

**BATAVIA CITY COUNCIL  
CONFERENCE MEETING**

*(Special Business Meeting  
Following Conference Meeting)*

**City Hall - Council Board Room  
One Batavia City Centre  
Monday, January 25, 2016 at 7:00 PM**

**AGENDA**

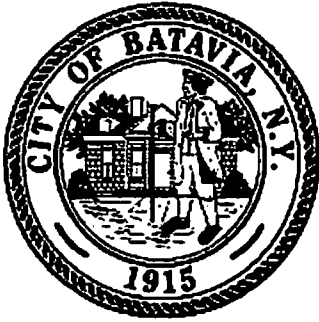
- I. Call to Order
- II. Invocation – Councilperson Briggs
- III. Pledge of Allegiance
- IV. Public Comments
- V. Council Response to Public Comments
- VI. Communications
- VII. Council President Report
  - a. Announcement of the next regular City Council Business meeting to be held on Tuesday, February 9, 2016 at 7:00 p.m. at the City Hall Council Board Room, 2<sup>nd</sup> Floor, City Centre.
- VIII. Public Hearing
  - a. Discontinuation of public use for 40-52 and 56-70 Ellicott Street for sale and redevelopment.
- IX. Changes to Council Meeting Rules
- X. Police Consolidation Study
- XI. Digital Signs
- XII. Close Out Capital Projects
- XIII. Co-operative Purchasing
- XIV. Summit Street Reconstruction Project Bid Award
- XV. Sales Tax Agreement
- XVI. Amend Fire Department 2015-2016 Budget to Reflect Car Seat and Bicycle Grant
- XVII. 2016-2017 Budget Public Hearing

**XVIII. Committee & Board Appointments**

**XIX. STOP-DWI Enhance (Crackdown) Award & STOP DWI Award**


**XX. Executive Session...Real Property**

**XXI. Adjournment**



# City of Batavia

To: Honorable City Council

From: Jason Molino, City Manager 

Date: January 19, 2016

Subject: Changes to Council Meeting Rules

**Background:** At the Organizational Meeting several amendments were requested with respect to the Business Meeting Rules. These issues were researched in reference to Roberts Rules of Order and the City Attorney was conferred with as the City Parliamentarian.

1. A request was made to change Section 3 of the Business Rules, to allow Council members to change a vote after City Council had voted on an issue and the result finalized, without requiring consent from the entire City Council. When an individual Council member casts a vote, the vote is considered an individual action. Once a Council vote is finalized, the vote becomes an action of the City Council, and as such an individual vote cannot be changed unless granted by consent of the City Council.
2. It was requested that under Section 8 of the Business Rules, that an individual not be required to put their name and address in writing to the City Clerk in order to speak at a public comment or public hearing session. Current practice includes individuals signing up with the City Clerk in advance of the meeting, which is then put "in writing" by the City Clerk. There does not appear to be a concern with the current procedure, except that the language in the rules could be clearer in that individuals only need to sign up with the City Clerk prior to the meeting. The appropriate change has been made to the attached rules.
3. A request was made with respect to a Councilperson not wanting to vote and how an abstention would be counted with respect to the voting results. In general, where either a majority vote or a two-thirds vote is required for a motion to pass, abstentions have absolutely no effect on the outcome of the vote since either a majority or two thirds of votes cast need to be in favor of the motion under consideration. For example, if a motion is made to vote on an issue that requires the majority to pass, and there are four (4) "yes" votes, four (4) "no" votes and one (1) abstention, the motion fails, as there needs to be five (5) "yes" votes for a motion to pass. In other words, "yes" votes need to outweigh "no" votes; an abstention is not a "yes" vote.
4. One change was made with respect to the Conference Meeting Rules as the current rules do not reflect the current practice with respect to when public comments are allowed. Current practice in Conference Meetings is that public comments take place prior to the business on the agenda,

however the rules state that public comments are after the business on the agenda. The rules were amended to reflect the current practice.

**Supporting Documents:**

1. A Resolution to Amend the Rules Governing Council Business Meeting and Conference Meeting Rules

**#-2016**

**A RESOLUTION TO AMEND THE RULES GOVERNING COUNCIL BUSINESS MEETING  
AND CONFERENCE MEETING RULES**

**Motion of Councilperson**

**WHEREAS**, the Batavia City Council, pursuant to the City Charter, shall adopt rules governing its procedure, the conduct of its meetings.

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Batavia that the Rules Governing Council Business and Conference Meetings shall be amended as outlined in Attachment A of this resolution.

**Seconded by Councilperson  
and on roll call**

**DRAFT**

## **Attachment A**

### **RULES GOVERNING BUSINESS MEETINGS**

(Adopted 1/18/82, 1/4/10, 1/3/12)

(Amended 11/23/98, 02/25/02, 07/14/03, 01/14/08, 1/8/14, 2/8/16)

**Section 1.** The President of the Council shall conduct all meetings, shall preserve order, maintain dignity and appoint such committees as he may from time to time deem necessary.

**Section 2.** Any member of the Council desiring to speak or present any subject shall not proceed until recognized by the President.

**Section 3.** All resolutions shall be voted by roll call and each Councilperson shall answer by voice either yes or no unless excused from voting under the provisions of Section 3.9 of the Charter. Every member of the Council present at a meeting shall be required to vote as herein provided and if he does not so vote, the Clerk shall record the vote per Robert's Rules of Order. In the event a Councilperson cast his/her vote in error and the final vote has been announced but the meeting has not been concluded, the Councilperson shall notify the Council President of the error in the vote and request that his/her vote be changed. The Council President will at that time seek general consent from the Council present to grant the request and if there are no objections, so grant. If a Councilperson objects to the request, then a motion can be made and seconded by Council to grant the request. This motion is undebatable and the Council President will call for a vote on the motion.

**Section 4.** Order of Business (Regular Meeting)\*

Call to Order, Invocation  
Pledge of Allegiance  
Approval of Minutes  
Assignment of Agenda Items  
Council President's Report  
City Attorney's Report  
City Manager's Report  
Committee Reports  
Public Comments  
Council Response to Public Comments\*\*  
Unfinished Business  
New Business  
Adjournment

\* Special meetings need not include all of these items.

\*\* Responses shall be limited to the correction of factual errors made by public.

**Section 5.** All questions of procedure not provided for by the Charter or this ordinance shall be decided according to Roberts Rules of Order (revised). Public comments shall follow Roberts Rules of Order and shall be enforced by Council President.

**Section 6.** Any rules may be suspended by the unanimous consent of members present but such suspension shall apply only to those matters considered at the time of the suspension.

**Section 7.** An Agenda for Council Meetings shall be prepared by the City Manager prior to the meeting and distributed to the Council members, at least four (4) days before any such meeting. Items placed on the Business agenda will be those that have been determined to move forward by a consensus of Council members at a prior Conference meeting. Petitions, resolutions or other business to be presented to the Council by Council members must be filed in writing with the Clerk not later than noon of the Tuesday preceding a regular meeting, except as hereinafter stated.

- a) From time to time matters of urgency may come to light that require Council's immediate attention. These items may be added to the Council meeting agenda without first being discussed at a Conference meeting only with the approval of the Council President, with the concurrence of two (2) other Council members.
- b) No petitions, resolutions or other business may be presented to Council by individual Council members unless action to do so was approved at a prior Conference meeting by a majority of the whole Council.
- c) No employee or staff time will be expended upon any matter unless directed by the City Manager or approved by a majority vote of the whole Council at a Council meeting or a Conference meeting.

**Section 8.** Any persons desiring to speak at any Council meeting or public hearing shall submit their name and address in writing to the Clerk prior to the meeting or public hearing and state the purpose of said person's talk. The individual speaking shall not exceed five minutes with extensions granted at the discretion of the Chair and, if related to any item on the agenda, shall occur prior to Council action. Time shall not be transferable from one individual to another. The City Manager or his/ her designee shall time the individuals speaking and give a thirty second warning.

At all times, speakers shall direct their comments to the Chair and shall refrain from addressing individual Council persons.

**Section 9.** In the event of conduct which the Council President or other Council members find offensive, the following steps shall be taken to correct this behavior:

- (a) The Council President will formally address the concern with the individual Council member;
- (b) If the problem persists, the City Council will take a short recess;
- (c) If the problem continues, the Council member in question will forfeit their right to speak on the specific topic; and
- (d) If the problem continues, the Council President shall take corrective steps based upon procedures outlined in Roberts Rules of Order (revised).

**Section 10.** Special meeting called per §3.8(B) of the City Charter shall try to be scheduled to provide at least 48 hours between the calling of the meeting and the actual meeting time. This time allows for proper public notice to issued, contacting of all Council members, and development of necessary agenda materials. It is understood that there may be situations where overwhelming urgency requires that the meeting be scheduled strictly in compliance with §3.8(B) of the City Charter.

**Section 11.** If within 10 minutes from the start time of a meeting a quorum is not present, the meeting shall be cancelled and Councilmembers released.

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## **RULES FOR CONFERENCE MEETINGS**

(Adopted 1/18/82, 1/4/10)

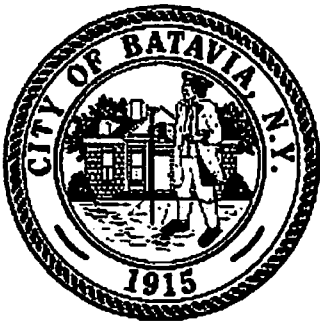
(Amended 11/09/98, 02/25/02, 01/14/08, 2/8/16)

1. An agenda for conference meetings shall be prepared by the City Manager, the Council President and/or President Pro Tem prior to the meeting and distributed to the Council members, at least four (4) days before any such meeting. Individual Council members may add to the conference agenda by informing the Manager by 11:00 A.M. the Tuesday before the meeting. From time to time matters of urgency may come to light after the agenda deadline. These items may be added to the agenda only with the approval of the Council President.
  2. The regular conference agenda\* shall take the following form:
    - a. Call to Order
    - b. **[Public Comments]**
    - ~~b.c. OLD BUSINESS - not completed at previous conference meetings~~
    - ~~e.d. NEW BUSINESS~~
    - ~~d.e. Items not included on the agenda (if time permits)~~
    - ~~e. Public Comments~~
- \* Special conference meetings need not include all of these items.
3. Conference meetings shall be limited to two and one-half hours but in any event will not exceed beyond 10:00 P.M. During the initial review of any topic listed on the Agenda, a limit of thirty (30) minutes will be given for discussion by the City Council. At the end of thirty minutes, Council may have this discussion continued at the conclusion of the regular Conference Agenda should time be available or have the item brought back at a future Conference session(s) for further discussions.
  4. A quorum for a conference meeting shall consist of six members. All action taken at a conference meeting shall be by majority of the whole Council - 5 votes.
  5. All motions to add agenda items to the business meeting shall be voted by roll call and each councilperson shall answer by voice vote either yes or no unless excused from voting under the provisions of Section 3.9 of the Charter. Every member of the Council present at a meeting shall be required to vote as herein provided and if he or she does not so vote, the Clerk shall record the vote per Robert's Rules of Order (revised). Votes during Conference meetings generally are informally used to determine whether an item should be forwarded on to the Business Agenda for formal action, to determine whether a consensus exists amongst Council members to proceed in a certain direction, or to commit staff time to further research a topic. Because of this, votes other than on formalized action, should not be construed as a final position of an individual Council member. In the event a Councilperson cast his/her vote in error before the next agenda item has been started, the Councilperson shall notify the Council President of the error in the vote and request that his/her vote be changed.
  6. Any person desiring to speak at any conference meeting shall submit his name and address in writing to the Clerk before each meeting, and state the purpose of his talk. During the Public

Comment section of the Agenda, the individual shall be allowed to address Council. The individual speaking shall not exceed five minutes with extensions granted at the discretion of the Chair. Time shall not be transferable from one individual to another. The City Manager or his/her designee shall time the individuals speaking and give a thirty second warning.


7. At all times, members shall direct their comments to the Chair and shall refrain from addressing each other.
8. A conference meeting may be called by the Council President, or by any three members who petition for a meeting. The Council President may cancel a conference meeting due to weather conditions or if, in his opinion, it will be impossible to obtain a quorum. The City Manager shall inform all Council members of canceled meeting as soon as possible by phone.
9. All matters not covered by Conference Rules shall be governed by Roberts Rules of Order. Public comments shall be governed by Roberts Rules of Order and shall be enforced by Council President.

DRAFT



# City of Batavia

To: Honorable City Council

From: Jason Molino, City Manager 

Date: January 19, 2016

Subject: Batavia Police/ Genesee County Sheriff Consolidation Study

**Background:** Over the past two months City Council has requested City staff to investigate options with respect to conducting a joint study with Genesee County, and possibly the Village of LeRoy, on consolidating the City's police department into the Genesee County Sheriff's Office. After discussions with County leadership, it was identified that there are two programs currently available to assist with the joint study, the Local Government Efficiency (LGE) Grant Program and the Governor's Municipal Restructuring Fund (MRF). The LGE program has been in existence for several years and has assisted the City with studying shared dispatch and police records systems with Genesee County and the City/Town of Batavia consolidation efforts. The MRF was recently created with the adoption of the last State budget. After confirming with the New York State Department of State (DOS), the agency that administers both programs, MRF guidelines are expected to be issued within the next few weeks followed by open enrollment of funding applications. This is different from the LGE program that only accepts applications in July, followed by awards in December. Both programs may require a local match, most likely 5-10% of the project costs.

When considering a joint study of this nature, framing the issue of what will be studied is important to ensure the end result will assist in making supported and meaningful policy decisions. Below is an example of suggested language for the purposed study.

*This study should aid government officials and the public in determining the feasibility of consolidating the Batavia Police Department and Genesee County Sheriff's Office, in discovering future cost savings as well as the most beneficial relationship to serve each community's law enforcement needs. The study will help the City and County gain a better understanding of their common interests and how they can together provide essential public safety services while, maintaining the quality of life for their respective communities and constituents. The study should examine the opportunities and challenges for coordinating or consolidating police services between the two departments, as both have facilities within the City's boundaries.*

If City Council is desirous of moving forward with a joint application to either DOS program it is recommended that the attached resolution, or similar resolution, be adopted by both the City Council

and County Legislature demonstrating joint concurrence of the project and to provide the City Manager and County Manager authority to submit the needed applications.

**Supporting Documents:**

1. A Resolution Authorizing the Joint Grant Application to Study the Consolidation of City of Batavia and Genesee County Law Enforcement Agencies

**#-2016**

**A RESOLUTION AUTHORIZING THE JOINT GRANT APPLICATION TO STUDY  
THE CONSOLIDATION OF CITY OF BATAVIA AND GENESEE COUNTY LAW  
ENFORCEMENT AGENCIES**

**Motion of Councilperson**

**WHEREAS**, the City of Batavia and Genesee County have long worked together as part of an ongoing effort to reduce redundancies, increase efficiency, and alleviate the tax burden on their residents; and

**WHEREAS**, the protection of life and property is one of the most vital, and most costly, functions of government at all levels; and

**WHEREAS**, that public function is fulfilled in Genesee County through a number of police agencies, the largest of which are the Batavia Police Department and the Genesee County Sheriff's Office; and

**WHEREAS**, cities and counties throughout New York State have recognized the opportunity for improved quality and efficiency that may be afforded by consolidating or sharing police services and have, as a result, begun the process by investing in a comprehensive analysis of the feasibility of consolidating or sharing police services; and

**WHEREAS**, in 2009, the City of Batavia and Genesee County achieved efficiency and cost savings through the consolidation of emergency dispatch services; and

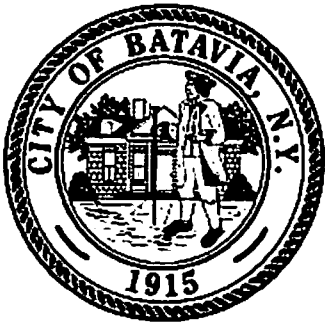
**WHEREAS**, the City of Batavia and Genesee County currently operate under a Mutual Aid Agreement and share additional resources with the City of Batavia's Emergency Response Team unit and the Genesee County Drug Task Force, and

**WHEREAS**, as a result of years of cooperation and previous successful consolidation efforts, the City of Batavia and Genesee County are interested in studying additional efficiencies through the consolidation and/or shared services of the City of Batavia Police Department and the Genesee County Sheriff's Office; and

**WHEREAS**, New York State has encouraged communities to identify and implement consolidation and shared service opportunities and has established various grant funds, including the Local Government Efficiency Grant Program and a \$150 million onetime allocation for the Governor's Municipal Restructuring Fund, to support such efforts; and


**NOW THEREFORE BE IT RESOLVED**, the City Council of the City of Batavia authorizes and endorses a joint effort with Genesee County and any other Genesee County municipalities to secure State grant funding and/or other aid that will, in turn, fund a detailed analysis of the feasibility for consolidation and /or sharing of law enforcement services within the County.

**Seconded by councilperson  
And on roll call**



# City of Batavia

To: Honorable City Council

From: Jason Molino, City Manager 

Date: January 21, 2016

Subject: Digital Signs

Attached are two planning documents, from the American Planning Association and the Dutchess County Planning Federation, that outline digital sign ordinances and what issues communities may face when developing local laws guiding these types of signs. Also attached is the BMC sign code section.

Currently the Batavia Municipal Code (BMC) has one reference to digital signs under the Prohibited Signs section, § 190-43., H., (2), which states, "No sign shall be illuminated by or contain flashing, intermittent, rotating or moving lights, except to show time and temperature." As such no digital reader board/sign in the City has the authority for, and/or is permitted to change more than once a day. In essence they are static digital boards, with the exception of time and temperature changes.

Referring this matter to the City Planning and Development Committee for review and comment is appropriate for receiving direction the land use concern regarding digital signs.

City of Batavia, NY  
Thursday, January 21, 2016

## Chapter 190. Zoning

### Article IX. Supplementary Regulations

#### § 190-43. Signs.

[Amended 11-25-1996]

- A. Statement of purpose. The purpose of this section is to promote the public health, safety and welfare of the community by regulating the placement and size of outdoor signs and advertising displays. It is intended to protect all property values by ensuring that individual signs do not detract from the overall appearance and safety of the community.
- B. Definitions. See definitions in § 190-3.
- C. Permit required. It is unlawful for any person to erect, enlarge, relocate or change the copy of any sign other than those identified as exempt in this section, without first obtaining a sign permit and paying the fee therefor as provided in this section. Routine maintenance of existing signs, not involving erection, enlargement, relocation or change of copy, shall not require a permit.
- D. Application for permit. Application shall be made in writing to the Department of Community Development on forms prescribed and provided by the City of Batavia and shall contain the following information:

[Amended 12-10-2001]

- (1) Name address and telephone number of applicant and property owner.
- (2) Location of building, structure or land upon which the sign now exists or is to be erected.
  - (a) If a new sign is to be erected, elevation and plan drawings should be included. A clear description of the placement and appearance of the proposed sign should include the following:
    - [1] Location on the premises, specifically, its position in relation to adjacent buildings, structures and property lines.
    - [2] The method of illumination, and position of lighting.
    - [3] Graphic design, including symbols, letters, materials, and possible color combinations.
  - (b) If the sign is in compliance, the Department of Community Development shall issue a permit for the proposed or existing sign. On the other hand, the Department of Community Development shall give written notice to the applicant if the sign application has been denied.
- E. Fees. Fees for sign permits, special sign permits and portable sign permits shall be as set by resolution of the City Council.

- F. Permitted signs. All signs shall be allowed that comply with the provisions and conditions set forth in the Chart incorporated and made a part hereof by reference as EXHIBIT A and/or the other provisions of this Section, and all signs not so compliant are specifically prohibited.
- G. Exempt signs. The following signs are considered to be exempt from obtaining a permit, but not exempt from the provisions of this section. Exempt signs of a temporary nature shall not be attached to fences, utility poles or the like and shall not impair traffic visibility. Exempt signs, not in compliance with the provisions of Subsections (1) through (12) below may not continue after the effective date of any amendment of this section.  
[Amended 12-10-2001]
- (1) Historical markers, tablets and statues, memorial signs or plaques; names of building and dates of erection when cut into masonry surface or when constructed of bronze, stainless steel or similar material; and emblems installed by governmental agencies, religious or nonprofit organizations not exceeding six square feet.
  - (2) Flags and insignia of any government, except when displayed in connection with commercial promotion.
  - (3) On-premises directional signs for the convenience of the general public, identifying parking areas, fire zones, entrances and exits and similar signs, not exceeding four square feet per face and four feet in height.
  - (4) Nonilluminated warning, private drive, posted or no trespassing signs, not exceeding two square feet per face.
    - (a) "Warning," "private drive," "posted" or "no trespassing" signs shall not be in excess of four feet in height and shall not be in excess of two square foot per face. A maximum of one posted, "warning" or "no trespassing" sign shall be permitted to be placed along the perimeter of property lines at intervals not less than 100 feet apart. This restriction will not apply to properties owned by public entities or utility companies.
  - (5) Number and nameplates identifying residents, mounted on the house, apartment or mailbox, not exceeding one square foot in area.
  - (6) Lawn signs identifying residents, not exceeding two square foot per side. Such signs are not to be illuminated except by a light which is an integral part of a lamppost if used as a support, with no advertising message thereon.
  - (7) Private-owner merchandise sale signs for garage sales and auctions, not exceeding four square feet for a period not exceeding seven days.
  - (8) "For Sale" and "For Rent" real estate signs. Maximum size in residential districts shall not exceed six square feet per side; maximum size in commercial or industrial zones shall not exceed 32 square feet per side.
  - (9) Temporary signs (window, posters, directional) not exceeding 60 days.
  - (10) Holiday decorations, including lighting.
  - (11) Signs identifying contractors, engineers or architects working on a structure or job site not to exceed 12 square feet in residential districts or 32 square feet in commercial or industrial districts.
  - (12) Political posters not exceeding six square feet in residential zones and 20 square feet in commercial or industrial zones.
- H. Prohibited signs.

- (1) No off-premises signs shall be allowed other than those allowed under the exempt sign section (Subsection G).
  - (2) No sign shall be illuminated by or contain flashing, intermittent, rotating or moving lights, except to show time and temperature.
  - (3) No sign shall impair or cause confusion of vehicular or pedestrian traffic, in its design color or placement.
  - (4) No sign shall be placed upon the roof of any building.
  - (5) No sign shall consist of moving, revolving or fluttering devices such as ribbons and streamers.
  - (6) No advertising message shall be extended over more than one sign placed along a street or highway.
  - (7) No signs shall be attached to utility poles in all zones of the City of Batavia. No permanent, temporary or exempt signs shall be attached, placed, painted or drawn upon fences, trees or man-made or natural features, including permanent, temporary or exempt signs. These restrictions shall not apply to properties owned by public agencies or utility companies.  
[Added 12-10-2001]
  - (8) No signs shall be placed anywhere within the City or state rights-of-way without the permission of the City Engineer, excepting projecting signs in commercial, industrial and planned development districts not exceeding six square feet and sandwich board signs not exceeding 20 square feet in commercial industrial and planned development districts.  
[Added 12-10-2001]
- I. Special event signs. A sign used to advertise or promote a community-wide event which is not for the purpose of advertising products, events, or services at an individual business or location. Sponsors of the special event may be included upon the sign. All signs for special events, except as otherwise provided by this section, shall be permitted for period not exceeding six weeks prior to the activity or event nor exceeding four days after the activity or event. Such signs shall be attached or secured to a building or a structure and shall not be attached to fences, trees, utility poles, rocks or other facets of the natural landscape, nor be placed in a position that will obstruct or impair traffic.
- J. Portable signs/sandwich board signs.
- (1) Portable signs, if powered by electric, must meet all the construction standards of the New York State Uniform Fire Prevention and Building Code.
  - (2) Sandwich board signs do not require a permit but must be taken inside the place of business at the close of business and must not obstruct pedestrian traffic.
  - (3) Portable sign size shall not exceed 32 square feet and shall be limited to five feet above grade.
  - (4) Sandwich board signs shall not exceed 20 square feet and shall be limited to five feet above grade.
  - (5) Portable signs must be removed after 60 days. Another portable sign permit can be applied for 30 days after removal of a portable sign.  
[Added 12-10-2001]
- K. Freestanding signs in mall areas, shopping center plazas and industrial parks. No individual freestanding signs shall be allowed in a shopping center plaza, mall area or an industrial park. A freestanding directory sign, including all businesses in the plaza or industrial park, shall be allowed.
- L. Nonconforming signs. Any sign or other advertising structure lawfully in existence on the date this amendment to this section is enacted or the effective date of any amendment to this section may

continue. However, a nonconforming sign shall not be enlarged or replaced by another nonconforming sign and shall be maintained.

- M. Removal of signs. Any sign, existing on or after the effective date of this amendment to this section, which no longer advertises an existing business conducted or product sold on the premises upon which such a sign is located, or is unsafe shall be removed within 30 days upon written notice from the Department of Community Development.  
[Amended 12-10-2001]
- N. Maintenance. All signs shall be maintained in such a condition so as to not constitute a danger to the public health, safety or welfare. The Department of Community Development shall inspect and have the authority to order the painting, repair and alteration or removal of signs which become dilapidated or are abandoned, or which constitute physical hazard to the public safety.  
[Amended 12-10-2001]
- O. Business signs. Any sign that advertises a place of business shall have no more than 25% of its copy advertise a product that may be purchased within the premises.
- P. Barber poles. Barber poles shall not be permitted in residential districts. Such signs shall be allowed to rotate and have a maximum size of 18 inches in height. Projection of barber pole signs from the building shall not exceed nine inches and the cylinder size shall not be greater than four inches by 10 inches. The Planning and Development Committee shall approve such signs.  
[Amended 12-10-2001]
- Q. Construction standards. All signs shall be constructed and installed in conformance with the New York State Uniform Fire Prevention and Building Code. Separate certification may be required for illuminated signs indicating compliance with the National Electrical Code (NFPA 70).
- (1) Wall signs shall not extend beyond the ends or over the top of the walls to which attached and shall not extend above the level of the second floor of the building.
  - (2) Wall signs shall not extend more than 15 inches from the face of the buildings to which they are attached.
  - (3) Freestanding signs shall not extend over the public right-of-way.
  - (4) The Department of Community Development shall have the option to require a review by the City Engineer. If the City Engineer finds the mounting technique questionable, a professional review by a New York State registered engineer would be required.  
[Amended 12-10-2001]
- R. Appeal procedures. Any person aggrieved by a decision of the Department of Community Development relative to the provision of this section may appeal such decision by applying for a special sign permit. The Department of Community Development shall refer the application to the Planning and Development Committee for approval or denial.  
[Amended 12-10-2001]
- S. In granting a special sign permit the Planning and Development Committee must determine that the sign is in harmony with the general purposes of this section, does not harm the neighborhood character, and is not detrimental to public health, safety or welfare. The Planning and Development Committee should also consider the benefit to the applicant versus the detriment to the community in granting the special use permit.<sup>[1]</sup>  
[Amended 12-10-2001]
- [1] Editor's Note: *Exhibit A*, which immediately followed this section, is included at the end of this chapter.

# ZONINGPRACTICE

April 2008

AMERICAN PLANNING ASSOCIATION



➔ ISSUE NUMBER FOUR

## PRACTICE SMART SIGN CODES



# Looking Ahead: Regulating Digital Signs and Billboards

By Marya Morris, AICP

Cities and counties have always been challenged to keep their sign ordinances updated to address the latest in sign types and technologies.

Each new sign type that has come into use—for example, backlit awnings and electronic message centers—has prompted cities to amend their regulations in response to or in anticipation of an application to install such a sign.

The advent in the last several years of signs using digital video displays represents the latest, and perhaps the most compelling, challenge to cities trying to keep pace with signage technology. More so than any other type of sign technology that has come into use in the last 40 to 50 years, digital video displays on both off-premise (i.e., billboards) and on-premise signs raise very significant traffic safety considerations.

This issue of *Zoning Practice* covers current trends in the use of digital technology on off-premise billboards and on-premise signs. It recaps the latest research on the effects of

this type of changeable signage on traffic safety. It also discusses the use of digital video sign technology as a component of on-premise signs, including a list of ordinance provisions that municipalities should consider if they are going to permit this type of sign to be used. I use the phrase digital display or video display, but these devices are also referred to as LEDs or, collectively, as “dynamic signs.”

## BRIGHT BILLBOARDS

While digital technology is growing in use for on-premise signs, it is the proliferation of digital billboards that has triggered cities and counties to revise their sign ordinances to address this new type of display. Of the approximately half-million billboards currently lining U.S. roadways, only about 500 of them are digital. However, the industry's trade

group, the Outdoor Advertising Association of America, expects that number to grow by several hundred each year in the coming years. In 2008, digital billboards represent for the sign industry what the Comstock Lode must have represented for silver miners in 1858—seemingly limitless riches. The technology allows companies to rent a single billboard—or pole—to multiple advertisers. A billboard company in San Antonio, for example, estimated that annual revenue from one billboard that had been converted from a static image to a changeable digital image would increase tenfold, from \$300,000 to \$3 million just one year after it went digital.

It is very difficult for cities and counties to get billboards removed once they are in place. Billboard companies have made a concerted effort to get state legislation passed that limits or precludes the ability of local

ⓐ A typology of moving-image signs. The variable message sign at the right uses a motor to switch among three different static images. Next, the electronic messageboard at Wrigley Field in Chicago displays scrolling text and simple images. The on-premise digital sign, pictured third from left, looks like a giant television screen, displaying a steady stream of video images. On the far right, this digital billboard cycles through a number of static video images at regularly timed intervals.



## ASK THE AUTHOR JOIN US ONLINE!

Go online from May 12 to 23 to participate in our "Ask the Author" forum, an interactive feature of Zoning Practice. Marya Morris, AICP, will be available to answer questions about this article. Go to the APA website at [www.planning.org](http://www.planning.org) and follow the links to the Ask the Author section. From there, just submit your questions about the article using the e-mail link. The author will reply, and Zoning Practice will post the answers cumulatively on the website for the benefit of all subscribers. This feature will be available for selected issues of Zoning Practice at announced times. After each online discussion is closed, the answers will be saved in an online archive available through the APA Zoning Practice web pages.

### About the Author

Marya Morris is a senior associate at Duncan Associates, a planning consulting firm specializing in land development regulations and infrastructure finance. [www.duncanassociates.com](http://www.duncanassociates.com)

governments to require removal of existing billboards through amortization. The only option left is paying cash compensation. The federal Highway Beautification Act, which was modified many years ago under industry pressure, also prohibits amortization and requires cash compensation for billboard removal.

With the amortization option unavailable, some cities and counties have struck deals with billboard companies requiring them to remove two boards for every new one they install. Other jurisdictions have established simple no-net-increase policies. Although many communities have had success with these approaches, in the

last few years the industry has devised a litigious tactic to secure new billboard permits. Billboard companies challenge the constitutionality of a sign provision, and when the ordinance is in legal limbo, they rush in to secure billboard permits.

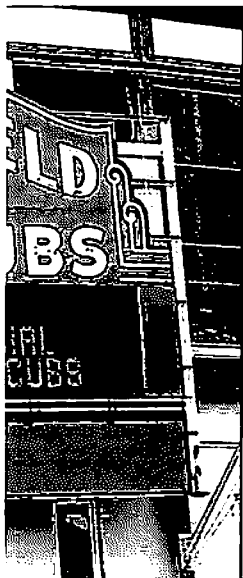
The American Planning Association has joined Scenic America, the International Municipal Lawyers Association, and others in filing amicus curiae briefs in many of these cases to show the courts the industry's pattern of conduct and deliberate strategy to circumvent local sign codes. A review in January 2006 found 113 such "shakedown" sign cases filed in the federal

courts since 1997, and eight filed in state courts in the same time period. For more information visit the APA Amicus Curiae webpage at [www.planning.org/amicusbriefs](http://www.planning.org/amicusbriefs).

The emergence of the highly lucrative digital billboards has also, however, given local governments some leverage to at least reduce the total number of billboards. Many of the applications cities are seeing for the video billboards are requests by companies to replace the static type with the new video displays in key locations. The added revenue potential from a digital format has proved to be enough of an incentive to get companies to agree to remove multiple static billboards in exchange for permits to install video display in certain locations.

In June 2007, Minnetonka, Minnesota, in the Twin Cities area, reached a settlement with Clear Channel in which the company agreed to

The emergence of the highly lucrative digital billboards has given local governments some leverage to at least reduce the total number of billboards.



Photos by David Morley

remove 15 of the 30 conventional static image billboards in the city in exchange for permission to install its digital billboards. The city will permit the company to install no more than eight dynamic signs at four to six locations.

The City of San Antonio amended its sign and billboard ordinance in December 2007 to require the removal of up to four static billboards in exchange for permission to install one digital display billboard in their place. Prior to that amendment the city had no provisions for digital sign technology, but it did already have a two-for-one replacement requirement. The city has a developed a sliding scale that determines the number of billboards required to be removed in exchange for a single digital billboard. According to the scale, the number of digital signs permitted is determined by the total square footage of static billboard faces removed. Therefore, a billboard company will be required to demolish as few as three and as many as 19 billboards to get one new digital billboard structure placed or an existing static billboard face replaced.

#### IT DEPENDS ON YOUR DEFINITION OF 'DISTRACTING'

Digital signs are brighter and more distracting than any other type of sign. Other attention-grabbers, like strobe lights, mirrors, searchlights, and signs with moving parts, are typically prohibited (or allowed under very narrow circumstances) by even the most hands-off jurisdictions. The high visual impact of digital signs has prompted highway and traffic safety experts to try to quantify how drivers respond to such distractions. This research, which is summarized below, has been instrumental in helping cities craft new sign ordinances that address the specific characteristics of such signs, including how often the messages or images change, the degree of brightness, and their placement relative to residential areas.

The Federal Highway Administration is currently conducting a study on driver distraction and the safety or impact of new sign technologies on driver attention. The initial phase, which is slated to be completed by June 2008, will identify and evaluate the most significant issues and develop research methods needed to secure definitive results. The FHWA anticipates the second phase of the research study and final report will be completed in the latter part of calendar year 2009. Also, the Transportation Research Board (a branch of the National Science Foundation) has formed a subcommittee to examine research needs on electronic signs.

⊕ Recent studies indicate that digital displays with continuous dynamic content are more distracting than other types of moving-image signs. Signs that work well in pedestrian-oriented areas might be inappropriate for busy highways.



David Morley

Until a couple of years ago, one of the only studies on the effects of billboards and traffic safety was a 1980 survey of existing research on the subject prepared for the Federal Highway Administration (Wachtel and Netherton 1980). It did not, however, provide any concrete answers. The study noted "attempts to quantify the impact of roadside advertising on traffic safety

have not yielded conclusive results." The authors found that courts typically rule on the side of disallowing billboards because of the "readily understood logic that a driver cannot be expected to give full attention to his driving tasks when he is reading a billboard."

A 2006 study by the National Highway Traffic Safety Administration that focused primarily on driver distractions inside the car (i.e., phone use, eating, and changing the radio station) concluded that any distraction of more than two seconds is a potential cause of crashes and near crashes.

A 2004 study at the University of Toronto found that drivers make twice as many glances at active (i.e., video signs) than they do at passive (i.e., static) signs. All three of the moving sign types that were studied (video, scrolling text, and trivision) attracted more than twice as many glances as static signs. They also found that the drivers' glances at the active signs were longer in duration; 88 percent of glances were at least 0.75 seconds long. A duration of 0.75 seconds or longer is important because that is the amount of time required for a driver to react to a vehicle that is slowing down ahead. Video and scrolling text signs received the longest average maximum glance duration.

An earlier study also at the University of Toronto that was designed to determine whether video billboards distract drivers' attention from traffic signals found that drivers made roughly the same number of glances at traffic signals and street signs with and without full-motion video

#### ORDINANCES AND ZONING REPORTS

- ◆ City of Minnetonka, Minnesota. 2007. Staff report to city council recommending adoption of an ordinance regulating digital signs. June 25. Available at [www.eminnetonka.com/community\\_development/planning/show\\_project.cfm?link\\_id=Dynamic\\_Signs\\_Ordinance&cat\\_link\\_id=Planning](http://www.eminnetonka.com/community_development/planning/show_project.cfm?link_id=Dynamic_Signs_Ordinance&cat_link_id=Planning).
- ◆ City of San Antonio City Code, Chapter 28. Amendment Adding Provisions for Digital Signs. Last revised December 2, 2007. Available at <http://epay.sanantonio.gov/dsddocumentcentral/upload/SIGNseccDRAFT.pdf>.
- ◆ City of Seattle, Land Use Code, Section 23.55.005 Signs, Video Display Methods. Last revised 2004. <http://clerk.ci.seattle.wa.us/~public/clrkhome.htm>.

billboards present. This may be interpreted to mean that while electronic billboards may be distracting, they do not appear to distract drivers from noticing traffic signs. This study also found that video signs entering the driver's line of sight directly in front of the vehicle (e.g., when the sign is situated at a curve) are very distracting.

A 2005 study by the Texas Transportation Institute of driver comprehension of sign messages that flash or change concluded that such signs are more distracting, less comprehensible, and require more reading time than do static images. While this research did not evaluate advertising-related signs, it does demonstrate that flashing signs require more of the driver's time and attention to comprehend the message. In the case of electronic billboards, this suggests that billboards that flash may require more time and attention to read than static ones.

The City of Seattle commissioned a report in 2001 to examine the relationship between

## Sign messages that flash or change are more distracting, less comprehensible, and require more reading time than do static images.

The Seattle study also found that drivers expend about 80 percent of their attention on driving-related tasks, leaving 20 percent of their attention for nonessential tasks, including reading signs. The report recommended the city use a "10-second rule" as the maximum display time for a video message.

### APPROACHES TO REGULATING DIGITAL DISPLAY SIGNS

Most cities and counties that have amended their sign ordinances to address the use of digital display on on-premise signs and billboards have done so in response to an application by a sign owner to install a new sign that uses the

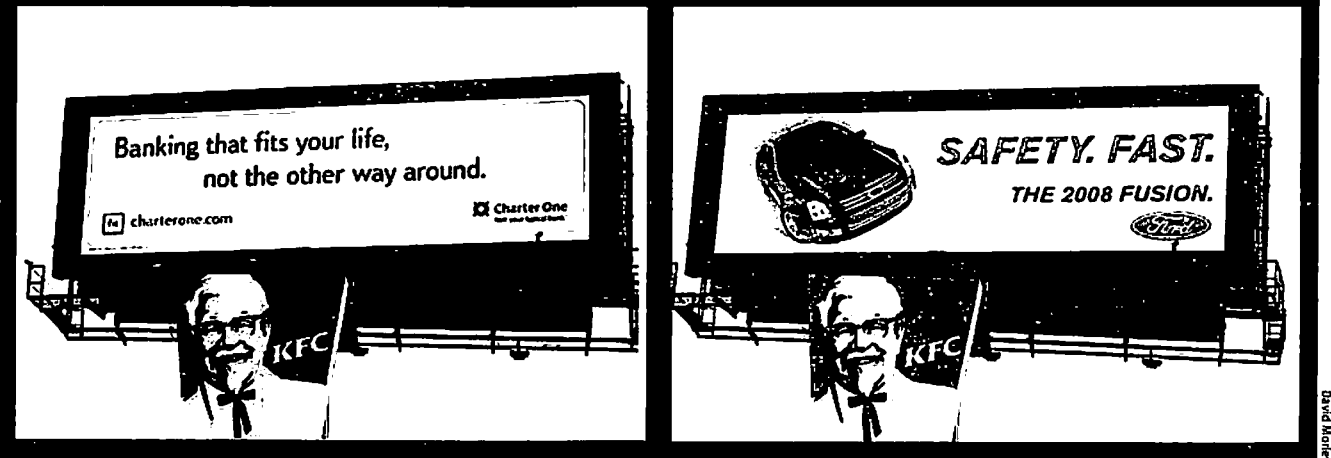
ital video display signs while still permitting electronic message centers.

3) A relatively small number of sign ordinances have been amended to allow video display signs under narrowly prescribed circumstances and with numerous conditions.

For jurisdictions that want or need to allow them, the following section explains additional considerations that should be added to a sign ordinance to effectively regulate digital display signs.

**Sign type.** The ordinance must indicate whether the digital display can be used on off-premise billboards only, on on-premise signs only, or on both sign types.

⊕ Billboards with changeable digital images allow billboard companies to dramatically increase their revenue by renting the same sign face to multiple advertisers.



electronic signs with moving/flashing images and driver distraction. The study was conducted by Jerry Wachtel, who in 1980 had conducted the first-ever study on signs and traffic safety for the Federal Highway Administration.

The Seattle report concluded that electronic signs with moving images will distract drivers for longer durations (or intervals) than do electronic signs with no movement. The study also noted that the expanded content of a dynamic sign also contributes to extended distraction from driving. Specifically it found that signs that use two or more frames to tell a story are very distracting because drivers are involuntarily compelled to watch the story through to its conclusion.

technology or in response to a sign owner having replaced an existing sign face with a digital display. Some cities, like Minnetonka, were required by a court settlement with a billboard company to allow the technology. Although regulations for digital signs are still relatively new, we can group the regulatory approaches (or lack thereof) into three general categories:

- 1) Most sign ordinances are still silent on the issue of digital video displays, but almost all do regulate electronic message centers and also prohibit or restrict signs that move, flash, strobe, blink, or contain animation.
- 2) A smaller but growing number of sign ordinances contain a complete prohibition on dig-

**Definitions.** The definitions section must be updated to include a detailed definition of digital display signage and the sign's functional characteristics that could have an effect on traffic safety and community aesthetics.

**Zoning districts.** The ordinance should list the districts in which such signs are permitted and where they are prohibited. Such signs are commonly prohibited in neighborhood commercial districts, historic districts, special design districts, and scenic corridors, in close proximity to schools, and in residential districts. On the other end of the spectrum, East Dundee, Illinois, for example, expressly encourages digital video signs in two commercial overlay districts, but only a

## RESOURCES

- ◆ Beljer, D. and A. Smiley. 2005. "Observed Driver Glance Behavior at Roadside Advertising Signs." *Transportation Research Record*.
- ◆ Dudek, C. L. et al. 2005. "Impacts of Using Dynamic Features to Display Messages on Changeable Message Signs." Washington, D.C.: Operations Office of Travel Management: Federal Highway Administration.
- ◆ "Dynamic" Signage: Research Related To Driver Distraction and Ordinance Recommendations. Prepared by SRF Consulting Group, Inc. for the City of Minnetonka, Minnesota. June 7, 2007 ([www.digitalooh.org/digital/pdf/2007-minnetonka\\_digital-srf\\_consulting\\_report06-08-07.pdf](http://www.digitalooh.org/digital/pdf/2007-minnetonka_digital-srf_consulting_report06-08-07.pdf)).
- ◆ "The Impact of Driver Inattention on Near-Crash/Crash Risk: An Analysis Using the 100-Car Naturalistic Driving Study Data." 2006. National Highway Traffic Safety Administration, U.S. Department of Transportation. April.
- ◆ McBride, Sarah. "Seeing the Light: In Billboard War, Digital Signs Spark a Truce." *Wall Street Journal*. February 3, 2007.
- ◆ Smiley, A. et al. 2004. "Impact of Video Advertising on Driver Fixation Patterns." *Transportation Research Record*.
- ◆ *Unsafe at Any Speed: Billboards in the Digital Age*. 2007. Scenic America Issue Alert 2. Available at [www.scenic.org/pdfs/eb.pdf](http://www.scenic.org/pdfs/eb.pdf). The Scenic America website has a number of excellent resources for planners and citizens interested in regulating digital signage, including a downloadable PowerPoint presentation, research summaries, and model ordinances.
- ◆ Wachtel, J. and R. Netherton. 1980. "Safety and Environmental Design Considerations in the Use of Commercial Electronic Variable-Message Signage." Report No. FHWA-RD-80-051. Washington, D.C.: Federal Highway Administration.

few land uses—new car dealerships, multi-tenant retail centers, and amusement establishments—are permitted to have them.

**Placement and orientation.** A minimum spacing requirement between signs and residential areas should be considered, as should a provision requiring that the sign face be oriented away from residential areas and other scenic or sensitive areas. The Baker and Wolpert study recommended that dynamic signs be limited or prohibited at intersections, in demanding driving environments, and in places where they obstruct a driver's view. In Seattle, the sign face of on-premise digital signs must not be visible from a street, driveway, or surface parking area, nor may it be visible from a lot that is owned by a different person.

**Sign area.** For on-premise signage, many ordinances include a limit on the percentage of the sign face that can be used for digital display. Thirty percent is common although in some areas, such as entertainment districts, that proportion may be much higher.

**Illumination and brightness.** The ordinance should address the legibility and brightness of a sign both during the day and after dark. During the day the issue is reducing or minimizing glare and maintaining contrast between the sign face and the surrounding area. At night the issues are the degree of brightness and its impact on driver distraction and on light trespass into residential areas. In the study for the City of Minnetonka, researchers noted the challenge posed by this aspect of digital signs: "There is no objective definition of excessive brightness because the appropriate level of brightness depends on the environment within which the sign operates."

**Message duration and transition.** The ordinance must include a minimum duration of time that a single message must be displayed. Typically this is expressed in terms of seconds. The San Antonio billboard ordinance requires each image to remain static for at least eight seconds and that a change of image be accomplished within one second or less.

The city's ordinance requires any portion of the message that uses a video display method to have a minimum duration of two seconds and a maximum duration of five seconds. Further, it requires a 20-second "pause" in which a still image or blank screen is showed following every message that is shown on a video display.

**Public service announcements.** In exchange for permission to use digital displays, owners of billboards in Minnesota and San

Antonio have agreed to display emergency information such as Amber Alerts and emergency evacuation information. Such a requirement can be included in an ordinance or imposed as a condition of approval.

Whether undertaking a comprehensive revision of a sign ordinance or more limited, strategic amendments to address digital technology, there are other common provisions related to electronic and digital signage that should be revisited as part of the rewrite. At the top of the list would be updating standards for conventional electronic message centers to reflect the latest research regarding driver distraction and message duration. Also, the boilerplate provisions common to so many ordinances that prohibit signs that flash, are animated, or simulate motion should also be rethought. These provisions could conceivably be used to prohibit digital displays without additional regulations. The problem is that these characteristics are very rarely defined in the ordinance and remain open to interpretation. Also, whenever new regulations are being considered for digital billboards, jurisdictions should take the opportunity to draft new provisions to address digital technology for on-premise signs as well. And, finally, any time the sign ordinance goes into the shop for repair—whether to address digital signage or to make broader changes—is a good time to remove or revise any provisions that violate content neutrality rules.

## NEWS BRIEFS

SMART GROWTH TAKES A HIT IN MARYLAND

By Lora Lucero, ACP

The *Baltimore Sun* hit the nail on the head when it reported on March 12 "[t]he state's highest court declared that Maryland law does not require local governments to stick to their master plans or growth-management policies in making development decisions."

*Trail, et al. v. Terrapin Run, LLC, et al.* presented an important question for the court to address: What link is required between the community's adopted plan and the decision by the Zoning Board of Appeals (ZBA) to grant or deny a request for a special exception? In a 4 to 3 vote, the majority concluded that Article 66B, the state planning law, is permissive in nature and plans are only advisory guides, so a strong link between plans and implementation is not required. The court affirmed the county's

## The majority concluded that the state planning law is permissive in nature and plans are only advisory guides, so a strong link between plans and implementation is not required.

approval of the special exception and determined that the “in harmony with” traditional standard in applications for special exceptions remains the standard, in the absence of specific legislative language to the contrary. The court’s decision is available at [www.planning.org/amicusbriefs/pdf/terrapinrundecision.pdf](http://www.planning.org/amicusbriefs/pdf/terrapinrundecision.pdf).

Terrapin Run, LLC, the developer, proposed to build an “active adult” community of 4,300 homes on 935 partially wooded acres in Allegany County, a rural area of mountainous Western Maryland. The land is primarily zoned District “A” (Agricultural, Forestry, and Mining), with a portion located in District “C” (Conservation). In addition to the homes, the developer proposed to build an equestrian center, a community building, and a 125,000-square-foot shopping center.

The residential density is 4.6 units per acre. A planner who testified at trial indicated that the density of the proposed development would approximate that of Kentlands, in Montgomery County. The initial phase of development would use individual septic tanks, but the project would eventually require its own sewage treatment plant. Significantly, the property is not located in one of Maryland’s priority funding areas.

The zoning ordinance divides Allegany County into urban and nonurban areas. “A” and “C” are classified as nonurban zoning districts. The zoning ordinance provides:

“Non-urban districts are designed to accommodate a number of non-urban land uses including agriculture, forestry, mining, extractive industries, wildlife habitat, outdoor recreation, and communication, transmission and transportation services, as well as to protect floodplain areas, steep slope areas, designated wetlands and habitat areas, and Public Supply Watersheds from intense urban development.” Allegany County Code, Chapter 141, Part 4 (Zoning) §141-5(B) (emphasis supplied).

Opponents to the project argued that the ZBA erred when it found that strict conformity with the plan was not required and that the proposed development would be “in harmony with” the Allegany County Comprehensive Plan

because Maryland Code (Article 66, § 1(k)) requires a special exception to be “in conformity with” the plan.

Gov. Martin O’Malley’s administration argued in its amicus brief that counties and municipalities are required to conform to the seven broad “visions” for growth in Maryland as listed below:

### § 1.01. Visions

- (1) Development is concentrated in suitable areas.
- (2) Sensitive areas are protected.
- (3) In rural areas, growth is directed to existing population centers and resource areas are protected.
- (4) Stewardship of the Chesapeake Bay and the land is a universal ethic.
- (5) Conservation of resources, including a reduction in resource consumption, is practiced.
- (6) To assure the achievement of items (1) through (5) of this section, economic growth is encouraged and regulatory mechanisms are streamlined.
- (7) Adequate public facilities and infrastructure under the control of the county or municipal corporation are available or planned in areas where growth is to occur.

APA and its Maryland Chapter jointly filed an amicus brief. We argued that “[p]lans are documents that describe public policies that the community intends to implement and not simply a rhetorical expression of the community’s desires.” APA’s position is that (1) the adopted comprehensive plan must be implemented; (2) effective implementation requires that the day-to-day decisions made by local officials be consistent with the adopted comprehensive plan; and (3) the court’s review of whether consistency is achieved should be more searching when local officials are acting in their administrative (quasi-judicial) capacity. APA’s amicus brief is available at [www.planning.org/amicusbriefs/pdf/terrapinrun.pdf](http://www.planning.org/amicusbriefs/pdf/terrapinrun.pdf).

The lengthy majority opinion (52 pages) recounts much of Maryland’s legislative history in statutory reforms. “[T]his case, in one sense is a continuation of legislative battles that began in the early 1990s, where representatives of the

environmental protection and professional land planning interests attempted to establish that the State, or State planners, should exercise greater control than theretofore enjoyed over most aspects of land use decision-making that then reposed in the local jurisdictions” (*Trail, et al. v. Terrapin Run, LLC, et al.*, 2008 WL 638691, p.1). The majority concludes that the “in harmony” standard is synonymous with “in conformity.” However, the three dissenting justices said the majority “sets special exception considerations on a lubricious path” (*Trail, et al. v. Terrapin Run, LLC, et al.*, Minority Opinion, p.13). The statutory amendments made by the legislature in 1970, and subsequent case law, buttresses the argument that a stricter linkage is required between the adopted plan and the grant of a special exception, the minority opined.

Richard Hall, Maryland secretary of planning and past president of the Maryland Chapter of APA, said: “We think this is a time when we need more smart, sustainable growth, not less.” The O’Malley administration is going to study the ruling before deciding whether to advance legislation to reverse the court’s decision.

Lora Lucero, AICP, is editor of *Planning & Environmental Law* and staff liaison to APA’s amicus curiae committee.

Cover concept by Lisa Barton.

Photos: Sign © iStockphoto.com/David McShane; Screen © iStockphoto.com/Alexey Khlobystov

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IS YOUR COMMUNITY READY  
FOR DIGITAL SIGNAGE?

4

# Plan On It

A Dutchess County Planning Federation eNewsletter

May 2012

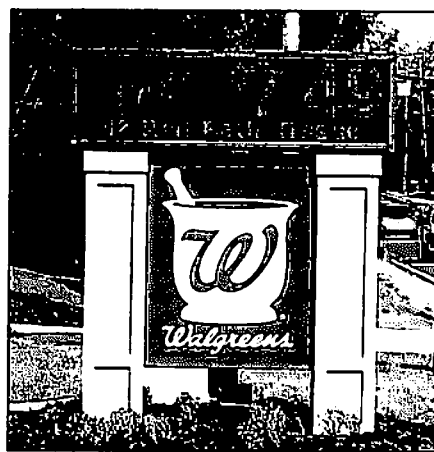
## Regulating Digital Signs *To Glow or Not To Glow*

By Heather LaVarnway, Senior Planner; and Emily Dozier, Planner

A digital sign is one whose message is both delivered and changed electronically, typically through the use of light emitting diodes, or LEDs. Digital signs are highly visible and allow sign owners to change messages easily and quickly. Consequently, they are cropping up in many of our communities. In response, many local municipalities have raised concerns about digital signs and have reached out to the Dutchess County Department of Planning and Development for guidance. Some of the concerns expressed include:

- Potential for driver distraction — bright signs with changing messages are inherently designed to grab attention — what does this mean for driver and pedestrian safety?
- Brightness and legibility — although it may seem counterintuitive, some digital signs are so bright that they are actually more difficult to read than their non-lit counterparts;
- Visual clutter — one might be okay, but what happens if digital signs proliferate?

All local zoning codes prohibit flashing, moving, and intermittent or rotating lights. Some municipalities further prohibit all internally illuminated signs. The Greenway Guide on Signs recommends against moving or glaring signs, billboards, and portable or readerboard signs. Our Department's stance on digital signs is no different — we recommend prohibiting them.



*An example of a digital sign, sometimes called an electronic messaging center.*

Of the 30 municipalities in Dutchess County:

- 50% prohibit internal illumination
- 100% prohibit flashing, animation, intermittent lighting
- 100% prohibit large-scale off-premise signs or new billboards

In all cases, local municipalities should be aware of the issues surrounding digital signs, and are encouraged to incorporate appropriate regulatory language into their municipal codes — whether to prohibit digital signs altogether, only permit certain types, or permit them with standards and restrictions.

Below is an overview of the main issues with digital signs, and guidance on how to regulate them. Please note that this overview is not exhaustive, and local municipalities should engage their own planning consultants to conduct additional research and make recommendations appropriate for each municipality. As always, municipalities should seek legal advice on any proposed regulations.

### Types of Digital Signs

Most digital signs use LED technology, which is more energy efficient than neon or incandescent. Before we delve into the details, it's important to define the three main types of digital signs:

*Digital fuel pricing signs* are gas station signs with electronically changeable fuel prices.



*A digital fuel pricing sign.*

*Electronic messaging centers* are digital readerboards that display more complex messages and graphics, and may either be static or involve frequent changes to the message (depending on local regulations). Examples include a drugstore sign that electronically advertises various products and sales, a movie theater sign showing what's playing, or a school sign that lists upcoming holidays or sporting events.

*Digital billboards* are large, off-premises signs that utilize digital messaging capabilities, have the appearance of a huge movie theater screen, and can be programmed with complicated graphics and frequent message transitions.



*An electronic messaging center.*

### Digital Signs and Driver Distraction — Is It an Issue?

Driving is a complicated task that requires constant processing of information and decision-making. While a singularly causal relationship between digital signs and driver distraction has been subject to conflicting studies, most experts agree that when digital signs are added to the mix, they can contribute to driver distraction and pose a safety concern.

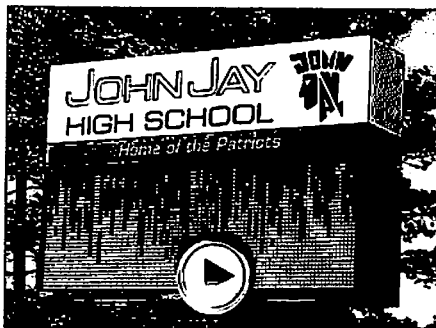
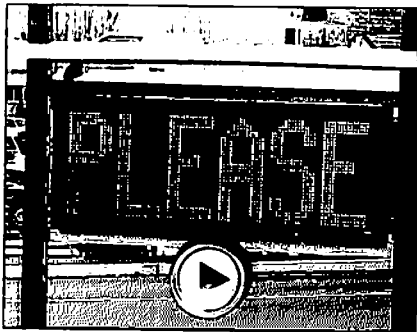
Common sense, too, tells us that seeing a brightly lit sign in the distance will initially draw our attention away from the road, and then reading that sign (which may include several lines of text and/or a changing message) holds our attention — and this can only serve to distract us from the tasks of driving. Research has shown that drivers diverting their attention away from the road for 2 or more seconds make a crash 3.7 times more likely. References that address driver distraction are provided at the end of the article.

## Regulatory Issues to Consider

Some municipalities may choose to simply prohibit digital signs, while others may allow them with certain restrictions. Digital signs, regardless of type, share certain characteristics. Issues to consider, and examples of regulations for these issues, are provided below:

### 1. Transitions and Display Type

- Limit frequent changes to the message, e.g.:
  - Consider a minimum display time of 12-24 hours.
- For message transitions, require instantaneous changes without any special effects.
- Prohibit “sequencing” of messages, which is when only a portion of the message is displayed at a time and the viewer must wait through at least one transition to see the entire message, e.g.:
  - The messages portrayed shall be complete in themselves without continuation of content to the next image, display, or to another sign.
- Prohibit motion, animation, or video, including any type of special effect that simulates movement including flashing, fading, blinking, dissolving, scrolling, traveling, or changes in intensity.
- Prohibit sound or auditory components.



*Click on the photos above to view videos of electronic messaging centers with changing, moving, and/or flashing images. [These videos are best viewed in QuickTime, which is a free download.]*

### 2. Legibility

- Establish performance measures, such as:
  - Digital signs should be clear and easy to read, without excessive text, colors, graphics, or other features that reduce their legibility.
- Encourage use of a limited number of words on the sign, e.g.:
  - The text of the message should use the fewest number of words possible to allow the entire copy to be read with minimal distraction [some codes recommend no more than 9 or 12 words per sign].

- Consider a maximum letter size to ensure that the sign is not overpowering, e.g.:
  - The character height of numbers or letters contained in an outdoor numeric display cannot exceed x inches [some codes allow 12-15 inches].
- Consider a minimum lettering size to ensure that the letters don't blur together, e.g.:
  - Some codes require 7" tall letters where speed limits are 25-34 mph, 9" tall letters where speed limits are 35-44 mph, 12" tall letters where speed limits are 45-54 mph, and 15" tall letters where speed limits are 55+ mph.

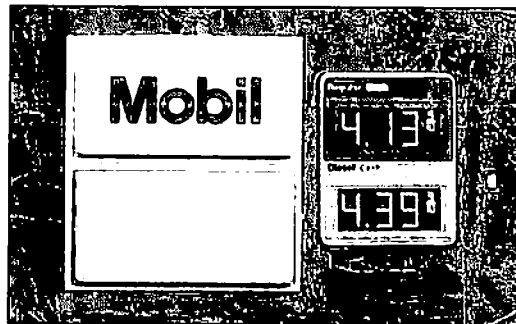
### 3. Brightness/Illumination Level

Just because a sign is lit doesn't necessarily mean it's easier to read. Presenters at a 2011 Northeast States Sign Association industry-sponsored conference stated that LEDs used in digital signs, particularly fuel pricing signs, are often too bright, making them appear blurry to the viewer. This becomes a safety concern, especially near intersections, traffic signals, curb cuts and sidewalks, and near other competing signs:

According to a study done for the City of Minnetonka, MN:

***"Sign industry representatives indicate that excessive brightness can be the result of..... lack of understanding that brightness is not necessarily an advantage, especially if it makes a sign unreadable or unpleasant to look at."***

- Establish purpose statements, such as:
  - No sign shall be brighter than is necessary for clear and adequate visibility;
  - No sign shall be of such intensity or brilliance as to impair the vision of a motor vehicle driver or to otherwise interfere with the driver's operation of a motor vehicle;
  - No sign shall be of such intensity or brilliance that it interferes with the effectiveness of an official traffic-control sign, device or signal.
- Limit brightness, e.g.:
  - Signs should be limited to a brightness level that is below the maximum output of the sign [one industry expert suggests digital signs be limited to 60% of maximum output].



Notice the blurry glow around these LED numbers, making it more difficult for some viewers to discern the actual numbers from a distance.

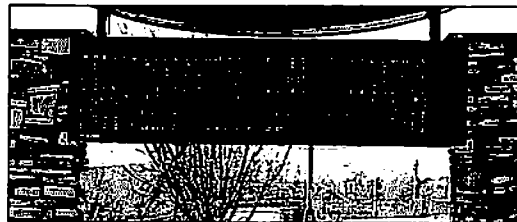
- Signs should include light sensors to automatically dim the sign as ambient light levels decrease. Requiring both a dimmer control as well as light sensors may be an optimal solution.
- If measuring brightness using footcandles, consider requiring the illuminance of a digital sign to not exceed 0.3 footcandles over the ambient light level for the area.
- If measuring brightness using nits, consider requiring digital signs to operate below a maximum illumination of x nits during daylight hours and x nits between dusk to dawn [Some codes specify 5,000–7,000 nits during daylight and 280–500 nits from dusk to dawn, while others address different maximum nit levels for red, green, amber, and full color signs.].
- If measuring nits and/or footcandles is deemed cost prohibitive, conformity with brightness regulations could be established by submittal of a manufacturer's certification that the sign is incapable of exceeding the stated limits of the municipal code.
- Require a black screen in case of malfunction, e.g.:
  - All digital signs shall contain a default mechanism that will cause the sign to revert immediately to a black screen if the sign malfunctions.

Brightness refers to the perceived intensity of a source of light. It is subjective and relative to ambient light levels. The same sign viewed at night or in a dimly lit area appears brighter than during the day or in an urban environment with many competing sources of artificial illumination.

There are two objective measures related to brightness: illuminance and luminance:

- **Illuminance** is the amount of light that lands on a surface, such as from a pole light onto the ground, and is measured in *footcandles* or *lux*.
- **Luminance** is the amount of light leaving a surface, such as light given off from an internally illuminated sign. Luminance is measured in candelas per square meter, also referred to as *nits*.

The Illuminating Engineering Society of North America and other organizations agree that luminance (nits) is the best measure for judging relative sign brightness. Determining nit levels may be best achieved by the manufacturer. However, measuring footcandles may be less expensive and easier to do in the field if a municipality is interested in field-checking digital signs.



*This malfunctioning message was displayed for several months before being repaired.*

#### 4. Location

- Specify permitted zoning districts and sign types, e.g.:
  - Digital displays are allowed only on freestanding signs in certain districts [such as commercial or highway business zones].
- Limit the number of signs per property and visible at one time, e.g.:
  - A maximum of one digital display sign is permitted per property;

- Only one digital sign face, on either side of the road, shall be visible to a driver at one time.
- Limit the digital portion of a sign, e.g.:
  - Only one contiguous digital display area is allowed on a sign face.
- Prohibit vehicle-mounted and other mobile digital signs, except those authorized by the Department of Transportation.

#### 5. Size

- Establish a maximum size and/or percentage of a sign's area that can be digital, e.g.:
  - The digital portion of a sign shall have a maximum allowable area of x square feet or x percent of the sign area, whichever is less [some codes allow a maximum size of 40 square feet; some allow 25-50 percent of the sign area to be digital].

#### 6. Permits

- Consider requiring an annual permit and fee, e.g.:
  - All digital signs require a permit, along with a fee to defray the municipality's cost to monitor and regulate their operational mode in accordance with the provisions of this chapter. The permit must be renewed annually. [This allows the municipality to adjust standards as needed based on changing technology and evaluation of impacts].
- Require an owner/operator certification, e.g.:
  - The initial permit application must include a certification from the owner or operator of the sign stating that the sign shall at all times be operated in accordance with municipal codes and that the owner or operator shall provide proof of such conformance upon request by the municipality.

### Additional Issues for Digital Billboards

According to a [report](#) for the National Cooperative Highway Research Project, "Of those research studies that have addressed driver distraction and roadside billboards, nearly every empirical study undertaken since 1995, including that by Lee et al., and sponsored by the outdoor advertising industry, have demonstrated that there is an adverse relationship between distraction and digital billboards" (p.145).

In addition to the items previously listed in this article, the following specific issues apply to digital billboards:

- Determine whether the conversion of existing paper billboards to digital billboards should be allowed. We strongly suggest that digital billboards are not appropriate for Dutchess County.
- If digital billboards are allowed, these standards should be considered:



Digital billboard. [Photo credit: Associate Press via The Post Standard website, syracuse.com]

- Establish a minimum display time (the Federal Highway Administration recommends a minimum of 8 seconds between message transitions). An alternative approach would establish a few minimum display times based on typical road speeds and sight distances to the billboard.
- Specify acceptable and unacceptable locations, such as not within a highway interchange, where drivers are contending with a multitude of road signs, or performing complex maneuvers such as merging and changing lanes.

### What is the Future for Digital Signs in Our Communities?

Many communities in Dutchess County already prohibit internally lit signs. However, as the cost of digital signs continues to fall, there may be added pressure from applicants to allow them. While communities can discuss and debate the particular issues presented above, it is worth noting that the marketing materials of digital sign manufacturers often state that these digital signs are designed to be attention-getting. It is difficult to understand how they can be attention-getting for the sign owner and simultaneously not be a safety hazard or visual intrusion for the community. Municipalities must decide which is more important —the benefit to the digital sign owner, or the safety and visual quality of the community. Through local regulations, municipalities have the power and the right to prohibit or permit digital signs as they see fit.

#### More Information

"Dynamic" Signage: Research Related to Driver Distraction and Ordinance Recommendations  
Prepared for the City of Minnetonka, MN (June 2007).

Looking Ahead: Regulating Digital Signs and Billboards  
American Planning Association, *Zoning Practice* (April 2008)

Safety Impacts of the Emerging Digital Display Technology for Outdoor Advertising Signs  
National Cooperative Highway Research Program, by Jerry Wachtel (2009)

Scenic America

Greenway Guide E2: Signs

#### Municipal Code Examples

*Disclaimer: The Dutchess County Department of Planning and Development does not necessarily endorse any of these codes, but provides them as examples of the many different ways to address digital signs.*

Minnetonka, MN Sign Ordinance — see Ch. 3, Section 300.30 (Zoning, Signs) — subsection 2 (Definitions), subsection 14 (Dynamic Displays), and subsection 15 (Brightness Standards)

*Continued on next page...*

## Municipal Code Examples

...cont'd

Hamburg, NY Sign Regulations — see §280-234 (Definitions), §280-238 (Illumination), and §280-261 (Business signs in C or M Districts)

Mesa, AZ Sign Regulations — see §11-41-5 (Definitions) and §11-41-8[D-17] (Electronic Message Displays)

Bastrop, TX Sign Ordinance — see §3.20.006 (Definitions), §3.20.011 (Sign Illumination), and §3.20.015-5 (Electronic Message LED)

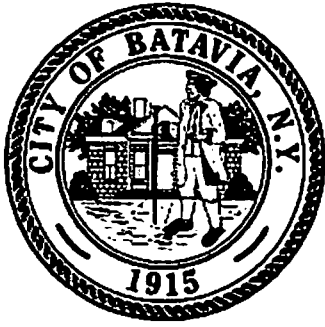
Eden Prairie, MN Sign Permits — City Code Chapter 11, see §11.70.2 (Definitions), §11.70.3C (General Provisions), §11.70.7 (Dynamic Displays).

Vancouver, WA Land Use and Development Code — see §20.150.040 (General Definitions), and §20.960.060-I (Commercial District Signs).

[CLICK HERE](#) for a print version (.pdf) of this issue and to view past issues of the DCPF's newsletter, *Plan On It*.


This newsletter was developed by the Dutchess County Department of Planning and Development, in conjunction with the Dutchess County Planning Federation.

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# City of Batavia

To: Honorable City Council

From: Jason Molino, City Manager 

Date: January 21, 2016

Subject: Close out of Capital Projects

**Background:** In an effort to keep our capital project fund up to date and current, it is necessary to close out certain capital projects that are completed at this time. Those capital projects that are completed and need to be closed out are: Walnut Street Reconstruction Project, Trumbull/Summit Sanitary Sewer and Infrastructure Improvement Project and the Water Plant Roof Replacement.

With regards to the Walnut Street Reconstruction Project, there is residual amount of \$33,591.45 surplus to be transferred out of the project in order to properly close this project. Conversely, with regards to the Trumbull/Summit project, a transfer of \$85,760.71 to the project is required from the Sidewalk Reserve in order to properly close the project.

The Walnut Street reconstruction project surplus of \$33,591.45 can be transferred to the City general fund or repurposes to benefit another capital project. The Trumbull Pwy/Summit Sanitary Sewer and Infrastructure Improvement Project that included a series of improvements such as a sanitary sewer replacement, road resurfacing and sidewalk replacements was expected to utilized Sidewalk Reserve funding to close out the project and requires \$85,760.71 from the Sidewalk Reserve to close out the project.

It is recommended that the remaining surplus from the Walnut Street project be transferred to the Trumbull/Summit project, and less Sidewalk Reserve be utilized to close out the Trumbull/Summit project. This would allow for both projects to be closed out as well as provide additional funding in the Sidewalk Reserve for sidewalk projects in future years.

**Recommendation:** It is recommended that the remaining balance of the Walnut Street project be used to assist in closing out the Trumbull/Summit project, thereby utilizing less Sidewalk Reserve than intended. This will provide additional resources in the Sidewalk Reserve for projects in future years.

**Supporting Documents:**

1. A Resolution Closing Out Capital Projects

**#-2016**  
**A RESOLUTION TO CLOSE OUT CAPITAL PROJECTS**

**Motion of Councilperson**

**WHEREAS**, The City of Batavia should periodically close capital projects which are completed; and

**WHEREAS**, projects completed at this time that require official closing are listed as follows:

#0504 Walnut Street Road Construction  
#1303 Trumbull/Summit Sanitary Sewer and Infrastructure Improvement Project  
#1502 Water Plant Roof; and

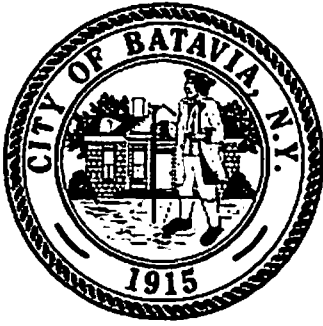
**WHEREAS**, the City Council authorizes the City Manager to make the recommended transfers and close out the specified capital projects effective February 8, 2016; and

**WHEREAS**, in order to close out the Trumbull/Summit project a transfer of \$52,169.26 from the Sidewalk Reserve is required and in order to close the Walnut Street project a transfer of \$33,591.45 out of the Walnut Street Project to the Trumbull/Summit Sanitary Sewer and Infrastructure Improvement Project is required; and

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Batavia that the following transfers be made:


\$33,591.45	from 030.9961.0901.0504 Capital Fund Transfers out to 030.0030.5031.1303 General Fund Transfers in
\$52,169.26	from 001.9950.0906.2107 General Fund Transfers out to 030.0030.5031.1303 Capital Fund Transfers in

**Seconded by Councilperson  
and on roll call**



# City of Batavia

To: Honorable City Council

From: Jason Molino, City Manager 

Date: January 21, 2016

Subject: Co-operative Purchasing

**Background:** With the changes in New York State Law and New York States Office of General Services reducing/phasing out NYS bidding contracts, cooperative purchasing has become a very common way to find best value and pricing for commodity purchases for all government agencies. The City of Batavia currently is a member of several cooperative purchasing resources the Empire Bid System, US Communities and National Joint Powers Alliance (NJPA). These organizations are sources for "Piggy-Back" bid purchases that leverage buying power by volume for its members. There are two other cooperative purchasing agencies available for our use, the H-GACBuy (Houston-Galveston Area Council) and TPCN (The Cooperative Purchasing Network).

Most departments of the City would benefit from the purchase power offered by these additional cooperatives. The City currently does business with a number of associated vendors such as Fastenal, Toro, Grainger and Office Depot. In many cases these vendors offer better discounts to members of the cooperatives. An example is Lawson Products sells plow bolts at \$.30 to \$.50 per bolt less than what the City currently pays. While this pricing appears nominal on the surface, with an average of 26 bolts per plow and upwards of fourteen plows, the savings begins to add up over a season of plow adjustments. Also it has been noted that H-GACBuy large equipment discounts are near 30% of the old NYS Bids that are being phased out. It should also be noted that there are also numerous fire apparatus vendors available that some NYS communities are starting to utilize and receiving considerable savings when compared to traditional in-house bidding processes. There appears to be substantial benefit for the City joining these additional cooperatives, both from a pricing perspective as well as less time spent on developing, issuing and reviewing bid specifications.

**Recommendation:** H-GACBuy and TPCN require City Council action to officially join both cooperatives. It is recommended that City Council adopt the attached resolutions authorizing the City to join both cooperatives. Joining a cooperative does not obligate the City in any manner to exclusively purchase from either cooperative, and the City at any time can discontinue its membership.

**Supporting Documents:**

1. Resolutions for H-GACBuy and TPCN.

**#-2016**

**A RESOLUTION AUTHORIZING THE CITY OF BATAVIA, NY TO ENTER INTO A  
COOPERATIVE PURCHASING AGREEMENT WITH THE HOUSTON-GALVESTON  
AREA COUNCIL (H-GAC)**

**Motion of Councilperson**

**WHEREAS**, the City Council has been presented a proposed Interlocal Agreement for cooperative purchasing with Houston-Galveston Area Council (H-GAC), and found it to be acceptable and in the best interests of the City of Batavia and its citizens, and

**WHEREAS**, the City Council desires to participate in the described cooperative purchasing program, with H-GAC, and in the opinion that participation in the program will be highly beneficial to the taxpayers of the City of Batavia through the anticipated savings to be realized.

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Batavia authorizes the Council President to execute the Interlocal Agreement with H-GAC and hereby authorizes the City Manager, or his designee to serve as the Official Representative of the City of Batavia relating to the program.

**Seconded by Councilperson  
and on roll call**

**#-2016**

**A RESOLUTION AUTHORIZING THE CITY OF BATAVIA, NY TO ENTER INTO A  
COOPERATIVE PURCHASING AGREEMENT WITH REGION 4 EDUCATION  
SERVICE CENTER LEAD AGENCY FOR THE COOPERATIVE PURCHASING  
NETWORK (TCPN)**

**Motion of Councilperson**

**WHEREAS**, the City Council has been presented a proposed Interlocal Agreement with the Region 4 Education Service Center, lead agency for The Cooperative Purchasing Network (TCPN), and found it to be acceptable and in the best interests of the City of Batavia and its citizens; and

**WHEREAS**, the City Council desires to participate in the described cooperative purchasing program, whose lead agency is Region 4 Education Service Center, and in the opinion that participation in the program will be highly beneficial to the taxpayers of the City of Batavia through the anticipated savings to be realized; and

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Batavia authorizes the Council President to execute the Interlocal Agreement with the Region 4 Education Service Center, lead agency for The Cooperative Purchasing Network (TCPN) and hereby authorizes the City Manager, or his designee to serve as the Official Representative of the City of Batavia relating to the program.

**Seconded by Councilperson  
and on roll call**



## INTERLOCAL CONTRACT FOR COOPERATIVE PURCHASING

ILC

No.: \_\_\_\_\_

Permanent Number assigned by H-GAC

THIS INTERLOCAL CONTRACT ("Contract"), made and entered into pursuant to the Texas Interlocal Cooperation Act, Chapter 791, Texas Government Code (the "Act"), by and between the Houston-Galveston Area Council, hereinafter referred to as "H-GAC," having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, and \* \_\_\_\_\_, a local government, a state agency, or a non-profit corporation created and operated to provide one or more governmental functions and services, hereinafter referred to as "End User," having its principal place of business at \* \_\_\_\_\_

### W I T N E S S E T H

WHEREAS, H-GAC is a regional planning commission and political subdivision of the State of Texas operating under Chapter 391, Texas Local Government Code; and

WHEREAS, pursuant to the Act, H-GAC is authorized to contract with eligible entities to perform governmental functions and services, including the purchase of goods and services; and

WHEREAS, in reliance on such authority, H-GAC has instituted a cooperative purchasing program under which it contracts with eligible entities under the Act; and

WHEREAS, End User has represented that it is an eligible entity under the Act, that its governing body has authorized this Contract on \* \_\_\_\_\_ (Date), and that it desires to contract with H-GAC on the terms set forth below;

NOW, THEREFORE, H-GAC and the End User do hereby agree as follows:

#### ARTICLE 1: LEGAL AUTHORITY

The End User represents and warrants to H-GAC that (1) it is eligible to contract with H-GAC under the Act because it is one of the following: a local government, as defined in the Act (a county, a municipality, a special district, or other political subdivision of the State of Texas or any other state), or a combination of two or more of those entities, a state agency (an agency of the State of Texas as defined in Section 771.002 of the Texas Government Code, or a similar agency of another state), or a non-profit corporation created and operated to provide one or more governmental functions and services, and (2) it possesses adequate legal authority to enter into this Contract.

#### ARTICLE 2: APPLICABLE LAWS

H-GAC and the End User agree to conduct all activities under this Contract in accordance with all applicable rules, regulations, and ordinances and laws in effect or promulgated during the term of this Contract.

#### ARTICLE 3: WHOLE AGREEMENT

This Contract and any attachments, as provided herein, constitute the complete contract between the parties hereto, and supersede any and all oral and written agreements between the parties relating to matters herein.

#### ARTICLE 4: PERFORMANCE PERIOD

The period of this Contract shall be for the balance of the fiscal year of the End User, which began \* \_\_\_\_\_ and ends \* \_\_\_\_\_. This Contract shall thereafter automatically be renewed annually for each succeeding fiscal year, provided that such renewal shall not have the effect of extending the period in which the End User may make any payment due an H-GAC contractor beyond the fiscal year in which such obligation was incurred under this Contract.

#### ARTICLE 5: SCOPE OF SERVICES

The End User appoints H-GAC its true and lawful purchasing agent for the purchase of certain products and services through the H-GAC Cooperative Purchasing Program. End User will access the Program through HGACBuy.com and by submission of any duly executed purchase order, in the form prescribed by H-GAC to a contractor having a valid contract with H-GAC. All purchases hereunder shall be in accordance with specifications and contract terms and pricing established by H-GAC. Ownership (title) to products purchased through H-GAC shall transfer directly from the contractor to the End User.

(over)

#### **ARTICLE 6: PAYMENTS**

H-GAC will confirm each order and issue notice to contractor to proceed. Upon delivery of goods or services purchased, and presentation of a properly documented invoice, the End User shall promptly, and in any case within thirty (30) days, pay H-GAC's contractor the full amount of the invoice. All payments for goods or services will be made from current revenues available to the paying party. In no event shall H-GAC have any financial liability to the End User for any goods or services End User procures from an H-GAC contractor.

#### **ARTICLE 7: CHANGES AND AMENDMENTS**

This Contract may be amended only by a written amendment executed by both parties, except that any alterations, additions, or deletions to the terms of this Contract which are required by changes in Federal and State law or regulations are automatically incorporated into this Contract without written amendment hereto and shall become effective on the date designated by such law or regulation.

H-GAC reserves the right to make changes in the scope of products and services offered through the H-GAC Cooperative Purchasing Program to be performed hereunder.

#### **ARTICLE 8: TERMINATION PROCEDURES**

H-GAC or the End User may cancel this Contract at any time upon thirty (30) days written notice by certified mail to the other party to this Contract. The obligations of the End User, including its obligation to pay H-GAC's contractor for all costs incurred under this Contract prior to such notice shall survive such cancellation, as well as any other obligation incurred under this Contract, until performed or discharged by the End User.

#### **ARTICLE 9: SEVERABILITY**

All parties agree that should any provision of this Contract be determined to be invalid or unenforceable, such determination shall not affect any other term of this Contract, which shall continue in full force and effect.

#### **ARTICLE 10: FORCE MAJEURE**

To the extent that either party to this Contract shall be wholly or partially prevented from the performance within the term specified of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed; provided, however, force majeure shall not excuse an obligation solely to pay funds. Determination of force majeure shall rest solely with H-GAC.

#### **ARTICLE 11: VENUE**

Disputes between procuring party and Vendor are to be resolved in accord with the law and venue rules of the State of purchase.

**THIS INSTRUMENT HAS BEEN EXECUTED IN TWO ORIGINALS BY THE PARTIES HERETO AS FOLLOWS:**

\*  
\_\_\_\_\_  
Name of End User (local government, agency, or non-profit corporation)

\*  
\_\_\_\_\_  
Mailing Address

\*  
\_\_\_\_\_  
City State ZIP Code

\*By: \_\_\_\_\_  
Signature of chief elected or appointed official

\*  
\_\_\_\_\_  
Typed Name & Title of Signatory Date

***Houston-Galveston Area Council***  
3555 Timmons Lane, Suite 120, Houston, TX 77027

By: \_\_\_\_\_  
Executive Director

Attest: \_\_\_\_\_  
Manager

Date: \_\_\_\_\_

*\*Denotes required fields*

rev. 03/11

**\*Request for Information**

Please sign and return the Interlocal Contract, along with this completed form, to H-GAC by emailing it to [cpcontractfax@h-gac.com](mailto:cpcontractfax@h-gac.com) or by faxing it to 713-993-2424. The contract may also be mailed to:

**H-GAC Cooperative Purchasing Program**  
**P.O. Box 22777, Houston, TX 77227-2777**

Name of End User Agency: \_\_\_\_\_ County Name: \_\_\_\_\_  
(Municipality/County/District/etc.)

Mailing Address: \_\_\_\_\_  
(Street Address/P.O. Box) (City) (State) (ZIP Code)

Main Telephone Number: ( ) FAX Number: ( )

Physical Address: \_\_\_\_\_  
(Street Address, if different from mailing address) (City) (State) (ZIP Code)

Web Site Address: \_\_\_\_\_

Official Contact: \_\_\_\_\_  
(Point of Contact for HGACBuy Interlocal Contract)

Mailing Address: \_\_\_\_\_  
(Street Address/P.O. Box)

(City) (State) (ZIP Code)

Authorized Official: \_\_\_\_\_  
(Mayor/City Manager/Executive Director/etc.)

Mailing Address: \_\_\_\_\_  
(Street Address/O.O. Box)

(City) (State) (ZIP Code)

Official Contact: \_\_\_\_\_  
(Purchasing Agent/Auditor etc. )

Mailing Address: \_\_\_\_\_  
(Street Address/O.O. Box)

(City) (State) (ZIP Code)

Official Contact: \_\_\_\_\_  
(Public Works Director/Police Chief etc.)

Mailing Address: \_\_\_\_\_  
(Street Address/O.O. Box)

(City) (State) (ZIP Code)

Official Contact: \_\_\_\_\_  
(EMS Director/Fire Chief etc. )

Mailing Address: \_\_\_\_\_  
(Street Address/O.O. Box)

(City) (State) (ZIP Code)

Title: \_\_\_\_\_

Ph No.: ( ) -

Fx No. : ( ) -

E-Mail Address: \_\_\_\_\_

Title: \_\_\_\_\_

Ph No.: ( ) -

Fx No. : ( ) -

E-Mail Address: \_\_\_\_\_

Title: \_\_\_\_\_

Ph No.: ( ) -

Fx No. : ( ) -

E-Mail Address: \_\_\_\_\_

Title: \_\_\_\_\_

Ph No.: ( ) -

Fx No. : ( ) -

E-Mail Address: \_\_\_\_\_

Title: \_\_\_\_\_

Ph No.: ( ) -

Fx No. : ( ) -

E-Mail Address: \_\_\_\_\_

\* denotes required fields

# **INTERLOCAL AGREEMENT**

## **Region 4 Education Service Center**

### **Contracting Parties**

\_\_\_\_\_  
School District or Public Entity

\_\_\_\_\_  
County-District Number

Region 4 Education Service Center

101 - 950  
County-District Number

This agreement is effective \_\_\_\_\_ and shall be automatically renewed unless either party gives sixty (60) days prior written notice of non-renewal. This agreement may be terminated with or without cause by either party upon (60) days prior written notice, or may also be terminated for cause at anytime upon written notice stating the reason for and effective date of such terminations and after giving the affected party a thirty (30) day period to cure any breach.

### **Statement of Services to be Performed:**

Authority for such services is granted under Government Code, Title 7, Chapter 791 Interlocal Cooperation Contracts, Subchapter B and Subchapter C, and Local Government Code, Title 8, Chapter 271, Subchapter F, Section 271.101 and Section 271.102. The purpose of this cooperative is to obtain substantial savings for member school districts and public entities through volume purchasing.

### **Role of the Purchasing Cooperative:**

1. Provide for the organizational and administrative structure of the program.
2. Provide staff time necessary for efficient operation of the program.
3. Receive quantity requests from entities and prepare appropriate tally of quantities.
4. Initiate and implement activities related to the bidding and vendors selection process.
5. Provide members with procedures for ordering, delivery, and billing.
6. Fully comply with all applicable state rules and regulations related to competitive procurement and cooperative purchasing in the State of Texas.

### **Role of the Member School District or Public Entity:**

1. Commitment to participate in the program as indicated by an authorized signature in the appropriate space below.
2. Designate a contact person for the cooperative.
3. Commit to purchase products and services that become part of the official products and services list when it is in the best interest of the member entity.
4. Prepare purchase orders issued to the appropriate vendor from the official award list provided by the Purchasing Cooperative.

5. Issue any and all contracts, purchase orders, or other applicable authorizations for purchase (Purchase Orders) made on behalf of TCPN vendors. This agreement, however, does not obligate Member to purchase any commodities and/or services under any TCPN contract.
6. Accept shipments of products ordered from vendors in accordance with standard purchasing procedures.
7. Pay vendors in a timely manner for all goods and services received.

#### **General Provisions**

1. The parties agree to comply fully with all applicable federal statutes, rules and regulations in connection with the programs contemplated under this Agreement. This Agreement is subject to all applicable present and future valid laws governing such programs.
2. It is the sole responsibility of each Member Agency to follow their state procurement statutes as it pertains to cooperative purchasing, or joint power agreements, with in-state or out-of-state public agencies.
3. This Agreement shall be governed by the law of the State of Texas and venue shall be in the county in which the administrative offices of Region 4 ESC are located, which is Harris County, Texas.
4. If any term(s) or provisions of this Agreement are held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect.
5. Before any party may resort to litigation, any claims, disputes or other matters in questions between the Parties to this Agreement shall be submitted to nonbinding mediation.
6. No party to this Agreement waives or relinquishes any immunity or defense on behalf of themselves, their directors, officers, employees and agents as a result of this agreement being executed or the performance of the functions and obligations describe herein.
7. This Agreement incorporates all agreements, covenants and understandings between the parties concerning subject matter in the Agreement. No prior agreement of understanding, verbal or otherwise, by the parties or their agents, shall be valid or enforceable unless embodied in this agreement.
8. TCPN makes the contract available to the Member "as is" and is under no obligation to revise the terms, conditions, scope, prices, and/or any other requirements of the contract for the benefit of the Member.
9. Region 4 ESC may amend this Agreement, provided that written notice is given to the Member no less than 60 days prior to the date that the change will take effect.
10. All forms of written notice, under this agreement, shall be made by first class mail, postage prepaid and delivered to the parties of the agreement.
11. Member agrees to cooperate in compliance with any reasonable request for information and/or records made by the Cooperative. Breach of this provision may be grounds for termination after 10 days written notice to the Member.

By execution and delivery of this Agreement, the undersigned individuals warrant that they have been duly authorized by all requisite administrative action required to enter into and perform the terms of this Agreement.

## Region 4 Education Service Center

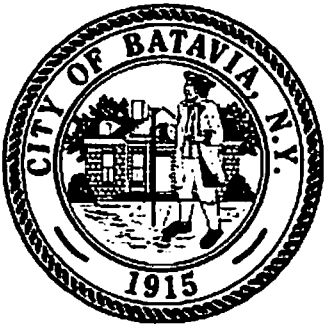
By \_\_\_\_\_  
Authorized Signature

**Region 4 ESC Chief Financial Officer**  
**Title**

Date \_\_\_\_\_

**Telephone Number**

robert.zingelmann@esc4.net  
Email Address

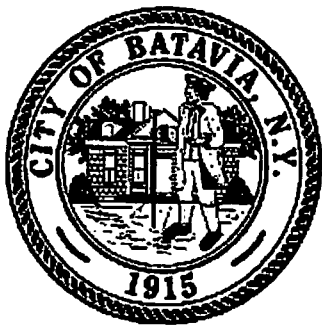


## Memo

Date: January 20, 2016  
To: Jason Molino, City Manager  
From: Matt Worth, Director of Public Works  
Subject: Summit St Reconstruction Project Bid Award


Final design of this project has been completed and funding approval from the Federal Highway Administration has been received. As a result, an advertisement for bids was issued on January 19<sup>th</sup>, 2016 with a bid opening date of February 9, 2016.

It is expected that a review of the bid tabulations will be completed and a recommendation by the design engineer will be prepared for City Councils consideration of award for the February 22, 2016 council meeting.



## City of Batavia

To: Honorable City Council

From: Jason Molino, City Manager 

Date: January 21, 2016

Subject: Sales Tax Allocation Agreement

**Background:** In 1999 the City and County entered into the Sales Tax Allocation Agreement formalizing the percentage share of County sales tax to be distributed between the City, County, Towns and Villages (see attached). This agreement came in tandem with the creation of the Operation and Maintenance Agreement for the Water Treatment Plant and Water Treatment Facilities Agreement, as all three agreements addressed the Genesee County Public Water Supply Program, economic development and water demands in the County.

All three agreements were renewed and extended in 2007 for an additional 10 years. As outlined in the Sale Tax Allocation Agreement resolution, by July 2016, a committee of County Legislators, City Council members and elected representatives from the surrounding Towns and Villages are to convene and recommend to the City Council and County Legislature whether or not to amend, modify or extend this agreement for an additional term, and that no later than December 1, 2016 both elected bodies shall notify the other of its intentions.

It should be noted, that while not mentioned in the Sales Tax Allocation Agreement, the two water treatment agreements do have barring on the outcome of the sales tax agreement and that any recommendation regarding any one agreement would generally not be made individually or absent of the other two. As such the City has begun preliminary discussions with the County regarding the water agreements.

A more in-depth review of the Genesee County Public Water Supply Program and how the three agreements relate to each will be forth coming at a future Council meeting.

**Recommendation:** It is recommended that the City Council appoint two City Council members to participate in the committee regarding the Sales Tax Allocation Agreement.

**Supporting Document:**

1. A Resolution Appointing Two Council Members to the Committee to Review the Sales Tax Allocation Agreement with Genesee County

**#-2016**

**A RESOLUTION APPOINTING TWO COUNCIL MEMBERS TO THE COMMITTEE  
TO REVIEW THE SALES TAX ALLOCATION AGREEMENT WITH GENESEE  
COUNTY**

**Motion of Councilperson**

**WHEREAS**, the County of Genesee and the City of Batavia, together with representatives of the Villages and Towns in the county did in 1999 reach an agreement with regard to the distribution of sales tax revenue in Genesee County and renewed that agreement in 2007, and

**WHEREAS**, the County and Villages recognized that the best interests of the entire area, all the various municipalities and all the citizens thereof, would be best served if the revenue derived from sales tax allocated to the City was to be stabilized, and

**WHEREAS**, it was recognized that industrial and commercial growth in the County of Genesee would in all likelihood take place outside the City, that the population of the City would in all likelihood decline and that the City's portion of the revenue derived from sales tax should be based neither on taxable sales within its geographic boundaries nor its population, and

**WHEREAS**, the County Legislature has determined that the City's ability to serve as a commercial, financial and governmental center of the County is essential for the economic growth of the areas outside the City, and

**WHEREAS**, pursuant to the current Sales Tax Allocation Agreement that on or before the first day of July, 2016, the Genesee County Legislature shall cause a committee to be convened consisting of members of the County Legislature, members of the City Council and representatives of the elected officials of the Villages and Towns of Genesee County, which committee shall recommend to the Legislature and the City Council whether or not to amend, modify or extend this Agreement for an additional term, and

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council hereby appoints Councilpersons XXX and XXX to serve as the City representatives on said committee.

**Seconded by Councilperson  
and on roll call**

**AGREEMENT  
SALES TAX ALLOCATION  
COUNTY OF GENESEE and CITY OF BATAVIA**

THIS AGREEMENT made this 9<sup>th</sup> day of November, 1999 by and between the COUNTY OF GENESEE, with offices at the Old County Courthouse, 7 Main Street, Batavia, New York 14020 hereinafter referred to as "County", and the CITY OF BATAVIA, with offices at City Hall, West Main Street, Batavia, New York 14020 hereinafter referred to as "City".

**WITNESSETH:**

WHEREAS, the County and the City, together with representatives of the Villages and Towns in the County have heretofore formed a committee composed of members of the legislature, members of the City Council and representatives of the elected officials of the Villages and Towns which committee has reached an agreement in principal regarding the distribution of sales tax revenue in Genesee County; and

WHEREAS, the County and the Villages recognize that the best interests of the entire area, all the various municipalities and all the citizens thereof, will be best served if the revenue derived from sales tax allocated to the City was to be stabilized; and

WHEREAS, it is recognized by all members of the committee that industrial and commercial growth will in all likelihood take place outside the City, that the current population of the City will in all likelihood decline and that the City's proportion of the revenue derived from sales tax should be based neither on taxable sales within its geographic boundaries nor its population; and

WHEREAS, the members of the committee have determined that the City's ability to serve as a commercial, financial and governmental center of the County is essential for the economic growth of the areas outside the City; and

WHEREAS, if the City's revenue were to decline it would seriously adversely affect its ability to function effectively as such a center, thus seriously adversely affect the ability of the areas outside the City to achieve their full potential for economic development; and

WHEREAS, the best interest of the entire Genesee County Community are best served by sharing sales tax revenue in a manner which stabilizes the City's income derived therefrom in order to preserve and promote it and the entire area; and

WHEREAS, the parties hereto wish to enter into an Agreement pursuant to subdivision c of section 1262 of the Tax Law of the State of New York.

NOW, THEREFORE, it is agreed as follows:

**FIRST:** The County shall, during the term of this Agreement, have the exclusive authority to impose all of the taxes described in Articles 28 and 29 of the Tax Law of the State of New York, pursuant to the provisions of Section 1210(a) and 1224(p) of said law and at a rate of three percent (3%) and one percent (1%) respectively and shall not set aside any part thereof for County purposes or educational purposes, except as otherwise provided in this Agreement.

**SECOND:** The City, during the term of this Agreement, shall refrain from imposing any of the taxes described in Article 28 of the Tax Law, effective March 1, 2000.

**THIRD:** The net proceeds of the tax imposed, collected and received by the County shall be allocated and distributed as follows:

A. Fifty percent (50%) of such monies shall be set aside for County purposes and shall be available for any legitimate County purposes.

B. The City shall receive sixteen percent (16%) of such monies.

C. Thirty four percent (34%) of such monies shall be paid to the each of the towns in proportion to its share of the full taxable value of real property in such towns. Where a village has elected to be paid directly pursuant to section 1262(c) of the Tax Law said village shall be paid that amount proportionate to its share of the total full value of taxable real property in the town.

**FOURTH:** The implementation of the distributive formula contained in "THIRD" above is contingent upon agreement by the City not to pre-exempt the sales tax imposed by the County during the term of this Agreement. The City, by resolution has authorized the President of the City Council to confirm its agreement to the distributive formula as set forth herein.

**FIFTH:** The term of this Agreement shall be five (5) years commencing March 1, 2000 and ending on the 28th day of February, 2005.

**SIXTH:** That on or before the first day of each July during the term of this Agreement, the Genesee County Legislature shall cause a committee to be convened consisting of members of the Legislature, members of the City Council and representatives of the elected officials of the Villages and Towns of Genesee County, which committee shall recommend to the Legislature and the City Council whether or not to amend, modify or extend this Agreement for an additional year.

The Legislature and the City Council thereafter, and prior to September 1, of each year, shall, by resolution, extend this Agreement for an additional year or notify the other body that it intends, at the end of the term or any extension, thereof, to terminate, amend or modify this Agreement.

It is the express intent of this paragraph that there shall be an agreement for five (5) years in effect at all times and that in order to terminate or modify this Agreement, or any extension thereof, the Legislature is required to give the City at least four (4) years notice of its intent prior to effecting any such termination or modification.

SEVENTH: Within the time frames set forth herein the statutory notice requirements in Articles 28 and 29 of the Tax Law, this Agreement may be modified, terminated or otherwise amended in the event that both the City Council and the County Legislature, by formal resolution, mutually agree to do so. Neither party may do so unilaterally. Any such modification, termination or amendment must be reduced to writing, executed by such officers of each body as they shall respectively designate and approved by the Office of the State Comptroller as set forth above.

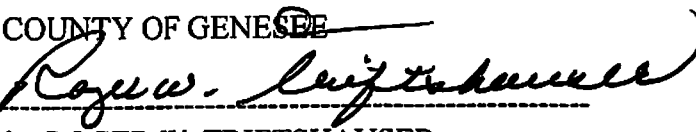
EIGHTH: This Agreement is subject to the approval of the State Comptroller of the State of New York as set forth in section 1262 (c) of the Tax Law.

IN WITNESS WHEREOF, the undersigned have set their hands this 9<sup>th</sup> day of  
~~September~~, 1999.  
November

CITY OF BATAVIA

  
-----  
by GEORGE SPINNEGAN  
President, City Council

COUNTY OF GENESEE

  
-----  
by ROGER W. TRIFTSHAUSER,  
Chairman, Genesee County Legislature

\* \* \*

**#80-2007**

**A RESOLUTION TERMINATING THE CURRENT  
SALES TAX ALLOCATION-AGREEMENT  
WITH THE COUNTY OF GENESEE**

**Motion of Councilperson Holvey**

**WHEREAS**, the City Council by resolution adopted September 30, 1999 did authorize the President of City Council to execute the Sales Tax Agreement between the City of Batavia and County of Genesee, and

**WHEREAS**, Paragraph Six of such agreement states that prior to September 1 of each year the Legislature and City Council shall, by Resolution, extend this agreement for an additional year or notify the other body that it intends, at the end of the term or any extension, thereof, to terminate, amend or modify this Agreement.

**NOW, THEREFORE, BE IT RESOLVED**, That the City Council does hereby elect and terminate the Sales Tax Agreement between the City of Batavia and County of Genesee dated November 9, 1999 effective February 28, 2012.

**Seconded by Councilperson Russell and on roll call approved 6-3. Councilpersons Mallow, Briggs and Christian voted no.**

\* \* \*

**#81-2007**

**A RESOLUTION APPROVING A SALES TAX ALLOCATION AGREEMENT  
WITH THE COUNTY OF GENESEE**

**Motion of Councilperson Snyder**

**WHEREAS**, The County of Genesee and the City of Batavia, together with representatives of the Villages and Towns in the county did in 1999 reach an agreement with regard to the distribution of sales tax revenue in Genesee County, and

**WHEREAS**, The County and Villages recognized that the best interests of the entire area, all the various municipalities and all the citizens thereof, would be best served if the revenue derived from sales tax allocated to the City was to be stabilized, and

**WHEREAS**, It was recognized that industrial and commercial growth in the County of Genesee would in all likelihood take place outside the City, that the population of the City would in all likelihood decline and that the City's portion of the revenue derived from sales tax should be based neither on taxable sales within its geographic boundaries nor its population, and

**WHEREAS,** The County Legislature has determined that the City's ability to serve as a commercial, financial and governmental center of the County is essential for the economic growth of the areas outside the City, and

**WHEREAS,** A decline in the City's revenue would adversely affect its ability to function effectively as such a center and adversely affecting the ability of the areas outside the City to achieve their full potential for economic development, and

**WHEREAS,** The best interests of the entire Genesee County Community are best served by sharing sales tax revenue in a manner which stabilizes the City's sales tax revenue in order to preserve and promote all of Genesee County, and

**WHEREAS,** The parties hereto now wish to enter into a new ten (10) year Agreement to reflect the continued need and success of the 1999 Agreement.

**WHEREAS,** The County and City wish to enter into an Agreement pursuant to subdivision C of Section 1262 of the Tax Law of the State of New York.

**NOW, THEREFORE, BE IT RESOLVED,** that the City Council hereby authorizes the Council President to execute the Sales Tax Agreement between the City of Batavia and County of Genesee that is attached hereto.

**Seconded by Councilperson Holvey and on roll call approved 6-3. Councilpersons Mallow, Briggs and Christian voted no.**

**AGREEMENT  
SALES TAX ALLOCATION  
COUNTY OF GENESEE and CITY OF BATAVIA**

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 200 by and between the COUNTY OF GENESEE, with offices at the Old County Courthouse, 7 Main Street, Batavia, New York 14020 hereinafter referred to as "County", and the CITY OF BATAVIA, with offices at City Centre, Main Street, Batavia, New York 14020 hereinafter referred to as "City".

**WITNESSETH:**

**WHEREAS,** the County and the City, together with representatives of the Villages and Towns in the County have hereto reached an agreement in principal regarding the distribution of sales tax revenue in Genesee County; and

**WHEREAS,** the County and the Villages recognize the best interests of the entire area, all the various municipalities and all the citizens thereof, would be best served if the revenue derived from sales tax allocated to the City was to be stabilized; and

**WHEREAS,** it is recognized that industrial and commercial growth in Genesee County would in all likelihood take place outside the City, that the current population of the City will in

all likelihood decline and that the City's portion of the revenue derived from sales tax should be based neither on taxable sales within its geographic boundaries nor its population; and

WHEREAS, it is clear that the City's ability to serve as a commercial, financial and governmental center of the County is essential for the economic growth of the areas outside the City; and

WHEREAS, a decline in the City's revenue would adversely affect its ability to function effectively as such a center and adversely affect the ability of the areas outside the City to achieve their full potential for economic development; and

WHEREAS, the best interest of the entire Genesee County Community are best served by sharing sales tax revenue in a manner which stabilizes the City's sales tax revenue in order to preserve and promote all of Genesee County; and

WHEREAS, the parties hereto wish to enter into an Agreement pursuant to subdivision c of Section 1262 of the Tax Law of the State of New York.

NOW, THEREFORE, it is agreed as follows:

FIRST: The County shall, during the term of this Agreement, have the exclusive authority to impose all of the taxes described in Articles 28 and 29 of the Tax Law of the State of New York, pursuant to the provisions of Section 1210(a) and 1224(p) of said law and at a rate of three percent (3%) and one percent (1%) respectively and shall not set aside any part thereof for County purposes or educational purposes, except as otherwise provided in this Agreement.

SECOND: The City, during the term of this Agreement, shall refrain from imposing any of the taxes described in Article 28 of the Tax Law, effective March 1, 2008.

THIRD: The net proceeds of the tax imposed, collected and received by the County shall be allocated and distributed as follows:

- A. Fifty percent (50%) of such monies shall be set aside for County purposes and shall be available for any legitimate County purposes.
- B. The City shall receive sixteen percent (16%) of such monies.
- C. Thirty-four percent (34%) of such monies shall be paid to each of the towns in proportion to its share of the full taxable value of real property in such towns. Where a village has elected to be paid directly pursuant to Section 1262(c) of the Tax Law said village shall be paid that amount proportionate to its share of the total full value of taxable real property in the town.

FOURTH: The implementation of the distributive formula contained in "Third" above is contingent upon agreement by the City not to pre-exempt the sales tax imposed by the County during the term of this Agreement. The City, by resolution has authorized the President of the City Council to confirm its agreement to the distributive formula as set forth herein.

FIFTH: The term of this Agreement shall be ten (10) years commencing March 1, 2008 and ending on the 28<sup>th</sup> day of February, 2018.

SIXTH: that on or before the first day of July, 2016, the Genesee County Legislature shall cause a committee to be convened consisting of members of the County Legislature, members of the City Council and representatives of the elected officials of the Villages and Towns of Genesee County, which committee shall recommend to the Legislature and the City Council whether or not to amend, modify or extend this Agreement for an additional term.

The Legislature and the City Council thereafter, and prior to December 1, 2016, shall, by resolution, notify the other body that it intends, at the end of the term or any extension, thereof, to terminate, amend or modify this Agreement.

SEVENTH: Within the time frames set forth herein and the statutory notice requirements in Articles 28 and 29 of the Tax Law, this Agreement may be modified, terminated or otherwise amended in the event that both the City Council and the County Legislature, by formal resolution, mutually agree to do so. Neither party may do so unilaterally. Any such modification, termination or amendment must be reduced to writing, executed by such officers of each body as they shall respectively designate and approved by the Office of the State Comptroller as set forth above.

EIGHTH: This Agreement is subject to the approval of the State Comptroller of the State of New York as set forth in Section 1262(c) of the Tax Law.

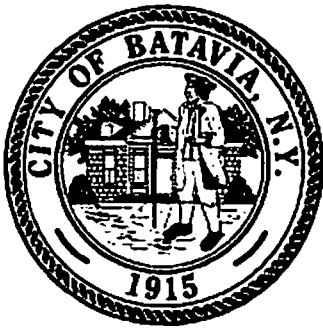
IN WITNESS WHEREOF, the undersigned have set their hands this \_\_\_\_\_ day of \_\_\_\_\_.

CITY OF BATAVIA

\_\_\_\_\_  
By Frank Ferrando  
President, City Council

COUNTY OF GENESEE

\_\_\_\_\_  
By MARY PAT HANCOCK  
Chair, Genesee County Legislature



## City of Batavia

To: Jason Molino, City Manager  
From: Daniel G. Herberger, Interim Fire Chief  
Date: January 21, 2016  
Subject: Resolution to amend the Fire Department 2015-2016 budget

Jason, attached is a Resolution to amend the Fire Department 2015-2016 budget to reflect the receipt of two separate grant awards from the NYS Governor's Traffic Safety Committee. The first award is for the Child Safety Seat Program in the amount of \$6,000 and the second award is for the Bicycle and Pedestrian Safety Program in the amount of \$800.

This amendment will affect the following budget lines:

Increase revenue accounts:	
1.1.3389.1155	\$6,000.00
Increase expense accounts:	
1.3410.0201.1155	\$6,000.00
Increase revenue accounts:	
1.1.3389.1156	\$ 800.00
Increase expense accounts:	
1.3410.0201.1156	\$ 800.00

Please let me know if you have any questions or concerns.

**Fire Department**  
18 Evans Street  
Batavia, New York 14020



Phone: 585-345-6375  
Fax: 585-345-5639  
[www.batavianewyork.com](http://www.batavianewyork.com)

**#-2016**

**A RESOLUTION TO AMEND THE 2015-2016 FIRE DEPARTMENT BUDGET TO REFLECT THE RECEIPT OF A CAR SEAT GRANT, IN THE AMOUNT OF \$6,000 AND A BICYCLE AND PEDESTRIAN SAFETY GRANT, IN THE AMOUNT OF \$800**

**Motion of Councilperson**

**WHEREAS**, the City of Batavia Fire Department has received a grant in the amount of \$6,000 for Award period October 1, 2015 through September 30, 2016 from the New York State Governor's Traffic Safety Committee related to Car Seat Safety for increased child passenger safety and proper installation training of caregivers in an effort to reduce serious injury and death to children; and

**WHEREAS**, the City of Batavia Fire Department has received a grant in the amount of \$800 for Award period October 1, 2015 through September 30, 2016 from the New York State Governor's Traffic Safety Committee related to Bicycle & Pedestrian Safety for improving the safety of pedestrians, bicyclists and other wheel-sport enthusiasts who are New York's most vulnerable roadway users; and

**WHEREAS**, to properly account for the expenditure of this money, a budget amendment needs to be made; and

**NOW THEREFORE, BE IT RESOLVED**, by the Council of the City of Batavia that the City Manager is authorized to make the following budget amendment to the 2015-2016 budgets effective February 9, 2016 to cover various Car Seat Program details and equipment purchases:

**Increase revenue accounts:**

**Increase revenue accounts:**

1.1.3389.1155 \$6000.00

**Increase expense accounts:**

1.3410.0201.1155 \$6000.00

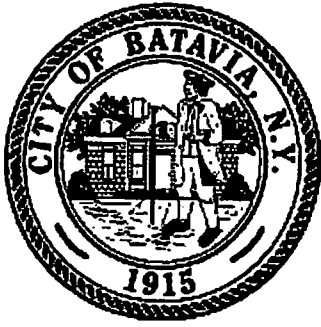
**Increase revenue accounts:**

1.1.3389.1156 \$800.00

**Increase expense accounts:**


1.3410.0201.1156 \$800.00

**Seconded by Councilperson  
and on roll call**



# City of Batavia

To: Honorable City Council

From: Jason Molino, City Manager 

Date: January 19, 2016

Subject: Proposed Budget Work Sessions

After reviewing last year's budget work session schedule and discussing with Council members how to best review the proposed budget, I would recommend a schedule as stated below:

Fri. Jan. 15 <sup>th</sup>	Budget delivered to City Council
Mon. Feb 1 <sup>st</sup>	Budget work session
Tues. Feb. 9 <sup>th</sup>	Set public hearings for budget at Business meeting; Budget work session
Tues. Feb. 16 <sup>th</sup>	Budget work session
Mon. Feb. 22 <sup>nd</sup>	Conduct public hearings for budget
Mon. Mar. 14 <sup>th</sup>	Adopt budget and related resolutions

The weeks of February 22<sup>nd</sup> and 29<sup>th</sup> can be available for any needed budget work sessions.

If any Councilmember would like to meet to discuss any aspects of the budget, staff and I will make our schedules available to meet with you at your convenience. Please feel free to contact me to set up any meetings.

**#-2016**

**A RESOLUTION INTRODUCING 2016-2017 BUDGET ORDINANCE AND  
SCHEDULING A PUBLIC HEARING**

**Motion of Councilperson**

**WHEREAS**, the City Manager prepared and submitted to the City Council a Proposed Budget for the 2016-2017 fiscal year on January 15, 2016 pursuant to Section 16.3 of the City Charter, copies of which were received by all members of the City Council and a copy placed on file in the City Clerk's Office; and

**WHEREAS**, a Public Hearing is required for compliance with the City Charter and the public hearing will be held on February 22, 2016 at 7:00 PM in the Council Board Room of City Hall; and

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Batavia that the 2016-2017 Budget Ordinance is hereby introduced pursuant to Section 3.13 of the City Charter; and

**BE IT FURTHER RESOLVED**, that the City Council hold a public hearing on said Budget Ordinance in the Council Board Room, Second Floor, One Batavia City Centre, Batavia, New York, at 7:00 PM on Monday, February 22, 2016; and

**BE IT FURTHER RESOLVED**, that the City Clerk publish or cause to be published a public notice in the official newspaper of the City of said public hearing at least three (3) days prior thereto.

**Seconded by Councilperson  
and on roll call**

**ORDINANCE #001-2016**  
**AN ORDINANCE ADOPTING THE 2016-2017 BUDGET AND DETERMINING THE**  
**AMOUNT OF TAX TO BE LEVIED ON ALL REAL PROPERTY FOR THE 2016-2017**  
**FISCAL YEAR**

**BE IT ENACTED**, by the Council of the City of Batavia, New York:

**SECTION 1.** The proposed Budget for 2016-2017, submitted by the City Manager pursuant to Sections 16.3, 16.4, and 16.5 of the City Charter on January 15, 2016, as amended, setting forth the estimates of revenues and expenditures for the fiscal year 2016-2017 of the various funds of the City of Batavia, namely, General Fund, Water Fund, Sewer Fund, and Workers' Compensation Fund is hereby approved and that the several amounts allowed as estimated expenditures be and are hereby appropriated to the use of the several departments of the City of Batavia for the purpose set forth in each estimate in the proposed budgets for the fiscal year 2016-2017.

**SECTION 2.** The City Council does hereby finally ascertain, fix, and determine that the entire amount necessary, proper, and legal be raised by tax to defray the expenditures of the City of Batavia for the fiscal year of 2016-2017 is \$5,126,334.

**SECTION 3.** The sum of \$5,126,334 the entire amounts heretofore ascertained, fixed, and determined as necessary, proper, and legal be raised by tax to defray the expenditures of the City of Batavia for the fiscal year 2016-2017, be and the same is hereby levied on all the real property subject to taxation by the City of Batavia according to valuation upon the assessment roll for the fiscal year 2016-2017.

**SECTION 4.** The amounts to be raised by taxation as hereby stated for City purposes is hereby a warrant upon the Clerk-Treasurer to spread and extend such levies upon the current assessment tax roll and to collect the same.

**SECTION 5.** The budget summaries, as filed in the Clerk-Treasurer's Office of the various funds of the City of Batavia, are made a part hereof and are hereby declared to be part of the Ordinance.

**SECTION 6.** This Ordinance shall become effective April 1, 2016.

## Budget Summaries

### General Fund

General Fund - Capital Reserves	\$ 146,265.00
City Council	\$ 56,700.00
City Manager	\$ 180,430.00
Finance	\$ 138,610.00
Administrative Services	\$ 329,050.00
Clerk/Treasurer	\$ 134,000.00
City Assessment	\$ 145,952.00
Legal Services	\$ 219,800.00
Personnel	\$ 487,860.00
Engineering	\$ 32,000.00
Elections	\$ 18,210.00
Public Works Administration	\$ 104,860.00
City Facilities	\$ 359,670.00
Information Systems	\$ 79,575.00
General Fund - Contingency	\$ 250,000.00
Police	\$ 4,018,010.00
Fire	\$ 3,896,092.00
Control of Dogs	\$ 1,310.00
Inspection	\$ 342,130.00
Vital Statistics	\$ 19,040.00
Maintenance Administration	\$ 198,350.00
Street Maintenance	\$ 811,395.00
Public Works Garage	\$ 497,222.00
Snow Removal	\$ 617,039.00
Street Lights & Traffic Signals	\$ 283,340.00
Sidewalk Repairs	\$ 259,990.00
Parking Lots	\$ 35,200.00
Community Development	\$ 20,000.00
Council on Arts	\$ 5,000.00
Parks	\$ 675,070.00
Summer Recreation	\$ 69,195.00
Youth Services	\$ 169,165.00
Historic Preservation	\$ 2,100.00
Community Celebrations	\$ 17,870.00
Planning & Zoning Boards	\$ 3,200.00
Storm Sewer	\$ 238,320.00
Refuse & Recycling	\$ 58,680.00
Street Cleaning	\$ 331,790.00
Medical Insurance	\$ 10,070.00
General Fund - Debt Service/Bonds	\$ 512,575.00

General Fund – BAN	\$ .00
Install Pur Debt - Municipal Lease	\$ 35,843.00
Gen. Fund – Debt Svc-Energy Lease	\$ 75,475.00
Gen. Fund – Other Gov't Debt	\$ 96,027.00
General Fund - Transfer/Other Funds	\$ 322,090.00
<b>TOTAL</b>	<b>\$ 16,304,570.00</b>

**Water, Wastewater &  
Workers Comp Funds**

**PROPOSED  
2016/17**

Water Administration	\$ 2,408,170.00
Pump Station & Filtration	\$ 1,284,370.00
Water Distribution	\$ 431,160.00
Water Fund – Medical Insurance	\$ 1,000.00
Water Fund Contingency	\$ 15,000.00
Water Fund - Debt Service/Bonds	\$ 25,800.00
Install Pur Debt – Municipal Lease	\$ 4,031.00
Water Fund– Debt Svc-Energy Lease	\$ 18,010.00
Water Fund – Transfers for Cap Proj	\$ 700,000.00
Water Fund - Transfer to Other Funds	\$ 243,740.00
Water Fund - Reserve	\$ 140,939.00
Water Fund – Debt Service - BAN	\$ 3,300.00
<b>TOTAL</b>	<b>\$ 5,275,520.00</b>

Wastewater Administration	\$ 329,620.00
Sanitary Sewers	\$ 476,030.00
Wastewater Treatment	\$ 835,840.00
WW Fund Contingency	\$ 15,000.00
WW Fund – Medical Insurance	\$ 1,010.00
WW Fund - Debt Service/Bonds	\$ 163,059.00
WW Fund – Debt Service/BAN	\$ 37,200.00
WW Fund - Debt Svc-Energy Lease	\$ 7,471.00
Install Pur Debt – Municipal Lease	\$ 29,028.00
WW Fund – Transfer to Other Funds	\$ 31,810.00
WW Fund – Transfer for Capital Proj	\$ 562,000.00
WW Fund - Reserve	\$ 730,000.00
<b>TOTAL</b>	<b>\$ 3,218,068.00</b>

Workers' Compensation	\$ 322,640.00
<b>TOTAL</b>	<b>\$ 322,640.00</b>

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TOTAL

\$ 25,120,798.00

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DRAFT

**#-2016**

**A RESOLUTION INTRODUCING A LOCAL LAW AMENDING SECTION 184-41 (A), (B), (C), AND (O) OF THE BATAVIA MUNICIPAL CODE TO ESTABLISH NEW WATER RATES, METER FEES AND A CAPITAL IMPROVEMENT FEE AND PROVIDING FOR PUBLIC NOTICE AND HEARING**

**Motion of Councilperson**

**BE IT RESOLVED**, that Local Law No. 1 of the Year 2016 entitled "**LOCAL LAW NO. 1 OF THE YEAR 2016 CITY OF BATAVIA TO AMEND §184-41 (A), (B), (C), AND (O) OF THE CODE OF THE CITY OF BATAVIA TO ESTABLISH NEW WATER RATES, METER FEES AND A CAPITAL IMPROVEMENT FEE**" be introduced before the City Council of Batavia, New York; and

**BE IT FURTHER RESOLVED**, that copies of the aforesaid proposed Local Law be laid upon the desk of each member of the City Council by the City Clerk; and

**BE IT FURTHER RESOLVED**, that the City Council hold a public hearing on said proposed Local Law in the Council Board Room, Second Floor, One Batavia City Centre, Batavia, New York, at 7:00 p.m. on Monday, February 22, 2016; and

**BE IT FURTHER RESOLVED**, that the City Clerk publish or caused to be published a public notice in the official newspaper of the City of said public hearing at least three (3) days prior thereto.

**Seconded by Councilperson  
and on roll call**

**LOCAL LAW NO. 1 OF THE YEAR 2016  
CITY OF BATAVIA**

**A LOCAL LAW TO AMEND §184-41(A), (B), (C), AND (O) OF THE CODE OF THE  
CITY OF BATAVIA TO ESTABLISH NEW WATER RATES, METER FEES AND A  
CAPITAL IMPROVEMENT FEE**

**Be It Enacted** by the City Council of the City of Batavia, New York as follows:

**Section 1.     § 184-41. Water rates.**

**A. Water Rates**

**City – Water – Quarterly Schedule**

~~\$4.78~~ [\$4.95] per 1,000 gallons

**Town Served Directly by the City – Building and Hydrants**

~~\$6.14~~ [\$6.35] per 1,000 gallons

**B. Bulk rate at water plant fill station:** ~~\$6.40~~ [\$6.63] per 1,000 gallons; cards: \$12.50 each.

**Section 3.     Effective Date**

The foregoing amendment shall become effective with the water consumed ~~April 1, 2015~~  
~~as billed on and after June 1, 2015~~ [April 1, 2016 as billed on and after June 1, 2016].

**C. Quarterly meter service and availability charge for meters:**

<b>Type</b>	<b>Size in Inches</b>	<b>Quarterly Fee</b>
Disc	5/8	<del>\$-9.32</del> [\$9.64]
Disc	3/4	<del>\$11.79</del> [\$12.20]
Disc	1	<del>\$12.42</del> [\$12.85]
Disc	1 ½	<del>\$21.10</del> [\$21.84]
Disc	2	<del>\$29.30</del> [\$30.33]
Compound	2	<del>\$24.82</del> [\$25.69]
Compound	3	<del>\$94.40</del> [\$97.71]
Compound	4	<del>\$150.26</del> [\$155.52]
Compound	6	<del>\$226.99</del> [\$234.93]
Turbo	3	<del>\$55.86</del> [\$57.81]
Turbo	4	<del>\$94.40</del> [\$97.71]
Fireline	4	<del>\$94.40</del> [\$97.71]
Fireline	6	<del>\$150.26</del> [\$155.52]

Fireline	8	\$209.46 [ <del>\$216.79</del> ]
Fireline	10	<del>\$273.53</del> [ <del>\$283.10</del> ]

All of the above meter service charges include the required remote reading encoder systems.

O. Quarterly Capital Improvement fee for meters:

Type	Size in Inches	Quarterly Fee
Disc	5/8	<del>\$4.50</del> [ <del>\$4.95</del> ]
Disc	3/4	<del>\$5.70</del> [ <del>\$6.27</del> ]
Disc	1	<del>\$6.00</del> [ <del>\$6.60</del> ]
Disc	1 1/2	<del>\$10.20</del> [ <del>\$11.22</del> ]
Disc	2	<del>\$14.16</del> [ <del>\$15.58</del> ]
Compound	2	<del>\$12.00</del> [ <del>\$13.20</del> ]
Compound	3	<del>\$45.63</del> [ <del>\$50.19</del> ]
Compound	4	<del>\$72.63</del> [ <del>\$79.89</del> ]
Compound	6	<del>\$109.73</del> [ <del>\$120.70</del> ]
Turbo	3	<del>\$27.00</del> [ <del>\$29.70</del> ]
Turbo	4	<del>\$45.63</del> [ <del>\$50.19</del> ]
Fireline	4	<del>\$45.63</del> [ <del>\$50.19</del> ]
Fireline	6	<del>\$72.63</del> [ <del>\$79.89</del> ]
Fireline	8	<del>\$101.25</del> [ <del>\$111.38</del> ]
Fireline	10	<del>\$132.23</del> [ <del>\$145.45</del> ]

Deletions designated by ~~strikeout~~  
Additions designated as [brackets]

**#-2016  
RESOLUTION TO APPOINT MEMBERS TO VARIOUS CITY COMMITTEES/  
BOARDS**

**Motion of Councilperson**

**WHEREAS**, certain vacancies exist on various City Committees/Boards.

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Batavia that the following appointments be made:

**Community Garden Committee**

Deborah Kerr-Rosenbeck

December 31, 2018

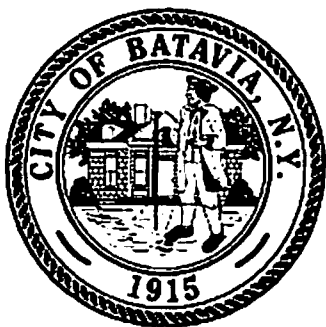
**Youth Board**

Paula Fischer

September 31, 2017

**Seconded by Councilperson  
and on roll call**

**DRAFT**



# City of Batavia

## Memo

To: Jason Molino, City Manager

From: Shawn Heubusch, Chief of Police

Date: January 20, 2016

RE: **STOP-DWI Enhanced (Crackdown) Award & STOP-DWI Award**

Attachments: Grant Award Documents

Cc: Lisa Neary, Deputy Director of Finance

On October 1, 2015 the Genesee County STOP-DWI program was awarded \$17,785 for the 2015/2016 "High Visibility Road Checks/ Saturation Patrols/ DRE Call Out During Impaired Driving Crackdowns" grant to be shared by the City of Batavia, Village of LeRoy and Genesee County. Of the \$17,785 the City of Batavia was then awarded \$6,612.37 for Enhanced DWI enforcement efforts by the Genesee County STOP-DWI coordinator.

These enhanced efforts include joint DWI patrols or checkpoints with other law enforcement agencies as well as reimbursement for Drug Recognition Expert (DRE) call-outs during the grant period.

The City of Batavia will benefit greatly from these additional DWI details by enhancing the Police Department's ability to conduct more specialized enforcement details to target alcohol or drug impaired drivers.

On January 1<sup>st</sup>, 2016 the City Police were awarded \$29,260 from the Genesee County STOP-DWI program to provide for specialized patrols targeting drug and alcohol impaired driving and to purchase equipment that will enhance DWI enforcement efforts. The funding will be used to enhance our traffic safety initiatives.

Feel free to call with any questions you may have. Thank you.

**Police Department**  
10 West Main Street  
Batavia, New York 14020



Phone: 585-345-6350  
Fax: 585-344-1878  
Records: 585-345-6356  
Detective Bureau: 585-345-6370  
[www.batavianewyork.com](http://www.batavianewyork.com)

**#-2016**

**A RESOLUTION TO AMEND THE 2015-2016 POLICE DEPARTMENT BUDGET TO REFLECT THE RECEIPT OF A STOP-DWI GRANT AND AN ENHANCED STOP-DWI GRANT IN THE AMOUNT OF \$29,260 (STOP-DWI) & \$6,612.37 (STOP-DWI ENHANCED) TO ADDRESS THE CRIMES OF DRIVING WHILE INTOXICATED AND/OR DRIVING WHILE ABILITY IMPAIRED BY DRUGS**

**Motion of Councilperson**

**WHEREAS**, the City of Batavia Police Department has received a grant in the amount of \$29,260 from THE GENESEE COUNTY STOP-DWI PROGRAM TO COMBAT IMPAIRED DRIVING BY FUNDING SPECIALIZED PATROL FUNCTIONS AND EQUIPMENT; and

**WHEREAS**, the City of Batavia Police Department has received a grant in the amount of \$6,612.37 from THE GENESEE COUNTY STOP-DWI PROGRAM TO COMBAT IMPAIRED DRIVING BY FUNDING JOINT AND ENHANCED PATROLS; and

**WHEREAS**, to properly account for the expenditure of this money, a budget amendment needs to be made; and

**NOW THEREFORE, BE IT RESOLVED**, by the Council of the City of Batavia that the City Manager be and hereby is authorized to make the following budget amendment to the 2015-2016 budget to cover various initiatives to combat alcohol and drug related traffic offenses:

Effective February 9, 2016, amend the 2015-16 budget:

**Increase expenditure accounts**

001.3120.0101.1153	\$ 6,106.52
001.3120.0802.1153	\$ 505.85
001.3120.0101.1154	\$ 9,235.00
001.3120.0802.1154	\$ 765.00
001.3120.0200.1154	\$ 18,260.00
001.3120.0201.1154	\$ 1,000.00

**Increase revenue accounts**

1.1.3389.1153	\$ 6,612.37
1.1.3389.1154	\$ 29,260.00

**Seconded by Councilperson  
and on roll call**

## **MOTION TO ENTER EXECUTIVE SESSION**

### **Motion of Councilperson**

**WHEREAS**, Article 7, Section 105(1)(h), of the Public Officer's Law permits the legislative body of a municipality to enter into Executive Session to discuss "...the proposed acquisition, sale, or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof...".

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Batavia, that upon approval of this Motion, the City Council does hereby enter into Executive Session.

**Seconded by Councilperson  
and on roll call**