



City of Newburgh Council Work Session  
*Sesión de trabajo del Concejal de la  
Ciudad de Newburgh*

July 9, 2015

6:00 p.m.

AGENDA 9

1. Reminders:

- a. A Public Hearing to continue to hear public comment on Zoning will be held on Monday, July 13, 2015.
- b. A Certificate of Recognition will be presented to Bishop Jeffery Woody for his outstanding work and community service for the City of Newburgh.
- c. Certificates of Recognition will be presented to City residents for their outstanding dedication in helping clean up Newburgh.
- d. A presentation from Arnold Restivo from Key Bank on First Time Homebuyers in the City of Newburgh.
- e. The Comptroller will be presenting the Monthly Financial Summary Report.

*El Contralor presentará el Resumen Mensual del Reporte Financiero.*

2. Economic Development and Planning:

- a. Draft Ordinance No. 10-2015  
An ordinance rescinding the language contained in Chapter 300 of the Code of the City of Newburgh entitled "Zoning" and enacting a new Chapter 300 entitled "Zoning" to adopt a new zoning ordinance and zoning map for the City of Newburgh. (Alexandra Church)
- b. Draft Resolution No. 153 -2015  
A resolution of the City Council of the City of Newburgh issuing a Negative Declaration under State Environmental Quality Review Act (SEQRA) with respect to the adoption of the revised chapter 300 entitled "Zoning" of the Code of Ordinances of the City of Newburgh. (Alexandra Church)

c. Resolution No. 154-2015

A resolution authorizing the City Manager to enter into a license agreement with the Newburgh Preservation Association to allow access to Old Town Cemetery for the purpose of making improvements in connection with a Veterans Day Project. (Alexandra Church)

d. Resolution No. 155-2015

A resolution authorizing the City Manager to execute a License Agreement with Vets Leading the Way to permit access to City owned property located at 41 Wisner Avenue (Section 32, Block 1, Lot 8) for the purposes of performing a site assessment. (Alexandra Church)

e. Resolution No. 156-2015

A resolution to authorize the conveyance of real property known as 37 Hasbrouck Street (Section 38, Block 4, Lot 17), 42 Hasbrouck Street (Section 38, Block 3, Lot 49) and 53 Hasbrouck Street (Section 38, Block 4, Lot 11) at private sale To Liz Pastore D/B/A Prestige Building Co. for the amount of \$37,660.00. (Alexandra Church)

f. Resolution No. 157-2015

A resolution authorizing the execution of a Release of Restrictive Covenants and Right of Re-Entry from a deed issued to Russell Turiak to the premises known as 8 Clark Street (Section 36, Block 1, Lot 8). (Michelle Kelson)

g. Resolution No. 158-2015

A resolution of the City Council of the City of Newburgh, New York supporting the 2015 Consolidated Funding Application of Safe harbors of the Hudson, Inc. to the New York State Office of Parks, Recreation and Historic Preservation for an Environmental Protection Fund Grant. (Alexandra Church)

h. Resolution No. 159 -2015

A resolution of the City Council of the City of Newburgh, New York supporting the 2015 Consolidated Funding Application of the Newburgh Community Land Bank to the Office of Community Renewal, New York State Housing Trust Fund Corporation for a New York Main Street Downtown Stabilization Program Grant. (Alexandra Church)

i. Resolution No. 160 – 2015

A resolution of the City Council of the City of Newburgh, New York supporting the 2015 Consolidated Funding Application of St. George's Episcopal Church to the New York State Office of Parks, Recreation and Historic Preservation for an

Environmental Protection Fund Grant under the Historic Property Acquisition, Preservation and Planning Program. (Alexandra Church)

j. Resolution No. 161 -2015

A resolution of the City Council of the City of Newburgh, New York supporting the 2015 Consolidated Funding Application of the Newburgh Community Land Bank for a New York State Energy Research and Development Authority – Cleaner, Greener Communities Program Phase II Implementation Grant.  
(Alexandra Church & Jason Morris)

k. Resolution No. 162-2015

A resolution authorizing the City Manager to apply for and accept if awarded a New York State Department of State Office of parks, Recreation and Historic Preservation Recreational Trails Program Grant through the Consolidated Funding Application process in an amount not to exceed \$200,000.00 to develop a park and construction of trails along the Quassaick Creek.  
(Alexandra Church & Jason Morris)

l. Resolution No. 163-2015

A resolution authorizing the City Manager to apply for and accept if awarded a New York State Energy Research and Development Authority – Cleaner, Greener Communities Program Phase II Implementation Grant through the Consolidated Funding Application process in an amount not to exceed \$10,000.00 to develop solar energy guidelines. (Alexandra Church & Jason Morris)

m. Resolution No. 164-2015

A resolution authorizing the City Manager to apply for and accept if awarded a New York State Office of Parks, Recreation and Historic Preservation for an Environmental Protection Fund Park Acquisition, Development and Planning Program Grant in an amount not to exceed \$200,000.00 to develop park land at Browns Pond. (Alexandra Church & Jason Morris)

3. Engineering

a. Resolution No. 165-2015

A resolution authorizing Arcadis/Malcolm Pirnie to assist the City of Newburgh in applying for a New York State Environmental Facilities Corporation Green Innovation Grant with an award not to exceed \$400,000.00 through the Consolidated Funding Application Process for the City Hall Green Roof Renovation Project and further authorizing the City Manager to accept such grant funds if awarded. (Jason Morris)

b. Resolution No. 166-2015

A resolution authorizing Arcadis/Malcolm Pirnie to assist the City of Newburgh in applying for a New York State Department of Environmental Conservation Water Quality Improvement Program Grant with an award not to exceed \$500,000.00 through the Consolidated Funding Application Process for the Downing Park Pond Drainage Improvement Project and further authorizing the City Manager to accept such grant funds if awarded. (Jason Morris)

c. Resolution No. 167-2015

A resolution authorizing the City Manager to apply for and accept if awarded a New York State Department of State Local Waterfront Revitalization Program Grant through the Consolidated Funding Application Process in an amount not to exceed \$155,000.00 to undertake the reconstruction of Combined Sewer Overflow Outfall No. 12. (Jason Morris)

d. Resolution No. 168-2015

A resolution authorizing Arcadis/Malcolm Pirnie to assist the City of Newburgh in applying for a New York State Department of Environmental Conservation Water Quality Improvement Program Grant with an award not to exceed \$500,000.00 through the Consolidated Funding Application Process for the Regulator No. 2 Replacement Project and further authorizing the City Manager to accept such grant funds if awarded. (Jason Morris)

e. Resolution No. 169-2015

A resolution authorizing the City Manager to apply for and accept if awarded an Empire State Development Grant from the Regional Council Capital Fund through the Consolidated Funding Application Process in an amount not to exceed \$1,800,000.00 to undertake the South Water Street Sewer Separation Project. (Jason Morris)

f. Resolution No. 170-2015

A resolution authorizing Barton & Loguidice, D.P.C. to assist the City of Newburgh in applying for an Engineering Planning Grant from the Environmental Facilities Corporation through the Consolidated Funding Application Process with an award of up to \$125,000.00 to investigate illicit sewer connections east of Liberty Street within the City of Newburgh and further authorizing the City Manager to accept such grant funds if awarded. (Jason Morris)

g. Resolution No. 171-2015

A resolution authorizing the City Manager to execute a contract with Barton & Loguidice, D.P.C. for professional engineering services for a sanitary sewer overflow investigation within the City of Newburgh at a cost not to exceed \$27,840.00. (Jason Morris)



h. Resolution No. 172-2015

A resolution authorizing the execution of a change order in the amount of \$55,100.00 with Amstar of western New York Inc. in connection with the Ellis Avenue and Brady Avenue Water Storage Tanks Rehabilitation Project.  
(Jason Morris)

i. Resolution No. 173-2015

A resolution authorizing the City Manager to execute an amendment to the Street Lighting Authority Order with CH Energy Group, Inc. (Jason Morris)

j. Draft Resolution No. 174 -2015

A resolution to authorize the execution of a change order in the amount of \$ with Enterprise Network Resolutions Contracting, LLC, in connection with site cover installation at the former Provan Ford site located at 210 Mill Street.

4. Agreements and Grants:

a. Resolution No. 175-2015

A resolution authorizing the City Manager to apply for and accept if awarded a grant from the Orange county Youth Bureau in the amount of \$32,743.00 requiring no City match for the Recreation Department to fund Youth Soccer & Basketball Programs in the City of Newburgh. (Derrick Stanton)

b. Resolution No. 176-2015

A resolution authorizing the City Manager to accept a proposal and execute a contract with Novusolutions for the purchase of meeting and agenda management software.

c. Resolution No. 177-2015

A resolution authorizing the City Manager to apply for and accept if awarded a grant from the United States Department of Justice for the Cops Hiring Program to promote community policing in an amount not to exceed \$1,068,048.24 with a twenty five percent local cash match required. (Acting Chief Cameron)

5. Discussion Items:

- a. Dumping Fine ( Karen Mejia)
- b. Bulk Pick Up (Mayor Kennedy)
- c. Capital Budget 2015 (John Aber)

d. Draft Resolution No. -2015

Resolution scheduling a Public Hearing for August 10, 2015 to hear public comment concerning a Local Law rescinding the language contained in Chapter 34, Article I of the Code of the City of Newburgh entitled "Code of Ethics" and amending Chapter 34 to enact a new Article I entitled "Code of Ethics" to the Code of Ordinances of the City of Newburgh. (Michelle Kelson)

e. Draft Resolution No. -2015

A resolution to remove the "Have you been convicted of a crime?" question from the City of Newburgh application for employment form. (Mayor Kennedy)

6. Executive Session:

- a. Pending litigation
- b. Collective negotiations

ORDINANCE NO.: 10 - 2015

OF

\_\_\_\_\_, 2015

**AN ORDINANCE RESCINDING THE LANGUAGE CONTAINED IN  
CHAPTER 300 OF THE CODE OF THE CITY OF NEWBURGH ENTITLED “ZONING”  
AND ENACTING A NEW CHAPTER 300 ENTITLED “ZONING” TO ADOPT  
A NEW ZONING ORDINANCE AND ZONING MAP FOR THE CITY OF NEWBURGH**

**WHEREAS**, by Resolution No. 172-2011 of September 12, 2011, the City Council of the City of Newburgh (“City Council” or “City”) adopted a Future Land Use Plan as an amendment to the City’s Sustainable Master Plan pursuant to Section 28-a of the New York State General City Law; and

**WHEREAS**, the City Council recognizes that subsequent to the adoption of the Future Land Use Plan it is necessary to revise and update the City’s Zoning Code to be consistent with the policies and goals of the Future Land Use Plan; and

**WHEREAS**, by Resolution No. 87-2012 of June 18, 2012, the City Council accepted the report of the Pace Law School Land Use Law Center making recommendations for the streamlining of the City’s land use process; supported a comprehensive review and update of the City’s land use laws, including an update of the City’s entire Zoning Code; and authorized the City Manager to take such steps as are necessary to seek funding sources for a comprehensive update of the City’s Zoning Code; and

**WHEREAS**, the City, in coordination with the Greater Newburgh Partnership (“GNP”), appointed a Zoning Advisory Team which has revised City of Newburgh Zoning Code and Map to comply with and conform to land use policy recommendations clearly set forth in the 2011 Future Land Use Plan; and

**WHEREAS**, the Zoning Advisory Team has presented a Draft Zoning Code Update to the City Council and by Resolution No. 37-2014 of February 24, 2014, this Council accepted the Draft Zoning Code Update from the Zoning Advisory Team and agreed to take such steps as are necessary and appropriate to review, adopt and implement a comprehensive update of the City of Newburgh Zoning Code; and

**WHEREAS**, after due notice, this Council notice held a public hearing on the Draft Zoning Code and Map at a regular meeting of the City Council on May 12, 2014 and which continued on at regular meetings of the City Council on May 27, 2014, June 9, 2014 and July 14, 2014; and

**WHEREAS**, this Council determined at that time that the Draft Zoning Code and Map as proposed required additional review, public input and modification; and

**WHEREAS**, on March 9, 2015, after additional review and modification, a Revised Draft Zoning Code was submitted to this Council; and

**WHEREAS**, public informational sessions to advise and update the public about the proposed draft zoning code were held on December 10, 2014, February 8, 2015 and May 13, 2015, and after due notice, this Council held a public hearing on the Revised Draft Zoning Code at a regular meeting of the City Council on April 13, 2015; and

**WHEREAS**, a final draft of the proposed Zoning Code and Map was submitted to Council on June 11, 2015; and

**WHEREAS**, by Resolution No. 100-2014 of April 28, 2014, in compliance with SEQRA, the City Council of the City of Newburgh declared its intent to assume Lead Agency status, classified the project as a Type I action, proposed to accept as complete an Environmental Assessment Form and referred the proposed Chapter 300 entitled "Zoning" to and the Orange County Planning Department pursuant to General Municipal Law Section 239-m; and

**WHEREAS**, by Resolution No. 164-2014 of July 14, 2014, in compliance with SEQRA, the City Council of the City of Newburgh declared itself to be Lead Agency status for the environmental review of the action pursuant to 6 NYCRR 617.6 and accepted Part 3 of the Environmental Assessment Form ("EAF"); and

**WHEREAS**, the Draft Zoning Code and Zoning Map together with the FEAF was duly submitted to the Orange County Planning Department for review pursuant to General Municipal Law Section 239-m and the Orange County Planning Department has replied with its recommendations; and

**WHEREAS**, this Council having duly held a third public hearing on the final draft of the proposed Zoning Code and Zoning Map at a regular meeting of the City Council on July 13, 2015; and

**WHEREAS**, this Council having duly reviewed the FEAF and all public comments received and having issued a negative declaration on this action by Resolution No. -2015 of July 13, 2015;

**NOW, THEREFORE, BE IT ORDAINED**, by the Council of the City of Newburgh, New York that that Chapter 300 of the Code of Ordinances of the City, entitled "Zoning" and being Ordinance No. 18-2000 of December 11, 2000, as amended, be and hereby is repealed in its entirety; and

**BE IT FURTHER ORDAINED**, that a new Chapter 300 of the Code of Ordinances entitled "Zoning" and Zoning Map of the City of Newburgh be and hereby are enacted to read as annexed hereto in Schedule "A" and "B" respectively and made a part hereof; and

**BE IT FURTHER ORDAINED**, this Ordinance shall take effect on \_\_\_\_\_, 2015.

# City of Newburgh, Chapter 300, Zoning

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<b>ARTICLE I—TITLE, SCOPE, AND PURPOSES</b>	<b>5</b>
§300-1. <i>Title</i>	5
§300-2. <i>Introduction and User Guide</i>	5
§300-3. <i>Scope</i>	6
<b>ARTICLE II—DEFINITIONS AND WORD USAGE</b>	<b>8</b>
§300-6. <i>Definitions and Word Usage</i>	8
<b>ARTICLE III—ADMINISTRATION</b>	<b>17</b>
§300-7. <i>Administration and Enforcement Official</i>	17
§300-8. <i>Applicant's Requirements</i>	17
§300-9. <i>Schedule of Fees, Collection Procedures</i>	17
§300-10. <i>Escrow</i>	18
§300-11. <i>Building Permits, Certificates of Occupancy and Site Plan Approval</i>	19
§300-12. <i>Application for Building Permit</i>	20
§300-13. <i>Certificates of Occupancy</i>	21
§300-14. <i>Reapplication after Denial</i>	22
<b>ARTICLE IV—LAND USE AND OVERLAY DISTRICTS</b>	<b>23</b>
§300-21. <i>Establishment of Districts</i>	23
§300-22. <i>Zoning Map</i>	23
§300-23. <i>Interpretation of District Boundaries</i>	24
§300-24. <i>Higher Standards to Prevail</i>	24
<b>ARTICLE V—LAND USE DISTRICT REGULATIONS</b>	<b>25</b>
§300-31. <i>Allowable Uses, Accessory and Mixed Uses; Change of Use</i>	25
§300-32. <i>Density Dimensional Regulations</i>	27
§300-33. <i>Conservation Development District</i>	29
<b>ARTICLE VI—HISTORIC OVERLAY DISTRICT</b>	<b>32</b>
§300-36. <i>Historic and Architectural Design Overlay Districts: Purpose</i>	32
§300-77. <i>Architectural Review Commission</i>	32
§300-38. <i>Powers and Duties of the ARC</i>	34
§300-39. <i>Designation of Landmarks or Historic Districts or Architectural Design Districts</i>	34
§300-40. <i>Certificate of Appropriateness</i>	36
§300-41. <i>Appeal of COA Decision, Hardship</i>	39
§300.42. <i>Demolition, Removal, or Relocation of Landmark Buildings</i>	41

# City of Newburgh, Chapter 300, Zoning

---

§300-43. Administration and Enforcement	43
§300-44. Designation of Districts and Standards	44
§300-46. Waterbody Protection Overlay (WPO) District	46
§300-47. Neighborhood Commercial Overlay District	49
<b>ARTICLE VIII—SUPPLEMENTARY REGULATIONS</b>	<b>50</b>
§300-51. Environmental Performance Standards	50
§300-52. Environmental Constraints	51
§300-53. Screening and Buffering in Nonresidential Districts with respect to Lots in the “C”, “Ind” and “PO” Districts.	52
§300-54. Parking and Storage of Tractors, Trailers, and Buses	53
§300-55. Outdoor Swimming Pools	53
§300-56. Preservation of Public Rights-Of-Way	53
§300-57. Public Utilities	54
§300-58. Mobile Homes	54
§300-60. Adult Uses	55
<b>ARTICLE IX—OFF-STREET PARKING AND LOADING</b>	<b>56</b>
§300-66. General Requirements	56
§300-67. Off-Street Parking Standards	56
§300-68. Design, Layout and Construction of Parking Areas	57
§300-69. Off-Street Loading Space Requirements	59
§300-70. Shared Parking and Special Off-Street Parking Permit	59
<b>ARTICLE X—NONCONFORMING USES AND STRUCTURES</b>	<b>61</b>
§300-76. Continuation of Nonconforming Uses and Structures	61
§300-77. Discontinuance and Reestablishment	61
§300-78. Change of Non-Conforming Uses	61
§300-79. Restoration, Expansion and Repair	62
§300-80. District Changes	62
§300-81. Special Permit Uses	62
§300-82. Construction Started Prior to this Chapter	63
§300-83. Existing Nonconforming Lots	63
<b>ARTICLE XI—SITE PLAN APPLICATION AND APPROVAL</b>	<b>64</b>
§300-86. Site Plan Review	64
§300-87. Required Information	64

# City of Newburgh, Chapter 300, Zoning

§300-88. <i>Procedures</i>	68
§300-89. <i>Criteria</i>	70
§300-90. <i>Public Hearing</i>	73
§300-91. <i>Action</i>	74
§300-92. <i>Implementation, Amendment and Enforcement of Approved Site Plan</i>	75
<b>ARTICLE XII—SPECIAL USE PERMITS</b>	<b>78</b>
§300-101. <i>Purpose</i>	78
§300-102. <i>Application and Procedures</i>	78
§300-103. <i>Standards for Individual Special Uses</i>	83
§300-104. <i>Findings</i>	86
<b>ARTICLE XIII—ZONING BOARD OF APPEALS</b>	<b>88</b>
§300-111. <i>Purpose and Establishment</i>	88
§300-112. <i>Continuation, Appointment and Organization; Alternate Members</i>	88
§300-113. <i>General Powers and Duties</i>	89
§300-114. <i>Appeals for Variance</i>	89
§300-115. <i>Use Variance and Area Variances</i>	90
§300-116. <i>Procedures</i>	92
<b>ARTICLE XIV—ENFORCEMENT, SEVERABILITY, WHEN EFFECTIVE</b>	<b>95</b>
§300-121. <i>Violations and Enforcement; Penalties for Offenses</i>	95
§300-122. <i>Severability</i>	96
§300-123. <i>Amendments</i>	97
§300-124. <i>When Effective</i>	98
§300-125. <i>Repeal of Existing Zoning Ordinance</i>	98
<b>ARTICLE XV— FORM BASED CODE</b>	
<b>PART 1: INTRODUCTION</b>	
§300-126. <i>Purpose and Intent of Form-Based Code</i>	
§300-127. <i>Districts Defined</i>	
§300-128. <i>Existing Context</i>	
§300-129. <i>Schedule of Permitted Uses</i>	
<b>PART 2: DISTRICT REGULATIONS AND GUIDELINES</b>	
§300-136. <i>Broadway Corridor</i>	
§300-137. <i>Downtown Neighborhood</i>	
§300-138. <i>Waterfront Gateway</i>	
§300-139. <i>Planned Waterfront District</i>	

# City of Newburgh, Chapter 300, Zoning

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## **PART 3: SUPPLEMENTARY STANDARDS**

*§300-151. Building Types*

*§300-152. Design Standards*

*§300-153. Signs and Awnings*

*§300-154. Streetscape Standards*

*§300-155. Landscape Standards*

*§300-156. Hudson River Waterfront Access*

*§300-157. Parking Requirements in Downtown Districts*



# City of Newburgh, Chapter 300, Zoning

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## ARTICLE I—TITLE, SCOPE, AND PURPOSES

### §300-1. Title

This Chapter shall be known and may be cited as the “City of Newburgh, New York Zoning Ordinance.

### §300-2. Introduction and User Guide

- A) This Chapter enables the City of Newburgh to protect the diverse character of the City while also giving landowners a range of options and choices for the use, development, and conservation of their land. It is designed to strike a balance between achieving the community’s goals as expressed in the City’s Comprehensive Plan and protecting the property interests of landowners, providing a development approval process that is predictable, efficient and fair.
- B) Overview: This section provides a brief overview of what is in the Zoning Law.
  - 1) This Chapter divides the City into land use and overlay districts and establishes rules for the use of land in each district. The text is accompanied by a Zoning Map which shows where the various districts are located.
  - 2) The Schedule of Use Regulations in §300-31 identifies the uses allowed in each district. The definitions in §300-6 explain meanings of the different use categories. Several of the uses are also regulated by “supplementary regulations” in Article VIII, which are referenced in the Schedule of Use Regulations.
  - 3) Article V, and the Schedules §300-32, contain dimensional regulations for each district, covering lot size, setbacks, and other requirements about the permissible amount, size, type, and location of development on a lot.
  - 4) Articles VI and VII address “overlay” districts, which are special districts designed primarily to protect special resources from inappropriate development and to maintain the City’s character and natural and historic resources. The provisions of these districts apply in addition to those of the “underlying” land use district.
  - 5) Article V and §300-33 contains options for flexibility in development patterns, particularly the use of Conservation Development Districts (CDD), which preserve open space by concentrating development on a portion of a parcel.
  - 6) Article X contains rules for allowing the continuation of buildings and uses that were legal under previous regulations but do not conform to this Chapter.
  - 7) Supplementary regulations in Article VIII contain performance standards for all development, as well as additional requirements for specific types of uses and structures.
  - 8) Articles X, XI, XII and XIII explain the procedures for obtaining various types of approvals and permits from the City, including land use permits from the Building Inspector, Special Use Permits and Site Plan approval from the City Planning Board, and variances from the Zoning Board of Appeals. §300-123 contains the procedures for amending this Chapter to change the map or the text.

## City of Newburgh, Chapter 300, Zoning

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- C) How to Use this Chapter. Landowners and others who use this Chapter are encouraged to meet with the Building Inspector to discuss how this Chapter applies to their property. For any large-scale development (a large business or a development of several homes), it is also a good idea to consult with the City's Comprehensive Plan to understand how to make a proposed development fit within the City's vision of its future. The usual sequence of steps in using this Chapter is as follows:
- 1) Check the Zoning Land Use District Map to determine land use district(s) in which your property is located.
  - 2) Check the Overlay District Map(s) to see which of the overlay districts apply to your land. Review the provisions of applicable overlay districts in §Articles V, VI and VII to see how they may affect what you can do with your land.
  - 3) Consult the Schedule of Use Regulations and text in §300-31, along with any relevant definitions in §300-6 to determine whether your proposed use is allowed in that district and what permits may be needed to approve it. Also, check the specific sections that address the district in which your land is located in as well as any supplementary regulations in Article VIII that may apply to your proposed use.
  - 4) Consult the Schedules of Area, Bulk, and Parking Regulations in §300-32 to see which setbacks and other dimensional standards apply.
  - 5) If your land is in the CDD, review the requirement of a conservation analysis and the various development options provided in §300-33 to determine which you want to pursue.
  - 6) If you have an existing use that is no longer permitted, or if your existing building or lot does not comply with dimensional standards for your zoning district, refer to Article X to determine what you can do with it.
  - 7) If the Schedule of Use Regulations indicates that your proposed use or structure can go forward with just a building permit, refer to Article III. If the use will require a Special Use Permit or Site Plan approval, turn to Articles X and XI for the procedures to follow.
  - 8) If your proposed use or structure is not permitted, you may want to petition for either a variance from the Zoning Board of Appeals (as provided in Article XIII) or a zoning amendment from the City Council (as provided in §300-123). These options should be discussed with the Building Inspector before they are pursued. Any zoning amendment must be consistent with the Comprehensive Plan.

### **§300-3. Scope**

Except as hereinafter provided:

- A) No building or land shall hereafter be used or occupied and no building or part thereof shall be erected, moved or altered unless in conformity with the regulations herein specified for the zoning district(s) in which it is located.
- B) No building shall hereafter be erected or altered to exceed the height, to house a greater number of families, to occupy a greater percentage of lot area, or to have narrower or smaller yards than is specified herein for the district(s) in which such building located.

# City of Newburgh, Chapter 300, Zoning

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- C) No part of a yard or other open space about any building required for the purpose of complying with the provisions of this Chapter shall be included as part of a yard or other open space similarly required for another building.

## **§300-4. Purposes**

This Chapter has been adopted and deemed necessary to achieve the following purposes:

- A) To promote the orderly development and redevelopment of the City.
- B) To recognize, preserve, and promote the character of the City, which is one of mixed use, tightly knit, and urban in nature.
- C) To promote the goals and objectives of the Comprehensive Plan.
- D) To establish the appropriate location of various uses, buildings, and open spaces necessary to protect public health and safety.
- E) To provide a range of housing opportunities for all segments of the population with due consideration of regional housing needs, ensuring that affordable housing remains in appropriate proportion to the development of market rate housing.
- F) To encourage a range of business activities in appropriate locations by concentrating businesses in or near transportation corridors, and to promote economic development by building on the tremendous physical, aesthetic, and historical assets of the City.
- G) To preserve the historic and architectural features and districts that make Newburgh unique and desirable, as well as for the basis for the overall character of the community.
- H) To promote the appropriate use, conservation and enjoyment of the public spaces of the City, including sidewalks, streets, parks and the waterfront.
- I) To conserve the natural resources of the City by encouraging development in appropriate locations and by limiting building in areas where it would adversely affect the City's ecological habitats.
- J) To improve transportation facilities in areas designated for more intensive development, taking advantage of existing regional transit programs and encouraging the implementation of new programs.
- K) To reduce traffic congestion on Broadway and other major transportation routes by establishing a pattern of development and circulation that reduces the need for driving, provides alternative routes between destinations, and encourages walking, bicycling and the use of regional transportation services.

# City of Newburgh, Chapter 300, Zoning

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## ARTICLE II—DEFINITIONS AND WORD USAGE

### §300-6. Definitions and Word Usage

- A) Except where specifically defined herein, all words used in this Chapter shall carry their customary meanings. Words used in the present tense include the future and the plural the singular. The word “shall” is intended to be mandatory, while “should” is not; and “occupied” or “used” shall be considered as though followed by the words “or intended, arranged, or designed to be used or occupied.” In general, this Chapter uses the word “permitted” to describe an action that requires a permit and “allowed” when a permit is not required.
- B) Definitions:
1. **ACTIVITY FACILITY:** A business which, for compensation, offers indoor recreational activities such as dance, martial arts, arts and crafts, musical or theatrical instruction, children’s gyms and play center, and other places of public or private entertainment. Activity facilities shall not include facilities intended primarily for spectator activities, such as, but not limited to stadia and arenas, automotive tracks, bowling alleys, parlors or amusement parks.
  2. **ADULT DAY CARE FACILITY:** An establishment which provides day-care services for hire to adults who, by reason of physical or other limitations associated with age, physical or mental disabilities or other factors, are unable or substantially unable to live independently without supervision.
  3. **ADULT USES:** An adult bookstore, adult motion picture theater, or adult entertainment cabaret, as defined herein.
    - a) **ADULT BOOKSTORE:** An establishment having as a substantial or significant portion of its stock-in-trade books, magazines, or other periodicals, films, slides and videotapes, which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to sexual activities or exposing specified anatomical areas.
    - b) **ADULT FILM THEATER:** An enclosed building used primarily for presenting material motion pictures, films, slide shows or videotapes distinguished or characterized by an emphasis on matters depicting, describing or relating to sexual activities or exposing specified anatomical areas.
    - c) **ADULT ENTERTAINMENT CABARET:** A building or portion thereof regularly featuring dancing or other live entertainment if the dancing or entertainment that constitutes the primary live entertainment is distinguished or characterized by an emphasis on the exhibiting of sexual activities or specified anatomical areas for observation by patrons therein.
  4. **AGRICULTURE:** An activity which includes the cultivation of the soil for food products or other useful or valuable growths of the field or garden, nursery stock and commercial greenhouses, but does not include dairying, raising of livestock, breeding or keeping of animals, fowl or birds where the same is carried on as a business or gainful occupation. “Agriculture” includes also the sale at retail of farm, garden or nursery products produced on the premises.

## City of Newburgh, Chapter 300, Zoning

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5. **AMUSEMENT CENTER:** A place of business wherein three or more coin-operated machines, games of skill or chance or other machines of a similar nature are available for use or play by the general public.
6. **ANIMAL CARE CENTER:** Any building or portion of a building designed or used for the care, observation, or treatment of domestic animals, or for the keeping, breeding or boarding for compensation of dogs, cats, or other domestic animals, when such boarding is for more than three (3) consecutive hours.
7. **APARTMENT HOUSE (SAME AS MULTIFAMILY DWELLING):** A residential building that contains more than four (4) dwelling units, with one primary entrance to access all dwelling units contained therein. An apartment house may include accessory uses shared by residents of the apartment house, including recreational facilities, laundry rooms, parking, seating areas and open space for the exclusive use of residents residing in the complex.
8. **APARTMENT, ACCESSORY:** A self-contained residential dwelling unit, clearly incidental and secondary to the principal dwelling of which it is a part, having a separate entrance and containing separate cooking, eating, sanitation and sleeping facilities for the exclusive use of the occupant in a one-family dwelling, or in a separate accessory structure on the same lot as a one-family dwelling.
9. **ASSEMBLY HALL/BANQUET HALL:** Buildings in which the primary or intended occupancy or use is the assembly for amusement, athletic, civic, dining, educational, entertainment, political, recreational, religious, social, or similar purposes, except an assembly hall shall not include any use defined elsewhere herein, in which kitchen facilities may or may not exist.
10. **AUTOMOBILE-GASOLINE STATION:** Any building or land area used for the retail dispensing or sales of automobile fuels, which activity may be accompanied by accessory uses such as sales of lubricants, tires, accessories or supplies, and prepackaged food items and tangible consumer goods, primarily for self-service by the customer.
11. **AUTOMOBILE SALES:** Any building, land area or other premises used for the display, sale or lease of new or used automobiles, vans, trucks, trailers, or boats, but not including any repair work. Such facilities may not conduct repair services as an accessory use other than warranty or other minor repair service.
12. **AUTOMOBILE WASH:** Any building or land area, the use of which is devoted to the business of washing or waxing automobiles for a fee, whether by automated cleansing devices or otherwise.
13. **AUTOMOBILE-SERVICE/REPAIR:** Any area of land, including structures thereon, available to the public, operated for gain, and which are used for repair, greasing, washing, servicing, adjusting or equipping of automobiles or other vehicles.
14. **BANK:** A financial institution that is open to the public and engaged in deposit banking, and that may perform closely related functions, such as making loans, investments, and fiduciary activities.
15. **BAR:** A commercial establishment, open to the general public, which sells and serves alcoholic beverages for consumption on the premises and where food may be served as an accessory use. The term “bar” includes “barroom”, “wine bar”, “tavern”, “pub”, and “saloon”.
16. **BASEMENT:** A story that is wholly or partly below grade, but at least ½ of its height, measured from floor to ceiling, is above the average established curb level or

## City of Newburgh, Chapter 300, Zoning

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- finished grade of the ground adjoining the building.
17. **BED AND BREAKFAST:** A lodging facility in an owner occupied dwelling offering from two to five (2-5) guest rooms, without separate kitchen facilities, for paying, transient guests for a period not to exceed fifteen (15) consecutive days per guest. A dining room and kitchen may be provided for serving guests of the facility, but shall not be open to the public. An AirB&B is a variant of this use. Short-term, in-home lodging shall apply for one room for up to three (3) paying guests.
  18. **BILLIARD PARLOR:** A building, or portion thereof, having within its premises three (3) or more pool tables, billiard tables, or a combination thereof.
  19. **BOARDING HOUSE:** An owner occupied dwelling unit, with non-transient boarders, and with common rooms used and accessible to all residents, within which are boarding units that are rented individually and occupied for sleeping and/or living purposes to non-transient occupants. A boarding house shall not be considered a roominghome.
  20. **BOARDING UNIT:** Any room or group of rooms forming a habitable unit used or intended to be used for living or sleeping but not used for cooking purposes.
  21. **BOAT REPAIR:** A facility where boats are repaired and may be stored.
  22. **BOWLING ALLEY:** Indoor facility for the sport of bowling, with customary accessory uses, such as snack bars.
  23. **BUILDING ACCESSORY:** A building, the use and size of which is incidental to, and complimentary of, the principal building on a lot.
  24. **BUILDING FRONT LINE:** The line of the face of the building nearest the front lot line. The face includes covered porches, but does not include steps.
  25. **BUILDING MAIN (PRINCIPAL):** The building in which is conducted the primary use of the lot on which it is located.
  26. **BUIDING:** (Includes "structure") Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.
  27. **CABARET:** Any room, place, or space in which any musical entertainment, singing, dancing, or other similar amusement takes place in connection with a bar and/or restaurant, accept for an Adult Cabaret.
  28. **CAR RENTAL:** A business that rents vehicles to persons or businesses for use on a transient basis. The business may include on-site facilities for servicing, storing, repairing, and fueling the vehicles.
  29. **CELLAR:** That space of a building that is partly or entirely below grade which has more than half of its height, measured from floor to ceiling, below the average established curb level or finished grade of the ground adjoining the building.
  30. **CEMETERY:** A place used for the interment of human or animal remains or cremated remains.
  31. **CHILD DAY CARE CENTER:** A facility that is not also a dwelling unit that provides care for infants and preschool children and may offer pre-kindergarten educational service, on a regular basis for more than three hours per child and is defined in 18 NYCRR Part 413 and regulated in accordance with 18 NYCRR 418.
  32. **COLLEGE/UNIVERSITY:** An institution for post-secondary education, which is licensed by the State of New York to grant associate, baccalaureate, or higher degrees.
  33. **COMMERCIAL LAUNDRY:** An establishment that launders and/or dries articles for



## City of Newburgh, Chapter 300, Zoning

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- commercial and not individual, customers.
34. **COMMUNITY CENTER:** A place, structure, area, or other facility used for providing religious, fraternal, social, educational, or recreational programs generally open to the public, not operated for profit, and designed to accommodate and serve significant segments of the local community.
35. **COOPERATIVE HOUSE:** A dwelling unit that is rented as a singular unit and not occupied by a family, as defined in this Chapter, within which are two or more boarding units occupied for sleeping and/or living purposes by non-transient occupants. A cooperative house shall not be considered to be a rooming house.
36. **COTTAGE INDUSTRY:** A use that is conducted wholly within an enclosed building that involves the manufacturing, production, processing, fabrication, assembly, treatment, repair, or packing of finished products predominantly from previously prepared or refined materials (or from raw materials that do not need refining). Light industry is capable of operation in such a manner that does not cause a noticeable amount of noise, dust, odor, smoke, glare, or vibration outside of the building in which the activity takes place. Such a use may or may not contain retail space. A machine shop is included in this category.
37. **COVERAGE, BUILDING:** The area that is covered by all of the buildings on the lot.
38. **CURB LEVEL:** The established elevation of the street grade at the point that is opposite the center of the wall nearest to and facing the street line. Where a building is on a corner lot, the curb level is the average of the mean levels of the curb line on the two intersecting streets. Where there is uncertainty about the curb level, it shall be determined by the City Engineer.
39. **DISTRIBUTION FACILITY/WAREHOUSE:** A facility involving the storage and shipment of goods in allotments. This use does not involve the manufacture or sale of goods from the premises.
40. **DORMITORY:** A building intended or used principally for sleeping accommodations, where such building is directly related to an educational or public institution, or house of worship. Such building may include common kitchen and gathering rooms, but does not contain complete dwelling units.
41. **DRIVE THRU (BANK, FAST FOOD RESTAURANT, PHARMACY):** An establishment that dispenses products or services to patrons who remain in vehicles.
42. **DRY CLEANER:** An establishment for the on-premises mechanical cleaning of garments, articles or goods of fabric for retail customers, or where drop-off and pick up occurs for garments or articles that are sent to another location for mechanical cleaning or laundering. A dry cleaning establishment does not include a laundry or laundromat, which provides self-service washing or drying for use by retail customers.
43. **DWELLING UNIT:** A single unit with one or more rooms with provisions for living, cooking, sanitary and sleeping facilities arranged for the use of one family only.
44. **DWELLING, DETACHED:** A dwelling having no common walls, floors or ceilings with any other dwelling unit.
45. **DWELLING, FOUR-FAMILY:** A building containing four (4) dwelling units only, on a single lot of record.
46. **DWELLING, MULTI-FAMILY:** See APARTMENT HOUSE.
47. **DWELLING, SINGLE FAMILY:** A building containing not more than one dwelling unit and not having more than one kitchen on a single lot of record.
48. **DWELLING, ROW OR ATTACHED (TOWNHOME):** A dwelling, having common

## City of Newburgh, Chapter 300, Zoning

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- walls with one or more dwelling units, also referred to as a “townhome”. A row dwelling sharing one common wall shall be deemed an end unit. This term shall also refer to two dwellings sharing one party or lot line wall and commonly referred to as a “duplex”.
49. DWELLING, THREE-FAMILY: A building containing three (3) dwelling units only, on a single lot of record.
50. DWELLING, TWO-FAMILY: A building containing two (2) dwelling units only, on a single lot of record.
51. DWELLING: Any building or portion thereof designed or used exclusively for non-transient residential use.
52. FAMILY DAY CARE: A facility located in a residential structure, which is owner-occupied as a family residence, that provides daytime care of more than three (3) hours per day per child for three to twelve (3 – 12) infants, pre-school children, and school age children 6 to 12 years of age for compensation. A Family Day Care includes those day care facilities defined by New York State in 18 NYCRR Part 413 as “Family Day Care Home” and “Group Family Day Care Home. Such facility must be licensed by New York State and operated in accordance with all applicable regulations.
53. FAMILY: One, two, or more persons occupying a dwelling unit and living together as a traditional family or the functional equivalent of a traditional family.
54. FLOOR AREA, BUILDING: The sum of the gross horizontal area of the several floors of a building and its accessory buildings on the same lot, excluding cellar and basement floor areas not devoted to residential use but including the area of roofed porches and roofed terraces. All dimensions shall be measured between exterior faces of walls.
55. FRONTAGE OCCUPANCY: The percentage of the lot width which must be occupied by either a front building façade or structures that screen parking, located within the area of the front lot line and the maximum front yard setback.
56. FRONTAGE: The length of a lot that borders a single street.
57. FUNERAL HOME: The establishment of a funeral director or undertaker, which includes facilities for the conduct of funeral services, but not cremation.
58. GARAGE, PRIVATE: Part of a principal residential building, or an accessory building located on the same lot as the principal residential building, designed primarily for the storage of motor vehicles.
59. HEIGHT, BUILDING: The vertical distance measured from curb or grade level at the front of the building to the highest level of a flat or mansard roof or to the average height of a pitched, gable, hip or gambrel roof, excluding bulkheads, and similar constructions enclosing equipment or stairs, provided that they are less than twelve (12) feet in height and do not occupy more than thirty percent (30%) of the area of the roof upon which they are located.
60. HOME OCCUPATION: Any use customarily conducted entirely within a dwelling or its accessory structures and carried on by the inhabitants thereof, which use is clearly incidental and secondary to the use of dwelling for residential purposes and does not change the character thereof.
61. HOSPITAL: An institution, licensed by the State of New York, which provides primarily transient or acutely needed human physical and/or mental health services and which includes inpatient facilities.
62. HOTEL: A building, or portion thereof, containing rooms occupied by transient guests who are lodged for payment, with or without meals, and in which there may be provided



## City of Newburgh, Chapter 300, Zoning

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- such services as are accessory and incidental to the use thereof as a temporary residence, such as dining, conference centers, recreational facilities and gift shops for the guests of the hotel.
63. **HOUSE OF WORSHIP:** A building, or portion thereof, together with its accessory buildings and uses, where persons regularly assemble for religious worship, services, and social events and which building, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain ceremonies and purposes.
64. **IN-LAW APARTMENT:** See APARTMENT, ACCESSORY.
65. **INDUSTRIAL USES:** A business use or activity at a scale greater than home industry, involving the manufacture, fabrication, processing, reduction, assembly, or destruction of any article, substance, or commodity, or any other treatment thereof in such a manner as to change the form, character, or appearance thereof.
66. **LAUNDROMAT:** A facility which provides self-service washing or drying for use by retail customers.
67. **LIVE/WORK:** A dwelling which is owner occupied, and which provides a commercial ground floor space and residential space above, for the family, craft or business, and retail space for creating sales.
68. **LOT LINE:** Any line dividing one lot from another or separating a lot from a street right-of-way line.
69. **LOT, CORNER:** A lot at the junction of, and having frontage on, two or more intersecting streets.
70. **LOT, DEPTH:** The mean distance between the front and rear lot lines, measured in the general direction of its side lot lines.
71. **LOT, THROUGH:** A lot having frontage on two streets, but not at the intersection of those two streets.
72. **LOT, WIDTH:** The mean distance of a lot measured at right angles to its depth, at the required setback line.
73. **LOT:** (Includes “plot”) A parcel of land occupied or capable of being occupied by one building and the accessory buildings or uses customarily incident to it, including such open spaces as are required by this Chapter.
74. **MEMBERSHIP CLUB:** An unincorporated association of persons for common social purpose or an association incorporated under the Membership Association Law, and which association or membership corporation is not conducted for profit and is not a part of, related to, or associated with a profit-making venture and which is managed by officers or directors, serving without pay and chosen or elected directly by members who form such an association or membership corporation.
75. **MIXED USE:** A development or a single building in which there may be a blend of uses including residential, commercial, cultural, institutional, or industrial, where those functions are physically and functionally integrated; most prominently a ground floor with a restaurant, theater, or retail shop and offices and/or residential use above.
76. **MOBILE HOME:** A structure mounted on axles and wheels containing living facilities and which was designed to be towed by an automobile or truck from place to place. Such structure will not be considered a mobile home for purposes of this Chapter if it is placed on a permanent foundation and modified to meet applicable building code requirements for a residential structure.
77. **MOTEL:** See “hotel”.

## City of Newburgh, Chapter 300, Zoning

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78. **MUSEUM:** A building serving as a repository for a collection of natural, scientific or literary curiosities, objects of interest or works of art, and arranged, intended and designed to be used by members of the public for viewing, with or without an admission charge, together with customary accessory uses including, for example, retail sale of goods to the public; café food service, art, dance and music performances, literary readings, and showing of films.
79. **NEIGHBORHOOD RETAIL:** A store serving the local retail business needs of the residents of the neighborhood, including but not limited to books, flowers, clothing, groceries, and pharmaceuticals.
80. **NONCONFORMING LOT:** Any lot lawfully existing on record on the effective date of this Chapter, or any amendment thereto, that does not meet the bulk and area requirements of this Chapter for the zoning district in which such lot is situated as a result of the enactment.
81. **NONCONFORMING STRUCTURE:** Any building lawfully existing on the effective date of this Chapter, or any amendment thereto, that does not meet the bulk and area requirements of this Chapter for the zoning district in which such building is situated as a result of the enactment.
82. **NONCONFORMING USE:** Any use lawfully existing on the effective date of this Chapter, or any amendment thereto, that does not conform to the district use regulations of this Chapter for the zoning district in which such use is situated as a result of the enactment.
83. **NURSING HOME:** An institution, licensed by the State of New York, which provides nursing care and related medical services on a 24-hour basis to primarily non-transient clients for remuneration.
84. **OFFICE PARK:** A group of two or more principal buildings and their accessory uses, together with any open space remaining, located on one lot, which buildings have a unified Site Plan and shall be designed to function as one project. The buildings in an “office park” shall be occupied or used principally for businesses or professional offices that are designed, constructed, and maintained on a coordinated basis.
85. **OPEN SPACE:** That portion of the lot that is unencumbered by any structure or any other impervious surface.
86. **PARKING AREA COMMUNITY:** A building, or part thereof, or a surface used for parking vehicles for remuneration.
87. **PARKING SPACE:** A space, available for the parking of one vehicle.
88. **PARKS, OPEN SPACE AND RECREATION:** Those areas owned or used by the City, other public entity or government, or non-profit organizations that are devoted to parks, playgrounds, recreation areas, nature preserves, or open space.
89. **PERSONAL SERVICES:** An establishment that is primarily engaged in frequent or recurring provision of individual services generally related to personal needs, and is not separately defined herein. These uses may also include accessory retail sales of products related to the service provided. Examples of personal services include but are not limited to: barber shops, nail salons, massage facilities, tailors.
90. **PROFESSIONAL OFFICE:** The office of a member of a recognized profession maintained for the conduct of that profession in any of the following related categories: architectural, engineering, planning, law, interior design, accounting, insurance, real estate, medical, dental, optical, or any similar type of profession.
91. **PUBLIC UTILITY:** Any person, firm, corporation, or governmental agency duly

## City of Newburgh, Chapter 300, Zoning

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- authorized to furnish to the public, under governmental regulation, electricity, gas, water, sewage treatment, steam, cable television, telephone, or telecommunications but shall not mean any person or entity that provides wireless telecommunication services to the public.
92. **RECREATIONAL VEHICLE:** A vehicular unit, which is designed as a temporary dwelling for travel, recreational, and vacation use, and which is self-propelled, mounted on, or pulled by another vehicle. Examples include, but are not limited to a travel trailer, camping trailer, truck camper, motor home, fifth-wheel trailer, or van camper.
93. **RESIDENTIAL CARE FACILITY:** A supervised residential board and care establishment, used as a group residence or extended care facility of the care of persons, where compensation and/or reimbursement of costs is paid to an operator, pursuant to state or federal standards, licensing requirements, or programs funding residential care services. The residential care facility provides common eating facilities for residents and common meeting or social or recreation areas. Such housing may also include daily activity assistance, such as dressing, grooming, bathing, etc.
94. **RESTAURANT:** Any establishment where the principal use is the preparation and sale of food and beverages to customers seated at a table or counter, served by a waiter or waitress, or at a buffet for consumption of the food on the premises. A restaurant may include the serving of alcoholic beverages and the provision of carry-out food service if they are incidental to the consumption of food and beverages. The term “restaurant” does not include a business whose principal operation is as a bar, cabaret, carry-out food service, or a fast-food establishment.
95. **RESTAURANT, CARRY-OUT:** Any establishment where food and/or beverages are prepared and served in a read-to-consume state and whose design or principal method of operation includes one or both of the following characteristics: customers order from a menu board or serve themselves from a buffet and principally carry out their food and/or beverages for consumption off premises.
96. **RESTAURANT, FAST-FOOD:** Restaurants where most customers order and are served food inside the premises at a counter, to be taken to a table for consumption or in packages prepared to leave the premises. See **DRIVE THRU** for where customers are served their food in a motor vehicle through a service window, in packages prepared to leave the premises.
97. **RETAIL:** A business that sells goods directly to the general public, for business, personal or household consumption, where such goods are available for immediate purchase and removal from the premises by the purchaser and are not defined elsewhere in this Chapter. Retail businesses include but are not limited to hardware stores, liquor stores, newsstands, shoe stores, stationery stores, convenience stores.
98. **ROOMING HOUSE:** Any dwelling, other than a boarding house, within which are boarding units rented individually and occupied for sleeping and/or living purposes to non-transient occupants. No common rooms are provided for the use of the residents.
99. **SCHOOL OF GENERAL INSTRUCTION (EDUCATIONAL SERVICES):** Any public school operated under the laws of the State of New York or nonpublic school offering courses in general instruction at least five days per week and seven months per year and generally serves students in grades corresponding to Pre-K through 12th grade.
100. **SELF-STORAGE:** A building or group of buildings consisting of individual, self-contained units leased to individuals, organizations, or businesses for storage of personal property.

## City of Newburgh, Chapter 300, Zoning

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- 101. SETBACK: The horizontal distance from such lot line to the part of the building which is nearest to such line.
- 102. SHOPPING CENTER: An area planned, as a whole with one Site Plan approval, for occupancy of three or more retail stores, light industrial uses, or professional offices with common accessory parking, that are designed, constructed, and maintained on a coordinated basis.
- 103. SIGN: Includes every sign, billboard, general sign, wall sign, roof sign, illuminated sign projecting sign, temporary sign, marquee and canopy and shall include any announcement, declaration, demonstration, display, illustration or insignia used to advertise or promote the interests of any person when the same is placed out of doors in view of the general public.
- 104. SHORT-TERM, IN-HOME LODGING: Lodging for paying guests for no more than one room and no more than three guests and for no more than 15 days is allowed without registration. (See BED & BREAKFAST).
- 105. STORAGE YARD: A building or area of land where a person, firm or corporation engaged in the construction business, or a related field, stores building materials, equipment and supplies exclusively in the business as a contractor.
- 106. STORY, HALF: A story under a gable, hip, or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than two (2) feet above the floor of such story.
- 107. STORY: The portion of a building which is between one floor level and the next higher floor level, or the roof. If a mezzanine floor area exceeds 1/3 of the area of the floor immediately below, it shall be deemed to be a story. A basement shall be deemed to be a story when its ceiling is six (6) or more feet above the finished grade. A cellar shall not be deemed to be a story if unfinished and without human occupancy.
- 108. STREET: A public or private way which affords the principal means of access to abutting properties.
- 109. TATTOO PARLOR: Any building or premises in which a tattooist lawfully conducts their practice of marking a body with indelible ink or pigments.
- 110. TAXI SERVICE: A service that offers transportation in motor vehicles to persons for compensation. The business may include facilities for servicing, storing, and fueling the vehicles.
- 111. TECHNICAL SCHOOL: A school established to provide for the teaching of industrial, clerical, managerial, trade, or artistic schools.
- 112. THEATER/AUDITORIUM: A place of public assembly used for spectator presentations including movie or professional theater, indoor concert venue or other performance with temporary or permanent seating, for admission to which an entrance fee is received.
- 113. TOWNHOME: See "DWELLING, ROW OR ATTACHED."
- 114. TRAILER: Any vehicle without motive power, designed to be towed by a motor vehicle, except as defined elsewhere herein.
- 115. TRANSIENT: Temporary daily or weekly occupancy.
- 116. USE, ACCESSORY: A use that is clearly incidental to the principal use of a building or lot.
- 117. WHOLESALE: An establishment primarily engaged in the display, storage, distribution and sale of merchandise to retailers to industrial, commercial, institutional, or professional business users, or to other wholesalers, or acting as agents or brokers and

## City of Newburgh, Chapter 300, Zoning

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buying merchandise for, or selling to such individuals or companies. Such establishments are not generally open to the general public.

118. YARD: (from rear, side): The portion of the lot between the lot line and the required set-back; or if no minimum setback is required the portion of the lot between the lot line and the façade of the building.

### ARTICLE III—ADMINISTRATION

#### **§300- 7. Administration and Enforcement Official**

- A) The provisions of this Chapter shall be administered and enforced by the Building Inspector in accordance with the provisions established in Chapter 122, §122-1 through §122-27 of the Code of the City of Newburgh. The Building Inspector shall be provided with the assistance of such other public officials and employees as the City Manager may direct.
- B) No building permit, Certificate of Occupancy or other permit or license shall be issued if it would be in conflict with the provisions of this Chapter or Article I of Chapter 122, entitled “Administration and Enforcement of Uniform Code”, or Chapter 172 entitled, “Fire Prevention” of the Code of the City of Newburgh, or any other applicable local, state, or federal law or regulation.
- C) In accordance with §122-5 of the Code of the City of Newburgh, the Building Inspector may delegate, in writing, to such other officials the authority to perform inspections, review applications, issue notices of violation and issue permits and to enforce the provisions of this Chapter. In the performance of such functions, these officials shall be responsible to the Building Inspector, and the Building Inspector shall be responsible for the work that they perform.

#### **§300-8. Applicant’s Requirements**

- A) In order to apply to the City Planning Board, Zoning Board of Appeals, or Architectural Review Commission, except as specifically provided for elsewhere in this Chapter, the Applicant must have a certain legal interest in that for which he/she is applying, which interest must be one of the following:
  - 1. Owner
  - 2. Contract Vendee/Purchaser or holder of an option to purchase wherein the purchase agreement or option is binding and subject to cancellation based solely on the adjudication of the Application
  - 3. A verified agent of one of the above. Where such application is made by a person other than the owner, it shall be accompanied by an affidavit of the owner that the proposed work is authorized by the owner and that the Applicant is authorized to make such application.

#### **§300-9. Schedule of Fees, Collection Procedures**

## City of Newburgh, Chapter 300, Zoning

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- A) The schedule of fees for applications made pursuant to this Chapter shall be as specified in §163-1. Schedule of Code Fees, of the Code of the City of Newburgh. A copy of this schedule and the procedure for collecting those fees shall be available in the office of the Building Inspector.

### **§300-10. Escrow**

A) Escrow Deposits:

1. In accordance with Chapter 163 of the Code of Ordinances of the City of Newburgh, any application for a Special Use Permit, Site Plan or subdivision approval, zoning amendment, variance, or other appeal, the reviewing board may require an Applicant to deposit an initial sum of money into an escrow account in advance of the review of the application. Said sum shall be based on the estimated cost to the City of reviewing the particular type of application before it. The reviewing board may also consider the City's survey of professional review expenses in determining the initial sum of money to be deposited in an escrow account by an Applicant.

B) Escrow Funds:

1. In accordance with Chapters 158 and 163 of the Code of Ordinances of the City of Newburgh, escrow funds shall be used to cover the reasonable and necessary costs of reviewing an application. Costs may include staff costs or consultant fees for planning, engineering, legal, and other professional and technical services required for the proper and thorough review of an application. The reviews governed by this section shall include all environmental review pursuant to law including review of the proposed action under the State Environmental Quality Review Act (SEQR).
2. The review expenses provided for herein are in addition to application or administrative fees required pursuant to other sections of the City of Newburgh. Funds deposited by Applicants pursuant to this section shall not be used to offset the City's general expenses of professional services for the several boards of the City or its general administrative expenses.
3. Fees charged strictly as a result of a SEQR review shall in no event exceed the maximum amounts that can be charged pursuant to the SEQR regulations in §617.13 "Fees and costs" of the State Environmental Quality Review Act.
4. Upon receipt of monies requested for an escrow account, the Building Inspector shall remit to the City Comptroller who shall cause such monies to be placed in a separate non-interest-bearing account in the name of the Applicant/Application and shall keep a separate record of all such monies deposited and the name of the Applicant and project for which such sums were deposited.
5. Itemized vouchers shall be submitted to the City Comptroller for services rendered on behalf of the City regarding a particular application. After review and approval in accordance with §300-10 (C) vouchers shall be paid out of the monies so deposited, and shall debit the separate record of such account accordingly.



## City of Newburgh, Chapter 300, Zoning

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### C) Review of Vouchers; Payment

1. The Director of Planning and Development shall review and audit all such vouchers and shall approve payment of only such consultant charges as are reasonable in amount and necessarily incurred by the City in connection with the review and consideration of applications. In auditing the vouchers, the Director of Planning and Development may take into consideration the size, type and number of buildings to be constructed, the topography of the site at issue, environmental conditions at such site, the infrastructure proposed in the application and any special conditions the applicable Board (City Planning Board, Zoning Board, Architectural Review Board) may deem relevant.
2. In no event shall an Applicant make direct payment to any consultant retained by the City to review applications.

D) If at any time during the processing of an application there shall be insufficient monies within the established escrow account to pay the approved vouchers in full, or if it shall reasonably appear to the reviewing board that escrow funds will be insufficient to meet vouchers yet to be submitted, the reviewing board shall cause the Applicant to deposit additional sums as the board deems necessary or advisable in order to meet such expenses or anticipated expenses.

E) In the event the Applicant fails to deposit the requested review fees into an escrow account, any application review, approval, permit or certificates of occupancy may be withheld or suspended by the reviewing board, officer or employee of the City until such monies are deposited.

F) Upon completion of the review of an application or upon the withdrawal of an application, and after all fees already incurred by the City have been paid and deducted from the escrow account, any balance remaining in the escrow account shall be refunded within sixty (60) days after the Applicant's request.

### **§300-11. Building Permits, Certificates of Occupancy and Site Plan Approval**

#### A) Building Permit

1. The Building Inspector shall issue building permits and certificates of Occupancy where appropriate for buildings constructed or altered in accordance with the provisions of the Uniform Fire Prevention and Building Code. In the case of demolition, this permit shall be called a "demolition permit".
2. No building permits or Certificates of Occupancy shall be issued by the Building Inspector except where all the provisions of this Chapter have been complied with.
3. No land shall be used or occupied and no building hereafter erected, altered or extended shall be used or changed in use until a Certificate of Occupancy has been issued by the Building Inspector in accordance with the provisions of the New York State Uniform Fire Prevention and Building Code.

B) Site Plan Approval. Site Plan approval from the City Planning Board shall be required for the conversion or change in use of any existing building, structure, or parcel of land as provided in §300-31 and in accordance with the provision for the Overlay Districts as provided in Articles IV and V.

# City of Newburgh, Chapter 300, Zoning

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## **§300-12. Application for Building Permit**

- A) Applications for Building Permits shall be prepared and submitted in accordance with the regulations provided in the Uniform Fire Prevention and Building Code and any additional regulations provided in the relevant sections of the Code of the City of Newburgh.
- B) All applications required by this Chapter shall be on such forms specified by the Building Inspector. All forms shall be available from, and returned to, the Building Inspector.
- C) Applications shall be accompanied by the additional information required by this Chapter and that may also be indicated on the forms.
- D) Unless otherwise noted on the forms, or written direction from the Building Inspector, applications and supporting material shall be provided in hard copy in a number and size proscribed on the form, and optionally, as digital files.
- E) An application shall not be considered as submitted nor shall it be accepted and processed until the application, completely and correctly filled in is accompanied by all the minimum basic information and the proper fee as established under this Chapter.
- F) Process to Obtain Permits: The process to obtain necessary permits to erect, occupy, or change the use of a permitted structure or lot are as follows:
  - 1. Any person intending to undertake new construction, structural alteration, or change in the use of a building or lot shall apply to the Building Inspector for a building permit by submitting the appropriate application form and paying the required fee. For rules governing changes of use, see §300-31, and Articles VI and VII.
  - 2. The Building Inspector shall grant or deny the permit as provided in §300-12(G), or refer the application to the City Planning Board if a Special Use Permit and/or Site Plan approval is required in accordance with §300-31.
  - 3. If a building permit is issued, the Applicant may proceed to undertake the action permitted. Upon completion of any construction, the Applicant shall apply to the Building Inspector for a Certificate of Occupancy (for building permits only).
  - 4. If the Building Inspector finds that the Applicant's action has been taken in accordance with the building permit, the Building Inspector shall issue a Certificate of Occupancy as provided in §300-13(B), allowing the structure to be occupied.
  - 5. If the Building Inspector denies a building permit application and does not refer the application to the City Planning Board, Zoning Board of Appeal or Architectural Review Commission, the Applicant may appeal in accordance with the provisions of §300-14.
- G) Action Upon Application
  - 1. The Building Inspector shall promptly review the application and approve or deny it, providing the reason for denial in writing. A copy of the approved or disapproved



## City of Newburgh, Chapter 300, Zoning

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- application shall be delivered or mailed to the Applicant within a time frame not to exceed thirty (30) working days of the submittal to the Building Inspector.
2. An application with the approval of the Building Inspector shall become effective when the Building Inspector has filed written approval of the permit application. A copy of the building permit shall be placed in the permanent file for the property.
- H) Invalid Approval: No building permit shall be valid unless it complies with all provisions of this Chapter. Any permit approved in violation of this Chapter shall be void.
- I) Failure to Complete Construction.
1. In accordance with §122-17, Duration of Building Permit; extensions, of the Code of the City of Newburgh, a building permit shall be effective to authorize the commencing of work in accordance with the application, plans and specifications on which it is based for a period of six (6) months after the date of its issuance. For good cause, the Building Inspector may allow a maximum of two (2) extensions for periods not exceeding three (3) months each provided an application for extension is received at least thirty (30) days prior to the expiration of such building permit.
  2. Any structure for which a building permit has been issued which remains partially complete with no substantial progress over a six (6) month period shall be considered a violation of this Chapter to be remedied pursuant to §300-121.
- J) Termination of Building Permit: An approved building permit shall terminate and become void if there is no construction of the new use within six (6) months of the date of approval.
- K) Withdrawal by Applicant. In the event that it is determined by the Applicant after the issuance of a building permit and payment of the required fee that the proposed construction is not desired and there is no intent to proceed with reference to the same, then and in that event a letter signed by the Applicant, expressing his/her intention not to continue, shall be received by the Building Inspector.

### **§300-13. Certificates of Occupancy**

No building or structure hereafter erected, constructed, enlarged, altered, or moved and no enlarged, extended, altered, or relocated portion of an existing building or structure shall be occupied or used until a Certificate of Occupancy has been issued by the Building Inspector, in accordance with the provisions of the Uniform Fire Prevention and Building Code, Chapter 172, Fire Prevention of the Code of the City of Newburgh, this Chapter, and any other applicable laws and regulations.

- A) Exception for minor alterations. No Certificate of Occupancy shall be required for any alteration of or ordinary repairs to an existing building or structure which is not structural in nature and which does not require a building permit pursuant to the provisions of this Chapter, the Uniform Fire Prevention and Building Code, Chapter 172, Fire Prevention, of the Code of the City of Newburgh.

# City of Newburgh, Chapter 300, Zoning

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B) Issuance of a Certificate of Occupancy:

1. The Building Inspector shall examine the location of any new structures or improvements to existing structures and shall determine whether or not such new structures or improvements comply with the setbacks and other requirements of this Chapter, including the terms and conditions of any Site Plan approval, Special Use Permit, variance, subdivision approval, or conservation easement granted. The Building Inspector shall maintain complete records of the dates of inspections conducted hereunder, the names of all persons attending such inspections, the extent of completion of the work on each date, and any other observations relevant to determining compliance with this Chapter.
2. After work has been completed, inspected, and found to be in full compliance with the building permit, the Building Inspector shall issue a Certificate of Occupancy. A copy of the Certificate of Occupancy shall be placed in the permanent property file for the property.

C) Effective Date of Certificate of Occupancy. A Certificate of Occupancy shall become effective upon filing in the permanent file for the property, together with the building permit and all previous applications and approvals granted.

D) Before issuing a Certificate of Occupancy, the Building Inspector must confirm with the City Comptroller that all fees incurred by the City for the review and processing of said application have been paid and deducted from the escrow account. Only when confirmation that all fees have been paid, can the Building Inspector issue the Certificate of Occupancy.

## **§300-14. Reapplication After Denial**

- A) When an application has been duly processed and denied and no appeal has been made or when an appeal has been made but the body appealed to has sustained the denial, said application shall not be eligible for reconsideration for one (1) year following such denial.
- B) A new application affecting all or part of the same property or use must be substantially different from the denied application to be eligible for consideration within one (1) year of the denial of the original application.

*(§300-15 through §300-20 reserved)*

# City of Newburgh, Chapter 300, Zoning

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## ARTICLE IV—LAND USE AND OVERLAYDISTRICTS

### §300-21. Establishment of Districts

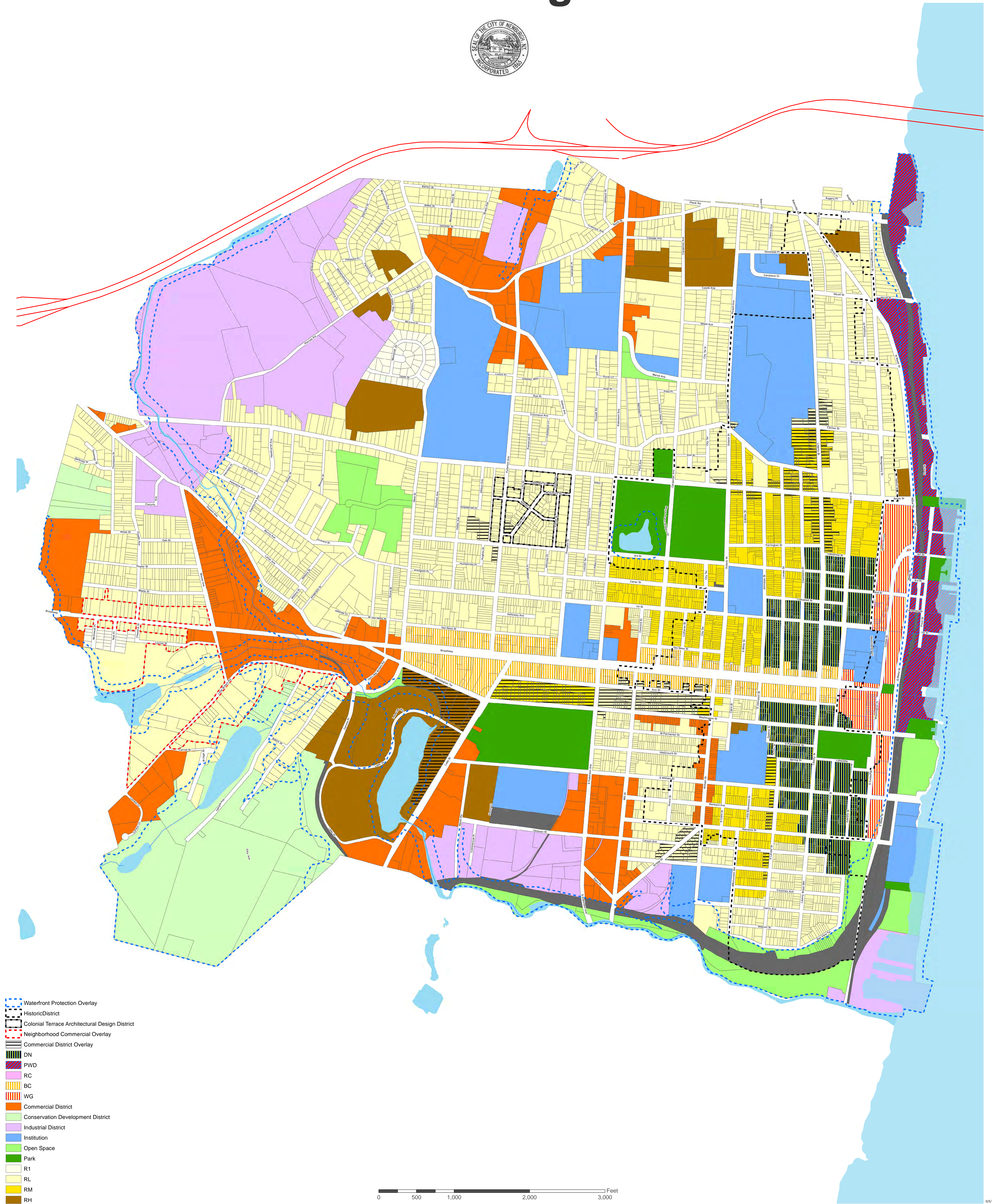
- A) For the purposes listed in §300-4, the City of Newburgh is hereby divided into the following Zoning Districts:
- B) Traditional Zoning Districts:
  - 1. R-1 – Single Family District
  - 2. Residential – Low Density (R-Low)
  - 3. Residential –Medium Density (R-Med)
  - 4. Residential– High Density (R-High)
  - 5. Planned Office District (PO)
  - 6. Commercial District (CD)
  - 7. Conservation Development District (CDD)
  - 8. Industrial District (IND)
- B) Form Based Districts
  - 1. Broadway Corridor (BC)
  - 2. Downtown Neighborhood (DN)
  - 3. Waterfront Gateway (WG)
  - 4. Planned Waterfront District (PWD)
- C) Overlay Districts
  - 1. In addition to these land use districts, the following overlay districts are hereby created:
    - a) East End Historic District Overlay (EEH)
    - b) Colonial Terraces Architectural Design District Overlay (CTA)
    - c) Waterfront Protection Overlay (WPO)
    - d) Neighborhood Commercial Overlay (NC)
  - 2. Overlay districts do not change the use and dimensional requirements of the underlying land use districts, unless specifically so stated in this Chapter. On any given parcel of land, more than one overlay district may apply.

### §300-22. Zoning Map

- A) The location and boundaries of the zoning districts are established as shown on the Zoning Map of the City of Newburgh, attached hereto and made a part of this Chapter.
- B) Re-adoption of Maps. The Official Zoning Map shall be kept in the office of the City Clerk, the Building Inspector/Code Enforcement, and the Planning Department, and shall be reviewed for accuracy and updated at least once annually with any Zoning Map amendments adopted in the previous year by the City Council or its designee.
- C) Zoning Map Amendment. Changes may be made in district boundaries or other matter portrayed on the Zoning Maps only by zoning amendments adopted by the City Council. Such changes shall be noted by the City Clerk on the Official Zoning Maps promptly after the City Council adopts such an amendment.



# City of Newburgh Zoning



- Waterfront Protection Overlay
- Historic District
- Colonial Terrace Architectural Design District
- Neighborhood Commercial Overlay
- Commercial District Overlay
- DN
- PWD
- RC
- BC
- WG
- Commercial District
- Conservation Development District
- Industrial District
- Institution
- Open Space
- Park
- R1
- RL
- RM
- RH
- Utility

0 500 1,000 2,000 3,000 Feet



# City of Newburgh, Chapter 300, Zoning

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- D) Final Zoning Authority. Each ordinance adopting an amendment shall be the final authority as to the current status of lands, structures and uses in the City.
- E) Authorized Map Changes. Any unauthorized map change made by any person shall be considered a violation of this Chapter, punishable under Article IVX of this Chapter.

## **§300-23. Interpretation of District Boundaries**

Where uncertainty exists with respect to the boundaries of any of the Zoning Districts, the following rules apply:

- A) Where district boundaries are indicated as approximately following or parallel to the center lines of streets or highways, or the boundaries of streets, highways, or rights-of-way, the district boundary shall be construed as following or being parallel to said center or boundary lines.
- B) Where a land use district boundary divides a lot line in a single ownership existing at the effective date of this Chapter, the City Planning Board may grant a Special Use Permit to allow the uses authorized and the district requirement of the less restricted portion of such lot to extend up to a maximum of fifty (50) feet into the more restricted portion of the lot. This provision shall not apply to Overlay Districts.
- C) Where district boundaries are so indicated that they approximately follow lot lines in effect at the time of the effective date of this Chapter, the district boundary shall be construed as following said lot line.
- D) Where the boundary of a district follows shorelines, streams, creeks and waterbodies, said boundary shall be deemed to follow such shorelines and, in the event of change in the shoreline, shall be deemed as moving with the actual shoreline.
- E) Where the boundary of a district follows shorelines, creeks, streams, lakes, or other bodies of water, said boundary line shall be deemed to be at the limit of the jurisdiction of the City, State or Federal Agency, unless otherwise indicated.
- F) Within the Water Protection Overlay District, where the overlay district is based upon natural features, such boundaries may be more precisely established through field investigation by a qualified professional.

## **§300-24. Higher Standards to Prevail**

In their interpretation and application, the provisions of this Chapter shall be held to be the minimum requirements. Whenever the requirements of this Chapter are at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances, the most restrictive, or that imposing the highest standards, shall govern.

*(§300-25 through §300-30 reserved)*

# City of Newburgh, Chapter 300, Zoning

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## ARTICLE V—LAND USE DISTRICT REGULATIONS

### §300-31. Allowable Uses, Accessory and Mixed Uses; Change of Use

- A) Purpose. The use regulations in this article are intended to allow flexibility of land use to encourage business development that is consistent with the character and scale of the City of Newburgh. In reviewing applications for Special Use Permits and Site Plan approval, the City Planning Board shall impose any conditions that may be necessary to ensure that a proposed use will be compatible with its surroundings. The City Planning Board shall deny any proposed use which does not satisfy the criteria in this Chapter.
- B) Use Restrictions and Schedule of Use Regulations. No structure or land shall be used except as provided in the Schedule of Use Regulations. In the event that a particular proposed use does not fit into one of the categories shown on the Schedule of Use Regulations, it shall be considered to be prohibited.

#### SCHEDULE OF USE REGULATIONS KEY

- P** Designates a use permitted by right. Usually requires a building permit and a Certificate of Occupancy from the Building Inspector, but does not require review by any municipal board.
  - P\*** Designates a use permitted by right subject to Site Plan review by the City Planning Board [Article XI]
  - S** Designates a use permitted by Special Use Permit of the City Planning Board [Article XII]
  - A** Designates a use that is permitted as a use accessory to a use permitted by right, with Site Plan approval, or with a Special Use Permit.
- C) Prohibited Uses. Any use, whether or not listed in the Schedule of Use Regulations, is prohibited if it does not satisfy the standards and criteria in §300-31, §300-129, and Appendix A.
  - D) Accessory Uses. Uses customarily incidental and subordinate to principal uses shown on the Schedule of Use Regulations shall be allowed on the same terms as the principal uses, whether or not on the same lot, unless otherwise indicated on the Schedule of Use Regulations. Noncommercial recreational use shall be permitted as an accessory use in all districts.
  - E) Mixed Use. The City of Newburgh encourages the mixing of uses where such mixing does not create land use conflicts. Accordingly, all Special Use Permit and/or Site Plan reviews for the same project shall be consolidated into one proceeding before the City Planning Board for Site Plan Approval.
  - F) Change of Use or Structure. A change of use is the initiation of a use that is in a different use category, as listed on the Schedule of Use Regulations, from the existing use of the site

*Schedule of Use Regulations*

Use	R-1	Low Density Res	Med Density Res	High Density Res	Commercial	Industrial	Commercial District Overlay/ Neighborhood Commercial Overlay	Conservation Development District	Broadway Corridor (BC)	Downtown Neighborhood (DN)	Waterfront Gateway (WG)	Planned Waterfront District (PWD)
Apartment House			P*	P			P*	P*	P	P*	P*	P*
Four Family Dwelling			P	P*			P*	P*	P	P*	P*	P*
Two or Three Family Dwelling		P*	P	P				P*	P	P	P*	P*
Row or Attached Dwelling (Townhome)		P	P					P*		P	P*	P*
Two-Family Detached Dwelling		P*	P	P				P*		P	P*	
One-Family Detached Dwelling	P	P*	P	P				P*		P	P*	P*
Residential Care Facility			S	S				P*	P	P	P*	P*
Cooperative House		P	P	P					P	P	P*	P*
Accessory Apartment	A;S	A	A	A								
Bed & Breakfast		A;S	A;S	A;S				A;S	A;S	A;S	A;S	A;S
Short Term In Home Lodging	A;S	A	A	A				A	A	A	A	
Boarding House		S	S									
Customary Home Occupation		A;S	A;S	A;S				A;S	A;S	A;S	A;S	A;S
Rooming House					S				S	S	S	S
Mixed Use with Residential			P*	P*					P*	P*	P*	P*
Live Work			P*	P*					P*	P*	P*	P*
Buildings, uses or facilities of any Governmental Unit			P*	P*	P*	P*	P*	P*	P*	P*	P*	P*
Cemetery		P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*
College/University		P*	P*	P*					P*	P*	P*	
Community Center		P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*
Parking Lot		S	S	S	P	P	P	P*	P*	S	S	S
Community Parking Lot	S	S	P*	P*	P	P	P	P*	P*	S	S	S
Dormitories		A	A	A	A	A	A	A	A	A	A	A
Hospital				A	A			A	A;S	A		
House of Worship		P*	P*	P*	P*				P*	P*	P*	P*
Membership Club					S	S	S	S	P*	P*	P*	P*
Museum					S	S	S	S	P*	P*	P*	P*
Parks, Open Space, Recreational Facilities		P	P	P	P	P	P	P*	P	P	P*	P*
Public Libraries				P			P*		P*	P*		
School of General Instruction			P*	P*	P*	P*			P*	P*	P*	

Activity Facility					p*	p*	p*		p	p	p*	p*
Adult Day Care Facility				p*			p*		p	p	p*	p*
Adult Uses					S	S						
Amusement Center					p*	p*	p*		S	S		
Animal Care Facility					S	S			S	S		
Assembly Hall				p*	p*	p*			p*		p*	p*
Bank					p*	A	p*		p		p*	
Bar					p*	p*	p*		p	p*	p*	p*
Billiard Parlor					p*	p*			p	p*	p*	
Bowling Alley					p*	p*	p*		p*	p*	p*	p*
Brewing of malt beverages or distilled spirits primarily for on-Site consumption					p*	p*	p*		p*	p*	p*	
Professional Office			P	P	P	P	P		p	p	p*	p*
Cabaret					S	S			p	p	p*	p*
Car Rental					S	p*			S	S	S	
Child Day Care		p*;S	S	S	S		p*		p	p	p*	p*
Cottage Industry		S	P	P	S	p*	S		p	p	p*	p*
Drive-Thru (Bank, Restaurant, Pharmacy, etc.)					p*		p*		p*	p*	p*	
Funeral Home				p*	p*		p*		p*	p*	p*	
Hotel				p*	p*				p*	p*	p*	p*
Laundromat			p*	p*			p*		p	p		
Marina											p*	p*
Movie or Professional Theater, Indoor Concert Venue				S	S				S	S	S	S
Nursing Home			S	S	S		S	S	p*	p*	p*	p*
Office Park					p*	p*	p*					
Personal Services					P	A	P		p	p	p*	p*
Restaurant					p*	A	p*		p	p	p*	p*
Restaurant, Carry-Out					p*	A	p*		p	p*	p*	
Restaurant, Fast-Food					p*	A	p*		p	p*	p*	
Retail					P	A	S		p	p	p*	p*
Retail, Neighborhood			S	S	P	A	P		p	p	p*	p*
Self Storage					p*	p*						
Shopping Center					p*							
Tattoo Parlor					P				p	p	p*	p*
Taxi Service				S	S	S	S		p*			
Technical School					S	p*	S		S	S	S	
Agriculture		S	S	S	p*	p*	S	S				
Automobile Gas Station					S	S	S					
Automobile Sales					S	S	S					
Automobile Service/Repair				S	S	S	S					
Automobile Wash					S	S	S					
Boat Repair						p*						S
Distribution Facility/Warehouse					p*	p*						



Dry Cleaner; Commercial Laundry					p*	p*	p*		p*			
Industrial Uses						p*						
Storage Yard					p*		S					
Wholesale					p	p*	p		p*			

## City of Newburgh, Chapter 300, Zoning

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or structure. A change of ownership, tenancy, or occupancy, or a change from one use to another within the same category, shall not be considered a change of use, unless the change would result in the expansion of any existing use or any change of use or a property or structure, enlargement or addition of a sign or an increase of more than 20 percent (20%) in vehicle trip generation as indicated in current trip generation rates contained in the publications Trip Generation or Trip Generation handbook published by the Institute of Transportation Engineers (ITE).

1. Uses by right (P). Any change of use of land or existing structures to a use permitted by right without Site Plan review (P on the Schedule of Use Regulations) shall not require approval from the City Planning Board or the Building Inspector. This shall not affect applicable requirements for obtaining building permits for construction or expansion of a structure from the Building Inspector under Chapters 121, 122, 125, and 126 of the Code of the City of Newburgh.
2. Uses by right subject to Site Plan review (P\*). Except for one and two family dwellings on a single lot, any change of the use of an existing structure to a use permitted by right subject to Site Plan review shall require Site Plan review only if it involves:
  - a) The development or redevelopment of any property or structure, including but not limited to vacant property, for a new use.
  - b) Any use requiring a special Use Permit, subject to any exceptions contained in Articles XII and XIII of this Chapter.
  - c) The expansion of any existing use or any change of use of a property or structure, where the City Planning Board has determined that the alteration will substantially intensify the use or substantially modify the site with respect to the generation of traffic, pedestrian movement, parking needs, noise, glare, exposure to hazard from fire or flood, utilization of water supply, sanitary sewer, drainage or other utility system and may have a substantial impact upon the character or environment of the surrounding area. This includes an increase in density in residential areas.
3. Uses by Special Use Permit ("S" on the Schedule of Use Regulations)
  - a) A Special Use Permit shall be required for any change of use from a use that does not require a Special Use Permit, or a use permitted in the zone, to a use that does require a Special Use Permit.
  - b) Once a Special Use Permit has been granted, it shall run with the land and apply to the approved use and to all subsequent owners, tenants and occupants engaged in the same use. The Special Use Permit shall also apply to any subsequent use of the property in the same use category, provided that such use has no greater impact on adjoining properties, complies with all terms and conditions of the Special Use Permit, and does not involve new construction, enlargement, exterior alteration of existing structures, increased parking, or other changed use of outdoor areas. Any change to another use allowed by Special Use Permit shall require the granting of a new Special Use Permit or a Special Use Permit amendment.

- G) Rebuilding, Replacement, Expansion of Structures. The rebuilding/replacement on the same footprint of any structure for a use which requires Site Plan review (P\*) or a Special

# City of Newburgh, Chapter 300, Zoning

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Use Permit (S) shall require Site Plan review, even if it is a continuation of the same use.

H) Special Site Design Considerations.

1. In the Conservation Development District (CDD). The purpose of the CDD is to encourage conservation of environmental resources in exchange for flexibility in build and area requirements and the potential for granting more intensive development if conservation goals stated in §300-33 are achieved. A minimum of 50 percent (50%) of net land shall be preserved by a permanent conservation easement or deed restriction as open space. Buildings shall have a maximum height of four (4) stories or fifty (50) feet and a maximum length of two hundred (200) feet. Additional regulations for the CDD are in §300-33.
2. Buildings shall be placed in front of their parking lots to screen the parking from the road. This requirement shall not apply if the entire site is screened from the road by natural vegetation and/or natural topography. The City Planning Board may modify or waive this requirement where unusual lot configurations such as corner lots or through lots make compliance with this requirement impractical or impossible or where the predominant character of surroundings development is such as compliance with this requirement would serve no useful purpose, provided that the Applicant minimizes the visual impacts of such parking areas.

## **§300-32. Density Dimensional Regulations**

- A) Applicability. The Density and Dimensional Regulations in this section apply to the 'traditional' zoning districts, as defined in §300-21. The density and dimensional regulations for the 'Form Based' districts, as defined in §300-21, are regulated in Article XV of this Chapter and in Appendix B.
- B) Purpose. The restrictions and controls in this section regulate development as set forth in Schedule of Bulk, Area, and Parking Regulations, which are supplemented by the other sections of this Chapter. This Chapter shall not interfere with or abrogate or annul any easement, covenant or other agreement between parties; provided, however, that when this Chapter imposes a greater restriction on the use of buildings or land or on the height of buildings or requires larger open spaces or imposes any higher standards than are imposed or required by any other statute, law, ordinance, rule or regulation, or by any easement, covenant or agreement, the provisions of this Chapter shall control. Where the requirements of this Chapter differ from the requirements of another statute, law, ordinance, rule or regulation, the more restrictive shall govern.
- C) Exempt Uses. The provisions of this article shall not apply in any of the following instances:
1. Public parks, playgrounds or similar recreational areas owned or operated by a governmental authority with permission of the Building Inspector.
  2. Fire houses, police stations, or other public safety uses owned or operated by the City of Newburgh, Orange County, or by any governmental authority, with permission of the Building Inspector.

## City of Newburgh, Chapter 300, Zoning

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3. Other municipal buildings, uses, or utility services operated by the City of Newburgh with permission of the Building Inspector.
- D) Additional Dimensional Requirements
1. Corner Lots. A yard equal to the required front yard shall be provided with respect to any lot line that abuts a street. The other yards shall be deemed to be side yards.
  2. Through Lots. The Building Inspector shall designate a front and rear yard in keeping with the predominant development pattern of the area and/or to promote consistency with the goals of the Comprehensive and Land Use Plans.
  3. With respect to one-, two-, three-, and four-family houses, no more than one principal building and its accessory structures and uses may be located on one lot.
- E) Subdivision of a Lot. Where a lot is subdivided from an existing lot already occupied by a building or structure, both the existing lot and the newly subdivided lot shall conform with the requirements of this Chapter with respect to existing building(s) and all yards and other required spaces in connection therewith.
- F) Required Street Frontage. No building permit shall be issued nor shall any Site Plan be approved for the construction of any new building or structure unless the lot upon which the use is to be established or such structure is to be built has frontage of at least twenty (20) feet on a dedicated public street or on a street or highway, which has been suitably improved to City road standards or a bond posted therefor and unless the actual access to such use or such structure will be over such frontage.
- G) Multiple Residential Buildings on One Lot. A lot may contain more than one principal apartment house provided that the lot conforms to the applicable density requirements of the underlying zoning district. Such lot may not later be subdivided unless the subdivided lots conform to the dimensional regulations in effect when the subdivision is proposed.
- H) Projections into Required Yards.
1. Every part of a required yard shall be open from its lowest point to the sky unobstructed, except for the ordinary projection of sills, belt courses, pilasters, leaders, chimneys, cornices, eaves and ornamental features, provided that no such projection may extend more than four (4) feet into any required yard.
  2. Bays including their cornices and eaves, may extend not more than four (4) feet into any required yard provide that the sum of such projections on any wall shall not exceed one-third (1/3) the length of such wall.
  3. An open fire balcony or fire escape may extend not more than four (4) feet into any required yard.
  4. Steps and stairs may extend not more than four (4) feet into the required side or rear setback area.
  5. Awnings or movable canopies may extend not more than four (4) feet into the required side or rear setback area.

## City of Newburgh, Chapter 300, Zoning

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- I) Height Exceptions. The height limitations in the Dimensional Table shall not apply to any flagpole, radio or television receiving antenna, spire or cupola, chimney, elevator or stair bulkhead, parapet or railing, water tank, or any similar non-habitable structure, provided that such structure is firmly attached to the roof or side of a building and covers no more than ten percent (10%) of the roof area.
- J) Setbacks for Accessory Structures and Uses.
  - 1. Any accessory structure attached to a principal building and any detached garage, tennis court, or swimming pool shall comply with the minimum setback requirements of this Chapter applicable to the principal building. Other detached accessory structures or uses may encroach into required setback areas provided that they:
    - a) Are not used for human habitation;
    - b) Have a footprint no larger than two hundred (200) square feet;
    - c) Do not exceed sixteen (16) feet in height;
    - d) Do not occupy more than ten percent (10%) of the rear setback area;
    - e) Are set back at least ten (10) feet from side lot lines;
    - f) Are not located closer to the street than the front yard setback required for a principal building, except for fences, gates, mailboxes, signs, with less than one hundred (100) square feet of footprint, as well as ornamental structures such as entry pillars and statues; and
    - g) Are not used for housing animals.
  - 2. For corner lots the setback from all streets shall be the same for accessory structures as for principal buildings.
  - 3. For watercourse setbacks see §300-46.
- K) Setbacks Involving Irregular Buildings and Lot Lines. Where structures or lot lines are irregular or unusual in configuration, all points on the structure shall satisfy the minimum setback requirements from that point on the lot line which is the shortest distance from the structure.
- L) Fences (including hedges). The setback requirements of this Chapter shall not apply to any fences less than four (4) feet high in any front, side, or rear yard, except where corner clearances are required for traffic safety.

### **§300-33. Conservation Development District**

- A) Purpose and Intent. The purpose of the Conservation Development District (CDD) is to encourage conservation of environmental resources in exchange for flexibility in bulk and area requirements and the potential for granting more intensive development if conservation goals stated herein are achieved. The primary goals of the CDD are to:
  - 1. Preserve open space;
  - 2. Preserve or enhance environmentally sensitive features;
  - 3. Protect steep slopes by preserving vegetative cover to minimize the impacts of erosion and sedimentation;
  - 4. Provide opportunities for on-site storm water management and groundwater recharge;

## Schedule of Bulk, Area and Parking Regulations

### Single Family Residential\*/ Low Density Residential

Use	Use Type*	Minimum Area Lot (sq. feet)	Minimum Lot Width (feet)	Minimum Lot Depth (feet)	Minimum Front Yard (feet)	Minimum Side Yard Each (feet)	Minimum Rear Yard (feet)	Maximum Height (Stories)	Maximum Height (feet)	Maximum Lot Coverage %	Off-Street Parking Required	
One-Family detached dwelling; Two or Three Family Dwelling (new construction) (1)	P	2500	25	95	15	10	20	3	40	30%	2 per dwelling unit	
Row or Attached Townhouse	P	2500	25	95	10	5	20	3	40	40%	1 per dwelling unit	
Two or Three Family dwelling within a pre-existing building	P	2500	25	95	15	10	20	3	40	30%	2 per dwelling unit	
Residential Care Facility	S	2500	25	95	10	5	20	3	40	30%	As determined by Planning Board	
Cooperative House (3)	P	2500	25	95	15	10	20	3	40	30%	2 per 3 bedrooms; or portion thereof	
Bed & Breakfast	A; S	2500	25	95	10	5	20	3	40	30%	1 per quest room; 1 for dwelling unit	
Boarding House	S	3500	30	80	10	5	20	3	40	40%	2 per 3 bedrooms; or portion thereof	
Child Day Care	S	2500	25	95	15	10	20	3	40	30%	2	
Home Occupation/Home Professional Office	A; S	2500	25	95	15	10	20	3	40	30%	dwelling unit requirement plus 1 per non-resident employee	
Cemetery	P*	40,000				20	20	20	2	25	As determined by Planning Board	
College/University	P*	As Determined by City Planning Board and in accordance with facility master plan. *										
Community Center	S	5000	45	95	15	10	20	3	40	50%		
Community Parking Area	S	2500			5	5	5	4				
Cottage Industry	S	2500	25	95	15	10	20	3	45	60 percent	1 per 500 sf	
House of Worship	P*	5000	45	95	15	10	20	3	40	50%	As determined by Planning Board	
Private Recreational Facilities	A	5000	45	95	15	10	20	3	40	50%	As determined by Planning Board	
Public Parks, Playgrounds	P										As determined by Planning Board	
Agriculture	S	As Determined by City Planning Board and in accordance with facility master plan. *										

\*Single family residential is the only use permitted in the Single Family Residential district.

- 1) A detached dwelling may have less than the required side yard on one side if a ten-foot yard is provided by the adjacent use along the same lot line AND where the dwelling provides a ten-foot minimum side yard along the other side
  - 2) Parking subject to Article IX.
  - 3) Cooperative Houses in existence at the time this Chapter is adopted, must submit a complete application for a Special Permit to the City Planning Board within six months of this Chapter's adoption.
- Accessory structures and uses are permitted pursuant to Section 300-31, Accessory Uses and Structures, as well as other applicable sections of this Chapter.

## Schedule of Bulk, Area and Parking Regulations

### Medium Density Residential

Use	Use Type	Minimum Area Lot (sq. feet)	Minimum Lot Width (feet)	Minimum Lot Depth (feet)	Minimum Front Yard (feet)	Minimum Side Yard Each (feet)	Minimum Rear Yard (feet)	Maximum Height (Stories)	Maximum Height (feet)	Maximum Lot Coverage %	Off-Street Parking Required
Apartment House*	P*	1,800 sf dwelling unit	45	80	10	10	20	4	45	50%	0.75 per bedroom
One-Family detached dwelling; Two or Three Family Dwelling (new construction) (1)	P	2500	25	95	10	5	20	3	40	30%	2 per dwelling unit
Row or Attached Townhouse	P	2500	25	95	10	5	20	3	40	40%	1 per dwelling unit
Two, Three, or Four Family dwelling within a pre-existing building	P	2500	25	95	10	5	20	3	40	30%	1 per dwelling unit
Residential Care Facility	S	2500	25	95	10	5	20	3	40	30%	As determined by Planning Board
Cooperative House	P	2500	25	95	10	5	20	3	40	30%	2 per 3 bedrooms; or portion thereof
Bed & Breakfast	A; S	2500	25	95	10	5	20	3	40	30%	1 per quest room; 1 for dwelling unit
Boarding House	S	3500	30	80	10	5	20	3	40	40%	2 per 3 bedrooms; or portion thereof
Home Occupation/Home Professional Office	A; S	2500	25	95	10	5	20	3	40	30%	dwelling unit requirement plus 1 per non-resident employee
Live/Work	P*	2500	25	95	10	5	20	3	40	40%	2
Buildings, uses or facilities of Governmental Unit	P*	5000	45	95	15	10	20	3	40	50%	As determined by Planning Board
Cemetery	P*	40,000			20	20	20	2	25	As determined by City Planning Board.	
College/University	P*	As Determined by City Planning Board and in accordance with facility master plan. *									
Community Center	P*	5000	45	95	15	10	20	3	40	50%	As determined by Planning Board
Community Parking Area	S	2500			5	5	5	4			
Cottage Industry	S	2500	25	95	15	10	20	3	45	60 percent	1 per 500 sf
Child Day Care	S	2500	100	100	15	10	20	2.5	35	50%	2 per classroom
House of Worship	P*	5000	45	95	15	10	20	3	40	50%	As determined by Planning Board
Public Parks, Playgrounds	P										As determined by Planning Board
Professional Office	P	5000	45	95	15	10	20	3	40	50%	As determined by Planning Board
School of General Instruction	P*	15000	100	150	30	30	30	3	40	50%	1 per 16 students
Laundromat	P*	2500	25	95	10	10	10	3	35	70 percent	1 per 500 square feet
Nursing Home	S	15000	100	150	0	10	20	6	60	55 percent	1 per 4 beds, or as determined by City Planning
Neighborhood Retail	S	2500	25	95	10	10	10	3	35	70 percent	1 per 500 square feet
Agriculture	S	As Determined by City Planning Board and in accordance with facility master plan. *									

1) A detached dwelling may have less than the required side yard on one side if a ten-foot yard is provided by the adjacent use along the same lot line AND where the dwelling provides a ten-foot minimum side yard along the other side lot line.

2) Where a dwelling shares a common wall meeting applicable building and construction codes, no side yard is required.

3) Boarding Houses in existence at the time this Chapter is adopted, must submit a complete application for a Special Permit to the City Planning Board within six months of this Chapter's adoption.

4) Parking subject to Article IX.

\* New Construction of Apartment Houses in the Medium Density District is limited to 10 units per lot.

Accessory structures and uses are permitted pursuant to Section 300-31, Accessory Uses and Structures, as well as other applicable sections of this Chapter.

**Schedule of Area, Bulk, and Parking Regulations**

**High Density Residential**

Use	Use Type	Minimum Area Lot (sq. feet)	Minimum Lot Width (feet)	Minimum Lot Depth (feet)	Minimum Front Yard (feet)	Side Yard Each (feet)	Minimum Rear Yard (feet)	Maximum Height (Stories)	Maximum Height (feet)	Maximum Lot Coverage %	Off-Street Parking Required
Apartment House	P	500 per dwelling unit	30	70	0	10	20	6	60	55 percent	0.75 per bedroom
Two , Three, or Four Family dwelling within a pre-existing building	P	2,000	20	70	0	5	20	4	45	55 percent	As determined by City Planning Board.
One-Family detached dwelling; Two or	P	2,000	20	70	0	5	20	3.5	45	55 percent	None
Residential Care Facility	S	2,000	20	70	0	5	20	4	45	55 percent	0.33 per bedroom (or as determined by City Planning Board)
Cooperative House	P	2,000	20	70	0	5	20	4	45	55 percent	None
Bed & Breakfast	A;S	2,000	20	70	0	5	20	4	45	55 percent	1 space per guest room (in addition to those required for dwelling unit)
Home Occupation / Home Professional Office	A; S	2,000	20	70	0	5	20	4	45	55 percent	0.33 per non-resident employee, in addition to dwelling unit requirement
Live/Work**	P*	2000	20	70	0	5	20	4	45	55 percent	2
Buildings, Uses or Facilities of any Governmental Unit/ Public Library	P*/ P	2,000	20	70	0	5	20	2.5	35	70 percent	As determined by Planning Board
Cemetery	P*	40,000			20	20	20	2	25	As determined by City Planning Board.	
College/University	P*	As Determined by City Planning Board and in accordance with facility master plan.									
Community Center	P*	5000	45	95	15	10	20	3	40	50%	As determined by Planning Board
Public Parking	S				5	5	5	4	45		
Hospital	A	As Determined by City Planning Board and in accordance with facility master plan. *									
House of Worship/ Assembly Hall/ Funeral Home	P*	7,500	75	100	0	20	20	3	40	70 percent	1 per 5 seats
Public Parks, Playgrounds, Open Space	P										
School of General Instruction	P*	15,000	100	150	0	10	30	3	40	70 percent	1 per 19 students
Adult Day Care Center	P*	5,000	30	70	0	5	20	3	35	55 percent	1.5 per classroom
Child Day Care Center	S*	5,000	30	70	0	5	20	3	35	55 percent	1.5 per classroom
Hotel/Motel	P*/ P	7,500	75	100	0	20	20	4	45	60 percent	1.0 per room; plus parking for accessory uses
Laundromat	P*	5,000	30	70	0	5	20	2	25	55 percent	1 per 500 square feet
Movie or Professional Theater	S	--	--	--	--	--	--	4	45	60 percent	1 per 4 seats
Nursing Home	S	15,000	100	150	0	10	20	6	60	55 percent	1 per 4 patient beds, or as determined by City Planning Board
Taxi Service	S	5,000	30	70	10	5	10	2	25	60 percent	1 per 300 sf; plus adequate parking for all fleet vehicles
Automobile service/Repair	S	5,000	30	70	10	5	10	2	25	60 percent	2 per repair bay
Neighborhood Retail	S	2500	25	95	10	10	10	3	35	70 percent	1 per 500 square feet
Professional Office	P	5000	30	70	0	5	20	3	35	55 percent	As determined by Planning Board
Agriculture	S	As Determined by City Planning Board and in accordance with facility master plan.									

1) A detached dwelling may have less than the required side yard on one side if a ten-foot yard is provided by the adjacent use along the same lot line AND where the dwelling provides a ten-foot minimum side yard along the other side lot line.



2) Where a dwelling shares a common wall meeting applicable building and construction codes, no side yard is required.

3) Boarding Houses in existence at the effective date of this Chapter, must submit a complete application for a Special Use Permit to the City Planning Board within six months of the effective date of this Chapter.

4) Parking subject to Article IX

Accessory structures and uses are permitted pursuant to §300-31, Accessory Uses and Structures, as well as the other applicable sections of this Chapter.

**Schedule of Bulk, Area and Parking Regulations**  
**Commercial and Industrial Zones**

Use	Commercial Use Type	Industrial Use Type	Commercial District Overlay/ Neighborhood Commercial Overlay	Broadway Corridor Use Type	Minimum Front Yard (feet)	Minimum Side Yard Each (feet)	Minimum Rear Yard <sup>1</sup> (feet)	Maximum Height (Stories)	Maximum Height (feet)	Maximum Lot Coverage (percent)	Off-Street Parking Required <sup>2</sup>
Activity Facility	P*	P*	P*	P	--	--	--	4	45	60 percent	1 per 4 people allowed during maximum occupancy
Adult Day Care Facility			P*	P	--	--	--	4	45	60 percent	1 per 300 sf
Adult Uses	S	S			--	--	--	4	45	60 percent	1 per 2 people allowed during maximum occupancy
Agriculture	P*	P*	S		As Determined by City Planning Board and in accordance with facility master plan.						
Amusement Center	P*	P*	P*	S	--	--	--			60 percent	1 per 200 sf
Animal Care Facility	S	S		S	--	--	--	4	45	60 percent	1 per 200 sf
Assembly Hall/Banquet Hall	P*	P*		P*	--	--	--	4	45	60 percent	1 per 3 people allowed during maximum occupancy
Automobile Gasoline Station	S	S	S		10	5	10	1	15	60 percent	1 per 3 gas pumps; plus parking for accessory uses
Automobile service/Repair	S	S	S		10	5	10	2	25	60 percent	2 per repair bay
Automobile Wash	S	S	S		10	5	10	1	15	60 percent	*
Bank	P*	A	P*	P	--	--	--	4	45	60 percent	1 per 300 sf
Bar	P*	P*	P*	P	--	--	--	4	45	60 percent	1 per 150 sf
Billiard Parlor	P*	P*		P	--	--	--	4	45	60 percent	1.5 per table
Boat Repair		P*			10	5	10	2	25	60 percent	As determined by City Planning Board.
Bowling Alley	P*	P*	P*	P*	--	--	--	4	45	60 percent	3 per lane; plus parking for accessory uses if such
Brewing of malt beverages or distilled spirits primarily for on-Site consumption	P*	P*	P*	P*	10	10	10	4	45	70 percent	1 per 1,000 square feet
Business or Professional Office; Office	P	P	P	P	--	--	--	4	45	60 percent	1 per 300 sf
Cabaret	S	S		P	--	--	--	4	45	60 percent	1 per 100 sf
Car Rental	S	P*		S	10	5	10	2	25	60 percent	1 per 300 sf; plus adequate parking for rental
Cemetery <sup>3</sup>	P*	P*	P*	P*	20	20	20	2	25	As determined by City Planning Board.	
College/University				P*	As Determined by City Planning Board and in accordance with facility master plan.						
Cottage industry	S		P*		--	--	--	4	45	60 percent	1 per 500 sf
Child Day Care Center	S		P*	P	--	--	--	4	45	60 percent	1.5 per classroom
Distribution Facility/Warehouse	P*	P*			10	10	10	3	35	70 percent	1 per 1,000 square feet
Drive-Thru	P*		P*	P*	--	--	--	4	45	60 percent	As determined by City Planning Board.
Dry Cleaner / Commercial Laundry	P*	P*	P*	P*	10	10	10	3	35	70 percent	1 per 500 square feet
Funeral Home	P*		P*	P*	--	--	--	4	45	60 percent	1 per 100 sf; OR, 1 per 5 seats in chapel, whichever
Hospital	A			A/S	As Determined by City Planning Board and in accordance with facility master plan.						
Hotel/Motel	P*			P*	--	--	--	4	45	60 percent	1.0 per room; plus parking for accessory uses
House of Worship	P*			P*	0	20	20	4	45	70 percent	1 per 5 seats
Industrial Uses		P*			10	10	10	3	35	70 percent	1 per 1,000 square feet
Membership Club	S	S	S	P*	--	--	--	4	45	60 percent	As determined by City Planning Board.
Movie or Professional Theater	S			S	--	--	--	4	45	60 percent	1 per 4 seats
Museum	S	S	S	P*	--	--	--	4	45	60 percent	1 per 300 sf
Nursing Home	S		S	P*	0	10	20	6	60	55 percent	1 per 4 beds, or as determined by City Planning
Park	P	P	P	P	--	--	--				As determined by City Planning Board.
Parking Area, Community	P	P	P	P*	5	5	5	4	45		
Personal Services	P	A	P	P	--	--	--	4	45	60 percent	1 per 300 sf
Residential Care Facility				P	0	5	20	4	45	55 percent	0.33 per sleeping room (or as determined by City
Restaurant	P*	A	P*	P	--	--	--	4	45	60 percent	1 per 100 sf
Restaurant, Carry-Out	P*	A	P*	P	--	--	--	2	25	60 percent	1 per 100 sf
Restaurant, Fast-Food	P*	A	P*	P	--	--	--		25	60 percent	1 per 100 sf
Retail Store	P	A	S	P	--	--	--	2	45	60 percent	1 per 300 sf
Retail , Neighborhood	P	A	P	P							
Rooming House	S			S	--	--	--	4	45	60 percent	0.5 per boarding unit
Self Storage	P*	P*			10	10	10	4	45	70 percent	1 per 1,000 square feet
Shopping Center	P*				--	--	--	4	45	60 percent	1 per 300 sf
Tattoo Parlor	P			P	--	--	--	4	45	60 percent	1 per 300 sf
Taxi Service	S	S	S	P	10	5	10	2	25	60 percent	1 per 300 sf; plus adequate parking for all fleet
Technical School	S	P*	S	S	--	--	--	4	45	60 percent	As determined by City Planning Board.
Wholesale	P	P*	P	P*	10	10	10	4	45	70 percent	1 per 1,000 square feet

<sup>1)</sup> Must also comply with §300-53.

2) Parking subject to Article IX

3) Cemetery must have a minimum lot size of 40,000 square feet.

Accessory structures and uses are permitted pursuant to §300-31, Accessory Uses and Structures, as well as the other applicable sections of this Chapter.

## City of Newburgh, Chapter 300, Zoning

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5. Protect and enhance scenic views;
  6. Encourage flexibility in the design of residential land uses that may not be permitted under traditional zoning regulations;
  7. Promote a range of housing types;
  8. Create on-site recreation opportunities;
  9. Promote integration with neighboring land uses through trails and waterfront access points.
- B) Allowable Uses. Any uses permitted by right in the residential R-1, R-Low, R-Med., R-High Districts.
- C) Definitions. For the purposes of this section, ‘environmental resource areas’ are areas of slopes over twenty percent (20%), delineated wetlands, streams, lakes, and their adjacent 100-foot buffers, one hundred (100) and five hundred (500) year floodplains and floodways, areas within the WPO, ridgelines, scenic view sheds, ecologically sensitive areas and other environmentally sensitive features determined by the City Planning Board.
- D) Standards.
1. Multiple parcels allowed. Contiguous parcels under common ownership may be considered as one ‘site’ under this section.
  2. Applications for Site Plan approval must be in keeping with, and further the goals stated in, the purpose and intent of this subsection.
  3. Dimensional Standards. The density and dimensional standards in §300-32 and all other density and dimensional regulations in this Chapter other than those contained in this section and the parking and loading requirements in Article IX, shall not apply and are superseded by this subsection. Dimensional and density standards shall be approved by the City Planning Board based on physical characteristics of the site, the character of the proposed development, relevant performance standards in this Chapter, and the requirements of the SEQRA process.
    - a) The number of dwelling units allowed in a CDD shall be equal to the gross area of the CDD site less the ‘environmental resource areas’; the remaining number divided by three thousand (3,000) square feet.
    - b) Applicants in the CDD may be eligible for a density bonus of up to twenty percent (20%), at the discretion of the City Planning Board, based on the plan’s furtherance of the purposes of this article.
    - c) Buildings shall have a maximum length of two hundred (200) feet.
    - d) Buildings shall have a maximum height of four (4) stories or fifty (50) feet. However, the City Planning Board may adjust the maximum allowable height in order to maintain compatibility with surrounding land uses or to protect important views or to protect, preserve, and enhance the environmental features of the site.
    - e) Maximum impervious coverage shall be fifteen percent (15%) of the total gross land area, including preserved open space areas.
  4. A minimum of fifty percent (50%) of the land area of the parcel shall be preserved by a permanent conservation easement or deed restriction as open space. Open space land preserved under this subsection may include ponds and streams, wetlands and

## City of Newburgh, Chapter 300, Zoning

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wetland buffers, steep slopes, ridgelines, scenic view-shed areas, and recreational areas such as trails. It shall not include land that is covered by impervious surface other than trails or paths.

5. Each CDD site must include passive recreation on the site, such as walking trails.
  6. The development area shall be treated as a unit. Regardless of the form of ownership of the property or its division into separate parcels, the open space, and other dimensional requirements in this section shall apply to the entire area zoned CDD and not to any individual parcels or lots which are portions thereof.
  7. Off-street parking must be provided on the CDD site in accordance with requirements stated in Article IX. Parking areas must be screened from environmental resource areas and adjacent residentially zoned parcels, except where doing so would not further the goals of this section (i.e., parking areas of two adjacent CDD sites may abut each other without screening).
  8. Adequate internal circulation must be provided, including adequate access for emergency vehicles.
- E) Application Procedure. For any application within the Conservation Development District, the Applicant shall prepare a conservation analysis of the land (as described in Section §300-33D to be submitted with the Site Plan Application. The Site Plan Application in a CDD shall also contain such other information as the City Planning Board deems necessary to determine whether or not the Plan complies with the requirements of this subsection. The Site Plan Application package shall also include a management plan for the future of the proposed development as a unified entity.
- F) The City Planning Board shall refer applications for Site Plan approval under this section to the Conservation Advisory Council (CAC). The CAC has thirty (30) days from the referral to provide its comments on the application.

*(§300-34 through §300-35 reserved)*

# City of Newburgh, Chapter 300, Zoning

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## ARTICLE VI—HISTORIC OVERLAYDISTRICT

### §300-36. Historic and Architectural Design Overlay Districts: Purpose

- A) The National Historic Preservation Act of 1966 established the national historic preservation program, which operates as a decentralized partnership between the federal government and the state. The 1980 amendments to the National Historic Preservation Act authorized the Certified Local Government (CLG) program, a federal-state-local preservation partnership. Under this program, the Secretary of the Interior certifies local governments as CLGs if they meet several requirements developed by the National Park Service and the State Historic Preservation Office (SHPO).
- B) To maintain CLG status, the City must adhere to requirements which include maintenance of a local historic preservation commission with the power to designate or recommend designation of historic properties; provide historic preservation guidance; and approve or disapprove demolition, relocation, new construction, or exterior alteration affecting designated properties within its jurisdiction.
- C) Based on the above authority, and inasmuch as the City of Newburgh has many significant historic, architectural and cultural resources which constitute its heritage, this section is intended to establish an Architectural Review Commission:
  - 1. To foster public knowledge, understanding, and appreciation in the beauty and character of the City of Newburgh, and in the accomplishments of its past;
  - 2. To ensure the harmonious, orderly, and efficient growth and development of the City;
  - 3. To enhance the visual character of the city by encouraging new design and construction that complements the City's historic buildings;
  - 4. To protect and promote the economic benefits of historic preservation to the City, its inhabitants and visitors;
  - 5. To protect property values in the City;
  - 6. To promote and encourage continued private ownership and stewardship of historic structures;
  - 7. To identify as early as possible and resolve conflicts between the preservation of historic landmarks/districts and alternative land uses; and
  - 8. To conserve valuable material and energy resources by ongoing use and maintenance of the existing built environment.
- D) Scope. In 1977 the Newburgh City Council designated the East End Historic District. In 1985 the district was enlarged and added to the National Register of Historic Places. The Colonial Terraces was added and Design Guidelines adopted by City Council in 2005.

### §300-37. Architectural Review Commission

- A) Creation and Membership. There is hereby continued a Commission to be known as the "City of Newburgh Architectural Review Commission (ARC). The ARC shall consist of seven (7) members to be appointed by the City Manager as follows:

## City of Newburgh, Chapter 300, Zoning

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1. At least one shall be an historian; such member may be a nonresident of the City;
  2. At least three shall be residents of a historic district or architectural design district established within the city or residents of a designated individual landmark building;
  3. At least one shall be an architect; such member may be a nonresident of the City;
  4. All should have demonstrated significant interest in and commitment to the field of historic preservation or architecture evidenced by involvement in a local or regional historic preservation group, employment or volunteer activity in the field of preservation planning, or other serious undertaking in the field of historic preservation.
  5. Except as provided above, all members shall be residents and shall have an interest in historic preservation and architectural development within the City of Newburgh;
  6. In the event that individuals cannot be identified to fulfill the qualifications of (1), (2), (3) or (4) above, members who fulfill (4) may be appointed.
- B) Members shall serve a term of five (5) years from their most recent appointment.
- C) Two (2) alternate members of the ARC shall be appointed by the City Manager for a term of two (2) years, commencing on the date of appointment. These members shall serve when members are absent or unable to participate on an application before the ARC. The Chairman of the ARC may designate an alternate substitute for a member when such member is unable to participate on an application or matter before the board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the Board. Such designation shall be entered into the minutes of every ARC meeting at which the substitution is made. All provisions of state law and local law, codes, rules and regulations relating to ARC member eligibility, vacancy in office, or removal, compatibility of office and service on other boards, as well as any provisions of any local law or local ordinance relating to training, continuing education, compensation and attendance, performance of duties, qualifications and others, shall also apply to alternate members.
- D) Chairman. The Chairman shall be appointed by the City Manager. If the City Manager shall not appoint a Chairman, then the Chairman shall be elected by the members of the ARC.
- E) Vacancies occurring other than by expiration of term shall be filled for the remainder of the unexpired term in the same manner as the original appointments.
- F) Meetings. The ARC shall meet at least monthly, but may be held at any time on the written request of the majority of ARC members or on the call of the Chairman.
- G) Secretary. The secretary is a staff member of the City, and not a voting member of the ARC. The Secretary shall keep and make available to the public on request all records of meeting minutes, attendance, resolutions and reports.

# City of Newburgh, Chapter 300, Zoning

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- H) Quorum. A quorum for the transaction of business shall consist of four (4) of the ARC members. A majority of the full authorized membership is required to grant a Certificate of Appropriateness or designate a landmark, historic district or architectural design district.
- I) Training. Each member shall complete a minimum of four (4) hours of training each year, designed to assist the members to be more effective in carrying out their duties.

## **§300—38. Powers and Duties of the ARC**

- A) The ARC shall exercise aesthetic judgment to maintain the character of historic and architectural design districts, or a landmark, and to prevent construction, reconstruction, alteration or demolition, which would be out of harmony with the architectural aesthetics, style, materials, colors, line and details of the district and/or landmark.
- B) In addition to the aforementioned powers, the powers of the ARC shall include:
  - 1. Adoption of criteria for the identification of significant local historic, architectural, and cultural landmarks and for the delineation of historic districts.
  - 2. Conduct surveys of significant historic, architectural, and cultural landmarks and historic districts within the City.
  - 3. Recommend to the city Council the designation of a local building, structure or property or a collection of buildings, structures or properties as a local landmark, historic district or architectural design district, hereafter referred to as “designated properties.”
  - 4. Recommend to the State Historic Preservation Office the listing of any local landmark for inclusion on the State Register of Historic Places.
  - 5. Increasing public awareness of the value of historic, cultural, and architectural preservation by developing and participating in public education programs.
  - 6. Provide advice and guidance to owners, contract vendees, and residents of historic districts on financing sources that are available specifically to properties within the historic districts, such as the federal Historic Rehabilitation Tax Credit and Property Tax Abatements.
  - 7. Approval or disapproval of applications for Certificates of Appropriateness pursuant to this article as to designated properties pursuant to this article and as to all changes in exterior features or demolition of designated properties duly established by ordinance of the City, with the exceptions of those changes stated in Section §300-40(A)(4) of this Chapter.

## **§300.39 Designation of Landmarks or Historic Districts or Architectural Design Districts**

The commission shall delineate landmarks or historic districts and recommend them to the City governing board for designation under local law.

- A) Local Landmark Designation.
  - 1. The ARC may make a recommendation to the City Council for the local designation of a structure, building or property as a landmark if it:



## City of Newburgh, Chapter 300, Zoning

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- (a) exemplifies or possesses special character, or historic or aesthetic interest of value as part of the political, economic, or social history of the City;
  - (b) is identified with persons or events significant in local, state, or national history;
  - (c) embodies the distinguishing characteristics of a type, period or method of construction or design style, or is a valuable example of the use of indigenous materials or craftsmanship; or is representative of the work of a designer, architect or builder;
  - (d) represents an established and familiar visual feature of the community by virtue of its unique location or singular physical characteristic, represents an established and familiar visual feature of the community; or
  - (e) has yielded or may be likely to yield information important in prehistory or history.
2. Notice of a proposed designation shall be sent by certified mail to the owner of the property proposed for designation at the address on file for said property owner with the city Assessor, describing the property proposed and announcing a public hearing by the City Council to consider the designation. The proposal shall also be published at least once in all official newspapers of the City at least five (5) days prior to the date of the public hearing. Once the City Council has issued notice of a proposed designation, no building permit shall be issued by the Building Inspector until the City Council has made its decision.
  3. The City Council shall hold a public hearing prior to designation of any local landmark. The ARC, owners, and interested parties may present testimony or documentary evidence at the hearing which will become part of a record regarding the historic, architectural, or cultural importance of the proposed landmark. The record may also contain staff reports, public comments, or other evidence offered outside of the hearing.
  4. The City Council shall forward notice of each property designated as a local landmark to the office of the Orange County Clerk for recordation.
  5. The location of each local landmark designated henceforth shall be specified in detail and shall be filed, in writing, in the Building Inspector's office for public inspection.
- B) Historic District or Architectural Design District.
1. The ARC may recommend to the City Council the designation of a group of properties as a local historic district or architectural design district if the proposed district:
    - a) Contains properties which meet one or more of the criteria for designation of a landmark; and
    - b) By reason of possessing such qualities, constitutes a distinct section of the City.
  2. Designation of an historic district or architectural design district represents an amendment to this Chapter and Zoning Map and shall be done in accordance with procedures contained in §300-39 of this Chapter and in accordance with Section 83 of the General City Law of the State of New York.
  3. The location of each local historic district or architectural design district designated henceforth shall be specified in detail and shall be filed, in writing, in the Building Inspector's office for public inspection.
  4. The location of each historic district or architectural design district shall be shown as an overlay district on the City of Newburgh Zoning Map.

## City of Newburgh, Chapter 300, Zoning

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5. The City Council shall forward notice of each designated historic district or architectural design district to the office of the Orange County Clerk for recordation.

### **§300-40 Certificate of Appropriateness**

#### **A) Certificate required:**

1. The City of Newburgh Architectural Review Commission is responsible for the approval or disapproval of proposals for exterior changes to a historic property designated under local law. No person shall carry out any exterior alteration, restoration, reconstruction, demolition, new construction, or move of a designated historic landmark or property within a designated historic district without first obtaining a Certificate of Appropriateness that authorizes such work from the City of Newburgh ARC.
2. The building department shall receive and file all applications issued for any individual landmark, or landmarks or historic district to which this local law applies. The building department shall transmit a copy of any such application to the commission.
3. The building department may set up a preliminary review at the request of the applicant, which will include an informational overview of process and requirements.
4. The commission may require that the application for certificate of appropriateness (COA) be supplemented by such additional information or materials as may be necessary for a complete review by the commission. The commission may impose such reasonable conditions or restrictions as it is necessary or appropriate on a case-by-case basis to promote or achieve the purpose of this Article.
5. Exemptions: The following activities do not require a Certificate of Appropriateness under this Article:
  - a) Repair, replacement and installation of electrical, plumbing, heating and ventilation systems, provided that such work does not affect the exterior of the structure.
  - b) Caulking, weather stripping, glazing and repainting of windows.
  - c) Repair of porches, cornices, exterior siding, doors, balustrades, stairs or other trim when the repair is done in-kind to match historic material and form.
  - d) Repair of storm windows (exterior, interior or wood), provided they match the shape and size of historic windows and that the meeting rail coincides with that of the historic window; color should match the window frame trim.
  - e) Installation of new window jambs or jamb liners.
  - f) Repair or replacement of awnings when work is done in-kind to match existing materials and form.
  - g) Roof repair of historic roofing with materials that matches the existing material in form or better.
  - h) Repair of gutters and downspouts that match the existing material in form or better.
  - i) Installation of insulation where exterior siding or trim is not altered or damaged and is not inset from the insulation or stays proud of the building plane as intended.
  - j) Repair of existing roads, driveways, sidewalks and curbs, provided that work

## City of Newburgh, Chapter 300, Zoning

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is done so that there are no changes in dimension or configuration of those features. Concrete used for sidewalks, curbs and driveway aprons shall be dyed in the mix prior to placing to emulate bluestone in the historic district.

- k) Exterior lead paint abatement that includes scraping and repainting of exterior work and masonry surfaces.
  - l) Repair of fencing when work is done in-kind to match existing material and form.
  - m) Repair or replacement of water, gas, storm or sewer lines.
  - n) Emergency repairs necessitated by a casualty to the property (fire, storm, flood, etc.)
- B) In passing upon an application for a Certificate of Appropriateness, the ARC shall not consider changes to interior spaces, unless they are open to the public, or to architectural features that are not visible from a public place, public street, or alley; unless the designation of the property in the historic record documents interior features of the property.
- C) Decision-Making. The ARC's decision shall be based upon the following principles:
- 1. Designated properties which contribute to the character of an historic district or architectural design district shall be retained, with their historic or architectural features altered as little as possible.
  - 2. Any alteration of a designated property shall be compatible with its historic character as well as with the surrounding district; and
  - 3. New construction shall be compatible with the district in which it is located and in harmony with the design guidelines established for such district.
  - 4. Items not contemplated at the time of this or other reference publications shall be at the discretion of the ARC.
- D) Principles of Compatibility. The ARC shall consider the following factors:
- 1. The general design, character, and appropriateness to the property of the proposed alteration or new construction.
  - 2. The scale of the proposed alteration or new construction in relation to the property itself, surrounding properties, and the neighborhood.
  - 3. Texture, materials, and color and their relation to similar features of other properties in the neighborhood.
  - 4. Visual and aesthetic compatibility with surrounding properties, including proportion of the property's front façade, proportion and arrangement of windows and other openings within the façade, roof shape, and the rhythm of spacing of properties in streets, including setback.
  - 5. The importance of historic, architectural or other features to the significance of the property.
  - 6. The proposed action's consistency with design guidelines established for an historic or architectural design district.
- E. Special Demolition Considerations. In considering applications for demolition, the ARC shall consider:
- 1. Whether the building or structure is dangerous to health, safety or life.
  - 2. The extent, significance, and expense of repairs needed to maintain the structure in good repair.

## City of Newburgh, Chapter 300, Zoning

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3. The historic value of the structure or property.
4. The contribution of the structure or property to community character, or an existing, locally-designated historic or architectural district.
5. The existence and extent of hardship criteria, including whether:

## City of Newburgh, Chapter 300, Zoning

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- a) The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible, without being allowed the proposed demolition.
  - b) The property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return, without being allowed the proposed demolition.
  - c) Efforts to find a purchaser interested in acquiring the property and preserving it have failed.
6. The potential of relocating the building and any other information considered necessary by the ARC.
- F) Certificate of Appropriateness Application Procedure. Prior to the commencement of any work requiring a certificate of appropriateness, the property owner, or contractor with written authorization of the owner, shall file an application for a building permit with the City of Newburgh Building Inspector and an application for such certificate with the commission. The application shall contain the following:
- 1. Name, address, and telephone number of applicant;
  - 2. Building permit application number as assigned by the building department;
  - 3. Location and photographs of property;
  - 4. Name of the NYS Registered Design Professional (i.e. Registered Architect) hired by the Applicant. Unless the residential homeowner creates the drawings themselves, all drawings submitted by a NYS RDP must have the seal and signature of the Licensee;
  - 5. Elevation drawings of proposed changes, if available;
  - 6. Perspective drawings, including relationship to adjacent properties, if available;
  - 7. Samples of building materials to be used, including their proposed color;
  - 8. Where the proposal includes signs or lettering, a scale drawing showing the type of lettering to be used, all dimensions and colors, a description of materials to be used, method of illumination, and a plan showing the sign's location on the property; and any other information which the commission may deem necessary in order to visualize the proposed work;
  - 9. Copies of all SEQRA documents and proceedings.
  - 10. Upon submission of a complete application, the commission shall have the authority to, without public hearing and notice:
    - a) determine whether the proposed work constitutes ordinary maintenance and repair for which a certificate of appropriateness is not required;
    - b) approve work which is considered replacement-in-kind;
    - c) approve work that is of any other type that has been previously determined by the commission to be appropriate for delegation to staff.
- G. Consent Agenda. The ARC is empowered to consider and approve multiple applications with a single motion which have been placed on a consent agenda. The decision shall be based on:
- 1. The nature and extent of the alteration or demolition being proposed.
  - 2. The degree to which the application is in conformance with the appropriate Design Guidelines.

## City of Newburgh, Chapter 300, Zoning

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3. Written 'Consent Agenda Guidance', approved by the ARC regarding paint colors, materials, and items generally suitable for specific purposes within the district.
  4. Items placed on the Consent Agenda shall be listed on the ARC's meeting agenda and announced at the meeting. A majority vote of the ARC members present at the meeting may remove an item from the Consent Agenda and place it on the regular agenda for full consideration by the ARC.
  5. The Chair of the ARC shall entertain a motion to approve items placed on the Consent Agenda upon hearing no objection to the applications remaining on the list.
  6. Applicants with items pending on the Consent Agenda do not need to attend the ARC meeting at which their application is being considered.
- H. No building permit shall be issued for such proposed work until a Certificate of Appropriateness has first been issued by the ARC. The Certificate of Appropriateness required by this section shall be in addition to and not in lieu of any building permit that may be required by any other ordinance of the City of Newburgh.
- I. In such cases when the current property owner does not plan on carrying out the work applied for, but rather wants to transfer the COA approval to a subsequent owner, the ARC approval shall be conditioned upon completion of the approved scope of work within a reasonable time-frame or twenty-four (24) months . Renewals of such conditions may be granted at the sole discretion of the ARC upon application at least thirty (30) days prior to the expiration of the time limit.
- J. The ARC shall approve, deny, or approve the application for a certificate with modifications within sixty (60) days from the closing of the public hearing, if any, and otherwise within sixty (60) days from the receipt of the completed application. The ARC shall hold a public hearing on the application at which an opportunity will be provided for proponents and opponents of the application to present their views. Notice of such public hearing shall be published in the official newspaper of the City of Newburgh at least five (5) days prior to said hearing.
1. A public hearing shall not be required for an application limited to approval of paint color or repair or maintenance of a building or structure or property that does not involve the alteration or removal of any exterior feature.
  2. A public hearing shall not be required for items on the Consent Agenda.
- K. All decisions of the ARC shall be in writing. A copy shall be sent to the Applicant by regular mail and a copy filed with the Building Inspector's office for public inspection.

### **§300-41. Appeal of COA Decision, Hardship**

- A) An applicant whose certificate of appropriateness for a proposed alteration of a landmark property has been denied may apply for relief on the ground of economic hardship. In order to prove the existence of economic hardship related to a proposed alteration, the applicant shall establish that the denial of a certificate of appropriateness will prevent the property

## City of Newburgh, Chapter 300, Zoning

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owner from earning a reasonable return on investment, regardless of whether that return represents the most profitable return possible.

- B) Consultation; Plan Development. The applicant shall consult in good faith with the commission, local preservation groups, and other interested parties in a diligent effort to seek an alternative that will result in appropriate preservation of the property. The consulting parties may include interested purchasers, as well as preservation and other interested organizations, public agencies, developers, real estate agents and individuals who may be instrumental in developing an economically feasible solution.
- C) Economic Hardship; Criteria. Following the denial of a certificate of appropriateness, the applicant may request a certificate of economic hardship. In all cases other than a proposed demolition, removal or relocation, the applicant shall prove the existence of economic hardship by demonstrating to the commission that: (1) the applicant cannot realize a reasonable return if compliance with the commission's decision is required, provided, however, that the lack of reasonable return is proven by the applicant to be substantial as demonstrated by competent financial evidence; (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (3) that the requested relief, if granted, will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self-created.
- D) The commission, in the granting of a certificate of economic hardship, shall grant the minimum terms deemed necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health safety and welfare of the community.
- E) Public Hearing.
  - 1. The commission may hold a public hearing on the hardship application at which an opportunity will be provided for the applicant and public to present their views on the hardship application.
  - 2. If no public hearing is held, the commission must render a decision on the hardship application within sixty two (62) days following its receipt of a complete application.
    - 1. A complete application includes the conclusion of all activities under (c) initiated to consult with necessary parties to determine whether the property may be preserved or rehabilitated in a manner that alleviates the hardship that would otherwise result while substantially accomplishing the goals of this local law.
    - 2. A complete application also includes receipt by the commission of all submissions necessary to meet the applicant's burden of proof.
  - 3. Following the submission of a complete application, the commission may schedule a public hearing within a reasonable time and determine within 62 days following to the close of any public hearing held on the application whether the applicant has met his or her burden of proof.



## City of Newburgh, Chapter 300, Zoning

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F) Commission Decision.

1. If the commission finds that the applicant's burden of proof has not been met, the commission shall deny the application for a certificate of economic hardship.
2. If the commission finds that the applicant's burden of proof has been met, the commission shall issue a preliminary determination of landmarks or economic hardship within 62 days of the close of any public hearing held on the application or within 62 days after the commission has received a complete application.
3. Within 62 calendar days following the commission's preliminary determination of economic hardship the commission must make a final determination.
4. A decision of the commission on the hardship application shall be in writing and shall state the reasons for granting or denying it. A copy shall be sent to the applicant by certified mail/return receipt requested or courier service with proof of delivery or personal service with proof of delivery and a copy filed with the City clerk's office for public inspection.

- G) No building permit or other land use approvals shall be issued unless the commission grants the hardship application. If the hardship application is granted, the commission shall approve only such work as is necessary to alleviate the hardship.

### **§300.42 Demolition, Removal, or Relocation of Landmark Buildings**

- A) Demolition of an individual landmark or of a structure located in and contributing to the significance of a historic district shall be allowed only in case of economic hardship, unless the building department, upon due deliberation has made an express written finding that the structure presents an imminent threat to the public health, safety and welfare.
- B) Any person desiring to demolish a designated historic building shall first file an application for a historic building demolition permit with the building department and an application for such certificate with the commission. An applicant must submit the following items:
1. Current level of economic return;
  2. Amount paid for the property, date of purchase, party from whom purchased, and relationship between the owner of record, the applicant, and person from whom property was purchased;
  3. Annual gross and net income from the property for the previous three (3) years; itemized operating and maintenance expenses for the previous three (3) years, and depreciation deduction and annual cash flow before and after debt service, if any, during the same period;
  4. Remaining balance on the mortgage or other financing secured by the property and annual debt-service, if any, during the prior three (3) years;
  5. Real estate taxes for the previous four (4) years and assessed value of the property according to the two (2) most recent assessed valuations;
  6. All appraisals obtained within the last two (2) years by the owner or applicant in connection with the purchase, financing, or ownership of the property;



## City of Newburgh, Chapter 300, Zoning

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7. Form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture, or other;
  8. Any state or federal income tax returns relating to the property for the last two years;
  9. Any listing of property for sale or rent, price asked, and offers received, if any, within the previous two (2) years, including testimony and relevant documents regarding: (a) any real estate broker or firm engaged to sell or lease the property, (b) reasonableness of price or rent sought by the applicant, or (c) any advertisements placed for the sale or rent of the property;
  10. Feasibility of alternative uses for the property that could earn a reasonable return;
  11. Report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any buildings on the property and their suitability for rehabilitation;
  12. Cost estimates for the proposed construction, alteration, demolition, or removal, and an estimate of any additional cost that would be incurred to comply with the requirements for a certificate of appropriateness;
  13. Estimated market value of the property: (a) in its current condition; (b) after completion of the proposed alteration or demolition; and (c) after renovation of the existing property for continued use;
  14. Expert testimony or opinion on the feasibility of rehabilitation or reuse of the existing structure by an architect, developer, real estate consultant, appraiser, and/or other real estate professional experienced in historic properties and rehabilitation;
  15. Any evidence of self-created hardship through deliberate neglect or inadequate maintenance of the property; and
  16. Economic incentives and/or funding available to the applicant through federal, state, city, or private programs.
- C) Demolition of any such building may be approved only in connection with approval of a replacement project.
- D) The commission shall hold a public hearing and shall take one of the following actions:
- (1) Approve the demolition permit in conformance with the provisions F of this Article below,
  - (2) Approve the demolition hardship permit subject to a waiting period of up to one hundred twenty (120) days to consider relocation/documentation;
  - (3) Deny the permit.
- E) During the continuance period, the commission may investigate relocation of the building (on site) or modification of the building for future uses in a way which preserves the architectural and historical integrity of the building.
- F) Demolition, Removal or Relocation Hardship Criteria
1. Certificate of appropriateness for demolition, removal or relocation. An applicant whose certificate of appropriateness for a proposed demolition, removal or relocation of a landmark, resource or property has been denied may apply for relief on the ground of economic hardship. In order to prove the existence of economic hardship sufficient to justify demolition, removal, or relocation, the applicant shall establish that the denial of a certificate of appropriateness will prevent the property owner from earning a

## City of Newburgh, Chapter 300, Zoning

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reasonable return on investment, regardless of whether that return represents the most profitable return possible.

2. Certificate of Appropriateness for Demolition. The applicant for a certificate of appropriateness for demolition must establish to the commission's satisfaction, an imminent plan of reuse or redevelopment of the affected property. The applicant for an income-producing property shall establish that:
  - a) the property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible; and,
  - b) the property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return; and,
  - c) efforts to find a purchaser interested in acquiring the property and preserving it have failed.
  - d) In deciding upon such application for removal, relocation or demolition, the commission may consider whether the owner has created his own hardship through waste and neglect, thereby permitting the property to fall into a serious state of disrepair.
3. Before approving the removal, relocation or demolition of an individual landmark or structure within a historic district, the commission may suspend the application for up to one hundred and eighty (180) days to allow the applicant to consult in good faith with the commission, local preservation groups, and the public in a diligent effort to seek a less intrusive alternative to demolition.

### **§300.43. Administration and Enforcement**

- A) Enforcement. All work performed pursuant to a Certificate of Appropriateness issued under this article shall conform to the requirements stated in the Certificate or reasonably implied therein. It shall be the duty of the Building Inspector to periodically inspect any such work to assure compliance with the Certificate and all applicable law. In the event any requirement included in the Certificate of Appropriateness has not been met, or upon notification of that fact by the historic preservation commission, the Building Inspector shall issue a stop-work order and all work shall immediately cease. No further work shall be undertaken on the project as long as a stop-work order is in effect.
- B) Any owner or person in charge of a property who demolishes, alters, constructs, or permits a designated property to fall into a serious state of disrepair in violation of this local law in the absence of a certificate of appropriateness, a finding of economic hardship, or other approval by the commission, may be required by the City Council to restore the property and its site to its appearance prior to the violation.
- C) Maintenance Required. Nothing in this article shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of a landmark or property within a historic district which does not involve a change in the design, material, color, or outward appearance. No owner or person with an interest in a designated property shall permit the property to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural or historic feature which would, in the judgment of the ARC,

## City of Newburgh, Chapter 300, Zoning

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produce a detrimental effect upon the character of a historic or architectural district as a whole or the life and character of a landmark. Examples of such deterioration include:

1. Deterioration of exterior walls or other vertical supports;
2. Deterioration of roofs and other horizontal members;
3. Deterioration of exterior chimneys;
4. Deterioration or crumbling of exterior stucco or mortar;
5. Ineffective waterproofing of exterior walls, roofs, or foundations, including broken windows or doors and
6. Deterioration of any features so as to create a hazardous condition which could lead to a claim that demolition is necessary for the public safety.

D) Violations. If, in the judgment of the commission, a violation exists that will result in a detrimental effect upon the life and character of a designated historic resource, landmark, property or on the character of a historic district as a whole, the commission shall notify the Building Inspector. If, upon investigation, the Building Inspector finds non-compliance with the requirements of the Property Maintenance Code of the New York State Fire Prevention and Building Code, or any other applicable law or regulation, the building inspector shall order such remedies as are necessary and consistent with this local law and shall provide written notice thereof to the secretary of the commission.

E) Penalties

1. Failure to comply with any of the provisions of this article shall be deemed a violation, and upon conviction the violator shall be liable to a fine of not less than \$500 or fifteen (15) days in jail or both for each day the violation continues.
2. Any person who demolishes, alters, constructs or permits a designated property to fall into a serious state of disrepair in violation of this article shall be required to restore the property and its site to its appearance prior to the violation. An action to enforce this subsection may be brought by the City in any court of competent jurisdiction. This civil remedy shall be in addition to and not in lieu of any criminal prosecution and penalty.

F) Appeals. Any person aggrieved by a decision of the commission relating to a certificate of economic hardship or a certificate of appropriateness may, within fifteen (15) days of the decision, file a written appeal to the City governing board for review of the decision. Appellate review shall be based on the same record that was before the commission and using the same criteria in this Article.

G) Termination of Certificate of Appropriateness: An approved Certificate of Appropriateness shall terminate and become void if there is no building or demolition permit filed with Building Inspector as per §300-11 and §300-12 of this Chapter, within twenty-four (24) months of the date of approval.

### **§300-44. Designation of Districts and Standards**

A) Design Guidelines. The City Council, by resolution, may adopt design guidelines for any historic or architectural design district. Said design guidelines shall be drafted with the

## City of Newburgh, Chapter 300, Zoning

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input and participation of the ARC and owners of property located within the district. A public hearing shall be held prior to the adoption of design guidelines, and notice of said public hearing shall be in accordance with section §300-39.

- B) The ARC, in its deliberations, shall be guided by design guidelines that have been duly adopted by the City Council in any review authorized herein.
- C) The East End Historic District. The ARC, in its deliberations, shall be guided by the East End Historic District Guidelines, duly adopted by the City Council by ordinance No. 2-2008, dated February 25, 2008 and by the City Council's adoption of the CLG update scheduled for 2015.
- D) Colonial Terraces Architectural Design District. The ARC, in its deliberations, shall be guided by the 'Colonial Terraces Design Guidelines' duly adopted by the City Council by Ordinance No. 3-2-5, dated June 20, 2005.

*(§300-45 reserved)*

# City of Newburgh, Chapter 300, Zoning

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## ARTICLE VII—OTHER OVERLAY DISTRICTS

### §300-46. Waterbody Protection Overlay (WPO) District

- A) Purpose and Intent. The Waterbody Protection Overlay District (WPO) is established to provide protection to the City's waterbodies, creek and stream corridors. Creating and preserving vegetated stream and creek buffers will be protective of water quality, will prevent erosion and preserve and enhance animal habitat and plants to sustain the ecological services provided by aquatic resources such as ponds, lakes, and streams. It is also imperative to note the designation of the Hudson River as a National Heritage Site in the mid-Hudson region.
- B) The purpose of this section is to regulate land uses within or adjacent to a stream corridor or waterbody to protect water quality, habitat and biodiversity, and scenic resources, and to reduce the risk of damage from flooding. It is important to note that the entire Quassaick Creek Watershed, which originates in Ulster County, and drains the northeastern portion of Orange County, flows through the City of Newburgh to the Hudson River. It is therefore imperative to the protection of public health, safety, and welfare to appropriately manage development adjacent to this critical resource. The primary goals of the WPO are to:
1. Promote the ecological health, biodiversity and natural habitats of the creeks, stream corridors and waterbodies with the City of Newburgh by:
    - a) Maintaining and restoring riparian buffer vegetation;
    - b) Minimizing stream channel constraints; and
    - c) Other best management practices.
  2. Provide for responsible development of parcels adjacent to the City's creeks, streams and waterbodies.
  3. Protect public health and welfare by preserving water quality, filtering pollution and sediments and reducing the risk of damage from flooding.
  4. Enhance the aesthetic character of the City's creeks, streams and waterbodies, which are a source of civic pride.
  5. Promote public access to the shore of the creeks, streams and waterbodies.
  6. Re-orient development to feature the streams, creeks and waterbodies and allow the public to use the shore and the water resources for passive and active recreation.
  7. Promote public awareness of the vital ecological and historic value of the mapped waterbodies of the City of Newburgh.
- C) Boundaries. The Water Protection Overlay District includes all land lying within one hundred (100) feet of the top of the bank on each side of the following waterbodies. Where there is no clearly defined bank, the district boundary shall be measured from the mean high-water line of the waterbody. Where there are steep slopes – also protected from development, the measurement will be from the top of the bank and continued along the top of the slope where it levels off until one hundred (100) feet is met.
1. Quassaick Creek
  2. Gidneytown Creek
  3. Harrison Pond

## City of Newburgh, Chapter 300, Zoning

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4. Strook's Pond to the east of Harrison Pond and west of Gidneytown Creek
  5. Crystal Lake
  6. Muchattoes Lake
  7. Unnamed Ponds (2) southwest of Crystal Lake
  8. Unnamed Stream that flows into and out of Crystal Lake and is tributary to the Quassaick Creek. (Note: The portion of this unnamed stream northeast of Crystal Lake is not mapped on the National Hydrography dataset and is not accurately mapped by the NYS DEC.)
  9. That portion of the Hudson River that is not within the Planned Waterfront District (PWD) Zoning District.
- D) Regulatory Effect and Land Uses. The requirements of the Waterbody Overlay District shall apply to parcels that have any part within the WPO District, as shown on the zoning map, not just the portion of parcels within the WPO. The requirements of this section will be in addition to the requirements of the underlying zoning district.
- E) Setbacks. Within the WPO District, no principal structure shall be located within one hundred (100) feet of a creek, stream or waterbody, and no accessory structure two hundred (200) square feet or greater shall be located within fifty (50) feet of a watercourse. These setbacks shall not apply to docks, piers, bridges, and other structures, which, by their nature, must be located on, adjacent to, or over the watercourse. For purposes of determining setbacks, measurements shall be horizontal distances measured from the top of the bank or mean high-water line, as appropriate. For lots in existence prior to the effective date of this Chapter, and for any project for which an environmental impact statement has been prepared, the City Planning Board may modify these setback requirements, provided that the City Planning Board finds that the proposed construction will comply with the Subsection §300-46(F)(2).
- F) Site Plan Approval Requirement. Within the WPO District, no person shall clear, fill, dredge, excavate, deposit materials, or undertake any construction activities within the WPO without Site Plan approval as detailed in this Section.
1. All parcels having any part within the WPO shall be subject to Site Plan review and approval and may not be exempted from that requirement based on §300-46.
  2. The City Planning Board shall refer the Site Plan application to the Conservation Advisory Council. The CAC has thirty (30) days from the date of referral to provide its comment on the application.
  3. The City Planning Board may only grant site Plan approval for any of the activities noted in §300-31 if it finds the proposed activity is compliant with the following appropriate conditions:
    - a) The proposed activity will not result in erosion or pollution from surface or subsurface runoff. In making such determination, the City Planning Board shall consider slopes, drainage patterns, water entry points, soils erosion, depth to bedrock and high-water table, and other relevant factors.

## City of Newburgh, Chapter 300, Zoning

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The proposed activity includes appropriate measures to minimize stormwater quantity and velocity, improve stormwater quality, promote inflow and infiltration, protect stream and lake/pond banks from erosion, improve the water quality of the City's waterways, and increase public awareness of these critical resources. This section applies to the entire parcel, not just the portion of the parcel within the WPO. These measures may include any of:

1. Vegetated stream-bank buffers;
  2. Rain Gardens and bio-retention swales;
  3. Storage and reuse of roof, sidewalk, and parking lot runoff;
  4. Pervious paving materials;
  5. Appropriately placed, designed, and managed constructed wetlands;
  6. Public access to resource;
  7. Public education materials (signs, kiosks, viewing areas, etc.);
  8. Other measures identified by the City, County, State or regional planning entities as appropriate to further the goals specified above.
- b) Any areas of natural resource preservation on the Site shall be linked, to the extent practical, with preservation areas on adjacent parcels.
  - c) The proposed activity would provide passive, non- permanent recreation and walking trails and/or public pedestrian access to the creek, stream or waterbody and will comply with all other applicable provisions of this Chapter.
  - d) Any new encroachment into the WPO has been demonstrated to be, in the City Planning Board's opinion, the only practicable alternative, taking into consideration other alternatives requiring no or lesser impacts within the WPO.
  - e) Any encroachment into the WPO is required so as not to deprive the owner of all reasonable returns on investment relating to the development of their parcel, if said parcel is in an undeveloped condition and in single ownership.
  - f) The planting and keeping of gardens in areas already cleared of natural vegetation and currently existing in a maintained condition (i.e. lawn).
  - g) The proposed activity will not result in degradation of scenic character and will be compatible with its surroundings.
4. If a Special Use Permit, Variance or Subdivision approval is required in connection with a project located in the WPO and subject to the provisions herein, the requirements of this section shall be considered in such a proceeding, and no separate Site Plan approval shall be required.

### G) Erosion and Stormwater Management

1. For any Special Use Permit, Site Plan, Variance, or Subdivision application in which the area to be disturbed lies partially or wholly within the WPO, an erosion and sediment control plan shall be required pursuant to the Stormwater Management regulations in Chapter 248 of the Code of the City of Newburgh pursuant to § 248-60 (A).

### H) For lots in existence prior to the effective date of this Chapter that are currently developed with a building, parking lot, or any other impervious surface within the WPO, and are applying for amendments to their Site Plan, Subdivision, Special Use Permit or Variance, at the time of application



## City of Newburgh, Chapter 300, Zoning

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1. No increase in the amount of the WPO covered by impervious surface is allowed;
2. Site Plans must make maximum use of Low Impact Development techniques and other water quality/quantity improving development tools described in §300-86(F)(2)(b).

### **§300-47. Neighborhood Commercial Overlay District**

- A) The purpose and intent of the Neighborhood Commercial Overlay District (NC) is to:
1. Recognize the existing development pattern within the area of the City along the gateways to the city and westernmost portion of Broadway.
  2. To allow multiple uses within buildings and within lots in order to promote market-driven uses and redevelopment within targeted areas of the City, as identified in the Future Land Use Plan.
- B) Within the NC Overlay District, the following uses are added to the list of uses permitted as of right but require site plan approval.
1. Retail Store
  2. Restaurant
  3. Personal Services
  4. Professional Office
  5. Mixed Use
  6. Animal Care Facility
  7. Adult Day Care Facility
  8. Child Care Center
  9. Technical School
- C) Off-Street Parking. Off-street parking required for the uses listed in paragraph (B) shall be the same as those listed for the “C-Commercial” district.
- D) Bulk and area requirements for the uses listed in paragraph (B) above shall be the same as the underlying zoning.

*(§300-48 through §300-50 reserved)*



# City of Newburgh, Chapter 300, Zoning

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## ARTICLE VIII—SUPPLEMENTARY REGULATIONS

### §300-51. Environmental Performance Standards

- A) Compliance with Performance Standards. No use shall hereafter be established, altered, moved or expanded unless it complies with the performance standards set forth in this section. Continued conformance with such standards, once applicable, shall be a requirement for the continuance of any Certificate of Occupancy.
- B) Purpose of Performance Standards. Consistent with the general purposes of this Chapter, performance standards shall set specific controls on potentially objectionable external aspects of all uses in order to:
1. Reduce to a reasonable minimum the dissemination of smoke, gas, dust, odor or other atmospheric pollution outside the building in which the use is conducted.
  2. Control noise and light perceptible beyond the boundaries of the site of the use.
  3. Limit the discharge of treated wastes and prohibit the discharge of untreated wastes into any watercourse.
  4. Limit the dissemination of vibration, heat or electromagnetic interference beyond the immediate site on which the use is located.
  5. Limit physical hazard by reason of fire, explosion, radiation or any similar cause.
  6. Regulate and control the generation and flow of vehicular traffic in order to prevent hazardous conditions, traffic congestion, and excessive noise in the streets.
- C) Noise. No noises shall be emitted in violation of Chapter 212 of the Code of the City of Newburgh. In addition, the following specific standards apply to noise:
1. Sound levels shall be determined at the lot line of the lot from which the noise is emitted. Sound measurements shall be accomplished through a sound-level meter having an A-weighted filter and constructed in accordance with specifications of the American National Standards Institute or other generally accepted standard for the measurement of sound.
  2. No person, firm or corporation shall allow the emission of sound which, as measured at the lot lines, has a sound level in excess of:
    - a) Sixty (60) decibels on the A-weighted scale between the hours of 7:00 a.m. and 8:00 p.m. and,
    - b) Fifty (50) decibels on the A-weighted scale between the hours of 8:00 p.m. and 7:00 a.m.
  3. Sounds emitted at levels lower than those prohibited by Subsection 2 above shall not be permitted if, because of the type or frequency of the noise emitted, such sounds are offensive, disruptive or in continual disharmony with the character of an adjoining or nearby residential neighborhood.
  4. Exemptions. The following shall be exempt from the noise level regulations:
    - a) Noises not directly under the control of the property user.
    - b) Noises emanating from construction and maintenance activities between 8:00 a.m. and sunset, Monday through Friday.

## City of Newburgh, Chapter 300, Zoning

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- c) The noises of safety signals, warning devices, emergency pressure-relief valves or other emergency warning signals.
  - d) Bells or chimes from a church or other place of worship.
- D) Exterior Illumination and Glare. No use shall produce glare so as to cause illumination beyond the boundaries of the property on which it is located in excess of 0.5 footcandle. All exterior lighting, including security lighting, in connection with all buildings, signs or other uses shall be directed away from adjoining streets and properties. The City Planning Board may require special efforts to reduce the impacts of exterior lighting, such as limiting hours of lighting, planting screening vegetation, or installing light shields to alleviate the impact of objectionable or offensive light and glare on neighboring residential properties and public thoroughfares.
- E) Review Procedures. As a part of Site Plan review of potentially objectionable external aspects and therefore be subject to these performance standards, the reviewing board may require the Applicant, at his or her own expense, to provide such evidence as it deems necessary to determine whether the proposed use will comply with these standards.

### **§300-52. Environmental Constraints**

- A) Wetlands in Lot Areas Calculations. In computing minimum lot sizes pursuant to the Dimensional Table, the area of wetlands shall be subtracted from the total acreage in the lot area calculations.
- B) Steep Slopes. For any subdivision, Special Use Permit, Site Plan, Building Permit, Zoning Permit, or variance that involves the disturbance of slopes greater than 15%, conditions shall be attached to ensure that:
1. Adequate erosion control and drainage measures will be in place so that erosion and sedimentation do not occur during or after construction, as determined by the Planning Board.
  2. Cutting of trees, shrubs, and other natural vegetation will be minimized, as determined by the Planning Board.
  3. Safety hazards will not be created due to excessive road or driveway grades or due to potential subsidence, road washouts, landslides, flooding or avalanches, as determined by the Planning Board.
  4. Proper engineering review of plans and construction activities will be conducted by the City to ensure compliance with this section, paid for by escrow deposits paid by the Applicant.
  5. No Certificate of Occupancy will be granted until all erosion control and drainage measures required pursuant to this section have been satisfactorily completed.

Note: There will be no building allowed within the one hundred (100) feet of a waterbody within the Water Overlay District according to the procedural measurements outlined, in reference to §300-46.

## City of Newburgh, Chapter 300, Zoning

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- C) Slope determinations shall be made based upon the topographic information required for a particular approval, along with such other topographic information as a reviewing board or official shall reasonably require or the Applicant shall offer. In cases of uncertainty or dispute, a qualified professional retained by the City, at the Applicant's expense, shall determine the location of regulated slopes.
- D) Not more than fifty percent (50%) of any land within easements or rights-of-way for overhead utilities (69 KV or greater) or within a designated street line shall be counted as part of any minimum lot area requirement. No building, structure, yard, or land proposed for prolonged habitual human occupancy shall be located within such easement; however, a road may traverse the easement.
- E) In calculating minimum lot area or allowable density, or dwelling unit count subject to §300-33, the portion(s) of the lot that include the following shall be subtracted from the total lot area prior to the calculation of the size subject to the fifty percent (50%) allowable build area:
  - 1. Ponds, streams, rivers, lakes;
  - 2. Delineated wetlands;
  - 3. Lands having slopes greater than twenty percent (20%);
  - 4. Areas within the Federal Emergency Management Agency designated one-hundred (100) and five hundred (500) year floodplains and floodways;
  - 5. Areas within the WPO;
  - 6. Ridgelines;
  - 7. Scenic Viewsheds;
  - 8. Ecologically sensitive areas and other environmentally sensitive features determined by the City Planning Board.

### **§300-53. Screening and Buffering in Nonresidential Districts with respect to Lots in the “C”, “Ind” and “PO” Districts.**

- A) There shall be a landscaped buffer strip along each boundary which adjoins a lot in the Residential Districts or an existing dwelling in any district. This strip shall be at least seven (7) feet in width and shall contain screening or plantings in the center of the strip not less than four (4) feet in width and six (6) feet in height at the time of occupancy of such lot. This planting strip shall be maintained by the owner or occupant and shall be maintained as a dense screen on a year-round basis.
- B) At least fifty percent (50%) of the plantings shall consist of evergreens.
- C) At the discretion of the City Planning Board, a solid wall or fence of at least six (6) feet in height may be substituted for such a landscaped buffer strip.

# City of Newburgh, Chapter 300, Zoning

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## **§300-54. Parking and Storage of Tractors, Trailers, and Buses**

- A) No person shall park, keep, or store, nor permit the parking, keeping, or storing on any lot within the Residential Districts of any “tractor”, “tractor-trailer combination”, “semitrailer”, or “bus” as defined in the Vehicle and Traffic Law of the State of New York.
- B) This section shall not be construed as permitting the continuation of any such storage, parking, garaging, or keeping as a nonconforming use, to a business lawfully in operation as of the effective date of this Chapter.
- C) The outside storage of not more than one (1) unoccupied recreational vehicle or boat and trailer not exceeding thirty-five (35) feet in length is permitted within lots in the Residential Districts.

## **§300-55. Outdoor Swimming Pools**

- A) All swimming pools must meet the requirements of the New York State Building Code and must be operated and maintained in compliance with the New York Sanitary Code.
- B) No Swimming pool shall be filled or used until the Building Inspector certifies that the swimming pool meets all necessary requirements and that the owner has presented evidence of liability insurance of not less than \$100,000.

## **§300-56. Preservation of Public Rights-Of-Way**

- A) Notwithstanding any other provision contained herein, the rights of the City to open, grade, pave and complete for public use the severable streets and roads laid out pursuant to the authority of the Laws of 1867, Chapter 674, and set forth in the commissioner’s Report of the Streets and Roads in the City of Newburgh dated February 11, 1868, shall be preserved and maintained.
- B) Notwithstanding any other provision contained herein and for the purpose of ensuring a connection between the shore of said City and the navigable waters of the Hudson River and enabling the authorities of the City to extend all streets terminating at the river into the waters of the Hudson River, all estate, title and interest to all such lands under water of the river in front of said streets shall be vested in the City for the use and purpose of public streets and highways forever.
- C) Notwithstanding any other provision contained herein, all existing public rights-of-way and easements, including but not limited to rights of travel on City streets and access to the Hudson River, shall be preserved and maintained.

## City of Newburgh, Chapter 300, Zoning

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- D) Notwithstanding any other provision contained herein, all rights granted to the City of Newburgh by the Charter of the City of Newburgh and the laws of the State of New York to extend existing City Streets to the Hudson River shall remain in force and effect.
- E) Notwithstanding any other provision contained herein, all rights granted to the City of Newburgh by the Charter of the City of Newburgh and the laws of the State of New York to extend Front Street shall remain in force and effect.

### **§300-57. Public Utilities**

Nothing in this Chapter shall restrict the construction or use of underground or overhead distribution conduits of public utilities operating under the laws of the State of New York. Public utility buildings and electrical substations are permitted in all zoning districts; however, they are only permitted in a residential district when the location within such district is necessary for the direct furnishing of service to customers and provided that no offices, warehouses, construction, repair shops or garage facilities are included, and provided that a Special Use Permit is obtained from the City Planning Board. Nothing herein shall be construed to allow cellular or personal communication facilities in accordance with this section.

### **§300-58. Mobile Homes**

No mobile home shall be permitted in any district in the City of Newburgh, except as an office by a contractor during construction, upon issuance of a permit by the Building Inspector and payment of the appropriate fee.

### **§300-59. Animal Care Facilities**

- A) The City Planning Board will determine the maximum number and type of animals to be boarded based on site conditions, ability of the proposed facility to provide a safe and sanitary environment for the animals and their caretakers, and the ability to mitigate any potential noise, odor, or community character impact.
- B) The City Planning Board may consider the number and size of animals to be sheltered and impose reasonable conditions to protect neighbors, aesthetic impact and animal safety in order to ensure the health, safety and general welfare of the community.
- C) All boarding of pets shall be indoors.
- D) If stored outside, no animal waste or substance which produces a noxious or offensive odor or dust shall be stored or permitted to accumulate within 200 feet from any lot line, 100 feet from any street, wetland, lake or stream. The storage area, whether inside or outside shall not attract or harbor vermin, rodents, flies or other animals and shall be subject to the approval of the City Planning Board. If the Building Inspector or other code Enforcement

## City of Newburgh, Chapter 300, Zoning

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Officer determines that a problem does exist, he or she shall so notify the owner in writing and the owner must commence steps to rectify the situation within a timely fashion but not to exceed thirty (30) days. If the problem is not rectified in a satisfactory manner, the Building Inspector or other Code Enforcement Officer may commence criminal proceedings against the owner or other person(s) responsible for such violation(s) and, upon a conviction thereof, such owner or other responsible person shall be liable for any and all fines and/or penalties applicable to violations of this Chapter. If the situation is not rectified within thirty (30) days from the date upon which the violation should have been rectified, the Building Inspector or Code Enforcement Officer may commence any and all appropriate proceedings for revocation of the Special Use Permit.

### **§300-60. Adult Uses**

- A) Location. No adult use shall be located within five hundred (500) feet of:
  - 1. Any dwelling unit, provided that as of the effective date of this Chapter said dwelling existed.
  - 2. Any lot within the Residential Districts and the Broadway Corridor, Downtown Neighborhood, Waterfront Gateway or the Planned Waterfront District zoning districts.
  - 3. Another adult use.
  - 4. Any school, church, house of worship, park, playground, or playing field.
- B) No more than one adult use as defined in this Chapter shall be located on any lot.
- C) In all districts, a nonconforming adult use shall terminate within one year after the effective date of this Chapter or from such later date that the adult establishment becomes nonconforming, except that such use may be continued for a limited period of time by the Zoning Board of Appeals provided that:
  - 1. An application is made by the owner of such use to the Zoning Board of Appeals at least one hundred and twenty (120) days prior to the date on which such use must terminate.
  - 2. The Applicant has made, prior to the nonconformity, substantial financial expenditures related to the nonconforming use;
  - 3. The Applicants has not recovered substantially all of the financial expenditures related to the nonconforming use; and
  - 4. The period for which such use may be permitted to continue is the minimum period sufficient for the Applicant to rec over substantially all of the financial expenditures incurred related to the nonconforming use.
  - 5. For the purposes of this section, “financial expenditure” shall mean the capital outlay made by the Applicant to establish the adult use, exclusive of the fair market value of the building in which the use is located and exclusive of any improvements unrelated to the nonconforming adult use.

## City of Newburgh, Chapter 300, Zoning

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### **§300-61. Local Waterfront Revitalization Program**

In addition to the requirements set forth in this Chapter 300 of the Code of the City of Newburgh, the City of Newburgh Local Waterfront Revitalization Program adopted May 14, 2001, as it may be amended from time to time, shall apply to all properties located within the City of Newburgh Local Waterfront Revitalization Program boundaries and compliance with the City of Newburgh Waterfront Consistency Review Law, Chapter 159, Article III of the Newburgh City Code, is required. A copy of the City of Newburgh Local Waterfront Revitalization Program is available in the office of the Newburgh City Clerk.

*(§300-61 through §300-65 reserved)*

# City of Newburgh, Chapter 300, Zoning

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## ARTICLE IX—OFF-STREET PARKING AND LOADING

### §300-66. General Requirements

- A) Applicability. In any district, if a new structure is constructed, the use of any structure is enlarged or extended, and the use of any lot is established or any existing use is changed after the effective date of this Chapter, off-street parking and off-street loading spaces shall be provided in accordance with the requirements of the bulk and area tables for the appropriate district as well as the requirements of this article.
- B) Exemption. If a structure or use in existence prior to the effective date of this Chapter is expanded or enlarged, it shall not have to comply with the requirements of this Article if such expansion or enlargement would require less than a fifteen percent (15%) increase in the number of parking spaces that would have been required of the use as it existed on the effective date of this Chapter.
- C) When units or measurements determining the number of required parking or loading spaces result in a requirement of a fractional space, any fraction equal to or greater than one-half shall be rounded up.
- D) Except as provided in §300-54 or §300-157, parking and loading spaces required by this Chapter shall be required to be on the same lot as the use they are intended to serve.
- E) Off-street parking in front of the building will only be permitted with site plan approval from the Planning Board. The plan shall include trees and plantings that adequately screen the parked cars from street views. All residential dwellings for which front yard parking is proposed will have to have obtain site plan approval even if no significant construction is occurring.

### §300-67. Off-Street Parking Standards

- A) New building in ‘Traditional’ Zoning Districts. ‘Traditional’ zoning districts, as defined in § 300-21(B), shall be subject to the minimum off-street parking requirements specified in the Schedule of Bulk, Area, and Parking Regulations.
- B) ‘Form-Based Zoning Districts. ‘Form-Based districts, as defined in §300-21 (C), shall be subject to the minimum off-street parking requirements specified in Article XV.
- C) New buildings shall include off-street parking plans as part of the design of the building. Uses that are particularly ‘parking dependent’ such as theaters and supermarkets, shall include the number of parking spaces associated with their use as outlined in the Schedule of Use Tables accompanying this Chapter.
- D) New buildings that require site plan approval shall include off-street parking plans for



## City of Newburgh, Chapter 300, Zoning

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bicycles as part of the design of the building. The number of spaces and design of the facilities shall be determined in consultation with the Planning Board as part of the site plan review process.

### **§300-68. Design, Layout and Construction of Parking Areas**

- A) Standards for Parking and Loading Spaces. When five (5) or more parking spaces or two (2) or more loading spaces are required, said spaces shall meet the following standards, and the plans shall be approved by the Building Inspector.
1. Each perpendicular parking space shall not be less than nine (9) feet by eighteen (18) feet. No less than three hundred (300) square feet of parking area, including space for maneuvers, shall be provided per parking space, and the arrangement of parking spaces shall be approved by the Building Inspector.
  2. Each loading space shall be not less than 1,000 square feet in horizontal area nor less than fourteen (14) feet in height, including space for maneuvering, and the arrangement of layout of off- street loading areas shall be approved by the Building Inspector.
  3. Any portion of any entrance or exit driveway shall not be closer than twenty (20) feet to the curb line of an intersecting street nor closer than five (5) feet to any lot line, and both distances shall be maintained by a curb.
  4. Any two driveways leading from a street to a single lot shall not be within thirty (30) feet of each other at their intersections with the front lot line for an interior lot and forty (40) feet for a corner lot.
  5. Any entrance or exit driveway for a residential use shall not exceed twenty (20) feet nor be less than twelve (12) feet in width at its intersection with the front lot line. Any entrance or exit driveway for a nonresidential use shall not exceed twenty-four (24) feet nor be less than twelve (12) feet in width at its intersection with the front lot line.
  6. Exits and entrances shall be a minimum of fifty (50) feet from any entrance or exit located on the same side of the street on which the entrance or exit abuts, unless the Planning Board determines that this distance may be reduced without impacting public safety.
  7. Exits and entrances shall be a minimum of two hundred (200) feet, as measured along the side of the street on which they abut, from any school, public playground, church, public library, hospital, or institution for dependents or children.
- B) Location and Screening,
1. All off-street parking shall be located behind or to the side of the principal building, except as provided in §300-31(H)(2), §300-33(D), §300-66E, and §300-143, and except for the parking of bicycles. Parking spaces located in a side yard shall, if possible, be screened from public view. Adjoining parking areas shall be connected directly to one another or to a service road or alley wherever feasible to reduce turning movements onto roads.
  2. If a parking lot containing five (5) or more spaces lies within or borders the WPO, or any R District, a buffer zone at least five (5) feet wide shall be planted with trees or dense vegetation to provide screening along all boundary lines, unless the adjoining properties are in the “C”, “PO”, or “Ind” districts.
  3. No portion of the area used for parking within the “Commercial”, “Industrial”, or “Planned Office” districts shall be within twenty (20) feet of a residential dwelling on

## City of Newburgh, Chapter 300, Zoning

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an adjoining lot. The Planning Board may reduce this setback requirement based on the unique circumstances of the site plan application or the inclusion of additional mitigation, such as appropriate landscaping, fencing, or similar measures designed to screen and buffer the parking lot from the residential dwelling.

- C) Construction of parking areas. Parking areas shall be surfaced with a suitable durable dustless surface, including but not limited to asphalt, concrete, paving stones, or Belgian block, which shall meet the approval of the City Planning Board. Parking areas shall be constructed with adequate drainage. Surfacing, grading, and drainage shall facilitate groundwater recharge by minimizing impermeable pavement and runoff. Overflow or peak period parking surfaces shall be permeable. Oil traps may be required for larger paved parking lots.
- D) Landscaping and Screening
1. Parking areas shall be designed and landscaped to avoid long, uninterrupted rows of vehicles by breaking them into separate parking lots divided by tree lines, alleys, pedestrian areas, or buildings. Parking lots containing more than forty (40) spaces shall be divided into smaller areas by landscaped islands at least five (5) feet wide located no more than one hundred twenty (120) feet apart. All islands shall be planted with three-inch minimum caliper shade trees at a density of at least one tree for every twenty (20) linear feet of island. Parking lots containing fewer than forty (40) spaces shall provide at least one three-inch minimum caliper shade tree per eight (8) spaces.
  2. The screening shall consist of a solid fence or wall not less than three (3) feet nor more than six (6) feet in height or shrubbery planted not more than three (3) feet apart on center, at least two (2) feet from the lot line, and all maintained in good condition. No portion of an area used for parking shall be closer than five (5) feet to a sidewalk.
  3. A substantial bumper of masonry, steel or heavy timber shall be placed near all interior lot lines to protect structures and property abutting a parking or loading area for parking areas with five (5) vehicles or more.
- E) Lighting. Lighting within parking lots shall be on low poles of twelve (12) to fifteen (15) feet maximum height, with color-corrected lamps and cutoff luminaires designed to minimize glare and light pollution. Design of poles and luminaires shall be compatible with the style of the architecture and adjoining streetscape treatment. Sidewalks leading from parking lots shall be lit with bollard lighting and indirect illumination of buildings and vegetation.
- F) Nonconforming parking lots shall be brought into conformity with this Section to the extent practical whenever a Site Plan or Special Use Permit application is filed for an expansion or change of use.

# City of Newburgh, Chapter 300, Zoning

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## **§300-69. Off-Street Loading Space Requirements**

- A) General Requirement. Loading docks and service areas shall be located to minimize visual intrusion on public spaces and ensure pedestrian and automobile safety by separating truck traffic and loading operations from pedestrian and automobile circulation. Where appropriate, loading docks shall be screened by walls extending from a building face or placed within arcades or other architectural features assigned to blend them with the architecture of the building. Adjacent buildings shall be sited to allow shared access to loading docks through the use of common loading zones or service alleys.
- B) In any district, in connection with every building or building group or part thereof hereafter erected and having a gross floor area of 10,000 square feet or more which is to be occupied by industrial, distribution, or commercial uses, there shall be provided and maintained on the same zone lot with such building off-street loading berths in accordance with the following requirements:

Use	Square Feet of Floor Area	Required Off-Street Loading Berths
Retail, Commercial,	10,000 - 25,000	1
Wholesale, Industrial	25,000 - 40,000	2
Storage	40,000 - 60,000	3
	60,000 - 100,000	4
	For each additional 50,000	+1
Marinas, Boat Repair	Per 10,000	1

- C) Each loading space shall be not less than ten (10) feet in width, twenty-five (25) feet in length, and fourteen (14) feet in height and may not occupy any part of a required front or side yard.

## **§300-70. Shared Parking and Special Off-Street Parking Permit**

- A) The use of the same off-street parking or loading spaces by two or more uses is allowed, subject to the provisions of Article XII or when an Applicant has been granted a Special Off-Street Parking Permit pursuant to the requirements of this section.
- B) When an application made pursuant to this Chapter does not require Site Plan approval, an Applicant may apply for a Special Off-Street Parking Permit from the City Planning Board. The City Planning Board may grant a Special Off-Street Parking Permit to an Applicant in

## City of Newburgh, Chapter 300, Zoning

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order to modify the number of parking spaces otherwise required by this Chapter.

- D) In order to grant the Special Off-Street Parking Permit and modify the required off-street parking requirements, the City Planning Board must find that:
1. such a reduction would still allow for adequate off-street parking given the use and the zoning district; or,
  2. Adequate on-street parking within 500 feet is available; or,
  3. The owner can secure a written agreement for shared parking from a use within five hundred (500) feet.
- E) When off-street parking or loading serves two or more uses, whether such uses are on the same lot or on separate lots within five hundred (500) feet, the City Planning Board may reduce the number of off-street parking spaces required of each use if it finds that the number of off-street parking spaces proposed will substantially meet the intent of this article by reason of variation in the probable time of maximum parking demand for each use. In such event, the City Planning Board may condition the Special Off-Street Parking Permit on certain hours of operation for each use.
- F) Procedure
1. Applications for a Special Off-Street Parking Permit shall be submitted to the Building Inspector in the manner and form proscribed by the City Planning Board, accompanied by the fee as listed in Chapter 163 of the Code of the City of Newburgh.
  2. Complete applications for a Special Off-Street Parking Permit that are received by the deadline stipulated in the approved City Planning Board Policies and Procedures, which is available in the office of the Building Inspector, will be reviewed by the City Planning Board at the next regularly scheduled meeting.

*(§300-71 through §300-75 reserved)*

# City of Newburgh, Chapter 300, Zoning

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## **ARTICLE X—NONCONFORMING USES AND STRUCTURES**

### **§300-76. Continuation of Nonconforming Uses and Structures**

- A) Any structure or use, which was legal when built or commenced, and which was in existence on the effective date of this Chapter, or amendment of this Chapter, which becomes non-conforming as a result of such enactment or amendment of this Chapter, may be continued as a legal non-conforming use.
- B) Nothing herein contained shall require any change in plans, construction or designated use of a building for which a building permit has been heretofore issued and the construction of which shall have been diligently prosecuted within three (3) months of the date of such permit and the ground story framework of which, including the second tier of beams, shall have been completed within six (6) months of the date of the permit and which entire building shall be completed according to such plans as filed within one (1) year from the effective date of this Chapter.

### **§300-77. Discontinuance and Reestablishment**

- A) Discontinuance. Whenever a nonconforming use has been discontinued for a period of eighteen (18) months, such use shall not thereafter be reestablished except as provided in §300-78(A), and any future use shall be in conformity with the provisions of this Chapter.
- B) Once changed to a conforming use, no building or land shall be permitted to revert to a nonconforming use.
- C) Reestablishment. The City Planning Board may issue a Special Use Permit for the reestablishment of the use after the eighteen (18) month period has expired if the Applicant has been prevented from continuing the use during the one-year period due to strikes, acts of God, disability, or other similar hardship beyond the Applicant's control.

### **§300-78. Change of Non-Conforming Uses**

- A) A nonconforming use of a structure or parcel of land may, upon Special Use Permit by the City Planning Board, be changed to another non-conforming use, which is of the same or lesser impact, except that no use prohibited by Article V shall be permitted under any circumstances. No structure in which a non-conforming use has been changed to a use of lesser impact shall again be devoted to a non-conforming use with greater impact. In determining whether a use is of greater or lesser impact, the City Planning Board shall consider the impact criteria listed in §300-104. No nonconforming use shall be extended or expanded to displace a conforming use.
- B) Any nonconforming use of any open space on a lot outside a structure or of a lot not occupied by a structure shall not be extended.

# City of Newburgh, Chapter 300, Zoning

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- C) any conforming principal use of a nonconforming structure may be extended throughout the existing structure.
- D) A nonconforming structure shall not be moved to any other location on the lot or any other lot unless every portion of such structure, the use, and the lot shall be deemed conforming.

## **§300-79. Restoration, Expansion and Repair**

A non-conforming use or structure shall not be extended, enlarged, or structurally altered except as provided below.

- A) Any non-conforming use or structure determined to be unsafe may be restored to a safe condition, provided that such work on any nonconforming structure shall not place it in greater non-conformity.
- B) A building used for residential purposes, that is a non-conforming structure or use, may be rebuilt in the event of its total or partial destruction by fire or other in accordance with the provisions provided below. Such rebuilding shall require Site Plan approval by the City Planning Board.
  - 1. The area occupied by the foundation of the building must occupy the same or lesser amount of the area occupied by the damaged building.
  - 2. The rebuilt structure may not exceed the original height of the total or partially destroyed structure.
  - 3. The total square footage of the repaired or rebuilt building must be the same as, or less than, the damaged or destroyed building.
- C) “Building used for residential purpose” as herein, shall mean a building, which at the time of the damage by fire or other causes was used solely for residential purposes or, if the building was vacant, that it is designed solely for residential purposes.

## **§300-80. District Changes**

Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification, the foregoing provisions shall also apply to any nonconforming uses existing therein.

## **§300-81. Special Permit Uses**

Any preexisting legal use which is allowable by Special Use Permit under this Chapter, but which has not been issued a Special Use Permit, shall be considered a permitted use. The expansion of such a use shall require Site Plan approval, unless such expansion has been permitted by a prior Site Plan approval.

# City of Newburgh, Chapter 300, Zoning

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## **§300-82. Construction Started Prior to this Chapter**

Any structure, for which construction was begun prior to the effective date of this Chapter, or of any amendment thereto, may be completed and used in accordance with the approved plans and specification for such structure. Any structure for which construction has not begun pursuant to approved plans shall be subject to the provisions of this Chapter and any amendments thereto, even if all pre-construction approvals have been granted. For purposes of this Subsection, “beginning construction” shall mean excavation and the pouring of footings or the installation of any other means of permanently attaching a structure to the ground.

## **§300-83. Existing Nonconforming Lots**

- A) Any lot of record created prior to the effective date of this Chapter, which does not comply with the area, density, or dimensional requirements of this Chapter shall be deemed to comply with such requirements, and no variance shall be required for its development or for any addition to or other alteration of a structure, provided that the following conditions are satisfied.
  - 1. The following minimum area and dimensions are maintained, unless smaller dimensions are permitted in the district:
    - a) Lot area: 2,000 square feet.
    - b) Side setback: Fifteen percent (15%) of lot width but not less than five (5) feet per side.
    - c) Rear setback: Fifteen percent (15%) of lot depth but not less than ten (10) feet.
  - 2. All Health Department regulations are satisfied.
- B) A nonconforming lot may be subdivided only if the subdivision plat shows that every subdivided portion of such lot will be merged with adjoining properties to increase the area of such properties, thereby eliminating the nonconforming lot.
- C) Notwithstanding the foregoing provisions, any undeveloped lot in a subdivision which was not properly approved by the City Planning Board or City Council or not filed in the office of the County Clerk, and whose area or dimensions do not comply with the requirements of this Chapter, shall be considered a violation of this Chapter and shall not be protected under paragraph (A) of this Section.

*(§300-84 through §300-85 reserved)*



# City of Newburgh, Chapter 300, Zoning

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## ARTICLE XI—SITE PLAN APPLICATION AND APPROVAL

### §300-86. Site Plan Review

- A) Purpose. The City of Newburgh requires Site Plan review by the City of Newburgh Planning Board in accordance with the requirements of Article V. The purpose of Site Plan review is to provide oversight of specific types of development to ensure compliance with all appropriate land development regulations and consistency with the City's adopted planning and policy documents.
- B) Applicability. Site Plan approval by the City of Newburgh Planning Board shall be required by all permitted uses listed in the Schedule of Use Regulations as requiring Site Plan approval only. Site Plan review shall be included as an integral part of the Special Use Permit approval process as required in Article XII of this Chapter. The City Planning Board will refer to the International Dark Sky Lighting standards when reviewing all plans.

### §300-87. Required Information

- A) An application for Site Plan approval shall be accompanied by plans and descriptive information sufficient to clearly portray the intentions of the Applicant. Site Plans shall be prepared by a licensed professional engineer, architect, or landscape architect and shall include the following, unless waived by the City of Newburgh Planning Board:
1. A vicinity map drawn at the scale of 1,000 feet to the inch or larger that shows the relationship of the proposal to existing community facilities which affect or serve it, such as roads, shopping areas, schools, etc. The map shall also show all properties, subdivisions, streets, and easements within 500 feet of the property.
  2. An existing conditions map, showing existing buildings, roads, utilities, and other man-made features, as well as topography and all existing natural land features that may influence the design of the proposed use, such as rock outcrops, existing watercourses, wetlands, floodplains, drainage retention areas, soils, marshes, wooded areas, single trees with a diameter of twelve (12) inches or more, measured three (3) feet above the base of the trunk, and other significant existing features located within any area where clearing will occur.
  3. A field survey of the boundary lines of the parcel, giving complete descriptive data by bearings and distances, made and certified by a licensed surveyor.
  4. A Site Plan drawn at a scale and on a sheet appropriate to the project. The information listed below shall be shown on the Site Plan and all sheets submitted in the Site Plan application package:
    - a) Name of the project, section, block and lot number, street names and project site boundaries, fire lanes, date of plan, North arrow and scale of plan, name and address of the owner of record, developer, and seal of the engineer, architect, and landscape architect. If the Applicant is not the owner of record, a letter of authorization shall be required from the owner.
    - b) The names of all owners of record of all adjacent property within five hundred (500) feet of the site's perimeter.



## City of Newburgh, Chapter 300, Zoning

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- c) Zoning district boundaries with five hundred (500) feet of the site's perimeter shall be drawn and identified on the Site Plan, as well as any school, overlay and/or special district boundaries.
- d) Boundaries of the subject property, building or setback lines if different from those required in this Chapter, and lines of existing streets and lots as shown on the official map of the City of Newburgh or City tax map.
- 5. The location and use of all existing and proposed structures within the subject property as shown on the official map of the city of Newburgh or tax map, including all dimensions of height, area, all exterior entrances, and all anticipated future additions and alterations.
- 6. The location, height, size, materials and design of all proposed signs.
- 7. Traffic flow patterns within the site, entrances and exits, and loading and unloading areas, as well as curb cuts on the site and with one hundred (100) feet of the site. The City of Newburgh Planning Board may, at its discretion, require a detailed traffic study for large developments or for those in heavy traffic areas to satisfy the requirements of §300-91.
- 8. The location, size, dimensions, access and egress, circulation patterns and design of an off-street parking areas, including location of handicapped accessible parking and required signage.
- 9. The location of all present and proposed overhead or underground utility systems including:
  - a) Sewage lines, septic systems.
  - b) Water supply system (valves and hydrants, wells).
  - c) Telephone, cable and electrical systems.
  - d) Storm drainage system, including existing and proposed drain lines, culverts, catch basins, headwalls, endwalls, hydrants, manholes and drainage swales.
- 10. Erosion and sedimentation control plan to prevent the pollution of surface or ground water, erosion of soil both during and after construction, excessive runoff, excessive raising or lowering of the water table, and flooding of other properties as applicable.
- 11. Existing and proposed topography at two (2) foot contour intervals or such other contour interval as the Board shall specify. All elevation shall refer to the nearest United States Coastal and Geodetic Bench Mark.
- 12. The Location of all Floodplain Boundaries as Determined by the Federal Emergency Management Agency. In accordance with Chapter 175, Flood Damage Prevention, of the Code of the City of Newburgh, if any portion of the parcel is within the one-hundred-year (100-year) floodplain, the area will be shown and base flood elevations given. Areas shall be indicated within the proposed site and with fifty (50) feet of the proposed site where soil removal or filling is required, showing the approximate volume in cubic yards. The plan shall specify all nonstructural measures to minimize flood damage, including but not limited to:
  - a) The setback of buildings and structures away from the floodplain.
  - b) The planting of vegetation and installation of drainage.
  - c) The flood-proofing of buildings or their elevation above the base flood level.
- 13. Lighting Plan, Including the Existing and Proposed Location, Height, Intensity and Bulk Type (Sodium, Incandescent, etc.) of all External Lighting Fixtures. The direction

## City of Newburgh, Chapter 300, Zoning

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of illumination and methods to eliminate glare onto adjoining properties shall also be shown.

14. A landscaping, planting and grading plan showing proposed changes to existing features and any proposed new features shall be shown.
  15. For new construction or alterations to any structure, a table containing the following information shall be included:
    - a) Estimated area of structure intended to be used for particular uses such as retail operation, office, storage, etc.;
    - b) Estimated maximum number of employees;
    - c) Maximum seating capacity, where applicable; and
    - d) Number of parking spaces existing and required for the intended use including parking for bicycles.
  16. Elevations at a scale of 1/4 inch equals one (1) foot for all exterior facades of the proposed structure(s) and/or alterations to or expansions of existing facades, showing design features and indicating the type and color of materials to be used.
  17. Where appropriate, the City of Newburgh Planning Board may request soil logs, percolation test results, and storm runoff calculations.
  18. Disposition plans for disposal of construction and demolition waste, either on site or at an approved disposal facility.
  19. SEQRA – Environmental Assessment Form or Draft Environmental Impact Statement.
  20. Where appropriate, a cultural resource survey of resources with historic or archaeological significance.
  21. Where the Applicant wishes to develop in stages, the Site Plan application must include the complete ultimate proposed development
  22. Identification of any hazardous materials associated with a proposed industrial use.
  23. Disclosure of information on the use, storage, treatment and disposal of any hazardous materials associated with a proposed industrial use.
  24. Other information that may be deemed necessary by the City of Newburgh Planning Board.
- B) Additional Viewshed Analyses for the WG, PWD, and portion of the DN districts.
1. Purpose and Intent. The purpose of this sub-section is to protect and enhance the City's scenic viewshed, comprised of natural, aesthetic and cultural resources formed by the landscape and geologic features of the City. It is the intent of the City of Newburgh to preserve scenic views to and from the Hudson River, the Hudson Highlands and the East Bank of the Hudson River.
  2. The views from the following locations are recognized by the City of Newburgh as providing significant benefits to the residents and visitors of Newburgh and as important parts of Newburgh's cultural heritage. The detailed description of the current views is noted specifically, to highlight the character of the current view as emphasis to the importance of its preservation.
    - a) The Dutch Reformed Church and at Montgomery and South Streets. From this vantage point looking south-southeast, the view is of Hudson Highlands, Bannerman's Island, and the Hudson.
    - b) Washington's Headquarters. The views to the southeast and east focus on the

## City of Newburgh, Chapter 300, Zoning

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- Hudson River and mountains beyond. The Hudson River, the lawn and the roof line of the building in the center of the view are horizontal in design. To the northeast there is a clear view of the Hudson River, the mountains beyond and the Newburgh- Beacon Bridge.
- c) Broadway and Colden Street. The foreground is occupied by open space identified for pedestrian walkways to the northeast, to the waterfront. Marine Drive, in the middle ground, runs parallel to the Hudson River. On the Hudson River's edge are low buildings that do not obstruct the view. The Newburgh-Beacon Bridge fades into the horizon. The view to the southeast features the sloping parkland in the foreground, low industrial buildings and a marina bay in the middle ground. The southeast view is dominated by the Hudson River, and the Hudson Highlands. There is some light industrial use presently in the middle ground. The foreground is sloping parkland and an undeveloped site.
  - d) Newburgh Public Library. The view from the eastern wall of the Newburgh Public Library, at an elevation of approximately one hundred (100) feet above sea level, provides a view of the Hudson.
  - e) The view to the south terminates at Orange County Community College. The north-facing view is of the Hudson Highlands, the Hudson River and the Newburgh Beacon Bridge. Existing structures on the waterfront frame the bottom of the view from this highpoint.
  - f) Bay View Terrace. The views from Bay View Terrace, between Overlook Place and Monument Street offer views of the Hudson River, the Hudson Highlands, Bannerman's Island and points north and south.
3. Visual Impact Analysis
- a) All applications for Site Plan approval within the WG, PWD or DN districts shall be evaluated for their impacts to the scenic views defined above during the Site Plan review process.
  - b) Visual Impact Analyses for applications requiring Site Plan approval will be evaluated by the Planning Board. If the Application does not require Site Plan approval, the Visual Impact Analyses will be evaluated by the Building Inspector.
4. Visual Impact Analysis Methodology.
- a) In connection with the Site Plan approval process, the City Planning Board shall require the Applicant to prepare photographic simulations of the proposed structure(s), within the context of the site, to determine whether or not a proposed structure or activity will adversely affect the scenic viewshed.
  - b) The City Planning Board can authorize alternative state-of-the-art visual impact assessment techniques to be employed by an Applicant in the preparation of the Visual Impact Assessment. Use of an alternative visual impact assessment methodology may only be employed by mutual agreement of the Applicant and the City Planning Board.
5. Referral. To assist in the evaluation, the City Planning Board shall refer all applications for Site Plan approval within the WG and PWD Zoning Districts to the Conservation Advisory Council (CAC). Such referral shall be done so as to allow the CAC at least thirty (30) days, but no more than 30 days after the next scheduled regular meeting to review and return comments

## City of Newburgh, Chapter 300, Zoning

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6. Public Hearing. The City Planning Board must hold a public hearing on all Site Plan applications in accordance with Section §300-130.
  7. Evaluation Criteria. When making their determination of impacts to the scenic viewshed, Site Plan approval may only be granted by the City Planning Board if, with appropriate conditions attached, the proposed activity:
    - a) Will not significantly impair scenic character and will be aesthetically compatible with its surroundings.
    - b) Will minimize the removal of native vegetation, except where such removal may be necessary to open up or prevent the blockage of scenic views and panoramas from public places.
    - c) Will locate and cluster buildings and other structures in a manner that minimizes their visibility from public places.
  8. Waivers. The City Planning Board may waive one or more of the specific requirements of this subsection upon a written finding that such waiver will not impair the scenic preservation purposes of this Article. Any development which is the subject of a detailed visual assessment as part of an environmental impact statement shall be eligible for such waivers if supported by SEQR findings.
- C) Waivers. Upon findings by the City of Newburgh Planning Board that, due to special conditions peculiar to a site, certain information required in this section, §300-87, is inappropriate or unnecessary, the Board may vary, waive or defer the provision of such information, provided that such variance or waiver will not have detrimental effects on the public health, safety, or general welfare or have the effect of nullifying the intent and purposes of the Site Plan submission, City of Newburgh Master Plan or this Chapter.

### **§300-88. Procedures**

- A) Applicability. This section applies for Site Plan approval applications where no Special Use Permit is required.
- B) Pre-Application Planning Board Workshop
1. Purpose. The purpose of the optional Pre-Application Planning Board Workshop is to provide cooperative consultation between the City of Newburgh and Applicants by providing the Applicant with the opportunity for informal discussion of site development proposals with the City Planning Board. The goal of the Pre-Application Planning Board Workshop discussion is for the City Planning Board to guide Applicants toward productive use of their land within the regulations, thereby avoiding and minimizing to the extent practicable, the potential for environmental impact. The intent of the Pre-Application Planning Board workshop is for the City Planning Board to provide Applicants with their general impressions of the proposed site development application, and provide the Applicant with general suggestions and advice, which may be incorporated into the formal submission.
  2. Process. Once the Building Inspector has referred an application to the City Planning Board for Site Plan approval in accordance with the requirements of §300-31, and prior to submission of a formal site development plan, an Applicant may request to be placed

## City of Newburgh, Chapter 300, Zoning

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on a City Planning Board Workshop for an informal discussion of the proposal with the City Planning Board. Materials provided by the Applicant to the City Planning Board can be schematic, but provide sufficient information for the City Planning Board to provide informal comments and direction to the Applicant.

C) Post-Application Technical Workshop

1. Purpose. The purpose of the mandatory Post-Application Technical Workshop is to provide Applicants with the technical expertise of the City staff in advance of filing a formal application for review by the Planning Board. The goal of the Post-Application Technical Workshop is to provide Applicants with technical guidance on the required submission materials, and the roadmap through the review and approvals process.
2. Process. Prior to the submission of a formal site development plan, the Applicant must meet with the City Engineer, City Attorney, City Building Inspector, Department of Planning and Development, City Department of Fire Prevention and City Planning Board Chairperson (or designated representative) to discuss the proposed site development plan in order to determine, which of the subsequent requirements may be necessary in developing and submitting the required Site Plan.

D) Submission. An application for Site Plan approval shall be submitted to the Building Inspector, in accordance with the submission requirements (number of copies, digital files, etc.) and within the required deadlines stipulated in the approved City Planning Board Policies and Procedures available in the office of the Building Inspector. The information enumerated in §300-87 shall be submitted, as required along with:

1. A SEQRA Environmental Assessment Form or Draft Environmental Impact Statement.
2. The Site Plan application fee and any required escrow deposit for review costs, as determined by the City Engineer.

E) Application for Area Variance. Where a proposed Site Plan contains one or more features which do not comply with the dimensional regulations of this Chapter, application may be made to the Zoning Board of Appeals for an area variance pursuant to §300-115 without a decision or determination by the Building Inspector.

F) SEQRA Compliance. Upon receipt of application materials it deems complete, the City of Newburgh Planning Board shall initiate the New York State Environmental Quality Review process by either circulating the application and environmental assessment form to all involved agencies (if coordinated review is undertaken) or by issuing its determination of significance within the later of twenty (20) calendar days or the receipt of any additional information reasonably necessary to make the determination. Where the proposed action may have a significant effect on the environment, the City Planning Board shall issue a positive declaration and require the submission of a draft environmental impact statement (DEIS). No time periods for decision-making in this Chapter shall begin to run until either acceptance of a DEIS as satisfactory pursuant to New York State Department of Environmental Conservation regulations or the issuance of a negative declaration.

# City of Newburgh, Chapter 300, Zoning

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## G) Referrals.

1. The Orange County Department of Planning. Upon receipt of application materials it deems to be complete, the City of Newburgh Planning Board shall refer to the Orange County Department of Planning in accordance of Section 239M of the General Municipal Code, any application for a Site Plan affecting real property, which shall be accompanied by a full statement of the matter under consideration, as defined herein, with five hundred (500) feet of the boundary of:
  - a) The municipal boundaries
  - b) Any existing county or state park or other recreational area
  - c) Any existing or proposed county or state roadway
  - d) Any existing or proposed right-of-way for a stream or drainage channel owned by the County for which the County has established channel lines
  - e) Any existing or proposed county- or state-owned land on which a public building or institution is situated.
2. Conservation Advisory Council. The City of Newburgh Planning Board shall refer any Site Plan application to the Conservation Advisory Commission for review and recommendations. Such referral shall be done so as to allow the CAC at least 30 days, running concurrently within the required 62 day City Planning Board required SEQRA timeframe, to review and return comments.

## §300-89. Criteria

In reviewing Site Plans, the City of Newburgh Planning Board, and any City of Newburgh Board and/or Committee to which the Site Plan has been referred, shall consider the criteria set forth below. The City Planning Board may also use as approval criteria, the Orange County Department of Planning “Orange County Design Manual”, Orange County’s Watershed Design Guide 2014, and the City’s Conservation Advisory Council’s Green Infrastructure Guide 2015, and may adapt the recommendations of those documents to the requirements of this Chapter.

### A) Layout and design

1. All structures in the plan shall be integrated with each other and with adjacent structures and shall, where practical, be laid out in a pattern that is consistent with the character of the City of Newburgh and/or within the neighborhood in which the development is proposed.
2. Structures that are visible from public roads shall be compatible with each other and with traditional structures in the surrounding area in architecture, design, massing, materials, and placement and shall harmonize with traditional elements in the architectural fabric of the area.
3. Architectural design shall be in keeping with the character of the City of Newburgh. In general, the design shall avoid flat roofs, large expanses of undifferentiated facades, and long, plain wall sections.
4. Where appropriate, setbacks shall maintain and continue the existing setback pattern of surrounding properties.



## City of Newburgh, Chapter 300, Zoning

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5. The City Planning Board shall encourage the creation of landscaped parks or squares easily accessible by pedestrians.
  6. Impacts on historic and cultural resources shall be minimized.
- B) Nonpoint Source Pollution Protection Plans to achieve the following objectives:
1. Natural ground contours should be followed as closely as possible.
  2. Areas of steep slopes, where high cuts and fills may be required, should be avoided.
  3. Extreme care should be exercised in areas adjacent to natural drainageways so that their final gradient and resultant discharge velocity will not create additional erosion problems. Construction and post-construction runoff levels should be maintained at or below preconstruction levels at all times.
  4. Natural protective vegetation should remain undisturbed, if at all possible, and restored when necessary.
  5. The amount of time that disturbed ground surfaces are exposed to the energy of rainfall and runoff should be limited.
  6. The velocity of the runoff water on all areas subject to erosion should be reduced below that necessary to erode the materials.
  7. A ground cover should be applied sufficient to restrain erosion on that portion of the disturbed area undergoing no further active disturbance.
  8. Runoff from a site should be collected and detained in sediment basins to trap pollutants which would otherwise be transported from the site.
  9. The angle for graded slopes and fills should be limited to an angle no greater than that which can be retained by vegetative cover. Other erosion-control devices or structures should be used only where vegetation and grading are not sufficient to control erosion.
  10. The length as well as the angle of graded slopes should be minimized to reduce the erosive velocity of runoff water.
- C) Landscaping
1. Landscape buffers shall be provided between uses that may be incompatible, such as large-scale commercial uses and residences. Such buffers may include planted trees and shrubs, hedgerows, berms, existing forest land or forest created through natural succession. The width of such buffer areas will depend upon the topography, scale of the uses, and their location on the property but shall normally be between fifty (50) feet and two hundred (200) feet.
  2. Landscaping at all seasons of the year, shall be an integral part of the entire project area and shall buffer the site from and/or integrate the site with the surrounding area, as appropriate.
  3. Primary landscape treatment shall consist of shrubs, ground cover, and shade trees and shall combine with appropriate walks and street surfaces to provide an attractive development pattern. Landscape plants selected should generally be native to the region and appropriate to the growing conditions of the growing environment.
  4. Insofar as practical, preservation of existing trees over twelve (12) inches in diameter will be attained to the maximum extent possible and other vegetation shall be conserved and integrated into the landscape design plan.

## City of Newburgh, Chapter 300, Zoning

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5. For landscaping parking lots, see § 300-108(D).

### D) Parking, Circulation and Loading.

1. Roads, driveways, sidewalks and off-street parking and loading space shall be safe and shall encourage pedestrian movement.
2. Vehicular and pedestrian connections between adjacent sites shall be provided to encourage pedestrian use and to minimize traffic existing roads. The construction of connected parking lots, service roads, alleys, footpaths, bike paths, and new public streets to connect adjoining properties shall be required where appropriate.
3. Off-street parking and loading standards in Articles VIII and IX shall be satisfied. However,
  - a) The City Planning Board shall have the authority to reduce the amount of off-street parking required in the underlying zone by up to twenty five percent (25%) when it finds that:
    - i. Such a reduction would still allow for adequate off-street parking given the use and the zoning district; or,
    - ii. Adequate on-street parking within five hundred (500) feet is available; or,
    - iii. The owner can secure a written agreement for shared parking from a use within five hundred (500) feet.
  - b) When off-street parking or loading serves two or more uses, whether such uses are on the same lot or on separate lots within five hundred (500) feet, the City Planning Board may reduce the number of parking spaces that would otherwise be required for each use upon a determination by the Board that the overall number of spaces to be provided will substantially meet the intent of this article by reason of variation in the probable time of maximum parking demand of each use. In such event, the City Planning Board may condition the Site Plan approval on certain hours of operation for each use.
4. Access from and egress to public highways shall be approved by the appropriate highway department, including city, county, and state.
5. All buildings shall be accessible by emergency vehicles.

### E) Reservation of Parkland. Before the City Planning Board may approve any Site Plan containing residential units, such Site Plan shall also show, when required by such board, a park or parks suitably located for playground or other recreational purposes.

1. The City Planning Board shall not require land for park, playground or other recreational purposes until it has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the City. Such findings shall include an evaluation of the present and future needs for park and recreational facilities in the City based on projected population growth to which the particular Site Plan will contribute. Such findings shall provide an individualized determination that such required dedication or reservation is related both in nature and extent to the impact of the proposed Site Plan.
2. In the event the City Planning Board makes a finding pursuant to the preceding subsection that the proposed Site Plan presents a proper case for requiring a park or parks suitably located for playgrounds or other recreation purpose, but that a suitable



## City of Newburgh, Chapter 300, Zoning

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park or parks of adequate size to meet the requirement cannot be properly located on such Site Plan, the City Planning Board may require a sum of money in lieu thereof. In making such determination of suitability, the Board shall assess the size and suitability of lands shown in the Site Plan which could be possible locations for park or recreational facilities, as well as practical factors including whether there is a need for additional facilities in the immediate community. Any monies required by the City Planning Board in lieu of land for park, playground or other recreational purposes, pursuant to the provisions of this section, shall be deposited in the City of Newburgh Fund for Parkland, to be used by the City exclusively for park, playground or other recreational purposes, including the acquisition of property. Such payment shall be a condition of the Site Plan approval and shall be assessed in accordance with the Site Plan recreation fee schedule established under Chapter 163, Fees, of the Code of the City of Newburgh. No Site Plan shall be signed by the Chairman of the City of Newburgh Planning Board until such payment has been received by the City and receipt therefor provided to the city Planning Board.

### F) Miscellaneous Standards

1. Buildings and other facilities shall be designed, located, and operated to avoid causing excessive noise on a frequent or continuous basis.
2. Exterior lighting fixtures shall be shielded to prevent light from shining directly onto neighboring properties or public ways, and to minimize light spillage. Light standards shall not exceed twenty (20) feet in height.
3. Drainage of the site shall recharge groundwater to the extent practical. The peak rate of surface water flowing off site shall not increase above predevelopment conditions and shall not adversely affect drainage on adjacent properties or public roads.
4. Applicable requirements for proper disposal of construction and demolition waste shall be satisfied and any necessary permits or agreements for off-site disposal shall be obtained.
5. No materials shall be placed below the finished grade of a site other than sand, gravel, rocks and soil that are uncontaminated by any solid waste or hazardous materials. Materials that were previously contaminated and have been reconditioned shall not be permitted except that decontaminated material may be used as a base for road or parking lot construction, provided that such decontaminated material does not pollute groundwater or surface water.
6. Hazardous Material. All hazardous materials are properly stored, treated, and disposed of in accordance with all relevant and applicable local, state and federal requirements.

### **§300-90. Public Hearing**

The City of Newburgh Planning Board may, at its sole discretion, hold a public hearing on Site Plan in accordance with the procedures presented herein. If the City Planning Board determines that a Public Hearing is required, the City Planning Board shall hold such hearing within sixty two (62) days of accepting a completed application.

- A) At least ten (10) days prior to such hearing the Secretary of the City Planning Board shall:

## City of Newburgh, Chapter 300, Zoning

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1. Mail, by regular mail, at the Applicant's expense, a notice in English and Spanish an announcement of the meeting to all property owners within five hundred (500) feet of the exterior boundaries of the property affected by the Application.
    - a) The Secretary of the Planning Board arranges for the Applicant to obtain the appropriate list from the Assessor's Office, prepares one copy in English and Spanish of the announcement of the meeting and a brief description of the application.
    - b) The Applicant prepares the envelopes, stamps them and returns the prepared mailing to the Secretary of the Board with a copy of the list of those to receive the mailing.
  2. Cause to be published in the official newspaper of the City, a notice (in English and Spanish) of such hearing and of the substance of the Application, at the Applicant's expense to be paid in advance.
- B) Prior to said hearing, the Secretary of the Board shall prepare an affidavit of mailing, swearing that the required mailings and publication have been performed, which documents shall become part of the application. The affidavit of mailing will be made available to the Applicant to present to the City Planning Board for the record of proceedings.
- C) For the purpose of the mailings required by this section, the term "owner" shall be construed to mean the owner as indicated on the Assessment roll of the City of Newburgh.

### **§300-91. Action**

- A) The City of Newburgh Planning Board shall approve, approve with modifications and/or conditions, or deny any application for a Site Plan within sixty two (62) days after a public hearing, or if no public hearing is held, within sixty two (62) days of receipt of a final complete Site Plan application. The time within which the City Planning Board must render its decision may be extended by mutual consent of the Applicant and the City Planning Board. Any decision shall contain written findings explaining the rationale for the decision in light of the standards provided herein.
- B) Criteria for decisions on Site Plans shall be limited to those listed in §300-89.
- C) Conditions. In granting Site Plan approval, the City of Newburgh Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related and incidental to the proposed Site Plan and may be necessary in the Board's opinion to meet the objectives herein set forth. Upon granting of Site Plan approval, any such conditions must be met in connection with issuance of permits by applicable enforcement agents or officer of the City. These conditions may include:
1. Increasing dimensional or area requirements;
  2. Requiring the set-aside of perpetual open space land pursuant to §300-33;
  3. Specifying location, character and number of vehicle access points;
  4. Requiring landscaping, planting and screening;

## City of Newburgh, Chapter 300, Zoning

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5. Requiring clustering of structures and uses in order to preserve environmental resources and minimize the burden on public services and facilities; and
6. Requiring performance guaranties to insure the completion of the project in accordance with the conditions imposed.

### D) Referrals

1. Orange County Department of Planning
  - a) No action shall be taken on applications referred to the Orange County Department of Planning until either the Orange County Department of Planning has issued its recommendation or a minimum of thirty (30) days and a maximum of up to two (2) days prior to a regularly scheduled meeting where a board will be taking action, have elapsed from the date of the receipt of the complete application, unless the County and City Planning Board agree to an extension of the County's time period for review.
  - b) County Disapproval. A majority-plus-one vote of the City of Newburgh Planning Board shall be required to grant any Special Use Permit which receives a recommendation of disapproval from the Orange County Department of Planning. The City Planning Board shall set forth its reasons for such contrary action.

E) The decision of the City of Newburgh Planning Board shall be filed in the office of the City Clerk within five (5) business days after such decision is rendered and a copy thereof mailed to the Applicant. A resolution of either approval or approval with modifications and/or conditions shall include authorization to the City Planning Board Chairman to stamp and sign the Site Plan upon the Applicant's compliance with applicable conditions and the submission requirements stated herein.

F) If the City Planning Board's resolution includes a requirement that modifications be incorporated in the Site Plan, conformance with these modifications shall be considered a condition of approval.

G) If the Site Plan is disapproved, the City Planning board may recommend further study of the Site Plan and resubmission to the City Planning Board after it has been revised or redesigned.

### **§300-92. Implementation, Amendment and Enforcement of Approved Site Plan**

A) Implementation. Within six (6) months after receiving approval of a Site Plan, with or without modifications, the Applicant shall submit multiple copies, as specified in the adopted City of Newburgh Planning Board Policies and Procedures available in the office of the Building Inspector, of the Site Plan to the City Planning Board for stamping and signing.

1. The Site Plan submitted for stamping shall conform strictly to the Site Plan approved by the City Planning Board, except that it shall further incorporate any required revisions or other modifications and shall be accompanied by the following additional information:
  - a) Record of application for and approval status of all necessary permits from federal,

# City of Newburgh, Chapter 300, Zoning

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state, and county officials.

## City of Newburgh, Chapter 300, Zoning

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- b) Detailed sizing and final material specification of all required improvements.
  - c) An estimated project construction schedule. If a performance guaranty pursuant to Subsection B is to be provided by the Applicant for all or some portion of the work, a detailed site improvements cost estimate shall be included.
  - d) Proof of payment of the City Planning Board's review costs.
  - 2. Upon stamping and signing the Site Plan, the City of Newburgh Planning Board shall forward a copy of the approved Site Plan to the Building Inspector and the Applicant. The Building Inspector may then issue a building Permit or Certificate of Occupancy if the project conforms to all required conditions.
- B) Performance Guaranty. A Certificate of Occupancy shall be issued until all improvements shown on the Site Plan are installed or a sufficient performance guaranty has been posted for improvements not yet completed. The performance guaranty shall be posted in accordance with the procedures specified in §27-a.7 of General City Law. The amount and sufficiency of such performance guaranty shall be determined by the City Engineer and all required forms and security shall be approved by the city of Newburgh Corporation Counsel.
- C) As-Built Plans and Inspection of Improvements. No Certificate of Occupancy shall be granted until the applicant has filed a set of as-built plans with the City Engineer and the Building Inspector, indicating any deviations from the approved Site Plan. The Building Inspector shall be responsible for the inspection of site improvements, including coordination with the City Engineer, and shall grant a Certificate of Occupancy upon a finding that the project as built complies in all material respects with the Site Plan.
- D) Site Plan Amendments. An approved Site Plan may be amended by filing an application with the City Planning Board for a Site plan amendment.
- 1. If the City Planning Board finds that such proposed amendment is consistent with the terms of any applicable Site Plan approval and does not represent a substantial change from the approved Site Plan, it shall grant the amendment.
  - 2. If the City Planning Board determines that the proposed amendment is consistent with the terms of the applicable Site Plan approval but is a substantial change from the approved Site Plan, it shall require a revised Site Plan approval process and follow the applicable procedures for Site plan approval contained herein.
  - 3. If the City Planning Board determines that the proposed amendment is inconsistent with the terms of the Site Plan approval, it shall deny the amendment, and require a revised Site Plan approval process and follow the applicable procedures for Site Plan approval contained herein.
- E) Expiration, Renewal, Revocation and Enforcement
- 1. Expiration. A Site Plan approval shall expire if the Applicant fails to obtain the necessary building permits or fails to comply with the conditions of the Site Pan approval within one (1) year of its issuance or if a Special Use Permit with which it is associated expires.

## City of Newburgh, Chapter 300, Zoning

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2. Renewal. The City of Newburgh Planning Board may extend the time for application for a building permit, for a period not to exceed one (1) year, if, in its opinion, such action is warranted by the particular circumstances thereof. Applications for such an extension/ renewal must be received at least forty five (45) days prior to expiration. The City Planning Board may grant up to a two (2) one-year renewals/extension of the Site Plan approval at its discretion. In considering a Site Plan renewal, the City of Newburgh Planning Board shall evaluate whether any significant changes to the City of Newburgh's Master Plan or Code of the City of Newburgh have occurred since the issuance of the original approval. Should the City Planning Board determine that the Site Plan is substantially noncompliant with the City of Newburgh's Master Plan or Code of the City of Newburgh, the City Planning Board may deny the Site Plan renewal, and the Applicant may file an amended Site Plan application. Site Plans that have expired shall not be eligible for renewal.
  3. A Site Plan approval may be revoked by the City Planning board that approved it, upon notice and opportunity to be heard, if the permittee violates the conditions of the Site Plan approval or engages in any construction or alteration not authorized by the Site Plan approval.
- F) Violation. Any violation of the conditions of a Site Plan approval shall be deemed a violation of this Chapter and shall be subject to enforcement action as provided herein.

*(§300-93 through §300-100 reserved)*

# City of Newburgh, Chapter 300, Zoning

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## **ARTICLE XII—Special Use Permits**

### **§300-101. Purpose**

- A) The city of Newburgh land use regulations are designed to allow a variety of uses of land, provided those uses do not adversely affect neighboring properties, the natural environment, or the character of the City. Therefore, to ensure that these uses are appropriate to their surroundings and consistent with the purposes of this Chapter, some uses are permitted only upon issuance of a Special Use Permit by the City Planning Board.
- B) Accessory uses or structures used in connection with a Special Use Permit shall be subject to the same approval requirement as the principal structure or use.
- C) Considerations. On application and after public hearing, the City Planning Board may authorize by resolution, the issuance of a Special Use Permit only for those uses in a district where this Chapter requires such a permit. In making its determination, the City Planning Board shall give consideration to any or all of the following as they may be appropriate:
  - 1. The special use requested is listed among the special uses in the zone for which the application is made.
  - 2. Criteria for particular special use(s) as listed in §300-103 of this Chapter, as applicable.
  - 3. The special use is of such location, size and character that, in general, it will be in harmony with the appropriate and orderly development of the district in which it is proposed to be situated and will not be detrimental to the orderly development of adjacent properties in accordance with the zoning classification of such properties.
  - 4. The special use will not impair the integrity or character of the zone or adjoining zones nor be detrimental to the public health, morals or welfare.
  - 5. The special use will not impair the nature and condition of all adjacent structures and uses.
  - 6. The special use is in conformity with adopted Planning and Policy Documents including, but not limited to:
    - a) The City of Newburgh Master Plan
    - b) The City of Newburgh Local Waterfront Revitalization Plan
    - c) The City of Newburgh Land Use Plan

### **§300-102. Application and Procedures**

- A) Preapplication Meeting. Before filing an application, a preliminary conference with the Building Inspector is required to discuss the nature of the proposed use and to determine the information that will need to be submitted in the Site Plan required to be submitted with the Special Use Permit application.
- B) An application for a Special Use Permit shall be submitted to the Building Inspector in accordance with the application submission deadlines as prescribed by the Building

# City of Newburgh, Chapter 300, Zoning

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Inspector.

- C) Each application shall fully set forth the circumstances of the case. Every application shall refer to the specific provision of the Chapter involved.
- D) Fee. All applications for Special Use Permits made to the City Planning Board shall be accompanied by the fee as provided for in Chapter 163 of the Code of Ordinances of the City of Newburgh.
- E) Application for a Special Use Permit shall require Site Plan approval in accordance with the Site Plan regulations contained in this Chapter. The City Planning Board may waive Site Plan approval for a Special Use Permit application that will involve no physical alteration or disturbance to a site. At a minimum, the application for a Special Use Permit shall be accompanied by a plan showing the size and location of the lot, and the location of all buildings and proposed facilities, including access drives, parking areas, and all streets within two hundred (200) feet of the lot lines.
- F) If an application is for a parcel or parcels on which more than one use requiring a Special Use Permit is proposed, the Applicant may submit a single application for all such uses. The City Planning Board may grant the application with respect to some proposed uses and not others. For purposes of determining SEQRA compliance, all proposed uses on a single parcel or on contiguous or related parcels under single or related ownership shall be considered together.
- G) Application for Area Variance. Notwithstanding any provision of law to the contrary, where a proposed Special Use Permit contains one or more features, which do not comply with the dimensional requirements of this Chapter, application may be made to the Zoning Board of Appeals for an area variance pursuant to §300-115 without a decision or determination by the Building Inspector.
- H) State Environmental Quality Review Act (SEQRA) Compliance. Upon receipt of application materials it deems complete, the City Planning Board shall initiate the New York State Environmental Quality Review process by either circulating the application and environmental assessment form to all involved agencies (if coordinated review is undertaken) or by issuing its determination of significance within the later of twenty (20) calendar days, or the receipt of any additional information reasonably necessary to make the determination. Where the proposed action may have a significant effect on the environment, the City Planning Board shall issue a positive declaration and require the submission of a draft environmental impact statement (DEIS). No time periods for decision-making in this Chapter shall begin to run until either acceptance of a DEIS as satisfactory pursuant to New York State Department of Environmental Conservation regulations or the issuance of a negative declaration.
- I) Referrals.



## City of Newburgh, Chapter 300, Zoning

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1. Orange County Department of Planning. Upon receipt of application materials it deems to be complete, the City Planning Board shall refer to the Orange County Department of Planning in accordance of Section 239m of the General Municipal Code, any application for a Special Use Permit affecting real property, which shall be accompanied by a full statement of the matter under consideration, as defined herein, within five hundred (500) feet of the boundary of:
    - a) The City of Newburgh.
    - b) Any existing county or state park or other recreational area.
    - c) Any existing or proposed county or state roadway.
    - d) Any existing or proposed right-of-way for a stream or drainage channel owned by the County for which the County has established channel lines.
    - e) Any existing or proposed county- or state-owned land on which a public building or institution is situated.
  2. Conservation Advisory Council. The City Planning Board shall refer any Special Use Permit application to the CAC within ten (10) days of receipt, for review and recommendations. Such referral shall be done so as to allow the CAC at least thirty (30) days to review and return comments, unless extended by mutual agreement between the advisory agency and applicant or acting agency in the case of direct action.
- J) Notice and Hearing.
1. The City Planning Board shall hold a public hearing on a complete Special Use Permit application within sixty two (62) days of its submission.
  2. At least ten (10) days prior to such hearing the Secretary of the City Planning Board shall:
    - a) Mail, by regular mail, at the Applicant's expense, a notice in English and Spanish an announcement of the meeting to all property owners within three hundred (300) feet of the exterior boundaries of the property affected by the Application.
    - b) The Secretary of the Planning Board arranges for the Applicant to obtain the appropriate list from the Assessor's Office, prepares one copy in English and Spanish of the announcement of the meeting and a brief description of the application.
    - c) The Applicant prepares the envelopes, stamps them and returns the prepared mailing to the Secretary of the Board with a copy of the list of those to receive the mailing.
  3. Cause to be published in the official newspaper of the City, a notice (in English and Spanish) of such hearing and of the substance of the Application, at the Applicant's expense to be paid in advance.
  4. Prior to said hearing, the Secretary of the Board shall prepare an affidavit of mailing, swearing that the required mailings and publication have been performed, which documents shall become part of the application. The affidavit of mailing will be made available to the Applicant to present to the City Planning Board for the record of proceedings.
  5. For the purpose of the mailings required by this section, the term "owner" shall be construed to mean the owner as indicated on the assessment roll of the City of Newburgh.

## City of Newburgh, Chapter 300, Zoning

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6. The Applicant shall also be required to post a notice on a sign purchased from the City Clerk stating that there is a pending application on the property, and providing the date, time, and place of the hearing, the place and times the application may be reviewed by the public, and a telephone number to call for further information. This sign shall be posted in public view in a conspicuous location within three (3) days after the City Planning Board establishes a public hearing date, shall be updated if more hearing dates are scheduled, and shall remain in place until the day after the hearing is closed.

### K) Action

1. The City Planning Board shall approve, approve with modifications and/or conditions, or deny any application for a Special Use Permit within 62 days after the public hearing. The time within which the City Planning Board must render its decision may be extended by mutual consent of the Applicant and the Planning Board. Any decision shall contain written findings explaining the rationale for the decision in light of the standards contained in §300-103 and §300-104.
2. The Special Use Permit and accompanying Site Plan shall be implemented as provided in §300-92.
3. Conditions. The City Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed Special Use Permit and may be necessary in the Board's opinion to meet the objectives herein set forth. Upon its granting of said Special Use Permit, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the City. These conditions may include:
  - a) A time limitation on the term of the Special Use Permit
  - b) Imposing operating conditions including, for example, hours of operation
  - c) Increasing dimensional or area requirements
  - d) Requiring the set-aside of perpetual open space land pursuant to §300-33
  - e) Specifying location, character and number of vehicle access points
  - f) Requiring landscaping, planting and screening
  - g) Requiring clustering of structures and uses in order to preserve environmental resources and minimize the burden on public services and facilities
  - h) Requiring action by the Applicant, including the posting of performance bonds and furnishing of guaranties to ensure the completion of the project in accordance with the conditions imposed
  - i) Requiring the recording of an easement
  - j) The installation of storm water management controls
  - k) Referrals
    1. Orange County Department of Planning
      - i. No action shall be taken on applications referred to the Orange County Department of Planning until either the Orange County Department of Planning has issued its recommendation or a minimum of thirty (30) days and a maximum of up to two (2) days prior to a regularly scheduled meeting where a board will be taking action, have elapsed from the date of its receipt of the complete application, unless the County and City Planning Boards agree to an extension of the time period for review.

## City of Newburgh, Chapter 300, Zoning

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- ii. County Disapproval. A majority-plus-one vote of the City Planning Board shall be required to grant any Special Use Permit which receives a recommendation of disapproval from the Orange County Department of Planning. The City Planning Board shall by resolution set forth its reasons for such contrary action.
  - 2. Conservation Advisory Council
    - i. Where the City Planning Board has referred the application for a Special Use Permit to the CAC for its advisory opinion, prior to making its determination, the City Planning Board shall consider the recommendation from the CAC with reference to the consistence of the proposed action. In the event that the CAC recommendation is not forthcoming with thirty (30) days following referral of the Coastal Assessment Form (CAF), the City Planning Board shall make its determination without the benefit of the CAC recommendation.
    - ii. If the City Planning Board receives comments/recommendation for the CAC and determines to proceed contrary to the recommendation(s) the City Planning Board shall include in its Findings, the reasons set forth for such contrary action.
  - l) No Special Use Permit shall be issued for property where the Building Inspector has found a violation of this Chapter, and where such violation has not been corrected, unless the granting of such Special Use Permit and Site Plan approval will result in a correction of said violation.
  - m) Filing. The decision of the City Planning Board shall be filed in the office of the City Clerk within five (5) business days after such decision is rendered and a copy thereof mailed to the Applicant.
- L) Expiration, Enforcement, Renewal and Amendment, Revocation
- 1. Expiration. A Special Use Permit shall expire if the Special Use Permit use or uses cease for more than twenty four (24) consecutive months for any reason or if the Applicant fails to obtain the necessary building permits or fails to comply with the conditions of the Special Use Permit within twelve (12) months of its issuance without renewal.
  - 2. Enforcement
    - a) The City Planning Board may establish a schedule of inspection to be conducted by the Building Inspector to determine continued compliance with this Chapter and any conditions of the Special Use Permit.
    - b) In any case where the conditions of a Special Use Permit have not been or are not being complied with, the Building Inspector shall give the applicant notice of intention to revoke such permit at least ten (10) days prior to a City Planning Board review thereon.. After conclusion of the review, the City Planning Board may authorize the Building Inspector to revoke such permit.
    - c) Granting of a Special Use Permit does not exempt the Applicant from complying with all of the requirements of building codes and other ordinances.
  - 3. Renewal and Amendment

## City of Newburgh, Chapter 300, Zoning

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- a) **Renewal.** Where a Special Use Permit has been granted, but the Applicant has failed to obtain the necessary building permits or fails to comply with the conditions of the Special Use Permit within twelve (12) months of its issuance, the City Planning Board may grant one (1) six (6) month extension, provided the Applicant submits a written request to the City Planning Board detailing the circumstances that have prevented the Applicant from pursuing a building permit or compliance with the conditions of the Special Use Permit. This renewal application must be submitted to the City Planning Board no less than sixty (60) days prior to the expiration of the Special Use Permit. The Applicant is responsible for tracking the dates. The Applicant will not receive notification from the City Planning Board, nor City Staff relative to renewal or expiration dates or required actions.
- b) **Amendment.** The terms and conditions of any Special Use Permit may be amended in the same manner as required for the issuance of a Special Use Permit, following the criteria and procedures in this article. Any enlargement, alteration, or construction of accessory structures not previously approved shall require Site Plan review only, provided that the use does not change.
- 4. **Revocation.** Any violation of the conditions of a Special Use Permit shall be deemed a violation of this Chapter and shall be subject to enforcement action as provided in Article XV. A Special Use Permit may be revoked by the City Planning Board if the permittee violates the conditions of the Special Use Permit or engages in any construction or alteration not authorized by the Special Use Permit.

### **§300-103. Standards for Individual Special Uses**

In addition to the other criteria in this Chapter, the following individual special uses shall meet the criteria below.

- A) **Home Occupation, Professional Home-Based Office, or Live /Work:** Home occupations are deemed to be accessory uses and are permitted within a single-dwelling unit, or in a building or other structure accessory to a dwelling unit, and only by the person or persons maintaining their primary residence in said dwelling unit, subject to the requirements contained herein. For the purposes of this section, “primary residence” is defined as the location of an individual’s residence for more than six (6) months of the year. A home occupation shall not require full site development plan submission. However, an Applicant shall be required to submit a lot survey indicating the location and size of the home or accessory building and the area of the home or accessory building to be used for purposes of the home occupation.
  - 1. The minimum lot size shall be that specified for the Zoning District.
  - 2. **Extent of Use.** Such occupation is carried on in an area not thirty three percent (33%) of the gross floor area of the principal building.
  - 3. At no time shall any premises be used in such a manner to cause the emanation therefrom of offensive or noxious odors, vapors, fumes, glare, dust, smoke, gas, vibration, noise, or radiation or be used in such a manner as to cause injury, annoyance or disturbance to any of the surrounding properties and to their owners and occupants.

## City of Newburgh, Chapter 300, Zoning

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4. Mechanical and Electrical Equipment. Mechanical or electrical equipment capable of producing noise, electrical or magnetic interference with radio or television reception in the neighborhood shall be prohibited unless also equipped with means to prevent such interference.
  5. Outdoor Storage. There shall be no outdoor storage of materials, supplies, or equipment associated with the home occupation.
  6. Employees on Site. No more than two (2) paid or non-paid employees or assistants in addition to the home occupant may be engaged on the premises of the home occupation at any given time.
  7. Permitted Uses. It shall include no more than one of the following uses, provided that such uses are clearly incidental and secondary to the use of the dwelling unit for residential purposes:
    - a) Custom dressmaking
    - b) Art/music/dance instruction for not more than nine students simultaneously. Concerts or recitals are prohibited.
    - c) Professional office of engineer, architect, lawyer, insurance, real estate, accounting, or similar customary home office based professions
    - d) Photography, using home scale equipment
    - e) Professional Craft Workers and Artists and other uses consistent with the scope and intent of this section as determined and approved by the approving agency.
  8. Materials Delivery. The size, frequency, and duration of deliveries for the home occupation must be in keeping with the character of the zoning district and surrounding land uses.
  9. The City Planning Board may approve the operation of a home occupation subject to any condition it deems necessary to ensure that the use does not diminish or impact the peace, security and the overall residential quality of the neighborhood. This includes the provision of necessary off-street parking, if required.
  10. Evidence of Use. The home occupation shall not display or create outside the building any evidence of the home occupation, except that one unanimated, non-illuminated flat wall or window sign, having an area of not more than six (6) square feet, shall be permitted on each lot on which the building is situated, such sign to be in conformance with Chapter 250 of the Code of the City of Newburgh and/or §300 Form Based Code for the district in which the home occupation may occur.
  11. Commercial Vehicle Parking. Not more than one (1) commercial vehicle shall be permitted in connection with any home occupation and shall be stored in an enclosed garage, or otherwise screened from the street.
  12. Alterations. No alteration of the principal residential building shall be made which alters the residential character of the building.
- B) The standards for a Child Day Care Center shall be as follows:
1. The Special Use Permit application shall describe the anticipated occupancy of the facility by age group, i.e. infant, toddler, and school age, and the hours of operation of the facility, parking and circulation plan, New York state Department of Social Services application and license, and other information required to understand the operation.
  2. A floor plan of the day-care center shall be submitted.

## City of Newburgh, Chapter 300, Zoning

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3. In addition to the parking space requirements contained in the Use and Bulk Tables, additional parking spaces shall be provided for drop-off and pickup of children at a rate of one parking space per fifteen (15) children. Said spaces shall be provided directly in front of the facility along an internal driveway or in an approved parking area. The most appropriate location for drop-off parking shall include a consideration of emergency access and shall be determined by the City Planning Board during Site Plan review. The drop-off location shall be clearly posted with appropriate signage or pavement markings. Fire lanes shall not be used for drop-off areas.
  4. Outdoor play areas shall be located at a minimum distance of twenty five (25) feet from any lot line or from any parking area and twenty five (25) feet from any public right-of-way and fenced in for safety. Outdoor play areas shall be directly accessible from the principal structure and shall not require crossing any street, driveway, or parking area for access. The City Planning Board may, as part of Site Plan review and in consultation with the prospective operator, modify the area requirement to apply only to the largest age group.
  5. A six (6) foot high solid fence or opaque fence combined with hedge or tree plantings shall be provided to screen the outdoor play area where it abuts a residential zoning district.
  6. Said facility shall provide a minimum of two (2) marked exits.
  7. Day-care centers shall adhere to the requirements of the New York State Uniform Fire Prevention and Building Code and all other applicable state guidelines that govern said uses
- C) The standards for a Drive-Thru Establishments and Automobile Washes shall be as follows:
1. A traffic queuing analysis must be submitted that demonstrates that there will be no queuing on public streets or rights of way and that all sidewalk areas will be kept clear of standing vehicles.
  2. For Automobile Washes, a water management plan, including water recycling, shall be submitted and approved by the City Planning Board, which plan limits, to the extent practicable, the amount of potable water used at the facility and demonstrates that the facility will adequately capture all runoff from the facility on-Site.
- D) The standards for a Shopping Center shall be as follows:
1. The Site shall be planned and developed subject to a coordinated plan.
  2. The Site and structures shall reflect the existing community character and incorporate existing building facades to the extent possible.
  3. The Shopping Center shall encourage pedestrian usage, not require outside storage, and have no light spillage onto adjacent properties.
  4. The required off-street parking shall be based upon §300-32 and Article X of this Chapter.
- E) The standards for a Cottage Industry / Live-Work shall be as follows:
1. Adequate landscaping and/or screening must be provided around any outdoor storage areas.



## City of Newburgh, Chapter 300, Zoning

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2. Delivery hours shall be regulated by the Special Use Permit.
  3. Any potentially unique adverse impacts of the use, owing to the nature of the use, must be described in the Special Use Permit application and measures to mitigate such impacts must be provided.
- F) The standards for a Dry Cleaner / Commercial Laundry shall be as follows:
1. Applicants must provide copies of all applicable New York State and Federal permits required for operation.
  2. A chemical storage pan must be submitted detailing the nature, amount, and method for storing all liquid and solid chemicals on the premises. The plan must detail the features that guard against the possible release of chemicals into the air, sewer system, ground, or water.
- G) The standards for a Cabaret shall be as follows:
1. A building safety and evacuation plan must be submitted to, and approved by, the City Planning Board and Building Inspector.
  2. Adequate parking, either on- or off-street must be identified.
  3. Noise attenuation must be provided when, in the opinion of the City Planning Board, based on the proximity of the cabaret use to residential uses or the nature of the planned cabaret use, such attenuation will be needed to provide for the safe enjoyment of nearby residential users or other property owners.

### **§300-104. Findings**

- A) In granting or denying special Use Permits, the City Planning Board shall take into consideration the scale of the proposed project, the possible impact of the proposed project on the adjacent properties and uses, and that such proposed Special Use Permit use does not interfere with or diminish the value of adjoining property. The City Planning Board shall also take account of any conditions imposed that would mitigate potential adverse impacts and preserve or enhance the character of the City of Newburgh. No Special Use Permit shall be granted for any property on which there exists a violation of the Chapter, including a violation of any condition of a previous municipal approval, unless the City Planning Board finds that the Applicant has no legal right or ability to remedy the violation or that the grant of a Special Use Permit is necessary to remedy a condition that poses a risk to public health or safety.
- B) Criteria. Before granting or denying a Special Use Permit, the City Planning Board shall make specific written findings establishing whether or not the proposed project:
1. Will comply with all land use district, overlay district, and other specific requirements of this Chapter and other local laws and regulations and will be consistent with the purposes of this Chapter and of the land use district in which it is located.
  2. Will comply with the applicable criteria in §300-103.
  3. Will not result in excessive off-premises noise, dust, odors, solid waste, or glare or create any public or private nuisances.

## City of Newburgh, Chapter 300, Zoning

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4. Will not cause significant traffic congestion, impair pedestrian safety, or overload existing roads, considering their current width, surfacing, and condition, and any improvements proposed to be made to them by the Applicant.
5. Will be accessible to fire, police, and other emergency vehicles.
6. Will not overload any public water, drainage, or sewer system, or any other municipal facility.
7. Will not materially degrade any watercourse or other natural resource or ecosystem or endanger the water quality of an aquifer.
8. Will be suitable for the property on which it is proposed, considering the property's size, location, topography, vegetation, soils, natural habitat, and hydrology, and, if appropriate, its ability to be buffered or screened from neighboring properties and public roads.
9. Will be subject to such conditions on operation, design and layout of structures, and provision of buffer areas as may be necessary to ensure compatibility with surrounding uses and to protect the natural, historic, and scenic resources of the City.
10. Will be consistent with the goal of buffering nonresidential uses that are incompatible with residential use.
11. Will comply with applicable Site Plan criteria in §300-89.
12. If the property is in a residential district, will have no greater overall off-site impact than would full development of the property with uses permitted by right, considering relevant environmental, social, and economic impacts.

*(§300-105 through §300-110 reserved)*



# City of Newburgh, Chapter 300, Zoning

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## ARTICLE XIII—ZONING BOARD OF APPEALS

### **§300-111. Purpose and Establishment**

- A) The purpose and intent of this article is to provide a body, the Zoning Board of Appeals (ZBA), to which may be referred appeals from the enforcement of this Chapter based upon alleged uncertainty in the text, error in administrative decisions or unique hardship.
- B) This Zoning Board of Appeals is not established as a means of altering this Chapter, the intent of this Chapter, or the purpose of this Chapter. It shall not permit any use in any zone which would be in conflict with such zone under the terms of this Chapter or which, in effect, would constitute a change in zoning.
- C) The Zoning Board of Appeals shall have all the powers and duties prescribed by law and this Chapter in connection with appeals to review any order, requirement, decision, interpretation, or determination made by an administrative official charged with the enforcement of this Chapter, generally the Building Inspector. An appeal may be taken by any person aggrieved or by any officer, department, board, or committee of the City.

### **§300-112. Continuation, Appointment and Organization; Alternate Members**

- A) The Zoning Board of Appeals, as constituted at the time of the effective date of this Chapter, shall continue in existence in accordance with the provisions of the General City Law applicable thereto.
- B) The ZBA shall consist of seven (7) members. The term of office of each member shall be seven (7) years, and his term shall continue until a successor shall be appointed. If a vacancy shall occur other than by expiration of the term, it shall be filled by appointment of the City Manager for the unexpired term.
  - 1. Chairperson. One member shall be designated by the City Manager to act as Chairperson, or, on the failure to do so, the ZBA shall elect a Chairman from its own members. The City Manager shall appoint a Secretary, and the Zoning Board of Appeals shall prescribe rules for the conduct of its affairs in accordance with the provisions included in this Chapter and all applicable State regulations.
- C) Alternate Member. Two (2) alternate members of the Zoning Board of Appeals shall be appointed by the City Manager for a term of two (2) years, commencing on the date of appointment. These members shall serve when members are absent or unable to participate on an application before the Zoning Board of Appeals.
  - 1. The Chairman of the Zoning Board of Appeals may designate one of the appointed alternate members as an alternate substitute for a member when such member is unable to participate on an application or matter before the board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the board. Such designation shall be entered into the minutes of every Zoning Board of Appeals meeting at which the substitution is made.

## City of Newburgh, Chapter 300, Zoning

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- D) All provisions of state law and local law, codes, rules and regulations relating to Zoning Board of Appeals member eligibility, vacancy in office, removal, compatibility of office and service on other boards, as well as any provisions of any local law or local ordinance relating to training, continuing education, compensation and attendance, performance of duties, qualifications and others, shall also apply to alternate members.

### **§300-113. General Powers and Duties**

- A) The Zoning Board of Appeals shall have all the powers and duties prescribed by law and this Chapter, provided that none of the following provisions shall be deemed to limit any power of the Board that is conferred by law.
- B) Appeals of Orders, Requirements, Decisions, Interpretations or Determinations. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation, or determination appealed and shall make such order, requirement, decision, interpretation, or determination, that in the opinion of the ZBA ought to have been made in the matter by the City of Newburgh Building Inspector or other administrative official charged with the enforcement of this Chapter.
- C) Power to Interpret Chapter. On appeal from an order, requirement, decision or determination made by an administrative official or on request by any official, board or agency of the City, the Zoning Board of Appeals shall have the power to decide any of the following matters:
  - 1. Text: determination of the meaning of any portion of the text of this Chapter.
  - 2. Map: determination of the exact location of any zoning boundaries shown on the Zoning Map.
  - 3. Variances: granting of use or area variances, as defined herein.

### **§300-114. Appeals for Variance**

- A) The Zoning Board of Appeals shall have the power, upon appeal of a determination by the Building Inspector, and after public notice and hearing, to vary or modify the application of any provisions of this Chapter relating to use, construction, or alteration of structures or the use of land, so that the spirit of this Chapter is observed, public safety and welfare secured and substantial justice is done.
- B) Variation from the strict enforcement of the terms of this Chapter may only occur where the literal enforcement of the requirements of this Chapter would involve practical difficulties or would cause undue hardships that would deprive the owner of the reasonable use of the land or buildings involved and would not carry out the spirit and purpose of this Chapter. Such a request shall be termed a 'variance'.
- C) An Applicant for a variance must demonstrate that a substantial and unique hardship would be created by the strict interpretation of the provisions of this Chapter and this hardship can

# City of Newburgh, Chapter 300, Zoning

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be corrected by a variation in the regulations without causing undue hardship to others or to the city as a whole. The basis for this action is hardship on the individual rather than benefit to the public.

## **§300-115. Use Variance and Area Variances**

### **A) Use Variances**

1. The ZBA, on appeal from a decision or determination from the Building Inspector, shall have the power to grant use variances, authorizing the use of the land, which otherwise would not be allowed by this Chapter.
2. No such use variance shall be granted by the Zoning Board of Appeals without a showing by the Applicant that the applicable zoning regulations and restrictions have caused unnecessary hardship.
  - a) In order to prove such unnecessary hardship, the Applicant shall demonstrate to the Zoning Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:
    - i. The Applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
    - ii. The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the neighborhood;
    - iii. The requested use variance, if granted, will not alter the essential character of the neighborhood; and
    - iv. The alleged hardship has not been self-created.
3. Minimum Variance. The Zoning Board of Appeals, in granting use variances, shall grant the minimum variance that it deems necessary and the adequate to address the unnecessary hardship proven by the Applicant and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.
4. If the use variance is granted for a nonresidential use, the Applicant shall obtain Site Plan approval from the City Planning Board prior to commencing the use or obtaining a building permit.

### **B) Area Variances.** The ZBA shall have the power, upon an appeal from a decision or determination of the Building Inspector, to grant area variances from the area or dimensional requirements specified in this Chapter.

1. The Zoning board of Appeals, in the granting of area variances, shall grant the minimum variance that it deems necessary and adequate while preserving and protecting the character of the neighborhood and the health, safety, and welfare of the community.
2. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the Applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider whether:
  - a) An undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;

## City of Newburgh, Chapter 300, Zoning

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- b) The benefit sought by the Applicant can be achieved by some method feasible for the Applicant to pursue, other than an area variance;
  - c) The requested area variance is substantial;
  - d) The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
  - e) The alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals but shall not necessarily preclude the granting of the area variance.
- C) Ineligible Hardship. The following types of cases shall not be construed as eligible for consideration as hardship cases within the meaning of this Chapter:
1. The Applicant, with or without knowledge of the provisions of this Chapter, has acquired the site subsequent to the effective date of this Chapter.
  2. The Applicant has caused a self-imposed hardship by changing his circumstances after the effective date of this Chapter. (Example: The Applicant in selling a portion of a larger site has either created a new lot which is deficient in total area or has rendered the existing larger segment on which the structure is located insufficient in yard space.)
  3. The Applicant would realize financial advantage from a change to the site, the structure or the use.
- D) Transference. Unless otherwise specified at the time the variance is granted, the variance pertains to the subject property and not to the individual who applied. Consequently, the variance is transferable to any future owner of the subject property but cannot be transferred by the Applicant to a different site should said Applicant move to another location.
- E) Expiration. Unless otherwise specified at the time the variance is granted, it pertains to the subject property for an indefinite time. However, in the case where work has not been commenced and diligently prosecuted within one year after the date of granting of a variance, then without further action such variances shall become null and void.
- F) Imposition of conditions and safeguards. The Zoning Board of Appeals shall, in the granting of both use and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this Chapter and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.
- G) Referral to City Planning Board. Where the Zoning Board of Appeals finds the zoning classification of a particular property to be conducive to the deprivation of all reasonable use of the land or building by the owner thereof and where such Board deems the same condition to apply generally to other land or buildings in the same neighborhood or zone said Board shall deny a variance on the grounds that the conditions and circumstances are not unique and shall call this condition to the attention of the City Planning Board accompanied by a recommendation that this Chapter be amended.

# City of Newburgh, Chapter 300, Zoning

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## §300-116. Procedures

- A) Contents of the Application. Appeals shall be submitted by filing a written notice of appeal to the Building Inspector and Zoning Board of Appeals within ninety (90) days after the filing in the City Clerk's office of the order, requirement, decision, interpretation, or determination of the administrative official charged with the enforcement of such ordinance or local law by filing with such administrative official and with the Zoning Board of Appeals a notice of appeal, specifying the grounds thereof and the relief sought.
- B) Applications for appeals shall be filed on forms required by the ZBA. Such application shall refer to the specific relevant provisions of this Chapter and shall specify the grounds for the variance requested, the interpretation claimed, or for the reversal of an order, requirement, decision, or determination by the Building Inspector. The Building Inspector shall transmit all the papers constituting the record of the appeal to the Zoning Board of Appeals. In addition to these required materials, the application shall include as necessary:
  - 1. A plot plan drawn to scale with accurate dimensions, showing the location of all existing and proposed structures on the lot
  - 2. A site context map showing the zoning of the parcel in question as well as the zoning of all adjacent properties
  - 3. Complete copies of the required application materials in the number and format prescribed by the Building Inspector.
  - 4. Fees. All appeals or requests for a variance made to the Zoning Board of Appeals
- C) Referrals
  - 1. Orange County Department of Planning
    - a) Requests for variances that require referral to the Orange County Department of Planning shall be so referred pursuant to the General Municipal Law, Article 12-B, §§ 239-1 and 239-m, as amended. The referral shall be accompanied by a full statement of such proposed action, and any materials and of forms required by the Orange County Department of Planning.
    - b) No action shall be taken on variances referred to the Orange County Department of Planning until either the Orange County Department of Planning has issued its recommendation or a minimum of thirty (30) days and a maximum of up to two (2) days prior to a regularly scheduled meeting where a board will be taking action, have elapsed from the date of its receipt of the full statement of the proposed variance, unless the Orange county Department of Planning and City of Newburgh Zoning Board of Appeals agree to an extension of the County's time period for review.
    - c) County Disapproval. A majority-plus-one vote shall be required to approve any variance, which receives a recommendation of disapproval from the Orange County Department of Planning because of the referral process specified above, along with a resolution setting forth the reasons for such contrary action.
  - 2. Planning Board Advisory Opinion: The Zoning Board of Appeals is not required to but may, in its discretion, refer any requests for appeals or applications for variances to the City Planning Board for review and recommendations. If no report is received from

## City of Newburgh, Chapter 300, Zoning

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the City Planning board within thirty (30) days, the Zoning Board of Appeals may render its decision without said report.

## City of Newburgh, Chapter 300, Zoning

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3. Conservation Advisory Council. Whenever a request for appeal or application for variance involves the City's waterfront area, the Zoning Board of Appeals shall determine the consistency of the proposed action as set forth in Chapter 159-5 of the code of the City of Newburgh known as the "City of Newburgh Waterfront Consistence review Law.: The Zoning Board of Appeals shall refer a copy of a completed Coastal Assessment Form (CAF) and other appropriate application materials to the Conservation Advisory Council within ten (10) days of its submission and, prior to making its determination, shall consider the recommendation of the CAC with reference to the consistency of the proposed action. In the event that the CAC recommendation is not forthcoming within thirty (30) days following referral of the CAF, the Zoning Board of Appeals shall make its determination without the benefit of the CAC recommendation.

### D) Hearing and Public Notice

1. The Zoning Board of Appeals shall set a reasonable time after receipt of a complete application for the hearing of appeals and the Applicant shall be notified of the date.
2. At least ten (10) days prior to such hearing the Secretary of the City Planning Board shall:
  - a) Mail, by regular mail, at the Applicant's expense, a notice in English and Spanish and announcement of the meeting to all property owners within five hundred (500) feet of the exterior boundaries of the property affected by the Application.
  - b) The Secretary of the Planning Board arranges for the Applicant to obtain the appropriate mailing list from the Assessor's Office.
  - c) The Applicant prepares the envelopes, stamps them and returns the prepared mailing to the Secretary of the Board with a copy of the list of those to receive the mailing.
3. At least ten (10) days prior to the date of the hearing of appeals, the Secretary of the ZBA at the expense of the Applicant, to be paid in advance, shall give public notice by causing the publication of a notice of such hearing and the substance of the appeal, in the official newspaper of the City of Newburgh.
4. Prior to the public hearing, the Applicant shall submit to the ZBA affidavits of the Secretary of the Board swearing that the required mailings and publication have been performed, which documents shall become part of the application.
5. At the hearing, any party may appear in person or by agent or by attorney.
6. The Zoning Board of Appeals may adjourn the hearing for a reasonable period in order to cause such further notice as it deems proper to be served upon such other property owners as it decides may be interested in the appeal.

### E) Action. The Zoning Board of Appeals may, in conformity with the provisions of this Chapter, reverse, affirm, or modify, wholly or in part, the order, requirement, decision, interpretation or determination of the administrative official in accordance with the provisions of this Chapter.

1. Any such action shall be decided within sixty two (62) days after the close of the hearing. The time within which the Zoning Board of Appeals must render its decision may be extended by mutual consent of the Applicant and the Board.



## City of Newburgh, Chapter 300, Zoning

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2. Every decision of the Zoning Board of Appeals shall be approved by the affirmative vote of a majority of all the members by resolution which contains a full record of the findings of the Zoning Board of Appeals in the case. If the Zoning Board of Appeals acts contrary to the recommendations of the City Planning Board or the County Planning Board, it shall give written reasons for such action.
- F) Filing of decision or action. Every order, requirement, decision, interpretation, or determination of the Zoning Board of Appeals shall be filed in the office of the City Clerk within five business days after the day such decision is rendered and shall be a public record. A copy thereof shall be mailed to the Applicant within the same five day period.
- G) Court review of Board decisions. Any person or persons jointly or severally aggrieved by any decision of the Zoning Board of Appeals may apply to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law.
- H) Expiration of appeal decision. Unless otherwise specified by the Zoning Board of Appeals, a decision on any appeal shall expire if the appellant fails to obtain any necessary building permit within twelve (12) months of the date of such decision.
- I) Stay of Proceedings. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Building Inspector certifies to the Zoning Board of Appeals, after the notice of appeal shall have been filed, that such a stay of proceedings would, in the Building Inspector's opinion, by reason of facts stated in the certificate, would cause imminent peril to life or property. In such a case, proceedings shall not be stayed except by a restraining order, which may be granted by the Zoning Board of Appeals or by a court of record on application, on notice to the Building Inspector for due cause shown.
- J) Rehearing. A motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination of the Board not previously reheard may be made by any member of the Board within sixty two (62) days of the original decision. A unanimous vote of all members of the Board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing, the Board may reverse, modify, or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the Board finds that the rights vested in persons acting in good faith in reliance upon the reheard order, decision or determination will not be prejudiced thereby.

*(§300-117 through §300-120 reserved.)*



# City of Newburgh, Chapter 300, Zoning

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## ARTICLE XIV—ENFORCEMENT, SEVERABILITY, WHEN EFFECTIVE

### §300-121. Violations and Enforcement; Penalties for Offenses

- A) Inspection. To determine compliance with this Chapter, and in accordance with the provisions of the Uniform Fire Prevention and Building Code, and the Code of the City of Newburgh, the Building Inspector or any duly authorized City representative, upon showing the proper credentials in the discharge of his/her duties, may enter upon any building, structure or premises at any reasonable hour or in an emergency at any hour whatsoever upon the consent of the owner or occupant or pursuant to a lawful warrant.
- B) Notice of violation
  1. Upon finding any new construction, improvements, or uses to be in violation of this Chapter, the Building Inspector shall transmit a written notice of violation, by registered or certified mail, to the owner and tenants of the property upon which the alleged violation occurs, describing the alleged violation. The notice of violation shall require an answer or correction of the alleged violation to the satisfaction of the Building Inspector within a reasonable time limit set by the Building Inspector. The notice shall state that failure to reply or to correct the alleged violation to the satisfaction of Building Inspector within the time limit constitutes admission of a violation of this Chapter. The notice shall further state that, upon request of those to whom it is directed, technical determinations of the nature and extent of the violation as alleged will be made and that if a violation as alleged is found, costs of the determinations will be charged against those responsible, in addition to such other penalties as may be appropriate, and that if it is determined that no violation exists, costs of determination will be borne by the City.
  2. If, within the time limit set, there is no reply but the alleged violation is corrected to the satisfaction of the Building Inspector, the notation "Violation Corrected" shall be made on the Building Inspector copy of the notice.
  3. If there is no reply within the time limit set (thus establishing admission of a violation of this Chapter) and the alleged violation is not corrected to the satisfaction of the Building Inspector within the time limit set, the Building Inspector shall take action in accordance with §300-121(C) of this Chapter.
  4. A permanent record of all notices of violation and their disposition shall be kept in the offices of the Building Inspector.
- C) Abatement of violations. The Building Inspector may issue a stop-work or cease and desist order and/or institute an appropriate legal action or proceeding to prevent, restrain, correct, or abate any violation of this Chapter to prevent the occupancy of premises or to prevent any activity, business, or use that violates this Chapter. Such legal action may include the issuance of an appearance ticket pursuant to the Criminal Procedure Law, §150.20(3).
- D) Penalties
  1. A violation of this Chapter is an offense punishable by fine not exceeding \$250 or imprisonment for a period not to exceed fifteen (15) days, or both, for conviction of a

## City of Newburgh, Chapter 300, Zoning

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first offense. Conviction of a second offense, committed within five (5) years of the first offense, is punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed fifteen (15) days, or both. Conviction of a third or subsequent offense committed within a period of five (5) years is punishable by a fine of not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed fifteen (15) days, or both. Each day's continued violation shall constitute a separate additional violation. A violation which creates an imminent hazard to health and safety shall be punishable by the same fine as above, as well as by imprisonment for a period not to exceed six (6) months per violation.

2. In addition, any person who violates any provision of this Chapter or who fails to do any act required thereby shall, for each and every such violation, pay a civil penalty of not more than \$100. When a violation of any of the provisions is continuous, each day thereof shall constitute a separate and distinct violation subjecting the offender to an additional penalty.
  3. The imposition of penalties for any violation of this Chapter shall not excuse the violation nor permit the violation to continue. The application of the above penalties or prosecution for a violation of any provision of this Chapter shall not prevent the abatement of a violation pursuant to Subsection C, "Abatement of Violations". The expenses of the City in enforcing such removal, including legal fees, may be chargeable (in addition to the criminal and civil penalties) to the offender and may be recovered in a civil court of appropriate jurisdiction.
- E) Complaints of Violations. Whenever a suspected violation of this Chapter occurs, any person may file a signed written complaint reporting such violation to the Building Inspector. The Building Inspector may also investigate any oral complaint made to his/her office. All complaints, written or oral, shall be properly recorded, filed, and promptly investigated by the Building Inspector.
- F) Accountability. For every violation of the provisions of this Chapter, the owner, agent, contractor, lessee, ground lessee, tenant, licensee, or any other person who commits, takes part, or assists in such violation or who maintains any structures or premises in which any such violation exists shall be punishable according to the provisions of this Chapter.
- G) Existing Violations. No application shall be received nor shall any application, if received, be reviewed or be granted for any variance, zoning change, Special Use Permit, Site Plan, subdivision, building permit, license, Certificate of Occupancy or any other change set forth in this Chapter if there are any existing violations of this Chapter for the lot or lots contained in said application, unless said application is required by the Building Inspector, City of Newburgh Corporation Counsel, or the reviewing agency in settlement of the outstanding violation.

### **§300-122. Severability**

- A) If any clause, sentence, paragraph, subdivision, section or part of this Chapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not

# City of Newburgh, Chapter 300, Zoning

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affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

- B) It is hereby declared to be the intent of the City Council that this Chapter would have been enacted even if such invalid provision had not been included herein.

## **§300-123. Amendments**

- A) Initiation. The City Council may, on its own motion or on petition or on recommendation from the City Planning Board or Zoning Board of Appeals, amend, supplement, or repeal the regulations and provisions of this Chapter. A property owner or authorized agent may apply for amendment to this Chapter by filing a petition with the City Council. The City Council shall be under no obligation to consider or review a petition for a zoning amendment. The petition shall include a description of the property or properties affected, a map showing the property or properties affected and all properties within a radius of five hundred (500) feet of the exterior boundaries thereof and the applicable filing fee.
- B) Review by Planning Agencies. As an aid in analyzing the implications of proposed amendments and to coordinate the effect of such actions on intergovernmental concerns, the City Council, shall refer proposed amendments to the City of Newburgh Planning Board and to the County Planning Department as required by §§ 239-l and 239-m of the General Municipal Law.
1. Referral to Orange county Department of Planning. No action shall be taken to approve a proposed zoning amendment referred to the Orange County Department of Planning until its recommendation has been received, or thirty (30) days have elapsed after its receipt of the full statement of the proposed amendment, unless the County and City agree to an extension beyond the thirty (30) day requirement for the County Planning Department's review.
  2. Referral to the City of Newburgh Planning Board . Every proposed amendment or change initiated by the City Council or by petition (but not if initiated by the City of Newburgh Planning Board) shall be referred to the City of Newburgh Planning Board for report thereon prior to public hearing. If the City of Newburgh Planning Board does not report within thirty (30) days of such referral, the City Council may take action without the City Planning Board report. This period of time may be extended by agreement of the City Council and City of Newburgh Planning Board.
- C) Public Hearing and Notice. No proposed amendment shall become effective until after a public hearing thereon, at which the public shall have an opportunity to be heard. If the City Council chooses to consider a proposed zoning amendment, it shall, by resolution at a duly called meeting, set the time and place for a public hearing on the proposed amendment and shall cause public notice to be given as required by the laws of New York State and specified below. If a proposed amendment is initiated by petition, the petitioner shall be responsible for publication of notice and for notice to adjacent municipalities if necessary.

# City of Newburgh, Chapter 300, Zoning

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1. Publication of Notice in Newspaper. Notice of the time and place of the public hearing shall be published at least ten (10) days in advance of such hearing in the official newspaper. This notice shall provide a summary of the proposed amendment in such reasonable detail as will give adequate notice of its, indicating the place or places where copies of the proposed amendment may be examined and the time and place of the hearing.
2. Notice to Adjacent Municipalities. Written notice of any proposed amendment affecting property lying within five hundred (500) feet of an adjacent municipality shall be served in person or by mail upon the Clerk of such municipality at least ten (10) days prior to the date of public hearing. Representatives of neighboring municipalities receiving notification of a proposed amendment shall have the right to appear and be heard at the public hearing thereon but shall not have the right to review by a court.

## D) Adoption.

1. The City Council may adopt amendments to this Chapter by a majority vote of its membership, except in the case of local protest or disapproval by the Orange county Department of Planning as noted below.
2. Count Disapproval. A supermajority (majority-plus-one) vote of all City Council members shall be required to pass any proposal which receives a recommendation of disapproval from the Orange County Department of Planning prior to City Council action, along with a resolution setting forth the reasons for such contrary action.

## E) Effective Date. Unless the amendment provides for a different effective date, each amendment adopted by the City Council shall take effect when filed with the Secretary of the State of New York pursuant to the Municipal Home Rule Law of the State of New York.

### **§300-124. When Effective**

This chapter, together with the Zoning Map and the Schedule of Use and Bulk Regulations, and Form Based Code incorporated herein and made a part of this Chapter, shall take effect ten (10) days after its publication and posting as required by City Law.

### **§300-125. Repeal of Existing Zoning Ordinance**

The ordinance entitled “City of Newburgh, New York, Zoning Ordinance” effective 04-15-2006 including all amendments to said ordinance, is hereby repealed as of the effective date of this Chapter.



# City of Newburgh, NY

## Article XV of the Zoning Ordinance Form-Based Code: Downtown Districts and Waterfront

<b>PART 1 .....</b>	<b>4</b>
§300-126 PURPOSE AND INTENT OF FORM-BASED CODE	4
§300-127 DISTRICTS DEFINED	5
§300-128 EXISTING CONTEXT	6
§300-129 SCHEDULE OF PERMITTED USES	8
<b>Part 2 .....</b>	<b>11</b>
§300-136 BROADWAY CORRIDOR	11
§300-137 DOWNTOWN NEIGHBORHOOD	15
§300-138 WATERFRONT GATEWAY	19
§300-139 PLANNED WATERFRONT DISTRICT	23
<b>PART 3 .....</b>	<b>29</b>
§300-151 BUILDING TYPES	29
§300-152 DESIGN STANDARDS	Error! Bookmark not defined.35
§300-153 SIGNS AND AWNINGS	36
§300-154 STREETScape STANDARDS	41
§300-155 LANDSCAPE STANDARDS	44
§300-156 HUDSON RIVER WATERFRONT PUBLIC ACCESS	48
§300-157 PARKING REQUIREMENTS IN THE DOWNTOWN DISTRICTS	50

**§ 300-126 PURPOSE AND INTENT OF FORM-BASED CODE**

**§ 300-127 DISTRICTS DEFINED**

**§ 300-128 EXISTING CONTEXT**

**§ 300-129 SCHEDULE OF PERMITTED USES**

In order to promote a more urban, walkable, and vibrant downtown, the City of Newburgh has chosen to utilize a Form-Based Zoning approach for its four downtown districts. The regulations in this Article supplement those regulations found in the rest of this Chapter and provide specific details on the form of development that is encouraged and allowed in this important section of the City.

***This Form-Based Code will:***

- Focus on the importance of building types and the relationship of one building to another
- Allow flexibility and variety with respect to uses within buildings and within a zoning district
- Help ensure new development is compatible with the existing urban fabric of downtown Newburgh
- Provide guidelines for the redevelopment of the waterfront
- Provide clarity to developers about what is desired and allowed
- Speed the application and approval process for projects meeting the requirements of this Article

***Organization***

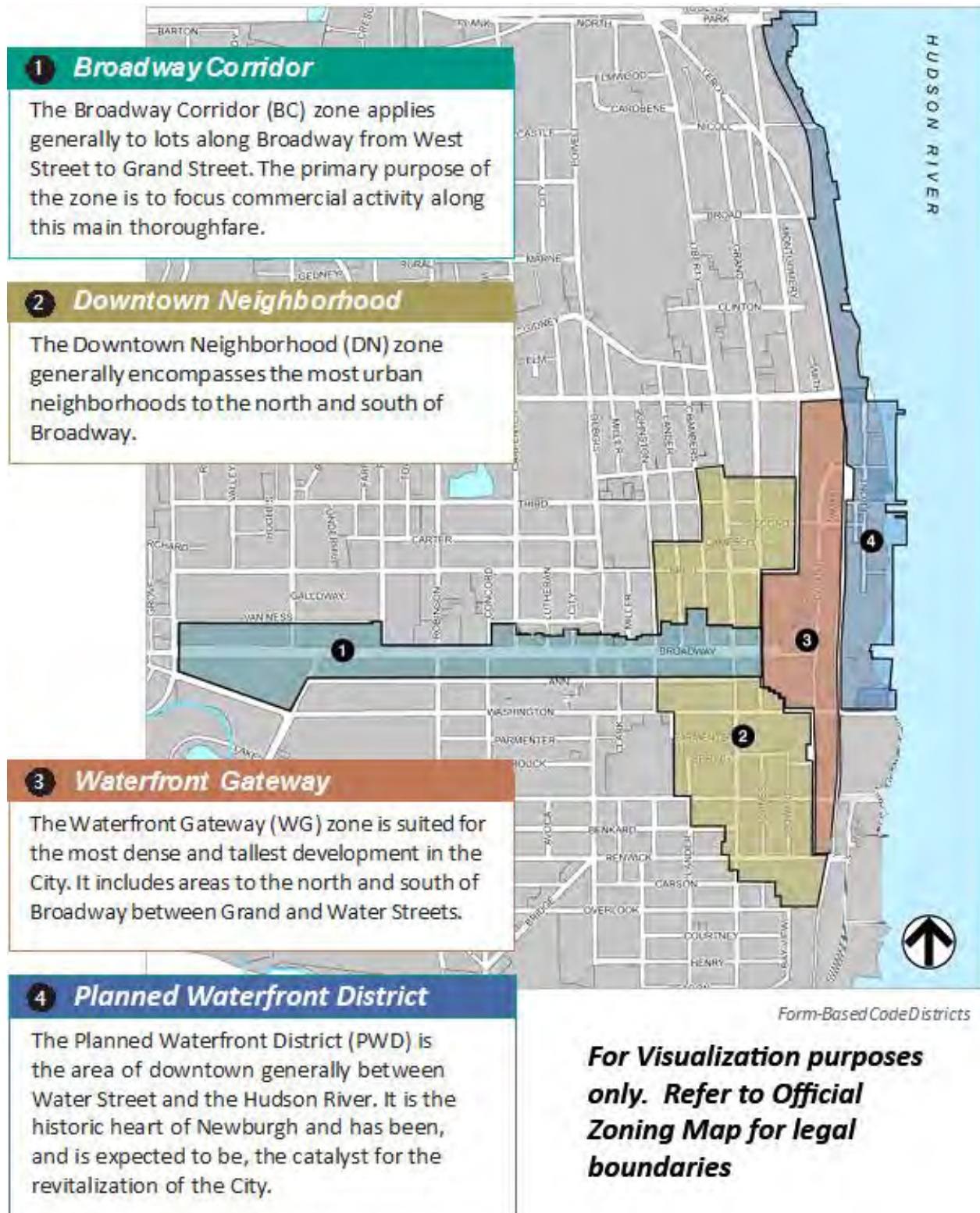
This Form-Based Code (FBC) is a fully binding and enforceable component of the City's Zoning Code. It is also designed as a 'stand-alone' resource for the development regulations for Newburgh's downtown.

The Form-Based Code is organized as follows.

- Part 1: Introduction – This section describes the purpose and intent of the Form-Based districts and includes the schedule of permitted uses within the districts.
- Part 2: District Regulations and Guidelines – This section defines the development standards for each of the four downtown districts.
- Part 3: Supplementary Standards – This section provides detailed standards on building design, streetscape, and parking within the Form-Based districts.



The following four zoning districts, shown on the official Zoning Map of the City of Newburgh, are regulated through this Form-Based Code. The regulations in this form-based code regulate the use, bulk, area, and design of new construction within these four zoning districts.



The following images on these two pages characterize some of the existing form within the downtown districts and show the diversity of existing building types and uses within the FBC districts. They are presented for informational purposes only.

## BROADWAY CORRIDOR



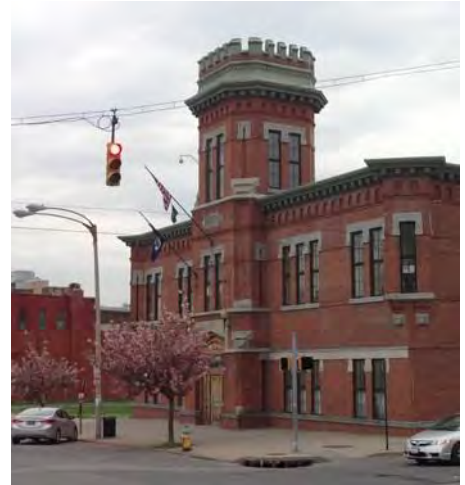
### Shopfront Building Type

- Shopfront building type used for residential use
- Entrance should be accentuated more



### Shopfront Building Type

- Mixed-use buildings on Broadway
- Zero front and side yard setback
- Complementary, but not identical, architectural features
- Infill opportunities on vacant and underdeveloped lots



### Civic Building Type

- Former Armory
- Distinctive architecture and building form
- Respects street wall

## DOWNTOWN NEIGHBORHOOD



### Rowhouse Building Type

- Façade breaks for every lot
- Stoop type entrance feature
- All houses are built with entrance feature right to front lot line



### Shopfront Building Type

- Liberty/Grand Street commercial corridor
- High degree of transparency on the first floor
- Architectural feature (bay window) allowed to encroach onto public right of way to add visual interest



### Rowhouse Building Type

- Porch type entrance feature
- Architectural accents, including bay windows, to maximize visual interest
- All houses are built with entrance feature to front lot line



## WATERFRONT GATEWAY



### Civic Building Type

- Institutional uses and civic buildings anchor Waterfront Gateway District
- Higher building to capitalize on Hudson River views and site topography

## PLANNED WATERFRONT DISTRICT



### Shopfront Building Type

- Front Street on the waterfront
- Ground-floor commercial and retail
- Awnings provide visual interest
- Setback should be used for public amenities



- Waterfront walkway between Hudson River and buildings
- Pedestrian path provided with lighting, seating, and other amenities

## Permitted by Right and Permitted by Site Plan

The Form-Based Code allows a mix of uses, both within lots and within buildings. The following uses are permitted within the Form-Based districts as designated by P; are permitted within the Form-Based districts pending site plan review as designated by P\*; or are permitted within the Form-Based districts by special permit from the Planning Board as designated by S.

Use	Broadway Corridor (BC)	Downtown Neighborhood (DN)	Waterfront Gateway (WG)	Planned Waterfront District (PWD)
Apartment House	P	p*	p*	p*
Four Family Dwelling	P	p*	p*	p*
Two or Three Family Dwelling	P	P	p*	p*
Row or Attached Dwelling (Townhome)		P	p*	p*
Two-Family Detached Dwelling		P	p*	
One-Family Detached Dwelling		P	p*	p*
Residential Care Facility	P	P	p*	p*
Cooperative House	p	p	p*	p*
Accessory Apartment				
Bed & Breakfast	A;S	A;S	A;S	A;S
Short Term In Home Lodging	A	A	A	
Boarding House				
Customary Home Occupation	A;S	A;S	A;S	A;S
Rooming House	S	S	S	S
Mixed Use with Residential	p*	p*	p*	p*
Live Work	p*	p*	p*	p*
Buildings, uses or facilities of any Governmental Unit	p*	p*	p*	p*
Cemetery	p*	p*	p*	p*
College/University	p*	p*	p*	
Community Center	p*	p*	p*	p*
Parking Lot	p*	S	S	S
Community Parking Lot	p*	S	S	S
Dormitories	A	A	A	A
Hospital	A;S	A		
House of Worship	p*	p*	p*	p*
Membership Club	p*	p*	p*	p*
Museum	p*	p*	p*	p*
Parks, Open Space, Recreational Facilities	P	P	p*	p*
Public Libraries	p*	p*		
School of General Instruction	p*	p*	p*	
Activity Facility	P	P	p*	p*
Adult Day Care Facility	P	P	p*	p*
Adult Uses				
Amusement Center	S	S		
Animal Care Facility	S	S		
Assembly Hall	p*		p*	p*
Bank	P		p*	
Bar	P	p*	p*	p*
Billiard Parlor	P	p*	p*	
Bowling Alley	p*	p*	p*	p*
Brewing of malt beverages or distilled spirits primarily for	p*	p*	p*	

on-Site consumption				
Professional Office	P	P	p*	p*
Cabaret	P	P	p*	p*
Car Rental	S	S	S	
Child Day Care	P	P	p*	p*
Cottage Industry	P	P	p*	p*
Drive-Thru (Bank, Restaurant, Pharmacy, etc.)	p*	p*	p*	
Funeral Home	p*	p*	p*	
Hotel	p*	p*	p*	p*
Laundromat	P	P		
Marina			p*	p*
Movie or Professional Theater, Indoor Concert Venue	S	S	S	S
Nursing Home	p*	p*	p*	p*
Office Park				
Personal Services	P	P	p*	p*
Restaurant	P	P	p*	p*
Restaurant, Carry-Out	P	p*	p*	
Restaurant, Fast-Food	P	p*	p*	
Retail	P	P	p*	p*
Retail, Neighborhood	P	P	p*	p*
Self Storage				
Shopping Center				
Tattoo Parlor	P	P	p*	p*
Taxi Service	p*			
Technical School	S	S	S	
Automobile Gas Station				
Automobile Sales				
Automobile Service/Repair				
Automobile Wash				
Agriculture				
Boat Repair				S
Distribution Facility/Warehouse				
Dry Cleaner; Commercial Laundry	p*			
Industrial Uses				
Storage Yard				
Wholesale	p*			

## Architectural Review Commission

Lots within the East End Historic District must also comply with the requirements of Article VI.

## PART 2: DISTRICT REGULATIONS AND GUIDELINES

**§300-136 – Broadway Corridor**

**§300-137 – Downtown Neighborhood**

**§300-138 – Waterfront Gateway**

**§300-139 – Planned Waterfront District**

## Part 2

# §300-136 BROADWAY CORRIDOR



*The Broadway Corridor is characterized by a wide street with shopfront type buildings fronting on the lot line. Current form encourages pedestrian activity and serves as the central commercial corridor in the City.*



### PURPOSE & INTENT

The purpose and intent of the Broadway Corridor is to:

- Promote a vibrant, pedestrian oriented Broadway;
- Focus new commercial development along Broadway;
- Provide for a mix of uses that serves the needs of the residents of, and visitors to, the City.

Within this district, the preferred form for new development is the shopfront form, also known as the Main Street form. This form generally features ground-floor retail with residential or commercial uses on the upper floors. Buildings with residential use only are allowed, but must follow the design guidelines for the district.

A transit oriented development is planned for the

western end of the district. The area is bound by Broadway to the north and West Street and Lake Street to the west and east. This 'sub-district' will feature the same general form as the rest of the corridor, but will allow slightly higher and more dense new development that will capitalize on transit investments made by the City and County.



## Lot Standards

Buildings within the Broadway Corridor District shall comply with the following lot, building height, and building frontage requirements.

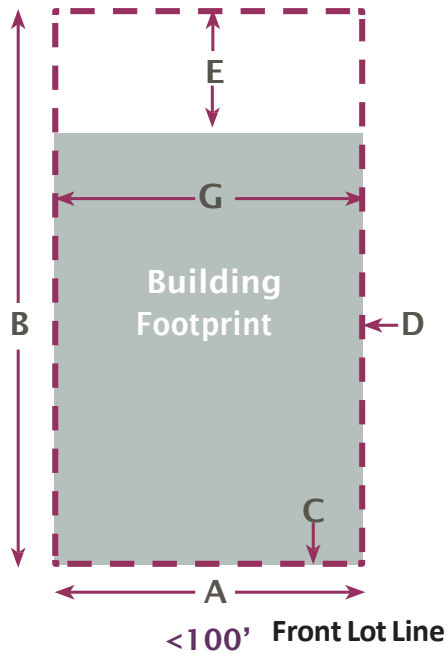
	MIN (feet)	MAX (feet)
(A) Lot Width	20	-
(B) Lot Depth	75	-
(C) Front Setback <sup>1</sup>	0	0/10
(D) Side Setback <sup>2</sup>	0	0
(E) Rear Setback <sup>3,4,5</sup>	20	-
(F) Landscaped Area <sup>6</sup>	10%	-
(G) Frontage Occupancy	80%	-
(H) Height <sup>7</sup>		
Broadway Corridor	3 stories/35 feet	5 stories /65 feet
TOD 'sub-district' <i>(south of Broadway between     Lake and West Streets)</i>	4 stories /45 feet	6 stories /75 feet

1. A maximum of 10 feet may be allowed only if the front yard has no parking and is landscaped and used in a manner that enhances the street life by such means as pocket parks or plazas, outdoor dining areas, or public art. No outdoor display of items for sale shall be permitted in the front yard.
2. Lots 100 feet wide or greater may have, but are not required to have, one side yard of 12 feet.
3. If the rear yard is dedicated to the City of Newburgh as all or part of a public parking lot or structure, the minimum setback shall be 5 feet with landscaping within the setback to screen from adjacent uses.
4. Lots fronting on Broadway and within the TOD sub-district are not required to have a rear yard.
5. Private service alleys are permitted within the rear yard.
6. Lots fronting on Broadway, and all those lots south of Broadway between West and Lake Streets, are not required to have a minimum landscaped area.
7. A 6th story is only allowed if set back from the front façade at least 15 feet.

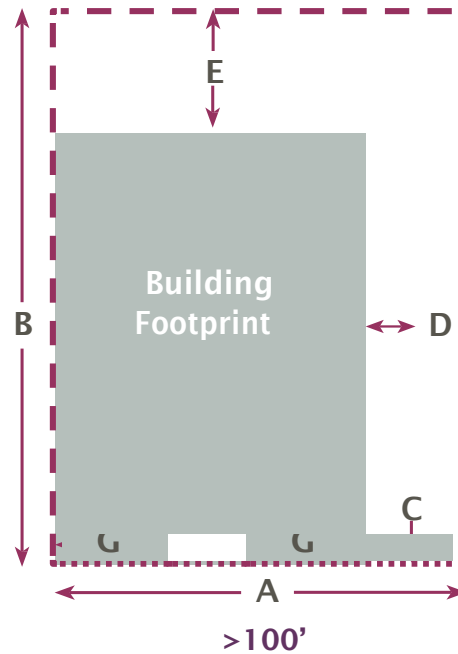


## Building Placement Examples

### Rear Lot Line



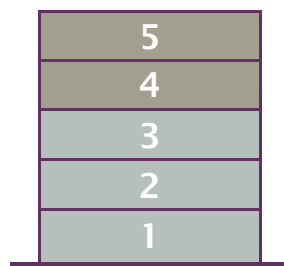
- Building placed at front lot line for continuous street wall
- Lot width <100 feet so no side yard allowed



- Recessed entrance allowed because 80% of façade is at lot line
- One side yard of 12 feet is allowed because lot width is greater than 100 feet

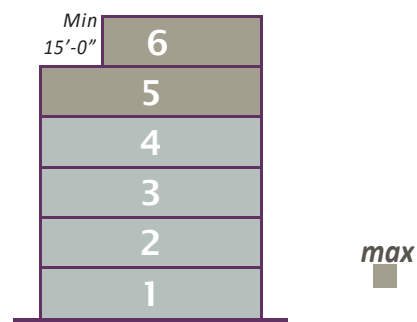
## Building Height Diagrams

### Broadway Corridor



- Minimum 3 stories (35 feet)
- Maximum 5 stories (65 feet)





















### TOD 'Sub-District'



- Minimum 4 stories (45 feet)
- Maximum 6 stories (75 feet)
- 6<sup>th</sup> story must be setback 15 feet

## Building & Sign Types

Buildings within the Broadway Corridor District must be of the Shopfront or Civic building type as defined in 3.1. Midrise buildings are also allowed in certain areas of the district. The table below illustrates the allowable sign types, as defined and regulated in 3.3, for each building type.

Building Type Sign Type	SHOPFRONT	MIDRISE*			CIVIC
 BAND					
 BLADE					
 SHINGLE					
 AWNING					
 YARD					
 MARQUEE					

\* Not allowed for buildings that front Broadway or are within the TOD sub-district.

## §300-137 DOWNTOWN NEIGHBORHOOD



*The Downtown Neighborhood is characterized by residential blocks featuring rowhouses, the Liberty/Grand Street commercial corridor with a mix of uses and building façades, and mixed-use blocks of residential with shopfronts on the corner.*

### PURPOSE & INTENT

The primary intent of this zone is to protect and promote the quality of the downtown residential neighborhoods immediately north and south of Broadway and the smaller scale mixed-use shop front buildings located primarily on Liberty and Grand Streets. This zone also includes the Liberty/Grand Street Heritage Corridor and contains a number of historically significant properties.

Several building forms are in this district. New infill development shall respect the pattern and scale of the existing urban development. Compact detached houses with small side yards are allowed except on lots fronting Liberty or Grand Streets. Within the more commercial areas of the district, such as Liberty or Grand Streets, the Shopfront and Midrise are the preferred building types.

These commercial, mixed-use, and higher density residential structures will reflect the historic development pattern of the area and capitalize on the cultural assets within the district.



## Lot Standards

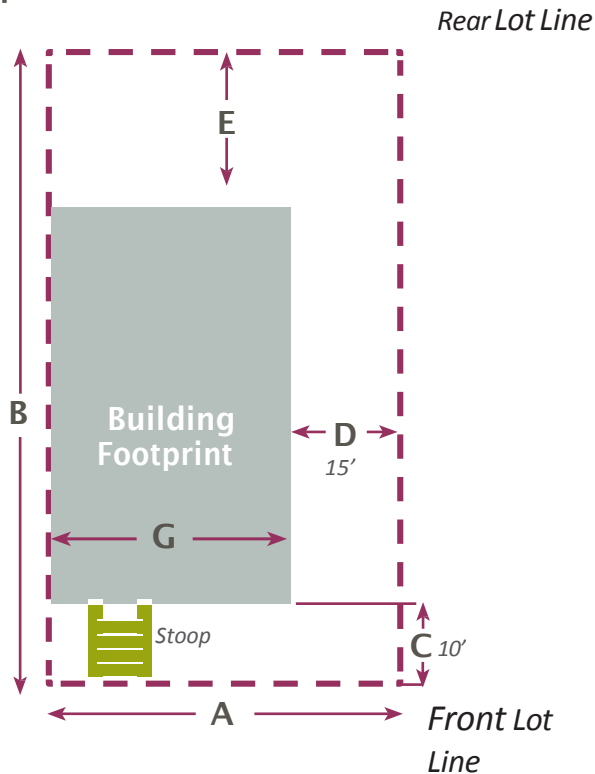
Buildings within the Downtown Neighborhood District shall comply with the following lot, building height, and building frontage requirements.

	MIN (feet)	MAX (feet)
(A) Lot Width	20	-
(B) Lot Depth	75	-
(C) Front Setback <sup>1</sup>	-	0/10
(D) Side Setback <sup>2, 3, 4</sup>	-	0
(E) Rear Setback <sup>5, 6</sup>	20	-
(F) Landscaped Area	15%	-
(G) Frontage Occupancy	80%	-
(H) Height <sup>7</sup>		
Rowhouse & Compact Detached House	2 stories/25 feet	4 stories/50 feet
Shopfront & Midrise	3 stories/35 feet	6 stories /75 feet

1. A maximum of 10 feet may be allowed only if:
  - a) For Shopfront, primarily commercially used Midrise, and Civic buildings – the front yard has no parking and is landscaped and used in a manner that enhances the street life by such means as pocket parks or plazas, outdoor dining areas, or public art. No outdoor display of items for sale shall be permitted in the front yard; OR,
  - b) For Rowhouses, primarily residential Midrises, and Compact Detached Houses – the entrance feature connects the house to the sidewalk.
2. Lots 100 feet wide or greater may have, but are not required to have, one side yard of 12 feet
3. Compact Detached Houses may have two side yards that are no more than 20 feet combined, no one of which is greater than 15 feet.
4. Rowhouses are allowed to have one side yard no greater than 12 feet and no less than 5 feet.
5. If the rear yard is dedicated to the City of Newburgh as all or part of a public parking lot or structure, the minimum setback shall be 5 feet with landscaping within the setback to screen from adjacent uses.
6. Private service alleys are permitted within the rear yard.
7. A 6th story is only allowed if set back from the front façade at least 15 feet.

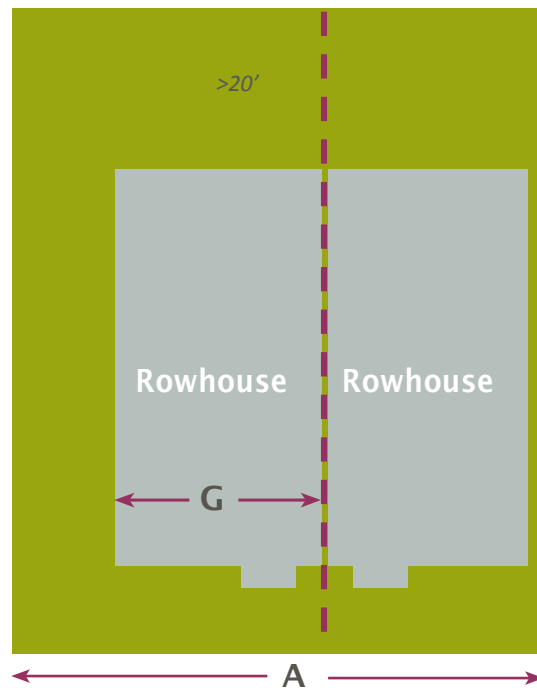
## Building Placement Examples

### Compact Detached House Placement Example



- Building façade is set back no more than 10 feet from front lot line
- Stoop continues to front lot line
- One side yard of 15 feet provided

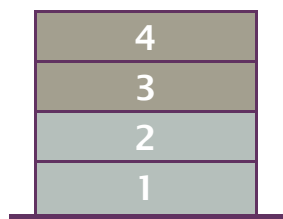
### Rowhouse Building Placement Example



- Building façade is set back no more than 10 feet from front lot line
- Stoop connects to sidewalk
- Where possible, building facade aligns with adjoining building
- One side yard on end building of 12 feet allowed

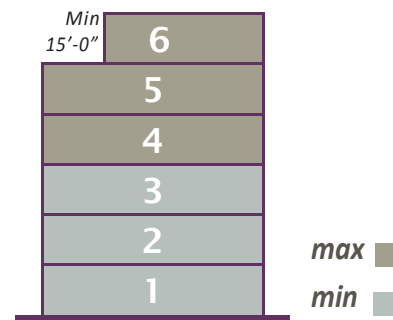
## Building Height Diagrams

### Rowhouse/Compact Detached House



- Minimum 2 stories (25 feet)
- Maximum 4 stories (50 feet)





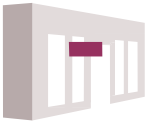
















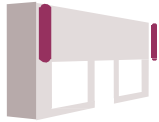

### Shopfront/Midrise



- Minimum 3 stories (35 feet)
- Maximum 6 stories (75 feet)
- 6<sup>th</sup> story must be setback 15 feet



## Building & Sign Types

Building Type Sign Type	SHOPFRONT	MIDRISE	ROWHOUSE	COMPACT* DETACHED	CIVIC
<b>BAND</b>					
					
<b>BLADE</b>					
					
<b>SHINGLE</b>					
					
<b>AWNING</b>					
					
<b>YARD</b>					
					
<b>MARQUEE**</b>					
					

\* Not allowed on lots fronting Liberty or Grand Streets

\*\* Only allowed on the Liberty and Grand Street building frontage.

## §300-138 WATERFRONT GATEWAY



*The Waterfront Gateway is anchored by institutional uses and civic buildings. Much of the rest of the district is characterized by large undeveloped and under-developed properties, many of which are City-owned.*



### PURPOSE & INTENT

The primary intent of the Waterfront Gateway District is to maximize the residential and commercial density of new development. New projects in this zone should capitalize on the dramatic views of the Hudson River Valley, while protecting the views of the river from upland as defined in Article XI. It is anticipated that marquis buildings will anchor this district along Broadway and a mix of uses north and south of Broadway will create a center of activity within the City.

This district forms a transition between the Waterfront, the Broadway Corridor, and the Downtown Neighborhood districts. Development should provide inviting public spaces that encourage pedestrian activity. The physical form of buildings is intended to vary within the district. Mid to high-rise buildings are encouraged along Broadway and its surrounding blocks, with shopfronts on the first floor to encourage

pedestrian activity. Higher density residential, mixed-use, and commercial buildings are encouraged in the rest of the district. Creative responses to the opportunities presented by the district's vacant and underutilized blocks are strongly encouraged.



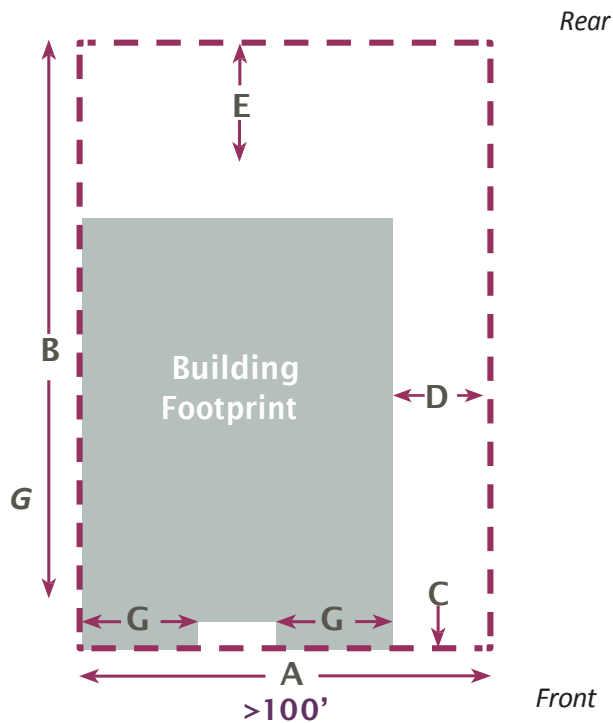
## Lot Standards

Buildings within the Waterfront Gateway District shall comply with the following lot, building height, and building frontage requirements.

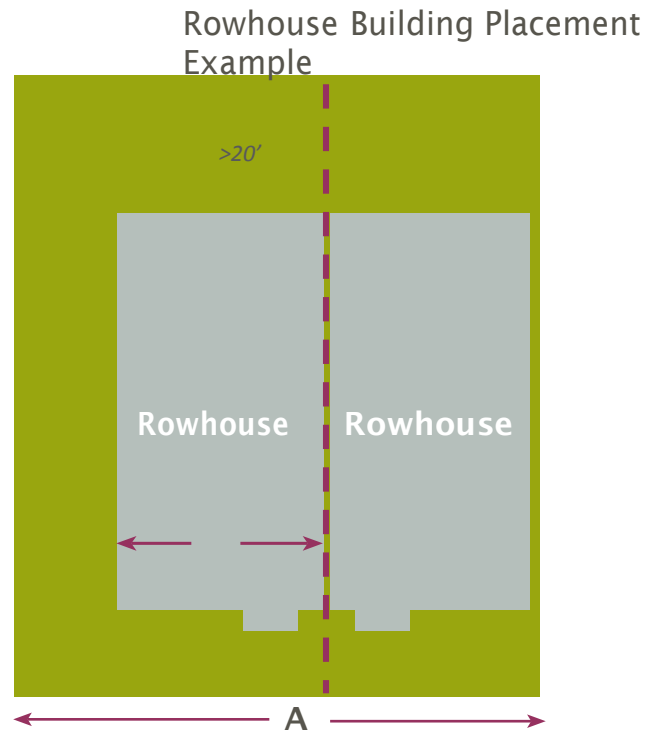
	MIN (feet)	MAX (feet)
(A) Lot Width	20	-
(B) Lot Depth	75	-
(C) Front Setback <sup>1</sup>	-	0/10
(D) Side Setback <sup>2,3</sup>	-	0
(E) Rear Setback <sup>4,5</sup>	20	-
(F) Landscaped Area <sup>6</sup>	10%	-
(G) Frontage Occupancy	80%	-
(H) Height <sup>7</sup>		
Rowhouse	3 stories/30 feet	4 stories/50 feet
Shopfront & Midrise	5 stories/50 feet	8 stories/95 feet

1. A maximum of 10 feet may be allowed only if:
  - a) For Shopfront, Midrise, and Civic buildings – the front yard has no parking and is landscaped and used in a manner that enhances the street life by such means as pocket parks or plazas, outdoor dining areas, or public art. No outdoor display of items for sale shall be permitted; OR,
  - b) For Rowhouses – the entrance feature connects the house to the sidewalk allowed.
2. Lots 100 feet wide or greater may have, but are not required to have, one side yard of 12 feet.
3. Rowhouses are allowed to have one side yard no greater than 12 feet and no less than 5 feet.
4. If the rear yard is dedicated to the City of Newburgh as all or part of a public parking lot or structure, the minimum setback shall be 5 feet with landscaping within the setback to screen from adjacent uses.
5. Private service alleys are permitted within the rear yard.
6. Lots fronting on Broadway are not required to have a minimum landscaped area.
7. An 8th story including parking stories is allowed for buildings set into the hillside only if the story is set back from the front façade at least 15 feet. The building cannot block any viewshed as defined in Article VII.

## Building Placement Examples



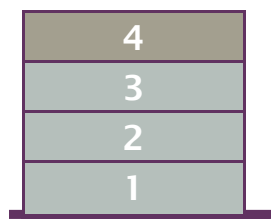
- Recessed entrance allowed because 80% of building façade is at lot line
- One side yard of 12 feet is allowed because lot width is greater than 100 feet



- Building façade is set back no more than 10 feet from front lot line
- Stoop connects to sidewalk
- Where possible, building façade aligns with adjoining building
- One side yard on end building of 12 feet allowed

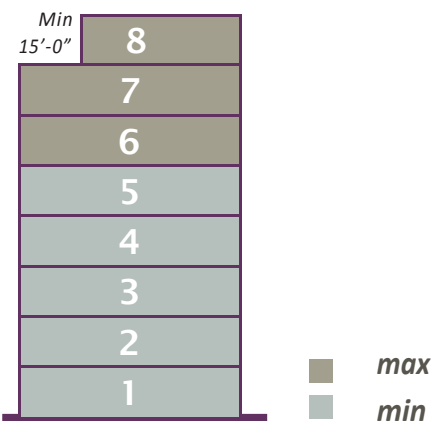
## Building Height Diagrams

Rowhouse/Compact Detached House















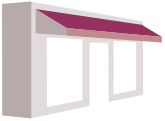






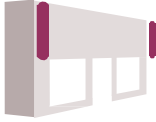



- Minimum 3 stories (30 feet)
- Maximum 4 stories (50 feet)

Shopfront/Midrise



- Minimum 5 stories (50 feet)
- Maximum 8 stories (95 feet)
- 8<sup>th</sup> story must be setback 15 feet

## Building & Sign Types

<div>Building Type</div> <div>Sign Type</div>	SHOPFRONT	MIDRISE*	ROWHOUSE*		CIVIC
<b>BAND</b>					
					
<b>BLADE</b>					
					
<b>SHINGLE</b>					
					
<b>AWNING</b>					
					
<b>YARD</b>					
					
<b>MARQUEE**</b>					
					

\*Not allowed for buildings that front Broadway

\*\* Only allowed on the Broadway frontage of buildings.



## §300-139 PLANNED WATERFRONT DISTRICT



*The waterfront district is currently characterized by large amounts of surface parking, thriving restaurants and marinas, and retail uses. A waterfront walkway has been started and links to a City Park offering beautiful views of the Hudson. The district also contains large undeveloped parcels.*

### PURPOSE & INTENT

The PWD is established with the goal of revitalizing the waterfront and establishing the City as a regional destination along the Hudson River. Within this district, water-dependent and water-enhanced uses are encouraged. A broad mix of uses, including housing, commercial, cultural, and open space uses are allowed.

Because of the importance of this district to the overall development of the City and because of the large number of vacant and underutilized parcels within the district, all new construction must obtain Site Plan Approval from the Planning Board in accordance with Article XII. Development must also meet open space standards as well as provide public access to the waterfront.

The physical form and orientation of the buildings within the PWD should reflect the importance of the Hudson River to the successful redevelopment of the waterfront and should encourage activation of the waterfront through increased pedestrian

utilization. Shopfront buildings and Rowhouses, along with Civic buildings, are permitted within this district. Parking lots, both structured and surface, should be primarily located adjacent to the railroad tracks. This will allow the parking to be screened from vantage points to the east and west.



## Lot Standards

Buildings within the Planned Waterfront District shall comply with the following lot, building height, and building frontage requirements.

	MIN (feet)	MAX (feet)
(A) Lot Width	20	-
(B) Lot Depth	75	-
(C) Front Setback <sup>1</sup>	-	0/10
(D) Side Setback <sup>2</sup>	-	15
(E) Rear Setback	-	-
(EE) Hudson River Setback <sup>*</sup>	40	-
(F) Landscaped Area <sup>3</sup>	15%	-
(G) Frontage Occupancy	80%	-
(H) Height <sup>4</sup>		
Rowhouse	2 stories/25 feet	4 stories/50 feet
Shopfront & Midrise	5 stories/50 feet	6 stories/65 feet

1. A maximum of 10 feet may be allowed only if:

- a) For Shopfront, Midrise, and Civic buildings – the front yard has no parking and is landscaped and used in a manner that enhances the street life by such means as pocket parks or plazas, outdoor dining areas, or public art. No outdoor display of items for sale shall be permitted in the front yard; OR,
- b) For Rowhouses – the entrance feature connects the house to the sidewalk.

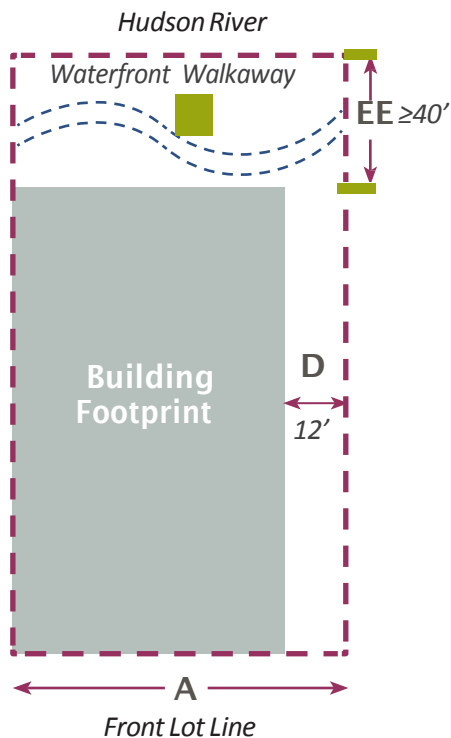
2. If a side yard is provided, it shall be no less than 8 feet and no more than 15 feet.

3. Lots fronting on Broadway and lots on the north side of Front Street between Broadway and South Street are not required to have a minimum landscaped area.

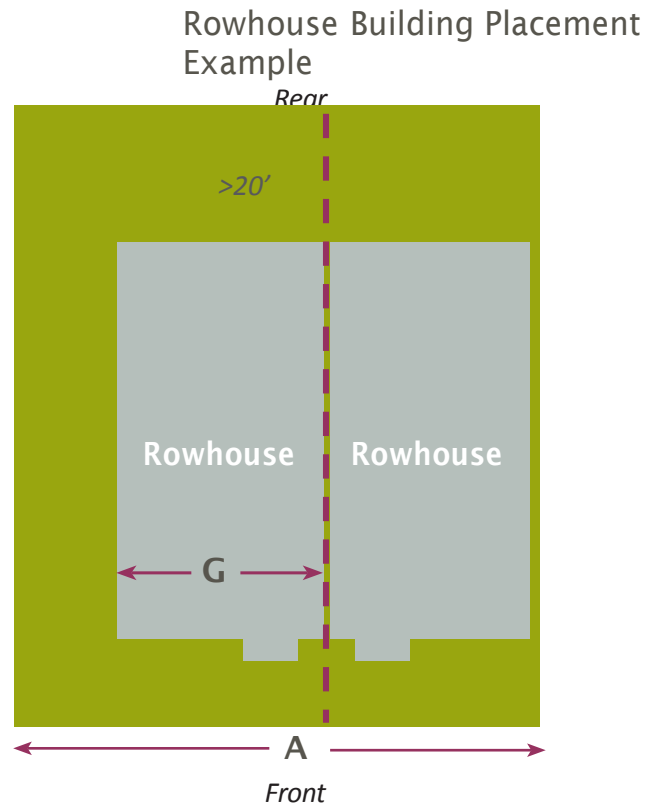
4. A 6th story is allowed if set back from the front façade at least 15 feet.

*\* Hudson River Setback is measured from each point along the shoreline, bulkhead, or stabilized shore, landward. Accessory swimming pools, parking, balconies, and porches are not allowed in the Hudson River Setback. Water-dependent uses and structures may be located in the Hudson River Setback with approval from the Planning Board.*

## Building Placement Examples



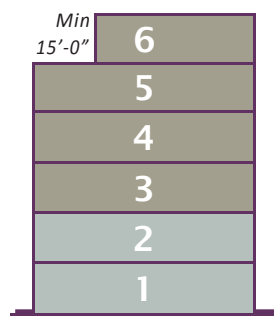
- Hudson River Setback of at least 40 feet
- Waterfront walkway provided in Hudson River setback



- Building façade is set back no more than 10 feet from front lot line
- Stoop connects to sidewalk
- Where possible, building facade aligns with adjoining building

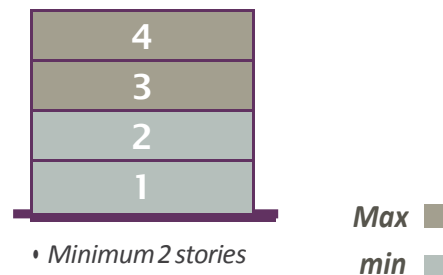
## Building Height Diagrams

### Shopfront/Midrise







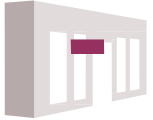














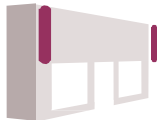



- Minimum 2 stories (25 feet)
- Maximum 6 stories (65 feet)
- 6<sup>th</sup> story should be setback 15 feet

### Rowhouse



- Minimum 2 stories (25 feet)
- Maximum 4 stories (50 feet)

## Building & Sign Types

<div>Building Type</div> <div>Sign Type</div>	SHOPFRONT	MIDRISE	ROWHOUSE*		CIVIC
					
					
					
					
					
					

\* Not allowed on Broadway or on the south side of Front Street.

\*\* Only allowed on the Broadway frontage of buildings.

**Massing** – In order to protect the view corridors to the Hudson River and to reduce the scale of waterfront buildings, an individual building may occupy no more than 100 feet of the dimension of the lot measured parallel to Front Street. Buildings to the north of Broadway and west of Front Street are exempted from this supplementary massing requirement.

**Parking** – Whenever possible, parking (both surface and structured) should be placed adjacent to the railroad tracks. In this manner, the visibility of the parking can be minimized both from points to the east (downtown) and from pedestrians within the waterfront. Limited on-street parking may be allowed at the discretion of the Planning Board and in consultation with the Department of Public Works. In addition, no parking shall be allowed within the Hudson River Setback.

### *Open Space*

All lots greater than 50,000 square feet in area shall provide maintained open space(s) for the benefit of the residents, clients, and/or general public.

The amount of maintained open space shall equal no less than 10% of the area of all lands not underwater.

The nature, location, and maintenance plans for such open spaces shall be approved by the Planning Board during Site Plan review.

A lot's *Waterfront Area*, may account for no more than 25% of a Site's required Open Space.

On-site open space can be used for passive or active recreation and/or to create, enhance, or preserve important views both into and from the City.

### *Public Access*

This 'Public Access' section summarizes the detailed requirements in Part 3.

#### Physical Access

Public access to the river's edge shall be provided for all lots having the Hudson River as part of its boundary.

Public access shall consist of:

- A *Waterfront Area* that is open to the public and has a minimum width of 20 feet
- A *Waterfront Walkway* within the *Waterfront Area* that is a minimum of 12 feet wide

#### Visual Access:

All new construction within the PWD shall preserve views of the Hudson River created by the public streets grid.

All applications for Site Plan Approval shall be evaluated for their impacts to the following scenic views:

- Montgomery and South Streets
- Washington's Headquarters
- Broadway and Colden Street
- Newburgh Public Library
- First and Montgomery Streets
- Bay View Terrace



## PART 3: SUPPLEMENTARY STANDARDS

**§300-151 – Building Types**

**§300-152 – Design Standards**

**§300-153 – Signs and Awnings**

**§300-154 – Streetscape Standards**

**§300-155 – Landscape Standards**

**§300-156 – Hudson River Waterfront Access**

**§300-157 – Parking**

The building types defined in this Section are allowed within the BC, DN, WG, and PWD districts. The design standards and regulations that apply to each building type are in addition to those required within each zoning district.

### Shopfront Building Type

The façade of the shopfront building type is placed at or close to the front lot line with an entrance generally at sidewalk grade. Pedestrian-oriented retail or office uses are generally located on the ground-floor with upper floor typically designed for residential, hospitality, or employment uses. The shopfront building type is characterized by:

- A high percentage of glazing on the first floor
- A prominent entrance
- First floor architectural articulation, such as a shopfront with cornice, or architecturally emphasized entrance



#### Shopfront Building Type

*Built to front lot line*

*High degree of transparency on first floor*

*Architectural articulation between 1st and 2nd floor*

*Roof line architectural features*

*Evenly placed windows*

### Standards

#### Massing

- Maximum length of building wall along a street shall be 200 feet
- Buildings must have a break in façade at least every 50 feet from the previous break or the end of the building. A façade break may be met through the use of architectural features (such as bay windows, porches, porticos, recessed doorways, etc.), through changes in building material or finish or by other similar means.

#### Windows

- Street level primary façades
  - Minimum of 60% window coverage
  - Transparent with views into the business
  - Bottom of window shall be between 24 and 32 inches above the sidewalk
- Floors above street level and secondary façades
  - Minimum 30% window coverage for commercial uses
  - Minimum 15% window coverage for residential uses
  - Individual window proportions shall be greater in height than width

- Exterior window guards (e.g. security guards) shall be integrated with the design of the building
- Windows shall be placed in a consistent pattern within the first floor, floors two through the penultimate floor, and the top floor

#### Entrances

- Main building entrances shall be accentuated – permitted accents include: recessed, canopy, awning, portico, or overhang
- All primary entrances shall be illuminated from above. No up facing lighting is permitted.
- Security door guards shall be integrated with the design of the building

#### Corner Articulation

- Main entrances to buildings on corner lots should be oriented to the corner and public street fronts
- Main building entrance should be on the primary street
- Massing and architecture of the building should reflect the importance of a corner site and relate to both street frontages

## Midrise Building Type

The midrise building is a key characteristic of an urban downtown providing higher density buildings where the building line generally meets the lot line. Midrise buildings may include a vertical mix of uses (such as ground-floor retail or service with upper floors residential, service, or offices), or single-use building (such as residential or office).

### Standards

#### Massing

- Maximum length of building wall along a street shall be 200 feet
- Buildings must have a break in façade at least every 50 feet from the previous break or the end of the building. A façade break may be met through the use of architectural features (such as bay windows, porches, porticos, recessed doorways, etc.), through changes in building material or finish, or by other similar means.

#### Windows

- Minimum 30% window coverage on first floor
- Minimum 15% window coverage above the first floor
- Individual window proportions shall be greater in height than width
- Exterior window guards (e.g. security guards) shall be integrated with the design of the building
- Windows shall be placed in a consistent pattern within the first floor, floor two through the penultimate floor, and the top floor.

#### Entrances

- Main building entrances shall be accentuated – permitted accents include: recessed, awning, canopy, portico, or overhang
- Main building entrances should be designed to reflect the primary use of the building. If primarily a residential use, midrises are encouraged to use a stoop, lightwell, or dooryard entrance type (as defined in the 'rowhouse' building type)
- A midrise building may also have a forecourt entrance. A forecourt entrance is when a small courtyard is placed on the front lot line of



#### Midrise Building Type

*Building pulled to front lot line*

*Some transparency on first floor*

*Evenly spaced window openings*

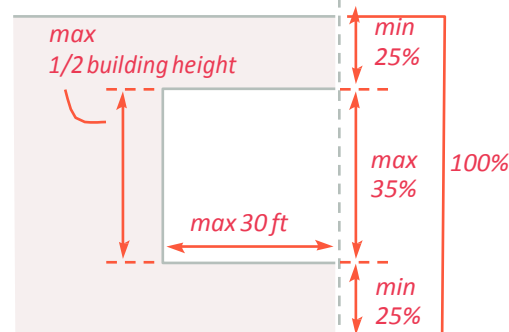
*Primary entrances should be accentuated*

the building. A forecourt may occupy no more than 35% of the length of the front façade and must be placed in the middle of the building's front façade such that no less than 25% of the length of the front façade is located on either side of the forecourt. The forecourt shall be no more than 30 feet deep and no wider than half of the building's height.

#### Corner Articulation

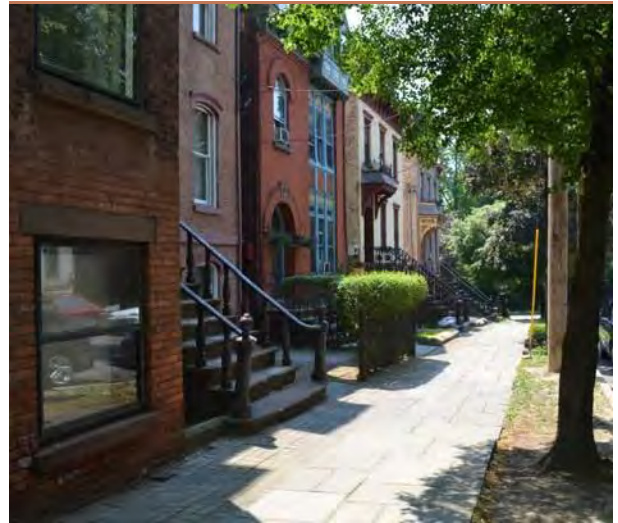
- Main entrances to buildings on corner lots should be oriented to the corner and public street fronts
- Main building entrances should be on the primary street
- Massing and architecture of the building should reflect the importance of a corner site and relate to both street frontages

#### Forecourt Plan



### Rowhouse Building Type

- The Rowhouse Building Type is a residential structure typically located on a narrow lot, that shares a party wall with a structure on an adjoining lot. Rowhouses typically range from 2 to 4 stories and are also called townhouses and attached houses. Rowhouses are prominent in the Downtown Neighborhood District in particular, and help provide a broad choice of housing types within the City.
- Rowhouses shall be no more than 30 feet wide and the front façade shall be located near the front lot line



#### Rowhouse Building Type

*Rowhouses with stoop and dooryard entrance type features  
All entrance features reach the front lot line  
Pedestrian clear width provided next to lot line with  
streetscape zone closest to curb*

### Standards

#### Windows

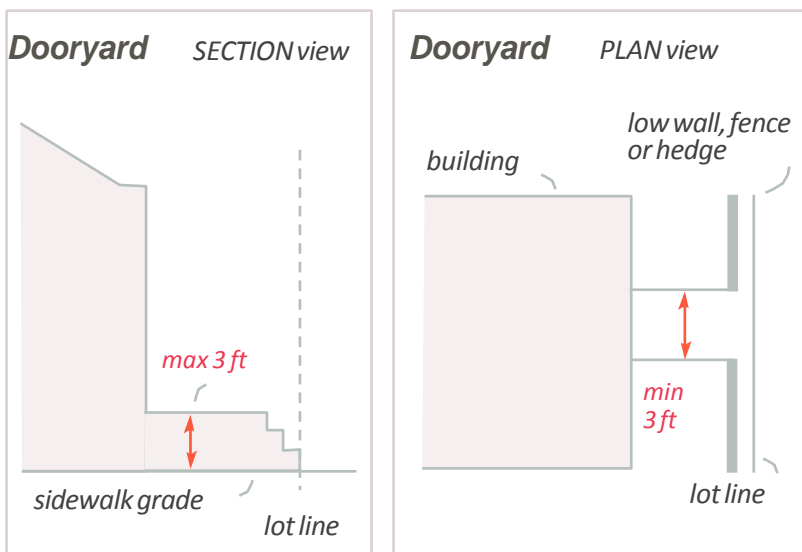
- Individual window proportions shall be greater in height than width
- Exterior window guards (e.g. security guards) shall be integrated with the design of the building
- Windows shall be placed in a consistent pattern within the first floor, floors two through the penultimate floor, and the top floor

#### Entrances

- Rowhouses shall have one of the four entrance types defined below
- Rowhouses shall have their primary entrance on the front façade

*Entrance Types***STOOP***Stoop Entrance Type**Frontage Line defined by low wall, hedge, or fence*

- The elevated stoop serves to engage the sidewalk and ensure privacy within the building
- The stairs of the stoop align with, or near to, the lot line
- The stairs to the stoop may be perpendicular or parallel to the sidewalk
- The stoop may have an awning, porch, or portico
- A low wall, fence, or hedge may be provided to define the frontage line

**DOORYARD**

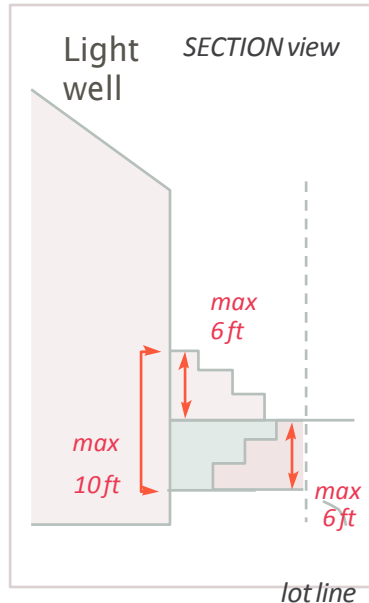
- In the Dooryard Entrance Type:
  - A low wall, fence, or hedge is provided to define the frontage line; and,
  - The main entrance is provided at the same grade as the 'dooryard' that is created.
- Dooryards must be within three vertical feet of the grade of the adjacent sidewalk
- Any stairs that are provided must align with, or near to, the frontage line



## LIGHTWELL



*Lightwell providing an entrance to the ground floor and basement level.*



- In the Lightwell Entrance Type, the setback of the main building façade features either an elevated terrace or recessed lightwell
- The Lightwell Entrance Type allows natural sunlight to enter the floor below grade and often serves to allow an outside entrance from the ground floor and the one immediately below
- Neither the top of the terrace or the

bottom of the lightwell shall be more than 6 feet in vertical distance from the sidewalk. In no instance shall the distance between the top of the terrace and the bottom of the lightwell be more than 10 feet.

## PORCH



*Porch open on two sides and engages building on other two sides*



*Porch feature shared between multiple rowhouses*

- Porches must be a minimum of 18 inches above the sidewalk grade
- Porches must maintain a clear path of travel that is at least three feet wide

## Compact Detached House

A compact detached dwelling is located on an urban lot no wider than 56 feet. The maximum individual side yard is 15 feet and two side yards combined may be no more than 20 feet.

### Windows

- Individual window proportions shall be greater in height than width
- Exterior window guards (e.g. security guards) shall be integrated with the design of the building
- Windows shall be placed in a consistent pattern within the first floor, floors two through the penultimate floor, and the top floor

### Entrances

- Main building entrance shall face the street
- Secondary entrance may be provided on the side or rear of the building if facing a side yard at least 5 feet wide or greater, or a rear yard
- Compact Detached Houses shall have one of the four Entrance types allowed for Rowhouses (e.g. Stoop, Dooryard, Lightwell, or Porch)

### Massing

- Compact Detached Houses shall be no more than 36 feet wide
- Where possible, the front building façade shall align with neighboring structures

## Civic

Owing to its special and public or quasi-public use, the Civic Building Type is designed to stand out from the form of the adjacent area. Civic buildings are often architecturally distinctive buildings that occupy prominent spaces in the community. The Civic Building Type requires a special use permit and site plan approval from the Planning Board in all districts. Civic Buildings do not need to be institutionally or government owned. For example, Civic Buildings could include theaters.



### Civic

*Orange County Community College building  
Civic building with unique architecture and site design  
Capitalizes on site location, orientation to the Hudson River  
Prioritizes pedestrian movements*

## Design Standards

The following design standards shall apply to all of the downtown districts. They are intended to:

- Preserve and enhance the architectural character of the City
- Promote pedestrian access and activity
- Maintain the role of streets as civic and social spaces

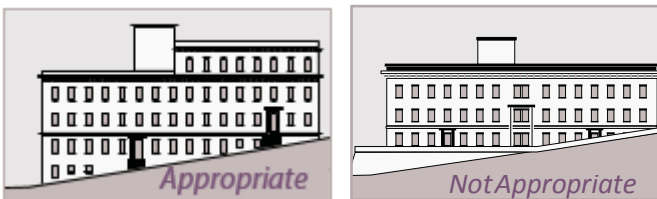
## Topography

When topography is altered during construction, the site shall be graded to avoid:

- The creation of retaining walls or blank walls taller than four feet in height along any street frontage
- Mass grading of a site that results in buildings not reflecting the topography of the site



*Appropriate mass grading of a site allows narrow footprint buildings to step up and follow the site topography.*



*Appropriate grading for large footprint buildings addresses the street along the entire frontage and does not create large blank retaining walls or building facades.*

## Projections and Encroachments

- Architectural building elements, such as balconies, bay windows, open porches, and cornices may encroach up to three feet beyond the front lot line if the bottom of the encroaching element is at least 10 feet above the grade of the sidewalk
- Window or projected air conditioners are not permitted on the front façade
- Flags attached to a building façade are permitted to encroach up to three feet

beyond the front lot line if the base of the pole is at least six feet above the grade of the sidewalk and is angled upward.

## Architectural Features







- Windows may not be placed on a building façade that is within 2 feet of an adjacent lot
- Architectural features, such as balconies and bay windows, are encouraged for all building types
- All building types should include a top floor cornice or comparable architectural feature. If the top floor is required to be set back from the front façade of the floor immediately below, the penultimate floor shall also have a cornice or similar architectural feature.
- Architectural features and windows should be continued on all sides of the building that are visible from a street or public parking area. Blank walls should be avoided.
- Mechanical equipment and refuse containers shall be concealed from public view either by being placed to the rear of the building or screened with appropriate landscaping or walls or architecturally compatible rooftop masking

## Building Materials

- Building materials for finishes include wood, brick, stucco, stone, or fiber-cement siding and trim
- Vinyl, aluminum, or sheet metal siding or trim and concrete blocks or walls are not allowed as finish material in any district

## Primary Façade

- If a building is on the corner, the primary façade of a building is that which faces the primary street
- The primary street is the one on which the primary use of the building is concentrated
- For Shopfront Building Types, the primary street will usually be either Broadway, Liberty, Grand, or Front Streets

		Quantity per Façade	Maximum Area (square foot)	Maximum Height (h)	Maximum Width (w)
	<b>BAND</b>	1	16	minimum 1 ft; maximum 3 ft	90% of façade
	<b>BLADE</b>	1	8	4	4
	<b>SHINGLE</b>	1	6	3	2
	<b>AWNING</b>	1 per ground- fl door or window	90% of canopy	n/a	Full span of façade
	<b>YARD</b>	1	9	3	3
	<b>MARQUEE</b>	1	36	12	3

## Signage

The purpose of these requirements is to promote high-quality, well-designed signs that:

- Clearly advertise the tenant or user
- Enhance the architectural, structural or landscape features of the associated facility
- Enliven the resident and visitor experience
- Contribute to the improvement of the visual environment, expression of local character
- Minimize sign clutter

All new signs erected in the Form-Based Districts shall comply with the regulations in this Section. The regulations in this section are in addition to the signage regulations found in Part 2 of this Article and Chapter 250 of the City Code. Where the regulations in this Chapter conflict with any other signage regulation, the regulations of this Article shall prevail.

## General Standards

Historical markers and tablets, memorial signs and plaques, dates of building erection, and emblems installed by governmental agencies are all exempt from these regulations if they are 12 square feet or less.

Changeable Copy signs are permitted on Civic Buildings, schools, Houses of Worship, and buildings occupied by not-for-profit organizations. (Changeable copy signs are those designed to hold copy (letters, numbers, graphics) that can be readily and periodically modified.)

Signs shall be compatible with building design in terms of relative scale, overall size, materials and colors. Signs shall not dominate a building façade or streetscape

## Legibility

- Signs shall avoid hard-to-read intricate type- faces, and limit the number of letter styles
- The area of the sign devoted to text shall be limited. Lettering and logos shall not occupy more than seventy-five percent (75%) of the sign face.
- Signs may use symbols and logos
- Signs shall avoid large contiguous areas of blank space

Minimum Ground Clearance (feet)	Depth (Projection from façade) (feet)	Width of Sign	Maximum Text and Graphics Height (inches)	Maximum Projection into ROW (feet)
(c)	(d)		(t)	(p)
8	1	n/a	18	1
8	4' or 1/3 width of sidewalk, whichever is less	n/a	8	4' or 1/3 width of sidewalk, whichever is less
8	2	n/a	8	2
10	4 feet minimum	n/a	2 ft max text height ; 75% of the awning width max	maximum projection 2 feet from curb
1	n/a	5 inches maximum	75% of sign height max	not allowed
12	3	12 inches maximum	75% of sign width max	3

### Location and Size

- Signs shall be designed to relate to the architectural features of the building and to create visual continuity with other shopfronts in the same or adjacent buildings
- When possible, signs shall be placed at or near the public building entrance to indicate accesses
- For the purposes of this sign regulation section only, façade shall mean either a building façade, or that portion of a building façade that is occupied by a single tenant space having a public entrance on the building façade ("Business Façade"). For spaces located interior to a building that do not have direct access to the building façade, the elevation at which public access is provided shall be considered the business façade.

### Illumination

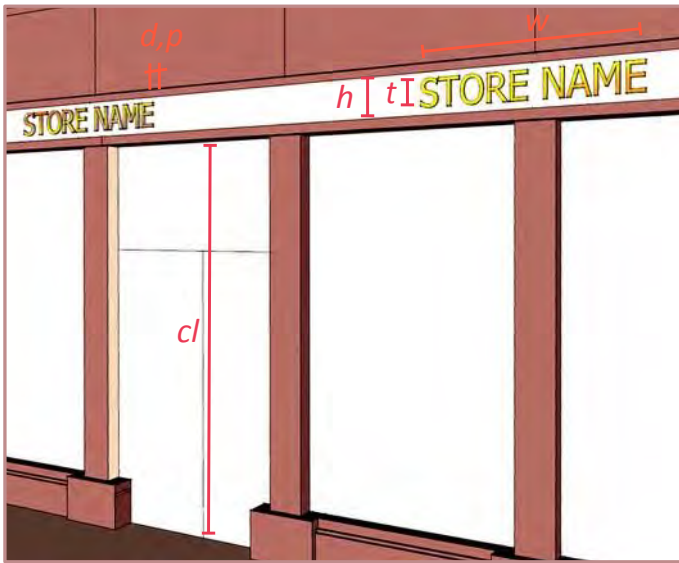
- Utilization of a direct source of light (e.g. spotlight) is permitted. The light shall be focused on the sign and shielded to prevent glare.

- Back-lit, solid letters are encouraged
- Individually illuminated letters, either internally illuminated or back-lit (reverse channel), are permitted
- Signs using internally illuminated cabinet with translucent panels ("box signs") are not permitted
- Signs that use blinking or flashing lights shall be prohibited
- Neon signs and electronic reader board signs are prohibited

### Materials

- Sign materials shall be selected with consideration for the architectural design of the building's façade. Permitted materials include wood or PVC that is carved, sandblasted, etched, properly sealed and painted, or stained or metal that is formed, etched, cast, engraved, and properly primed and painted or factory coated to protect against corrosion. Acrylic is also permitted.



**BAND****Description**

- Individual cut letters placed directly against the façade or placed on a solid background attached to the façade
- The display surface is parallel to the plane of the building façade
- The sign projects no more than 12 inches from the building façade

**General Provisions**

- Sign is mounted, not be painted directly on the façade
- No portion of the band sign may extend above the roof line or above a parapet wall of a building with a flat roof
- No portion of a band sign may extend above the lower eave line of a building with a pitched roof
- A band sign cannot cover windows or architectural details

**BLADE****Description**

- Mounted perpendicular to primary street facing façade
- Pedestrian-scale lettering, not auto-scaled

**General Provisions**

- Must be located at least 25 feet from any other blade or projecting sign
- Top of sign may not be higher than the top of the first floor
- May be mounted only below the second floor
- Shall not have more than two faces

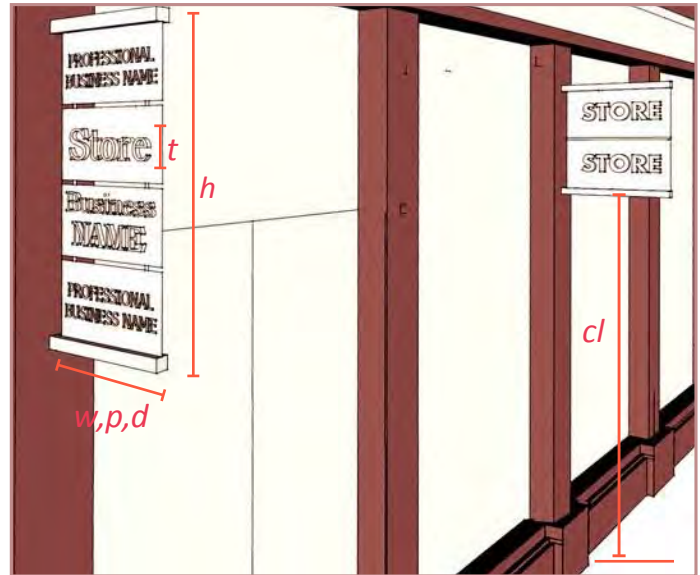
## SHINGLE

### Description

- Small projecting sign that hangs from a bracket or support perpendicular to façade
- Located adjacent to, or over, the building entrance
- Pedestrian scale lettering, not auto-scaled.

### General Provisions

- Hanging bracket must be an integral part of the sign design
- Must be located below the window sills of the second floor
- May not be illuminated



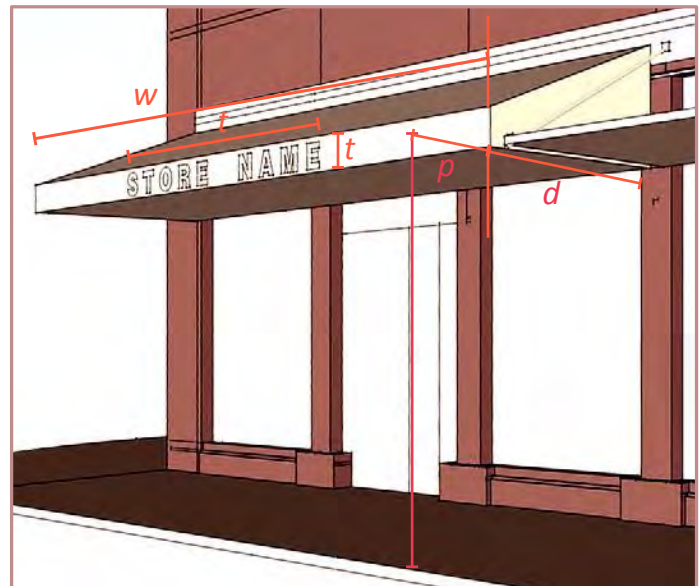
## AWNING

### Description

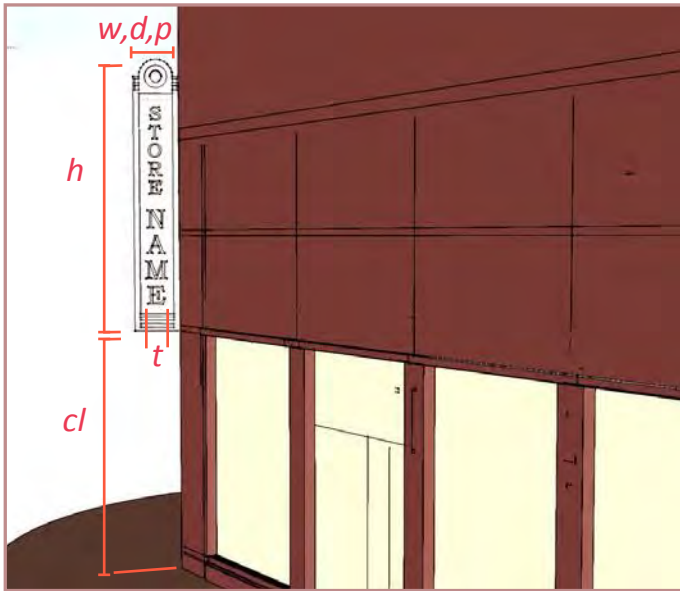
- Lettering, graphics or symbols adhered to awning

### General Provisions

- Must be flush with the awning or canopy
- Only awnings or canopies over ground story doors and windows may contain signs
- A maximum of one sign is allowed per vertical awning face
- Internal lighting or back lighting of awning signs is prohibited



## MARQUEE



## Description

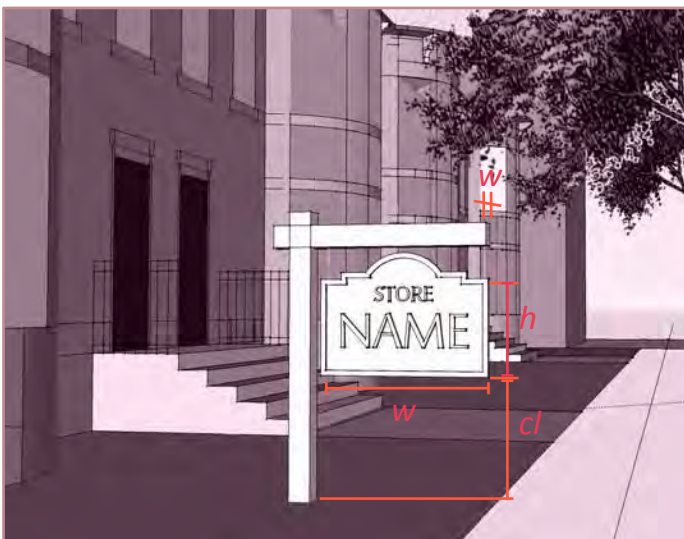
- Large projecting sign
- May be placed at second story or above
- Oriented perpendicular to the façade or at a 45 degree angle to the corner of a building

## General Provisions

- Top of sign may not be higher than the top of the building

## YARD

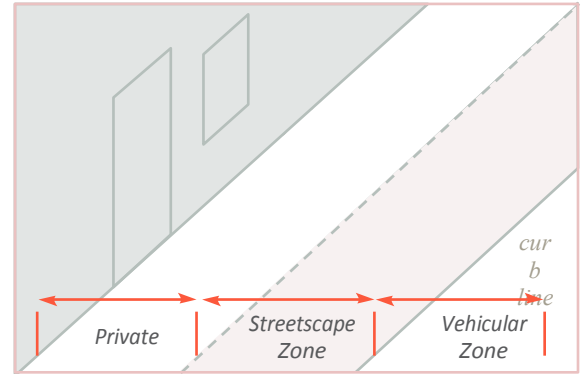
## Description



- Freestanding sign attached to the ground by one or more support structures
- Structure may be no higher than 5 feet, measured to top from the ground
- Sign hangs from the bracket or support
- Must be located at least 25 feet from any other yard sign
- Hanging bracket must be an integral part of the sign design

## STREETSCAPE STANDARDS

This section addresses the design of the streetscape zone. The streetscape zone is the space between the curbline and property line. The purpose of these regulations is to provide a high quality and consistent pedestrian environment.



## STREETSCAPE ZONE

The Streetscape Zone is comprised of three separate areas: the Pedestrian Walkway; the Street Tree/Utility Zone; and the Amenity Zone.

### Pedestrian Walkway

The Pedestrian Walkway is that portion of the Streetscape Zone that is devoted to pedestrian movement. The pedestrian walkway is clear of all temporary or permanent obstructions which may impede the flow or circulation of pedestrians. The minimum width and relative location of the pedestrian walkway within the Streetscape Zone varies throughout the Form-Based Districts with the absolute minimum width being 5 feet.

### Street Tree and Utility Zone

The street tree and utility zone is the area within the Streetscape zone located immediately adjacent to the curb line.

Wherever possible, canopy trees will be planted within a continuous bed no less than 5 feet wide and 10 feet long. The exposed surface below the tree shall be planted with ground cover or surfaced with permeable pavers or tree grates.

Where large areas of pervious surface treatments are not possible, structural soils shall be utilized to provide beneficial root zone conditions to improve tree health and long term survival.

Permitted elements placed within the street tree and utility zone include:

- Street trees
- Directional signage
- Traffic/parking signage
- Fire hydrants, manholes
- Other public utilities
- Municipal garbage and recycling containers
- Bike racks
- Bus Shelter
- Wayfinding signage

## Amenity Zone

The Amenity Zone is that portion of the Streetscape Zone that is accessible to the public, but may also be utilized by private property owners for temporary and incidental amenities that promote the overall pedestrian-orientated goals of the Form-Based Code Districts. When the Amenity Zone is located immediately adjacent to the building façade, a minimum 5 foot wide path shall be provided to each building entrance that is clear of all obstructions.

Permitted elements placed within the amenity zone on a temporary basis:

- Benches or other seating
- Small above ground planters or planted containers
- Foundation planting (i.e. shrubs and ground cover)
- Decorative entry pavers
- Café seating
- Place-making public art
- Bike racks

## DESIGN STANDARDS FOR STREETSCAPE ZONE

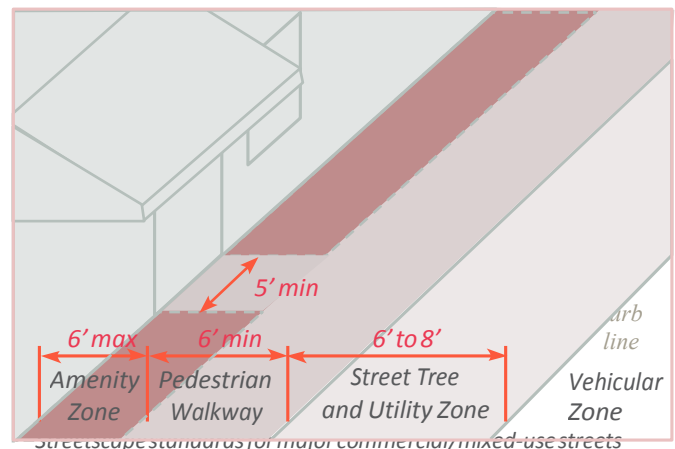
The required width and relative location of the areas within the Streetscape Zone vary by the type of street. There are two main types of streets in the Form-Based Districts, which are characterized by their usage and physical dimensions. They are Commercial/Mixed-Use Streets and Residential Streets.

### Commercial / Mixed-Use Streets

#### Major Commercial/ Mixed-use Streets

Major Commercial/ Mixed-use Streets are characterized by:

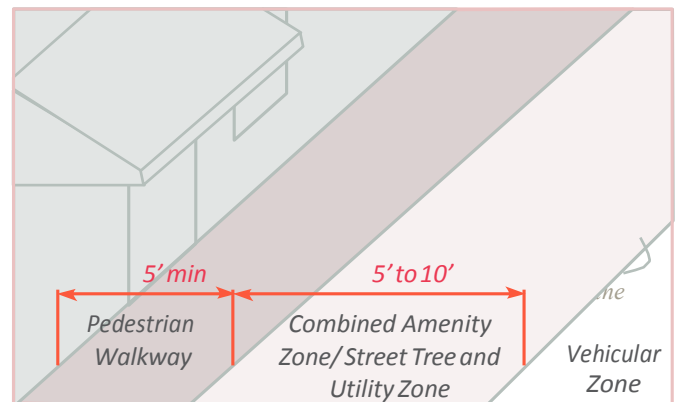
- Width of Public Right-of-Way (property line to property line): +/- 130 feet
- Width of Vehicular Roadway (curb to curb): +/- 90 feet
- Width of Streetscape Zone (curb to property line): +/- 20 feet
- Example: Broadway



### Minor Commercial/ Mixed-use Streets

Minor Commercial/ Mixed-use Streets are characterized by:

- Width of Public Right-of-Way (property line to property line): 60 feet to 70 feet
- Width of Vehicular Roadway (curb to curb): 30 feet to 40 feet
- Width of Streetscape Zone (curb to property line): 10 feet to 20 feet
- Example: Liberty Street or Ann Street



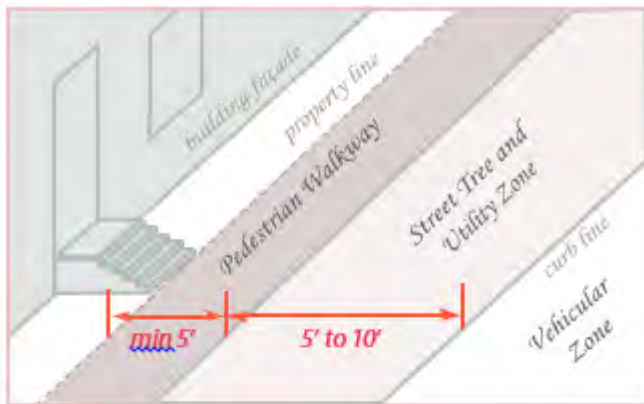


## Residential Streets

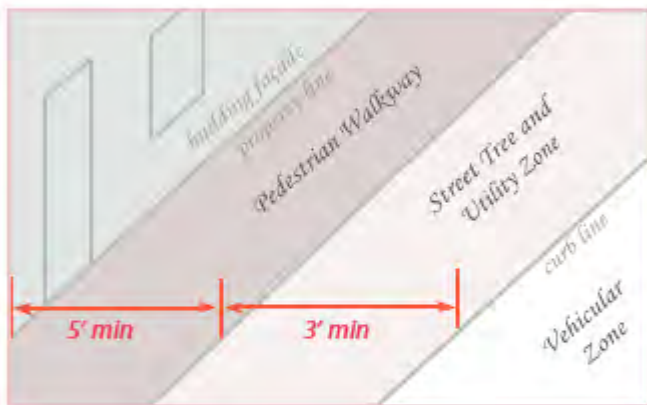
Residential streets within the FBC typically have the following characteristics

- Width of Public Right-of-Way (property line to property line): 36 feet to 60 feet
- Width of Streetscape zone (curb to curb): 20 feet to 36 feet
- Width of Pedestrian Zone (curb to property line): 8 feet to 15 feet
- Example: First Street, Parmenter Street

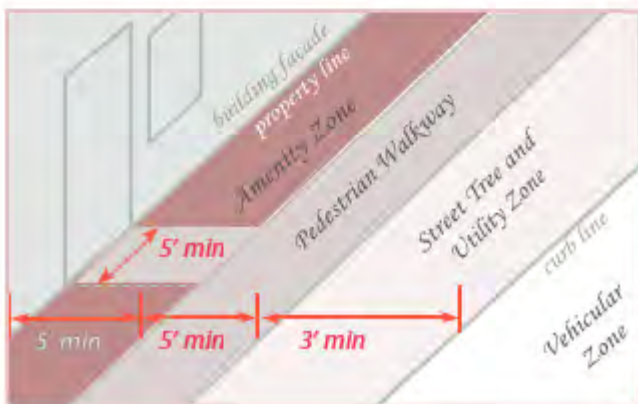
The following Streetscape Standards apply to residential streets within the Form-Based Districts.



These streetscape standards apply to residential streets that primarily feature buildings that are set back from the property line where the Streetscape Zone is approximately 10-15 feet wide. An Amenity Zone is not allowed on this type of Streetscape.



These streetscape standards apply to primarily residential streets where the building façade aligns with, or near to, the lot line and the Streetscape Zone is approximately 8 feet wide. An Amenity Zone is not allowed on this type of Streetscape.



These streetscape standards apply to primarily residential streets where the building façade aligns with, or near to, the lot line and the Streetscape Zone is greater than 10 feet wide. An amenity Zone no wider than 5 feet is permitted adjacent to the building façade, provided the minimum Pedestrian Walkway and Street Tree / Utility Zone dimensions are met and that a minimum 5 foot wide unobstructed path is provided to each building entrance.

### Landscape Standards

The following landscape standards apply primarily to the public realm and to projects within the Form-Based Code districts that require a Sidewalk Permit in accordance with Chapter 263 of the City Code. When possible, they should be followed by other projects within the Form-Based Districts.

#### *Landscape Materials*

1. All plant species must be native to the region or regionally appropriate as determined by the Conservation Advisory Council.
2. All invasive species, as identified by the United States Forest Service, Cornell Cooperative Extension, or the NYSDEC are prohibited from being planted in the Form-Based districts.
3. Replacement of invasive species with desirable hardwood species is encouraged.
4. All tree and other landscape materials shall meet the American Standard for Nursery Stock standards as published by the American Association of Nurserymen.
5. Tree and other landscape material selected for planting must be free from injury, pests, disease, nutritional disorders or root defects, and must be of good vigor in order to assure a reasonable expectation of survivability.
6. Large and medium canopy tree species shall be a minimum of 12 feet in height and have a caliper of at least 2.5 inches at time of planting.
7. Small canopy tree species should be a minimum of 4 feet in height and have a caliper of at least  $\frac{9}{16}$  inches and five or more branches at time of planting.
8. Shrubs shall be a minimum of 18 inches in height and width at time of planting.

#### *Landscape Installation and Maintenance*

1. Tree and landscape materials shall be installed according to standards established by the American National Standards Institute (ANSI).
2. Structural soil shall be installed in and

around all tree wells to provide adequate underground volume for root growth.

The structural soil should tie into adjacent landscaped areas to provide tree roots access to open soil.

3. Large and medium trees shall not be planted underneath or directly adjacent to overhead powerlines.
4. All plant material shall be maintained in good condition at all times in accordance with standards established by ANSI.
5. All plantings that die or are destroyed must be replaced during the next suitable planting season.
6. Attaching lights, signage, fence rails, and any other items to trees that may result in damage to the tree is prohibited.

#### *Design Requirements for Street Trees*

1. Street trees shall help define the boundary between automobile-zones and the streetscape zone.
2. All street trees planted in the streetscape zone are to be limbed up to a minimum of 6 feet.
3. Selection of tree species shall be based upon height, canopy diameter, disease resistance and transparency.
4. Large canopy street trees should be planted approximately every 30 feet.
5. A minimum soil volume of 400 cubic feet per tree is required.
6. To provide adequate underground volume for root growth, structural soil shall be installed under the paved areas around all tree pits of a dimension no less than 5' x 10'.
7. Wherever possible trees shall be planted in continuous tree pits or planting beds to provide optimal environment for root growth
8. Where continuous open-surface planting beds are not possible, structural soil should be used to provide a subsurface connection between tree pits to provide optimal conditions for tree root growth.

### ***Parking and Loading Area Landscaping***

These requirements apply to surface parking lots.

1. All parking and loading areas that are visible from the public right-of-way shall be screened with vegetation to minimize the visual impact of parked vehicles.
2. Shrubs and trees shall be installed in all parking lot medians to provide for semi-continuous plantings.
3. Within a surface parking lot each landscape island shall contain a minimum of 1 large canopy tree.

### ***Lot Landscaping and Foundation Plantings***

1. All permeable ground surfaces of lots in environments altered from their natural, predevelopment state and not provided for circulation of vehicles, bicycles or pedestrians shall be planted with vegetation or otherwise landscaped.
2. Except when a build-to line or minimum setback makes the provision of foundation plantings impractical, a foundation planting area shall be maintained around all structures. The foundation planting shall incorporate a mixture of trees, shrubs, and ground covers in order to soften the building façade. Foundation plantings shall not be required along any building elevation or portion thereof that contains only service and/or delivery areas that are not visible from any roadway.

## List of Recommended Street Trees (adapted from NYC DPR "Tree Planting Standards", April 2008)

### Large Trees-Mature Height Greater Than 50 Feet

Scientific Name	Common Name	Comments
<i>Ginkgo biloba</i>	Ginkgo	Male Only - Does Not Bear Fruit
<i>Quercus</i> spp. 'Fastigiata'	Fastigiata Oak	
<i>Liquidambar styraciflua</i>	Sweetgum	Plant Spring Only, lawn pits only
<i>Metasequoia glyptostroboides</i>	Dawn Redwood	
<i>Taxodium distichum</i>	Baldcypress	Ideal For Wet Soils
<i>Tilia cordata</i>	Littleleaf Linden	
<i>Gymnocladus dioica</i>	Coffee	Needs Lots of Space
<i>Gleditsia triacanthos</i> var. <i>inermis</i>	Honeylocust	Tolerates Tough Conditions
<i>Liriodendron tulipifera</i>	Tulip Tree	Tree Does Best in Lawn Pits
<i>Quercus rubra</i>	Northern Red Oak	Plant Spring Only
<i>Quercus bicolor</i>	Swamp White Oak	Plant Spring Only
<i>Quercus imbricaria</i>	Shingle Oak	Plant Spring Only
<i>Quercus palustris</i>	Pin Oak	Needs Large Tree Pit
<i>Quercus phellos</i>	Willow Oak	Plant Spring Only
<i>Tilia americana</i>	American Linden	Partial Shade, Fragrant Flowers
<i>Tilia x euclora</i>	Crimean Linden	Pest Resistant
<i>Tilia tomentosa</i>	Silver Linden	Fragrant Flowers
<i>Zelkova serrata</i>	Japanese Zelkova	

### Medium Trees - Mature Height 35-50 Feet

Scientific Name	Common Name	Comments
<i>Carpinus betulus</i>	European Hornbeam	
<i>Quercus robur</i>	English Oak	Plant Spring Only
<i>Cercidiphyllum japonicum</i>	Katsura Tree	Tree Does Best In Lawn Pits
<i>Corylus colurna</i>	Turkish Filbert	
<i>Nyssa sylvatica</i>	Black Gum	Should only be planted in extremely wet sites
<i>Ostrya virginiana</i>	American Hophornbeam	Plant Spring Only
<i>Quercus acutissima</i>	Sawtooth Oak	Plant Spring Only
<i>Eucommia ulmoides</i>	Hardy Rubber Tree	Tolerates Tough Conditions
<i>Styphnolobium japonicum</i>	Scholar Tree	Tolerates Tough Conditions

### Intermediate Trees - Mature Height 25-35 Feet

Scientific Name	Common Name	Comments
<i>Koeleruteria paniculata</i>	Goldenrain tree	Tolerates Tough Conditions
<i>Maackia amurensis</i>	Amur Maackia	

### Small Trees - Mature Height Less Than 25 Feet

Scientific Name	Common Name	Comments
<i>Amelanchier canadensis</i>	Serviceberry	
<i>Cercis canadensis</i>	Eastern Redbud	Does Best in Lawn Pits
<i>Carpinus caroliniana</i>	American Hornbeam	Plant Spring Only
<i>Fraxinus 'Leprechaun'</i>	Leprechaun Green Ash	
<i>Malus</i> spp.	Crabapple	
<i>Crataegus</i> spp.	Hawthorn	
<i>Cornus mas</i>	Cornelian Cherry	
<i>Prunus virginiana 'Schubert'</i>	Schubert Cherry	Tolerates Tough Conditions
<i>Syringa reticulata</i>	Japanese Tree Lilac	
<i>Prunus cerasifera</i>	Purpleleaf Plum	
<i>Prunus 'Okame'</i>	Okame Cherry	
<i>Prunus padus</i>	European Birdcherry	
<i>Prunus sargentii</i>	Sargent Cherry	
<i>Prunus serrulata 'Kwanzan'</i>	Japanese Flowering Cherry	
<i>Prunus x yedoensis</i>	Yoshino Cherry	Tree Does Best in Lawn Pits

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## Hudson River Waterfront Public Access

### The purpose of this section is to:

- Promote and maintain the physical and visual public access to and along the waterfront;
- Create a desirable relationship between waterfront development, public access areas, and the upland communities;
- Protect the natural resources within this environmentally sensitive area.

### The requirements of this section apply to all lots within the PWD.

### Physical and Visual access to the Hudson River must be provided within the PWD.

#### Physical Public Access

- Public Access to the river's edge shall be provided on all lots having the Hudson River as part of its boundary. Public access shall consist of:
  - » A Waterfront Area that is open to the public, in accordance with the section below, that is a minimum of 20 feet wide as measured perpendicular from the Hudson River Shoreline
  - » A publicly accessible Waterfront Walkway within the Waterfront Area that provides a minimum clear width of 12 feet
- Waterfront Areas
  - » Waterfront Areas shall be accessible from a public sidewalk, street, public park, or other public place, or from another publicly accessible Waterfront Area, provided that access is provided to the Waterfront Area no less often than every 400 feet from a public place.
  - » Appropriately designed and scaled down lighting, seating, and trash receptacles shall be placed within the Waterfront Area at adequate intervals, as determined by the Planning Board.
  - » Waterfront Areas shall be free of obstructions, except for landscaping, seating, trash receptacles, works of art, lighting, informational kiosks.
  - » Waterfront Areas shall have signage, located at or near the walkway's connection to a public street, sidewalk, or park, that the walkway is "Open to the Public" and ADA-accessible, as well as the hours of operation (as allowed below) and the name and contact phone number of the person designated to maintain the walkway.
  - » Waterfront Areas shall be open to the public from dawn to dusk, except when the adjacent use is commercial in nature, in which case the walkway shall be open until the business is closed. Waterfront Walkways shall be open every day of the year, with the exception of closures necessary for maintenance and for no more than one day each year in order to preserve the private ownership of the area.
  - » Waterfront Areas, including Waterfront Walkways shall be maintained by the property owner. The Property owner shall be required to post a maintenance bond with the Building Department for 125% of the annual cost of maintaining the walkway, as certified by a registered architect or landscape architect. Such bond shall be replaced every five years with a bond equal to 125% of the current cost of maintaining the walkway for one year.
  - » Vehicle access is prohibited within the Waterfront Areas with the exception of emergency and maintenance vehicles.

- Waterfront Walkways Minimum Design Standards. Waterfront Walkways shall:
  - » Be designed in accordance with the Waterfront Design Guidelines, as adopted by the Conservation Advisory Council or the Planning Board (if such guidelines are available)
  - » Have a minimum clear and unobstructed width of 12 feet
  - » Be accessible to persons with physical disabilities as required by the ADA
  - » Connect to the Waterfront Walkways on adjacent lots

#### **Visual Access and Scenic Viewshed Protection**

- Construction within the right-of-way of the following mapped streets is expressly prohibited by this statute. The prohibition applies to the right-of-way width from the eastern most terminus of the following streets to the Hudson River shoreline.
  - » Washington Street
  - » Broadway
  - » Second Street
  - » Third Street
  - » Fourth Street
  - » South Street
- All applications for Site Plan Approval shall be evaluated for their impacts to the following scenic views, in accordance with Article XI:
  - » **The Dutch Reformed Church**
  - » Montgomery and South Streets
  - » Washington's Headquarters
  - » Broadway and Colden Street
  - » Newburgh Public Library
  - » First and Montgomery Streets
  - » Bay View Terrace

### Applicability

This section will apply to any new construction and any application requiring Site Plan Approval within the BC, DN, WG, and PWD districts.

### General Provisions

- Off-street parking that is required pursuant to this section shall be the sum total of the parking required for each use on the lot.
- Applicants that wish to provide fewer off-street parking spaces than required by this section may apply to the Planning Board for a Special Parking Permit as described in Article IX.
- Nothing in this section prohibits providing more off-street parking than is required by this section. It is recognized that adequate off-street parking will likely require creative and collaborative solutions.
- Required off-street parking does not need to be provided on the same lot as the use. However, if the parking is not on the same lot, the Applicant must demonstrate that the required parking spaces are available for a period of not less than 10 years for the exclusive use of the Applicant and that the allocated spaces are within 500 feet of the use.
- The size, dimension, and accessibility, including space for maneuvers, of all off-street parking areas shall be approved by the Building Inspector.
- All off-street parking shall be located behind, or to the side, of the principal building, or screened totally from the street.
- The shared use of off-street parking is encouraged by multiple uses, especially when those uses have differing times of peak demand.

### Off Street Parking Standards

- Residential and Commercial uses in the BC district. No off-street parking shall be required within the BC district with the exception of Civic buildings or new uses which are parking dependent such as theaters and supermarkets, which during the Special Permit application process, may be required to provide off-street parking in accordance with the “Bulk and Area Table”.
- Residential Uses in Other Districts.
  - » No off-street parking shall be required for the residential portion of any building with less than 4 units.
  - » Any building with more than 4 dwelling units must provide off-street parking for those dwelling units at a rate of 1 space for every dwelling unit.
- Non-Residential Uses in the DN, WG, PWD.
  - » Uses Permitted by Right-No Site Plan Required.
    - Off-street parking shall not be required for the first 5,000 square feet of commercially occupied space (or the first 3,000 square feet of space occupied by a restaurant) within an individual building within the DN, WG, and PWD districts.
    - Off-street parking for the portion of the occupied space above the 5,000/3,000 square feet limit set above shall be calculated at the rates set in the “Bulk and Area Table” for the Commercial and Industrial District.
  - » Uses requiring site plan or special use permit.
    - Owing to the unique nature of these uses and of their locations within the City, the off-street parking standards for uses requiring site plan or special use permit approval shall be determined by the Planning Board.

- In determining the amount of off-street parking required, the Planning Board shall consider:
  - *The amount of off-street parking that the use is likely to require, given its size and location in accordance with §300-32 for similar uses.*
  - *The amount and availability of on-street, municipal, or private parking available in the vicinity of the Site (ie, 500 feet).*
  - *The impact that the provision of off-street parking may have on the visual quality of the zoning district.*
- Off-street loading berths shall be provided according to the schedule and regulations in Article X.

RESOLUTION NO.: 153 - 2015

OF

JULY 13, 2015

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH  
ISSUING A NEGATIVE DECLARATION UNDER  
STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) WITH RESPECT TO  
THE ADOPTION OF THE REVISED CHAPTER 300 ENTITLED “ZONING” OF  
THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH**

**WHEREAS**, the City of Newburgh is proposing to adopt a revised Chapter 300 entitled “Zoning” of the City Code of Ordinances of the City of Newburgh; and

**WHEREAS**, the City of Newburgh proposes to undertake the adoption of the revised Chapter 300 entitled “Zoning” in compliance with the terms of State law and does hereby wish to review the project in accordance with the State Environmental Quality Review Act (SEQRA); and

**WHEREAS**, by Resolution No. 100-2014 of April 28, 2014, in compliance with SEQRA, the City Council of the City of Newburgh declared its intent to assume Lead Agency status, classified the project as a Type I action, proposed to accept as complete an Environmental Assessment Form and referred the proposed Chapter 300 entitled “Zoning” to and the Orange County Planning Department pursuant to General Municipal Law Section 239-m; and

**WHEREAS**, by Resolution No. 164-2014 of July 14, 2014, in compliance with SEQRA, the City Council of the City of Newburgh declared itself to be Lead Agency status for the environmental review of the action pursuant to 6 NYCRR 617.6 and accepted Part 3 of the Environmental Assessment Form (“EAF”); and

**WHEREAS**, the City of Newburgh has taken a hard look at the environmental impacts of adopting the revised Chapter 300 entitled “Zoning” and has determined that there will be no negative environmental impacts regarding same;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York hereby issues a Negative Declaration pursuant to the SEQRA.



*Full Environmental Assessment Form  
Part I - Project and Setting*

## Instructions for Completing Part 1

Part 1 is to be completed by the applicant or project sponsor. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part I based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either "Yes" or "No". If the answer to the initial question is "Yes", complete the sub-questions that follow. If the answer to the initial question is "No", proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the project sponsor to verify that the information contained in Part I is accurate and complete.

### A. Project and Sponsor Information.

Name of Action or Project: City of Newburgh Zoning Code Update		
Project Location (describe, and attach a general location map): City of Newburgh, New York		
Brief Description of Proposed Action (include purpose or need): The Proposed Action is an update to the existing Zoning Ordinance (Chapter 300) and Zoning Map for the City of Newburgh, to replace Chapter 300 off the City's Code to conform with the City's Adopted Future Land Use Plan (2011). At present, the City's Code does not adequately conform to the physical layout and infrastructure of the City of Newburgh. As a result, Applicants are required to seek variances and waivers for a significantly disproportionate number of proposed applications. This process is onerous, and results in the inefficient use of time and financial resources to process applications. The purpose of the new Zoning Code is implement measures that will streamline the application process and to advance the goals of the other adopted City planning documents, including, but not limited to, the Pace Streamlining Report, Waterfront Charette, Liberty/Grand Heritage Corridor, Newburgh 2020, and the Newburgh Transportation and Land Use Study. Specifically, the new Zoning Code will recognize the existing urban pattern of development, promote mixed-use development, streamline the application and review process, encourage economic development, and incorporate form-based zoning for the downtown. The process to update the Zoning Code began in January 2013 with the appointment by the City Council of a Zoning Advisory Team. This team, comprised of City officials, staff, and board members, as well as leaders of various community groups, met approximately 17 times to draft the new Zoning Code and held two public engagement sessions to solicit public feedback. The team then presented its recommendations to the City, which now proposes to adopt them in the form of the new Code.		
Name of Applicant/Sponsor: City of Newburgh	Telephone: E-Mail:	
Address: 83 Broadway		
City/PO: Newburgh	State: NY	Zip Code: 12550
Project Contact (if not same as sponsor; give name and title/role): City Manager	Telephone: 845-569-7301 E-Mail:	
Address:		
City/PO:	State:	Zip Code:
Property Owner (if not same as sponsor):	Telephone: E-Mail:	
Address:		
City/PO:	State:	Zip Code:

## B. Government Approvals

B. Government Approvals Funding, or Sponsorship. ("Funding" includes grants, loans, tax relief, and any other forms of financial assistance.)		
Government Entity	If Yes: Identify Agency and Approval(s) Required	Application Date (Actual or projected)
a. City Council, Town Board, or Village Board of Trustees	1E1Yes0No	City Council Adoption of Zoning Amendments
b. City, Town or Village Planning Board or Commission	0Yes0No	
c. City Council, Town or Village Zoning Board of Appeals	0Yes0No	
d. Other local agencies	DYesDNo	
e. County agencies	1I]YesDNo	General Municipal Law 239 referral
f. Regional agencies	DYesDNo	
g. State agencies	0Yes0No	
h. Federal agencies	DYesONo	
i. Coastal Resources.		
i. Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway?		121YesDNo
ii. Is the project site located in a community with an approved Local Waterfront Revitalization Program?		121 YesDNo
iii. Is the project site within a Coastal Erosion Hazard Area?		D Yes(1]No

## C. Planning and Zoning

C.1. Planning and zoning actions.	
Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed?	(1]YesONo
<ul style="list-style-type: none"> <li>If Yes, complete sections C, F and G.</li> <li>If No, proceed to question C.2 and complete all remaining sections and questions in Part 1</li> </ul>	
C.2. Adopted land use plans.	
a. Do any municipally- adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located?	121Yes0No
If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located?	121YesDNo
b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?)	i;z]YesDNo
If Yes, identify the plan(s): <u>Brownfield Remediation Sites including: 336042, 336009, 336031, B00127, B00136, 546031, 336063, VOO1 17, B00188, B00189, E336074, E336075, C336085, 336085, 336055; Brownfield Opportunity Area Nomination (census tract 5); Hudson River Greenway; LWRP; HMP; East End Historic District;</u>	
c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan?	0Yes1]No
If Yes, identify the plan(s):	

### C.3. Zoning

a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance. i;Z) YesDNo  
If Yes, what is the zoning classification(s) including any applicable overlay district?  
The Proposed Action would result in an update to Chapter 300 of the City's Code, including text amendments and zoning map changes (see Part 3).

b. Is the use permitted or allowed by a special or conditional use permit? 0Yes0No  
c. Is a zoning change requested as part of the proposed action? !;ZJ YesDNo

If Yes,  
i. What is the proposed new zoning for the site? Proposed Action would result in amendments to the City of Newburgh Zoning Code (see Part 3).

### C.4. Existing community services.

a. In what school district is the project site located? Newburgh Enlarged City School District

b. What police or other public protection forces serve the project site?

Cit of Newburgh Police Department Orange County Sheriffs Office New York State Police

c. Which fire protection and emergency medical services serve the project site?

Newburgh Fire Department

d. What parks serve the project site?

Includes, but not limited to: 9/11 Memorial Park; Aquatic Center; Audrey Carey Park; Broadway Park; Clinton Square; Delano-Hitch Recreation Park; Delano-Ritch Stadium; Desmond Tennis Courts; Downing Park; Ganev Avenue Basketball Courts; Rasbrouck Street Park; Newburgh Boat Launch

### D. Project Details

#### D.1. Proposed and Potential Development

a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)?

b. a. Total acreage of the site of the proposed action? \_\_\_\_\_ acres  
b. Total acreage to be physically disturbed? \_\_\_\_\_ acres  
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? \_\_\_\_\_ acres

c. Is the proposed action an expansion of an existing project or use? ☐ Yes ☐ No  
i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % \_\_\_\_\_ Units: \_\_\_\_\_

d. Is the proposed action a subdivision, or does it include a subdivision? DYes DNo

If Yes,

i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types)

ii. Is a cluster/conservation layout proposed? DYesDNo

iii. Number of lots proposed?

iv. Minimum and maximum proposed lot sizes? Minimum \_\_\_\_\_ Maximum \_\_\_\_\_

e. Will proposed action be constructed in multiple phases? 0Yes0No

i. If No, anticipated period of construction: \_\_\_\_\_ months

ii. If Yes:

- Total number of phases anticipated \_\_\_\_\_
- Anticipated commencement date of phase 1 (including demolition) \_\_\_\_\_ month \_\_\_\_\_ year
- Anticipated completion date of final phase \_\_\_\_\_ month \_\_\_\_\_ year
- Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases: \_\_\_\_\_

f. Does the project include new residential uses? If Yes, show numbers of units proposed.				0Yes0No
<u>One Family</u>	<u>Two Family</u>	<u>Three Family</u>	Multiple Family (four or more)	
Initial Phase At completion of all phases				
g. Does the proposed action include new non-residential construction (including expansions)? If Yes,				0Yes0No
i. Total number of structures				
ii. Dimensions (in feet) of largest proposed structure:                      height;                      width; and                      length				
iii. Approximate extent of building space to be heated or cooled:                      square feet				
h. Does the proposed action include construction or other activities that will result in the impoundment of any liquids, such as creation of a water supply, reservoir, pond, lake, waste lagoon or other storage? If Yes,				0Yes0No
i. Purpose of the impoundment:                      _____				
ii. If a water impoundment, the principal source of the water: <u>D</u> Ground water <u>D</u> Surface water streams 00ther specify: _____				
iii. If other than water, identify the type of impounded/contained liquids and their source. _____				
iv. Approximate size of the proposed impoundment.                      Volume:                      million gallons; surface area:                      acres				
v. Dimensions of the proposed dam or impounding structure:                      height;                      length				
vi. Construction method/materials for the proposed dam or impounding structure (e.g., earth fill, rock, wood, concrete): _____				
<b>D.2. Project Operations</b>				
a. Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both? (Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite) If Yes:				0Yes0No
i. What is the purpose of the excavation or dredging? _____				
ii. How much material (including rock, earth, sediments, etc.) is proposed to be removed from the site?				
• Volume (specify tons or cubic yards):                      _____				
• Over what duration of time?                      _____				
iii. Describe nature and characteristics of materials to be excavated or dredged, and plans to use, manage or dispose of them. _____				
iv. Will there be onsite dewatering or processing of excavated materials? If yes, describe. _____				0Yes0No
v. What is the total area to be dredged or excavated?                      _____ acres				
vi. What is the maximum area to be worked at any one time?                      _____				
vii. What would be the maximum depth of excavation or dredging?                      _____				
viii. Will the excavation require blasting?                      0Yes				
ix. Summarize site reclamation goals and plan: _____ _____ _____				
b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area? If Yes:				0Yes0No
i. Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description): _____				

ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet or acres:

iii. Will proposed action cause or result in disturbance to bottom sediments? 0Yes0No

If Yes, describe: \_\_\_\_\_

iv. Will proposed action cause or result in the destruction or removal of aquatic vegetation? 0Yes0No

If Yes:

- acres of aquatic vegetation proposed to be removed: \_\_\_\_\_
- expected acreage of aquatic vegetation remaining after project completion: \_\_\_\_\_
- purpose of proposed removal (e.g. beach clearing, invasive species control, boat access): \_\_\_\_\_
- proposed method of plant removal: \_\_\_\_\_
- if chemical/herbicide treatment will be used, specify product(s): \_\_\_\_\_

v. Describe any proposed reclamation/mitigation following disturbance: \_\_\_\_\_

c. Will the proposed action use, or create a new demand for water? 0Yes[]No

If Yes:

i. Total anticipated water usage/demand per day: \_\_\_\_\_

gallons/day

ii. Will the proposed action obtain water from an existing public water supply? DYesDNo

If Yes:

- Name of district or service area: \_\_\_\_\_
- Does the existing public water supply have capacity to serve the proposal? 0Yes0No
- Is the project site in the existing district? D Yes0No
- Is expansion of the district needed? 0Yes0No
- Do existing lines serve the project site? 0Yes0No

iii. Will line extension within an existing district be necessary to supply the project? DYes[]No

If Yes:

- Describe extensions or capacity expansions proposed to serve this project: \_\_\_\_\_
- Source(s) of supply for the district: \_\_\_\_\_

iv. Is a new water supply district or service area proposed to be formed to serve the project site? ☐ Yes0No

If Yes:

- Applicant/sponsor for new district: \_\_\_\_\_
- Date application submitted or anticipated: \_\_\_\_\_
- Proposed source(s) of supply for new district: \_\_\_\_\_

v. If a public water supply will not be used, describe plans to provide water supply for the project: \_\_\_\_\_

vi. If water supply will be from wells (public or private), maximum pumping capacity: \_\_\_\_\_ gallons/minute.

d. Will the proposed action generate liquid wastes? 0Yes0No

If Yes:

i. Total anticipated liquid waste generation per day: \_\_\_\_\_

gallons/day

ii. Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each): \_\_\_\_\_

iii. Will the proposed action use any existing public wastewater treatment facilities? 0Yes0No

If Yes:

- Name of wastewater treatment plant to be used: \_\_\_\_\_
- Name of district: \_\_\_\_\_
- Does the existing wastewater treatment plant have capacity to serve the project? 0Yes[]No
- Is the project site in the existing district? 0Yes0No
- Is expansion of the district needed? 0Yes[]No

<ul style="list-style-type: none"> <li>• Do existing sewer lines serve the project site? _____</li> <li>• Will line extension within an existing district be necessary to serve the project? If Yes:               <ul style="list-style-type: none"> <li>• Describe extensions or capacity expansions proposed to serve this project: _____</li> </ul> </li> </ul>	0Yes0No 0Yes0No
iv. Will a new wastewater (sewage) treatment district be formed to serve the project site? If Yes: <ul style="list-style-type: none"> <li>• Applicant/sponsor for new district: _____</li> <li>• Date application submitted or anticipated: _____</li> <li>• What is the receiving water for the wastewater discharge? _____</li> </ul>	0Yes0No
v. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge, or describe subsurface disposal plans): _____ _____	
vi. Describe any plans or designs to capture, recycle or reuse liquid waste: _____ _____ _____	

e. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction? If Yes: <ul style="list-style-type: none"> <li>i. How much impervious surface will the project create in relation to total size of project parcel?                _____ Square feet or _____ acres (impervious surface)                _____ Square feet or _____ acres (parcel size)</li> <li>ii. Describe types of new point sources. _____</li> </ul>	0Yes0No
iii. Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)? _____ _____	
<ul style="list-style-type: none"> <li>• If to surface waters, identify receiving water bodies or wetlands: _____</li> </ul>	
<ul style="list-style-type: none"> <li>• Will stormwater runoff flow to adjacent properties? _____</li> </ul>	0Yes0No
iv. Does proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater?	0Yes0No
f. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations? If Yes, identify: <ul style="list-style-type: none"> <li>i. Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles) _____</li> <li>ii. Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers) _____</li> <li>iii. Stationary sources during operations (e.g., process emissions, large boilers, electric generation) _____</li> </ul>	0Yes0No
g. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit? If Yes: <ul style="list-style-type: none"> <li>i. Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year) _____</li> <li>ii. In addition to emissions as calculated in the application, the project will generate:               <ul style="list-style-type: none"> <li>• _____ Tons/year (short tons) of Carbon Dioxide (CO<sub>2</sub>)</li> <li>• _____ Tons/year (short tons) of Nitrous Oxide (N<sub>2</sub>O)</li> <li>• _____ Tons/year (short tons) of Perfluorocarbons (PFCs)</li> <li>• _____ Tons/year (short tons) of Sulfur Hexafluoride (SF<sub>6</sub>)</li> <li>• _____ Tons/year (short tons) of Carbon Dioxide equivalent of Hydrofluorocarbons (HFCs)</li> <li>• _____ Tons/year (short tons) of Hazardous Air Pollutants (HAPs)</li> </ul> </li> </ul>	0Yes0No  DYesDNo



<p>h. Will the proposed action generate or emit methane (including, but not limited to, sewage treatment plants, landfills, composting facilities)?</p> <p>If Yes:</p> <p>i. Estimate methane generation in tons/year (metric): _____</p> <p>ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring): _____</p>	<p>0Yes0No</p>		
<p>i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations?</p> <p>If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust): _____</p>	<p>0Yes0No</p>		
<p>j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services?</p> <p>If Yes:</p> <p>i. When is the peak traffic expected (Check all that apply):    D Morning                      D Evening                      0 Weekend  DRandomly between hours of _____ to _____</p> <p>ii. For commercial activities only, projected number of semi-trailer truck trips/day: _____</p> <p>iii. Parking spaces:    Existing _____                      Proposed _____                      Net increase/decrease _____</p> <p>iv. Does the proposed action include any shared use parking? _____</p> <p>v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe: _____</p>	<p>0Yes0No</p>		
<p>vi. Are public/private transportation service(s) or facilities available within <i>Yi</i> mile of the proposed site?</p> <p>vii. Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles?</p> <p>viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes?</p>	<p>0Yes0No</p> <p>0Yes0No</p> <p>0Yes0No</p>		
<p>k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy?</p> <p>If Yes:</p> <p>i. Estimate annual electricity demand during operation of the proposed action: _____</p> <p>ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other): _____</p> <p>iii. Will the proposed action require a new, or an upgrade to, an existing substation?</p>	<p>0Yes0No</p> <p>0Yes0No</p>		
<p>l. Hours of operation. Answer all items which apply.</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> <p>i. During Construction:</p> <ul style="list-style-type: none"> <li>• Monday - Friday: _____</li> <li>• Saturday: _____</li> <li>• Sunday: _____</li> <li>• Holidays: _____</li> </ul> </td> <td style="width: 50%; vertical-align: top;"> <p>ii. During Operations:</p> <ul style="list-style-type: none"> <li>• Monday - Friday: _____</li> <li>• Saturday: _____</li> <li>• Sunday: _____</li> <li>• Holidays: _____</li> </ul> </td> </tr> </table>		<p>i. During Construction:</p> <ul style="list-style-type: none"> <li>• Monday - Friday: _____</li> <li>• Saturday: _____</li> <li>• Sunday: _____</li> <li>• Holidays: _____</li> </ul>	<p>ii. During Operations:</p> <ul style="list-style-type: none"> <li>• Monday - Friday: _____</li> <li>• Saturday: _____</li> <li>• Sunday: _____</li> <li>• Holidays: _____</li> </ul>
<p>i. During Construction:</p> <ul style="list-style-type: none"> <li>• Monday - Friday: _____</li> <li>• Saturday: _____</li> <li>• Sunday: _____</li> <li>• Holidays: _____</li> </ul>	<p>ii. During Operations:</p> <ul style="list-style-type: none"> <li>• Monday - Friday: _____</li> <li>• Saturday: _____</li> <li>• Sunday: _____</li> <li>• Holidays: _____</li> </ul>		

<p>m. Will the proposed action produce noise that will exceed existing ambient noise levels during construction operation, or both? <span style="float: right;">0 Yes 0 No</span></p> <p>If yes:</p> <p>i. Provide details including sources, time of day and duration:</p> <p>_____</p> <p>_____</p>	
<p>ii. Will proposed action remove existing natural barriers that could act as a noise barrier or screen? <span style="float: right;">D Yes D No</span></p> <p>Describe: _____</p> <p>_____</p>	
<p>n. Will the proposed action have outdoor lighting? <span style="float: right;">0 Yes 0 No</span></p> <p>If yes:</p> <p>i. Describe source(s), location(s), height of fixture(s), direction/aim, and proximity to nearest occupied structures:</p> <p>_____</p> <p>_____</p>	
<p>ii. Will proposed action remove existing natural barriers that could act as a light barrier or screen? <span style="float: right;">D Yes D No</span></p> <p>Describe: _____</p> <p>_____</p>	
<p>o. Does the proposed action have the potential to produce odors for more than one hour per day? <span style="float: right;">0 Yes 0 No</span></p> <p>If Yes, describe possible sources, potential frequency and duration of odor emissions, and proximity to nearest occupied structures: _____</p> <p>_____</p> <p>_____</p>	
<p>p. Will the proposed action include any bulk storage of petroleum (combined capacity of over 1,100 gallons) or chemical products 185 gallons in above ground storage or any amount in underground storage? <span style="float: right;">0 Yes 0 No</span></p> <p>If Yes:</p> <p>i. Product(s) to be stored _____</p> <p>ii. Volume(s) _____ per unit time (e.g., month, year)</p> <p>iii. Generally describe proposed storage facilities: _____</p> <p>_____</p>	
<p>q. Will the proposed action (commercial, industrial and recreational projects only) use pesticides (i.e., herbicides, insecticides) during construction or operation? <span style="float: right;">D Yes 0 No</span></p> <p>If Yes:</p> <p>i. Describe proposed treatment(s):</p> <p>_____</p> <p>_____</p> <p>_____</p>	
<p>ii. Will the proposed action use Integrated Pest Management Practices? <span style="float: right;">D Yes 0 No</span></p>	
<p>r. Will the proposed action (commercial or industrial projects only) involve or require the management or disposal of solid waste (excluding hazardous materials)? <span style="float: right;">0 Yes 0 No</span></p> <p>If Yes:</p> <p>i. Describe any solid waste(s) to be generated during construction or operation of the facility:</p> <ul style="list-style-type: none"> <li>• Construction: _____ tons per _____ (unit of time)</li> <li>• Operation : _____ tons per _____ (unit of time)</li> </ul> <p>ii. Describe any proposals for on-site minimization, recycling or reuse of materials to avoid disposal as solid waste:</p> <ul style="list-style-type: none"> <li>• Construction: _____</li> <li>• Operation: _____</li> </ul> <p>iii. Proposed disposal methods/facilities for solid waste generated on-site:</p> <ul style="list-style-type: none"> <li>• Construction: _____</li> <li>• Operation: _____</li> </ul> <p>_____</p>	

s. Does the proposed action include construction or modification of a solid waste management facility? 0 Yes 0 No  
 If Yes:  
 i. Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities):--;--;--;--;--;--  
 ii. Anticipated rate of disposal/processing:  
 • Tons/month, if transfer or other non-combustion/thermal treatment, or  
 • Tons/hour, if combustion or thermal treatment  
 iii. If landfill, anticipated site life:\_\_\_\_\_ years

---

t. Will proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste? 0 Yes 0 No  
 If Yes:  
 i. Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility: \_\_\_\_\_  
 \_\_\_\_\_  
 ii. Generally describe processes or activities involving hazardous wastes or constituents: \_\_\_\_\_  
 \_\_\_\_\_  
 iii. Specify amount to be handled or generated \_\_\_\_\_ tons/month  
 iv. Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents: \_\_\_\_\_  
 \_\_\_\_\_  
 v. Will any hazardous wastes be disposed at an existing offsite hazardous waste facility? 0 Yes 0 No  
 If Yes provide name and \_\_\_\_\_ n of facility: \_\_\_\_\_  
 \_\_\_\_\_  
 If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility:  
 \_\_\_\_\_  
 \_\_\_\_\_

#### E. Site and Setting of Proposed Action

E.1. Land uses on and surrounding the project site

a. Existing land uses.  
 i. Check all uses that occur on, adjoining and near the project site.  
☐ Urban ☐ Industrial ☐ Commercial ☐ Residential (suburban) ☐ Rural (non-farm)  
☐ Forest ☐ Agriculture ☐ Aquatic ☐ Other (specify): \_\_\_\_\_  
 ii. If mix of uses, generally describe:  
 \_\_\_\_\_  
 \_\_\_\_\_

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b. Land uses and cover types on the project site.

Land use or Cover type	Current Acreage	Acreage After Project Completion	Change (Acres +/-)
• Roads, buildings, and other paved or impervious surfaces			
• Forested			
• Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural)			
• Agricultural (includes active orchards, field, greenhouse etc.)			
• Surface water features (lakes, ponds, streams, rivers, etc.)			
• Wetlands (freshwater or tidal)			
• Non-vegetated (bare rock, earth or fill)			
• Other Describe: _____			

<p>c. Is the project site presently used by members of the community for public recreation?  <i>i. If Yes: explain:</i> _____</p>	<p>D Yes D No</p>
<p>d. Are there any facilities serving children, the elderly, people with disabilities (e.g., schools, hospitals, licensed day care centers, or group homes) within 1500 feet of the project site?          If Yes,  <i>i. Identify Facilities:</i>          _____          _____</p>	<p>0 Yes 0 No</p>
<p>e. Does the project site contain an existing dam?          If Yes:  <i>i. Dimensions of the dam and impoundment:</i>              • Dam height: _____ feet              • Dam length: _____ feet              • Surface area: _____ acres              • Volume impounded: _____ gallons OR acre-feet  <i>ii. Dam's existing hazard classification:</i> _____  <i>iii. Provide date and summarize results of last inspection:</i>          _____          _____</p>	<p>D ves D No</p>
<p>f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility?          If Yes:  <i>i. Has the facility been formally closed?</i>              • If yes, cite sources/documentation: _____  <i>ii. Describe the location of the project site relative to the boundaries of the solid waste management facility:</i>          _____          _____  <i>iii. Describe any development constraints due to the prior solid waste activities:</i> _____          _____</p>	<p>0 Yes 0 No</p> <p>0 Yes 0 No</p>
<p>g. Have hazardous wastes been generated, treated and/or disposed of at the site, or does the project site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste?          If Yes:  <i>i. Describe waste(s) handled and waste management activities, including approximate time when activities occurred:</i>          _____          _____</p>	<p>0 Yes 0 No</p>
<p>h. Potential contamination history. Has there been a reported spill at the proposed project site, or have any remedial actions been conducted at or adjacent to the proposed site?          If Yes:  <i>i. Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database? Check all that apply:</i>              D Yes - Spills Incidents database      Provide      DEC      ID      number(s): _              D Yes - Environmental Site Remediation database      Provide      DEC      ID      number(s): _              D Neither database  <i>ii. If site has been subject of RCRA corrective activities, describe control measures:</i> _____          _____          _____  <i>iii. Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation database?</i>          If yes, provide DEC ID number(s): 336042, 336036, 336009, 336031, 800127, 800136, ...  <i>iv. If yes to (i), (ii) or (iii) above, describe current status of site(s):</i></p>	<p>0 Yes 0 No</p> <p>0 Yes 0 No</p> <p>0 Yes 0 No</p>

v. Is the project site subject to an institutional control limiting property uses?		0Yes0No
<ul style="list-style-type: none"> <li>If yes, DEC site ID number: _____</li> <li>Describe the type of institutional control (e.g., deed restriction or easement): _____</li> <li>Describe any use limitations: _____</li> <li>Describe any engineering controls: _____</li> <li>Will the project affect the institutional or engineering controls in place? _____</li> <li>Explain: _____</li> </ul>		
0Yes0No		
E.2. Natural Resources On or Near Project Site		
a. What is the average depth to bedrock on the project site? _____ feet		
b. Are there bedrock outcroppings on the project site?		0Yes0No
If Yes, what proportion of the site is comprised of bedrock outcroppings?		%
c. Predominant soil type(s) present on project site:		%
_____		%
_____		%
d. What is the average depth to the water table on the project site? Average:		feet
e. Drainage status of project site soils: D Well Drained:		% of site
D Moderately Well Drained:		% of
site D Poorly Drained		% of
site		% of site
f. Approximate proportion of proposed action site with slopes: D 0-10%:		% of
D to-15%:		% of
site D 15% or greater:		% of site
g. Are there any unique geologic features on the project site?		o Yes D No
If Yes, describe: _____		
h. Surface water features.		
i. Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes)?		0Yes0No
ii. Do any wetlands or other waterbodies adjoin the project site?		0Yes0No
If Yes to either i or ii, continue. If No, skip to E.2.i.		
iii. Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency?		0Yes0No
iv. For each identified regulated wetland and waterbody on the project site, provide the following information:		
<ul style="list-style-type: none"> <li>Streams: Name _____ Classification _____</li> <li>Lakes or Ponds: Name _____ Classification _____</li> <li>Wetlands: Name _____ Approximate Size _____</li> <li>Wetland No. (if regulated by DEC) _____</li> </ul>		
v. Are any of the above water bodies listed in the most recent compilation of NYS water quality-impaired waterbodies?		0Yes DNo
If yes, name of impaired water body/bodies and basis for listing as impaired: _____		
i. Is the project site in a designated Floodway?		DYesLNo
j. Is the project site in the 100 year Floodplain?		0Yes[]No
k. Is the project site in the 500 year Floodplain?		0Yes[]No
l. Is the project site located over, or immediately adjoining, a primary, principal or sole source aquifer?		0Yes[]No
If Yes:		
i. Name of aquifer: _____		

<p>m. Identify the predominant wildlife species that occupy or use the project site:</p> <p>_____</p> <p>_____</p>	
<p>n. Does the project site contain a designated significant natural community? <span style="float: right;">o Yes D No</span></p> <p>If Yes:</p> <p>i. Describe the habitat/community (composition, function, and basis for designation): _____</p> <p>ii. Source(s) of description or evaluation: _____</p> <p>iii. Extent of community/habitat: _____</p> <ul style="list-style-type: none"> <li>• Currently: _____ acres</li> <li>• Following completion of project as proposed: _____ acres</li> <li>• Gain or loss (indicate + or -): _____ acres</li> </ul>	
<p>o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species? <span style="float: right;">o Yes o No</span></p>	
<p>p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern? <span style="float: right;">o Yes o No</span></p>	
<p>q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing? <span style="float: right;">o Yes o No</span></p> <p>If yes, give a brief description of how the proposed action may affect that use: _____</p> <p>_____</p>	
<p><b>E.3. Designated Public Resources On or Near Project Site</b></p>	
<p>a. Is the project site, or any portion of it, located in a designated agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? <span style="float: right;">o Yes o No</span></p> <p>If Yes, provide county plus district name/number: _____</p>	
<p>b. Are agricultural lands consisting of highly productive soils present? <span style="float: right;">o Yes o No</span></p> <p>i. If Yes: acreage(s) on project site? _____</p> <p>ii. Source(s) of soil rating(s): _____</p>	
<p>c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark? <span style="float: right;">o Yes D No</span></p> <p>If Yes:</p> <p>i. Nature of the natural landmark:      <b>D</b> Biological Community      <b>D</b> Geological Feature</p> <p>ii. Provide brief description of landmark, including values behind designation and approximate size/extent: _____</p> <p>_____</p>	
<p>d. Is the project site located in or does it adjoin a state listed Critical Environmental Area? <span style="float: right;">o Yes D No</span></p> <p>If Yes:</p> <p>i. CEA name: _____</p> <p>ii. Basis for designation: _____</p> <p>iii. Designating agency and date: _____</p>	



e. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on, or has been nominated by the NYS Board of Historic Preservation for inclusion on, the State or National Register of Historic Places?	<input type="radio"/> Yes <input type="radio"/> No
If Yes: <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <span>i. Nature of historic/archaeological resource: <input type="radio"/> Archaeological Site</span> <span><input type="radio"/> Historic Building or District</span> </div>	
ii. Name: _____	
iii. Brief description of attributes on which listing is based: _____	
f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the New York State Historic Preservation Office (SHPO) archaeological site inventory?	<input type="radio"/> Yes <input type="radio"/> No
g. Have additional archaeological or historic site(s) or resources been identified on the project site?	<input type="radio"/> Yes <input type="radio"/> No
If Yes: <div style="margin-top: 5px;">           i. Describe possible resource(s): _____           <div style="margin-top: 5px;">             ii. Basis for identification: _____           </div> </div>	
h. Is the project site within five miles of any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource?	<input type="radio"/> Yes <input type="radio"/> No
If Yes: <div style="margin-top: 5px;">           i. Identify resource: _____           <div style="margin-top: 5px;">             ii. Nature of, or basis for, designation (e.g., established highway overlook, state or local park, state historic trail or scenic byway, etc.): _____           </div> </div>	
iii. Distance between project and resource: _____ miles.	
i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666?	<input type="radio"/> Yes <input type="radio"/> No
If Yes: <div style="margin-top: 5px;">           i. Identify the name of the river and its designation: _____           <div style="margin-top: 5px;">             ii. Is the activity consistent with development restrictions contained in 6 NYCRR Part 1666?             <div style="text-align: right; margin-top: 5px;"> <input type="radio"/> Yes <input type="radio"/> No             </div> </div> </div>	

#### F. Additional Information

Attach any additional information which may be needed to clarify your project.

If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

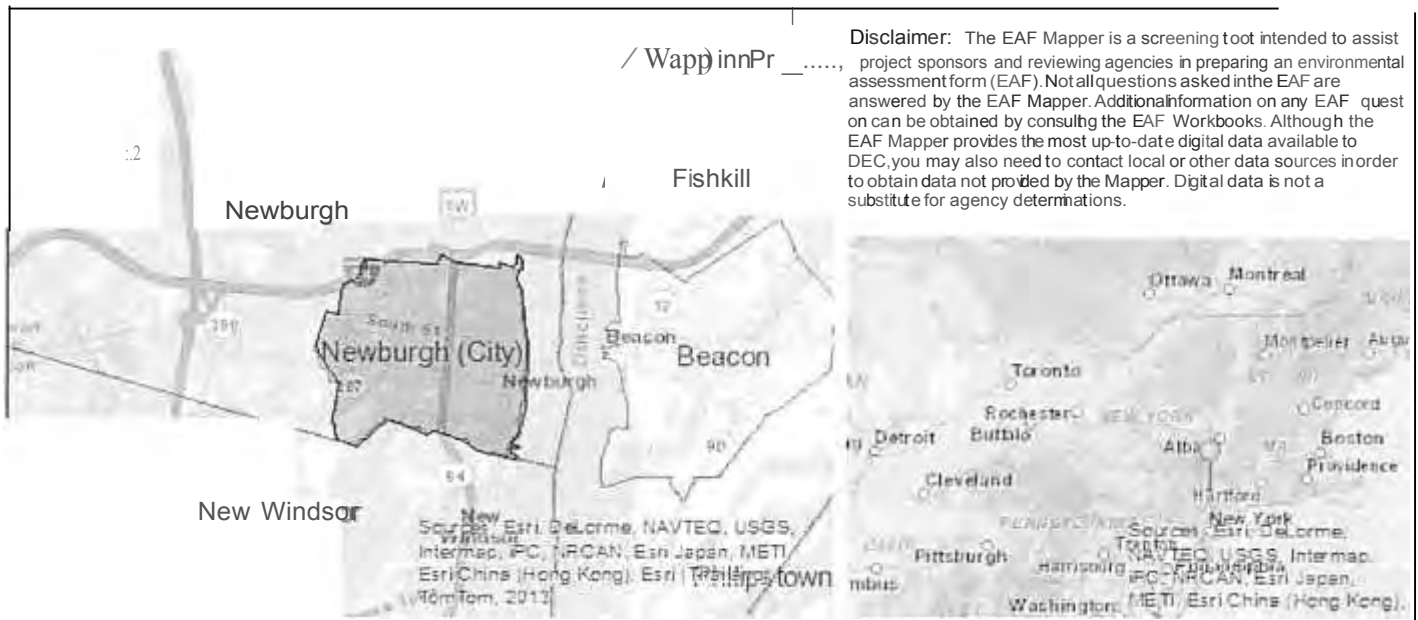
#### G. Verification

I certify that the information provided is true to the best of my knowledge.

Applicant/Sponsor Name City of Newburgh Date 11/2/2020 / \_\_\_\_\_

Title City Manager

Signature \_\_\_\_\_



8.i.i [Coastal or Waterfront Area]	Yes
8.i.ii [Local Waterfront Revitalization Area] C.2.b. [Special Planning District]	Yes
C.2.b. [Special Planning District-Name]	Yes - Digital mapping data are not available for all Special Planning Districts. Refer to EAF Workbook.
E.1.h [DEC Spills or Remediation Site - Potential Contamination History]	Remediation Sites:336042, Remediation Sites:336009, Remediation Sites:336031, Remediation Sites:800127, Remediation Sites:800136, Remediation Sites:546031, Remediation Sites:336063, Remediation Sites:V00117, Remediation Sites:800188, Remediation Sites:800189, Remediation Sites:E336074, Remediation Sites:E336075, Remediation Sites:C336085, Remediation Sites:336085, Remediation Sites:336055
E.1.h.i [DEC Spills or Remediation Site - Listed]	Yes - Digital mapping data for Spills Incidents are not available for this location. Refer to EAF Workbook .
E.1.h.i [DEC Spills or Remediation Site - Environmental Site Remediation Database]	Yes
E.1.h.i [DEC Spills or Remediation Site - DEC ID Number]	336042, 336009, 336031, 800127, 800136, 546031, 336063, V00117, 800188, 800189, E336074, E336075, C336085, 336055
E.1.h.iii [Within 2,000' of DEC Remediation Site]	Yes
E.1.h.iii [Within 2,000' of DEC Remediation Site - DEC ID]	336042, 336036, 336009, 336031, 800127, 800136, V00135, 546031, 336063, V00117, 800188, 800189, E336074, E336075, 336077, C336085, 336055, C336086
E.2.g g (Unique Geologic Features)	No
E.2.h .i [Surface Water Features]	Yes
E.2.h.ii [Surface Water Features]	Yes
E.2.h.iii [Surface Water Features]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.

E.2.h.iv [Surface Water Features - Stream Name]	862-212, 862-219
E.2.h.iv [Surface Water Features - Stream Classification]	B
E.2.h.iv [Surface Water Features - Wetlands Name]	NYS Wetland, Federal Wetland
E.2.h.iv [Surface Water Features - Wetlands Size in Acres]	Federal Wetland:38105.8536113, Federal Wetland:411.79672191, Federal Wetland:2.02510306, Federal Wetland:0.49891849, Federal Wetland:0.94241162, Federal Wetland:0.07329913, Federal Wetland:0.06566601, Federal Wetland:2.37876228, Federal Wetland:1.418881, Federal Wetland:8.09591287, Federal Wetland:0.25336216, Federal Wetland:2.71282597, Federal Wetland:0.96769233, Federal Wetland:4.35799419, Federal Wetland:13.4096026, Federal Wetland:8.01877274, Federal Wetland:0.32698715, Federal Wetland:1.79392371, Federal Wetland:0.38059508, Federal Wetland:0.48110976, NYS Wetland:54.4
E.2.h.iv [Surface Water Features - Wetlands No]	NB-29
E.2.h.v [Impaired Water Bodies]	Yes
E.2.h.v [Impaired Water Bodies - Name and Basis for Listing]	Name - Pollutants - Uses:Hudson River (Class B) – Priority Organics – Fish Consumption
E.2.i. [Floodway]	Yes
E.2.j. [100 Year Floodplain]	Yes
E.2.k. [500 Year Floodplain]	Yes
E.2.1. [Aquifers]	Yes
E.2.1. [Aquifer Names]	Principal Aquifer
E.2.n. [Natural Communities]	No
E.2.o. [Endangered or Threatened Species]	Yes
E.2.p. [Rare Plants or Animals]	No
E.3.a. [Agricultural District]	No
E.3.c. [National Natural Landmark]	No
E.3.d [Critical Environmental Area]	No
E.3.e. [National Register of Historic Places]	Yes - Digital mapping data for archaeological site boundaries are not available. Refer to EAF Workbook.
E.3.e.ii [National Register of Historic Places - Name]	East End Historic District, Washington's Headquarters, Dutch Reformed Church, Crawford, David, House, New York State Armory, US Post Office-Newburgh, Old Town Cemetery - Palisades - Palisades - Palisades
E.3.f. [Archeological Sites]	Yes
E.3.i. [Designated River Corridor]	No

*Full Environmental Assessment Form*  
**Part 2 - Identification of Potential Project Impacts**

Agency Use Only [If applicable:]  
 Project : Newburgh Zoning Code Update  
 Date : --

Part 2 is to be completed by the lead agency. Part 2 is designed to help the lead agency inventory all potential resources that could be affected by a proposed project or action. We recognize that the lead agency's reviewer(s) will not necessarily be environmental professionals. So, the questions are designed to walk a reviewer through the assessment process by providing a series of questions that can be answered using the information found in Part I. To further assist the lead agency in completing Part 2, the form identifies the most relevant questions in Part I that will provide the information needed to answer the Part 2 question. When Part 2 is completed, the lead agency will have identified the relevant environmental areas that may be impacted by the proposed activity.

If the lead agency is a state agency and the action is in any Coastal Area, complete the Coastal Assessment Form before proceeding with this assessment.

**Tips for completing Part 2:**

- Review all of the information provided in Part I.
- Review any application, maps, supporting materials and the Full EAF Workbook.
- Answer each of the 18 questions in Part 2.
- If you answer "Yes" to a numbered question, please complete all the questions that follow in that section.
- If you answer "No" to a numbered question, move on to the next numbered question.
- Check appropriate column to indicate the anticipated size of the impact.
- Proposed projects that would exceed a numeric threshold contained in a question should result in the reviewing agency checking the box "Moderate to large impact may occur."
- The reviewer is not expected to be an expert in environmental analysis.
- If you are not sure or undecided about the size of an impact, it may help to review the sub-questions for the general question and consult the workbook.
- When answering a question consider all components of the proposed activity, that is, the "whole action".
- Consider the possibility for long-term and cumulative impacts as well as direct impacts.
- Answer the question in a reasonable manner considering the scale and context of the project.

<b>1. Impact on Land</b> Proposed action may involve construction on, or physical alteration of, the land surface of the proposed site. (See Part I.D.1) <i>If "Yes", answer questions a - h. If "No", move on to Section 2.</i>	NO	YES	
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may involve construction on land where depth to water table is less than 3 feet.	E2d	<input type="radio"/>	<input type="radio"/>
b. The proposed action may involve construction on slopes of 15% or greater.	E2f	<input type="radio"/>	<input type="radio"/>
c. The proposed action may involve construction on land where bedrock is exposed, or generally within 5 feet of existing ground surface.	E2a	<input type="radio"/>	<input type="radio"/>
d. The proposed action may involve the excavation and removal of more than 1,000 tons of natural material.	02a	<input type="radio"/>	<input type="radio"/>
e. The proposed action may involve construction that continues for more than one year or in multiple phases.	01e	<input type="radio"/>	<input type="radio"/>
f. The proposed action may result in increased erosion, whether from physical disturbance or vegetation removal (including from treatment by herbicides).	02e, 02q	<input type="radio"/>	<input type="radio"/>
g. The proposed action is, or may be, located within a Coastal Erosion hazard area.	B1i	<input type="radio"/>	<input type="radio"/>
h. Other impacts:		<input type="radio"/>	<input type="radio"/>

## 2. Impact on Geological Features

The proposed action may result in the modification or destruction of, or inhibit access to, any unique or unusual land forms on the site (e.g., cliffs, dunes, minerals, fossils, caves). (See Part I. E.2.g)

II]NO

DYES

*If "Yes", answer questions a - c. If "No", move on to Section 3.*

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. Identify the specific land form(s) attached: _____	E2g	<input type="radio"/>	<input type="radio"/>
b. The proposed action may affect or is adjacent to a geological feature listed as a registered National Natural Landmark. Specific feature: _____	E3c	<input type="radio"/>	<input type="radio"/>
c. Other impacts: _____		<input type="radio"/>	<input type="radio"/>

## 3. Impacts on Surface Water

The proposed action may affect one or more wetlands or other surface water bodies (e.g., streams, rivers, ponds or lakes). (See Part 1. D.2, E.2.h)

ONO

IIJYES

*If "Yes", answer questions a - l. If "No", move on to Section 4.*

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may create a new water body.	D2b, D1h	<input type="radio"/>	<input type="radio"/>
b. The proposed action may result in an increase or decrease of over 10% or more than a 10 acre increase or decrease in the surface area of any body of water.	D2b	<input type="radio"/>	<input type="radio"/>
c. The proposed action may involve dredging more than 100 cubic yards of material from a wetland or water body.	D2a	<input type="radio"/>	<input type="radio"/>
d. The proposed action may involve construction within or adjoining a freshwater or tidal wetland, or in the bed or banks of any other water body.	E2h	<input type="radio"/>	<input type="radio"/>
e. The proposed action may create turbidity in a waterbody, either from upland erosion, runoff or by disturbing bottom sediments.	D2a, D2h	<input type="radio"/>	<input type="radio"/>
f. The proposed action may include construction of one or more intake(s) for withdrawal of water from surface water.	D2c	<input type="radio"/>	<input type="radio"/>
g. The proposed action may include construction of one or more outfall(s) for discharge of wastewater to surface water(s).	D2d	<input type="radio"/>	<input type="radio"/>
h. The proposed action may cause soil erosion, or otherwise create a source of stormwater discharge that may lead to siltation or other degradation of receiving water bodies.	D2e	<input type="radio"/>	<input type="radio"/>
i. The proposed action may affect the water quality of any water bodies within or downstream of the site of the proposed action.	E2h	<input type="radio"/>	<input type="radio"/>
j. The proposed action may involve the application of pesticides or herbicides in or around any water body.	D2q, E2h	<input type="radio"/>	<input type="radio"/>
k. The proposed action may require the construction of new, or expansion of existing, wastewater treatment facilities.	Ola, D2d	<input type="radio"/>	<input type="radio"/>

l. Other impacts: The proposed action will improve water quality by regulating and limiting land use activities adjacent to the City's streams and lakes.	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES
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**4. Impact on groundwater**  
The proposed action may result in new or additional use of ground water, or may have the potential to introduce contaminants to ground water or an aquifer.  
(See Part 1. D.2.a, D.2.c, D.2.d, D.2.p, D.2.q, D.2.t)  
*If "Yes", answer questions a - h. If "No", move on to Section 5.*

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may require new water supply wells, or create additional demand on supplies from existing water supply wells.	D2c	<input type="radio"/>	<input type="radio"/>
b. Water supply demand from the proposed action may exceed safe and sustainable withdrawal capacity rate of the local supply or aquifer. Cite Source: _____	D2c	<input type="radio"/>	<input type="radio"/>
c. The proposed action may allow or result in residential uses in areas without water and sewer services.	01a, D2c	<input type="radio"/>	<input type="radio"/>
d. The proposed action may include or require wastewater discharged to groundwater.	D2d, E21	<input type="radio"/>	<input type="radio"/>
e. The proposed action may result in the construction of water supply wells in locations where groundwater is, or is suspected to be, contaminated.	D2c, E1f, E1g, E1h	<input type="radio"/>	<input type="radio"/>
f. The proposed action may require the bulk storage of petroleum or chemical products over ground water or an aquifer.	D2p, E21	<input type="radio"/>	<input type="radio"/>
g. The proposed action may involve the commercial application of pesticides within 100 feet of potable drinking water or irrigation sources.	E2h, D2q, E21, D2c	<input type="radio"/>	<input type="radio"/>
h. Other impacts: The City is served by a surface water reservoir.		<input type="radio"/>	<input type="radio"/>

**5. Impact on Flooding**  
The proposed action may result in development on lands subject to flooding.  
(See Part 1. E.2)  
*If "Yes", answer questions a - - If "No", move on to Section 6.*

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may result in development in a designated floodway.	E2i	<input checked="" type="radio"/>	<input checked="" type="radio"/>
b. The proposed action may result in development within a 100 year floodplain.	E2j	<input checked="" type="radio"/>	<input checked="" type="radio"/>
c. The proposed action may result in development within a 500 year floodplain.	E2k	<input checked="" type="radio"/>	<input checked="" type="radio"/>
d. The proposed action may result in, or require, modification of existing drainage patterns.	D2b, D2e	<input checked="" type="radio"/>	<input checked="" type="radio"/>
e. The proposed action may change flood water flows that contribute to flooding.	D2b, E2i, E2j, E2k	<input checked="" type="radio"/>	<input checked="" type="radio"/>
f. If there is a dam located on the site of the proposed action, is the dam in need of repair, or upgrade?	E1e	<input checked="" type="radio"/>	<input checked="" type="radio"/>



g. Other impacts: The new ZQning Code augments the existing Flood Damage Prevention ordinance (Chapter 175) of the City by further restricting development in the floodplain will in the Conservation Development District.		III	D
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6. Impacts on Air			
The proposed action may include a state regulated air emission source. (See Part 1.D.2.f., D.2.h, D.2.g) <i>If "Yes", answer questions a - f. If "No", move on to Section 7.</i>		(I)NO	DYES
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. If the proposed action requires federal or state air emission permits, the action may also emit one or more greenhouse gases at or above the following levels: i. More than 1000 tons/year of carbon dioxide (CO <sub>2</sub> ) ii. More than 3.5 tons/year of nitrous oxide (N <sub>2</sub> O) iii. More than 1000 tons/year of carbon equivalent of perfluorocarbons (PFCs) iv. More than .045 tons/year of sulfur hexafluoride (SF <sub>6</sub> ) v. More than 1000 tons/year of carbon dioxide equivalent of hydrochlorofluorocarbons (HFCs) emissions vi. 43 tons/year or more of methane	D2g D2g D2g D2g D2g D2h	<input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/>	<input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/>
b. The proposed action may generate 10 tons/year or more of any one designated hazardous air pollutant, or 25 tons/year or more of any combination of such hazardous air pollutants.	D2g	<input type="radio"/>	<input type="radio"/>
c. The proposed action may require a state air registration, or may produce an emissions rate of total contaminants that may exceed 5 lbs. per hour, or may include a heat source capable of producing more than 10 million BTU's per hour.	D2f, D2g	<input type="radio"/>	<input type="radio"/>
d. The proposed action may reach 50% of any of the thresholds in "a" through "c", above.	D2g	<input type="radio"/>	<input type="radio"/>
e. The proposed action may result in the combustion or thermal treatment of more than 1 ton of refuse per hour.	D2s	<input type="radio"/>	<input type="radio"/>
f. Other impacts:		<input type="radio"/>	<input type="radio"/>

7. Impact on Plants and Animals			
The proposed action may result in a loss of flora or fauna. (See Part 1.E.2. m.-q.) <i>If "Yes", answer questions a - i. If "No", move on to Section 8.</i>		II)NO	DYES
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may cause reduction in population or loss of individuals of any threatened or endangered species, as listed by New York State or the Federal government, that use the site, or are found on, over, or near the site.	E2o	<input type="radio"/>	<input type="radio"/>
b. The proposed action may result in a reduction or degradation of any habitat used by any rare, threatened or endangered species, as listed by New York State or the federal government.	E2o	<input type="radio"/>	<input type="radio"/>
c. The proposed action may cause reduction in population, or loss of individuals, of any species of special concern or conservation need, as listed by New York State or the Federal government, that use the site, or are found on, over, or near the site.	E2p	<input type="radio"/>	<input type="radio"/>
d. The proposed action may result in a reduction or degradation of any habitat used by any species of special concern and conservation need, as listed by New York State or the Federal government.	E2p	<input type="radio"/>	<input type="radio"/>

e. The proposed action may diminish the capacity of a registered National Natural Landmark to support the biological community it was established to protect.	E3c	D	D
f. The proposed action may result in the removal of, or ground disturbance in, any portion of a designated significant natural community. Source:	E2n	D	D
g. The proposed action may substantially interfere with nesting/breeding, foraging, or over-wintering habitat for the predominant species that occupy or use the project site.	E2m	D	D
h. The proposed action requires the conversion of more than 10 acres of forest, grassland or any other regionally or locally important habitat. Habitat type & information source:	E1b	D	D
i. Proposed action (commercial, industrial or recreational projects, only) involves use of herbicides or pesticides.	D2q	D	D
j. Other impacts:		D	D

<b>8. Impact on Agricultural Resources</b> The proposed action may impact agricultural resources. (See Part 1.E.3.a. and b.) [Z]NO DYES If "Yes", answer questions a - h. If "No", move on to Section 9.			
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may impact soil classified within soil group I through 4 of the NYS Land Classification System.	E2c, E3b	D	D
b. The proposed action may sever, cross or otherwise limit access to agricultural land (includes cropland, hayfields, pasture, vineyard, orchard, etc).	E1a, E1b	D	D
c. The proposed action may result in the excavation or compaction of the soil profile of active agricultural land.	E3b	D	D
d. The proposed action may irreversibly convert agricultural land to non-agricultural uses, either more than 2.5 acres if located in an Agricultural District, or more than 10 acres if not within an Agricultural District.	E1b, E3a	D	D
e. The proposed action may disrupt or prevent installation of an agricultural land management system.	E1 a, E1 b	D	D
f. The proposed action may result, directly or indirectly, in increased development potential or pressure on farmland.	C2c, C3, D2c, D2d	D	D
g. The proposed project is not consistent with the adopted municipal Farmland Protection Plan.	C2c	D	D
h. Other impacts:		D	D

<p>9. Impact on Aesthetic Resources</p> <p>The land use of the proposed action are obviously different from, or are in sharp contrast to, current land use patterns between the proposed project and a scenic or aesthetic resource. (Part I.E.1.a, E.1.b, E.3.h.)</p> <p><i>If "Yes", answer questions a - f. If "No", go to Section 10.</i></p>			
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. Proposed action may be visible from any officially designated federal, state, or local scenic or aesthetic resource.	E3h	D	D
b. The proposed action may result in the obstruction, elimination or significant screening of one or more officially designated scenic views.	E3h, C2b	D	D
c. The proposed action may be visible from publicly accessible vantage points: i. Seasonally (e.g., screened by summer foliage, but visible during other seasons) ii. Year round	E3h	D D	D D
d. The situation or activity in which viewers are engaged while viewing the proposed action is: i. Routine travel by residents, including travel to and from work ii. Recreational or tourism based activities	E3h E2q, E1c	D D	D D
e. The proposed action may cause a diminishment of the public enjoyment and appreciation of the designated aesthetic resource.	E3h	D	D
f. There are similar projects visible within the following distance of the proposed project: 0-1/2 mile 1/2-3 mile 3-5 mile 5+ mile	D1a, E1a, D1f, D1g	D	D
g. Other impacts: The Zoning Code update encourages responsible development along Newburgh's waterfront and downtown areas, which are visible from National Register Sites, State Parks, and locally important views. The Code includes form-based regulations and scenic viewline protections.		III	D
<p>10. Impact on Historic and Archeological Resources</p> <p>The proposed action may occur in or adjacent to a historic or archaeological resource. (Part I.E.3.e, f. and g.)</p> <p><i>If "Yes", answer questions a - e. If "No", go to Section 11.</i></p>			
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may occur wholly or partially within, or substantially contiguous to, any buildings, archaeological site or district which is listed on or has been nominated by the NYS Board of Historic Preservation for inclusion on the State or National Register of Historic Places.	E3e	D	D
b. The proposed action may occur wholly or partially within, or substantially contiguous to, an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory.	E3f	D	D
c. The proposed action may occur wholly or partially within, or substantially contiguous to, an archaeological site not included on the NY SHPO inventory. Source:	E3g	D	D

d. Other impacts: The Proposed Action streamlines the application and review process for structures located within the City's Historic Districts.			D
e. If any of the above (a-d) are answered "Yes", continue with the following questions to help support conclusions in Part 3:			
i. The proposed action may result in the destruction or alteration of all or part of the site or property.	E3e, E3g, E3f	D	D
ii. The proposed action may result in the alteration of the property's setting or integrity.	E3e, E3f, E3g, E1a, E1b	D	D
iii. The proposed action may result in the introduction of visual elements which are out of character with the site or property, or may alter its setting.	E3e, E3f, E3g, E3h, C2, C3	D	D

<b>11. Impact on Open Space and Recreation</b> The proposed action may result in a loss of recreational opportunities or a reduction of an open space resource as designated in any adopted municipal open space plan. (See Part I . C.2.c, E.1.c., E.2.q.) <i>If "Yes", answer Questions a - e. If "No", RO to Section 12.</i>			
	[Z]No	OYEs	
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may result in an impairment of natural functions, or "ecosystem services", provided by an undeveloped area, including but not limited to stormwater storage, nutrient cycling, wildlife habitat.	D2e, E1b E2h, E2m, E2o, E2n, E2p	0	0
b. The proposed action may result in the loss of a current or future recreational resource.	C2a, E1c, C2c, E2q	0	0
c. The proposed action may eliminate open space or recreational resource in an area with few such resources.	C2a, C2c E1c, E2q	0	0
d. The proposed action may result in loss of an area now used informally by the community as an open space resource.	C2c, E1c	0	0
e. Other impacts: _____		0	0

<b>12. Impact on Critical Environmental Areas</b> The proposed action may be located within or adjacent to a critical environmental area (CEA}. (See Part I . E.3.d) <i>If "Yes", answer Questions a - c. If "No", RO to Section 13.</i>			
	({]NO	DYES	
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may result in a reduction in the quantity of the resource or characteristic which was the basis for designation of the CEA.	E3d	0	0
b. The proposed action may result in a reduction in the quality of the resource or characteristic which was the basis for designation of the CEA.	E3d	0	0
c. Other impacts: _____		0	0

<b>13. Impact on Transportation</b> The proposed action may result in a change to existing transportation systems. <b>NO</b> <input type="checkbox"/> <b>YES</b> <input type="checkbox"/> (See Part I . D.2.j) <i>If "Yes", answer questions a - j. If "No", go to Section 14.</i>			
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. Projected traffic increase may exceed capacity of existing road network.	D2j	<b>D</b>	<b>D</b>
b. The proposed action may result in the construction of paved parking area for 500 or more vehicles.	D2j	<b>D</b>	<b>D</b>
c. The proposed action will degrade existing transit access.	D2j	<b>D</b>	<b>D</b>
d. The proposed action will degrade existing pedestrian or bicycle accommodations.	D2j	<b>D</b>	<b>D</b>
e. The proposed action may alter the present pattern of movement of people or goods.	D2j	<b>D</b>	<b>D</b>
f. Other impacts: See Part 3 of the EAF.		<b>D</b>	<b>D</b>

<b>14. Impact on Energy</b> The proposed action may cause an increase in the use of any form of energy. <b>NO</b> <input type="checkbox"/> <b>YES</b> <input type="checkbox"/> (See Part I . D.2.k) <i>If "Yes", answer questions a - e. If "No", go to Section 15.</i>			
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action will require a new or an upgrade to an existing, substation.	D2k	<b>O</b>	<b>O</b>
b. The proposed action will require the creation or extension of an energy transmission or supply system to serve more than 50 single or two-family residences or to serve a commercial or industrial use.	D1f, D1q, D2k	<b>O</b>	<b>O</b>
c. The proposed action may utilize more than 2,500 MWhrs per year of electricity.	D2k	<b>O</b>	<b>O</b>
d. The proposed action may involve heating and/or cooling of more than 100,000 square feet of building area when completed.	D1g	<b>O</b>	<b>O</b>
e. Other Impacts:			

<b>15. Impact on Noise, Odor, and Light</b> The proposed action may result in an increase in noise, odors, or outdoor lighting. <b>NO</b> <input type="checkbox"/> <b>YES</b> <input type="checkbox"/> (See Part I . D.2.m., n., and o.) <i>If "Yes", answer questions a - f. If "No", go to Section 16.</i>			
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may produce sound above noise levels established by local regulation.	D2m	<b>D</b>	<b>D</b>
b. The proposed action may result in blasting within 1,500 feet of any residence, hospital, school, licensed day care center, or nursing home.	D2m, Eld	<b>D</b>	<b>D</b>
c. The proposed action may result in routine odors for more than one hour per day.	D2o	<b>D</b>	<b>D</b>

d. The proposed action may result in light shining onto adjoining properties.	D2n	D	D
e. The proposed action may result in lighting creating sky-glow brighter than existing area conditions.	D2n, El a		
f. Other impacts: <u>New development is likely to occur as a result of the proposed action, however, it will not change the existing urban and built character and condition of the City.</u>		III	D

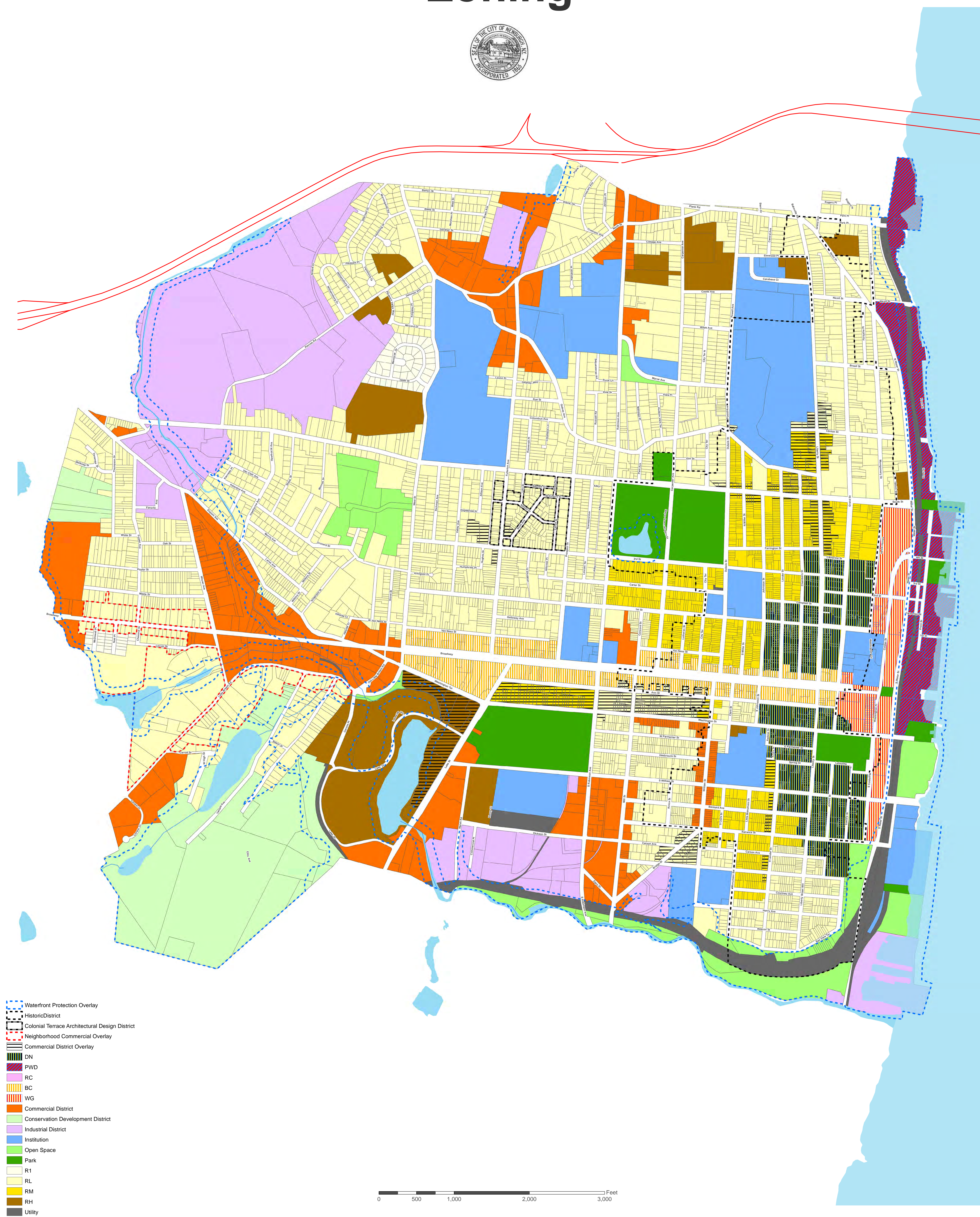
<b>16. Impact on Human Health</b> The proposed action may have an impact on human health from exposure to new or existing sources of contaminants. (See Part 1.D.2.q., E.1.d. f. g. and h.) <i>If "Yes", answer questions a - m. If "No", go to Section 17.</i>				[I]NO	DYES
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur		
a. The proposed action is located within 1500 feet of a school, hospital, licensed day care center, group home, nursing home or retirement community.	El d	O	O		
b. The site of the proposed action is currently undergoing remediation.	El g, El h	O	O		
c. There is a completed emergency spill remediation, or a completed environmental site remediation on, or adjacent to, the site of the proposed action.	El g, El h	O	O		
d. The site of the action is subject to an institutional control limiting the use of the property (e.g., easement or deed restriction).	El g, El h	O	O		
e. The proposed action may affect institutional control measures that were put in place to ensure that the site remains protective of the environment and human health.	El g, El h	O	O		
f. The proposed action has adequate control measures in place to ensure that future generation, treatment and/or disposal of hazardous wastes will be protective of the environment and human health.	D2t	O	O		
g. The proposed action involves construction or modification of a solid waste management facility.	D2q, El f	O	O		
h. The proposed action may result in the unearthing of solid or hazardous waste.	D2q, El f	O	O		
i. The proposed action may result in an increase in the rate of disposal, or processing, of solid waste.	D2r, D2s	O	O		
j. The proposed action may result in excavation or other disturbance within 2000 feet of a site used for the disposal of solid or hazardous waste.	El f, El g, El h	O	O		
k. The proposed action may result in the migration of explosive gases from a landfill site to adjacent off site structures.	El f, El g	O	O		
l. The proposed action may result in the release of contaminated leachate from the project site.	D2s, El f, D2r	O	O		
m. Other impacts:					



<b>17. Consistency with Community Plans</b> The proposed action is not consistent with adopted land use plans. (See Part 1. C.1, C.2. and C.3.) <i>If "Yes", answer questions a - h. If "No", go to Section 18.</i>		<b>IZ)No</b>		<b>DvEs</b>	
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur		
a. The proposed action's land use components may be different from, or in sharp contrast to, current surrounding land use pattern(s).	C2, C3, D1a, E1a, E1b	<input type="radio"/>	<input type="radio"/>		
b. The proposed action will cause the permanent population of the city, town or village in which the project is located to grow by more than 5%.	C2	<input type="radio"/>	<input type="radio"/>		
c. The proposed action is inconsistent with local land use plans or zoning regulations.	C2, C2, C3	<input type="radio"/>	<input type="radio"/>		
d. The proposed action is inconsistent with any County plans, or other regional land use plans.	C2, C2	<input type="radio"/>	<input type="radio"/>		
e. The proposed action may cause a change in the density of development that is not supported by existing infrastructure or is distant from existing infrastructure.	C3, D1e, D1f, D1g, E1b	<input type="radio"/>	<input type="radio"/>		
f. The proposed action is located in an area characterized by low density development that will require new or expanded public infrastructure.	C4, D2c, D2d, D2j	<input type="radio"/>	<input type="radio"/>		
g. The proposed action may induce secondary development impacts (e.g., residential or commercial development not included in the proposed action)	C2a	<input type="radio"/>	<input type="radio"/>		
h. Other:		<input type="radio"/>	<input type="radio"/>		

<b>18. Consistency with Community Character</b> The proposed project is inconsistent with the existing community character. (See Part 1. C.2, C.3, 0.2, E.3) <i>If "Yes", answer questions a - J. If "No", proceed to Part 3.</i>		<b>[Z]NO</b>		<b>DYES</b>	
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur		
a. The proposed action may replace or eliminate existing facilities, structures, or areas of historic importance to the community.	E3e, E3f, E3g	<input type="radio"/>	<input type="radio"/>		
b. The proposed action may create a demand for additional community services (e.g. schools, police and fire)	C4	<input type="radio"/>	<input type="radio"/>		
c. The proposed action may displace affordable or low-income housing in an area where there is a shortage of such housing.	C2, C3, D1f, D1g, E1a	<input type="radio"/>	<input type="radio"/>		
d. The proposed action may interfere with the use or enjoyment of officially recognized or designated public resources.	C2, E3	<input type="radio"/>	<input type="radio"/>		
e. The proposed action is inconsistent with the predominant architectural scale and character.	C2, C3	<input type="radio"/>	<input type="radio"/>		
f. Proposed action is inconsistent with the character of the existing natural landscape.	C2, C3, E1a, E1b, E2g, E2h	<input type="radio"/>	<input type="radio"/>		
g. Other impacts:		<input type="radio"/>	<input type="radio"/>		







## Build-Out Analysis

In order to assess the full environmental impacts of an update to zoning, a build-out analysis was performed to anticipate the future water and sewer capacity needs of the City of Newburgh..

A build-out is an exercise that imagines that every piece of land is rebuilt to its fullest density allowed by zoning. Therefore, if all current structures were rebuilt to their highest density, and all open or vacant land that is not protected by some sort of restriction (parks or preserved open space) were built to their highest density, Newburgh would have a certain number of dwelling units and square feet of commercial and industrial space. These figures will have an effect on the capacity of services such as schools and libraries, and on water and sewer infrastructure. Newburgh is a built-out city with limited vacant and undeveloped land. It is assumed that the majority of the structures that are currently constructed will remain, even with changes in zoning, so an additional build-out was done to analyze only the effects on those parcels that are vacant, undeveloped, or underdeveloped.

## Assumptions

The build-out was performed assuming that every parcel would be built to the highest density allowed by its zone. The following table summarizes those assumptions. Each parcel was then analyzed to determine if it met the minimum lot size allowed for each respective zone, and calculated whether it would either have residential dwelling units, or commercial/ industrial square footage. For the four form-based, mixed use zones, a ratio of residential-to-commercial space was assumed, and both a dwelling unit count and commercial square footage was calculated.

Build-Out Assumptions							
Zone	Minimum Lot Size (Sq.Ft)	Maximum Lot Coverage	Maximum Building Height (Ft)	Maximum Dwelling Units	Dwelling Units per Sq Ft Land	Dwelling Units per Sq Ft Buildings	Percent Residential
Broadway Corridor	1500	0.75	65			750	0.6
Commercial District		0.6	45				
Conservation Development District							
Downtown Neighborhood	1500	0.8	35			1000	0.8
High Density Residential	2000	0.55	45	500 sq ft bldg/ DU		500	
High Density Residential, Apartment Building	2500	0.55	60	500 sf lot/DU	500		
Industrial District		0.7	35				
Institutional							
Low Density Residential	2500	0.3	40	3			
Medium Density Residential	2500	0.3	40	3			
Medium Density Residential, Apartment Building	9000	0.5	45	1800 sf lot /DU	1800		
Open Space	0			0			
Park	0			0			
Planned Waterfront District	1500	0.75	50			1000	0.8
Residential Single Family	2500	0.3	40	1			
Utility							
Waterfront Gateway	1500	0.8	95			1000	0.5

The proposed zoning also has updates to environmental constraints. These areas have limits on building and were reduced from the overall buildable area. For most of these areas, the zoning calls for a 50% reduction in their allowable buildable area. However, within the Water Protection Overlay (WPO) area, there is no new construction permitted, so the entirety of that area was reduced from the buildable area of each parcel. The environmental constraints considered in this build out analysis are Wetlands, classified bodies of water as shown in (site source), FEMA 500 and 100 year flood zones, WPO buffer, and slopes greater than 20%.

### **Full Build-Out**

The Full Build-Out assumes that every parcel in the City that is not currently a Park, Institution, Utility Right-of-Way (ROW), or Protected Open Space, will be rebuilt to its maximum allowable density, accounting for the respective reduction due to environmental constraints. This Full Build-Out scenario is considered highly unlikely, and is not reflected in current or historic building patterns, or in current or historic population growth. Under those conditions, the following Full Build-Out statistics are as follows:

37,621,423	Total Square Feet Commercial and Industrial space
146,962	Total Dwelling Units, resulting in
454,113	Total Population

### **Amended Build-Out**

The Amended Build-Out assumes that all parcels currently built on would remain, and that only those parcels that are Vacant, Parking Lots, Urban Renewal properties, or Storage Yards would be redeveloped to their maximum allowable density, accounting for the reduction for environmental constraints. This scenario is considered more likely and more reflective of historic density and population growth. However, it is still unlikely that this scenario would be fully realized in the next 20 years. Under these conditions, the Amended Build-Out statistics are as follows:

11,527,793	Additional Square Feet Commercial and Industrial space
8,526	Additional Dwelling Units, resulting in
25,749	Additional Residents

### **Outcomes**

The ability of the City of Newburgh to support the future demands under a full or amended build-out has capacity issues relating to all City services, but especially to its wastewater and drinking water infrastructure. New development under these new zoning conditions must ultimately be done in conjunction with careful monitoring of all city services to ensure that adequate services can be provided. Understanding the discreet capacity constraints for Water and Sewer Service, calculations were prepared to see if the City has the capacity to meet development under each build-out scenario. The City has the following capacity of its wastewater and drinking water services:

**Wastewater Treatment:** 9 million gallons per day total capacity; with 3.8 Million reserved for Town of Newburgh

**Drinking Water Filtration:** 4.7 million gallons per day current production; potential for 8.85 million gallons per day of treatment capacity with scheduled upgrades. (Note: 2012 Safe Yield Study limits reservoir daily yield to 6.2 million gallons per day during drought periods, or 8.5 million gallons per day during non-drought periods)

The residential build-out would result in the following water and wastewater daily uses, given the assumptions that:

- There will continue to be 3.09 people per household, as per the 2010 US Census.
- Each residential bedroom will result in 120 gallons of water use per day.
- Each person will result in 110 gallons of wastewater per day.

Residential Water and Wastewater Usage						
	Existing Dwelling Units*	New Dwelling Units	Total Dwelling Units	Total Potential Residents/Beds	Water Gallons Per Day, Res	Wastewater Gallons Per Day, Res
<b>Full Build-Out</b>	0	146,962	146,962	454,113	54,493,510	49,952,384
<b>Amended Build-Out</b>	10,505	8,526	19,031	58,806	7,056,695	6,468,637
*Full Build-Out Scenario assumes there is no existing dwelling units or commercial square footage, and that all is new.						

The commercial/ industrial build-out would result in the following water and wastewater daily uses, given the assumptions that:

- Water will be used at a rate of 25 gallons per day per 200 feet of commercial space.
- General use/ warehouse use will generate 15 gallons of wastewater per worker or 200 square feet of space.
- Restaurants will generate 35 gallons of wastewater per seat, or 25 square feet of space.
- Restaurants will continue to account for 4% of City commercial square footage.

Commercial/ Industrial Water and Wastewater Usage						
	Existing Commercial/ Industrial Sq Ft*	New Commercial/ Industrial Sq Ft	Total Commercial/ Industrial Sq Ft	Water Gallons Per Day	Wastewater Gallons Per Day, Warehouse	Wastewater Gallons Per Day, Restaurant
<b>Full Build-Out</b>	0	37,621,423	37,621,423	4,702,678	2,708,742	2,106,800
<b>Amended Build-Out</b>	5,362,477	11,527,793	16,890,270	2,111,284	1,216,099	945,855
*Full Build-Out Scenario assumes there is no existing dwelling units or commercial square footage, and that all is new.						

Under these scenarios, the system would be hugely over capacity under the full build-out and would need to plan for upgrades to both sewer and water systems. The systems have near the potential capacity to accommodate all future users of the amended build-out, however, this capacity would rely on planned upgrades, and a potential reduction in the amount of allotted capacity granted to neighboring communities in future intermunicipal agreements. A change to this allotted capacity is not expected to be probable, and therefore increased sewer and water capacity would be required under the amended build-out condition to meet full future capacity needs.

<b>Water and Wastewater, Capacity v. Need (gallons per day)</b>				
	<b>Existing Capacity*</b>	<b>Potential Capacity*</b>	<b>Full Build-Out Need</b>	<b>Amended Build-Out Need</b>
<b>Wastewater</b>	5,200,000	9,000,000	54,767,926	8,630,591
<b>Drinking Water</b>	4,500,000	8,500,000	59,196,187	9,167,979
*Without planned upgrades and with reductions for capacity allotted for neighboring communities.				



RESOLUTION NO.: 154 - 2015

OF

JULY 13, 2015

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO  
A LICENSE AGREEMENT WITH THE NEWBURGH PRESERVATION ASSOCIATION  
TO ALLOW ACCESS TO OLD TOWN CEMETERY FOR THE PURPOSE OF MAKING  
IMPROVEMENTS IN CONNECTION WITH A VETERANS DAY PROJECT**

**WHEREAS**, The City of Newburgh owns certain property located at 215 Grand Street, Newburgh, NY, more accurately described as Section 12, Block 1, Lot 12 on the official tax map of the City of Newburgh, also known as Old Town Cemetery; and

**WHEREAS**, The Newburgh Preservation Association, Inc. has requested access to the Old Town Cemetery in connection with a Veterans Day Project for the purpose of performing maintenance, repairs and making improvements, including but not limited to venting and capping the Robinson Mausoleum, restoring the fencing and original cemetery sign and landscaping, and to conduct educational tours for the students attending public or private schools within the City of Newburgh at no cost to the City; and

**WHEREAS**, the City Council of the City of Newburgh finds that permitting such access for the purpose of performing such work and making such improvements to the Old Town Cemetery 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 a license agreement, in substantially the same form annexed hereto with such other terms and conditions acceptable to the Corporation Counsel, with The Newburgh Preservation Association, Inc. to allow access to City owned property known as the Old Town Cemetery located at 215 Grand Street, Newburgh, NY for the purpose of repairs, maintenance and improvements to the Old Town Cemetery in connection with a Veterans Day Project.

## LICENSE AGREEMENT

This Agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, two thousand and fifteen, by and between the CITY OF NEWBURGH, a municipal corporation organized and existing under the laws of the State of New York with offices at 83 Broadway, City Hall, Newburgh, New York 12550 as "LICENSOR," and THE NEWBURGH PRESERVATION ASSOCIATION, INC., a not-for-profit corporation, organized under the laws of the State of New York and having its principal office for the transaction of business at P.O. Box 206, Newburgh, New York 12551 as "LICENSEE";

### WITNESSETH THAT:

Licensee desires the license or privilege of gaining access to and performing work upon the premises of Licensor on behalf of itself and its employees, agents, volunteers and contractors known as Old Town Cemetery, 215 Grand Street, Newburgh, NY, and more accurately described as Section 12, Block 1, Lot 12 on the official tax map of the City of Newburgh.

AND WHEREAS, Licensor is willing to give said license or privilege on the following terms and conditions:

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and conditions hereinafter contained, it is hereby agreed as follows:

First: Licensor hereby gives to Licensee and Licensee's employees, agents, volunteers and contractors, upon the conditions hereinafter stated, the license or privilege of entering upon Licensor's property located at Old Town Cemetery, 215 Grand Street, in the City of Newburgh, New York, and taking thereupon such vehicles, equipment, tools, machinery and other materials as may be necessary, in connection with a Veterans Day Project, for the purposes of and to perform maintenance, repairs and make improvements to property owned by Licensor and used as and for a cemetery and memorial to the original eighteenth and nineteenth century colonial settlers; to maintain, repair and enhance said property, including but not limited to venting and capping the Robinson Mausoleum, restoring the fencing and original cemetery sign, landscaping and any and all other work appurtenant thereto; and to conduct educational tours for the students attending public or private schools within the City of Newburgh.

Second: Licensee shall install, repair and maintain said improvements on said premises in such location and position and as to any such work upon or under property of Licensor in such manner as will be satisfactory to Licensor.

Third: Licensee agrees to do such work and maintain said facilities in such manner as will comply fully with the provisions of any laws, ordinances or other lawful authority obtaining any and all permits required thereby.

Fourth: Licenser acknowledges that the enhancements, improvements and repairs to the subject property shall inure to the benefit of both parties, and shall be satisfactory, adequate and sufficient consideration for the License granted hereunder.

Fifth: Licensee hereby agrees to defend, indemnify and hold Licenser harmless against any claims, actions and proceedings brought against Licenser arising out of, in connection with and/or relating to Licensee's use of the premises. Licensee has posted evidence of and shall maintain throughout the term of this License public liability insurance naming the Licenser as additional insured in a minimum coverage amount of One Million (\$1,000,000.00) Dollars.

Sixth: This Agreement and the license or privilege hereby given shall expire and terminate upon the earlier of November 11, 2015 or the completion of the work by Licensee and its agents, volunteers, employees and contractors, and the restoration of the property to a clean and orderly state and in the same condition as existed prior to the granting of this license, normal wear and tear excepted.

Seventh: It is understood and agreed that no vested right in said premises is hereby granted or conveyed from either party to the other, and that the privileges hereby given are subject to any and all encumbrances, conditions, restrictions and reservations upon or under which the parties held said premises prior to the granting of this license.

Eighth: Without limitation to the general provisions of this Agreement, it is understood and agreed that said improvements shall be installed in substantially the location and position shown in the attachments hereto, and in accordance with details and specifications as set forth on maps or plans hereto attached and hereby made a part hereof.

WITNESSETH:

THE CITY OF NEWBURGH

LICENSOR

By: \_\_\_\_\_  
Michael G. Ciaravino, City Manager  
Per Resolution No.

NEWBURGH PRESERVATION ASSOCIATION

LICENSEE

By: \_\_\_\_\_  
Executive Officer

RESOLUTION NO.: 155 - 2015

OF

JULY 13, 2015

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE  
A LICENSE AGREEMENT WITH VETS LEADING THE WAY  
TO PERMIT ACCESS TO CITY OWNED PROPERTY  
LOCATED AT 41 WISNER AVENUE (SECTION 32, BLOCK 1, LOT 8)  
FOR THE PURPOSES OF PERFORMING A SITE ASSESSMENT**

**WHEREAS**, Vets Leading the Way has requested that the City of Newburgh allow them access to 41 Wisner Avenue more accurately described as Section 32, Block 1, Lot 8 on the official tax map of the City of Newburgh, for the purposes of performing certain predevelopment activities in connection with a site assessment to determine whether to purchase 41 Wisner Avenue; and

**WHEREAS**, such access to the properties requires the parties to execute a license agreement, a copy of which is attached hereto and made a part of this resolution; and

**WHEREAS**, this Council has reviewed such license and has determined that entering into the same would be in the best interests of the City of Newburgh and its further development;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into the attached license agreement with Vets Leading the Way and their contracted agents to allow access to 41 Wisner Avenue Street for the purposes of performing certain predevelopment activities in connection with a site assessment.

## LICENSE AGREEMENT

This Agreement, made this \_\_\_\_ day of \_\_\_\_\_, two thousand and fifteen by and between the CITY OF NEWBURGH, a municipal corporation organized and existing under the laws of the State of New York with offices at 83 Broadway, City Hall, Newburgh, New York 12550 as "LICENSOR," and VETS LEADING THE WAY, INC., a not-for-profit organization having an address of \_\_\_\_\_, and their consultants, agents, volunteers and contractors as "LICENSEE";

WITNESSETH THAT:

WHEREAS, Licensee desires the license or privilege of gaining access to and performing work upon the premises of Licensor, on behalf of itself and its employees, volunteers, agents and contractors, known as 41 Wisner Avenue, and more accurately described as Section 32, Block 1, Lot 8 on the official tax map of the City of Newburgh.

AND WHEREAS, Licensor is willing to give said license or privilege on the following terms and conditions:

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and conditions hereinafter contained, it is hereby agreed as follows:

First: Licensor hereby gives to Licensee and Licensee's employees, volunteers, agents and contractors, upon the conditions hereinafter stated, the license or privilege of entering upon Licensor's property located at 41 Wisner Avenue Street in the City of Newburgh, New York, and taking thereupon such vehicles, equipment, tools, machinery and other materials as may be necessary, for the purposes of and to perform pre-development tasks in connection with a site assessment on said property owned by Licensor, including but not limited to brush clearing, cleaning, excavating, inspection, structural evaluation, filling, boring, testing, sampling, and any and all other work appurtenant thereto.

Second: Licensee agrees to do such work and perform such tasks in such manner as will comply fully with the provisions of any laws, ordinances or other lawful authority, obtaining any and all permits required thereby.

Third: During the term of this Agreement, the parties mutually agree to release and indemnify each other for all claims, damages or expenses resulting from said party's own negligence. It is hereby acknowledged that Licensor is a self-insured municipality.

Fourth: Licensee will perform all work in connection with a site assessment and evaluation of an inactive commercial property, including walk-through inspection, review of City of Newburgh and other records, review of governmental environmental records and data, and other measures relating to environmental testing, underground tanks, potential contamination issues,



evaluation of structures and related tasks in connection with said property. In all contracts by which Licensee retains consultants and contractors to perform these tasks, they shall name City as additional insured under insurance coverage concerning the performance of the tasks referenced herein.

Fifth: This Agreement and the license or privilege hereby given shall expire and terminate upon the completion of the work by Licensee and its agents, employees and contractors, and the restoration of the property to a clean and orderly state and in the same condition as existed prior to the granting of this license, normal wear and tear excepted.

Sixth: It is understood and agreed that no vested right in said premises is hereby granted or conveyed from either party to the other, and that the privileges hereby given are subject to any and all encumbrances, conditions, restrictions and reservations upon or under which the parties held said premises prior to the granting of this license.

WITNESSETH:

THE CITY OF NEWBURGH

LICENSOR

By: \_\_\_\_\_  
Michael G. Ciaravino, City Manager  
Per Resolution No.

VETS LEADING THE WAY

LICENSEE

By: \_\_\_\_\_

RESOLUTION NO.: 156 - 2015

OF

JULY 13, 2015

A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY  
KNOWN AS 37 HASBROUCK STREET (SECTION 38, BLOCK 4, LOT 17),  
42 HASBROUCK STREET (SECTION 38, BLOCK 3, LOT 49) AND  
53 HASBROUCK STREET (SECTION 38, BLOCK 4, LOT 11) AT PRIVATE SALE  
TO LIZ PASTORE D/B/A PRESTIGE BUILDING CO. FOR THE AMOUNT OF \$37,660.00

**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 37 Hasbrouck Street, 42 Hasbrouck Street and 53 Hasbrouck Street , being more accurately described as Section 38, Block 4, Lot 17, Section 38, Block 3, Lot 49 and Section 38, Block 4 and Lot 11 respectively, on the official tax map of the City of Newburgh; and

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

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

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchaser be and hereby is confirmed and the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of the indicated purchase price in money order, good certified or bank check, made payable to **THE CITY OF NEWBURGH**, such sums are to be paid on or before September 11, 2015, being sixty (60) days from the date of this resolution; and

<u>Property address</u>	<u>Section, Block, Lot</u>	<u>Purchaser</u>	<u>Purchase Price</u>
37 Hasbrouck Street	38 - 4 - 71	Liz Pastore	\$19,920.00
42 Hasbrouck Street	38 - 3 - 49		\$ 7,960.00
53 Hasbrouck Street	38 - 4 - 11		\$ 9,780.00

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

# Terms and Conditions Sale

## 37 Hasbrouck Street, City of Newburgh (38-4-17)

## 42 Hasbrouck Street, City of Newburgh (38-3-49)

## 53 Hasbrouck Street, City of Newburgh (38-4-11)

### STANDARD TERMS:

1. City of Newburgh acquired title to these properties in accordance with Article 11 of the Real Property Tax Law of the State of New York, and all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture.
2. For purposes of these Terms and Conditions, parcel shall be defined as a section, block and lot number.
3. All real property, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title; and (e) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the date of sale.
4. The properties are sold subject to unpaid school taxes for the tax years of 2014 and 2015 County Tax and 2014-2015 School Taxes and any subsequent levies. The purchaser shall reimburse the City for 2014 and 2015 County Taxes and 2014-2015 School Taxes and any subsequent levies. Upon the closing, the properties shall become subject to taxation and apportionment of the 2015 City taxes shall be made as of the date of closing. Water and sewer charges and sanitation fees will be paid by the City to the date of closing.
5. **WARNING: FAILURE TO COMPLY WITH THE TERMS OF THIS PARAGRAPH MAY RESULT IN YOUR LOSS OF THE PROPERTY AFTER PURCHASE.** The deed will contain provisions stating that the purchaser is required to rehabilitate any building on the property and bring it into compliance with all State, County and Local standards for occupancy within (18) months of the date of the deed. Within such eighteen (18) month time period the purchaser must either: obtain a Certificate of Occupancy for all buildings on the property; make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or demolish such buildings. The deed shall require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. If the purchaser has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued. A written request made to the City Manager for an extension of the eighteen (18) month rehabilitation period shall be accompanied by a non-refundable fee of \$250.00 per parcel for which a request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to rehabilitate of up to, but not to exceed, three (3) months. Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.
6. 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.

7. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.
8. 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.
9. The entire purchase price and all closing costs/fees must be paid by money order or guaranteed funds to the City of Newburgh Comptroller's Office on or before September 11, 2015. *The City of Newburgh does not accept credit card payments for the purchase price and closing costs/fees.* **The City is not required to send notice of acceptance or any other notice to a purchaser.** At closing, purchaser, as grantee, may take title as a natural person or as an entity wherein purchaser is an officer or managing member of said entity. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefor, and unless accompanied by a fee of \$250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.
10. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the successful purchaser shall be entitled only to a refund of the purchase money paid with interest. 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.
11. Sale shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, his heirs, successors or assigns, against City of Newburgh arising from this sale.
12. 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, and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**
13. 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.
14. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least thirty (30) days in advance of closing title and approved by the City's Engineer.
15. Evictions, if necessary, are solely the responsibility of the purchaser after closing and recording of the deed.



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

RESOLUTION NO.: 157-2015

OF

JULY 13, 2015

**A RESOLUTION AUTHORIZING THE EXECUTION  
OF A RELEASE OF RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY  
FROM A DEED ISSUED TO RUSSELL TURIK  
TO THE PREMISES KNOWN AS 8 CLARK STREET  
(SECTION 36, BLOCK 1, LOT 8)**

**WHEREAS**, on September 11, 1997, the City of Newburgh conveyed property located at 8 Clark Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 36, Block 1, Lot 8, to Russell Turiak; and

**WHEREAS**, Mr. Turiak, by his attorney, has requested a release of the restrictive covenants contained in said deed; and

**WHEREAS**, the appropriate departments have reviewed their files and advised that the covenants have been complied with, and recommends such release be granted; and

**WHEREAS**, this Council believes it is in the best interest of the City of Newburgh and its further development to grant such request;

**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 execute the release, annexed hereto and made a part of this resolution, of restrictive covenants numbered 1, 2, 3 and 4 of the aforementioned deed.

**RELEASE OF COVENANTS AND  
RIGHT OF RE-ENTRY**

**KNOWN ALL PERSONS BY THESE PRESENTS**, that the City of Newburgh, a municipal corporation organized and existing under the Laws of the State of New York, and having its principal office at City Hall, 83 Broadway, Newburgh, New York 12550, in consideration of TEN (\$10.00) DOLLARS lawful money of the United States and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby release and forever quitclaim the premises described as 8 Clark Street, Section 36, Block 1, Lot 8, on the Official Tax Map of the City of Newburgh, from those restrictive covenants numbered 1, 2, 3 and 4 in a deed dated September 11, 1997, from the CITY OF NEWBURGH to RUSSELL TURIAK, recorded in the Orange County Clerk's Office on October 28, 1997, in Liber 4654 of Deeds at Page 242 and does further release said premises from the right of re-entry reserved in favor of the City of Newburgh as set forth in said deed.

Dated: \_\_\_\_\_, 2015

THE CITY OF NEWBURGH

By: \_\_\_\_\_  
Michael G. Ciaravino, City Manager  
Pursuant to Resolution No.: \_\_-2015

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

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared MICHAEL G. CIARAVINO, 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 capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

\_\_\_\_\_

RESOLUTION NO.: 158 - 2015

OF

JULY 13, 2015

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH, NEW YORK  
SUPPORTING THE 2015 CONSOLIDATED FUNDING APPLICATION OF  
SAFE HARBORS OF THE HUDSON, INC. TO THE NEW YORK STATE OFFICE OF  
PARKS, RECREATION AND HISTORIC PRESERVATION FOR AN  
ENVIRONMENTAL PROTECTION FUND GRANT**

**WHEREAS**, the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) Environmental Protection Fund Grant Program provides funding for the acquisition, planning, development, and improvement of parks, historic properties, and heritage areas located within the physical boundaries of the State of New York; and

**WHEREAS**, Safe Harbors of the Hudson is applying to OPRHP for a Park Acquisition, Development and Planning Program grant under the Environmental Protection Fund for the development of Safe Harbors Park located at 97-101 Broadway at the southwest corner of Broadway and Liberty Streets, a site located within the territorial jurisdiction of this Council; and

**WHEREAS**, as a requirement under the rules of this program, Safe Harbors of the Hudson must obtain the endorsement of the City Council of the City of Newburgh in which the project will be located; and

**WHEREAS**, this program further requires that public access covenants conveyed to New York State for all park development projects undertaken by not-for-profit corporations;

**NOW, THEREFORE, BE IT RESOLVED** that the City of Newburgh fully supports and endorses the 2015 Consolidated Funding Application of Safe Harbors of the Hudson to the New York State Office of Parks, Recreation and Historic Preservation for an Environmental Protection Fund Grant under the Park Acquisition, Development and Planning Program for the Safe Harbors Park Redevelopment Project within the City of Newburgh.

RESOLUTION NO.: 159 - 2015

OF

JULY 13, 2015

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH, NEW YORK  
SUPPORTING THE 2015 CONSOLIDATED FUNDING APPLICATION OF THE  
NEWBURGH COMMUNITY LAND BANK TO THE OFFICE OF  
COMMUNITY RENEWAL, NEW YORK STATE HOUSING TRUST FUND  
CORPORATION FOR A NEW YORK MAIN STREET  
DOWNTOWN STABILIZATION PROGRAM GRANT**

**WHEREAS**, the New York Main Street Downtown Stabilization Program provides funding to assist with environmental remediation and associated construction costs, as well as other innovative approaches to stabilizing and developing downtown, mixed-use buildings; and

**WHEREAS**, the Newburgh Community Land Bank intends to apply for funding under the New York Main Street Downtown Stabilization Program in an amount not to exceed \$500,000.00 for mixed-use building stabilization and repairs in the Neighborhood Revitalization Area bounded by Dubois Street, Liberty Street, Broadway and First Street to include necessary environmental remediation, essential masonry repairs, roof repairs, and structural stabilization; and

**WHEREAS**, the Newburgh Community Land Bank is collaborating with Safe Harbors of the Hudson and the City of Newburgh to leverage and maximize the impact of funding on the community and provide economic development and housing opportunities in downtown, mixed-use commercial districts to stimulate reinvestment and sustain downtown and neighborhood revitalization efforts;

**NOW, THEREFORE, BE IT RESOLVED**, that the City of Newburgh fully supports the 2015 Consolidated Funding application of the Newburgh Community Land Bank to the Office of Community Renewal under the New York Main Street Downtown Stabilization Program to secure state funding for mixed use building stabilization and repairs in the Neighborhood Revitalization Area.



RESOLUTION NO.: 160 - 2015

OF

JULY 13, 2015

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH, NEW YORK  
SUPPORTING THE 2015 CONSOLIDATED FUNDING APPLICATION OF  
ST. GEORGE'S EPISCOPAL CHURCH TO THE NEW YORK STATE OFFICE OF PARKS,  
RECREATION AND HISTORIC PRESERVATION FOR AN ENVIRONMENTAL  
PROTECTION FUND GRANT UNDER THE HISTORIC PROPERTY ACQUISITION,  
PRESERVATION AND PLANNING PROGRAM**

**WHEREAS**, the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) Environmental Protection Fund Grant Program provides funding to improve, protect, preserve, rehabilitate, restore or acquire properties listed on the State or Federal Register of Historic Places; and

**WHEREAS**, St. George's Episcopal Church is applying to OPRHP for a Historic Property Acquisition Preservation and Planning Program grant under the Environmental Protection Fund to repair the tower, roof and nave ceiling of the historic building located at 105 Grand Street, a site located within the territorial jurisdiction of this Council; and

**WHEREAS**, this Council finds that the repair and restoration of St. George's Episcopal Church is in the best interests of the City of Newburgh and its further development;

**NOW, THEREFORE, BE IT RESOLVED** that the City of Newburgh fully supports and endorses the 2015 Consolidated Funding Application of St. George's Episcopal Church to the New York State Office of Parks, Recreation and Historic Preservation for an Environmental Protection Fund Grant under the Park Acquisition, Development and Planning Program for the preservation of St. George's Episcopal Church located at 105 Grand Street in the City of Newburgh.

RESOLUTION NO.: 161 - 2015

OF

JULY 13, 2015

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH, NEW YORK  
SUPPORTING THE 2015 CONSOLIDATED FUNDING APPLICATION OF THE  
NEWBURGH COMMUNITY LAND BANK FOR A NEW YORK STATE ENERGY  
RESEARCH AND DEVELOPMENT AUTHORITY - CLEANER, GREENER  
COMMUNITIES PROGRAM PHASE II IMPLEMENTATION GRANT**

**WHEREAS**, the New York State Energy Research and Development Authority (NYSERDA) Cleaner Greener Communities Program is a competitive grant program designed to encourage communities to develop and implement regional sustainable growth strategies; and

**WHEREAS**, the Newburgh Community Land Bank seeks funding for a Category 3 - Community-Scale Sustainability Project for properties located in the area of South Miller Street and First Street and in the right of way to promote green infrastructure, renewable energy and complete streets strategies and project demonstrations in vacant lots in Neighborhood Revitalization Area bounded by Dubois Street, Liberty Street, Broadway and First Street; and

**WHEREAS**, the Newburgh Community Land Bank intends to leverage other funding to further sustainable neighborhood development as a part of an overall neighborhood redevelopment plan;

**NOW, THEREFORE, BE IT RESOLVED**, that the City of Newburgh fully supports the 2015 Consolidated Funding application of the Newburgh Community Land Bank to the New York State Energy Research and Development Authority Cleaner Greener Communities Program to secure state funding for innovative and transformational sustainable development in the Neighborhood Revitalization Area.

RESOLUTION NO.: 162 - 2015

OF

JULY 13, 2015

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR  
AND ACCEPT IF AWARDED A NEW YORK STATE DEPARTMENT OF STATE  
OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION  
RECREATIONAL TRAILS PROGRAM GRANT THROUGH THE  
CONSOLIDATED FUNDING APPLICATION PROCESS IN AN AMOUNT  
NOT TO EXCEED \$200,000.00 TO DEVELOP A PARK AND  
CONSTRUCTION OF TRAILS ALONG THE QUASSAICK CREEK**

**WHEREAS**, the Orange County Land Trust has awarded the City of Newburgh a grant in the amount of \$50,000.00 for the acquisition of land along the Quassaick Creek; and

**WHEREAS**, the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) Recreational Trails Programs provides funds to develop and maintain recreational trails for motorized and non-motorized use; and

**WHEREAS**, the City of Newburgh is a qualified applicant under this OPRHP Recreational Trails Program; and

**WHEREAS**, the City of Newburgh intends to apply for a grant in the amount of \$200,000.00 with the Orange County Land Trust grant as the required matching funds to construct trails along the Quassaick Creek to provide public access as part of the Quassaick Creek Estuary Preserve; and

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept if awarded a New York State Office of Parks, Recreation and Historic Preservation Recreational Trails Program grant through the 2015 Consolidated Funding Application process in an amount not to exceed \$200,000.00 to construct public access trails along the Quassaick Creek; and that the City Manager is authorized to execute all such contracts and documentation and take such further actions as may be appropriate and necessary to accept such grant and administer the program funded thereby.

RESOLUTION NO.: 163 - 2015

OF

JULY 13, 2015

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR  
AND ACCEPT IF AWARDED A NEW YORK STATE ENERGY RESEARCH AND  
DEVELOPMENT AUTHORITY – CLEANER, GREENER COMMUNITIES PROGRAM  
PHASE II IMPLEMENTATION GRANT THROUGH THE  
CONSOLIDATED FUNDING APPLICATION PROCESS IN AN AMOUNT  
NOT TO EXCEED \$10,000.00 TO DEVELOP SOLAR ENERGY GUIDELINES**

**WHEREAS**, the New York State Energy Research and Development Authority (NYSERDA) Cleaner Greener Communities Program is a competitive grant program designed to encourage communities to develop and implement regional sustainable growth strategies; and

**WHEREAS**, the City of Newburgh is a qualified applicant under the NYSERDA Cleaner Greener Communities Program; and

**WHEREAS**, the City of Newburgh seeks funding to develop solar energy guidelines for City-wide implementation to meet Orange County guidelines and best practices for alternative energy production and to reduce energy costs to the City, homeowners and businesses; and

**WHEREAS**, such grant funds shall be in an amount not to exceed \$10,000.00 with no City match required; and

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept if awarded a New York State Energy Research and Development Authority Cleaner Greener Communities Program grant through the 2015 Consolidated Funding Application process in an amount not to exceed \$10,000.00 with no City match required to fund the development of solar energy guidelines; and that the City Manager is authorized to execute all such contracts and documentation and take such further actions as may be appropriate and necessary to accept such grant and administer the program funded thereby.

RESOLUTION NO.: 164 - 2015

OF

JULY 13, 2015

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND  
ACCEPT IF AWARDED A NEW YORK STATE OFFICE OF PARKS, RECREATION AND  
HISTORIC PRESERVATION FOR AN ENVIRONMENTAL PROTECTION FUND  
PARK ACQUISITION, DEVELOPMENT AND PLANNING PROGRAM GRANT  
IN AN AMOUNT NOT TO EXCEED \$200,000.00  
TO DEVELOP PARK LAND AT BROWNS POND**

**WHEREAS**, the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) Environmental Protection Fund Park Acquisition, Development and Planning Program Grant Program provides funding for the acquisition, planning, development, and improvement of parks, historic properties, and heritage areas located within the physical boundaries of the State of New York; and

**WHEREAS**, the City of Newburgh is a qualified applicant under this OPRHP Park Acquisition, Development and Planning Program; and

**WHEREAS**, the City of Newburgh intends to apply for a grant in the amount of \$200,000.00, with no City match required, to develop a public park land and public entrance to Browns Pond including the creation of parking lot, which will require the demolition of the abandoned building on the site; and

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept if awarded a New York State Office of Parks, Recreation and Historic Preservation Environmental Protection Fund Park Acquisition, Development and Planning Program grant through the 2015 Consolidated Funding Application process in an amount not to exceed \$200,000.00 to develop public park land at Browns Pond; and that the City Manager is authorized to execute all such contracts and documentation and take such further actions as may be appropriate and necessary to accept such grant and administer the program funded thereby.



RESOLUTION NO.: 165 - 2015

OF

JULY 13, 2015

**A RESOLUTION AUTHORIZING ARCADIS/MALCOLM PIRNIE TO ASSIST THE CITY OF NEWBURGH IN APPLYING FOR A NEW YORK STATE ENVIRONMENTAL FACILITIES CORPORATION GREEN INNOVATION GRANT WITH AN AWARD NOT TO EXCEED \$400,000.00 THROUGH THE CONSOLIDATED FUNDING APPLICATION PROCESS FOR THE CITY HALL GREEN ROOF RENOVATION PROJECT AND FURTHER AUTHORIZING THE CITY MANAGER TO ACCEPT SUCH GRANT FUNDS IF AWARDED**

**WHEREAS**, The Green Innovation Grant Program (GIGP) administered by the New York State Environmental Facilities Corporation (EFC) through the Clean Water State Revolving Fund (CWSRF) provides grants on a competitive basis to projects that improve water quality and demonstrate green stormwater infrastructure in New York; and

**WHEREAS**, the City of Newburgh is a qualified applicant under the EFC GIGP; and

**WHEREAS**, Arcadis/Malcolm Pirnie has offered to prepare and submit a Green Innovation Grant application to the Environmental Facilities Corporation through the Consolidated Funding Application process at no cost to the City to fund the City Hall Green Roof Renovations Project which will incorporate green roof components on portions of the building to improve stormwater management at the site; and

**WHEREAS**, such grant funds shall be in an amount not to exceed \$400,000.00 with a City match in the amount of \$100,000.00 for asbestos abatement, which is not an eligible GIGP cost; and

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that Arcadis/Malcolm Pirnie be and is hereby authorized to apply for a Green Innovation Grant from the Environmental Facilities Corporation through the Consolidated Funding Application process in an amount not to exceed \$400,000.00; and

**BE IT FURTHER RESOLVED**, by the City Council that the City Manager be and he is hereby authorized to accept, if awarded, said Green Innovation Grant through the Consolidated Funding Application process; and

**BE IT FURTHER RESOLVED**, by the City Council that the that the City Manager be and he is hereby authorized to execute all such grant application forms, contracts and documentation and take such further action as may be appropriate and necessary to accept such grant and administer the program funded thereby.

RESOLUTION NO.: 166 - 2015

OF

JULY 13, 2015

**A RESOLUTION AUTHORIZING ARCADIS/MALCOLM PIRNIE TO ASSIST THE CITY OF NEWBURGH IN APPLYING FOR A NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION WATER QUALITY IMPROVEMENT PROGRAM GRANT WITH AN AWARD NOT TO EXCEED \$500,000.00 THROUGH THE CONSOLIDATED FUNDING APPLICATION PROCESS FOR THE DOWNING PARK POND DRAINAGE IMPROVEMENT PROJECT AND FURTHER AUTHORIZING THE CITY MANAGER TO ACCEPT SUCH GRANT FUNDS IF AWARDED**

**WHEREAS**, the New York State Department of Environmental Conservation Water Quality Improvement Project Program is a competitive state-wide reimbursement grant program open to local governments for projects that directly address documents water quality impairments; and

**WHEREAS**, the City of Newburgh is a qualified applicant for non-agricultural nonpoint source abatement and control projects under the DEC WQIP Program; and

**WHEREAS**, Arcadis/Malcolm Pirnie has offered to prepare and submit a WQIP Program grant application through the Consolidated Funding Application process at no cost to the City to fund the Downing Park Pond Drainage Improvement Project through green infrastructure and stormwater retrofits in connection with the City's Long Term Control Plan; and

**WHEREAS**, such grant funds shall be in an amount not to exceed \$375,000.00 with a twenty-five (25%) percent City match in the amount of \$125,000.00 for a total project cost of \$500,000.00;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that Arcadis/Malcolm Pirnie be and is hereby authorized to apply for a Water Quality Improvement Program Grant from the Department of Environmental Conservation through the Consolidated Funding Application process in an amount not to exceed \$375,000.00; and

**BE IT FURTHER RESOLVED**, by the City Council that the City Manager be and he is hereby authorized to accept, if awarded, said Water Quality Improvement Program Grant through the Consolidated Funding Application process; and

**BE IT FURTHER RESOLVED**, by the City Council that the that the City Manager be and he is hereby authorized to execute all such grant application forms, contracts and documentation and take such further action as may be appropriate and necessary to accept such grant and administer the program funded thereby.

RESOLUTION NO.: 167 - 2015

OF

JULY 13, 2015

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR  
AND ACCEPT IF AWARDED A NEW YORK STATE DEPARTMENT OF STATE  
LOCAL WATERFRONT REVITALIZATION PROGRAM GRANT THROUGH THE  
CONSOLIDATED FUNDING APPLICATION PROCESS  
IN AN AMOUNT NOT TO EXCEED \$155,000.00 TO UNDERTAKE  
THE RECONSTRUCTION OF COMBINED SEWER OVERFLOW OUTFALL NO. 12**

**WHEREAS**, the New York State Department of Environmental Conservation requires the City of Newburgh to repair a pipe collapse in Combined Sewer Overflow (CSO) Outfall No. 12 which is damaging property along the Hudson River and is in violation of the City's State Pollutant Discharge Elimination System (SPDES) permit; and

**WHEREAS**, the New York State Department of State's Local Waterfront Revitalization Program (LWR Program) provides 50/50 matching grants on a competitive basis to eligible villages, towns, cities, and located along New York's coasts or designated inland waterways to revitalize communities and waterfronts through planning, design, and construction projects, with design and construction tied to prior planning; and

**WHEREAS**, the City of Newburgh is a qualified applicant under this LWR Program; and

**WHEREAS**, the City of Newburgh has completed the design phase of the reconstruction of CSO No. 12 and the total cost of the reconstruction phase of the project is \$300,000.00; and

**WHEREAS**, the City has identified the LWR Program for funding to complete the reconstruction project with the match to be derived from the 2015 BAN; and

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept if awarded a New York State Department of State Local Waterfront Revitalization Program grant through the 2015 Consolidated Funding Application process in an amount not to exceed \$155,000.00 to fund the Combined Sewer Overflow Outfall No. 12 Reconstruction; and that the City Manager is authorized to execute all such contracts and documentation and take such further actions as may be appropriate and necessary to accept such grant and administer the program funded thereby.

RESOLUTION NO.: 168 - 2015

OF

JULY 13, 2015

**A RESOLUTION AUTHORIZING ARCADIS/MALCOLM PIRNIE TO ASSIST THE CITY OF NEWBURGH IN APPLYING FOR A NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION WATER QUALITY IMPROVEMENT PROGRAM GRANT WITH AN AWARD NOT TO EXCEED \$500,000.00 THROUGH THE CONSOLIDATED FUNDING APPLICATION PROCESS FOR THE REGULATOR NO. 2 REPLACEMENT PROJECT AND FURTHER AUTHORIZING THE CITY MANAGER TO ACCEPT SUCH GRANT FUNDS IF AWARDED**

**WHEREAS**, the New York State Department of Environmental Conservation Water Quality Improvement Project Program is a competitive state-wide reimbursement grant program open to local governments for projects that directly address documents water quality impairments; and

**WHEREAS**, the City of Newburgh is a qualified applicant for wastewater treatment improvement projects under the DEC WQIP Program; and

**WHEREAS**, Arcadis/Malcolm Pirnie has offered to prepare and submit a WQIP Program grant application through the Consolidated Funding Application process at no cost to the City to fund the Regulator No. 2 Replacement Project as a wastewater treatment improvement in connection with the City's Long Term Control Plan; and

**WHEREAS**, such grant funds shall be in an amount not to exceed \$425,000.00 with a fifteen (15%) percent City match in the amount of \$75,000.00 for a total project cost of \$500,000.00;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that Arcadis/Malcolm Pirnie be and is hereby authorized to apply for a Water Quality Improvement Program Grant from the Department of Environmental Conservation through the Consolidated Funding Application process in an amount not to exceed \$425,000.00; and

**BE IT FURTHER RESOLVED**, by the City Council that the City Manager be and he is hereby authorized to accept, if awarded, said Water Quality Improvement Program Grant through the Consolidated Funding Application process; and

**BE IT FURTHER RESOLVED**, by the City Council that the that the City Manager be and he is hereby authorized to execute all such grant application forms, contracts and documentation and take such further action as may be appropriate and necessary to accept such grant and administer the program funded thereby.

RESOLUTION NO.: 169 - 2015

OF

JULY 13, 2015

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR  
AND ACCEPT IF AWARDED AN EMPIRE STATE DEVELOPMENT GRANT FROM  
THE REGIONAL COUNCIL CAPITAL FUND  
THROUGH THE CONSOLIDATED FUNDING APPLICATION PROCESS  
IN AN AMOUNT NOT TO EXCEED \$1,800,000.00 TO UNDERTAKE  
THE SOUTH WATER STREET SEWER SEPARATION PROJECT**

**WHEREAS**, the New York State Department of Environmental Conservation requires the City of Newburgh to eliminate illicit sewer discharges into the Hudson River as part of the City's Long Term Control Plan; and

**WHEREAS**, the New York State Urban Development Corporation d/b/a Empire State Development (ESD) through the Regional Council Capital Fund provides funding which may be used to finance infrastructure investments and capital expenditures for infrastructure projects including transportation, parking garages, water and sewer, communication, and energy generation and distribution; and

**WHEREAS**, the City of Newburgh is a qualified applicant under the ESD Regional Council Capital Fund; and

**WHEREAS**, the City of Newburgh has completed the design phase of the South Water Street Sewer Separation Project and the total cost of the construction phase of the project is \$1,800,000.00; and

**WHEREAS**, the City has identified the ESD Regional Council Capital Fund for funding to complete the construction phase of the South Water Street Sewer Separation Project with the ten (10%) percent match to be derived from the 2015 BAN; and

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept if awarded a New York State Urban Development Corporation d/b/a Empire State Development Regional Council Capital Fund grant through the 2015 Consolidated Funding Application process in an amount not to exceed \$1,800,000.00 to fund the South Water Street Sewer Separation Project; and that the City Manager is authorized to execute all such contracts and documentation and take such further actions as may be appropriate and necessary to accept such grant and administer the program funded thereby.

RESOLUTION NO.: 170 - 2015

OF

JULY 13, 2015

**A RESOLUTION AUTHORIZING BARTON & LOGUIDICE, D.P.C. TO ASSIST THE CITY OF NEWBURGH IN APPLYING FOR AN ENGINEERING PLANNING GRANT FROM THE ENVIRONMENTAL FACILITIES CORPORATION THROUGH THE CONSOLIDATED FUNDING APPLICATION PROCESS WITH AN AWARD OF UP TO \$125,000.00 TO INVESTIGATE ILLICIT SEWER CONNECTIONS EAST OF LIBERTY STREET WITHIN THE CITY OF NEWBURGH AND FURTHER AUTHORIZING THE CITY MANAGER TO ACCEPT SUCH GRANT FUNDS IF AWARDED**

**WHEREAS**, the City of Newburgh recently has identified certain illicit sewer connections which discharge directly to the City's combined sewer overflows rather than to the City's waste water treatment plant; and

**WHEREAS**, the City is obligated to further investigate and detect such illicit sewer connections; and

**WHEREAS**, the New York State Consolidated Funding Application process provides grant funding to support the City's plan to further investigate and detect such illicit sewer connections; and

**WHEREAS**, Barton & Loguidice, D.P.C. has offered to prepare and submit an engineering planning grant application to the Environmental Facilities Corporation through the Consolidated Funding Application process at no cost to the City for the further investigation and identification of illicit sewer connections east of Liberty Street; and

**WHEREAS**, such grant funds shall be in an amount not to exceed \$125,000.00; and

**WHEREAS**, said grant requires a twenty (20%) percent local match, which can be derived from the in-kind services of the City's Engineering and Public Works Departments;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that Barton & Loguidice, D.P.C. be and is hereby authorized to apply for a planning grant through the Consolidated Funding Application process in an amount not to exceed \$125,000.00; and

**BE IT FURTHER RESOLVED**, by the City Council that the City Manager be and he is hereby authorized to accept, if awarded, said planning grant through the Consolidated Funding Application process; and



**BE IT FURTHER RESOLVED,** by the City Council that the that the City Manager be and he is hereby authorized to execute all such grant application forms, contracts and documentation and take such further action as may be appropriate and necessary to accept such grant and administer the program funded thereby.

RESOLUTION NO.: 171 - 2015

OF

JULY 13, 2015

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT  
WITH BARTON & LOGUIDICE, D.P.C. FOR PROFESSIONAL ENGINEERING  
SERVICES FOR A SANITARY SEWER OVERFLOW INVESTIGATION WITHIN THE  
CITY OF NEWBURGH AT A COST NOT TO EXCEED \$27,840.00**

**WHEREAS**, by Resolution No. 153-2014 of June 9, 2014, the City Council of the City of Newburgh authorized Barton & Loguidice, D.P.C. to apply for a planning grant through the Consolidated Funding Application process in an amount not to exceed Thirty Thousand (\$30,000.00) Dollars and further authorized the City Manager to accept, if awarded, said planning grant; and

**WHEREAS**, the City of Newburgh was awarded an Engineering Planning Grant in the amount of \$27,840.00 administered through the New York Clean Water State Revolving Fund for the identification of point source sewage along the City's Hudson River waterfront; and

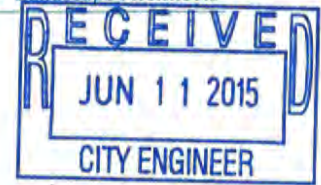
**WHEREAS**, , Barton & Loguidice, D.P.C. has prepared a proposal for the scope of professional engineering services necessary to complete the work outlined in grant proposal at a cost not to exceed \$27,840.00; and

**WHEREAS**, said grant requires a twenty (20%) percent local match in the amount of \$6,960.00, which will be derived from the in-kind services of the City's staff, for a total project cost of \$34,800.00;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that City Manager is hereby authorized to execute an agreement for professional engineering services with Barton & Loguidice, D.P.C. for the scope of work outlined in the proposal dated June 5, 2015 in an amount not to exceed \$27,480.00, with other provisions as Corporation Counsel may require, for the inspection of the City's combined sewer overflows and the identification of point source sewage along the City's Hudson River waterfront.

June 5, 2015

Mr. Jason Morris  
City Engineer  
City of Newburgh  
83 Broadway  
Newburgh, New York 12550



Re: Proposal for Sanitary Sewer Overflow Investigation Project  
NYSEFC/NYSDEC Wastewater Engineering Planning Study  
File: P702.2582

Dear Mr. Morris:

Barton & Loguidice, D.P.C. (B&L) is pleased to have been asked to continue working on this project with the City of Newburgh and is providing this proposal for the completion of a Sanitary Sewer Overflow Investigation. As you are aware, the City of Newburgh was successful with its grant request prepared and submitted on behalf of the City through the Consolidated Funding Application (CFA) process in December 2014. On behalf of everyone at B&L, congratulations!

This award consists of an Engineering Planning Grant of \$27,840, administered by the Clean Water State Revolving Fund (CWSRF) for identification of point source sewage pollution along the City's Hudson River Waterfront. This grant requires that the City provide a 20% minimum local share of the total project cost (i.e., \$6,960 minimum local match and \$34,800 total project cost required to maximize the grant). The grant also requires 20% participation by Minority and/or Women Owned Business Enterprises (M/WBE) for contracted services exceeding \$25,000.

**Background:**

A sample taken on May 14, 2014 by the Riverkeeper identified elevated levels of enterococcus, a more prominent indicator organism than E-coli; near the Newburgh Boat Launch. Over the years 58% of the samples taken in the vicinity of the Boat Launch have exceeded the EPA guidelines for safe swimming. The latest round of sampling conducted on July 9, 2014 indicate a count of 2420 which is in far excess of the EPA safe swimming guidelines of 60 counts. Upon investigation, the City has identified several properties along the two blocks bounded by Washington Street, Colden Street, Water Street and Renwick Street that were found through dye testing to have sanitary sewer laterals connected directly to the CSO #004 overflow pipe. These direct connections were previously not known to exist. The City has an active project to install a new gravity sanitary sewer and pump station to direct these flows to the Wastewater Treatment Plant and away from CSO #004. Through additional investigations and field testing with dye by the City Engineer and the Building Inspector, additional sanitary sewer overflow (SSO) connections similar to the one described above are suspected to exist.

We understand that the City desires to conduct inspections of the combined sewer system overflows and identify any direct sanitary connections causing sanitary sewer overflows downstream of a Combined Sewer Overflow Regulator. The City desires to conduct prioritized CCTV inspections of overflow pipes from combined sewer regulators to their point of discharge into the Hudson River that the City has yet to investigate.





Eleven (11) CSO pipes currently have yet to be inspected and B&L will work with the City to prioritize the CCTV Inspections and outfalls with the limited amount of funds. These CCTV inspections of the overflow pipes would serve to identify any additional direct connections such as the one found on Water Street.

#### SCOPE OF SERVICES:

1. Kick off Meeting & Historical Data Review:

Work under this task will include meetings with the City Engineer, City Department of Public Works and Contracted Operations staff to discuss their knowledge of any ongoing concerns and remedies currently being employed to address the needs of the aging sewer infrastructure, including investigative programs or ongoing efforts completed by the City. During the meeting with the City, we would expect to discuss the past work performed; successful measures implemented on an ongoing basis, suspected areas of continually contributing sanitary sewer overflows, records of documented SSO sources and maintenance problem areas. We will obtain and review available documents (i.e., GIS sewer files, sewer mapping, plans/profiles, televising logs/videos, etc.) as necessary within the area of concern.

Review the City's collection system mapping with the City Engineer, DPW Staff and Contracted Operators to confirm pipe sizes, materials, manhole numbering system, and flow directions to the greatest extent possible.

2. GIS Data Collection:

B&L will coordinate with the City GIS Department for the GIS location of the known structures and any identified new structure will be provided to the GIS Department for inclusion into the City's existing GIS database.

3. Closed Circuit Television (CCTV) Inspections of Regulator Overflow Pipes:

Based on our understanding of the project, the City desires to determine the presence of sanitary sewer connections to the combined sewer overflow pipes downstream of a regulator. The City will utilize its own staff to clean out, label and uncover these overflow pipes to facilitate the CCTV. Note that this effort can be part of the City's 20% in-kind services match. Based on our knowledge of the system and review of record mapping, B&L has observed that the following sections of sewer are downstream of regulators to be inspected by CCTV:

CSO	Location	Length to Outfall
1. CSO #001	Southern Interceptor Sewer along South Water St.	1,400 LF
2. CSO #003	Along Renwick St. north of Colden St	1,200 LF
3. CSO #004	Along South William St. just south of Edward St.	1,180 LF
4. CSO #005	First Street at Intersection with Montgomery St.	1,290 LF
5. CSO #006	Along Second St. South of Grand St.	1,500 LF
6. CSO #007	Fourth Street at Intersection with Front St.	180 LF
8. CSO #009	Broad Street at Intersection with Water St.	3,600 LF
9. CSO #010	Along Nicoll St just north of Hudson St.	460 LF
10. CSO #011	Park Place at Intersection with Montgomery St.	740 LF

**Total: 11,550 LF**



**\*\*B&L will subcontract the CCTV Services with a certified M/WBE firm. The amount of CCTV completed will depend upon the limited budget available. Prioritization of CSO outfalls to review will be reviewed with the City as all these outfalls likely cannot be inspected with the available limited funds.**

**\*\*\*CSO #002 has already been CCTV'd as part of the West Trunkline Sewer Improvements Project, and CSO #008 is proposed to be CCTV'd as part of the Liberty & Grand Street Improvements Project.**

B&L staff will be available during the CCTV activities, but it is assumed the City staff will be onsite to identify direct connections of sanitary laterals to these outfalls. Direct connections will be flagged and the City Engineer & Contracted Operator to complete the two (2) hour notification sheet and Report of Non Compliance for submission to the NYSDEC within two (2) hours of discovery of a Direct Connection or Sanitary Sewer Overflow (SSO). Note that this effort can be part of the City's 20% in-kind services match.

These inspections should not only indicate the presence of direct connections, but should also indicate pipe sags, displaced joints and debris, root ball intrusions or other obstacles that would prevent the pipe from flowing freely. It is assumed that no bypass pumping will be necessary to facilitate the CCTV as the work will occur when it is not raining. B&L will subcontract CCTV services with a qualified subcontractor. It is preferred that the contractor use the GRANITE™ software so that these can be directly uploaded into the City's electronic database. All data files will be submitted to the City on a thumb drive.

4. Draft Sewer Investigative Report:

Combining the information gathered during the tasks above, the B&L team will prepare a draft version of the Sewer Investigative Report for review with the key stakeholders. The report will document the results of the sanitary sewer evaluation activities summarized above. The report will include sewer GIS Maps prepared by the City and updates showing the identified SSO's within the existing sanitary sewer system. Note that this effort can be part of the City's 20% in-kind services match. B&L and the City of Newburgh representatives will then meet to discuss the draft report. Three (3) hard copies and one (1) electronic copy of the Draft Report will be submitted to the City for review.

5. Final Sewer Investigative Report:

Once the Draft Sewer Investigative Report is reviewed and revised based on input from project stakeholders, B&L will develop a presentation that summarizes the results. This information will then be presented during a City Council meeting.

A Final Report will be prepared for presentation to the project stakeholders and the public. It is assumed that attendance at one (1) City Council Meeting or Workshop will be necessary to present the findings of the Final Report. Five (5) hard copies and one (1) electronic copy of the Final Report will be submitted to the City upon completion. Additional copies can be provided at cost.



6. Regulatory Coordination:

The City will need to coordinate with regulatory agencies and identify applicable regulations pertaining to the work proposed including the April 24, 2009 Guidelines for Sanitary Sewer Overflow Abatement Analysis. Continued correspondence with regulatory staff may be required throughout the duration of the project.

### TECHNICAL ASSUMPTIONS

*SEQR* –The proposed action is defined as a Type II Action in compliance with State Environmental Quality Review (SEQR; 6 NYCRR Part 617). Specifically, Subdivision 6.15(c)(1): maintenance or repair involving no substantial changes in an existing structure or facility.

*Wetland Delineation* – It is assumed that the sewers are located along public rights-of-way used for travel and no wetlands exist. Should a Wetland Delineation be necessary B&L would complete these as an additional service, under a separate authorization.

*Archeological and Threatened/Endangered Species* –Similar to other work within public right of ways it is anticipated that no impacts to archeological and/or threatened or endangered species will occur. Should screening or mitigation be is determined necessary B&L would complete these services as an additional service under separate authorization.

*Topographic & Boundary Surveying Services* are not included. Should these be determined to be necessary to achieve the project goals, B&L would complete these as an additional service under a separate authorization.

*Easements Maps and Descriptions* –It is assumed that all sewers are within existing sewer easements or right-of-ways. Therefore additional easement procurement has not been included in this proposal.

*Subsurface Investigations* – It is assumed that no excavation will be required; therefore costs for subsurface investigations have not been included.

*SPDES NOI and SWPPP Preparation* – It is assumed that no excavation or construction will be required; therefore preparation of a SWPPP or SPDES NOI has not been included.

*Sewer Cleaning* - It is assumed that all cleaning will be provided by the City. B&L staff to identify structures for cleaning and after the cleaning is confirmed completed by the City; the B&L team will complete the inspection. If it is desired that B&L subcontract these services, B&L would prepare an RFP

for contractors to bid on and then select the lowest cost qualified contractor and they would complete these services. B&L would perform these services as an additional service under a separate authorization.

*Municipal Advisor Services* - The services Barton & Loguidice proposes to provide DO NOT INCLUDE advice or recommendations with respect to the issuance, structure, timing, terms or any other aspect of municipal securities, municipal derivatives, guaranteed investment contracts or investment strategies. Any opinions, advice, information or recommendations provided by Barton & Loguidice is understood by the parties to be strictly engineering opinions, advice, information or recommendations. Barton & Loguidice is not a “municipal advisor” as defined by 15 U.S.C. 78o-4 or the related rules of the Securities and





Mr. Jason Morris, City Engineer  
City of Newburgh  
June 5, 2015  
Page 5



Exchange Commission. The parties to whom this proposal is being provided should determine independently whether they require the services of an municipal advisor.

### **CWSRF Planning Grant – M/WBE Utilization Compliance**

B&L shall comply with provisions of the NYS Environmental Facilities Corporation (EFC) “Required Terms for Contracts and Subcontracts Receiving SRF Financial Assistance”, included in the attached “NYSEFC Required Terms” and incorporated into and made a part of this Agreement and all other terms and conditions reasonably required by EFC, as of the date of this agreement.

### **SCHEDULE**

The final Preliminary Engineering Report will be completed within nine (9) months of execution of the grant agreement in accordance with program guidelines.

### **SERVICES NOT INCLUDED**

Additional services will be required to complete a capital improvement project (should the City elect to do so), which are not included as part of this proposal. Tasks specifically not included are as follows:

- Topographic, Boundary & Bathometric Surveys
- SEQR, environmental impact statement or environmental studies
- Supplemental environmental field work or studies as required by agencies
- Subsurface investigations
- Excavation
- Design, bid, permitting or construction related services

### **FEE FOR SERVICES**

Barton & Loguidice, D.P.C. proposes to provide the Scope of Services described herein for the following fees:

Kickoff Meeting & Historical Data	\$ 1,000 Lump Sum
Subcontracted Closed Circuit Television (CCTV) Allowance	\$18,840 Lump Sum
Sewer Investigative Report	<u>\$ 8,000 Lump Sum</u>
<b>Total:</b>	<b>\$27,840</b>

The fee for services would be a lump sum fee of Twenty Seven Thousand Eight Hundred and Forty Dollars (\$27,840). Billing would be monthly in proportion to the services completed through the date of the invoice.

It is assumed that the 20% City local share requirement of the Grant Funding of \$6,960 will be met through in-kind services to be performed by City staff. In-kind services will include data collection, cleaning of sewers, and public notification to residents and regulatory agencies. It is to be noted that the CCTV services will be subcontracted to a qualified Minority Business Enterprise (MBE) contractor, as our contract is subject to a 20% M/WBE participation goal, which we intend to meet. The project will be completed in accordance with the enclosed “Non-Construction Bid Packet” for the New York State Revolving Fund.



Mr. Jason Morris, City Engineer  
City of Newburgh  
June 5, 2015  
Page 6



For the Scope of Services presented above, Barton & Loguidice, D.P.C (B&L) proposes to be compensated on a Lump Sum basis. If additional hours are required, B&L will request the City's authorization under a separate supplement to proceed forward. We will not bill beyond this amount without a change in scope and prior approval of the City Council.

This project will be in accordance with our Standard Terms and Conditions for Professional Engineering Services (copy attached). Authorization of these services may be done by signature below. Please retain one (1) copy for City files and return one (1) to B&L.

We appreciate this opportunity to provide further professional services to the City and look forward to expanding our working relationships with City officials and staff. Should you have any questions or if you would like to discuss the project, please do not hesitate to contact Anthony Eagan or me.

Very truly yours,

BARTON & LOGUIDICE, D.P.C.

A handwritten signature in black ink, appearing to read 'Donald H. Fletcher', is written over the printed name.

Donald H. Fletcher, P.E.  
Vice President

ATE/ojf  
Encl.

#### **Authorization**

Barton & Loguidice, D.P.C. is hereby authorized by the City of Newburgh to proceed with the services described herein in accordance with the Terms and Conditions proposed herein and the attached terms and conditions.

#### **RECOMMENDED BY:**

\_\_\_\_\_  
Jason Morris P.E.  
City Engineer

\_\_\_\_\_  
Date

#### **APPROVED AS TO FINANCES:**

\_\_\_\_\_  
John Aber  
City Comptroller

\_\_\_\_\_  
Date



Mr. Jason Morris, City Engineer  
City of Newburgh  
June 5, 2015  
Page 7



**APPROVED AS TO FORM:**

Michelle Kelson  
Corporation Council

Date

**AUTHORIZED:**

Michael Ciaravino  
City Manager

Date

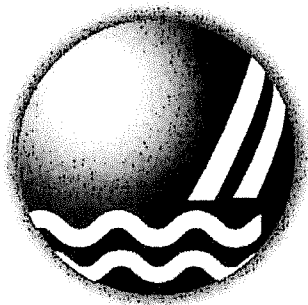




Mr. Jason Morris, City Engineer  
City of Newburgh  
June 5, 2015  
Page 8

**NYSEFC Required Terms**





NY State Revolving Fund  
**MWBE / EEO / AIS**

Bid Packet for

# Non-Construction Contracts

Effective October 1, 2014

New York State Environmental Facilities Corporation  
625 Broadway, Albany, NY 12207-2997  
(800) 882 9721  
P: (518) 402-7396 F: (518) 402-7456  
[www.efc.ny.gov](http://www.efc.ny.gov)



## BID PACKET FOR NON-CONSTRUCTION CONTRACTS

### NEW YORK CLEAN WATER and DRINKING WATER STATE REVOLVING FUNDS

Administered by the New York State Environmental Facilities Corporation (EFC)

“Non-Construction Contracts” means any written agreement, and amendment(s) thereto, where the recipient is committed to expend or does expend funds in return for labor, services (including legal, financial, technical, and other professional services), travel, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency.

### Contents of Bid Packet

#### **Part 1:       REQUIRED CONTRACT LANGUAGE ..... 4**

*The required contract language to be inserted into all non-construction contracts to satisfy Equal Employment Opportunity (EEO), Disadvantaged Business Enterprise (DBE), Minority & Women Owned Business Enterprise (MWBE), American Iron and Steel (AIS) and some other Clean/Drinking Water State Revolving Fund (SRF) Program requirements*

#### **Part 2:       GUIDANCE MATERIALS..... 12**

*A description of the program requirements as they relate to non-construction contracts funded in whole or in part by the New York State Revolving Funds – all contracts and subcontracts.*

*Checklists summarizing important required forms or steps to be completed by the Contractor are included at the end of this section.*

#### **Part 3:       REQUIRED FORMS ..... 32**

*Copies of required forms are included at the end of this packet for the Service Provider's use. All forms can be found on the EFC website ([www.efc.gov](http://www.efc.gov)).*

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# PART 1:

## REQUIRED CONTRACT LANGUAGE

This Part 1 is to be inserted in its entirety for ALL non-construction contracts and subcontracts funded in whole or in part with SRF funds.

Check EFC's website ([www.efc.ny.gov](http://www.efc.ny.gov)) for updates.

**\*\*Please note that the contractual language in its entirety is not necessarily applicable to all projects. Information is provided in parentheses below each program section within to identify circumstances when certain language is not applicable.\*\***

### Table of Contents

REQUIRED TERMS FOR PROJECT CONTRACTS AND SUBCONTRACTS .....	5
EEO AND MWBE LANGUAGE, GOALS AND OTHER PROGRAM REQUIREMENTS.....	6
MWBE PROGRAM.....	7
EEO PROGRAM .....	8
DISADVANTAGED BUSINESS ENTERPRISES .....	8
REMEDIES .....	8
RESTRICTIONS ON LOBBYING .....	9
AMERICAN IRON AND STEEL (AIS) REQUIREMENT .....	9

## **REQUIRED TERMS FOR PROJECT CONTRACTS AND SUBCONTRACTS**

***\*\* (Applies to all contracts) \*\****

In accordance with the terms and conditions set forth in Section 5.1 of the Project Finance Agreement, Recipient agrees that the following language will be included in all contracts and subcontracts regarding the Project including but not limited to those relating to construction, engineering, architectural, legal and fiscal services, as required by federal and state laws, regulations, and executive orders applicable to this Project:

### **Defined Terms:**

The term "Bid Packets" means the New York State Revolving Fund (SRF) Bid Packet for Construction Contracts and Bid Packet for Non-Construction Contracts and Service Providers, available at [www.efc.ny.gov/](http://www.efc.ny.gov/).

The term "Service Providers" means those who provide the following: legal, engineering, financial advisory, technical, or other professional services; supplies, commodities, equipment, materials, and travel.

The term "subcontractor", as used in this contract or subcontract, means, and applies to, any individual or business enterprise that has an agreement, purchase order, or any other contractual arrangement with a Service Provider.

The term "EEO policy statement" means a statement of the Service Provider and subcontractor setting forth at least the following:

- (i) A statement that the Service Provider will provide for and promote equal employment opportunity free of discrimination and harassment against any person on the basis of race, color, national origin, age, disability, sex, gender, sexual orientation, religion, genetic characteristics or information, status as a victim of domestic violence, veteran or military status, marital or family status, or any other discrimination prohibited by law, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination and will make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on contracts relating to the Project.
- (ii) An agreement that all of Service Provider's solicitations or advertisements for employees will state that, in the performance of the contract relating to this Project, all qualified applicants will be provided with equal employment opportunity free of discrimination and harassment against any person on the basis of race, color, national origin, age, disability, sex, gender, sexual orientation, religion, genetic characteristics or information, status as a victim of domestic violence, veteran or military status, marital or family status, or any other discrimination prohibited by law.
- (iii) An agreement to request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate or harass on the basis of race, color, national origin, age, disability, sex, gender, sexual orientation, religion, genetic characteristics or information, status as a victim of domestic violence, veteran or military status, marital or family status, or any other discrimination prohibited by law and that such union or representative will affirmatively cooperate in the implementation of the Service Provider's obligations herein.
- (iv) An agreement to comply with the provisions of the Human Rights Law (Article 15 of the Executive Law), including those relating to non-discrimination on the basis of prior criminal conviction and prior arrest, and with all other State and federal statutory constitutional non-discrimination provisions.

The term "EFC" means the New York State Environmental Facilities Corporation.

The term "EPA" means the United States Environmental Protection Agency.

The term "ESD" means the Empire State Development Corporation - Division of Minority and Women's Business Development.

The term "Recipient" means the party, other than EFC, to a grant agreement or a project finance agreement with EFC through which funds for the payment of amounts due hereunder are being paid in whole or in part.

The term "State" means the State of New York.

The term "Treatment Works Project" means a Clean Water Act (CWA) Section 212 project. Examples include new, expanded or rehabilitated wastewater plants; sludge treatment and disposal facilities including biosolids reuse; collector, trunk and interceptor sewers; sewer rehabilitation and infiltration/inflow correction; municipally-owned sewers and treatment capacity for industrial wastewater; combined sewer overflow (CSO) abatement; stormwater resiliency and pollution abatement; energy initiatives, including energy efficiency and on-site power generator for treatment plants and sewer systems; water treatment plant filter backwash and sludge treatment; water efficiency projects, including conservation and reuse of water; septage hauling and marine vessel pump out/treatment facilities; publically-owned water conservation/reuse devices or systems; and security measures for wastewater treatment plants and sewer systems.

The terms "Nonpoint Source Projects" and "Green Infrastructure Project" mean a CWA Section 319 Project. Examples include green infrastructure projects that manage stormwater, such as constructed wetlands, biofilters, porous pavement and green roofs; waterbody restoration including stream bank stabilization and drainage erosion and sediment control; restoration of riparian vegetation, wetlands and other water bodies; land acquisition or conservation easements for water quality protection; stormwater management facilities, such as street sweepers and catch basin vacuum vehicles, sediment traps and basins; and capping and closure of municipal solid waste landfills, landfill reclamation, landfill leachate collection, storage and treatment of landfill gas collection and control systems.

The term "Estuary Management Program Project" means a CWA Section 320 Project. Examples include projects necessary to implement the EPA-approved Estuary Conservation and Management Plans for the New York-New Jersey Harbor; Peconic Bay; and Long Island Sound Estuaries.

## **EEO AND MWBE LANGUAGE, GOALS AND OTHER PROGRAM REQUIREMENTS**

*\*\*(Applies to all contracts)\*\**

### **Interpretation:**

This contract is subject to Article 15-A of the Executive Law (Article 15-A) and 5 NYCRR 140-145 (the Regulations) and shall be considered a State Contract as defined therein. If any of the terms herein conflict with Article 15-A or the Regulations, such law and regulations shall supersede these requirements.

### **Representations and Acknowledgements of Service Provider:**

The Service Provider acknowledges that funds for the payment of amounts due under this contract are being provided in whole or in part subject to the terms and conditions of a grant agreement or a project finance agreement with EFC.

The Service Provider represents that it has submitted an EEO policy statement, an EEO Workforce Staffing Plan for Service Provider (Non-construction) Contracts, and an MWBE Utilization Plan (prime Service Providers only), **prior to the execution of this contract.**

Suspension/Debarment - The Service Provider is not a debarred or suspended party under 2 CFR Part 180, 2 CFR Part 1532 and 40 CFR Part 32. Further, neither the Service Provider nor any of its subcontractors have contracted with, or will contract with, any debarred or suspended party under the foregoing regulations or with any party that has been determined to be ineligible to bid under Section 316 of the Executive Law.

### **Equal Employment Opportunity (EEO), Affirmative Action, MWBE and Other Covenants:**



Service Provider and subcontractor shall comply with all federal and state laws, regulations, and executive orders applicable to this Project, and shall provide such documentation, including periodic reports, as may be requested from time to time and as set forth in guidance documentation available at [www.efc.ny.gov/](http://www.efc.ny.gov/), including but not limited to the Bid Packets.

With respect to this contract, the Service Provider and subcontractor shall undertake or continue existing programs of affirmative action and equal employment opportunity to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, color, national origin (including limited English proficiency), age, disability, sex, gender, sexual orientation, religion, genetic characteristics or information, status as a victim of domestic violence, veteran or military status, marital or family status, or any other discrimination prohibited by law. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

## **MWBE PROGRAM**

**\*\* (Applies to all: (1) Service Provider Contracts greater than \$25,000  
(2) Contracts that are initially under this thresholds but subsequent change orders or contract amendments increased the contract value above \$25,000  
(3) Change orders greater than \$25,000) \*\***

**MWBE Goals** - The Service Provider agrees to pursue MWBE goals in effect at the time of execution of this contract. The MWBE goals shall be applied to the total amount being funded pursuant to the grant agreement or project finance agreement with EFC.

<b>10/1/2012 – Present</b>	<b>MWBE Combined Goal*</b>
All counties	20%

\*May be any combination of MBE and/or WBE participation

Service Provider shall solicit participation of MWBE firms (including subcontractors, consultants and service providers) for SRF-funded projects in accordance with the aforementioned goals. The Service Provider must submit sufficient documentation to demonstrate good faith efforts to provide opportunities for MWBE participation for work related to the SRF-funded project in the event respective goals are not achieved. Guidance pertaining to documentation of good faith efforts is set forth in the Bid Packet.

The Service Provider agrees that for purposes of providing meaningful participation by MWBEs on the contract and achieving the goals, Service Provider will reference the directory of New York State Certified MWBEs found at the following internet address: <http://www.ny.newnycontracts.com/>.

Subcontractors who in turn subcontract work shall also comply with MWBE requirements for that contract.

**MWBE Utilization Plan** (MWBE Utilization Plan requirements apply to Service Provider. MWBE Utilization Plans are submitted to the SRF Recipient's minority business officer (MBO) prior to execution of a contract.) – Each Service Provider shall prepare an MWBE Utilization Plan, and any subsequent revisions or amendments thereto, that provides information describing MBEs and WBEs to be utilized at various times during the performance of this contract. The MWBE Utilization Plan shall identify the Service Provider's proposed MBE and WBE utilization for this contract and the MWBE participation goals established for this contract by EFC. The MBEs and WBEs identified in the MWBE Utilization Plan must be certified by, or have applied, for certification from ESD.

In the event that the Service Provider's approved MWBE Utilization Plan does not propose achievement of the MWBE participation goals for this contract, the Service Provider shall complete a waiver request as hereinafter referenced.

**Submission** – Within 30 days of execution of this contract, the Service Provider shall submit to the Recipient copies of all signed subcontracts, agreements, and/or purchase orders referred to in the MWBE Utilization Plan.

**Compliance** – The Service Provider agrees to adhere to its approved MWBE Utilization Plan for the

participation of MWBEs on this contract pursuant to their respective MWBE goals.

**Waivers** – If the Service Provider's application of good faith efforts does not result in the utilization of MBE and/or WBE firms to achieve the aforementioned goals then, prior to execution of a contract, the Service Provider shall complete the waiver request portion of the MWBE Utilization Plan and submit it to the Recipient. The Service Provider is entitled to receive a written notice of acceptance or denial within 20 days of receipt. Upon receipt of a notice of deficiency from the Recipient, the Service Provider shall respond with a written remedy to such notice within 7 days. Such response may include a request for a total or partial waiver of the aforementioned goals.

The Service Provider shall comply with the requirements set forth in the Bid Packets regarding waivers.

**Required Reports – MWBE Monthly Report** – The Service Provider agrees to submit a report to the Recipient by the 3<sup>rd</sup> business day following the end of each month over the term of this contract documenting the payment made and the progress towards achievement of the MWBE goals of this contract.

## **EEO PROGRAM**

*\*\* (Applies to all Service Provider Contracts and Subcontracts) \*\**

### **EEO Workforce Staffing Plan**

All Service Providers and their subcontractors shall submit an acceptable EEO Workforce Staffing Plan setting forth the anticipated work force to be utilized on such contract or, where required, information on the Service Provider's total work force, including apprentices, broken down by specific ethnic background, gender and Federal occupational categories or other appropriate categories specified by the Recipient. The EEO Workforce Staffing Plan is submitted to the Recipient prior to execution of a contract.

### **Required Reports - EEO Workforce Utilization Reports**

During the term of this contract, the Service Provider and subcontractor shall update and provide notice to the Recipient of any changes to the previously submitted Staffing Plan in the form of an EEO Workforce Utilization Report. The Service Provider shall submit this information on a quarterly basis during the term of this contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The EEO Workforce Utilization Report must be submitted to report this information. In the event a Service Provider and subcontractor's workforce does not change within the Quarterly period, the Service Provider shall notify the Recipient in writing.

## **DISADVANTAGED BUSINESS ENTERPRISES**

*\*\* (Applies to all contracts) \*\**

The Service Provider and subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The Service Provider and subcontractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Service Provider and subcontractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies. Service Providers and subcontractors shall comply with the requirements set forth in the Bid Packets regarding Disadvantaged Business Enterprises.

## **REMEDIES**

*\*\* (Applies to all contracts) \*\**

Upon a determination by the Recipient of the Service Provider's non-responsiveness, non-responsibility or

breach as a result of a failure to comply with the requirements of Article 15-A and the Regulations, the Recipient may withhold funds under this contract or take such other actions, impose liquidated damages or commence enforcement proceedings as set forth herein or as otherwise allowed by law or in equity.

If the Service Provider or subcontractor fails to submit to Recipient an EEO policy statement consistent with the provisions set forth in clauses (i), (ii), (iii) and (iv) of the definition thereof and within the timeframe required therefor, Recipient may declare this contract to be null and void.

The Service Provider and subcontractor agree that a failure to submit and/or adhere to its EEO policy statement, EEO Workforce Staffing Plan for Service Provider (Non-construction) Contracts, and an MWBE Utilization Plan, and any other required periodic reports, shall constitute a material breach of the terms of this contract, entitling Recipient to any remedy provided herein, including but not limited to, a finding of Service Provider non-responsiveness.

**Liquidated or Other Damages** - If it has been determined by the Recipient or NYSEFC that the Service Provider is not in compliance with the requirements herein or refuses to comply with such requirements, or if the Service Provider is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Service Provider shall be obligated to pay to Recipient liquidated damages or other appropriate damages as determined by the Recipient or EFC, in accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13

Liquidated damages shall be calculated as an amount not to exceed the difference between:

1. All sums identified for payment to MWBEs had the Service Provider achieved the contractual MWBE goals; and
2. All sums actually paid to MWBEs for work performed or materials supplied under this contract.

In the event a determination has been made by the Recipient or EFC which requires the payment of liquidated damages and such identified sums have not been withheld, the Service Provider shall pay such liquidated damages to the Recipient within sixty (60) days after they are assessed unless prior to the expiration of such sixtieth day, the Service Provider has filed a complaint with ESD pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if the Director of ESD renders a decision in favor of the Recipient.

## **RESTRICTIONS ON LOBBYING**

*\*\* (Applies to all contracts greater than \$100,000) \*\**

The Service Provider and subcontractor executing a contract in excess of \$100,000 agree to provide to the Recipient an executed Certification For Contracts, Grants, Loans, and Cooperative Agreements 40 CFR 34, in the form attached hereto, consistent with the requirements of 40 CFR Part 34.

## **AMERICAN IRON AND STEEL (AIS) REQUIREMENT**

*\*\* (Applies only to Equipment and Material Supplier contracts) \*\**

The Service Provider acknowledges to and for the benefit of the Recipient of the Clean Water State Revolving Fund (CWSRF) or the Drinking Water State Revolving Fund (DWSRF) financial assistance ("Purchaser") that the Service Provider understands the goods and services under this Agreement are being funded with monies made available by the New York State Environmental Facilities Corporation (EFC) through the CWSRF or the DWSRF and that such funding is subject to certain statutory restrictions requiring that certain iron and steel products used in the project be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by the Service Provider pursuant to this Agreement.

The Service Provider hereby represents and warrants that:

- (a) the Service Provider has reviewed and understands the American Iron and Steel Requirement,
- (b) all of the iron and steel products covered by the American Iron and Steel Requirement used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and
- (c) the Service Provider will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Recipient.

Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Service Provider shall permit the Recipient to recover as damages against the Service Provider any loss, expense, or cost (including without limitation attorney's fees) incurred by the Recipient resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the EFC or any damages owed to the EFC by the Recipient). While the Service Provider has no direct contractual privity with the EFC, as a lender to the Recipient for the funding of this project, the Recipient and the Service Provider agree that the EFC is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the EFC.

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# PART 2:

## GUIDANCE MATERIALS

### Table of Contents

<b>INTRODUCTION .....</b>	<b>13</b>
<b>SECTION 1    EQUAL EMPLOYMENT OPPORTUNITY .....</b>	<b>14</b>
A.    WORKFORCE DIVERSITY .....	14
B.    EEO POLICY STATEMENT .....	14
C.    EEO WORKFORCE STAFFING PLAN .....	14
D.    EEO WORKFORCE UTILIZATION REPORTS.....	14
<b>SECTION 2    MINORITY &amp; WOMEN-OWNED BUSINESS ENTERPRISE and                   DISADVANTAGED BUSINESS ENTERPRISE .....</b>	<b>15</b>
A.    MWBE REQUIREMENTS .....	15
B.    MWBE PARTICIPATION GOALS (FAIR SHARE OBJECTIVES) .....	15
C.    RECEIVING CREDIT UNDER THE EFC MWBE PROGRAM.....	15
D.    NON-CONSTRUCTION CONTRACTOR'S MWBE RESPONSIBILITIES .....	16
E.    SUBCONTRACTOR'S MWBE RESPONSIBILITIES .....	20
F.    WAIVER REQUESTS.....	21
G.    PROTESTS/COMPLAINTS .....	22
H.    WASTE, FRAUD AND ABUSE .....	22
I.    REMEDIES .....	22
<b>SECTION 3    RESTRICTIONS ON LOBBYING .....</b>	<b>22</b>
<b>SECTION 4    AIS REQUIREMENTS .....</b>	<b>23</b>
A.    DEFINITIONS .....	23
B.    CERTIFICATION.....	25
C.    WAIVER REQUESTS.....	25
D.    DE MINIMIS WAIVER .....	26
E.    INSPECTIONS .....	27
F.    BEST PRACTICES .....	27
<b>CHECKLISTS .....</b>	<b>28</b>



## INTRODUCTION

A description of requirements as they relate to non-construction contracts funded in whole or in part by the New York State Revolving Funds:

### **Applicability:**

This guidance applies to Service Provider (Non-Construction) contracts are written agreements where the SRF recipient (Recipient) commits to expend funds for services (including legal, engineering, financial advisory or other professional services, and labor); supplies; commodities; equipment; materials; and travel, or any combination thereof.

### **Purpose of Documents:**

This guidance is designed to complement the required contract language as set forth in Part 1 – Required Contract Language, by providing additional information intended to assist SRF Recipients and bidders in complying with EEO, MWBE, and other requirements of the SRF programs, including:

- New York State Executive Law, Article 15-A and New York Code of Rules and Regulations, Title 5 (5 NYCRR) Parts 140-145 (Regulations of the Commissioner of Economic Development)
- 40 Code of Federal Regulations (CFR) Part 33 – “Participation by Disadvantaged Business Enterprises in US EPA Programs”
- Restrictions on Lobbying

Service Providers are required to engage in procurement practices that will provide opportunities for meaningful participation of minority and women-owned business enterprises (MWBE) in providing labor, travel, equipment, materials, supplies, services (including legal, financial, engineering or other professional services), or any combination of the above, and practices to encourage the employment of minorities and women in the workforce.

Failure to report on EEO participation or to meet all the requirements of MWBE & DBE regulations in a timely manner may result in withholding of disbursements of SRF funds or other remedies as cited in the SRF financing agreement. This may affect the Service Provider’s payments. If this is a project with a not-for-profit entity, please contact EFC for appropriate guidance.

Reference the EFC website to ensure the most recent forms and language. (<http://www.efc.ny.gov/>)

The New York State Environmental Facilities Corporation (EFC) implements the New York State Revolving Fund (SRF) for both Clean Water and Drinking Water projects. This guidance outlines the activities that must be performed by each Service Provider on an SRF funded project in order to comply with federal and New York State laws and regulations.

## **SECTION 1      EQUAL EMPLOYMENT OPPORTUNITY**

*\*\* (Applies to all contracts) \*\**

### **A.      WORKFORCE DIVERSITY**

Service Providers are required to document their efforts to meet EEO goals for the employment of minorities and women on all SRF funded projects on the EEO Workforce Utilization Report. The United States Department of Labor (DOL) has established EEO goals for employment of minority and women. The goals are available on EFC's website in the Prime Contractor Folder.

### **B.      EEO POLICY STATEMENT**

The EEO Policy Statement is documentation of a Service Provider's policy of non-discrimination in accordance with federal and state laws. The EEO Policy Statement must: be submitted to the Recipient's minority business officer (MBO) as part of any bid proposal; include language as defined above (see Required Terms for Project Contracts and Subcontracts – EEO Policy Statement definition); and be signed by each potential bidder.

The EEO Policy Statement can be found in the required forms section of this document and on EFC's website.

### **C.      EEO WORKFORCE STAFFING PLAN**

With the Bid, or when offering services, each Service Provider shall submit to the SRF Recipient an EEO Workforce Staffing Plan estimating the anticipated work force to be utilized on the project. The EEO Workforce Staffing Plan shall include information on the Service Provider's total work force, including apprentices, broken down by specific ethnic background, gender and Federal occupational categories.

Blank EEO Workforce Staffing Plans are found in the Required Forms section of this document and on EFC's website.

### **D.      EEO WORKFORCE UTILIZATION REPORTS**

Upon the execution of the contract and monthly thereafter, the Service Provider shall submit to the Recipient's MBO an EEO Workforce Utilization Report that documents the actual labor hours worked by ALL Service Provider AND subcontractor employees during the prior month period, on activities related to the contract, broken down by specific ethnic background, gender, and Federal occupational categories or other appropriate categories specified by the Recipient.

The EEO Workforce Utilization Report is part of the MWBE Monthly Report forms. Both the EEO Workforce Utilization Report and MWBE Monthly Report are found on the EFC website in the Prime Contractor folder.

All EEO Workforce Utilization Reports submitted by the Service Provider and subcontractor must reflect a separation of the workforce utilized in the performance of this contract from the Service Provider or subcontractor's total workforce. The EEO Workforce Utilization Report must indicate that the information provided relates to the actual workforce utilized. If the Service Provider or subcontractor fails to separate the workforce to be utilized on this contract from the total workforce as determined by Recipient, the Service Provider shall submit the EEO Workforce Utilization Report and indicate that the information provided is the Service Provider or subcontractor's total workforce during the subject time frame, not limited to work specifically under a particular contract.

## SECTION 2 MINORITY & WOMEN-OWNED BUSINESS ENTERPRISE and DISADVANTAGED BUSINESS ENTERPRISE

**\*\* (DBE Applies to all contracts)**

**MWBE Applies to all:** (1) Service Provider Contracts greater than \$25,000  
(2) Projects that are initially under this thresholds but subsequent contract amendments increased the contract value above \$25,000  
(3) Change orders greater than \$25,000)\*\*

### A. MWBE REQUIREMENTS

Recipients, Service Provider and subcontractors must comply with New York State Executive Law, Article 15-A and New York Code of Rules and Regulations, Title 5 (5 NYCRR) Parts 140-145 (Regulations of the Commissioner of Economic Development).

Non-construction contracts, for the purposes of SRF MWBE compliance, are written agreements between an SRF Recipient and a Service Provider (or subcontractor) whereby the SRF Recipient commits to expend funds for the services (i.e. legal, engineering, financial advisory or other professional services, and labor); supplies; commodities; equipment; materials; and travel, or combination thereof in support of an SRF financed project.

Amendments or change orders for such non-construction contracts with a value greater than \$25,000 may be subject to MWBE requirements as well. The Service Provider is to seek additional MWBE participation for the additional value of the contract unless EFC determines otherwise.

If contracts with a value of \$25,000 or less have subsequent change orders or amendments that bring the total contract value to greater than \$25,000, the full value of the contract will then be subject to MWBE requirements.

### B. MWBE PARTICIPATION GOALS (FAIR SHARE OBJECTIVES)

Based on the report, "The State of Minority and Women-Owned Business Enterprise: Evidence of New York, April 29, 2010" (NYS Disparity Study), there is a demonstrated availability of MWBEs throughout New York State. Service Providers are required to solicit participation of MWBE firms (including subcontractors, consultants, and service providers) for SRF funded projects.

MWBE participation goals will be based on the execution date of each respective contract, unless MWBE participation goals have been otherwise specified in an executed SRF grant agreement or project finance agreement.

10/1/2012 – Present	MWBE Combined Goal*
All counties	20%

\*May be any combination of MBE and/or WBE participation

10/1/2011 – 9/30/2012	MWBE Combined Goal*
All counties	10%

\*May be any combination of MBE and/or WBE participation

10/13/2010 – 9/30/2011	MBE Goals	WBE Goals
All other counties non-NYC	8.8%	8.8%
New York City and Long Island Region (Bronx, Brooklyn, Manhattan, Queens, Staten Island, Nassau, Suffolk)	18.8%	20.5%

### C. RECEIVING CREDIT UNDER THE EFC MWBE PROGRAM

To receive MWBE participation credit, Service Provider that have been identified in an approved MWBE Utilization Plan (See Subsection D1 below for more information) must be certified as an MBE or WBE by the Division of Minority and Women's Business Development, Empire State

Development Corporation (ESDC). Conditional credit will be given for firms that have applications pending with ESDC.

Prime Service Providers that are certified MWBE firms will receive credit for MWBE participation.

A list of firms certified in New York State can be found on the ESD website at <http://www.ny.newnycontracts.com>. Searches can be performed by the business name and commodity code or business description.

## **D. NON-CONSTRUCTION CONTRACTOR'S MWBE RESPONSIBILITIES**

### **At the Time of Bid (if applicable):**

The completed forms listed below shall be part of the official bid submission by each competing Service Provider:

- **EPA Form 6100-3 "DBE Subcontractor Performance Form"**

Each potential bidder shall complete this form and submit it to the MBO for each MWBE firm contacted during the bid or proposal preparation process, and make reasonable efforts to obtain signatures from the MBEs and WBEs contacted. This form shall be completed by each potential subcontractor and submitted to the MBO as part of the bid submission.

- **EPA Form 6100-4 "DBE Subcontractor Utilization Form"**

This form shall be completed by each potential bidder and submitted to the MBO as part of the bid submission. On this form, each bidder offers their estimated plan for MBE and WBE utilization for their contract.

NOTE: The EEO Policy Statement should be completed and submitted at this time.

### **Prior to Award of the Contract:**

- **EPA Form 6100-2 "DBE Subcontractor Participation Form"**

Distribute the form to MWBE Subcontractors who are listed on the 6100-4 form. Submit documented proof (e.g. email, letter, certified mail receipt) to the MBO that the 6100-2 form was sent to the MWBE Subcontractors. (See Part 3: Required Forms)

### **After Award of the Contract:**

Each prime Service Provider is obligated to seek MWBE participation and document their good faith efforts to meet MWBE goals.

#### **1. MWBE Utilization Plan (UP)**

- a. **Due Date:** MWBE UPs are required to be submitted to the MBO no later than the date of execution of the contract.
- b. **Preparation:** Each Service Provider shall prepare an MWBE UP that provides information describing MBEs and WBEs to be utilized during the term of the contract. The MWBE UP will reflect the EFC MWBE goals that apply to the contract as well as the Service Provider's anticipated MWBE participation. The Service Provider will transmit the completed MWBE UP form, with all pages filled out, to the MBO. Blank MWBE UP forms are available on the EFC website.

MWBE UP revisions should be submitted to the MBO, with the next monthly report. When an MWBE UP is revised due to execution of a change order, the change order should be submitted to the MBO with the revised MWBE UP.

- c. **NYS Certified:** The MBEs and WBEs identified in the MWBE UP must be certified by, or have applied for certification from:

Empire State Development Corporation  
 Division of Minority and Women's Business Development  
 625 Broadway  
 Albany, New York 12245  
 Phone: 1-800-782-8639  
<http://www.ny.newnycontracts.com>

- d. **Supplier Credit:** Credit for MBE/WBE participation shall be granted for MWBE firms performing a commercially useful business function according to custom and practice in the industry.

"Commercially useful functions" normally include:

- i. Providing technical assistance to a purchaser prior to a purchase, during installation, and after the supplies or equipment are placed in service;
- ii. Manufacturing or being the first tier below the manufacturer of supplies or equipment; or
- iii. Providing functions other than merely accepting and referring requests for supplies or equipment to another party for direct shipment to a Service Provider.
- iv. Being responsible for ordering, negotiating price, and determining quality and quantity of materials and supplies.

MBE/WBE goal crediting:

- i. For MWBE suppliers who are manufacturers, fabricators, or official manufacturer's representatives who are warehousing such goods, up to 100% of the MBE/WBE objective may be credited.
  - ii. No credit will be granted for MBEs and/or WBEs that do not provide a commercially useful function
- e. **Waiver Request:** If the Service Provider's application of good faith efforts does not result in the utilization of MBE and/or WBE firms to achieve the aforementioned goals or a specialty equipment/service waiver is requested, the Service Provider shall complete the waiver request portion of the MWBE Utilization Plan, attach appropriate documentation, and submit it to the MBO. **See Section F for more information.**
- f. **MWBE Utilization Plan Acceptance vs. Notice of Deficiency:** The MBO will evaluate a completed MWBE UP. Upon review and application of the requirements set forth in this guidance, if the MBO finds the UP acceptable, they will forward to EFC for review. If the MBO finds the UP insufficient, they will work with the Service Provider to address deficiencies before submitting to EFC for review. A written notice of acceptance or denial will be issued by EFC within 20 business days of receipt of the UP. Upon notice of deficiency to the Service Provider from either the MBO or EFC, the Service Provider shall respond with a written remedy to such notice within seven (7) business days.

In coordination with the MBO, EFC will accept a UP upon consideration of many factors, including the following:

- i. The UP indicates that the MWBE proposed goals for the project will be achieved;
- ii. A prime Service Provider, who is a certified MBE or WBE, will be credited for up to 100% of the category of their certification. However, good faith efforts to seek participation in the other category are required;
- iii. Adequate documentation to demonstrate good faith effort and/or support a specialty equipment/services waiver as described in Section D2.

- g. **UP Acceptance:** Within 10 days of the final acceptance of a MWBE Utilization Plan or Waiver Request, EFC will post the approved MWBE Utilization Plan or Waiver Request on the EFC website.
- h. **Conditional UP:** In coordination with the MBO, EFC may issue conditional acceptance of Utilization Plans pending submission of additional documentation that demonstrates there will be an increase in MWBE participation.
- i. **Revisions of the MWBE Utilization Plans:** If project conditions change such that the information submitted in the approved MWBE UP is no longer valid, the Service Provider shall indicate the changes to the MBO in the next monthly report. At EFC's discretion, a completely revised MWBE UP form and good faith effort documentation may be required to be submitted.
- j. **Projects Co-Funded with other state/federal agencies:** In the event EFC is providing financial assistance to a project that is also financially supported by other state/federal agencies, EFC may defer to the MBE and WBE participation goals and established by those agencies.

## 2. Good Faith Effort Documentation

Prime Service Providers shall maintain documentation of their efforts to solicit participation of MWBE firms for SRF-funded projects in an effort to meet the appropriate goals. In the event respective goals are not achieved, the Service Provider must submit sufficient documentation to demonstrate good faith efforts have been made to provide opportunities to certified MWBE firms to participate in SRF-funded projects.

Examples of documentation of good faith efforts are set forth below:

- Information on the scope of work related to the contract and specific steps taken to reasonably structure the scope of work to break out tasks or equipment needs for the purpose of providing opportunities for subcontracting with or obtaining supplies or services from MBEs or WBEs.
- Printed screenshots of the directory of Certified Minority and Women Owned Businesses (MWBE directory) on ESD's website on a statewide basis, if appropriate, for both MBEs and WBEs that provide the services or equipment necessary for the contract. Contact the MBO for assistance in performing a proper search including identifying a sufficient number of solicitations to show that good faith effort was made.
- Copies of timely solicitations and documentation that the Service Provider offered relevant plans, specifications, or other related materials to MBE and WBE firms on ESD's MWBE directory to participate in the work, with the responses.

The Service Provider is to offer sufficient advance notice proportional to the size and complexity of the contract to enable MBEs and WBEs to prepare an informed response to the solicitations for participation as a subcontractor or supplier. The solicitations and responses are required to be documented in a log to be submitted in the case where the goal is not met. The log should consist of the list of MBE and WBE firms solicited, their contact information, the type of work they were solicited to perform (or equipment to provide), how the solicitation was made (fax, phone, email) and the contact information, the contacts name and the outcome. If a bid was received, the bid price should also be included in the log. See a sample log entry below:

Date	M/WBE Type	Company	Scope of work	Contact Name	Phone/ Email	Solicitation Format	MWBE Response	Negotiation Required?	Selected? If not, Explain



If no response was received to an initial solicitation, at least one follow-up solicitation should be made in a different format than the first, e.g. fax followed by phone call. Any bids received from non-MWBE firms should also be tracked on the log.

Submit the EPA 6100-3 and 6100-4 forms that are required as part of all bids or proposals. A properly completed EPA 6100-3 form is good indication of a contact to an MWBE and their response to the contact. If solicitations do not result in obtaining sufficient participation of MWBE firms due to non-responsiveness, please contact the MBO or EFC MWBE representative for support.

- Copies of any advertisements of sufficient duration to effectively seek participation of certified MBE and WBEs timely published in appropriate general circulation, trade and MWBE oriented publications, together with listing and dates of publication of such advertisements. EFC recommends the use of the Contract Reporter that is free to all Service Providers - <https://www.nyscr.ny.gov/>. A log should be kept of the responses to the ads, similar to the log for MWBE firm solicitation and should include the non-MWBE firms that responded and the bid prices. Any negotiations should be documented in the log.
- Documents demonstrating that insufficient MBEs or WBEs are reasonably available to perform the work. Based on the NYS Disparity Study, there is a presumption of MBE and WBE statewide availability, unless information is submitted indicating otherwise.
- A written demonstration that the Service Provider offered to make up any inability to meet the project MWBE participation goals in other contracts and/or agreements performed by the Service Providers on another SRF funded project.
- The date of pre-bid, pre-award, or other meetings scheduled by the Recipient, if any, and the contact information of any MBEs and WBEs who attended and are capable of performing work on the project.
- Any other information or documentation that demonstrates the Service Provider conducted good faith efforts to provide opportunities for MWBE participation in their work. For instance, prime Service Provider and MBOs should develop a list of MWBE firms that have expressed interest in working on SRF funded projects
- The use of certified Disadvantaged Business Enterprises (DBE), Small Business Administration (SBA), and Veteran-Owned Small Businesses (VOSB) may be considered as a demonstration of Good Faith Efforts.

### **3. Subcontract Agreements**

The Service Provider shall submit copies of all legally signed subcontracts, agreements, and purchase orders that are referred to in the MWBE Utilization Plan to the MBO within 30 days of their execution. These subcontracts and/or purchase orders must include the following information:

- a. Actual dollar amount of the subcontract;
- b. A job description of the work to be performed by the subcontractor;
- c. Signatures of both parties;
- d. Date of execution;
- e. MWBE language (included in this bid packet); and
- f. A signed EEO Policy Statement Agreement (See Required Forms).

NOTE: Purchase orders must be sent with copies of both sides of cancelled checks.

#### 4. Monthly Reports

The Service Provider must submit monthly MWBE payment reports supplemented with proof of payment to the MBO. Blank monthly report forms are available on EFC's website or from the MBO. Monthly reports should be submitted to the MBO within 3 business days after the end of each month being reported.

As part of the Monthly Report, the Service Provider must provide documentation to the MBO that subcontractors have been paid within 30 days of receipt of payment from the Recipient.

The final monthly payment report must reflect all Utilization Plan revisions and all change orders.

#### 5. Other Service Provider Responsibilities

- a. Continue good faith efforts to seek opportunities for MBE and WBE participation even if proposed goals have been achieved. In addition, any revisions to an MWBE Utilization Plan must be documented in the next monthly report to the MBO for approval.
- b. Provide written notification to the MBO and EFC of any termination of an MBE or WBE subcontractor. This should be reported as part of the revised MWBE Utilization Plan or in a monthly report.
- c. Provide timely and complete responses to inquiries from either the MBO or EFC staff as requested.
- d. Make all MWBE documents and records available upon request to EFC staff, the MBO, or their authorized representatives.
- e. Manage the project in a manner that creates meaningful opportunities for participation by MBEs and WBEs.
- f. Provide programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination on the basis of race, color, national origin (including limited English provision), age, disability, sex, gender, sexual orientation, religion, genetic characteristics or information, status as a victim of domestic violence, veteran or military status, marital or family status, or any other discrimination prohibited by law.

Additional guidance and requirements pertaining to the preparation and submission of the MWBE Utilization Plans can be found in the Part 1: Required Contract Language.

NOTE: Failure by the Service Provider to receive acceptance of the MWBE Utilization Plan by the Recipient or EFC may result in withholding of progress payments. Such withholding of progress payments shall not relieve the Service Provider of any contract requirements including the completion of the project within the specified contract time.

### E. SUBCONTRACTOR'S MWBE RESPONSIBILITIES

Subcontractors are those individuals or business enterprises that contract directly with Service Providers. Subcontractors should:

1. Maintain their MWBE certifications, and notify the Service Provider and MBO of any change in their certification status.
2. Respond promptly to solicitation requests by completing and submitting bid information in a timely manner.

3. Maintain business records that should include, but not be limited to, contracts/agreements, records of receipts, correspondence, purchase orders, and canceled checks.
4. Complete and submit the EPA Form 6100-3 "DBE Subcontractor Performance Form" to the Service Provider prior to submission of the bid (if applicable). Provide a receipt of EPA Form 6100-2 "DBE Subcontractor Participation Form" to the Service Provider prior to award of contract.
5. Ensure that a required EEO Policy Statement is included in each subcontract. Additionally, signed versions of each subcontract should be sent to the MBO within 30 days of execution.
6. Provide programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination on the basis of race, color, national origin (including limited English provision), age, disability, sex, gender, sexual orientation, religion, genetic characteristics or information, status as a victim of domestic violence, veteran or military status, marital or family status, or any other discrimination prohibited by law.
7. Notify the MBO and EFC when contract problems arise, such as non-payment for services or when the subcontractor is not employed as described in the MWBE Utilization Plan.
8. Perform the subcontracted scope of work in a professional and timely manner.

## F. WAIVER REQUESTS

Each Service Provider is required to create meaningful opportunities for certified MWBE participation and to offer the MWBE certified firms a fair share of their work. After making good faith efforts to create meaningful opportunities, a Service Provider may find that it is not possible to meet the MWBE goals. In that case, the Service Provider shall request a waiver from the goals.

Even if an MWBE waiver is granted, EEO information must still be submitted. The EEO information is submitted as part of the Monthly Report.

1. **Preparation:** The Service Provider shall complete the waiver request portion of the MWBE Utilization Plan and submit it to the MBO along with adequate good faith effort documentation and a letter explaining why the waiver is necessary.
2. **Waiver Review:** The MBO and EFC will review each waiver request based on the good faith effort criteria presented above and the documentation submitted with the waiver request. EFC will not issue any automatic waivers from MWBE responsibilities. A full or partial waiver from the MWBE goals can be requested.
3. **Specialty Equipment/Service Waiver:** A specialty equipment/service waiver may be granted in cases where:
  - a. equipment is made by only one non-MWBE manufacturer,
  - b. the technical contract specifications call for equipment that is not available through an MWBE supplier;
  - c. the equipment is constructed on site by specially trained non-MWBE labor;
  - d. the service is not available through an MWBE (such as work done by National Grid);
  - e. the service is proprietary in nature (such as use of certain computer software necessary for control systems); or
  - f. the service cannot be subcontracted (such as litigation services).

If the contract includes specialty equipment or services, and documentation is submitted demonstrating that there are no MBE/WBE firms capable of completing this portion of the contract, the specialty amount of the contract may be deducted from the total contract

amount to determine the MWBE Eligible Amount and the goals would be applied to the MWBE Eligible Amount. This determination is made at the discretion of the MBO and EFC.

**Example:**

$$\begin{array}{rcl} \$200,000 & - & \$50,000 \\ \text{(Contract)} & & \text{(Specialty equipment/service)} \end{array} = \$150,000 \quad \text{(MWBE Eligible Amount)}$$

The MWBE goal is applied to the remaining balance.

A request for this specialty equipment/service deduction can be completed by filling out section two of the MWBE Utilization Plan and submitting it to the MBO. The request must include a copy of the page from the contract where the equipment/ service is described and the cost of each item. Additional documentation may be requested by the MBO or EFC.

## **G. PROTESTS/COMPLAINTS**

Subcontractors or Service Providers who have any concerns, issues, or complaints regarding the implementation of the SRF MWBE/EEO Program, or wish to protest should do so in writing to the project MBO and EFC. The MBO, in consultation with EFC, will review the circumstances described in the submission, investigate to develop additional information, if warranted, and determine whether action is required. If the subcontractor believes the issue has not been resolved to their satisfaction, they may appeal in writing to EFC for consideration.

## **H. WASTE, FRAUD AND ABUSE**

Subcontractors, contractors, Service Provider, or Recipients who know of or suspect any instances of waste, fraud, or abuse within the MWBE & EEO Program should notify the project MBO and EFC immediately. Additionally, suspected fraud activity should be reported to the EPA – Office of Inspector General Hotline at (888) 546-8740, the New York State Office of Inspector General at (800) 367-4448, or the ESD Compliance Office at (212) 803-3268.

## **I. REMEDIES**

If a Recipient makes a determination that a Service Provider has been non-responsive, is non-responsible, or is in breach as a result of a failure to comply with the program requirements discussed in Part 1: Required Contract Language, Recipient may withhold funds under the contract or take such other actions, impose liquidated damages or commence enforcement proceedings.

If a Service Provider or subcontractor fails to submit to Recipient an EEO policy statement within the required timeframe, Recipient may declare the contract to be null and void.

A failure to submit and/or adhere to an EEO policy statement and an MWBE Utilization Plan, and any other required reports, shall constitute a material breach of the terms of the contract between the Service Provider and Recipient, and justify a finding of Service Provider non-responsiveness.

## **SECTION 3 RESTRICTIONS ON LOBBYING**

*\*\* (Applies to contracts greater than \$100,000) \*\**

Each Service Provider and subcontractor which has a contract with Recipient exceeding \$100,000 shall provide to the Recipient an executed certification on the form provided, that it will not expend appropriated federal funds to pay any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, officer or employee of Congress or any employee of any Member of Congress in accordance with the provisions of 40 CFR Part 34, and to maintain such certification for their own records.

## SECTION 4 AIS REQUIREMENTS

***\*\* (Applies only to Equipment and Materials Supplier contracts) \*\****

American Iron and Steel (AIS) requirements apply to any federally funded construction contract that meets all of the following conditions:

- For the construction, alteration, maintenance, or repair of public water system or treatment works;
- That execute a financial assistance agreement with the NYS Environmental Facilities Corporation (EFC) after January 17, 2014 for assistance through either the Clean Water State Revolving Fund (CWSRF) or the Drinking Water State Revolving Fund (DWSRF), and
- Did not have the project plans and specifications submitted for review by a NYS agency on or before January 17, 2014 and approved by a NYS agency before April 15, 2014.

The following activities must be implemented by each Service Provider on an SRF funded project in order to maintain compliance with the AIS program. These contractual obligations are included in the contract language in Part 1: Required Contract Language and expanded upon below.

### A. DEFINITIONS

It is required that all of the iron and steel products used in the project are produced in the United States. The term **"iron and steel products"** means the following products made primarily of iron or steel that is permanently incorporated into the public water system or treatment works:

Lined or unlined pipes or fittings  
 Manhole Covers  
 Municipal Castings (defined below);  
 Hydrants  
 Tanks  
 Flanges  
 Pipe clamps and restraints  
 Valves  
 Structural steel  
 Reinforced precast concrete  
 Construction materials (defined below)

For one of the listed products to be considered subject to the AIS requirement, it must be made of greater than 50% iron and steel, measured by material cost.

**Municipal castings** – cast iron or steel infrastructure products that are melted and cast. They typically provide access, protection, or housing for components incorporated into utility owned drinking water, storm water, wastewater, and surface infrastructure. They are typically made of grey or ductile iron, or steel. Examples of municipal castings are:

Access Hatches	Inlets
Ballast Screen	Junction Boxes
Benches (Iron or Steel)	Lampposts
Bollards	Manhole Covers, Rings and
Cast Bases	Frames, Risers
Cast Iron Hinged Hatches	Meter Boxes
Cast Iron Riser Rings	Service Boxes
Catch Basin Inlet	Steel Hinged Hatches
Cleanout/Monument Boxes	Square and Rectangular
Construction Covers and Frames	Steel Riser Rings
Curb and Corner Guards	Trash receptacles
Curb Openings	Tree Grates
Detectable Warning Plates	Tree Guards
Downspout Shoes (Boot, Inlet)	Trench Grates
Drainage Grates, Frames and Curb	Valve Boxes, Covers and Risers
Inlets	

**Construction Materials** – articles, materials, or supplies made primarily of iron and steel that are permanently incorporated into the project, not including mechanical and/or electrical components, equipment and systems. Some of these products may overlap with what is also considered “structural steel”. This includes, but is not limited to, the following products:

Wire rod	Fasteners (i.e.,	Roofing
Bar	nuts and	Ductwork
Angle	bolts)	Surface drains
Concrete	Welding rods	Cable hanging
Reinforcing	Decking	systems
bar	Grating	Manhole steps
Wire	Railings	Fencing and
Wire cloth	Stairs	fence tubing
Wire rope and	Access ramps	Guardrails
Cables	Fire escapes	Doors
Tubing	Ladders	Stationary
Framing	Wall panels	screens
Joists	Dome	
Trusses	structures	

**NOT Considered Construction Materials:** Mechanical and electrical components, equipment and systems are not considered construction materials. Mechanical equipment is typically that which has motorized parts and/or is powered by a motor. Electrical equipment is typically any machine powered by electricity and includes components that are part of the electrical distribution system.

The following examples (including their appurtenances necessary for their intended use and operation) are NOT considered construction materials:

Pumps	Membrane bioreactor systems
Motors	Membrane filtration systems
Gear reducers	Filters
Drives (including variable frequency drives (VFDs))	Clarifiers and clarifier mechanisms
Electric/pneumatic/manual accessories used to operate valves (such as electric valve actuators),	Rakes
Mixers	Grinders
Gates	Disinfection systems
Motorized screens (such as traveling screens)	Presses (including belt presses)
Blowers/aeration equipment	Conveyors, cranes
Compressors	HVAC (excluding ductwork)
Meters	Water heaters
Sensors	Heat exchangers
Controls and switches	Generators
SCADA	Cabinetry and housings (such as electrical boxes/enclosures)
Metal office furniture	Lighting fixtures
Shelving	Electrical conduit
Laboratory equipment	Emergency life systems
Analytical instrumentation	
Dewatering equipment	



## **B. CERTIFICATION**

Each Service Provider that has a contract with the Recipient shall provide to the Recipient an executed certification on the form provided, that the iron and steel products and/or materials used on this project are in full compliance with the American Iron and Steel requirements in accordance with the provisions of the Consolidated Appropriations Act, and to maintain such certification for their own records.

It is recommended that a step certification process is used, in which each handler (supplier, fabricator, manufacturer, processor, etc) of the iron and steel products certifies that their step in the process was domestically performed. Each time a step in the manufacturing process takes place, the manufacturer delivers its work along with a certification of its origin.

A certification typically includes:

- a. the name of the manufacturer
- b. the location of the manufacturing facility where the product or process took place (not its headquarters)
- c. a description of the product or item being delivered
- d. a signature by a manufacturer's responsible party

These certifications should be collected and maintained by Recipients.

Alternatively, the final manufacturer that delivers the iron or steel product to the worksite, vendor, or Service Provider, may provide a certification asserting that all manufacturing processes occurred in the US. While this type of certification may be acceptable, it may not provide the same degree of assurance. Additional documentation may be needed if the certification is lacking important information.

## **C. WAIVER REQUESTS**

The EPA is allowed to issue waivers from the AIS requirements when:

- The application of the AIS requirements would be inconsistent with the public interest;
- Iron and steel products are not produced in the US in sufficient and reasonably available quantities and of a satisfactory quality; or
- Inclusion of iron and steel products produced in the US will increase the cost of the overall project by more than 25 percent.

AIS waivers can be product-specific, project-specific, regional, or nationwide. Waiver requests can only be submitted by either EFC or DOH to EPA, and only EPA can approve an AIS waiver. If the Service Provider is considering requesting an AIS waiver, documentation as described in the EPA guidance should be developed and submitted to the EFC or DOH Project Engineer. See EFC's website for EPA guidance.

### **1. Waiver Documentation:**

The Service Provider shall complete the waiver request to the Recipient along with adequate good faith effort documentation. Waiver requests should include the following information:

- a. Description of the foreign and domestic construction materials
- b. Unit of measure
- c. Quantity
- d. Price
- e. Time of delivery or availability
- f. Location of the construction project
- g. Name and address of the proposed supplier

- h. A detailed justification for the use of foreign construction materials

For **Cost Waiver Requests**, the Service Provider should compare the overall cost of the project with domestic iron and steel products to overall cost of the project with foreign iron and steel products. Relevant excerpts from the bid documents used by the Service Providers to complete the comparison, as well as supporting documentation indicating that the Service Providers made a reasonable survey of the market, such as a description of the process for identifying suppliers and a list of contacted suppliers may be used.

For **Availability Waiver Requests**, the request must include the following supporting documentation necessary to demonstrate the availability, quantity and/or quality of the materials for which the waiver is requested:

- a. Supplier information or pricing information from a reasonable number of domestic suppliers indicating availability/delivery date for construction materials
- b. Documentation of the assistance recipient's efforts to find available domestic sources, such as a description of the process for identifying suppliers and a list of contacted suppliers
- c. Project schedule
- d. Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of construction materials

Availability Waiver Requests should include a statement from the prime Service Provider and/or supplier confirming the non-availability of the domestic construction materials for which the waiver is sought.

## 2. Waiver Review:

The Recipient and EFC will review each waiver request based on the criteria presented above and the documentation submitted with the waiver request. EFC will submit waiver request directly to EPA for final approval of submission. Granting a waiver is a three-step process:

- a. Posting – After receiving an application for waiver of the AIS requirements, EPA will publish the request on its website for 15 days and receive informal comment.
- b. Evaluation – EPA will review the application to determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver to make a determination.
- c. Determination – In the event that EPA finds that adequate documentation and justification has been submitted, the EPA may grant a waiver to the Recipient. The Recipient should keep a copy of the signed waiver in its project files.

## D. DE MINIMIS WAIVER

The AIS de minimis waiver allows that incidental iron and steel components that are tracked in a certain manner are exempt for the AIS requirements. Items that can be subject to the de minimis waiver must be:

- 1. Essential, but incidental to the construction
- 2. Incorporated into the physical structure of the project. and
- 3. Often are low cost and procured in bulk.

Examples items eligible for de minimis tracking include: washers, screws, nuts, bolts, fasteners, miscellaneous wire, corner bead, ancillary tubing, etc.

Examples of items that are NOT incidental and cannot be considered for de minimis tracking include: process fittings, tees, elbows, flanges, brackets, valves, sewer or water pipes for distribution, treatment or storage tanks, large structural support systems, etc.

To comply with the de minimis waiver, all items that are waived must meet the above criteria and must be 5% or less of the total cost of materials incorporated into the project. This can be measured on a project basis, or on a contract-by-contract basis, as long as the cost of the tracked de minimis iron and steel items is 5% or less of the total material cost of materials incorporated into the project.

Service Providers should prepare a record, in spreadsheet form, which tracks the cost of all materials incorporated into the project. This spreadsheet can be either project specific or contract specific. If contract specific, a material tracking record for each construction contract should be prepared and items that are subject to the AIS de minimis waiver highlighted. There should be a clear calculation available to indicate that the cost of the de minimis iron and steel items is 5% or less of the total cost of all materials.

## **E. INSPECTIONS**

EFC or DOH can be expected to conduct occasional site inspections that will include a review of AIS documentation for the project. Items that will be reviewed during these inspections include:

1. AIS certifications from vendors, suppliers, or manufacturers;
2. Contract and subcontracts to verify that the AIS contractual language has been included; and
3. The lists of the incidental iron and steel project components that are claimed under the AIS de minimis waiver.

## **F. BEST PRACTICES**

The following Best Practices are suggestions and recommendations for the Service Provider to remain in compliance with the AIS program. The EFC can be contacted directly with any questions regarding compliance.

1. The Service Provider should carefully review the plans and specifications prepared to identify iron and steel products (as defined previously in Section 5.A) used in each project and incorporate American-made iron and steel at the time of bid.
2. The Service Provider should acquire product certifications from all suppliers and manufacturers for iron and steel products verifying that the products used in the project are American-made. These certifications should be kept on file for the duration of the project and provided to the SRF Recipient.
3. The product/manufacture certifications should be submitted with each equipment/material submittal to the Recipient and/or Engineer. The Service Provider should retain all delivery slips, certifications and approved submittals in their file for the duration of the project.

## **EEO PROGRAM CHECKLIST**

**The EEO program is required of all contracts.**

**The following forms must be completed and submitted to the Recipient. Refer to the applicable sections in the Guidance for further information.**

**At the Time of Bid:**

**Guidance Reference**

- |  |             |
|--|-------------|
| <input type="checkbox"/> EEO Policy Statement        | Section 1.B |
| <input type="checkbox"/> EEO Workforce Staffing Plan | Section 1.C |

**After Contract Award:**

- |   |             |
|---|-------------|
| <input type="checkbox"/> EEO Utilization Report | Section 1.D |
|---|-------------|

## MWBE and DBE PROGRAM CHECKLIST

**Service Providers must comply with the MWBE program if “yes” is answered for ANY of the following questions. The DBE program is required of all contracts.**

Yes   No

- |                          |                          |   |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | The Service Provider contract greater than \$25,000.  |
| <input type="checkbox"/> | <input type="checkbox"/> | The initial Service Provider contract was \$25,000 or less, but a subsequent change order increased the total contracted value over \$25,000. |
| <input type="checkbox"/> | <input type="checkbox"/> | A contract amendment was approved that is greater than \$25,000.  |
| <input type="checkbox"/> | <input type="checkbox"/> | A partial or full waiver was not approved by the EFC.   |

**If you answered YES to any of the above, then the following MWBE forms must be completed and submitted to the Recipient. The DBE forms are required of all contracts that are bid. Refer to the applicable sections in the Guidance for further information.**

### At the Time of Bid:

### Guidance Reference

- |                          |   |             |
|--------------------------|---|-------------|
| <input type="checkbox"/> | EPA Form 6100-3: “DBE Subcontractor Performance Form” | Section 2.D |
| <input type="checkbox"/> | EPA Form 6100-4: “DBE Subcontractor Utilization Form” | Section 2.D |

### Prior to Contract Award

- |                          |   |             |
|--------------------------|---|-------------|
| <input type="checkbox"/> | EPA Form 6100-2: “DBE Subcontractor Participation Form” | Section 2.D |
|--------------------------|---|-------------|

### After Contract Award

- |                          |  |               |
|--------------------------|--|---------------|
| <input type="checkbox"/> | MWBE Utilization Plan and/or Waiver Request and any revisions subsequent to approval | Section 2.D.1 |
| <input type="checkbox"/> | Good Faith Effort Documentation (if submitting a waiver)                             | Section 2.D.2 |
| <input type="checkbox"/> | All executed subcontracts, agreements and purchase orders                            | Section 2.D.3 |
| <input type="checkbox"/> | Proof of payment to MWBE firms   | Section 2.D.4 |
| <input type="checkbox"/> | Monthly MWBE Reports   | Section 2.D.4 |

## AMERICAN IRON AND STEEL (AIS) REQUIREMENTS CHECKLIST

**Service Providers must comply with the AIS program if “yes” is answered for ALL of the following questions.**

Yes   No

- ☐   ☐ As part of your scope of services you are supplying the Recipient with construction materials or equipment to be installed as part of this project.
- ☐   ☐ This project involves the construction, alteration, maintenance, or repair of a public water system (DWSRF) or treatment works (CWSRF). Examples of treatment works include but are not limited to collection systems, pump stations, and wastewater treatment plants (see Definitions).
- ☐   ☐ A financing assistance agreement with the NYS Environmental Facilities Corporation (EFC) was executed after January 17, 2014 for assistance through either the Clean Water State Revolving Fund (CWSRF) or the Drinking Water State Revolving Fund (DWSRF).
- ☐   ☐ The project did not have the project plans and specifications submitted for review by a NYS agency on or before January 17, 2014 and approved by a NYS agency before April 15, 2014.

**If you answered YES to all of the above, then the following forms must be completed and submitted to the Recipient. Refer to the applicable sections in the Guidance for further information.**

### After Contract Award

### **Guidance Reference**

- |   |             |
|---|-------------|
| <input type="checkbox"/> AIS Compliance Certifications for all applicable iron and steel products | Section 4.B |
|---|-------------|



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**PART 3:**  
**REQUIRED FORMS**  
**FOR NON-CONSTRUCTION CONTRACTS**

All required forms can be found on the EFC website ([www.efc.ny.gov](http://www.efc.ny.gov))

**The following SRF forms are provided and may be required. Please refer to the Guidance Section Checklists to determine which forms are applicable to your project.**

	<b>Guidance Reference</b>
<input type="checkbox"/> EEO Policy Statement	Section 1.B
<input type="checkbox"/> EEO Staffing Plan (form available online only)	Section 1.C
<input type="checkbox"/> EEO Workforce Utilization Report (form available online only)	Section 1.D
<input type="checkbox"/> MWBE Utilization Plan and/or Waiver Request (form available online only)	Section 2.D.1
<input type="checkbox"/> MWBE Monthly Report Form (form available online only)	Section 2.D.4
<input type="checkbox"/> EPA Form 6100-2 "DBE Subcontractor Participation Form"	Section 2.D
<input type="checkbox"/> EPA Form 6100-3 "DBE Subcontractor Performance Form"	Section 2.D
<input type="checkbox"/> EPA Form 6100-4 "DBE Subcontractor Utilization Form"	Section 2.D
<input type="checkbox"/> Lobbying Certification (Certification for Contracts, Grants, Loans, and Cooperative Agreements 40 CFR 34)	Section 3

**AGREEMENT TO ABIDE BY EQUAL EMPLOYMENT OPPORTUNITY  
POLICY STATEMENT REQUIREMENTS  
NEW YORK STATE REVOLVING FUND (SRF)**

I, Donald H. Fletcher, am the authorized representative of Barbora & Lequidre.  
Name of Representative Name of Contractor/Service Provider  
I hereby certify that Barbora & Lequidre will abide by the equal employment  
Name of Contractor/Service Provider  
opportunity (EEO) policy statement provisions outlined below.

- (i) A statement that the contractor will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination and will make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on contracts relating to the Project.
- (ii) An agreement that all of contractor's solicitations or advertisements for employees will state that, in the performance of the contract relating to this Project, all qualified applicants will be afforded equal employment opportunities without discrimination on the basis of race, creed, color, national origin, sex, age, disability or marital status.
- (iii) An agreement to request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein.
- (iv) An agreement to comply with the provisions of the Human Rights Law (Article 15 of the Executive Law), including those relating to non-discrimination on the basis of prior criminal conviction and prior arrest, and with all other State and federal statutory constitutional non-discrimination provisions.

Blank EEO Policy Statements are available at [www.efc.ny.gov/mwbe](http://www.efc.ny.gov/mwbe), if needed.

If contractor fails to submit to Recipient an EEO policy statement consistent with the provisions set forth above in clauses (i), (ii), (iii) and (iv) and within the timeframe required thereof, Recipient may declare this contract to be null and void.

X Donald H. Fletcher  
Contractor/Service Provider Representative

Once completed, please provide to the Prime Contractor and/or the community MBO

## Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Participation Form

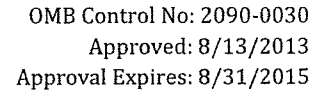
An EPA Financial Assistance Agreement Recipient must require its prime contractors to provide this form to its DBE subcontractors. This form gives a DBE<sup>1</sup> subcontractor<sup>2</sup> the opportunity to describe work received and/or report any concerns regarding the EPA-funded project (e.g., in areas such as termination by prime contractor, late payments, etc.). The DBE subcontractor can, as an option, complete and submit this form to the EPA DBE Coordinator at any time during the project period of performance.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)		Point of Contact
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Received from the Prime Contractor Involving Construction, Services , Equipment or Supplies	Amount Received by Prime Contractor

<sup>1</sup> A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

<sup>2</sup> Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

[illegible]

<b>Subcontractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

**EPA FORM 6100-2 (DBE Subcontractor Participation Form)**



## Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Performance Form

This form is intended to capture the DBE<sup>1</sup> subcontractor's<sup>2</sup> description of work to be performed and the price of the work submitted to the prime contractor. An EPA Financial Assistance Agreement Recipient must require its prime contractor to have its DBE subcontractors complete this form and include all completed forms in the prime contractors bid or proposal package.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Submitted to the Prime Contractor Involving Construction, Services , Equipment or Supplies	Price of Work Submitted to the Prime Contractor
DBE Certified By: ___ DOT      ___ SBA ___ Other: _____		Meets/ exceeds EPA certification standards? ___ YES    ___ NO    ___ Unknown

<sup>1</sup> A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

<sup>2</sup> Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

**Disadvantaged Business Enterprise (DBE) Program  
DBE Subcontractor Performance Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Print Name
Title	Date

Subcontractor Signature	Print Name
Title	Date

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

## Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Utilization Form

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE<sup>1</sup> subcontractors<sup>2</sup> and the estimated dollar amount of each subcontract. An EPA Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

Prime Contractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Issuing/Funding Entity:			

I have identified potential DBE certified subcontractors	___ YES	___ NO	
If yes, please complete the table below. If no, please explain:			
<b>Subcontractor Name/ Company Name</b>	<b>Company Address/ Phone/ Email</b>	<b>Est. Dollar Amt</b>	<b>Currently DBE Certified?</b>

Continue on back if needed

<sup>1</sup> A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

<sup>2</sup> Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

**Disadvantaged Business Enterprise (DBE) Program  
DBE Subcontractor Utilization Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

<b>Prime Contractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

**CERTIFICATION  
FOR  
CONTRACTS, GRANTS, LOANS, AND  
COOPERATIVE AGREEMENTS  
40 CFR 34**

SRF Project No.:

41576

The undersigned each certify, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grant, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

By: 

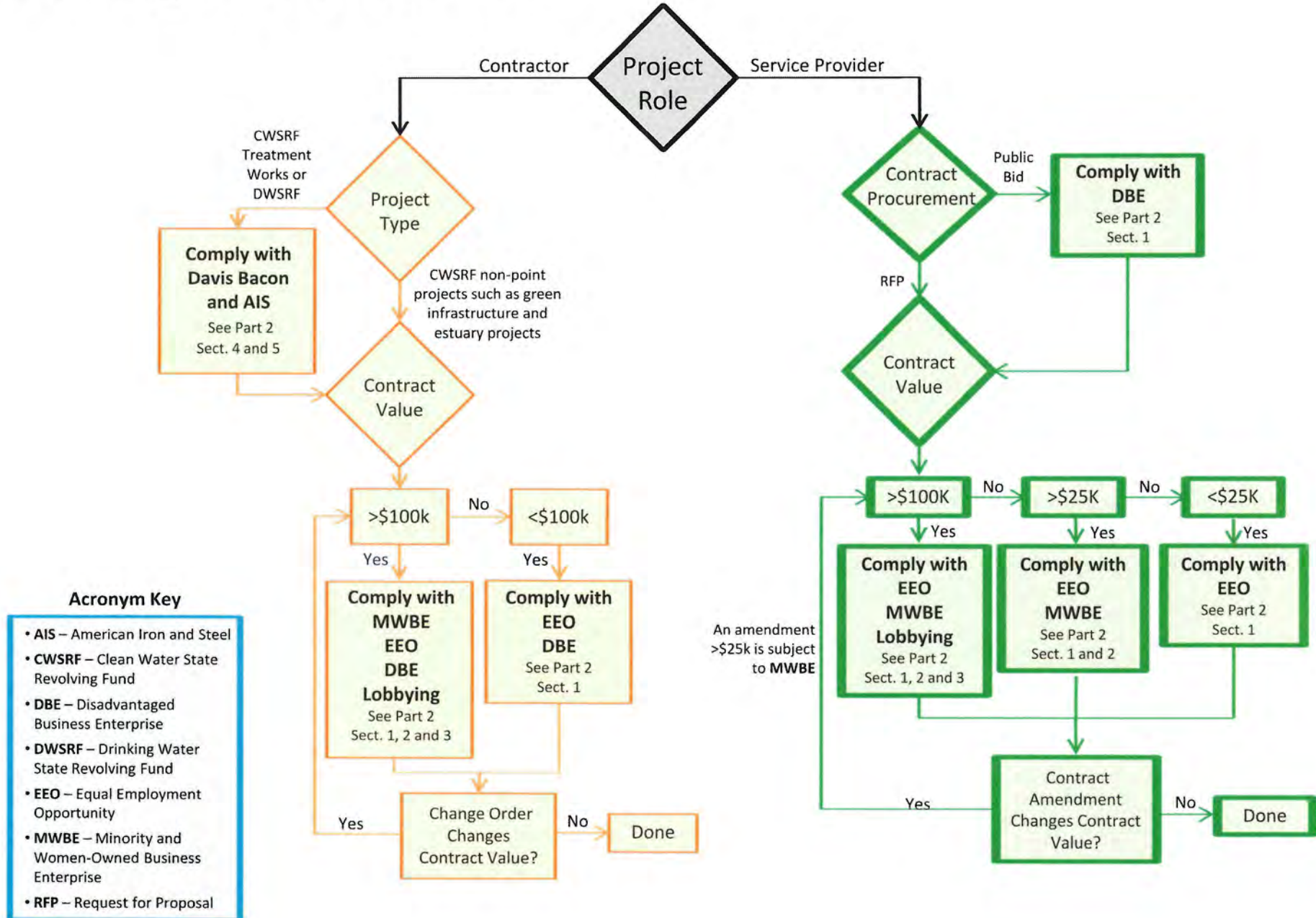
Name: Donald H. Fletcher

Title: Vice President

Date: June 4, 2015

Contract ID: \_\_\_\_\_

# SRF Program Decision Tree







Mr. Jason Morris, City Engineer  
City of Newburgh  
May 29, 2015  
Page 9

### **B&L Terms and Conditions**



**STANDARD TERMS AND CONDITIONS**  
**for**  
**PROFESSIONAL ENGINEERING SERVICES**  
**provided by**  
**BARTON & LOGUIDICE, D.P.C. ("ENGINEER")**

The OWNER and the ENGINEER, for themselves, their successors and assigns, have mutually agreed and do agree with each other as follows:

**1.0 Basic Agreement**

Engineer shall provide, or cause to be provided, the services set forth in the proposal to which these terms and conditions are attached (PROPOSAL), and Owner shall pay Engineer for such Services as set forth in PROPOSAL. The PROPOSAL, in conjunction with these terms and conditions, is referred to herein as "Agreement".

**2.0 Payment Procedures**

Engineer will prepare a monthly invoice in accordance with Engineer's standard invoicing practices and submit the invoice to Owner. Invoices are due and payable within 30 days of the date of the invoice. If Owner fails to make any payment due Engineer for services and expenses within 30 days after the date of Engineer's invoice, the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges.

**3.0 Additional Services**

If mutually agreed by Owner and Engineer, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth in the PROPOSAL if requested by the Owner. Owner shall pay Engineer for such additional services as follows: (1) as mutually agreed by Owner and Engineer, or (2) an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any.

**4.0 Termination**

If Engineer's services related to the project are terminated for any reason, Engineer shall be compensated for time plus reasonable expenses associated with demobilizing personnel and equipment, and, if requested in writing by the OWNER, for completion of tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

**5.0 Controlling Law**

This Agreement is to be governed by the law of the state in which the Project is located.

**6.0 Successors, Assigns, and Beneficiaries**

Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted herein the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

**7.0 General Considerations**

A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Engineer and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

B. Engineer shall not at any time supervise, direct, or have control over any contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.

C. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.

D. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.

E. All design documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.

F. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer pursuant to the PROPOSAL, whichever is greater.

H. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials) except as may be specifically defined in the Scope of Services. If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

I. The services to be provided by Barton & Loguidice under this Agreement DO NOT INCLUDE advice or recommendations with respect to the issuance, structure, timing, terms or any other aspect of municipal securities, municipal derivatives, guaranteed investment contracts or investment strategies. Any opinions, advice, information or recommendations provided by Barton & Loguidice are understood by the parties to this Agreement to be strictly *engineering* opinions, advice, information or recommendations. Barton & Loguidice is not a "municipal advisor" as defined by 15 U.S.C. 78o-4 or the related rules of the Securities and Exchange Commission. The other parties to this Agreement should determine independently whether they require the services of a municipal advisor.

**8.0 Dispute Resolution**

Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice by either party of the existence of the dispute. If the parties fail to resolve a dispute through negotiation then Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by a mutually acceptable mediator. Owner and Engineer agree to participate in the mediation process in good faith and to share the cost of the mediation equally. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

**9.0 Accrual of Claims**

All causes of action between the parties to this Agreement including those pertaining to acts, failures to act, failures to perform in accordance with the obligations of the Agreement or failures to perform in accordance with the standard of care shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts, failures to act or failures to perform occurring prior to Substantial Completion, or the date of issuance of the Notice of Acceptability of Work for acts, failures to act or failures to perform occurring after Substantial Completion.

**10.0 Total Agreement**

This Agreement constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

RESOLUTION NO.: 172 - 2015

OF

JULY 13, 2015

**A RESOLUTION AUTHORIZING THE EXECUTION OF A CHANGE ORDER  
IN THE AMOUNT OF \$55,100.00 WITH AMSTAR OF WESTERN NEW YORK INC.  
IN CONNECTION WITH THE ELLIS AVENUE AND BRADY AVENUE  
WATER STORAGE TANKS REHABILITATION PROJECT**

**WHEREAS**, by Resolution No. 268-2015 of October 27, 2015, the City Council of the City of Newburgh awarded a bid to and authorized the execution of a General Construction contract with Amstar of Western New York, Inc. for the Ellis Avenue and Brady Avenue Water Storage Tanks Rehabilitation Project (the "Project") at a cost of \$743,000.00; and

**WHEREAS**, additional Project work was performed on the interior columns and the concrete foundations of the tanks, which could not have been identified during until after the tanks were dewatered and the bituminous coatings removed; and

**WHEREAS**, Change Order No. 1 for the additional Project work was submitted, which also contains a credit to the City for proposed Project work which was not required, for a net cost of additional services in the amount of \$55,100.00 and total Project cost of \$798,100.00; and

**WHEREAS**, funding for the additional Project work contained in Change Order No. 1 shall be derived from the 2012 Bond; and

**WHEREAS**, this Council finds that authorizing the City Manager to execute Change Order No. 1 to the General Construction contract for the Project 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 hereby is authorized to execute Change Order No. 1 to the General Construction contract with Amstar of Western New York, Inc. for the Ellis Avenue and Brady Avenue Water Storage Tanks Rehabilitation Project.

BARTON & LOGUIDICE, D.P.C.  
280 Broadway, Suite 12  
Newburgh, New York 12550

CHANGE ORDER NO.: 1

DATE: June 26, 2015

B&L FILE NO.: 1352.002.001

PROJECT: Rehabilitation of Ellis Avenue & Brady Avenue  
Water Storage Tanks  
Contract 2A – General Construction

OWNER: City of Newburgh

CONTRACTOR: Amstar of Western NY, Inc  
825 Rein Road  
Cheektowaga, NY 14225

**AUTHORIZATION IS HEREBY GRANTED FOR THE FOLLOWING CHANGES:**

Description and Reason of Change Order:

The following changes to the work under the above reference Contract:

1. An extra work allowance of \$10,000 was included within the Contract to address any spots on the existing tanks which required spot repairs. The allowance was to be applied toward additional work as may be authorized by the Owner. This was included to address any welding associated with the Tank Repairs. No such repairs were required, so this item credits this back to the City.
2. An additive bid item for pit filling, as necessary for the interior columns of Ellis Avenue Water Tank was included within the contract. No such pit filling of the interior columns will be necessary, so this item credits this back to the City.
3. There are 16 columns within the interior of the tank, It was unclear how many there were during the inspection conducted with a water filled tank. Record plans were unavailable and the Inspection Report refers to "13?." After the Tank was dewatered and entry gained into the tank, there were found to be 16 columns. In addition, during the inspection, it was noted that it appeared that 5-foot of the interior columns needed to be repaired. Over the course of the three years since the inspection, the area of the interior columns expanded by 3-feet to 8 feet. The costs included in this item cover the additional work for the three columns as well as the additional three (3) feet on each column.

4. Upon removal of the existing bituminous coating around the circumference of the tank, the concrete foundation was found to be in significantly poor condition. Due to the costs associated with utilizing the specified repair material, a value engineered cost saving repair was developed. The concrete around the tank requires repair work before the contractor can apply the CIM coating. SIKA topping product 122 is proposed to provide a new smooth top on the foundation with a 2 inch slope away from the tank around 340 lf of area to direct rainwater away from the tank/foundation interface.

Change Order Cost:

Item 1.	(\$10,000.00	Credit to the City)
Item 2.	(\$ 1,900.00	Credit to the City)
Item 3.	\$39,000.00	Credit to the Contractor
Item 4.	\$28,000.00	Credit to the Contractor
	<b>\$55,100.00</b>	<b>Credit to the Contractor</b>

See attached supporting documentation for additional details.

Original Contract Amount	\$743,100.00
Change Order No. 1	\$ 55,100.00
<b>Revised Total Contract Amount</b>	<b>\$798,100.00</b>

All the work will be in accordance with the applicable provisions of the Contract Documents.

APPROVALS:

OWNER: \_\_\_\_\_

DATE: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

DATE: \_\_\_\_\_

ENGINEER:  \_\_\_\_\_

DATE: 6/26/15

RESOLUTION NO.: 173-2015

OF

JULY 13, 2015

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE  
AN AMENDMENT TO THE STREET LIGHTING AUTHORITY ORDER  
WITH CH ENERGY GROUP, INC.**

**WHEREAS**, it has become necessary to amend the Street Lighting Authority Order entered into with Central Hudson Gas & Electric Corporation n/k/a CH Energy Group, Inc., providing for the installation of a HPS5800 lamp on pole number 40294 located on Grand Street Cemetery and an installation of a HPS16000 lamp on pole number 1744 on Grand Street; and

**WHEREAS**, there will be a cost to the City of Newburgh of \$26.25 per quarterly period for this change;

**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 execute the attached amendment to the Street Lighting Authority Order.



CENTRAL HUDSON GAS & ELECTRIC CORPORATION  
610 LITTLE BRITAIN ROAD  
NEW WINDSOR, NY 12553-6114  
(845) 452-2700

STREET LIGHTING AUTHORITY ORDER

PAGE 1

CITY OF NEWBURGH  
83 BROADWAY  
NEWBURGH NY 12550

ORDER NO.: H8-03375  
ACCOUNT NO.: 8411-2080-00  
DATE: 06/09/15

TO CENTRAL HUDSON GAS & ELECTRIC CORPORATION:

YOU ARE HEREBY AUTHORIZED TO MAKE CHANGES SPECIFIED BELOW TO THE STREET LIGHTING SERVICE FOR THE CITY LGTG , IN ACCORDANCE WITH A RESOLUTION DULY ADOPTED AS PROVIDED BY LAW BY THE \_\_\_\_\_ (COUNCIL/BOARD) OF THE \_\_\_\_\_ OF \_\_\_\_\_ AT A MEETING HELD ON \_\_\_\_\_, 20\_\_ AS FOLLOWS

ACTION:  
INSTALL

OR REMOVE	TYP & SIZE OF LAMP	POLE NO	RATE **	MAP & GRID	LOCATION	DATE COMPLETE	ADJ AMT
INSTALL	HPS 5800	40294	A		GRAND ST CEMETARY		12.43
INSTALL	HPS 16000	1744	A		GRAND ST		13.82

INS 70 W ON PL#40294 & 150 PL#N1744

- \*\* A. COMPANY OWNED AND MAINTAINED; ANNUAL OR SEASONAL SERVICE
- \*\* B. CUSTOMER OWNED/COMPANY MAINTAINED
- \*\* C. CUSTOMER OWNED/CUSTOMER MAINTAINED

THESE CHANGES ARE SUBJECT TO THE TERMS OF THE EXISTING STREET LIGHTING SERVICE CLASSIFICATIONS. DOES NOT INCLUDE THE COST OF ELECTRICITY.

MUNICIPALITY \_\_\_\_\_ BY \_\_\_\_\_  
\_\_\_\_\_, 20 \_\_\_\_\_ TITLE \_\_\_\_\_

W.O.NO. \_\_\_\_\_ DATE WORK COMPLETED \_\_\_\_\_ BY \_\_\_\_\_

RESOLUTION NO.: \_\_\_\_\_ - 2015

OF

JULY 13, 2015

**A RESOLUTION TO AUTHORIZE THE EXECUTION OF A CHANGE ORDER  
IN THE AMOUNT OF \$ \_\_\_\_\_ WITH ENTERPRISE NETWORK RESOLUTIONS  
CONTRACTING, LLC IN CONNECTION WITH SITE COVER INSTALLATION AT THE  
FORMER PROVAN FORD SITE LOCATED AT 210 MILL STREET**

**WHEREAS**, by Resolution No. 286-2014 of November 24, 2014, the City Council of the City of Newburgh awarded a bid and authorized the City Manager to execute a contract with Enterprise Network Resolutions Contracting, LLC (ENRC) for the site cover installation at the former Provan Ford Site located at 210 Mill Street at a cost of \$148,962.50; and

**WHEREAS**, ENRC has submitted a change order in the amount of \$ \_\_\_\_\_ for additional costs related to the installation of a demarcation barrier; and

**WHEREAS**, funding for the cost of the work covered by the change order shall be derived from the budget line H1.1440.0215.5400.2010; and

**WHEREAS**, a portion of such expenditure shall be reimbursed by the Department of Environmental Conservation in accordance with the Environmental Restoration Program;

**WHEREAS**, this Council finds that authorizing the City Manager to execute a change order for the site cover installation;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he hereby is authorized to execute a change order to the site cover installation contract at the former Provan Ford Site located at 210 Mill Street with Enterprise Network Resolutions Contracting LLC in the amount of \$ \_\_\_\_\_ .

RESOLUTION NO.: 175 - 2015

OF

JULY 13, 2015

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ACCEPT  
IF AWARDED A GRANT FROM THE ORANGE COUNTY YOUTH BUREAU IN THE  
AMOUNT OF \$32,743.00 REQUIRING NO CITY MATCH  
FOR THE RECREATION DEPARTMENT TO FUND  
YOUTH SOCCER & BASKETBALL PROGRAMS IN THE CITY OF NEWBURGH**

**WHEREAS**, the City of Newburgh Recreation Department has advised that funding is available through the Orange County Youth Bureau; and

**WHEREAS**, such grant shall provide funding to conduct youth soccer and basketball programs in the City of Newburgh; and

**WHEREAS**, no City matching funds are required; and

**WHEREAS**, this Council has determined that applying for and accepting said grant if awarded is in the best interests of the City of Newburgh and its youth;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept if awarded a grant from the Orange County Youth Bureau in the amount of \$32,743.00 requiring no City match for the Recreation Department to fund youth soccer and basketball programs in the City of Newburgh; and to execute all necessary documents to receive and comply with the terms of such grant and to carry out the program funded thereby.

RESOLUTION NO.: 176 - 2015

OF

JULY 13, 2015

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ACCEPT A PROPOSAL AND EXECUTE A CONTRACT  
WITH NOVUSOLUTIONS FOR THE PURCHASE  
OF MEETING AND AGENDA MANAGEMENT SOFTWARE**

**WHEREAS**, the City of Newburgh wishes to purchase meeting and agenda management software; and

**WHEREAS**, NovusAgenda is an electronic solution designed to create, approve and track items for future and past City Council meetings; and

**WHEREAS**, NovusAgenda will reduce internal staff labor by processing individual items electronically and track all requests, reducing paper and copy costs; and

**WHEREAS**, Novusolutions has submitted a proposal for the NovusAgenda software, a copy of which is annexed hereto, including installation and training, at an initial cost of Eight Thousand Seven Hundred (\$8,700.00) Dollars for the first year and Seven Thousand Nine Hundred Fifty (\$7,950.00) Dollars for the second and third years; and

**WHEREAS**, funding for such software, installation and training shall be derived from A.1410.0448, City Clerk, Other Services; and

**WHEREAS**, this Council has determined that purchasing such software 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 accept a proposal and execute a contract, including terms and conditions as may be required by the Corporation Counsel, with Novusolutions to provide for the purchase of meeting and agenda management software.



# Meeting Management Solution

Presented to: Newburgh City

DATE: 10-22-14

---

*Manufactured By:*

  
**Novusolutions**

10012 N. Dale Mabry Hwy

Suite 115

Tampa, FL 33618

---

*Presented By:*

Byron Gillin

[bgillin@novusolutions.com](mailto:bgillin@novusolutions.com)

800-274-5624 x703



## TABLE OF CONTENTS

<i>Executive Summary</i>	3
<i>Installation</i>	4
<i>Deployment Services</i>	4
<i>90 day Pilot Program</i>	5
<i>Pricing</i>	6
NovusAGENDA Software Pricing	6
NovusAGENDA Training Pricing	7
Optional Training Services	8
Pricing Summary for NovusAGENDA	8
Video Streaming Services Considerations	9
<i>PROPOSAL TERMS AND CONDITIONS</i>	9
Limitation of Liability	9
Ownership of Data	9
Price terms	9
Payment Terms	10
Insurance	10
Other terms	10
<i>How do I order?</i>	11
<i>Approval Page</i>	11





## EXECUTIVE SUMMARY

Government organizations today are being forced to do more with less in regard to their public meeting documents. States are enforcing Open Meeting Laws to accommodate the changing technical environment of your area. Your public demands information and transparency relevant to their family and business. Your board demands meeting materials be up to date and easy to research previously discussed issues in order to be better prepared for your upcoming public meetings. How can government organizations meet all of these demands with the limited funding you have available?

**We recommend that integrated meeting and agenda management software be implemented across your organization!** NovusAGENDA is an electronic solution designed to create, approve and track items for upcoming and past board meetings. Whether your organization is adding an agenda item, like the approval for a new employee benefit offering or the construction of a baseball field, NovusAGENDA will provide the controlled, well-organized systematic solution to truly make your organization paperless. With the NovusAGENDA foundation in place internally, your board members and public can now access the information they need on demand at any time from any device!

NovusAGENDA will reduce your internal staff labor of processing individual items and back up material by over 50% while eliminating all paper and copy costs your organization currently has budgeted for this part of your business. The savings does not stop there! If board members wish to go electronic, distribution and printing costs will also be eliminated as well as a reduction in research time bringing the full power of electronic data access to the fingertips of each board member. Tools for the board member include:

- Logging in through a secure username and password on any device (i.e., iPads, etc)!
- Viewing agendas and all materials well before the meeting
- Viewing specific items along with support material including Closed Session items
- Making secure personal private comments on any item for their own purposes
- Researching past Agenda, Minutes and Personal Private Comments.
- Real time analytics on spending patterns and goal tracking

The savings continue during your meeting as NovusAGENDA has all the tools to automate the creation of your minutes, track and record voting, motions, and much more, such as video streaming indexed for you and your public.

NovusAGENDA's unique reporting module empowers your administrators with the data from your meetings to make data-driven decisions for the organization and track your progress along the way.

Novusolutions award winning staff brings over 13 years of experience working with hundreds of government NovusAGENDA clients across the country. Our support team will be an extension to your organization to offload all software management, training, and support, so you can focus on providing the public and board the transparency they demand. ***NovusAGENDA is the one comprehensive solution to make paperless meetings easy!***



## INSTALLATION

Our Cloud Computing partner is Amazon Cloud based Web Services, <http://aws.amazon.com/>. They offer world class cloud computing solutions with full 24 X 7 backup and reliable infrastructure designed for today's complex computing challenges.

### Amazon Hosting

NovusAGENDA Application runs on EC2 servers.

<http://aws.amazon.com/ec2/>

Backups are run daily and stored on Amazon S3

<http://aws.amazon.com/s3/>

This option allows you to outsource the hosting of the software to Novusolutions. This is by far the most popular option in today's environment.

Self Hosting is available if needed. Contact us for more information.

## DEPLOYMENT SERVICES

Standard services are required for deployment and included in the pricing and support.

Included Standard Deployment Services	
Configured Item Details	This screen is configured to add fields to our standard form required by your organization. This form is used to create items and can vary based on meeting type. YOU can have one item details page for planning and another for council meetings.
Configured Public Agendas	The public agenda is configured to mimic your current layouts. Agenda layout can vary based on meeting type.
Configured Minutes Page Set	The page set includes draft and final minutes layout. Minutes layout can vary based on meeting type.
Custom Workflows	Workflows can be pre-configured allowing users to simply submit items to named workflows which are then built for them automatically. Workflows can vary based on meeting type.



Solution Overview	This session is with key staff including Board Clerk, IT staff assigned to support the software and key Board Clerk staff. The session involves a complete system overview and workflow building session. This session is delivered prior to any other training so key staff are very familiar with the solution and the workflows are correct prior to staff training.
PDF converter	Attachments and agenda packets are converted to one single PDF file. PDF layout mimics the lay out of the minutes and agenda for that meeting type. We can also add page tamping to the PDF automatically.
Video Services	Do you already video record your meetings? If so, NovusAGENDA will offer you two meetings per month to be uploaded and streamed to the public off our servers <u>at no additional cost</u> . You take your existing video and simply upload it to our servers. Once it is converted, you can link clients to that video stream off your meeting. If you are looking for indexing or are starting from scratch and would like to record your meetings, please see our Video Service Considerations Section.

## 90 DAY PILOT PROGRAM

Novusolutions has agreed to offer you a 90 day pilot program of NovusAGENDA to confirm the cost and efficiency savings. Novusolutions is confident that NovusAGENDA will exceed expectations, eliminate paper, and improve the business process of agenda creation and meeting management. There will be no cost for the 90 day duration of this pilot.

Upon successful implementation of the pilot, you will then agree to continue using NovusAGENDA for the Pricing outlined below. However unlikely, if NovusAGENDA does not satisfy your needs, then no commitment is required and the service will be turned off.

The Approval Page of this document will need to be signed prior to beginning this agreement. This will allow Novusolutions to dedicate the resources to begin the project.

- You provide us copies of Agenda, minutes and departments with staff listings within 5 days of project start. In addition we can discuss your item review process as well in that first 5 days.
- We will fully deploy, train and test NovusAGENDA within 20 days of receiving your information.



- You run for 60 days or up to a total of 90 days from project start to test the software in an actual meeting.
- Pilot program covers one meeting body but you can add others once you agree to move forward.

## PRICING

All pricing includes an unlimited use license enabling support for as many meeting types as you need at no added license costs. There are no user licenses either. "Unlimited use" means unlimited use with NovusAGENDA.

### NOVUSAGENDA SOFTWARE PRICING

Item	Pricing (Annually)
NovusAGENDA	\$7,950
NovusMEETING	Included
NovusBOARDVIEW	Included
NovusREPORTING	Included
Board and Committee management (Term Tracking)	Included
Video Integration	Included
Video Services	See Video Services Considerations
Laserfiche integration	Included. Contact us if integration required with other tools
<b>Total Annual Cost</b>	<b>\$7,950</b>
<b>Option In Meeting Tools (Voting, etc.)</b>	<b>Additional \$600 annually</b>



## NOVUSAGENDA TRAINING PRICING

Standard training services are required for deployment.

Standard Remote Training Services	Description
Administrator Training	This is remote training to train one or two system administrators on managing user rights in NovusAGENDA. This class is delivered remotely using web meeting technology managed by Novusolutions.
Board Clerk Training	Training including meeting management, agenda preparation, minutes and system oversight. Delivered remotely using web meeting.
User Training	Training includes creating items, copying old items to new meeting and item submission and approval process. Delivered remotely using web meeting.
Board Training	Training includes viewing agendas, minutes, and all documentation for upcoming meetings, making private notes, researching past meeting information and notes, and analyzing reports and meeting data. Voting can be added if the voting module is in place.
Web Based Training	<p>Web-based training videos for all staff to view on demand via Internet. Videos include:</p> <ul style="list-style-type: none"> <li>• User training</li> <li>• Board Clerk Training</li> <li>• Board Training</li> <li>• Admin Training</li> </ul>
<b>Total One Time Cost</b>	<b>\$750</b>



## OPTIONAL TRAINING SERVICES

Additional remote training – Included for new releases and refresher training. If retraining is needed due to turnover or other issues we also include a Web-Based Training Portal and regularly scheduled Client Webinars.

Optional Onsite training - \$2,450 per day includes travel, 2-day minimum.

## PRICING SUMMARY FOR NOVUSAGENDA

	One Time Fee	Annual Fee	TOTAL
<b>NovusAGENDA</b>	<b>\$750 for Remote Training</b>	<b>\$7,950</b>	<b>\$8,700</b>
<b>Add On Options:</b>			
<b>In Meeting Tools (Electronic Voting, Request to Speak, In Meeting Public Display, Item highlight for board)</b>		<b>\$600</b>	
<b>Laserfiche Integration maintenance (Included Year 1. Billed beginning Year 2)</b>		<b>\$600</b>	
<b>Onsite Installation (Only needed if Active Directory Integration is required)</b>	<b>\$3,450</b>		
<b>Onsite Training (Not required as unlimited remote training options included)</b>	<b>\$2,450 per day including travel. 2 day Minimum.</b>		





TOTAL INVESTMENT YEAR 1 \$8,700

NovusAGENDA Including:

- Remote Training

TOTAL INVESTMENT YEAR 2 \$7,950

NovusAGENDA

TOTAL INVESTMENT YEAR 3 \$7,950

NovusAGENDA

There are NO long term contracts to sign with NovusAGENDA.

**Payment Terms** – Payment is due at the end of the successful pilot term.

#### VIDEO STREAMING SERVICES CONSIDERATIONS

The pricing above includes the option for clients to upload the existing video of their meetings to our servers and create a link to those videos on their agendas and minutes in NovusAGENDA (limit of 2 meetings a month). However, many clients require additional video services. NovusAGENDA provides state of the art video streaming technology and services completely hands-free! Contact us for pricing on hardware and the video streaming services that best fit your needs. These video services can be added at any time!

#### PROPOSAL TERMS AND CONDITIONS

##### LIMITATION OF LIABILITY

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER UNDER THIS LICENSE AGREEMENT FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES, LOSS OF DATA, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION OR LOSS OF BUSINESS INFORMATION ARISING OUT OF THE USE OF OR INABILITY TO USE THE NOVUSAGENDA SOFTWARE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE MAXIMUM LIABILITY UNDER THIS AGREEMENT IS THE TOTAL VALUE OF THE ANNUAL CONTRACT.

##### OWNERSHIP OF DATA

The client owns all data stored in their NovusAGENDA data base from the instant you touch the keyboard. In the event the client terminates service or NovusAGENDA ceases business operations the data will be sent to your organization along with database schema to make the data accessible. All data is stored in an MSSQL database and also can be accessible on demand anytime by using the included NovusAGENDA Reporting Module.

##### PRICE TERMS



The pricing in this proposal is set for three years. Even though there is no contract or commitment to sign with NovusAGENDA, we want our clients to have budget security on this project. If a price increase is needed for any reason, the client will be notified more than a budget year in advance of the increase and would be no more than the CPI (Consumer Price Index) for the period.

Services are billed annually. All invoices are due within 30 days of issue date.

#### **PAYMENT TERMS**

NovusAGENDA is proud of our client retention rates. Therefore we do not require clients to sign long term contracts. All projects are billed annually to eliminate the high cost of invoicing, processing, and collections from both the vendor and the clients end every month. If the client cancels at any time, any unused funds would be returned. A 30 day notice is required.

If monthly billing is attractive to the client, there will be no charge if a credit or procurement card is used. Automatic electronic drafts or deposits are also fine. If traditional invoices and collections need to be instituted, a 5% fee will be added to cover this expense.

#### **INSURANCE**

Novusolutions carries full insurance and can offer certificate of insurance with your organization named on it at no cost. If your organization requires further insurance endorsements added costs may be charged to cover the cost of those documents because carriers charge added fees for those services.

The COI we provide will cover General, Automotive and Umbrella Liability plus Workers Compensation coverage.

#### **OTHER TERMS**

NovusAGENDA is offered with a free pilot program so additional performance bonds or other such instruments are not needed to insure successful delivery. No payments are required until clients complete the pilot cycle.

NovusAGENDA carries commercial general liability insurance of \$1,000,000 that should be more than enough to cover risk for this SaaS solution. The cost for any additional insurance or bonds required by a client will be passed onto the client.

In lieu of escrow accounts NovusAGENDA will agree to provide a full unlimited use licensed copy of the software to any client in the event NovusAGENDA ceases operations.

All data is backed up in our Amazon cloud daily and kept in redundant locations. If clients require copies of data backups these can be provided quarterly at an additional fee. Contact NovusAGENDA sales team for costs.



## HOW DO I ORDER?

We require your signature on the approval page listed below. Once that has been signed and sent back to Novusolutions we will assign your project manager. If you choose to issue a purchase order you may attach it to these documents or send it in under separate cover.

You can email to [sales@novusolutions.com](mailto:sales@novusolutions.com) or :

Mail to: Novusolutions, 10012 N Dale Mabry Hwy, Suite 115, Tampa, Florida 33618-4425

Fax to: 954-337-0761 Attn: Sales

## APPROVAL PAGE

Newburgh City hereby agrees to proceed with the project, initiating with the Pilot project described above and, following a successful Pilot cloud implementation, will move forward with NovusAGENDA. If the pilot is not successful, there is no cost or obligation.

In order to proceed with the Pilot implementation, this Authorization must be signed, which will initiate assignment of personnel to begin the Pilot project. After the successful pilot, please choose which option you will prefer to deploy (not binding as you can change your mind).

**OPTIONAL COMPONENTS:** Please check any options to be included.

- ☐ NovusAGENDA in Meeting Tools (Voting, request to speak, etc.)
- ☐ NovusAGENDA Video (Hardware may need to be purchased based on Package chosen)

The Pilot duration will be 90 days and will include the deployment, training, and consultation and test meeting(s).

Signature

Date

\_\_\_\_\_

Printed Signature

Purchase Order Number \_\_\_\_\_ (optional)

Invoice Address: \_\_\_\_\_

Accounts payable contact: \_\_\_\_\_

Phone \_\_\_\_\_

E-mail \_\_\_\_\_

RESOLUTION NO.: 177 - 2015

OF

JULY 13, 2015

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO APPLY FOR AND ACCEPT IF AWARDED A GRANT FROM THE  
UNITED STATES DEPARTMENT OF JUSTICE FOR THE  
COPS HIRING PROGRAM TO PROMOTE COMMUNITY POLICING  
IN AN AMOUNT NOT TO EXCEED \$1,068,048.24  
WITH A TWENTY FIVE PERCENT LOCAL CASH MATCH REQUIRED**

**WHEREAS**, the City of Newburgh Police Department performs many duties and offers a variety of services to promote public safety and health; and

**WHEREAS**, the City of Newburgh Police Department has identified the community policing model as an effective crime prevention tool; and

**WHEREAS**, the United States Department of Justice has established the COPS Hiring Program (CHP) as a competitive grant program that provides funding directly to law enforcement agencies to increase their community policing and crime prevention efforts; and

**WHEREAS**, the CHP establishes funding in the amount of \$125,000.00 per officer position based on current entry level salaries and benefits and provides 36 month funding of four (4) additional police officers and requires a twenty five (25%) percent match but includes a 12 month retention at the end of the grant period; and

**WHEREAS**, the City's request for grant funds under the CHP will not exceed \$1,068,048.24; and

**WHEREAS**, this Council has determined that applying for and acceptance of such grant is in the best interests of the City of Newburgh and its residents;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept if awarded a grant from the United States Department of Justice for the COPS Hiring Program to promote community policing, in an amount not to exceed \$1,068,048.24, with a twenty five (25%) percent local cash match required; and that the City Manager is authorized to execute all such contracts and documentation and take such further actions as may be appropriate and necessary to accept such grant and administer the program funded thereby.

*City of Newburgh, NY  
Wednesday, July 1, 2015*

## Chapter C. Charter

### Article IV. City Council

#### § C4.32. Penal ordinances.

[Amended 12-22-1952 by L.L. No. 10-1952; 9-14-1987 by L.L. No. 4-1987]

- A. The Council may provide that a violation of any ordinance shall constitute a misdemeanor or a violation.
- (1) Any person guilty of a misdemeanor shall be punished as follows:
- (a) Class A misdemeanor: by a fine of not more than \$1,000 or by imprisonment for not more than one year, or both.
  - (b) Class B misdemeanor: by a fine of not more than \$500 or by imprisonment for not more than three months, or both.
  - (c) Unclassified misdemeanor: A sentence to pay a fine for an unclassified misdemeanor shall be a sentence to pay an amount, fixed by the court, in accordance with the provisions of the ordinance that defines the crime. A sentence of imprisonment for an unclassified misdemeanor shall be a definite sentence. When such a sentence is imposed, the term shall be fixed by the court, and shall be in accordance with the sentence specified in the ordinance that defines the crime. In the event the ordinance that defines the crime does not set forth a sentence, such crime shall be punished in the same manner as provided in this Charter for a person found guilty of a Class A misdemeanor.  
[Added 10-10-2000 by L.L. No. 2-2000]
- (2) Any person guilty of a violation shall be liable to a fine not exceeding \$250 in amount or to imprisonment for a term not exceeding 15 days, or both such fine and imprisonment.
- B. Such ordinance may also provide for a penalty, not exceeding \$500, to be recovered by the City in a civil action. The City may maintain an action or proceeding in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of any ordinance of the Council notwithstanding the fact that the ordinance may provide a penalty for such violation.

*City of Newburgh, NY  
Wednesday, July 1, 2015*

## Chapter 1. General Provisions

### Article I. Adoption of Code

#### § 1-12. Penalties for offenses against Code provisions.

[Amended 9-28-1998 by Ord. No. 12-98]

- A. Whenever in this Code or in any ordinance or local law of the City any act is prohibited or is made or declared to be unlawful or an offense or whenever in such Code, ordinance or local law the doing of any act is required or where the failure to do any act is declared to be unlawful, where no specific penalty is provided therefor, the violation of any such provision of this Code or any ordinance or local law shall:
  - (1) Be prosecuted as a violation as that term is defined in the Penal Law of the State of New York, as amended from time to time, and shall be punished as provided in § C4.32 of the Charter, by a fine not exceeding \$250 or by imprisonment for a term not exceeding 15 days, or both. Each day any violation of any provisions of this Code or of any ordinance or local law shall continue shall constitute a separate offense; or, at the discretion of the enforcing officer, such violation may also:
  - (2) Provide the basis for a civil cause of action which may be maintained by the City of Newburgh, as provided in § C4.32 of the Charter, in an amount not exceeding \$500. Each day any violation of any provisions of this Code or of any ordinance or local law shall continue shall constitute grounds for a separate cause of action.
- B. The amount of fine so charged shall be collected and enforced in the same manner and in the same time as may be provided by law for the collection and enforcement of civil judgments.



City of Newburgh, NY  
Wednesday, July 1, 2015

## Chapter 183. Waste Management, Handling and Disposal

[HISTORY: Adopted by the City Council of the City of Newburgh 9-12-2005 by Ord. No. 7-2005.<sup>[1]</sup>  
Amendments noted where applicable.]

### GENERAL REFERENCES

Garbage collection user fees — See Charter § C9.33.

Penalties for offenses — See Ch. 1, § 1-12.

Building demolition debris — See Ch. 125.

Construction operations — See Ch. 139.

Fees — See Ch. 163.

Housing and property standards — See Ch. 190.

Junkyards — See Ch. 198.

Use and maintenance of streets and sidewalks — See Ch. 263, Art. II.

Water pollution — See Ch. 295.

[1]: *Editor's Note: This ordinance also repealed former Ch. 183, Garbage, Rubbish and Refuse, adopted 11-13-1967 (Ch. 12 of the Code of Ordinances), as amended.*

## Article I. Littering and Dumping

### § 183-1. Littering and dumping prohibited.

- A. No circulars, papers, advertisements, samples, notices, books, leaflets, paper scraps or other printed materials shall be thrown, deposited or left in or about the streets of the City or in the doorways, approaches, highways or any other exterior part of private property in the City. This section shall not apply to the regular delivery of newspapers and periodicals to consumers thereof.
- B. No dirt, ashes, filth, dross, cinders, shells, offal, vegetables, garbage, filthy waters, liquid, recyclables, waste or trash of any kind shall be thrown, left, placed or swept into or on any street, sidewalk, highway, park, public property, property owned by the City of Newburgh or private property in the City, unless placed for collection in compliance with the provisions of this chapter.
- C. No sand, gravel, cement, concrete, fill, bricks, stones, rocks, wood or other building or construction materials shall be deposited or thrown upon or permitted to fall upon any streets, sidewalks or lots in or of the City from any vehicle or by any other means, or at any time when said materials are being transported through the streets of said City, nor shall any such materials other than clean fill consisting of earth, sand or gravel be placed elsewhere than in a dump or other proper receptacle or depository designated therefor for which a special permit has been issued pursuant to the applicable provisions of this Code or of state law.
- D. No person or persons shall use any vehicle for hauling paper, dirt, debris, rock, refuse or other matter unless such vehicle is so constructed or covered as to prevent the falling or scattering of any part of such load while passing over the streets, highways and public places. All such vehicles

shall remain at all times in compliance with the provisions hereof requiring vehicles and private providers of collection services to be licensed and approved by the City.

- E. No person shall collect or place for collection any waste, trash, garbage or recyclables from, on or at any property in violation of any of the provisions of this Code of Ordinances or on a day not authorized as a collection day therefor by City code or rule or by an authorized City official. No City employee shall collect waste from any property that is not listed on the records of the Superintendent of Public Works as having collection by the City.
- F. No person shall place in a garbage can or other such receptacle located on a public street or in a public building any waste or trash, whether bagged, bundled or loose, which was produced or generated or which originated at or from a business or commercial operation or from a household or residence within or outside of the City. Such garbage cans and public receptacles shall only be used by pedestrians and others using the streets and sidewalks of the City for small items of waste such as wrappers and other discarded materials which are not special waste or recyclables or other materials required to be handled under other provisions of this chapter or of some other law, code, rule or regulation. Anyone misusing a public garbage can or receptacle as prohibited herein shall be subject to a penalty as prescribed in the City Code.
- G. Any person having ownership, custody or control of a dog or other domesticated companion or working animal and walking such animal on the streets and thoroughfares and other common public access area shall be responsible for the picking up and collection and proper disposal of any and all waste products of such animal.

## § 183-2. Penalties for littering and dumping.

- A. Notwithstanding any other provision of law, any person violating any provision of § 183-1 or other section of this chapter of the Code of Ordinances of the City of Newburgh, unless otherwise specified, shall be subject to the penalties provided for herein.
- B. The imposition of one penalty for any violation of Chapter 183 of the Code of Ordinances of the City of Newburgh unless otherwise specified shall not excuse the offense or permit it to continue, and all such persons shall be required to correct or remedy such violation or defects. Each day that prohibited conditions or actions exist or continue shall constitute a separate offense hereunder.
- C. In the event that the City or any other person shall be required to correct or remedy such violations or defects, the court may, in its discretion, order the payment, as and for an additional fine of the cost of such correction or remedy, such payment to be made to the City or to the person making such correction or remedy. Payment of such costs in damages shall be in addition to any other penalties imposed pursuant to this section. The court may order such payment of damages either upon submission of proof of actual costs expended for correction or remedy of the violations or upon submission of an estimate from an authorized City official or contractor for the cost of such correction or remedy.
- D. The application of the above penalties shall not be held to prevent the enforced removal of prohibited conditions, nor shall it be held to prevent the City from removing trash and/or remedying a violation of this chapter and holding the party or parties committing such violation responsible for the City's costs and expenses incurred in providing such remedy.

## § 183-3. and § 183-4. (Reserved)

## § 183-5. Sidewalks and gutters; duty to clean and maintain.

A. Definitions. For the purpose of this section, the following terms shall have the following meanings:

### **GUTTER**

That portion of the street located within 18 inches of the curb or roadway edge or, if no curb is installed, on the side normally reserved for vehicular traffic or the parking of vehicles.

### **SIDEWALK**

The area commonly used by the public for pedestrian travel. The term shall include the paved or unpaved area used by the public or set aside for the use of the public as a right-of-way and shall include any planting strips or curbing.

B. Duty to clean or maintain.

- (1) No person shall deposit or cause to be deposited upon any sidewalk and gutter abutting said premises any litter, paper, dirt, debris, filth, garbage, offal, building materials, wood, glass or other waste or discarded matter.
- (2) Every owner and occupant of a single-family dwelling shall maintain the sidewalk and gutter abutting said premises free of waste, litter, garbage and debris in a clean and sanitary condition at all times. No person shall sweep or otherwise dispose of waste materials by depositing or otherwise causing same to be or remain in gutters, sewers or storm drains.
- (3) Every owner of a building containing two or more dwelling units, every owner of a vacant building and every owner of a vacant lot shall maintain the sidewalk and gutter abutting said premises free of litter, garbage and debris and in a clean and sanitary condition.
- (4) Every person owning, managing or occupying a place of business or premises comprised of mixed commercial and residential uses shall keep the sidewalk and gutter abutting said premises free of litter, garbage and debris and in a clean and sanitary condition.

## § 183-6. Disposal or accumulation of unsanitary matter.

No person shall discard, place or allow to be placed by a person or animal or dispose of decomposable organic matter which would tend to create a nuisance or act as a breeding place or as food for insects, rats, mice, vermin or other pests or vectors on the surface of any ground within the City; nor discard anything capable of holding water which might serve as a breeding place for mosquitoes or other flying insects; nor permit any stagnant pools of water to exist; nor permit the growth or accumulation of ragweed, poisonous plants or pollinating weeds detrimental to public health; nor permit the growth of brush or grass or the accumulation of combustible matter which might serve to increase the fire hazard posed to neighboring property; nor permit the accumulation of waste tires, vehicles, auto parts, machinery or the components thereof on any property.

## § 183-7. Sanitation Inspectors; authority.

The City Manager is authorized to appoint one or more Sanitation/Code Enforcement Officers in accordance with state and local laws. Such officers shall be authorized to issue notices of violations as well as to issue and serve summonses upon any persons alleged to have violated any of the provisions of this chapter. This appointment power shall remain subject to all other legal and contractual procedures, rights and limitations. Notices, violations and summonses as provided for herein may also be issued by any City police officer or Code Enforcement Officer.

## Article II. Collection Regulations

### § 183-8. Purpose.

The rules and regulations of this article are hereby established to regulate the handling of various types of waste in the homes and commercial establishments within the limits of the City and to provide for sanitary storage, effective collection and successful operation of the municipal disposal facilities and systems.

### § 183-9. Definitions.

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

#### **ASHES**

The residue of the combustion of any type of solid fuel, such as wood, coal, coke, charcoal or lye substances. The handling, collection and disposal of ashes is subject to all the requirements of this Code in addition to all other applicable requirements of federal and state laws, codes, rules and regulations.

#### **AUTOMOTIVE WASTES**

The wastes generated by businesses and individuals engaged in the buying, selling, trading, repair, modification, enhancement or other work involving motor vehicles or their components.

#### **BUILDING AND CONSTRUCTION WASTES**

Materials resulting from the construction, alteration or repair of structures and consisting of plaster, metal, brick, concrete, lathing, roofing, nails and hardware and materials containing same, earth, structural members and like material. Such material may also be known as and referred to as "construction and demolition" waste or debris or as "C and D."

#### **BULK AND OVERSIZE ITEMS**

Any item of furniture, such as tables, chairs, sofas, couches, mattresses, box springs, beds, dressers and other such items and/or parts thereof.

#### **COMMERCIAL WASTES**

The general or extraordinary wastes that accumulate in structures or upon the land appurtenant to any commercial property or small commercial property or business devoted in whole or in part to nonresidential purposes, including but not limited to clubs, stores, offices, restaurants, banks, entertainment and recreational facilities, industrial properties including those devoted to manufacturing, processing, treatment, modification, storage or shipment of goods or products; and shall also include wastes generated by residential properties with four or more separate dwelling units, but shall not include large residential or other properties required to provide dumpsters or other means of disposal by the provisions of this chapter. The owner of or responsible party for such structures or land or business shall be responsible for the safe and lawful disposal of such wastes.

#### **ELECTRONIC COMPONENTS**

Wastes consisting of unbroken television and computer screens and monitors; components of radios, video devices, entertainment systems and other like materials.

#### **GARBAGE**

Waste material including, but not limited to animal, fish, fowl, fruit or vegetable matter created or sold in connection with or produced therefrom and also including spoiled food and dead animals found within the City limits and including food containers.

**INDUSTRIAL WASTES**

The wastes that accumulate in structures or upon the lands appurtenant to any industrial property as defined herein.

**RECYCLABLES**

Those materials capable of being reprocessed and reused, limited for collection purposes to the categories of newspaper, clear glass, colored glass, tin cans, aluminum cans and plastic and such other materials designated and deemed to be recyclable and/or for which it has been determined that there exists a commercial market therefor. Such determination may be made by the City or by the County of Orange or by the state or its agencies or by any other government authority which is empowered by law to make such determination.

**RESIDENTIAL WASTES**

The wastes that accumulate in structures or upon lands appurtenant to any residential property consisting solely of one, two or three separate dwelling units.

**SPECIAL WASTE**

Waste materials not otherwise defined and which because of their kind or nature either require special handling, pose a potential hazard to public health or safety, are subject to special rules or regulations imposed and/or enforced under law by a governmental authority, which present particular problems in handling, management and disposal. "Special waste" shall include but not be limited to the following: hazardous waste and materials, chemicals, biological waste, radioactive waste, and medical waste, among others.

**WHITE GOODS**

Waste materials consisting of refrigerators, stoves, washers, dryers, sinks, toilets, ovens, boilers, heaters, freezers and other like appliances and fixtures.

**WASTE**

As used herein, all materials discarded to be managed, handled and disposed of according to the provisions of this chapter which is not otherwise defined as "C and D," white goods, wood waste and tree trimmings, automotive waste, special waste or otherwise defined herein.

**WOOD WASTE AND TREE TRIMMINGS**

Waste materials produced or generated as a result of cutting or trimming or otherwise collecting from trees, shrubs and other plant life, leaves, branches, twigs, flowers and other components thereof, living or dead, and no longer connected to the host plant.

## § 183-10. Removal by person other than Superintendent of Public Works.

Persons other than the Superintendent of Public Works removing waste, garbage or refuse recyclables, special or other kinds of waste shall separate the materials contained therein as required by law, code, rule or regulation, and deliver them to such places designated therefor and within such hours as shall be fixed by law or by the Superintendent of Public Works. Such persons must secure in advance from the City and other regulatory authority any and all permits, approvals and permissions therefor as required by all applicable laws, rules and regulations.

## § 183-11. City's right to reimbursement of costs.

Whenever in the Charter or Code of Ordinances of the City of Newburgh the City is authorized to impose a fee for the collection and disposal of solid waste, including but not limited to bulk and oversized items, so-called white goods, construction and demolition waste and debris, and any and all other waste materials, and/or impose penalties for a violation of any provisions thereof, it shall be understood that in the event of noncompliance and/or nonpayment, the City shall have the right to take any and all such actions, including but not limited to making expenditures and retaining agents, employees and/or consultants to effectuate such proper removal and disposal and to remedy all damages and remediate such consequences of the leaving of such improper item(s) and the City may make a demand upon the responsible party and/or the owner of the subject real property for payment of the City's costs and fees for such collection, and all such other charges, fees, fines and penalties as may be provided for herein and imposed hereunder. In the event of nonpayment following such demand, the City may add the costs and expenses thereof to the amount of taxes due as levied upon the property of the responsible parties, and may then proceed with all such collection and enforcement actions and proceedings as are provided by law for the collection and enforcement of unpaid taxes.

## § 183-12. Segregation and separation of waste materials and recyclables.

- A. Waste to be collected by the City is to be well drained of free water and wrapped in clear plastic bags and stored in a watertight, tightly covered container. Undrained garbage will not be collected and is hereby declared to be a nuisance and a violation of this chapter when placed on public or private property, whether in containers or not.
- B. All recyclables are to be completely separated from nonrecyclable material and separated according to prevailing law, code, rule or regulation and as set forth herein. No recyclables shall be placed out for collection mixed with garbage or other kinds of waste. Recyclables may only be placed for collection on the day and in the manner designated for the collection of recyclables by the Superintendent of Public Works and/or by other lawful authority. Any such mixing or prohibited commingling of waste with recyclables set out for collection shall be a violation of this chapter.

## § 183-13. Handling and disposal of waste.

- A. Containers for waste. Wrapped or bagged waste shall be stored in watertight, tightly covered metal or plastic cans not exceeding 32 gallons in capacity and weighing not more than 50 pounds when full. Not more than three containers shall be put out for collection by any single-family residence, nor more than five containers by any multiple-family residence comprised of two-family or three-family dwellings on any one collection day, except as otherwise provided for herein. Each such container shall be clearly marked with the address of the premises served thereby.
- B. Confiscation of containers. Containers not conforming to the requirements set forth by this article or which shall be deemed a sanitary or accident hazard may be confiscated by the City and disposed of without compensation to the owner(s) thereof.
- C. The City shall not collect the following kinds of waste items and materials: automotive waste, waste tires, C and D, broken television computer screens and monitors, special and/or hazardous waste. Such wastes are the responsibility of the subject property owner and/or generator of such waste to manage, handle and dispose.



- D. Handling and disposal of specified waste. The following categories of waste shall be collected by the City only after an appointment for the collection of same in advance with the City Department of Public Works and the payment of the fee provided therefor in a schedule of fees promulgated by the Superintendent of Public Works. Such items shall be put out for collection no earlier than 6:00 p.m. on the evening prior to the day of such appointment. Bulk and oversize items, white goods, wood waste, and unbroken television and computer screens and monitors, and electronic components.
- E. Wood waste, leaves and tree trimmings. Such materials shall be securely tied in bundles or bagged to prevent scattering thereof, each of which bundles shall not contain items exceeding three inches in diameter nor four feet in length, nor shall any bundle weigh more than 50 pounds. Wood waste and tree trimmings shall be collected only after an appointment for collection has been made with the Department of Public Works or according to a collection schedule established by the Department. Leaves shall be securely bagged in biodegradable bags weighing no more than 50 pounds each when full. Material which is loose or otherwise improperly bundled or bagged shall not be collected by the City.
- F. No item shall be left out for collection, nor shall any such item be collected, which is in a dangerous, unstable or deteriorated condition, such that it is crumbling or disintegrating, is composed of or contains toxic or hazardous substances, has exposed nails or broken glass or sharp points or edges, or is loose and unconfined and subject to scattering, or otherwise presents any inherent danger to any member of the public or to City employees or agents. Anyone leaving such items on the public sidewalk, gutter or street, and the private owner of adjoining property if any, or either of them, shall be jointly and severally liable and responsible for the immediate safe removal of such items from the sidewalk, gutter or street and for their proper disposal; and for the costs and expenses if any to the City of Newburgh if the City, by its agents and employees, should effectuate such removal and disposal; and for any costs or damages resulting to any individual suffering injury, damage or loss resulting from the leaving of such items as aforesaid. This provision shall be in addition to and not instead of any other requirements or remedies provided by any other law, rule, regulation or requirement.

## § 183-13.1. Handling and collection of recyclables.

- A. Collection of designated materials. The following materials and items shall not be put out for collection as part of the ordinary stream of municipal solid waste. Instead, such materials and items shall be handled, managed and disposed as set forth herein. These provisions shall be in addition to and not in lieu of all other laws, rules and regulations governing management and disposal of these materials adopted and enforced by any and all other regulatory agencies with jurisdiction thereover. Recyclables shall be set out for collection on the days and times set forth in the City Code, rules and regulations, and as determined by the Superintendent of Public Works.
- B. All recyclables shall be put out in two separate containers; one labeled "paper," and one labeled "mixed recyclables," in compliance with the rules set forth herein.
- C. Recyclables. The City shall cooperate with the State of New York and with the County of Orange and shall conform to the practices required thereby in the handling, separation, bundling and securing, collection and disposal of all recyclables. Such information and requirements promulgated by the County of Orange are incorporated by reference herein. In addition, the following rules and requirements shall be met.
  - (1) All recyclable newspapers and other mixed paper as defined by the City, county and/or state or other lawful authority shall be placed for collection in a separate, reusable closed and secure container. Such container shall include newspapers, white envelopes, white and colored ledger (office paper), kraft paper, including brown grocery bags, notebook paper,

construction paper, soft-covered workbooks, telephone books, paperback books, magazines, catalogues, so-called junk mail, including white and colored envelopes, window envelopes, coupons, computer printout paper, facsimile and photocopy paper, chipboard and boxboard, paper egg cartons, including boxes used for cereal, tissue, prepared food, crackers, pasta products, games and the like, corrugated paper boxes, and shredded paper contained in paper bags. Such shall not include any kind or form of plastic bags. Such container shall be clearly marked as "Paper" recyclables. It shall be permissible to collapse, bundle, cut or otherwise consolidate corrugated paper, cartons, chipboard, boxboard and other heavy paper products and set same out for collection if securely tied together in a bundle which does not weigh more than 50 pounds and is free of grease, oil and other food materials or other waste mixed in therewith, and so secured as to prevent scattering thereof.

- (2) Mixed recyclables shall be placed for collection in a separate, reusable closed and secure container. Mixed recyclables shall include clear, green and brown glass bottles, metal cans, including up to one-gallon clean water-based paint cans, nonhazardous aerosol cans, plastic containers numbered 1 through 7, milk and juice cartons and boxes, aluminum foil, aluminum plates and trays, white refrigerated and frozen food containers and like materials. All must be rinsed, with caps, lids or rings removed. Mixed recyclables shall not include any container used for any paint or surface treatment which is not water based, or any material which is or is mixed with any ashes, C and D, automotive wastes, hazardous waste or special waste as defined herein. No mirrors, windowpanes, glass doors, windshields, light bulbs, ceramics, crystal, Pyrex, dishes, clay or other materials may be mixed with glass.
- (3) Any changes to the definitions, rules or regulations adopted by the state, county or City or other lawful authority with respect to recyclables and their handling, management and disposal shall be considered to be incorporated herein upon their proper adoption by such authority.

## § 183-14. Building and construction waste.

Building and construction waste shall not be collected or disposed of by the City. Persons responsible for the generation of such waste, including property owners, contractors, workers and others, shall be jointly and severally responsible for the management and disposal of such waste. In the event the City incurs costs for the management and disposal of such waste due to the failure of responsible persons to do so, the City shall have the right to hold each persons jointly and severally liable to reimburse the City for all such costs.

## § 183-15. Collection rules.

- A. Waste, garbage, recyclables and other materials referred to in this article shall be set out for collection only in accordance with the following rules:
  - (1) Such materials shall be set out only if authorized for collection by the City.
  - (2) Such materials shall be placed on the sidewalk only.
  - (3) Such materials shall be placed only in front of premises whose owner has previously given permission to do so.
  - (4) Such materials shall be set out for collection no earlier than 6:00 p.m. on the day prior to the day of collection.
  - (5)

All containers and any uncollected materials shall be returned to the rear of the properties no later than 6:00 p.m. on the day of collection.

- B. Waste, garbage, recyclables, white goods, bulk and oversize items, wood wastes and other materials which the City is authorized to collect shall be collected on days specified by the Superintendent of Public Works.
- C. The following materials will be collected by the City only upon the making of an appointment with the Department of Public Works and the advance payment of the fee prescribed therefor in a schedule of fees promulgated by the Superintendent of Public Works: white goods, bulk and oversized items, wood waste, unbroken television and computer screens and monitors and electronic components.
- D. Garbage shall be contained in securely sealed clear plastic bags which shall be contained in a securely covered can or container as specified in this chapter.
- E. Commercial waste will be collected by the City only on such days and at such times as shall be scheduled by the Superintendent of Public Works. Premises producing such wastes may set out for collection no more than six cans or containers on any one collection day. Each and every such premises setting out such commercial waste shall contain such waste in securely sealed clear plastic bags which shall be contained in tightly covered metal or plastic cans, clearly marked with the address of the premises served thereby; each such metal or plastic can set out for collection shall not exceed 32 gallons in capacity and shall not exceed 50 pounds when full.
- F. Manufacturing and industrial facilities may not set out any waste materials whatsoever for collection by the City, but must arrange for the private collection and disposal of same at no cost to the City by a private entity properly qualified and licensed as required by law and by the terms of this chapter.
- G. On any occasion when a day scheduled for regular collection falls upon a Monday which shall be a public holiday, then the collection day for same shall be the immediately following Tuesday.

## § 183-16. Use of dumpsters.

Any commercial or industrial business or multiple residence may use a dumpster as a storage container for waste in lieu of those described in § 183-13 of this article. Such use, whether collection is by the City or a private collector, shall be subject to the following provisions:

- A. No dumpster shall be placed, kept or allowed to remain in any public street or upon a public sidewalk except as provided in Subsection G hereof.
- B. All dumpsters shall have a cover which shall be kept closed except when the dumpster is in the process of being filled or emptied.
- C. All dumpsters must be secured so as to prevent accidental movement from their location.
- D. All dumpsters shall be emptied and disinfected regularly. "Regularly" shall, for the purpose of this section, be interpreted to mean as often as necessary to prevent the accumulation of garbage from exceeding the capacity of the dumpster or as often as necessary to prevent the existence of a health hazard. The Superintendent of Public Works shall have the power to direct the disinfecting, cleaning or emptying of any dumpster which he finds to be a hazard to the public health. The area surrounding each dumpster shall be kept and maintained free of all garbage, trash and debris at all times.
- E.

All dumpsters shall be kept in an enclosure and at least five feet from all adjoining properties. Such enclosure shall be of sufficient height to shield the dumpster from public view from the public highway or street. Where such requirements cannot be met without practical difficulties, the Superintendent of Public Works shall have the power to grant, in writing, an exception to this provision and to impose conditions on said exception.

- F. Any person desiring to maintain or use a dumpster within the City shall apply to the Superintendent of Public Works for a permit to do same. Said application shall be upon a form to be provided by the Department of Public Works and shall be accompanied by a surety bond issued by a surety company authorized to do business in the State of New York and in a form to be approved by the Corporation Counsel. The amount of said bond is to be approved by the Superintendent of Public Works. The Superintendent of Public Works shall have the discretion to waive the requirement to provide a surety bond for any applicant showing good cause why such requirement should be waived.
- G. Any person desiring to use a dumpster for purposes of a construction or demolition job shall make application as provided in Subsection F of this section. Upon a showing of practical necessity, the Superintendent of Public Works may permit the placement of such a dumpster upon the streets or sidewalks of the City and may set reasonable conditions on said placement. Such conditions must include the marking of said dumpster with sufficient reflectors or lights if it is to be placed upon a public street or sidewalk and a time limit on such placing. All provisions of this section shall apply to said dumpsters, except Subsections A and E, for which the Superintendent of Public Works may specifically grant an exception subject to reasonable conditions.
- H. The City shall not be responsible for damage caused to any dumpster during the normal emptying of said dumpster during collection.

## § 183-17. Private collectors; licensing.

- A. Authority. Private parties may be authorized by the City Manager to collect industrial, commercial or residential wastes and recyclables at no cost to the City, provided that such collection is performed in accordance with the provisions of this article and produces no objectionable conditions in and on the streets of the City.
- B. Licensing. Private collectors shall, before engaging in such business, be licensed by the City Manager and shall conform to rules and regulations adopted by him which will guarantee the safe and sanitary transportation of materials and recyclables through the City and to the provisions of this chapter. Each vehicle used in such services must be licensed pursuant to this section. The term of the license shall commence on June 1 and expire on May 31 of the year following. A fee, as set forth in Chapter 163, Fees, of this Code for each vehicle shall be payable to the City Clerk prior to the issuance of a license. A license may be revoked by the City Manager after a hearing and upon evidence that a licensee's collection or disposal is not in conformity with the requirements of this chapter or such further rules and regulations as may be adopted.

## § 183-18. Private scavenging prohibited.

Private scavenging of or through waste set out for collection on the streets of the City or on private property adjacent thereto is prohibited.

## § 183-19. Sanitation permit required for commercial properties.

- A. No person shall operate and no owner shall permit to be operated on his property any commercial use which would bring such property within the definitions of "commercial property" as defined herein without first having obtained a written permit from the Superintendent indicating that arrangements have been made with a private waste collection provider who is fully qualified, permitted, authorized and licensed under all applicable state and local laws, rules and regulations for the collection of wastes generated by said commercial property.
- B. The application for such permit shall contain the following information and any other information deemed necessary by the Superintendent:
  - (1) The name and address of the person operating this commercial use.
  - (2) The name and address of the owner of the commercial property.
  - (3) The nature of the commercial use.
  - (4) The name and address of all private entities providing said sanitation service, and if different, the name and address of the company collecting and transporting commercial waste from the premises.
- C. A fee as set forth in Chapter **163**, Fees, of this Code shall be submitted with each application for such permit.  
[Amended 6-14-2010 by Ord. No. 10-2010]
- D. The permit shall be issued for a term of one year. A new application shall be filed each year, or more frequently whenever the company providing such service is changed.
- E. The issued permit shall be on a form provided by the Superintendent and shall cite the name of the commercial user, the location of the commercial property and the name of all persons or entities collecting commercial waste from said commercial property. The permit shall be prominently posted at the commercial property, to be visible from the public street. The specific location of posting is to be determined by the Superintendent. No permit shall be issued unless the person collecting said waste has a license issued pursuant to § **183-16** of this article. The permit shall not be transferable.
- F. Any person who operates a commercial use without obtaining a sanitation permit or who knowingly permits a commercial use to operate on his property without a sanitation permit or who fails to post a sanitation permit shall be guilty of a violation.

## § 183-20. Improper collection or disposal of waste, trash or garbage.

- A. No person shall place waste, trash, ashes, garbage or recyclables on any public street, sidewalk or property in the City or on any private property within the City for collection unless it is placed there pursuant to the provisions of this chapter.
- B. No person shall collect any waste, trash, ashes, recyclables or garbage from any commercial property that does not have a permit issued pursuant to this chapter and other provisions of the Code of Ordinances. No City employee shall collect waste from any property that is not listed on the records of the Superintendent as having collection by the City.

## § 183-21. Removal of residential waste.

No person other than the City of Newburgh shall collect or transport any residential waste, garbage, trash, ashes or recyclables generated by any residential property originating within the City, provided that a private collector, licensed pursuant to § 183-16 of this article, may collect, transport and dispose of such residential waste or recyclables generated by any residential structure or complex located on a single site that consists of in excess of 30 dwelling units under common ownership or under the control of a single condominium or cooperative corporation. The storage, collection and transportation of all residential waste or recyclables, whether collected by the City or by a licensed private hauler, shall be in accordance with this Code, the regulations of the City Manager and all other applicable laws, codes or regulations.

## § 183-22. Responsibilities of property owners.

- A. All residential waste generated within the City, except that which is collected by private carters pursuant to § 183-20 of this article, shall be collected by the City Bureau of Sanitation or the Department of Public Works, and the owner of the property from which said waste is generated and collected shall pay the service charge for such collection established by § C9.33 of the City Charter.
- B. It shall be the affirmative duty of the owner of every piece of real property in the City to provide for the collection and removal of wastes generated thereon from said property as provided for herein. The failure to continuously so provide for such removal shall be a violation. Each day for which there is no such provision made for servicing said property during a period when City collection has not been provided for and paid for shall be a separate violation.

## § 183-23. Penalties for offenses.

- A. Any person making a false statement on any application made pursuant to this article, or on any report made, or who shall violate any of the provisions of this chapter or fail to comply therewith or who shall violate or fail to comply with any order made thereunder shall be punished as provided herein for violation of this chapter of the Code of Ordinances of the City of Newburgh as follows:
  - (1) Be prosecuted as a violation as that term is defined in the Penal Law of the State of New York, as amended from time to time, and shall be punished by a fine of not less than \$100 but not exceeding \$250 or by imprisonment for a term not exceeding 15 days, or both for a first offense. For a second offense, the penalty shall be a fine of not less than \$250 nor more than \$500 or imprisonment for a term not exceeding 30 days, or both. For a third and for each additional violation thereafter, the penalty shall be a fine of not less than \$500 nor more than \$1,000 or imprisonment for a term of 60 days, or both. Each day any violation of any provisions of this Code or of any ordinance or local law shall continue shall constitute a separate offense; or, at the discretion of the enforcing officer, such violation may also:
  - (2) Provide the basis for a civil cause of action which may be maintained by the City of Newburgh as provided in § C4.32 of the Charter. Each day any violation of any provisions of this Code or of any ordinance or local law shall continue shall constitute grounds for a separate cause of action.

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.

- C. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

RESOLUTION NO.: \_\_\_\_ - 2015

OF

JULY 13, 2015

**RESOLUTION SCHEDULING A PUBLIC HEARING FOR AUGUST 10, 2015  
TO HEAR PUBLIC COMMENT CONCERNING A LOCAL LAW RESCINDING  
THE LANGUAGE CONTAINED IN CHAPTER 34, ARTICLE I OF THE CODE OF  
THE CITY OF NEWBURGH ENTITLED “CODE OF ETHICS” AND AMENDING  
CHAPTER 34 TO ENACT A NEW ARTICLE I ENTITLED “CODE OF ETHICS” TO  
THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH**

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that there is hereby scheduled a public hearing to receive comments concerning “A Local Law Rescinding the Language Contained in Chapter 34, Article I of the Code of the City of Newburgh Entitled ‘Code of Ethics’ and Enacting a New Chapter 34, Article I Entitled ‘Code of Ethics’” to the Code of Ordinances of the City of Newburgh”; and that such public hearing be and hereby is duly set for the next regular meeting of the Council to be held at 7:00 p.m. on the 10<sup>th</sup> day of August, 2015, in the 3<sup>rd</sup> Floor Council Chambers, 83 Broadway, City Hall, Newburgh, New York.

RESOLUTION NO.: \_\_\_\_\_ - 2015

OF

JULY 13, 2015

**A RESOLUTION TO REMOVE THE “HAVE YOU BEEN CONVICTED OF A CRIME”  
QUESTION FROM THE CITY OF NEWBURGH APPLICATION  
FOR EMPLOYMENT FORM**

**WHEREAS**, the City of Newburgh application for employment form includes the question, “Have you been convicted of any crime within the last seven years? If yes, explain:” and

**WHEREAS**, such a question often discourages rehabilitated individuals from seeking employment for fear that answering honestly will preclude the possibility of even being interviewed; and

**WHEREAS**, the following statement is at the bottom of the City of Newburgh’s job application form: “The NYS Human Rights Law prohibits discrimination in employment because of age, race, creed, color, national origin, sex, disability, marital status or criminal record. Accordingly, nothing in our application forms should be viewed as expressing, directly or indirectly, any limitation, specification, or discrimination as to age, race, creed, color, national origin, sex, disability, marital status or criminal record in connection with employment in the municipal service of the City of Newburgh. The City of Newburgh is an Equal Opportunity Employer”; and

**WHEREAS**, removing the question from the employment application does not preclude the City of Newburgh interviewer from asking a job candidate in a job interview the questions above cited, nor would removing the question preclude the employer from conducting a background check on the individual; and

**WHEREAS**, when someone in the past has been convicted or pled guilty to a felony or misdemeanor, they should have the opportunity to demonstrate to the employer, once given the chance in an interview, that they are and have been law-abiding and deserve consideration, if qualified, for the employment opportunity; and

**WHEREAS**, the United States as a result of its “War on Drugs” has one of the highest rates and levels of felony and misdemeanor convictions; and

**WHEREAS**, these convictions are often for non-violent crimes; and

**WHEREAS**, returning persons convicted of felonies and misdemeanors to the workforce is an effective measure to prevent recidivism; and

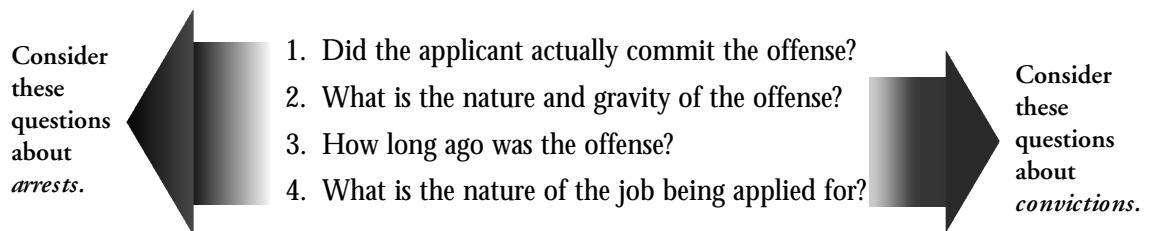
**WHEREAS**, removing the questions cited above does not compromise the health, safety and welfare of the People of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, that the crime question be removed from the City of Newburgh job application form.

# Using Arrest, Conviction, and Misdemeanor Information in the Hiring Process

## Summary

It is a common belief that the Equal Employment Opportunity Commission (EEOC) prohibits the use of arrest and misdemeanor information in the hiring process. As is discussed below, this is not the case. What the EEOC does prohibit is the use of arrest and misdemeanor information to exclude an applicant from employment without considering the four factors below. Furthermore, what many employers do not realize is that the EEOC also requires that they consider the last three of the following four factors in determining whether even an applicant's felony conviction is grounds for denying employment.



The EEOC also states that employers should not ask applicants about arrests which have not lead to convictions, since such questions may have a “chilling effect” upon minorities and discourage them from applying for a job. This does not prohibit employers from learning about these arrests from court records supplied by GIN.

*This information reflects GIN understanding of these issues at the time of this writing. It is not legal advice and is not intended to replace competent legal counsel. You may wish to seek an opinion from legal counsel on these issues.*

# Using Arrest, Conviction, and Misdemeanor Information in the Hiring Process

## Pros and Cons of Screening Out Arrest and Misdemeanor Information from Criminal Records

A few of our customers have requested that GIN screen out all arrest and misdemeanor information from the criminal records they receive. We believe that screening out such information has both advantages and dangers for our clients.

**Advantages of screening out arrest and misdemeanor information:** Many times the information which we provide is used by local managers who do not have extensive human resources training. By precluding these managers from seeing arrest and misdemeanor records, corporations ensure that those managers will not use the information improperly. The corporation is then safeguarded from the risk of a discrimination suits which could result from the inappropriate use of those records.

**Dangers of screening out arrest and misdemeanor information:** Following are two hypothetical examples demonstrating scenarios which could occur if a hotel screens out arrest and misdemeanor information:

- The hotel interviewed Amy and did a criminal background check. Although Amy had a history of shoplifting and other small dollar thefts, this information was screened out of the reports to the hotel because all of the convictions were misdemeanors. Later the hotel was forced to terminate Amy when she was caught stealing from guests' rooms. The hotel lost several regular customers because of the incident.
- John applied for a job as a maintenance person in the hotel. He had been arrested twice for child molestation but was not convicted either time because the parents of the alleged victims refused to allow their children to testify, saying that they had "suffered enough." Because the hotel had directed that arrest information be screened from the criminal records they ordered, they hired John without being aware of the past allegations against him. John later was convicted of using his hotel key to enter a guest's room and molest a 12 year old girl who had been left there by her parents. The judge in the case ruled that there was no law prohibiting the hotel from using arrest information in the hiring process and that the hotel did have a duty to protect the safety of its guests by making a reasonable inquiry into the background of those who could enter guests' rooms. The jury awarded a multi-million dollar judgment against the hotel.

*In light of the fact that the EEOC does not prohibit the use of arrest and misdemeanor information in the hiring process, employers must weigh the possible discrimination suits which could be brought against them for misusing the information against the possible consequences of refusing to consider the information.*



# Using Arrest, Conviction, and Misdemeanor Information in the Hiring Process

## Background of the EEOC's Position

*The EEOC states that if a hiring standard disqualifies a disproportionate number of minority applicants from employment, then an employer must prove that there is a business necessity for using that standard. Because minorities are both arrested and convicted more often than the general public, businesses are in danger of being charged with discrimination if they do not follow the EEOC guidelines for the use of this information.*

## Using Arrest Information in the Hiring Process

The EEOC states that it is permissible to use arrest information in the hiring process.

"...an arrest record may be used as evidence of conduct upon which an employer makes an employment decision. An employer may deny employment opportunities to persons based on any prior conduct which indicates that they would be unfit for the position in question, whether that conduct is evidenced by an arrest, conviction or other information provided to the employer. It is the *conduct*, not the arrest or conviction *per se*, which the employer may consider in relation to the position sought." (EEOC Policy Statement, N-915.061, II.B.2., September 7, 1990, underlining added)

What is forbidden by the EEOC is a blanket policy barring employment to those who have been arrested for a crime. "An arrest record does no more than raise a suspicion that an applicant may have engaged in a particular type of conduct." (Ibid., II.B.3.)

When confronted with information about the applicant's previous arrest record, the EEOC directs employers to:

1. "...determine whether the applicant is likely to have committed the conduct alleged." (Ibid.)
2. Consider "...the nature and gravity of the offense." (Ibid., II.B.2.)
3. Consider "...the time that has passed since the...arrest." (Ibid.), and
4. Consider "...the nature of the job held or sought." (Ibid.)

# Using Arrest, Conviction, and Misdemeanor Information in the Hiring Process

## Using Arrest Information in the Hiring Process (continued)

The material below provides a more detailed explanation of these four obligations.

### 1. Determine whether the applicant is likely to have committed the alleged conduct.

The first requirement is the most difficult. The EEOC states that an employer "...must determine whether the applicant is likely to have committed the conduct alleged. ...An employer need not conduct an informal 'trial' or an extensive investigation to determine an applicant's or employee's guilt or innocence. However, the employer may not perfunctorily 'allow the person an opportunity to explain' and ignore the explanation where the person's claims could easily be verified by a phone call, i.e., to a previous employer or a police department. The employer is required to allow the person a meaningful opportunity to explain the circumstances of the arrest(s) and to make a reasonable effort to determine whether the explanation is credible before eliminating him/her from employment opportunities."

Pages 6-8 of the attached EEOC Policy Statement provide excellent examples of what the EEOC believes to be reasonable in this area. Obviously it will be very helpful to have this step handled by someone with experience in human resources.

### 2. Consider the nature and gravity of the offense or offenses.

Failure to pay cab fare is a misdemeanor in some states. So is parking where temporary "No Parking" signs have been posted. But are they grave enough offenses to warrant rejecting someone for a job? The EEOC asks employers to consider the nature and gravity of an offense rather than adopting a policy which rejects all applicants who have even an insignificant criminal record.

### 3. Consider the time that has passed since the arrest.

The EEOC Policy Statement does not provide guidance on when an alleged action is too old to be considered relevant. Most employers would feel that a charge of murder or rape would stay relevant much longer than a charge for the possession of a small amount of marijuana. It should be mentioned that the Fair Credit Reporting Act prohibits consumer reporting agencies like GIN from reporting on criminal histories which are over seven years old unless the applicant makes over \$75,000 a year. (Unless specifically requested to do otherwise, we limit all of our inquiries to the last seven years.)

### 4. Consider the nature of the job held or sought.

An arrest or conviction for a DUI may not be relevant information for a job as a mail clerk where there are no driving responsibilities. A conviction for unemployment benefit fraud may not be relevant information for a job as a bus driver. On the other hand, even misdemeanor theft charges would be relevant for a job as a hotel maid where the applicant would have easy access to guests' property.

# Using Arrest, Conviction, and Misdemeanor Information in the Hiring Process

## Asking About Arrest Information in the Hiring Process

The EEOC has stated that asking applicants about arrests which have not led to convictions may have a “chilling effect” upon minorities and discourage them from applying for a job. In addition, some states prohibit employers from asking about arrest information. (See following information about state laws.) For these reasons many employers ask applicants to disclose convictions but not arrests on their job application. They rely on the actual criminal history records they obtain from GIN to inform them about arrests which have not led to a conviction.

## Using Conviction Information in the Hiring Process

The EEOC states that employers generally may not have a policy excluding all applicants who have been convicted of a crime, even if the crime was a felony. If there is a conviction, the employer may presume that the applicant did commit the alleged conduct and is not required to make further investigation. This is the only way in which the treatment of a conviction in the hiring process is different from the treatment of an arrest. The employer must still:

1. Consider “...the nature and gravity of the offense.” (Ibid., II.B.2.)
2. Consider “...the time that has passed since the conviction.” (Ibid.), and
3. Consider “...the nature of the job held or sought.” (Ibid.)

To comply with the EEOC policy statement, employers should establish guidelines which reflect reasonable background standards for the job. For instances, a hotel hiring for positions which allow access to guests rooms might exclude applicants with a felony conviction in the last seven years. Some employers also allow an appeal to the home office human resources department for exceptional cases.

## Using Misdemeanor Information in the Hiring Process

The EEOC does not prohibit the use of misdemeanor information in the hiring process. As described above, the EEOC does require that employers consider the nature and gravity of an arrest or conviction. Employers should not, therefore, automatically exclude all employees who have a misdemeanor on their record. On the other hand, some misdemeanor charges can be highly relevant to hiring decisions. Possession of marijuana, shoplifting, and domestic violence are all considered to be misdemeanors in some states. That does not mean that employers cannot consider this information in the hiring process.

## Helping the Local Manager Comply with EEOC Guidelines

Some corporations take these steps to assist their local managers to apply the EEOC guidelines:

1. Provide reasonable and clear guidelines on what is an unsatisfactory criminal history for a given position.
2. Refer hiring decisions involving arrest information to a senior human resources person who has the experience and knowledge to do the type of investigation required by the EEOC.

# Using Arrest, Conviction, and Misdemeanor Information in the Hiring Process

## Sample Policy for the Use of Arrest, Conviction, and Misdemeanor Information

The following is an example of a policy which attempts to comply with the EEOC guidelines on the subject.

### SAMPLE POLICY

All applicants are required to disclose on the employment application if they have been convicted of or served time for a felony. If they have, they are required to describe the situation on the application. The application states that this information will be reviewed for job relatedness and time since conviction.

The applicant will be rejected if the applicant discloses or if a criminal history report reveals that the applicant has:

1. Any felony convictions in the last seven years. However, exceptions may be considered in truly unusual cases where the conviction does not reflect upon the applicant's suitability for employment.
2. Any misdemeanor convictions in the last seven years involving violence, theft, drugs, or sexual misconduct. Again, exceptional cases may be considered.
3. If an applicant has been arrested (but not convicted) in the last seven years for any crime that would have made him/her unacceptable for employment by ABC Corporation if the applicant had been convicted, the manager will make a reasonable effort to determine if the applicant actually committed the offense. If the manager is not convinced that the applicant did not commit the offense, then the applicant will be rejected for employment.

Exceptions and questionable cases may be referred to the Regional Human Resources Manager for assistance.

## Complying with State Laws

State laws dealing with the use of criminal history information in the hiring process are more complicated than the EEOC guidelines. A number of states have laws requiring that certain professions, such as people working in child care, elder care, schools, and law enforcement, be checked for relevant criminal histories. Following is a summary of our current understanding of state laws which affect the use of criminal histories in hiring for more general employment. This information is drawn from materials published by CCH Incorporated, references are attached. This list is not all-inclusive, but attempts to highlight major state legislative initiatives.

# Using Arrest, Conviction, and Misdemeanor Information in the Hiring Process

## Complying with State Laws (continued)

Many states have laws granting employees certain protections regarding criminal record disclosure. While protections vary from state to state, prospective employees generally do not have to disclose any information concerning an arrest or criminal charge that did not result in a conviction or any information about convictions which have been pardoned by a governor.

Some of the states, notably California, Massachusetts, and Michigan, will commence legal action against employers who violate their statutes regarding the use of criminal records.

**California:** Employers are restricted from asking applicants about any arrest that did not result in a conviction, **and are also prohibited from seeking the information from any other source.** There are exceptions to this rule. Three of them are listed below.

An employer may ask about arrest information:

- When the employee who was arrested is out on bail on his own recognizance pending trial.
- When an employee is applying for jobs with access to patients, drugs, or medication.
- When an employee is applying for a supervisory position or a position which involves disciplinary power over minors or other persons.

*Because of the complexity of California's law with regard to the use of arrest and conviction information in the hiring process, GIN especially encourages California employers to seek legal counsel in this area.*

*Reference: California Labor Code, Section 432.8*

**Hawaii:** Hawaii has the nation's most restrictive law on the use of arrest and conviction records in the employment process. Hawaii Revised Statute 378-2 completely bars most Hawaiian employers from using either arrest or conviction information in the employment arena. (There are limited exceptions which apply to the state, counties, private schools, the Department of Education, financial institutions, the board of an association of apartment owners, and the manager of a condominium.) It is not our understanding that this statute prohibits an employer from another state from checking the Hawaiian criminal history of an applicant who formerly lived in Hawaii.

As far as we have been able to determine, this far reaching statute has not been challenged or interpreted in the courts.

*Reference: Hawaii Revised Statute, Section 378.2*

**Illinois:** Employers cannot ask if an applicant has been arrested.

Employers cannot use criminal history information which has been expunged, sealed, or impounded as a basis for denying employment or promotion. (Of course, if this information has been expunged, sealed, or impounded, GIN will not be able to include it in our reports.)

*Reference: Illinois Compiled Statute Annotated, Chapter 775, Section 5/2-103*

# Using Arrest, Conviction, and Misdemeanor Information in the Hiring Process

## Complying with State Laws (continued)

**Minnesota:** Employers are restricted from asking applicants about any arrest not followed by a valid conviction, convictions that have been annulled or expunged, and misdemeanor convictions for which no jail sentence can be imposed.

Employers who deny an applicant a position, or deny an individual a license, solely or in part because of that person's prior conviction, must notify the individual in writing of the grounds for the denial and the earliest date for re-application.

*Reference: "Pre-Employment Inquiries Generally Prohibited by the Minnesota Human Rights Act"*

**Ohio:** Employers may not question prospective employees as to any criminal record (arrest or conviction) that has been expunged or sealed.

*Reference: Ohio Revised Code Annotated, Section 2151.358(A)-(I)*

**Oregon:** Employers must tell employees and prospective employees that criminal history information might be sought.

*Reference: Oregon Revised Statute, Section 181.555 and 181.560*

**Washington:** Employers can get criminal history information only for specified purposes, which include pre-employment background checking as it relates to that applicant's fitness to perform the particular job sought. Employers must notify the employee or prospective employee that they are making an inquiry into their criminal record and must make the records available to the employee.

*Reference: Washington Admin. Code, Chapter 162, Sections 162-12-100et seq*

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CCH Incorporated published material referenced in this report:

1. "How Arrest Records May Be Used in Employment Decisions."
  2. "Criminal Record Inquiries."
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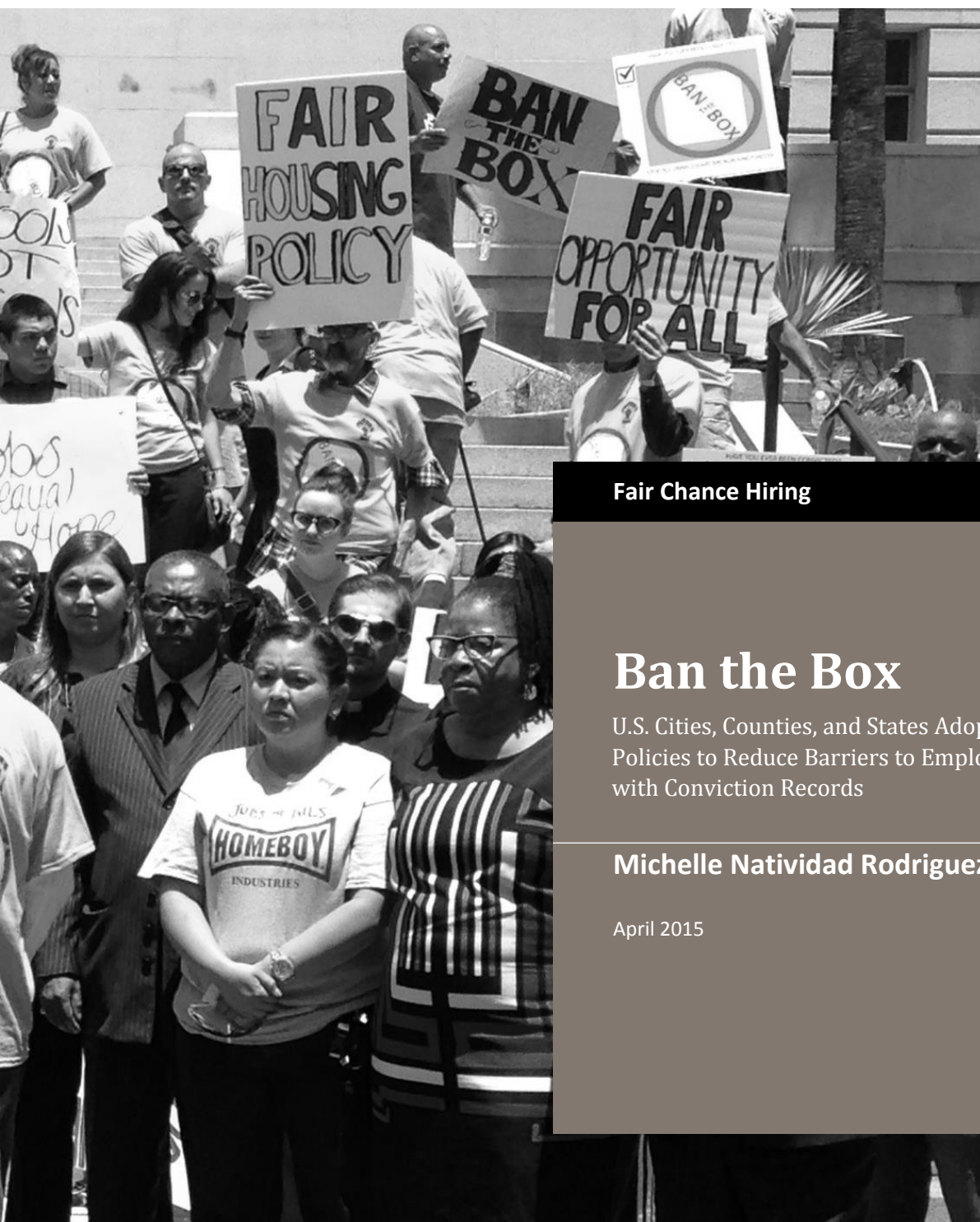
*This information reflects GIN's understanding of these issues at the time of this writing. It is not legal advice and is not intended to replace competent legal counsel.  
You may wish to seek an opinion from legal counsel on these issues.*





NATIONAL  
EMPLOYMENT  
LAW  
PROJECT

GUIDE



Fair Chance Hiring

## Ban the Box

U.S. Cities, Counties, and States Adopt Fair Hiring Policies to Reduce Barriers to Employment of People with Conviction Records

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Michelle Natividad Rodriguez

April 2015

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### **Acknowledgements**

NELP thanks the following foundations for their contributions in support of this work: The Open Society Foundations, the Public Welfare Foundation, and the Rosenberg Foundation. The photographs that appear in this document were taken by LA Voice, featuring a rally in support of fair hiring legislation in Los Angeles organized by A New Way of Life, All of Us or None, LA Voice, Homeboy Industries, and allied organizations. The author also thanks Madeline Neighly, former Staff Attorney at NELP, numerous NELP law clerks, and NELP colleague Andrew Bowe for their contribution to this publication and the many colleagues, allies and advocates for their efforts in this work.

### **About NELP**

For more than 45 years, the National Employment Law Project has worked to restore the promise of economic opportunity for working families across America. In partnership with grassroots and national allies, NELP promotes policies to create good jobs, enforce hard-won workplace rights, and help unemployed workers regain their economic footing. For more information, visit us at [www.nelp.org](http://www.nelp.org).

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# Contents

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**Introduction..... 3**

**List of All Ban the Box & Fair Chance Policies by State ..... 5**

**1. 16 Ban the Box & Fair Chance State Policies ..... 8**

**2. Summary of 16 Ban the Box & Fair Chance State Policies Table ..... 15**

**3. Local Ban the Box & Fair Chance Policies..... 16**

**4. Summary of Ban the Box & Fair Chance Policies Table..... 62**

# Introduction

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Nationwide, over 100 cities and counties have adopted what is widely known as “ban the box” so that employers consider a job candidate’s qualifications first, without the stigma of a criminal record. These initiatives provide applicants a fair chance by removing the conviction history question on the job application and delaying the background check inquiry until later in the hiring.

Momentum for the policy has grown exponentially, particularly in recent years. There are a total of sixteen states representing nearly every region of the country that have adopted the policies —California (2013, 2010), Colorado (2012), Connecticut (2010), Delaware (2014), Georgia (2015), Hawaii (1998), Illinois (2014, 2013), Maryland (2013), Massachusetts (2010), Minnesota (2013, 2009), Nebraska (2014), New Jersey (2014), New Mexico (2010), Rhode Island (2013), Vermont (2015) and Virginia (2015). Six states—Hawaii, Illinois, Massachusetts, Minnesota, New Jersey, and Rhode Island—have removed the conviction history question on job applications for private employers, which advocates embrace as the next step in the evolution of these policies.

16 states,  
Washington D.C.,  
and 100 cities and  
counties have  
adopted fair hiring  
policies.

Federally, the U.S. Equal Employment Opportunity Commission (EEOC) endorsed removing the conviction question from the job application as a best practice in its [2012 guidance](#) making clear that federal civil rights laws regulate employment decisions based on arrests and convictions. The Obama Administration’s My Brother’s Keeper Task Force also gave the movement a boost when it [endorsed](#) hiring practices “which give applicants a fair chance and allows employers the opportunity to judge individual job candidates on their merits.”

Fair chance policies benefit everyone because they’re good for families and the local community. At a [recent event](#) in Oakland for employers to discuss reentry issues, one business owner spoke to the personal benefit he finds from hiring people with records. “I’ve seen how a job makes all the difference,” says Derreck B. Johnson, founder and president of Home of Chicken and Waffles in Oakland. “When I give someone a chance and he becomes my best employee, I know that I’m doing right by my community.”

This resource guide documents the 16 states, Washington D.C., and the over [100 cities and counties](#)—that have taken steps to remove barriers to employment for qualified workers with records. Six states, Washington D.C., and 25 cities and counties now extend the fair chance policy to government contractors or private employers. Of the localities, Baltimore, Buffalo, Chicago, Columbia (MO), Montgomery County (MD), Newark, Philadelphia, Prince George’s County (MD), Rochester, San Francisco, Seattle, and Washington D.C. extend their fair chance laws to private employers in the area. A chart summarizing all the policies is at the end of this guide.

To support your state and local efforts to enact a fair chance policy, check out NELP’s [Fair Chance – Ban the Box Toolkit](#), which provides a step-by-step guide for advocates on how to launch a “ban the box” campaign. Embedded in the Toolkit is a range of resources

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to draft a law, to build your network, to support your outreach, and even to develop your media outreach. Here, are just a few of the resources:

- A one-page Factsheet, explains the basics of the policy.
- A Voices in Support factsheet highlights voices around the nation in support.
- A Best Practices and Model Policies guide provides model laws.
- The Research Summary is a compilation of supportive research.

For additional information, contact Senior Staff Attorney Michelle Natividad Rodriguez at [mrodriguez@nelp.org](mailto:mrodriguez@nelp.org)

# List of All Ban the Box & Fair Chance Policies by State

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## **ARIZONA**

[TUCSON, AZ](#)

## **CALIFORNIA (state law)**

[ALAMEDA COUNTY, CA](#)

[BERKELEY, CA](#)

[CARSON, CA](#)

[COMPTON, CA](#)

[EAST PALO ALTO, CA](#)

[OAKLAND, CA](#)

[PASADENA, CA](#)

[RICHMOND, CA](#)

[SAN FRANCISCO, CA](#)

[SANTA CLARA COUNTY, CA](#)

## **COLORADO (state law)**

## **CONNECTICUT**

**(state law)**

[BRIDGEPORT, CT](#)

[HARTFORD, CT](#)

[NEW HAVEN, CT](#)

[NORWICH, CT](#)

## **DELAWARE (state law)**

[NEW CASTLE COUNTY, DE](#)

[WILMINGTON, DE](#)

## **FLORIDA**

[CLEARWATER, FL](#)

[JACKSONVILLE, FL](#)

[POMPANO BEACH, FL](#)

[ST. PETERSBURG, FL](#)

[TAMPA, FL](#)

[TALLAHASSEE, FL](#)

## **GEORGIA (state policy)**

[ALBANY, GA](#)

[ATLANTA, GA](#)

[FULTON COUNTY, GA](#)

[MACON-BIBB COUNTY, GA](#)

## **HAWAII (state law)**

## **ILLINOIS (state law)**

[CHICAGO, IL](#)

## **INDIANA**

[INDIANAPOLIS, IN](#)

## **KANSAS**

[KANSAS CITY, KS](#)

## **KENTUCKY**

[LOUISVILLE, KY](#)

## **LOUISIANA**

[NEW ORLEANS, LA](#)

## **MARYLAND (state law)**

[BALTIMORE, MD](#)

[MONTGOMERY COUNTY, MD](#)

[PRINCE GEORGE'S COUNTY, MD](#)

## **MASSACHUSETTS**

**(state law)**

[BOSTON, MA](#)

[CAMBRIDGE, MA](#)

[WORCESTER, MA](#)

## **MICHIGAN**

[ANN ARBOR, MI](#)

[DETROIT, MI](#)

[EAST LANSING, MI](#)

[GENESEE COUNTY, MI](#)

[KALAMAZOO, MI](#)

[MUSKEGON COUNTY, MI](#)

## **MINNESOTA (state law)**

[MINNEAPOLIS, MN](#)

[ST. PAUL, MN](#)

## **MISSOURI**

[COLUMBIA, MO](#)

[KANSAS CITY, MO](#)

[ST. LOUIS, MO](#)



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**NEBRASKA (state law)**

**NEW JERSEY (state law)**

[ATLANTIC CITY, NJ](#)  
[NEWARK, NJ](#)

**NEW MEXICO (state law)**

**NEW YORK**

[BUFFALO, NY](#)  
[NEW YORK, NY](#)  
[ROCHESTER, NY](#)  
[SYRACUSE, NY](#)  
[ULSTER COUNTY, NY](#)  
[YONKERS, NY](#)

**NORTH CAROLINA**

[CARRBORO, NC](#)  
[CHARLOTTE, NC](#)  
[CUMBERLAND COUNTY, NC](#)  
[DURHAM CITY, NC](#)  
[DURHAM COUNTY, NC](#)  
[SPRING LAKE, NC](#)

**OHIO**

[AKRON, OH](#)  
[CANTON, OH](#)  
[CINCINNATI, OH](#)  
[CLEVELAND, OH](#)  
[CUYAHOGA COUNTY, OH](#)  
[DAYTON, OH](#)  
[HAMILTON COUNTY, OH](#)  
[MASSILLON, OH](#)  
[SUMMIT COUNTY, OH](#)  
[YOUNGSTOWN, OH](#)

**OREGON**

[MULTNOMAH COUNTY, OR](#)  
[PORTLAND, OR](#)

**PENNSYLVANIA**

[ALLEGHENY COUNTY, PA](#)  
[ALLENTOWN, PA](#)

[LANCASTER, PA](#)  
[PHILADELPHIA, PA](#)  
[PITTSBURGH, PA](#)  
[READING, PA](#)

**RHODE ISLAND (state law)**

[PROVIDENCE, RI](#)

**TENNESSEE**

[HAMILTON COUNTY, TN](#)  
[MEMPHIS, TN](#)

**TEXAS**

[AUSTIN, TX](#)  
[TRAVIS COUNTY, TX](#)

**VERMONT (state policy)**

**VIRGINIA (state policy)**

[ALEXANDRIA, VA](#)  
[ARLINGTON COUNTY, VA](#)  
[CHARLOTTESVILLE, VA](#)  
[DANVILLE, VA](#)  
[FAIRFAX COUNTY, VA](#)  
[FREDERICKSBURG, VA](#)  
[NEWPORT NEWS, VA](#)  
[NORFOLK, VA](#)  
[PETERSBURG, VA](#)  
[PORTSMOUTH, VA](#)  
[RICHMOND, VA](#)  
[ROANOKE, VA](#)  
[VIRGINIA BEACH, VA](#)

**WASHINGTON**

[SEATTLE, WA](#)  
[SPOKANE, WA](#)

**WASHINGTON D.C.**

**WISCONSIN**

[DANE COUNTY, WI](#)  
[MILWAUKEE COUNTY, WI](#)

# 16 Ban the Box & Fair Chance State Policies

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1. **CALIFORNIA ASSEMBLY BILL 218 (2013) (APPLIES TO PUBLIC EMPLOYMENT)** [Signed on October 10, 2013](#) by Governor Edmond “Jerry” Brown (D), [AB 218](#) removes questions about convictions from state agency, city, county and special district job applications and postpones such inquiries until later in the hiring process. The bill was initially introduced in 2012 as AB 1831 applying only to cities and counties. After the first effort stalled in the senate, AB 218 was introduced in 2013. Sponsoring organizations included the [National Employment Law Project](#), [Legal Services for Prisoners with Children](#), [All of Us or None](#), and [PICO California](#). Law enforcement positions are exempted, as are other positions that require a criminal background check by law. More than 100 organizations, spanning labor, interfaith, reentry, civil rights, employment, criminal justice, and others groups, formed a coalition that strongly supported the bill. AB 218 was also endorsed by several major newspapers, including [The New York Times](#), [Los Angeles Times](#), and [Sacramento Bee](#). Introduced by Asm. Roger Dickinson (D), see [bill information](#). See [NELP’s press release](#).

**Commentary:** Before AB 218 and under the administration of Governor Arnold Schwarzenegger (R), an administrative policy removing the conviction question from state job applications was adopted in 2010. On the effective date of the legislation, NELP released a [survey](#) of the largest cities and counties in California, which [revealed statewide implementation of the law](#).

2. **COLORADO HOUSE BILL 1263 (2012) (APPLIES TO STATE EMPLOYMENT AND LICENSING)** Signed on May 29, 2012 by Governor John Hickenlooper (D), [HB 1263](#) prohibits state agencies and licensing agencies from performing a background check until the agency determines that the applicant is a finalist for the position or the applicant receives a conditional offer. In determining whether a conviction disqualifies an applicant from employment or licensing, the state or licensing agency must consider (1) the nature of the conviction; (2) the direct relationship of the conviction to the job; (3) rehabilitation and good conduct; and (4) the time elapsed since the conviction. The law further prevents agencies from using arrests not leading to conviction in deciding whether to deny or withdraw an offer. Agencies may not disqualify an applicant based on an expunged, sealed, or pardoned conviction or charges dismissed pursuant to a deferred judgment, unless the agencies first consider the four factors listed above.

This law does not apply where a statute bars licensing based on convictions nor to certain public safety or correction-related jobs. The law addresses blanket bans in job advertisements that include a statement that a person with a criminal record may not apply. The legislation was supported by the [Colorado Criminal Justice Reform Coalition](#). Introduced by Rep. Claire Levy (D), see [bill information](#).

**Commentary:** Prior to the bill, Colorado state employment applications omitted any inquiries about applicants’ convictions or arrests. Thus, unlike the typical fair hiring

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legislation, this bill does not include language that requires removing the question about convictions on the application.

3. **CONNECTICUT HOUSE BILL 5207 (2010) (APPLIES TO STATE EMPLOYMENT)**

Connecticut's [HB 5207](#) unanimously passed both the house and senate, but was vetoed by the Governor. Nonetheless, legislators overrode the veto. Taking effect on October 1, 2010, state employers must wait until an applicant has been deemed otherwise qualified for the position before obtaining a criminal background report. HB 5207 amended existing law (§ 46a-80), which already included the following provisions directed to state agencies and licensing. First, the existing law prohibited applicants from being disqualified solely because of a conviction. Second, it required consideration of (1) the nature of the crime and its relationship to the job or occupation; (2) rehabilitation; and (3) the time elapsed since the conviction or release before making an employment or licensure determination. Third, an applicant must be provided with a written letter of rejection specifically stating the evidence presented and reasons for rejection. Finally, existing law also prohibited the use or dissemination of records of arrests that did not lead to conviction, or records of convictions that had been erased. Introduced by Labor and Public Employees Committee, see [bill information](#).

**Commentary:** Laying the foundation for the bill's sweeping support in the legislature, advocates formed a coalition (including [A Better Way Foundation](#)) that won fair chance policies locally in Norwich, Hartford, and New Haven in 2009.

4. **DELAWARE HOUSE BILL 167 (2014) (APPLIES TO PUBLIC EMPLOYMENT)** Signed on May 8, 2014, [HB 167](#), applies to the state, its agencies, and political subdivisions, such as cities and counties. This bill prohibits the public employer from inquiring into or considering criminal or credit histories of an applicant until after the completion of the first interview. When reviewing a criminal history, the public employer must consider: (1) nature of offense; (2) time passed; and (3) nature of job. Police forces and other positions with a statutory mandate for background checks are exempted. Governor Jack A. Markell [endorsed](#) the bill in his State of the State address. Introduced by Rep. James ("J.J.") Johnson (D), see [bill information](#). See [NELP's press release](#).

**Commentary:** In the initial bill version, the public employer was directed to consider a criminal record using a combination of factors in the [EEOC Guidance](#) and the [1979 Uniform Law Commissioners' Model Sentencing and Corrections Act](#). These factors clarified the job-relatedness analysis. However, the bill was amended and the EEOC factors above replaced the language. In addition, the provision encouraging state vendors to adopt similar policies was removed.

5. **GEORGIA EXECUTIVE ORDER (2015) (APPLIES TO STATE EMPLOYMENT)** Governor Nathan Deal (R) signed an [executive order](#) on February 23, 2015 which removed questions regarding criminal history from all applications for state employment. Under the executive order, inquiries into an applicant's criminal record are postponed until after "the initial stage of the state employment application process." In addition, the

Under the  
leadership of  
Republican Gov.  
Nathan Deal,  
Georgia became  
the first state in  
the Deep South to  
"ban the box."

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order prohibits the use of an applicant's criminal record as an automatic bar to employment, and provides applicants an opportunity to dispute the accuracy and relevance of any disqualifying conviction relied upon for rejection. Certain "sensitive governmental positions" are exempt. See [NELP's press release](#).

**Commentary:** Georgia is the first state in the Deep South to adopt a fair hiring policy. A broad coalition of advocacy groups, including Atlantans Building Leadership for Empowerment, the Georgia Justice Project, 9to5 Atlanta, and various faith-based organizations, supported the executive order.

6. **HAWAII HOUSE BILL 3528 (1998) (APPLIES TO PUBLIC AND PRIVATE EMPLOYMENT)**

In 1998, Hawaii became the first state to adopt a fair chance law as applied to both public and private employment. The statute, [Haw. Rev. Stat. § 378-2.5](#), prohibits employers from inquiring into an applicant's conviction history until after a conditional offer of employment has been made. The offer may be withdrawn if the applicant's conviction bears a "rational relationship" to the duties and responsibilities of the position sought. Under the law, employers may only consider an employee's conviction record within the most recent ten years, excluding periods of incarceration. Prior to HB 3528, the definition of unlawful discriminatory practices (§ 378-2) included "arrest and court record" as an impermissible reason for an employer to "refuse to hire or employ or to bar or discharge from employment, or otherwise to discriminate against any individual."

**Commentary:** NELP recommends prohibiting employers from inquiring into a conviction until after a conditional offer as one of the strongest means to change employer behavior of categorically rejecting the job applications of people with records.

7. **ILLINOIS HOUSE BILL 5701 (2014) (APPLIES TO PRIVATE EMPLOYERS)** Introduced on February 14, 2014, [HB 5701](#), the "Job Opportunities for Qualified Applicants Act," applies to employers with 15 or more employees and employment agencies. Employers may not inquire into an applicant's criminal record until the applicant has been selected for an interview by the employer or until after a conditional offer of employment is made to the applicant. Positions that have state or federal law exclusions based on certain convictions are exempted. The bill authorizes the imposition of warnings and civil penalties against violators. The bill was signed by Governor Pat Quinn on July 19, 2014. Introduced by Rep. Rita Mayfield (D), see [bill information](#). See [NELP's press release](#).

**Commentary:** The bill applies to only private employers, because Governor Pat Quinn issued an executive order in 2013, [Order 1](#), which required the Illinois Bureau of Personnel in the Department of Central Management Services (CMS) to modify the Application for State Employment (the "[CMS100](#)") for all state employing agencies, boards, and commissions.

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8. **MARYLAND SENATE BILL 4 (2013) (APPLIES TO STATE EMPLOYMENT)** [Signed on May 2, 2013](#) by Governor Martin O'Malley (D), [SB 4](#) adds [Article 2-203, Chapter 160](#) to the state code and prohibits state public employers from inquiring into the criminal history of an applicant for employment until the applicant has been provided an opportunity for an interview. Exceptions to the law include positions within the Department of Corrections, the Office of the Sheriff for any county, or where a background check is required by law. Introduced by Sen. Catherine Pugh (D), see [bill information](#).

**Commentary:** [Job Opportunities Task Force](#) led efforts on the bill for three prior years, which built a strong statewide coalition. The law includes a sunset provision of June 30, 2018.

9. **MASSACHUSETTS SENATE BILL 2583 (2010) (APPLIES TO PUBLIC AND PRIVATE EMPLOYMENT)** Governor Deval Patrick (D) signed [Chapter 256 of the Acts of 2010](#) on August 6, 2010. Under [Senate Bill 2583](#), employers can no longer use an initial written employment application to ask whether an applicant has been convicted unless there is a legal restriction that applies to the specific job or occupation. The law requires that applicants receive a copy of their criminal history report (1) prior to being questioned about their history; and (2) if an adverse decision is made based on the report. As a self-auditing mechanism, individuals are able to determine if the report was run through the state system. With certain exceptions, criminal records provided by the state may only contain (1) felony convictions for 10 years following disposition; (2) misdemeanor convictions for 5 years following disposition; and (3) pending criminal charges. The legislation was supported by a broad coalition (including [Massachusetts Law Reform Institute](#) and [Boston Workers Alliance](#) (BWA)). See [bill information](#), [MCAD factsheet](#), and [BWA factsheet](#).

**Commentary:** The bill uniquely tackles the issue of inaccurate commercial background checks by creating an incentive for employers to use the state's database, which then limits the length of time that criminal history information is available. It also ensures that a denied applicant receives a copy of his or her record, paralleling one component of the federal consumer protection law, the [Fair Credit Reporting Act](#), which applies to commercially-prepared background checks.

10. **MINNESOTA SENATE BILL 523 (2009, 2013) (APPLIES TO PUBLIC AND PRIVATE EMPLOYMENT)** Signed on May 13, 2013 by Governor Mark Dayton (D), [SF 523](#) amends [Minn. Stat. § 364 et seq.](#) This amendment expands the law from 2009 to cover not only public-sector hiring, but also adds that private employers may not inquire into an applicant's criminal history until after the applicant has been selected for an interview or before a conditional offer of employment. It also establishes penalties for private employers including fines for failure to comply. Behind the legislative win, the [Minnesota Second Chance Coalition](#) built on the 2009 success of [HF 1301](#), which added section 364.021 to [Minn. Stat. § 364 et seq.](#) applying ban-the-box to public employment. Longstanding statutory protections preceding that bill, dating back to 1974, include a

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prohibition against disqualifying applicants from public employment or licensure unless the conviction is “directly related” to the position of employment or occupational license sought, a requirement that job-related factors be considered, and a ban on using records of arrest not followed by valid conviction, annulled or expunged convictions, and misdemeanor convictions for which no jail sentence can be imposed when evaluating applicants for public employment or licensure. Introduced by Sen. Bobby Joe Champion (DFL), see [bill information](#).

**Commentary:** HF 1301 was signed by then-Governor Tim Pawlenty (R). Like HF 1301, SF 523 was an example of bipartisanship. Spurred by the state legislation, the Minneapolis-based retailer [Target announced](#) it would ban-the-box nationally. To support implementation, the Minnesota Department of Human Rights has provided educational [materials](#) for employers.

**11. NEBRASKA LEGISLATIVE BILL 907 (2014) (APPLIES TO PUBLIC EMPLOYMENT)**

Originally introduced in January 2014 as [LB 932](#), the legislation applies to public employers—the state, counties, and cities. Public employers are prohibited from inquiring into a job applicant’s criminal history until after the employer has determined the applicant meets the minimum job requirements. Law enforcement positions and other positions with mandated background check requirements are exempted, as well as school districts regarding specific information. The language of LB 932 was added as Sec. 12 to the more comprehensive prison reform legislation intended to reduce the inmate population, [LB 907](#). Governor Dave Heineman (R) signed LB 907 on April 16, 2014. LB 932 was introduced by Sen. Bill Avery (D) and LB 907 was introduced by Sen. Brad Ashford (D), see [bill information](#). See [NELP’s press release](#).

**Commentary:** Although exemptions are generally unnecessary with fair chance legislation because a background check is delayed, not prevented, exemptions can serve to assuage fears. Supporters include the City of Omaha; in fact, Mayor Jean Stothert (R) cited her support for the legislation in her 2014 [state of the city address](#).

**12. NEW JERSEY ASSEMBLY HOUSE BILL 1999 AND SENATE BILL 1484 (2014) (APPLIES TO PUBLIC AND PRIVATE EMPLOYMENT)**

Initial versions were introduced in 2013, but were reintroduced in 2014 as A1999 and [S1484](#), known as “The Opportunity to Compete Act.” A heavily amended [A1999](#) was passed and signed by Governor Chris Christie on August 11, 2014. The bill mandates that public and private employers cannot inquire into a candidate’s criminal history until the employer has conducted the first interview with the candidate. Employers may not consider expunged or pardoned convictions when making an employment decision. Introduced to Senate by Sens. Sandra B. Cunningham (D), M. Teresa Ruiz (D), and Raymond J. Lesniak (D) and introduced to Assembly by Asms. Bonnie Watson Coleman (D), Jerry Green (D), and L. Grace Spencer (D), see [bill information](#). See [NELP’s press release](#).

**Commentary:** Leading up to the introduction of the legislation, the [New Jersey Institute for Social Justice](#) engaged the private employer community through business

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roundtables as discussed in [NELP's webinar](#). The original version of the bill, available [here](#), included numerous strong provisions, such as delaying inquiry until a conditional offer.

13. **NEW MEXICO SENATE BILL 254 (2010) (APPLIES TO PUBLIC EMPLOYMENT)** On March 8, 2010, Governor Bill Richardson (D) signed this [measure](#) into law adding [N.M. Stat. § 28-2-3](#) to the existing “Criminal Offender Employment Act” (1974). The bipartisan effort resulted in public employers, including cities and counties, being prohibited from inquiring into an applicant’s conviction history on an initial employment application until an applicant has been “selected as a finalist.” The law permits convictions to be considered when determining eligibility for public employment or licensure, but convictions “may not operate as an automatic bar.” The law further prohibits, for employment and licensing, the use of records of arrest not leading to conviction and misdemeanor convictions not involving moral turpitude. [Drug Policy Alliance New Mexico](#) led the efforts on the bill. Introduced by Sen. Clinton D. Harden (R), see [bill information](#).

**Commentary:** The bill amended existing law, which permits a “moral turpitude” conviction that “directly relates” to employment to be the basis for denial. The existing law requires a written statement to the applicant of the reasons for denial and provides the parameters for a presumption of rehabilitation (§ 28-2-4).

14. **RHODE ISLAND HOUSE BILL 5507 (2013) (APPLIES TO PUBLIC AND PRIVATE EMPLOYMENT)** [Signed into law on July 15, 2013](#), by Governor Lincoln Chafee (D), [HB 5507](#) prohibits an employer from inquiring about an applicant's prior criminal convictions until the first interview with the applicant. An employer may inquire about the applicant's criminal convictions during the first interview. There are exceptions for positions where an applicant with a conviction history would be automatically disqualified by law. Introduced by Reps. Scott Slater (D), Michael W. Chippendale (R), Anastasia Williams (D), Joseph S. Almeida (D), and Grace Diaz (D), see [bill information](#).

**Commentary:** Rhode Island became the fourth state in the nation to implement ban-the-box for private employers statewide. [Direct Action for Rights and Equality](#) championed the efforts for years, producing the powerful video [Beyond the Box](#).

15. **VERMONT EXECUTIVE ORDER 03-15 (2015) (APPLIES TO STATE EMPLOYMENT)** On April 21, 2015, Governor Peter Shumlin (D) signed an executive order that eliminates all criminal records inquiries from applications for state employment. Under the policy, criminal background checks are not conducted until “an applicant has otherwise been found qualified for the position.” The executive order does not apply to law enforcement, correctional facilities, or “other sensitive positions.”

**Commentary:** In addition to the ban-the-box measure, Governor Shumlin expressed his support for S. 115, a bill that would allow more Vermonters to expunge convictions from their records. The bill passed the House and Senate.

Gov. Peter Shumlin  
took executive  
action in April  
2015, making  
Vermont the most  
recent state to  
adopt fair hiring.



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**16. VIRGINIA EXECUTIVE ORDER 41 (2015) (APPLIES TO STATE EMPLOYMENT)** [Signed on April 3, 2015](#) by Governor Terry McAuliffe (D), Executive Order 41 removes questions relating to criminal history from the state employment application. State employment decisions will not be based on the criminal history of an individual unless demonstrably job-related and consistent with business necessity. See NELP's [press release](#).

**Commentary:** Local advocates had been championing legislative action on “ban the box” for several years. After the latest legislation stalled, advocates called for executive action.

State (Year reform was adopted)	Relevant Statutes and Policy	Employers: Private and Public (State: S, Licensing: L, Cities and Counties: C)		Job-Related Screening*	Limits information (Arrests not leading to convictions: "Arrests"; Expunged or similar: "Expunged"; Time limit on record: "Time limit")*	Notification of denial: N; Copy of record: C*
<b>California (2010, 2013)</b>	Cal. Lab. Code § 432.9	—	Public (S, C)	—	Arrests, Expunged, Time limit	—
<b>Colorado (2012)</b>	Colo. Rev. Stat. § 24-5-101	—	Public (S, L)	Whether there is "direct relationship" between conviction and job	Arrests, Expunged	—
<b>Connecticut (2010)</b>	Conn. Gen. Stat. § 46a-80	—	Public (S, L**)	Consider nature of crime and relationship to the job	Arrests, Expunged	N, C
<b>Delaware (2014)</b>	Del. Code tit. 19, § 711(g); Del. Code tit. 29, § 6909B	—	Public (S, C)	Consider nature of offense and job	—	—
<b>Georgia (2015)</b>	Executive Order	—	Public (S)	—	—	—
<b>Hawaii (1998)</b>	Haw. Rev. Stat. §§ 378-2, 378-2.5	Private	Public (S, C)	Conviction bears "rational relationship" to position	Time limit	—
<b>Illinois (2013, 2014)</b>	820 Ill. Comp. Stat. § 75; Executive Order 1 (2013)	Private	Public (S)	—	—	—
<b>Maryland (2013)</b>	Md. Code Ann., State Pers. & Pens. § 2-203	—	Public (S)	—	—	—
<b>Massachusetts (2010)</b>	Mass. Gen. Laws ch. 151B, § 4 (9 ½); ch. 6, §§ 171A, 172	Private	Public (S, L**, C)	—	Time limit	N, C
<b>Minnesota (2009, 2013)</b>	Minn. Stat. § 364	Private	Public (S, L**, C)	Conviction "directly relates" to position	Arrests, Expunged	N
<b>Nebraska (2014)</b>	Neb. Rev. Stat. § 48-202	—	Public (S, C)	—	—	—
<b>New Jersey (2014)</b>	AB 1999	Private	Public (S, C)	—	Expunged	—
<b>New Mexico (2010)</b>	N.M. Stat. §§ 28-2-1 to 28-2-6	—	Public (S, L**, C)	Conviction "directly relates" to employment	Arrests	N
<b>Rhode Island (2013)</b>	R.I. Gen. Laws §§ 28-5-6, 28-5-7	Private	Public (S, C)	—	Arrests	—
<b>Vermont (2015)</b>	Executive Order 03-15	—	Public (S)	—	—	—
<b>Virginia (2015)</b>	Executive Order 41	—	Public (S)	Conviction must be job-related	—	—

\* Some of these components existed prior to the legislation listed here.

\*\*Removal of conviction inquiry from the licensing application is not required.

# Local Ban the Box & Fair Chance Policies

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(Listed in chronological order)

## ***BOSTON, MA (ORDINANCE APPLIES TO CITY AND VENDORS)***

- Background checks only required for some positions
- Policies applies to vendors/contractors doing business with the City
- Incorporates EEOC criteria in individualized assessment
- Right to appeal denial of employment

In 2004, Boston implemented policies that limit discrimination against people with criminal records in city government positions. In July 2006, Boston expanded those policies by removing the questions about criminal history from the job application and by requiring an estimated 50,000 city vendors to follow the City's hiring standards. The revised job application begins with an anti-discrimination statement listing "ex-offender status" as a protected classification. Background checks are not required for all positions. The ordinance includes an appeal and the right to present information. A broad community coalition, Massachusetts Alliance to Reform CORI (MARC), supported these developments.

## **Boston Resources**

Boston City Council Ordinance (July 1, 2006), [available here](#)

Boston Equal Opportunity Statement, [available here](#)

## **Boston Contacts**

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## ***SAN FRANCISCO, CA (BOARD OF SUPERVISORS RESOLUTION APPLIES TO CITY AND COUNTY (2005))***

- Background check only for finalists for positions
- Incorporates EEOC criteria in individualized assessment

## ***SAN FRANCISCO FAIR CHANCE ORDINANCE APPLIES TO PRIVATE EMPLOYERS AND AFFORDABLE HOUSING (2014)***

- Policy applies to private employers and to affordable housing
- Incorporates EEOC criteria in individualized assessment (jobs and housing)
- Right to appeal denial of employment or housing
- Provides copy of background check report

The campaign to "ban the box" on San Francisco's applications for public employment was led by [All of Us or None](#), a national organizing initiative of formerly incarcerated people. In 2005, the San Francisco Board of Supervisors approved a resolution initiated by All of Us or None calling for San Francisco to eliminate hiring discrimination against people with criminal records by removing the request for

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criminal history information on the initial job application for public employment. The resolution was implemented as a municipal hiring policy. An individual's past convictions can only be considered after an applicant has been identified as a finalist for a position. The exception is for those jobs where state or local laws expressly bar people with convictions from employment, in which case the City conducts its background review at an earlier stage of the hiring process.

In 2011, the [San Francisco Human Rights Commission](#) and the [San Francisco Reentry Council recommended](#) expanding the City's policy to all private employers, vendors, and affordable housing providers. After a three-year campaign led by NELP, [All of Us or None](#), and the [Lawyers' Committee for Civil Rights of the San Francisco Bay Area](#) (LCCR), the San Francisco Board of Supervisors unanimously passed the Fair Chance Ordinance on February 4, 2014.

### **San Francisco Resources**

San Francisco Board of Supervisors Resolution (Oct. 11, 2005), [available here](#)  
San Francisco Fair Chance Ordinance (Feb. 4, 2014), [available here](#)

### **San Francisco Contacts**

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### ***CHICAGO, IL (MAYOR'S INITIATIVE; ORDINANCE APPLIES TO PRIVATE EMPLOYERS)***

- Policy applies to private employers
- Incorporates EEOC criteria in individualized assessment

In May 2004, Chicago Mayor Richard Daley created the Mayoral Policy Caucus on Prisoner Reentry, bringing together government and community leaders. In January 2006, the Caucus issued a major report calling for broad reforms of City policy. Implementing the Mayor's hiring policy, the Chicago Department of Human Resources issued guidelines and removed the question about criminal history from the job application. In November 2014, the City Council passed an ordinance that extended the city policy to all private employers, including those that are exempted from the state law (which covers private employers with more than 15 employees). Conviction history inquiry is permitted after the candidate is selected for an interview or after conditional offer. The ordinance was referred to the Council by Mayor Rahm Emanuel.

### **Chicago Resources**

Mayor Daley's Press Release (Jan. 24, 2006), [available here](#)  
Report of the Mayoral Policy Caucus on Prisoner Reentry (Jan. 2006), [available here](#)  
Chicago Department of Human Resources Guidelines (June 5, 2007), [available here](#)

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City Council Ordinance 02014-8347 (Nov. 5, 2014), [available here](#)

**Chicago Contact**

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Commission on Human Relations  
(312)744-4111

***ALAMEDA COUNTY (OAKLAND & BERKELEY, CA AREA; RESOLUTION APPLIES TO COUNTY)***

- Incorporates EEOC criteria in individualized assessment

Beginning in March 2007, Alameda County removed the question on the job application that required all applicants to list their criminal convictions. Self-disclosure of criminal history information does not occur until the last step of the examination process and fingerprinting for background checks is performed after a conditional offer. In addition, to protect against potential discrimination, a special unit in the Human Resources Department performs an analysis to determine if the conviction is, in fact, related to the specific functions of the job. As reported by the Interim Director of Human Resources Services in March 2012, the County has not had any problems with the policy and “has benefited from hiring dedicated and hardworking County employees because of the policy change.”

**Alameda County Resources**

Alameda County Board of Supervisors Resolution (Oct. 3, 2006), [available here](#)  
Alameda County Letter to Asm. Roger Dickinson (March 28, 2012), [available here](#)

**Alameda County Contact**

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***ST. PAUL, MN (MAYOR'S DIRECTIVE AND CITY COUNCIL RESOLUTION APPLY TO CITY)***

- Background checks only required for some positions
- Incorporates EEOC criteria in individualized assessment

In December 2006, Mayor Christopher Coleman of St. Paul directed the City's Human Resources Department to reform its hiring process so that “all applicants have a full and fair opportunity for employment.” The City thus amended its employment application to remove questions regarding criminal history. That same month, the City Council approved a resolution calling on the City to “make a good faith determination as to which specific positions of employment are of such sensitivity and responsibility that a background check is warranted.” The resolution also mandated that background checks be performed only after an applicant is determined to be otherwise qualified for that position.

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### **St. Paul Resources**

Mayor Coleman's Memo to the City Council (Dec. 5, 2006), [available here](#)

Report of the Council on Crime and Justice, [available here](#)

St. Paul City Council Resolution, [available here](#)

St. Paul Employment Application, [available here](#)

### **St. Paul Contacts**

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### ***MINNEAPOLIS, MN (RESOLUTION APPLIES TO CITY)***

- Background checks only required for some positions
- Incorporates EEOC criteria in individualized assessment

Like St. Paul, Minneapolis passed a resolution banning the box in December 2006. The Minneapolis resolution shares many characteristics with the St. Paul resolution, including banning the box, making a “good faith” determination of which positions require background checks, and performing background checks on applicants only after they have been determined to be otherwise qualified. The [Council on Crime and Justice](#), with the support of more than 30 community organizations, was instrumental in getting both the St. Paul and Minneapolis resolutions passed.

### **Minneapolis Resources**

Minneapolis City Council Resolution, [available here](#)

### **Minneapolis Contacts**

Councilmember Elizabeth Glidden

Minneapolis City Council

[elizabeth.glidden@ci.minneapolis.mn.us](mailto:elizabeth.glidden@ci.minneapolis.mn.us)

### ***EAST PALO ALTO, CA (ADMINISTRATIVE POLICY APPLIES TO CITY)***

Inquiries regarding criminal histories are delayed until the applicant is a finalist.

### **East Palo Alto Resource**

Application, [available here](#)

### **East Palo Alto Contact**

Jesse Stout

[All of Us or None](#)

[jesse@prisonerswithchildren.org](mailto:jesse@prisonerswithchildren.org)

### ***OAKLAND, CA (CITY ADMINISTRATOR HIRING POLICY APPLIES TO CITY)***

- Background check only after offer of employment

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- Background checks only required for some positions
  - Incorporates EEOC criteria in individualized assessment
  - Right to appeal denial of employment
  - Provides copy of background check report

Oakland changed its job application in 2007 to eliminate questions about conviction histories. The new process did not require additional resources. Since implementing this practice, only a small number of applicants have been screened out from employment due to their criminal histories. Working with [All of Us or None](#), the City improved its policy in 2010. The City conducts background checks on applicants after a conditional offer, but only for those positions required by law or the City has made a “good faith determination” that the position warrants it. The City also notifies the applicant of the potential adverse employment action, provides a copy of the background report, and provides the applicant an opportunity to rebut the accuracy or relevancy of the background report. Final decisions are based on job-relatedness and other EEOC factors.

### **Oakland Resources**

City Administrator memo (Dec. 28, 2010), [available here](#)  
Letter to Asm. Dickinson regarding support of ban the box (March 28, 2012), [available here](#)

### **Oakland Contacts**

Jesse Stout  
[All of Us or None](#)  
[jesse@prisonerswithchildren.org](mailto:jesse@prisonerswithchildren.org)

Andrea Gourdine  
Director, Human Resources Management  
(510) 238-3112

### ***MULTNOMAH COUNTY (PORTLAND, OR AREA; ADMINISTRATIVE POLICY APPLIES TO COUNTY)***

- Incorporates EEOC criteria in individualized assessment

In October 2007, Multnomah County removed the question about criminal history from both on-line and hard-copy applications. The Multnomah County policy is similar to the policy implemented in the City and County of San Francisco. The Portland-based group, [Partnership for Safety and Justice](#), was instrumental in the adoption of the county hiring policy as part of their "Think Outside of the Box" campaign.

When an applicant's criminal history is considered, at a later stage of the hiring process, the Multnomah County policy requires an individualized determination of whether the conviction bears a rational relationship to the job. According to the policy, important factors to consider include the nature of the crime for which the applicant was convicted; any positive changes demonstrated since the conviction;



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the age at time of arrest; and the amount of time that has elapsed since the arrest occurred.

### **Multnomah County Resource**

Multnomah County Human Resources Memo (Oct. 10, 2007), [available here](#)

### **Multnomah County Contact**

Human Resources Department  
(503) 988-5015 x85015

### ***CAMBRIDGE, MA (ORDINANCE APPLIES TO CITY AND VENDORS)***

- Background checks only required for some positions
- Policies applies to vendors/contractors doing business with the City
- Incorporates EEOC criteria in individualized assessment
- Right to appeal prior to adverse determination
- Provides copy of background check report

In May 2007, Cambridge implemented policies limiting discrimination against people with criminal records in city government positions. In January 2008, the City Council passed an ordinance extending the requirements of the hiring policy to city vendors. Consistent with the City's hiring policy, vendors contracting with Cambridge wait to conduct a criminal background check until the job applicant is found to be "otherwise qualified" for the position.

### **Cambridge Resource**

Cambridge City Council Ordinance (Jan. 28, 2008), [available here](#)

### **Cambridge Contact**

Oman Bandar, Former Special Assistant to the Mayor  
[bandar\\_omar@hotmail.com](mailto:bandar_omar@hotmail.com)

### ***BALTIMORE, MD (HIRING POLICY APPLIES TO CITY, ORDINANCE APPLIES TO PUBLIC AND PRIVATE EMPLOYERS)***

- Background check only after conditional offer of employment
- Background checks only required for some positions
- Ordinance applies to public and private employers

In December 2007, with the backing of Mayor Sheila Dixon, the City of Baltimore's Board of Estimates unanimously approved changes to the City's administrative hiring policy. In accordance with the policy, the City removed the criminal history question from its job application. The City also implemented a policy to determine which positions qualified as "Positions of Trust" and thus require a background check. Employment applications for positions that are not positions of trust do not require applicants to disclose prior convictions or any other criminal history

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information. Where applicable, the applicant's criminal history is reviewed at the final stages in the hiring process.

In April 2014, the City Council approved an updated fair chance ordinance that applies to all employers with 10 or more employees. The new ordinance prohibits inquiry into a job applicant's conviction history until after a conditional offer of employment and provides administrative and judicial review of and remedial relief for violations. Uniquely, the ordinance provides for misdemeanor criminal charges and a fine to be levied against employers who violate the law.

### **Baltimore Resources**

Baltimore Policy on Positions of Trust (Feb. 3, 2008), [available here](#)

Baltimore Employment Application, [available here](#)

Baltimore Ordinance (2014), [available here](#)

### **Baltimore Contact**

Caryn Aslan, Policy Associate

[Job Opportunities Task Force](#)

[caryn@jotf.org](mailto:caryn@jotf.org)

### ***TRAVIS COUNTY (AUSTIN, TX AREA; ADMINISTRATIVE POLICY APPLIES TO COUNTY)***

- Background check only after applicant selected for hire
- Background checks only required for some positions
- Incorporates EEOC criteria in individualized assessment

In April 2008, acting upon the recommendation of Justice and Public Safety and the Director of Human Resources for Travis County, the Travis County Commissioner's Court voted to remove the question about an applicant's criminal history from county job applications. The Travis County Reentry Roundtable Report, which was completed in 2007, recommended changes to the county's hiring practice as a key way to increase employment opportunities for people reentering the community. The Human Resources Department trains hiring managers to consider "circumstances such as length of time since offense, seriousness of the offense, frequency of criminal incidents, and other mitigating factors."

### **Travis County Resources**

Memo, Travis County Director of Human Resources (April 15, 2008), [available here](#)

Travis County Guidelines for Hiring Ex-Offenders (April 21, 2008), [available here](#)

Travis County Employment Application, [available here](#)

### **Travis County Contact**

Steven Huerta, Chairman

All of Us or None Texas

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[tac\\_allofusornone@yahoo.com](mailto:tac_allofusornone@yahoo.com)

***AUSTIN, TX (ORDINANCE APPLIES TO CITY)***

- Background check only after conditional offer of employment
- Background checks only required for some positions

Following Travis County's lead, the City approved a "Ban the Box" ordinance in October 2008. The criminal background investigation questions were removed from the on-line employment application. For non-safety/law enforcement jobs, criminal background investigations are required only for positions that have financial responsibility or work with children, the disabled or elderly. When the job falls in one of these categories, the background investigation is undertaken only after an applicant has received a conditional offer. Individuals are also provided notice of denial. Featured in [HR Magazine](#), Director Mark Washington notes that since the City adopted this policy, more qualified candidates with criminal backgrounds have applied. "There are extremely talented and qualified people who happen to be ex-offenders," Washington adds.

**Austin Resource**

Austin Ban the Box Resolution (Oct. 16, 2008), [available here](#)

**Austin Contact**

Mark Washington, Director of Human Resources and Civil Services  
(512) 974-3400

***BERKELEY, CA (HUMAN RESOURCE DEPARTMENT HIRING POLICY APPLIES TO CITY)***

- Background check only after conditional offer of employment
- Background checks only required for some positions
- Incorporates EEOC criteria in individualized assessment

In October 2008, the City of Berkeley's Human Resources Department eliminated disclosure of conviction history information from the City's job application at the request of City Council. Berkeley does not require disclosure of conviction history information until an applicant is selected for the position and has received a conditional offer of employment. The Human Resources Department then reviews conviction history information, which is kept confidential. The evaluation includes "an assessment of the relationship between a conviction and the functions of the position; number of convictions; time elapsed since the conviction, evidence of rehabilitation, and any other mitigating circumstances." The City obtains conviction history from the California Department of Justice for identified public safety, recreation, and cash-handling/asset management positions only; for all other positions, conviction history self-disclosure is required. Police Department hires are exempted.

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### **Berkeley Resources**

Berkeley Hiring Policy Memo (Nov. 18, 2008), [available here](#)

Berkeley Employment Application, [available here](#)

### **Berkeley Contacts**

David Abel

Human Resources Manager

(510) 981-6807

Jesse Stout

[All of Us or None](#)

[jesse@prisonerswithchildren.org](mailto:jesse@prisonerswithchildren.org)

### ***NORWICH, CT (ORDINANCE APPLIES TO CITY)***

- Background check only after conditional offer of employment

In December 2008, Norwich's City Council voted to move "Beyond the Box" and reduce barriers to employment for people with criminal records. A large group of advocates including [Connecticut Pardon Team](#), [A Better Way Foundation](#), Evergreen Family Oriented Tree/Clean Slate of New Haven, CABHN, [Legal Assistance Resource Center](#) and [Greater Hartford Legal Aid](#) worked together to ensure the City Council passed the ordinance, the first of its kind in Connecticut at that time, paving the way for other cities and the State to follow suit.

### **Norwich Resource**

Norwich Ordinance Section 16-11 (Dec. 1, 2008), [available here](#)

### **Norwich Contact**

[Connecticut Pardon Team, Inc.](#)

[info@connecticutpardonteam.com](mailto:info@connecticutpardonteam.com)

### ***NEW HAVEN, CT (ORDINANCE APPLIES TO CITY AND VENDORS)***

- Background check only after conditional offer of employment
- Policies applies to vendors/contractors doing business with the City
- Incorporates EEOC criteria in individualized assessment
- Right to appeal denial of employment
- Provides copy of background check report

In February 2009, the City of New Haven's Board of Alderman approved an ordinance that requires the City and its vendors to wait to conduct a criminal background check until the job applicant is selected for the position and has received a conditional offer of employment. The City's Human Resources Department then evaluates the applicant's criminal history, keeping all information confidential within the Department. The ordinance also provides applicants with a copy of their conviction history report and the opportunity to appeal adverse employment decisions based upon a past conviction within ten days of receiving notice of the decision not to hire.

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### **New Haven Resources**

New Haven Ordinance, [available here](#)

New Haven Release of Information, [available here](#)

### **New Haven Contacts**

Eric Rey, Reentry Coordinator  
Mayor's Office, [Prison Reentry Initiative](#)  
[ERey@newhavenct.net](mailto:ERey@newhavenct.net)

Michael Fumiatti, Director of Purchasing  
City of New Haven  
[mfumiatti@newhavenct.net](mailto:mfumiatti@newhavenct.net)

### ***SEATTLE, WA (ORDINANCE APPLIES TO CITY AND PRIVATE EMPLOYERS)***

- Background checks only required for some positions
- Applies to public and private employers
- Right to appeal denial of employment
- Provides copy of background check report

In April 2009, the Personnel Director for the City of Seattle issued a memo to all department heads announcing the completion and implementation of the Citywide Personnel Rule for Criminal Background Checks. In 2013, the Seattle City Council voted to expand the ban the box policy to include private employers.

Adding to the state law that prohibits public agencies from refusing to hire someone or grant a license based solely on a criminal conviction, the new policy applies to both the City of Seattle and private employers. The ordinance prohibits employers from inquiring into an applicant's criminal history until after the employer has identified qualified applicants. Employers are permitted to conduct criminal history investigations and may exclude individuals from employment based on the applicant's criminal history if there is a legitimate business reason for doing so. Before an employer takes a negative employment decision based on an applicant's criminal history, the employer must identify to the applicant what information they are using to make the decision and provide the applicant with a minimum of two days in which to correct or explain that information.

### **Seattle Resources**

Seattle Personnel Director McDermott's Memo (April 24, 2009), [available here](#)

Seattle Personnel Rule 10.3 – Criminal Background Checks, [available here](#)

Seattle Ordinance Number 124201, [available here](#)

Seattle Office of Civil Rights Fact Sheet, [available here](#)

Seattle Job Assistance Ordinance Final Rules, [available here](#)

Seattle Job Assistance Ordinance FAQs, [available here](#)

Seattle Employers Card, English, [available here](#)

### **Seattle Contact**

Brenda Anibarro, Policy Analyst  
[Seattle Office for Civil Rights](#)

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[brenda.anibarro@seattle.gov](mailto:brenda.anibarro@seattle.gov)

***PROVIDENCE, RI (ADMINISTRATIVE POLICY APPLIES TO CITY)***

In 2008, the Mayor's Policy Office began investigating the City's hiring practices and their impact on the ability of people with criminal convictions to successfully transition back into the workforce. After consulting with NELP and HR representatives from three cities that had already successfully "banned the box," the City agreed to change the hiring policies. In April 2009, the HR department removed the language relating to information on criminal charges from its applications. In addition, the applicant only signs a waiver for a background check once it has been determined that the candidate satisfies the minimum criteria for the position based on qualifications and ability.

**Providence Resource**

Providence Employment Application, [available here](#)

**Providence Contact**

Margareta Wingate, Deputy Director  
Human Resources  
(401) 421-7740 ext. 616  
[mwingate@providenceri.com](mailto:mwingate@providenceri.com)

***HARTFORD, CT (ORDINANCE APPLIES TO CITY AND VENDORS)***

- Background check only after conditional offer of employment
- Background checks only required for some positions
- Policies applies to vendors/contractors doing business with the City
- Incorporates EEOC criteria in individualized assessment
- Right to appeal denial of employment

In May 2009, Hartford's City Council recognized that barriers to employment for people with criminal records "creat[e] permanent members of an underclass that threatens the health of the community and undermines public safety." In response, the City Council passed an ordinance to change the hiring policy of the City and its vendors. It offers important protections to workers, including prohibiting the consideration of arrests that did not lead to conviction; delaying background checks in the hiring process; limiting background checks to specific positions; and providing applicants the opportunity to appeal adverse employment decisions.

**Hartford Resources**

Hartford City Ban the Box Policy (April 13, 2009), [available here](#)  
Hartford Vendor Ban the Box Policy (April 13, 2009), [available here](#)

**Hartford Contact**

Sarah Diamond

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Clean Slate Committee  
[sdiamond193@gmail.com](mailto:sdiamond193@gmail.com)

***WORCESTER, MA (ORDINANCE APPLIES TO CITY AND VENDORS)***

- Background checks only required for some positions
- Policies applies to vendors/contractors doing business with the City
- Incorporates EEOC criteria in individualized assessment
- Right to appeal denial of employment
- Provides copy of background check report upon request

In June 2009, Worcester’s City Council passed the Fair CORI Practices Ordinance. This ordinance applies to “all persons and businesses supplying goods and/or services to the city of Worcester.” Background checks may only be performed when mandated by law, or when the city or vendor “determines that the position in question is of such sensitivity” that a review of the applicant’s criminal history is warranted. The comprehensive law also requires that the person reviewing the background report be trained to do so, and that they apply a list of factors to be considered. Finally, applicants may appeal if an adverse decision is made based on the criminal history.

**Worcester Resource**

Worcester City Ordinance (June 23, 2009), [available here](#)

**Worcester Contact**

Steve O’Neill, Executive Director for Inter-state Organizing  
[Ex-Prisoners and Prisoners Organizing for Community Advancement](#)  
(508) 410-7676  
[steve@exprisoners.org](mailto:steve@exprisoners.org)

***JACKSONVILLE, FL (ORDINANCE APPLIES TO CITY)***

- Background check only after applicant selected for hire
- Incorporates EEOC criteria in individualized assessment
- Right to appeal denial of employment

In 2008, the City Council adopted an ordinance reforming both its hiring procedures and its contractor bidding policies. In July 2009, the City’s Human Resources Department released the revised standard. The directive states that department heads will “not inquire about or consider criminal background check information in making a hiring decision.” Instead, “criminal information disclosure is required as part of the post-offer new hire process.” (emphasis in original). The application instructions even encourage people with a criminal record to apply for city jobs. The criminal background check screening is centralized in the Human Resources Department. Moreover, the screening process requires taking into account the specific duties of the job, the age of the offense, and rehabilitation. Denied



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applicants may appeal to Human Resources. Contractors are required to tally job opportunities for people with criminal records and report back to the City.

### **Jacksonville Resources**

Jacksonville City Council Ordinance (Nov. 10, 2008), [available here](#)

Jacksonville Human Resources Directive (July 8, 2009), [available here](#)

Jacksonville Background Screening Summary (May 10, 2010), [available here](#)

### **Jacksonville Contact**

Employee Services Department

(904) 630-1287

### ***BRIDGEPORT, CT (CIVIL SERVICE RULES APPLY TO CITY)***

- Incorporates EEOC criteria in individualized assessment
- Right to appeal denial of employment

In October 2009, Bridgeport's City Council ratified changes to the City's civil service rules regarding criminal history investigations of applicants. Under the rules, the Personnel Director will seek information about applicants' criminal histories only after the applicant has been found "otherwise eligible" to take the civil service examination. The initial employment application includes a disclaimer that criminal history information will be sought later in the application or examination process. Candidates who are disqualified because of their criminal record have the right to appeal the Personnel Director's decision to the Civil Service Commission. The Commission has the authority to "grant the appellant such relief as the Commission deems appropriate or to deny the appeal."

### **Bridgeport Resource**

Bridgeport Resolution Amending Civil Service Rules (Oct. 5, 2009), [available here](#)

### **Bridgeport Contact**

Nadine Nevins, Managing Attorney

[Connecticut Legal Services](#)

[nnevins@connlegalservices.org](mailto:nnevins@connlegalservices.org)

### ***KALAMAZOO, MI (CITY MANAGER HIRING POLICY APPLIES TO CITY)***

In January 2010 the city manager announced that the city would no longer ask about prior criminal history on its applications for employment. This decision came after months of pressure from a newly formed coalition, spearheaded by the Community Workers Center of Kalamazoo and convened by the Michigan Organizing Project. Members of the coalition continue to demand similar changes from other local units of government and eventually from the private sector.

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**Kalamazoo Contact**

[Michigan Organizing Project](#)

(269) 344-2423

**MEMPHIS, TN (ORDINANCE APPLIES TO CITY)**

- Incorporates EEOC criteria in individualized assessment
- Right to appeal denial of employment
- Provides copy of background check report

In June 2010, the Memphis City Council passed an ordinance to reduce barriers to employment for the City's estimated 8,915 citizens on probation or parole. The ordinance bans the box and, "except as otherwise dictated by state and federal law," permits inquiry into an applicant's criminal history only after the applicant has been determined to be otherwise qualified. However, the ordinance still requires applicants to complete a form listing their entire criminal history prior to the City conducting a background check.

**Memphis Resource**

Memphis City Ordinance (May 18, 2010), [available here](#)

**Memphis Contact**

DeAndre Brown, Executive Director

[Lifeline to Success](#)

[dbrown@lifeline2success.org](mailto:dbrown@lifeline2success.org)

**CINCINNATI, OH (CITY COUNCIL MOTION APPLIES TO CITY)**

- Incorporates EEOC criteria in individualized assessment
- Right to appeal denial of employment
- Provides copy of background check report

In August 2010, the City Council passed a motion in support of fair hiring. The City's employment applications no longer request information on an applicant's criminal history and background checks are conducted only after a contingent offer of employment has been made. If a criminal background check is the basis for denying employment, the applicant receives a copy and is given at least 10 business days to dispute the information. When considering an applicant's criminal history in making an employment decision, the Human Resources Department must consider whether the past offense(s) directly relate to the job responsibilities, the age of the person at the time of the offense(s), and any evidence of rehabilitation.

**Cincinnati Resource**

Cincinnati Motion in Support of Fair Hiring (June 9, 2010), [available here](#)

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### **Cincinnati Contact**

Stephen Johnson Grove, Deputy Director for Policy

[Ohio Justice & Policy Center](#)

[sjohnsongrove@ohiojp.org](mailto:sjohnsongrove@ohiojp.org)

### ***DETROIT, MI (ORDINANCE APPLIES TO CITY AND VENDORS)***

- Policies apply to vendors/contractors doing business with the City

In September 2010, Detroit's City Council voted unanimously to ban the box on City applications. The amendments to the Detroit City Code prohibit inquires or consideration concerning criminal convictions for City employees until an applicant is interviewed or is found to be otherwise qualified for employment by the City. The ordinance further revises the City's job application to include a statement that "criminal convictions are not a bar to City employment, provided, that the prior criminal activity is not directly related to the position being sought." As of July 1, 2012, the City has required business vendors and contractors to remove the conviction history question from job applications.

### **Detroit Resource**

Detroit City Ordinance (Sept. 13, 2010), [available here](#)

Detroit Contractor Ordinance (July 1, 2012), [available here](#)

### ***PHILADELPHIA, PA (ORDINANCE APPLIES TO CITY AND PRIVATE EMPLOYERS)***

- Policies apply to public and private employers in the City

On March 31, 2011, Philadelphia became the first city to ban the box for both public and private positions. The ordinance prohibits any employer from asking about, considering, or sharing information regarding non-conviction arrests that are not pending. The ordinance further prohibits inquiry into an applicant's conviction history "during the application process," defined as the time beginning when an applicant inquires about the employment and ending when the employer has accepted an application, or "before and during the first interview." Employers must then wait until after an applicant has completed an application and had a first interview before inquiring into the applicant's conviction history. The ordinance provides an exception from these rules "if the inquires or adverse actions prohibited [above] are specifically authorized by any other applicable law."

### **Philadelphia Resource**

Philadelphia City Council Ordinance (Feb. 17, 2011), [available here](#)

### **Philadelphia Contact**

Brendan Lynch, Staff Attorney

[Community Legal Services of Philadelphia](#)

[blynch@clsphila.org](mailto:blynch@clsphila.org)

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***WASHINGTON, DISTRICT OF COLUMBIA (ORDINANCE APPLIES TO DISTRICT AND PRIVATE EMPLOYERS)***

- Background check only after conditional offer of employment
- Incorporates EEOC criteria in individualized assessment
- Policies apply to public and private employers in the District

In December 2010, the nation’s capital joined the fair chance movement by passing the Returning Citizens Public Employment Inclusion Act of 2010, which went into effect in 2011 for public employers. On July 14, 2014, the Council of the District of Columbia voted unanimously to pass the Fair Criminal Records Screening Act of 2014, which applies to private employers. Under the new law, an employer that employs more than ten employees in the District cannot make any inquiry into an applicant’s conviction until after making a conditional offer of employment. A conditional offer can only be withdrawn for a “legitimate business reason,” which must consider job-relatedness of the offense, time passed, rehabilitation and other factors. A complaint process may be initiated with the Office of Human Rights and violation of the act may result in fines, of which half shall be awarded to the complainant. Reporting requirements are also included in the law such as voluntarily provided data on the hiring of applicants with records.

**Washington, D.C. Resource**

Fair Criminal Record Screening Amendment Act of 2014, [available here](#)

**Washington, D.C. Contact**

Marina Streznewski, Executive Director

DC Jobs Council

[mstreznewski@dcjobscouncil.org](mailto:mstreznewski@dcjobscouncil.org)

***DURHAM, NC (ADMINISTRATIVE POLICY APPLIES TO CITY)***

- Background check only after conditional offer

In February 2011, the City removed questions about criminal history from all employment applications. Potential employees who have been given a conditional offer of employment are subject to a background check.

**Durham Resources**

City Application, [available here](#)

Human Resource Management Memo (April 18, 2011), [available here](#)

“The Benefits of Ban the Box: A Case Study of Durham, NC”, [available here](#)

**Durham Contact**

Daryl V. Atkinson, Staff Attorney

[Southern Coalition for Social Justice](http://SouthernCoalitionforSocialJustice.org)

[daryl@scsj.org](mailto:daryl@scsj.org)

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**COMPTON, CA (RESOLUTION AND HIRING POLICY APPLIES TO CITY AND CONTRACTORS)**

- Background check only after conditional offer
- Policies applies to contractors doing business with the City
- Incorporates EEOC criteria in individualized assessment

On April 5, 2011, the City of Compton passed a resolution to provide equal employment opportunities for people with criminal records, effective July 1, 2011. A criminal background check is delayed until after a conditional offer of employment is made. The city prohibits the consideration of any convictions that are not job-related in the course of an employment decision. Factors to consider include: (1) whether the position provides the opportunity for the commission of a similar offense; (2) whether the individual has committed other offenses since the conviction; (3) the nature and gravity of the offense and; (4) time since the offense. In order to promote model hiring policies, the City requires employers that receive local government contracts to adopt the same hiring policies.

**Compton Resources**

Compton Resolution (April 5, 2011), [available here](#)

Compton Standard Operating Manual (July 1, 2011), [available here](#)

**Compton Contact**

[A New Way of Life](#)

(323) 563-3575

**NEW YORK CITY, NY (EXECUTIVE ORDER APPLIES TO CITY AND SOME CONTRACTORS)**

- Policies applies to City and contractors doing business with the Human Services Department

In August 2011, New York City Mayor Michael Bloomberg announced a \$130 million initiative to increase the education and employment prospects for African American and Latino men. Recognizing the disparate impact of criminal records on these communities and the effect on employment, Mayor Bloomberg also signed Executive Order No. 151 banning the box. The policy prohibits City agencies from asking about an applicant's criminal history on initial job application documents or in the initial interview. When an agency does review an applicant's criminal history, it is limited to considering felony convictions, unsealed misdemeanor convictions, and pending charges. Agencies may request waivers to make additional inquiries. In efforts to expand the policy, the City has now extended the ban the box policy to contractors doing business with the Human Services Department. These contractors may not may inquiries about convictions until after the first interview.

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### **New York City Resources**

Executive Order (Aug. 4, 2011), [available here](#)

Article 23-A of the Correction Law, [available here](#)

### ***CUMBERLAND COUNTY (FAYETTEVILLE, NC AREA; APPLIES TO COUNTY)***

On September 6, 2011, the Cumberland County Commissioners unanimously voted to ban the box and implement a new pre-employment background check policy.

### **Cumberland County Contact**

Julean Self

Assistant Human Resources Director

[jself@co.cumberland.nc.us](mailto:jself@co.cumberland.nc.us)

### ***CLEVELAND, OH POLICY (ADMINISTRATIVE POLICY APPLIES TO CITY)***

On September 26, 2011, the City of Cleveland announced its ban the box policy.

Developed in collaboration with the [Ohio Justice & Policy Center](#), the policy removes the checkbox on city job and civil service testing applications that asks whether the applicant has a felony conviction. Background checks will now be performed only on finalists for a position.

### **Cleveland Contacts**

Natoya Walker Minor, Chief of Public Affairs  
Director for Policy

Mayor's Office

[nwalker@city.cleveland.oh.us](mailto:nwalker@city.cleveland.oh.us)

Stephen Johnson Grove, Deputy

[Ohio Justice & Policy Center](#)

[sjohnsongrove@ohiojpc.org](mailto:sjohnsongrove@ohiojpc.org)

### ***MILWAUKEE COUNTY (MILWAUKEE, WI AREA; RESOLUTION APPLIES TO COUNTY)***

On October 7, 2011, Milwaukee County banned the box for county employment. The resolution further calls on the Director of Intergovernmental Relations to convey to the Governor and Wisconsin State Legislature that the State of Wisconsin should follow the lead of Milwaukee County and extend “ban the box” legislation for all public and private employers in the state.

### **Milwaukee County Resource**

Milwaukee County Resolution, [available here](#)

### **Milwaukee County Contact**

Carol Rubin, President

MOSES

[carolrubin3@gmail.com](mailto:carolrubin3@gmail.com)

### ***RICHMOND, CA (RESOLUTION APPLIES TO CITY AND VENDORS)***

- Background checks only required for some positions

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- Policy applies to vendors/contractors doing business with the City
  - Incorporates EEOC criteria in individualized assessment

On November 22, 2011, the Richmond City Council passed a measure to ban the box for city applications, spurred by the [Safe Return Project-Pacific Institute](#), which [researched](#) the status of formerly incarcerated Richmond residents and is led by formerly incarcerated advocates. In July 2013, the City Council voted to broadly expand the policy to companies with more than 10 employees who do business with the city, as well as their subcontractors. The new ordinance prohibits inquiry into an applicant's criminal history at any time unless a background investigation is required by State or Federal law or the position has been defined as "sensitive."

#### **Richmond, CA Resources**

Richmond City Resolution 110-11 (Nov. 22, 2011), [available here](#)

Richmond City Council Ordinance (July 30, 2013), [available here](#)

Memo from Councilmember Beckles (July 30, 2013), [available here](#)

#### **Richmond, CA Contacts**

Safe Return Project

[group@safereturnproject.org](mailto:group@safereturnproject.org)

#### ***ATLANTIC CITY, NJ (ORDINANCE APPLIES TO CITY AND VENDORS)***

- Background check only after conditional offer
- Policies applies to vendors/contractors doing business with the City
- Incorporates EEOC criteria in individualized assessment
- Right to appeal denial of employment

Approved by Mayor Langford on December 23, 2011, Atlantic City, NJ banned the box for city positions. The ordinance also requires all vendors doing business with the City to have practices, policies and standards that are consistent with the City's, and makes consideration of vendors' hiring policies, practices and standards part of the criteria to be considered when awarding contracts. However, with the adoption of the New Jersey Opportunity to Compete Act, effective March 1, 2015, which applies to all public and private employers that employ 15 or more employees, this local ordinance is superseded by the state law.

#### **Atlantic City Resource**

City of Atlantic City Ordinance (Dec. 7, 2011), [available here](#)

#### ***MUSKEGON COUNTY (NORTHWEST OF GRAND RAPIDS, MI AREA; APPLIES TO COUNTY)***

Recognizing the need to prioritize employment opportunities for successful re-entry, the Muskegon County Board of Commissioners voted to remove inquiry into



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criminal history from the written application for all opportunities unless required by local, state, or federal law.

**Muskegon County Resource**

Resolution (Jan. 12, 2012), [available here](#)

**Muskegon County Contact**

Chairman Mahoney

[commissioners@co.muskegon.mi.us](mailto:commissioners@co.muskegon.mi.us)

***CARSON, CA (RESOLUTION APPLIES TO CITY)***

- Incorporates EEOC criteria in individualized assessment

On March 6, 2012, the City Council of Carson passed a resolution to support ban the box efforts. The resolution describes ban the box as delaying disclosure of past convictions until after an offer of employment is made. At that point, a separate conviction history form is collected and investigated for an individualized assessment that considers the length of time since the conviction, relevance to the position, and evidence of rehabilitation.

**Carson Resource**

City Council Resolution (March 6, 2012), [available here](#)

**Carson Contact**

[A New Way of Life](#)

(323) 563-3575

***HAMILTON COUNTY, OH (CINCINNATI AREA; APPLIES TO COUNTY)***

- Background check only after conditional offer of employment
- Incorporates EEOC criteria in individualized assessment

In March 2012, the County modified its application for county jobs in order to remove criminal record inquiries from the job application. After a conditional job offer has been made, the county then evaluates criminal history based on the requirements of the job and the nature of the offense. This assessment does not apply to positions where there are statutory prohibitions on hiring people with certain kinds of convictions. If a person is denied, he or she is provided with an explanation of the rejection and may request a copy of the background check that shows the disqualifying offense.

**Hamilton Resource**

Human Resources Policy Manual, [available here](#)

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### **Hamilton Contacts**

David Helm, Assistant Director  
Human Resources Department  
[david.helm@hamilton-co.org](mailto:david.helm@hamilton-co.org)

Lori Chaney, Manager  
Human Resources Department  
[lori.chaney@hamilton-co.org](mailto:lori.chaney@hamilton-co.org)

### ***DAYTON, OH (APPLIES TO CITY)***

- Incorporates EEOC criteria in individualized assessment
- Right to appeal denial of employment

The City lacks a formal policy, but has removed the conviction history question from the job application. The City conducts a background check before the candidate list is sent to the relevant hiring department, but after the candidate list has been narrowed. For non-sensitive positions the City considers the age of the offense and the nature of the conviction. If individuals are denied after this assessment, they have the right to appeal the decision to the Civil Service Board and are also provided a written explanation of the denial.

### **Dayton Contact**

Ken Thomas, Senior Employment Manager  
Civil Service Department  
[ken.thomas@daytonohio.gov](mailto:ken.thomas@daytonohio.gov)

### ***SANTA CLARA COUNTY (SAN JOSE, CA AREA; APPLIES TO COUNTY)***

On May 1, 2012, the County adopted a procedure to remove the question on the job application that requires candidates to disclose criminal conviction histories. Once candidates have been tentatively selected, Human Resources will evaluate the conviction history. The Board of Supervisors supported this reform to eliminate the unnecessary disqualification of job applicants and increase the county's hiring pool of candidates.

### **Santa Clara County Resource**

Santa Clara Employment Application, [available here](#)

### **Santa Clara County Contacts**

Supervisor Dave Cortese  
[dave.cortese@bos.sccgov.org](mailto:dave.cortese@bos.sccgov.org)

Reverend Jeff Moore  
President of NAACP San Jose Chapter  
[info@sanjosenaacp.org](mailto:info@sanjosenaacp.org)

### ***SPRING LAKE, NC (ADMINISTRATIVE POLICY APPLIES TO TOWN)***

- Incorporates EEOC criteria in individualized assessment

Effective June 25, 2012, the Town of Spring Lake adopted a comprehensive statement of policy regarding criminal background checks for positions with the Town. According to the policy, an applicant's conviction will be reviewed on a case-

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by-case basis. The policy offers one of the most comprehensive lists of factors to determine whether there is a “substantial relationship between the conviction and the position” and whether the applicant should be excluded.

### **Spring Lake Resources**

Application, [available here](#)

Administrative Policies and Procedures (July 16, 2012), [available here](#)

### **Spring Lake Contact**

Daryl V. Atkinson, Staff Attorney

[Southern Coalition for Social Justice](#)

[daryl@scsj.org](mailto:daryl@scsj.org)

### ***NEWPORT NEWS, VA (ADMINISTRATIVE POLICY APPLIES TO CITY)***

- Incorporates EEOC criteria in individualized assessment

In a memo dated July 13, 2012 from the City Manager, the administration outlines a plan to remove the question about conviction histories from city job applications by October 1, 2012. Exempted positions include those in public safety, child welfare, and elder care departments. The memo specifically references the EEOC guidance and the City’s policy of complying with the guidance. The City was petitioned to consider ban the box in May by [Good Seed Good Ground](#), a local non-profit group whose mission is to rebuild the lives of youth. Newport News is the first city in Virginia to ban the box.

### **Newport News Resource**

City Manager and Human Resources Manager Memo (July 13, 2012), [available here](#)

### **Newport News Contact**

Good Seed Good Ground

(757) 244-0199

[info@goodseedgoodground.org](mailto:info@goodseedgoodground.org)

### ***HAMILTON COUNTY, TN (CHATTANOOGA, TN AREA; APPLIES TO COUNTY)***

The County removed all questions relating to criminal history from the county job application in 2012. The procedure was changed to ensure that the application process would be unbiased. The county now runs a background check after selecting a candidate for an open position. If the background check reveals a history, the candidate is allowed to explain the circumstances.

### **Hamilton County Contact**

Mike Dunne, External Communications Manager

Hamilton County Mayor's Office

[michaeld@hamiltontn.gov](mailto:michaeld@hamiltontn.gov)

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***CUYAHOGA COUNTY, OH (CLEVELAND, OH AREA; ORDINANCE APPLIES TO COUNTY)***

- Background check only after conditional offer of employment
- Incorporates EEOC criteria in individualized assessment

In August 2012, the County Council passed an ordinance that prohibits the County from inquiring about convictions on job applications. The Council recognized that only considering conviction history after a conditional job offer “promotes the fair consideration of all applicants for employment and contributes to the County’s reentry efforts.” The ordinance requires the following factors to be considered: the nature of the conviction, the length of time since the conviction, the specific job duties of the position, and any evidence of rehabilitation. The ordinance went into effect on September 30, 2012.

**Cuyahoga County Resources**

Ordinance No. 02012-0005 (Aug. 28, 2012), [available here](#)

Cuyahoga County Code Section 306, [available here](#)

***NEWARK, NJ (ORDINANCE APPLIES TO CITY, PRIVATE EMPLOYERS, LICENSING, AND HOUSING)***

- Background check only after conditional offer
- Background checks only required for some positions
- Applies to private employers, licensing, and housing
- Incorporates EEOC criteria in individualized assessment
- Right to appeal denial of employment
- Provides copy of background check report

On September 19, 2012, the Municipal Council passed a comprehensive ordinance. The ordinance applies to the City, private employers, local licensing, and to housing as well. Inquiries into an applicant’s criminal history are delayed until a conditional offer of employment is made by the employer, and there is a limited “lookback” period for offenses, ranging from eight years for indictable offenses and five years for disorderly persons convictions or municipal ordinance convictions. However, with the adoption of the New Jersey Opportunity to Compete Act, effective March 1, 2015, which applies to all public and private employers that employ 15 or more employees, this local ordinance is superseded by the state law.

**Newark Resources**

Ordinance #12-1630 (Sept. 19, 2012), [available here](#)

**Newark Contact**

[New Jersey Institute for Social Justice](#)

(973) 624-9400

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***SUMMIT COUNTY, OH (AKRON, OH AREA; APPLIES TO COUNTY)***

- Background checks only required for some positions
- Incorporates EEOC criteria in individualized assessment

In September 2012, based on the recommendation of the Human Resources Department, the Summit County Executive, Russell M. Pry, authorized the removal of conviction history questions from the job application. Background checks are only required for security-sensitive positions and are conducted after the interview. If an applicant has a conviction, then the County considers the age and nature of the offense and the duties of the relevant job position.

**Summit County Contact**

Christine Higham, Deputy Director  
Human Resources Department  
[chigham@summitoh.net](mailto:chigham@summitoh.net)

***DURHAM COUNTY (DURHAM, NC AREA; ADMINISTRATIVE POLICY APPLIES TO COUNTY)***

- Background check only after applicant selected for hire
- Incorporates EEOC criteria in individualized assessment
- Right to appeal denial of employment
- Provides copy of background check report

Effective October 1, 2012, the County does not inquire into an applicant's criminal history on an initial employment application form, unless explicitly mandated by law. The threshold for inquiry is after an applicant's credentials have been reviewed, it has been determined that the applicant is otherwise qualified for a position, and the applicant has been recommended for hire by the department where the vacancy exists. Records of criminal arrests, dismissals, or convictions which have been expunged may not be used. The policy explicitly incorporates language from the 2012 updated EEOC guidance—for example, applicants are provided the opportunity for an individualized assessment.

**Durham County Resources**

Administrative Procedure (effective Oct. 1, 2012), [available here](#)  
“The Benefits of Ban the Box: A Case Study of Durham, NC”, [available here](#)

**Durham County Contact**

Daryl V. Atkinson, Staff Attorney  
[Southern Coalition for Social Justice](http://SouthernCoalitionforSocialJustice.org)  
[daryl@scsj.org](mailto:daryl@scsj.org)

***CARRBORO, NC (APPLIES TO TOWN)***

- Incorporates EEOC criteria in individualized assessment

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On October 16, 2012, the Carrboro Board of Alderman voted unanimously to ban the box on Town of Carrboro job applications. The [Orange County Partnership to End Homelessness](#) initially proposed the measure.

#### **Carrboro Resources**

Employment application, [available here](#)

Human Resources Memo (Oct. 16, 2012), [available here](#)

#### ***WILMINGTON, DE (MAYORAL EXECUTIVE ORDER AND CITY COUNCIL RESOLUTION APPLY TO CITY)***

- Background check only after conditional offer

On December 6, 2012, the Wilmington City Council passed a resolution urging the City's Administration to ban the box on City employment applications. In response, Mayor Baker signed Executive Order 2012-3 on December 10, 2012, banning the box on initial job applications with the City. Wilmington will now conduct criminal background checks on applicants for non-uniformed positions after a conditional offer of employment has been provided.

#### **Wilmington Resources**

Executive Order 2013-3, [available here](#)

City Council Resolution 12-086, [available here](#)

#### ***PITTSBURGH, PA (ORDINANCE APPLIES TO CITY AND CONTRACTORS)***

- Policies applies to vendors/contractors doing business with the City
- Right to appeal denial of employment

On December 17, 2012, the Pittsburgh City Council passed two ban the box ordinances; one that applies to city employment and one that applies to contractors. The [Formerly Convicted Citizens Project](#) worked on the campaign for two years.

#### **Pittsburgh Resources**

Ordinance 2012-0013, applies to city positions, [available here](#)

Ordinance 2012-0015, applies to contractors, [available here](#)

#### **Pittsburgh Contact**

Dean Williams, Director

[Formerly Convicted Citizens Project](#)

(412) 295-8606

[fccpitt@gmail.com](mailto:fccpitt@gmail.com)

#### ***ATLANTA, GA (ORDINANCE APPLIES TO CITY)***

- Provides copy of background check

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On January 1, 2013, the City removed the conviction history question from its job application with mayoral support. In October 2014, the City Council unanimously voted to codify the policy in ordinance. Under the ordinance, the City may only inquire into an applicant's conviction history once it has determined that the applicant is otherwise qualified for the position. If the City then makes an adverse employment action based on the results of the background check, the City must notify the applicant of the decision within 30 days and provide the applicant with a copy of the background check highlighting the disqualifying convictions.

#### **Atlanta Resource**

Ordinance No. 14-O-1399 (Oct. 6, 2014), [available here](#)

#### **Atlanta Contact**

Charmaine Davis, Georgia State Director & Shannan Reaze, Organizer  
[9to5](#) and [9to5 Atlanta](#)  
[Charmaine@9to5.org](mailto:Charmaine@9to5.org); [Shannan@9to5.org](mailto:Shannan@9to5.org)

Marilynn Winn  
Women on the Rise  
[marilynn@rjactioncenter.org](mailto:marilynn@rjactioncenter.org)

#### ***TAMPA, FL (ORDINANCE APPLIES TO CITY)***

- Background check after conditional offer

On January 14, 2013, the Mayor of Tampa signed the ban the box ordinance approved by the City Council. Advocates in Tampa continue to work on expanding the ordinance to include contractors.

#### **Tampa Resource**

Ordinance 2013-3 (Jan. 14, 2013), [available here](#)

#### **Tampa Contact**

Sharon Streater, HOPE Lead Organizer  
[HOPE](#)  
[hopeinc@fdn.com](mailto:hopeinc@fdn.com)

#### ***CANTON, OH (CIVIL SERVICE COMMISSION RULES APPLIES TO CITY)***

- Incorporates EEOC criteria in individualized assessment

The Canton Civil Service Commission has amended the civil service examination rules. Under the new amendment, the Civil Service Commission will now examine applicants and may certify as eligible a person convicted of a felony or misdemeanor who is not precluded from holding a specific position under federal or state law, provided the conviction does not bear a direct and substantial relationship to the position. To determine whether a conviction bears a direct and substantial



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relationship to the position, the Human Resources Director will consider a list of factors, including EEOC-type factors.

#### **Canton Resource**

Rule IV, Examinations, Section 15, Amendment, [available here](#)

#### **Canton Contact**

Joseph Martuccio, Law Director

[City of Canton](#)

[joe.martuccio@cantonohio.gov](mailto:joe.martuccio@cantonohio.gov)

#### ***RICHMOND, VA (RESOLUTION APPLIES TO CITY)***

On March 25, 2013, the Richmond City Council unanimously passed a resolution to ban the box on City job applications. Except when required by federal or state law or for positions that the City Council, by resolution, has determined should be exempt, initial job applications may no longer inquire into an applicant's criminal conviction history. Attached to the resolution is a document that includes those positions determined by the City Council to be exempt from the ban the box ordinance.

#### **Richmond Resource**

Resolution No. 2013-R, 87-85 (March 25, 2013), [available here](#)

#### **Richmond Contact**

Richard Walker, Founder & CEO

[Bridging the Gap in Virginia](#)

[rwalker@bridgingthegapinvirginia.org](mailto:rwalker@bridgingthegapinvirginia.org)

#### ***KANSAS CITY, MO (ORDINANCE APPLIES TO CITY)***

- Incorporates EEOC criteria in individualized assessment

Recognizing the role of employment in reducing recidivism, Kansas City joined the movement to ban the box on April 4, 2013. Interestingly, the ordinance prohibits the City from using or accessing the following criminal records information: records of arrests not followed by valid conviction; convictions which have been annulled or expunged; pleas of guilty without conviction; and misdemeanor convictions for which no jail sentence can be imposed. Further, suspended imposition of sentence is not considered a conviction for purposes of the ordinance. While the ordinance is limited to City hiring, private employers are urged to adopt fair hiring practices that encourage the rehabilitation of people with criminal records.

#### **Kansas City Resource**

Rule IV, Examinations, Section 15, Amendment, [available here](#)

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**Kansas City Contact**

[Kansas City Human Relations Department](#)

(816) 513-1836

[hrdgeneral.inquiries@kcmo.org](mailto:hrdgeneral.inquiries@kcmo.org)

**PORTSMOUTH, VA (ADMINISTRATIVE POLICY APPLIES TO CITY)**

On June 2013, the Portsmouth City Manager made the administrative decision to ban the box. The City Manager notified the City Council that City employment applications would no longer request criminal history information from job applicants.

**Portsmouth Resource**

Letter from Portsmouth Human Resources Director (July 2013), [available here](#)

**Portsmouth Contact**

James Bailey, Regional Director

[CURE Virginia, Inc.](#)

[jbailey383@aol.com](mailto:jbailey383@aol.com)

**BUFFALO, NY (ORDINANCE APPLIES TO CITY, VENDORS, AND PRIVATE EMPLOYERS)**

- Applies to public and private employers and vendors

On June 11, 2013, the Common Council of Buffalo banned the box for public and private employers within the city of Buffalo as well as for vendors who do business with the city. The ordinance permits consideration of a candidate's criminal history only after an application has been submitted and not before the initial interview.

**Buffalo Resource**

Ordinance Amendment (June 2013), [available here](#)

**Buffalo Contact**

Jeffrey M. Conrad, Western New York Regional Director

[Center for Employment Opportunities](#)

(716) 842-6320 ext 501

[jconrad@ceoworks.org](mailto:jconrad@ceoworks.org)

**NORFOLK, VA (ADMINISTRATIVE POLICY APPLIES TO CITY)**

- Incorporates EEOC criteria in individualized assessment

On July 23, 2013, the Norfolk Assistant City Manager made a presentation to the City Council informing the Council that the City had decided to administratively ban the box on all City applications except for those positions that are deemed sensitive in nature. The City will continue with the current practice of reviewing the criminal

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history of all applicants by weighing the gravity of the offense, the length of time since conviction, and whether the conviction is applicable to the job.

### **Norfolk Resources**

Announcement of the administrative policy (July 2013, starts at 37:38 min mark), [available here](#)

Presentation by Assistant City Manager (July 2013), [available here](#)

### **Norfolk Contact**

James Bailey, Regional Director

[CURE Virginia, Inc.](#)

(713) 582-1316

[jbailey383@aol.com](mailto:jbailey383@aol.com)

### **PASADENA, CA (ADMINISTRATIVE POLICY APPLIES TO CITY)**

In July 2013, the City Manager removed the conviction history question from the city job application.

### **Pasadena Contacts**

Jaylene Moseley

Flintridge Center

[jaylene@flintridge.org](mailto:jaylene@flintridge.org)

Tiffany Jacobs-Quinn, Human Resources Manager

City of Pasadena Human Resources Department

[tjacobsquinn@cityofpasadena.net](mailto:tjacobsquinn@cityofpasadena.net)

### **PETERSBURG, VA (RESOLUTION APPLIES TO CITY)**

On September 3, 2013, the Petersburg City Council adopted a resolution to amend the City's job applications to remove inquiry into an applicant's criminal history. The Council had directed the Human Resources department to provide information on ban the box. The Director of Human Resources submitted a memo that recommended the Council adopt the ban the box resolution. The City continues to use a supplemental questionnaire to obtain criminal history information from applicants applying to safety sensitive and/or security related positions.

### **Petersburg Resources**

Petersburg Memo and Resolution, [available here](#)

Petersburg Employment Application, [available here](#)

Petersburg Supplemental Questionnaire, [available here](#)

### **VIRGINIA BEACH, VA (ADMINISTRATIVE POLICY APPLIES TO CITY)**

- Background check after conditional offer of employment

The City removed the conviction history inquiry from its general job application in November 2013. The Human Resources Department proposed the change, which was then reviewed by the City Attorney and approved by the City Manager.

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According to the policy, background checks are conducted on all applicants who are conditionally offered employment with the City. The inquiry takes into account the nature of the offense and its relation to the work sought. If an applicant is denied a position because of information on their background check, the applicant may ask about the information that contributed to the rejection.

### **Virginia Beach Resources**

City Job Application, [available here](#)

Human Resources Memorandum (Oct. 16, 2013), [available here](#)

Announcement to Employees, [available here](#)

### **Virginia Beach Contact**

Bill Edwards, Manager of Staffing & Compensation

Department of Human Resources

[wedwards@vbgov.com](mailto:wedwards@vbgov.com)

### ***AKRON, OH (ADMINISTRATIVE POLICY APPLIES TO CITY)***

- Incorporates EEOC criteria in individualized assessment
- Right to appeal

On October 29, 2013, the Civil Service Commission adopted several policy changes for the city's approximately 1,800 jobs. Under the revised policy, applicants to non-safety-sensitive positions need not check the box asking about convictions. The policy requires a background check before applicants are certified for an interview. If the background check reveals a conviction, then a committee evaluates a candidate's suitability for the job based on factors including job-relatedness and time passed since the conviction. A candidate who is rejected may appeal the decision to the personnel director. An appeal allows the applicant an opportunity to present rehabilitation or relevant evidence.

### **Akron Resource**

Conviction Records Policy for Classified Positions, [available here](#)

### **Akron Contact**

Kris Rininger, Personnel Analyst II

Personnel Department

[krininger@akronohio.gov](mailto:krininger@akronohio.gov)

### ***CLEARWATER, FL (ADMINISTRATIVE POLICY APPLIES TO CITY)***

- Incorporates EEOC criteria in an individualized assessment

At the recommendation of the City Attorney, the City removed the conviction record inquiry from its employment application in 2013 to comply with the related EEOC guidance. Criminal background checks are required for all applicants, but are not

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conducted until after the City narrows down its list of qualified candidates. In addition, the City follows the EEOC's guidance when determining whether a conviction relates to the position for which an applicant has applied. The background check is limited to convictions and the City does not consider arrests.

#### **Clearwater Resource**

Employment Application [available here](#)

#### **Clearwater Contact**

Dina Hyson, Human Resources Manager  
(727) 562-4871  
[dina.hyson@myclearwater.com](mailto:dina.hyson@myclearwater.com)

#### ***MASSILLON, OH (CIVIL SERVICE REQUIREMENT APPLIES TO CITY)***

- Incorporates EEOC criteria in individualized assessment

On January 3, 2014, the Massillon Civil Service Commission voted to adopt a “ban the box” policy and disclosure requirement for the City. The City will no longer seek criminal history information from applicants on initial job applications. After the City determines the best candidates for the position, it will ask about criminal history information during the interview. The City will also continue to perform criminal background checks. While the City will consider specific factors, no appeal or waiver process is outlined in the memo explaining the policy.

#### **Massillon Resource**

Massillon Civil Service Commission Letter (Jan. 17, 2014), [available here](#)

#### ***NEW ORLEANS, LA (ADMINISTRATIVE POLICY APPLIES TO CITY)***

- Incorporates EEOC criteria in individualized assessment
- Provides copy of background check report

On January 10, 2014, the City of New Orleans Chief Administrative Office released a policy memorandum announcing the City's new Policy for Review of Employment Candidates' Criminal History (Ban the Box). Wishing to safely remove barriers that impede otherwise qualified individuals from obtaining employment with the City, New Orleans will no longer request criminal history information from job applicants until after they have been interviewed and found to be otherwise qualified for the position. In addition, the applicant will receive a copy of his or her background check and has an opportunity to comment on the record prior to a final employment decision.

#### **New Orleans Resource**

New Orleans Policy Memorandum No. 129 (Jan. 10, 2014), [available here](#)

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***NEW CASTLE COUNTY (WILMINGTON, DE AREA; ADMINISTRATIVE POLICY APPLIES TO COUNTY)***

At the encouragement of the County Council Pro Tempore, New Castle County Executive Gordon signed an executive order removing criminal conviction history information from the County's non-uniformed employment applications on January 28, 2014, saying, "When people have paid their debt to society, they are ready to work and become contributing members of the community once again."

**New Castle County Resource**

New Castle County Executive Order Press Release (Feb. 14, 2014), [available here](#)

***DANE COUNTY (MADISON, WI AREA; ADMINISTRATIVE POLICY APPLIES TO COUNTY)***

When approached by Madison Organizing in Strength, Equity and Solidarity (MOSES) about banning the box for county job applications, Dane County Executive Joe Parisi needed no convincing. As a state legislator in 2009, Parisi had unsuccessfully pushed a bill to ban the box at the state level. After speaking with MOSES, Parisi removed questions of criminal history from the county application in February 2014 saying, "We don't have to condone what they did to get in trouble, but I, personally, want people who've served their debt to society to get back into the workforce."

**Dane County Resource**

Dane County Application, [available here](#)

**Dane County Contact**

Carol Rubin, President

MOSES

[carolrubin3@gmail.com](mailto:carolrubin3@gmail.com)

***INDIANAPOLIS, IN (ORDINANCE APPLIES TO CITY, COUNTY, LICENSING, AND VENDORS)***

- Policies apply to vendors/contractors doing business with the City
- Incorporates EEOC criteria in individualized assessment

On February 24, 2014, the Consolidated City of Indianapolis and Marion County (City) passed a fair chance ordinance by 26-2 with the support of Republican Mayor Greg Ballard. The ordinance prohibits City or County agencies and vendors from inquiring into an applicant's conviction history until after the first interview. If no interview is conducted, the employer is prohibited from making inquiries or gathering any information regarding the applicant's criminal convictions.

**Indianapolis Resource**

Indianapolis Ordinance (March 7, 2014), [available here](#)

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### **Indianapolis Contacts**

Shoshanna Spector, Executive Director

[IndyCAN](#)

[shoshanna@indykan.org](mailto:shoshanna@indykan.org)

Councilmember Vop Osili

[City of Indianapolis, City Council](#)

[voposili@gmail.com](mailto:voposili@gmail.com)

### ***CHARLOTTE, NC (ADMINISTRATIVE POLICY APPLIES TO CITY)***

On February 28, 2014, Charlotte City Manager Ron Carlee announced that the City had “banned the box” for City applications. The Charlotte Human Resources director said she expected the number of applications for city jobs to increase as a result of the decision.

### **Charlotte Resource**

Charlotte Human Resources Pre-Employment Background Check Policy, [available here](#)

### **Charlotte Contact**

Daryl V. Atkinson, Staff Attorney

[Southern Coalition for Social Justice](#)

[daryl@scsj.org](mailto:daryl@scsj.org)

### ***CHARLOTTESVILLE, VA (ADMINISTRATIVE POLICY APPLIES TO CITY)***

In March 2014, the City removed the question about conviction history from the city job application. “This is another example of our commitment to being a City of Second Chances for ex-offenders who are searching for meaningful employment,” said the mayor. The City will continue to conduct background checks before making final employment offers.

### **Charlottesville Resources**

Press Release (March 24, 2014), [available here](#)

City Council Minutes (April 7, 2014), [available here](#)

### **Charlottesville Contact**

Galloway Beck, Director

[beck@charlottesville.org](mailto:beck@charlottesville.org)

### ***LOUISVILLE, KY (ORDINANCE APPLIES TO CITY AND VENDORS)***

- Policies applies to vendors/contractors doing business with the City
- Incorporates EEOC criteria in individualized assessment

On March 13, 2014, the Louisville Metro Council unanimously passed a fair chance ordinance. The bipartisan victory was praised by Mayor Fischer as “compassionate legislation.” The ordinance prohibits City agencies from inquiring into an applicant’s conviction history until after the applicant has been found “otherwise qualified.” The ordinance states that the City prefers to do business with vendors who have adopted policies that are consistent with the City, and that consideration



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of vendors' criminal history policies will be part of the performance criteria used by the City when awarding contracts.

#### **Louisville Resource**

Louisville Metro Council Ordinance (March 13, 2014), [available here](#)

#### **Louisville Contact**

Robert Owens, Lead Organizer

[CLOUT](#)

[clout@bellsouth.net](mailto:clout@bellsouth.net)

#### ***ALEXANDRIA, VA (ADMINISTRATIVE POLICY APPLIES TO CITY)***

- Background check after conditional offer of employment

On March 19, 2014, the City Manager of Alexandria released a policy memorandum announcing the City's new ban the box policy. Pursuant to the new policy, inquiries regarding prior criminal history will only be made after a conditional offer of employment has been issued. The City Manager notes that implementation of this policy is likely to increase equity in the recruitment process, broaden the pool of candidates seeking City employment, and provide Alexandrians with records a better chance at achieving gainful employment.

#### **Alexandria Resource**

Alexandria Policy Memorandum (March 19, 2014), [available here](#)

#### ***YOUNGSTOWN, OH (RESOLUTION APPLIES TO CITY)***

- Background check after conditional offer of employment

On March 19, 2014, the city council voted unanimously to support a resolution to "ban the box" from city employment applications with the support of the mayor. Under the resolution, background checks are conducted only after the city is prepared to make an offer of employment.

#### **Youngstown Resource**

Resolution (March 19, 2014), [available here](#)

#### **Youngstown Contact**

Rebecca Soldan, Community Organizer

[Rebecca@mvorganizing.org](mailto:Rebecca@mvorganizing.org)

[Mahoning Valley Organizing Collaborative \(MVOC\)](#)

#### ***EAST LANSING, MI (RESOLUTION APPLIES TO CITY)***

Passed unanimously by the City Council on April 15, 2014, East Lansing's ban the box policy was introduced by Mayor Nathan Triplett. During discussion, Mayor Triplett noted his support of the policy was motivated by the need to "remove

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unnecessary bias from the pre-screening stage of the [hiring] process” and to make East Lansing a model employer in the state.

#### **East Lansing Resources**

Resolution (April 15, 2014), [available here](#)

Recording of City Council meeting, [available here](#)

#### **East Lansing Contact**

Nathan Triplett, Mayor

[ntriplett@gmail.com](mailto:ntriplett@gmail.com)

#### ***ANN ARBOR, MI (RESOLUTION APPLIES TO CITY)***

- Background check after conditional offer of employment
- Incorporates EEOC criteria in individualized assessment

On May 5, 2014 the Ann Arbor City Council voted unanimously to ban the box for city employment. The new resolution declares the City’s policy of not barring employment based on conviction history unless the exclusion is job-related for the position in question and consistent with business necessity. If the City seeks to deny an applicant based on conviction history, the City must perform an individualized assessment that takes into account the factors recommended by the EEOC.

#### **Ann Arbor Resource**

Resolution (May 5, 2014) [available here](#)

#### ***ROCHESTER, NY (ORDINANCE APPLIES TO CITY, VENDORS, AND PRIVATE EMPLOYERS)***

- Applies to public and private employers and vendors

On May 20, 2014, the Rochester City Council unanimously passed an ordinance for fair employment screening. It was signed by the Mayor two days later. Modeled on the Buffalo ordinance, all public and private employers within the City of Rochester are prohibited from inquiring into an applicant’s conviction history on an initial job application and must wait until after the first interview.

#### **Rochester Resource**

Ordinance (May 22, 2014), [available here](#)

#### **Rochester Contacts**

Valerie White-Whittick, Mentor Coordinator

Judicial Process Commission

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Mike Bleeg, Coordinator

Safer Monroe Area Reentry Team

[mbleeg@rochester.rr.com](mailto:mbleeg@rochester.rr.com)

Reyna Ramolete Hayashi, Workers’ Rights Attorney

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[Empire Justice Center](#)  
[rhayashi@empirejustice.org](mailto:rhayashi@empirejustice.org)

***GENESEE COUNTY (FLINT, MI AREA; RESOLUTION APPLIES TO COUNTY)***

- Background check after conditional offer of employment

Recognizing that asking about conviction history on job applicants may introduce bias into the hiring process, Genesee County Commissioners voted unanimously to “ban the box.” The new policy, which went into effect on June 1, 2014, requires the County to wait until a conditional offer of employment is to be made before conducting a background check and ensures that applicants be provided an opportunity to discuss the circumstances of his or her conviction history.

**Genesee County Resource**

Resolution, [available here](#)

***DANVILLE, VA (RESOLUTION APPLIES TO CITY)***

- Background check after conditional offer of employment
- Incorporates EEOC criteria in an individualized assessment

On June 3, 2014, the Danville Chapter of Virginia Organizing wrote a letter supporting a “ban the box” initiative in Danville. In response, Mayor Sherman Saunders signed a resolution that amended the city employment application to omit questions about conviction history. Under the new policy, background checks are conducted only after there has been a conditional offer of employment. The nature and age of the offense and the nature of the job are considered. Applicants are also given the opportunity to explain their conviction history.

**Danville Resource**

Resolution to Amend City Employment Application (June 17, 2014), [available here](#)

**Danville Contacts**

Marty Jackson  
Danville Chapter, Virginia Organizing  
(434) 429-8109

Sara Weller, Director  
Department of Human Resources  
[sara.weller@danvilleva.gov](mailto:sara.weller@danvilleva.gov)

***PORTLAND, OR (ADMINISTRATIVE POLICY APPLIES TO CITY)***

In July 2014, the City of Portland removed language from its employment applications that stated applicants may be required to sign a criminal history statement. Questions about criminal background, if relevant to a position, would be asked later in the hiring process. “This is a win-win,” said Mayor Charlie Hales. “This removes a barrier to employment with the City, which will attract a more diverse pool of applicants to City jobs—one step in addressing the collective impact of crime.” [Local advocates](#) are seeking to expand the policy to private employers.

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### **Portland Resource**

Portland Press Release (July 9, 2014), [available here](#)

### ***FULTON COUNTY (ATLANTA, GA AREA; ADMINISTRATIVE POLICY APPLIES TO COUNTY)***

- Background checks only required for some positions
- Incorporates EEOC criteria in individualized assessment
- Provides copy of background check report

On July 16, 2014, Fulton County issued a policy and procedure for fair criminal record screening. The policy explicitly incorporates the EEOC guidance. The Personnel Department is directed to remove questions about convictions from job application forms. The County is prohibited from inquiring into criminal history during the application process or before or during the first interview. An applicant need not disclose any arrests not leading to convictions, erased convictions, or juvenile adjudications. Background checks are limited to sensitive job positions. Applicants are notified of any adverse action and are provided a copy of the background check and notified of the conviction that is deemed job-related.

### **Fulton County Resource**

Fair Criminal Record Screening Policy and Procedure (July 16, 2014), [available here](#)

### **Fulton County Contact**

Charmaine Davis, Georgia State Director & Shannan Reaze, Organizer  
[9to5](#) and [9to5 Atlanta](#)  
[Charmaine@9to5.org](mailto:Charmaine@9to5.org); [Shannan@9to5.org](mailto:Shannan@9to5.org)

Marilynn Winn  
Women on the Rise  
[marilynn@rjactioncenter.org](mailto:marilynn@rjactioncenter.org)

### ***SPOKANE, WA (ADMINISTRATIVE POLICY APPLIES TO CITY)***

Spokane Mayor David Condon directed the Human Resources Department by letter on July 31, 2014 to draft policies and procedures that would delay a background check inquiry until the City has determined that the applicant meets the minimum qualifications for the job.

### **Spokane Resource**

Letter from Mayor (July 31, 2014), [available here](#)

### **Spokane Contact**

Julie Schaffer, Attorney  
[Center for Justice](#)  
[julie@cforjustice.org](mailto:julie@cforjustice.org)

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***FREDERICKSBURG, VA (ADMINISTRATIVE POLICY APPLIES TO CITY)***

- Background check after conditional offer of employment
- Incorporates EEOC criteria in individualized assessment

In 2014, the Human Resources Department and the City Attorney recommended a “ban the box” policy to the City Manager, who approved the new process. The City only conducts a background check after a conditional offer of employment has been made. If potentially negative information is identified, the City considers the age and nature of the offense in relation to the job position. If an applicant is denied, he or she will receive written notice that includes a description of the disqualifying information as well as the name of the company that ran the background check. The applicant has the opportunity to correct any misreported information.

**Fredericksburg Contact**

Robert F. Bell, Director  
Department of Human Resources  
(540) 372-1028

***TUCSON, AZ (RESOLUTION APPLIES TO CITY)***

- Background checks only required for some positions
- Background check after conditional offer of employment
- Incorporates EEOC criteria in individualized assessment

On August 27, 2014, the City of Tucson committed to removing the question about conviction history from the city job application. On March 17, 2015, a resolution was adopted by the mayor and city council directing the city to identify positions that require background checks and performing them after a contingent offer. The policy is directed to be consistent with the EEOC guidance.

**Tucson Resources**

City Job Application, [available here](#)  
Resolution No. 22373 (March 17, 2015), [available here](#)

**Tucson Contact**

Ellen Katz  
William E. Morris Institute for Justice  
[eskatz@qwestoffice.net](mailto:eskatz@qwestoffice.net)

***FAIRFAX COUNTY, VA (WASHINGTON, D.C. METRO AREA; APPLIES TO COUNTY)***

- Background check after conditional offer of employment

Fairfax County does not inquire about criminal records on its job applications. Public safety jobs and “certain sensitive positions” are the exceptions. Background checks are conducted after a conditional offer. The goal of the policy change was to

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“increas[e] the chances that an applicant will be judged more holistically, reach the interview stage, and hopefully be more likely to be hired.”

#### **Fairfax County Resource**

Statement of Supervisor Catherine M. Hudgins, [available here](#)

#### **Fairfax County Contact**

Susan Woodruff, Director

Fairfax County Department of Human Resources

[susan.woodruff@fairfaxcounty.gov](mailto:susan.woodruff@fairfaxcounty.gov)

#### ***ST. PETERSBURG, FL (ADMINISTRATIVE POLICY APPLIES TO CITY)***

On October 21, 2014, St. Petersburg Mayor Rick Kriseman announced his “City of Opportunity” initiatives related to fair hiring practices. Effective January 1, 2015, the city will remove the question asking city job applicants if they have a criminal record.

#### **St. Petersburg Contacts**

[Pinellas County Ex-Offender Re-Entry Coalition \(PERC\)](#)

[Faith in Florida](#)

#### ***ST. LOUIS, MO (ADMINISTRATIVE POLICY APPLIES TO CITY)***

- Background checks only required for some positions
- Incorporates EEOC criteria in an individualized assessment

As of March 2013, the City no longer automatically disqualified city job applicants with prior felonies. In October 2014, the City removed all questions about conviction history from its job application. The City now only screens later in the hiring process and only for certain sensitive positions. Missouri Senator Jamilah Nasheed stated in support, “Ban the box gives people with records a fair chance to re-enter the workforce and make positive contributions to society.”

#### **St. Louis Resources**

City Job Application, [available here](#)

Mayoral Press Release, [available here](#)

#### **St. Louis Contact**

Richard R. Frank, Director

Personnel Department

(314) 622-4308

#### ***LANCASTER, PA (RESOLUTION APPLIES TO CITY)***

- Background check for finalists
- Incorporates EEOC criteria in an individualized assessment

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By resolution, the City approved a new hiring policy effective October 1, 2014. Applicants will not be asked about a criminal record. Criminal background checks will be performed on finalists. If a finalist has a criminal record, human resources shall consider the nature of the position, accessibility to youth and the elderly, nature of the offense as related to the job duties, time passed, age of the applicant at the time of offense, and facts surrounding the offense.

#### **Lancaster Resources**

City Council approval of resolution, [available here](#)  
Policy memo, [available here](#)

#### ***ROANOKE, VA (ADMINISTRATIVE POLICY APPLIES TO CITY)***

On October 9, 2014, the City Manager indicated at a city council meeting that the question about a job applicant's conviction history would be removed from the initial application for most city positions. By January 2015, the city will have developed a new hiring process intended to provide people with records a fair opportunity at employment.

#### **Roanoke Resource**

City Council Agenda (Oct. 9, 2014), [available here](#)

#### ***YONKERS, NY (ADMINISTRATIVE POLICY APPLIES TO CITY)***

In November 2014, Community Voices Heard worked with the Mayor's office to remove the box asking an application to disclose his or her criminal history.

#### **Yonkers Resources**

Statement from Mayor's Office, [available here](#)  
Job application, [available here](#)

#### **Yonkers Contact**

Juanita Lewis  
Community Voices Heard  
[juanita@cvhaction.org](mailto:juanita@cvhaction.org)

#### ***ARLINGTON COUNTY, VA (ADMINISTRATIVE POLICY APPLIES TO COUNTY)***

In November 2014, the County eliminated questions about convictions from its employment application. "Taking this step reinforces our commitment to fair hiring practices," said the director of the human resources department. Exceptions are for positions related to public safety. Conviction inquiries are delayed until the applicant has an interview. The County conducts background checks on all applicants before confirming employment. Applicants with records are given the opportunity to provide a written explanation of their record. The County explains, "Allowing these candidates to proceed further into the process creates opportunities



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that may otherwise have been lost, and provides candidates with a more level playing field during the application process.”

#### **Arlington County Resources**

Press Release (Nov. 3, 2014), [available here](#)

#### **Arlington County Contact**

Marcy Foster, Director  
Department of Human Resources  
[mfoste@arlingtonva.us](mailto:mfoste@arlingtonva.us)

#### ***MONTGOMERY COUNTY, MD (WASHINGTON D.C. METRO AREA; ORDINANCE APPLIES TO PRIVATE EMPLOYERS AND COUNTY)***

- Applies to private employers and county
- Provides copy of background check
- Complaint process

Consideration of the legislation entailed extensive analysis by the County. The County found that “when people with criminal histories are denied a fair chance at employment, the entire community pays the cost in the form of diminished public safety, increased government spending on law enforcement and social services, and reduced government revenue in the form of lost income and sales taxes.” The law covers employers in the County that have 15 or more full-time employees. Employers may not conduct an investigation of an applicant’s conviction history until after the conclusion of the first interview. If the employer intends to rescind a conditional offer, the employer must provide the applicant with a copy of the background check and specify the disqualifying information and give the applicant seven days to review the information. Applicants may file a complaint with the director of the human rights commission. County Executive Ike Leggett signed the legislation on November 10<sup>th</sup> and the law will take effect on January 1, 2015.

#### **Montgomery County Resources**

Action Packet (Oct. 21, 2014), [available here](#)  
Legislation (Oct. 28, 2014), [available here](#)  
Press Release (Oct. 28, 2014), [available here](#)

#### **Montgomery County Contact**

Neil Greenberger, Legislative Information Officer  
[neil.greenberger@montgomerycountymd.gov](mailto:neil.greenberger@montgomerycountymd.gov)

#### ***KANSAS CITY AND WYANDOTTE COUNTY, KANSAS (“KCK”) (ORDINANCE APPLIES TO CITY)***

- Incorporates EEOC criteria in an individualized assessment

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On November 6, 2014, the Unified Government (UG) Board of Commissioners unanimously voted to pass an ordinance in “KCK” (Kansas City, Kansas) that will eliminate the field requesting disclosure of criminal convictions from the UG employment application. A petition for the change, with over 300 signers, was submitted in September 2014, stating: “We believe that just as all Citizens must pay taxes, all Citizens should have a fair chance at employment that is sustained by those same tax dollars.”

### **KCK Resources**

Agenda and Ordinance (Nov. 6, 2014), [available here](#)

### ***PRINCE GEORGE’S COUNTY, MD (WASHINGTON D.C. METRO AREA; ORDINANCE APPLIES TO PRIVATE EMPLOYERS AND COUNTY)***

- Applies to private employers and county
- Incorporates EEOC criteria in an individualized assessment
- Provides copy of background check report
- Complaint process

On November 19, 2014, the county council unanimously passed a bill that sets fair standards for screening criminal records during the hiring process. The bill is intended to “enhance the health and safety of the community by assisting individuals with criminal records to lawfully provide for themselves and their families.” Under the legislation, an employer is not permitted to inquire about a job applicant’s arrest or conviction record until after a first job interview. In making an employment decision based on a person’s record, employers are only allowed to consider offenses that specifically demonstrate unfitness for the desired position. If an employer decides to rescind a job offer based on a record, they must notify the applicant of that decision, specify the information on which the decision is based, and provide a copy of the background check to the applicant. The county executive signed the bill on December 4, 2014.

### **Prince George’s County Resource**

Ordinance (Nov. 19, 2014), [available here](#)

### ***ALLEGHENY COUNTY, PA (PITTSBURGH, PA AREA; APPLIES TO COUNTY)***

- Background checks only for some positions
- Background checks after conditional offer of employment
- Incorporates EEOC criteria in an individualized assessment

On November 24, 2014, the county executive announced that the county will remove questions regarding criminal history from its employment application. For the positions that do require a background check, it will be conducted only after a conditional offer of employment has been made. A candidate’s criminal history will be evaluated on a case-by-case basis that includes consideration of the age of the

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offense and the nature of the position sought. The human resources director stated that “[the policy will] increase the diversity of our employees and ensure that we reach a greater audience in our efforts to attract the most qualified candidates.”

#### **Allegheny County Resource**

Press Release (Nov. 24, 2014), [available here](#)

#### ***COLUMBIA, MO (ORDINANCE APPLIES TO PRIVATE EMPLOYERS AND CITY)***

- Applies to private employers and city
- Background checks after conditional offer of employment
- Complaint process

On December 1, 2014, the city council unanimously approved a fair chance ordinance that prohibits employers from inquiring into an applicant’s criminal history until after a conditional offer of employment. Under the ordinance, employers are allowed to notify applicants in writing of specific offenses that would disqualify them from a position. Employers are also encouraged to consider the nature of the offense, the time since the offense, and any rehabilitation measures taken since the offense. The city’s Human Rights Commission wrote a letter of support. The Mayor’s Task Force on Community Violence made the initial, formal recommendation to the council.

#### **Columbia Resource**

Supporting documents and ordinance (Dec. 1, 2014), [available here](#)

#### ***POMPANO BEACH, FL (ADMINISTRATIVE POLICY APPLIES TO CITY)***

- Incorporates EEOC criteria in an individualized assessment
- Provides copy of background check report

The City eliminated all questions regarding criminal records from its employment applications in December 2014. Criminal background checks are conducted after an initial interview. According to the Human Resources Director, applicants are notified of the reasons for denial and provided a copy of the background check report.

#### **Pompano Beach Resource**

City Manager’s Memorandum (Dec. 1, 2014), [available here](#)

#### **Pompano Beach Contact**

Vincent Marchione, Human Resources Analyst  
(954) 786-4627  
[vincent.marchione@copbfl.com](mailto:vincent.marchione@copbfl.com)

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***ULSTER COUNTY, NY (KINGSTON, NY AREA; EXECUTIVE ORDER APPLIES TO COUNTY)***

On December 16, 2014, the county executive signed the executive order to remove the conviction history question from the county's job application. Instead, the personnel department will consider convictions only after the first interview. In the press release, the county executive commented that "if we are serious about fighting discrimination and bias, it is simply the right thing to do." The order is effective on January 1, 2015.

**Ulster County Resources**

Executive Order No. 2-2014 (Dec. 16, 2014), [available here](#)

Press Release (Dec. 16, 2014), [available here](#)

***SYRACUSE, NY (ORDINANCE APPLIES TO CITY, LICENSURE, AND CONTRACTORS)***

- Applies to city employment and licensure; and applies to city contractors
- Background checks after conditional offer of employment
- Incorporates EEOC criteria in an individualized assessment

On December 8, 2014 the city council resoundingly voted 8-1 to enact the ordinance. Under the ordinance, the city and its contractors shall not inquire into an applicant's criminal history until an applicant is extended a conditional offer of employment. A conditional offer may be withdrawn if there is a direct relationship between a conviction and the job position or if there is a finding of unreasonable risk. Prior to an adverse action, the applicant is provided with a copy of the criminal history report, which also identifies disqualifying information. The applicant has the opportunity to provide countervailing evidence prior to a final adverse action. As a component of enforcement, the city is required to audit the hiring practices of the city and its contractors. The ordinance is effective March 22, 2015.

**Syracuse Resources**

Syracuse Fair Employment and Licensure Ordinance (Dec. 8, 2014), [available here](#)

Center for Community Alternatives Press Release (Dec. 8, 2014), [available here](#)

**Syracuse Contacts**

Alan Rosenthal and Patricia Worth

[Center for Community Alternatives](#)

[arosenthal@communityalternatives.org](mailto:arosenthal@communityalternatives.org) and [pwarth@communityalternatives.org](mailto:pwarth@communityalternatives.org)

***TALLAHASSEE, FL (ADMINISTRATIVE POLICY APPLIES TO CITY)***

Based on the City Manager's recommendation, on January 28, 2015 the City Commission approved a measure to remove any questions regarding criminal history from applications for employment with the City. The City will conduct a background check after selecting the top candidate(s). The measure supplements

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the existing policy requiring the City to consider how the conviction relates to the job. Arrests are not considered.

#### **Tallahassee Resource**

Tallahassee City Commission Meeting Memorandum, [available here](#)

#### **Tallahassee Contact**

Ellen Blair, Human Resources Director  
(850) 891-8538

#### ***MACON-BIBB COUNTY, GA (ORDINANCE APPLIES TO COUNTY)***

- Provides copy of background check report

On February 17, 2015, county commissioners voted 6-3 to remove any questions from the county application that ask about criminal records. The policy applies to applications for professional licenses as well. Background checks are still required for all applicants for employment, but if an applicant is rejected because of her criminal record, the County must provide the applicant with a copy of the record used and indicate the portions of the record that resulted in disqualification.

#### **Macon-Bibb County Resource**

Macon-Bibb County Commissioners' Ordinance, [available here](#)

#### **Macon-Bibb County Contacts**

Opie D. Bowen; Assistant County Attorney  
(478) 751-7671  
[obowen@maconbibb.us](mailto:obowen@maconbibb.us)

Charmaine Davis, Georgia State Director & Shannan Reaze, Organizer  
[9to5](#) and [9to5 Atlanta](#)  
[Charmaine@9to5.org](mailto:Charmaine@9to5.org); [Shannan@9to5.org](mailto:Shannan@9to5.org)

Marilynn Winn  
Women on the Rise  
[marilynn@rjactioncenter.org](mailto:marilynn@rjactioncenter.org)

#### ***READING, PA (ADMINISTRATIVE POLICY APPLIES TO CITY)***

- Background checks after conditional offer of employment

As of March 9, 2015, applications for employment with the City no longer include any questions relating to an applicant's criminal history. The City still conducts background checks on all applicants, but only after a conditional offer is made.

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***ALBANY, GA (RESOLUTION APPLIES TO CITY)***

- Incorporates EEOC criteria in individualized assessment

Albany's City Commissioners passed a resolution on March 24, 2015 that directs the Human Resources Department to remove from the City's employment application any questions about an applicant's criminal record. The City still conducts background checks on all applicants for City employment once they are selected for an interview. According to the Human Resources Director, the City follows the EEOC guidance and does not generally consider an arrest record. If an application is denied because of an applicant's criminal record, the applicant is notified of the reason for denial and provided an opportunity to dispute inaccuracies and/or present evidence of rehabilitation.

**Albany Resource**

Albany City Commissioners' Resolution [available here](#)

***ALLENTOWN, PA (ORDINANCE APPLIES TO CITY)***

- Background checks after conditional offer of employment

On April 1, 2015, Allentown's City Council voted unanimously to eliminate the criminal history inquiry from applications for City employment. The City will not conduct a background check until after making a conditional offer of employment. Applications for a position as a police officer, firefighter, or 911 operator will still include the criminal conviction inquiry.

Location	Employers:			Background checks only for some positions	Background check only after conditional offer or finalists selected	EEOC criteria	Notice of denial (N); Copy of record (C); Appeal or complaint (A)
	Private	Vendors	Public				
<b>ARIZONA</b>							
1. Tucson			X	X	X	X	A
<b>2. CALIFORNIA (State law)</b>			X				
3. Alameda County			X				
4. Berkeley			X	X		X	
5. Carson			X				
6. Compton		X	X			X	
7. East Palo Alto			X				
8. Oakland			X	X	X	X	N, C, A
9. Pasadena			X				
10. Richmond		X	X	X			
11. San Francisco	X <sup>1</sup>	X <sup>1</sup>	X		X	X	N, C, A
12. Santa Clara County			X				
<b>13. COLORADO (State law)</b>			X			X	A
<b>14. CONNECTICUT (State law)</b>			X			X	N, C
15. Bridgeport			X			X	N, A
16. Hartford		X	X	X	X	X	N, A
17. New Haven		X	X		X	X	N, C, A
18. Norwich			X		X		
<b>19. DELAWARE (State law)</b>			X			X	
20. New Castle County			X				
21. Wilmington			X		X		
<b>FLORIDA</b>							
22. Clearwater			X			X	
23. Jacksonville			X		X	X	N, A
24. Pompano Beach			X				N, C
25. St. Petersburg			X				
26. Tampa			X		X		N
27. Tallahassee			X			X	
<b>28. GEORGIA (State policy)</b>			X				
29. Albany			X			X	N, A
30. Atlanta			X				N, C
31. Fulton County			X	X		X	N, C
32. Macon-Bibb County			X				N, C
<b>33. HAWAII (State law)</b>	X	X	X		X	X	A
<b>34. ILLINOIS (State law)</b>	X	X	X				A



Location	Employers:			Background checks only for some positions	Background check only after conditional offer or finalists selected	EEOC criteria	Notice of denial (N); Copy of record (C); Appeal or complaint (A)
	Private	Vendors	Public				
35. Chicago	X	X	X		X	X	A
INDIANA							
36. Indianapolis		X	X			X	
KANSAS							
37. Kansas City			X			X	
KENTUCKY							
38. Louisville		X	X			X	
LOUISIANA							
39. New Orleans			X	X			C
40. MARYLAND (State law)			X				
41. Baltimore	X	X	X	X	X	X	A
42. Montgomery County	X	X	X				N, C, A
43. Prince George's County	X	X	X			X	N, C, A
44. MASSACHUSETTS (State law)	X	X	X				N, C
45. Boston		X	X	X			N, A
46. Cambridge		X	X			X	N, C, A
47. Worcester		X	X	X		X	N, C, A
MICHIGAN							
48. Ann Arbor			X		X	X	
49. Detroit		X	X				
50. East Lansing			X				
51. Genesee County			X		X		
52. Kalamazoo			X				
53. Muskegon County			X				
54. MINNESOTA (State law)	X	X	X		X	X <sup>2</sup>	N <sup>2</sup>
55. Minneapolis			X	X		X	
56. St. Paul			X	X		X	
MISSOURI							
57. Columbia	X	X	X		X		A
58. Kansas City			X		X	X	
59. St. Louis			X	X			
60. NEBRASKA (State law)			X				
61. NEW JERSEY (State law)	X	X	X				A
62. Atlantic City		X	X		X	X	N
63. Newark	X	X	X	X	X	X	N, C
64. NEW MEXICO (State law)			X			X	N

Location	Employers:			Background checks only for some positions	Background check only after conditional offer or finalists selected	EEOC criteria	Notice of denial (N); Copy of record (C); Appeal or complaint (A)
	Private	Vendors	Public				
<b>NEW YORK</b>							
65. Buffalo	X	X	X		X		
66. New York		X <sup>3</sup>	X				
67. Rochester	X	X	X		X		
68. Syracuse		X	X		X	X	N, C, A
69. Ulster County			X				
70. Yonkers			X				
<b>NORTH CAROLINA</b>							
71. Carrboro			X			X	
72. Charlotte			X				
73. Cumberland County				X			
74. Durham City				X		X	
75. Durham County				X		X	N, C, A
76. Spring Lake				X			N
<b>OHIO</b>							
77. Akron			X			X	A
78. Canton			X		X	X	
79. Cincinnati			X			X	N, C, A
80. Cleveland			X				
81. Cuyahoga County			X		X	X	
82. Dayton			X			X	N
83. Hamilton County			X				
84. Massillon			X			X	
85. Summit County			X	X		X	
86. Youngstown			X		X		
<b>OREGON</b>							
87. Multnomah County			X			X	
88. Portland			X				
<b>PENNSYLVANIA</b>							
89. Allegheny County			X	X	X	X	
90. Allentown			X		X		
91. Lancaster			X		X	X	
92. Philadelphia	X	X	X		X		A
93. Pittsburgh		X	X		X		N
94. Reading			X		X		
<b>95. RHODE ISLAND (State law)</b>	X	X	X				
96. Providence			X				
<b>TENNESSEE</b>							
97. Hamilton County							
98. Memphis			X			X	N, C, A

Location	Employers:			Background checks only for some positions	Background check only after conditional offer or finalists selected	EEOC criteria	Notice of denial (N); Copy of record (C); Appeal or complaint (A)
	Private	Vendors	Public				
<b>TEXAS</b>							
99. Austin			X	X	X		N
100. Travis County			X	X	X	X	
<b>101. VERMONT (State policy)</b>			X				
<b>102. VIRGINIA (State policy)</b>			X			X	
103. Alexandria			X		X		
104. Arlington County			X				
105. Charlottesville			X				
106. Danville			X		X	X	
107. Fairfax County			X		X		
108. Fredericksburg			X		X	X	N
109. Newport News			X			X	
110. Norfolk			X			X	
111. Petersburg			X				
112. Portsmouth			X				
113. Richmond			X				
114. Roanoke			X				
115. Virginia Beach			X		X	X	
<b>WASHINGTON</b>							
116. Seattle	X	X	X	X			N, C, A
117. Spokane			X				
<b>118. Washington D.C.</b>	X	X	X		X	X	A
<b>WISCONSIN</b>							
119. Dane County			X				
120. Milwaukee County			X				

<sup>1</sup> San Francisco Fair Chance Ordinance applies to private employers, not the City and County. The City and County has a separate policy.

<sup>2</sup> Applies only to public employers.

<sup>3</sup> Policies apply to contractors doing business with the Human Services Department.