CITY OF NEWBURGH
COUNCIL MEETING AGENDA
SESION GENERAL DEL CONSEJAL
May 8, 2017
7:00 PM

Mayor/Alcaldesa

1. Prayer/Rezo
2. Pledge of Allegiance/Juramento a la Alianza

City Clerk:/Secretaria de la Ciudad

3. Roll Call / Lista de Asistencia

Communications/Communicaciones

4. Approval of the minutes of the meeting of April 24, 2017
   Aprobación del acta de la reunión del 24de abril de 2017.

5. City Manager Update / Gerente de la Ciudad pone al dia a la audiencia de los planes de cada departamento

Presentations/Presentaciones

6. A Certificate of Achievement will be given to NFA Varsity Swimmer Joshua Bryant
   (City Council)

   Se dará un certificado de logro al nadador del equipo Varsity de Newburgh Free Academy Joshua Bryant. (Concejo Municipal)

Comments from the public regarding agenda and general matters of City Business/Comentarios del público con respecto a la agenda y sobre asuntos generales de la Ciudad.

Comments from the Council regarding the agenda/Comentarios del Consejo con respecto a la agenda

City Manager's Report/ Informe del Gerente de la Ciudad

7. Resolution No. 112 - 2017 - Amend 2017 Personnel Book to create Temporary FT HR Position
   Resolution Amending the 2017 Personnel Analysis Book to add one (1) temporary full-time position in the Executive Office to cover a leave of absence. (Katie Mack)

Una resolución enmendando el Libro de Análisis del Personal del 2017 para agregar un (1) puesto temporal a tiempo completo en la Oficina Ejecutiva para cubrir un permiso de ausencia. (Katie Mack)

8. Resolution No. 113 -2017 - Amend 2017 Personnel Budget to Replace Engineer GIS Analyst with an Engineering Technician

   Resolution amending the 2017 Personnel Analysis Book authorizing a change in job title from GIS Analyst to Engineering Technician in the Engineering Department (Katie Mack & Jason Morris)

   Una resolución enmendando el Libro de Análisis del Personal del 2017 autorizando un cambio en el título de trabajo de Analista GIS a Técnico en Ingeniería en el Departamento de Ingeniería. (Katie Mack y Jason Morris)

9. Resolution No. 114 - 2017 -(M) Self Insurance

   Resolution amending Resolution No: 310A-2016, the 2017 Budget for the City of Newburgh, New York to offset Self Insurance Fund Expenses. (Katie Mack & Michelle Kelson)

   Una resolución enmendando Resolución No. 310ª-2016, el Presupuesto del 2017 para la Ciudad de Newburgh, Nueva York para compensar los gastos de los fondos de Auto Aseguranzas. (Katie Mack y Michelle Kelson)

10. Resolution No. 115 -2017 - Annual Resolution to Co-Sponsor the 2017 Newburgh Illuminated Festival

    Resolution to continue sponsorship of the Newburgh Illuminated Festival (Michelle Kelson)

    Una resolución para continuar auspiciando el Festival Newburgh Iluminado. (Michelle Kelson)

11. Resolution No. 116 - 2017 - Purchase of 16 Lutheran Street

    Resolution to authorize the conveyance of real property known as 16 Lutheran Street (Section 29, Block 8, Lot 12) at private sale to Liban Adde for the amount of $20,615.00, (Deirdre Glenn)

    Una resolución autorizando el traspaso de bienes raíces conocidas como la 16 de la Calle Lutheran (Sección 29, Bloque 8, Lote 12) en una venta privada a Liban Adde por la cantidad de $20,615 (Deirdre Glenn)

12. Resolution No. 117 -2017 - Purchase of 28, 42 and 53 Hasbrouck Street

    Resolution to authorize the conveyance of real property known as 28

Hasbrouck Street (Section 38, Block 3, Lot 42), 42 Hasbrouck Street (Section 38, Block 3, Lot 49) and 53 Hasbrouck Street (Section 38, Block 4, Lot 11) at private sale to Eulogio Santiago and Felderi Santiago for the amount of $6,000.00

Una resolución autorizando el traspaso de bienes raíces conocidas como la 28 de la Calle Hasboruck (Sección 38, Bloque 3, Lote 42) 42 de la Calle Hasbrouck (Sección 38, bloque 3, Lote 49) y la 53 de la Calle Hasbrouck (Sección 38, Bloque 4, Lote 11) en una venta privada a Eulogio Santiago por la cantidad de $6,000.00

13. Resolution No. 118 - 2017 - Purchase of 5 Bush Avenue

    Resolution to authorize the conveyance of real property known as 5 Bush Avenue (Section 16, Block 6, Lot 14) at private sale to Eulogio Santiago and Felderi Santiago for the amount of $110,000.00

    Una resolución autorizando el traspaso de bienes raíces conocidas como la 5 de la Avenida Bush (Sección 16, Bloque 6, Lote 14) en una venta privada a Eulogio Santiago y Felderi Santiago por la cantidad de $110,000.00

14. Resolution No. 119 -2017 Purchase of 25 Benkard Avenue

    Resolution to authorize the conveyance of real property known as 25 Benkard Avenue (Section 45, Block 5, Lot 3) at private sale to Paulien Lethen for the amount of $131,000.00

    Una resolución autorizando el traspaso de bienes raíces conocidas como la 25 de la Avenida Benkard (Sección 45, Bloque 5, Lote 3) en una venta privada a Paulien Lethen por la cantidad de $131,000.00

15. Resolution No. 120 -2017 City Sponsorship of Film Festival at Washington's Headquarters

    Resolution to co-sponsor the summer film festival at Washington's Headquarters (Deirdre Glenn)

    Una resolución para co-auspiciar el festival de cine de verano en "Washington's Headquarters (Deirdre Glenn)

16. Resolution No. 121 - 2017 - Apply for and Accept if Awarded a Cities for

Responsible Investment and Strategic Enforcement ("Cities RISE") Grant from the Office of the Attorney General/ LISC

Resolution authorizing the City Manager to apply for and accept if awarded a Cities for Responsible Investment and Strategic Enforcement Phase One Grant for a comprehensive asset management data platform and technical expertise to facilitate implementation from the Office of the New York State Attorney General through Local Initiatives Support Corporation. (Deirdre Glenn)

Una resolución autorizando al Gerente de la Ciudad a solicitar y aceptar si en otorgado un Subvención Fase Uno de Ciudades para Inversiones Responsables y Ejecución Estratégica para una plataforma compresiva de administración de data y maestría técnica para facilitar la implementación de la Oficina del Procurador General del Estado de Nueva York por medio de la Corporación de Apoyo de Iniciativas Locales. (Deirdre Glenn)

17. Resolution No. 122 - 2017 -To Accept the Award of a DASNY grant of $100,000 sponsored by Senator Larkin for the Skate Park

    Resolution authorizing the City Manager to apply for and accept a DASNY State and Municipal Facilities Program Grant in an amount not to exceed $100,000.00 for the construction of a skateboard park to be located in the Delano-Hitch Recreation Park. (Deirdre Glenn)

    Una resolución autorizando al Gerente de la Ciudad a solicitar y aceptar una subvención Estatal DASNY y un Programa de Instalaciones Municipales por una cantidad que no exceda $100,00.00 para la construcción de un parque de patinaje que se ubicara en el Parque de Recreación Delano-Hitch. (Deirdre Glenn)

18. Resolution No. 123 - 2017 - Apprenticeship Training Program requirement in public construction contracts awarded by the City of Newburgh

    Resolution to require apprenticeship training programs for public contracts awarded by the City of Newburgh. (Councilwoman Karen Mejia)

    Una resolución para requerir programas de entrenamiento de aprendiz para contratos públicos otorgados por la Ciudad de Newburgh. (Concejal Karen Mejia)

19. Resolution No. 124 - 2017

    A Resolution authorizing the City Manager to execute a payment of claim with Jose Velazquez in the amount of $5,646.27.

    Una resolución autorizando al Gerente de la Ciudad para ejecutar un pago de reclamo con José Velazquez por el monto de $5,646.27.

20. Local Law No. 1 - 2017 amending Chapter 155 to add new section entitled "Reciprocal Licensing"

    Local Law amending Chapter 155, Article II of the Code of Ordinances of the City of Newburgh to include a new section entitled “Reciprocal Licensing”. (Asst. Chief Ahlers or Horton and Michelle Kelson)

    Una ley local enmendando el Capítulo 155, Articulo II del Código de Ordenanzas de la Ciudad de Newburgh para incluir una sección titulada “Licencias Reciprocas”. (Asistente de Jefe Ahlers o Horton y Michelle Kelson)

21. Local Law No. 2 - 2017 amending Chapter 172 to add new Article II Fireworks and Sparkling Devices

    Local Law amending Chapter 172 of the Code of Ordinances of the City of Newburgh to add “Article II – Fireworks and Sparkling Devices”. (Assistant Chief Ahlers or Horton & Michelle Kelson)

    Una ley local enmendando el Capítulo 172, Articulo II del Código de Ordenanzas de la Ciudad de Newburgh para agregar “Articulo II – Fuegos Artificiales y dispositivos chispeantes (Asistente de Jefe Ahlers o Horton y Michelle Kelson)

Old Business: / Asuntos Pendientes

New Business: / Nuevos Negocios

Final Comments from the City Council/ Comentarios Finales del Ayuntamiento:

Adjournment/ Aplazamiento:

RESOLUTION NO.: 112 -2017

OF

MAY 8, 2017

A RESOLUTION AMENDING THE 2017 PERSONNEL ANALYSIS BOOK TO ADD ONE (1) TEMPORARY FULL TIME POSITION IN THE EXECUTIVE OFFICE TO COVER A LEAVE OF ABSENCE

WHEREAS, due to a leave of absence, it is necessary to change the position of the Human Resources Director from part-time to full-time on a temporary basis in order to ensure that there is sufficient personnel capable of performing necessary work; and

WHEREAS, the change from part-time to full-time will be on a temporary basis for the duration of the leave of absence expected to be for approximately 6 weeks and funding for such position will be derived from available funds in the Executive Office budget line; and

WHEREAS, the City Council has determined that changing the position of the Human Resources Director from part-time to full-time on a temporary basis will promote economy and efficiency across City departments; the same being in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the Personnel Analysis Book for the fiscal year 2017 be amended to change the position of the Human Resources Director from part-time to full-time on a temporary basis in the Executive Office.

RESOLUTION NO.: 113 -2017

OF

MAY 8, 2017

A RESOLUTION AMENDING THE 2017 PERSONNEL ANALYSIS BOOK AUTHORIZING A CHANGE IN JOB TITLE FROM GIS ANALYST TO ENGINEERING TECHNICIAN IN THE ENGINEERING DEPARTMENT

WHEREAS, the 2017 Personnel Analysis Book included the position of GIS Analyst at Grade 21, Step 1 in the Engineering Department; and

WHEREAS, the Engineering Department proposed changes to the duties of the position of Engineering Technician that have been reviewed and approved by the City of Newburgh Civil Service Commission; and

WHEREAS, the City Engineer is recommending to this Council that the position of GIS Analyst be changed to the title of Engineering Technician at Grade 17, Step 1 to improve the efficiency of the Engineering Department; and

WHEREAS, the change in job title of such position requires the amendment of the City of Newburgh Adopted Personnel Analysis Book for 2017;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the Personnel Analysis Book for 2017 be and is hereby amended to provide for a change in title from GIS Analyst to Engineering Technician in the Engineering Department.

CITY OF NEWBURGH .
AMENDED: JUNE 18, 1991
AMENDED: APRIL 19, 2017

ENGINEERING TECHNICIAN

DISTINGUISHING FEATURES OF THE CLASS:

This position is both administrative and technical including the responsibility under the general direction of the City Engineer, Assistant City Engineer and/or City Manager for the day-to-day operation of the Engineering Department. Requires the technical knowledge for performing engineering and surveying field work and drafting. Requires a close working relationship with other City departments. Has responsibility for the safe keeping, preservation and/or revision of all City maps, drawings and pertinent records relating to the water mains, sewer mains, water pollution control facilities, water filtration plant and every installation making up the City's physical components. Serves as a resource person to the public as well as to other City departments.

EXAMPLES OF WORK: (ILLUSTRATIVE ONLY)

- Assists in developing maintenance and repair project priorities and schedules;
- Assists in administering the inspection program for City infrastructure;
- Assists in developing general standards for construction;
- Works with other City departments to identify and resolve problems related to City facilities;
- Assists in evaluating proposed City projects for appropriateness and costs;
- Coordinates the activities of contractors, sub-contractors, utilities and others affected by City construction contracts;
- Lays out and draws a variety of plans, profiles and details;
- Makes field inventories and obtains measurements of bridges, sewer infrastructure, water infrastructure, etc;
- Oversees care and maintenance of Engineering Department equipment, including, but not limited to GPS unit, sewer televising equipment, etc.;
- Establishes and maintains appropriate filing systems to permit the safekeeping and efficient retrieval of information, records and drawings;
- Performs SWPPP inspections and prepares reports for construction sites and stormwater management facilities in accordance with regulatory agency requirement/guidelines.

REQUIRED KNOWLEDGE, SKILLS AND ABILITIES:

- Working knowledge of mathematics, including algebra, geometry and trigonometry;
- Working knowledge of drafting and surveying, including basic engineering computations;
- Working knowledge of the methods and materials of construction as related to roads, water mains, sewers, drainage, buildings and related structures;
- Ability to collect, analyze and interpret technical data;
- Ability to write clear, comprehensive and informative reports;
- Ability to observe construction and determine compliance with specifications;
- Working knowledge of City's codes, laws, rules, regulations and policies pertaining to Engineering department activities
- Ability to work well with others and on their own;
- Working knowledge of hand and power tools, along with the ability and understanding on how to maintain and repair a wide range of engineering related equipment (ie. sewer telemetry, robotic camera, etc);
- AutoCAD;
- ArcGIS;
- GPS data collection;
- Large format scanning and archiving.

MINIMUM QUALIFICATIONS: EITHER:

A. Graduation from a regionally accredited or New York State registered college with an Associate degree in engineering or construction technology or related field;

- OR -

B. Graduation from high school or possession of a high school equivalency diploma and two years experience assisting an engineering project which shall have involved the use of high school mathematics;

- OR -

C. An equivalent combination of experience and training as outlined by the limits of A and B above.

RESOLUTION NO.: 114 - 2017

OF

MAY 8, 2017

RESOLUTION AMENDING RESOLUTION NO: 310A-2016,
THE 2017 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK
TO OFFSET SELF INSURANCE FUND EXPENSES

WHEREAS, by Resolution No. 91-2016 of April 11, 2016, the City Council authorized the settlement the claim of Susan Whitfield in the total amount of $225,000.00; and

WHEREAS, the Orange County Surrogate's Court issued a Decree dated April 14, 2017 approving the settlement of the claim and the disbursement of the settlement funds; and

WHEREAS, it is necessary to reallocate available funds the Self-Insurance Fund to pay the settlement funds so authorized by the City Council;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Newburgh, New York that Resolution No.: 310A-2016, the 2017 Budget of the City of Newburgh, is hereby adjusted as follows:

	Increase
Expense: M.1930.0400 Judgment & Claims	$364,569.00
Revenue: M.0000.2680 Insurance Recovery	$364,569.00

RESOLUTION NO. 91 - 2016

OF

APRIL 11, 2016

A RESOLUTION TO AUTHORIZE A SETTLEMENT IN THE MATTER OF SUSAN WHITFIELD AGAINST THE CITY OF NEWBURGH IN THE AMOUNT OF $225,000.00

WHEREAS, Susan Whitfield brought a claim against the City of Newburgh; and

WHEREAS, the parties reached an agreement for the payment of the settlement of the claim in the amount of Two Hundred Twenty-Five Thousand and 00/100 ($225,000.00) Dollars in exchange for a release to resolve all claims among them; and

WHEREAS, this Council has determined it to be in the best interests of the City of Newburgh to settle the matter for the amount agreed to by the parties;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City's attorney is hereby authorized to settle the claim of Susan Whitfield in the total amount of Two Hundred Twenty-Five Thousand and 00/100 ($225,000.00) Dollars, and that City Manager be and he hereby is authorized to execute documents as the City's attorney may require, to effectuate the settlement as herein described.

I, Katrina Cotten, Deputy City Clerk of the City of Newburgh hereby certify that I have compared the foregoing with the original resolution adopted by the Council of the City of Newburgh at a regular meeting held 4/11/16 and that it is a true and correct copy of such original.
Witness my hand and seal of the City of Newburgh this 12th day of April 20 16

Deputy City Clerk

RESOLUTION NO. 91 - 2016

OF

APRIL 11, 2016

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WHEREAS, this Council has determined it to be in the best interests of the City of Newburgh to settle the matter for the amount agreed to by the parties;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City's attorney is hereby authorized to settle the claim of Susan Whitfield in the total amount of Two Hundred Twenty-Five Thousand and 00/100 ($225,000.00) Dollars, and that City Manager be and he hereby is authorized to execute documents as the City's attorney may require, to effectuate the settlement as herein described.

I, Lorene Cotten, Deputy City Clerk of the City of Newburgh hereby certify that I have compared the foregoing with the original resolution adopted by the Council of the City of Newburgh at a regular meeting held 4/11/16 and that it is a true and correct copy of such original.
Witness my hand and seal of the City of Newburgh this 12th day of April 20 16

Deputy City Clerk

Form WD-7 (as of 4/98)

At a Surrogate's Court held in and for the County of Orange, at the Courthouse in Goshen, New York, on the 14th day of April, 2017.

P R E S E N T:

HON. Robert A. Onofry
Orange County Surrogate

----------X

In the Matter of the Application of

SUSAN WHITFIELD,
as Administratrix of the Goods, Chattels and Credits

which were of
NATHANIEL COBBS, Deceased,

For leave to compromise a certain cause of action for wrongful death of the decedent and to render and have judicially settled an account of the proceedings as such Administratrix.

----------X

DECREE

File No. 2008-188/A

Upon the Amended Petition of Susan Whitfield, as Administratrix of the Estate of Nathaniel Cobbs, deceased, duly verified the 4th day October, 2016, in which application was made for an Order permitting the said Susan Whitfield, as Administratrix to compromise and settle for the sum of $225,000.00 the cause of action against the City of Newburgh and City of Newburgh police officer defendants Thomas Murphy, John Buckley, John Jenerose, Christopher Flaherty, Howard Ladlee, and Robert Vasta arising from the death of the decedent, Nathaniel Cobbs,

And to discontinue the action for conscious pain and suffering and to discharge and release said defendants from all suits and claims upon the payment of the said $225,000.00 in settlement of the cause of action herein;

And that the entire recovery of said action should be allocated to compensatory damages for the cause of action for violation of decedent's federal constitutional rights, to modify the Letters of Administration to permit said compromise, dispense with the filing of a bond, judicially settle the account, pay to Sussman & Watkins, Esqs., their fee for services rendered;

And more than seven months having elapsed since the granting of Letters of Administration to Susan Whitfield, and the Surrogate having issued a Citation to all persons interested in the estate of said deceased to attend such judicial settlement on the 15th day of March, 2017, at 1:30 p.m., at the Surrogate's Court, Orange County, and said citation return date

having been adjourned to April 5, 2017 due to inclement weather;

And the said Citation having been duly returned with proof of due service thereof, or the due appearance and waiver of notice, by the following named person or corporations, to wit: NATHANIEL WHEELER; NICOLE EVITA WHEELER (as mother of Nakai and Naviean Wheeler, infants); NAKAI EZRA MAURICE WHEELER; GEORGE DODSON; and NYS TAX DEPARTMENT;

And the Court having appointed Robert J. Dickover, Esq., as Guardian Ad Litem for Naviean Ira-Terrell Wheeler and Nakiai Ezra Maurice Wheeler,

And Robert J. Dickover, Esq. having filed a report as such guardian ad litem,

And the said Susan Whitfield, petitioner herein, having appeared by her attorney, Christopher D. Watkins, Esq. of Sussman & Watkins;

And the Court having rendered a decision dated April 14, 2017, granting the petition to compromise the cause of action for violation of decedent's federal constitutional rights, and to judicially settle the account;

And the Court having examined the said account and having found the state and condition of said account to be as set forth in the following statement recorded with the Court:

SUMMARY STATEMENT OF THE SETTLEMENT PROCEEDS

The Administratrix is charged with $225,000.00
the proceeds of the action of wrongful death to be distributed.

TOTAL CHARGES $225,000.00

The Administratrix is credited with $0
the following amounts

TOTAL CREDITS $0

BALANCE OF THE SETTLEMENT PROCEEDS
TO BE DISTRIBUTED $225,000.00

ORDERED, ADJUDGED AND DECREED that the petitioner's application for leave to compromise and settle the cause of action arising out of decedent's death and to allocate the entire amount of the proceeds to the cause of action for violation of decedent's federal constitutional rights and to grant leave to discontinue the cause of action for conscious pain and suffering is granted; and it is further

ORDERED, ADJUDGED AND DECREED that the petitioner as Administratrix of the decedent's estate is authorized to settle and discontinue the claims and causes of action for conscious pain and suffering and wrongful death against the defendant, City of Newburgh and all individually named defendants, and petitioner is authorized to deliver general releases and

discontinuances and any other papers or documents that may be required to effectuate a settlement and discontinuances or withdrawals of the said claims and causes of actions for conscious pain and suffering and wrongful death; and it is further

ORDERED, ADJUDGED AND DECREED that the entire settlement sum of $225,000.00 is allocated to the cause of action for violation of decedent's constitutional rights, and the personal injury action is discontinued with prejudice and without interest, costs or disbursements; and it is further

ORDERED, ADJUDGED AND DECREED that the entire settlement sum of $225,000.00 be paid by the defendant City of Newburgh, and, after setting aside $10,000.00 to be judicially settled after publication notice:

To Sussman & Watkins, Esqs. as fee for services as attorneys for the Administratrix herein	$51,568.50
To Sussman & Watkins, Esqs., in reimbursement of disbursements as attorneys for the Administratrix herein	$18,366.00
To Susan Whitfield as her statutory commission as Administratrix	$10,000.00
To Susan Whitfield as reimbursement for her partial payment of Decedent's funeral expenses	$2,500.00
To George Dodson as reimbursement for his payment toward the costs of an independent autopsy of decedent.	$4,200.00
To Robert J Dickover, Esq., as fee for services as Guardian ad litem	$3,180.00
To Nathaniel Marquis Jerrod Wheeler, distribute. as and for his share as next of kin of said decedent Pursuant to EPTL section 4-1.1, equal to 33.3%	$41,728.50
To Nakai Ezra Maurice Wheeler, infant, by payment to Susan Whitfield, as Guardian of the property of Nakai Ezra Maurice Wheeler, to be deposited in a Guardianship Account in accordance with the Amended Letters of Guardianship issued on March 9, 2017, as and for his/her share as distributee of said decedent pursuant to EPTL section 4-1.1, equal to 33.3%	$41,728,50

To Naviean Ira Terrell Wheeler, infant, by payment to Susan Whitfield,
as Guardian of the property of Naviean Ira Terrell Wheeler,
to be deposited in a Guardianship Account in accordance with
the Amended Letters of Guardianship issued on March 9, 2017
as and for his/her share as distribute of said decedent
pursuant to EPTL section 4-1.1, equal to 33.3% $41,728.50

and it is further

ORDERED, ADJUDGED AND DECREED that upon the defendant making payments as aforesaid, Susan Whitfield, as Administratrix of the estate of Nathaniel Cobbs, deceased, be and hereby is discharged from any and all further liability as to all matters and things embraced in the aforesaid account and determined by this decree; and it is further

ORDERED, ADJUDGED AND DECREED that the giving of a bond or other security in connections therewith be dispensed with, and that the restrictions on the Letters of Administration be modified to allow the above settlement;

ORDERED, ADJUDGED AND DECREED that the account of Susan Whitfield, as Administratrix is hereby judicially settled.

DATED: 4/14/2017

Surrogate

RESOLUTION NO.: 115 - 2017

OF

MAY 8, 2017

A RESOLUTION TO CONTINUE SPONSORSHIP OF THE NEWBURGH ILLUMINATED FESTIVAL

WHEREAS, the Newburgh Illuminated Festival will be held on June 3, 2017; and

WHEREAS, the Newburgh Illuminated Festival is an event designed to celebrate the rich history of the City, its cultural diversity and the residents that reside here, thus resulting in increased tourism, increased business support and positive regional perception; and

WHEREAS, the organizers of the Newburgh Illuminated Festival have requested that the City Council support the Festival as a City-sponsored event; and

WHEREAS, this City Council finds that supporting the Newburgh Illuminated Festival as a City-sponsored event is in the best interests of the residents of the City of Newburgh. That it is in the best interests of residents for the city departments such as Department of Public Works, City Police and others as needed to partner with the Festival organizers;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York hereby supports and sponsors the Newburgh Illuminated Festival as a City-sponsored event and that such sponsorship be limited to providing insurance coverage for the event.

RESOLUTION NO.: 116 - 2017

OF

MAY 8, 2017

A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY KNOWN AS 16 LUTHERAN STREET (SECTION 29, BLOCK 8, LOT 12) AT PRIVATE SALE TO LIBAN ADDE FOR THE AMOUNT OF $20,615.00

WHEREAS, the City of Newburgh has acquired title to several parcels of real property by foreclosure *In Rem* pursuant of Article 11 Title 3 of the Real property Tax law of the State of New York; and

WHEREAS, pursuant to Section 1166 of the Real Property Tax Law the City may sell properties acquired by foreclosure *In Rem* at private sale; and

WHEREAS, the City of Newburgh desires to sell 16 Lutheran Street being more accurately described as Section 29, Block 8, Lot 12 on the official tax map of the City of Newburgh; and

WHEREAS, the prospective buyer has offered to purchase this property at private sale; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to sell said property to the prospective buyer for the sum as outlined below, and upon the same terms and conditions annexed hereto and made a part hereof,

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchaser be and hereby is confirmed and the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of the indicated purchase price in money order, good certified or bank check, made payable to **THE CITY OF NEWBURGH,** such sums are to be paid on or before August 11, 2017, being approximately ninety (90) days from the date of this resolution; and

Property address	Section, Block, Lot	Purchaser	Purchase Price
16 Lutheran Street	29 - 8 - 12	Liban Adde	$20,615.00

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York, that the parcel is not required for public use.

Terms and Conditions of Sale
16 Lutheran Street, City of Newburgh (29-8-12)

STANDARD TERMS:

1. City of Newburgh acquired title to this property in accordance with Article 11 of the Real Property Tax Law of the State of New York, and all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture.
2. For purposes of these Terms and Conditions, parcel shall be defined as a section, block and lot number.
3. All real property, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title; and (e) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the date of sale.
4. The properties are sold subject to unpaid school taxes for the tax year of 2016-2017, and also subject to all school taxes levied subsequent to the date of the City Council resolution authorizing the sale. The purchaser shall reimburse the City for any school taxes paid by the City for the tax year 2016-2017, and subsequent levies up to the date of the closing. Upon the closing, the properties shall become subject to taxation. Water and sewer charges and sanitation fees will be paid by the City to the date of closing except that where the water meter reading nets a usage to the purchaser of less than 6 units for the quarterly bill, the purchaser shall be responsible for a minimum water and sewer bill of 6 units.
5. **WARNING: FAILURE TO COMPLY WITH THE TERMS OF THIS PARAGRAPH MAY RESULT IN YOUR LOSS OF THE PROPERTY AFTER PURCHASE. The deed will contain provisions stating that the purchaser is required to rehabilitate any building on the property and bring it into compliance with all State, County and Local standards for occupancy within (18) months of the date of the deed. Within such eighteen (18) month time period the purchaser must either: obtain a Certificate of Occupancy for all buildings on the property; make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or demolish such buildings. The deed shall require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. If the purchaser has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued. A written request made to the City Manager for an extension of the eighteen (18) month rehabilitation period shall be accompanied by a non-refundable fee of $250.00 per parcel for which a request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to rehabilitate of up to, but not to exceed, three (3) months. Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.**
6. Notice is hereby given that the property is occupied. This parcel is being sold subject to the City's Rental License Ordinance and all provisions of law applicable thereto. At closing, the purchaser will be required to register the property and remit the rental license fee. It is the sole responsibility of the purchaser to redevelop such parcel in accordance with same.
7. Notice is hereby given that the property lies within the East End Historic District as designated upon the zoning or tax map. This parcel is being sold subject to all provision of law applicable thereto and it is the sole responsibility of the purchaser to redevelop such parcel so designated in accordance with same.

8. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.
9. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.
10. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Property may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Property also may contain other environmental hazards. Purchaser shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchaser shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receivership of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Purchaser also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.
11. The entire purchase price and all closing costs/fees must be paid by money order or guaranteed funds to the City of Newburgh Comptroller's Office on or before August 11, 2017. Such closing costs/fees may include, but are not limited to: recording fees, tax adjustments as of the day of closing, fuel oil adjustments, and applicable condominium charges (e.g. monthly maintenance charges, assessment charges, transfer buy-in fees, and/or closing package ordering fees). *The City of Newburgh does not accept credit card payments for the purchase price and closing costs/fees.* **The City is not required to send notice of acceptance or any other notice to a purchaser.** At closing, purchaser, as grantee, may take title as a natural person or as an entity wherein purchaser is an officer or managing member of said entity. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefor, and unless accompanied by a fee of $250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.
12. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the successful bidder shall be entitled only to a refund of the purchase money paid with interest. Purchaser agrees that he shall <u>not</u> be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale.
13. Sale shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, his heirs, successors or assigns, against City of Newburgh arising from this sale.
14. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price, buyer's premium, and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**
15. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject property, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the property. The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.

16. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least ten (10) days in advance of closing title and approved by the City's Engineer.
17. Evictions, if necessary, are solely the responsibility of the successful bidder after closing and recording of the deed.
18. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he/she is not representing the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom City of Newburgh foreclosed within 24 months subsequent to the auction date. If such conveyance occurs, the purchaser understands that he/she may be found to have committed fraud, and/or intent to defraud, and will be liable for any deficiency between the purchase price at auction and such sums as may be owed to City of Newburgh as related to the foreclosure on the property and consents to immediate judgment by City of Newburgh for said amounts.

RESOLUTION NO.: 117 - 2017

OF

MAY 8, 2017

A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY KNOWN AS 28 HASBROUCK STREET (SECTION 38, BLOCK 3, LOT 42), 42 HASBROUCK STREET (SECTION 38, BLOCK 3, LOT 49) AND 53 HASBROUCK STREET (SECTION 38, BLOCK 4, LOT 11) AT PRIVATE SALE TO EULOGIO SANTIAGO AND FELDERI SANTIAGO FOR THE AMOUNT OF $6,000.00

WHEREAS, the City of Newburgh has acquired title to several parcels of real property by foreclosure *In Rem* pursuant of Article 11 Title 3 of the Real Property Tax Law of the State of New York; and

WHEREAS, pursuant to Section 1166 of the Real Property Tax Law the City may sell properties acquired by foreclosure *In Rem* at private sale; and

WHEREAS, the City of Newburgh desires to sell 28 Hasbrouck Street, 42 Hasbrouck Street and 53 Hasbrouck Street being more accurately described as Section 38, Block 3, Lot 42, Section 38, Block 3, Lot 49 and Section 38, Block 4, Lot 11, respectively, on the official tax map of the City of Newburgh; and

WHEREAS, the prospective buyer has offered to purchase these properties at private sale; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to sell said properties to the prospective buyer for the sum as outlined below, and upon the same terms and conditions annexed hereto and made a part hereof;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchaser be and hereby is confirmed and the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of the indicated purchase price in money order, good certified or bank check, made payable to THE CITY OF NEWBURGH, such sums are to be paid on or before August 11, 2017, being approximately ninety (90) days from the date of this resolution; and

Property address	Section, Block, Lot	Purchaser	Purchase Price
28 Hasbrouck Street	38 - 3 - 42	Eulogio Santiago	$6,000.00
42 Hasbrouck Street	38 - 3 - 49	Felderi Santiago	
53 Hasbrouck Street	38 - 4 - 11		

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York, that the parcels are not required for public use.

Terms and Conditions of Sale
28 Hasbrouck Street, City of Newburgh (38-3-42)
42 Hasbrouck Street, City of Newburgh (38-3-49)
53 Hasbrouck Street, City of Newburgh (38-4-11)

STANDARD TERMS:

1. City of Newburgh acquired title to this property in accordance with Article 11 of the Real Property Tax Law of the State of New York, and all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture.
2. For purposes of these Terms and Conditions, parcel shall be defined as a section, block and lot number.
3. All real property, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title; and (e) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the date of sale.
4. The properties are sold subject to unpaid school taxes for the tax year of 2016-2017, and also subject to all school taxes levied subsequent to the date of the City Council resolution authorizing the sale. The purchaser shall reimburse the City for any school taxes paid by the City for the tax year 2016-2017, and subsequent levies up to the date of the closing. Upon the closing, the properties shall become subject to taxation. Water and sewer charges and sanitation fees will be paid by the City to the date of closing.
5. **WARNING: FAILURE TO COMPLY WITH THE TERMS OF THIS PARAGRAPH MAY RESULT IN YOUR LOSS OF THE PROPERTY AFTER PURCHASE. The deed will contain provisions stating that the purchaser is required to rehabilitate any building on the property and bring it into compliance with all State, County and Local standards for occupancy within (18) months of the date of the deed. Within such eighteen (18) month time period the purchaser must either: obtain a Certificate of Occupancy for all buildings on the property; make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or demolish such buildings. The deed shall require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. If the purchaser has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued. A written request made to the City Manager for an extension of the eighteen (18) month rehabilitation period shall be accompanied by a non-refundable fee of $250.00 per parcel for which a request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to rehabilitate of up to, but not to exceed, three (3) months. Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.**
6. Notice is hereby given that the properties are vacant and unoccupied. The parcels are being sold subject to the City's Vacant Property Ordinance and all provisions of law applicable thereto. At closing, the purchaser will be required to register the properties and remit the vacant property fee. It is the sole responsibility of the purchaser to redevelop such parcels in accordance with same.
7. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed

by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.

8. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.
9. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Property may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Property also may contain other environmental hazards. Purchaser shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchaser shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receivership of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Purchaser also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.
10. The entire purchase price and all closing costs/fees must be paid by money order or guaranteed funds to the City of Newburgh Comptroller's Office on or before August 11, 2017. Such closing costs/fees may include, but are not limited to: recording fees, tax adjustments as of the day of closing, fuel oil adjustments, and applicable condominium charges (e.g. monthly maintenance charges, assessment charges, transfer buy-in fees, and/or closing package ordering fees). *The City of Newburgh does not accept credit card payments for the purchase price and closing costs/fees.* **The City is not required to send notice of acceptance or any other notice to a purchaser.** At closing, purchaser, as grantee, may take title as a natural person or as an entity wherein purchaser is an officer or managing member of said entity. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefor, and unless accompanied by a fee of $250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.
11. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the successful bidder shall be entitled only to a refund of the purchase money paid with interest. Purchaser agrees that he shall <u>not</u> be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale.
12. Sale shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, his heirs, successors or assigns, against City of Newburgh arising from this sale.
13. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price, buyer's premium, and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**
14. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject property, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the property. The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.
15. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least ten (10) days in advance of closing title and approved by the City's Engineer.

16. Evictions, if necessary, are solely the responsibility of the successful bidder after closing and recording of the deed.
17. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he/she is not representing the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom City of Newburgh foreclosed within 24 months subsequent to the auction date. If such conveyance occurs, the purchaser understands that he/she may be found to have committed fraud, and/or intent to defraud, and will be liable for any deficiency between the purchase price at auction and such sums as may be owed to City of Newburgh as related to the foreclosure on the property and consents to immediate judgment by City of Newburgh for said amounts.

RESOLUTION NO.: 118 - 2017

OF

MAY 8, 2017

A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY KNOWN AS 5 BUSH AVENUE (SECTION 16, BLOCK 6, LOT 14) AT PRIVATE SALE TO EULOGIO SANTIAGO AND FELDERI SANTIAGO FOR THE AMOUNT OF $110,000.00

WHEREAS, the City of Newburgh has acquired title to several parcels of real property by foreclosure *In Rem* pursuant of Article 11 Title 3 of the Real Property Tax Law of the State of New York; and

WHEREAS, pursuant to Section 1166 of the Real Property Tax Law the City may sell properties acquired by foreclosure *In Rem* at private sale; and

WHEREAS, the City of Newburgh desires to sell 5 Bush Avenue being more accurately described as Section 16, Block 6, Lot 14 on the official tax map of the City of Newburgh; and

WHEREAS, the prospective buyer has offered to purchase this property at private sale; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to sell said property to the prospective buyer for the sum as outlined below, and upon the same terms and conditions annexed hereto and made a part hereof;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchaser be and hereby is confirmed and the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of the indicated purchase price in money order, good certified or bank check, made payable to THE CITY OF NEWBURGH, such sums are to be paid on or before August 11, 2017, being approximately ninety (90) days from the date of this resolution; and

Property address	Section, Block, Lot	Purchaser	Purchase Price
5 Bush Avenue	16 - 6 - 14	Eulogio Santiago Felderi Santiago	$110,000.00

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York, that the parcel is not required for public use.

Terms and Conditions of Sale
5 Bush Avenue, City of Newburgh (16-6-14)

STANDARD TERMS:

1. City of Newburgh acquired title to this property in accordance with Article 11 of the Real Property Tax Law of the State of New York, and all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture.
2. For purposes of these Terms and Conditions, parcel shall be defined as a section, block and lot number.
3. All real property, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title; and (e) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the date of sale.
4. The properties are sold subject to unpaid school taxes for the tax year of 2016-2017, and also subject to all school taxes levied subsequent to the date of the City Council resolution authorizing the sale. The purchaser shall reimburse the City for any school taxes paid by the City for the tax year 2016-2017, and subsequent levies up to the date of the closing. Upon the closing, the properties shall become subject to taxation. Water and sewer charges and sanitation fees will be paid by the City to the date of closing except that where the water meter reading nets a usage to the purchaser of less than 6 units for the quarterly bill, the purchaser shall be responsible for a minimum water and sewer bill of 6 units.
5. **WARNING: FAILURE TO COMPLY WITH THE TERMS OF THIS PARAGRAPH MAY RESULT IN YOUR LOSS OF THE PROPERTY AFTER PURCHASE. The deed will contain provisions stating that the purchaser is required to rehabilitate any building on the property and bring it into compliance with all State, County and Local standards for occupancy within (18) months of the date of the deed. Within such eighteen (18) month time period the purchaser must either: obtain a Certificate of Occupancy for all buildings on the property; make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or demolish such buildings. The deed shall require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. If the purchaser has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued. A written request made to the City Manager for an extension of the eighteen (18) month rehabilitation period shall be accompanied by a non-refundable fee of $250.00 per parcel for which a request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to rehabilitate of up to, but not to exceed, three (3) months. Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.**
6. Notice is hereby given that the property is occupied. This parcel is being sold subject to the City's Rental License Ordinance and all provisions of law applicable thereto. At closing, the purchaser will be required to register the property and remit the rental license fee. It is the sole responsibility of the purchaser to redevelop such parcel in accordance with same.
7. Notice is hereby given that the property lies within the Colonial Terraces Architectural Design District as designated upon the zoning or tax map. This parcel is being sold subject to all provision of law applicable thereto and it is the sole responsibility of the purchaser to redevelop such parcel so designated in accordance with same.

8. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.

9. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.

10. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Property may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Property also may contain other environmental hazards. Purchaser shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchaser shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receivership of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Purchaser also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.

11. The entire purchase price and all closing costs/fees must be paid by money order or guaranteed funds to the City of Newburgh Comptroller's Office on or before August 11, 2017. Such closing costs/fees may include, but are not limited to: recording fees, tax adjustments as of the day of closing, fuel oil adjustments, and applicable condominium charges (e.g. monthly maintenance charges, assessment charges, transfer buy-in fees, and/or closing package ordering fees). *The City of Newburgh does not accept credit card payments for the purchase price and closing costs/fees.* **The City is not required to send notice of acceptance or any other notice to a purchaser.** At closing, purchaser, as grantee, may take title as a natural person or as an entity wherein purchaser is an officer or managing member of said entity. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefor, and unless accompanied by a fee of $250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.

12. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the successful bidder shall be entitled only to a refund of the purchase money paid with interest. Purchaser agrees that he shall <u>not</u> be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale.

13. Sale shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, his heirs, successors or assigns, against City of Newburgh arising from this sale.

14. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price, buyer's premium, and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**

15. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject property, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the property. The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.

16. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least ten (10) days in advance of closing title and approved by the City's Engineer.
17. Evictions, if necessary, are solely the responsibility of the successful bidder after closing and recording of the deed.
18. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he/she is not representing the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom City of Newburgh foreclosed within 24 months subsequent to the auction date. If such conveyance occurs, the purchaser understands that he/she may be found to have committed fraud, and/or intent to defraud, and will be liable for any deficiency between the purchase price at auction and such sums as may be owed to City of Newburgh as related to the foreclosure on the property and consents to immediate judgment by City of Newburgh for said amounts.

Purchase Proposal Summary

Location:	**5 Bush Avenue**
Tax Map Number:	16-6-14
Property Class:	482—Detached Row Building
Zoning:	RL—Residential Light Density; CTADD—Colonial Terrace Architectural Design District
Description:	Year Built: 1918; 3460 total sf; 2 apartments on the 2nd floor; 2 business on the 1st floor. The basement is unfinished.
Condition:	Average
Assessed Value:	$270,200
Offer Price:	$135,100 @ 50%
Annual Taxes:	$ 15,671 +/-

The city acquired these properties: March 2016

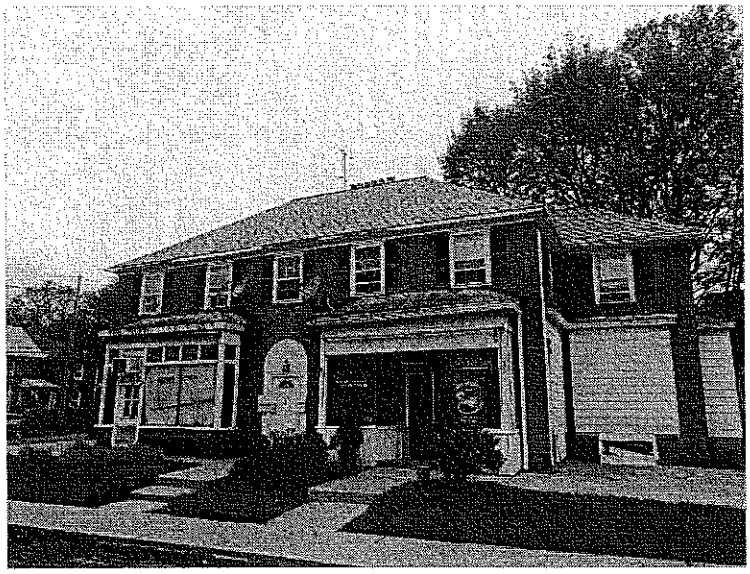
Offer Information:

Name:	Eulogio & Felderi Santiago (E-Sky Group LLC)
Offer Price:	**$110,000**
Construction Estimate:	$ 75,440 +/-
Funding Source:	Tompkins/Mahopac Bank & Fidelity Investments.

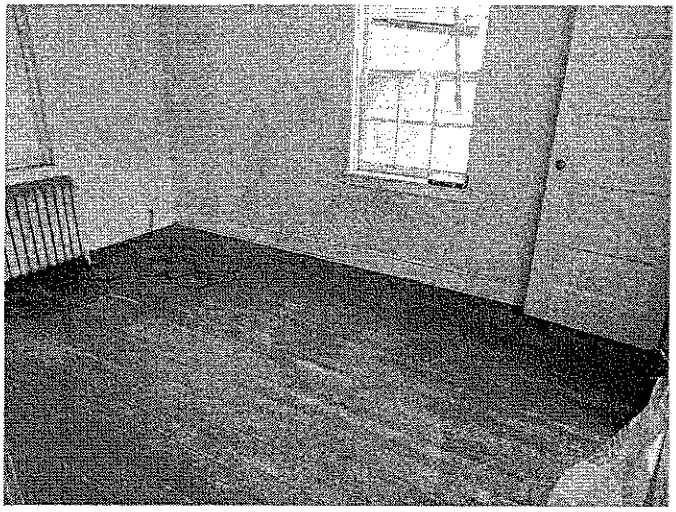
Comments: A father and son contracting team wish to purchase and restore this distinctive building on the corner of Bush and Fullerton Avenues. The father, Eulogio, has been a general contractor for many years. He has renovated over 40 properties through the greater New York City area.

In Yonkers, where their company is based, they have redeveloped 12 properties, yielding a total of 31 apartments. Now, they seek to use the same "Yonkers" model to redevelop properties in Newburgh. They are committed to provide quality affordable housing to the community.

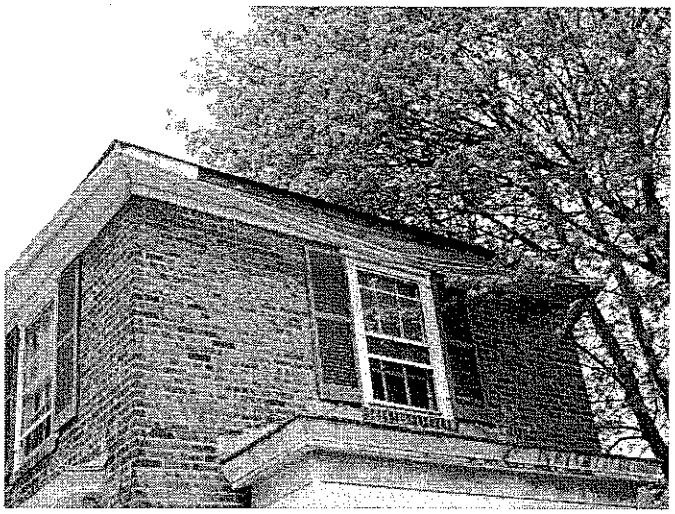
There are two businesses occupying the 1st floor; the 2nd floor apartments are empty. The apartments need updating and some renovation work. The exterior of the building also needs some work.



Interior Views



Detailed Exterior Views



Proposal Form

Contact Information:

Name: Eulogio Santiago and Felderi Santiago
Business Name (If Applicable): E-Sky Group LLC
Address: 26 Alder Street
City, State & Zip: Yonkers, NY 10701
Home phone:
Business Phone: 914-295-2626
Mobile Phone: 914-439-4956
E-mail: info@eskygroup.com
Federal I.D. No. (If Available):

Property Ownership Information:

Do you own – as an individual, member of an LLC, partner in a partnership or officer in a corporation - any properties in the City of Newburgh? Yes___ No ✓

If you own property or properties in the City of Newburgh, are any of these properties vacant and/or currently listed on the City of Newburgh's Vacant Building Registry?
Yes _____ (attach explanation) No _____ N/A ✓ (No property owned in the City of Newburgh)

Please list **all** of the addresses of properties you own in the City of Newburgh. Also indicate if any of these properties are vacant. (You may attach a list of the properties if the space below is inadequate.):

N/A

Are you current on all municipal obligations (taxes, water charges, etc.)?
Yes _____ No ___ (attach explanation) N/A ✓ (No property owned in City of Newburgh)
Verified (Internal Office Use Only); Date Verified _____

Do you have any outstanding code violations for properties owned in the City of Newburgh?
Yes____ (attach explanation) No ___ N/A ✓ (No property owned in City of Newburgh)
☐ Verified (Internal Office Use Only); Date Verified _____

Have you had a previous tax foreclosure on a property owned by you in the City of Newburgh? Yes _____ (attach explanation) No ✓

Individual Property Bid Sheet

Information on Bid Property:
(If you are bidding on more than one property, please submit a completed copy of this page for **each** bid property. Please limit the total number of properties to a maximum of **three (3)**. Only one copy of the other pages in this application is required even if you are bidding on multiple properties.)

Property Address: 5 Bush

S-B-L#: _____

Type of Project:

_____ Single Family (includes a condominium unit)

_____ Multi-Family (# of Units___)

__✓__ Mixed Use (Commercial & Residential - # of Residential Units 2)

For the property types listed above, will it be occupied by the purchaser: Yes___ No✓

_____ Commercial _____ Industrial

_____ Vacant Land (Proposed Use:_____)

Offer Purchase Price: $ 110,000
(An offer of **at least** the minimum purchase price is recommended. The "Offer Purchase Price" cannot be left blank.)

Does or will your proposal conform to existing zoning? Yes✓ No____

Renovation Estimate (Pre-Qualifying) - How much do you anticipate investing in this project for renovations? Please consider in your estimate that most vacant properties need *significant* repairs before they can be occupied again. This estimate can be revised once you have obtained entry to the property. *A more detailed repair cost estimate will be required after interior access.* Do not include renovation cost estimate in the "Offer Purchase Price" listed above: **$** 75,440.00

Who will be doing the work? ✓Self ___Other (complete below)

Please keep in mind that the City of Newburgh requires electrical and plumbing work to be performed by City of Newburgh licensed electricians and plumbers.

General Contractor: E-Sky Construction Group LLC
Architect: _____
Engineer: _____

E-Sky Group LLC
26 Alder Street
Yonkers, NY 10701

E-SKYGROUP

Date 4/12/17

Property: 5 Bush

Division		Total
Bathroom (s)		
Replace 3 piece bathroom (vanity, tub and toilet) in each unit	$ 2,400.00	
Install ceramic tile throughout bathroom in each unit	$ 6,000.00	
Replace fixtures in each unit	$ 700.00	
	Subtotal	$ 9,100.00
Electrical		
Upgrade electrical outlets, GFIs, smoke and carbon monixide detectors in each unit	$ 4,000.00	
Install new lighting fixtures in each unit	$ 1,900.00	
	Subtotal	$ 5,900.00
Interior		
Repair drywall, prime and paint each unit. Replace trim and doors as required	$ 8,000.00	
Sand and stain floors in each unit	$ 3,500.00	
Install new windows in each unit	$ 14,000.00	
	Subtotal	$ 25,500.00
Kitchens		
Install new kitchen cabinets in each unit	$ 5,500.00	
Install new appliances in each unit	$ 1,250.00	
	Subtotal	$ 6,750.00
Exterior		
Restore store front fascade	$ 7,500.00	
Tree trimming of the outside	$ 850.00	
Install 2 exterior doors, one per store front and entrace to apartments	$ 2,500.00	
Address issues with gutters, shutters and roof	$ 7,500.00	
	Subtotal	$ 18,350.00
	Contingecy 15%	$ 9,840.00
Comments:	**TOTAL**	$ 75,440.00

Examples of Purchaser's Previous Renovation or Development Experience:
(Alternatively, applicants can attach a list of renovated properties or development experience that contains the information listed below.)

	Property/Project No. 1	Property/Project No. 2
Property Address: Please list all addresses (not merely project name). Include street number, street, city and zip code.	32 Orchard Street Yonkers, NY 10701	99 Waverly Street Yonkers, NY 10701
Role (i.e. owner, partner, general contractor, architect, investor.)	Investor/Contractor	Investor/Contractor
Type of Project: (i.e. new construction, existing building requiring substantial rehabilitation or moderate rehabilitation.)	Existing building requiring substantial rehabilitation	Existing home requiring substantial rehabilitation
Property Type: (i.e. single-family, multi-family rental or commercial.)	4-unit multi-family	Single Family
Number of Buildings in Project	1	1
Total Number of Residential Units in Project/Building	4	1
If commercial, total square footage of project	N/A	N/A
Total Estimated Development/Rehabilitation Costs	$220,000	$120,000
Current Status of Building (Pre-development, under construction/renovation or completed - include date completed.)	Renovation Completed. Fully Occupied and Rented Completion Date: 6/2010	Renovation Completed. Fully Occupied and Rented Completion Date: 5/2010
Government Program, if any (Provide name of program and agency, name and current phone of reference.)	None	None

Examples of Purchaser's Previous Renovation or Development Experience:
(Alternatively, applicants can attach a list of renovated properties or development experience that contains the information listed below.)

	Property/Project No. 1	Property/Project No. 2
Property Address: Please list all addresses (not merely project name). Include street number, street, city and zip code.	191 Palisade Avenue Yonkers, NY 10703	26 Linden Street Yonkers, NY 10701
Role (i.e. owner, partner, general contractor, architect, investor.)	Investor/Contractor	Investor/Contractor
Type of Project: (i.e. new construction, existing building requiring substantial rehabilitation or moderate rehabilitation.)	Existing building requiring substantial rehabilitation	Existing home requiring substantial rehabilitation
Property Type: (i.e. single-family, multi-family rental or commercial.)	2-family	3-unit multi-family
Number of Buildings in Project	1	1
Total Number of Residential Units in Project/Building	2	3
If commercial, total square footage of project	N/A	N/A
Total Estimated Development/Rehabilitation Costs	$200,000	$160,000
Current Status of Building (Pre-development, under construction/renovation or completed - include date completed.)	Renovation Completed. Fully Occupied and Rented Completion Date: 2/2011	Renovation Completed. Fully Occupied and Rented Completion Date: 9/2014
Government Program, if any (Provide name of program and agency, name and current phone of reference.)	None	None

Examples of Purchaser's Previous Renovation or Development Experience:
(Alternatively, applicants can attach a list of renovated properties or development experience that contains the information listed below.)

	Property/Project No. 1	Property/Project No. 2
Property Address: Please list all addresses (not merely project name). Include street number, street, city and zip code.	97 Hawthorne Avenue Yonkers, NY 10701	116 Waverly Street Yonkers, NY 10701
Role (i.e. owner, partner, general contractor, architect, investor.)	Investor/Contractor	Investor/Contractor
Type of Project: (i.e. new construction, existing building requiring substantial rehabilitation or moderate rehabilitation.)	Existing building requiring substantial rehabilitation	Existing home requiring substantial rehabilitation
Property Type: (i.e. single-family, multi-family rental or commercial.)	3-unit multi-family	3-unit multi-family
Number of Buildings in Project	1	1
Total Number of Residential Units in Project/Building	3	3
If commercial, total square footage of project	N/A	N/A
Total Estimated Development/Rehabilitation Costs	$100,000	$160,000
Current Status of Building (Pre-development, under construction/renovation or completed - include date completed.)	Renovation Completed. Fully Occupied and Rented Completion Date: 01/2014	Renovation Completed. Fully Occupied and Rented Completion Date: 8/2013
Government Program, if any (Provide name of program and agency, name and current phone of reference.)	None	None

Examples of Purchaser's Previous Renovation or Development Experience:
(Alternatively, applicants can attach a list of renovated properties or development experience that contains the information listed below.)

	Property/Project No. 1	Property/Project No. 2
Property Address: Please list all addresses (not merely project name). Include street number, street, city and zip code.	174 Oak Street Yonkers, NY 10701	76 Orchard Street Yonkers, NY 10701
Role (i.e. owner, partner, general contractor, architect, investor.)	Investor/Contractor	Investor/Contractor
Type of Project: (i.e. new construction, existing building requiring substantial rehabilitation or moderate rehabilitation.)	Existing building requiring substantial rehabilitation	Existing home requiring substantial rehabilitation
Property Type: (i.e. single-family, multi-family rental or commercial.)	4-unit multi-family	Single Family
Number of Buildings in Project	1	1
Total Number of Residential Units in Project/Building	4	1
If commercial, total square footage of project	N/A	N/A
Total Estimated Development/Rehabilitation Costs	$65,000	$75,000
Current Status of Building (Pre-development, under construction/renovation or completed - include date completed.)	Renovation Completed. Fully Occupied and Rented Completion Date: 02/2015	Renovation Completed. Fully Occupied and Rented Completion Date: 8/2014
Government Program, if any (Provide name of program and agency, name and current phone of reference.)	None	None

Finances:
(Applicant should provide not only sources of funding for the purchase of the property but also sufficient funding for the rehabilitation and/or development of the property.)

I am providing:
- ✓ Personal Financial Statement
- ___ Letter from Lender/Investor
- ✓ Personal or Business Bank Statement
- ___ Evidence of project funding
- ___ Developers should provide three years financial statements

What You Should Attach:

- Description of renovation plan with preliminary budget
- Verification of financial capacity
- Explanation of any tax delinquency/code violations/vacant building (if applicable)

Business Relationship:

Have you had a "business relationship" as defined in Chapter 34, Article 2 (B) (2) of the municipal code, with any City elected official in the 12 months prior to the due date of this proposal? Yes____ No✓

INFORMATION RELEASE:

It is our intent that all personal financial information submitted with this proposal to the Department of Planning and Development shall be considered confidential. I hereby authorize the City of Newburgh Department of Planning and Development to obtain credit reports (by completing a PathStone Credit Report Authorization Form) and verify information supplied as part of this proposal. All information provided is true and accurate to the best of my knowledge. By signing, you also acknowledge reading and reviewing the "Standard Terms and Conditions of Sale".

Felderi Santiago
Signature

04/12/2017
Date

Felderi Santiago Social Security # [redacted] Date of Birth: [redacted]
Print Name

Submit Application to:

Department of Planning & Development
City Hall – 83 Broadway
Newburgh NY 12550

TOMPKINS
Mahopac Bank

January 30, 2017

Felderi Santiago
26 Alder Street
Yonkers, NY 10701
Re: 476 WARBURTON REALTY PARTNERS LLC

To whom it may concern;

This letter is to inform you of Mr. Santiago's available balances with our bank. Mr. Santiago currently has balances of more than $120,000.00 available in his accounts. Please feel free to contact me should you have any questions. I can be reached directly at 914-966-9800 extension 31320.

Sincerely,

Franklin Vasquez
Branch Manager
fvasquez@tompkinsfinancial.com

Account Summary

Account # 163-244945
TRUST: UNDER AGREEMENT

Account Value: $358,188.57

Change in Account Value ▲ $120.26

	This Period	Year-to-Date
Beginning Account Value	$358,068.31	$356,000.18
Change in Investment Value *	120.26	2,188.39
Ending Account Value	$358,188.57	$358,188.57
Accrued Interest (AI)	0.00	
Ending Account Value Incl. AI	$358,188.57	

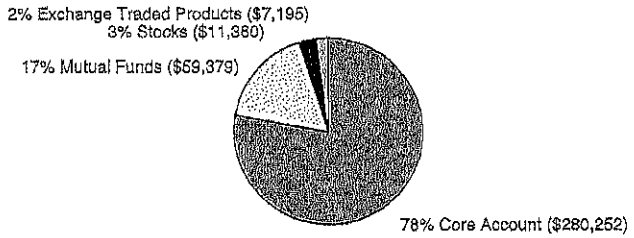
Free Credit Balance $280,252.74

Free credit balances (FCB)include cash credits from the sale of long positions, deposits, cash dividends, and interest payments which have not been transferred to a money market fund or FDIC core position. FCB also includes multi-currency positions, FCASH and credit balances that exceed the amount required to satisfy your margin obligations. Refer to the back of your statement for more information.

Total Account Trades Apr 2016 - Mar 2017: 3

* *Appreciation or depreciation of your holdings due to price changes plus any distribution and income earned during the statement period.*

Account Holdings



Top Holdings

Description	Value	Percent of Account
Cash	$280,252	78%
Gateway Fund Class A	30,225	8
Fidelity New Markets Income	12,583	4
Total	**$323,061**	**90%**

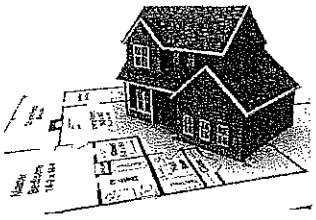
Please note that, due to rounding, percentages may not add to 100%.

Income Summary

	This Period	Year-to-Date
Taxable	**$165.83**	**$350.17**
Dividends	163.45	343.26
Interest	2.38	6.91
Total	**$165.83**	**$350.17**

MR_CE_BCVI.QPBBBCI.ZP_BBBBB 20170331

Who is E-Sky Group?



E-Sky Group (ESG) is a Yonkers NY based real estate company founded by Eulogio Santiago and Felderi Santiago offering Real Estate brokerage, construction and investment services. ESG was founded with the goal of investing, managing, and developing residential/commercial real estate properties to provide quality housing to citizens.

Felderi Santiago is a Technical Director for Centrify Corporation, a security software company based in Silicon Valley. In his function, Felderi manages 11 resources throughout the US and Latin America and is responsible for all Technical sales. Felderi has been with Centrify for 11 years and as employee #40 has helped the company grow to 800 employees and $100M in revenue. Felderi has a Masters of Engineering degree in Computer Engineering from the University of Michigan and a Dual Bachelors of Science in Electrical and Computer & Systems Engineering from Rensselaer Polytechnic Institute. After finishing his Bachelors, Felderi accepted an offer from Ford Motor Company to join their Leadership Development program. During his four years with Ford, Felderi rotated to different groups within Ford and gained many different perspectives and experiences. After graduating from the Leadership Development program, Felderi chose to take a position as a Security Architect with Ford's Security and Architecture group where he was responsible for addressing security gaps in Ford's identity and access management model. After leaving Ford, Felderi accepted a position with Centrify Corporation. Felderi's customer service, sales and analytical background make him a valuable addition to the team.

Eulogio Santiago is a General Contractor and Real Estate Broker who specializes in 203k projects and has managed extensive renovations on over 40 properties. Eulogio has a Masters degree in Linguistics from York University in England. Before his venture into Real Estate, Eulogio founded UTECI, the first university in Cibao valley of the Dominican Republic, was the Executive Director of Extensions Center for Mercy College and has taught ESL at various prestigious institutions. Eulogio also has the entrepreneurial spirit and launched two businesses, Ridge Supermarket and Neat Cleaners. Eulogio has also run for local office in Yonkers, NY twice. Eulogio's experience with people, administration and entrepreneurial experiences provide this business venture with an incredible amount of experience and value.

ESG is very passionate about Real Estate. The philosophy is to provide quality and affordable housing options to the community. ESG's model has been very successful in Yonkers, NY where 12 properties with over 31 apartments have been redeveloped. ESG is expanding to Newburgh where it sees a tremendous need for quality housing options for the community.

RESOLUTION NO.: 119 - 2017

OF

MAY 8, 2017

A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY KNOWN AS 25 BENKARD AVENUE (SECTION 45, BLOCK 5, LOT 3) AT PRIVATE SALE TO ROY LETHEN FOR THE AMOUNT OF $131,000.00

WHEREAS, the City of Newburgh has acquired title to several parcels of real property by foreclosure *In Rem* pursuant of Article 11 Title 3 of the Real Property Tax Law of the State of New York; and

WHEREAS, pursuant to Section 1166 of the Real Property Tax Law the City may sell properties acquired by foreclosure *In Rem* at private sale; and

WHEREAS, the City of Newburgh desires to sell 25 Benkard Avenue being more accurately described as Section 45, Block 5, Lot 3 on the official tax map of the City of Newburgh; and

WHEREAS, the prospective buyer has offered to purchase this property at private sale; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to sell said property to the prospective buyer for the sum as outlined below, and upon the same terms and conditions annexed hereto and made a part hereof;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchaser be and hereby is confirmed and the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of the indicated purchase price in money order, good certified or bank check, made payable to THE CITY OF NEWBURGH, such sums are to be paid on or before August 11, 2017, being approximately ninety (90) days from the date of this resolution; and

Property address	Section, Block, Lot	Purchaser	Purchase Price
25 Benkard Avenue	45 - 5 - 3	Roy Lethen	$131,000.00

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York, that the parcel is not required for public use.

Terms and Conditions of Sale
25 Benkard Avenue, City of Newburgh (45-5-3)

STANDARD TERMS:

1. City of Newburgh acquired title to this property in accordance with Article 11 of the Real Property Tax Law of the State of New York, and all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture.
2. For purposes of these Terms and Conditions, parcel shall be defined as a section, block and lot number.
3. All real property, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title; and (e) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the date of sale.
4. The properties are sold subject to unpaid school taxes for the tax year of 2016-2017, and also subject to all school taxes levied subsequent to the date of the City Council resolution authorizing the sale. The purchaser shall reimburse the City for any school taxes paid by the City for the tax year 2016-2017, and subsequent levies up to the date of the closing. Upon the closing, the properties shall become subject to taxation. Water and sewer charges and sanitation fees will be paid by the City to the date of closing except that where the water meter reading nets a usage to the purchaser of less than 6 units for the quarterly bill, the purchaser shall be responsible for a minimum water and sewer bill of 6 units.
5. **WARNING: FAILURE TO COMPLY WITH THE TERMS OF THIS PARAGRAPH MAY RESULT IN YOUR LOSS OF THE PROPERTY AFTER PURCHASE. The deed will contain provisions stating that the purchaser is required to rehabilitate any building on the property and bring it into compliance with all State, County and Local standards for occupancy within (18) months of the date of the deed. Within such eighteen (18) month time period the purchaser must either: obtain a Certificate of Occupancy for all buildings on the property; make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or demolish such buildings. The deed shall require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. If the purchaser has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued. A written request made to the City Manager for an extension of the eighteen (18) month rehabilitation period shall be accompanied by a non-refundable fee of $250.00 per parcel for which a request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to rehabilitate of up to, but not to exceed, three (3) months. Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.**
6. Notice is hereby given that the property is occupied. This parcel is being sold subject to the City's Rental License Ordinance and all provisions of law applicable thereto. At closing, the purchaser will be required to register the property and remit the rental license fee. It is the sole responsibility of the purchaser to redevelop such parcel in accordance with same.
7. Notice is hereby given that the property lies within the East End Historic District as designated upon the zoning or tax map. This parcel is being sold subject to all provision of law applicable thereto and it is the sole responsibility of the purchaser to redevelop such parcel so designated in accordance with same.

8. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.
9. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.
10. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Property may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Property also may contain other environmental hazards. Purchaser shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchaser shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receivership of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Purchaser also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.
11. The entire purchase price and all closing costs/fees must be paid by money order or guaranteed funds to the City of Newburgh Comptroller's Office on or before August 11, 2017. Such closing costs/fees may include, but are not limited to: recording fees, tax adjustments as of the day of closing, fuel oil adjustments, and applicable condominium charges (e.g. monthly maintenance charges, assessment charges, transfer buy-in fees, and/or closing package ordering fees). *The City of Newburgh does not accept credit card payments for the purchase price and closing costs/fees.* **The City is not required to send notice of acceptance or any other notice to a purchaser.** At closing, purchaser, as grantee, may take title as a natural person or as an entity wherein purchaser is an officer or managing member of said entity. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefor, and unless accompanied by a fee of $250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.
12. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the successful bidder shall be entitled only to a refund of the purchase money paid with interest. Purchaser agrees that he shall <u>not</u> be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale.
13. Sale shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, his heirs, successors or assigns, against City of Newburgh arising from this sale.
14. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price, buyer's premium, and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**
15. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject property, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the property. The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.

16. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least ten (10) days in advance of closing title and approved by the City's Engineer.
17. Evictions, if necessary, are solely the responsibility of the successful bidder after closing and recording of the deed.
18. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he/she is not representing the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom City of Newburgh foreclosed within 24 months subsequent to the auction date. If such conveyance occurs, the purchaser understands that he/she may be found to have committed fraud, and/or intent to defraud, and will be liable for any deficiency between the purchase price at auction and such sums as may be owed to City of Newburgh as related to the foreclosure on the property and consents to immediate judgment by City of Newburgh for said amounts.

RESOLUTION NO.: 120 - 2017

OF

MAY 8, 2017

A RESOLUTION TO CO-SPONSOR THE SUMMER FILM FESTIVAL AT WASHINGTON'S HEADQUARTERS

WHEREAS, a Summer Film Festival is proposed for Washington's Headquarters State Historic Park on the last Saturday in June, July, August, and September; and

WHEREAS, the film series will be free of charge and open to the public; and

WHEREAS, the organizers of the Summer Film Festival have requested that the City Council support the Festival as a City-sponsored event; and

WHEREAS, this City Council finds that supporting the Summer Film Festival at Washington's Headquarters as a City-sponsored event is in the best interests of the residents of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York hereby supports and sponsors the Summer Film Festival at Washington's Headquarters as a City-sponsored event and that such sponsorship be limited to providing insurance coverage for the event.

RESOLUTION NO.: 121 - 2017

OF

MAY 8, 2017

A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ACCEPT IF AWARDED A CITIES FOR RESPONSIBLE INVESTMENT AND STRATEGIC ENFORCEMENT PHASE ONE GRANT FOR A COMPREHENSIVE ASSET MANAGEMENT DATA PLATFORM AND TECHNICAL EXPERTISE TO FACILITATE IMPLEMENTATION FROM THE OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL THROUGH LOCAL INITIATIVES SUPPORT CORPORATION

WHEREAS, the City of Newburgh Department of Planning and Development wishes to apply for a Cities for Responsible Investment and Strategic Enforcement ("Cities RISE") Phase One grant from the Office of the New York State Attorney General through Local Initiatives Support Corporation ("LISC"), a national community development intermediary that specializes in affordable housing, economic development and community revitalization; and

WHEREAS, Cities RISE will provide cities, towns, and villages in New York State with populations greater than 25,000 with easy to use technology that will coordinate, map out and analyze disparate sources of data with the goal of facilitating effective, equitable strategies to spur housing revitalization; and

WHEREAS, if awarded, the Cities RISE Phase One grant will provide a two-year license to use the BuildingBlocks data platform, technical assistance in using the platform, and additional consulting services to help plan and implement a comprehensive approach to housing challenges; and

WHEREAS, this Council has determined that making such application and accepting such grant if awarded is in the best interests of the City of Newburgh and its further development;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept if awarded a Cities for Responsible Investment and Strategic Enforcement ("Cities RISE") Phase One grant for a comprehensive asset management data platform and technical expertise to facilitate implementation from the Office of the New York State Attorney General through Local Initiatives Support Corporation; and that the City Manager is authorized to execute all such documentation and take such further actions as may be appropriate and necessary to accept such grant and administer the programs funded thereby.

LISC
Helping neighbors build communities

Enterprise™

Cities for Responsible Investment and Strategic Enforcement (Cities RISE)
Phase One

Request for Applications
2017 – 2018 grants

CITIES RISE – PHASE ONE

REQUEST FOR APPLICATIONS ("RFA")

Application Submission and Due Dates: The applicant is responsible for ensuring arrival by 5pm on May 5th, 2017. Please submit all applications as a single PDF with the name of the municipality in the title to CitiesRISE@enterprisecommunity.org. Please note that only e-mail attachments will be reviewed; no information in the body of the e-mail aside from attachments will be considered part of the application. The projected date for notice of awards for this Request for Applications (RFA) is May 19, 2017, with awardees required to countersign and return required documentation by June 9, 2017. Enterprise Community Partners, Inc. (Enterprise) and the Local Initiatives Support Corporation (LISC; together "Enterprise and LISC" or "LISC and Enterprise") in their discretion may extend the application deadline.

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1. RFA INFORMATION

I. Background

Cities for Responsible Investment and Strategic Enforcement ("Cities RISE") will provide cities, towns, and villages in New York State with populations greater than 25,000 (or collaborations of municipalities with combined populations greater than 25,000) with easy to use technology that will coordinate, map out and analyze disparate sources of data with the goal of facilitating effective, equitable strategies to spur housing revitalization. Cities RISE will empower local governments to make improvements in three main areas:

- **Data Integration and Analytics**: Cities RISE will enable cities, towns, and villages to better understand their housing stock, identify trends in their distressed housing, and think strategically about interventions that can create healthier and more vibrant neighborhoods.

- **Equitable Policy and Practices**: The program seeks to support cities, towns, and villages to *recognize and correct* existing housing and code enforcement policies that have historically had a negative and disparate impact on lower income communities.

- **Civic Engagement and Innovation**: Cities RISE will empower community stakeholders to participate in decision-making and implementation of innovative housing programs based on successful models backed by empirical evidence.

This Request for Applicants (RFA) seeks applicants for the Phase One of Cities RISE. The funding for this program was recovered by NY Attorney General Eric T. Schneiderman as the result of bank settlements related to the housing crisis. Phase One is jointly managed by Enterprise Community Partners, Inc. (Enterprise) and Local Initiatives Support Corporation (LISC). Enterprise and LISC are national nonprofit organizations that facilitate community development, with a long history of program facilitation in New York State.

To inform program design, consultants were engaged to conduct a feasibility study to analyze the asset management capacity and data needs of NY municipalities. The study included a thorough market analysis of data platforms designed for code enforcement/ asset management. The study team unanimously recommended the BuildingBlocks application.

Applicants who are chosen under this RFA will receive a two-year license to use the BuildingBlocks data platform, technical assistance in using the platform, and additional consulting services to help plan and implement a comprehensive approach to housing challenges.

A. Problem Statement

Municipalities in New York State are facing many pervasive asset management challenges, including vacant and blighted properties, tax delinquencies, and noncompliant landlords. The housing crisis compounded these challenges, leaving under-resourced municipalities scrambling to try to address housing asset management problems that disproportionately affect low-income communities. In recent history, there have been significant cuts to community development programs, and there is uncertainty about the future of federal funding for code enforcement and asset management. Municipalities are doing more with less to address housing challenges. Cities RISE will equip municipalities with tools that will help them to create,

or strengthen, systems and policies to work more efficiently and to promote housing equity within cities.

B. Program Purpose, Phase One

Phase One of Cities RISE, which is the subject of this RFA, will provide municipal leadership a comprehensive asset management data platform and technical expertise to facilitate implementation. With the support of these resources, municipalities can create a blueprint for strategic and equitable allocation of code enforcement, housing improvement, and community development resources. The aim is also to increase collaboration within units of local government, particularly among agencies whose work affects housing quality and neighborhood outcomes, and with community stakeholders, and to promote increased communication across municipalities through the sharing of information, best practices, and policy innovations.

Awardees under this RFA will receive software licenses to enable them to use the BuildingBlocks platform of OpportunitySpace ("OS") for two successive one-year periods, with the first year starting June 2017. Grantees have no obligation to renew the BuildingBlocks license at the end of the two-year grant period, but may decide to renew at their own cost. Awardees will receive two years of:

- **BuildingBlocks**, a cloud-based web application designed specifically to coordinate housing and asset management-related data for local governments. The platform:
  - Integrates disparate datasets from across municipal departments—such as Code Enforcement, Legal, Police, and Fire—into a single, map-based dashboard that provides granular property details.
  - Overlays market-strength indicators—including income levels, and vacancy rates, and other relevant publicly available information—to inform decision-making.
  - Provides data reporting and analysis to leaders across siloes.

  Easier access to cross-departmental data available in one easy to use format is intended to help municipalities craft or refine strategies to deploy limited housing and code enforcement resources efficiently and equitably.

  We strongly encourage all applicants to click on this link to see a demonstration of BuildingBlocks in action:

  https://vimeo.com/211261548

  Substantial technical assistance will be provided by the application provider, including in-person training at the municipality, to ensure that core users understand how to use BuildingBlocks and maximize its value for their local needs.

- **Capacity Building**: Consultants will provide on-going support to grantees to facilitate use of the data to develop improved asset management strategies, including proactive initiatives to address inequity. The consultants will be supported by an advisory panel of leaders in the field, who will provide grantees with guidance and expertise.

With comprehensive, big picture, neighborhood-level and property-level data integrated between the different data sources and incorporating a predictive analysis overlay, Cities RISE grantees will be able to make improved decisions about how to allocate limited code enforcement and housing improvement resources.

II. Program Structure

Cities RISE will provide up to three phases of investment over a two-year period. **This RFA is for Phase One of the program.** Up to 40 municipalities selected through this RFA process will receive the first level of investment (BuildingBlocks license; technical assistance related to BuildingBlocks; and capacity-building consultant support for a period of two years.)

Municipalities that receive this first level of investment and can demonstrate success may be eligible to apply to for additional Phases of the program. Future phases could include additional change management resources, support to develop a community collaborative, and an innovation grant to launch new programs. Only grantees selected through this RFA will be eligible to apply for later Phases of the program.

III. Award Evaluation Information

1. Proposals will be evaluated based on evaluation criteria outlined in this RFA.
2. Proposals will first be examined for completeness. All complete proposals will be reviewed for eligibility and only complete, eligible proposals will be reviewed.
3. Eligible proposals will be reviewed by LISC and Enterprise, who will jointly determine which eligible applicants will receive awards.

IV. Performance Requirements

Awarded grantees will be expected to work with capacity building consultants to meet benchmarks related to improved use of data as part of a process designed to use an equity lens to make decisions related to policy-making and resource allocation. Municipalities receiving a Phase One award will be expected to:

1. Successfully onboard the BuildingBlocks application.
2. Dedicate at least two core users of the BuildingBlocks application, who will be responsible for using the data platform, including running analytics and producing regular reports.
3. Submit quarterly narrative grant reports on how the data platform is being used and what progress is being made.

In addition to these requirements, grantees will be expected to work toward a set of milestones during the course of the grant period. These milestones will be in two categories:

1. Data competency, which will measure how the grantee is using the technology to inform policy decisions and resource allocation and
2. Equitable policy and practices, which will measure whether the grantee is using an equity lens to make decisions related to policy-making and resource allocation that promote inclusive and equitable governance and do not have a disparate impact on historically disenfranchised populations.

2. GRANTEE PROPOSAL

I. Eligibility Information

A. Minimum Eligibility Criteria

To respond to this RFA, municipalities must demonstrate that they meet the following minimum eligibility criteria:

1. **Population**: This program is intended to support municipalities of varying sizes; however, the population must be of sufficient size to have complex municipal property data to support the implementation of the data platform. The applying municipality must have a population of **25,000** or more according to the 2010 census. Municipalities with smaller populations may choose to submit a joint application if their combined population exceeds 25,000 and if they currently share a consolidated code enforcement system.

2. **Municipal Code Enforcement**: The applying entity must be a municipality with jurisdiction over code enforcement. As indicated above, municipalities may apply together if they share a consolidated code enforcement system prior to the date of this RFA release.

3. **Data Requirements**: Grantees selected under this RFA must meet the minimum data requirements to utilize the BuildingBlocks data platform including:

    - Access to GIS files for each parcel in the municipality, or an agreement from the County to provide the GIS files for each parcel in the municipality.

    - The ability to demonstrate that at least three data sets are currently in a machine-readable format. Data sets can include: housing and building code violations; tax delinquencies; police reports; fire code violations; water / sewer payment delinquencies; foreclosures, vacant/abandoned properties, building permits, and utility shut-offs; access to additional machine-readable data sets related to the housing and economic conditions will strengthen applications.

    Please note: Personally Identifiable Information (i.e. information or data that can be used to identify or distinguish an individual's identity, including but not limited to name, date of birth, social security number, and biometric records) **must not be included in any of the data sets being provided to BuildingBlocks**.

4. **Management and Staffing**: The project proposal must have the active support and frequent involvement of the highest-ranking municipal official(s)—the chief executive officer of the local government—which may be the mayor and/ or the city/ town manager. Additionally, the applicant must demonstrate that it will dedicate sufficient personnel to staff the project and that the agencies using the data are prepared to coordinate with each other. Municipalities applying jointly must each individually demonstrate a staffing plan sufficient for database implementation.

    - The application must include a cover letter signed by the municipality's chief executive officer that demonstrates her/his support for the application and commitment to the municipality's successful use of Phase One resources. A similar letter will be required for the granting of the license for the second

year of the grant term. For municipalities applying jointly, each chief executive officer must submit a commitment letter.

- A staff person must be assigned to manage the data platform deployment (estimated commitment of 10-20 hours total over the course of 3-4 weeks). Responsibilities include but are not limited to:
    - Coordinating kick-off call, requirements definition, user training, and launch
    - Facilitating data transfer. If staff person is non-technical, s/he will oversee vendor's interactions with relevant technical staff.

- At least two staff members from relevant departments must be assigned, and receive training, as core users of the data platform as well as to interface with the capacity building consultants provided through this grant, throughout the entire grant period.

5. **Community Partnerships**: The applying municipality must demonstrate a commitment to working in partnership with a diverse range of stakeholders. Applications must include:

    - Two (2) letters of support from community institutions, stakeholders, and/ or Community Based Organizations (CBOs) (not including elected officials).

B. Preferences

Applications will be prioritized that meet the following criteria:

1. **Need**: This program is intended to support municipalities with comparatively high levels of community and property distress as demonstrated by publically accessible metrics. Indicators could include but are not limited to:

    - According to 2015 American Community Survey, a poverty rate above 15%. Alternatively, municipalities with lower overall poverty but with census tract concentrations with at least 20% poverty rates will also receive preference.
    - A high percentage of the municipality's housing stock with significant numbers of code violations related to health and safety.
    - High bank foreclosure rate, tax foreclosure rates, or other financial signals of distress.

2. **Community Impact:** Competitive applications will demonstrate a history of focusing on improving housing conditions for vulnerable populations and minimizing displacement, or if there is no extensive history, specific steps that the applicant plans to take, using BuildingBlocks and assistance from consultants provided to it under Phase One, to achieve these outcomes. To participate in the program, applicants must be prepared to fully embrace the goal of using data to create or update a strategy to target housing resources in both an efficient and equitable way.

3. **Staff Support:** Preference will be given to municipalities that assign at least one staff person from each of the relevant departments or agencies as core users of the data platform.

4. **Sustainability**: Competitive applications will demonstrate how the municipality will ensure long term sustainability—both financially and operationally—of the data and management systems put in place by this program. The municipality may demonstrate commitment to continuing data integration systems after the two-year program with a letter from the City Council or equivalent governmental decision-making body.

II. Narrative Proposal

Answers to the questions below must be presented as a narrative; any words beyond the limit for that section will be disregarded, **whether municipalities are applying jointly or individually**. The narrative should be organized and labeled based on the sections outlined below. For municipalities applying jointly, only one lead municipality must submit answers to the questions below but reference its partners' need, experience, etc. as applicable.

1. **Need (25 points) (Not to exceed 500 words)**
   - What are your municipality's greatest housing challenges?
   - Provide metrics, referenced under *Section 2.I.A and B* of this RFA, that illustrate your municipality's housing challenges. Does your municipality contain pockets of concentrated poverty or distress?
   - In what ways does your municipality need to improve its data systems related to code enforcement and asset management?
   - What do you see as the role of data collection and management in addressing your municipality's housing challenges?

2. **Experience (15 points) (Not to exceed 500 words)**
   - Does your municipality have an interagency working group that meets on a regular basis to discuss code enforcement/ asset management? If yes, please describe. If not, how do you currently facilitate effective interagency cooperation?
   - How does your municipality manage distressed property data? What data systems are you currently using? What sets of data (related to code enforcement/ asset management) do you currently have electronically?

3. **Proposed Strategy (20 points) (Not to exceed 500 words)**
   - What are your top priorities for improving code enforcement/ asset management?
   - Specifically, which datasets from which municipal agencies/ departments do you plan to feed into the BuildingBlocks platform if selected under this RFA?
   - What (if any) disparate impacts do your current code enforcement/ asset management practices have on low-income communities? How will data help you correct for this imbalance?

4. **Community Partnerships (15 points) (Not to exceed 250 words)**
   - Does your municipality currently solicit community feedback in making housing policy? If so, how do you collect community input?
   - How will your municipality solicit feedback from community members to inform your code enforcement/ asset management strategies?
   - Recognizing privacy concerns, would you want to make any of the data housed in the BuildingBlocks platform public? If yes, describe what data you might share with the public.

5. **Program Management (15 points) (Not to exceed 500 words)**
    - Name the agency positions that will be assigned to this project. How much time will each position commit to this project? What additional staffing plans do you propose for this project?
    - What activities will the team assigned to this project undertake once the data is loaded into the BuildingBlocks platform?
    - Describe how your municipality's chief executive officer(s) (mayor and/ or city/ town manager) will engage in this project?

6. **Support and Sustainability (10 points) (Not to exceed 250 words)**
    - How will your municipality ensure long term sustainability—both financially and operationally—of the data and management systems put in place by this program?

7. **Supplemental documents**
    - Please provide the following additional documents:
        i. Cover letter from the municipality's chief executive officer—the mayor and/ or the city/ town manager (required).
        ii. Summary page: Appendix I (required).
        iii. Agreement letter from the county to provide GIS files for each parcel in the municipality (required if the municipality does not currently have access to GIS files for each parcel in the municipality).
        iv. Two letters of support from community institutions, stakeholders, and/ or Community Based Organizations (CBOs) (required).
        v. Letter from the municipality's city council/ local governing body stating its financial commitment to sustaining data management systems beyond the two-year grant (optional).

III. Proposal and Submission Information

A. Timelines

Application issued: April 7, 2017

Informational call: April 18th, 2017 at 2pm EST.
Conference number 1-866-469-3239, code 66184256.
Please submit questions by 5:00 pm on April 14th. Submit questions as attachments to CitiesRISE@enterprisecommunity.org, with the word QUESTION clearly labeled in the name of the attachment. Any questions in the body of the e-mail or with the word QUESTION not in the title will not be viewed.

Due date and time: 5:00 pm EST on Friday, May 5th, 2017

Award notice: The projected notice of awards is May 19, 2017

Contract period: June 9, 2017 to June 8, 2019

B. Submittal Instructions

In order to fairly evaluate all proposals, a uniform proposal format is required. Each proposal section is listed below.

1. **Cover letter from Mayor/ Chief Executive Officer**
2. **Summary page**: Appendix I.
3. **Narrative**: Provide answers to the questions above, with a strict adherence to word count limitations.
4. **Commitment letters and supplemental attachments**: Listed above.

Please submit all applications as a single PDF with the name of the applying municipality (or municipalities) in the title to CitiesRISE@enterprisecommunity.org. The application must be submitted with a cover letter signed by the municipality's chief executive officer (mayor and/ or city/ town manager). Please note that only e-mail attachments will be reviewed; no information in the body of the e-mail aside from attachments will be considered part of the application. The projected date for notice of awards for this Request for Applications (RFA) is May 19, 2017, with awardees required to countersign and return required documentation by June 9, 2017. Enterprise Community Partners, Inc. (Enterprise) and the Local Initiatives Support Corporation (LISC; together "Enterprise and LISC" or "LISC and Enterprise") in their discretion may extend the application deadline.

IV. Grant Terms

Selected applicants will be required to enter into a grant agreement with Enterprise or LISC governing the grant of the license and related technical assistance from the BuildingBlocks vendor (Enterprise/LISC will pay the vendor directly), and enter into an End User Licensing Agreement with the vendor.

V. APPENDIX I: Application Summary Page

Legal Name of Municipal Corporation (or Corporations, if joint application):	
Is your Municipal Corporation responsible for Code Enforcement, with a dedicated office?	☐ Yes ☐ No
If you have another arrangement, such as shared code enforcement across municipalities, explain.	
In which county are you based?	
Population (2010 US Census):	
Poverty rate (2015 American Community Survey):	
% of census tracts with poverty rate of 20% or higher (2015 American Community Survey):	
Does your Municipal Corporation have access to GIS files for each parcel in the municipality, or an agreement from the County to provide the GIS files for each parcel in the municipality?	☐ Access to GIS files for every parcel ☐ Agreement from County to provide GIS files for every parcel (Agreement letter attached)
Relevant Municipal data sets in a machine-readable format	☐ Code Enforcement ☐ Property Tax ☐ Fire ☐ Police ☐ Utility ☐ Corporation Counsel ☐ Other (describe): _____
Name and title of staff person assigned to manage data platform deployment	
Name and titles of at least 2 staff people assigned as core users of data platform	

	Primary Contact	Secondary Contact
Name:		
Title:		
Agency/Office:		
Address:		
City, ZIP:		
Phone Number:		
Cell phone #:		
Email Address:		

Cities for Responsible Investment and Strategic Enforcement (Cities RISE)
Phase One

Request for Applications
2017 – 2018 grants

CITIES RISE – PHASE ONE

REQUEST FOR APPLICATIONS ("RFA")

Application Submission and Due Dates: The applicant is responsible for ensuring arrival by 5pm on May 5th, 2017. Please submit all applications as a single PDF with the name of the municipality in the title to CitiesRISE@enterprisecommunity.org. Please note that only e-mail attachments will be reviewed; no information in the body of the e-mail aside from attachments will be considered part of the application. The projected date for notice of awards for this Request for Applications (RFA) is May 19, 2017, with awardees required to countersign and return required documentation by June 9, 2017. Enterprise Community Partners, Inc. (Enterprise) and the Local Initiatives Support Corporation (LISC; together "Enterprise and LISC" or "LISC and Enterprise") in their discretion may extend the application deadline.

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1. RFA INFORMATION

I. Background

Cities for Responsible Investment and Strategic Enforcement ("Cities RISE") will provide cities, towns, and villages in New York State with populations greater than 25,000 (or collaborations of municipalities with combined populations greater than 25,000) with easy to use technology that will coordinate, map out and analyze disparate sources of data with the goal of facilitating effective, equitable strategies to spur housing revitalization. Cities RISE will empower local governments to make improvements in three main areas:

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To inform program design, consultants were engaged to conduct a feasibility study to analyze the asset management capacity and data needs of NY municipalities. The study included a thorough market analysis of data platforms designed for code enforcement/ asset management. The study team unanimously recommended the BuildingBlocks application.

Applicants who are chosen under this RFA will receive a two-year license to use the BuildingBlocks data platform, technical assistance in using the platform, and additional consulting services to help plan and implement a comprehensive approach to housing challenges.

A. Problem Statement

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or strengthen, systems and policies to work more efficiently and to promote housing equity within cities.

B. Program Purpose, Phase One

Phase One of Cities RISE, which is the subject of this RFA, will provide municipal leadership a comprehensive asset management data platform and technical expertise to facilitate implementation. With the support of these resources, municipalities can create a blueprint for strategic and equitable allocation of code enforcement, housing improvement, and community development resources. The aim is also to increase collaboration within units of local government, particularly among agencies whose work affects housing quality and neighborhood outcomes, and with community stakeholders, and to promote increased communication across municipalities through the sharing of information, best practices, and policy innovations.

Awardees under this RFA will receive software licenses to enable them to use the BuildingBlocks platform of OpportunitySpace ("OS") for two successive one-year periods, with the first year starting June 2017. Grantees have no obligation to renew the BuildingBlocks license at the end of the two-year grant period, but may decide to renew at their own cost. Awardees will receive two years of:

- **BuildingBlocks**, a cloud-based web application designed specifically to coordinate housing and asset management-related data for local governments. The platform:
    - Integrates disparate datasets from across municipal departments—such as Code Enforcement, Legal, Police, and Fire—into a single, map-based dashboard that provides granular property details.
    - Overlays market-strength indicators—including income levels, and vacancy rates, and other relevant publicly available information—to inform decision-making.
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  Easier access to cross-departmental data available in one easy to use format is intended to help municipalities craft or refine strategies to deploy limited housing and code enforcement resources efficiently and equitably.

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  Substantial technical assistance will be provided by the application provider, including in-person training at the municipality, to ensure that core users understand how to use BuildingBlocks and maximize its value for their local needs.

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With comprehensive, big picture, neighborhood-level and property-level data integrated between the different data sources and incorporating a predictive analysis overlay, Cities RISE grantees will be able to make improved decisions about how to allocate limited code enforcement and housing improvement resources.

II. Program Structure

Cities RISE will provide up to three phases of investment over a two-year period. **This RFA is for Phase One of the program.** Up to 40 municipalities selected through this RFA process will receive the first level of investment (BuildingBlocks license; technical assistance related to BuildingBlocks; and capacity-building consultant support for a period of two years.)

Municipalities that receive this first level of investment and can demonstrate success may be eligible to apply to for additional Phases of the program. Future phases could include additional change management resources, support to develop a community collaborative, and an innovation grant to launch new programs. Only grantees selected through this RFA will be eligible to apply for later Phases of the program.

III. Award Evaluation Information

1. Proposals will be evaluated based on evaluation criteria outlined in this RFA.
2. Proposals will first be examined for completeness. All complete proposals will be reviewed for eligibility and only complete, eligible proposals will be reviewed.
3. Eligible proposals will be reviewed by LISC and Enterprise, who will jointly determine which eligible applicants will receive awards.

IV. Performance Requirements

Awarded grantees will be expected to work with capacity building consultants to meet benchmarks related to improved use of data as part of a process designed to use an equity lens to make decisions related to policy-making and resource allocation. Municipalities receiving a Phase One award will be expected to:

1. Successfully onboard the BuildingBlocks application.
2. Dedicate at least two core users of the BuildingBlocks application, who will be responsible for using the data platform, including running analytics and producing regular reports.
3. Submit quarterly narrative grant reports on how the data platform is being used and what progress is being made.

In addition to these requirements, grantees will be expected to work toward a set of milestones during the course of the grant period. These milestones will be in two categories:

1. Data competency, which will measure how the grantee is using the technology to inform policy decisions and resource allocation and
2. Equitable policy and practices, which will measure whether the grantee is using an equity lens to make decisions related to policy-making and resource allocation that promote inclusive and equitable governance and do not have a disparate impact on historically disenfranchised populations.

2. GRANTEE PROPOSAL

I. Eligibility Information

A. Minimum Eligibility Criteria

To respond to this RFA, municipalities must demonstrate that they meet the following minimum eligibility criteria:

1. **Population**: This program is intended to support municipalities of varying sizes; however, the population must be of sufficient size to have complex municipal property data to support the implementation of the data platform. The applying municipality must have a population of **25,000** or more according to the 2010 census. Municipalities with smaller populations may choose to submit a joint application if their combined population exceeds 25,000 and if they currently share a consolidated code enforcement system.

2. **Municipal Code Enforcement**: The applying entity must be a municipality with jurisdiction over code enforcement. As indicated above, municipalities may apply together if they share a consolidated code enforcement system prior to the date of this RFA release.

3. **Data Requirements**: Grantees selected under this RFA must meet the minimum data requirements to utilize the BuildingBlocks data platform including:

    - Access to GIS files for each parcel in the municipality, or an agreement from the County to provide the GIS files for each parcel in the municipality.

    - The ability to demonstrate that at least three data sets are currently in a machine-readable format. Data sets can include: housing and building code violations; tax delinquencies; police reports; fire code violations; water / sewer payment delinquencies; foreclosures, vacant/abandoned properties, building permits, and utility shut-offs; access to additional machine-readable data sets related to the housing and economic conditions will strengthen applications.

    Please note: Personally Identifiable Information (i.e. information or data that can be used to identify or distinguish an individual's identity, including but not limited to name, date of birth, social security number, and biometric records) **must not be included in any of the data sets being provided to BuildingBlocks**.

4. **Management and Staffing**: The project proposal must have the active support and frequent involvement of the highest-ranking municipal official(s)—the chief executive officer of the local government—which may be the mayor and/ or the city/ town manager. Additionally, the applicant must demonstrate that it will dedicate sufficient personnel to staff the project and that the agencies using the data are prepared to coordinate with each other. Municipalities applying jointly must each individually demonstrate a staffing plan sufficient for database implementation.

    - The application must include a cover letter signed by the municipality's chief executive officer that demonstrates her/his support for the application and commitment to the municipality's successful use of Phase One resources. A similar letter will be required for the granting of the license for the second

year of the grant term. For municipalities applying jointly, each chief executive officer must submit a commitment letter.

- A staff person must be assigned to manage the data platform deployment (estimated commitment of 10-20 hours total over the course of 3-4 weeks). Responsibilities include but are not limited to:
    - Coordinating kick-off call, requirements definition, user training, and launch
    - Facilitating data transfer. If staff person is non-technical, s/he will oversee vendor's interactions with relevant technical staff.

- At least two staff members from relevant departments must be assigned, and receive training, as core users of the data platform as well as to interface with the capacity building consultants provided through this grant, throughout the entire grant period.

5. **Community Partnerships**: The applying municipality must demonstrate a commitment to working in partnership with a diverse range of stakeholders. Applications must include:

    - Two (2) letters of support from community institutions, stakeholders, and/ or Community Based Organizations (CBOs) (not including elected officials).

B. Preferences

Applications will be prioritized that meet the following criteria:

1. **Need**: This program is intended to support municipalities with comparatively high levels of community and property distress as demonstrated by publically accessible metrics. Indicators could include but are not limited to:

    - According to 2015 American Community Survey, a poverty rate above 15%. Alternatively, municipalities with lower overall poverty but with census tract concentrations with at least 20% poverty rates will also receive preference.
    - A high percentage of the municipality's housing stock with significant numbers of code violations related to health and safety.
    - High bank foreclosure rate, tax foreclosure rates, or other financial signals of distress.

2. **Community Impact:** Competitive applications will demonstrate a history of focusing on improving housing conditions for vulnerable populations and minimizing displacement, or if there is no extensive history, specific steps that the applicant plans to take, using BuildingBlocks and assistance from consultants provided to it under Phase One, to achieve these outcomes. To participate in the program, applicants must be prepared to fully embrace the goal of using data to create or update a strategy to target housing resources in both an efficient and equitable way.

3. **Staff Support:** Preference will be given to municipalities that assign at least one staff person from each of the relevant departments or agencies as core users of the data platform.

4. **<u>Sustainability</u>**: Competitive applications will demonstrate how the municipality will ensure long term sustainability—both financially and operationally—of the data and management systems put in place by this program. The municipality may demonstrate commitment to continuing data integration systems after the two-year program with a letter from the City Council or equivalent governmental decision-making body.

II. Narrative Proposal

Answers to the questions below must be presented as a narrative; any words beyond the limit for that section will be disregarded, **whether municipalities are applying jointly or individually**. The narrative should be organized and labeled based on the sections outlined below. For municipalities applying jointly, only one lead municipality must submit answers to the questions below but reference its partners' need, experience, etc. as applicable.

1. **<u>Need</u> (25 points) (Not to exceed 500 words)**
    - What are your municipality's greatest housing challenges?
    - Provide metrics, referenced under *Section 2.I.A and B* of this RFA, that illustrate your municipality's housing challenges. Does your municipality contain pockets of concentrated poverty or distress?
    - In what ways does your municipality need to improve its data systems related to code enforcement and asset management?
    - What do you see as the role of data collection and management in addressing your municipality's housing challenges?

2. **<u>Experience</u> (15 points) (Not to exceed 500 words)**
    - Does your municipality have an interagency working group that meets on a regular basis to discuss code enforcement/ asset management? If yes, please describe. If not, how do you currently facilitate effective interagency cooperation?
    - How does your municipality manage distressed property data? What data systems are you currently using? What sets of data (related to code enforcement/ asset management) do you currently have electronically?

3. **<u>Proposed Strategy</u> (20 points) (Not to exceed 500 words)**
    - What are your top priorities for improving code enforcement/ asset management?
    - Specifically, which datasets from which municipal agencies/ departments do you plan to feed into the BuildingBlocks platform if selected under this RFA?
    - What (if any) disparate impacts do your current code enforcement/ asset management practices have on low-income communities? How will data help you correct for this imbalance?

4. **<u>Community Partnerships</u> (15 points) (Not to exceed 250 words)**
    - Does your municipality currently solicit community feedback in making housing policy? If so, how do you collect community input?
    - How will your municipality solicit feedback from community members to inform your code enforcement/ asset management strategies?
    - Recognizing privacy concerns, would you want to make any of the data housed in the BuildingBlocks platform public? If yes, describe what data you might share with the public.

5. **<u>Program Management</u> (15 points) (Not to exceed 500 words)**
    - Name the agency positions that will be assigned to this project. How much time will each position commit to this project? What additional staffing plans do you propose for this project?
    - What activities will the team assigned to this project undertake once the data is loaded into the BuildingBlocks platform?
    - Describe how your municipality's chief executive officer(s) (mayor and/ or city/ town manager) will engage in this project?

6. **<u>Support and Sustainability</u> (10 points) (Not to exceed 250 words)**
    - How will your municipality ensure long term sustainability—both financially and operationally—of the data and management systems put in place by this program?

7. **<u>Supplemental documents</u>**
    - Please provide the following additional documents:
        i. Cover letter from the municipality's chief executive officer—the mayor and/ or the city/ town manager (required).
        ii. Summary page: Appendix I (required).
        iii. Agreement letter from the county to provide GIS files for each parcel in the municipality (required if the municipality does not currently have access to GIS files for each parcel in the municipality).
        iv. Two letters of support from community institutions, stakeholders, and/ or Community Based Organizations (CBOs) (required).
        v. Letter from the municipality's city council/ local governing body stating its financial commitment to sustaining data management systems beyond the two-year grant (optional).

III. Proposal and Submission Information

A. Timelines

Application issued: April 7, 2017

Informational call: April 18th, 2017 at 2pm EST.
Conference number 1-866-469-3239, code 66184256.
Please submit questions by 5:00 pm on April 14th. Submit questions as <u>attachments</u> to CitiesRISE@enterprisecommunity.org, with the word QUESTION clearly labeled in the name of the attachment. Any questions in the body of the e-mail or with the word QUESTION not in the title will not be viewed.

Due date and time: 5:00 pm EST on Friday, May 5th, 2017

Award notice: The projected notice of awards is May 19, 2017

Contract period: June 9, 2017 to June 8, 2019

B. Submittal Instructions

In order to fairly evaluate all proposals, a uniform proposal format is required. Each proposal section is listed below.

1. **Cover letter from Mayor/ Chief Executive Officer**
2. **Summary page**: Appendix I.
3. **Narrative**: Provide answers to the questions above, with a strict adherence to word count limitations.
4. **Commitment letters and supplemental attachments**: Listed above.

Please submit all applications as a single PDF with the name of the applying municipality (or municipalities) in the title to CitiesRISE@enterprisecommunity.org. The application must be submitted with a cover letter signed by the municipality's chief executive officer (mayor and/ or city/ town manager). Please note that only e-mail attachments will be reviewed; no information in the body of the e-mail aside from attachments will be considered part of the application. The projected date for notice of awards for this Request for Applications (RFA) is May 19, 2017, with awardees required to countersign and return required documentation by June 9, 2017. Enterprise Community Partners, Inc. (Enterprise) and the Local Initiatives Support Corporation (LISC; together "Enterprise and LISC" or "LISC and Enterprise") in their discretion may extend the application deadline.

IV. Grant Terms

Selected applicants will be required to enter into a grant agreement with Enterprise or LISC governing the grant of the license and related technical assistance from the BuildingBlocks vendor (Enterprise/LISC will pay the vendor directly), and enter into an End User Licensing Agreement with the vendor.

V. APPENDIX I: Application Summary Page

Legal Name of Municipal Corporation (or Corporations, if joint application):	
Is your Municipal Corporation responsible for Code Enforcement, with a dedicated office?	☐ Yes ☐ No
If you have another arrangement, such as shared code enforcement across municipalities, explain.	
In which county are you based?	
Population (2010 US Census):	
Poverty rate (2015 American Community Survey):	
% of census tracts with poverty rate of 20% or higher (2015 American Community Survey):	
Does your Municipal Corporation have access to GIS files for each parcel in the municipality, or an agreement from the County to provide the GIS files for each parcel in the municipality?	☐ Access to GIS files for every parcel ☐ Agreement from County to provide GIS files for every parcel (Agreement letter attached)
Relevant Municipal data sets in a machine-readable format	☐ Code Enforcement ☐ Property Tax ☐ Fire ☐ Police ☐ Utility ☐ Corporation Counsel ☐ Other (describe): _____
Name and title of staff person assigned to manage data platform deployment	
Name and titles of at least 2 staff people assigned as core users of data platform	

	Primary Contact	Secondary Contact
Name:		
Title:		
Agency/Office:		
Address:		
City, ZIP:		
Phone Number:		
Cell phone #:		
Email Address:		

RESOLUTION NO.: 122 - 2017

OF

MAY 8, 2017

RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ACCEPT A DASNY STATE AND MUNICIPAL FACILITIES CAPITAL PROGRAM GRANT IN AN AMOUNT NOT TO EXCEED $100,000.00 FOR THE CONSTRUCTION OF A SKATEBOARD PARK TO BE LOCATED IN THE DELANO-HITCH RECREATION PARK

WHEREAS, the City of Newburgh applied for a 2014 Municipal Facilities Capital Program Grant administered through the Dormitory Authority of the State of New York State and was approved as a Senate member item from Senator Larkin for the construction of a skateboard park to be located in the Delano-Hitch Recreation Park; and

WHEREAS, the approved Senate member item and grant is still available to the City with the submission of a new application; and

WHEREAS, it is deemed to be in the best interests of the City of Newburgh and its citizens to re-apply for and accept such grant;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and is hereby authorized to accept if awarded a State and Municipal Facilities Capital Program Grant administered by the Dormitory Authority of the State of New York from Senator Larkin in the amount of $100,000.00 for the construction of a skateboard park to be located in the Delano-Hitch Recreation Park, with the appreciation and thanks of the City of Newburgh; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York that the City Manager is authorized to execute all such contracts and documentation and take such further actions as may be appropriate and necessary to accept such grant and administer the programs funded thereby.

WILLIAM J. LARKIN, JR.
SENATOR, 39TH DISTRICT
REPUBLICAN CONFERENCE WHIP

PLEASE RESPOND TO:
ROOM 502 CAPITOL
ALBANY, NY 12247
(518) 455-2770

1693 LITTLE BRITAIN ROAD
NEW WINDSOR, NY 12553
(845) 567-1270

E-MAIL ADDRESS:
LARKIN@NYSENATE.GOV

WEB ADDRESS:
HTTP://LARKIN.NYSENATE.GOV

THE SENATE
STATE OF NEW YORK

COMMITTEES

CORPORATIONS, AUTHORITIES & COMMISSIONS

FINANCE

HEALTH

INSURANCE

RULES

TRANSPORTATION

VETERANS, HOMELAND SECURITY & MILITARY AFFAIRS

October 30, 2014

The Honorable Judith L. Kennedy
Mayor
City of Newburgh
City Hall – 83 Broadway
Newburgh, New York 12550

Dear Mayor Kennedy:

This letter will confirm that I have secured a grant in the amount of $100,000 for the City of Newburgh. This funding is through the State and Municipal Facilities Program (SAM) and will be administered by the Dormitory Authority of the State of New York (DASNY).

An initial Project Notification Form will be sent to the Senate Finance Committee to begin the process. The funding has been designated for costs associated with the construction of a Skateboard Park in Delano-Hitch Park. The Notification Form will be sent to the NYS Division of Budget and the Executive Chamber for their review and approval. For your planning purposes, please be aware that these approvals are taking several months, at a minimum, to obtain. Once you receive both approvals, the form will be sent to DASNY to being the contract process. DASNY will contact you directly to request additional information on the project.

I have enclosed a State and Municipal Facilities Capital Program Eligibility Criteria Sheet for your review.

If I can be of any further assistance with this grant, please do not hesitate to contact me.

Sincerely,

William J. Larkin, Jr.
Senator

Enclosure

Eligibility Criteria -- State & Municipal Facilities Capital Program (SAM)

- Minimum project amount of $50,000
- Have secured or can demonstrate a reasonable expectation of securing total project funding;
- Have a clearly identified, recurring source of revenue to support facility operations and maintenance;
- Where applicable, have received all necessary regulatory approvals, or can demonstrate a reasonable expectation that such approvals will be secured;
- Funds shall not be used for projects that are already completed at the time of application;
- All projects must be approved by the Division of Budget and the Executive.

ELIGIBLE GRANTEES -- **must be** one of the following:

- New York State, (Agency, Authority or Public Benefit Corporations);
- Counties, Legally Incorporated Villages, Towns or Cities;
- *Fire Districts*;
- *Independent Not-for-Profit Higher Education Institutions*;
- Metropolitan Transportation Authority;
- Public Housing Authorities
- *Public Libraries and/or Public Library Systems*;
- *Public School Districts;*
- Water or Sewer Districts; and
- State University & City University of New York, including Community Colleges

INELIGIBLE GRANTEES -- the following are **not eligible for funding**:

- Not-for-Profit Organizations;
- For Profit Corporations; and
- Industrial Development Authorities, (IDA)

- A public authority, IDA, or local development corporation would only be able to receive funding under this program if the project being funded is owned by any of the **eligible** entities enumerated above.

- For example, if a project of a local development corporation involves the construction of a business park, funding could be used for any road improvements, sewer improvements, etc. that are needed and that are located on State or municipal owned property leading up to such business park.

- Projects eligible for funding must be for one or more of the following:
  - The acquisition, construction, demolition, or replacement of a fixed asset or assets;
  - *The acquisition of capital assets with a useful life of not less than ten years purchased for the sole purpose of preserving or protecting infrastructure that is owned or controlled by eligible grantee*;
  - The major repair or renovation of a fixed asset, or assets which materially extend its useful life or materially improves or increase its capacity;
  - The planning or design of the acquisition, construction, demolition, replacement, major repair or renovation of a fixed asset(s), including the preparation and review of plans and specifications including engineering and other services, field surveys and related sub-surface investigations;
  - *Economic development projects sponsored by the State or municipal corporations that will create or retain jobs in New York State as certified by the Commissioner of the Department of Economic Development; and*
  - *Environmental projects sponsored by the State or municipal corporations.*

- **No funds from this program may be used as a required match or be considered a local share to other State programs or to leverage State aid or grants including, but not limited to, the apportionment of aid under the Education Law.**

WILLIAM J. LARKIN, JR.
SENATOR, 39TH DISTRICT
REPUBLICAN CONFERENCE WHIP

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- Funds shall not be used for projects that are already completed at the time of application;
- All projects must be approved by the Division of Budget and the Executive.

ELIGIBLE GRANTEES -- **must be** one of the following:

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- *Independent Not-for-Profit Higher Education Institutions*;
- Metropolitan Transportation Authority;
- Public Housing Authorities
- *Public Libraries and/or Public Library Systems*;
- *Public School Districts;*
- Water or Sewer Districts; and
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INELIGIBLE GRANTEES -- the following are **not eligible for funding**:

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- For Profit Corporations; and
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- A public authority, IDA, or local development corporation would only be able to receive funding under this program if the project being funded is owned by any of the **eligible** entities enumerated above.

- For example, if a project of a local development corporation involves the construction of a business park, funding could be used for any road improvements, sewer improvements, etc. that are needed and that are located on State or municipal owned property leading up to such business park.

- Projects eligible for funding must be for one or more of the following:
  - The acquisition, construction, demolition, or replacement of a fixed asset or assets;
  - *The acquisition of capital assets with a useful life of not less than ten years purchased for the sole purpose of preserving or protecting infrastructure that is owned or controlled by eligible grantee*;
  - The major repair or renovation of a fixed asset, or assets which materially extend its useful life or materially improves or increase its capacity;
  - The planning or design of the acquisition, construction, demolition, replacement, major repair or renovation of a fixed asset(s), including the preparation and review of plans and specifications including engineering and other services, field surveys and related sub-surface investigations;
  - *Economic development projects sponsored by the State or municipal corporations that will create or retain jobs in New York State as certified by the Commissioner of the Department of Economic Development; and*
  - *Environmental projects sponsored by the State or municipal corporations.*

- **No funds from this program may be used as a required match or be considered a local share to other State programs or to leverage State aid or grants including, but not limited to, the apportionment of aid under the Education Law.**

RESOLUTION NO.: 123 - 2017

OF

MAY 8, 2017

A RESOLUTION TO REQUIRE APPRENTICESHIP TRAINING PROGRAMS FOR PUBLIC CONSTRUCTION CONTRACTS AWARDED BY THE CITY OF NEWBURGH

WHEREAS, current State law allows as a local option but does not compel any governmental entity that is a party to a construction contract for a public project to require that any contractors or subcontractors participate in apprenticeship training programs approved by the State Commissioner of Labor as provided under Article 23, Section 816-b et seq. of the Labor Law; and

WHEREAS, there is a long and productive history of partnership between labor and management for the training of skilled craft workers in our State which began over fifty (50) years ago when the United States Congress passed the Fitzgerald Act (29 USC Section 50) to encourage States to develop apprenticeship training programs; and

WHEREAS, the New York State Legislature adopted Article 23 of the New York Labor Law in 1961 to authorize the State Commissioner of Labor to develop standards for apprenticeship training and a process for certifying programs which meet said standards; and

WHEREAS, the promotion of apprenticeship training programs will expand the pool of skilled workers in the City of Newburgh by providing many residents the means to earn a decent living thereby fostering the local and regional economies; and

WHEREAS, by adopting apprenticeship requirements in the City of Newburgh it will increase career opportunities for minorities and those of female gender and ensure contractors awarded projects in the City of Newburgh are committed to training, education and safety; and

WHEREAS, by Resolution No. 125-2014 of May 12, 2014, the City Council adopted apprenticeship requirements for all contractors or subcontractors, prior to entering into a construction contract with the City of Newburgh in excess of $250,000.00, appropriate for the type and scope of work to be performed, which have been registered with, and approved by, the New York State Commissioner of Labor in accordance with Article 23 of the New York Labor Law anything in Section 103 of the New York General Municipal Law to the contrary notwithstanding; and

WHEREAS, Resolution No. 125-2014 applied to construction contracts advertised for bids after May 15, 2014 and sunset on May 14, 2016 unless renewed and re-authorized by resolution of the City Council; and

WHEREAS, this Council wishes to renew and reauthorize the apprenticeship requirements adopted in Resolution No. 125-2014; and

WHEREAS, the adoption of this resolution renew and reauthorize the apprenticeship requirements constitutes a Type II Action under the State Environmental Quality Review Act ("SEQRA") and the regulations promulgated thereunder;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City of Newburgh hereby establishes a policy to promote apprenticeship training as authorized by Section 816-b of the New York Labor Law; and

BE IT FURTHER RESOLVED, that "construction contract" shall mean any contract to which the City of Newburgh and its affiliated agencies shall be a principal party which involves the construction, reconstruction, improvement, rehabilitation, installation, alteration, renovation, demolition, or otherwise providing for any building, facility or physical structure of any kind, if the labor components, final assessed value, gross capitol cost and/or component of such contract or project be in excess of Two Hundred Fifty Thousand ($250,000.00) Dollars; and

BE IT FURTHER RESOLVED, that "contractor or subcontractor" shall mean a contractor or subcontractor which directly employs labor under a construction contract for which an apprenticeship program has been approved by the New York Labor Law; and

BE IT FURTHER RESOLVED, that the City of Newburgh hereby requires any contractor or subcontractor, prior to entering into a construction contract with the City of Newburgh in excess of $250,000.00, to have apprenticeship agreements, appropriate for the type and scope of work to be performed, which have been registered with, and approved by, the New York State Commissioner of Labor in accordance with Article 23 of the New York Labor Law anything in Section 103 of the New York General Municipal Law to the contrary notwithstanding; and

BE IT FURTHER RESOLVED, that the apprentice program must meet the following standards: has been in existence for two or more years, has a graduation rate of at least twenty (20%) percent, has a legitimate place of training or access to a legitimate place of training, and has graduated a minimum of two (2) apprentices in the previous two years; and

BE IT FURTHER RESOLVED, that the City of Newburgh is hereby authorized, empowered and directed to promulgate such rules and regulations necessary and appropriate for the implementation and enforcement of any provision of this resolution; and

BE IT FURTHER RESOLVED, if any clause, sentence, paragraph, subdivision, section or part of this resolution or application thereof to any person, individual, corporation, firm, partnership, entity or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this resolution or its application to the person, individual, corporation, firm, partnership, entity or circumstance directly involved in the controversy in which such judgment or order shall be rendered; and

BE IT FURTHER RESOLVED, that this Resolution shall apply to construction contracts advertised for bids after May 15, 2017 and shall sunset on May 14, 2019 unless renewed and re-authorized by resolution of the City Council.

RESOLUTION NO.: 125 - 2014

OF

MAY 12, 2014

A RESOLUTION TO REQUIRE APPRENTICESHIP TRAINING PROGRAMS FOR PUBLIC CONSTRUCTION CONTRACTS AWARDED BY THE CITY OF NEWBURGH

WHEREAS, current State law allows as a local option but does not compel any governmental entity that is a party to a construction contract for a public project to require that any contractors or subcontractors participate in apprenticeship training programs approved by the State Commissioner of Labor as provided under Article 23, Section 816-b et seq. of the Labor Law; and

WHEREAS, there is a long and productive history of partnership between labor and management for the training of skilled craft workers in our State which began over fifty (50) years ago when the United States Congress passed the Fitzgerald Act (29 USC Section 50) to encourage States to develop apprenticeship training programs; and

WHEREAS, the New York State Legislature adopted Article 23 of the New York Labor Law in 1961 to authorize the State Commissioner of Labor to develop standards for apprenticeship training and a process for certifying programs which meet said standards; and

WHEREAS, the promotion of apprenticeship training programs will expand the pool of skilled workers in the City of Newburgh by providing many residents the means to earn a decent living thereby fostering the local and regional economies; and

WHEREAS, by adopting apprenticeship requirements in the City of Newburgh it will increase career opportunities for minorities and those of female gender and ensure contractors awarded projects in the City of Newburgh are committed to training, education and safety; and

WHEREAS, the adoption of this resolution constitutes a Type II Action under the State Environmental Quality Review Act ("SEQRA") and the regulations promulgated thereunder;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City of Newburgh hereby establishes a policy to promote apprenticeship training as authorized by Section 816-b of the New York Labor Law; and

BE IT FURTHER RESOLVED, that "construction contract" shall mean any contract to which the City of Newburgh and its affiliated agencies shall be a principal party which involves the

construction, reconstruction, improvement, rehabilitation, installation, alteration, renovation, demolition, or otherwise providing for any building, facility or physical structure of any kind, if the labor components, final assessed value, gross capitol cost and/or component of such contract or project be in excess of Two Hundred Fifty Thousand ($250,000.00) Dollars; and

BE IT FURTHER RESOLVED, that "contractor or subcontractor" shall mean a contractor or subcontractor which directly employs labor under a construction contract for which an apprenticeship program has been approved by the New York Labor Law; and

BE IT FURTHER RESOLVED, that the City of Newburgh hereby requires any contractor or subcontractor, prior to entering into a construction contract with the City of Newburgh in excess of $250,000.00, to have apprenticeship agreements, appropriate for the type and scope of work to be performed, which have been registered with, and approved by, the New York State Commissioner of Labor in accordance with Article 23 of the New York Labor Law anything in Section 103 of the New York General Municipal Law to the contrary notwithstanding; and

BE IT FURTHER RESOLVED, that the apprentice program must meet the following standards: has been in existence for two or more years, has a graduation rate of at least twenty (20%) percent, has a legitimate place of training or access to a legitimate place of training, and has graduated a minimum of two (2) apprentices in the previous two years; and

BE IT FURTHER RESOLVED, that the City of Newburgh is hereby authorized, empowered and directed to promulgate such rules and regulations necessary and appropriate for the implementation and enforcement of any provision of this resolution; and

BE IT FURTHER RESOLVED, if any clause, sentence, paragraph, subdivision, section or part of this resolution or application thereof to any person, individual, corporation, firm, partnership, entity or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this resolution or its application to the person, individual, corporation, firm, partnership, entity or circumstance directly involved in the controversy in which such judgment or order shall be rendered; and

BE IT FURTHER RESOLVED, that this Resolution shall apply to construction contracts advertised for bids after May 15, 2014 and shall sunset on May 14, 2016 unless renewed and re-authorized by resolution of the City Council.

I, Lorene Vitek, City Clerk of the City of Newburgh, hereby certify that I have compared the foregoing with the original resolution adopted by the Council of the City of Newburgh at a regular meeting held May 12, 2014 and that it is a true and correct copy of such original.

Witness my hand and seal of the City of Newburgh this 12 day of May, 2014

City Clerk

The City of Newburgh
Office of the Corporation Counsel

City Hall – 83 Broadway
Newburgh, New York 12550

Michelle Kelson
Corporation Counsel

Tel. (845) 569-7335
Fax. (845) 569-7338

ADVICE OF COUNSEL MEMORANDUM

TO: Mayor Judy Kennedy
Councilwoman Genie Abrams
Councilwoman Regina Angelo
Councilman Cedric Brown
Councilwoman Cindy Holmes
Councilwoman Gay Lee
Councilwoman Karen Mejia

FROM: Michelle Kelson, Corporation Counsel

RE: Apprenticeship programs in City construction contracts

CC: James A. Slaughter, Interim City Manager
John J. Aber, City Comptroller
Jason Morris, City Engineer

DATE: April 3, 2014

I have been asked to prepare a resolution establishing a City policy to require contractors and subcontractors to provide apprenticeship training programs in City construction contracts of $100,000.00 or more.

I understand the goals and purpose of this policy resolution. However, I am obligated to bring to your attention the legal implications of adopting such a policy resolution. Please be advised that the New York State Court of Appeals and the New York State Comptroller, have held that a local government may not require, as a pre-condition to the award of a contract to the lowest responsible bidder under General Municipal Law Section 103, that a bidder maintain an apprenticeship training program. I have attached copies of the decision of the New York Court of Appeals in Associated Builders and Contractors Inc. v. City of Rochester, 67 N.Y.2d 854, 492 N.E.2d 781, 501 N.Y.S.2d 653 and the Opinion of the New York State Comptroller No. 91-52, December 9, 1991 for your review and consideration.

Please do not hesitate to contact the undersigned if you have questions or require more information.

MICHELLE KELSON

MK/ar
Attachments

Court of Appeals of New York.
ASSOCIATED BUILDERS AND CONTRACTORS, INC., et al., Appellants,
v.
CITY OF ROCHESTER, Respondent,
and
Rochester Building Trades Council, by Christopher J. Farrell, as President and on Behalf of All Building Trades Employees of Member Unions of the Rochester Building Trades Council, Intervenor-Respondent.

March 27, 1986.

Association of nonunion contractors brought action seeking declaration that city ordinance granting competitive bidding preference to contractors having apprenticeship training programs was invalid. The Supreme Court, Monroe County, Conway, J., granted city's motion for summary judgment, and appeal was taken. Upon granting reargument of original decision, 106 A.D.2d 877, 483 N.Y.S.2d 970. The Supreme Court, Appellate Division, affirmed as modified, 112 A.D.2d 697, 491 N.Y.S.2d 871, and plaintiff appealed. The Court of Appeals held that ordinance conflicted with competitive bidding statute and thus was invalid.

Reversed.

West Headnotes

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City ordinance granting competitive bidding preference to contractors having apprenticeship training programs, by establishing precondition to award of contract to lowest responsible bidder, conflicted with competitive bidding statute, and thus was invalid. McKinney's General Municipal Law § 103; McKinney's Labor Law §§ 220, 810 et seq., 817.

***654 **782 *855** Paul J. Yesawich, III, and James M. Quinn, Rochester, for appellants.

Louis N. Kash, Corp. Counsel (Gary J. O'Donnell, Rochester, of counsel), for respondent.

Donald D. Oliver and Bernard T. King, Syracuse, for intervenor-respondent.

OPINION OF THE COURT

MEMORANDUM.

The order of the Appellate Division, 112 A.D.2d 697, 491 N.Y.S.2d 871, should be reversed, with costs, the cross motion of defendant City of Rochester denied, plaintiffs' motion for summary judgment granted and the case remitted to Supreme Court, Monroe County, for the entry of judgment declaring Ordinance 82–450 invalid and enjoining its enforcement.

General Municipal Law § 103 and similar legislative enactments requiring competitive bidding "evince a strong public policy of fostering honest competition in order to obtain the best work or supplies at the lowest possible price" (*Jered Contr. Corp. v. New York City Tr. Auth.*, 22 N.Y.2d 187, 192–193,

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292 N.Y.S.2d 98, 239 N.E.2d 197; *see,* General Municipal Law § 100–a). So strong is that policy that a seller who obtains a contract in violation of it may be barred from any recovery on the contract or, if that be too draconian a measure, required to repay the difference between his contract price and the low bid (*Gerzof v. Sweeney,* 22 N.Y.2d 297, 292 N.Y.S.2d 640, 239 N.E.2d 521; *see, Matter of New York State Assn. of Plumbing-Heating-Cooling Contrs. v. Egan,* 65 N.Y.2d 793, 493 N.Y.S.2d 112, 482 N.E.2d 908).

A municipal ordinance, such as Ordinance 82–450, which establishes a precondition to the award of a contract to the lowest responsible bidder, is inconsistent with General Municipal Law § 103 and, therefore, invalid, unless its establishment as a precondition is expressly authorized by "an act of the legislature or by a local law adopted prior to September first, nineteen hundred fifty-three" (General Municipal Law § 103[1]). Such is not the case with respect to apprentice training. Ordinance 82–450 was first adopted on September 28, 1982, and although Labor Law article 23 states the "public policy of ***856** the state of New York to develop sound apprenticeship training standards and to encourage industry and labor to institute training programs" (Labor Law § 810), the article is applicable only after the contractor or craft "has voluntarily elected to conform with its provisions" (§ 817). And although Labor Law § 220, the prevailing rate of wages statute, in subdivision (3), recognizes the right to pay an apprentice less than the prevailing rate, provided the apprentice receives "supplements in accordance with the prevailing practices" and the apprentice "is individually registered in an apprenticeship program which is duly registered with the industrial commissioner", we have held that the purpose of that section, and particularly of the supplements, is to equalize minimum labor costs between union contractors and nonunion employers who held an unfair advantage through lower labor costs (*Matter of Action Elec. Contrs. Co. v. Goldin,* 64 N.Y.2d 213, 222, 485 N.Y.S.2d 241, 474 N.E.2d 601), that that "purpose is fulfilled when a contractor pays in cash, totally or partially, the cost of prevailing supplemental benefits to his employees", and that the section was not concerned "to protect workers from their possible failure to put their additional cash towards a benefits plan" *(id.).* That this is the correct construction of the statute with respect to apprentices is made indelibly clear by subdivision (3–e) of section 220, which requires that "[a]ny employee listed on a payroll at an apprentice wage rate, who is not registered as above, shall be paid the wage *****655** rate determined by the New York State Department of Labor for the classification of work he actually performed."

Reading the three statutory provisions together, we conclude that the predominate purpose of the State Legislature was the protection of the public fisc by requiring ****783** competitive bidding (General Municipal Law § 103), that apprentice training, while a desirable end, was not intended by the State Legislature to affect the qualification of an otherwise responsible low bidder, and that, therefore, Ordinance 82–450 is invalid because in conflict with General Municipal Law § 103. *Matter of Skyway Roofing v. County of Rensselaer,* 79 A.D.2d 1078, 436 N.Y.S.2d 103, *lv. denied* 53 N.Y.2d 606, 440 N.Y.S.2d 1026, 422 N.E.2d 835 does not require a different conclusion for, as was pointed out by the dissenting justice below, the holding of the Appellate Division in that case was that because apprentice training was already required by statute, the county ordinance was superfluous. While we now disagree with the suggestion that such training is required by statute, our denial of leave in that case, even if the Appellate Division's decision is read more broadly, is without precedential ***857** effect (*Matter of Dobbs Ferry Union Free School Dist. [Dobbs Ferry United Teachers],* 51 N.Y.2d 861, 433 N.Y.S.2d 1018, 414 N.E.2d 398).

WACHTLER, C.J., and MEYER, SIMONS, KAYE, ALEXANDER and TITONE, JJ., concur in memorandum.

HANCOCK, J., taking no part.

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Order reversed, etc.

N.Y.,1986.
Associated Builders and Contractors, Inc. v. City of Rochester
67 N.Y.2d 854, 492 N.E.2d 781, 501 N.Y.S.2d 653

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Westlaw.

Opns St Comp, 1991 No. 91-52, 1991 WL 526991 (N.Y.St.Cptr.)

New York State Comptroller

NYCPTR Opn No.
91
-
52

December 9, 1991

TO: ROBERT C. MULVEY, ESQ., COUNTY ATTORNEY
COUNTY OF TOMPKINS

General Municipal Law, § 103; Municipal Home Rule Law, §§ 10, 33; State Constitution, Art 1, § 11; United States Constitution, Art I, § 8, Art IV, § 2, Amendment 14

1. PUBLIC CONTRACTS—AWARD—PREFERENCE TO BIDDER EMPLOYING PRESCRIBED PERCENTAGE OF LOCAL RESIDENTS

2. PUBLIC CONTRACTS—AWARD—REQUIRING APPRENTICESHIP TRAINING PROGRAM AS PRE–CONDITION TO

3. PUBLIC CONTRACTS—BIDS—RESTRICTING BIDS ONLY TO BIDDERS EMPLOYING PRESCRIBED PERCENTAGE OF LOCAL RESIDENTS

4. PUBLIC CONTRACTS—LOWEST RESPONSIBLE BIDDER—RESPONSIBILITY OF BIDDER AS DISTINGUISHED FROM DEBARMENT

5. LOCAL LAWS—COMPETITIVE BIDDING—PRE–EMPTION BY GENERAL MUNICIPAL LAW, § 103

6. LOCAL LAWS—PRE–EMPTION—PREFERENCE TO BIDDER EMPLOYING PRESCRIBED PERCENTAGE OF LOCAL RESIDENTS

7. LOCAL LAWS—PRE–EMPTION—REQUIRING APPRENTICESHIP TRAINING PROGRAM AS PRE–CONDITION TO

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8. LOCAL LAWS—PRE–EMPTION—RESTRICTING BIDS ONLY TO BIDDERS EMPLOYING PRESCRIBED PERCENTAGE OF LOCAL RESIDENTS

9. LOCAL LAWS—PRE–EMPTION—RESPONSIBILITY OF BIDDER AS DISTINGUISHED FROM DE-BARMENT

10. CONSTITUTIONAL LAW—EQUAL PROTECTION—PREFERENCE TO BIDDER EMPLOYING PRESCRIBED PERCENTAGE OF LOCAL RESIDENTS

11. CONSTITUTIONAL LAW—PRIVILEGES AND IMMUNITIES—PREFERENCE TO BIDDER EMPLOYING PRESCRIBED PERCENTAGE OF LOCAL RESIDENTS

12. CONSTITUTIONAL LAW—COMMERCE CLAUSE—PREFERENCE TO BIDDER EMPLOYING PRESCRIBED PERCENTAGE OF LOCAL RESIDENTS

A local government may not adopt a post–1953 local law which provides for an award of a contract after competitive bidding to a bidder which employs a prescribed percentage of local residents even though that bidder is not the lowest responsible bidder or which restricts competition only to bidders which employ a prescribed percentage of local residents for the purpose of benefiting the local economy. Such enactment would also raise constitutional questions of compliance with the commerce, privileges and immunities and equal protection clauses of the Constitution. A local government also may not adopt a post–1953 local law which requires as a precondition to the award of a contract that a bidder maintain an apprenticeship training program or which debars bidders from future contracts as a sanction for not complying with procurement requirements. Prior inconsistent opinions are superseded.

This is in reply to your letter requesting an opinion regarding a proposed local law which would establish a "county residents job policy" for county contracts. In pertinent part, the proposal would require any bidder on a county construction project to certify that (1) at least 50% of the total "employee person hours" shall be performed by county residents and (2) the bidder is a participant in a bonafide apprenticeship program. Bidders who are unable to meet the certification requirements may still submit bids, but their bids will only be considered if no bids meeting the certification requirements are received. The proposed enactment would also authorize the county to impose sanctions upon contractors found to be in noncompliance, including the denial of the right to participate in future county construction projects for up to three years.

*2 Municipal Home Rule Law, § 10(1)(i) authorizes local governments to adopt and amend local laws, not inconsistent with any general law or the Constitution, relating to their property, affairs or government. In addition, Municipal Home Rule Law, § 10(1)(ii)(a) authorizes local governments to adopt and amend local laws, not inconsistent with any general law or the Constitution, relating to certain specific subjects matters, whether or not they relate to the property, affairs or government of the local government, except to the extent that the State Legislature shall restrict the adoption of such local laws. Pertinent to this inquiry, these specific subject matters include the transaction of the business of the local government (Municipal Home Rule Law, § 10[1][ii][a][3]); the protection, welfare and safety of persons employed by any contractor or sub-contractor performing work, labor or services for the local government (Municipal Home Rule Law, § 10[1][ii][a][10]); and the government, protection, order, conduct, safety, health and

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well-being of persons or property within the local government (Municipal Home Rule Law, § 10[[[1][ii][a][12]).

While the general subject matter of the proposal is arguably a proper subject for a local law under Municipal Home Rule Law, § 10, the doctrine of pre-emption represents a fundamental limitation on home rule powers. Where the State has pre-empted the field, a local law regulating the same subject matter is deemed inconsistent with State law whether or not the terms of the local law actually conflict with the State statute (Albany Area Builders v Guilderland, 74 NY2d 372, 547 NYS2d 627; Jancyn v County of Suffolk, 71 NY2d 91, 524 NYS2d 8). The Legislature may expressly state its intent to pre-empt or that intent may be implied from the nature of the subject matter being regulated and the purpose and scope of the State legislative scheme, including the need for State-wide uniformity in a given area (Albany Area Builders, supra).

General Municipal Law, § 103(1) provides as follows:

> Except as otherwise expressly provided by an act of the legislature or by a local law adopted prior to September first, nineteen hundred fifty-three, all contracts for public work involving an expenditure of more than seven thousand dollars and all purchase contracts involving an expenditure of more than five thousand dollars, shall be awarded by the appropriate officer, board or agency of a political subdivision ... to the lowest responsible bidder furnishing the required security after advertisement for sealed bids in the manner provided by this section.... (Emphasis added; see L1991, ch 413, §§ 54–56, effective January 1, 1992, which increases the monetary thresholds of section 103 and adds a new section 104–b to the General Municipal Law to require the adoption of procurement policies and procedures).

This Office has previously concluded that the opening clause of section 103 evinces a legislative intent to pre-empt the field and to preclude the adoption of local laws on or after September 1, 1953 (1991 OpnsStComp No. 91–1, p 1; 1981 OpnsStComp No. 81–109, p 111; 1980 OpnsStComp No. 80–696, unreported; 1976 OpnsStComp No. 76–248, unreported; see Associated Builders v City of Rochester, 67 NY2d 854, 501 NYS2d 653 492 NE2d 781; Grimm v City of Troy, 60 Misc2d 579, 303 NYS2d 170; Williams v Bryant, 53 AD2d 229, 385 NYS2d 425; Pacificorp Capital Inc. v City of New York, 741 F Supp 481, 486; cf. McMillen v Browne, 14 NY2d 326, 251 NYS2d 641 and Anjac v Westchester County, Supreme Court, Westchester County, Jan. 30, 1989, Index #629/89, concerning whether Labor Law, § 220 pre-empts local laws). With respect to the scope of the State pre-emption under General Municipal Law, § 103, we have expressed the opinion that section 103(1) is not intended to preclude the adoption of local laws on or after September 1, 1953 which are essentially revisions, simplifications, consolidations, codifications or restatements of pre–1953 special or local laws applicable to a local government (Opn Nos. 91–1, 81–109 and 80–696, supra).

*3 The Court of Appeals has stated that section 103 and other competitive bidding statutes:

> evince a strong public policy of fostering honest competition in order to secure the best work or supplies at the lowest possible price. In addition, the obvious purpose of such statutes is to guard against favoritism, improvidence, extravagance, fraud and corruption. (Jered v NYCTA, 22 NY2d 187, 192–3, 292 NYS2d 98; see also General Municipal Law, § 100–a).

It is well-established that, consistent with the requirements of section 103, municipalities may fix reasonable standards and limitations which bidders are bound to observe (see, e.g., Randolph McNutt v Eckert, 257 NY 100; Gerzof v Sweeney, 16 NY2d 206, 264 NYS2d 376). Based on the purposes of the competitive bidding statutes, however, the courts have struck down conditions or restrictions in bid specifications or in resolutions or ordinances which tend to limit the list of otherwise qualified bidders to achieve objectives not within the intendment of section 103 (see, e.g., Associated Builders v City of Rochester, 67 NY2d 854, 501 NYS2d 653; Warren Bros. v Craner, 30 AD2d 437, 293

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NYS2d 763; American Institute v County of Erie, 32 AD2d 231, 302 NYS2d 61; see also Subcontractors v Koch, 96 AD2d 774, 465 NYS2d 825).

The Warren Bros. and American Institute cases, supra, considered the propriety of geographical limitations which restrict bidders. In Warren Bros., the court reviewed a bid specification which required bidders to have access to a plant within the county. The court stated as follows:

> The location of a plant within a political boundary of the state is not a proper requirement or test for the need of a product or the ability of the manufacturer to produce it and hence the right to bid to supply it. If distance is a proper factor, the requirement should be measured in miles or in a time factor, not by political boundaries. The latter do not go to the merits of need, and such test lends itself too readily to manipulation and evasion of the statutory requirement of open competition. (18 OpnsStComp, 1962, p 370; 10 OpnsStComp, 1954, p 404) (30 AD2d at p 439–440, 293 NYS2d at p 767)

Similarly, in American Institute, the court struck down a county resolution requiring that contract documents for capital projects of a county provide that only steel made in mills located in the United States would be supplied in the performance of contracts or subcontracts, stating as follows:

> The county rather feebly contends that the resolution has some relationship to quality control of steel. To the contrary the words of the members who sponsored the resolution make clear the intent: 'I would hope that 'public projects' would be built with American products which is in the best interest of our American economy ...'
>
> There may be excellent reasons why United States industry and labor should be protected—at the expense of the taxpayers—from importation of foreign manufactured steel. The attempt here, however, by a county legislative body to intrude into this area of mandated competitive bidding appears to be as much in conflict with the provisions of section 103 of General Municipal Law as would an attempt by county officials to confine bidding to one company, firm or individual or to exclude arbitrarily a potential bidder by a requirement that its plant be within the county (citations omitted; 32 AD2d at p 233; 302 NYS2d at p 63–4).

***4** In Associated Builders, supra, the Court of Appeals, considered whether a municipality, by ordinance, may establish as a precondition to the award of a contract to the lowest responsible bidder that a bidder maintain an apprenticeship training program. In that case, the Court stated that apprentice training, while a desirable end (see Labor Law, § 810), was not intended by the State Legislature to affect the qualifications of an otherwise responsible low bidder. The Court, therefore, declared the ordinance invalid because it conflicted with General Municipal Law, § 103, which has its "predominate purpose ... the protection of the public fisc by requiring competitive bidding" and because it was not expressly authorized "by act of the Legislature or by local law adopted prior to September first, nineteen hundred fifty-three" (67 NY2d 854, 861, 501 NYS2d 654; see also 1982 OpnsStComp No. 82–128, p 158).

There are no judicial decisions in this state that expressly discuss the authority of a political subdivision to impose, by local law, upon a non-complying bidder the sanction of debarment from future contracts for a prescribed period of time. The courts, however, have held that the authority of the State to award contracts to the "lowest responsible bidder" (see, e.g., Highway Law, § 38[3]; State Finance Law, § 174) does not expressly or by necessary implication authorize an awarding body to debar or suspend contractors, prospectively, from future contracts (Matter of Liquid Asphalt Distribution Association v White, 137 AD2d 913, 524 NYS2d 580; Matter of Callanan v White, 118 AD2d 167, 503 NYS2d 930, lv den 123 AD2d 462, 506 NYS2d 287 and 69 NY2d 601, 511 NYS2d 1027; see also NYS Asphalt Pavement v White, 141 Misc2d 28, 532 NYS2d 690). As stated in Matter of Callanan, supra:

> Certainly, the Department can and should consider past conduct by a bidder in making its decision as to whether

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> the bidder on a particular contract is responsible. However, in no statute has the Legislature granted the Department authority to commence any sort of proceeding for the purpose of punishing an irresponsible bidder or debarring such a bidder from submitting bids in the future.**** Nor can the power to debar bidders be necessarily implied from the authority to reject bids made by irresponsible bidders. The ability of the Department to reject bids of irresponsible bidders is not frustrated by its inability to debar future bids. Once the Department finds a bidder to be irresponsible for a particular reason, assuming that such a finding was not arbitrary or capricious, it could proceed to reject each of that bidder's future bids, in effect creating the sort of debarment accomplished in the instant case.
>
> However, this would force the Department to consider anew the bidder's responsibility upon each bid and, presumably, change its position when and if the bidder remedies the cause of the finding of irresponsibility. (citations omitted; 118 AD2d at 169–171, 503 NYS2d at 932–3)

*5 It is our opinion that the same principles apply to political subdivisions (but see Hi–Tech Mechanical, Inc. v City of New York, Supreme Court, NY County, NY Law Journal, 3/1/88, p 7, col. 1 and A.I. Smith v Fire Department of City of New York, —— AD2d ——, 574 NYS2d 34, involving NYC Charter provisions and regulations pertaining to debarment).

Based on the foregoing judicial decisions and our view that section 103 evinces an intention on the part of the State Legislature to pre-empt local legislation, it is our opinion that a post–1953 local law which limits the class of potential bidders to achieve objectives not contemplated by section 103 would be in conflict with section 103 and would be prohibited. Thus, if the primary purpose of a post–1953 local law which limits competition to bidders employing a prescribed percentage of local residents is to benefit the local economy, in our opinion, it would be in conflict with section 103 and would be prohibited (see also 1981 OpnsStComp No. 81–142, p 146; 1977 OpnsStComp No. 77–554, unreported; 1975 OpnsStComp No. 75–610, unreported; 28 OpnsStComp, 1972, p 188; 1983 Atty Gen [Inf Opns] No. I 83–46). It is our opinion that a post–1953 local law which provides for an award to a bidder which employs a prescribed percentage of local residents, even though that bidder is not the lowest responsible bidder, would be in conflict with the requirement in General Municipal Law, § 103 to award contracts only to the lowest responsible bidder and also would be prohibited.

We also conclude, based on Associated Builders, supra, that a local government may not require, by post–1953 local law, as a precondition to the award of a contract to the lowest responsible bidder under section 103 that a bidder maintain an apprenticeship training program. Finally, since General Municipal Law, § 103, like the statutes at issue in Matter of Liquid Asphalt and Matter of Callanan, supra, provides for an award of a contract to the "lowest responsible bidder" but contains no authorization to debar prospective bidders, it is our opinion that a post–1953 local law debarring bidders from future contracts is also in conflict with section 103 (see also J. Weinstein Building Corp. v Scoville, 141 Misc 902, 254 NYS 384; cf. Labor Law, § 220–b, relating to debarment of contractors violating prevailing wage requirements).

In reaching the above conclusions, we are not suggesting that a political subdivision is precluded from including reasonable requirements in its bid specifications that are consistent with the purposes of section 103. For example, to the extent that the proximity of a vendor to the municipality is reasonably related to the performance of the goods or services being sought, it would be consistent with section 103 to prescribe a distance factor in the bid specifications (see, e.g., Salle v OGS, 134 AD2d 809, 521 NYS2d 868, upholding a bid specification requiring that the supplier of dry ice be located within a certain distance from the facility served; see also 1980 OpnsStComp No. 80–440, p 127,

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concerning the purchase of and and gravel to be hauled to a municipal facility by the municipality). Similarly, it would be consistent with section 103 to require in bid specifications that bidders provide information necessary to the determination of a bidder's responsibility, including information in connection with previous municipal contracts (see, e.g., Harran Transportation Co. v Board of Education, 71 Misc2d 139, 335 NYS2d 465 revd on other grnds 71 Misc2d 143, 335 NYS2d 971).

***6** In addition to the state law issues discussed above, the proposed local law raises federal constitutional questions under the Commerce Clause (US Const, art 1, § 8, cl. 3); the Privileges and Immunities Clause (US Const, art IV, § 2, cl. 1) and the Equal Protection Clause (US Const, 14th Amendment; see also NY Const, art 1, § 11) (see, gen., 36 ALR 4th 941). In White v Mass Council of Construction Employers, 460 US 204, 75 LEd 1, 103 SCt 1042 [1983], the U.S. Supreme Court addressed the question of whether an executive order, which required that all construction projects funded in whole or in part by municipal funds or funds which the municipality had authority to administer should be performed by a work force at least one-half of which consisted of bonafide residents of the municipality, violated the Commerce Clause. The Court stated that when a state or local government enters a market as a participant, rather than as a regulator, it is not subject to the Commerce Clause (see also Hughes v Alexandria Scrap, 426 US 794, 49 LEd2d 220, 96 SCt 2488). Insofar as the municipality expended its own funds for construction contracts for public projects, the Court held the municipality was a market participant. The Court also upheld the executive order insofar as it was applied to projects funded in part with federal moneys under programs having regulations which affirmatively sanction local residency preferences, stating that where state or local government action is specifically authorized by Congress, it is not subject to the Commerce Clause even if it interferes with interstate commerce.

Shortly after White, supra, the Supreme Court, in United Building v Mayor and Council of the City of Camden, 465 US 208, 79 LEd2d 249, 104 SCt 1020, examined whether a city ordinance requiring at least 40% of the employees of contracts and subcontractors working on city construction contracts to be city residents was in violation of the Privileges and Immunities Clause, which states that "(t)he citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States". The Court first noted that the Privileges and Immunities Clause applies to enactments of local governments as well as those of a State. Further, the Court concluded that the Clause applies to an ordinance which discriminates against out-of-state residents solely on the basis of municipal, rather than state, residency.

The Court then held that while the opportunity to seek employment with private contractors and subcontractors engaged in public whose project was a "protected privilege" under the Clause, the Clause does not provide an absolute protection:

> It does not preclude discrimination against citizens of other States where there is a 'substantial reason' for the difference in treatment. '[T]he inquiry in each case must be concerned with whether such reasons do exist and whether the degree of discrimination bears a close relation to them.' Ibid. As part of any justification offered for the discriminatory law, nonresidents must somehow be shown to 'constitute a peculiar source of evil at which the statute is aimed. (465 US at 222, 79 LEd2d at 261; see also Hicklin v Orbeck, 437 US 518, 98 SCt 57, 2482 LEd 397; Salla v County of Monroe, 48 NY2d 514, 423 NYS2d 878, cert den 446 US 909, 64 LEd 262, 100 SCt 1836; WCM Window v Bernardi; 730 F2d 486; E & E v State of Illinois, 674 FSupp 269; cf. Winkler v Spinnato, 72 NY2d 402, 534 NYS2d 128 cert den 109 490 US 1005, 104 LEd2d 155, SCt 1640)

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*7 A local law which grants an employment preference to local residents may also raise the question of compliance with constitutional equal protection guarantees (see, e.g., C.D.R. Enterprises LTD v Board of Education, 412 FSupp 1164 affd sub nom Lefkowitz v CDR, 429 US 1031, 97 SCt 721 50 LEd2d 742; cf. Gould v Bennett, 153 Misc 818, 276 NYS 113; People v Crane, 214 NY 154 affd 239 US 195, 60 LEd 248, 36 SCt 85). Generally, classifications granting preferential treatment to a particular class of persons have been found to be permissible where the classification has a rational basis and is not arbitrary, where there is uniformity within the class, and where the classification bears some substantial and rational relationship to the accomplishment of a legitimate government purpose (see, e.g., Maresca v Cuomo, 64 NY2d 242, 485 NYS2d 724 dsmd 475 US 807, 88 LEd2d 28, 106 SCt 34). If, however, a local enactment infringes on fundamental right, a local government must show that the classification is necessary to accomplish a compelling state interest (id.). The right to travel or to migrate is a constitutionally protected fundamental right and, therefore, a residency classification which penalizes the exercise of that right subjects the classification to the compelling state interest test (Attorney General of NY v Soto–Lopez, 476 US 898, 90 LEd2d 899, 106 SCt 2317; see also E & E, supra; cf. Winkler, supra).

In summary, a local government may not adopt a post–1953 local law which provides for an award of a contract after competitive bidding to a bidder which employs a prescribed percentage of local residents even though that bidder is not the lowest responsible bidder or which restricts competition only to bidders which employ a prescribed percentage of local residents for the purpose of benefiting the local economy. Such enactment would also raise constitutional questions of compliance with the commerce, privileges and immunities and equal protection clauses of the Constitution. A local government also may not adopt a post–1953 local law which requires as a precondition to the award of a contract that a bidder maintain an apprenticeship training program or which debars bidders from future contracts as a sanction for not complying with procurement requirements.

Prior opinions are hereby superseded to the extent their rationale and/or conclusions are inconsistent herewith.

Opns St Comp, 1991 No. 91-52, 1991 WL 526991 (N.Y.St.Cptr.)

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RESOLUTION NO.: 124 - 2017

OF

MAY 8, 2017

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A PAYMENT OF CLAIM WITH JOSE VELAZQUEZ IN THE AMOUNT OF $5,646.27

WHEREAS, Jose Velazquez brought a claim against the City of Newburgh; and

WHEREAS, the parties have reached an agreement for the payment of the claim in the amount of Five Thousand Six Hundred Forty-Six and 27/100 Dollars ($5,646.27) in exchange for a release to resolve all claims among them; and

WHEREAS, this Council has determined it to be in the best interests of the City of Newburgh to settle the matter for the amount agreed to by the parties;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager is hereby authorized to settle the claim of Jose Velasquez in the total amount of Five Thousand Six Hundred Forty-Six and 27/100 Dollars ($5,646.27) and that the City Manager be and he hereby is authorized to execute documents as the Corporation Counsel may require to effectuate the settlement as herein described.

LOCAL LAW NO.: 1 - 2017

OF

MAY 8, 2017

A LOCAL LAW AMENDING CHAPTER 155, ARTICLE II OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH TO INCLUDE A NEW SECTION ENTITLED, "RECIPROCAL LICENSING"

BE IT ENACTED by the City Council of the City of Newburgh as follows:

SECTION 1 - TITLE

This Local Law shall be referred to as "A Local Law Amending Chapter 155, Article II of the Code of Ordinances of the City of Newburgh to Include a New Section entitled 'Reciprocal Licensing'".

SECTION 2 - PURPOSE AND INTENT

The City of Newburgh City Council, in order to properly protect the public health, safety and welfare of the residents of the City of Newburgh, hereby further regulates the licensing of electricians.

The intent of this amendment is to empower the City of Newburgh Board of Electrical Examiners, in additional to its other powers and duties contained in Chapter 30 of the Code of Ordinances, to determine whether the qualifications for a master electrician's license or a special electrician's license as required by a municipality located outside of the City of Newburgh are comparable with the qualifications established in Chapters 30 and 155 of the Code of Ordinances, and in the event that the qualifications are comparable, to enter into reciprocal licensing agreements with other municipalities.

SECTION 3 - AMENDMENT

The Code of Ordinances of the City of Newburgh is hereby amended to add the following section to Article II of Chapter 155 entitled "Licensing of Electricians" and to read as follows:

§155-28 Reciprocal Licenses.

Notwithstanding the requirements found contained in this Chapter, the Board is hereby authorized to enter into reciprocal licensing agreements with other municipalities in which a holder in good standing of a current master electrician's license or special electrician's license in one municipality shall be allowed to perform work in the other municipality. Such agreements shall be executed only upon a review of the examination standards of the other municipality and a determination that those standards meet or exceed the standards required by this Chapter and

any additional standards adopted by the Board. The licensee shall be responsible for the payment of the license fees in each jurisdiction.

SECTION 4 - VALIDITY

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

SECTION 5 – EFFECTIVE DATE

This Local Law and shall be effective when it is filed in the Office of the New York State Secretary of State in accordance with the provisions of New York State Municipal Home Rule Law.

RESOLUTION NO.: 98 - 2017

OF

APRIL 6, 2017

RESOLUTION SCHEDULING A PUBLIC HEARING FOR APRIL 24, 2017 TO HEAR PUBLIC COMMENT CONCERNING A LOCAL LAW AMENDING CHAPTER 155 OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH TO ADD A NEW SECTION ENTITLED "RECIPROCAL LICENSING"

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that there is hereby scheduled a public hearing to receive comments concerning a Local Law amending Chapter 155 of the Code of Ordinances of the City of Newburgh to add a new section entitled "Reciprocal Licensing"; and that such public hearing be and hereby is duly set for the next regular meeting of the Council to be held at 7:00 p.m. on the 24th day of April, 2017, in the 3rd Floor Council Chambers, 83 Broadway, City Hall, Newburgh, New York.

I, Lorene Vitek, City Clerk of the City of Newburgh, hereby certify that I have compared the foregoing with the original resolution adopted by the Council of the City of Newburgh at a regular meeting held 4/10/17 and that it is a true and correct copy of such original.

Witness my hand and seal of the City of Newburgh this 7 day of April 2017

City Clerk

LOCAL LAW NO.: _____- 2017

OF

_____, 2017

A LOCAL LAW AMENDING CHAPTER 155, ARTICLE II OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH TO INCLUDE A NEW SECTION ENTITLED, "RECIPROCAL LICENSING"

BE IT ENACTED by the City Council of the City of Newburgh as follows:

SECTION 1 - TITLE

This Local Law shall be referred to as "A Local Law Amending Chapter 155, Article II of the Code of Ordinances of the City of Newburgh to Include a New Section entitled 'Reciprocal Licensing'".

SECTION 2 - PURPOSE AND INTENT

The City of Newburgh City Council, in order to properly protect the public health, safety and welfare of the residents of the City of Newburgh, hereby further regulates the licensing of electricians.

The intent of this amendment is to empower the City of Newburgh Board of Electrical Examiners, in additional to its other powers and duties contained in Chapter 30 of the Code of Ordinances, to determine whether the qualifications for a master electrician's license or a special electrician's license as required by a municipality located outside of the City of Newburgh are comparable with the qualifications established in Chapters 30 and 155 of the Code of Ordinances, and in the event that the qualifications are comparable, to enter into reciprocal licensing agreements with other municipalities.

SECTION 3 - AMENDMENT

The Code of Ordinances of the City of Newburgh is hereby amended to add the following section to Article II of Chapter 155 entitled "Licensing of Electricians" and to read as follows:

§155-28 Reciprocal Licenses.

Notwithstanding the requirements found contained in this Chapter, the Board is hereby authorized to enter into reciprocal licensing agreements with other municipalities in which a holder in good standing of a current master electrician's license or special electrician's license in one municipality shall be allowed to perform work in the other municipality. Such agreements shall be executed only upon a review of the examination standards of the other municipality and a

determination that those standards meet or exceed the standards required by this Chapter and any additional standards adopted by the Board. The licensee shall be responsible for the payment of the license fees in each jurisdiction.

SECTION 4 - VALIDITY

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

SECTION 5 – EFFECTIVE DATE

This Local Law and shall be effective when it is filed in the Office of the New York State Secretary of State in accordance with the provisions of New York State Municipal Home Rule Law.

DRAFT

LOCAL LAW NO.: 2 - 2017

OF

MAY 8, 2017

A LOCAL LAW AMENDING CHAPTER 172 OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH TO ADD "ARTICLE II – FIREWORKS AND SPARKLING DEVICES"

BE IT ENACTED by the City Council of the City of Newburgh as follows:

SECTION 1 - TITLE

This Local Law shall be referred to as "A Local Law Amending Chapter 172 of the Code of Ordinances of the City of Newburgh to add 'Article II – Fireworks and Sparkling Devices'".

SECTION 2 - PURPOSE AND INTENT

Chapter 477 of the Laws of 2014 for New York State authorized counties and cities outside of New York City to legalize sparklers and certain sparkling devices (collectively referred to as "sparkling devices") for sale, possession and use. By Local Law No. 1 of 2015 effective April 10, 2015, Orange County opted to legalize sparking devices throughout Orange County. In response to concerns for the health, safety and welfare of the residents of the cities in Orange County, the Orange County Legislature and the Common Council of the City of Middletown adopted resolutions asking the New York State Legislature to reconsider the sparkling device legislation and allow cities within Orange County to opt out of the Orange County local law permitting the sale, possession and use of sparkling devices.

Chapter 458 of the Laws of 2016 for New York State, effective November 28, 2016, codified as New York State Penal Law Section 405.00(5)(c), allows a city within Orange County to adopt a local law to include sparkling devices within the definition of "fireworks" and "dangerous fireworks" as defined in the New York State Penal Law Section 270 and as applied and enforced through New York State Penal Law Section 405.00.

The purpose of this local law is to promote the public health, safety and welfare of the City of Newburgh by including the term "sparkling device" into the definitions of "fireworks" and "dangerous fireworks," as those terms are defined in the New York State Penal Law Section 270 and as applied and enforced through New York State Penal Law Section 405.00 within the City of Newburgh.

SECTION 3 - AMENDMENT

The Code of Ordinances of the City of Newburgh is hereby amended to add an Article II entitled "Fireworks and Sparkling Devices" to Chapter 172 and to read as follows:

"CHAPTER 172, ARTICLE II: FIREWORKS and SPARKLING DEVICES"

§172-14. Definitions.

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

SPARKLING DEVICE – shall have the same meaning as the term "sparkling device" is defined in the New York State Penal Law Section 270.00(1)(a)(vi).

FIREWORKS – shall have the same meaning as the term "fireworks" is defined in the New York State Penal Law Section 270.00(1)(a).

DANGEROUS FIREWORKS – shall have the same meaning as the term "dangerous fireworks" is defined in the New York State Penal Law Section 270.00(1)(b).

§ 172-15. Applicability.

This article shall apply to all persons within the limits of the City of Newburgh.

§ 172-16. Possession, sale or use declared hazard and nuisance.

The possession, sale or use of fireworks, dangerous fireworks, or sparkling devices in the City of Newburgh is hereby deemed to constitute a hazard and nuisance to the health, safety and welfare of the public.

§ 172-17. Merger of terms.

Pursuant to New York State Penal Law Section 405.00(5)(c), a sparkling device is hereby included within the definition of fireworks and dangerous fireworks.

§ 172-18. Penalties for offenses.

Any persons who shall violate any provisions of this Article shall be punished as provided in the New York State Penal Law Section 270 as applied and enforced by New York State Penal Law Section 405.00.

§ 172-19. Severability

The provisions of this Local Law are declared to be severable, and if any section or subsection of this Local Law is held to be invalid, such invalidity shall not affect the other provisions of this Local Law that can be given effect without the invalidated provision.

SECTION 4 - VALIDITY

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

SECTION 5 – EFFECTIVE DATE

This Local Law and shall be effective when it is filed in the Office of the New York State Secretary of State in accordance with the provisions of New York State Municipal Home Rule Law.

RESOLUTION NO.: 99 - 2017

OF

APRIL 6, 2017

RESOLUTION SCHEDULING A PUBLIC HEARING FOR APRIL 24, 2017 TO HEAR PUBLIC COMMENT CONCERNING A LOCAL LAW AMENDING CHAPTER 172 OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH TO ADD "ARTICLE II – FIREWORKS AND SPARKLING DEVICES"

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that there is hereby scheduled a public hearing to receive comments concerning a Local Law amending Chapter 172 of the Code of Ordinances of the City of Newburgh to add "Article II – Fireworks and Sparkling Devices"; and that such public hearing be and hereby is duly set for the next regular meeting of the Council to be held at 7:00 p.m. on the 24th day of April, 2017, in the 3rd Floor Council Chambers, 83 Broadway, City Hall, Newburgh, New York.

I, Lorene Vitek, City Clerk of the City of Newburgh, hereby certify that I have compared the foregoing with the original resolution adopted by the Council of the City of Newburgh at a regular meeting held 4/10/17 and that it is a true and correct copy of such original.

Witness my hand and seal of the City of Newburgh this 7 day of April 20 17

City Clerk

LOCAL LAW NO.: _____- 2017

OF

_____, 2017

A LOCAL LAW AMENDING CHAPTER 172 OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH TO ADD "ARTICLE II – FIREWORKS AND SPARKLING DEVICES"

BE IT ENACTED by the City Council of the City of Newburgh as follows:

SECTION 1 - TITLE

This Local Law shall be referred to as "A Local Law Amending Chapter 172 of the Code of Ordinances of the City of Newburgh to add 'Article II – Fireworks and Sparkling Devices'".

SECTION 2 - PURPOSE AND INTENT

Chapter 477 of the Laws of 2014 for New York State authorized counties and cities outside of New York City to legalize sparklers and certain sparkling devices (collectively referred to as "sparkling devices") for sale, possession and use. By Local Law No. 1 of 2015 effective April 10, 2015, Orange County opted to legalize sparking devices throughout Orange County. In response to concerns for the health, safety and welfare of the residents of the cities in Orange County, the Orange County Legislature and the Common Council of the City of Middletown adopted resolutions asking the New York State Legislature to reconsider the sparkling device legislation and allow cities within Orange County to opt out of the Orange County local law permitting the sale, possession and use of sparkling devices.

Chapter 458 of the Laws of 2016 for New York State, effective November 28, 2016, codified as New York State Penal Law Section 405.00(5)(c), allows a city within Orange County to adopt a local law to include sparkling devices within the definition of "fireworks" and "dangerous fireworks" as defined in the New York State Penal Law Section 270 and as applied and enforced through New York State Penal Law Section 405.00.

The purpose of this local law is to promote the public health, safety and welfare of the City of Newburgh by including the term "sparkling device" into the definitions of "fireworks" and "dangerous fireworks," as those terms are defined in the New York State Penal Law Section 270 and as applied and enforced through New York State Penal Law Section 405.00 within the City of Newburgh.

SECTION 3 - AMENDMENT

The Code of Ordinances of the City of Newburgh is hereby amended to add an Article II entitled "Fireworks and Sparkling Devices" to Chapter 172 and to read as follows:

"CHAPTER 172, ARTICLE II: FIREWORKS and SPARKLING DEVICES"

§172-14. Definitions.

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

SPARKLING DEVICE – shall have the same meaning as the term "sparkling device" is defined in the New York State Penal Law Section 270.00(1)(a)(vi).

FIREWORKS – shall have the same meaning as the term "fireworks" is defined in the New York State Penal Law Section 270.00(1)(a).

DANGEROUS FIREWORKS – shall have the same meaning as the term "dangerous fireworks" is defined in the New York State Penal Law Section 270.00(1)(b).

§ 172-15. Applicability.

This article shall apply to all persons within the limits of the City of Newburgh.

§ 172-16. Possession, sale or use declared hazard and nuisance.

The possession, sale or use of fireworks, dangerous fireworks, or sparkling devices in the City of Newburgh is hereby deemed to constitute a hazard and nuisance to the health, safety and welfare of the public.

§ 172-17. Merger of terms.

Pursuant to New York State Penal Law Section 405.00(5)(c), a sparkling device is hereby included within the definition of fireworks and dangerous fireworks.

§ 172-18. Penalties for offenses.

Any persons who shall violate any provisions of this Article shall be punished as provided in the New York State Penal Law Section 270 as applied and enforced by New York State Penal Law Section 405.00.

DRAFT

§ 172-19. Severability

The provisions of this Local Law are declared to be severable, and if any section or subsection of this Local Law is held to be invalid, such invalidity shall not affect the other provisions of this Local Law that can be given effect without the invalidated provision.

SECTION 4 - VALIDITY

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

SECTION 5 – EFFECTIVE DATE

This Local Law and shall be effective when it is filed in the Office of the New York State Secretary of State in accordance with the provisions of New York State Municipal Home Rule Law.

DRAFT

Homeland Security and Emergency Services

Emergency Management State Fire Counter Terrorism Interoperable and Emergency Communications Programs

Fire Prevention and Control

Sparkling Devices Information

A recent change in New York State Penal Law now allows for the sale and use of a specific category of consumer fireworks known as *Sparkling Devices*.

Sparkling Devices are ground based or handheld devices that produce a shower of colored sparks and or a colored flame, audible crackling or whistling noise and smoke. The law limits the type, size and construction of *Sparkling Devices* and requires that these devices must be hand held or mounted on a base or spike and be limited in sizes that range from 1 to 500 grams of pyrotechnic composition.

Sale and use of *Sparkling Devices* will be legal only in counties and cities that have enacted a local law pursuant to section 405.00 of the Penal Law of NY.

Click below to see the applicable sections of the Penal Law:
Read Section 270.00 of the Penal Law
Read Section 405.00 of the Penal Law

Click below to see the applicable section of the NY State Fire Code:
Read Dept. of State Rule 1228

Title 9 of the Official Compilation of New York Codes, Rules, and Regulation is amended by adding a new Part 225 titled Sparkling Devices. Click below to see the full text of the rule:
Part 225

Click below to see information on counties and cities where sparkling devices can be legally purchased and used.
http://troopers.ny.gov/Publications/

All sellers, wholesalers, manufacturers and distributors of Sparkling Devices who wish to do business in New York State or otherwise sell, ship, or assign for sale its products into New York State are required to apply for a certification with the Office of Fire Prevention and Control, pay an annual fee and be subject to other rules and conditions. OFPC has developed a certification process that is outlined in the documents below.

Forms and Documents:

Application for Sparkling Devices Certification - Registration Form for a certificate for the: Retail Sale, Distribution, Wholesale or Manufacture of Sparkling Devices.

Instructions for Applying for Sparkling Devices Certification - Guidance on how to complete the registration forms.

Sparkling Devices Application Checklist - To ensure timely processing of your application, this checklist will help ensure necessary items are met and/or included with your application.

Notice of Sparkler Fire and Explosion - Pursuant to Title 9 NYCRR Part 225, every manufacturer, distributor, wholesaler, specialty retailer, permanent retailer and temporary seasonal retailer shall report to the Office of Fire Prevention and Control basic information relating to all fires or explosions, including any accidental discharge of sparkling devices that occur on premises. This report shall be submitted within 24 hours of the occurrence or discovery of the fire or explosion.

Sparkler Safety Information - Flyer with safety tips and facts, as well as links to helpful sites.

Important Notes:

Sales of Sparkling Devices by certified permanent and specialty retailers can only occur from June 1 to July 5 and December 26 to January 1.

Sales of Sparkling Devices by certified temporary stands or tents can only occur from June 20 to July 5 and December 26 to January 1.

All other types of consumer fireworks, including firecrackers, bottle rockets, roman candles, spinners and aerial devices, remain illegal statewide.

Notice of Adoption

Permanent Rule - Effective June 3, 2015

Sparkling Devices

The Department of State has adopted a rule that amends the Uniform Code by adding provisions applicable to "sparkling devices." The rule text in is available by **clicking here**.

Chapter 477 of the Laws of 2014

Recently, Governor Cuomo signed a bill that amends the Penal Law definition of fireworks to include several categories of devices, including "sparkling devices," and authorizes any city (except the City of New York) or county (except those within the City of New York) to adopt a local law legalizing sparkling devices in such City or County.

Local Laws

Under the new provision of the Penal Law, Cities or Counties wishing to be covered by this legislation must affirmatively enact a local law to legalize the possession, manufacture, storage, handling, sale and use of "sparkling devices" within their jurisdiction.

Uniform Fire Prevention and Building Code

The Department of State adopted a rule that adds provisions applicable to "sparkling devices" to the Uniform Fire Prevention and Building Code (Uniform Code). The rule applies to buildings where sparkling devices are manufactured, stored, sold or used; and will establish provisions to reduce the risk of fire in buildings resulting from the manufacture, storage, sale or use of sparkling devices. These new provisions are based on provisions found in the 2015 International Fire Code and will be contained in a new Section 1228.3 to be added to 19 NYCRR Part 1228.

A rule in is available by **clicking here**.

2015 LOCAL LAWS OF ORANGE COUNTY

LOCAL LAW NO. 1 OF 2015

A LOCAL LAW TO AUTHORIZE THE SALE AND USE OF SPARKLING DEVICES.

BE IT ENACTED, by the Legislature of the County of Orange, as follows:

SECTION ONE. Legislative Findings.

The Orange County Legislature finds that the enacted State law, Chapter 477 of the Laws of 2014 amended the State Penal Law, the Executive Law, and the General Business Law with the intent to modernize the statute dealing with illegal fireworks, provide additional definitions of what constitutes fireworks and dangerous fireworks and remove certain novelty devices, which are not recognized as fireworks by the federal government, out of the definition of fireworks.

The Orange County Legislature finds that through the modernization of the statute and clearly defining the terms fireworks, dangerous fireworks and novelty devices, the new law provides law enforcement with an important tool in reducing the use of illegal fireworks and homemade devices and encourages the use of safe and legally regulated novelty devices.

The Orange County Legislature finds the new law allows sparkling devices to be sold and used in municipalities that affirmatively enact a local law authorizing the exclusion "sparkling devices" from the definitions of "fireworks" and "dangerous fireworks".

The Orange County Legislature finds that allowing residents and visitors the opportunity to use safe "sparkling devices" will benefit them and local businesses.

The Orange County Legislature finds that only those who are 18 years of age or older may purchase sparkling devices and that the sparkling devices shall only be sold between June 1st and July 5th and December 26th and January 2nd of each calendar year.

The Orange County Legislature further finds that all distributors, manufacturers, and retailers of sparkling devices must be licensed through the New York State Department of State.

SECTION TWO. Authorized sale and use of sparkling devices.

1. Pursuant to section 405 (5) (b) of the New York State Penal Law (Penal Law) and Penal Law section 270 (3)(b)(v) as enacted by Chapter 477 of the Laws of 2014, "sparkling devices" shall be excluded from the definition of "fireworks" and "dangerous fireworks" as those terms are defined by Penal Law sections 270(1)(a)(i) and 270(1)(b) respectively.

2. The sale and use of "sparkling devices" as defined in Penal Law section 270(1)(a)(vi) which is incorporated hereunder shall be lawful in Orange County provided such sale and use are not in violation of Section 270 of the Penal Law or any rules and regulations thereunder.

3. "Sparkling Devices" are defined as follows:

"Sparkling Devices" which are ground-based or hand-held devices that produce a shower of white, gold, or colored sparks as their primary pyrotechnic effect. Additional effects may include a colored

flame, an audible crackling effect, an audible whistle effect, and smoke. These devices do not rise into the air, do not fire inserts or projectiles into the air, and do not explode or produce a report (an audible crackling-type effect is not considered to be a report). Ground-based or hand-held devices that produce a cloud of smoke as their sole pyrotechnic effect are also included in this category. Types of devices in this category include:

(1) cylindrical fountain: cylindrical tube containing not more than seventy-five grams of pyrotechnic composition that may be contained in a different shaped exterior such as a square, rectangle, cylinder or other shape but the interior tubes are cylindrical in shape. Upon ignition, a shower of colored sparks, and sometimes a whistling effect or smoke, is produced. This device may be provided with a spike for insertion into the ground (spike fountain), a wood or plastic base for placing on the ground (base fountain), or a wood or cardboard handle to be hand held (handle fountain). When more than one tube is mounted on a common base, total pyrotechnic composition may not exceed two hundred grams, and when tubes are securely attached to a base and the tubes are separated from each other on the base by a distance of at least half an inch (12.7 millimeters), a maximum total weight of five hundred grams of pyrotechnic composition shall be allowed.

(2) cone fountain: cardboard or heavy paper cone containing not more than fifty grams of pyrotechnic composition. The effect is the same as that of a cylindrical fountain. When more than one cone is mounted on a common base, total pyrotechnic composition may not exceed two hundred grams, as is outlined in this subparagraph.

(3) wooden sparkler/dipped stick: these devices consist of a wood dowel that has been coated with pyrotechnic composition. Upon ignition of the tip of the device, a shower of sparks is produced. Sparklers may contain up to one hundred grams of pyrotechnic composition per item.

4) novelties which do not require approval from the United States department of transportation and are not regulated as explosives, provided that they are manufactured and packaged as described below:

(A) party popper: small devices with paper or plastic exteriors that are actuated by means of friction (a string or trigger is typically pulled to actuate the device). They frequently resemble champagne bottles or toy pistols in shape. Upon activation, the device expels flame-resistant paper streamers, confetti, or other novelties and produces a small report. Devices may contain not more than sixteen milligrams (0.25 grains) of explosive composition, which is limited to potassium chlorate and red phosphorus. These devices must be packaged in an inner packaging which contains a maximum of seventy-two devices.

(B) snapper: small, paper-wrapped devices containing not more than one milligram of silver fulminate coated on small bits of sand or gravel. When dropped, the device explodes, producing a small report. Snappers must be in inner packages not to exceed fifty devices each, and the inner packages must contain sawdust or a similar, impact-absorbing material.

SECTION THREE. Severability

If any part of or provisions of this law, or the application thereof to any person or circumstance, shall be adjudged invalid by any court of competent jurisdiction, such judgment shall

be confined in its operation to the part of or provision of, or application directly involved in the controversy in which such the remainder of this law, or the application thereof to other persons or circumstances.

SECTION FOUR. Effective date

This local law shall take effect immediately upon filing with the New York State Secretary of State.

Local Law No. 1 of 2015 was passed on, March 5, 2015 by the following roll call vote:

Ayes: 18
Noes: 3
Absent: 0

Approved by the County Executive: March 26, 2015

Filed with the Secretary of State: April 10, 2015

Effective: April 10, 2015

2016 Sess. Law News of N.Y. Ch. 458 (A. 9455) (McKINNEY'S)

McKINNEY'S 2016 SESSION LAW NEWS OF NEW YORK

239th LEGISLATURE

Additions are indicated by **Text**; deletions by
~~Text~~ .
Vetoes are indicated by ~~Text~~ ;
stricken material by ~~Text~~ .

CHAPTER 458
A. 9455

Approved and effective November 28, 2016

AN ACT to amend the penal law, in relation to the sale and possession of fireworks in certain cities

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 5 of section 405.00 of the penal law, as amended by chapter 477 of the laws of 2014, is amended to read as follows:

<< NY PENAL § 405.00 >>

5. Local ordinances superseded. (a) All local ordinances regulating or prohibiting the display of fireworks are hereby superseded by the provisions of this section. Every city, town or village shall have the power to enact ordinances or local laws regulating or prohibiting the use, or the storage, transportation or sale for use of fireworks in the preparation for or in connection with television broadcasts.

(b) Further, no city or county shall be bound to include "sparkling device" in the definitions of "fireworks" and "dangerous fireworks" in section 270.00 of this chapter, if such city or county shall so authorize the exemption of "sparkling device" by law. If any such city or county so elects, it and such other local jurisdictions that lie within its geographical boundaries shall not enact any other local law that is inconsistent with the provisions of subparagraph (iv) of paragraph (c) of subdivision one of section 270.00 of this chapter, nor to regulate sparkling devices in a manner that is in conflict with the provisions of NFPA 1124, 2006 edition.

(c) Notwithstanding paragraph (b) of this subdivision, any city wholly contained within the county of Orange may enact a local law to include "sparkling device" within the definitions of "fireworks" and "dangerous fireworks" as defined in section 270.00 of this chapter, notwithstanding any local law enacted by such county that authorizes the exemption of "sparkling device" from such definition.

§ 2. This act shall take effect immediately.

End of Document

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A09455 Summary:

BILL NO A09455

SAME AS SAME AS

SPONSOR Gunther

COSPNSR Brabenec

MLTSPNSR

Amd §405.00, Pen L

Permits a city wholly within the county of Orange to opt out of a county law permitting the sale and possession of sparklers.

A09455 Actions:

BILL NO A09455

03/04/2016 referred to codes
05/17/2016 reported
05/19/2016 advanced to third reading cal.702
05/24/2016 passed assembly
05/24/2016 delivered to senate
05/24/2016 REFERRED TO CODES
06/08/2016 SUBSTITUTED FOR S6683
06/08/2016 3RD READING CAL.1453
06/08/2016 PASSED SENATE
06/08/2016 RETURNED TO ASSEMBLY
11/16/2016 delivered to governor
11/28/2016 signed chap.458

A09455 Memo:

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A9455

SPONSOR: Gunther

TITLE OF BILL: An act to amend the penal law, in relation to the sale and possession of fireworks in certain cities

PURPOSE:

To allow cities within Orange County to prevent the sale and possession of "sparkling devices" by having these devices be considered "fireworks" and/or "dangerous fireworks."

SUMMARY OF PROVISIONS:

Section 1: Amends subdivision 5 of section 405.00 of the Penal Law by adding a paragraph (c) to allow cities wholly within the County of Orange to enact local laws including "sparkling devices" within the definitions of "fireworks" and "dangerous fireworks" as defined by section 207.00.

Section 2: Effective date.

JUSTIFICATION:

The use of "sparkling devices" were authorized in Orange County pursuant to Local Law in 2015. With Orange County being so close to Pennsylvania, where many more firework devices are legal, there was an increase in the usage of both legal "sparkling devices" and "illegal fireworks" in the County. This caused a steep increase in complaints to the local police forces, causing them to look into unnecessary "quality of life" complaints. In acknowledgement of the issues that arose, the Orange County Legislature has requested legislation to provide the cities in Orange County the ability to "opt-out" of the county authorization.

LEGISLATIVE HISTORY:

New Bill.

FISCAL IMPACT ON THE STATE:

None.

EFFECTIVE DATE:
This act shall take effect immediately.

A09455 Text:

STATE OF NEW YORK

9455

IN ASSEMBLY

March 4, 2016

Introduced by M. of A. GUNTHER -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to the sale and possession of fireworks in certain cities

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 5 of section 405.00 of the penal law, as amended by chapter 477 of the laws of 2014, is amended to read as follows:

5. Local ordinances superseded. (a) All local ordinances regulating or prohibiting the display of fireworks are hereby superseded by the provisions of this section. Every city, town or village shall have the power to enact ordinances or local laws regulating or prohibiting the use, or the storage, transportation or sale for use of fireworks in the preparation for or in connection with television broadcasts.

(b) Further, no city or county shall be bound to include "sparkling device" in the definitions of "fireworks" and "dangerous fireworks" in section 270.00 of this chapter, if such city or county shall so authorize the exemption of "sparkling device" by law. If any such city or county so elects, it and such other local jurisdictions that lie within its geographical boundaries shall not enact any other local law that is inconsistent with the provisions of subparagraph (iv) of paragraph (c) of subdivision one of section 270.00 of this chapter, nor to regulate sparkling devices in a manner that is in conflict with the provisions of NFPA 1124, 2006 edition.

(c) Notwithstanding paragraph (b) of this subdivision, any city wholly contained within the county of Orange may enact a local law to include "sparkling device" within the definitions of "fireworks" and "dangerous fireworks" as defined in section 270.00 of this chapter, notwithstanding any local law enacted by such county that authorizes the exemption of "sparkling device" from such definition.

§ 2. This act shall take effect immediately.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD13977-01-6

McKinney's Consolidated Laws of New York Annotated
Penal Law (Refs & Annos)
Chapter 40. Of the Consolidated Laws (Refs & Annos)
Part Four. Administrative Provisions
Title W. Provisions Relating to Firearms, Fireworks, Pornography Equipment and Vehicles Used in the Transportation of Gambling Records
Article 405. Licensing and Other Provisions Relating to Fireworks (Refs & Annos)

McKinney's Penal Law § 405.00

§ 405.00 Permits for public displays of fireworks

Effective: December 21, 2014
Currentness

1. Definition of "permit authority." The term "permit authority," as used in this section, means and includes the agency authorized to grant and issue the permits provided in this section. The permit authority on or within state property shall be the office of fire prevention and control. The permit authority for territory within a county park shall be the county park commission, or such other agency having jurisdiction, control and/or operation of the parks or parkways within which any fireworks are to be displayed. The permit authority in a city shall be the duly constituted licensing agency thereof and, in the absence of such agency, shall be an officer designated for the purpose by the legislative body thereof. The permit authority in a village shall be an officer designated for the purpose by the board of trustees thereof and the permit authority in the territory of a town outside of villages shall be an officer designated for the purpose by the town board thereof.

2. Permits for fireworks displays. Notwithstanding the provisions of section 270.00 of this chapter, the permit authority for state property, county parks, cities, villages, or towns may grant a permit for the display of fireworks to municipalities, fair associations, amusement parks, persons, or organizations of individuals that submit an application in writing. The application for such permit shall set forth:

(a) The name of the body sponsoring the display and the names of the persons actually to be in charge of the firing of the display who shall possess a valid certificate of competence as a pyrotechnician as required under the general business law and article sixteen of the labor law. The permit application shall further contain a verified statement from the applicant identifying the individuals who are authorized to fire the display including their certificate numbers, and that such individuals possess a valid certificate of competence as a pyrotechnician.

(b) The date and time of day at which the display is to be held.

(c) The exact location planned for the display.

(d) The number and kind of fireworks to be discharged.

(e) The manner and place of storage of such fireworks prior to the display.

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

McKinney's Consolidated Laws of New York Annotated
Penal Law (Refs & Annos)
Chapter 40. Of the Consolidated Laws (Refs & Annos)
Part Four. Administrative Provisions
Title W. Provisions Relating to Firearms, Fireworks, Pornography Equipment and Vehicles Used in the Transportation of Gambling Records
Article 405. Licensing and Other Provisions Relating to Fireworks (Refs & Annos)

McKinney's Penal Law § 405.00

§ 405.00 Permits for public displays of fireworks

Effective: November 28, 2016

Currentness

1. Definition of "permit authority." The term "permit authority," as used in this section, means and includes the agency authorized to grant and issue the permits provided in this section. The permit authority on or within state property shall be the office of fire prevention and control. The permit authority for territory within a county park shall be the county park commission, or such other agency having jurisdiction, control and/or operation of the parks or parkways within which any fireworks are to be displayed. The permit authority in a city shall be the duly constituted licensing agency thereof and, in the absence of such agency, shall be an officer designated for the purpose by the legislative body thereof. The permit authority in a village shall be an officer designated for the purpose by the board of trustees thereof and the permit authority in the territory of a town outside of villages shall be an officer designated for the purpose by the town board thereof.

2. Permits for fireworks displays. Notwithstanding the provisions of section 270.00 of this chapter, the permit authority for state property, county parks, cities, villages, or towns may grant a permit for the display of fireworks to municipalities, fair associations, amusement parks, persons, or organizations of individuals that submit an application in writing. The application for such permit shall set forth:

(a) The name of the body sponsoring the display and the names of the persons actually to be in charge of the firing of the display who shall possess a valid certificate of competence as a pyrotechnician as required under the general business law and article sixteen of the labor law. The permit application shall further contain a verified statement from the applicant identifying the individuals who are authorized to fire the display including their certificate numbers, and that such individuals possess a valid certificate of competence as a pyrotechnician.

(b) The date and time of day at which the display is to be held.

(c) The exact location planned for the display.

(d) The number and kind of fireworks to be discharged.

(e) The manner and place of storage of such fireworks prior to the display.

(f) A diagram of the grounds on which the display is to be held showing the point at which the fireworks are to be discharged, the location of all buildings, highways and other lines of communication, the lines behind which the audience will be restrained and the location of all nearby trees, telegraph or telephone lines or other overhead obstructions.

(g) Such other information as the permit authority may deem necessary to protect persons or property.

3. Applications for permits. All applications for permits for the display of fireworks shall be made at least five days in advance of the date of the display and the permit shall contain provisions that the actual point at which the fireworks are to be fired be in accordance with the rules promulgated by the commissioner of labor pursuant to section four hundred sixty-two of the labor law and that all the persons in actual charge of firing the fireworks shall be over the age of eighteen years, competent and physically fit for the task, that there shall be at least two such operators constantly on duty during the discharge and that at least two approved type fire extinguishers shall be kept at as widely separated points as possible within the actual area of the display. For any applications made for the display of fireworks on state property, the state fire administrator shall coordinate the issuance of such permits with the head of the police or fire department or both, where there are such departments. The legislative body of a county park, city, village or town may provide for approval of such permit by the head of the police or fire department or both where there are such departments. No permit granted and issued hereunder shall be transferable. After such permit shall have been granted, sales, possession, use and distribution of fireworks for such display shall be lawful solely therefor.

3-a. Notwithstanding the provisions of subdivision three of this section, no permit may be issued to conduct a display of fireworks upon any property where the boundary line of such property is less than five hundred yards from the boundary line of any property which is owned, leased or operated by any breeder as defined in subdivision four of section two hundred fifty-one of the racing, pari-mutuel wagering and breeding law.

4. Bonds. Before granting and issuing a permit for a display of fireworks as herein provided, the permit authority shall require an adequate bond from the applicant therefor, unless it is a state entity, county park, city, village or town, in a sum to be fixed by the permit authority, which, however, shall not be less than one million dollars, conditioned for the payment of all damages, which may be caused to a person or persons or to property, by reason of the display so permitted and arising from any acts of the permittee, his or her agents, employees, contractors or subcontractors. Such bond shall run to the state if the permit is granted for a display on state property, or to the county park, city, village or town in which the permit is granted and issued and shall be for the use and benefit of any person or persons or any owner or owners of any property so injured or damaged, and such person or persons or such owner or owners are hereby authorized to maintain an action thereon, which right of action also shall accrue to the heirs, executors, administrators, successors or assigns of such person or persons or such owner or owners. The permit authority may accept, in lieu of such bond, an indemnity insurance policy with liability coverage and indemnity protection equivalent to the terms and conditions upon which such bond is predicated and for the purposes provided in this section.

5. Local ordinances superseded. (a) All local ordinances regulating or prohibiting the display of fireworks are hereby superseded by the provisions of this section. Every city, town or village shall have the power to enact ordinances or local laws regulating or prohibiting the use, or the storage, transportation or sale for use of fireworks in the preparation for or in connection with television broadcasts.

(b) Further, no city or county shall be bound to include "sparkling device" in the definitions of "fireworks" and "dangerous fireworks" in section 270.00 of this chapter, if such city or county shall so authorize the exemption of "sparkling device" by law. If any such city or county so elects, it and such other local jurisdictions that lie within its geographical boundaries shall not enact any other local law that is inconsistent with the provisions of subparagraph (iv) of paragraph (c) of subdivision one of section 270.00 of this chapter, nor to regulate sparkling devices in a manner that is in conflict with the provisions of NFPA 1124, 2006 edition.

(c) Notwithstanding paragraph (b) of this subdivision, any city wholly contained within the county of Orange may enact a local law to include "sparkling device" within the definitions of "fireworks" and "dangerous fireworks" as defined in section 270.00 of this chapter, notwithstanding any local law enacted by such county that authorizes the exemption of "sparkling device" from such definition.

Credits

(L.1965, c. 1030. Amended L.1972, c. 661, § 9; L.2002, c. 151, § 1, eff. Oct. 21, 2002; L.2009, c. 57, pt. CC, § 21, eff. Oct. 4, 2009; L.2013, c. 127, § 2, eff. July 12, 2013; L.2014, c. 477, § 2, eff. Dec. 21, 2014; L.2016, c. 458, § 1, eff. Nov. 28, 2016.)

Editors' Notes

SUPPLEMENTARY PRACTICE COMMENTARY

by William C. Donnino

On the addition of subdivision (5)(b) by the Laws of 2014, c. 477, *see* Supplementary Practice Commentary to Penal Law § 270.00.

PRACTICE COMMENTARY

by William C. Donnino

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Penal Law § 405.00 has long existed to authorize permits for the "public" display of fireworks, meaning in effect a display not inside a building. L. 1965, c. 1030. In 2003, a separate statute was enacted to authorize permits for "indoor" pyrotechnics. Penal Law § 405.10. L. 2003, c. 584. *See* Practice Commentary to Penal Law § 405.10.

Then in 2009, Penal Law § 405.00 was amended to repeal the word "public" as a modifier of "display" in the body of the statute. L. 2009, c. 57. The title of the section remained: "Permits for public display of fireworks." More significantly, however, the legislation repealed the detailed requirements on where the outdoor public display of fireworks could take place [Penal Law § 405.00 former subdivision three], and substituted a requirement that the Commissioner of Labor enact rules on where the display of fireworks could take place.

In 2013, the definition of "permit authority," set forth in Penal Law §§ 405.00(1) and 405.10(1)(n), was amended to centralize the "permit authority" for firework displays "on or within state property" in the Office of Fire Prevention and Control (OFPC). L. 2013, c. 127. According to the Legislative Memorandum: "OFPC has the requisite technical expertise and resources to. issue permits for the display of fireworks and use of pyrotechnics on state property to ensure that they are safely conducted in accordance with the Penal Law and the Fire Code. Further, establishing a single state agency with the expertise and responsibility to make these permitting decisions is not only more efficient, but will bring consistency to how these displays are conducted on state property."

Notes of Decisions (16)

McKinney's Penal Law § 405.00, NY PENAL § 405.00
Current through L.2017, chapters 1 to 8.

End of Document

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Proposed Legislation

McKinney's Consolidated Laws of New York Annotated
Penal Law (Refs & Annos)
Chapter 40. Of the Consolidated Laws (Refs & Annos)
Part Three. Specific Offenses
Title P. Offenses Against Public Safety
Article 270. Other Offenses Relating to Public Safety

McKinney's Penal Law § 270.00

§ 270.00 Unlawfully dealing with fireworks and dangerous fireworks

Effective: December 21, 2014

Currentness

1. Definition of "fireworks" and "dangerous fireworks". (a) The term "fireworks," as used in this section, includes:

(i) display fireworks, which means fireworks devices in a finished state, exclusive of mere ornamentation, primarily intended for commercial displays which are designed to produce visible and/or audible effects by combustion, deflagration or detonation, including, but not limited to, salutes containing more than one hundred thirty milligrams (two grains) of explosive composition, aerial shells containing more than forty grams of chemical composition exclusive of lift charge, and other exhibition display items that exceed the limits of consumer fireworks contained in the American Pyrotechnic Association (APA) Standard 87-1, 2001 edition;

(ii) articles pyrotechnic, which means pyrotechnic devices for professional use similar to consumer fireworks in chemical composition and construction but not intended for consumer use and which articles meet the weight limits for consumer fireworks but are not labeled as such and are classified by the United States department of transportation in 49 CFR 172.101 as UN0431;

(iii) special effects, which means any combination of chemical elements or chemical compounds capable of burning independently of the oxygen of the atmosphere, and designed and intended to produce an audible, visual, mechanical, or thermal effect as an integral part of a motion picture, radio, television, theatrical, or opera production, or live entertainment;

(iv) consumer fireworks which are aerial in performance and are commonly referred to as sky rockets, bottle rockets, missile type rockets, helicopters, aerial spinners, roman candles, mines, shell devices, aerial shell kits, reloadables and audible ground devices which are commonly referred to as firecrackers and chasers, as well as metal wire handheld sparklers;

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(v) any blank cartridge, blank cartridge pistol, or toy cannon in which explosives are used, firecrackers, or any preparation containing any explosive or inflammable compound or any tablets or other device commonly used and sold as fireworks containing nitrates, chlorates, oxalates, sulphides of lead, barium, antimony, arsenic, mercury, nitroglycerine, phosphorus or any compound containing any of the same or other explosives, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, or other device containing any explosive substance, other than sparkling devices as defined in subparagraph (vi) of this paragraph; and

(vi) "sparkling devices," as used in this section, includes:

(1) sparkling devices which are ground-based or hand-held devices that produce a shower of white, gold, or colored sparks as their primary pyrotechnic effect. Additional effects may include a colored flame, an audible crackling effect, an audible whistle effect, and smoke. These devices do not rise into the air, do not fire inserts or projectiles into the air, and do not explode or produce a report (an audible crackling-type effect is not considered to be a report). Ground-based or hand-held devices that produce a cloud of smoke as their sole pyrotechnic effect are also included in this category. Types of devices in this category include:

(A) cylindrical fountain: cylindrical tube containing not more than seventy-five grams of pyrotechnic composition that may be contained in a different shaped exterior such as a square, rectangle, cylinder or other shape but the interior tubes are cylindrical in shape. Upon ignition, a shower of colored sparks, and sometimes a whistling effect or smoke, is produced. This device may be provided with a spike for insertion into the ground (spike fountain), a wood or plastic base for placing on the ground (base fountain), or a wood or cardboard handle to be hand held (handle fountain). When more than one tube is mounted on a common base, total pyrotechnic composition may not exceed two hundred grams, and when tubes are securely attached to a base and the tubes are separated from each other on the base by a distance of at least half an inch (12.7 millimeters), a maximum total weight of five hundred grams of pyrotechnic composition shall be allowed.

(B) cone fountain: cardboard or heavy paper cone containing not more than fifty grams of pyrotechnic composition. The effect is the same as that of a cylindrical fountain. When more than one cone is mounted on a common base, total pyrotechnic composition may not exceed two hundred grams, as is outlined in this subparagraph.

(C) wooden sparkler/dipped stick: these devices consist of a wood dowel that has been coated with pyrotechnic composition. Upon ignition of the tip of the device, a shower of sparks is produced. Sparklers may contain up to one hundred grams of pyrotechnic composition per item.

(2) novelties which do not require approval from the United States department of transportation and are not regulated as explosives, provided that they are manufactured and packaged as described below:

(A) party popper: small devices with paper or plastic exteriors that are actuated by means of friction (a string or trigger is typically pulled to actuate the device). They frequently resemble champagne bottles or toy pistols in shape. Upon activation, the device expels flame-resistant paper streamers, confetti, or other novelties and produces a small report. Devices may contain not more than sixteen milligrams (0.25 grains) of explosive composition, which is limited to potassium chlorate and

red phosphorus. These devices must be packaged in an inner packaging which contains a maximum of seventy-two devices.

(B) snapper: small, paper-wrapped devices containing not more than one milligram of silver fulminate coated on small bits of sand or gravel. When dropped, the device explodes, producing a small report. Snappers must be in inner packages not to exceed fifty devices each, and the inner packages must contain sawdust or a similar, impact-absorbing material.

(b) The term "dangerous fireworks" means any fireworks capable of causing serious physical injury and which are: firecrackers containing more than fifty milligrams of any explosive substance, torpedoes, skyrockets and rockets including all devices which employ any combustible or explosive substance and which rise in the air during discharge, Roman candles, and bombs, provided, however, that in cities with a population of one million or more, the term "dangerous fireworks" shall also include sparklers more than ten inches in length or one-fourth of one inch in diameter, or chasers including all devices which dart or travel about the surface of the ground during discharge.

(c) "Fireworks" and "dangerous fireworks" shall not be deemed to include the following nor shall the purchase and use of any items listed below be subject to the provisions of section 61 of title 12 of the New York state codes, rules and regulations or section four hundred eighty, four hundred eighty-one, four hundred eighty-two or four hundred eighty-three of the general business law:

(i) flares of the type used by railroads or any warning lights commonly known as red flares, or marine distress signals of a type approved by the United States coast guard, or

(ii) toy pistols, toy canes, toy guns or other devices in which paper caps containing twenty-five hundredths grains or less of explosive compound are used, providing they are so constructed that the hand cannot come in contact with the cap when in place for use, and toy pistol paper caps which contain less than twenty-hundredths grains of explosive mixture, the sale and use of which shall be permitted at all times, or

(iii) bank security devices which contain not more than fifty grams of any compound or substance or any combination thereof, together with an igniter not exceeding 0.2 gram, capable of producing a lachrymating and/or visible or audible effect, where such device is stored or used only by banks, national banking associations, trust companies, savings banks, savings and loan associations, industrial banks, or credit unions, or by any manufacturer, wholesaler, dealer, jobber or common carrier for such devices and where the total storage on any one premises does not exceed one hundred devices, or

(iv) except in cities with a population of one million or more, in those counties and cities that opt by local law pursuant to paragraph (b) of subdivision five of section 405.00 of this chapter, "fireworks" and "dangerous fireworks" shall not be deemed to include "sparkling devices" as defined in subparagraph (vi) of paragraph (a) of this subdivision.

2. Offense. (a) Except as herein otherwise provided, or except where a permit is obtained pursuant to section 405.00 of this chapter:

(i) any person who shall offer or expose for sale, sell or furnish, any fireworks or dangerous fireworks is guilty of a class B misdemeanor;

(ii) any person who shall offer or expose for sale, sell or furnish any fireworks or dangerous fireworks valued at five hundred dollars or more shall be guilty of a class A misdemeanor;

(iii) any person who shall possess, use, explode or cause to explode any fireworks or dangerous fireworks is guilty of a violation;

(iv) any person who shall offer or expose for sale, sell or furnish, any dangerous fireworks, fireworks or sparkling devices to any person who is under the age of eighteen is guilty of a class A misdemeanor.

(b) A person who has previously been convicted of a violation of subparagraph (iv) of paragraph (a) of this subdivision within the preceding five years and who shall offer or expose for sale, sell or furnish, any dangerous fireworks to any person who is under the age of eighteen, shall be guilty of a class E felony.

(c) Possession of fireworks or dangerous fireworks valued at one hundred fifty dollars or more shall be a presumption that such fireworks were intended to be offered or exposed for sale.

3. Exceptions. (a) The provisions of this section shall not apply to:

(i) fireworks, dangerous fireworks, and sparkling devices while in possession of railroads, common or contract carriers, retailers, wholesalers, distributors, jobbers and transportation companies or transportation agencies for the purpose of transportation to points without the state, the shipment of which is not prohibited by interstate commerce commission regulations as formulated and published from time to time, unless they be held voluntarily by such railroads, common or contract carriers, retailers, wholesalers, distributors, jobbers and transportation agencies or transporting companies as warehousemen for delivery to points within the state;

(ii) signaling devices used by railroad companies or motor vehicles referred to in subdivision seventeen of section three hundred seventy-five of the vehicle and traffic law;

(iii) high explosives for blasting or similar purposes;

(iv) fireworks, dangerous fireworks and sparkling devices for the use thereof by the United States military, and departments of the state and federal government;

(v) the use, transportation and storage of fireworks, dangerous fireworks and sparkling devices and special effects materials in connection with the production of motion pictures, television programs, commercials, and all entertainment media recorded in any current or to be designed format when such use, transportation and storage has been appropriately permitted by the local governmental subdivision having jurisdiction.

(b) Nothing in this article shall be construed to prohibit:

(i) any manufacturer, wholesaler, retailer, dealer or jobber from manufacturing, possessing or selling at wholesale a sparkling device to municipalities, religious or civic organizations, fair associations, amusement parks, or other organizations authorized by the state to store, transport, possess and use or to individuals to store, transport, possess and use;

(ii) the sale or use of blank cartridges for a motion picture, television program, commercial and all entertainment media, or for signal purposes in athletic sports, or for dog trials or dog training;

(iii) the use, storage, transportation or sale or transfer for use of fireworks and sparkling devices in the preparation for or in connection with motion pictures, television programs, commercials, and all entertainment media recorded in any current or to be designed format when such use, transportation and storage has been appropriately permitted by the local governmental subdivision having jurisdiction;

(iv) the manufacture or sale of sparkling devices provided they are to be shipped directly out of such city and any such items are sold in accordance with the provisions of this article; or

(v) except in cities with a population of one million or more, possession of sparkling devices lawfully obtained in a jurisdiction that did opt by local law pursuant to paragraph (b) of subdivision five of section 405.00 of this chapter to exclude "sparkling devices" from the definitions of "fireworks" and "dangerous fireworks", for the purpose of lawful use in another jurisdiction that did opt by local law pursuant to paragraph (b) of subdivision five of section 405.00 of this chapter to exclude "sparkling devices" from the definitions of "fireworks" and "dangerous fireworks". The superintendent of state police shall annually publish a list of those jurisdictions that have opted by local law pursuant to paragraph (b) of subdivision five of section 405.00 of this chapter to exclude "sparkling devices" from the definitions of "fireworks" and "dangerous fireworks".

4. Sales of ammunition not prohibited. Nothing contained in this section shall be construed to prevent, or interfere in any way with, the sale of ammunition for revolvers or pistols of any kind, or for rifles, shot guns, or other arms, belonging or which may belong to any persons whether as sporting or hunting weapons or for the purpose of protection to them in their homes, or, as they may go abroad; and manufacturers are authorized to continue to manufacture, and wholesalers and dealers to continue to deal in and freely to sell ammunition to all such persons for such purposes.

5. Notwithstanding the provisions of subdivision four of this section, it shall be unlawful for any dealer in firearms to sell any ammunition designed exclusively for use in a pistol or revolver to any person, not authorized to possess a pistol or revolver. The violation of this section shall constitute a class B misdemeanor.

Credits

(L.1965, c. 1030. Amended L.1967, c. 791, § 48; L.1969, c. 709, § 1; L.1975, c. 840, § 1; L.1978, c. 286, § 1; L.1986, c. 166, § 1; L.1997, c. 180, § 1, eff. Nov. 1, 1997; L.2014, c. 477, § 1, eff. Dec. 21, 2014.)

Editors' Notes

SUPPLEMENTARY PRACTICE COMMENTARY

by William C. Donnino

In 2014, subdivisions one, two, and three of the instant section were repealed and reenacted in the same structural format, that is: subdivision one defining "fireworks" and "dangerous fireworks"; subdivision two defining the offenses related to the possession and sale of "fireworks" and "dangerous fireworks"; and subdivision three listing certain exemptions from criminal liability. Laws of 2014, c. 477.

There appeared to be a dual purpose for the legislation. The first was to redefine, in greater detail and presumed clarity, the definitions of "fireworks" and "dangerous fireworks" in order to enhance enforcement. Whether that goal was accomplished remains to be determined. The second, and perhaps more significant, purpose was to authorize the exemption of certain fireworks from the definition of prohibited "fireworks" and "dangerous fireworks." *See* Legislative Memorandum.

Accordingly, subdivision one continues to define "fireworks" and "dangerous fireworks," albeit with more detail than the repealed definitions, and with the exclusion of certain fireworks, designated "sparkling devices," which had been included in the former definition. *See* Penal Law § 270.00(1)(b) and (c) and (3)(b)(v). The term "sparkling devices" is defined to include various types of "sparklers," and in addition, certain "novelties," such as a "party popper" and "snapper" [Penal Law § 270.00(1)(a)(vi)]. The exclusion of "sparkling devices," however, does not apply in New York City, nor in any other city or county which does not "authorize the exemption of 'sparkling device' by law" [Penal Law §§ 270.00(1)(c)(iv) and 405.00(5)(b)].

In approving the legislation, the Governor noted: "I vetoed earlier versions of this bill, which would permit the possession and sale of certain fireworks in this state on the limited circumstances....This bill improves upon those bills by expressly banning the possession of these fireworks in New York City and by requiring municipalities outside of New York City to affirmatively enact a local law electing to be covered by this legislation". 2014 Governor's Approval Memorandum 12.

The Superintendent of State Police is required to publish annually a list of those jurisdictions which "have opted by local law," to accept the exclusion of "sparkling devices" from the definitions of "fireworks" and "dangerous fireworks." *See* Penal Law § 405.00(5)(b). That legislative scheme could result in a patchwork of New York

jurisdictions which do or do not permit the possession and sale of certain fireworks, and perhaps complicate enforcement in New York City and those jurisdictions that do not accept the exclusion of "sparkling devices." *See* Penal Law § 270.00(3)(b)(v).

An inducement for a city or county to accept the exclusions is the expected revenue from the sales tax on the sale of "sparkling devices." *See* Legislative Memorandum on the state and local fiscal implications.

In light of the legalization of "sparkling devices" in the applicable jurisdictions, the same legislation added Executive Law § 156-h to provide for "[r]egistration and fees for manufacturers, distributors, wholesalers, and retailers of sparkling devices." In turn, General Business Law § 392-j was added to provide that sales of "sparkling devices" "shall be lawful only for business[es] registered by the state," and a violation thereof "shall be deemed an offense" as defined in Penal Law § 270.00(2).

Subdivision two of the instant section defines an "offense" related to the possession and sale of "fireworks" and "dangerous fireworks" in the same way that those offenses were defined in the repealed subdivision two, subject to the following: First, given that the defined offenses utilize and incorporate the terms "fireworks" and "dangerous fireworks," these offenses would not include "sparkling devices" in the jurisdictions where those exclusions apply. Second, regardless of whether a jurisdiction accepts the exclusion of "sparkling devices," this subdivision was amended to prohibit the sale of "sparkling devices" to minors. Specifically, the offense of offering or exposing for sale, or selling or furnishing "dangerous fireworks" to a person under the age of 18 was expanded to include doing same with respect to "fireworks or sparkling devices." Penal Law § 270.00(2)(iv).

The threshold monetary amount that triggers the presumption in subdivision two is increased from $50 to $150.

Subdivision three continues to define in more detail exceptions related to the use of otherwise prohibited fireworks in various occupations, the military, and in lawful transportation.

PRACTICE COMMENTARY

by William C. Donnino

Definitions

For this section, there are two defined terms: "fireworks," and "dangerous fireworks" [Penal Law § 270.00(1)].

The inclusion of a "blank cartridge pistol" within the definition of "fireworks" has been held not unconstitutionally vague. *People v. Jackson*, 76 Misc.2d 872, 352 N.Y.S.2d 376 (County Court, Erie, 1974) *affirmed without opinion* 36 N.Y.2d 726, 367 N.Y.S.2d 975, 328 N.E.2d 487 (1975).

In 1978, the definition of "fireworks" was amended to exclude "bank security devices," as defined and under the circumstances detailed in paragraph three of subdivision one. L.1978, c. 286. At the same time, the statute defining the offense of "unlawfully possessing noxious material" [Penal Law § 270.05] was amended to exclude such

devices from the operation of that statute. Consequently, the possession and sale of such devices under the circumstances detailed in these statutes is not criminal. The Legislative Memorandum in support of the legislation stated that New York State ranked second in the nation (after California) in the number of bank robberies reported to the FBI, and first in the dollar amount of funds taken from its banks. The Memorandum claimed that such devices had been effective elsewhere in the apprehension of robbers and in the recovery of stolen funds, and that their use had been proven to be safe.

The term "dangerous fireworks" was added in 1997. L.1997, c. 180. In creating the definition of "dangerous fireworks," four items then listed in the definition of "fireworks" were transferred to the new definition of "dangerous fireworks" -- namely, torpedoes, skyrockets, Roman candles, and bombs -- and other items were added. The definition of "dangerous fireworks" has two parts. In the first part, "dangerous fireworks" is defined to be any fireworks "capable of causing serious physical injury"; in the second part, the definition specifies certain types of fireworks. Thus, to establish the elements of the definition, it would appear that there must be proof both of the specified type of fireworks and that such fireworks were capable of causing serious physical injury.

The creation of the "dangerous fireworks" category permitted the Legislature to prescribe penalties for their sale (including the offering or exposing for sale, or furnishing of such fireworks) that were higher than those prescribed for the comparable sale of other fireworks. The legislative rationale was:

"Current law does little to deter individuals from engaging in the potentially lucrative business of the illicit sale of fireworks and dangerous fireworks. The profits from the illegal sales of fireworks can be substantial. Under current law no distinction is made between sales based on the value of the fireworks sold. There is also no difference in statute between common fireworks and stronger, potentially lethal, dangerous fireworks. People are killed or maimed each year by fireworks sold illegally in New York." Legislative Memorandum.

Model rocket engines have been held to not constitute fireworks. *People v. Bochter*, 63 Misc.2d 249, 311 N.Y.S.2d 186 (District Court, Suffolk County, 1970).

The Offenses

The basic "unlawfully dealing with fireworks" offense makes it a violation to possess, use, explode or cause to explode any fireworks or dangerous fireworks.

The exposure for sale, offer to sell, sale or furnishing of any fireworks or dangerous fireworks is a class B misdemeanor. If the fireworks or dangerous fireworks are valued at $500 or more, or the dangerous fireworks went to a person under 18 years of age, the crime is a class A misdemeanor. For the second offense of furnishing dangerous fireworks to a person under 18 years of age, committed within five years of a conviction for such offense, the law classifies the offense as an E felony.

Thus, the crime is not in possession, but in furnishing the fireworks or dangerous fireworks to another.

The possession of fireworks or dangerous fireworks valued at $50 or more, gives rise to a rebuttable presumption that the fireworks were intended to be offered or exposed for sale.

There is an exemption for the sale of ammunition [Penal Law § 270.00(4)] that in 1969 was qualified by making it

a crime [Penal Law § 270.00(5)] for a "dealer in firearms" to sell ammunition for a pistol or revolver to anyone who was not authorized to possess such weapons. L.1969, c. 709. The term "dealer in firearms" was apparently intended to refer to the definition of that term in Penal Law § 265.00(9).

Those with a permit for fireworks [see Penal Law article 405] and those specified in subdivision three of the instant section are excused from liability for the stated actions. Among those who have been exempted from liability by subdivision three are carriers while possessing fireworks for transportation or warehousing. Legislation in 1986 continued the exemption, but only if the carrier was in possession of the fireworks for "transportation to points without the state." L.1986, c. 166. The Legislative Memorandum in support of that law indicated that the law was designed to preclude New Yorkers who are not authorized to possess fireworks from ordering them from out-of-state sellers, perhaps through mail-order catalogs, and having them delivered to them in New York by common carriers.

Notes of Decisions (17)

McKinney's Penal Law § 270.00, NY PENAL § 270.00
Current through L.2017, chapters 1 to 8.

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