

**SPECIAL RULES, ENACTMENTS & INTERGOVERNMENTAL RELATIONS
COMMITTEE
Held In Room 318
PUTNAM COUNTY OFFICE BUILDING
CARMEL, NEW YORK 10512**

Members: Chairwoman Nacerino, Legislators Castellano & DiCarlo

Wednesday

3:00 P.M.

March 27, 2013

The meeting was called to order at 3:00 P.M. by Chairwoman Nacerino who requested that Legislator Castellano lead in the Pledge of Allegiance. Upon roll call, Legislators Castellano, DiCarlo, and Chairwoman Nacerino were present.

**Item #3) Chapter 173 of the Code of Putnam County Entitled “Item Pricing”/
Putnam County Chambers of Commerce/Discussion**

Chairwoman Nacerino made a motion to accept all additional information for the meeting, seconded by Legislator DiCarlo. All in favor.

Chairwoman Nacerino welcomed everyone to today’s meeting to continue the dialogue regarding the County’s Item Pricing Law. She reiterated that the County wholeheartedly supports small businesses and commerce. She stated that this law’s intent is to protect the consumer and it is the consumer’s right to know what the cost is of the item. She stated that the waiver is optional. This is not a mandated tax. The waiver’s intent is to seek relief from the item pricing law and ultimately it is a cost savings measure. Businesses generating less than \$3 million in revenue are exempt. Putnam County is not unique or out of the box by incorporating a revenue stream in our budget for waiver fees. Using the same participating stores as Westchester, presently there are twelve stores that will be affected with the potential of forty stores if they chose to exercise this option. We have given this our utmost consideration and attention. Herself and Director of Consumer Affairs Jean Marie Noel met with President of the Putnam County Chambers of Commerce Bill Nulk and the Chambers are very supportive. In analyzing our data, we concluded that the most similar comparison was that of the City of Mount Vernon. It resembles Putnam County in both population and the fee waiver scale. To the best of her knowledge, it has been a non-issue about the waiver fees in the City of Mount Vernon. She stated that they are prepared today to move forward with a proposed amendment of the waiver fees and to abolish Section 173-8 F, requiring a price scanner capable of printing an adhesive label. We believe that this amendment is fair and balanced. She then read the proposed waiver fees.

Mitch Klein, Vice President of Retail Services for Alpha I Marketing Corp and Chairman of the Food Industry Alliance, stated that they still question the fee schedule that has been put forward. They do not believe it is consistent with other counties and that it is far above what other counties are. Mount Vernon is a city and the problem with Mount Vernon is that supermarkets in the city do not participate in the waiver program. To

their knowledge they are unaware of any consumer complaints in their Putnam County stores for quite some time. If an item is priced wrong in their stores, the consumer is gladly given that item for free. Item pricing in Putnam County has not been enforced for many, many years. That does not mean that they do not believe in item pricing. The people who police us far more effectively than the Consumer Affairs Department are the consumers. If their pricing is wrong, they lose a customer. They watch their pricing very carefully, they are not aware of complaints. If there have not been complaints, why now take something to create revenue for the County when there have not been problems on a consumer basis. He further stated that if this law is to protect the public then why were they not brought in from the beginning. They would like to see it rolled back to what Westchester is based on the volume that is there.

Chairwoman Nacerino stated that she believes what the Committee has presented today is fair. She further stated that they cannot speak to why this was not enforced twenty years ago. The fact remains that it is a law on our books. She stated that it is our responsibility as government to implement the laws that we have on our books and we are trying to do that in a fair and equitable way. She stated that she cannot speak to them not being included in the initial conversation because she was not a legislator. She stated they are being included now.

Mr. Klein stated they still personally feel that for the supermarket business that the fee is exorbitant.

Chairwoman Nacerino thanked Mr. Klein for his comments. She stated that they compared Putnam County to Mount Vernon because Putnam County's population and small size really compares to that of a large city. She stated they tried to do an apples to apples comparison.

Mr. Klein stated that in Mount Vernon, there are no supermarkets that accepted that waiver fee. While the Legislature has absolutely every right to put the fee in, if nobody participates, you get nothing. He further stated that yes, the County still has the right to enforce the item pricing law but if there was a law that would be a cost savings to the stores it would be a win-win.

Chairwoman Nacerino stated that the waiver is an option that the store chooses to exercise or not.

Mr. Klein stated that they understand that. He further stated that there are other places like Mount Vernon that they have chosen not to exercise their waiver option.

Chairwoman Nacerino stated that was by choice.

Mr. Klein stated yes, that was absolutely by choice and they understand that Putnam's waiver is also by choice. They also felt that if the fee schedule got to a point where it was good for everyone that the County would enjoy some revenue.

Chairwoman Nacerino stated that she believes what was proposed today is that compromise. She believes the Committee has made significant overtures to accommodate all interested parties.

Director Noel stated that based on the information that the Mr. Rosen of the Food Alliance sent to the County Executive's office on February 8, 2013 and at a meeting he then attended on February 21, 2013, he presented a compromise of sorts and they took that into consideration. She then compared Westchester's fee schedule to Putnam's. She believes it is egregious to fine supermarkets the way that was done in the past without making an alternative option and a business decision. Our county has broken down the waivers in a different way. She further stated that item pricing is the law in Putnam County since 1991 and remains so today. The fact is that the existing law with the waiver option has been in place with the stated exemptions. If anyone has a business in Putnam County, and this is the same since 1991 and remains today, who does less than \$3 million per year you are exempt from item pricing, today, tomorrow, twenty years ago, exempt. If you are small business that makes more than \$3 million per year, if you have blood relatives working full-time in your business with you, you are exempt. If you have two full-time employees and your related blood, you are exempt. If you have more than three full-time employees and make more than \$3 million you fall into item pricing. The waiver is a voluntary option. Item price as the law requires or choose to apply for a waiver. The only thing that has changed in Putnam County is a new option for business, a voluntary waiver program, similar to those adopted by more than a dozen surrounding cities and counties.

Mr. Klein stated yes but candidly, it is very hard to tell a retailer how much he is going to save when for twenty plus years he had to do nothing. He stated that he has opened stores in Putnam and the Consumer Affairs Department came in and said as long as the store has shelf tags and everything is right, you have no problem with the County Consumer Affairs Department, you don't have to item price. He stated that the Consumer Affairs Department told him that personally.

Director Noel stated that is a personnel issue for Putnam County.

Mr. Klein stated that for twenty years they have not item priced. It is very hard for him to tell his stores how much they can save when for twenty years they have not done it. It is also very hard for him as a businessperson when all the County brings up is fines from 1997. It seems his stores have been doing a pretty good job then.

Director Noel stated is was 2001.

Mr. Klein stated that is still a pretty big margin.

Director Noel stated that Mr. Klein stated that the employee of Putnam County told him not to worry about it.

Mr. Klein stated yes and his stores didn't worry about it.

Director Noel stated she has a job description that she read at the last meeting that says item pricing is her job and her responsibility.

Mr. Klein stated he understands that but no one in the County followed up on it.

Director Noel stated that she is.

Mr. Klein stated that all of a sudden all of this comes forward with no consumer complaints.

Chairwoman Nacerino stated that is not the objective. The objective is the County has been remiss in exercising the law that we have on our own books and for the twenty years stores did not have to deal with it is twenty years that you are ahead of the game.

Mr. Klein stated that they are not ahead of the game.

Chairwoman Nacerino stated yes they are.

Mr. Klein stated that is her opinion but his stores have acted fairly, equitably, and honorably with the consumer.

Director Noel asked if his stores do that in Westchester, Ulster, Suffolk, etc?

Mr. Klein stated that they do it through the entire state.

Director Noel stated that is not what this hearing is about.

Legislator Castellano stated that the law says we have to price every single item.

Mr. Klein said yes.

Legislator Castellano asked if we walked into his stores today are we supposed to turn a blind eye to the items that are not marked.

Mr. Klein stated no. He further stated that he understands that.

Legislator Castellano asked Mr. Klein what the County was supposed to do, are we supposed to fine your stores or do you want to present something from the individual who said don't worry about it?

Mr. Klein stated that is not the right answer either. He was allowed to do something for twenty years and you have never said anything.

Legislator Castellano asked who has allowed him to do this.

Mr. Klein stated the County has allowed him to do this. The last fine was in 2001. Now either his stores are doing an excellent job and this is only to get money because there are not any issues with the consumer or the County has not done their job.

Director Noel asked if there have been issues with consumers in the counties that his stores participate in the waiver programs.

Mr. Klein stated he was not sure but there is probably some.

Director Noel asked him to clarify that his stores would only benefit here if we had complaints yet, he just stated that in other counties where there were no complaints he still participates in the waiver program.

Mr. Klein stated that was twisting it around to make it convenient.

Director Noel stated that no it is not. It is saying that if we had complaints it might be more of a basis for his stores to participate in the waiver program. She then asked him if there are not complaints in these other counties then why do his stores participate in those counties' waiver programs.

Mr. Klein stated that if the County is expecting every item in a store to constantly be perfectly item priced then the County is going to make a windfall profit and come in and fine his stores. If that becomes the issue then his stores will have to address that and put that as a budget item for his stores which makes the costs for products go up. There is a significant difference in the cost of a product in New York City then the cost of a product in this county and it is based on violations that the City issues. He receives in New York City, and candidly he does not operate any better or any worse in New York City than he does here, and he gets over \$2.3 million in fines in New York City because it is a revenue generating commission that does that. He does not get that anywhere else and he does not operate any better or any worse. That becomes a cost of doing business. They respect the right of the Legislature to do things.

Chairwoman Nacerino asked him to state what a penny on a dollar means to him.

Mr. Klein stated that if one of his stores has \$1 in sales, after the store pays its expenses, salaries, wages, rent, etc., the store makes somewhere between 0.65 and 0.87 of a cent on that \$1, which is less than a penny. He stated that is what the store puts in its pocket. He further stated that is basically the margins in the food business.

Director Noel asked if his stores use those pennies to pay the waiver fees in all of those other counties.

Mr. Klein stated that those fees are much lower than Putnam's.

Legislator Oliverio stated that there was an editorial in the paper recently about how the sales tax is onerous in our County. He stated that he did some investigation on these fees and he went to eighteen different locations and spot checked. He offered a

recommendation because he understands that we need to enforce this law, it is on the books. He recommended that the way to enforce it is either fine the stores who are not following the item pricing or give them an out, and that of course is the waiver fee. He stated that he believes that these fees are onerous. It is much higher than anything else he has seen. He does not want to compare Putnam County to the City of Mount Vernon. He recommended a 40% reduction across the waiver fees, the only one he would not reduce is the Over 90,000 square feet. He stated he would make that \$10,000.00. He believes by doing that reduction that the waiver fee schedule would be more acceptable. He stated he is not saying to repeal, he is saying to modify.

Chairwoman Nacerino stated that we also need to take into consideration we have mandated fees for small businesses to operate under the Licensing Law. While she respects Legislator Oliverio's suggestion, she believes that by doing so we would be opening Pandora's Box for every plumber, electrician, gardener, painter, etc., to say the County lowered their fees, then the County should lower ours.

Legislator Oliverio stated that we never had fees. He further stated that we created the fees and suggested that we create them at a correct level.

Chairwoman Nacerino stated that we created the fees to provide relief from the law. We also can give leverage to the small businessman who is paying over \$3,000 just for the pleasure to do business in Putnam County and those are really the epitome of the small businessman, your painter, your mow and blow, etc.

Legislator Oliverio suggested the Legislature look at those fees as well. He stated that if we really want businesses to locate to Putnam County we need to have a business friendly climate.

Chairwoman Nacerino stated that those are mandated fees, not optional.

Legislator Oliverio stated that those fees are mandated but we set the charge. We want businesses in Putnam County but sales tax is too high. People then shop elsewhere. If we are going to stop that we need to start right here and draw the line in the sand.

Legislator LoBue stated that last year when this was introduced as a revenue initiative, she voted "no" and so did Legislator Gross. She believes this is anti-business legislation because the Bondi Administration chose not to enforce this law because that Administration realized and understood the fragility of our economic base in this county which cannot be compared in her opinion to Westchester and Rockland. She stated that the fee waiver is optional but compliance of the law was optional for ten years and now we are saying we are going to enforce it. She stated that she does not understand why we would chose to enforce this law in this economic climate. In her opinion, this is poor judgment and a huge mistake. She stated that in order for it to pass, these fees need to be drastically reduced and in another five to ten years when the economy turns around and if we feel we need to revisit this, we can discuss it. At this point in the economy, this is a huge mistake and she is absolutely against it.

Chairwoman Nacerino stated that just to be clear this legislation was enacted before she was a Legislator. She stated she cannot speak to the logic or rationale of it being passed in November 2012. All she can speak to is that it is important for us as a government to adopt laws which we have full intention of enforcing. If we choose to adopt laws for the sheer pleasure of adopting laws and not enforce them then that becomes a travesty of our government process.

Mr. Michael Rosen, Senior Vice President of Government Relations & General Counsel of the Food Industry Alliance, thanked the Committee for agreeing to eliminate the requirement to have a printer attached to the price check scanner. That equipment is expensive to buy, install, and maintain. He stated that they still believe the fee schedule is too high. They are willing to pay a fee schedule similar to the other upstate counties but, suggested the Committee not compare Putnam Count to Mount Vernon. There is a new Director that wants to enforce the law. The courts have been very clear that when a County sets a fee schedule they have to have that fee schedule relate to the cost of providing that service. If you don't establish how you arrived at that fee the courts have held that that is a tax. He cannot believe that it would cost the Director \$13,000 to do a two hour inspection. He stated that the Committee has to look at fee schedules that are fair.

Mr. Tom Urtz, Vice President of Human Resources and Community Affairs for ShopRite Supermarkets, stated the coincidentally in Colonie they will open a new store and that would be one of seven stores they have opened in the last forty months. He stated that as part of the new development team, there are a lot of things that they look at when looking at a location and one is how the government deals with business in that area. He does not believe our fees can be compared to Westchester's because of population density.

Mr. Rosen stated that this is a "do not operate in Putnam County" law. He stated his stores would be happy to pay a fair fee so they can operate more efficiently. He suggested the fees be changed to fees that are more in line with fees of upstate rural counties.

Chairwoman Nacerino stated that he submitted something in February that he deemed acceptable.

Legislator Gross recited what the email said from Mr. Rosen.

Mr. Rosen stated he thinks it is too high.

Director Noel asked Mr. Rosen to clarify that he submitted it but he now thinks it is too high.

Mr. Rosen stated that they would like to have a dialogue, the fee schedule on the table is still too high, it is not related to the County's actual costs, it is really a hidden tax, and they respectfully ask that the Legislature choose a fee schedule more aligned with other upstate counties.

Jennifer Maher, Chairwoman of the Putnam County Chambers of Commerce, stated she made almost 103 calls to businesses. She spent a lot of time squashing myths and misconceptions. She further stated that she spoke to stakeholders and the waiver fee has to be in line or less than Westchester and Fairfield Counties because that is where we lose businesses to. She believes that Putnam County already has a stigma of not being business-friendly, and couple that with sales tax makes it a difficult atmosphere. She encouraged the Committee to consider coming down on the fees even more.

Bill Nulk, President of the Putnam County Chambers of Commerce, stated that they agree that item pricing is proper and the \$3 million exemption is appropriate and they have no problem with that. It is perception. There needs to be communication and education with people, letting them know this is coming because it has not been enforced in so long. He understands there has been change over in the Consumer Affairs Department but that is not the issue. He believes that when it was passed it should have been rolled out more appropriately.

Chairwoman Nacerino stated they have every intention when this is implemented to give warning and educate the public.

Chairwoman of the Putnam County Chambers of Commerce Maher stated that while she respects the Legislature's right to set the fees she believes they should be less than Putnam's competing counties. The Trades fees are more than the competing counties and she has heard complaints about those fees for some time. The Legislature has an opportunity right now to ensure that does not happen again this time with the waiver fees.

Chairwoman Nacerino stated that we need to look at that as well. Those Trades fees are required; we cannot offer a waiver option to them. She stated that the Trades fees generate a lot of revenue into the County but they are a hardship.

Ted Potrikus, Executive Vice President and Director of Government Relations of the Retail Council of New York State, stated that in 1991, the reason that Putnam County and a handful of other counties felt the need to enact item pricing laws is that the State item pricing law lapsed. He further stated that 1991 was a long time ago and there was a certain degree of lack of trust of the accuracy of price scanners. Scanners have come a long way and now everyone has a scanner and they are extremely effective. He stated that Putnam County can repeal their item pricing law. He stated that if consumer protection is the issue that is truly at the forefront of the County Legislature's mind then it need not be on the books because in 2006, the State Legislature enacted a scanner accuracy requirement. He further stated that law is in effect in every county that does not have its own item pricing law. He stated that he believes that these waivers are revenue generators that can be cloaked as consumer protections. His recommendation is to repeal the law.

Chairwoman Nacerino asked Mr. Potrikus, if he has made that argument to other counties with their own item pricing laws.

Mr. Potrikus stated he has. He further stated that in the State's 2006 law, any county that had an item pricing law in place was grandfathered in, no county can enact a new item pricing law nor can they change their item pricing law and that is their argument in Nassau County who changed their item pricing law for every item to be marked. The argument is ongoing. He stated that if protecting the consumer of Putnam County is truly the primary interest the way to do it is repeal the County Law and follow the State law.

Legislator Gross stated he believes this is a tax on consumers. He believes that businesses will not eat this tax and they will pass it on to our friends and neighbors. He thinks they should repeal it. Things are getting worse not better and he thinks to add another tax is a mistake. He believes the fees are not appropriate and the law should be repealed.

Legislator Albano stated that he is glad that we are paying attention to the law and doing things right. We have one extreme or the other, get rid of it or enforce it. He asked what the cost is to the County to carry out this law. He believes that we should be charging what it costs us to implement this.

Director Noel stated that she does not believe it is up to one employee to decide what County laws to enforce. She believes if the law is on the books it should be enforced. She stated there are three options: get rid of it, enforce as is, or modify it. She further stated that the law Mr. Potrikus cited is an unfunded mandate.

Mr. Potrikus stated that the counties that implement the State law do not call it an unfunded mandate, rather it is complaint driven. He stated that those counties do not inspect every store. He stated if there is a complaint, then those counties go in and issue a fine, a fine which can be set by the local government. He stated that what he will tell the stores in Putnam County is that the waiver fee is not reflective of how much it costs to inspect for item pricing violations, it is there to subsidize other things that are seen as unfunded mandates in the Consumer Affairs Department.

Mr. Rosen stated that in the other counties that use the State law those counties avoid the expense completely because when a complaint comes in they call New York State Department of Agriculture and Markets and have the State do the inspection because they are authorized to do so.

Mr. Klein stated that in nearby Danbury, Connecticut, the waiver fee is a one-time fee of \$750.00, no matter the size of the store. He stated that these are competitive issues that drive business to and from a county.

Colin Schmitt, Deputy Director of Operations for State Senator Greg Ball, stated that less than twenty-four hours ago Senator Ball launched an online petition against this item pricing law and as of 2:10 PM this afternoon there were approximately 260-280 names on said petition.

Legislator DiCarlo stated there are two questions: Do we want to repeal the law? If not, what is the structure moving forward? If you look at Mr. Rosen's February email it is very much in-line and we are almost at a compromise.

Mike Merrow, Director of Operations of the Lower Hudson Valley for Hannaford Supermarkets, stated that based on the dialogue that the repeal of the law is in the best interests of those involved. He stated that his stores spend millions of dollars a year on information technology infrastructure that absolutely insures that they we are right on pricing.

Andre Makater, resident of Putnam Valley, stated that he is a consumer and he can pick up an item and ask how much it costs. He believes that this law is not necessary because if he was wronged at a store, he will not go there anymore. He asked the Legislature to repeal this law.

Director Noel stated that there is a bill under NYS Sentate Open Legislation requires Item Pricing with Limited Exception. She stated that she understands that some of these laws never get passed. She stated that it has not come up on the State Legislature's 2013 agendas but it provides for State Agriculture and Markets to take this over.

Mr. Rosen stated that bill was from last session and was never enacted.

Mr. Potrikus stated that bill has come out every year since 1989 and has never passed.

Legislator LoBue stated that she spoke with Senator Ball's office and asked them to research that bill.

Mr. Schmitt stated he spoke to Senate Counsel and Senate Finance and they informed him that bill, as of today, there is no expectation by any of the experts in Albany that anything like this will be introduced.

Lynne Eckhardt, Councilwoman from the Town of Southeast, stated that the Town of Southeast has two developments and this bill is not going to help businesses to come to those developments. She stated that she is not a proponent of development but she wants the businesses here to succeed and she wants what is passed to succeed. She asked how it is determined that a business makes over \$3 million.

Director Noel stated they have to fill out a waiver form and attest to it.

Councilwoman Eckhardt further asked how much the equipment will cost each store if they do not go with the waiver.

Director Noel stated it will cost them nothing.

Councilwoman Eckhardt stated that even if the fees are reduced, we do not know who will apply for a waiver.

Director Noel stated it might be reasonable to assume based on the fee structure comparing the stores that have a waiver in Westchester and also have stores in Putnam that there would be twelve stores participating.

Councilwoman Eckhardt stated that something everyone will want to know is how much enforcing this will cost the County.

Director Noel stated that if no one applies for a waiver that her Department can enforce the law with her current staff. With the waiver program enacted, Director Noel would reorganize her department and enforce the waiver and item pricing also with her current staff.

Councilwoman Eckhardt stated she does not believe the public will see this as consumer protection. She encouraged the Legislature to really look at all aspects of this law and who it will effect.

Legislator LoBue stated that the Legislature received five emails from the public opposing this law. She suggested the Committee move to repeal this law.

Chairwoman Nacerino stated there are two schools of thought here: repeal and modification of the waiver fees. She further stated that the Committee will research them.

Charlie Melchner, resident of Mahopac in the Town of Carmel, stated that we do not need this law. He stated he does not feel it serves a purpose.

Kevin Bailey, Chairman of the Putnam County Industrial Development Agency, stated that he is glad Director Noel brought to light that this law was not enforced for twenty years. He stated that he still feels if the fees are not lowered than the County will not hit the revenue mark they have set.

Legislator Oliverio recommended that this discussion be tabled for the next Rules meeting in April and that would prepare us for the May Full Legislative Meeting.

Chairwoman Nacerino made a motion to table this discussion to the April Rules meeting, seconded by Legislator Castellano. All in favor.

There being no further business, at 4:30 P.M., Chairwoman Nacerino made a motion to adjourn, seconded by Legislator Castellano. All in favor.

Respectfully submitted by Krista M. Butler, Administrative Assistant.