; and

**WHEREAS**, in an effort to assist those individuals who exceed the HEAP guidelines,

but are financially unable to meet their winter heating costs, this Board of Supervisors is desirous of establishing a Last Stop Heating Assistance Program aimed at assisting these low/moderate income individuals; and

**WHEREAS**, this Board is also desirous of contracting with Adirondack Community Action Program, Inc. for the administration of this program.

**BE IT RESOLVED**, that the Essex County Board of Supervisors hereby establishes the Essex County Last Stop Heating Assistance Program under the following guidelines:

1. Essex County shall make available the sum of \$93,185 from the remaining Tobacco litigation money to fund and cover all costs associated with this program.
2. Any and all applicants must apply to HEAP first and be found ineligible before being eligible for this program. This can be done by phone or in person with either the Essex County Department of Social Services or the Essex County Office for the Aging.
3. Each individual applicant must be within \$250 from the current HEAP income eligibility guidelines to qualify for this program.
4. There must be less than one quarter of a tank of fuel left if an individual is heating with fuel or kerosene to be eligible; if the individual is heating with electricity the household must have received a shut-off notice to be eligible.
5. Individuals shall complete an application developed by Essex County and the Adirondack Community Action Program, Inc. which includes documentation regarding all income for the past weeks, all liquid assets which shall not exceed \$2,500, a vendor relationship, the names of all members situate in the household and the physical address of the residents requiring heating assistance.
6. Total heating assistance will be comprised of a one-time benefit of \$500 which will be paid directly to the vendor if all of the above requirements are met.
7. The administration of this program shall be through the Adirondack Community Action Programs, Inc. located in Elizabethtown, New York; and

**BE IT FURTHER RESOLVED**, that this Board of Supervisors hereby authorizes its County Chairwoman and/or County Manager to enter into an agreement with Adirondack Community Action Programs, Inc. for the administration of this program with the consideration to be paid to the Adirondack Community Action Programs, Inc. to be 8% of each individual one-time \$500 benefit or the sum of \$40.00 per individual benefit given; and

**BE IT FURTHER RESOLVED**, that the Essex County Board of Supervisors hereby amends the 2008 Essex County Budget as follows:

1. From the Ways and Means Committee

(a) For the Office for the Aging, to increase revenues and appropriations by \$93,185 as follows:

**REVENUES**

<u>Account Number</u>	<u>Account Name</u>	<u>Amount</u>
1900 42690	Tobacco Settlement	\$93,185

**APPROPRIATIONS**

<u>Account Number</u>	<u>Account Name</u>	<u>Amount</u>
63264 5440	Last Stop Heating Assistance Program	\$93,185

This resolution was seconded by Supervisor Blades, and duly adopted upon a roll-call vote as follows:

**AYES: 2779 votes**  
**NOES: 0 votes**  
**ABSENT: 64 votes (McSweeney)**

**Resolution No. 382**

***December 1, 2008***  
***Regular Board Meeting***

**RESOLUTION AUTHORIZING THE ACCEPTANCE OF THE OFFICE OF COMMUNITY SERVICES FOR WARREN AND WASHINGTON COUNTIES AS THE LEAD AGENCY FOR ALL SIX COUNTIES PARTICIPATING IN THE WARREN/WASHINGTON COUNTIES JUVENILE MENTAL HEALTH RESPITE SERVICES INTERMUNICIPAL AGREEMENT FOR THE "NORTH COUNTRY RESPITE INITIATIVE" AND FURTHER AUTHORIZING THE EXECUTION OF SAID INTERMUNICIPAL AGREEMENT**

The following resolution was offered by Supervisor Connell, who moved its adoption.

Upon the recommendation and approval of the Ways and Means Committee of this body, and the same appearing proper and necessary.

**WHEREAS**, the Warren County Office of Community Services has received a member item from Senator Little from the NYS Budget 2008 in the amount of \$200,000 (Two Hundred Thousand Dollars), to be utilized by Washington, Warren, Clinton, Essex, Franklin and parts of Hamilton Counties for the development of youth and family respite opportunities for those impacted by Mental Health and Developmental Disabilities, entitled "North Country Respite Initiative"; and

**WHEREAS**, with oversight by the New York State Office of Mental Retardation and Development Delay, the Office of Community Services for Warren and Washington Counties is the lead agency in this matter and will appropriate said monies through the

Warren/Washington Community Services who will contract with Northeast Parent and Child Society, or other suitable not-for-profit, to provide an assessment as to the training and education or other such services needed throughout the district; and

**WHEREAS**, through the intermunicipal agreement duly executed by each of the six counties, a portion of said funding is to be received for local projects consistent with the local respite needs, to be administered by each County Community Services Office; and

**BE IT RESOLVED**, that the Essex County Board of Supervisors accepts the Office of Community Services for Warren and Washington Counties as the lead agency for all six counties set forth in the municipal agreement for the “North Country Respite Initiative” and authorizes its County Chairperson and/or County Manager to execute an intermunicipal agreement with these counties for the Juvenile Mental Health Respite Services pursuant to the “North Country Respite Initiative” for training and education of juvenile mental health respite for Essex County, dependent upon the findings and needs assessment currently being performed by Northeast Parent and Child Society.

This resolution was seconded by Supervisor Blades, and duly adopted upon a roll-call vote as follows:

**AYES: 2779 votes**  
**NOES: 0 votes**  
**ABSENT: 64 votes (McSweeney)**

*Resolution No. 383*

*December 1, 2008*  
*Regular Board Meeting*

**RESOLUTION TO SUPPORT THE ADIRONDACK COUNTIES’  
EFFORTS TO LITIGATE AGAINST THE ADIRONDACK PARK  
AGENCY TO REVERSE RECENT ADOPTION OF REGULATIONS  
CONCERNING THE NEW SHORELINE PROHIBITIONS,  
WETLAND JURISDICTION AND NATURAL SUBDIVISIONS AND  
APPROPRIATING THE AMOUNT OF \$3,000 TO FUND  
LITIGATION**

The following resolution was offered by Supervisor Canon, who moved its adoption.

Upon the recommendation and approval of the Ways and Means Committee of this body, and the same appearing proper and necessary.

**WHEREAS**, there are 3000 lakes and ponds and 31,000 miles of rivers and streams in the Adirondacks; a large number are on private lands, the impact of the prohibition against expansion of pre-existing homes and cabins in the shoreline setback would be huge; and

**WHEREAS**, the APA (Adirondack Park Agency) adopted a new regulation on November 14, 2008 which effectively repeals a 30 plus year old state law which authorized grandfathered shoreline lot owners to expand their homes and cabins without APA jurisdiction; (APA Act Section 811(5) which became effective on May 22,

1973 provides that, with respect to pre-existing homes and cabins, “a single family dwelling or mobile home may always be enlarged or rebuilt to any extent provided that it continues to be used as such, provided, however, that no such increase or expansion shall violate, or increase any non-compliance with, the minimum setback requirement of the shoreline restrictions.”) For 35 years the Agency has interpreted that section of state law to authorize the expansion of shoreline homes to the side, back or up; Agency regulations in effect since 1979 codified that interpretation; and

**WHEREAS**, the New York State Legislature has not taken any action to modify Section 811(5) and there have been no court decisions modifying the interpretations of Sections 811(5), the APA adopted the new regulation prohibiting the expansion of shoreline homes unless a variance is granted; and

**WHEREAS**, the recently adopted regulations also purport to expand APA jurisdiction over subdivisions involving wetlands and natural subdivisions without action by the New York State Legislature, and

**WHEREAS**, Administrative Law Experts predict that it will be extremely difficult to obtain a variance for even modest expansions of shoreline homes to accommodate additions to families, additional bedrooms to care for elderly parents or the simple desire for more room; Contractors who count on expansions, tear downs and rebuilds will suffer the loss of work, jobs in material supply businesses and service businesses (e.g. insurance, real estate, banking, plumbing, heating and electric) will also be affected, thousands of shoreline properties will be affected and this decision will devalue shoreline properties; now, therefore be it

**BE IT RESOLVED**, that the Essex County Board of Supervisors hereby supports the efforts of the Adirondack Counties to litigate against the Adirondack Park Agency to reverse their adoption of recent regulations adopted on November 14, 2008, particularly the new shoreline prohibitions; and appropriates the sum of \$3,000 from Contingency Account 19904-5487 to County Attorney Account 14204-5433 to be used to fund litigation in concert with these counties to reverse the adoption of the regulations with such funds to be expended based upon the recommendation of each county’s County Attorney, and

**BE IT FURTHER RESOLVED**, that certified copies of this Resolution be forwarded to InterCounty Legislative Committee of the Adirondacks members, NYSAC, Governor David A. Paterson, the New York State Legislature and all others deemed necessary and proper.

<b>BUDGET IMPACT STATEMENT:</b>	
<i>Contingent Account Balance as of 11/3/08 :</i>	\$231,641.10
<i>Reduction Impact of this resolution:</i>	\$ 3,000.00
<i>FY2008 Contingent Account Balance:</i>	\$228,641.10

This resolution was seconded unanimously, and duly adopted upon a roll-call vote as follows:

**AYES: 2779 votes**  
**NOES: 0 votes**  
**ABSENT: 64 votes (McSweeney)**

**Resolution No. 384**

**December 1, 2008**  
**Regular Board Meeting**

**RESOLUTION OF CONDOLENCE TO THE FAMILY OF  
LEO J. HICKEY**

The following resolution was offered by Supervisor Ferebee, who moved its adoption.

**WHEREAS**, Leo J. Hickey passed away on Saturday, November 15, 2008; and

**WHEREAS**, Leo J. Hickey was born on August 10, 1973, the son of Thomas and Constance (Wells) Hickey; and

**WHEREAS**, Leo J. Hickey graduated in 1991 from Keene Central School and earned his associates degree from Canton ATC and thereafter worked as an automobile technician at Adirondack Auto in Elizabethtown; and

**WHEREAS**, Leo J. Hickey is survived by his parents, Thomas and Constance Hickey; his wife, Wendy (Johndrow) Hickey; and two beloved daughters, Elizabeth and Emily Ann Hickey. He is also survived by his sister, Carrie Hickey, his father-in-law and mother-in-law, Richard and Louise Johndrow; his brother-in-law, Scott Johndrow and his wife, Angela; numerous aunts, uncles and cousins; and

**WHEREAS**, Leo J. Hickey was a loving son, husband, father, son-in-law, brother-in-law, nephew, cousin and friend who will be sorely missed but never forgotten.

**BE IT RESOLVED**, that the Essex County Board of Supervisors, its Clerk of the Board, County Manager and County Attorney hereby express and extend their deepest sympathy and condolences to the family of Leo J. Hickey; and

**BE IT FURTHER RESOLVED**, that this Resolution be spread upon the minutes of this Board of Supervisors, with a suitably embossed copy thereof to be forwarded to the Hickey family.

This resolution was unanimously seconded and adopted.

**Resolution No. 385**

**December 1, 2008**  
**Regular Board Meeting**

**RESOLUTION OPPOSING THE NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION'S  
(NYSDEC) DRAFT SOLID WASTE FACILITY PERMITTING  
POLICY**

The following resolution was offered by Supervisor French, who moved its adoption.

Upon the recommendation and approval of the Ways and Means Committee of this body, and the same appearing proper and necessary.

**WHEREAS**, the NYSDEC has proposed a draft Solid Waste Facility Permitting Policy that is separate from and in addition to its promulgated Solid Waste rules and regulations (Title 6 New York Code of Rules and Regulations Part 360); and

**WHEREAS**, said draft Policy has been opposed by the National Solid Waste Management Association and the New York Association for Solid Waste Management; and

**WHEREAS**, the draft policy would improperly burden existing and planned solid waste facilities with another layer of regulation by the creation of a policy document which has not gone through the appropriate rulemaking process of amending Part 360 and would be subject to the interpretations of the nine separate DEC Regional offices which have permit review authority; and

**WHEREAS**, said draft Policy contemplates mandating landfill gas collection and control for those landfills not large enough to already be mandated via federal regulations, which, because it is practiced voluntarily by the vast majority of non-mandated public landfill operators in the State (including DANC), currently qualifies for the sale of carbon credits that help control tipping fees and which sale would be disallowed if the collection were made mandatory; and

**WHEREAS**, said draft Policy suggests that solid waste planning units update their Solid Waste Plans in conformance with the State's Plan, even though the State has not yet developed its own updated plan, creating a situation where local plans must continually adapt to the evolution of the State's Plan's development, and could threaten timely reviews of facility applications; and

**WHEREAS**, said draft Policy also reduces the facility permit term from ten (10) to five (5) years, substantially raising the administrative and regulatory costs of facility operations, while providing limited and dubious environmental benefits; and

**WHEREAS**, the State of New York is facing a fiscal crisis with projected multi-year budget deficits which will adversely impact the state and county budgets, hence it is not timely to impose new program mandates on taxpayers and rate payers without fully evaluating and justifying the significant economic impacts, and securing legislative authorization; now, therefore be it

**BE IT RESOLVED**, that the Essex County Board of Supervisors is opposed to the NYSDEC Draft Solid Waste Facility Permitting Policy in its entirety because such regulatory issues should be incorporated in NYCRR Part 360 and not be placed in a separate policy document; and

**BE IT FURTHER RESOLVED**, that the InterCounty Legislative Committee of the Adirondacks suggests to NYSDEC that it first complete its updated Solid Waste Plan via a Generic Environmental Impact Statement process, and then incorporate such changes as deemed appropriate at that time into a NYCRR Part 360 rulemaking process, conducted in a manner consistent with previous major Part 360 revisions (e.g., 1988 and 1993), as said process would require an examination of alternatives, an assessment of environmental and economic impacts and benefits, and an appropriate review by and contribution from the public and the affected regulated communities; and

**BE IT FURTHER RESOLVED**, that certified copies of this Resolution be forwarded to Governor David A. Paterson, the New York State Legislature, the InterCounty Legislative Committee of the Adirondacks and all others deemed necessary and proper.

This resolution was unanimously seconded and adopted.

*Resolution No. 386*

*December 1, 2008*  
*Regular Board Meeting*

**RESOLUTION OF CONGRATULATIONS TO THE MORIAH  
CENTRAL SCHOOL BOYS VARSITY FOOTBALL TEAM FOR  
WINNING THE 2008 SECTION 7 AND 10 CLASS D  
CHAMPIONSHIP; SECTION 2, 7 AND 10 CLASS D  
CHAMPIONSHIP; SECTION 2, 7 AND 10 CLASS D REGIONAL  
CHAMPIONSHIP; SECTION 1, 2, 7, 9 AND 10 CLASS D EASTERN  
CHAMPIONSHIP AND UPON BEING THE NEW YORK STATE  
OVERALL CLASS D STATE RUNNER-UP**

The following resolution was offered by Supervisors Scozzafava and Blades, who moved its adoption.



Upon the recommendation and approval of the Ways and Means Committee of this Body, and the same appearing proper and necessary.

**WHEREAS**, the 2008 Moriah Central School Boy's Varsity Football Team has won the Section 7 and 10 Class D Championship; and

**WHEREAS**, the Moriah Central School Boy's Varsity Football Team has also won the Section 2, 7 and 10 New York State Class D Regional Championship; and

**WHEREAS**, the Moriah Central School Boy's Varsity Football Team has also won the New York State Class D Eastern Championship for Sections 1, 2, 7, 9, and 10; and

**WHEREAS**, the 2008 Moriah Central School Boy's Varsity Football Team was the overall New York State Class D State runner-up;

**BE IT RESOLVED**, that the Essex County Board of Supervisors, its Clerk of the Board, County Manager and County Attorney hereby congratulate the 2008 Moriah Boy's Varsity Football Team, their coach and their assistants and staff, for the exemplary and outstanding accomplishments, including their earning the overall New York State Class D State runner-up football title for the entire state of New York; and

This resolution was unanimously seconded and adopted.

**Resolution No. 387**

**December 1, 2008**  
**Regular Board Meeting**

**RESOLUTION AUTHORIZING A BUDGET TRANSFER OF  
\$8,850 FROM CONTINGENCY ACCOUNT INTO THE COUNTY  
ATTORNEY'S OFFICE, TO COVER NEGATIVE ACCOUNT  
BALANCES**

The following resolution was offered by Supervisor Morency, who moved its adoption.

Upon the passage of a motion to consider from the floor, and the same appearing proper and necessary.

**BE IT RESOLVED**, that the Essex County Board of Supervisors hereby authorizes the transfer of \$8,850 from the contingency account #19904-5487 to the following:

<u>Account Number</u>	<u>Account Name</u>	<u>Amount</u>
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14204-5410	Office Supplies	\$ 300.00
14204-5423	Telephone	\$ 100.00
14204-5424	Postage	\$ 300.00
14204-5426	Books & Periodicals	\$6,200.00
14204-5433	Legal Fees	\$1,000.00
14204-5443	Travel Reimbursement	\$ 800.00
14204-5497	Mileage	\$ 150.00

This resolution was seconded by Supervisor Jackson, and duly adopted upon a roll-call vote as follows:

**AYES: 2779 votes**  
**NOES: 0 votes**  
**ABSENT: 64 votes (McSweeney)**

<b>BUDGET IMPACT STATEMENT:</b>	
Contingent Account Balance as of 11/3/08 :	\$228,641.10
Reduction Impact of this resolution:	\$ 8,850.00
<b>FY2008 Contingent Account Balance:</b>	<b>\$219,791.10</b>

**Resolution No. 388**

**December 1, 2008**  
**Regular Board Meeting**

**RESOLUTION ADOPTING LOCAL LAW NO. 3 OF 2008  
CONTINUING THE IMPOSITION OF A HOTEL AND MOTEL  
OCCUPANCY TAX**

The following resolution was offered by Supervisor Morrow, who moved its adoption.

Upon the passage of a motion to consider from the floor, and the same appearing proper and necessary.

**WHEREAS** Proposed Local Law No. 3 of 2008 was introduced by Resolution No. of 2008 continuing the imposition of a hotel/motel occupancy tax in Essex County as authorized by Part T of §1 of Chapter 406 of the Laws of 1999, and continued by Local Law No. 7 of 2002, and a public hearing on said proposed local law was held on December 1, 2008 at 9:30 a.m.; and

**BE IT RESOLVED** that the Essex County Board of Supervisors hereby adopts Local Law No. 3 of 2008 as follows:

**"ESSEX COUNTY LOCAL LAW NO. 3 OF 2005**

A local law continuing the imposition of a hotel/motel occupancy tax in Essex County as authorized by Part T of §1 of Chapter 406 of the Laws of 1999.

***BE IT ENACTED*** by the Board of Supervisors of Essex County as follows:

**ESSEX COUNTY ROOM OCCUPANCY TAX LAW**

Section

1. Title & Statement of Intent
2. Definitions
3. Imposition of Tax
4. Transitional Provisions
5. Exempt Organizations
6. Territorial Limitations
7. Registration
8. Administration and Collection
9. Records to be kept
10. Returns
11. Payment of Tax
12. Bonds & Security for Payment of Tax
13. Determination of Tax
14. Refunds
15. Disposition of Revenues
16. Reserves
17. Remedies Exclusive
18. Proceedings to Recover Tax
19. General Powers of Treasurer
20. Administration of Oaths & Compelling  
Testimony
21. Reference to Tax
22. Penalties, Interest & Violations
23. Judicial Review
24. Returns to be Secret
25. Notices and Limitations of Time
26. Limitation of Effect of Local Law
27. Separability
28. Effective Date

***Section 1. Title & Statement of Intent.***

This local law shall be known as the “Essex County Room Occupancy Tax Law”. The intent of this local law shall be to promote tourism and conventions in Essex County.

***Section 2. Definitions.***

When used in this local law, the following terms shall mean:

- (a) *County* - Essex County, New York.
- (b) *Effective Date* - the date set forth in Section 28 of this local law.
- (c) *Hotel or Motel* - Any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as “bed and breakfast” and “tourist” facilities.
- (d) *Occupancy* - The use of possession, or the right to the use or possession, of any room in a hotel or motel.
- (e) *Occupant* - A person who, for a charge or any consideration, uses, possesses, or has the right to use or possess, any room in a hotel or motel under any lease, concession, permit, right, license, agreement, or otherwise.
- (f) *Operator* - Any person operating a hotel or motel in Essex County including but not limited to the owner, proprietor, lessee, sub-lessee, mortgagee in possession, licensee, or any other person otherwise operating such hotel or motel.
- (g) *Permanent Resident* - Any person occupying any room or rooms in a hotel or motel for at least thirty (30) consecutive days.
- (h) *Person* - An individual, partnership, society, association, joint stock company, corporation, limited liability company, general or limited or limited liability partnership, estate, receiver, trustee, assignee, referee, and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and/or any combination of the foregoing.
- (i) *Rent* - The charge and/or consideration received for occupancy valued in money, whether received in money or otherwise.
- (j) *Return* - Any return filed or required to be filed as herein provided.
- (k) *Room* - Any room or rooms of any kind in any part or portion of a hotel or motel, which is available for, rented or otherwise let out for the lodging of guests.
- (l) *Tax Imposition Date* - the date set forth in Section 3 of this local law.
- (m) *Treasurer* - The Essex County Treasurer, or such other fiscal officer(s) as may be designated by the Board of Supervisors.

***Section 3. Imposition of Tax.***

Upon expiration of Local Law No. 7 of 2002 there shall continue to be, and hereby is, imposed and there shall be paid a tax of three percent (3%) of the per diem rental rate for each room or rooms in a hotel or motel located within the County, except that such tax shall not be applicable to a permanent resident of a hotel or motel.

***Section 4. Transitional Provisions.***

The tax imposed by this local law shall be paid upon any occupancy on and after the date set forth in Section 3 hereof although such occupancy is pursuant to a prior contract, lease, or other arrangement. Where rent is paid on a weekly or other term basis, the rent shall be subject to the tax imposed by this local law to the extent that it covers any period on and after the date set forth in Section 3 hereof.

***Section 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 local law:

- (a) The State of New York, or any public corporation (including a 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; and
- (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 paragraph 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 paragraph.

***Section 6. Territorial limitations.***

The tax imposed by this local law shall apply only within the territorial limits of Essex County.

***Section 7. Registration.***

- (a) Within twenty (20) days after the effective date of this local law, or in the case of an operator commencing business after such effective date within three (3) days after such commencement or opening, every operator shall file with the Treasurer a registration application in a form prescribed by the Treasurer.

(b) The Treasurer shall within five (5) days after receipt of a registration application issue without charge to the operator a certificate of authority empowering such operator to collect the tax from the occupant and duplicate thereof, for each additional hotel or motel of such operators.

(c) Each certificate shall state the hotel or motel to which it is applicable.

(d) Each 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 person seeking occupancy.

(e) Certificates shall not be assignable or transferable, and shall be surrendered immediately to the Treasurer upon the cessation of business at, or upon the sale or conveyance of, the hotel or motel named in such certificate(s).

***Section 8. Administration and collection.***

(a) The tax imposed by this local law shall be administered and collected by the Treasurer, or such other employees of the County as the Treasurer may designate, by such means and in such manner as are other taxes which are now collected and administered or as is otherwise provided by this local law.

(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 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 County, and the operator shall be liable for the collection thereof and for the tax.

(c) 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 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 may have in the event of non-payment of rent by the occupant; provided, however, that the Treasurer shall be joined as a party in any action or proceeding brought by the operator to collect or enforce collection of the tax.

(d) The Treasurer may, whenever he deems it necessary for the proper enforcement of this local law, provide by order that the occupant shall file returns and pay directly to the Treasurer the tax herein imposed, at such times as returns are required to be filed and payment over made by the operator.

(e) The tax imposed by this local law shall be paid upon any occupancy on and after the tax imposition date, although such occupancy is had pursuant to a contract, lease or other arrangement made prior to such date; and where rent is paid, charged, billed or falls due on

either a weekly, monthly or other term basis, the rent so paid, charged, billed or falling due shall be subject to the tax herein imposed to the extent that it covers any portion of the period on and after the tax imposition date.

(f) Where any tax has been paid hereunder upon any rent which has been ascertained to be worthless, the Treasurer may by order provide for credit and/or refund of the amount of such tax upon application therefor as provided in section fourteen of this local law.

(g) 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 occupant.

(h) Where an occupant claims exemption(s) from the tax under the provisions of section five of this local law, the rent shall be deemed taxable hereunder unless the operator shall receive from the occupant claiming such exemption

- (1) a copy of a certificate issued by the Treasurer certifying that the organization named therein is exempt from the tax pursuant to section five of this local law, together with a certificate duly executed by the exempt organization setting forth the occupant's name and certifying that
  - (i) the occupant is a duly authorized agent, representative or employee of the exempt organization,
  - (ii) the occupant's occupancy is paid or to be paid by such exempt organization, and
  - (iii) the occupant's occupancy is necessary or required in the course and furtherance of, and/or in connection with, the affairs of said exempt organization; or
- (2) a properly completed, executed and certified Exemption Certificate from taxes imposed pursuant to Articles 28 and 29 of the New York Tax Law, such certificate to be in the form and to contain the content approved and required by the New York State Department of Taxation.

***Section 9. Records to be kept.***

(a) 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 Treasurer may by regulation or order require.

(b) All records shall be available for inspection and examination at any time upon demand by the Treasurer, or the Treasurer's duly authorized agent or employee, and shall be preserved for a period of not less than three (3) years, except that the Treasurer may consent in writing to their destruction within that period or may in writing require that such records be kept and maintained for a specified period in excess of three (3) years.

**Section 10. Returns.**

(a) After the date set forth in Section 3 of this local law, and except as provided in subdivision (b) of this section, every operator shall file with the Treasurer a return of occupancy and of rents, and of the taxes payable thereon, for the same quarterly periods and on the same dates as returns for New York State sales and use taxes are filed or to be filed.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Treasurer may by order

(1) require returns to be made and filed for shorter periods than those prescribed pursuant to subdivision (a) of this section, on such dates as the Treasurer may specify in such rule or order, where the Treasurer deems it necessary in order to insure the payment of the tax imposed by this local law, or

(2) permit or require returns to be made by other periods and upon such other dates as the Treasurer may specify by rule or order so as to carry out the purposes of this local law.

(c) All returns shall be filed with the Treasurer within twenty (20) days from the expiration of the period covered thereby.

(d) The forms of returns shall be prescribed by the Treasurer and shall contain such information as the Treasurer may deem necessary for the proper administration of this local law.

(e) The Treasurer may require amended returns to be filed within twenty (20) days after notice and to contain the information specified in the notice.

(f) If a return required by this local law is not filed, or if a return when filed is incorrect or insufficient on its face or otherwise, the Treasurer shall take the necessary steps to enforce the filing of a properly completed and sufficient return or of a corrected return.

**Section 11. Payment of Tax.**

(a) Any tax imposed by this local law shall be paid by the occupant to the operator of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the County, and such operator or person entitled to be paid the rent or charge shall be liable for the collection and payment of tax to the County.

(b) The owner of the hotel or motel room or the person entitled to be paid the rent or charge for the hotel or motel room 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 or charge and payable at the same time as the rent or charge. In any action or proceeding brought by an owner or a person entitled to be paid the rent or charge for the purpose



of collecting the rent or charge, or the tax imposed by this local law, the Treasurer shall be joined as a party.

(c) At the time of filing a return of occupancy and of rents, each operator shall pay to the 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 of this local law.

(d) All taxes and other moneys required to be paid under and pursuant to this local law shall be due from the operator and paid to the 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 taxes due thereon.

***Section 12. Bonds & Security For Payment of Tax.***

(a) Where the Treasurer, in the exercise of the Treasurer's discretion, deems it necessary to protect revenues to be obtained under this local law, the Treasurer may by rule or order require any operator required to collect the tax imposed by this local law to file with the Treasurer a bond to secure the payment of any tax and/or penalties and interest due or which may become due from such operator.

(b) Any bond so required by the Treasurer shall be 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 fix.

(c) In the event the 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.

(d) The operator shall file such bond within five (5) days after the issuance of such notice, unless within such five (5) days the operator shall serve upon and deliver to the Treasurer a written request for a hearing before the Treasurer at which the necessity, propriety and amount of the bond shall be determined by the Treasurer. Any determination by the Treasurer upon such hearing shall be final and shall be complied with by the operator within five (5) days after the giving of notices thereof.

(e) In lieu of a bond the Treasurer, in the Treasurer's sole discretion, may accept or require

- (1) securities approved by the Treasurer in such amount as the Treasurer may prescribe, with such securities to be kept in the custody of the Treasurer, and/or
- (2) cash in such amount as the Treasurer may prescribe, with such cash to be deposited and kept in the custody of the Treasurer.

(f) The Treasurer shall have the right at any time without notice of the operator apply all or any portion of the bond(s), securities and/or cash to the payment of any tax and/or interest or penalties due, and for such purpose the Treasurer may exercise all rights under the bond(s) and/or may sell the securities at public or private sale without notice to the depositors thereof.

**Section 13. Determination of tax.**

(a) Upon the filing of a return, the Treasurer shall determine the amount of tax due under and pursuant to this local law.

(b) If a return required by this local law is not filed, or if a return when filed is incorrect or insufficient as to the amount of tax due, the amount of tax due under and pursuant to this local law shall be determined by the 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 of rents, comparable rents, type of accommodations and service, number of employees and/or other factors.

(c) Notice of a determination under subdivision (b) of this section shall be furnished in writing to the person liable for the collection and/or payment of the tax.

(d) Any determination by the Treasurer under subdivision (b) of this section shall finally and irrevocably fix the tax, unless

- (1) within thirty (30) days after the issuance of the notice of such determination the person against whom it is assessed shall apply in writing to the Treasurer for a hearing, or
- (2) the Treasurer shall, in the Treasurer's sole discretion, reconsider and re-determine the amount of tax due.

(e) Within fifteen (15) days after the conclusion of a hearing conducted pursuant to subdivision (d) (1) of this section, the Treasurer shall give written notice of the Treasurer's determination to the person against whom the tax is assessed.

(f) Except in the case of a wilfully 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

- (1) where no return has been filed as provided by this local law the tax may be assessed at any time; and/or
- (2) where, before 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 or any extension(s) thereof.

***Section 14. Refunds.***

(a) In the manner provided in this section the Treasurer shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid provided that written application for such refund shall be made to the Treasurer within one year from the payment thereof.

(b) An application for refund or credit may be made only by the occupant, operator, or other person who has actually paid the tax.

(c) An application for a refund or credit made as herein provided shall not be complete unless the same includes copies of all documentation and evidence upon which the applicant relies in support thereof, but nothing shall prohibit or prevent the Treasurer from receiving any other evidence with respect thereto.

(d) No application for a refund or credit shall be accepted or considered unless such application has been actually received by the Treasurer within one year of the payment by the tax.

(e) The determination to deny or allow a refund or credit shall be made by the Treasurer in writing, stating the reason(s) therefor, and the Treasurer shall give notice of such determination to the applicant.

(f) No refund shall be made to an operator who has collected and paid over such tax to the Treasurer unless and until such operator shall first establish, to the satisfaction of the Treasurer under such regulations as the Treasurer may prescribe, that such operator has repaid to the occupant(s) the amount of tax for which refund is sought.

(g) The Treasurer may, in the Treasurer's discretion and in lieu of the payment of any refund determined to be due, allow credit therefor on and against payments due from the applicant.

***Section 15. Disposition of Revenues.***

(a) All revenues resulting from the imposition of the tax under this local law shall be paid into the treasury of the County and shall be credited and deposited into a special tourism development and promotion fund, thereafter to be allocated for publicizing the advantages of the County pursuant to subdivision fourteen of section two hundred twenty-four of the County Law; provided, however, that the County

- (1) shall retain five per cent (5%) of the gross revenues to cover the County's costs for administration and collection; and
- (2) endeavor to expend the revenues in such fund in a manner reasonably intended to publicize the areas within the County commensurate with the amount of revenues generated from such areas.

(b) The County shall contract with the Lake Placid-Essex County Visitors Bureau for the expenditure of the net revenues in such fund pursuant to subdivision fourteen of section two hundred twenty-four of the County Law; provided, however, that the County may terminate such contract and/or enter into other contracts in the event that the Lake Placid-Essex County Visitors Bureau

- (1) dissolves, or
- (2) in the determination of the Board of Supervisors, after public hearing, ceases to adequately perform such contract.

(c) The Board of Supervisors shall by resolution appoint an advisory committee, some of the members of which shall be operators of facilities paying such tax. The advisory committee shall provide advice and recommendations as to the County's strategic tourism marketing plan(s) for publicizing the advantages of the County pursuant to subdivision fourteen of section two hundred twenty-four of the County Law and this local law.

***Section 16. Reserves.***

Whenever the occupant 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 such occupant or operator on such application for refund, the Treasurer shall set up appropriate reserves to meet any decision adverse to the County.

***Section 17. Remedies exclusive.***

The remedies provided by sections thirteen and fourteen of 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 or credit shall be enjoined, contested or reviewed by any action or proceeding, except by a proceeding under article seventy-eight of the civil practice law and rules pursuant to section twenty-three of this local law.

***Section 18. Proceedings to recover tax.***

(a) Whenever any operator 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 herein provided, or whenever any occupant shall fail to pay any such tax, penalty or interest, the county attorney shall, upon the request of the County Treasurer bring or cause to be brought an action to enforce the payment of the same on behalf of Essex County in any court of the state of New York or of any other state or of the United States.

(b) Notwithstanding any other provision of this section, if the Treasurer in his discretion believes that any such operator, 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, the Treasurer may declare

such tax or penalty to be immediately due and payable and may issue a warrant, as provided in this section, immediately.

(c) As an additional or alternate remedy, the Treasurer may issue a warrant, directed to the Essex County Sheriff or to the sheriff of any other county commanding him/her to levy upon and sell the real and personal property of the operator, occupant, or other person, including but not limited to any partner, corporate officer/director/shareholder, or member, liable for the tax, which may be found within his/her county 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 Treasurer and to pay to the Treasurer the money collected by virtue thereof within sixty days after the receipt of such warrant.

(d) The sheriff receiving a warrant issued under this section shall, within five (5) days after 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.

(e) Upon filing a copy of the warrant as provided in paragraph (d) of this section,

- (1) the amount of such warrant so docketed shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued, provided that such lien shall not apply to personal property unless another copy of such warrant is filed in the New York Department of State.
- (2) 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; and
- (3) the Treasurer shall have the same remedies to enforce the amount due thereunder as if the County had recovered judgment therefor.

(f) If a warrant is returned not satisfied in full, the Treasurer may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as provided in this section.

(g) Whenever an operator or other person shall make a sale, transfer, or assignment in bulk of any part or the whole of his hotel or motel or of such operator's business assets, otherwise than in the ordinary course of business, the following provisions shall apply:

- (1) the purchaser, transferee or assignee shall at least twenty (20) days before taking possession of the subject of said sale, transfer or assignment, or paying therefor, notify the Treasurer by registered mail of the proposed

sale and of the price, terms and conditions thereof and whether or not the operator 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;

- (2) for failure to comply with the provisions of this paragraph, including but not limited to subdivision (1) above, the purchaser, transferee or assignee shall be personally liable for the payment to the County of any such taxes theretofore or thereafter determined to be due to the County from the operator, 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;
- (3) whenever the purchaser, transferee or assignee shall fail to give notice to the Treasurer as required by subdivision (1) of this paragraph, or whenever the 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 operator, seller, transferor or assignor to the County, and the purchaser, transferee or assignee is forbidden to transfer to the operator, seller, transferor or assignor, and shall withhold any such sums of money, property or choses in action, or other consideration, to the extent of the amount of the County's claim;
- (4) within fifteen (15) days of receipt of the notice of the sale, transfer or assignment from the purchaser, transferee or assignee, the Treasurer shall give notice to the purchaser, transferee or assignee and to the operator, seller, transferor or assignor, of the total amount of any tax or taxes, as well as of any penalties or interest due thereon, which the Treasurer claims to be due from the operator, seller, transferor or assignor, to the County;
- (5) whenever the Treasurer shall fail to give the notice required by subdivision (4) of this paragraph, within fifteen (15) days from receipt of notice of the sale, transfer and assignment required by subdivision (1) of this paragraph, such failure shall release the purchaser, transferee or assignee from any further obligation to withhold 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 operator, seller, transferor or assignor;

- (6) upon receipt of the Treasurer's notice issued pursuant to subdivision (4) above stating the total amount of the County's claim, the purchaser, transferee or assignee may make payment of such claim to the Treasurer from any sums of money, property, or choses in action withheld in accord with the provisions of subdivision (3) of this paragraph, and upon making such payment the purchaser, transferee or assignee shall be relieved of all liability for such amounts to the operator, seller, transferor or assignor, and such amounts paid to the Treasurer shall be deemed satisfaction of the tax liability of the operator, seller, transferor or assignee to the extent of the amount of such payment.

(h) Whenever the liability of any operator or other person, including that of any purchaser, transferee or assignee, covered by this section has been wholly paid or satisfied or no longer exists, except where the liability is discharged by an order or decree in bankruptcy, the Treasurer shall

- (1) mail to such operator or other person a notice, addressed to the last known address of such operator or other person, setting forth
  - (i) the amount of the tax liability paid or satisfied,
  - (ii) that such liability has been wholly paid or satisfied or no longer exists, and
  - (iii) a statement to the effect that consumer reporting agencies must delete from a credit file any reference to the particular tax lien or claim within thirty (30) days of receipt from such operator or other person of a copy of such notice.

***Section 19. General powers of the Treasurer.***

In addition to the powers granted to the Treasurer by County Law and this local law, the Treasurer is hereby authorized and empowered:

(a) To make, adopt and amend rules and regulations, and to issue orders, appropriate to the carrying out of this local law and the purposes thereof;

(b) To extend for cause shown the time of filing any return for a period not exceeding thirty days; and for cause shown, to remit or waive penalties but not interest; and to compromise disputed claims in connection with the taxes hereby imposed;

(c) 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; and to afford information to such tax commission or such treasury department relative to any person, any other provision of this local law to the contrary notwithstanding;

(d) To delegate his functions hereunder to any employee or employees of the County Treasurer;

(e) To prescribe methods for determining the rents for occupancy and to determine the taxable and non-taxable rents;

(f) To require any operator within the county to keep detailed records of the nature and type of hotel or motel maintained, nature and type of service rendered, the rooms available and rooms occupied daily, lease's 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 County Treasurer;

(g) To assess, determine, revise and readjust the taxes imposed under this local law.

***Section 20. Administration of Oaths and Compelling Testimony.***

(a) The Treasurer, or the Treasurer's duly designated and authorized employee(s) or agent(s), shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of the Treasurer's powers and duties under this local law.

(b) The 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 the Treasurer or excused from attendance.

(c) 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 for by the subpoena of the Treasurer under this local law.

(d) 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 Treasurer under this local law shall 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.

(e) The officers who serve the summons or subpoena of the 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.

(f) The County Sheriff, the Sheriff's duly appointed deputies, and any officer or employee of the Treasurer designated to serve process under this local law, are hereby authorized and empowered to serve any summons, subpoena, order, notice, document, instrument, or other process to enforce or carry out this local law.

***Section 21. Reference to tax.***



Wherever reference is made in placards or advertisements or in any other publications to this tax such reference shall be substantially in the following form: "Tax on occupancy of hotel or motel rooms"; except that in any bill, receipt, statement or other evidence or memorandum of occupancy or rent charge issued or employed by the operator, the work "tax" will suffice.

***Section 22. Penalties, Interest & Violations.***

(a) Any person failing to file a return or to pay or pay over any tax to the Treasurer within the time required by this local law shall be subject to

- (1) a penalty of five per centum (5%) of the amount of tax due; plus
- (2) interest at the rate of one per centum (1%) of the amount of tax due for each month of delay, except that no interest shall be charged for the first thirty (30) days immediately after the date such return was required to be filed or such tax became due.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Treasurer may, if satisfied that the delay was excusable, cancel and remit all or part of such penalty, but may not cancel or remit any portion of the interest.

(c) All penalties and interest shall be paid and disposed of in the same manner as other revenues from this local law.

(d) Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this local law.

(e) Officers and/or members of an owner or operator which is a corporation, limited liability company, limited liability partnership, or partnership shall be personally liable for the tax collected or required to be collected and paid by such corporation under this local law, and shall also be personally liable for the penalties and interest herein imposed.

(f) In addition to the penalties herein or elsewhere prescribed, any person found to have committed any of the following acts shall 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:

- (1) failing to file a return required by this local law,
- (2) 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 wilfully false,
- (3) wilfully failing to file a bond required to be filed pursuant to this local law,

- (4) failing to file a registration certificate and such data in connection therewith as the Treasurer may by order, regulation or otherwise require,
- (5) failing to display, or to surrender upon demand of the Treasurer, the certificate of authority as required by this local law,
- (6) assigning or transferring such a certificate of authority,
- (7) wilfully failing to charge separately from the rent the tax herein imposed, or wilfully failing to state such tax separately on any evidence of occupancy and on any bill or statement or receipt of rent issue or employed by the operator,
- (8) wilfully failing or refusing to collect any tax imposed by this local law from the occupant,
- (9) referring or causing reference to be made to this tax in a form or manner other than that required by this local law, or
- (10) failing to keep or maintain the records required by this local law.

(g) The certificate of the County 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 23. Judicial Review.***

Any final determination of the amount of any tax payable pursuant to this local law, as well as any final determination on an application for refund or credit under section 14 of this local law, 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 if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such 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 such interest and penalties thereon as may be provided for by local law or regulation 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, 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, interest or penalties as a condition precedent to any tax imposed pursuant to this section shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers 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 a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers 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.

**Section 24. Returns to be secret.**

- (a) Except in accordance with proper judicial order, or as otherwise provided by law,
  - (1) it shall be unlawful for the Treasurer or any agent, employee or designee of the Treasurer to divulge or make known in any manner the rents or other information relating to the business of an operator contained in any return required under this local law; and
  - (2) the officers charged with the custody of such returns shall not be required to produce any of such returns or evidence of anything contained therein in any action or proceeding in any court, except on behalf of the 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, provided that 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.
- (b) Notwithstanding the provisions of paragraph (a) of this section, nothing herein shall be construed to prohibit
  - (1) the delivery to a taxpayer or such taxpayer's duly authorized representative of a copy of any return filed in connection with this local law, or
  - (2) the publication of statistics so classified as to prevent the identification of particular returns and items thereof, or
  - (3) the inspection by the county attorney or other legal representatives of the county, or by the district attorney of any county, of the return(s) 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.
- (c) Returns shall be preserved by the Treasurer for not less than three (3) years or for such longer period of time as the Treasurer determines.

(d) Any violation of paragraph (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 be an officer or employee of the county such officer or employee shall be dismissed from office or service with the county.

***Section 25. Notices and Limitations of Time.***

(a) 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 postpaid envelope addressed to such person at the address given in the last return filed pursuant to the provisions of this local law, or in any application made by such person, or if no return has been filed or application made then to such address as may be obtainable.

(b) The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed.

(c) 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 mailing of such notice.

(d) 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 county to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this local law.

***Section 26. Limitation of Effect of Local Law.***

This local law shall remain in full force and effect for a period of three (3) years from the date of enactment by the Board of Supervisors; except that nothing shall prohibit or prevent the adoption and enactment of subsequent local laws continuing or imposing the tax authorized hereby after the expiration of this or any other local law adopted and enacted pursuant to the provisions of Part T of §1 of Chapter 406 of the Laws of 1999.

***Section 27. Separability.***

If any provision of this local law or the application thereof to any person or circumstance shall be held invalid, the remainder of this local law and the application of such provision to other persons or circumstances shall not be affected thereby.

***Section 28. Effective Date.***

This local law shall take effect upon filing in the office of the Secretary of State of New York State.”

This resolution was duly seconded by Supervisors Connell and French, and adopted upon a roll-call vote as follows:

**AYES: 2779 votes**  
**NOES: 0 votes**  
**ABSENT: 64 votes (McSweeney)**

**Resolution No. 389**

**December 1, 2008**  
**Regular Board Meeting**

**RESOLUTION OF APPRECIATION TO CANADIAN PACIFIC  
RAILWAY FOR THE TOYS FOR TOTS TRAIN AND THE BENEFITS  
FOR THE FOOD PANTRY**

The following resolution was offered by Supervisor Dedrick, who moved its adoption.

Upon the passage of a motion to consider from the floor, and the same appearing proper and necessary.

**BE IT RESOLVED** that the Essex County Board of Supervisors hereby extends its deepest and abiding appreciation to the Canadian Pacific Railway for establishing and sponsoring the Toys For Tots Holiday Train and for its work with the food pantry.

This resolution was unanimously seconded and adopted.

**Resolution No. 390**

**December 1, 2008**  
**Regular Board Meeting**

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**RESOLUTION ACCEPTING THE 2009 TENTATIVE ESSEX  
COUNTY BUDGET SUBJECT TO AMENDMENT AND  
FINAL ADOPTION OF THE 2009 ESSEX COUNTY  
BUDGET**

The following resolution was offered by Supervisor Canon, who moved its adoption.

Upon the passage of a motion to consider from the floor, and the same appearing proper and necessary.

**BE IT RESOLVED** that the Essex County Board of Supervisors hereby accepts the submission of the 2009 Tentative Essex County Budget subject to amendment and final adoption of the 2009 Essex County Budget.

This resolution was duly seconded by Supervisor Dedrick, and adopted.

**Resolution No. 391**

**December 1, 2008  
Regular Board Meeting**

**RESOLUTION ADOPTING THE 2009 TENTATIVE ESSEX  
COUNTY BUDGET AS THE 2009 ESSEX  
COUNTY BUDGET AND APPROPRIATING FUNDS  
PURSUANT TO COUNTY LAW §356**

The following resolution was offered by Supervisor Morency, who moved its adoption.

**WHEREAS**, the Essex County Board of Supervisors has met and considered the 2009 tentative budget and conducted a public hearing thereon on November 24, 2008, as required by County Law §359; and

**WHEREAS**, the Board thereafter conducted budget hearings with each department head to review and consider amendments to the tentative budget in order to reduce the projected tax increase, and based upon such hearings has approved the tentative budget.

**BE IT RESOLVED** that the Essex County Board of Supervisors hereby adopts the 2009 Tentative Essex County Budget as the final 2009 Essex County Budget; and

**BE IT FURTHER RESOLVED** that the several amounts specified in such budget in the column entitled "Adopted" for the several objects set forth in said 2009 budget, totaling \$96,235,448, be appropriated for such objects effective January 1, 2009, with said budget containing total revenues of \$75,612,635.00; and

**BE IT FURTHER RESOLVED** that the sum of \$5,477,088.00 is hereby appropriated from the General Fund Balance for the 2009 Essex County Budget hereby adopted; and

**BE IT FURTHER RESOLVED** that the sum of \$1,900,000.00 is hereby appropriated from the Horace Nye Fund Balance, for the 2009 Essex County Budget hereby adopted; and

**BE IT FURTHER RESOLVED** that the sum of \$13,245,725.00 shall be raised by taxes levied upon the real property within the County for the 2009 Essex County Budget hereby adopted.

This resolution was duly seconded by Supervisor Merrihew, and adopted upon a roll-call vote as follows:

**AYES: 2779 votes**

**NOES:**            0 votes  
**ABSENT:**       64 votes        (*McSweeney*)

**Resolution No. 392**

***December 1, 2008***  
**Regular Board Meeting**

**RESOLUTION LEVYING 2009 COUNTY AND TOWN TAXES AND ASSESSMENTS, APPROVING THE COMPLETED TAX ROLLS, AND DIRECTING THE EXECUTION AND DELIVERY OF THE TAX WARRANTS**

The following resolution was offered by Supervisor Morrow, who moved its adoption.

**WHEREAS**, there has been presented to this Board of Supervisors a duly certified copy of the annual budget for each of the eighteen towns of Essex County for the fiscal year commencing January 1, 2009; and

**WHEREAS**, the Essex County Board of Supervisors has duly adopted its annual budget for the fiscal year 2009 by Resolution No. 391, which budget provides for appropriation of funds in the total amount of \$96,235,448.00, for revenues of \$75,612,635.00, and for a total tax levy of \$13,245,725.00.

**BE IT RESOLVED** that pursuant to Town Law §115, the amounts specified in the annual town budgets, as adopted by the respective Town Boards, to be raised by tax or assessment shall be levied, assessed, raised and collected against, from, and upon the real property of the respective towns liable therefor at the time and in the manner provided by law for the levy of county taxes; and

**BE IT FURTHER RESOLVED** that pursuant to County Law §360, the amounts specified in the 2009 County budget to be raised by tax, amounting to \$13,245,725.00 shall be levied, assessed, raised and collected against, from, and upon the real property of the County liable therefor at the time and in the manner provided by law; and

**BE IT FURTHER RESOLVED** that the Town and County taxes be extended against each parcel on said rolls, with such taxes as extended being hereby determined to be the taxes due on each such parcel as set forth thereon; and

**BE IT FURTHER RESOLVED** that there be annexed to each of said rolls a tax warrant in the form prepared by the Clerk of the Board, as provided by Real Property Tax Law §904, that such warrants should be in the respective amounts heretofore authorized to be levied upon said rolls, that under the seal of the Essex County Board of Supervisors the said rolls with said warrants are to be forthwith collected within and from the several tax districts of the County; and

**BE IT FURTHER RESOLVED** that such taxes and assessments, when collected, shall be paid to the Supervisor of the respective town and to the Essex County Treasurer in the amounts as shown on the Contents of Collectors Warrants for distribution by them in the manner provided by law.

This resolution was duly seconded by Supervisor French, and adopted upon a roll-call vote as follows:

**AYES: 2779 votes**  
**NOES: 0 votes**  
**ABSENT: 64 votes (McSweeney)**

**Resolution No. 393**

**December 1, 2008**  
**Regular Board Meeting**

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**RESOLUTION AUTHORIZING CONTRACTS FOR FISCAL  
YEAR 2009 FOR WHICH FUNDS ARE APPROPRIATED IN  
THE 2009 ESSEX COUNTY BUDGET**

The following resolution was offered by Supervisor Jackson, who moved its adoption.

Upon the passage of a motion to consider from the floor, and the same appearing proper and necessary.

**BE IT RESOLVED** that the Essex County Board of Supervisors hereby authorizes and directs the County Manager and/or Chairman of the Board to execute all contracts for fiscal year 2009 for the various departments of County Government for which funds have been appropriated in the 2009 Essex County Budget as adopted.

This resolution was duly seconded by Supervisor Merrihew, and adopted upon a roll-call vote as follows:

**AYES: 2779 votes**  
**NOES: 0 votes**  
**ABSENT: 64 votes (McSweeney)**

**Resolution No. 394**

**December 1, 2008**  
**Regular Board Meeting**



**RESOLUTION SCHEDULING THE 210<sup>th</sup>  
ORGANIZATIONAL  
MEETING FOR JANUARY 5, 2009**

The following resolution was offered by Supervisor Ferebee, who moved its adoption.

Upon the passage of a motion to consider from the floor, and it appearing proper and necessary;

**BE IT RESOLVED** that the Essex County Board of Supervisors hereby schedules the 2009 Organizational Meeting for January 5, 2009 to commence at 10:00 a.m.

This resolution was duly seconded by Supervisor Blades, and adopted.