



CITY OF NEWBURGH
COUNCIL MEETING AGENDA
SESION GENERAL DEL CONSEJAL

January 22, 2024
7:00 PM

Mayor/Alcaldesa

1. Moment of Silence / Momento de Silencio
2. Pledge of Allegiance / Juramento a la Alianza

City Clerk:/Secretaria de la Ciudad

3. Roll Call / Lista de Asistencia

Communications/Comunicaciones

4. Approval of the minutes from the City Council meeting of January 8, 2024 / Aprobacion del Acta de la Reunion General del Consejo del 8 de enero de 2024
5. City Manager Update / Gerente de la Ciudad Pone al Dia a la Audiencia de los Planes de Cada Departamento

Presentations/Presentaciones

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 and general matters of City Business/Comentarios del Consejo con respecto a la agenda y sobre asuntos generales de la Ciudad

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

6. Resolution No. 9 - 2024 - Purchase of 220 Gidney Avenue / Adquisición de 220 Gidney Avenue

Resolution to authorize the conveyance of real property known as 220 Gidney Avenue (Section 7, Block 9, Lot 17) at private sale to Genesis Retamozo for the amount of \$100,000.00

Resolución para autorizar el traspaso del inmueble conocido como 220 Gidney Avenue (Sección 7, Bloque 9, Lote 17) en venta privada a Génesis Retamozo por la cantidad de \$100,000.00

7. Resolution No. 10 - 2024 - Purchase of 39 Edward Street / Adquisición de 39 Edward Street

Resolution to authorize the conveyance of real property known as 39 Edward Street (Section 46, Block 2, Lot 2) at private sale to Keven Pujols and Jasmin Guerrero for the amount of \$160,000.00

Resolución para autorizar el traspaso del inmueble conocido como 39 Edward Street (Sección 46, Bloque 2, Lote 2) en venta privada a Keven Pujols y Jasmin Guerrero por la cantidad de \$160,000.00

8. Resolution No. 11 - 2024 - Mobile LPR Units / Unidades LPR móviles

Resolution authorizing the City Manager to sign Amendment No. 3 with Passport Labs, Inc. for municipal parking services and related equipment

Resolución por la que se autoriza al Administrador Municipal a firmar la Enmienda No. 3 con Passport Labs, Inc. para los servicios de estacionamiento municipal y el equipo relacionado

9. Resolution No. 12 - 2024 - 2024 Cafeteria Plan / Plan Cafetería 2024

A Resolution Adopting an Amending Cafeteria Plan Including A Health Flexible Spending Account and Dependent Care Flexible Spending Account as an Employee Benefit

Una Resolución Que Adopta Un Plan De Cafetería Enmendado Que Incluye Una Cuenta De Gastos Flexibles En Salud Y Atención De Dependientes Cuenta De Gastos Flexible Como Beneficio Para Los Empleados

10. Ordinance No. 1 - 2024 - Ordinance adding Xavier Lunan Park to City Code Section 220-26(b) "Hours of Use of Other City Parks and Recreation Areas" / Ordenanza por la que se añade el Parque Xavier Lunan a la Sección 220-26(b) del Código de la Ciudad "Horarios de uso de otros parques y áreas recreativas de la ciudad"

Ordinance amending Chapter 220 Article IV of the Code of Ordinances of the City of Newburgh entitled "Hours of Use of Other City Parks and Recreation Areas" adding Xavier Lunan Park to Section 220-26(B)

Ordenanza por la que se modifica el capítulo 220, artículo IV, del Código de Ordenanzas de la ciudad de Newburgh, titulado "Horarios de uso de otros parques y zonas recreativas de la ciudad", añadiendo el parque Xavier Lunan a la sección 220-26(B)

11. Ordinance No. 2 - 2024 - Ordinance Repealing Chapter 240, Rental Properties, Articles I and II / Ordenanza que deroga el Capítulo 240, Propiedades en alquiler, Artículos I y II

Ordinance amending Chapter 240 entitled "Rental Properties" of the Code of Ordinances of the City of Newburgh to repeal Article I, Rental Licenses, and Article II, Tenant Responsibility for Maintenance.

Ordenanza por la que se modifica el Capítulo 240 titulado "Propiedades de alquiler" del Código de Ordenanzas de la Ciudad de Newburgh para derogar el Artículo I, Licencias de alquiler, y el Artículo II, Responsabilidad del inquilino por el mantenimiento

12. Local Law No. A - 2024 - Local Law Adopting Chapter 240, Rental Properties, Article I and II / Ley local por la que se adopta el capítulo 240, Inmuebles de alquiler, artículos I y II

A Local Law amending Chapter 240 entitled "Rental Properties" of the Code of Ordinances of the City of Newburgh to add Article I, Rental Licenses and Article II, Tenant Responsibility for Maintenance

Una Ley Local que modifica el Capítulo 240 titulado "Propiedades de Alquiler" del Código de Ordenanzas de la Ciudad de Newburgh para añadir el Artículo I, Licencias de Alquiler y el Artículo II, Responsabilidad del Inquilino por el Mantenimiento

13. Resolution No. 13 - 2024 - 2024 Council Rules & Order of Procedure

A resolution adopting rules of order and procedure for the council of the City of Newburgh for the year 2024.

Una resolución adoptando reglas de orden y procedimiento para el consejo de la Ciudad de Newburgh para el año 2024

14. Resolution No. 14 - 2024 - Resolution Calling for an Immediate and Permanent Humanitarian Ceasefire

A resolution in support of an immediate and permanent Humanitarian ceasefire

Una resolución en apoyo de un alto el fuego humanitario inmediato y permanente

15. Resolution No. 15 - 2024 - Tax Certiorari Proceedings N & N of the Hudson Valley, LLC

A resolution approving the consent judgement and authorizing the City Manager to sign such consent judgement in connection with the tax certiorari proceeding against the City of Newburgh in the Orange County Supreme Court bearing Orange County Index No. EF004931-2023 involving section 34, block 3, lot 48 (N & N of the Hudson Valley, LLC)

Una resolución que aprueba la sentencia de consentimiento y autoriza al Gerente de la Ciudad a firmar tal sentencia de consentimiento en relación con el procedimiento de Certiorari de Impuestos contra la Ciudad de Newburgh en la Corte Suprema del Condado de Orange con números de índice del Condado de Orange EF004931-2023 implicando la sección 34, bloque 3, lote 48 (N & N of the Hudson Valley, LLC)

16. Resolution No. 16 - 2024 - Settlement of Claim 279 Liberty Street

A resolution authorizing the settlement of a claim in connection with the premises located at 279 Liberty Street (section 18, block 5, lot 8)

Resolución que autoriza la liquidación de una reclamación en relación con el local ubicado en el 279 Liberty Street (sección 18, bloque 5, lote 8)

Old Business: / Asuntos Pendientes

New Business: / Nuevos Negocios

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

Adjournment/ Aplazamiento:

RESOLUTION NO.: 9 - 2024

OF

JANUARY 22, 2024

**A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY
KNOWN AS 220 GIDNEY AVENUE (SECTION 7, BLOCK 9, LOT 17)
AT PRIVATE SALE TO GENESIS RETAMOZO FOR THE AMOUNT OF \$100,000.00**

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 220 Gidney Avenue, being more accurately described as Section 7, Block 9, Lot 17 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 purchasers 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 April 26, 2024, being approximately ninety (90) days from the date of this resolution; and

<u>Property address</u>	<u>Section, Block, Lot</u>	<u>Purchaser</u>	<u>Purchase Price</u>
220 Gidney Avenue	4 - 7 - 6	Genesis Retamozo	\$100,000.00

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 Sale

220 Gidney Avenue, City of Newburgh

(SBL: 7-9-17)

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, the parcel shall be defined by its section, block and lot number on the City of Newburgh Tax Map.
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 **2023-2024**, 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 **2023-2024**, 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: (i) obtain a Certificate of Occupancy for all buildings on the property; (ii) make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or (iii) demolish any buildings deemed structurally unsound by a New York State-licensed engineer and by the Building Inspector. 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 its consideration.
6. The City makes no representation as to whether the property is vacant and/or unoccupied. Evictions, if necessary, are solely the responsibility of the purchaser after closing and recording of the deed. The parcel is being sold subject to the City's Vacant Property Ordinance (Chapter 121) and all provisions of law applicable thereto. Within 30 days of closing, the purchaser must register the property and pay any applicable fees or submit an acceptable rehabilitation plan to the Building Department.

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 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 by the date listed in the approved City Council Resolution, notwithstanding any extensions of time granted pursuant to terms contained herein ("Closing Deadline"). 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.**
11. 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 from the Closing Deadline. 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 its consideration.
12. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the purchaser shall be entitled only to a refund of the purchase money paid. Purchaser agrees that he shall not 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 is conveyed on the actual day of closing. 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, tax reimbursements, buyer's premium (if applicable), and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon conveyance 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. Any survey description shall be provided to the City Corporation Counsel by the purchaser at least thirty (30) days in advance of closing title and approved by the City's Engineer.
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 36 months subsequent to the Closing Deadline date. If such conveyance occurs, 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 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.
18. The property is sold subject to an owner-occupancy restriction. The purchaser has agreed to purchase the property subject to the ten (10) year owner occupancy restriction shall, within 18 months of the delivery of the deed, establish his domicile and principal residence at said premises and maintain his domicile and principal residence at said premises for a period of at least five (5) years thereafter, provided that within said ten (10) year period, the purchaser may convey said premises to another who shall also maintain their domicile and principal residence at said premises for said period. This shall be set forth as a restrictive covenant in the deed, subject upon its breach, to a right of re-entry in favor of the City of Newburgh. This shall be in addition to all other provisions, covenants and conditions set forth in the Terms of Sale.
19. Within ten (10) business days of approval of sale by the City of Newburgh, the purchaser shall tender a non-refundable downpayment in the amount of **\$10,000.00** payable to "City of Newburgh" by money order or guaranteed funds to the "City of Newburgh". At closing, the downpayment amount shall be credited against the purchase price.
20. In the event that Seller engaged the services of a New York State Licensed Real Estate Broker in connection with this sale, Seller shall pay said Broker any commission earned pursuant to a separate agreement between Seller and Broker.

ACKNOWLEDGED AND AGREED

Date: _____

Genesis Retamozo

RESOLUTION NO.: 10 - 2024

OF

JANUARY 22, 2024

**A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY
KNOWN AS 39 EDWARD STREET (SECTION 46, BLOCK 2, LOT 2)
AT PRIVATE SALE TO KEVEN PUJOLS AND JASMIN GUERRERO
FOR THE AMOUNT OF \$160,000.00**

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 39 Edward Street, being more accurately described as Section 46, Block 2, Lot 2 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 purchasers 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 April 26, 2024, being approximately ninety (90) days from the date of this resolution; and

<u>Property address</u>	<u>Section, Block, Lot</u>	<u>Purchaser</u>	<u>Purchase Price</u>
39 Edward Street	46 - 2 - 2	Keven Pujols and Jasmin Guerrero	\$160,000.00

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 Sale

39 Edward Street, City of Newburgh

(SBL: 46-2-2)

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, the parcel shall be defined by its section, block and lot number on the City of Newburgh Tax Map.
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 **2023-2024**, 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 **2023-2024**, 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: (i) obtain a Certificate of Occupancy for all buildings on the property; (ii) make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or (iii) demolish any buildings deemed structurally unsound by a New York State-licensed engineer and by the Building Inspector. 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 its consideration.
6. The City makes no representation as to whether the property is vacant and/or unoccupied. Evictions, if necessary, are solely the responsibility of the purchaser after closing and recording of the deed. The parcel is being sold subject to the City's Vacant Property Ordinance (Chapter 121) and all provisions of law applicable thereto. Within 30 days of closing, the purchaser must register the property and pay any applicable fees or submit an acceptable rehabilitation plan to the Building Department.

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 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 by the date listed in the approved City Council Resolution, notwithstanding any extensions of time granted pursuant to terms contained herein ("Closing Deadline"). 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.**
11. The 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. If purchaser takes title as an entity, purchaser must provide an affidavit listing all of the members or shareholders of said entity, their addresses, their phone numbers, and their percentage ownership stake in the entity. Purchaser must have at least a fifty-one (51%) ownership stake in said entity in order for said entity to take title.
12. 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 from the Closing Deadline. 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 its consideration.
13. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the purchaser shall be entitled only to a refund of the purchase money paid. Purchaser agrees that he shall not 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.
14. Sale shall be final, absolute and without recourse once title is conveyed on the actual day of closing. 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.
15. 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, tax reimbursements, buyer's premium (if applicable), and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon conveyance of deed.**

16. 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.
17. 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. Any survey description shall be provided to the City Corporation Counsel by the purchaser at least thirty (30) days in advance of closing title and approved by the City's Engineer.
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 36 months subsequent to the Closing Deadline date. If such conveyance occurs, 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 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.
19. The property is sold subject to an owner-occupancy restriction. The purchaser has agreed to purchase the property subject to the ten (10) year owner occupancy restriction shall, within 18 months of the delivery of the deed, establish his domicile and principal residence at said premises and maintain his domicile and principal residence at said premises for a period of at least five (5) years thereafter, provided that within said ten (10) year period, the purchaser may convey said premises to another who shall also maintain their domicile and principal residence at said premises for said period. This shall be set forth as a restrictive covenant in the deed, subject upon its breach, to a right of re-entry in favor of the City of Newburgh. This shall be in addition to all other provisions, covenants and conditions set forth in the Terms of Sale.
20. Notice is given that the property lies within either the East End Historic District or the Colonial Terraces Architectural Design District as designated in the City of Newburgh's current zoning map. This parcel is sold subject to all provision of law applicable thereto. It is the sole responsibility of the purchaser to redevelop such parcel so designated in accordance any additional laws, rules or regulations applicable to those districts.
21. Within ten (10) business days of approval of sale by the City of Newburgh, the purchaser shall tender a non-refundable downpayment in the amount of **\$5,000.00** payable to "City of Newburgh" by money order or guaranteed funds to the "City of Newburgh". At closing, the downpayment amount shall be credited against the purchase price.
22. In the event that Seller engaged the services of a New York State Licensed Real Estate Broker in connection with this sale, Seller shall pay said Broker any commission earned pursuant to a separate agreement between Seller and Broker.

ACKNOWLEDGED AND AGREED

Date: _____

Keven Pujols

Jasmin Guerrero

Agenda Item 8.

Resolution No. 11 - 2024 - Mobile LPR Units / Unidades LPR móviles

Resolution authorizing the City Manager to sign Amendment No. 3 with Passport Labs, Inc. for municipal parking services and related equipment

Resolución por la que se autoriza al Administrador Municipal a firmar la Enmienda No. 3 con Passport Labs, Inc. para los servicios de estacionamiento municipal y el equipo relacionado

Background:

The Police Department would like to add mobile LPR (License Plate Recognition) Units to each Parking Enforcement vehicle (3 in total).

Additional Information:

To be expense against 2020 bond or transfer will be made from 2020 bond line into another line to monitor this expense separately from previous 2020 bond expenses.

ATTACHMENTS:

Description	Upload Date	Type
Resolution approving Passport Amendment #3	1/10/2024	Resolution Letter
MinuteMan SOW	1/8/2024	Backup Material
LPR Sales ORder Form	1/8/2024	Backup Material

RESOLUTION NO.: 11 - 2024

OF

JANUARY 22, 2024

**RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AMENDMENT NO. 3
WITH PASSPORT LABS, INC. FOR MUNICIPAL PARKING SERVICES
AND RELATED EQUIPMENT**

WHEREAS, by Resolution No. 195-2019 of August 12, 2019, the City Council of the City of Newburgh approved a master services agreement to upgrade its technology related to municipal parking services and enforcement with Passport Labs, Inc.; and

WHEREAS, by Resolution No. 289-2019 of November 19, 2019 and Resolution No. 173-2020 of August 10, 2020, the City Council approved Amendment No. 1 and Amendment No. 2 with Passport Labs, Inc. which addressed the fee structure for collecting fines from non-New York State residents and third-party payment options; and

WHEREAS, additional services are required to address parking violations and Passport Labs, Inc. has submitted Amendment No. 3 to provide Genetec's AutoVu Automated License Plate Recognition System and related software and hardware components to be used in parking enforcement operations; and

WHEREAS, this Council finds that signing Amendment No. 3 is 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 City Manager be and he is hereby authorized to enter into Amendment No. 3 with Passport Labs, Inc. for municipal parking services and enforcement, said amendment including Genetec's AutoVu Automated License Plate Recognition System and related software and hardware components to be used in parking enforcement operations.

Statement of Work

City of Newburgh, NY

December 18, 2023



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Disclaimer

This Statement of Work contains information that is proprietary and confidential to Passport Labs, Inc. ("Passport") and shall not be disclosed or used for any purpose other than the

purposes described herein. Any other disclosure or use of this document, in whole or in part, without the permission of Passport is prohibited.

Project Overview

Passport will work with MinuteMan and Genetec to provide the The City of Newburgh, NY (“Client”) with Genetec’s AutoVu Automated License Plate Recognition system (“LPR system”) comprised of the following software and hardware components:

- Security Center
 - The LPR parent application that is used to configure and manage the AutoVu system.
- City Patroller
 - The software application that is installed on the ruggedized in-vehicle computer.
 - Patroller sends LPR data to Security Center
- OpsMan Mobile
 - The issuance application to printed physical citations
- AutoVu SharpZ3 Camera Components
 - The cameras and associated hardware used to capture license plate images and send the data to Patroller or Security Center to verify against certain vehicle lists.
 - SharpZ3 camera unit
 - SharpZ3 VGA camera unit
 - AutoVu LPR Processing Unit

Passport will integrate with the LPR system to provide the following functionality through the LPR system:

- Monitor Passport Parking paid parking sessions
- Monitor scofflaws
- Monitor IPS multi-space license plate based parking sessions
- Transfer citations data and images from the LPR system to the OpsMan Mobile issuance application

The Genetec LPR system, supported by MinuteMan, is a third party solution that Passport has integrated with to provide the functionality listed above. Genetec may build new or enhanced features; however, these features if available may not be supported by Passport directly and must function independently in the Genetec LPR system without additional integrations with

Passport, unless explicitly listed in this statement of work. All support requests or feature requests should be sent to MinuteMan.

During this project, Passport will perform architecture, design, implementation, and information transfer services for the project.

Statement of Work

Configurations

License Plate Recognition

Overview

The LPR system will be licensed for installation on two (2) ruggedized in-vehicle computers to be used in conjunction with the Client's soon to be purchased AutoVu SharpZ3 Cameras. The LPR software solution will be configured to allow for the issuance of printed citations from the Client's mobile issuance device and printers.

Genetec AutoVu SharpZ3 Camera Components Hardware and Installation

The AutoVu SharpZ3 camera components are the license plate recognition cameras that capture vehicle plates and send the data to Patroller or Security Center to verify against certain vehicle lists.

The installation of the camera hardware will be completed on two (2) Client provided vehicles by MinuteMan..

The AutoVu SharpZ3 camera bundle will be installed on the roof of the vehicle in front of any lightbar. There should not be a sunroof on the vehicle's roof.

Possible locations for the installation of the AutoVu LPR Processing Unit are listed below:

- The trunk of the vehicle
- Behind the back seat of the driver or passengers seats

The Client will use the LPR system on the following vehicles:

- Two (2) 2021 Chevrolet vehicles

Genetec Security Center Software

Security Center seamlessly integrates with the AutoVu Sharp camera and City Patroller components to provide advanced data mining and reporting through Genetec's Security Desk user interface. The user can use Security Desk to generate a variety of LPR reports. The reports results can be filtered based on date, time, patrolling unit, type of hit, and more.

Please note that Genetec's Security Center software is completely separate from Passport's back-office software system. This means that no data from the LPR system will flow into Passport's back-office system. If a citation is issued based on an offense located by the LPR system, then that citation will be available in Passport's back-office system.

Genetec City Patroller Software

City Patroller is the AutoVu software application that is installed on the ruggedized in-vehicle computer.

City Patroller will be used to do the following:

- Verify license plate reads from the AutoVu SharpZ3 cameras against certain vehicle lists
- Alert the vehicle driver of hits so that subsequent actions can be performed
- Collect data from time-limited parking enforcement

In order to ensure that the ruggedized in-vehicle computer is able to be properly installed in the vehicle, the Client must ensure that there are no additional computers within the vehicle. In addition, the Client must ensure that there are no firewalls or other barriers to the application's internet access.

LPR System Functionality

The LPR system allows the enforcement officer to manually select the enforcement zone or time-limited parking restrictions to be enforced in a parking zone. In concert with the monitoring and issuance handhelds utilizing OpsMan Mobile and the wireless bluetooth printers, the following workflow and features are available from the LPR system:

- Genetec Patroller will be installed in an enforcement vehicle and connected to the internet.
 - The officer must also have the OpsMan Mobile issuance application device and connected wireless bluetooth printer if they wish to issue parking citations.

- Valid parking rights are sent to the in-vehicle Patroller software on a regular basis which keeps the device up to date of all active parking sessions and permits so incorrect citations are not issued.
- The driver selects the zone in Patroller to start monitoring.
 - Please note that Genetec AutoVu does have the ability to geolocate zones if the location of those zones is set up in Security Center.
 - This capability exists entirely within the Genetec system and is outside of Passport's system or control.
- As the enforcement vehicle drives a lot or street, the license plate of the parked vehicle is read by the SharpZ3 cameras and sent to the Patroller application.
 - Genetec Patroller will then compare the read to the certain list of vehicle parking rights.
 - A hit alarm will trigger within Patroller when a sighting of a license plate number does not match a valid parking right or highlights a time-limited infraction.
 - AutoVu allows the driver to simultaneously enforce against parking rights and time-limited parking restrictions.
 - At this point, the officer in the vehicle can choose to enforce the hit, which will push the citation data and images to the Violations from LPR section in Opsman Mobile.
 - If a valid parking right is available for the read, then the LPR system will continue to the next vehicle.
 - Please note that AutoVu is unable to enforce time-limited parking restrictions for a vehicle that has a valid parking right. In other words, if a vehicle has a valid parking right, then the LPR system will not be able to chalk that vehicle.
- If a hit is located, then the officer will stop to write the citation within OpsMan Mobile.
 - After enforcing a violation hit in Patroller, the vehicle data and image evidence will be automatically transferred to OpsMan Mobile so that the violation can be issued seamlessly without duplicate data entry.
 - LPR system citation data can be found in the Violations from LPR section in Opsman Mobile.

In addition to parking rights, the LPR system will also be used to monitor scofflaws, as defined by the Client's scofflaw criteria.

Future LPR Vehicle Installations

If the Client elects to purchase a new vehicle to be used with the LPR system and has purchased a new LPR bundle, then the Client shall inform Passport of the vehicle type, make, model and planned equipment to be installed on or inside the vehicle.

Passport will then work with the Client to confirm that the LPR system software and hardware will be able to be successfully installed within the vehicle prior to the actual installation of the LPR software and hardware.

Passport will provide the Client with all equipment specification sheets and installation requirements to allow the Client to select a vehicle that will be compliant with the LPR system.

Enforcement Hardware

Monitoring and Issuance Devices

- The Client will continue to utilize its current android based monitoring and issuance devices.
- Passport will provide the Client with two (2) LPR system hardware bundles.
 - The LPR system hardware bundles will each be delivered with:
 - One (1) SharpZ3 camera bundle with the following:
 - One (1) SharpZ3 camera unit
 - One (1) SharpZ3 VGA camera unit
 - One (1) AutoVu LPR Processing Unit
 - One (1) ruggedized in-vehicle computer.
 - The computer must be connected to a wireless data plan.
 - The Client is responsible for maintaining and paying for the data plans associated with the device.
 - One (1) computer dock.
 - One (1) computer base.
 - One (1) computer mount.

The Client is responsible for the data plans associated with all of the devices listed above.

Issuance Printers

- The Client will continue to utilize its current issuance devices

- Any subsequent printers secured, configured, and delivered to the City will be invoiced at the price listed in the contract.

Citation Issuance Paper

- The Client will continue to utilize its current Citation Issuance Paper

Custom Integrations or Configurations

IPS Parking Meter Integration

Passport will integrate with the Client's multi-space license plate based IPS parking pay station for the purpose of monitoring parking meter sessions with the LPR System.

Assumptions & Notes

While performing these services, Passport will rely upon the concerted engagement, direction, authorization, approval or other information provided by the Client's primary stakeholder and technical teams.

The Client's Project Manager and respective team will be responsible for contributing to and reviewing Weekly Status Reports and reporting Project issues.

Additional Client responsibilities include:

- Providing operational information in a timely manner.
- Providing a list of stakeholders for preliminary implementation
- Making a good faith effort to facilitate the continued progress of the implementation.
- Perform user acceptance testing to confirm the accuracy of configured attributes in the system
- Provide written approval on each aspect of the system

Deliverables or activities not specifically identified as in scope throughout this document are by definition out of scope, unless accompanied by an approved Scope Change Order.

Project Change Control

Changes may be required to manage unanticipated or new information that may arise during the course of the implementation and delivery of this solution that impacts an existing (or creates a new) deliverable, restriction, milestone, or dependency. This Project Change Control process is meant to enforce a process to ensure changes are tracked and approved appropriately throughout the project.

Process

- A Passport representative will complete a Scoping Change Order form describing the exchange to be evaluated.
- Passport will perform an impact assessment (cost, schedule, risk, etc) and provide a recommendation for how to achieve the Client's objectives in the context of the latest information.
- The Client will decide whether or not to proceed with Passport's recommendation or to suggest an alternative approach.
- If the Change Request is approved by the Client and returned back upon full execution, then the Change Request document will be incorporated as part of the Statement of Work.

Timeline Effects

- Upon approval by all parties, the impact assessment associated with such a change request shall augment any prior commitments or estimates of timeline and pricing in this Statement of Work, which shall no longer apply. Passport will use commercially reasonable efforts to maintain the timeline and cost associated with this Statement of Work, augmented by any and all Change Request(s) approved by all parties.

Acceptance

Please indicate your acceptance of this Statement of Work by signing below. Both Parties must approve any changes to this Statement of Work in writing. These changes may result in additional costs.

Client

Authorized Name: _____
Title: _____
Signature: _____
Date: _____

Passport Labs, Inc.

128 S. Tryon St. Suite 2200 Charlotte, NC 28202

Authorized Name: _____
Title: _____
Signature: _____
Date: _____



Third Amendment to Agreement

Reference is made to that certain Software License and Service Agreement (the “Agreement”) dated August 19, 2019 by and between Passport Labs, Inc. (“Passport”) and City of Newburgh (“Provider”) (Passport and Provider are collectively referred to as the “Parties”), together with the Statement of Work attached hereto as Exhibit C.

The Parties desire to amend the Agreement as follows, which shall be effective as of the last date specified below the Parties’ signatures:

1. Customer agrees to add the following LPR Units and fees payable to Passport:

Products and Services	Fee(s)	Fee Type(s)
License Plate Recognition Platform	See below pricing table	

LPR Pricing Table

Genetec Autovu Managed Service 2.0 (Annual Recurring)	\$4,713.00
Genetec Autovu Managed Service Upgrade to Pay by Plate (Annual Recurring)	\$337.50
Genetec Autovu Managed Service Patroller Connection (Annual Recurring- 3 vehicles)	\$1,154.25
Remote Support (Annual Recurring)	\$2,062.50
SharpZ3 City Kit (Equipping 3 Vehicles)	\$65,835.00
Mapping License Including Data for North America	\$1,500.00
Panasonic ToughPad FZ-G2 w/ 5 year warranty (City provides cellular data)	\$20,530.14
Shipping & Handling	\$475.02
Installation Labor, Travel, Services, Configuration, & Setup	\$22,822.50
One-time Total	\$111,162.66

Annual Recurring Total	\$8,267.25
Total Year One Cost	\$119,429.91

2. Except as expressly amended herein, the remainder of the Agreement remains in full force and effect.

Agreed to and accepted by:

Passport Labs, Inc.

City of Newburgh

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT C

Statement of Work

Agenda Item 9.

Resolution No. 12 - 2024 - 2024 Cafeteria Plan / Plan Cafetería 2024

A Resolution Adopting an Amending Cafeteria Plan Including A Health Flexible Spending Account and Dependent Care Flexible Spending Account as an Employee Benefit

Una Resolución Que Adopta Un Plan De Cafetería Enmendado Que Incluye Una Cuenta De Gastos Flexibles En Salud Y Atención De Dependientes Cuenta De Gastos Flexible Como Beneficio Para Los Empleados

ATTACHMENTS:

Description	Upload Date	Type
Res adopting amended Cafeteria Plan w Health FSA & Dependent Care FSA 1 8 24	1/10/2024	Resolution Letter
City of Newburgh Summary Plan Description	1/10/2024	Backup Material
City of Newburgh Plan Description	1/10/2024	Backup Material

RESOLUTION NO.: 12 - 2024

OF

JANUARY 8, 2024

**A RESOLUTION ADOPTING AN AMENDED CAFETERIA PLAN INCLUDING
A HEALTH FLEXIBLE SPENDING ACCOUNT AND DEPENDENT CARE
FLEXIBLE SPENDING ACCOUNT AS AN EMPLOYEE BENEFIT**

WHEREAS, the City of Newburgh (the “City”) had created and adopted a Cafeteria Plan including a Health Flexible Spending Account and Dependent Care Flexible Spending Account pursuant to the U.S. Internal Revenue Code Section 125; and

WHEREAS, the City proposes to amend the Summary Plan Description to increase the employee contribution limits for Flexible Spending Accounts to the maximum amount allowable by the Internal Revenue Service; and

WHEREAS, this Council has reviewed the amended Summary Plan Description and finds the amendment to be in the best interest of the City;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the form of the Cafeteria Plan including a Health Flexible Spending Account and Dependent Care Flexible Spending Account and amended Summary Plan Description effective January 1, 2024, presented to this meeting is hereby approved and adopted and that the City Manager of the City of Newburgh is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Plan.

**CITY OF NEWBURGH
FLEXIBLE BENEFITS PLAN
SUMMARY PLAN DESCRIPTION**

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XI SUMMARY

CITY OF NEWBURGH FLEXIBLE BENEFITS PLAN

INTRODUCTION

We have amended the "Flexible Benefits Plan" that we previously established for you and other eligible employees. Under this Plan, you will be able to choose among certain benefits that we make available. The benefits that you may choose are outlined in this Summary Plan Description. We will also tell you about other important information concerning the amended Plan, such as the rules you must satisfy before you can join and the laws that protect your rights.

One of the most important features of our Plan is that the benefits being offered are generally ones that you are already paying for, but normally with money that has first been subject to income and Social Security taxes. Under our Plan, these same expenses will be paid for with a portion of your pay before Federal income or Social Security taxes are withheld. This means that you will pay less tax and have more money to spend and save.

Read this Summary Plan Description carefully so that you understand the provisions of our amended Plan and the benefits you will receive. This SPD describes the Plan's benefits and obligations as contained in the legal Plan document, which governs the operation of the Plan. The Plan document is written in much more technical and precise language. If the non-technical language in this SPD and the technical, legal language of the Plan document conflict, the Plan document always governs. Also, if there is a conflict between an insurance contract and either the Plan document or this Summary Plan Description, the insurance contract will control. If you wish to receive a copy of the legal Plan document, please contact the Administrator.

This SPD describes the current provisions of the Plan which are designed to comply with applicable legal requirements. The Plan is subject to federal laws, such as the Internal Revenue Code and other federal and state laws which may affect your rights. The provisions of the Plan are subject to revision due to a change in laws or due to pronouncements by the Internal Revenue Service (IRS) or other federal agencies. We may also amend or terminate this Plan. If the provisions of the Plan that are described in this SPD change, we will notify you.

We have attempted to answer most of the questions you may have regarding your benefits in the Plan. If this SPD does not answer all of your questions, please contact the Administrator (or other plan representative). The name and address of the Administrator can be found in the Article of this SPD entitled "General Information About the Plan."

I ELIGIBILITY

1. When can I become a participant in the Plan?

Before you become a Plan member (referred to in this Summary Plan Description as a "Participant"), there are certain rules which you must satisfy. First, you must meet the eligibility requirements and be an active employee. After that, the next step is to actually join the Plan on the "entry date" that we have established for all employees. The "entry date" is defined in Question 3 below. You will also be required to complete certain application forms before you can enroll in the Plan.

2. What are the eligibility requirements for our Plan?

You will be eligible to join the Plan once you have satisfied the conditions for coverage under our group medical plan. Of course, if you were already a participant before this amendment, you will remain a participant.

3. When is my entry date?

Once you have met the eligibility requirements, your entry date will be the first day of the month coinciding with or following the date you met the eligibility requirements.

4. What must I do to enroll in the Plan?

Before you can join the Plan, you must complete an application to participate in the Plan. The application includes your personal choices for each of the benefits which are being offered under the Plan. You must also authorize us to set some of your earnings aside in order to pay for the benefits you have elected.

II OPERATION

1. How does this Plan operate?

Before the start of each Plan Year, you will be able to elect to have some of your upcoming pay contributed to the Plan. These amounts will be used to pay for the benefits you have chosen. The portion of your pay that is paid to the Plan is not subject to Federal income or Social Security taxes. In other words, this allows you to use tax-free dollars to pay for certain kinds of benefits and expenses which you normally pay for with out-of-pocket, taxable dollars. However, if you receive a reimbursement for an expense under the Plan,

you cannot claim a Federal income tax credit or deduction on your return. (See the Article entitled "General Information About Our Plan" for the definition of "Plan Year.")

III CONTRIBUTIONS

1. How much of my pay may the Employer redirect?

Each year, you may elect to have us contribute on your behalf enough of your compensation to pay for the benefits that you elect under the Plan. These amounts will be deducted from your pay over the course of the year.

2. What happens to contributions made to the Plan?

Before each Plan Year begins, you will select the benefits you want and how much of the contributions should go toward each benefit. It is very important that you make these choices carefully based on what you expect to spend on each covered benefit or expense during the Plan Year. Later, they will be used to pay for the expenses as they arise during the Plan Year. In addition, you should also note that any previous benefit payments made from any Account under the Plan that are unclaimed (e.g., uncashed benefit checks) by the end of the Plan Year following the period of coverage in which the qualifying expense was incurred will be forfeited to the Employer.

3. When must I decide which accounts I want to use?

You are required by Federal law to decide before the Plan Year begins, during the election period (defined below). You must decide two things. First, which benefits you want and, second, how much should go toward each benefit.

4. When is the election period for our Plan?

You will make your initial election on or before your entry date. (You should review Section I on Eligibility to better understand the eligibility requirements and entry date.) Then, for each following Plan Year, the election period is established by the Administrator and applied uniformly to all Participants. It will normally be a period of time prior to the beginning of each Plan Year. The Administrator will inform you each year about the election period. (See the Article entitled "General Information About Our Plan" for the definition of Plan Year.)

5. May I change my elections during the Plan Year?

Generally, you cannot change the elections you have made after the beginning of the Plan Year. However, there are certain limited situations when you can change your elections. You are permitted to change elections if you have a "change in status" and you make an election change that is consistent with the change in status. Currently, Federal law considers the following events to be a change in status:

- Marriage, divorce, death of a spouse, legal separation or annulment;
- Change in the number of dependents, including birth, adoption, placement for adoption, or death of a dependent;
- Any of the following events for you, your spouse or dependent: termination or commencement of employment, a strike or lockout, commencement or return from an unpaid leave of absence, a change in worksite, or any other change in employment status that affects eligibility for benefits;
- One of your dependents satisfies or ceases to satisfy the requirements for coverage due to change in age, student status, or any similar circumstance; and
- A change in the place of residence of you, your spouse or dependent that would lead to a change in status, such as moving out of a coverage area for insurance.

In addition, if you are participating in the Dependent Care Flexible Spending Account, then there is a change in status if your dependent no longer meets the qualifications to be eligible for dependent care.

There are detailed rules on when a change in election is deemed to be consistent with a change in status. In addition, there are laws that give you rights to change health coverage for you, your spouse, or your dependents. If you change coverage due to rights you have under the law, then you can make a corresponding change in your elections under the Plan. If any of these conditions apply to you, you should contact the Administrator.

If the cost of a benefit provided under the Plan increases or decreases during a Plan Year, then we will automatically increase or decrease, as the case may be, your salary redirection election. If the cost increases significantly, you will be permitted to either make corresponding changes in your payments or revoke your election and obtain coverage under another benefit package option with similar coverage, or revoke your election entirely.

If the coverage under a Benefit is significantly curtailed or ceases during a Plan Year, then you may revoke your elections and elect to receive on a prospective basis coverage under another plan with similar coverage. In addition, if we add a new coverage option or eliminate an existing option, you may elect the newly-added option (or elect another option if an option has been eliminated) and make corresponding election changes to other options providing similar coverage. If you are not a Participant, you may elect to join the Plan. There are also certain situations when you may be able to change your elections on account of a change under the plan of your spouse's, former spouse's or dependent's employer.

These rules on change due to cost or coverage do not apply to the Health Flexible Spending Account, and you may not change your election to the Health Flexible Spending Account if you make a change due to cost or coverage for insurance.

You may not change your election under the Dependent Care Flexible Spending Account if the cost change is imposed by a dependent care provider who is your relative.

You may revoke your coverage under the employer's group health plan outside of our open enrollment period, if your employment status changes from working at least 30 hours per week to less than 30 hours. This is regardless of whether the reduction in hours has resulted in loss of eligibility. You must show intent to enroll in another health plan.

You may also revoke or modify your coverage (including change to self only from family/other-than-self coverage in certain cases) under our Employer sponsored group health plan if you (or individuals related to you in certain cases) are eligible to obtain coverage through the health exchanges.

6. May I make new elections in future Plan Years?

Yes, you may. For each new Plan Year, you may change the elections that you previously made. You may also choose not to participate in the Plan for the upcoming Plan Year. If you do not make new elections during the election period before a new Plan Year begins, we will consider that to mean you have elected not to participate for the upcoming Plan Year.

IV BENEFITS

1. Health Flexible Spending Account

The Health Flexible Spending Account enables you to pay for expenses allowed under Sections 105 and 213(d) of the Internal Revenue Code which are not covered by our insured medical plan and save taxes at the same time. The Health Flexible Spending Account allows you to be reimbursed by the Employer for expenses incurred by you and your dependents.

Drug costs, including insulin, may be reimbursed.

You may not be reimbursed for the cost of other health care coverage maintained outside of the Plan, or for long-term care expenses. A list of covered expenses is available from the Administrator.

For 2024, the most you can contribute is \$3,200. After 2024, the dollar limit may increase for cost of living adjustments.

In order to be reimbursed for a health care expense, you must submit to the Administrator an itemized bill from the service provider. We will also provide you with a debit or credit card to use to pay for medical expenses. The Administrator will provide you with further details. Amounts reimbursed from the Plan may not be claimed as a deduction on your personal income tax return. Reimbursement from the fund shall be paid at least once a month. Expenses under this Plan are treated as being "incurred" when you are provided with the care that gives rise to the expenses, not when you are formally billed or charged, or you pay for the medical care.

You may be reimbursed for expenses for any child until the end of the calendar year in which the child reaches age 26. A child is a natural child, stepchild, foster child, adopted child, or a child placed with you for adoption. If a child gains or regains eligibility due to these new rules, that qualifies as a change in status to change coverage.

Newborns' and Mothers' Health Protection Act: Group health plans generally may not, under Federal law, restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child to less than 48 hours following a vaginal delivery, or less than 96 hours following a cesarean section. However, Federal law generally does not prohibit the mother's or newborn's attending provider, after consulting with the mother, from discharging the mother or her newborn earlier than 48 hours (or 96 hours as applicable). In any case, plans and issuers may not, under Federal law, require that a provider obtain authorization from the plan or the issuer for prescribing a length of stay not in excess of 48 hours (or 96 hours).

Women's Health and Cancer Rights Act: This plan, as required by the Women's Health and Cancer Rights Act of 1998, will reimburse up to plan limits for benefits for mastectomy-related services including reconstruction and surgery to achieve symmetry between the breasts, prostheses, and complications resulting from a mastectomy (including lymphedema). Contact your Plan Administrator for more information.

2. Dependent Care Flexible Spending Account

The Dependent Care Flexible Spending Account enables you to pay for out-of-pocket, work-related dependent day-care cost with pre-tax dollars. If you are married, you can use the account if you and your spouse both work or, in some situations, if your spouse goes to school full-time. Single employees can also use the account.

An eligible dependent is someone for whom you can claim expenses on Federal Income Tax Form 2441 "Credit for Child and Dependent Care Expenses." Children must be under age 13. Other dependents must be physically or mentally unable to care for themselves. Dependent Care arrangements which qualify include:

- (a) A Dependent (Day) Care Center, provided that if care is provided by the facility for more than six individuals, the facility complies with applicable state and local laws;
- (b) An Educational Institution for pre-school children. For older children, only expenses for non-school care are eligible; and
- (c) An "Individual" who provides care inside or outside your home: The "Individual" may not be a child of yours under age 19 or anyone you claim as a dependent for Federal tax purposes.

You should make sure that the dependent care expenses you are currently paying for qualify under our Plan.

The law places limits on the amount of money that can be paid to you in a calendar year from your Dependent Care Flexible Spending Account. Generally, your reimbursements may not exceed the lesser of: (a) \$5,000 (if you are married filing a joint return or you are head of a household) or \$2,500 (if you are married filing separate returns); (b) your taxable compensation; (c) your spouse's actual or deemed earned income (a spouse who is a full time student or incapable of caring for himself/herself has a monthly earned income of \$250 for one dependent or \$500 for two or more dependents).

Also, in order to have the reimbursements made to you from this account be excludable from your income, you must provide a statement from the service provider including the name, address, and in most cases, the taxpayer identification number of the service provider on your tax form for the year, as well as the amount of such expense as proof that the expense has been incurred. In addition, Federal tax laws permit a tax credit for certain dependent care expenses you may be paying for even if you are not a Participant in this Plan. You may save more money if you take advantage of this tax credit rather than using the Dependent Care Flexible Spending Account under our Plan. Ask your tax adviser which is better for you.

3. Premium Expense Account

A Premium Expense Account allows you to use tax-free dollars to pay for certain premium expenses under various insurance programs that we offer you. These premium expenses include:

- Health care premiums under our insured group medical plan.
- Group term life insurance premiums.
- Cancer insurance premiums.
- Accidental death and dismemberment insurance premiums.

Under our Plan, we will establish sub-accounts for you for each different type of insurance coverage that is available. Also, certain limits on the amount of coverage may apply.

The Administrator may terminate or modify Plan benefits at any time, subject to the provisions of any insurance contracts providing benefits described above. We will not be liable to you if an insurance company fails to provide any of the benefits described above. Also, your insurance will end when you leave employment, are no longer eligible under the terms of any insurance policies, or when insurance terminates.

Any benefits to be provided by insurance will be provided only after (1) you have provided the Administrator the necessary information to apply for insurance, and (2) the insurance is in effect for you.

If you cover your children up to age 26 under your insurance, you can pay for that coverage through the Plan.

V BENEFIT PAYMENTS

1. When will I receive payments from my accounts?

During the course of the Plan Year, you may submit requests for reimbursement of expenses you have incurred. Expenses are considered "incurred" when the service is performed, not necessarily when it is paid for. The Administrator will provide you with acceptable forms for submitting these requests for reimbursement. If the request qualifies as a benefit or expense that the Plan has agreed to

pay, you will receive a reimbursement payment soon thereafter. Remember, these reimbursements which are made from the Plan are generally not subject to federal income tax or withholding. Nor are they subject to Social Security taxes. Requests for payment of insured benefits should be made directly to the insurer. You will only be reimbursed from the Dependent Care Flexible Spending Account to the extent that there are sufficient funds in the Account to cover your request.

2. What happens if I don't spend all Plan contributions during the Plan Year?

Any monies left at the end of the Plan Year will be forfeited. Obviously, qualifying expenses that you incur late in the Plan Year for which you seek reimbursement after the end of such Plan Year will be paid first before any amount is forfeited. For the Health Flexible Spending Account, you must submit claims no later than the end of the month following 90 days after the end of the Plan Year. For the Dependent Care Flexible Spending Account, you must submit claims no later than the end of the month following 90 days after the end of the Plan Year. Because it is possible that you might forfeit amounts in the Plan if you do not fully use the contributions that have been made, it is important that you decide how much to place in each account carefully and conservatively. Remember, you must decide which benefits you want to contribute to and how much to place in each account before the Plan Year begins. You want to be as certain as you can that the amount you decide to place in each account will be used up entirely.

3. Family and Medical Leave Act (FMLA)

If you take leave under the Family and Medical Leave Act, you may revoke or change your existing elections for health insurance, group-term life insurance and the Health Flexible Spending Account. If your coverage in these benefits terminates, due to your revocation of the benefit while on leave or due to your non-payment of contributions, you will be permitted to reinstate coverage for the remaining part of the Plan Year upon your return. For the Health Flexible Spending Account, you may continue your coverage or you may revoke your coverage and resume it when you return. You can resume your coverage at its original level and make payments for the time that you are on leave. For example, if you elect \$1,200 for the year and are out on leave for 3 months, then return and elect to resume your coverage at that level, your remaining payments will be increased to cover the difference - from \$100 per month to \$150 per month. Alternatively your maximum amount will be reduced proportionately for the time that you were gone. For example, if you elect \$1,200 for the year and are out on leave for 3 months, your amount will be reduced to \$900. The expenses you incur during the time you are not in the Health Flexible Spending Account are not reimbursable.

If you continue your coverage during your unpaid leave, you may pre-pay for the coverage, you may pay for your coverage on an after-tax basis while you are on leave, or you and your Employer may arrange a schedule for you to "catch up" your payments when you return.

4. Uniformed Services Employment and Reemployment Rights Act (USERRA)

If you are going into or returning from military service, you may have special rights to health care coverage under your Health Flexible Spending Account under the Uniformed Services Employment and Reemployment Rights Act of 1994. These rights can include extended health care coverage. If you may be affected by this law, ask your Administrator for further details.

5. What happens if I terminate employment?

If you terminate employment during the Plan Year, your right to benefits will be determined in the following manner:

- (a) You will remain covered by insurance, but only for the period for which premiums have been paid prior to your termination of employment.
- (b) You will still be able to request reimbursement for qualifying dependent care expenses incurred during the remainder of the Plan Year from the balance remaining in your dependent care account at the time of termination of employment. However, no further salary redirection contributions will be made on your behalf after you terminate. You must submit claims no later than the end of the month following 90 days after the end of the Plan Year in which termination occurs.
- (c) For health benefit coverage and Health Flexible Spending Account coverage on termination of employment, please see the Article entitled "Continuation Coverage Rights Under COBRA." Upon your termination of employment, your participation in the Health Flexible Spending Account will cease, and no further salary redirection contributions will be contributed on your behalf. However, you will be able to submit claims for health care expenses that were incurred before the end of the period for which payments to the Health Flexible Spending Account have already been made. Your further participation will be governed by "Continuation Coverage Rights Under COBRA."

6. Will my Social Security benefits be affected?

Your Social Security benefits may be slightly reduced because when you receive tax-free benefits under our Plan, it reduces the amount of contributions that you make to the Federal Social Security system as well as our contribution to Social Security on your behalf.

VI
HIGHLY COMPENSATED AND KEY EMPLOYEES

1. Do limitations apply to highly compensated employees?

Under the Internal Revenue Code, highly compensated employees and key employees generally are Participants who are officers, shareholders or highly paid. You will be notified by the Administrator each Plan Year whether you are a highly compensated employee or a key employee.

If you are within these categories, the amount of contributions and benefits for you may be limited so that the Plan as a whole does not unfairly favor those who are highly paid, their spouses or their dependents. Federal tax laws state that a plan will be considered to unfairly favor the key employees if they as a group receive more than 25% of all of the nontaxable benefits provided for under our Plan.

Plan experience will dictate whether contribution limitations on highly compensated employees or key employees will apply. You will be notified of these limitations if you are affected.

VII
PLAN ACCOUNTING

1. Periodic Statements

The Administrator will provide you with a statement of your account periodically during the Plan Year that shows your account balance. It is important to read these statements carefully so you understand the balance remaining to pay for a benefit. Remember, you want to spend all the money you have designated for a particular benefit by the end of the Plan Year.

VIII
GENERAL INFORMATION ABOUT OUR PLAN

This Section contains certain general information which you may need to know about the Plan.

1. General Plan Information

City of Newburgh Flexible Benefits Plan is the name of the Plan.

Your Employer has assigned Plan Number 501 to your Plan.

The provisions of your amended Plan become effective on January 1, 2024. Your Plan was originally effective on April 1, 2001.

Your Plan's records are maintained on a twelve-month period of time. This is known as the Plan Year. The Plan Year begins on January 1 and ends on December 31.

2. Employer Information

Your Employer's name, address, and identification number are:

City of Newburgh
83 Broadway
Newburgh, New York 12550
14-6002329

3. Plan Administrator Information

The name, address and business telephone number of your Plan's Administrator are:

City of Newburgh
83 Broadway
Newburgh, New York 12550
845-569-7358

The Administrator keeps the records for the Plan and is responsible for the administration of the Plan. The Administrator will also answer any questions you may have about our Plan. You may contact the Administrator for any further information about the Plan.

4. Service of Legal Process

The name and address of the Plan's agent for service of legal process are:

City of Newburgh
83 Broadway
Newburgh, New York 12550

5. Type of Administration

The type of Administration is Employer Administration.

6. Claims Submission

Claims for expenses should be submitted to:

HealthEquity Inc.
P.O. Box 14053
Lexington, KY 40512

IX ADDITIONAL PLAN INFORMATION

1. Claims Process

You should submit all reimbursement claims during the Plan Year. For the Health Flexible Spending Account, you must submit claims no later than the end of the month following 90 days after the end of the Plan Year. For the Dependent Care Flexible Spending Account, you must submit claims no later than the end of the month following 90 days after the end of the Plan Year. Any claims submitted after that time will not be considered.

Claims that are insured will be handled in accordance with procedures contained in the insurance policies. All other general requests should be directed to the Administrator of our Plan. If a dependent care or medical expense claim under the Plan is denied in whole or in part, you or your beneficiary will receive written notification. The notification will include the reasons for the denial, with reference to the specific provisions of the Plan on which the denial was based, a description of any additional information needed to process the claim and an explanation of the claims review procedure. Within 60 days after denial, you or your beneficiary may submit a written request for reconsideration of the denial to the Administrator.

Any such request should be accompanied by documents or records in support of your appeal. You or your beneficiary may review pertinent documents and submit issues and comments in writing. The Administrator will review the claim and provide, within 60 days, a written response to the appeal. (This period may be extended an additional 60 days under certain circumstances.) In this response, the Administrator will explain the reason for the decision, with specific reference to the provisions of the Plan on which the decision is based. The Administrator has the exclusive right to interpret the appropriate plan provisions. Decisions of the Administrator are conclusive and binding.

X CONTINUATION COVERAGE RIGHTS UNDER COBRA

Under federal law, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), certain employees and their families covered under health benefits under this Plan will be entitled to the opportunity to elect a temporary extension of health coverage (called "COBRA continuation coverage") where coverage under the Plan would otherwise end. This notice is intended to inform Plan Participants and beneficiaries, in summary fashion, of their rights and obligations under the continuation coverage provisions of COBRA, as amended and reflected in final and proposed regulations published by the Department of the Treasury. This notice is intended to reflect the law and does not grant or take away any rights under the law.

The Plan Administrator or its designee is responsible for administering COBRA continuation coverage. Complete instructions on COBRA, as well as election forms and other information, will be provided by the Plan Administrator or its designee to Plan Participants who become Qualified Beneficiaries under COBRA. While the Plan itself is not a group health plan, it does provide health benefits. Whenever "Plan" is used in this section, it means any of the health benefits under this Plan including the Health Flexible Spending Account.

1. What is COBRA continuation coverage?

COBRA continuation coverage is the temporary extension of group health plan coverage that must be offered to certain Plan Participants and their eligible family members (called "Qualified Beneficiaries") at group rates. The right to COBRA continuation coverage is triggered by the occurrence of a life event that results in the loss of coverage under the terms of the Plan (the "Qualifying Event"). The coverage must be identical to the coverage that the Qualified Beneficiary had immediately before the Qualifying Event, or if the coverage

has been changed, the coverage must be identical to the coverage provided to similarly situated active employees who have not experienced a Qualifying Event (in other words, similarly situated non-COBRA beneficiaries).

There may be other options available when you lose group health coverage. For example, you may be eligible to buy an individual plan through the Health Insurance Marketplace. By enrolling in coverage through the Marketplace, you may qualify for lower costs on your monthly premiums and lower out-of-pocket costs. Additionally, you may qualify for a 30-day special enrollment period for another group health plan for which you are eligible (such as a spouse's plan), even if that plan generally doesn't accept late enrollees.

2. Who can become a Qualified Beneficiary?

In general, a Qualified Beneficiary can be:

(a) Any individual who, on the day before a Qualifying Event, is covered under a Plan by virtue of being on that day either a covered Employee, the Spouse of a covered Employee, or a Dependent child of a covered Employee. If, however, an individual who otherwise qualifies as a Qualified Beneficiary is denied or not offered coverage under the Plan under circumstances in which the denial or failure to offer constitutes a violation of applicable law, then the individual will be considered to have had the coverage and will be considered a Qualified Beneficiary if that individual experiences a Qualifying Event.

(b) Any child who is born to or placed for adoption with a covered Employee during a period of COBRA continuation coverage, and any individual who is covered by the Plan as an alternate recipient under a qualified medical support order. If, however, an individual who otherwise qualifies as a Qualified Beneficiary is denied or not offered coverage under the Plan under circumstances in which the denial or failure to offer constitutes a violation of applicable law, then the individual will be considered to have had the coverage and will be considered a Qualified Beneficiary if that individual experiences a Qualifying Event.

The term "covered Employee" includes any individual who is provided coverage under the Plan due to his or her performance of services for the employer sponsoring the Plan. However, this provision does not establish eligibility of these individuals. Eligibility for Plan coverage shall be determined in accordance with Plan Eligibility provisions.

An individual is not a Qualified Beneficiary if the individual's status as a covered Employee is attributable to a period in which the individual was a nonresident alien who received from the individual's Employer no earned income that constituted income from sources within the United States. If, on account of the preceding reason, an individual is not a Qualified Beneficiary, then a Spouse or Dependent child of the individual will also not be considered a Qualified Beneficiary by virtue of the relationship to the individual. A domestic partner is not a Qualified Beneficiary.

Each Qualified Beneficiary (including a child who is born to or placed for adoption with a covered Employee during a period of COBRA continuation coverage) must be offered the opportunity to make an independent election to receive COBRA continuation coverage.

3. What is a Qualifying Event?

A Qualifying Event is any of the following if the Plan provided that the Plan participant would lose coverage (i.e., cease to be covered under the same terms and conditions as in effect immediately before the Qualifying Event) in the absence of COBRA continuation coverage:

(a) The death of a covered Employee.

(b) The termination (other than by reason of the Employee's gross misconduct), or reduction of hours, of a covered Employee's employment.

(c) The divorce or legal separation of a covered Employee from the Employee's Spouse. If the Employee reduces or eliminates the Employee's Spouse's Plan coverage in anticipation of a divorce or legal separation, and a divorce or legal separation later occurs, then the divorce or legal separation may be considered a Qualifying Event even though the Spouse's coverage was reduced or eliminated before the divorce or legal separation.

(d) A covered Employee's enrollment in any part of the Medicare program.

(e) A Dependent child's ceasing to satisfy the Plan's requirements for a Dependent child (for example, attainment of the maximum age for dependency under the Plan).

If the Qualifying Event causes the covered Employee, or the covered Spouse or a Dependent child of the covered Employee, to cease to be covered under the Plan under the same terms and conditions as in effect immediately before the Qualifying Event, the persons losing such coverage become Qualified Beneficiaries under COBRA if all the other conditions of COBRA are also met. For example, any increase in contribution that must be paid by a covered Employee, or the Spouse, or a Dependent child of the covered Employee, for coverage under the Plan that results from the occurrence of one of the events listed above is a loss of coverage.

The taking of leave under the Family and Medical Leave Act of 1993, as amended ("FMLA") does not constitute a Qualifying Event. A Qualifying Event will occur, however, if an Employee does not return to employment at the end of the FMLA leave and all other

COBRA continuation coverage conditions are present. If a Qualifying Event occurs, it occurs on the last day of FMLA leave and the applicable maximum coverage period is measured from this date (unless coverage is lost at a later date and the Plan provides for the extension of the required periods, in which case the maximum coverage date is measured from the date when the coverage is lost.) Note that the covered Employee and family members will be entitled to COBRA continuation coverage even if they failed to pay the employee portion of premiums for coverage under the Plan during the FMLA leave.

4. What factors should be considered when determining to elect COBRA continuation coverage?

When considering options for health coverage, Qualified Beneficiaries should consider:

- **Premiums:** This plan can charge up to 102% of total plan premiums for COBRA coverage. Other options, like coverage on a spouse's plan or through the Marketplace, may be less expensive. Qualified Beneficiaries have special enrollment rights under federal law (HIPAA). They have the right to request special enrollment in another group health plan for which they are otherwise eligible (such as a plan sponsored by a spouse's employer) within 30 days after Plan coverage ends due to one of the Qualifying Events listed above.
- **Provider Networks:** If a Qualified Beneficiary is currently getting care or treatment for a condition, a change in health coverage may affect access to a particular health care provider. You may want to check to see if your current health care providers participate in a network in considering options for health coverage.
- **Drug Formularies:** For Qualified Beneficiaries taking medication, a change in health coverage may affect costs for medication – and in some cases, the medication may not be covered by another plan. Qualified beneficiaries should check to see if current medications are listed in drug formularies for other health coverage.
- **Severance payments:** If COBRA rights arise because the Employee has lost his job and there is a severance package available from the employer, the former employer may have offered to pay some or all of the Employee's COBRA payments for a period of time. This can affect the timing of coverage available in the Marketplace. In this scenario, the Employee may want to contact the Department of Labor at 1-866-444-3272 to discuss options.
- **Medicare Eligibility:** You should be aware of how COBRA coverage coordinates with Medicare eligibility. If you are eligible for Medicare at the time of the Qualifying Event, or if you will become eligible soon after the Qualifying Event, you should know that you have 8 months to enroll in Medicare after your employment –related health coverage ends. Electing COBRA coverage does not extend this 8-month period. For more information, see [medicare.gov/sign-up-change-plan](https://www.medicare.gov/sign-up-change-plan).
- **Service Areas:** If benefits under the Plan are limited to specific service or coverage areas, benefits may not be available to a Qualified Beneficiary who moves out of the area.
- **Other Cost-Sharing:** In addition to premiums or contributions for health coverage, the Plan requires participants to pay copayments, deductibles, coinsurance, or other amounts as benefits are used. Qualified beneficiaries should check to see what the cost-sharing requirements are for other health coverage options. For example, one option may have much lower monthly premiums, but a much higher deductible and higher copayments.

Are there other coverage options besides COBRA Continuation Coverage? Yes. Instead of enrolling in COBRA continuation coverage, there may be other coverage options for Qualified Beneficiaries through the Health Insurance Marketplace, Medicaid, or other group health plan coverage options (such as a spouse's plan) through what is called a "special enrollment period." Some of these options may cost less than COBRA continuation coverage. You can learn more about many of these options at www.healthcare.gov.

5. What is the procedure for obtaining COBRA continuation coverage?

The Plan has conditioned the availability of COBRA continuation coverage upon the timely election of such coverage. An election is timely if it is made during the election period.

6. What is the election period and how long must it last?

The election period is the time period within which the Qualified Beneficiary must elect COBRA continuation coverage under the Plan. The election period must begin no later than the date the Qualified Beneficiary would lose coverage on account of the Qualifying Event and ends 60 days after the later of the date the Qualified Beneficiary would lose coverage on account of the Qualifying Event or the date notice is provided to the Qualified Beneficiary of her or his right to elect COBRA continuation coverage. If coverage is not elected within the 60 day period, all rights to elect COBRA continuation coverage are forfeited.

Note: If a covered Employee who has been terminated or experienced a reduction of hours qualifies for a trade readjustment allowance or alternative trade adjustment assistance under a federal law called the Trade Act of 2002, as extended by the Trade Preferences Extension Act of 2015, and the employee and his or her covered dependents have not elected COBRA coverage within the normal election period, a second opportunity to elect COBRA coverage will be made available for themselves and certain family members, but only within a limited period of 60 days or less and only during the six months immediately after their group health plan coverage ended. Any person who qualifies or thinks that he or she and/or his or her family members may qualify for assistance under this special provision should contact the

Plan Administrator or its designee for further information about the special second election period. If continuation coverage is elected under this extension, it will not become effective prior to the beginning of this special second election period.

7. Is a covered Employee or Qualified Beneficiary responsible for informing the Plan Administrator of the occurrence of a Qualifying Event?

The Plan will offer COBRA continuation coverage to Qualified Beneficiaries only after the Plan Administrator or its designee has been timely notified that a Qualifying Event has occurred. The Employer (if the Employer is not the Plan Administrator) will notify the Plan Administrator or its designee of the Qualifying Event within 30 days following the date coverage ends when the Qualifying Event is:

- (a) the end of employment or reduction of hours of employment,
- (b) death of the employee,
- (c) commencement of a proceeding in bankruptcy with respect to the Employer, or
- (d) entitlement of the employee to any part of Medicare.

IMPORTANT:

For the other Qualifying Events (divorce or legal separation of the employee and spouse or a dependent child's losing eligibility for coverage as a dependent child), you or someone on your behalf must notify the Plan Administrator or its designee in writing within 60 days after the Qualifying Event occurs, using the procedures specified below. If these procedures are not followed or if the notice is not provided in writing to the Plan Administrator or its designee during the 60-day notice period, any spouse or dependent child who loses coverage will not be offered the option to elect continuation coverage. You must send this notice to the Plan Administrator or its designee.

NOTICE PROCEDURES:

Any notice that you provide must be ***in writing***. Oral notice, including notice by telephone, is not acceptable. You must mail, fax or hand-deliver your notice to the person, department or firm listed below, at the following address:

City of Newburgh
83 Broadway
Newburgh, New York 12550

If mailed, your notice must be postmarked no later than the last day of the required notice period. Any notice you provide must state:

- the **name of the plan or plans** under which you lost or are losing coverage,
- the **name and address of the employee** covered under the plan,
- the **name(s) and address(es) of the Qualified Beneficiary(ies)**, and
- the **Qualifying Event** and the **date** it happened.

If the Qualifying Event is a **divorce or legal separation**, your notice must include a **copy of the divorce decree or the legal separation agreement**.

Be aware that there are other notice requirements in other contexts, for example, in order to qualify for a disability extension.

Once the Plan Administrator or its designee receives ***timely notice*** that a Qualifying Event has occurred, COBRA continuation coverage will be offered to each of the qualified beneficiaries. Each Qualified Beneficiary will have an independent right to elect COBRA continuation coverage. Covered employees may elect COBRA continuation coverage for their spouses, and parents may elect COBRA continuation coverage on behalf of their children. For each Qualified Beneficiary who elects COBRA continuation coverage, COBRA continuation coverage will begin on the date that plan coverage would otherwise have been lost. If you or your spouse or dependent children do not elect continuation coverage within the 60-day election period described above, the right to elect continuation coverage will be lost.

8. Is a waiver before the end of the election period effective to end a Qualified Beneficiary's election rights?

If, during the election period, a Qualified Beneficiary waives COBRA continuation coverage, the waiver can be revoked at any time before the end of the election period. Revocation of the waiver is an election of COBRA continuation coverage. However, if a waiver is later revoked, coverage need not be provided retroactively (that is, from the date of the loss of coverage until the waiver is revoked). Waivers and revocations of waivers are considered made on the date they are sent to the Plan Administrator or its designee, as applicable.

9. Is COBRA coverage available if a Qualified Beneficiary has other group health plan coverage or Medicare?

Qualified Beneficiaries who are entitled to elect COBRA continuation coverage may do so even if they are covered under another group health plan or are entitled to Medicare benefits on or before the date on which COBRA is elected. However, a Qualified Beneficiary's COBRA coverage will terminate automatically if, after electing COBRA, he or she becomes entitled to Medicare or becomes covered under other group health plan coverage.

10. When may a Qualified Beneficiary's COBRA continuation coverage be terminated?

During the election period, a Qualified Beneficiary may waive COBRA continuation coverage. Except for an interruption of coverage in connection with a waiver, COBRA continuation coverage that has been elected for a Qualified Beneficiary must extend for at least the period beginning on the date of the Qualifying Event and ending not before the earliest of the following dates:

- (a) The last day of the applicable maximum coverage period.
- (b) The first day for which Timely Payment is not made to the Plan with respect to the Qualified Beneficiary.
- (c) The date upon which the Employer ceases to provide any group health plan (including a successor plan) to any employee.
- (d) The date, after the date of the election, that the Qualified Beneficiary first becomes entitled to Medicare (either part A or part B, whichever occurs earlier).
- (e) In the case of a Qualified Beneficiary entitled to a disability extension, the later of:
 - (1) (i) 29 months after the date of the Qualifying Event, or (ii) the first day of the month that is more than 30 days after the date of a final determination under Title II or XVI of the Social Security Act that the disabled Qualified Beneficiary whose disability resulted in the Qualified Beneficiary's entitlement to the disability extension is no longer disabled, whichever is earlier; or
 - (2) the end of the maximum coverage period that applies to the Qualified Beneficiary without regard to the disability extension.

The Plan can terminate for cause the coverage of a Qualified Beneficiary on the same basis that the Plan terminates for cause the coverage of similarly situated non-COBRA beneficiaries, for example, for the submission of a fraudulent claim.

In the case of an individual who is not a Qualified Beneficiary and who is receiving coverage under the Plan solely because of the individual's relationship to a Qualified Beneficiary, if the Plan's obligation to make COBRA continuation coverage available to the Qualified Beneficiary ceases, the Plan is not obligated to make coverage available to the individual who is not a Qualified Beneficiary.

11. What are the maximum coverage periods for COBRA continuation coverage?

The maximum coverage periods are based on the type of the Qualifying Event and the status of the Qualified Beneficiary, as shown below.

- (a) In the case of a Qualifying Event that is a termination of employment or reduction of hours of employment, the maximum coverage period ends 18 months after the Qualifying Event if there is not a disability extension and 29 months after the Qualifying Event if there is a disability extension.
- (b) In the case of a covered Employee's enrollment in the Medicare program before experiencing a Qualifying Event that is a termination of employment or reduction of hours of employment, the maximum coverage period for Qualified Beneficiaries ends on the later of:
 - (1) 36 months after the date the covered Employee becomes enrolled in the Medicare program. This extension does not apply to the covered Employee; or
 - (2) 18 months (or 29 months, if there is a disability extension) after the date of the covered Employee's termination of employment or reduction of hours of employment.
- (c) In the case of a Qualified Beneficiary who is a child born to or placed for adoption with a covered Employee during a period of COBRA continuation coverage, the maximum coverage period is the maximum coverage period applicable to the Qualifying Event giving rise to the period of COBRA continuation coverage during which the child was born or placed for adoption.
- (d) In the case of any other Qualifying Event than that described above, the maximum coverage period ends 36 months after the Qualifying Event.

12. Under what circumstances can the maximum coverage period be expanded?

If a Qualifying Event that gives rise to an 18-month or 29-month maximum coverage period is followed, within that 18- or 29-month period, by a second Qualifying Event that gives rise to a 36-months maximum coverage period, the original period is expanded to 36

months, but only for individuals who are Qualified Beneficiaries at the time of and with respect to both Qualifying Events. In no circumstance can the COBRA maximum coverage period be expanded to more than 36 months after the date of the first Qualifying Event. The Plan Administrator must be notified of the second qualifying event within 60 days of the second qualifying event. This notice must be sent to the Plan Administrator or its designee in accordance with the procedures above.

13. How does a Qualified Beneficiary become entitled to a disability extension?

A disability extension will be granted if an individual (whether or not the covered Employee) who is a Qualified Beneficiary in connection with the Qualifying Event that is a termination or reduction of hours of a covered Employee's employment, is determined under Title II or XVI of the Social Security Act to have been disabled at any time during the first 60 days of COBRA continuation coverage. To qualify for the disability extension, the Qualified Beneficiary must also provide the Plan Administrator with notice of the disability determination on a date that is both within 60 days after the date of the determination and before the end of the original 18-month maximum coverage. This notice must be sent to the Plan Administrator or its designee in accordance with the procedures above.

14. Does the Plan require payment for COBRA continuation coverage?

For any period of COBRA continuation coverage under the Plan, Qualified Beneficiaries who elect COBRA continuation coverage may be required to pay up to 102% of the applicable premium and up to 150% of the applicable premium for any expanded period of COBRA continuation coverage covering a disabled Qualified Beneficiary due to a disability extension. Your Plan Administrator will inform you of the cost. The Plan will terminate a Qualified Beneficiary's COBRA continuation coverage as of the first day of any period for which timely payment is not made.

15. Must the Plan allow payment for COBRA continuation coverage to be made in monthly installments?

Yes. The Plan is also permitted to allow for payment at other intervals.

16. What is Timely Payment for COBRA continuation coverage?

Timely Payment means a payment made no later than 30 days after the first day of the coverage period. Payment that is made to the Plan by a later date is also considered Timely Payment if either under the terms of the Plan, covered Employees or Qualified Beneficiaries are allowed until that later date to pay for their coverage for the period or under the terms of an arrangement between the Employer and the entity that provides Plan benefits on the Employer's behalf, the Employer is allowed until that later date to pay for coverage of similarly situated non-COBRA beneficiaries for the period.

Notwithstanding the above paragraph, the Plan does not require payment for any period of COBRA continuation coverage for a Qualified Beneficiary earlier than 45 days after the date on which the election of COBRA continuation coverage is made for that Qualified Beneficiary. Payment is considered made on the date on which it is postmarked to the Plan.

If Timely Payment is made to the Plan in an amount that is not significantly less than the amount the Plan requires to be paid for a period of coverage, then the amount paid will be deemed to satisfy the Plan's requirement for the amount to be paid, unless the Plan notifies the Qualified Beneficiary of the amount of the deficiency and grants a reasonable period of time for payment of the deficiency to be made. A "reasonable period of time" is 30 days after the notice is provided. A shortfall in a Timely Payment is not significant if it is no greater than the lesser of \$50 or 10% of the required amount.

17. Must a Qualified Beneficiary be given the right to enroll in a conversion health plan at the end of the maximum coverage period for COBRA continuation coverage?

If a Qualified Beneficiary's COBRA continuation coverage under a group health plan ends as a result of the expiration of the applicable maximum coverage period, the Plan will, during the 180-day period that ends on that expiration date, provide the Qualified Beneficiary with the option of enrolling under a conversion health plan if such an option is otherwise generally available to similarly situated non-COBRA beneficiaries under the Plan. If such a conversion option is not otherwise generally available, it need not be made available to Qualified Beneficiaries.

18. How is my participation in the Health Flexible Spending Account affected?

You can elect to continue your participation in the Health Flexible Spending Account for the remainder of the Plan Year, subject to the following conditions. You may only continue to participate in the Health Flexible Spending Account if you have elected to contribute more money than you have taken out in claims. For example, if you elected to contribute an annual amount of \$500 and, at the time you terminate employment, you have contributed \$300 but only claimed \$150, you may elect to continue coverage under the Health Flexible Spending Account. If you elect to continue coverage, then you would be able to continue to receive your health reimbursements up to the \$500. However, you must continue to pay for the coverage, just as the money has been taken out of your paycheck, but on an after-tax basis. The Plan can also charge you an extra amount (as explained above for other health benefits) to provide this benefit.

IF YOU HAVE QUESTIONS

If you have questions about your COBRA continuation coverage, you should contact the Plan Administrator or its designee. For more information about your rights under ERISA, including COBRA, the Health Insurance Portability and Accountability Act (HIPAA), and

other laws affecting group health plans, contact the nearest Regional or District Office of the U.S. Department of Labor's Employee Benefits Security Administration (EBSA). Addresses and phone numbers of Regional and District EBSA Offices are available through EBSA's website at www.dol.gov/ebsa.

KEEP YOUR PLAN ADMINISTRATOR INFORMED OF ADDRESS CHANGES

In order to protect your family's rights, you should keep the Plan Administrator informed of any changes in the addresses of family members. You should also keep a copy, for your records, of any notices you send to the Plan Administrator or its designee.

XI SUMMARY

The money you earn is important to you and your family. You need it to pay your bills, enjoy recreational activities and save for the future. Our flexible benefits plan will help you keep more of the money you earn by lowering the amount of taxes you pay. The Plan is the result of our continuing efforts to find ways to help you get the most for your earnings.

If you have any questions, please contact the Administrator.

**CITY OF NEWBURGH
FLEXIBLE BENEFITS PLAN
AND ALL SUPPORTING FORMS HAVE BEEN PRODUCED FOR
HEALTHEQUITY INC**

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**CITY OF NEWBURGH
FLEXIBLE BENEFITS PLAN**

NOTE: THIS DOCUMENT SHOULD BE REVIEWED AND APPROVED BY THE EMPLOYER'S LEGAL COUNSEL PRIOR TO BEING ADOPTED (SIGNED AND IMPLEMENTED). ANY CHANGES SUGGESTED DURING THAT REVIEW ARE THE RESPONSIBILITY OF THE EMPLOYER.

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**CITY OF NEWBURGH
FLEXIBLE BENEFITS PLAN**

INTRODUCTION

The Employer has amended this Plan effective January 1, 2024, to recognize the contribution made to the Employer by its Employees. Its purpose is to reward them by providing benefits for those Employees who shall qualify hereunder and their Dependents and beneficiaries. The concept of this Plan is to allow Employees to choose among different types of benefits based on their own particular goals, desires and needs. This Plan is a restatement of a Plan which was originally effective on April 1, 2001. The Plan shall be known as City of Newburgh Flexible Benefits Plan (the "Plan").

The intention of the Employer is that the Plan qualify as a "Cafeteria Plan" within the meaning of Section 125 of the Internal Revenue Code of 1986, as amended, and that the benefits which an Employee elects to receive under the Plan be excludable from the Employee's income under Section 125(a) and other applicable sections of the Internal Revenue Code of 1986, as amended.

**ARTICLE I
DEFINITIONS**

1.1 **"Administrator"** means the Employer unless another person or entity has been designated by the Employer pursuant to Section 9.1 to administer the Plan on behalf of the Employer. If the Employer is the Administrator, the Employer may appoint any person, including, but not limited to, the Employees of the Employer, to perform the duties of the Administrator. Any person so appointed shall signify acceptance by filing written acceptance with the Employer. Upon the resignation or removal of any individual performing the duties of the Administrator, the Employer may designate a successor.

1.2 **"Affiliated Employer"** means the Employer and any corporation which is a member of a controlled group of corporations (as defined in Code Section 414(b)) which includes the Employer; any trade or business (whether or not incorporated) which is under common control (as defined in Code Section 414(c)) with the Employer; any organization (whether or not incorporated) which is a member of an affiliated service group (as defined in Code Section 414(m)) which includes the Employer; and any other entity required to be aggregated with the Employer pursuant to Treasury regulations under Code Section 414(o).

1.3 **"Benefit" or "Benefit Options"** means any of the optional benefit choices available to a Participant as outlined in Section 4.1.

1.4 **"Cafeteria Plan Benefit Dollars"** means the amount available to Participants to purchase Benefit Options as provided under Section 4.1. Each dollar contributed to this Plan shall be converted into one Cafeteria Plan Benefit Dollar.

1.5 **"Code"** means the Internal Revenue Code of 1986, as amended or replaced from time to time.

1.6 **"Compensation"** means the amounts received by the Participant from the Employer during a Plan Year.

1.7 **"Dependent"** means any individual who qualifies as a dependent under an Insurance Contract for purposes of coverage under that Contract only or under Code Section 152 (as modified by Code Section 105(b)).

"Dependent" shall include any Child of a Participant who is covered under an Insurance Contract, as defined in the Contract, or under the Health Flexible Spending Account or as allowed by reason of the Affordable Care Act.

For purposes of the Health Flexible Spending Account, a Participant's "Child" includes his/her natural child, stepchild, foster child, adopted child, or a child placed with the Participant for adoption. A Participant's Child will be an eligible Dependent until reaching the limiting age of 26, without regard to student status, marital status, financial dependency or residency status with the Employee or any other person. When the child reaches the applicable limiting age, coverage will end at the end of the calendar year.

The phrase "placed for adoption" refers to a child whom the Participant intends to adopt, whether or not the adoption has become final, who has not attained the age of 18 as of the date of such placement for adoption. The term "placed" means the assumption and retention by such Employee of a legal obligation for total or partial support of the child in anticipation of adoption of the child. The child must be available for adoption and the legal process must have commenced.

1.8 **"Effective Date"** means April 1, 2001.

1.9 **"Election Period"** means the period immediately preceding the beginning of each Plan Year established by the Administrator, such period to be applied on a uniform and nondiscriminatory basis for all Employees and Participants. However, an Employee's initial Election Period shall be determined pursuant to Section 5.1.

1.10 **"Eligible Employee"** means any Employee who has satisfied the provisions of Section 2.1.

An individual shall not be an "Eligible Employee" if such individual is not reported on the payroll records of the Employer as a common law employee. In particular, it is expressly intended that individuals not treated as common law employees by the

Employer on its payroll records are not "Eligible Employees" and are excluded from Plan participation even if a court or administrative agency determines that such individuals are common law employees and not independent contractors.

1.11 **"Employee"** means any person who is employed by the Employer. The term Employee shall include leased employees within the meaning of Code Section 414(n)(2).

1.12 **"Employer"** means City of Newburgh and any successor which shall maintain this Plan; and any predecessor which has maintained this Plan. In addition, where appropriate, the term Employer shall include any Participating, Affiliated or Adopting Employer.

1.13 **"Insurance Contract"** means any contract issued by an Insurer underwriting a Benefit.

1.14 **"Insurance Premium Payment Plan"** means the plan of benefits contained in Section 4.1 of this Plan, which provides for the payment of Premium Expenses.

1.15 **"Insurer"** means any insurance company that underwrites a Benefit under this Plan.

1.16 **"Key Employee"** means an Employee described in Code Section 416(i)(1) and the Treasury regulations thereunder.

1.17 **"Participant"** means any Eligible Employee who elects to become a Participant pursuant to Section 2.3 and has not for any reason become ineligible to participate further in the Plan.

1.18 **"Plan"** means this instrument, including all amendments thereto.

1.19 **"Plan Year"** means the 12-month period beginning January 1 and ending December 31. The Plan Year shall be the coverage period for the Benefits provided for under this Plan. In the event a Participant commences participation during a Plan Year, then the initial coverage period shall be that portion of the Plan Year commencing on such Participant's date of entry and ending on the last day of such Plan Year.

1.20 **"Premium Expenses" or "Premiums"** mean the Participant's cost for the Benefits described in Section 4.1.

1.21 **"Premium Expense Reimbursement Account"** means the account established for a Participant pursuant to this Plan to which part of his Cafeteria Plan Benefit Dollars may be allocated and from which Premiums of the Participant may be paid or reimbursed. If more than one type of insured Benefit is elected, sub-accounts shall be established for each type of insured Benefit.

1.22 **"Salary Redirection"** means the contributions made by the Employer on behalf of Participants pursuant to Section 3.1. These contributions shall be converted to Cafeteria Plan Benefit Dollars and allocated to the funds or accounts established under the Plan pursuant to the Participants' elections made under Article V.

1.23 **"Salary Redirection Agreement"** means an agreement between the Participant and the Employer under which the Participant agrees to reduce his Compensation or to forego all or part of the increases in such Compensation and to have such amounts contributed by the Employer to the Plan on the Participant's behalf. The Salary Redirection Agreement shall apply only to Compensation that has not been actually or constructively received by the Participant as of the date of the agreement (after taking this Plan and Code Section 125 into account) and, subsequently does not become currently available to the Participant.

1.24 **"Spouse"** means spouse as determined under Federal law.

ARTICLE II PARTICIPATION

2.1 ELIGIBILITY

Any Eligible Employee shall be eligible to participate hereunder as of the date he satisfies the eligibility conditions for the Employer's group medical plan, the provisions of which are specifically incorporated herein by reference. However, any Eligible Employee who was a Participant in the Plan on the effective date of this amendment shall continue to be eligible to participate in the Plan.

2.2 EFFECTIVE DATE OF PARTICIPATION

An Eligible Employee shall become a Participant effective as of the first day of the month coinciding with or next following the date on which he met the eligibility requirements of Section 2.1.

2.3 APPLICATION TO PARTICIPATE

An Employee who is eligible to participate in this Plan shall, during the applicable Election Period, complete an application to participate in a manner set forth by the Administrator. The election shall be irrevocable until the end of the applicable Plan Year unless the Participant is entitled to change his Benefit elections pursuant to Section 5.4 hereof.

An Eligible Employee shall also be required to complete a Salary Redirection Agreement during the Election Period for the Plan Year during which he wishes to participate in this Plan. Any such Salary Redirection Agreement shall be effective for the first pay period beginning on or after the Employee's effective date of participation pursuant to Section 2.2.

2.4 TERMINATION OF PARTICIPATION

A Participant shall no longer participate in this Plan upon the occurrence of any of the following events:

- (a) **Termination of employment.** The Participant's termination of employment, subject to the provisions of Section 2.5;
- (b) **Death.** The Participant's death, subject to the provisions of Section 2.6; or
- (c) **Termination of the plan.** The termination of this Plan, subject to the provisions of Section 10.2.

2.5 TERMINATION OF EMPLOYMENT

If a Participant's employment with the Employer is terminated for any reason other than death, his participation in the Benefit Options provided under Section 4.1 shall be governed in accordance with the following:

- (a) **Insurance Benefit.** With regard to Benefits which are insured, the Participant's participation in the Plan shall cease, subject to the Participant's right to continue coverage under any Insurance Contract for which premiums have already been paid.
- (b) **Dependent Care FSA.** With regard to the Dependent Care Flexible Spending Account, the Participant's participation in the Plan shall cease and no further Salary Redirection contributions shall be made. However, such Participant may submit claims for employment related Dependent Care Expense reimbursements for claims incurred through the remainder of the Plan Year in which such termination occurs and submitted no later than the end of the month following 90 days after the end of the Plan Year, based on the level of the Participant's Dependent Care Flexible Spending Account as of the date of termination.
- (c) **COBRA applicability.** With regard to the Health Flexible Spending Account, the Participant may submit claims for expenses that were incurred during the portion of the Plan Year before the end of the period for which payments to the Health Flexible Spending Account have already been made. Thereafter, the health benefits under this Plan including the Health Flexible Spending Account shall be applied and administered consistent with such further rights a Participant and his Dependents may be entitled to pursuant to Code Section 4980B and Section 11.14 of the Plan.

2.6 DEATH

If a Participant dies, his participation in the Plan shall cease. However, such Participant's spouse or Dependents may submit claims for expenses or benefits for the remainder of the Plan Year or until the Cafeteria Plan Benefit Dollars allocated to each specific benefit are exhausted. In no event may reimbursements be paid to someone who is not a spouse or Dependent. If the Plan is subject to the provisions of Code Section 4980B, then those provisions and related regulations shall apply for purposes of the Health Flexible Spending Account.

ARTICLE III CONTRIBUTIONS TO THE PLAN

3.1 SALARY REDIRECTION

Benefits under the Plan shall be financed by Salary Redirections sufficient to support Benefits that a Participant has elected hereunder and to pay the Participant's Premium Expenses. The salary administration program of the Employer shall be revised to allow each Participant to agree to reduce his pay during a Plan Year by an amount determined necessary to purchase the elected Benefit Options. The amount of such Salary Redirection shall be specified in the Salary Redirection Agreement and shall be applicable for a Plan Year. Notwithstanding the above, for new Participants, the Salary Redirection Agreement shall only be applicable from the first day of the pay period following the Employee's entry date up to and including the last day of the Plan Year. These contributions shall be converted to Cafeteria Plan Benefit Dollars and allocated to the funds or accounts established under the Plan pursuant to the Participants' elections made under Article IV.

Any Salary Redirection shall be determined prior to the beginning of a Plan Year (subject to initial elections pursuant to Section 5.1) and prior to the end of the Election Period and shall be irrevocable for such Plan Year. However, a Participant may revoke a Benefit election or a Salary Redirection Agreement after the Plan Year has commenced and make a new election with respect to the remainder of the Plan Year, if both the revocation and the new election are on account of and consistent with a change in status and such other permitted events as determined under Article V of the Plan and consistent with the rules and regulations of the Department of the Treasury. Salary Redirection amounts shall be contributed on a pro rata basis for each pay period during the Plan Year. All individual Salary Redirection Agreements are deemed to be part of this Plan and incorporated by reference hereunder.

3.2 APPLICATION OF CONTRIBUTIONS

As soon as reasonably practical after each payroll period, the Employer shall apply the Salary Redirection to provide the Benefits elected by the affected Participants. Any contribution made or withheld for the Health Flexible Spending Account or Dependent Care Flexible Spending Account shall be credited to such fund or account. Amounts designated for the Participant's Premium Expense Reimbursement Account shall likewise be credited to such account for the purpose of paying Premium Expenses.

3.3 PERIODIC CONTRIBUTIONS

Notwithstanding the requirement provided above and in other Articles of this Plan that Salary Redirections be contributed to the Plan by the Employer on behalf of an Employee on a level and pro rata basis for each payroll period, the Employer and Administrator may implement a procedure in which Salary Redirections are contributed throughout the Plan Year on a periodic basis that is not pro rata for each payroll period. However, with regard to the Health Flexible Spending Account, the payment schedule for the required contributions may not be based on the rate or amount of reimbursements during the Plan Year.

ARTICLE IV BENEFITS

4.1 BENEFIT OPTIONS

Each Participant may elect any one or more of the following optional Benefits:

- (1) Health Flexible Spending Account
- (2) Dependent Care Flexible Spending Account
- (3) Insurance Premium Payment Plan
 - (i) Health Insurance Benefit
 - (ii) Group-Term Life Insurance Benefit
 - (iii) Cancer Insurance Benefit
 - (iv) Accidental Death and Dismemberment Insurance Benefit

4.2 HEALTH FLEXIBLE SPENDING ACCOUNT BENEFIT

Each Participant may elect to participate in the Health Flexible Spending Account option, in which case Article VI shall apply.

4.3 DEPENDENT CARE FLEXIBLE SPENDING ACCOUNT BENEFIT

Each Participant may elect to participate in the Dependent Care Flexible Spending Account option, in which case Article VII shall apply.

4.4 HEALTH INSURANCE BENEFIT

- (a) **Coverage for Participant and Dependents.** Each Participant may elect to be covered under a health Insurance Contract for the Participant, his or her Spouse, and his or her Dependents.
- (b) **Employer selects contracts.** The Employer may select suitable health Insurance Contracts for use in providing this health insurance benefit, which policies will provide uniform benefits for all Participants electing this Benefit.
- (c) **Contract incorporated by reference.** The rights and conditions with respect to the benefits payable from such health Insurance Contract shall be determined therefrom, and such Insurance Contract shall be incorporated herein by reference.

4.5 GROUP-TERM LIFE INSURANCE BENEFIT

- (a) **Coverage for Participant only.** Each Participant may elect to be covered under the Employer's group-term life Insurance Contract.
- (b) **Employer selects contracts.** The Employer may select suitable group-term life Insurance Contracts for use in providing this group-term life insurance benefit, which policies will provide benefits for all Participants electing this Benefit on a uniform basis.

(c) **Contract incorporated by reference.** The rights and conditions with respect to the benefits payable from such group-term life Insurance Contract shall be determined therefrom, and such group-term life Insurance Contract shall be incorporated herein by reference.

4.6 **CANCER INSURANCE BENEFIT**

(a) **Coverage for Participant and/or Dependents.** Each Participant may elect to be covered under the Employer's cancer Insurance Contract. In addition, the Participant may elect either individual or family coverage.

(b) **Employer selects contracts.** The Employer may select suitable cancer Insurance Contracts for use in providing this cancer insurance benefit, which policies will provide uniform benefits for all Participants electing this Benefit.

(c) **Contract incorporated by reference.** The rights and conditions with respect to the benefits payable from such cancer Insurance Contract shall be determined therefrom, and such cancer Insurance Contract shall be incorporated herein by reference.

4.7 **ACCIDENTAL DEATH AND DISMEMBERMENT INSURANCE BENEFIT**

(a) **Coverage for Participant and/or Dependents.** Each Participant may elect to be covered under the Employer's accidental death and dismemberment Insurance Contract.

(b) **Employer selects contracts.** The Employer may select suitable accidental death and dismemberment policies for use in providing this accidental death and dismemberment insurance benefit, which policies will provide uniform benefits for all Participants electing this Benefit.

(c) **Contract incorporated by reference.** The rights and conditions with respect to the benefits payable from such accidental death and dismemberment Insurance Contract shall be determined therefrom, and such accidental death and dismemberment Insurance Contract shall be incorporated herein by reference.

4.8 **NONDISCRIMINATION REQUIREMENTS**

(a) **Intent to be nondiscriminatory.** It is the intent of this Plan to provide benefits to a classification of employees which the Secretary of the Treasury finds not to be discriminatory in favor of the group in whose favor discrimination may not occur under Code Section 125.

(b) **25% concentration test.** It is the intent of this Plan not to provide qualified benefits as defined under Code Section 125 to Key Employees in amounts that exceed 25% of the aggregate of such Benefits provided for all Eligible Employees under the Plan. For purposes of the preceding sentence, qualified benefits shall not include benefits which (without regard to this paragraph) are includible in gross income.

(c) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination or possible taxation to Key Employees or a group of employees in whose favor discrimination may not occur in violation of Code Section 125, it may, but shall not be required to, reject any election or reduce contributions or non-taxable Benefits in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner. Contributions which are not utilized to provide Benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited and deposited into the benefit plan surplus.

ARTICLE V PARTICIPANT ELECTIONS

5.1 **INITIAL ELECTIONS**

An Employee who meets the eligibility requirements of Section 2.1 on the first day of, or during, a Plan Year may elect to participate in this Plan for all or the remainder of such Plan Year, provided he elects to do so on or before his effective date of participation pursuant to Section 2.2.

5.2 **SUBSEQUENT ANNUAL ELECTIONS**

During the Election Period prior to each subsequent Plan Year, each Participant shall be given the opportunity to elect, on an election of benefits form to be provided by the Administrator, which Benefit options he wishes to select. Any such election shall be effective for any Benefit expenses incurred during the Plan Year which follows the end of the Election Period. With regard to subsequent annual elections, the following options shall apply:

(a) A Participant or Employee who failed to initially elect to participate may elect different or new Benefits under the Plan during the Election Period;

(b) A Participant may terminate his participation in the Plan by notifying the Administrator in writing during the Election Period that he does not want to participate in the Plan for the next Plan Year, or by not electing any Benefit options;

(c) An Employee who elects not to participate for the Plan Year following the Election Period will have to wait until the next Election Period before again electing to participate in the Plan, except as provided for in Section 5.4.

5.3 FAILURE TO ELECT

Any Participant failing to complete an election of benefits form pursuant to Section 5.2 by the end of the applicable Election Period shall be deemed to have elected not to participate in the Plan for the upcoming Plan Year. No further Salary Redirections shall therefore be authorized for such subsequent Plan Year.

5.4 CHANGE IN STATUS

(a) **Change in status defined.** Any Participant may change a Benefit election after the Plan Year (to which such election relates) has commenced and make new elections with respect to the remainder of such Plan Year if, under the facts and circumstances, the changes are necessitated by and are consistent with a change in status which is acceptable under rules and regulations adopted by the Department of the Treasury, the provisions of which are incorporated by reference. Notwithstanding anything herein to the contrary, if the rules and regulations conflict, then such rules and regulations shall control.

In general, a change in election is not consistent if the change in status is the Participant's divorce, annulment or legal separation from a Spouse, the death of a Spouse or Dependent, or a Dependent ceasing to satisfy the eligibility requirements for coverage, and the Participant's election under the Plan is to cancel accident or health insurance coverage for any individual other than the one involved in such event. In addition, if the Participant, Spouse or Dependent gains or loses eligibility for coverage, then a Participant's election under the Plan to cease or decrease coverage for that individual under the Plan corresponds with that change in status only if coverage for that individual becomes applicable or is increased under the family member plan.

Regardless of the consistency requirement, if the individual, the individual's Spouse, or Dependent becomes eligible for continuation coverage under the Employer's group health plan as provided in Code Section 4980B or any similar state law, then the individual may elect to increase payments under this Plan in order to pay for the continuation coverage. However, this does not apply for COBRA eligibility due to divorce, annulment or legal separation.

Any new election shall be effective at such time as the Administrator shall prescribe, but not earlier than the first pay period beginning after the election form is completed and returned to the Administrator. For the purposes of this subsection, a change in status shall only include the following events or other events permitted by Treasury regulations:

- (1) Legal Marital Status: events that change a Participant's legal marital status, including marriage, divorce, death of a Spouse, legal separation or annulment;
- (2) Number of Dependents: Events that change a Participant's number of Dependents, including birth, adoption, placement for adoption, or death of a Dependent;
- (3) Employment Status: Any of the following events that change the employment status of the Participant, Spouse, or Dependent: termination or commencement of employment, a strike or lockout, commencement or return from an unpaid leave of absence, or a change in worksite. In addition, if the eligibility conditions of this Plan or other employee benefit plan of the Employer of the Participant, Spouse, or Dependent depend on the employment status of that individual and there is a change in that individual's employment status with the consequence that the individual becomes (or ceases to be) eligible under the plan, then that change constitutes a change in employment under this subsection;
- (4) Dependent satisfies or ceases to satisfy the eligibility requirements: An event that causes the Participant's Dependent to satisfy or cease to satisfy the requirements for coverage due to attainment of age, student status, or any similar circumstance; and
- (5) Residency: A change in the place of residence of the Participant, Spouse or Dependent, that would lead to a change in status (such as a loss of HMO coverage).

For the Dependent Care Flexible Spending Account, a Dependent becoming or ceasing to be a "Qualifying Dependent" as defined under Code Section 21(b) shall also qualify as a change in status.

Notwithstanding anything in this Section to the contrary, the gain of eligibility or change in eligibility of a child, as allowed under Code Sections 105(b) and 106, and guidance thereunder, shall qualify as a change in status.

(b) **Special enrollment rights.** Notwithstanding subsection (a), the Participants may change an election for group health coverage during a Plan Year and make a new election that corresponds with the special enrollment rights provided in Code Section 9801(f), including those authorized under the provisions of the Children's Health Insurance Program Reauthorization Act of 2009 (SCHIP); provided that such Participant meets the sixty (60) day notice requirement imposed by

Code Section 9801(f) (or such longer period as may be permitted by the Plan and communicated to Participants). Such change shall take place on a prospective basis, unless otherwise required by Code Section 9801(f) to be retroactive.

(c) **Qualified Medical Support Order.** Notwithstanding subsection (a), in the event of a judgment, decree, or order (including approval of a property settlement) ("order") resulting from a divorce, legal separation, annulment, or change in legal custody which requires accident or health coverage for a Participant's child (including a foster child who is a Dependent of the Participant):

(1) The Plan may change an election to provide coverage for the child if the order requires coverage under the Participant's plan; or

(2) The Participant shall be permitted to change an election to cancel coverage for the child if the order requires the former Spouse to provide coverage for such child, under that individual's plan and such coverage is actually provided.

(d) **Medicare or Medicaid.** Notwithstanding subsection (a), a Participant may change elections to cancel or reduce accident or health coverage for the Participant or the Participant's Spouse or Dependent if the Participant or the Participant's Spouse or Dependent is enrolled in the accident or health coverage of the Employer and becomes entitled to coverage (i.e., enrolled) under Part A or Part B of the Title XVIII of the Social Security Act (Medicare) or Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under Section 1928 of the Social Security Act (the program for distribution of pediatric vaccines). If the Participant or the Participant's Spouse or Dependent who has been entitled to Medicaid or Medicare coverage loses eligibility, that individual may prospectively elect coverage under the Plan if a benefit package option under the Plan provides similar coverage.

(e) **Cost increase or decrease.** If the cost of a Benefit provided under the Plan increases or decreases during a Plan Year, then the Plan shall automatically increase or decrease, as the case may be, the Salary Redirections of all affected Participants for such Benefit. Alternatively, if the cost of a benefit package option increases significantly, the Administrator shall permit the affected Participants to either make corresponding changes in their payments or revoke their elections and, in lieu thereof, receive on a prospective basis coverage under another benefit package option with similar coverage, or drop coverage prospectively if there is no benefit package option with similar coverage.

A cost increase or decrease refers to an increase or decrease in the amount of elective contributions under the Plan, whether resulting from an action taken by the Participants or an action taken by the Employer.

(f) **Loss of coverage.** If the coverage under a Benefit is significantly curtailed or ceases during a Plan Year, affected Participants may revoke their elections of such Benefit and, in lieu thereof, elect to receive on a prospective basis coverage under another plan with similar coverage, or drop coverage prospectively if no similar coverage is offered.

(g) **Addition of a new benefit.** If, during the period of coverage, a new benefit package option or other coverage option is added, an existing benefit package option is significantly improved, or an existing benefit package option or other coverage option is eliminated, then the affected Participants may elect the newly-added option, or elect another option if an option has been eliminated prospectively and make corresponding election changes with respect to other benefit package options providing similar coverage. In addition, those Eligible Employees who are not participating in the Plan may opt to become Participants and elect the new or newly improved benefit package option.

(h) **Loss of coverage under certain other plans.** A Participant may make a prospective election change to add group health coverage for the Participant, the Participant's Spouse or Dependent if such individual loses group health coverage sponsored by a governmental or educational institution, including a state children's health insurance program under the Social Security Act, the Indian Health Service or a health program offered by an Indian tribal government, a state health benefits risk pool, or a foreign government group health plan.

(i) **Change of coverage due to change under certain other plans.** A Participant may make a prospective election change that is on account of and corresponds with a change made under the plan of a Spouse's, former Spouse's or Dependent's employer if (1) the cafeteria plan or other benefits plan of the Spouse's, former Spouse's or Dependent's employer permits its participants to make a change; or (2) the cafeteria plan permits participants to make an election for a period of coverage that is different from the period of coverage under the cafeteria plan of a Spouse's, former Spouse's or Dependent's employer.

(j) **Change in dependent care provider.** A Participant may make a prospective election change that is on account of and corresponds with a change by the Participant in the dependent care provider. The availability of dependent care services from a new childcare provider is similar to a new benefit package option becoming available. A cost change is allowable in the Dependent Care Flexible Spending Account only if the cost change is imposed by a dependent care provider who is not related to the Participant, as defined in Code Section 152(a)(1) through (8).

(k) **Health FSA cannot change due to insurance change.** A Participant shall not be permitted to change an election to the Health Flexible Spending Account as a result of a cost or coverage change under any health insurance benefits.

(l) **Changes due to reduction in hours or enrollment in an Exchange Plan.** A Participant may prospectively revoke coverage under the group health plan (that is not a health Flexible Spending Account) which provides minimum essential coverage (as defined in Code §5000A(f)(1)) provided the following conditions are met:

Conditions for revocation due to reduction in hours of service:

- (1) The Participant has been reasonably expected to average at least 30 hours of service per week and there is a change in that Participant's status so that the Participant will reasonably be expected to average less than 30 hours of service per week after the change, even if that reduction does not result in the Participant ceasing to be eligible under the group health plan; and
- (2) The revocation of coverage under the group health plan corresponds to the intended enrollment of the Participant, and any related individuals who cease coverage due to the revocation, in another plan that provides minimum essential coverage with the new coverage effective no later than the first day of the second month following the month that includes the date the original coverage is revoked.

The Administrator may rely on the reasonable representation of the Participant who is reasonably expected to have an average of less than 30 hours of service per week for future periods that the Participant and related individuals have enrolled or intend to enroll in another plan that provides minimum essential coverage for new coverage that is effective no later than the first day of the second month following the month that includes the date the original coverage is revoked.

Conditions for revocation due to enrollment in a Qualified Health Plan:

- (1) The Participant is eligible for a Special Enrollment Period to enroll in a Qualified Health Plan through a Marketplace (federal or state exchange) pursuant to guidance issued by the Department of Health and Human Services and any other applicable guidance, or the Participant seeks to enroll in a Qualified Health Plan through a Marketplace during the Marketplace's annual open enrollment period; or
- (2) One or more related individuals of the Participant is eligible for a Special Enrollment Period to enroll in a Qualified Health Plan through a Marketplace (federal or state exchange) pursuant to guidance issued by the Department of Health and Human Services and any other applicable guidance, or related individual(s) seeks to enroll in a Qualified Health Plan through a Marketplace during the Marketplace's annual open enrollment period; and
- (3) The revocation of the election of coverage under the group health plan – either revocation in whole or revocation of other-than-self coverage – corresponds to the intended enrollment of the Participant and/or any related individuals who cease coverage due to the revocation in a Qualified Health Plan through a Marketplace for new coverage that is effective beginning no later than the day immediately following the last day of the original coverage that is revoked.

The Administrator may rely on the reasonable representation of a Participant (on behalf of themselves or related individuals) who has an enrollment opportunity for a Qualified Health Plan through a Marketplace that the Participant or related individuals have enrolled or intend to enroll in a Qualified Health Plan for new coverage that is effective beginning no later than the day immediately following the last day of the original coverage that is revoked.

ARTICLE VI HEALTH FLEXIBLE SPENDING ACCOUNT

6.1 ESTABLISHMENT OF PLAN

This Health Flexible Spending Account is intended to qualify as a medical reimbursement plan under Code Section 105 and shall be interpreted in a manner consistent with such Code Section and the Treasury regulations thereunder. Participants who elect to participate in this Health Flexible Spending Account may submit claims for the reimbursement of Medical Expenses. All amounts reimbursed shall be periodically paid from amounts allocated to the Health Flexible Spending Account. Periodic payments reimbursing Participants from the Health Flexible Spending Account shall in no event occur less frequently than monthly.

6.2 DEFINITIONS

For the purposes of this Article and the Cafeteria Plan, the terms below have the following meaning:

(a) **"Health Flexible Spending Account"** means the account established for Participants pursuant to this Plan to which part of their Cafeteria Plan Benefit Dollars may be allocated and from which all allowable Medical Expenses incurred by a Participant, his or her Spouse and his or her Dependents may be reimbursed.

(b) **"Highly Compensated Participant"** means, for the purposes of this Article and determining discrimination under Code Section 105(h), a participant who is:

- (1) one of the 5 highest paid officers;

(2) a shareholder who owns (or is considered to own applying the rules of Code Section 318) more than 10 percent in value of the stock of the Employer; or

(3) among the highest paid 25 percent of all Employees (other than exclusions permitted by Code Section 105(h)(3)(B) for those individuals who are not Participants).

(c) **"Medical Expenses"** means any expense for medical care within the meaning of the term "medical care" as defined in Code Section 213(d) and the rulings and Treasury regulations thereunder, and not otherwise used by the Participant as a deduction in determining his tax liability under the Code. "Medical Expenses" can be incurred by the Participant, his or her Spouse and his or her Dependents. "Incurred" means, with regard to Medical Expenses, when the Participant is provided with the medical care that gives rise to the Medical Expense and not when the Participant is formally billed or charged for, or pays for, the medical care.

A Participant may not be reimbursed for the cost of other health coverage such as premiums paid under plans maintained by the employer of the Participant's Spouse or individual policies maintained by the Participant or his Spouse or Dependent.

A Participant may not be reimbursed for "qualified long-term care services" as defined in Code Section 7702B(c).

(d) The definitions of Article I are hereby incorporated by reference to the extent necessary to interpret and apply the provisions of this Health Flexible Spending Account.

6.3 FORFEITURES

The amount in the Health Flexible Spending Account as of the end of any Plan Year (and after the processing of all claims for such Plan Year pursuant to Section 6.7 hereof) shall be forfeited and credited to the benefit plan surplus. In such event, the Participant shall have no further claim to such amount for any reason, subject to Section 8.2.

6.4 LIMITATION ON ALLOCATIONS

(a) Notwithstanding any provision contained in this Health Flexible Spending Account to the contrary, the maximum amount of salary reductions that may be allocated to the Health Flexible Spending Account by a Participant in or on account of any Plan Year is the statutory amount under Code Section 125(i), as adjusted for increases in the cost of living. The cost of living adjustment in effect for a calendar year applies to any Plan Year beginning with or within such calendar year. The dollar increase in effect on January 1 of any calendar year shall be effective for the Plan Year beginning with or within such calendar year. For any short Plan Year, the limit shall be an amount equal to the limit for the calendar year in which the Plan Year begins multiplied by the ratio obtained by dividing the number of full months in the short Plan Year by twelve (12).

(b) **Participation in Other Plans.** All employers that are treated as a single employer under Code Sections 414(b), (c), or (m), relating to controlled groups and affiliated service groups, are treated as a single employer for purposes of the statutory limit. If a Participant participates in multiple cafeteria plans offering health flexible spending accounts maintained by members of a controlled group or affiliated service group, the Participant's total Health Flexible Spending Account contributions under all of the cafeteria plans are limited to the statutory limit (as adjusted). However, a Participant employed by two or more employers that are not members of the same controlled group may elect up to the statutory limit (as adjusted) under each Employer's Health Flexible Spending Account.

6.5 NONDISCRIMINATION REQUIREMENTS

(a) **Intent to be nondiscriminatory.** It is the intent of this Health Flexible Spending Account not to discriminate in violation of the Code and the Treasury regulations thereunder.

(b) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination under this Health Flexible Spending Account, it may, but shall not be required to, reject any elections or reduce contributions or Benefits in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner. Contributions which are not utilized to provide Benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited and credited to the benefit plan surplus.

6.6 COORDINATION WITH CAFETERIA PLAN

All Participants under the Cafeteria Plan are eligible to receive Benefits under this Health Flexible Spending Account. The enrollment under the Cafeteria Plan shall constitute enrollment under this Health Flexible Spending Account. In addition, other matters concerning contributions, elections and the like shall be governed by the general provisions of the Cafeteria Plan.

6.7 HEALTH FLEXIBLE SPENDING ACCOUNT CLAIMS

(a) **Expenses must be incurred during Plan Year.** All Medical Expenses incurred by a Participant, his or her Spouse and his or her Dependents during the Plan Year shall be reimbursed during the Plan Year subject to Section 2.5, even

though the submission of such a claim occurs after his participation hereunder ceases; but provided that the Medical Expenses were incurred during the applicable Plan Year. Medical Expenses are treated as having been incurred when the Participant is provided with the medical care that gives rise to the medical expenses, not when the Participant is formally billed or charged for, or pays for the medical care.

(b) **Reimbursement available throughout Plan Year.** The Administrator shall direct the reimbursement to each eligible Participant for all allowable Medical Expenses, up to a maximum of the amount designated by the Participant for the Health Flexible Spending Account for the Plan Year. Reimbursements shall be made available to the Participant throughout the year without regard to the level of Cafeteria Plan Benefit Dollars which have been allocated to the fund at any given point in time. Furthermore, a Participant shall be entitled to reimbursements only for amounts in excess of any payments or other reimbursements under any health care plan covering the Participant and/or his Spouse or Dependents.

(c) **Payments.** Reimbursement payments under this Plan shall be made directly to the Participant. However, in the Administrator's discretion, payments may be made directly to the service provider. The application for payment or reimbursement shall be made to the Administrator on an acceptable form within a reasonable time of incurring the debt or paying for the service. The application shall include a written statement from an independent third party stating that the Medical Expense has been incurred and the amount of such expense. Furthermore, the Participant shall provide a written statement that the Medical Expense has not been reimbursed or is not reimbursable under any other health plan coverage and, if reimbursed from the Health Flexible Spending Account, such amount will not be claimed as a tax deduction. The Administrator shall retain a file of all such applications.

(d) **Claims for reimbursement.** Claims for the reimbursement of Medical Expenses incurred in any Plan Year shall be paid as soon after a claim has been filed as is administratively practicable; provided however, that if a Participant fails to submit a claim no later than the end of the month following 90 days after the end of the Plan Year, those Medical Expense claims shall not be considered for reimbursement by the Administrator.

6.8 DEBIT AND CREDIT CARDS

Participants may, subject to a procedure established by the Administrator and applied in a uniform nondiscriminatory manner, use debit and/or credit (stored value) cards ("cards") provided by the Administrator and the Plan for payment of Medical Expenses, subject to the following terms:

(a) **Card only for medical expenses.** Each Participant issued a card shall certify that such card shall only be used for Medical Expenses. The Participant shall also certify that any Medical Expense paid with the card has not already been reimbursed by any other plan covering health benefits and that the Participant will not seek reimbursement from any other plan covering health benefits.

(b) **Card issuance.** Such card shall be issued upon the Participant's Effective Date of Participation and reissued for each Plan Year the Participant remains a Participant in the Health Flexible Spending Account. Such card shall be automatically cancelled upon the Participant's death or termination of employment, or if such Participant has a change in status that results in the Participant's withdrawal from the Health Flexible Spending Account.

(c) **Maximum dollar amount available.** The dollar amount of coverage available on the card shall be the amount elected by the Participant for the Plan Year. The maximum dollar amount of coverage available shall be the maximum amount for the Plan Year as set forth in Section 6.4.

(d) **Only available for use with certain service providers.** The cards shall only be accepted by such merchants and service providers as have been approved by the Administrator following IRS guidelines.

(e) **Card use.** The cards shall only be used for Medical Expense purchases at these providers, including, but not limited to, the following:

- (1) Co-payments for doctor and other medical care;
- (2) Purchase of drugs prescribed by a health care provider, including, if permitted by the Administrator, over-the-counter medications and menstrual care products as allowed under IRS regulations;
- (3) Purchase of medical items such as eyeglasses, syringes, crutches, etc.

(f) **Substantiation.** Such purchases by the cards shall be subject to substantiation by the Administrator, usually by submission of a receipt from a service provider describing the service, the date and the amount. The Administrator shall also follow the requirements set forth in Revenue Ruling 2003-43 and Notice 2006-69. All charges shall be conditional pending confirmation and substantiation.

(g) **Correction methods.** If such purchase is later determined by the Administrator to not qualify as a Medical Expense, the Administrator, in its discretion, shall use one of the following correction methods to make the Plan whole. Until the amount is repaid, the Administrator shall take further action to ensure that further violations of the terms of the card do not occur, up to and including denial of access to the card.

- (1) Repayment of the improper amount by the Participant;
- (2) Withholding the improper payment from the Participant's wages or other compensation to the extent consistent with applicable federal or state law;
- (3) Claims substitution or offset of future claims until the amount is repaid; and
- (4) if subsections (1) through (3) fail to recover the amount, consistent with the Employer's business practices, the Employer may treat the amount as any other business indebtedness.

ARTICLE VII DEPENDENT CARE FLEXIBLE SPENDING ACCOUNT

7.1 ESTABLISHMENT OF ACCOUNT

This Dependent Care Flexible Spending Account is intended to qualify as a program under Code Section 129 and shall be interpreted in a manner consistent with such Code Section. Participants who elect to participate in this program may submit claims for the reimbursement of Employment-Related Dependent Care Expenses. All amounts reimbursed shall be paid from amounts allocated to the Participant's Dependent Care Flexible Spending Account.

7.2 DEFINITIONS

For the purposes of this Article and the Cafeteria Plan the terms below shall have the following meaning:

(a) **"Dependent Care Flexible Spending Account"** means the account established for a Participant pursuant to this Article to which part of his Cafeteria Plan Benefit Dollars may be allocated and from which Employment-Related Dependent Care Expenses of the Participant may be reimbursed for the care of the Qualifying Dependents of Participants.

(b) **"Earned Income"** means earned income as defined under Code Section 32(c)(2), but excluding such amounts paid or incurred by the Employer for dependent care assistance to the Participant.

(c) **"Employment-Related Dependent Care Expenses"** means the amounts paid for expenses of a Participant for those services which if paid by the Participant would be considered employment related expenses under Code Section 21(b)(2). Generally, they shall include expenses for household services and for the care of a Qualifying Dependent, to the extent that such expenses are incurred to enable the Participant to be gainfully employed for any period for which there are one or more Qualifying Dependents with respect to such Participant. Employment-Related Dependent Care Expenses are treated as having been incurred when the Participant's Qualifying Dependents are provided with the dependent care that gives rise to the Employment-Related Dependent Care Expenses, not when the Participant is formally billed or charged for, or pays for the dependent care. The determination of whether an amount qualifies as an Employment-Related Dependent Care Expense shall be made subject to the following rules:

- (1) If such amounts are paid for expenses incurred outside the Participant's household, they shall constitute Employment-Related Dependent Care Expenses only if incurred for a Qualifying Dependent as defined in Section 7.2(d)(1) (or deemed to be, as described in Section 7.2(d)(1) pursuant to Section 7.2(d)(3)), or for a Qualifying Dependent as defined in Section 7.2(d)(2) (or deemed to be, as described in Section 7.2(d)(2) pursuant to Section 7.2(d)(3)) who regularly spends at least 8 hours per day in the Participant's household;
 - (2) If the expense is incurred outside the Participant's home at a facility that provides care for a fee, payment, or grant for more than 6 individuals who do not regularly reside at the facility, the facility must comply with all applicable state and local laws and regulations, including licensing requirements, if any; and
 - (3) Employment-Related Dependent Care Expenses of a Participant shall not include amounts paid or incurred to a child of such Participant who is under the age of 19 or to an individual who is a Dependent of such Participant or such Participant's Spouse.
- (d) **"Qualifying Dependent"** means, for Dependent Care Flexible Spending Account purposes,
- (1) a Participant's Dependent (as defined in Code Section 152(a)(1)) who has not attained age 13;
 - (2) a Dependent or the Spouse of a Participant who is physically or mentally incapable of caring for himself or herself and has the same principal place of abode as the Participant for more than one-half of such taxable year; or

(3) a child that is deemed to be a Qualifying Dependent described in paragraph (1) or (2) above, whichever is appropriate, pursuant to Code Section 21(e)(5).

(e) The definitions of Article I are hereby incorporated by reference to the extent necessary to interpret and apply the provisions of this Dependent Care Flexible Spending Account.

7.3 DEPENDENT CARE FLEXIBLE SPENDING ACCOUNTS

The Administrator shall establish a Dependent Care Flexible Spending Account for each Participant who elects to apply Cafeteria Plan Benefit Dollars to Dependent Care Flexible Spending Account benefits.

7.4 INCREASES IN DEPENDENT CARE FLEXIBLE SPENDING ACCOUNTS

A Participant's Dependent Care Flexible Spending Account shall be increased each pay period by the portion of Cafeteria Plan Benefit Dollars that he has elected to apply toward his Dependent Care Flexible Spending Account pursuant to elections made under Article V hereof.

7.5 DECREASES IN DEPENDENT CARE FLEXIBLE SPENDING ACCOUNTS

A Participant's Dependent Care Flexible Spending Account shall be reduced by the amount of any Employment-Related Dependent Care Expense reimbursements paid or incurred on behalf of a Participant pursuant to Section 7.12 hereof.

7.6 ALLOWABLE DEPENDENT CARE REIMBURSEMENT

Subject to limitations contained in Section 7.9 of this Program, and to the extent of the amount contained in the Participant's Dependent Care Flexible Spending Account, a Participant who incurs Employment-Related Dependent Care Expenses shall be entitled to receive from the Employer full reimbursement for the entire amount of such expenses incurred during the Plan Year or portion thereof during which he is a Participant.

7.7 ANNUAL STATEMENT OF BENEFITS

On or before January 31st of each calendar year, the Employer shall furnish to each Employee who was a Participant and received benefits under Section 7.6 during the prior calendar year, a statement of all such benefits paid to or on behalf of such Participant during the prior calendar year. This statement is set forth on the Participant's Form W-2.

7.8 FORFEITURES

The amount in a Participant's Dependent Care Flexible Spending Account as of the end of any Plan Year (and after the processing of all claims for such Plan Year pursuant to Section 7.12 hereof) shall be forfeited and credited to the benefit plan surplus. In such event, the Participant shall have no further claim to such amount for any reason.

7.9 LIMITATION ON PAYMENTS

(a) **Code limits.** Notwithstanding any provision contained in this Article to the contrary, amounts paid from a Participant's Dependent Care Flexible Spending Account in or on account of any taxable year of the Participant shall not exceed the lesser of the Earned Income limitation described in Code Section 129(b) or \$5,000 (\$2,500 if a separate tax return is filed by a Participant who is married as determined under the rules of paragraphs (3) and (4) of Code Section 21(e)).

7.10 NONDISCRIMINATION REQUIREMENTS

(a) **Intent to be nondiscriminatory.** It is the intent of this Dependent Care Flexible Spending Account that contributions or benefits not discriminate in favor of the group of employees in whose favor discrimination may not occur under Code Section 129(d).

(b) **25% test for shareholders.** It is the intent of this Dependent Care Flexible Spending Account that not more than 25 percent of the amounts paid by the Employer for dependent care assistance during the Plan Year will be provided for the class of individuals who are shareholders or owners (or their Spouses or Dependents), each of whom (on any day of the Plan Year) owns more than 5 percent of the stock or of the capital or profits interest in the Employer.

(c) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination or possible taxation to a group of employees in whose favor discrimination may not occur in violation of Code Section 129 it may, but shall not be required to, reject any elections or reduce contributions or non-taxable benefits in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner. Contributions which are not utilized to provide Benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited.

7.11 COORDINATION WITH CAFETERIA PLAN

All Participants under the Cafeteria Plan are eligible to receive Benefits under this Dependent Care Flexible Spending Account. The enrollment and termination of participation under the Cafeteria Plan shall constitute enrollment and termination of participation under this Dependent Care Flexible Spending Account. In addition, other matters concerning contributions, elections and the like shall be governed by the general provisions of the Cafeteria Plan.

7.12 DEPENDENT CARE FLEXIBLE SPENDING ACCOUNT CLAIMS

The Administrator shall direct the payment of all such Dependent Care claims to the Participant upon the presentation to the Administrator of documentation of such expenses in a form satisfactory to the Administrator. However, in the Administrator's discretion, payments may be made directly to the service provider. In its discretion in administering the Plan, the Administrator may utilize forms and require documentation of costs as may be necessary to verify the claims submitted. At a minimum, the form shall include a statement from an independent third party as proof that the expense has been incurred during the Plan Year and the amount of such expense. In addition, the Administrator may require that each Participant who desires to receive reimbursement under this Program for Employment-Related Dependent Care Expenses submit a statement which may contain some or all of the following information:

- (a) The Dependent or Dependents for whom the services were performed;
- (b) The nature of the services performed for the Participant, the cost of which he wishes reimbursement;
- (c) The relationship, if any, of the person performing the services to the Participant;
- (d) If the services are being performed by a child of the Participant, the age of the child;
- (e) A statement as to where the services were performed;
- (f) If any of the services were performed outside the home, a statement as to whether the Dependent for whom such services were performed spends at least 8 hours a day in the Participant's household;
- (g) If the services were being performed in a day care center, a statement:
 - (1) that the day care center complies with all applicable laws and regulations of the state of residence,
 - (2) that the day care center provides care for more than 6 individuals (other than individuals residing at the center), and
 - (3) of the amount of fee paid to the provider.
- (h) If the Participant is married, a statement containing the following:
 - (1) the Spouse's salary or wages if he or she is employed, or
 - (2) if the Participant's Spouse is not employed, that
 - (i) he or she is incapacitated, or
 - (ii) he or she is a full-time student attending an educational institution and the months during the year which he or she attended such institution.
- (i) **Claims for reimbursement.** If a Participant fails to submit a claim no later than the end of the month following 90 days after the end of the Plan Year, those claims shall not be considered for reimbursement by the Administrator.

ARTICLE VIII BENEFITS AND RIGHTS

8.1 CLAIM FOR BENEFITS

- (a) **Insurance claims.** Any claim for Benefits underwritten by Insurance Contract(s) shall be made to the Insurer. If the Insurer denies any claim, the Participant or beneficiary shall follow the Insurer's claims review procedure.
- (b) **Dependent Care Flexible Spending Account or Health Flexible Spending Account claims.** Any claim for Dependent Care Flexible Spending Account or Health Flexible Spending Account Benefits shall be made to the Administrator. For the Health Flexible Spending Account, if a Participant fails to submit a claim no later than the end of the month following 90 days after the end of the Plan Year, those claims shall not be considered for reimbursement by the Administrator. For the Dependent Care Flexible Spending Account, if a Participant fails to submit a claim no later than the end of the month following 90 days after the end of the Plan Year, those claims shall not be considered for reimbursement by the Administrator. If the

Administrator denies a claim, the Administrator may provide notice to the Participant or beneficiary, in writing, within 90 days after the claim is filed unless special circumstances require an extension of time for processing the claim. The notice of a denial of a claim shall be written in a manner calculated to be understood by the claimant and shall set forth:

- (1) specific references to the pertinent Plan provisions on which the denial is based;
 - (2) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation as to why such information is necessary; and
 - (3) an explanation of the Plan's claim procedure.
- (c) **Appeal.** Within 60 days after receipt of the above material, the claimant shall have a reasonable opportunity to appeal the claim denial to the Administrator for a full and fair review. The claimant or his duly authorized representative may:
- (1) request a review upon written notice to the Administrator;
 - (2) review pertinent documents; and
 - (3) submit issues and comments in writing.
- (d) **Review of appeal.** A decision on the review by the Administrator will be made not later than 60 days after receipt of a request for review, unless special circumstances require an extension of time for processing (such as the need to hold a hearing), in which event a decision should be rendered as soon as possible, but in no event later than 120 days after such receipt. The decision of the Administrator shall be written and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, with specific references to the pertinent Plan provisions on which the decision is based.
- (f) **Forfeitures.** Any balance remaining in the Participant's Health Flexible Spending Account or Dependent Care Flexible Spending Account as of the end of the time for claims reimbursement for each Plan Year and Grace Period (if applicable) shall be forfeited and deposited in the benefit plan surplus of the Employer pursuant to Section 6.3 or Section 7.8, whichever is applicable, unless the Participant had made a claim for such Plan Year, in writing, which has been denied or is pending; in which event the amount of the claim shall be held in his account until the claim appeal procedures set forth above have been satisfied or the claim is paid. If any such claim is denied on appeal, the amount held beyond the end of the Plan Year shall be forfeited and credited to the benefit plan surplus. If the Plan Administrator is unable to make payment to any Participant or other person to whom a payment is due under the Plan because it cannot ascertain the identity or whereabouts of such Participant or other person after reasonable efforts have been made to identify or locate such person, then such payment and all subsequent payments otherwise due to such Participant or other person shall be forfeited and returned to the Employer following a reasonable time after the date any such payment first became due.

8.2 APPLICATION OF BENEFIT PLAN SURPLUS

Any forfeited amounts credited to the benefit plan surplus by virtue of the failure of a Participant to incur a qualified expense or seek reimbursement in a timely manner may, but need not be, separately accounted for after the close of the Plan Year (or after such further time specified herein for the filing of claims) in which such forfeitures arose. In no event shall such amounts be carried over to reimburse a Participant for expenses incurred during a subsequent Plan Year for the same or any other Benefit available under the Plan; nor shall amounts forfeited by a particular Participant be made available to such Participant in any other form or manner, except as permitted by Treasury regulations. Amounts in the benefit plan surplus shall be used to defray any administrative costs and experience losses or used to provide additional benefits under the Plan.

ARTICLE IX ADMINISTRATION

9.1 PLAN ADMINISTRATION

The Employer shall be the Administrator, unless the Employer elects otherwise. The Employer may appoint any person, including, but not limited to, the Employees of the Employer, to perform the duties of the Administrator. Any person so appointed shall signify acceptance by filing acceptance in writing (or such other form as acceptable to both parties) with the Employer. Upon the resignation or removal of any individual performing the duties of the Administrator, the Employer may designate a successor.

If the Employer elects, the Employer shall appoint one or more Administrators. Any person, including, but not limited to, the Employees of the Employer, shall be eligible to serve as an Administrator. Any person so appointed shall signify acceptance by filing acceptance in writing (or such other form as acceptable to both parties) with the Employer. An Administrator may resign by delivering a resignation in writing (or such other form as acceptable to both parties) to the Employer or be removed by the Employer by delivery of notice of removal (in writing or such other form as acceptable to both parties), to take effect at a date specified therein, or upon delivery to the Administrator if no date is specified. The Employer shall be empowered to appoint and remove the Administrator from time to time as

it deems necessary for the proper administration of the Plan to ensure that the Plan is being operated for the exclusive benefit of the Employees entitled to participate in the Plan in accordance with the terms of the Plan and the Code.

The operation of the Plan shall be under the supervision of the Administrator. It shall be a principal duty of the Administrator to see that the Plan is carried out in accordance with its terms, and for the exclusive benefit of Employees entitled to participate in the Plan. The Administrator shall have full power and discretion to administer the Plan in all of its details and determine all questions arising in connection with the administration, interpretation, and application of the Plan. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan. The Administrator shall have all powers necessary or appropriate to accomplish the Administrator's duties under the Plan. The Administrator shall be charged with the duties of the general administration of the Plan as set forth under the Plan, including, but not limited to, in addition to all other powers provided by this Plan:

- (a) To make and enforce such procedures, rules and regulations as the Administrator deems necessary or proper for the efficient administration of the Plan;
- (b) To interpret the provisions of the Plan, the Administrator's interpretations thereof in good faith to be final and conclusive on all persons claiming benefits by operation of the Plan;
- (c) To decide all questions concerning the Plan and the eligibility of any person to participate in the Plan and to receive benefits provided by operation of the Plan;
- (d) To reject elections or to limit contributions or Benefits for certain highly compensated participants if it deems such to be desirable in order to avoid discrimination under the Plan in violation of applicable provisions of the Code;
- (e) To provide Employees with a reasonable notification of their benefits available by operation of the Plan and to assist any Participant regarding the Participant's rights, benefits or elections under the Plan;
- (f) To keep and maintain the Plan documents and all other records pertaining to and necessary for the administration of the Plan;
- (g) To review and settle all claims against the Plan, to approve reimbursement requests, and to authorize the payment of benefits if the Administrator determines such shall be paid if the Administrator decides in its discretion that the applicant is entitled to them. This authority specifically permits the Administrator to settle disputed claims for benefits and any other disputed claims made against the Plan;
- (h) To appoint such agents, counsel, accountants, consultants, and other persons or entities as may be required to assist in administering the Plan.

Any procedure, discretionary act, interpretation or construction taken by the Administrator shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan shall continue to comply with the terms of Code Section 125 and the Treasury regulations thereunder.

9.2 EXAMINATION OF RECORDS

The Administrator shall make available to each Participant, Eligible Employee and any other Employee of the Employer such records as pertain to their interest under the Plan for examination at reasonable times during normal business hours.

9.3 PAYMENT OF EXPENSES

Any reasonable administrative expenses shall be paid by the Employer unless the Employer determines that administrative costs shall be borne by the Participants under the Plan or by any Trust Fund which may be established hereunder. The Administrator may impose reasonable conditions for payments, provided that such conditions shall not discriminate in favor of highly compensated employees.

9.4 INSURANCE CONTROL CLAUSE

In the event of a conflict between the terms of this Plan and the terms of an Insurance Contract of an independent third party Insurer whose product is then being used in conjunction with this Plan, the terms of the Insurance Contract shall control as to those Participants receiving coverage under such Insurance Contract. For this purpose, the Insurance Contract shall control in defining the persons eligible for insurance, the dates of their eligibility, the conditions which must be satisfied to become insured, if any, the benefits Participants are entitled to and the circumstances under which insurance terminates.

9.5 INDEMNIFICATION OF ADMINISTRATOR

The Employer agrees to indemnify and to defend to the fullest extent permitted by law any Employee serving as the Administrator or as a member of a committee designated as Administrator (including any Employee or former Employee who previously served as Administrator or as a member of such committee) against all liabilities, damages, costs and expenses (including attorney's fees and amounts paid in settlement of any claims approved by the Employer) occasioned by any act or omission to act in connection with the Plan, if such act or omission is in good faith.

**ARTICLE X
AMENDMENT OR TERMINATION OF PLAN**

10.1 AMENDMENT

The Employer, at any time or from time to time, may amend any or all of the provisions of the Plan without the consent of any Employee or Participant. No amendment shall have the effect of modifying any benefit election of any Participant in effect at the time of such amendment, unless such amendment is made to comply with Federal, state or local laws, statutes or regulations.

10.2 TERMINATION

The Employer reserves the right to terminate this Plan, in whole or in part, at any time. In the event the Plan is terminated, no further contributions shall be made. Benefits under any Insurance Contract shall be paid in accordance with the terms of the Insurance Contract.

No further additions shall be made to the Health Flexible Spending Account or Dependent Care Flexible Spending Account, but all payments from such fund shall continue to be made according to the elections in effect until 90 days after the termination date of the Plan. Any amounts remaining in any such fund or account as of the end of such period shall be forfeited and deposited in the benefit plan surplus after the expiration of the filing period.

**ARTICLE XI
MISCELLANEOUS**

11.1 PLAN INTERPRETATION

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner. This Plan shall be read in its entirety and not severed except as provided in Section 11.12.

11.2 GENDER, NUMBER AND TENSE

Wherever any words are used herein in one gender, they shall be construed as though they were also used in all genders in all cases where they would so apply; whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply; and whenever any words are used herein in the past or present tense, they shall be construed as though they were also used in the other form in all cases where they would so apply.

11.3 WRITTEN DOCUMENT

This Plan, in conjunction with any separate written document which may be required by law, is intended to satisfy the written Plan requirement of Code Section 125 and any Treasury regulations thereunder relating to cafeteria plans.

11.4 EXCLUSIVE BENEFIT

This Plan shall be maintained for the exclusive benefit of the Employees who participate in the Plan.

11.5 PARTICIPANT'S RIGHTS

This Plan shall not be deemed to constitute an employment contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon him as a Participant of this Plan.

11.6 ACTION BY THE EMPLOYER

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

11.7 EMPLOYER'S PROTECTIVE CLAUSES

(a) **Insurance purchase.** Upon the failure of either the Participant or the Employer to obtain the insurance contemplated by this Plan (whether as a result of negligence, gross neglect or otherwise), the Participant's Benefits shall be limited to the insurance premium(s), if any, that remained unpaid for the period in question and the actual insurance proceeds, if any, received by the Employer or the Participant as a result of the Participant's claim.

(b) **Validity of insurance contract.** The Employer shall not be responsible for the validity of any Insurance Contract issued hereunder or for the failure on the part of the Insurer to make payments provided for under any Insurance Contract. Once insurance is applied for or obtained, the Employer shall not be liable for any loss which may result from the failure to pay Premiums to the extent Premium notices are not received by the Employer.

11.8 NO GUARANTEE OF TAX CONSEQUENCES

Neither the Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant under the Plan will be excludable from the Participant's gross income for federal or state income tax purposes, or that any other federal or state tax treatment will apply to or be available to any Participant. It shall be the obligation of each Participant to determine whether each payment under the Plan is excludable from the Participant's gross income for federal and state income tax purposes, and to notify the Employer if the Participant has reason to believe that any such payment is not so excludable. Notwithstanding the foregoing, the rights of Participants under this Plan shall be legally enforceable.

11.9 INDEMNIFICATION OF EMPLOYER BY PARTICIPANTS

If any Participant receives one or more payments or reimbursements under the Plan that are not for a permitted Benefit, such Participant shall indemnify and reimburse the Employer for any liability it may incur for failure to withhold federal or state income tax or Social Security tax from such payments or reimbursements. However, such indemnification and reimbursement shall not exceed the amount of additional federal and state income tax (plus any penalties) that the Participant would have owed if the payments or reimbursements had been made to the Participant as regular cash compensation, plus the Participant's share of any Social Security tax that would have been paid on such compensation, less any such additional income and Social Security tax actually paid by the Participant.

11.10 FUNDING

Unless otherwise required by law, contributions to the Plan need not be placed in trust or dedicated to a specific Benefit, but may instead be considered general assets of the Employer. Furthermore, and unless otherwise required by law, nothing herein shall be construed to require the Employer or the Administrator to maintain any fund or segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or security or other interest in, any fund, account or asset of the Employer from which any payment under the Plan may be made.

11.11 GOVERNING LAW

This Plan is governed by the Code and the Treasury regulations issued thereunder (as they might be amended from time to time). In no event shall the Employer guarantee the favorable tax treatment sought by this Plan. To the extent not preempted by Federal law, the provisions of this Plan shall be construed, enforced and administered according to the laws of the State of New York.

11.12 SEVERABILITY

If any provision of the Plan is held invalid or unenforceable, its invalidity or unenforceability shall not affect any other provisions of the Plan, and the Plan shall be construed and enforced as if such provision had not been included herein.

11.13 CAPTIONS

The captions contained herein are inserted only as a matter of convenience and for reference, and in no way define, limit, enlarge or describe the scope or intent of the Plan, nor in any way shall affect the Plan or the construction of any provision thereof.

11.14 CONTINUATION OF COVERAGE (COBRA)

Notwithstanding anything in the Plan to the contrary, in the event any benefit under this Plan subject to the continuation coverage requirement of Code Section 4980B becomes unavailable, each Participant will be entitled to continuation coverage as prescribed in Code Section 4980B, and related regulations. This Section shall only apply if the Employer employs at least twenty (20) employees on more than 50% of its typical business days in the previous calendar year.

11.15 FAMILY AND MEDICAL LEAVE ACT (FMLA)

Notwithstanding anything in the Plan to the contrary, in the event any benefit under this Plan becomes subject to the requirements of the Family and Medical Leave Act and regulations thereunder, this Plan shall be operated in accordance with Regulation 1.125-3.

11.16 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

Notwithstanding anything in this Plan to the contrary, this Plan shall be operated in accordance with HIPAA and regulations thereunder.

11.17 UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)

Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with the Uniform Services Employment And Reemployment Rights Act (USERRA) and the regulations thereunder.

11.18 COMPLIANCE WITH HIPAA PRIVACY STANDARDS

(a) **Application.** If any benefits under this Cafeteria Plan are subject to the Standards for Privacy of Individually Identifiable Health Information (45 CFR Part 164, the "Privacy Standards"), then this Section shall apply.

(b) **Disclosure of PHI.** The Plan shall not disclose Protected Health Information to any member of the Employer's workforce unless each of the conditions set out in this Section are met. "Protected Health Information" shall have the same definition as set forth in the Privacy Standards but generally shall mean individually identifiable information about the past, present or future physical or mental health or condition of an individual, including genetic information and information about treatment or payment for treatment.

(c) **PHI disclosed for administrative purposes.** Protected Health Information disclosed to members of the Employer's workforce shall be used or disclosed by them only for purposes of Plan administrative functions. The Plan's administrative functions shall include all Plan payment functions and health care operations. The terms "payment" and "health care operations" shall have the same definitions as set out in the Privacy Standards, but the term "payment" generally shall mean activities taken to determine or fulfill Plan responsibilities with respect to eligibility, coverage, provision of benefits, or reimbursement for health care. Protected Health Information that consists of genetic information will not be used or disclosed for underwriting purposes.

(d) **PHI disclosed to certain workforce members.** The Plan shall disclose Protected Health Information only to members of the Employer's workforce who are designated and authorized to receive such Protected Health Information, and only to the extent and in the minimum amount necessary for that person to perform his or her duties with respect to the Plan. "Members of the Employer's workforce" shall refer to all employees and other persons under the control of the Employer. The Employer shall keep an updated list of those authorized to receive Protected Health Information.

(1) An authorized member of the Employer's workforce who receives Protected Health Information shall use or disclose the Protected Health Information only to the extent necessary to perform his or her duties with respect to the Plan.

(2) In the event that any member of the Employer's workforce uses or discloses Protected Health Information other than as permitted by this Section and the Privacy Standards, the incident shall be reported to the Plan's privacy official. The privacy official shall take appropriate action, including:

(i) investigation of the incident to determine whether the breach occurred inadvertently, through negligence or deliberately; whether there is a pattern of breaches; and the degree of harm caused by the breach;

(ii) appropriate sanctions against the persons causing the breach which, depending upon the nature of the breach, may include oral or written reprimand, additional training, or termination of employment;

(iii) mitigation of any harm caused by the breach, to the extent practicable; and

(iv) documentation of the incident and all actions taken to resolve the issue and mitigate any damages.

(e) **Certification.** The Employer must provide certification to the Plan that it agrees to:

(1) Not use or further disclose the information other than as permitted or required by the Plan documents or as required by law;

(2) Ensure that any agent or subcontractor, to whom it provides Protected Health Information received from the Plan, agrees to the same restrictions and conditions that apply to the Employer with respect to such information;

(3) Not use or disclose Protected Health Information for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the Employer;

(4) Report to the Plan any use or disclosure of the Protected Health Information of which it becomes aware that is inconsistent with the uses or disclosures permitted by this Section, or required by law;

- (5) Make available Protected Health Information to individual Plan members in accordance with Section 164.524 of the Privacy Standards;
- (6) Make available Protected Health Information for amendment by individual Plan members and incorporate any amendments to Protected Health Information in accordance with Section 164.526 of the Privacy Standards;
- (7) Make available the Protected Health Information required to provide an accounting of disclosures to individual Plan members in accordance with Section 164.528 of the Privacy Standards;
- (8) Make its internal practices, books and records relating to the use and disclosure of Protected Health Information received from the Plan available to the Department of Health and Human Services for purposes of determining compliance by the Plan with the Privacy Standards;
- (9) If feasible, return or destroy all Protected Health Information received from the Plan that the Employer still maintains in any form, and retain no copies of such information when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible; and
- (10) Ensure the adequate separation between the Plan and members of the Employer's workforce, as required by Section 164.504(f)(2)(iii) of the Privacy Standards and set out in (d) above.

11.19 COMPLIANCE WITH HIPAA ELECTRONIC SECURITY STANDARDS

Under the Security Standards for the Protection of Electronic Protected Health Information (45 CFR Part 164.300 et. seq., the "Security Standards"):

- (a) **Implementation.** The Employer agrees to implement reasonable and appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of Electronic Protected Health Information that the Employer creates, maintains or transmits on behalf of the Plan. "Electronic Protected Health Information" shall have the same definition as set out in the Security Standards, but generally shall mean Protected Health Information that is transmitted by or maintained in electronic media.
- (b) **Agents or subcontractors shall meet security standards.** The Employer shall ensure that any agent or subcontractor to whom it provides Electronic Protected Health Information shall agree, in writing, to implement reasonable and appropriate security measures to protect the Electronic Protected Health Information.
- (c) **Employer shall ensure security standards.** The Employer shall ensure that reasonable and appropriate security measures are implemented to comply with the conditions and requirements set forth in Section 11.18.

11.20 MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT

Notwithstanding anything in the Plan to the contrary, the Plan will comply with the Mental Health Parity and Addiction Equity Act.

11.21 GENETIC INFORMATION NONDISCRIMINATION ACT (GINA)

Notwithstanding anything in the Plan to the contrary, the Plan will comply with the Genetic Information Nondiscrimination Act.

11.22 WOMEN'S HEALTH AND CANCER RIGHTS ACT

Notwithstanding anything in the Plan to the contrary, the Plan will comply with the Women's Health and Cancer Rights Act of 1998.

11.23 NEWBORNS' AND MOTHERS' HEALTH PROTECTION ACT

Notwithstanding anything in the Plan to the contrary, the Plan will comply with the Newborns' and Mothers' Health Protection Act.

IN WITNESS WHEREOF, this Plan document is hereby executed this _____ day of _____.

City of Newburgh

By _____
EMPLOYER

Agenda Item 10.

Ordinance No. 1 - 2024 - Ordinance adding Xavier Lunan Park to City Code Section 220-26(b) "Hours of Use of Other City Parks and Recreation Areas" / Ordenanza por la que se añade el Parque Xavier Lunan a la Sección 220-26(b) del Código de la Ciudad "Horarios de uso de otros parques y áreas recreativas de la ciudad"

Ordinance amending Chapter 220 Article IV of the Code of Ordinances of the City of Newburgh entitled "Hours of Use of Other City Parks and Recreation Areas" adding Xavier Lunan Park to Section 220-26(B)

Ordenanza por la que se modifica el capítulo 220, artículo IV, del Código de Ordenanzas de la ciudad de Newburgh, titulado "Horarios de uso de otros parques y zonas recreativas de la ciudad", añadiendo el parque Xavier Lunan a la sección 220-26(B)

Background:

Clean-up/housekeeping amendment; Xavier Lunan Park was dedicated in 2002 but never added to the list of parks in Section 220-26(B) which provides the regular hours of public use of various City parks.

ATTACHMENTS:

Description	Upload Date	Type
Ordinance adding Xavier Lunan Park to Section 220-26(b)	1/10/2024	Ordinance

ORDINANCE NO.: 1 - 2024

OF

JANUARY 22, 2024

AN ORDINANCE AMENDING CHAPTER 220 ARTICLE IV OF
THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH
ENTITLED “HOURS OF USE OF OTHER CITY PARKS AND RECREATION AREAS”
ADDING XAVIER LUNAN PARK TO SECTION 220-26(B)

BE IT ORDAINED, by the Council of the City of Newburgh, New York that Article IV of Chapter 220 of the Code of the City of Newburgh entitled “Hours of Use of Other City Parks and Recreation Areas” be and is hereby amended to read as follows:

SECTION 1. Chapter 220. Parks and Recreation Areas.

Article VI. Hours of Use of Other City Parks and Recreation Areas; Penalties

§220-26. Hours

A. No person shall be present within the parks and recreation areas listed in Subsection B hereof, between the hours of 9:00 p.m. and 7:00 a.m., except when permission is specifically granted, in writing, by the City Manager or the City Council for a special event. No person shall operate or park a motorized vehicle within the parks and recreation areas listed in Subsection B hereof at any time except when permission is granted, in writing, by the City Manager or City Council for a special event.

B. The following parks and recreation areas shall be governed by Subsection A of this section:

Section, Block and Lot Number	Location
49-1-1	Bay View Terrace
38-3-35.1	10 to 14 Hasbrouck Street
16-2-1	Lily Street (tennis court)
4-4-1	Veterans Memorial, corner of Leroy Street and Liberty Street
4-10-1	Corner of Leroy Street and Liberty Street

~~Strikethrough~~ denotes deletions
Underlining denotes additions

16-4-1	McKinstry Street and Wilson Street Field
12-2-6	Grand Street and South Street playground (Tyrone H. Crabb Memorial Park)
11-4-34.1	Gidney Avenue basketball court
3-5-1	Triangle Park, North Street
9-3-1	Triangle Park, Forsythe Place
33-6-1.1	Washington Terrace and West Street (Schliermacher Park)
18-8-1.2	Liberty Street playground (Audrey L. Carey Family Park)
7-2-2	Marne Avenue water tank
<u>48-2-22.2</u>	<u>66 Courtney Avenue</u> <u>(Xavier Lunan Park)</u>

SECTION 2. Severability.

The provisions of this Ordinance are separable and if any provision, clause, sentence, section, subsection, word or part thereof is held to be illegal, invalid, or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity, or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Ordinance or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Ordinance would have been adopted is such illegal, invalid, or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Ordinance or part here of is held inapplicable had been specifically exempt therefrom.

SECTION 3. Codification.

It is the intention of the City Council of the City of Newburgh and it is hereby enacted that the provisions of this Ordinance shall be included in the Code of Ordinances of the City of Newburgh; that the sections and subsections of this Ordinance may be re-numbered and/or re-lettered by the codifier to accomplish such intention; that the term “Ordinance” shall be changed to “Chapter”, “Section”, or other appropriate word as required for codification; and that any such rearranging of

~~Strikethrough~~ denotes deletions
Underlining denotes additions

the numbering and/or lettering and editing shall not affect the validity of this Ordinance or the provisions of the Code of Ordinances affected thereby.

SECTION 4. Validity

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

SECTION 5. This ordinance shall take immediately.

~~Strikethrough~~ denotes deletions
Underlining denotes additions

Agenda Item 11.

Ordinance No. 2 - 2024 - Ordinance Repealing Chapter 240, Rental Properties, Articles I and II / Ordenanza que deroga el Capítulo 240, Propiedades en alquiler, Artículos I y II

Ordinance amending Chapter 240 entitled "Rental Properties" of the Code of Ordinances of the City of Newburgh to repeal Article I, Rental Licenses, and Article II, Tenant Responsibility for Maintenance.

Ordenanza por la que se modifica el Capítulo 240 titulado "Propiedades de alquiler" del Código de Ordenanzas de la Ciudad de Newburgh para derogar el Artículo I, Licencias de alquiler, y el Artículo II, Responsabilidad del inquilino por el mantenimiento

Background:

Need to repeal the existing Chapter 240, Article I & Article II before readopting Chapter 240 Article I and Article II as a local law.

ATTACHMENTS:

Description	Upload Date	Type
Ordinance	1/9/2024	Ordinance

ORDINANCE NO.: 2 - 2024

OF

JANUARY 22, 2024

**AN ORDINANCE AMENDING CHAPTER 240 ENTITLED “RENTAL PROPERTIES”
OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH
TO REPEAL ARTICLE I, RENTAL LICENSES, AND ARTICLE II,
TENANT RESPONSIBILITY FOR MAINTENANCE**

BE IT ORDAINED by the City Council of the City of Newburgh that:

SECTION 1. Article I, Rental Licenses, and Article II, Tenant Responsibility for Maintenance, of Chapter 240 of the Code of Ordinance of the City of Newburgh entitled “Rental Properties” is hereby repealed in its entirety.

SECTION 2. Validity

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

SECTION 3. This Ordinance shall take effect immediately.

Agenda Item 12.

Local Law No. A - 2024 - Local Law Adopting Chapter 240, Rental Properties, Article I and II / Ley local por la que se adopta el capítulo 240, Inmuebles de alquiler, artículos I y II

A Local Law amending Chapter 240 entitled "Rental Properties" of the Code of Ordinances of the City of Newburgh to add Article I, Rental Licenses and Article II, Tenant Responsibility for Maintenance

Una Ley Local que modifica el Capítulo 240 titulado "Propiedades de Alquiler" del Código de Ordenanzas de la Ciudad de Newburgh para añadir el Artículo I, Licencias de Alquiler y el Artículo II, Responsabilidad del Inquilino por el Mantenimiento

Background:

Re-adopting Chapter 240, Article I and Article II as a local law in order to give effect to a New York State Law amendment to the Real Property Actions and Proceedings Law requiring a petitioner to have a valid rental license if such license is require by local law in order to commence a special proceeding for eviction.

Additional Information:

12/7/2023 work session - local law introduced

12/11/2023 Council meeting - public hearing scheduled for 1/8/2024

1/8/2024 Council meeting - public hearing convened and completed

ATTACHMENTS:

Description	Upload Date	Type
Local Law	1/9/2024	Resolution Letter
RPAPL 741 Amendment	1/9/2024	Backup Material

LOCAL LAW NO.: A - 2024

OF

JANUARY 22, 2024

**A LOCAL LAW AMENDING CHAPTER 240 ENTITLED “RENTAL PROPERTIES”
OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH
TO ADD ARTICLE I, RENTAL LICENSES, AND ARTICLE II,
TENANT RESPONSIBILITY FOR MAINTENANCE**

BE IT ENACTED by the City Council of the City of Newburgh that the Code of Ordinances is hereby amended to add Article I, Rental Licenses, and Article II, Tenant Responsibility for Maintenance, of Chapter 240 entitled “Rental Properties”.

SECTION 1. Title

This Local Law shall be referred to as “A Local Law amending Chapter 240 entitled ‘Rental Properties’ of the Code of Ordinances of the City of Newburgh to add Article I, Rental Licenses, and Article II, Tenant Responsibility for Maintenance”.

SECTION 2. Purpose and Intent

On October 25, 2023, Governor Hochul signed into law, and codified in Chapter 579 of the Laws of New York 2023, an amendment to Real Property Actions and Proceedings Law Section 741 adding new subsection (7) providing that in the City of Newburgh where the premises from which removal is sought is subject to a local law requiring the registration of said premises as a condition of legal rental, allege proof of compliance with such local law. The primary purpose of this local law is to give effect to that amendment by requiring registration of rental properties and making such registration subject to a local law.

SECTION 3. Amendment

Chapter 240 of the Code of Ordinances of the City of Newburgh is hereby amended to add the following Article I, Rental Properties, and Article II, Tenant Responsibility for Maintenance, to read as follows:

Article I Rental Licenses

§ 240-1 Findings and purpose.

The City Council has determined that there exists in the City of Newburgh a significant number of non-owner-occupied rental units. Non-owner occupants are less able to maintain daily oversight of

their properties to ensure compliance with applicable laws, rules, and regulations. The City Council finds that the registration of rental properties is intended to and will ensure the protection of persons and property in all existing rental structures and on all premises required to be registered under this chapter. Further, the registration of rental properties will ensure that rental property owners adhere to applicable code provisions governing the use and maintenance of rental properties, including provisions limiting the maximum occupancy for which a rental property can be certified. It is the purpose of this chapter to protect the health, safety, and welfare of the residents of the City of Newburgh, as well as to protect the City's housing stock from deterioration by establishing a program for registering and identifying residential rental properties and for determining the responsibilities of owners of residential rental properties.

§ 240-2 Definitions.

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

AGENT

Any person who has charge, care, or control of a building, or part thereof, in which rental dwelling units or rooming units are let.

BUILDING

A combination of materials, whether portable or fixed, having a roof to form a structure affording shelter for persons, animals, or property.

CODE

The City of Newburgh Code of Ordinances and the New York State Uniform Fire Prevention and Building Code.

DWELLING

A building used in whole or part for residential uses.

DWELLING UNIT

A single unit providing complete, independent, law-compliant living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

MUNICIPAL OFFICER

The Fire Chief, Code Compliance Supervisor, Building Inspector, or other such official within the Fire Department or the Bureau of Code Compliance as may be designated in writing.

OWNER

Any individual or individuals, limited liability company, partnership, or corporation or any similar type of business organization, whether for profit or otherwise, in whose name title to a building stands, including a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent, or any other person, firm, or corporation directly or indirectly in control of the property. Each, any, and all such persons shall have a joint and severable obligation for compliance with the provisions of this chapter.

OWNER-OCCUPIED DWELLING

A dwelling occupied by an individual owner or by members of his or her family on a nonrental basis. For the purposes of this chapter, "owner-occupied" shall not include any building owned by a limited liability company, partnership, corporation, or any similar type of business organization, including, but not limited to, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or agent.

RENTAL PROPERTY

All buildings that contain a dwelling unit or a rooming unit that is rented, leased, let, or hired out to be occupied for residential or mixed use (commercial-residential) and are not owner-occupied.

ROOMING UNIT

Any furnished room for rent within a building and forming a single sleeping space.

TENANT

A person, not the legal owner of record, occupying or in possession or control of a dwelling, dwelling unit or a rooming unit.

§ 240-3 Rental license process.

- A. The owner of any rental property as defined herein shall within 30 days after assuming ownership of a rental property submit a rental license application for such rental property with the municipal officer on forms provided for that purpose by the municipal officer along with any fees required by Chapter 163. Failure to receive notice from the municipality shall not constitute grounds for failing to register the property.
- B. Each rental property having a separate section block and lot number shall be registered separately.
- C. The license rental application shall include the information required under § 240-4, as well as any additional information that the Municipal Officer may reasonably require.

- D. It shall be unlawful for any owner to offer any unit for rent or to rent any dwelling unit or to allow any dwelling unit to be occupied without having first received a rental license pursuant to this chapter as required herein within the time prescribed for such registration. Failure to receive notice of the rental license deadline will not excuse failure to receive a rental license for a rental property. It is the responsibility of the owner to fulfill the requirements of this article.
- E. No initial rental license or a rental license renewal shall be issued until the Municipal Officer has determined that the property is in compliance with the Code. Such determination shall be based on an inspection as described in § 240-6, provided that if the owner does not consent to such inspection and no inspection has been performed pursuant to search warrant, the owner shall, in the alternative, submit a certification by a licensed professional engineer that the subject property is in compliance with said the Codes, and in which case such certification shall be made on a form prescribed by the City of Newburgh Bureau of Code Compliance and reviewed by a Municipal Officer to determine compliance.
- F. If the rental license application is incomplete or the applicant does not meet the requirements of the licensing process within 120 days of the submittal date, the application will be deemed canceled and an owner shall be required to file a new application and pay a new application fee
- G. Except as provided in § 240-13, the rental license shall remain valid for one year from the date of issue. The owner shall be required to renew the rental license annually and shall pay a fee in the amount prescribed in Chapter 163.
- H. The Municipal Officer may establish for purposes of efficient administration that all rental licenses shall be renewed by a single date in each year. The Municipal Officer shall establish this date in which case the initial rental license fee shall be prorated for applications received less than 10 months prior to that date.
- I. The completed rental license application shall be deemed prima facie proof of the statements therein contained in any administrative enforcement proceeding or court proceeding instituted by the City against the owner or owners of the building.

§ 240-4 Rental license application.

- A. A rental license application shall be made by the owner of rental units or the owner's legally constituted agent on a form approved and supplied by the City of Newburgh Office of Code Compliance. This form shall be known as a "rental property statement" and shall be signed by the owner under oath. The statement shall include:
 - (1) The name(s), residence and business addresses, e-mail addresses, telephone numbers, and birth date(s) of the principal officers if the applicant is an individual, or the business names, business addresses, e-mail addresses, telephone numbers, and name(s), residential addresses, and birth date(s) of all principal officer(s) and/or member(s) if the applicant is any business entity recognized by New York State law. Where more than one natural

person has an ownership interest, the required information shall be included for each owner.

- (2) If the owner is not a natural person, the employer identification number of the owner.
 - (3) The name, street address, e-mail address, and telephone number of a natural person 21 years of age or older, designated by the owner or owners as the authorized agent for receiving notices of code violations and for receiving process in any court proceeding or administrative enforcement proceeding on behalf of such owner or owners in connection with the enforcement of any applicable code. The agent for service of process must maintain offices or reside in the State of New York.
 - (4) The name, street address, e-mail address, and telephone numbers of the firm or individual responsible for maintaining the property. The individual or a representative of the firm responsible for maintaining the property must maintain offices within 45 miles of the City and shall be available by telephone or in person on a twenty-four-hour-per-day, seven-day-per-week basis.
 - (5) Name, address, and telephone number of vendee, if the dwelling is being sold through a contract for deed.
 - (6) A description of the premises, including street address, section block and lot, and type of building.
 - (7) Number of dwelling units within the dwelling.
 - (8) Description of procedure through which tenant inquiries and complaints are to be processed.
 - (9) Status of utility fees, property taxes, and other assessments on the dwelling and other rental real property in the City owned by the applicant.
 - (10) The number of tenants that reside in each dwelling unit within the building.
 - (11) Whether the owner consents to a municipal inspection pursuant to § 240-6 or whether the owner will provide a certification by a licensed professional engineer that the property is in compliance with the Code.
 - (12) The City of Newburgh Bureau of Code Compliance may, in its discretion, request additional information from time to time. The owner or authorized agent must reply with such requested information within 14 days of such request.
- B. The owner shall notify the Municipal Officer within 10 days of any change in the rental license information by filing an amended rental property statement on a form provided by the

Municipal Officer for such purpose. Depending on the nature of changes, the City may require consent to a new property inspection. Notice of transfer of ownership shall be as described in § 240-8.

§ 240-5 License fees; exemptions.

- A. License fees as set forth in Chapter 163 of this Code shall be due 90 days prior to the license expiration date; in the cases of a new unlicensed dwelling, a change in a previously filed rental license application, or a new license that is required due to a change in ownership as set forth in § 240-8 below, rental license fees shall be due at the time of application.
- B. Owner-occupied dwellings containing not more than two rental units are exempt from the filing fees set forth in Chapter 163 of this Code but still must submit a rental license application as described in § 240-3 and § 240-4 above.
- C. A delinquency penalty of 5% of the rental license fee for each day of operation without a valid rental license shall be charged operators of rental properties. Once issued, a rental license is nontransferable, and the rental licensee shall not be entitled to a refund of any license fee. Upon revocation or suspension, application withdrawal, an incomplete application or process, or application cancellation, the fee is nonrefundable.
- D. All inspection fees are set in Chapter 163. If the inspection is being performed as part of the rental licensing process, fees must be paid prior to the time of rental license issuance or renewal for the property.
- E. If any fee or any portion is not paid within 60 days after billing, the Comptroller may certify the unpaid cost against the property, and the unpaid cost shall be added to and collected with the subsequent City tax levy and shall bear interest and be enforced as provided by law for City taxes.
- F. All funds collected from rental license fees under this section shall be deposited in a dedicated trust fund to be used exclusively for municipal activities with respect to vacant and problem properties in the municipality, including, but not limited to, inspection, nuisance abatement, securing and boarding, maintaining property information systems, general code enforcement activities, and reasonable administrative and legal costs associated with any of the foregoing.

§ 240-6 Inspection.

- A. During regular business hours or in an emergency, the municipal officer or his representative or any duly authorized City representative, upon the showing of proper credentials and in the discharge of his duties, may enter any building or rental unit within a building upon consent of the owner or with a duly executed search warrant, to make an inspection to determine whether there is any violation of the Code.

- B. At the request of the municipal officer, the Corporation Counsel is authorized to make application to the City Court of the City of Newburgh or any other court of competent jurisdiction for the issuance of a search warrant to be executed by a police officer in order to conduct an inspection of any premises believed to be subject to this chapter. The municipal officer may seek a search warrant whenever the owner, managing agent, or occupant fails to allow inspections of any dwelling unit contained in the rental property where there is a reasonable cause to believe that there is a violation of the Code .
- C. The presence or existence of any of the following shall create a rebuttable presumption that a dwelling unit is rented:
- (1) The property is occupied by someone other than the owner, and the owner of the property represents, in writing or otherwise, to any person or establishment, business, institution or government agency, that he resides at an address other than the rental property.
 - (2) Persons occupying the premises represent that they pay rent to the owner of the premises.
 - (3) Utilities, cable, phone or other services are in place or requested to be installed or used at the premises in the name of someone other than the record owner.
 - (4) Testimony by a witness that it is common knowledge in the community that a person other than the record owner resides in the premises.
 - (5) There is more than one mailbox at the premises.
 - (6) There is more than one gas meter at the premises.
 - (7) There is more than one electric meter at the premises.
 - (8) There are separate entrances for segregated parts of the dwelling.
 - (9) There are partitions or internal doors which may serve to bar access between segregated portions of the dwelling, including, but not limited to, bedrooms.
 - (10) There exists a separate written or oral lease or rental arrangement, payment or agreement for portions of the dwelling among its owner(s) and/or occupants and/or persons in possession thereof.
 - (11) Any occupant or person in possession thereof does not have unimpeded and/or lawful access to all or part of the dwelling unit.
 - (12) There exists two or more kitchens each containing one or more of the following: a range, oven, hotplate, microwave or other similar device customarily used for cooking or preparation of food and/or a refrigerator.

- D. Nothing in this section, except for provisions containing emergency inspections, shall be deemed to authorize the municipal officer or representative to conduct an inspection of any premises subject to this chapter without the consent of the owner or without a warrant duly issued by a court of competent jurisdiction.
- E. Nothing in this section shall prevent the entry into a building or dwelling unit by the municipal officer without the consent of the owner or a search warrant in response to an emergency.

§ 240-7 Conformance to other laws.

No rental license shall be issued or renewed unless the rental property and its premises conform to the Code of Ordinances of Newburgh and the laws of the State of New York.

§ 240-8 License not transferable.

No rental license shall be transferable to another person or to another rental property. Every person holding a rental license shall give notice, in writing, to the municipal officer within 10 business days after having legally transferred or otherwise disposed of the legal control of any licensed rental property. Such notice shall include the name and address of the person succeeding to the ownership or control of such rental property.

§ 240-9 Required postings.

- A. The rental license issued under this article shall contain the following information:
 - (1) The address, type of structure, and structure classification;
 - (2) The date of inspection;
 - (3) The date of issuance;
 - (4) The expiration date;
 - (5) Number of dwelling units;
 - (6) A statement indicating whether the structure is equipped with a fire alarm system;
 - (7) A statement indicating whether the structure is equipped with a sprinkler system;
 - (8) Local contact information, including name, address, and phone number for the owner or owner's designated representative;
 - (9) The maximum number of permanent and/or temporary occupants permitted.
- B. Every licensee of a rental property with more than four units shall conspicuously post the current rental license certificate in the main entryway or other conspicuous location. For rental properties of four or fewer units, the licensee must provide a copy of the rental license certificate to each tenant by attaching a copy to the tenant's copy of the executed lease agreement.
- C. The City's trash and refuse policies and procedures and alternate-side street parking regulations shall be conspicuously posted in the main entryway or other conspicuous location. For rental

properties with only one dwelling unit or with no common entryway, the owner must provide a copy of these policies, procedures, and regulations with the tenant's copy of the executed lease agreement.

§ 240-10 Occupancy register required.

- A. Every owner of a licensed rental property shall keep, or cause to be kept, a current register of occupancy for each dwelling unit that provides the following information:
 - (1) Dwelling unit address.
 - (2) Number of bedrooms in dwelling unit and the maximum number of occupants.
 - (3) Legal names and date of birth of adult occupants and number of adults and children (under 18 years of age) currently occupying the dwelling units.
 - (4) Dates renters occupied and vacated dwelling units.
 - (5) A chronological list of complaints and requests for repair by dwelling unit occupants, which complaints and requests are related to the provisions of this Code of Ordinances.
 - (6) A similar chronological list of all corrections made in response to such requests and complaints.
- B. Such register shall be made available for viewing or copying by the municipal officer at all reasonable times.
- C. The property owner may request a pre-rental inspection of a unit prior to placing tenants and obtain a certificate of compliance stating that the apartment is in compliance with the Code. The cost of this inspection shall be included with license fee.

§ 240-11 Retaliatory actions.

- A. No person shall institute or maintain an action for eviction because the occupant has reported a violation of this law or any related provision of the Code to the Code Compliance Bureau or other City employee.
- B. No person shall cause any service, facility, equipment or utility required under this local law to be removed, shut off or discontinued in retaliation for a complaint.

§ 240-12 Rules and regulations.

The municipal officer may issue rules and regulations for the administration of the provisions of this article.

§ 240-13 "Compliant landlord" designation.

- A. An owner who has fully met the requirements set forth in § 240-13B shall be designated as a "compliant landlord". The designation of "compliant landlord" shall be at the discretion of the

municipal officer and is not a right that will vest at any time and may be subject to termination at the discretion of the City, municipal officer and in accordance with any changes in local, state or federal law.

B. Qualifications to be a “compliant landlord”:

- (1) Owner must satisfy the requirements of §§ 240-3, 240-4, 240-5, 240-6, 240-9 and 240-10; and
- (2) Owner must have been issued a rental license for all non-owner-occupied dwellings owned and rented in the City of Newburgh; and
- (3) Owner must have no open cases with the Code Compliance Bureau or Fire Prevention Bureau and no outstanding violations of the Code; and
- (4) Owner must be current on all real property taxes, water, sewer and sanitation bills on all properties owned in the City of Newburgh; and
- (5) Owner must have no open abatement proceedings on any properties owned in the City of Newburgh.

C. An owner who is designated as a “compliant landlord” shall have his rental license remain valid for a period of two years and shall be permitted to renew the rental license every two years and the fee prescribed in Chapter 163 shall be paid every two years with the renewal application.

§ 240-14 Enforcement.

- A. The City of Newburgh shall have a choice of enforcing this chapter as provided in § 1-12 of the Code of Ordinances of the City of Newburgh by seeking civil penalties or by instituting a criminal proceeding or may choose to do both.
- B. A designated managing agent of an owner may be served with a notice of violation, order to remedy, an appearance ticket, or other service of process, whether criminal or civil, pursuant to and subject to the provisions of law as if actually served upon the owner.
- C. No owner who designates a managing agent pursuant to the provisions of this chapter may assert the defense of lack of notice or lack of in personam jurisdiction based solely upon the service of process on his designated agent.
- D. Any owner who fails to register a rental property under the provisions of this chapter shall be deemed to consent to receive, by posting at the building, any and all notices of code violations and all process in an administrative proceeding brought to enforce code provisions concerning the building.

- E. The municipal official may revoke a rental license or approval issued under the provisions of this chapter for any of the following reasons:
- (1) Any false statement or misrepresentation as to a material fact in the application, plans or specifications on which the building permit was based;
 - (2) The rental license was issued in error and should not have been issued in accordance with applicable law;
 - (3) Failure to maintain the necessary requirements as outlined in this chapter, or occurrence of unlawful activities at or about the premises;
 - (4) Fighting or violent, tumultuous or threatening behavior by any occupant of the premises;
 - (5) Unreasonable noise from the premises on a regular basis;
 - (6) Repeated calls to the police for disturbances and/or disputes at the premises;
 - (7) Obstruction of vehicular or pedestrian traffic due to vehicles from or at the premises;
 - (8) Hazardous or physically offensive conditions created by an act of an occupant or owner of the premises; or
 - (9) Existing violations on the premises of the Code ; or
 - (10) Condemnation of the building or after a fire resulting in structural damage.
- F. Such revocation shall take place after notice to the applicant and opportunity for the applicant to be heard by the municipal officer.
- G. No rental license shall be revoked where there is reasonable grounds that the conduct for revocation as set forth in this subsection is the result of domestic abuse, sexual assault, stalking and/or harassment.
- H. No fees, as provided in Chapter 163, shall be refunded after the revocation of a rental license.

§ 240-15 Penalties for offenses.

- A. If the City of Newburgh chooses to enforce this chapter through a criminal proceeding, any person who violates or fails to comply with any provisions of this chapter or of the rules and regulations issued hereunder or who violates or fails to comply with any order made thereunder shall be fined up to \$500 per day for each day the violation exists and/or 30 days in jail.
- B. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue, and all such persons shall be required to correct or remedy such violations or defects. Each day that prohibited conditions exist shall constitute a separate offense and so subject the owner to an additional fine of up to \$500 per day for each day the violation exists and/or additional jail sentences of up to 30 days in jail.
- C. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

- D. For purposes of this section, failure to file a rental property statement within 60 days of the effective date of this chapter or within 30 days after assuming ownership of the rental property, whichever is later, or within 10 days of receipt of notice by the municipality; failure to provide correct information on the rental property statement; and failure to comply with the provisions of §§ 240-3, 240-4, 240-5, 240-9 and 240-10 of this article or such matters as may be established by the rules and regulations of the municipal officer shall be deemed to be violations of this article.

Article II Tenant Responsibility for Maintenance

§ 240-18 General requirements.

Tenants of rental property shall maintain the rented premises in conformance with the following standards. Tenants shall only be responsible for conditions that he or she actually caused. The requirements of this article are not intended to conflict with or supersede New York State Real Property Law § 235-b.

§ 240-19 Common, public or open areas.

- A. Steps, walks, driveways, parking spaces and similar paved areas shall be kept free of obstacles to afford safe and convenient passage. Structural repairs are the responsibility of the property owner.
- B. Yards, courts and vacant lots shall be kept clean and free of hazards.
- C. Open fires shall not be permitted, unless authorized and approved pursuant to the Code and in conformity with state air pollution control regulations.

§ 240-20 Buildings and structures.

- A. Floors, walls, including windows and doors, ceilings and other interior surfaces within the rental property, shall be maintained in clean and sanitary condition in accordance with the Code and shall not be broken, damaged or destroyed and/or permitted to attract insect, vermin and rodent harborage and infestation.
- B. Extension cords. Electrical extension cords shall be used only in conformance with the Code. If extension cords must be used, they must be used on a temporary basis only, properly sized for the use; must not cross any pathways, or be placed under carpets or rugs. They also should not be a tripping hazard.
- C. Utilities.
 - (1) Tenants may not perform electrical or plumbing work. Tampering with electrical or plumbing infrastructure in any way is prohibited.

- (2) Tenants or third parties who are licensed electricians or licensed plumbers must obtain proper permits before commencing and completing any work.
- D. External decorative lighting, including, but not limited to, holiday lighting, shall not be hung by tacks or nails in such a manner as to create a fire hazard. Electrical light fixtures and other heat-generating appliances shall not be covered with fabric or other combustible material.
- E. Excessive amounts of loose fabric when used as a wall or ceiling covering is a fire hazard and is not permitted.
- F. Tenants may not store or place anything in such a way that it might block or prevent the use of a means of exiting from a room, rooming unit, dwelling unit or building. Items should not be stored by tenants in unfinished areas of buildings (cellars, attics, etc.), which could contribute to combustion in a fire or block access by emergency personnel, (i.e., mattresses, old boxes, lumber, clothes, etc.).
- G. Fire escapes shall not be used for storage and shall be kept clear to allow for immediate egress from a room, rooming unit, dwelling unit or building.
- H. Tenants shall not store combustible or flammable liquids and/or flammable gases in their dwelling unit or rooming unit, or in accessory buildings, except in sealed, approved containers.
- I. Flammable and combustible liquids and/or gases shall not be stored in hallways, exits, stairways or areas normally used for the safe passage of people.
- J. Unfinished areas of buildings, such as cellars or attics, shall not be used for any activities whatsoever other than for utility purposes.
- K. Rugs or carpet shall not be installed in such a way as to obstruct the smooth opening or closing of any doors.
- L. Cooking and refrigeration appliances, kitchens, and bathrooms must be kept in a clean and sanitary condition so as not to attract insect, vermin and rodent harborage and infestation.
- M. Food garbage shall not be stored on premises in such a way or for such a period of time so as to become a health hazard.

§ 240-21 Infestation and harborages.

Grounds, buildings and structures shall be maintained free of insect, vermin and rodent harborage and infestation. The accumulation and/or storage of materials that may provide harborage or serve as food for rodents or other vermin in a site accessible to such rodents or vermin is prohibited.

§ 240-22 Garbage and refuse.

- A. Adequate sanitary facilities and methods shall be used for the collection, storage, handling and disposal of garbage and refuse within rental property. Storage containers within rental property shall be of an approved flame-resistant material.
- B. The accumulation or storage of garbage or refuse in public halls or stairways shall be prohibited.
- C. Tenants shall not place loose bags of garbage and/or recyclables outside the building or in a garage area and shall comply with the waste collection regulations as prescribed by Chapter 183 of the City Code of Ordinances.
- D. Tenants shall not store or leave interior furniture outdoors except for disposal in accordance with Chapter 183 of the City Code of Ordinances and applicable rules and regulations of the Department of Public Works.

§ 240-23 Junk.

- A. Refrigerators, and similar equipment with locking mechanisms, shall not be discarded, abandoned or stored on premises accessible to children, without first removing the locking devices or the hinges of the doors.
- B. Junked vehicles, unregistered vehicles, equipment and materials shall not be stored in common, shared and/or open areas of premises.

§ 240-24 Domestic animals and pets.

Domestic animals and pets shall be kept in an appropriate manner in accordance with Chapter 150 of the City Code of Ordinances. Any tenant having ownership, custody or control of a dog or other domesticated companion or working animal shall be responsible for promptly picking up, collecting and disposing of any and all waste products of such animal in a sanitary manner.

§ 240-25 Smoke detectors, carbon monoxide detectors, fire extinguishers and sprinkler systems.

- A. Smoke detectors and carbon monoxide detectors shall not be removed, damaged or disabled in any way. Smoke and carbon monoxide detectors shall not be disabled by the tenant(s).
- B. The detectors shall not be disconnected from a power source or rendered inoperable in any way. Tenants shall not remove batteries in smoke detectors or carbon monoxide detectors located in a rental property.
- C. It shall be the duty of the tenant(s) of any rental property to keep and maintain such detectors located within their dwelling unit, or sleeping room, in good repair and operable condition and to notify the property owner to replace any and all devices which are stolen, removed, missing

or rendered inoperable during their tenancy of such dwelling unit with an identical device or an equivalent device, as approved by the owner.

- D. Fire extinguishers shall not be used for any purpose other than that for which they were designed. Tenant shall notify the Fire Department upon discharging a fire extinguisher to extinguish a fire.
- E. Tampering with sprinkler systems in any way and hanging items from sprinkler systems and sprinkler equipment is prohibited.

§ 240-26 Exits: hardware for doors.

- A. Prohibited locking devices. No hasp, lock, padlock, bar, chain or other device, which is openable only from the exterior, shall be installed by a tenant(s) on any door, which is used or intended to be used, as a means of egress.
- B. Locking devices required.
 - (1) It is the responsibility of all property owners to ensure that exit doors from dwelling units, and doors from bedrooms, sleeping rooms or lodging units which are located within dwelling units, rooming houses or boardinghouses, in which three or more unrelated individuals reside, shall be equipped with a locking device which is securable by means of a key from the outside and which is provided, on the inside, with a simple type of releasing device, such as a knob, handle or panic bar, the method of operation of which is obvious, even in darkness. No tenant shall remove and/or disable said locking devices.
 - (2) It is the responsibility of all property owners to ensure that all openable windows located within 10 feet, measured vertically, or within six feet, measured horizontally, of ground level, or of exterior balconies, porches, stairs, fire escapes, railings, roof surfaces or any other accessible structure, shall be equipped with sash locks designed to be openable from the inside only. Sash locks shall be easily openable without the use of keys and be maintained in good repair. No tenant shall remove and/or disable said sash locks.
- C. Self-closing doors shall not be blocked in the open position, and automatic doors shall not be removed.
- D. Tampering with exit lights and exit signs is prohibited. If exit lights are out or malfunctioning, the property owner must be notified.

§ 240-27 Violations and enforcement.

- A. Whenever the municipal officer finds that there has been a violation of these standards, the municipal officer shall first issue a notice of violation to the person or persons responsible, so long as the property owner has provided such responsible party information to the Bureau of Code Compliance. The order shall:

- (1) Be in writing.
- (2) Identify the premises.
- (3) Specify the violation and remedial action to be taken.
- (4) Provide a reasonable time limit for compliance.
- (5) State the time within which an appeal may be taken.
- (6) If the violation constitutes a public nuisance or renders the premises dangerous or unsafe, include, in the order, a statement that if the violation is not remedied within the time limit specified in the order, the City may remedy the violation in accordance with Chapter 126 and Chapter 226 of the City Code of Ordinances.

B. A notice of violation and order may be served as follows:

- (1) By personal service upon the tenant(s); or
- (2) By posting a copy thereof on the door of the tenant(s) premises, or if access thereto is denied, by posting a copy thereof on the outside door of the building and mailing a copy to the tenant(s) in a postpaid wrapper addressed to the tenant(s).

C. In case the tenant(s) shall fail, neglect or refuse to remove, eliminate or abate the violation, or in the case that the owner, lessor or agent fails to cause the tenant(s) to remove the violation within the time specified, the municipal officer shall forward the notice of violation to the Corporation Counsel who shall prosecute same as provided herein.

D. If the violation constitutes a public nuisance or renders the premises dangerous or unsafe, and the violation order has been served, but the violation has not been remedied within the time limit specified in such violation order, the City may remedy the violation in accordance with Chapter 126 and Chapter 226 of the City Code of Ordinances.

§ 240-28 Penalties for offenses.

Failure to comply with a violation order, within the time limit stated therein, shall constitute an offense. A person convicted of an offense shall be punished by a fine not to exceed \$500, or in the court's discretion, a sentence of community service in accordance with the New York State Penal Law. Each day that a violation continues shall be deemed a separate offense and shall subject the occupant to an additional penalty as provided above.

§ 240-29 Violations constitute substantial obligation of tenancy.

Unless otherwise provided for by state or federal law or the provisions of a lease, the compliance with the provisions of this chapter shall constitute a substantial obligation of every residential tenancy and the violation thereof shall be grounds for termination of the tenancy.

SECTION 4. Severability.

The provisions of this Local Law are separable and if any provision, clause, sentence, section, subsection, word or part thereof is held to be illegal, invalid, or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity, or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Local Law would have been adopted is such illegal, invalid, or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part here of is held inapplicable had been specifically exempt therefrom.

SECTION 5. Codification

It is the intention of the City Council of the City of Newburgh and it is hereby enacted that the provisions of this Local Law shall be included in the Code of Ordinances of the City of Newburgh; that the sections and subsections of this Local Law may be re-numbered and/or re-lettered by the codifier to accomplish such intention; that the term “Local Law” shall be changed to “Chapter”, “Article”, “Section”, or other appropriate word as required for codification; and that any such rearranging of the numbering and/or lettering and editing shall not affect the validity of this Local Law or the provisions of the Code of Ordinances affected thereby.

SECTION 6. 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 7. Effective Date

This Local Law shall be effective after the filing in the Office of the New York State Secretary of State in accordance with the provisions of New York State Municipal Home Rule Law.

2023 New York Assembly Bill No. 7265, New York Two Hundred Forty-Sixth Legislative Session

NEW YORK BILL TEXT

**TITLE: Relates to the contents of a petition in a summary proceeding
to recover possession of real property in the city of Newburgh.**

VERSION: Adopted

October 25, 2023

Jacobson, Jonathan



Image 1 within document in PDF format.

SUMMARY: ROLISON JACOBSON Amd i741, RPAP L Requires a petition in a summary proceeding to recover possession of real property in the city of Newburgh to allege proof of compliance with local laws requiring rental residential property registration and licensure.

TEXT:

LAWS OF NEW YORK, 2023

CHAPTER 579

AN ACT to amend the real property actions and proceedings law, in relation to requiring a petition in a summary proceeding to recover possession of real property in the city of Newburgh to allege proof of compliance with local laws requiring rental residential prop- erty registration and licensure

Became a law October 25, 2023, with the approval of the Governor. Passed on Home Rule request pursuant to Article IX, section 2(b) (2) of the

Constitution by a majority vote, three-fifths being present.

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

Section 1. **Section 741 of the real property actions and proceedings law** is amended by adding a new subdivision 7 to read as follows:

7. In the city of Newburgh, where the premises from which removal is sought is subject to a local law requiring the registration of said premises as a condition of legal rental, allege proof of compliance with such local law.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law.

The Legislature of the STATE OF NEW YORK **ss:**

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

ANDREA STEWART-COUSINS CARL E. HEASTIE Temporary President of the Senate Speaker of the Assembly

Agenda Item 13.

Resolution No. 13 - 2024 - 2024 Council Rules & Order of Procedure

A resolution adopting rules of order an procedure for the council of the City of Newburgh for the year 2024.

Una resolución adoptando reglas de orden y procedimiento para el consejo de la Ciudad de Newburgh para el año 2024

Background:

Revised blackline with proposed revisions to public comment & hearings sections based on Mayor & Council feedback to City Manager & Corporation Counsel

ATTACHMENTS:

Description	Upload Date	Type
Resolution, Rules & Order of Procedure	1/19/2024	Resolution Letter

RESOLUTION NO.: 13 - 2024

OF

JANUARY 22, 2024

A RESOLUTION ADOPTING RULES OF ORDER AND PROCEDURE
FOR THE COUNCIL OF THE CITY OF NEWBURGH
FOR THE YEAR 2024

NOW, BE IT RESOLVED, that the Council of the City of Newburgh, New York hereby adopts for use the Rules of Order and Procedure as set forth in the copy attached hereto and made a part of this Resolution; and

BE IT FURTHER RESOLVED, that this Resolution shall take at the next Council meeting subsequent to its adoption.

City of Newburgh City Council
Rules of Order and Procedure

Rule I: General Rules of Procedure

- A. The presiding officer shall preserve order and decorum and shall decide questions of order, subject to an appeal by motion to the City Council; the appeal to be taken without debate. The presiding officer may, if (s)he so desires, present motions and resolutions to the City Council, and (s)he may debate on any question which is being considered by it.
- B. When a question is under consideration, no motion shall be entertained except as herein specified, which shall have precedence in the following order:
 - 1. Motion for clarification, or to request reversal of ruling of the presiding officer, or limiting or extending discussion;
 - 2. Recess the session;
 - 3. Lay on table;
 - 4. Postpone to a meeting of a certain date;
 - 5. Refer to work session;
 - 6. Amend;
 - 7. Call the previous question, to be asked as follows: "Shall the main question be put now?" If answered in the negative, the main question remains before the Council.
- C. A motion to lay a question on the table shall be decided without amendment or debate, and a motion to postpone shall be decided without debate.
- D. A motion to adjourn may be made at the conclusion of the City Manager's Report and shall be decided without debate. The Presiding Officer may adjourn a meeting in an emergency which endangers the public health, safety or welfare.
- E. Every member desiring to speak shall address the presiding officer. All council members shall confine him/herself to the question under debate and avoid personalities. A member once recognized shall not be interrupted when speaking.
- F. No question or motion shall be debated or put, unless it is seconded. It shall then be stated by the presiding officer.
- G. A motion to reconsider any action taken by the Council may be made on the day such action was taken, either immediately during the session or at a recessed or adjourned session. Such motion must be made by a member on the prevailing side, but may be seconded by any member. The motion is subject to debate. This rule shall not prevent any member of the Council from making or re-making the same or any other motion at a subsequent meeting of the Council.

- H. No member of the Council shall by conversation or otherwise delay or interrupt the proceedings or the peace of the Council nor disturb any member while speaking or refuse to comply with these rules, or the orders of its presiding officer. The Presiding Officer, subject to appeal by motion to the Council, may direct a member who is acting in violation of this section to leave the meeting or call for a recess.
- I. As the sergeant-at-arms of the meetings, the Police Chief, or designee, shall carry out all order and instructions given by the presiding officer, for the purpose of maintaining order and decorum at the meetings, subject to an appeal by motion, to the Council.
- J. Any motion may be withdrawn by the maker before it has been amended or voted upon, but in such case any other member may renew the motion at that time.
- K. Council Member absence, violation of rules or disorderly behavior may be addressed by City Charter Section C4.01(A).

Rule II. Order of Business

- A. The Order of Business shall be in conformity with section 20-3 of the Code of Ordinances. Further comments from the Council shall be limited to 3 minutes for each Council Member.
- B. The Order of Business may be departed from by majority vote of the members present.

Rule II-A. Videoconferencing

- A. Members of the City Council of the City of Newburgh are authorized to participate in meetings by videoconference when a Council Member is unable to be physically present due to extraordinary circumstances consistent with Public Officers Law § 103-a and Local Law No. A-2022 of August 8, 2022 and codified as Section 20-1.2 of the City Code of Ordinances as follows:
 - 1. A quorum of 4 Council Members must be present in the same physical location where the public can attend;
 - 2. All Council Members shall be physically present at any meeting of the City Council unless a Council Member is unable to be physically present due to extraordinary circumstances. Extraordinary circumstances are unexpected, unforeseen and uncommon and may include, but are not limited to:
 - a. disability;
 - b. illness;
 - c. isolation or quarantine order;
 - d. the death of a relative where such term is defined to include a spouse, parent, step-parent, sibling, step-sibling, sibling's spouse, child, step-child, domestic partner, or individual for whom the member is the legal or designated guardian;
 - e. caregiving responsibilities for a relative;

- f. responsibilities and/or obligations of the member's primary employment or business;
 - g. or any other significant or unexpected factor that may preclude physical attendance.
 - 3. A Council Member who wishes to participate in a meeting by videoconference must provide advance notice and justification for their absence to the extent possible to the Mayor, or in the Mayor's absence to the President Pro Tem, with a copy to the City Manager and City Clerk. An email, text message, or telephone call is sufficient for this purpose if received by the Mayor and City Manager at least 24 hours before the meeting but no later than 10:00 am on the day of the meeting at which the Council Member intends to participate by videoconference.
 - 4. The Mayor may require any Council Member requesting to participate in a meeting by teleconference to provide documentation, to the extent possible, supporting such request and may publicly confirm that such documentation was received without publicly stating the contents of such documentation.
 - 5. Except in the case of executive sessions, the City Council shall ensure that members who are participating remotely can be heard, seen, and identified at all times when the meeting is being conducted.
 - 6. The minutes of meetings involving videoconferencing shall state which members, if any, participated by videoconference, and shall be available to the public.
 - 7. If videoconferencing is being used to conduct a meeting, the public notice for the meeting shall inform the public that videoconferencing will be used, where the public can view and/or participate in such meeting, where required documents and records will be posted or available, and identify the physical location for the meeting where the public can attend.
 - 8. If videoconferencing is used to conduct a meeting, the public body shall provide the opportunity for members of the public to view such meeting by video, and to participate in proceedings by videoconference in real time where public comment or participation is authorized and shall ensure that videoconferencing authorizes the same public participation as in person participation.
 - 9. Any and all videoconferencing technology used for public meetings shall be made accessible to members of the body and the public with disabilities in accordance with the Americans with Disabilities Act of 1990, as amended.
- B. A City of Newburgh public body may hold a meeting entirely by videoconference, with no in-person requirement, during a state of emergency declared by the Governor of New York pursuant to Executive Law § 28 or by the Orange County Executive or City Manager of the City of Newburgh pursuant to Executive Law § 24 if such public body determines that the circumstances necessitating the emergency declaration would affect or impair the ability of the public body to hold an in-person meeting.

Rule III. Voting

- A. The order of voting shall be by alphabetical order of the last name of each Council member with the Mayor voting last.
- B. All votes shall be by roll call. It shall be the duty of the City Clerk to enter on the minutes the names of the members voting for or against the question. Once a question has been put and the vote is being taken, the members of the Council shall confine themselves to voting and shall not resume discussion or make further comments on the question.
- C. Every resolution or motion must be seconded before being put to a vote. An abstention, silence or absence shall be considered a negative vote for the purposes of determining the final vote on a matter.
- D. No resolution, ordinance or local law may be introduced at a meeting unless the resolution, ordinance or local law has been considered at a work session of the Council prior to the Council meeting or is listed on the written agenda for said meeting. No resolution, ordinance or local law may be introduced at a meeting if it will result in exceeding the maximum number of work session items set forth in Rule X. Notwithstanding the foregoing, by majority vote, an emergency item concerning the public health, safety or welfare not discussed at work session or appearing on the written agenda may be introduced, considered, and voted upon.

Rule IV. Executive Session

Whenever the Council shall determine to transact business in an executive session, it shall do so in accordance with the provisions of the New York State Open Meetings Law. All executive sessions shall be commenced at the public meeting. Proposals, discussions, statements and transactions in executive session are intended to be and shall be held and maintained in confidence and shall not be disclosed. The presiding officer shall direct all persons except members and designated officers and employees of the City to withdraw.

Rule V. Participation of City Manager and Staff

The City Manager shall be permitted to address the Council and participate in discussions. Heads of Departments shall be permitted to address the Council. Any other City officer or employee shall be permitted to address the Council with permission of the presiding officer, subject to an appeal by motion to the City Council, the appeal to be taken without debate.

Rule VI. Suspension of the Rules

In order to hear persons other than members of the City Council, the Mayor, and members of City staff, it shall be necessary to pass a motion suspending the rules of order. A motion to suspend the rules may be made at any time during the meeting and shall be decided without debate. Any such

person speaking shall confine himself-herself to the subject and shall spend not longer than three (3) minutes, unless the time is extended by the presiding officer. This rule shall not apply to public hearings.

Rule VII. Guidelines for Public Comment

- A. The public shall be allowed to speak only during the Public Comment period of the meeting and only during the time allotted or at such other time as the presiding officer may propose ~~allow after~~ subject to a majority vote of appeal ~~by motion to the Council~~.
- B. Speakers must adhere to the following guidelines:
1. Speakers must be recognized by the presiding officer.
 2. Speakers must step to the designated speaking area in the room.
 3. Speakers must give their name, street name without number and organization, if any.
 4. Speakers must limit their remarks to 3 minutes. The City Clerk shall keep a record of the time and shall inform the presiding officer when the 3 minutes has expired.
 5. Speakers may not yield any remaining time they may have to another speaker.
 6. Council members may, with the permission of the presiding officer, request to respond to a speaker's remarks after the speaker has concluded remarks or the speaker's time has expired, but only for the purpose of clarification or information.
 7. All remarks shall be addressed to the Council as a body and not to any specific member or to staff. All speakers addressing the City Council at a public meeting shall speak from the public microphone with employees and agents of the City having the option to speak from the head table using a microphone. In no circumstances shall any speaker sit in front of the head table with his or her back to the public.
 8. Speakers shall observe the commonly accepted rules of courtesy, decorum, dignity and good taste. No profanities shall be used. No personal, slanderous, boisterous remarks shall be made. Council members, the Mayor and staff shall be treated with respect. The presiding officer, subject to appeal by motion to the Council, or the Council, may, by majority vote, request that the presiding officer direct that a speaker violating this provision or any other rule yield the floor and in the event the speaker fails to obey, (s)he may be escorted from the meeting by the sergeant-in-arms.
 9. Interested parties or their representatives may address the Council by written communications. Written communications shall be delivered to the Clerk or their designee. Speakers may read written communications verbatim.
 10. The maximum time allotted for the public comment period is one hour. The allotted time may be extended by majority vote of the Council.
- C. Members of the public not speaking shall observe commonly accepted rules of courtesy and decorum. They shall not annoy or harass others or speak when another speaker is being heard by the Council.

Rule VIII. Use of Recording Equipment

All members of the public and all public officials are allowed to audio or video record public meetings. Recording is not allowed during executive sessions. The recording should be done in a manner which does not interfere with the meeting. The presiding officer, subject to appeal by motion to the Council, may make the determination that the recording is being done in an intrusive manner, taking into consideration, but not limited to, brightness of lights, distance from the deliberations of the Council, size of the equipment, and the ability of the public to still participate in the meeting. If the presiding officer makes the determination that the recording is intrusive and has the effect of interfering with the meeting, (s)he may request an accommodation to avoid the interference and if not complied with, may ask the individual to leave the meeting room.

Rule IX. Rules for Public Hearings

The following rules shall apply to a legally required public hearing held before the City Council:

- (a) The Presiding Officer shall recognize each speaker when the hearing is commenced. Speakers shall identify themselves, their street name and organization, if any, prior to the remarks.
- (b) Speakers must limit their remarks to three (3) ~~five (5)~~ minutes. Remarks shall be addressed only to the hearing issues. Speakers may not yield any remaining time they may have to another speaker. The City Clerk shall time speakers and advise the presiding officer when the time has expired.
- (c) All remarks shall be addressed to the Council as a body and not to any individual member thereof.
- (d) Speakers shall observe the commonly accepted rules of courtesy, decency, dignity and good taste. Any loud, boisterous individual shall be asked to leave by the Presiding Officer and may be removed at the request of the Presiding Officer, subject to appeal by motion to the Council. Speakers addressing issues outside the scope of the hearing shall be asked to cease their comments.
- (e) Interested parties may address the Council by written communication. The statements may be read at the hearing, but shall be provided to all Council members and entered in the minutes of the hearing by the City Clerk.
- (f) The City Clerk shall include in the minutes of the hearing the name, address and organization, if any, of each speaker, a summary of the remarks, and written statements submitted to the Council.
- (g) The maximum time allotted for a public hearing is one hour. The allotted time may be extended by majority vote of the Council.

Rule X. Work Sessions

There shall be regular work sessions of the Council to be held each Thursday preceding a Monday evening Council meeting. The work sessions shall be held at 6:00 p.m. in City Hall, 83 Broadway, Third Floor Council Chambers, unless the Council by majority vote cancels or changes the time or place of such session. The Rules IV, V, VI, and VIII of the Rules of Order of the Council shall apply to all work sessions. Work Session items requiring the preparation of a resolution, ordinance or local law shall be submitted to the City Manager's office no later than close of business on Wednesday in the week before the work session. Discussion items for work sessions shall be submitted to the City Manager's office no later than noon on the Friday immediately preceding the work session. The number of work session items and presentations shall be limited to 20. Presentations shall be limited to 10 minutes. Priority shall be given to those items which require the action of the City Council before the next regularly scheduled work session. Items considered in Executive Session shall be excluded from the maximum number of work session items.

Rule XI. Robert's Rules of Order

In the event any question in procedure shall arise that is not provided for by these rules, then, in that event, Robert's Rules of Order, Newly Revised, 10th Edition, shall be followed.

Rule XII. Adoption of Ordinances

Provided the proposed adoption of an ordinance has been placed on an agenda for a meeting of the Council at which the public is afforded the opportunity to comment on agenda items before Council action, a formal public hearing will not be conducted prior to the adoption of such ordinance, unless otherwise required by federal, state, or local law, ordinance, rule or regulation.

This rule shall not be construed to prevent the Council from holding a public hearing on any ordinance at its discretion, provided a majority of the members of the Council in attendance at a meeting, upon a motion or resolution duly introduced, vote to conduct such public hearing.

Date Adopted: May 14, 2001

Amended: February 25, 2002 (Rule XII added)
January 10, 2014 (Rule IV)
February 22, 2016
April 24, 2017 (Rule VII(B) amended)
January 22, 2018 (Rule II, Rule VII(B), Rule IX amended)
October 22, 2018 (Rule III(D) and Rule X amended)
February 14, 2022 (Rule I(K) added, Rule 1(D), Rule 1(H), VII(B)(2), VII(b)(6) amended)
March 13, 2023 (Rule II-A added)

Approved: January 22, 2024 ~~March 13, 2023~~

Agenda Item 14.

Resolution No. 14 - 2024 - Resolution Calling for an Immediate and Permanent Humanitarian Ceasefire

A resolution in support of an immediate and permanent Humanitarian ceasefire

Una resolución en apoyo de un alto el fuego humanitario inmediato y permanente

ATTACHMENTS:

Description	Upload Date	Type
Resolution Calling for an Immediate and Permanent Humanitarian Ceasefire	1/12/2024	Resolution Letter

RESOLUTION NO.: 14 - 2024

OF

JANUARY 18, 2024

**A RESOLUTION IN SUPPORT OF AN IMMEDIATE AND PERMANENT
HUMANITARIAN CEASEFIRE**

WHEREAS, all human life is precious; and

WHEREAS, over 23,000 Palestinians and over 1,200 Israelis have been killed since October 7th;
and

WHEREAS, collective punishment and the killing of civilians are war crimes under
international law; and

WHEREAS, the deal negotiated in late November for a temporary ceasefire and release of
some hostages is insufficient, and a more permanent solution is desperately needed; and

WHEREAS, the United States holds immense diplomatic power to save Palestinian and
Israeli lives; and

WHEREAS, all elected officials must use the platform provided by their offices to advocate
for measures that will end violence and prevent death;

NOW, THEREFORE, BE IT RESOLVED that the City of Newburgh:

1. Condemns the killing of civilians, collective punishment, and all forms of
Islamophobia and antisemitism; and
2. Urges the Biden administration to call for and facilitate a permanent ceasefire in Gaza;
and
3. Urges the Biden administration to send and facilitate the entry of humanitarian aid to
Gaza; and
4. Calls for the release of all hostages and political prisoners; and
5. Urges elected officials representing the City of Newburgh to call for a permanent ceasefire,
the entry of humanitarian aid to Gaza, and the release of all hostages; and

BE IT FURTHER RESOLVED, that upon passage, a copy of this Resolution shall be sent to

the Office of U.S. President Joe Biden, the Office of U.S. Senator Chuck Schumer, the Office of U.S. Senator Kirsten Gillibrand, the Office of U.S. Representative Pat Ryan, the Office of State Senator Rob Rolison, and the Office of State Assemblyman Jonathan Jacobson.

RESOLUTION NO.: 15-2024

OF

JANUARY 22, 2024

A RESOLUTION APPROVING THE CONSENT JUDGMENT AND AUTHORIZING THE CITY MANAGER TO SIGN SUCH CONSENT JUDGMENT IN CONNECTION WITH THE TAX CERTIORARI PROCEEDING AGAINST THE CITY OF NEWBURGH IN THE ORANGE COUNTY SUPREME COURT BEARING ORANGE COUNTY INDEX NO. EF004931-2023 INVOLVING SECTION 34, BLOCK 3, LOT 48 (N & N OF HUDSON VALLEY, LLC)

WHEREAS, N & N of Hudson Valley, LLC has commenced tax certiorari proceedings against the City of Newburgh in the Supreme Court of the State of New York, County of Orange for the 2023-2024 tax year bearing Orange County Index No. EF004931-2023; and

WHEREAS, it appears from the recommendation of the City Assessor, Joanne Majewski, and Kelly M. Naughton, Esq. of Naughton & Torre, LLP, Special Counsel for the City of Newburgh in the aforesaid proceeding, upon a thorough investigation of the claims that further proceedings and litigation by the City would involve considerable expense with the attendant uncertainty of the outcome, and that settlement of the above matters as more fully set forth below is reasonable and in the best interests of the City; and

WHEREAS, N & N of Hudson Valley, LLC is willing to settle this proceeding without interest, costs or disbursements, in the following manner:

1. That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2023-2024 as tax map number 34-3-48 be reduced to a market value of \$280,000.

NOW, THEREFORE BE IT RESOLVED, that the proposed settlement as set forth and described above, and the attached Consent Judgment is hereby accepted pursuant to the provisions of the General City Law and other related laws.

BE IT FURTHER RESOLVED, that Todd Venning, City Manager of the City of Newburgh; Joanne Majewski, Assessor of the City of Newburgh; Kelly M. Naughton, Esq. on behalf of Naughton & Torre, LLP, as Special Counsel, be and they hereby are designated as the persons for the City who shall apply for such approval pursuant to the aforesaid laws.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
In the Matter of the Application of
N&N OF HUDSON VALLEY LLC,

Petitioner,

Index No. EF004931-2023

-against-

CITY OF NEWBURGH, a Municipal Corporation, its
ASSESSOR, and its BOARD OF ASSESSMENT
REVIEW,

CONSENT JUDGMENT

Respondents.

For Review of the Assessment of Certain Real Property
under Article 7 of the Real Property Tax Law.
-----X

UPON THE CONSENT attached hereto duly executed by the attorneys for all the parties
and by all the parties, it is

ORDERED, that the real property of Petitioner described on the City of Newburgh
assessment rolls for the 2023-2024 tax year as follows:

Tax Map No. 34-3-48

be reduced in market value from \$380,000.00 to a total market value of \$280,000.00, prior to the
application of any real property tax exemptions, if any; and it is further,

ORDERED, that the Petitioners' real property taxes on said parcel above described for the
2023-2024 School, County and City taxes be adjusted accordingly and that any overpayment by
Petitioner for the 2023-2024 tax year be refunded upon the entering of this Consent Judgment with
the Orange County Clerk's Office; and it is further,

ORDERED, that the officer or officers having custody of the aforesaid City of Newburgh
assessment rolls shall make or cause to be made upon the proper books and records and upon the

assessment roll of said City the entries, changes and corrections necessary to conform such reduced market value; and it is further,

ORDERED, that there shall be audited, allowed and refunded to the Petitioner by the City of Newburgh and/or the County Commissioner of Finance, as the case may be, the amount, if any, paid as City taxes and City Special District taxes against the original assessment in excess of what said taxes would have been if the market value had been determined as herein; and it is further,

ORDERED, that there shall be audited, allowed and refunded to the Petitioner by the City of Newburgh, the County of Orange, and/or the County Commissioner of Finance, as appropriate and/or required by statute, the amount, if any, paid as County taxes and County Special District taxes against the original assessment in excess of what said taxes would have been if the market value had been determined as herein; and it is further,

ORDERED, that there shall be audited, allowed and refunded to the Petitioner by the Newburgh City School District, the amount, if any, paid as School District taxes against the original assessment in excess of what said taxes would have been if the market value had been determined as herein; and it is further,

ORDERED, that all tax refunds hereinabove directed to be made by Respondents and/or any of the various taxing authorities be made by check or draft payable to the order of STENGER, DIAMOND & GLASS, LLP, as attorneys for the Petitioner, who are to hold the proceeds as trust funds for appropriate distribution, and who are to remain subject to the further jurisdiction of this Court in regard to their attorney's lien, pursuant to Judiciary Law § 475; and it is further,

ORDERED, that the provisions of Real Property Tax Law § 727 shall be applicable to the 2024, 2025 and 2026 assessment years; and it is further,

ORDERED, that in the event that the refunds are made within sixty (60) days after service of the Order with notice of entry, there shall be no interest, otherwise, interest shall be paid in accordance with the applicable statute, and it is further;

ORDERED, that these proceedings are settled without costs or disbursements to either party as against the other.

Signed: January __, 2024
Goshen, New York

ENTER:

HON.
SUPREME COURT JUSTICE

ON CONSENT:

HON. TODD VENNING
City Manager
Dated: _____

KAREN E. HAGSTROM, ESQ.
Stenger, Diamond & Glass, LLP
Attorneys for the Petitioner
Dated: _____

HON. JOANNE MAJEWSKI
Assessor
Dated: _____

KELLY M. NAUGHTON, ESQ.
Naughton & Torre, LLP
Attorneys for City Respondents
Dated: _____

Agenda Item 16.

Resolution No. 16 - 2024 - Settlement of Claim 279 Liberty Street

A resolution authorizing the settlement of a claim in connection with the premises located at 279 Liberty Street (section 18, block 5, lot 8)

Resolución que autoriza la liquidación de una reclamación en relación con el local ubicado en el 279 Liberty Street (sección 18, bloque 5, lote 8)

ATTACHMENTS:

Description	Upload Date	Type
FOR VOTE - res for BGC revert settlement 279 Liberty Street w backup 1 22 24 mtg	1/19/2024	Resolution Letter

RESOLUTION NO.: _____¹⁶ - 2024

OF

JANUARY 22, 2024

**A RESOLUTION AUTHORIZING THE SETTLEMENT OF A CLAIM
IN CONNECTION WITH THE PREMISES LOCATED AT
279 LIBERTY STREET (SECTION 18, BLOCK 5, LOT 8)**

WHEREAS, the City of Newburgh commenced legal action against Boys & Girls Club of Newburgh, Inc., current owner of record of the premises known as 279 Liberty Street (Section 18, Block 5, Lot 8) to enforce its reverter and re-entry rights to the premises; and

WHEREAS, the parties have reached a settlement agreement in a manner and form substantially similar to the agreement annexed hereto; and

WHEREAS, this Council has determined it to be in the best interests of the City of Newburgh to enter into the attached settlement agreement;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the Corporation Counsel is hereby authorized to settle the legal action pending against Boys & Girls Club of Newburgh, Inc., and the City Manager or the Corporation Counsel is hereby authorized to execute a written settlement agreement and any other documents as the Corporation Counsel may require, to effectuate the settlement as herein described.

STATE OF NEW YORK : COUNTY OF ORANGE
CITY OF NEWBURGH

-----X

In the matter of:

**STIPULATION OF
SETTLEMENT**

Enforcement of the City of Newburgh's Right of
Reverter and Re-Entry against Boys & Girls Club
of Newburgh, Inc. for properties known as
279 Liberty Street and 146 Chambers Street
in the City of Newburgh.

-----X

This Stipulation of Settlement ("Stipulation" or "Agreement") is entered into on this _____ day of _____, by and between the City of Newburgh (hereafter "City"), a municipal corporation with an address of 83 Broadway, Newburgh, New York 12550 and Boys & Girls Club of Newburgh, Inc., a domestic not-for-profit corporation with an address of 285 Liberty Street Newburgh, New York 12550 (hereafter "BGC"), the parties named in this matter:

WHEREAS, by deed dated November 13, 2015, recorded in the Orange County Clerk's Office at Book 13973, Page 825 (hereafter the "Deed"), the City conveyed to BGC, for good and valuable consideration, all of its right, title and interest in two (2) parcels of real property known as 279 Liberty Street and 146 Chambers Street, Newburgh, New York, identified on the City of Newburgh tax map as Section 18, Block 5, Lots 8 and 29, respectively; and

WHEREAS, the Deed contained certain terms and conditions subsequent including, but not limited to, the obligation within eighteen (18) months of the date of the deed to rehabilitate any building on the property and bring it into compliance with all State, County and local standards and to obtain within such time frame a Certificate of Occupancy for all buildings on the property, or to make all buildings granted a Certificate of Occupancy before the date of conveyance fit for the use stated in such Certificate of Occupancy; and

WHEREAS, to date, more than 18 months have passed since the of the date of the Deed to obtain a Certificate of Occupancy for the building(s) on the Premises or to make any building(s) granted a Certificate of Occupancy before the date of the conveyance fit for the use stated in the Certificate of Occupancy; and

WHEREAS, the City duly-served demand for return of the Premises in accordance with Section 612 of the Real Property Actions and Proceedings Law; and

WHEREAS, BGC entered into an agreement dated as of August 30, 2023 with Affiliated Contracts LLC for the sale of 279 Liberty Street, and said contract rights were subsequently assigned to ASAK 279 Liberty LLC (“ASAK”) by an assignment of agreement of even date herewith; and

WHEREAS, BGC has requested the City’s assistance in facilitating a transfer of the Premises to ASAK in an effort to resolve this matter without further litigation being required by the parties; such that

IT IS HEREBY CONSENTED AND AGREED by the parties to this litigation, that they be bound by the terms and conditions enumerated below, as follows:

1. The “Whereas” paragraphs stated above shall be restated and incorporated herein to give full force and effect to the same.
2. BGC shall execute a deed, TP-584, RP-5217, and any other documents deemed necessary by the City, in a form acceptable to the City, that transfers 279 Liberty Street to ASAK while preserving the City’s Right of Reverter and Re-Entry to the property.
3. BGC shall be responsible for obtaining ASAK’s cooperation in the execution of documents referenced in paragraph 2, above.
4. BGC shall retain title to the property known as 146 Chambers Street.

5. At the time of closing, BGC shall be current on all municipal charges to the Premises, including City/County taxes, school taxes, water/sewer billing, and sanitation billing.
6. BGC waives any and all claims regarding service, subject matter jurisdiction, and personal jurisdiction in this case.
7. BGC has had opportunity to consult with its attorneys on this matter and enter into this Agreement in accordance with its solicited legal advice, and in accordance with the rules outlined in its Bylaws, its Articles of Incorporation, or any other such documents that may govern BGC's for this Agreement.
8. Each party to this Agreement represents and warrants that the execution, delivery and performance of this Agreement and the consummation of the transactions provided in this Agreement have been duly authorized by all necessary action of the respective entity and that the person executing this Agreement on its behalf has the full capacity to bind that entity.
9. The City Council of the City of Newburgh, by resolution number ____-2023, has authorized and consented to the terms of the Agreement.
10. There are no other agreements, written or oral, pending between the Parties.
11. This Agreement is the full understanding between the parties, and any prior understandings or agreements are null and void.
12. The exchange of copies of this Agreement, including executed signature pages, by electronic transmission (including PDF or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) will constitute effective execution and delivery of this Agreement for all purposes.

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[Signature page to follow.]

Signature Page

Stipulation of Settlement, City of Newburgh / Boys & Girls Club of Newburgh, Inc.

IN WITNESS WHEREOF, this Agreement is entered into on the date first referenced herein.

CITY OF NEWBURGH

Todd Venning

City Manager

Per Resolution No.: _____-2023

BOYS & GIRLS CLUB OF NEWBURGH, INC.

By: Kevin White
Executive Director

By: George Kiamos, Esq.
Catania, Mahon & Rider, PLLC
Attorneys for Boys & Girls Club
of Newburgh, Inc.

SBL: 18-5-8

BARGAIN & SALE DEED WITH COVENANT AGAINST GRANTOR'S ACTS

THIS INDENTURE, made the ____ day of _____, Two Thousand and Twenty-Four

BETWEEN Boys & Girls Club of Newburgh, Inc., a not-for-profit corporation with an address of 285 Liberty Street, Newburgh, New York 12550,

party of the first part, and

ASAK 279 Liberty LLC, a New York limited liability company with an address of 8 Bond Street, Suite 100, Great Neck, New York 11021,

party of the second part

WITNESSETH, that the party of the first part, in consideration of TEN AND 00/100 (\$10.00) DOLLARS, lawful money of the United States and other good and valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City of Newburgh, County of Orange, and State of New York, being further bounded and described in Schedule A attached hereto.

SUBJECT to all covenants, easements and restrictions of record, if any, affecting said premises;

BEING and intended to be the same premises conveyed to the party of the first part in a certain deed dated November 13, 2015, by The City of Newburgh and recorded in the office of the Orange County Clerk in Liber 13973 of deeds at page 825 on November 18, 2015.

This transaction is being made in the usual course of business conducted by the grantor corporation and does not constitute the sale, transfer, or alienation of all or substantially all of the assets of said corporation. This conveyance is authorized by the Board of Directors and no other consent is required.

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above-described premises to the center lines thereof,

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

AND the party of the second part expressly covenants and agrees that:

The restrictive covenants numbered (1), (2), (3), (4), and (5), and contained in the deed dated November 13, 2015, by The City of Newburgh and recorded in the office of the Orange County Clerk in Liber 13973 of deeds at page 825 on November 18, 2015 shall remain in effect for an additional eighteen (18) months from the date of this deed. Said covenants shall continue as covenants running with the land and shall without regard to technical classification or designation, legal or otherwise, be to the fullest extent binding for the benefit of, in favor of and enforceable by The City of Newburgh, its successors and assigns, against the party of the second part herein, its successors and assigns, and to every successor in interest to the property described in this deed or any part thereof or any interest therein, and any party in possession or occupancy of the property described in this deed or any part thereof.

In the event that subsequent to the conveyance of the property described in this deed the party of the second part shall default in or violate any of its obligations contained in the covenants set forth in this deed, The City of Newburgh shall have the right to re-enter and take possession of the property described in this deed and to terminate the estate conveyed by this deed to the party of the second part, it being the intent of this provision that the conveyance to the party of the second part shall be made upon a condition subsequent to the effect that in the event of any default, failure, violation or other action or inaction by the party of the second part contrary to the obligations specified in the covenants contained in this deed, The City of Newburgh, may at its option, declare a termination in favor of The City of Newburgh, of the title and of all rights and interests in and to the property conveyed by this deed to the party of the second part and any successors in interest or assigns to or in the property, shall revert to The City of Newburgh.

The party of the second part, its successors or assigns, also expressly waives the defense of statute of limitations in any proceeding that may be brought by the The City of Newburgh, its successors or assigns, to enforce its rights of reverter or re-entry related to the restrictive covenants in the November 13, 2015 deed.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

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[Signature Page to Follow]

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

BOYS & GIRLS CLUB OF NEWBURGH, INC.

By: _____

Name: Kevin White

Title: Executive Director/Authorized Signatory

STATE OF NEW YORK)
) ss.:
COUNTY OF ORANGE)

On the ____ day of _____, in the year 2024, before me, the undersigned, a Notary Public in and for the State, personally appeared KEVIN WHITE personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his/her/their capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

IN PRESENCE OF:

ASAK 279 LIBERTY LLC

By: _____

Name: Aaron Sakhai

Title: Managing Member

STATE OF NEW YORK)
) ss.:
COUNTY OF ORANGE)

On the ____ day of _____, in the year 2024, before me, the undersigned, a Notary Public in and for the State, personally appeared AARON SAKHAI personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his/her/their capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

IN PRESENCE OF:

THE CITY OF NEWBURGH

By: _____

Name: Todd Venning

Title: City Manager

Pursuant to Res. No.: _____-2024

STATE OF NEW YORK)

) ss.:

COUNTY OF ORANGE)

On the _____ day of _____, in the year 2024, before me, the undersigned, a Notary Public in and for the State, personally appeared TODD VENNING personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his/her/their capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

ADDRESS: 279 Liberty Street, Newburgh, New York 12550
SBL: 18-5-8

RECORD AND RETURN BY MAIL TO:

Joshua Goldstein, Esq.
111 Great Neck Road, Suite 508
Great Neck, NY 11021

SCHEDULE A

Property Description

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the State of New York, County of Orange and City of Newburgh, known as 279 Liberty Street, in the City of Newburgh and being more accurately described as Section 18, Block 5, Lot 8, on the Official Tax Map of The City of Newburgh.

DRAFT