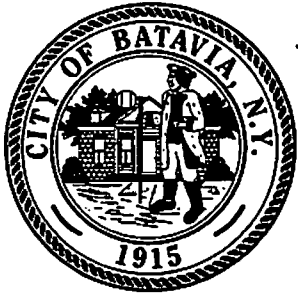


## **BATAVIA CITY COUNCIL CONFERENCE MEETING**

**City Hall - Council Board Room  
One Batavia City Centre  
Monday, September 23, 2019 at 7:00 PM**

### **AGENDA**

- I. Call to Order
- II. Invocation – Councilperson Karas
- III. Pledge of Allegiance
- IV. Public Comments
- V. Council Response to Public Comments
- VI. Communications
- VII. Council President Report
  - a. Announcement of the next Business Meeting to be held on Tuesday, October 15, 2019 at 7:00 p.m. at the City Hall Council Board Room, 2<sup>nd</sup> Floor, City Centre
  - b. Proclamation – Fire Prevention Week October 6-12, 2019
- VIII. Presentation Audit Report 2018/2019 by Laura Landers, Freed Maxick
- IX. Transferring Funds From Assigned Fund Balance To Various Reserve Funds
- X. FEMA’s Grant – Amend Fire Department 2019/2020 Budget
- XI. Child Safety Seat Program Grant – Amend Fire Department 2019/2020 Budget
- XII. Street Lighting Upgrades – National Grid Power Corporation
- XIII. Easement – Charter/Time Warner Northeast LLC
- XIV. Water Meter Funds Budget Adjustment
- XV. Rezoning Public Hearing – Public Storage Business in I-1 and I-2 Zones
- XVI. Lease Agreement – Batavia Players Theater Company
- XVII. Executive Session...Employment Matters
- XVIII. Adjournment



# City of Batavia

August 20, 2019

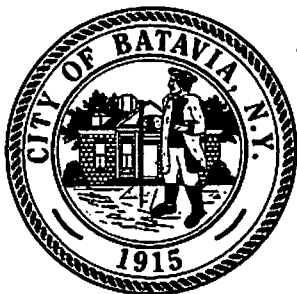
To the Honorable City Council,

The City of Batavia Audit Advisory Committee met on Tuesday August 20, 2019 to review the City's 2018/2019 audited financial statements. Along with the five members of the Committee, attendees included City Manager Martin Moore, Assistant City Manager Rachel Tabelski, Lisa Neary who is the City of Batavia Deputy Director of Finance, and Certified Public Accountant Laura Landers, partner with Freed Maxick.

Ms. Landers kicked off the meeting by reviewing in their entirety, the 2018/2019 financial statements with all of us. Mr. Moore followed by presenting several highlights from the Fiscal Year Ending March 31, 2019. Mr. Moore then provided the committee with recommendations for the allocation of \$1,300,000 of the current unassigned fund balance to designated restricted reserve fund balances.

The Audit Advisory Committee raised a number of questions and received direct and thorough answers from Ms. Landers, Mr. Moore, and Ms. Neary. Topics of in-depth and lively discussion included (in no specific order);

- 1) Discussion regarding the sharp increase in sales tax revenue, and the viability of using this number for future budgeting.
- 2) Discussion of the interest rates currently on BAN and Bond obligations, along with interest rate projections and the resulting strategies involving "pay now" or "finance".
- 3) An examination of the current reserve fund balances, and the necessity and appropriateness of these balances, with specific focus on the newly created "Compensated Absences Reserve", and "Administrative Reserve".
- 4) Lengthy discussion regarding the Worker Compensation self-insurance plan, and the need to increase reserves due to the \$750,000 deductible per incident. The committee agrees we have some exposure here, and suggest moving this reserve closer to \$1,000,000 in the years ahead.
- 5) Analysis and discussion of the current and projected tax impact on Batavia residents, including the soon to be retired long-term debt resulting from Dwyer Stadium and the Main Street project.



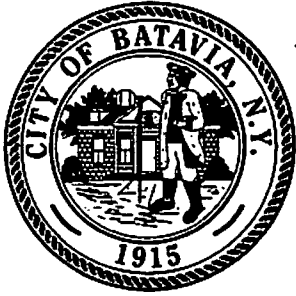
## City of Batavia

- 6) The self-insured health insurance plan that the city provides to its employees, corresponding reserves, future cost projections, and the savings realized by self-insuring.
- 7) In depth discussion of the “agreed upon” sales tax agreement with the county, the timetable and probability for its official adoption, and a contingency plan if this does not get signed by the Governor.
- 8) The continued practice to identify and build reserves within specific reserve fund accounts for future anticipated projects, improvements and equipment replacement.
- 9) Analysis of the now implemented GASB statement 75 – Reporting for Post-employment benefits other than pensions and the accounting impact this will have with the financial reporting going forward.

The Audit Advisory Committee remains very satisfied with the current financial status of the City of Batavia. We applaud the leadership, and members of City Council for their proactive approach and responsible budgeting, particularly when it comes to building reserve balances to address the future needs of our community, and their desire to plan for and implement a ‘level debt’ strategy going forward. The Audit Advisory Committee asserts that the 2018/2019 financial statements for the City of Batavia appear accurate and tell a very progressive story about the direction of the City. In addition, The Audit Advisory Committee also brings unanimous consensus that Mr. Moore’s recommendations for the funding of reserves from unassigned fund balance appear appropriate and reasonable.

Our City is in a much better financial position than it was in the past. We are also in a much stronger financial position than many other similar sized Cities, primarily due to our focus and ability to fund reserves for identified long term projects.

We would like to thank City Council for their continued support of paneling an Audit Advisory Committee. Financial transparency and engaging the public remain critical pillars to effective governing and creating community ‘buy-in’. We are honored to serve our City in this capacity. We would also like to thank Mr. Moore and his staff for providing us with all appropriate information, both presented and requested, and for the clear and detailed responses to our questions that arose during the meeting.



# City of Batavia

Sincerely,

*Audit Advisory Committee*

Marc Staley

Nicholas Harris

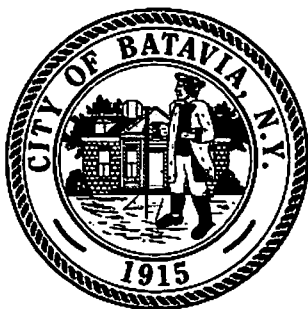
David Leone

Bob Bialkowski

Paul Vicle

**Audit Advisory Committee  
One Batavia City Centre  
Batavia, New York 14020**

**Phone: 585-345-6330  
Fax: 585-343-8182  
[www.batavianewyork.com](http://www.batavianewyork.com)**



# City of Batavia

## *Memorandum*

To: Audit Advisory Committee

From: Dr. Martin D. Moore, City Manager

Date: August 20, 2019

Subject: Assignment of Reserves

Below is a recommendation for the allocation of \$1.3 million in unassigned fund balance to reserve fund balances. This is based on:

1. an increase in unassigned fund balance at fiscal year end,
2. the amount of existing balance in selected reserve accounts, and
3. the planned or expected expenditures related to selected reserve funds based on capital plans.

### **General Fund Reserves**

**Police Equipment Reserve (\$20,000)** –The Police Equipment Reserve fund balance is \$12,671. We recommend increasing this reserve by \$20,000 to aid in the purchase and equipping of an armored vehicle for the Emergency Response Team.

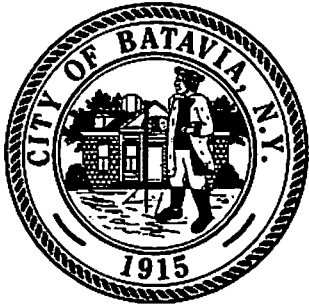
**Fire Equipment Reserve (\$35,000)** – The Fire Equipment Reserve fund balance is \$190,180. The City Manager is working with the Fire Department on a front-line fire apparatus replacement plan. Each apparatus can cost between \$400,000 - \$1,000,000. We recommend increasing the reserve by \$35,000 to help maximize payment for apparatus out of reserves.

**DPW Equipment Reserve (\$220,000)** – The Department of Public Works (DPW) reserve fund balance is \$194,013. Since 2011, the City has replaced over 20 pieces of public works equipment, valued at over \$3 million, as part of its Equipment Replacement Plan. Through the remainder of Fiscal 2019/2020 and into 2020/2021, DPW projects to spend over \$300,000 on a class 8 (single axle) snow plow, plus class 3 snow equipment (1-ton pickup with plow and spreader). We recommend increasing the reserve by \$220,000 to provide for these planned purchases.

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**Office of the City Manager  
One Batavia City Centre  
Batavia, New York 14020**

**TDD 800-662-1220  
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[www.batavianewyork.com](http://www.batavianewyork.com)**



# City of Batavia

**Facility Reserve (\$175,000)** – The Facility Reserve fund balance is \$123,400. We recommend increasing this reserve by \$175,000 to address pressing needs identified in the City’s plan for a police station, including:

1. heating, wiring, plumbing, and some structural work at the current police station to keep the current building usable for the next 5 years; and
2. design, build, and equip a new Police Facility at a cost of \$6-\$8 million, paid for with a mix of reserves and municipal bonding.

**Sidewalk Reserve (\$50,000)** – The Sidewalk Reserve fund balance is \$1,869. Plans for Fiscal Year 2020/2021 are to replace over 500 linear feet of broken sidewalk as part of our complete streets initiative. We recommend increasing this reserve by \$50,000 to continue our planned sidewalk work.

**Compensated Absences Reserve (\$400,000)** – This reserve pays for unused benefits at the time of employee retirement. The Compensated Absences Reserve fund balance is \$18,567. Due to a large number of planned retirements, the City projects to spend up to \$306,000 out of this reserve in Fiscal year 2019/2020, and currently have 5 additional employees eligible to retire from 2020-2023. We recommend increasing this reserve by \$400,000 to pay for expected retirement payouts.

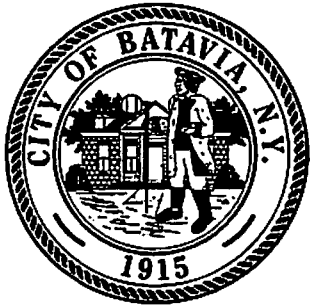
**Parking Lot Reserve (\$100,000)**- The Parking Lot Reserve fund balance is \$46,721.97. The City has plans for a projected \$135,000 in parking lot improvements for Fiscal years 2020/2021 into 2021/2022. We recommend increasing this reserve by \$100,000 to pay for these improvements.

**Administrative Reserve (\$300,000)** – The Administrative Reserve fund balance is \$4,136. This reserve exists to pay for administrative equipment needs, and is currently being used to upgrade the City’s information technology to current standards and address cyber security needs. We recommend increasing this reserve by \$300,000 to help pay for replacement of the city’s telephone system that is end of life, replacement of the computer network distribution system that is end of life, project management for year 2 of the city’s software conversion, and repayment of the short-term Bond Anticipation Note.

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# City of Batavia

## **Recommendation**

Funding reserves for future liabilities, equipment, infrastructure and facility improvements remains a critical part of sound financial and project planning. The recommended appropriations to reserve funds are consistent with the City's adopted Capital Plans and Financial Policies, including the City's fund balance policy.

The City has diligently built reserve funds in anticipation of capital expenditures that are occurring over the next 2-5 years. Continued expenses include public works equipment, sidewalk replacements, a computer system overhaul, and multiple facility improvements. As a result, the City's reserve fund expects to be impacted by these expenditures. By funding this year's reserves as recommended, the City stays on target with its financial planning, and avoids negative impacts to City operations.

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#-2019

**A RESOLUTION TRANSFERRING FUNDS FROM ASSIGNED FUND BALANCE TO  
VARIOUS RESERVE FUNDS**

**Motion of Councilperson**

**WHEREAS**, pursuant to General Municipal Law 6-c and 6-j the City of Batavia has established various reserve funds; and

**WHEREAS**, the City of Batavia, for the fiscal year ending March 31, 2019, has assigned General Fund balance for funding various reserves; and

**WHEREAS**, the City has made significant strides in improving their equipment, infrastructure and buildings, however, there is still work to be done to continue progressing in replacing equipment, infrastructure and buildings that are old and in poor shape; and

**WHEREAS**, the City has equipment replacement plans and building improvement plans which outlines replacing and improving equipment and buildings ten years into the future; and

**WHEREAS**, the City is currently working with consultants to overhaul the City's antiquated Enterprise Resource Planning (ERP) system that will upgrade the information technology and records management of the City; and

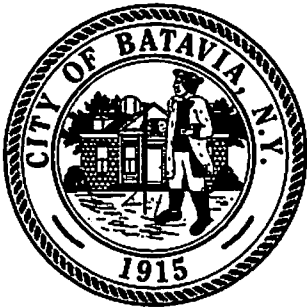
**WHEREAS**, the City has significant future liabilities related to compensated absences (unused benefits paid to employees at the time of retirement) due to upcoming employee retirements.

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Batavia does hereby transfer, consistent with the City's Strategic Plan, the following amounts into the following reserves from the General Fund's Assigned Fund Balance:

Police Equipment Reserve	\$ 20,000
Fire Equipment Reserve	35,000
DPW Reserve	220,000
Facility Reserve	175,000
Sidewalk Reserve	50,000
Compensated Absence Reserve	400,000
Parking Lot Reserve	100,000
Administrative Reserve	300,000

**Seconded by Councilperson  
and on roll call**





# City of Batavia

## *Memorandum*

To: Martin Moore, Ph.D., City Manager

From: Stefano Napolitano, Fire Chief

Date: September 17, 2019

Subject: Resolution to amend the City of Batavia Fire Department 2019-2020 budget.

Attached please find a Resolution to amend the Fire Department 2019-2020 budget to reflect the receipt of a grant from FEMA's Assistance to Firefighters Grant (AFG) in the amount of \$4,762.00.

The grant will allow the fire department to purchase wireless communication headsets which will enhance crew communication while responding to emergencies.

This amendment will affect the following budget lines:

Increase revenue accounts:

001.0001.4389.1187	\$4,762.00
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Increase expense accounts:

001.3410.0201.1187	Equipment	\$4,762.00
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If you have any questions, please do not hesitate to contact me.

Thank you

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



**Phone: 585-345-6375**  
**Fax: 585-343-5639**  
**[www.batavianewyork.com](http://www.batavianewyork.com)**

#-2019

**A RESOLUTION TO AMEND THE 2019-2020 FIRE DEPARTMENT BUDGET TO REFLECT THE RECEIPT OF A FEMA ASSISTANCE TO FIREFIGHTERS (AFG) GRANT, IN THE AMOUNT OF \$4,762.00.**

**Motion of Councilperson**

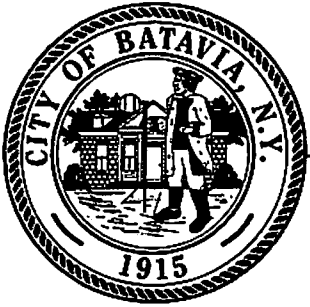
**WHEREAS**, the City of Batavia Fire Department has received a grant in the amount of \$ 4,762.00 for Award period August 13, 2018 through November 6, 2019 from the Federal Emergency Management Agency (FEMA) for new Hearing Protection and Communication Equipment; and

**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 2019-2020 budgets effective October 15, 2019 to cover various details and equipment purchases:

Increase revenue accounts:	
001.0001.4389.1187	\$4,762.00
Increase expense accounts:	
001.3410.0201.1187	\$4,762.00

**Seconded by Councilperson  
and on roll call**



# City of Batavia

## *Memorandum*

To: Martin Moore, Ph.D., City Manager

From: Stefano Napolitano, Fire Chief

Date: September 17, 2019

Subject: Resolution to amend the City of Batavia Fire Department 2019-2020 budget.

Attached please find a Resolution to amend the Fire Department 2019-2020 budget to reflect the receipt of a grant from the New York State Governor's Traffic Safety Committee. This award is for the Child Safety Seat Program and is in the amount of \$3,200.00.

This amendment will affect the following budget lines:

### Increase revenue accounts:

001.0001.3389.1186	State Aid-Public Safety	\$3,200.00
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### Increase expense accounts:

001.3410.0201.1186	FD. Small Equipment	\$1,400.00
001.3410.0401.1186	FD Supplies/Materials	\$ 100.00
001.3410.0435.1186	FD Travel & Training	\$1,700.00

If you have any questions, please do not hesitate to contact me.

Thank you



#-2019

**A RESOLUTION TO AMEND THE 2019-2020 FIRE DEPARTMENT BUDGET TO REFLECT THE RECEIPT OF A CAR SEAT GRANT, IN THE AMOUNT OF \$3,200.00.**

**Motion of Councilperson**

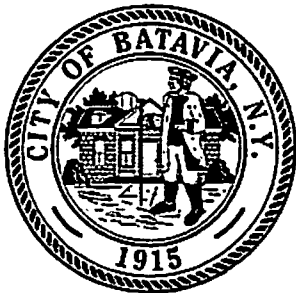
**WHEREAS**, the City of Batavia Fire Department has received a grant in the amount of \$ 3,200.00 for award period October 1, 2019 through September 30, 2020 from the New York State Governor's Traffic Safety Committee related to Car Seat Safety for increased child passenger safety and proper installation training of caregivers in an effort to reduce serious injury and death to children; and

**WHEREAS**, 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 2019-2020 budgets effective September 30, 2019 to cover various Car Seat Program details, equipment purchases:

Increase revenue accounts:	\$3,200.00
Increase revenue accounts: 001.3410.0201.1173	\$1,400.00
Increase revenue accounts: 001.3410.0435.1173	\$1,700.00
Increase expense accounts: 001.3410.0401.1173	\$ 100.00


**Seconded by Councilperson  
and on roll call**



# City of Batavia

## *Memorandum*

To: Martin Moore, City Manager

From: Matt Worth, Director of Public Works 

Date: August 15, 2019

Subject: Street Lighting

In response to criminal activity, three areas in the City had a temporary increase in street lighting as a preventive measure per the Police Department request. The Police Department has since requested that these changes become permanent.

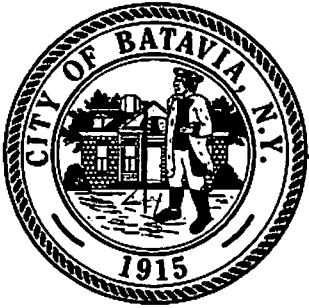
The existing locations are Central Ave (2-lights), Watson Ave (1-light), and State St (1-light). At each of these locations, existing 100 watt streetlights were increased to a 400 watt fixture. This increases the annual cost of each of these fixtures by approximately \$175 for a total annual increase of \$700 in the street lighting account.

While this may be an appropriate implementation at these specific locations, I would caution Council as to the budgetary impact this would have on a large scale change in policy on street lighting. A permanent change to our street lighting system requires Council action per the tariff and franchise agreement with National Grid.

Supporting Documentation:  
Police Chief Memo  
Draft Resolution

Department of Public Works  
One Batavia City Centre  
Batavia, New York 14020

Phone: 585-345-6325  
Fax: 585-343-1385  
[www.batavianewyork.com](http://www.batavianewyork.com)



# City of Batavia

## *Memorandum*

To: Matt Worth, Director of Public Works

From: Shawn Heubusch, Police Chief

Date: August 8, 2019

Subject: Enhanced Street Lighting

In response to public safety needs the Police Department is requesting that the lighting enhancements made to the street lights on Central Avenue, State Street and Watson Street become permanent enhancements. The enhanced lighting in the area has proven beneficial to the community and enabled the ability for the Police Department to respond to calls for service in those areas.

Please consider this formal request and take action as you deem appropriate.

Thank you.

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



**Phone: 585-345-6350**  
**Fax: 585-344-1878**  
**Records: 585-345-6303**  
**Detective Bureau: 585-345-6370**  
**[www.batavianewyork.com](http://www.batavianewyork.com)**

**#-2019**  
**A RESOLUTION AUTHORIZING CHANGES TO THE CITY OF BATAVIA'S  
STREET LIGHT ACCOUNT WITH  
NATIONAL GRID POWER CORPORATION**

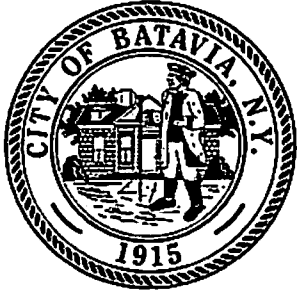
**Motion of Councilperson**

**WHEREAS**, several incidents of criminal activities have occurred in the vicinity of Central Avenue, State Street, and Watson Street; and

**WHEREAS**, increased lighting has been determined to be a deterrent to criminal activities specifically at these locations;

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Batavia that National Grid Power Corporation is hereby authorized and directed to do the following work in the City of Batavia, St. Light Account no: 23938-79100. Install one-400 watt high pressure sodium lamp and luminaire on pole #128 on State Street, pole #21 and #35 on Central Avenue, and pole #5 on Watson Avenue with an estimated annual increased cost of \$700.00.


**Seconded by Councilperson  
and on roll call**



# City of Batavia

## *Memorandum*

To: Martin Moore, City Manager

From: Matt Worth, Director of Public Works 

Date: September 13, 2019

Subject: Easement - Charter / Time Warner Northeast LLC

Charter/Time Warner approached the City as to obtaining an easement to install communication cable in the Court Street Parking Lot to service customers along Main Street from the back side. An internal review by the Department concluded that an easement along the north property line would be the most acceptable as to not segment the parking lot parcel limiting future development while providing the most direct and adjacent access to their potential customers.

Access to these properties by utilities is limited by the fact that utilities are required to be installed underground in the downtown area, and that the communication companies do not have any open conduits on Main St that could be utilized. With the nature of high-speed communication and data being important for business, an easement creating a pathway for upgraded communication facilities is appropriate.

It should be noted that the easement is not exclusive and this location can be accessed by other utilities requesting an easement for access.

Supporting Documentation:  
Easement  
Draft Resolution

Department of Public Works  
One Batavia City Centre  
Batavia, New York 14020

Phone: 585-345-6325  
Fax: 585-343-1385  
[www.batavianewyork.com](http://www.batavianewyork.com)



EASEMENT AGREEMENT

In consideration of good and valuable consideration, receipt and adequacy whereof is hereby acknowledged, City of Batavia ("Grantor"), hereby grants, conveys unto TIME WARNER CABLE NORTHEAST LLC its successors and assigns ("Grantee"), a perpetual, non-exclusive right-of-way and easement to install, construct, lay, reconstruct, operate, maintain, repair, replace, enlarge, relocate, inspect, supplement and remove (collectively, "Service"), at any time or times hereafter, its communication systems and related components, lines and equipment, together with all such communication facilities, including, without limitation, conduits, cables, wires, fibers, poles, pedestals, pipes, antennas fixtures, handholes, apparatus and appurtenances, as it may from time to time require or deem proper therefore (collectively, the "Equipment"), in, under, over and upon a strip of real property as more particularly described as having an address of 30-32 Jackson Street, situated in the City/Town/Village of Batavia, County of Genesee, State of New York, Section: 84.011-3-6.1 (the "Property").

The Equipment shall be constructed within the boundaries of a strip of real property as shown and delineated upon the attached legal description or drawing marked on Exhibit A (the "Premises") attached hereto and incorporated herein. In addition, Grantor does hereby grant, convey to Grantee a temporary construction easement in, under, over and upon the real property shown and delineated upon the attached legal description or drawing marked on Exhibit A attached hereto and incorporated herein. The duration of the construction easement shall be until the completion of construction of the Equipment.

This Easement Agreement grant includes Grantee's right of ingress to and egress from the Premises to Service the Equipment, the right to use the Premises parallel to and adjoining the boundaries of the Premises for the operation and maintenance of the Equipment and for any of the purposes herein specified, and the right to carry in the Equipment the communication facilities Grantee deems proper. Grantee at its expense shall restore all disturbed areas to as reasonable a condition as possible to the condition prior to any construction. Grantee shall also have the right to cut, trim, remove, destroy, or otherwise control any trees, brush or other vegetation now standing or hereafter growing upon the Premises. The Grantee shall repair any damage caused by Grantee and Grantee's contractors to Grantor's Property and shall defend, indemnify and hold Grantor harmless against any claims, loss or damage arising from the construction, maintenance and/or operation of the Equipment or any wrongful or negligent act or omission of the Grantee or its agents or employees with respect thereto. The Equipment placed or installed on the Premises by Grantee, whether permanent or temporary and replacements thereof, shall be and remain the property of Grantee, and may be removed by Grantee at Grantee's discretion.

Grantor may use the Property for all purposes not inconsistent with, or in interference with, the full enjoyment of this Easement Agreement and the Premises by Grantee. Grantor will not, without the prior written consent of the Grantee, do or suffer or permit to be done, any of the following: place any building or structures on or so as to interfere with or obscure the Grantee's access to and use of the Premises; raise or lower the ground level of the Property; or stockpile or store objects on or as to interfere with or obstruct the Grantee's access to or use of the Premises or Grantee's ability to Service the Equipment.

Grantor hereby represents that Grantor is the true and lawful fee simple owner of the Premises and has full power and right to execute and grant this Easement Agreement.

This Easement Agreement is freely alienable and transferable by Grantee. Grantee may hereafter transfer, assign and convey this Easement Agreement in whole or in part and/or grant, convey or permit sub-easements or the use thereof by other parties, so long as such sub-easements or users do not exceed or violate the limitations, restrictions and reservations contained in this Easement Agreement.

This Easement Agreement shall bind and inure to the benefit of, and serve as an obligation of, Grantor, Grantee, and their respective heirs, legal representatives, licensees, lessees, successors and assigns. Any right, title, interest or privilege granted to Grantee hereunder shall be held and may be exercised by Grantee and its legal representatives, successors and assigns whether or not so expressed herein. This Easement Agreement is a covenant running with the Property. This Easement Agreement constitutes the entire agreement between Grantor and Grantee, there being no oral agreements or representations of any kind made between Grantor and Grantee.

WITNESS, Grantor and Grantee signed this Easement Agreement effective as of September \_\_, 2019.

GRANTOR: City of Batavia
One Batavia City Centre, Batavia NY 14020

GRANTEE: TIME WARNER CABLE NORTHEAST LLC
By: Charter Communications, Inc., its Manager
12405 Powerscourt Drive, St. Louis, MO 63131,
Attn: Commercial Contracts Management

Grantor's Signature Notarized by:
State of New York
County of \_\_\_\_\_

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

My Commission Expires: \_\_\_\_\_

Notary Public in and for the State of New York
Printed name of Notary

Grantee's Signature Notarized by:
State of New York
County of \_\_\_\_\_

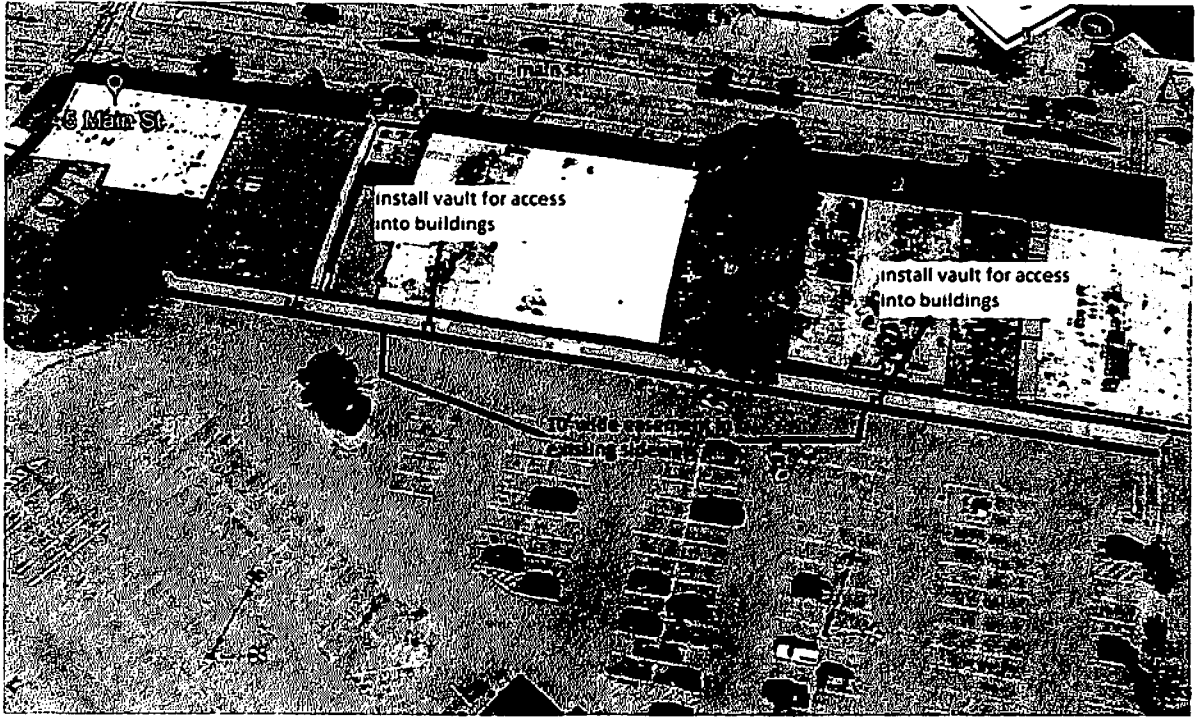
On the \_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument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

My Commission Expires: \_\_\_\_\_

Notary Public in and for the State of New York

**EXHIBIT A**

Legal Description or Diagram of the Premises



**#-2019**

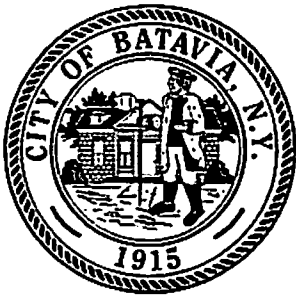
**A RESOLUTION TO AUTHORIZE THE CITY COUNCIL PRESIDENT TO EXECUTE AN EASEMENT AGREEMENT WITH TIME WARNER CABLE NORTHEAST LLC**

**Motion of Councilperson**

**WHEREAS**, Time Warner Cable Northeast LLC is desirous to make upgrades to their existing network for providing internet and telephone services by adding equipment and fiber optic capabilities in the Court Street parking lot area; and

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Batavia to hereby authorize the City Council President to execute the easement with Time Warner Cable Northeast LLC as stated in "Attachment A" below.


**Seconded by Councilperson  
and on roll call**



# City of Batavia

## Memorandum

To: Martin Moore, City Manager

From: Matt Worth, Director of Public Works 

Date: September 16, 2019

Subject: Water Meter Funds from County – Budget Adjustment

As part of the one year water agreement extension in December of 2018, the \$100,000 capitalized fund to be utilized for budget shortages was no longer needed. The agreement calls for the City to receive these funds with the stipulation that the funds be utilized for the purchase of new water meters to be installed into the City system.

The County has processed the funds, and the City has received the \$100,000. A budget adjustment is required so that the meters can be purchased under a current contract that the City “piggy backs” off of for the purchase of new water meters.

The City Budget should reflect the following changes:

Revenues - Water Fund			
County Contract	002.0002.2378	Increase	\$100,000
Expense – Water Distribution			
Equipment Small	002.8340.0201	Increase	\$100,000

Supporting Documentation:  
County Contract Extension  
Draft Resolution

**AMENDED AND RESTATED  
COUNTY OF GENESEE AND CITY OF BATAVIA  
OPERATION AND MAINTENANCE AGREEMENT**

**THIS AMENDED AND RESTATED AGREEMENT** (hereinafter "current Agreement") made the 13 day December, 2018, by and between the County of Genesee, a municipal corporation of the State of New York, with offices located at the Old Courthouse, 7 Main Street, Batavia, New York, 14020 (hereinafter "County"), and the City of Batavia, a municipal corporation of the State of New York with offices located at One Batavia City Centre, Batavia, New York 14020 (hereinafter "City").

**WITNESSETH:**

**WHEREAS**, the County and City agree that it is desirable to continue to use the current City Water Treatment Plant for as long as it is economically viable, and

**WHEREAS**, the parties intend to execute simultaneously herewith an Amended and Restated Agreement whereby the City will lease its Water Supply and Treatment Facilities to the County, and

**WHEREAS**, the City has special expertise, professional skills and experience in the management, operation and repair of the water supply and treatment system, and

**WHEREAS**, the City desires to continue to provide such services to the County, subject to the terms and conditions contained herein, and

**WHEREAS**, the parties previously executed a "Water Supply Operation & Maintenance Agreement", dated April 10, 2001 (hereinafter "2001 O&M Agreement"), and

**WHEREAS**, the parties further entered into an "Amendment to City of Batavia and County of Genesee Water Supply Operation & Maintenance Agreement Dated April 10, 2001", which was dated December 31, 2007 (hereinafter "2007 Amended O&M Agreement"), and

**WHEREAS**, the parties further entered into a "Second Amendment to City of Batavia and County of Genesee Water Supply Operation & Maintenance Agreement Dated April 10, 2001", which was dated June 19, 2017 (hereinafter "2017 Second Amended O&M Agreement"), and

**WHEREAS**, these three prior Agreements need to be further amended and restated as set forth herein.

**NOW, THEREFORE,** in consideration of the mutual covenants and agreements contained herein, it is agreed as follows:

## **1. DEFINITIONS**

“Administrative” refers to that part of the City’s operation other than that directly involved with operation, maintenance, and repair of the Facilities.

“Costs of Operation” means all costs directly related to operation, maintenance, and repair of the “Facilities” including personnel, utilities, supplies, chemicals, contract services and reasonable and applicable Administrative costs of general City government.

“Direct Customers” means water customers directly served and billed by the City including those in the Town of Batavia whose water does not pass through one of the master meters.

“Distribution System” means all piping and appurtenances after the master meter(s) at the water treatment plant utilized to serve all customers who are directly billed by the City and prior to any master meters measuring water supplies to the Town of Batavia and/or any other political jurisdiction. (The term “Transmission/Distribution System” also means “Distribution System.”)

“Facilities” means the water supply and treatment facilities including: all production and monitoring wells, (developed and undeveloped), and pumping equipment on property adjacent to Cedar Street; transmission lines from these wells to the Water Treatment Plant; water intake structure, equipment and piping for the withdrawal of water from Tonawanda Creek; water treatment plant on Lehigh Avenue, including clearwell, elevated water storage tank #2 (VA Tank); discharge piping from the plant, through a proposed master meter to the City’s Distribution System.

“Maintenance” means those routine and/or repetitive activities, including preventative in nature, required or recommended by the equipment or facility manufacturer, City professional staff, applicable laws, or industry standards to maximize the service life of the Facilities or components thereof.

“Operators” means the full time City employees who only work directly at the Water Treatment Plant and operate the plant. For part-time or shared personnel, their associated costs shall be prorated appropriately.

“Personnel Costs” includes all salary, benefits, training, certification and costs related to contractual agreements for the Operators, applicable portions of other Department of Public Works personnel when they perform work associated with the Facilities, and Administrative personnel.

“Repairs” means those non-routine activities required for operational continuity, safety and performance, generally due to failure or to avert a failure of any component of the Facilities.

“System” means the entire water supply and distribution system both within and without the City of Batavia, including the Facilities, the Distribution System, and all connected meters, and any piping, tanks, pumps, meters, and appurtenances that currently exist or may be added outside of the City, but receiving water from the Water Treatment Plant.

“Plant” means the portion of the Facilities located on Lehigh Avenue in the City, which receives raw water from the wells on Cedar Street and the Tonawanda Creek and processes it to drinking water standards as well as softening it.

## 2. GENERAL

2.1 This Agreement is for operation and maintenance of the Facilities by the City. Related provisions involving the terms and conditions for leasing the Facilities to the County, and for the supply of water to water users in the City of Batavia, shall be set forth in the additional Amended and Restated Lease Agreements and Water Supply Agreement to be entered into by the parties simultaneously herewith.

2.2 This Agreement shall be binding upon the successors and assigns of each party, but neither party may assign this Agreement without prior written consent of the other party, except that the County can assign this Agreement in whole or in part without such approval to a subsequently formed Genesee County Water District. Consent shall not be unreasonably withheld.

2.3 All notices shall be in writing and transmitted to the addresses stated above.

2.4 This Agreement is the entire operating contract between the parties. This Agreement may be modified only by written agreement signed by both parties. Wherever used, the terms “County” and “City” shall include respective officer, agents, directors, elected or appointed officials, and employees.

2.5 If any non-material term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

2.6 For the purposes of this Agreement, all days shall be counted including Saturdays and Sundays, and legal holidays, provided however that if the final day of any period shall fall on a Saturday, Sunday or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday.

2.7 It is understood that insofar as operation and maintenance of the "Plant" is concerned, the relationship of the City to County is that of independent contractor.

2.8 The City shall have the sole operational and repair authority of the "Facilities" within the scope set out herein as long as all requirements and standards of water production as well as the terms of this current Agreement are satisfied.

2.9 The City shall have the right to sell bulk water to customers at the "Plant" and withdraw such water prior to the master meter. Such transactions shall be handled in the same manner as water supplied within the City and subject to rates established by the City. Records shall be kept of the volumes sold, and payment to the County shall be made at the same rate as that passing through the master meter.

2.10 The cost of wastewater discharges from the "Plant", including domestic and process wastewater, shall be included in the operational expenses to be paid by the County as provided in Section 6 herein.

2.11 The division of this Agreement into articles, paragraphs, and subparagraphs and the insertion of headings are for convenience of reference only, and shall not affect the construction or interpretation of this Agreement.

2.12 The City and County shall designate their respective contact persons for purposes of day-to-day interpretation, communications, coordination, and administration of this Agreement. Initially, the representatives shall be the City Director of Public Works and the County Superintendent of Highways. Any change in these designations shall be immediately communicated to the other party. These representatives may designate other personnel within their respective organization to contact for specific reasons.

2.13 For all disputes or matter requiring interpretation, an attempt will be made by the designated representatives (Section 2.12 above) to first resolve all such issues. If they are



unable to resolve the issue, it shall be submitted to a committee consisting of two City Council members and two County Legislators, chosen by the President of the City Council and Chair of the County Legislature, respectively, who shall resolve the dispute after receiving input from administrative, technical and legal staff of each party as appropriate. If said committee is unable to resolve the dispute, venue for any action or proceeding shall lie in New York State Supreme Court, Genesee County.

### **3. CITY RESPONSIBILITIES AND OBLIGATIONS**

In accordance with the terms of this current Agreement, the City shall:

3.1 Within the design capacity and capability of the Facilities, manage, operate and maintain the Facilities so that water transmitted from the Plant meets or exceeds the minimum drinking water standards as established by the United States Environmental Protection Agency and the New York State Department of Health. In addition, the hardness level of the water produced and transmitted from the Plant shall not exceed 140 mg/l.

3.2 The City shall also be authorized to alter the Facilities to achieve the objectives of this current Agreement, provided that any such improvements shall not create additional operating and maintenance costs, unless any such costs are paid by the City.

3.3 Operate and maintain (or cause to be operated and maintained) the Facilities as required to comply with Section 3.1 above and to be consistent with good engineering/operations practices.

3.4 Provide sufficient certified, qualified and experienced operations personnel (as well as necessary management, administrative, technical and clerical support), who meet relevant State of New York requirements regarding water treatment operations and maintenance.

3.5 Perform (or have performed) all necessary Maintenance and Repairs of the Facilities to comply with the above.

3.6 Pay all costs incurred in operation of the Facilities as provided herein.

3.7 Provide the County, on a quarterly basis, an invoice for Costs of Operation of the Facilities as outlined in Section 6 below.

3.8 Provide County any and all information related to the Facilities and the operation thereof in accordance with the laws of the State of New York.

#### **4. COUNTY RESPONSIBILITIES AND OBLIGATIONS**

In accordance with the terms of this Agreement, the County shall:

4.1 Make any additional capital expenditures to the Plant as may be necessary to ensure its continued operation during the term of this Agreement, as well as make direct payment or reimbursement to the City for repairs necessary to operate and maintain the Facilities in accordance with Section 3 above for the supply of water at a quality in accordance with Section 3.1 above, and in sufficient quantity to meet the peak demand of all existing and future direct customers of the City and any customers beyond the City's boundaries as may currently exist or be added by the County. City and County engineering representatives shall make annual inspection and make determination as to capital investments required

4.2 Not allow any additional demands on the System outside the City that would measurably reduce the prior levels of pressure, water quality or fire flow capability at any location within the City unless approved by the City's Director of Public Works. Said approval will not be unreasonably withheld. Any increased demands on the System that would measurably and negatively impact City customers will be preceded by the installation of improvements, at County expense, to the System to mitigate any such negative impact(s).

4.3 Not install new equipment or operate any current equipment in any part of the System in such a manner that measurably increases water pressure within the City, unless approved by the City's Director of Public Works. Said approval will be not be unreasonably withheld.

4.4 Supply the City with water from the City's current sources and not from any outside source, unless such other source or sources are specifically authorized by the City.

#### **5. METERS**

5.1 It is understood that there will be "master meters" measuring all treated water entering the City's Transmission/Distribution System from the Plant as well as all water supplied to others who are not Direct Customers of the City. It shall be the responsibility of the County to bear the cost of installation, maintenance and repair of the master meter supplying water from the Plant to the City's Transmission/Distribution System. The City and County agree to have the City undertake these tasks with all reasonable costs reimbursed to the City by the County.

5.2 All master meters providing water to those who are not Direct Customers of the City will be owned, maintained and repaired by the City with all reasonable costs reimbursed to the City by the County.

5.3 The City shall not be required to pay the County for any water used within the Plant whether or not such water passes through the master meter.

## 6. PAYMENT TO THE CITY

6.1 Each year the City and County will adopt an approved annual budget for the Costs of Operation of the Facilities. On or before October 1 of each calendar year. The City will submit to the County a proposed annual budget for the City's forthcoming fiscal year. If the County does not receive a budget from the City by October 1, the adopted budget from the previous year will serve as the City's proposed annual budget. The County will review and make comments and recommendations on the proposed annual budget to the City within thirty (30) days of its receipt. The City and County will resolve any issues and agree on an approved annual budget for the forthcoming year within thirty (30) days after the return of the County's comments to the City and in no case later than November 15. If the City and County have not agreed on an approved annual budget by November 15, an approved annual budget shall be determined as prescribed in Section 2.13 above. If the City receives no comment or approval from the County after forty-five (45) days from its submittal, its October 1 proposed annual budget will be deemed approved by the County.

6.2 Payment by the County to the City for the Costs of Operation for the first three quarters will be based solely on the approved annual budget, and will each be twenty five percent (25%) of the approved annual budget. The final quarterly payment will be adjusted according to actual costs, as further detailed in 6.4 below. The Costs of Operation that will be invoiced quarterly will provide reasonable documentation so as to allow review of the actual costs by the County. If the actual total annual Costs of Operation exceeds the approved annual budget (a Shortfall), the Shortfall amount will be funded and paid for by the County's Water Fund. .

6.3 The annual compensation shall include extra reimbursement to the City for Transmission/Distribution System losses attributable to providing water to users both inside and outside the City. Said extra compensation shall be an amount equal to the rate charged by the County to the City for water used by the City, times the total net amount of water used by the City (total water production less water used outside the City) times the City's percent of unaccounted water within the City Transmission/Distribution System times fifteen percent (15%) (an estimate of actual water lost from the Transmission/Distribution System due to transmission outside the City versus water used within the City but not metered fire hydrants, public buildings, etc.).

6.4 The total annual compensation (as described above in Section 6.1 and 6.2) shall be administered so as to provide an incentive to minimize Costs of Operation of the Facilities and to return any savings between the actual Costs of Operation and the approved annual budget back to the City and County, fifty percent (50%) of any such surpluses shall be kept by the County while the remaining fifty percent (50%) of any such surpluses shall be distributed to the City in the last quarterly payment of the budget year. This surplus calculation involves taking the approved annual budget for the Costs of Operation, less the actual Costs of Operation. If the total annual actual Costs of Operation is greater than the approved annual budget, this difference will be added to the fourth quarter payment to the City. If the total annual actual Cost of Operations is less than the approved annual budget, fifty percent (50%) of said difference will be reduced from the fourth quarter payment to the City. .

6.5 Pursuant to the terms and conditions of the prior Water Supply Operation & Maintenance Agreement, dated, April 10, 2001, the County accumulated a Surplus fund of \$100,000. Since 6.2 above details how the County will be held responsible for covering a future shortfall in the approved annual budget, maintaining such a Surplus fund is no longer necessary. As such, this Surplus fund of \$100,000 will be liquidated in the fourth quarter distribution of the 2018/19 approved annual budget, to be made in April of 2019, with the City collecting \$100,000 of the distribution to be utilized solely for water meter replacement by the City; provided that the County will not contribute to the water meter replacement work. Otherwise, the City will collect \$50,000.

6.6 Quarterly invoices submitted by the City will be paid within forty-five (45) days of receipt. Invoices shall be billed on or about the first of the month for the months of May, July, October and January.

## 7. INDEMNITIES, LIABILITY AND INSURANCE

7.1 City hereby agrees to hold County harmless from any liability or damages, costs, claims, and expenses, including reasonable attorneys' fees which may arise from City negligence under this current Agreement.

7.2 County hereby agrees to hold City harmless from any liability or damages, costs, claims, and expenses, including reasonable attorneys' fees which may arise from County negligence under this current Agreement.

7.3 The City will be responsible and liable for any penalties or fines which may be imposed by any governmental entity having jurisdiction over the Facilities for any violation resulting from negligence or other conduct in managing or operating the Facilities by the City. The City will not be responsible and liable for any such violation resulting from County's failure to provide adequate equipment, source supply or other requirements of the Facilities to meet applicable quality and quantity standards or failures resulting from causes of Force Majeure.

7.4 The City shall maintain, through either commercial policy or self-insurance, insurance coverage on its employees and equipment. The County shall require contractors performing work at the Facilities on behalf of the County to add City as an additionally insured on its insurance policies. .

7.5 The County will annually provide the City with a Certificate of Insurance evidencing insurance coverages as required by this section.

## 8. TERMS AND TERMINATION

8.1 The term of this Agreement shall be for a period of one(1) year commencing January 1, 2019 and ending December 31, 2019.

8.2 Either party may terminate this Agreement for a material breach of this Agreement by the other party, but only after giving written notice of said breach, and allowing the other party sixty (60) days to cure or commence reasonable steps to cure the breach.

8.3 It is recognized that conditions may occur at some time during the term of this Agreement that result in both parties approving an alternative water source and the resulting discontinuance of operation of the Facilities, including, but not limited to, the City entering into a retail water supply Agreement with the Monroe County Water Authority. If such discontinuance occurs, County will provide City one hundred eighty (180) days written notice in advance of the projected termination of operation of the Facilities. City shall continue operation of the Facilities until they are no longer needed, after which time this Agreement shall terminate.

8.4 The prior aforesaid Agreements consisting of the 2001 O&M Agreement, the 2007 Amended O&M Agreement and the 2017 Second Amended O&M Agreement, are hereby replaced in their entirety, and upon execution of this current Agreement, these three prior documents shall be null and void.

IN WITNESS WHEREOF, the parties have executed this current Agreement as of the date first above written by their duly authorized officers.


Attest: Sharon K. Livingston  
Title: Contractual Secretary


COUNTY OF GENESEE

By: [Signature]  
Name: R. J. Bitusca

Date: 12-13-18

Title: Chairman

Attest:   
Martin D. Moore  
Title: City Manager  
Date: 12/11/18

CITY OF BATAVIA  
By:   
Eugene Dankowski Jr.  
Name: \_\_\_\_\_  
Title: City Council President

#-2019

**A RESOLUTION TO AMEND THE 2019-2020 DEPARTMENT OF PUBLIC WORKS BUDGET TO REFLECT THE RECEIPT OF \$100,000 PER THE AMENDED AND RESTATED COUNTY OF GENESEE AND CITY OF BATAVIA OPERATION AND MAINTENANCE AGREEMENT DATED DECEMBER 13, 2018**

**Motion of Councilperson**

**WHEREAS**, the City of Batavia on December 13, 2018 amended and restated the Operation and Maintenance Agreement with Genesee County; and

**WHEREAS**, section 6.5 of the agreement states that the City of Batavia will receive \$100,000.00 for the replacement of water meters; and

**WHEREAS**, the City is desirous of maintaining the funds in the Water department budget to offset the cost of water meters; 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 2019-2020 Water Department budget:

Amend the 2019-20 Water Department budget:

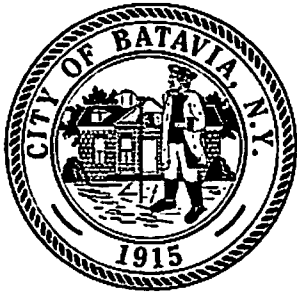
Increase revenue accounts

002.0002.2378 \$100,000.00

Increase expenditure accounts

002.8340.0201 \$100,000.00

**Seconded by Councilperson  
and on roll call**



# City of Batavia

## *Memorandum*

To: Martin Moore, City Manager

From: Matt Worth, Director of Public Works

Date: September 13, 2019

Subject: Rezoning Public Hearing – Public Storage Business in I-1 and I-2 Zones

An action to change the City of Batavia Zoning Ordinance to add public storage units with the issuance of a Special Use Permit to I-1 and I-2 Industrial Zoning Districts is before Council for consideration. This process included a review by both the City and County Planning Boards as requested by City Council.

The review of the planning boards included the recommendation add public storage units, with the issuance of a special use permit, to I-1 and I-2 Industrial zoning districts. The Zoning Ordinance submission before Council and attached for the public to review as part of the Public Hearing reflects this change. All other items that are part of the original petition, and supporting documentation that was provided for the original referral to the Planning Board are still valid.

As is required by the action to introduce an ordinance to change the City of Batavia Zoning Ordinance a public hearing is required. A public hearing is an opportunity for the public to review the proposed changes and make comments ahead of the City Council taking action.

It is recommended that a public hearing in this matter be scheduled for Monday November 12<sup>th</sup> at the City Council Business Meeting.

### Supporting Documentation:

January 18, 2019 Memo to Council for PDC Referral

June 18, 2019 Memo to Council, Genesee County Planning, City PDC w/original petition

Genesee County Planning Board Notice of Final Action

Comprehensive Plan Map showing Community Services for this area

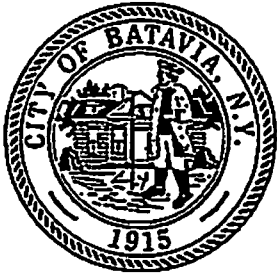
Draft Ordinance for Zoning Change

Draft Resolution for Public Hearing

**Department of Public Works**  
One Batavia City Centre  
Batavia, New York 14020

Phone: 585-345-6325  
Fax: 585-343-1385  
[www.batavianewyork.com](http://www.batavianewyork.com)






# City of Batavia

## *Memorandum*

To: Martin Moore, City Manager

From: Matt Worth, Director of Public Works 

Date: January 18, 2019

Subject: Petition for Zoning Ordinance Change

The City received a formal petition from Mr. Peter Yasses and 54 Cedar St LLC for a change to the current Zoning Ordinance. Currently, the City of Batavia Zoning Ordinance does not have any land zones that allow for the operation of a Self Service Storage Unit type of business.

The petition as received requests that allowed uses in I-1 and I-2 Industrial Zones be changed to allow for the operation of a storage unit business. This item was originally considered for a use variance, however, granting a variance would not have been a successful approach due to NYS General City Law. The recommendation from the Genesee County Planning Board of Referrals was to file the petition before you to consider changing the code to allow this use. A review of the updated comprehensive plan does not appear to address this issue as it relates to either Industrial Zones, or this type of business activity.

It is appropriate for City Council to consider referring this matter to the City of Batavia Planning and Development Committee for review.

Supporting Documentation:  
Draft Resolution  
Petition for Zoning Change

*Office of the City Manager*  
One Batavia City Centre  
Batavia, New York 14020

Phone: 585-345-6330  
Fax: 585-343-8182  
[www.batavianewyork.com](http://www.batavianewyork.com)

#13-2019

**A RESOLUTION REFERRING THE REVIEW OF THE ZONING OF PUBLIC STORAGE RENTAL UNITS IN THE BATAVIA MUNICIPAL CODE TO THE PLANNING AND DEVELOPMENT COMMITTEE**

**Motion of Councilperson McGinnis**

WHEREAS, the City Council is desirous of reviewing the Batavia Municipal Code, Section §190, in response to a petition from Peter Yasses, a member of 54 Cedar Street LLC, in relation to the lack of permitted zoning use of Public storage rental units; and

WHEREAS, under the City Charter § 13-3 the City Planning and Development Committee shall have such powers and duties to serve in an advisory capacity and provide such advice as to assist the City Council in developing a strategy that interprets, plans and leads in the implementation of land use matters relating to public and private development within the City of Batavia; and

WHEREAS, General City Law Section 27 provides City Council with the authority to refer matters to the Planning and Development Committee requesting reviews and recommendations regarding planning and development within the City of Batavia; and

**NOW THEREFORE, BE IT RESOLVED**, that the City Council of the City of Batavia hereby requests that the City Planning and Development Committee is to review permitted zoning of public storage units in the Batavia Municipal Code, to include application and implementation matters, as well as potential revisions, and make a recommendation to the City Council for consideration.

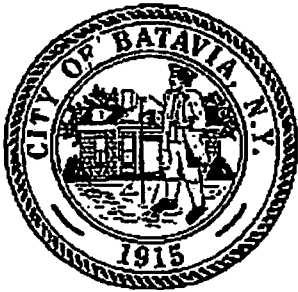
**Seconded by Councilperson Viele and on roll call approved 9-0.**

I hereby certify that the foregoing is a true and correct transcript of a resolution duly adopted by the City Council of the City of Batavia on the 11<sup>th</sup> day of February, 2019 and of the whole thereof.

Dated at Batavia, NY, February 27, 2019



Heidi J. Parker  
City Clerk, Batavia, NY



*City of Batavia*  
*Department of Public Works*  
*Bureau of Inspections*

One Batavia City Center, Batavia, New York 14020 (585)-345-6345 (585)-345-1385 (fax)

To: Planning and Development Committee  
From: Doug Randall, Code Enforcement Officer  
Date: 2/28/19  
Re: Public storage rental units

City Council has been petitioned to amend the current zoning ordinance to allow the principal use of "storage unit buildings with individual units" and "outdoor fenced-in storage area for large items". The petitioner requests such uses for the I-1 and I-2 use districts.

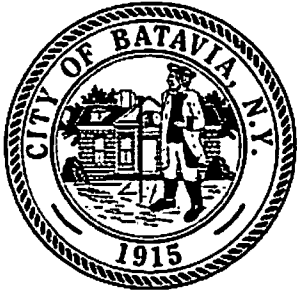
City Council has requested the Planning and Development Committee review permitted zoning of public storage units in the Batavia Municipal Code, to include application and implementation matters, as well as potential revisions, and make recommendations to City Council for consideration.

**Review Procedures:**

**City Planning and Development Committee-** Pursuant to City Charter chapter 13-3, the Planning and Development Committee shall serve in an advisory capacity to City Council and make recommendations regarding proper use of private lands as outlined in the comprehensive plan.

The PDC should consider, at a minimum;


- 1) Whether self-service public storage buildings and/or lots for outdoor storage should be an approved principal use within the City of Batavia.
- 2) Which zoning use districts would be best suited for these types of uses.
- 3) What restrictions or conditions should be placed on this use.



# City of Batavia

## *Memorandum*

To: Marty Moore, City Manager

From: Matt Worth, Director of Public Works 

Date: June 18, 2019

Subject: Zoning Recommendation

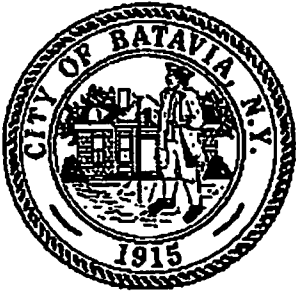
Mr. Peter Yasses, a member of 54 Cedar St LLC had requested a zoning change to recognize public storage units within the Batavia Municipal Code. At the February 11, 2019 Council meeting, the City Council directed that this item be reviewed by the Planning and Development Committee (PDC) and a recommendation to be provided for City Council's consideration.

The attached document includes the recommended changes, highlighted in yellow, which defines and recognizes public storage units in I-1 and I-2 zones contingent upon obtaining a special use permit. There is also documentation highlighting the specific parcel owned by 54 Cedar LLC as well as the zoning map showing other I-1 and I-2 zones within the City.

The next appropriate step is for Council to review the recommended changes. Council can accept the PDC recommendation "as is" and forward to the County Planning Department for review, or make comments/changes which can be sent directly to County Planning Department or can be sent back to the City PDC for their review and comment before going to the County Planning.

A formal resolution is not required for sending the proposed changes to the County Planning Department. A public hearing and local law resolution would then be the final steps in adopting the zoning change.

Supporting Documentation  
Planning and Development Committee Document



*City of Batavia*  
*Department of Public Works*  
*Bureau of Inspections*

One Batavia City Center, Batavia, New York 14020 (585)-345-6345 (585)-345-1385 (fax)

To: Genesee County Planning  
From: Doug Randall, Code Enforcement Officer  
Date: 7/1/19  
Re: Change in zoning to add Public Storage Units in I-1 and I-2  
Tax Parcel No. All within I-1 and I-2

Zoning Use District: I-1 and I-2

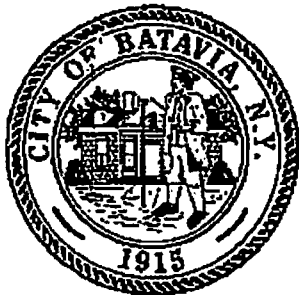
Batavia City Council has been petitioned to amend the current zoning ordinance to allow the principal use of "storage unit buildings with individual units" and "outdoor fenced-in area for large items". The petitioner has requested such uses for the I-1 and I-2 use districts.

Upon referral from City Council, the Planning and Development Committee reviewed the matter and during its regularly scheduled meeting on May 21, 2019, made recommendation to permit the use of "Public Storage Units/Buildings" with issuance of a Special Use Permit for properties located within the I-1 and I-2 zoning use districts. A number of code changes were recommended and have been included in this packet.

**Review and Approval Procedures:**

**County Planning Board-** Pursuant to General Municipal Law 239 m, referral to the County Planning Board is required since the property is within 500 feet of the boundary of the city; the boundary of a County or State park or other recreation area; the right of way of a state parkway, throughway, expressway, road or highway; the boundary of county or state owned land on which a public building or institution is situated; the boundary of a farm operation located in an agricultural district (not required for area variances).

Batavia City Council will be the lead agency to conduct SEQR.



*City of Batavia*  
*Department of Public Works*  
*Bureau of Inspections*

One Batavia City Center, Batavia, New York 14020 (585)-345-6345 (585)-345-1385 (fax)

To: Planning and Development Committee  
From: Doug Randall, Code Enforcement Officer  
Date: 2/28/19  
Re: Public storage rental units

City Council has been petitioned to amend the current zoning ordinance to allow the principal use of "storage unit buildings with individual units" and "outdoor fenced-in storage area for large items". The petitioner requests such uses for the I-1 and I-2 use districts.

City Council has requested the Planning and Development Committee review permitted zoning of public storage units in the Batavia Municipal Code, to include application and implementation matters, as well as potential revisions, and make recommendations to City Council for consideration.

**Review Procedures:**

**City Planning and Development Committee-** Pursuant to City Charter chapter 13-3, the Planning and Development Committee shall serve in an advisory capacity to City Council and make recommendations regarding proper use of private lands as outlined in the comprehensive plan.

The PDC should consider, at a minimum;

- 1) Whether self-service public storage buildings and/or lots for outdoor storage should be an approved principal use within the City of Batavia.
- 2) Which zoning use districts would be best suited for these types of uses.
- 3) What restrictions or conditions should be placed on this use.

SEND OR DELIVER TO:  
GENESEE COUNTY DEPARTMENT OF PLANNING  
3837 West Main Street Road  
Batavia, NY 14020-9404  
Phone: (585) 815-7901

DEPARTMENT USE ONLY:  
GCDP Referral # C-10-BAT-7-19



**\* GENESEE COUNTY \*  
PLANNING BOARD REFERRAL**

RECEIVED  
Genesee County  
Dept. of Planning  
7/3/2019

Required According to:  
**GENERAL MUNICIPAL LAW ARTICLE 12B, SECTION 239 L, M, N**  
(Please answer ALL questions as fully as possible)

**1. REFERRING BOARD(S) INFORMATION**

Board(s) Batavia City Council  
Address One Batavia City Centre  
City, State, Zip Batavia, NY 14020  
Phone (585) 345-6327 Ext. \_\_\_\_\_

**2. APPLICANT INFORMATION**

Name Martin Moore, City Manager for Batavia City Council  
Address One Batavia City Centre  
City, State, Zip Batavia, NY 14020  
Phone (585) 345-6333 Ext. \_\_\_\_\_ Email mmoore@batavianewyork.com

MUNICIPALITY:  City  Town  Village of Batavia

**3. TYPE OF REFERRAL: (Check all applicable items)**

- |   |  |                                      |
|---|--|--------------------------------------|
| <input type="checkbox"/> Area Variance      | <input type="checkbox"/> Zoning Map Change                 | Subdivision Proposal                 |
| <input type="checkbox"/> Use Variance       | <input checked="" type="checkbox"/> Zoning Text Amendments | <input type="checkbox"/> Preliminary |
| <input type="checkbox"/> Special Use Permit | <input type="checkbox"/> Comprehensive Plan/Update         | <input type="checkbox"/> Final       |
| <input type="checkbox"/> Site Plan Review   | <input type="checkbox"/> Other: _____                      |                                      |

**4. LOCATION OF THE REAL PROPERTY PERTAINING TO THIS REFERRAL:**

- A. Full Address All I-1 and I-2 zoning use districts within the City of Batavia  
B. Nearest intersecting road \_\_\_\_\_  
C. Tax Map Parcel Number \_\_\_\_\_  
D. Total area of the property \_\_\_\_\_ Area of property to be disturbed \_\_\_\_\_  
E. Present zoning district(s) \_\_\_\_\_

**5. REFERRAL CASE INFORMATION:**

- A. Has this referral been previously reviewed by the Genesee County Planning Board?  
 NO  YES If yes, give date and action taken \_\_\_\_\_
- B. Special Use Permit and/or Variances refer to the following section(s) of the present zoning ordinance and/or law  
\_\_\_\_\_
- C. Please describe the nature of this request Add the use of Public Storage Units with issuance of Special Use Permits to I-1 and I-2 zoning use districts.

**6. ENCLOSURES - Please enclose copy(s) of all appropriate items in regard to this referral**

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> Local application      | <input checked="" type="checkbox"/> Zoning text/map amendments | <input type="checkbox"/> New or updated comprehensive plan      |
| <input type="checkbox"/> Site plan              | <input checked="" type="checkbox"/> Location map or tax maps   | <input checked="" type="checkbox"/> Photos                      |
| <input type="checkbox"/> Subdivision plot plans | <input type="checkbox"/> Elevation drawings                    | <input checked="" type="checkbox"/> Other: <u>cover letters</u> |
| <input checked="" type="checkbox"/> SEQR forms  | <input type="checkbox"/> Agricultural data statement           |   |

**7. CONTACT INFORMATION** of the person representing the community in filling out this form (required information)

Name Douglas Randall Title Code Enf. Officer Phone (585) 345-6327 Ext. \_\_\_\_\_  
Address, City, State, Zip One Batavia City Centre, Batavia, NY 14020 Email drandall@batavianewyork.com



## GENESEE COUNTY PLANNING BOARD REFERRALS NOTICE OF FINAL ACTION

GCDP Referral ID C-10-BAT-7-19

Review Date 7/11/2019

Municipality	<u>BATAVIA, C.</u>
Board Name	<u>BATAVIA CITY COUNCIL</u>
Applicant's Name	<u>Martin Moore, City Manager for Batavia City Council</u>
Referral Type	<u>Zoning Text Amendments</u>
Variance(s)	
Description:	<u>Zoning Text Amendments to add public storage units with issuance of a Special Use Permit to I-1 and I-2 Industrial zoning districts</u>
Location	<u>All I-1 and I-2 Zoning Districts</u>
Zoning District	<u>Industrial (I-1 and I-2) Districts</u>

### PLANNING BOARD DECISION

APPROVAL

### EXPLANATION:

The proposed Zoning Text Amendments are intended to protect the health, safety, and welfare of the City and should pose no significant county-wide or inter-community impact.



Director

July 11, 2019

Date

If the County Planning Board disapproved the proposal, or recommends modifications, the referring agency shall NOT act contrary to the recommendations except by a vote of a majority plus one of all the members and after the adoption of a resolution setting forth the reasons for such contrary action. Within 30 days after the final action the referring agency shall file a report of final action with the County Planning Board. An action taken form is provided for this purpose and may be obtained from the Genesee County Planning Department.



## **City of Batavia Planning and Development Committee**

**June 10, 2019**

**Batavia City Council  
One Batavia City Centre  
Batavia, NY 14020**

**Regarding: Permitted zoning of public storage units in the Batavia Municipal Code**

**Honorable Councilpersons,**

**During its regularly scheduled meeting of May 21, 2019, the Planning and Development Committee considered the request to review and make recommendations regarding the permitted zoning of public storage units in the Batavia Municipal Code, to include application and implementation matters, as well as potential revisions.**

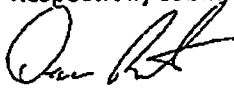
**Currently, the City of Batavia Zoning Ordinance does not have any land zones that allow for the operation of a Self-Service Storage Unit type of business. The PDC took note that on September 13, 2018, Genesee County Planning, recommended to consider changing the code to allow for this usage.**

**After lengthy discussion, a motion was supported to recommend to define Public Storage Rental Units/Buildings as follows: A building or buildings comprised of separate rental units of varying size, with or without outside storage, for private storage of personal property by the general public. The motion further stipulates that the standards and regulations set forth in the amendment to the Batavia Municipal Code shall apply.**

**Roll call of the three members in attendance resulted in unanimous recommendation of approval.**

**Please feel free to contact me if you have any questions regarding this matter.**

**Respectfully submitted,**



**Duane Preston  
Chair**

**§ 190-3. Definitions.**

**A. Generally.**

(1) All words used in the present tense include the future tense; all words in the singular number include the plural number and vice versa; the word "person" includes corporations and all other legal entities; the words "lot," "plot," "parcel," "tract of land," and "premises" shall include one another; the word "premises" shall include the land and buildings thereon; the word "building" shall include "structure" and vice versa; "occupied" or "used" shall be considered as though followed by the words "or intended, arranged or designed to be used or occupied" unless the natural construction of the wording indicates otherwise. The word "shall" is mandatory and not directory.

(2) Except where specifically defined herein, all words in this chapter shall carry their customary meanings.

**B. Specific terms. As used in this chapter, unless the context or subject matter otherwise requires, the following terms shall have the following meanings:**

**ACCESSORY DWELLING UNIT** — A self-contained dwelling unit, within a structure originally designed for a single-family residence, with separate kitchen facilities, with requirements set forth in § 190-37.[Added 10-25-1999]

**ADULT BOOKSTORE** — An establishment having a stock-in-trade consisting partially or totally of books, magazines, any other periodicals or fi including videos or compact disks, for sale, rent or viewing on premises by use of motion picture devices or any other coin-operated means, and which establishment has a substantial portion of said enumerated stock-in-trade which is distinguished or characterized by its emphasis on matter depicting, describing or related to specified sexual activities or specified anatomical areas.[Added 11-14-1994; amended 12-13-1999]

**ADULT EATING OR DRINKING ESTABLISHMENT** — An eating or drinking establishment which features any one or more of the following:[Added 11-14-1994; amended 12-13-1999]

(1) Live performances which are characterized by an emphasis upon the depiction or description of specified anatomical areas or specified sexual activities; or

- (2) Films, motion pictures, video cassettes, slides, or other visual representations which are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas; or
- (3) Employees who as part of their employment, regularly expose to patrons specified anatomical areas, and which is not customarily opened to the general public during such features because it excludes minors by reason of age.

**ADULT ENTERTAINMENT CABARET** — A public or private establishment which features topless dancers, strippers, male or female impersonators, exotic dancers or similar entertainers.[Added 11-14-1994; amended 12-13-1999]

**ADULT MINI-MOTION-PICTURE THEATER** — An enclosed building with a capacity of less than 50 persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.[Added 11-14-1994; amended 12-13-1999]

**ADULT MOTEL** — A motel which makes available to its patrons in their room film slide shows or videotapes with an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.[Added 11-14-1994; amended 12-13-1999]

**ADULT MOTION-PICTURE THEATER** — An enclosed building with a capacity of 50 or more persons used regularly and routinely for presenting material having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.[Added 11-14-1994; amended 12-13-1999]

**ADULT USE** — Within a commercial establishment, any activity or use relating to specified sexual activities or specified anatomical areas, including but not limited to the activities and uses set forth in the definitions of adult bookstore, adult eating or drinking establishment, adult entertainment cabaret, adult mini-motion-picture theater, adult motion-picture theater, adult motel, massage establishment, nude model studio and peep shows.[Added 11-14-1994; amended 12-13-1999]

**ALLEY** — Narrow supplementary thoroughfare for the public use of vehicles or pedestrians, affording access to abutting property.

**ALTERATION** — Any change, rearrangement, or addition to a building, other than repairs; any modification in construction or in building equipment.

**AREA, BUILDING** — Total of area taken on a horizontal plane at the main grade level of principal buildings and all accessory buildings, exclusive of uncovered porches, parapets, steps, and terraces.

**ART GALLERY** — A structure or building utilized for the display of art work, including paintings, sculptures and prints for sale to the public.[Added 8-14-2000]

**AUTOMOBILE SERVICE STATION** — Any area of land, including structures thereon, that is used for the sale of gasoline or any other motor vehicle fuel and oil and other lubricating substances, including the sale of motor vehicle accessories and which may or may not include facilities for lubricating and other minor servicing of motor vehicles but not including the painting thereof by any means. Any rebuilding, reconditioning or collision services involving frame and fender straightening or repair, or any dismantling or disassembly of frame and exterior parts is not an automobile service station. The sale or rental of vehicles is not a permitted use under the definition of automobile service station. Such use may be allowed with special authorization of the Planning Board.

**BASEMENT** — That space of a building that is partly below grade, which has 1/2 or more of its height, measured from floor to ceiling, above the average floor grade.

**BED-AND-BREAKFAST** — A house or structure, or portion thereof, where short-term lodging rooms and meals are provided. The operator of the inn shall live on the premises or in adjacent premises.[Added 8-14-2000]

**BREW PUB/MICRO-BREWERY** — An eating and drinking establishment where certain beverages are prepared on the premises exclusively for on-site consumption. For a brew pub, the brewing of such beverages is accessory to the eating and drinking establishment. A micro-brewery, on the other hand, focuses on the production of beer, with the eating and drinking establishment as an accessory.[Added 8-14-2000]

**BUILDING** — A structure wholly or partially enclosed within exterior walls, or within exterior and party walls, and a roof. The term "building" shall be construed as if followed by the phrase "or part thereof," unless otherwise indicated by the text.

**BUILDING COVERAGE** — That percentage of the lot area covered by the building area.

**BUILDING, HEIGHT OF** — The vertical distance measured from the average level of the proposed finished grade across the front of the building to the ridgeline of the roof of the building.

**BUILDING LINE** — A line formed by the intersection of a horizontal plane at average grade level and a vertical plane that coincides with the exterior surfaces of the building on any side. In case of a cantilevered section of a building or projected roof or porch, the vertical plane will coincide with the most projected surface. All yard requirements are measured to the building line.

**BUILDING OR STRUCTURE, ACCESSORY** — A structure the use of which is incidental to that of the main building and which is located on the same premises.

**CELLAR** — That part of a building that is partly or entirely below grade, which has more than 1/2 of its height, measured from finished floor to ceiling, below the average finished grade.

**DENSITY** — The total number of dwelling units proposed divided by the total number of acres within the tract.

**DRIVEWAY** — Every entrance or exit used by vehicular traffic to or from lands or buildings abutting a highway.

**DWELLING, MULTIFAMILY** —

- (1) A building designed or occupied for residential purposes by more than two families; or
- (2) A series of attached, detached, or semidetached buildings, which are provided as a group collectively with essential services and utilities, and which are located on a lot, plot, or parcel of land, under common ownership; or
- (3) The residential part of a mixed occupancy building. Regardless of the foregoing, any residential building, other than a one- or two-family dwelling on a single zoning lot, shall be deemed to be a multiple dwelling.

**DWELLING, ONE-FAMILY** — A building containing only one dwelling unit, and occupied by only one family.

**DWELLING, TWO-FAMILY** — A building containing only two dwelling units, and occupied by only two families.

**DWELLING UNIT** — A complete self-contained residential unit, with living, sleeping, cooking, and sanitary facilities within the unit, for use by one family.

**FAMILY** — A single person; or two or more persons maintaining a common household with not more than two boarders, roomers, or lodgers. The term family does not include live-in household employees.<sup>1</sup>

**FENCE** — A fence is a structure which prohibits or inhibits unrestricted travel between properties or portions of properties or between the street or public right-of-way and a property. Fences may be constructed of wood, metal, plastic or other materials. Densely planted shrubbery or hedges which inhibit travel may also be considered as a fence.

**FLOODPLAIN** — Any area adjacent to a water body which is subject to inundation from high water and/or wave action, and at a minimum that area subject to a one-percent or greater chance of fl in any given year and all areas designated as Special Flood Hazard Zones by the Federal Insurance Administration's Offi Map for the City shall be considered as fl areas.

**GARAGE, PRIVATE** — A roofed space for the storage of one or more motor vehicles, provided that no business, occupation or service is conducted for profit therein nor space therein for more than one car is leased to a nonresident of the premises.

**GARAGE, PUBLIC** — A building or part thereof used for the storage, hiring, selling, greasing, washing, servicing, or repair of motor vehicles, operated for gain.

**GARDEN APARTMENTS** — A residence building or group of one or more residence buildings of not more than 2 1/2 stories in height and two rooms in depth designed and erected as a project with singleness of use and operation and where joint or communal use is to be made of open areas by the occupants.

**HELIPORT** — An area used by helicopters which area includes passenger and cargo facilities, maintenance and overhaul, fueling service, storage space, tie-down space, hangars and other accessory buildings, and open spaces.

**HELISTOP** — An area on a roof or on the ground used by helicopters for the purpose of picking up or discharging passengers or cargo, but not including fuel service, maintenance or overhaul.

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1. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

**HIGH RISE** — An apartment complex three stories or more in height.

**HOME OCCUPATION** — Any occupation or profession which is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit by a member of the family residing in the dwelling unit. Home occupations shall be clearly incidental and secondary to the use of the dwelling unit for residential purposes.

- (1) In particular, a home occupation includes, but is not limited to the following: licensed plumbers, hairdressing, dressmaking, laundering, homecooking, teaching (musical instruction limited to a single pupil at a time) and the skilled practice by an accountant, architect, artist, dentist, doctor, engineer, insurance agent, lawyer, musician, realtor, or member of any profession within a dwelling occupied by the same.
- (2) However, a home occupation shall not be interpreted to include the following: commercial stables and kennels, restaurants and tea rooms, musical instruction to groups, dancing instruction, tourist homes, convalescent homes, mortuary establishments, garages or shops for the repair of motor vehicles and other trades and businesses of a similar nature.
- (3) The occupation or profession shall be carried on wholly within the principal building or within a building or other structure accessory thereto. Not more than one person outside the family shall be employed in the home occupation. Under no circumstances shall the home occupation or professional use occupy more than 25% of the total gross habitable floor area of the principal building.

**HOSPITAL** — An establishment for temporary occupation by the sick or injured for the purpose of medical diagnosis and treatment, including a sanitarium and sanatorium, and shall be limited to the treatment or other care of humans.

**HOTEL** — A building containing primarily hotel units for the purpose of furnishing lodging, with or without meals, for transient occupancy; and with management maintaining a register and providing daily housekeeping and other incidental services, including desk, telephone, or bellboy services.

**JUNKYARD; RECLAMATION CENTER** — The use of more than 200 square feet of the area of any lot where waste, discarded or salvaged materials are bought, sold, exchanged, stored, baled,

cleaned, packed, disassembled or handled, processed or reclaimed, including automobile wrecking yards, used lumberyards, and places or yards for used or salvage materials and equipment; as distinguished from such uses when conducted entirely within an enclosed building, and as distinguished from establishments for the sale, purchase or storage of used cars in operable condition, used machinery, furniture and household equipment, and the processing of used, or salvaged materials as part of a manufacturing process. Two or more abandoned, disabled, dismantled or partly dismantled vehicles allowed to remain on a premises for a period of more than 30 days shall constitute a junkyard.

**KENNEL** — A structure used for the harboring of more than three dogs that are more than six months old.

**LARGE-SCALE MULTIFAMILY DEVELOPMENT** — A development which is designed to provide habitation for six or more families. Large-scale multifamily development shall include apartment houses, fl garden apartments, townhouses or any combination thereof which comprise six or more units.

**LIVE/WORK UNIT** — A place designed to be used, or used as, both a dwelling place and a place of work by an artist, artisan, or craftperson, including persons engaged in the application, teaching, or performance of fi arts such as, but not limited to, drawing, vocal or instrumental music, painting, sculpture, and writing.[Added 8-14-2000]

**LOT** — A parcel of land considered as a unit, occupied or capable of being occupied by one building and accessory buildings or uses, or by a group of buildings united by a common use or interest; and including such open spaces as are required by this chapter, and having its principal frontage on a public street or an officially approved place.

**LOT AREA** — The total horizontal area included within lot lines, except that no part of the area within a public right-of-way may be included in the computation of lot area.

**LOT, CORNER** — A lot located at the intersection of and fronting on two or more intersecting streets, and having an interior angle at the corner of intersection of less than 135°.

**LOT COVERAGE** — That percentage of the lot area covered by the building area. (See "building coverage.")

**LOT DEPTH** — The mean horizontal distance between the front and rear lot lines, measured from front to rear.



**LOT, INTERIOR** — A lot other than a corner lot.

**LOT LINE, FRONT** — In the case of a lot abutting upon only one street, the line separating such lot from such street. In the case of a lot that abuts more than one street, each street line shall be considered to be a front lot line.

**LOT LINE, REAR** — That lot line which is opposite and most distant from the front lot line.

**LOT LINE, SIDE** — That lot line not a front lot line or a rear lot line.

**LOT, THROUGH** — An interior lot having frontage on two approximately parallel or converging streets.

**LOT WIDTH** — The distance between side lot lines measured at right angles to the lot depth measured at a point from the front lot line equal to the front yard specified for the district.

**MASSAGE ESTABLISHMENT** — Any establishment having a place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths and steam baths. This definition shall not be construed to include a hospital, nursing home or medical clinic or the office of a physician, surgeon, chiropractor, osteopath, duly licensed massage therapist, or duly licensed physical therapist; or barbershops or beauty shops in which massages are administered only to the scalp, face, neck and shoulders. This definition shall also exclude health clubs which have facilities for physical exercise, such as tennis courts, racquetball courts or exercise rooms, and which do not receive their primary source of revenue through the administration of massages.[Added 11-14-1994; amended 12-13-1999]

**MOBILE HOME** — A mobile home is a movable living unit designed for year-round occupancy, sometimes termed a "house trailer." For the purposes of this chapter, a mobile home shall not be considered a dwelling.

**MOBILE HOME COURT OR PARK** — A parcel of land which has been planned and improved primarily for the placement of mobile homes.

**MOTEL** — A building with or without party walls, or any group of buildings, used primarily for sheltering transient motorists, and accessory uses, such as restaurants and parking.

**NONCONFORMING BUILDING, STRUCTURE OR LOT** — A building, structure, lot or use of land existing at the time of

enactment of this chapter or an amendment thereto, and which does not conform to the regulations of the district in which it is situated or to the provisions of such amendment if nonconforming to such amendment only.

**NONCONFORMING USE** — A property use legally existing at the time of the enactment of this chapter; or any subsequent amendment, which does not conform to the use regulations of the district in which it is situated.

**NUDE MODEL STUDIO** — Any place where a person who appears in a state of nudity or displays specified anatomical areas is regularly provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration, other than as part of a course of instruction offered by an educational institution established pursuant to the Laws of the State of New York.[Added 11-14-1994; amended 12-13-1999]

**NURSING OR CONVALESCENT HOME** — Any dwelling used for the accommodation and care of persons with, or recuperating from, illness or incapacity, where nursing services are furnished.

**PEEP SHOWS** — A theater which presents material in the form of live shows, film or videotapes, viewed from an individual enclosure with an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas and for which a fee is charged.[Added 11-14-1994; amended 12-13-1999]

**PERSON** — Any person, firm, partnership, corporation, association, or legal representative, acting individually or jointly.[Added 11-14-1994; amended 12-13-1999]

**PARKING SPACE** — An off-street space available for the parking of one motor vehicle measuring no less than eight feet in width and 19 feet in depth and including sufficient space for aisles and maneuverability.

**PUBLIC STORAGE RENTAL UNITS/BUILDING** - **A building or buildings comprised of separate rental units of varying size for private storage of personal property by the general public.**

**RESTAURANT** — Any establishment however designated, at which food is sold for consumption on the premises to patrons seated within an enclosed building. However, a snack bar or refreshment stand at a public, semipublic or community swimming pool, playground, playfield, or park operated by the agency or group or an approved vendor operating the

§ 190-3

recreational facilities and for the convenience of the patrons of  
the facility shall not be deemed to be a restaurant.

§ 190-3

**RESTAURANT, DRIVE-IN** — An establishment where patrons are served food, soft drinks, ice cream, and similar confections for principal consumption outside the confines of the principal building or in automobiles parked upon the premises, regardless of whether or not seats or other accommodations are provided for the patrons.

**ROOMING HOUSE** — Any building or portion thereof containing more than two and less than 10 rooms that are used, rented or hired out to be occupied or that are occupied for sleeping purpose for compensation, whether the compensation be paid directly or indirectly.

**SALVAGE** — The utilization of waste materials and processing of discarded or rejected materials that result from manufacturing or fabricating operations.[Added 8-14-2000]

**SERVICE STATION** — See "automobile service station."

**SEXUAL ENCOUNTER CENTER** — A business or commercial enterprise that offers for money or any form of consideration, a place where two or more persons may congregate, associate or consort for the purpose of specified sexual activities or exposure of specified anatomical areas or activities between male and female persons and/or persons of the same sex, when one or more of the persons is in the state of nudity or seminude. The definition of sexual encounter center shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the State of New York engages in medically approved and recognized sexual therapy. [Added 11-14-1994; amended 12-13-1999]

**SHOPPING CENTER** — A group of commercial uses located on a single parcel of land under one ownership, having adequate space in rear for loading and unloading commodities; and required off-street parking.

**SIGN** — [Amended 5-13-1985; 1-23-2017 by L.L. No. 1-2017]

- (1) **AWNING SIGN** — A sign where graphics or symbols are painted, sewn, or otherwise adhered to the awning material as an integrated part of the awning itself.
- (2) **BACKLIT ILLUMINATION** — Signs that are backlit illuminated involve a low level of external light shining out from behind solid objects, most often letters, creating a soft glow around the outside of the objects.

- (3) BRACKET SIGN — A freestanding sign, attached to the ground by one or more support structures, that is not higher than 11 feet and hangs from a bracket or support.
- (4) CANOPY SIGN — A sign placed on a canopy so that the display surface is parallel to the plane of the wall.
- (5) DIRECTIONAL SIGN — A permanent sign which is designed for the purpose of directing traffic or pedestrian traffic to the location of an activity or business.
- (6) ELECTRICAL RACEWAY — A raceway (sometimes referred to as a "raceway system" is an enclosed conduit that forms a physical pathway for electrical wiring. Raceways protect wires and cables from heat, humidity, corrosion, water intrusion and general physical threats.
- (7) ELECTRONIC MESSAGE BOARD — An illumination type that produces a static or changeable electronic message using light-emitting diodes (LED), liquid crystal display (LCD) or other digital display method, that is designed to provide an electronic message or display that may be generated and periodically changed using an internal, external or remotely located electronic control system, which contains an illuminated, programmable message or graphic, whether it is or moving.
- (8) EXTERNAL ILLUMINATION — Signs that are externally illuminated have light shining onto the outer surface of the sign. External illumination may be downlit (lit from above) and uplit (lit from below).
- (9) FREESTANDING SIGN — A self-supporting sign not attached to any building, wall or fence, but in a fixed location; includes pole signs, pylon signs, and masonry wall-type signs, but does not include portable trailer-type signs.
- (10) ICONIC SIGN — A sculptural, typically three-dimensional sign whose form suggests its meaning, and which can either be building-mounted or freestanding.
- (11) ILLUMINATED SIGN — Any sign illuminated by electricity, gas or other artificial light either for the interior, back lit or exterior of the sign, and which includes reflective and phosphorescent light.
- (12) INTERNAL ILLUMINATION — Signs that are internally illuminated have light shining through the surface of the sign.

Typically, these either involve a rectangular-shaped box sign or individual letters (channel letters) that are lit from inside. Neon signs are not considered internally illuminated.

- (13) **MARQUEE SIGN** — A sign attached to the top or the face of a permanent roof-like structure.
- (14) **MONUMENT SIGN** — A freestanding sign attached to the ground along its entire length to a continuous pedestal. A monument sign is horizontally oriented or is square.
- (15) **OFF-PREMISES SIGN** — A sign unrelated to a business or a profession conducted, or to a commodity or service sold or offered, upon the premises where such a sign is located.
- (16) **POLE SIGN** — A freestanding sign constructed on a structure of one or more poles.
- (17) **PORTABLE SIGN** — A sign designed to be portable and not structurally attached to the ground, building, structure or another sign.
- (18) **PROJECTING SIGN** — A sign attached to the building façade at a ninety-degree angle, extending more than 15 inches. A projecting sign may be two- or three-dimensional.
- (19) **SHINGLE SIGN** — A small projecting sign that hangs from a bracket or support.
- (20) **SIDEWALK SIGN** — A moveable sign not secured or attached to the ground or surface upon which it is located.
- (21) **SIGN** — A structure or device designed or intended to convey information to the public in written or pictorial form.
- (22) **SIGN STRUCTURE** — Framework for the sign.
- (23) **SIGN SURFACE AREA** — The entire area within the single, continuous perimeter enclosing the limits of writing representation, emblem or any figure or similar character. Supports, uprights or structures on which any sign is supported shall not be included in the sign surface area unless it is an integral part of the sign.
- (24) **TEMPORARY SIGN** — A sign having a duration of no more than 60 days.

(25)WALL SIGN — A sign placed or painted against a building and attached to the exterior front, rear or side so that the display surface is parallel to the plane of the wall.

(26)WINDOW SIGN — A sign visible from a sidewalk, street or other public place, painted or affixed on glass or other window material, or located inside within four feet of the window, but not including graphics in connection with customary window display of products.<sup>2</sup>

SITE PLAN — A plan of a lot or subdivision on which is shown topography, location of all buildings, structures, roads, rights-of-way, boundaries, all essential dimensions and bearings and any other information deemed necessary by the Planning Board.

SPECIFIED ANATOMICAL AREAS [Added 11-14-1994; amended 12-13-1999] —

(1) Less than completely and opaquely covered human genitals, pubic region or female breast below a point immediately above the top of the areola.

(2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES [Added 11-14-1994; amended 12-13-1999] —

(1) Human genitals in a state of sexual stimulation or arousal.

(2) Acts of human masturbation, sexual intercourse, or sodomy.

(3) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

SUBSTANTIAL PORTION [Added 11-14-1994; amended 12-13-1999] — The following conditions are present:

(1) The amount of actual stock-in-trade that is distinguished or characterized by its emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas is equal to or greater than 15% of the total stock-in-trade of the bookstore; and/or

(2) Fifteen percent or more of the fl area of the building accessible to customers contains the enumerated materials distinguished or characterized by its emphasis on matter

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2. Editor's Note: The definition of "sign area," which immediately followed, was repealed 5-13-1985.

depicting, describing or relating to specified sexual activities or specified anatomical areas, as compared to the total floor area of the building accessible to customers.

**STREET** — A public thoroughfare which has been dedicated or deeded to the public for public use, and which has been improved in accordance with municipal standards.

**STREET LINE** — That line determining the limit of the highway rights of the public, either existing or contemplated.

**STRUCTURE** — An assembly of materials, forming a construction framed of component structural parts for occupancy or use, including buildings.

**STRUCTURAL ALTERATION** — Any change to a structure which is not merely a repair or replacement of an existing part, or any change which would:

- (1) Enlarge or diminish the livable floor area of the structure or any part thereof;
- (2) Change the number of dwelling units contained in any structure;
- (3) Cause a change in the location or height of the exterior walls or roof of the structure;
- (4) Move the structure from one position to another;
- (5) Change any exit or entry facilities;
- (6) Change or rearrange the structural parts including bearing walls, beams, girders, columns.

**TEMPORARY USE** — An activity conducted for a specified limited period of time which may not otherwise be permitted by the provisions of this chapter.

**TOURIST HOME** — A dwelling in which overnight accommodations are provided or offered for transient guests for compensation.

**TOWNHOUSE** — One of a series of attached one-family dwelling units, each having a common wall between adjacent sections and having direct access to private, individual rear and/or front yards designed as an integral part of each one-family dwelling unit.

**USE** — The specific purposes for which land or a building is designed, arranged, intended or for which it is or may be occupied or maintained.



**YARD** — An open space on the same lot with a building, unoccupied or unobstructed by any portion of a structure from the ground upward, except as otherwise provided in this chapter.

**YARD, FRONT** — An open, unoccupied space on the same lot with the building, between the front line of the building and the street or highway line, and extending the full width of the lot.

**YARD, REAR** — An open, unoccupied space, except for accessory buildings, on the same lot with the building between the rear line of the building and the rear lot line and extending the full width of the lot.

**YARD, SIDE** — An open, unoccupied space on the same lot with the building, situated between the building and the side lot line, and extending from the front yard to the rear yard.

**§ 190-15. I-1 Industrial Districts.**

In I-1 Industrial Districts, no building or structure shall be erected, altered or extended, and no land, building or structure or part thereof, shall be used for other than the following permitted uses, subject to the performance standards set forth in § 190-38:  
A. Permitted principal uses.

- (1) Retail store, including storage, wholesale, and service operations customarily incidental thereto.
- (2) Any legal use of a light industrial nature which involves the processing, fabrication, assembly or packaging of previously prepared or refined materials, including uses providing repair or general services to industrial uses except:
  - (a) Those uses which, because of danger to the general public due to hazards of fire and explosion, including those uses where explosives, combustible bases or flammable liquids are manufactured or stored, shall be permitted only by a special use permit authorized by the Council according to the provisions of § 190-37 and only in conformance with the State Building Construction Code<sup>1</sup> and Labor Law of the State of New York.
  - (b) Uses of an extractive nature, including but not limited to the operation of sand and gravel mines, topsoil removal and mineral removal work.
- (3) Industrial office buildings for executive, engineering and administrative purposes.
- (4) Scientific or research laboratories devoted to research, design and/or experimentation and processing and fabricating incidental thereto.
- (5) Any use permitted in § 190-24B(2), except that retail stores shall be governed by Subsection A(1) of this section.
- (6) Art gallery. [Added 8-14-2000] B. Permitted accessory uses.
  - (1) Such accessory uses as are customarily incidental to any of the above uses, subject to the provisions of § 190-35.
  - (2) Off-street parking subject to the provisions of § 190-39.

§ 190-15

§ 190-15

(3) Signs subject to the provisions of § 190-43.

C. Uses permitted by special use permit. [Amended 8-14-2000]

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<sup>1</sup>. Editor's Note: See Ch. 51, Building Construction.

- (1) **Junkyards, salvage and scrap processing, outside storage.**
- (2) **Uses which may cause a danger to the public due to the hazards of fire and explosion.**
- (3) **Automobile service stations.**
- (4) **Live/work units. Live/work units must comply with § 190-37, Subsection J, entitled "Standards applicable for all special use permits."**
- (5) **Brew pub, micro brewery. Brew pubs and micro breweries must comply with § 190-37, Subsection J, entitled "Standards applicable for all special use permits."**
- (6) **Public storage rental units/buildings with or without outside storage.**

**§ 190-42. Miscellaneous regulations.**

- A. **Rear dwelling.** No building in the rear of a principal building on the same lot shall be used for residence purposes, except that an accessory building may house domestic employees of the occupants of the principal building.
- B. **Location of certain activities.** Other provisions of this chapter notwithstanding, the following uses or activities shall not be permitted within 200 feet of any residential district:
  - (1) **Garage or shop for painting of automobiles or for the repairing of automobile bodies or fenders involving hammering or other work causing loud or unusual noise or fumes or odors.**
  - (2) **Junkyard, animal hospital, kennel or place for the boarding of animals.**
- C. **Access of business, commercial, or industrial use.** No driveway or other means of access for vehicles, other than a public street, shall be maintained or used in any residential district for the servicing of a commercial or industrial use located in a commercial or industrial district, except with special permission of the City Planning Board.
- D. **More than one building on a lot.** When there is more than one principal building on a lot in any district, the space between such buildings shall be no less than the sum of the side yards required, or the sum of the rear and the front yards, as the case may be and minimum lot area requirements shall apply to each structure.
  - (1) **Public storage rental units/buildings are exempt from this requirement and must be constructed in compliance with the separation requirements of the New York State Building and Fire Codes.**
- E. **Mobile homes.** The use of a mobile home for dwelling purposes in any district over 48 hours, whether on wheels or otherwise supported, is prohibited except as provided herein. Upon application, the Code Enforcement Officer may issue a temporary permit for the use of a mobile home for dwelling purposes for a period not to exceed two months in any twelve-month period, or issue a permit for a period of 12 months, which shall not be renewed, for the occupancy of a mobile home during construction of a permanent dwelling for the occupant.
- F. **Parking lots.** Parking lots may be allowed in Residential R-2 and R-3 Districts upon compliance with the following conditions and procedures:
  - (1) **Application for a parking lot in an R-2 or R-3 District shall be made to the Code Enforcement Officer and the application**

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§ 190-42

§ 190-42

shall be accompanied by a fee as set by resolution of the City Council. It shall be reviewed by the Code Enforcement Officer and forwarded by him or her

within 30 days to the Planning Board for its consideration. If the application is thereafter approved, the Planning Board shall note its approval on the application and return it to the Code Enforcement Officer who shall then issue a permit and upon the completion of all the conditions required, the Code Enforcement Officer shall issue a certificate of compliance. [Amended 4-22-1991; 3-13-1995; 6-25-2001 by L.L. No. 1-2001]

- (2) The lot shall be used only for the parking of passenger automobiles of employees, customers or guests of the person or firm submitting an application as aforesaid, and such person or firm shall be responsible for the maintenance of the lot and ensuring compliance with the provisions hereof.
- (3) No charge shall be made for parking on the lot.
- (4) The lot shall not be used for sales, repair work or servicing of any kind.
- (5) Entrance to or exit from the lot shall be located so as to do the least harm to the residential district and reasonable time limits for the use of such lot may be established.
- (6) No advertising sign or material shall be located on the lot.
- (7) All parking shall be back of the front yard as defined in this chapter, and no motor vehicles shall be parked within 10 feet of any property line.
- (8) The parking area shall have a fence at least six feet high around the perimeter of the lot, and curbs with bumper tire barriers shall be installed at all parking spaces.
- (9) All lighting shall be arranged so that there will be no glare therefrom annoying to the occupants of adjoining property in a residential district.
- (10) The surface of the parking area and the approaches and exits thereto shall be composed of at least two inches of stone treated with asphaltic road oil or such other surfacing as may be required by the Planning Board and shall be smoothly graded and adequately drained.
- (11) The Planning Board may require such other conditions as may be deemed necessary to safeguard the health, safety

detrimental effects of the parking lot on adjacent property.<sup>1</sup>G. Landscaping regulations.

- (1) Landscaping consisting of attractive trees, shrubs, plants and grass lawns shall be required and planted in accordance with the site plans submitted and approved by the Planning Board. Buffer planting as defined in this chapter shall include an area of at least 10 feet in depth provided along the side and rear property lines of all commercial and industrial districts or uses including parking lots permitted in Subsection F of this section, so as to provide protection to adjacent properties where such lot lines abut Residential Districts or uses.
- (2) In addition to such buffer planting, the owner of the commercial or industrial property shall erect on the buffer area a fence six feet in height for the purpose of protecting the residential property from litter, debris and light glare and such other nuisances that would disturb peaceful possession.
- (3) Such fence shall contain no more than 25% open space. The responsibility for maintenance of the commercial or industrial property referred to herein shall be the shared responsibility of the owners of the property and any other tenants who may be in possession thereof.
- (4) Such fencing referred to above shall be located only as shown on the site plan approved by the Planning Board.

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<sup>1</sup> . Editor's Note: Original Subsection 12, amended 3-13-1995, which immediately followed this section, was repealed 10-14-1997.

**§ 190-37. Special use permits. [Amended 11-9-1998]**

The following uses may be permitted provided a special use permit is authorized by the Planning and Development Committee under the terms and specifications herein. The necessity for certain specific uses is recognized. At the same time they, or any of them, may be or become inimical to the public health, safety and general welfare of the community if located without consideration to the existing conditions and surroundings. Special use permits authorize a particular land use that is permitted by the provisions of this chapter, but may require additional conditions to assure that the proposed use is in harmony with this chapter and will not adversely affect the neighborhood conditions. The following standards and proceedings are hereby established which are intended to provide the Planning and Development Committee with a guide for the purpose of reviewing certain uses not otherwise permitted in this chapter.

- A. **Municipal or public utility structures.** Municipal or public utility structures or facilities may be permitted by special use permit in residential and commercial zoning districts provided that:
- (1) The proposed installation in a specific location is necessary and convenient for the efficiency of the public utility system or the satisfactory and convenient provision of service by the utility to the neighborhood or area in which the particular use is to be located.
  - (2) The design of any building in connection with such facility conforms to the general character of the area and will not adversely affect the safe and comfortable enjoyment of property rights of the district in which it is located.
  - (3) Adequate and attractive fences and other safety devices will be provided.
  - (4) A buffer strip 10 feet in width shall be provided around the perimeter of the property.
  - (5) Adequate off-street parking shall be provided.
  - (6) All of the area, yard and building coverage requirements of the respective zoning district will be met.
- B. **Professional offices.** Professional offices for attorneys, physicians and/or dentists may be permitted by special use permit in the R-3 Residential District, provided that:
- (1) A minimum area of 10,000 square feet with 75 feet of frontage shall be provided.
  - (2) Not more than 30% of the lot shall be covered by building area.

- (3) A minimum of 35 feet for rear and front yards and a minimum of 12 feet for one side yard and a total of 25 feet for both side yards shall be required for all new construction.
  - (4) On an existing structure which is connected and providing no additions are required, the City Council shall determine that the proposed use and structure will not be detrimental to adjoining properties.
  - (5) Off-street parking shall be provided at a rate of one space per 150 square feet of floor area or fraction thereof. No parking shall be permitted within any portion of the front yard.
  - (6) Where a parking area for four or more cars adjoins a residential property, a planted buffer strip at least 10 feet wide shall be provided between the parking area and the adjoining property.
  - (7) No more than four physicians or dentists shall occupy one building.
  - (8) If the proposed use is to be located in a residential building, the residential facade shall be maintained.
- C. High-rise apartments. High-rise apartments may be permitted by special use permit in the R-3 Residential, C-1 Limited Commercial and C-2 General Commercial Districts, provided that:
- (1) Detailed plot plans, showing parking, building location, buffer areas, etc., shall be submitted.
  - (2) No structure shall contain more than one dwelling unit per 650 square feet of lot area. For structures which exceed eight stories in height, the minimum lot area per dwelling unit shall not exceed 800 square feet.
  - (3) The minimum lot width shall be 150 feet.
  - (4) All yards shall have a minimum depth equal to not less than 1/2 the height of the tallest building but in no case shall the required yard areas be less than 35 feet.
  - (5) No apartment unit shall have less than 396 square feet of gross living area.
  - (6) Parking may be provided in any yard area but the front yard and shall be in the ratio as approved by the City Council.
  - (7) Not more than 40% of the lot area shall be covered by building area.
  - (8) Each building shall be provided with at least one passenger elevator and one service/passenger elevator.



- (9) One project identification sign shall be permitted which shall not exceed 25 square feet in area and shall be situated not less than 10 feet within the property lines. The sign may include only the name of the project, the street address, and the presence or lack of vacancies.
- D. **Cleaning establishments.** Cleaning establishments may be permitted by special use permit in the C-2 General Commercial and Industrial Districts, provided that:
- (1) It shall be determined that the proposed use is compatible in the adjoining land uses.
  - (2) The proposed use will not adversely affect the general health, safety and welfare of the public.
  - (3) The applicant shall indicate precautions taken to protect the general health, safety and welfare of the public.
- E. **Automobile service stations; garages; drive-in restaurants.** Automobile service stations and/or garages for the storage, adjustment or repair of motor vehicles, drive-in restaurants and other similar uses where specific attention and consideration must be given to traffic generation and the disruption of traffic flow as well as the danger to the general public due to hazards by fire and explosion, may be permitted by special use permit in C-2, I-1 and I-2 Districts, provided that:
- (1) A site plan shall be prepared to show the location of buildings, parking areas, and driveways. In addition, the site plan shall show the number and location of fuel tanks to be installed; the dimensions and capacity of each storage tank; the depth the tanks will be placed below the ground; the number and location of pumps to be installed; the type of structure and accessory buildings to be constructed; the location, height, and lighting power of proposed lighting standards; and the manner in which buffering is to be provided.
  - (2) Automobile service stations and drive-in restaurants shall have the following yard restrictions:
    - (a) A minimum lot size of 15,000 square feet with a minimum width of 125 feet.
    - (b) Minimum front and side yard areas of 25 feet with a minimum rear yard of 35 feet.
    - (c) Maximum lot coverage of 20%.
    - (d) Maximum building height of one story or 18 feet.

- (3) Driveways at service stations, drive-in restaurants and other uses providing drive-in service shall not be less than 20 feet nor more than 24 feet in width at any point. Driveways must be at least 20 feet from any side lot line and 50 feet from the intersection of street lines. No more than two driveways shall be permitted for each 125 feet of street frontage.
- (4) The entire area of the site traveled by motor vehicles shall be hard surfaced.
- (5) Any repair of motor vehicles shall be performed in a fully enclosed building, and no motor vehicle shall be offered for sale on the site. No motor vehicle parts or partially dismantled motor vehicles shall be stored outside an enclosed building.
- (6) Accessory goods for sale may be displayed on the pump island and the building island only. The outdoor display of oil cans and/or antifreeze and similar products may be displayed on the respective island if provided for in a suitable stand or rack.
- (7) All fuel pumps shall be located at least 20 feet from any street or property line and pumps shall have automatic shutoffs as approved by the Fire Department.
- (8) Parking for service stations shall be provided in the ratio of one space per 100 square feet of floor area or fraction thereof in the principal building. Parking for drive-in restaurants shall be provided in the ratio of four spaces per 100 square feet of floor area or fraction thereof in the principal building.
- (9) Where such parking areas abut a residential zoning district, they shall be screened by a buffer area not less than 10 feet in depth composed of densely planted evergreen shrubbery, solid fencing, or a combination of both which, in the opinion of the City Council will be adequate to prevent the transmission of headlight glare across the district boundary line. Such buffer screen shall have a minimum height of six feet above finished grade at the highest point of the parking area. The materials shall be in keeping with the character of the adjacent residential area.
- (10) No automobile service station or public garage shall be located within 500 feet of any public entrance to a church, school, library, hospital, charitable institution or place of public assembly. The distance shall be measured in a straight line from the public entrance to the lot line nearest such entrance along the street line.
- (11) No service station shall be located within 1,000 feet of an existing station on the same side of the highway. If a station is located at the intersection of two streets, this distance shall be measured along both streets which abut the property.
- (12) The areas shall be illuminated by nonglare lighting standards, focused downward, and which, in the opinion of the City Council, will not create a nuisance to adjoining property owners.

(13) Drive-in restaurants for the purposes of this subsection are defined as eating establishments for customers normally arriving by motor vehicles, who are provided quick service, food and drink, and such customers obtain their own food and drink at a counter or other place for dispensing food therein and consume such food and drink upon the premises; or in such type restaurants where customers may be waited upon without leaving their vehicles by employees of the drive-in restaurant.

(14) The use of an automobile service station may include the sale or rental of vehicles with a special permit from the City Council. No vehicles shall be parked or displayed in the required front yards, and a detailed plot plan showing the areas in which such vehicles are to be stored shall accompany the application for the special use permit.

F. Automobile junkyards; reclamation centers. As defined by this chapter, junkyards, automobile junkyards, or reclamation centers may be permitted by special use permit in the I-1 and I-2 Industrial Districts, provided that:

- (1) All wrecking, dismantling, processing and other related operations shall be conducted within the property lines which shall be completely enclosed by a solid fence material of not less than six feet in height. Such fence shall be of a height sufficient to preclude the visibility of materials from all public rights-of-way.
- (2) The keeping of such fence in good maintenance shall be a condition of the issuance of the special use permit. The Council may revoke this authorization if such fence is not maintained in good condition.
- (3) No junkyard shall be located within 200 feet of a residential district. This distance shall be measured from the nearest point of the property line of the junkyard to the residential district.

G. Large-scale multifamily developments. Large-scale multifamily developments, including garden apartments and townhouses may be permitted in any residential district and the C-1 Limited Commercial District, provided that:

- (1) A detailed site plan showing the location of all buildings, driveways, parking areas, and recreation space buffer areas, is submitted in accordance with § 51-8B of Chapter 51, Building Construction, of the Code of the City of Batavia.
- (2) Special use permit for such uses shall be required at any time the number of units in a particular development reaches six or more, whether the six are proposed at any one time, single, or in any combination totaling six or more.

- (3) The total number of dwelling units for a multifamily project shall not exceed a density of:
  - (a) Six units per gross acre of land in R-1 Districts.
  - (b) Twelve units per gross acre of land in R-2 Districts.
  - (c) Twenty units per gross acre of land in R-3 and C-1 Districts.
- (4) There shall be no dwelling units below the first story or above the second story.
- (5) Each dwelling unit shall contain complete kitchen facilities, toilet and bathing facilities, and shall have a minimum gross floor area in accordance with the following:
  - (a) One-bedroom dwelling units and/or efficiency units shall have a minimum of 600 square feet.
  - (b) Two-bedroom dwelling units shall have a minimum of 800 square feet.
  - (c) Three-bedroom dwelling units shall have a minimum of 1,000 square feet.
- (6) There shall be no more than 16 dwelling units in each building or structure.
- (7) No multifamily dwelling structure shall be located within 25 feet of another dwelling structure, swimming pool, recreation building, or garage.
- (8) Every building shall have a minimum setback of 20 feet from any and all interior roads, driveways, and parking areas.
- (9) There shall be a buffer strip planted with evergreen shrubs along the entire perimeter of the property, exclusive of the front yard(s), of at least 15 feet in width measured from the property line. No parking or recreation areas shall be permitted within this buffer strip.
- (10) Parking shall be required at the ratio of no less than 1 1/2 spaces per dwelling unit.
- (11) A minimum of 10% of the total tract area shall be designated for common recreational purposes. The area designated for recreation shall, in the opinion of the City Council, be suitable for such purposes.
- (12) Sufficient laundry, drying, garbage pickup and other utility areas must be provided and shall be located with a view both to convenience and to minimizing the detrimental effect on the aesthetic character of the building(s) and shall be enclosed and shielded from view by fencing, walls or shrubbery of at least six feet in height around the perimeter.

- (13) There shall be a minimum common storage area in each building for bicycles, perambulators and similar type of equipment of 30 square feet in area and a minimum of six feet in height per dwelling unit.
- (14) Driveways, parking areas, dwelling entranceways, and pedestrian walks shall be provided with sufficient illumination to minimize hazards to pedestrians and motor vehicles. Such light sources shall, where necessary, be shielded to avoid glare disturbing to occupants of buildings.
- (15) Other standards and conditions to the site plan and to curbing, driveways, parking areas, pedestrian walks, landscaping and planting not otherwise specified herein may be attached as conditions by the City Council as circumstances indicate they will further the purposes and intent of this chapter.
- (16) The proposed use shall meet the area and yard requirements specified in Schedule I of this chapter.<sup>1</sup>

H. Heliports and helistops. Heliports and helistops may be permitted by special use permit in the I-1 and I-2 and P-1 and P-2 Districts, provided that:

- (1) All applications for a heliport or helistop in the City shall include all of the information identified in § 51-8D of Chapter 51, Building Construction, of the Code of the City of Batavia, as well as anticipated frequency of helicopter operations; proposed landing areas, including ground and building sites; types of craft to be utilized; takeoff and landing approaches, emergency landing sites; fire participation facilities; and structural support capabilities for rooftop landing sites.
- (2) Heliports or helistops shall not be permitted within 1,000 feet of any residential district except by special use permit authorized by the City Council.
- (3) All helicopter landing areas shall be enclosed by winddeflection fences which are four feet in height.
- (4) All helicopter landing surfaces shall be free from dust, dirt and other loose material and shall be covered by a surface approved by the City Engineer.
- (5) For rooftop landing areas the structure shall be capable of supporting a gross concentrated load equal to 1.75 times the helicopter's weight.
- (6) Routes of helicopters shall be over terrain which affords suitable emergency landing areas no farther away than a glide angle of one foot vertically to four feet horizontally.

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<sup>1</sup> . Editor's Note: Schedule I is included at the end of this chapter.

- (7) Minimum landing areas for a heliport shall be 100 feet by 100 feet exclusive of tie-down facilities, taxi-ways, service and parking areas. On rooftop sites, the minimum landing area shall be 40 feet by 40 feet for helicopters of less than 3,500 pounds gross weight. The minimum size of the touchdown area for helicopters over 3,500 pounds gross weight shall be at least 1 1/2 times the rotor diameter.
  - (8) Rooftop helicopter landing facilities shall be located in an area that will permit a glide slope angle of eight feet horizontal distance for every one foot vertical clearance required. Two such approaches shall be available, at least 90° removed from each other.
  - (9) On all touchdown or landing areas, whether elevated or flush with the roof, provision shall be made for collecting fuel which may be spilled in event of any emergency. Separator or clarifier tanks for collecting spilled fuel shall be installed under approval and supervision of the City Engineer.
  - (10) Fire-fighting facilities approved by the Batavia Fire Department shall be provided at all landing sites.
  - (11) All landing sites shall be approved and marked as prescribed by the Federal Aviation Administration.
  - (12) For rooftop sites no light standards, roof vents, guy lines, television antennas, or other similar rooftop obstructions which may be difficult to see from the air shall be permitted within the required glide slope on three sides, or within an arc of 270°.
  - (13) Such lights as are installed shall illuminate and be directed onto the touchdown pad only, and in such a manner that the light rays cannot interfere with the helicopter pilot's vision.
  - (14) Approved means of communication, such as telephone, radio, fire alarm box or signaling device, shall be provided adjacent to the landing area.
- i. Restricted residential uses. Restricted residential uses shall be permitted in C-3 Central Commercial Districts as defined herein with the following provisions:  
[Added 7-8-1996]
- (1) A detailed site plan showing the location and size of all buildings, entrances, exits, driveways, signage, parking areas, and dumpsters is submitted in accordance with § 51-8 of Chapter 51, Building Construction, of the Code of the City of Batavia.
  - (2) A detailed floor plan drawn to scale of all interior portions of any building or any renovations to existing buildings shall be submitted as part of the special use permit application.

- (3) The maximum height from curb level for any new building constructed shall be four stories.
  - (4) No residential use shall be permitted on the first floor. The first floor use must be consistent with other allowed uses in the C-3 Central Commercial Districts.
  - (5) There shall be no more than two bedrooms per unit.
  - (6) Any new building constructed shall be built to the front lot lines on Main Street and Jackson Street within the C-3 Central Commercial District.
  - (7) A parking plan shall be submitted detailing plans for parking. An annual fee for parking shall be required for any use by residents of City-owned parking lots with those limitations set forth by the City Council if the special use permit application is approved.
  - (8) Separate signage denoting residential use shall be allowed as approved in the special use review.
  - (9) Other standards and conditions to the site plan and to curbing, driveways, parking areas, pedestrian walks, landscaping and planting not otherwise specified herein may be attached as conditions by the City Council as circumstances indicate they will further the purposes and intent of this chapter.
- J. Accessory dwelling units. Accessory dwelling units may be permitted by special use permit in the R-1 Residential District, provided that: **[Added 10-25-1999]**
- (1) No changes are made to the front exterior of the single-family dwelling to maintain the appearance of a single-family home.
  - (2) Accessory units will only be allowed in owner-occupied singlefamily residences.
  - (3) Garages may not be converted to accessory dwelling units.
  - (4) Entrances for the accessory unit shall not be on the front exterior to maintain the single-family appearance of the structure.
  - (5) One parking space to be provided for the accessory dwelling unit.
- K. Standards applicable for all special use permits. The Planning and Development Committee may issue a special use permit only after it has found that all the following standards and conditions have been satisfied, in addition to any other applicable standards and conditions contained elsewhere in this chapter. **[Added 11-9-1998]**

- (1) The location and size of such use and intensity of the operations involved in or conducted therewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons therewith will not be hazardous and shall be in harmony with the orderly development of the district.
- (2) The location, nature and height of buildings, walls and fences will not discourage the appropriate development and use of adjacent land and buildings, nor impair their value.
- (3) The operation of any such use shall not be more objectionable to nearby properties than would be operation of any permitted use.
- (4) The operation of any such use shall not cause undue noise, vibration, odor, lighting glare, and unsightliness so as to detrimentally impact adjacent properties.
- (5) When a commercial or industrial special use abuts a residential property the Planning and Development Committee may find it necessary to require screening of sufficient height and density (i.e. fences, hedges, etc.) to reduce or eliminate the conflicting environmental conditions previously mentioned.
- (6) Electrical disturbances shall not be caused so as to disrupt radio or television communications in the immediate area.
- (7) The proposed use shall meet the off-street parking and loading requirements of similar uses.
- (8) Appropriate on-lot drainage shall be provided so as to eliminate any potential on-site water-related problems. Also, the drainage systems created shall not detrimentally impact on adjacent properties.
- (9) Traffic access to and from the use site, as well as on-lot traffic circulation, shall be designed so as to reduce traffic hazards.
- (10) Such use shall be attractively landscaped.
- (11) A special use permit shall not be issued for a use on a lot where there is an existing violation of this chapter unrelated to the use which is the subject of the requested special use permit, as determined by the Planning and Development Committee.
- (12) As a condition of all special use permits, right of entry for inspection with reasonable notice shall be provided to determine compliance with the conditions of said permit.
- (13) In addition to the general standards for special use permits as set forth herein, the Planning and Development Committee may, as a condition of approval for



any such use, establish any other additional standards, conditions, and requirements it deems necessary or appropriate to promote the public health, safety and welfare, and to otherwise implement the intent of this chapter.

(14) The above standards are not intended to apply to uses whose regulation has been preempted by the state or federal government.

- L. Adult uses as per Article VI. [Added 12-13-1999]
- M. Public storage rental units/buildings. Public storage rental units/buildings may be permitted by Special Use Permit in the I-1 and I-2 districts provided:
  - (1) A site plan be prepared and show the arrangement of storage buildings and outside storage areas, exterior lighting, landscaping, screening, fencing, and garbage/trash storage areas, in addition to the site plan requirements of 190-44.
  - (2) Buildings are not to exceed 1 story in height and not more than 20 feet above grade.
  - (3) Buildings and outside storage areas are to be a minimum of 100 feet from any residential use property.
  - (4) Storage of the following will be prohibited:
    - (a) Flammable liquids, gases or solids in excess of those permitted by the International Fire Code.
    - (b) Storage of food products.
    - (c) Outside storage of junk automobiles/vehicles, auto parts, or mechanical equipment other than recreational vehicles, motor homes, travel trailers, campers, boats.
    - (d) Storage of garbage, trash or recyclable materials.
  - (5) Off street parking shall be provided for visitors at the rate of 1 space per 20 rental units.
  - (6) No materials or products of any kind may be displayed or offered for sale on site.
  - (7) Outdoor lighting shall be designed so the maximum illumination at the property line does not exceed "0" foot-candles on adjacent residential use properties.

#-2019

**A RESOLUTION TO INTRODUCE AN ORDINANCE AMENDING CHAPTER 190 ENTITLED "ZONING" OF THE CITY OF BATAVIA MUNICIPAL CODE TO AMEND I-1 AND I-2 TO INCLUDED SELF STORAGE AND TO SCHEDULE A PUBLIC HEARING**

**Motion of Councilperson**

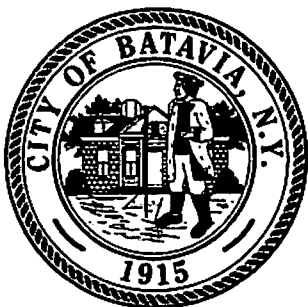
**BE IT RESOLVED** that a proposed Ordinance entitled **"AN ORDINANCE AMENDING CHAPTER 190 ENTITLED "ZONING" OF THE CITY OF BATAVIA MUNICIPAL CODE TO AMEND I-1 AND I-2 TO INCLUDED SELF STORAGE IN THE CITY OF BATAVIA"** is introduced before the City Council of the City of Batavia, New York; and

**BE IT FURTHER RESOLVED** that copies of the aforesaid proposed Ordinance be laid upon the desk of each member of the City Council; and

**BE IT FURTHER RESOLVED** that the City Council hold a public hearing on said proposed Ordinance at the City Hall, One Batavia City Centre, Batavia, New York, at 7:00 P.M. on Tuesday, November 12, 2019; 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 five days prior thereto.

**Seconded by Councilperson  
and roll call**



# City of Batavia

## *Memorandum*

**To:** Honorable City Council

**From:** Dr. Martin D. Moore, City Manager

**Date:** September 17, 2019

**Subject:** Lease Agreement with Batavia Players Theater Company

Discussions have been ongoing between the City and the Batavia Players, Inc in regards to leasing City owned property located within the City Centre, specifically parcels 2, 35, and 39 Batavia City Centre. These discussions have been part of an effort to revitalize vacant City Centre space in conjunction with an opportunity to bring events into the heart of the downtown area.

Relocation of the theater to the downtown area is part of the City's 2012 Community Improvement Plan, and the 2017 Comprehensive Plan. This initiative is also one of the projects funded as part of the Downtown Revitalization Initiative (DRI) grant award.

It should be noted that the lease has an escalating rent payment schedule which is common for unfurnished spaces that require initial investments by the tenant. The length of the lease is 5 years with a tenant option to renew for a second five year period. The lease includes the space previously occupied by Dent medical.

This agreement also provides a revenue stream along with the space occupied by Dent to support the City's commitment of maintenance fees as outlined in the new agreement for the City Centre concourse operations.

**Supporting Docs:** Draft Lease  
Draft Resolution  
Theatre 56 Project Description

## CONSTRUCT THEATER 56



<b>PROJECT</b>	Construct Theater 56
<b>APPLICANT / OWNER</b>	Batavia Players Inc. / City of Batavia
<b>LOCATION</b>	35 Batavia City Centre, Map # 7
<b>PROJECT COST</b>	\$901,750
<b>DRI FUNDING</b>	\$701,750

### PROJECT DESCRIPTION AND FUTURE USE

Batavia Players Inc., a local non-profit community theater group currently located at 56 Harvester Avenue, is proposing to establish a new regional performing arts center at Batavia City Centre. Currently the theater is outgrowing its' space and the space is not ideal for performances.

Consequently, the Theater group will be relocating to recently foreclosed city owned properties in the Batavia City Centre via a lease, with an option to purchase in the future. The location would provide additional space for the theater and also provide space for retail/concession, offices, costumes, and a dance academy. The approximate 11,000 sq. ft. ADA accessible building would also provide space for an additional 70 seats that would help to increase attendance, and associated revenues, by 40%. Façade improvements are also included as part of this project.

Batavia Players has been looking for new space that is more visually prominent and centrally located which this space provides. The new theater would have synergistic impacts with the Downtown Revitalization effort as it would be across the street from the Eli Fish Brewing Company and proposed Newberry Place Lofts and nearby several proposed DRI projects at the mall and medical campus. Nightlife, weekend activity, and livability would also be enhanced in downtown Batavia with the project.

## **CONSTRUCT THEATER 56**

### **PROJECT COSTS**

TOTAL COSTS:	\$901,750
Construction:	\$761,750
Equipment:	\$40,000
Environmental Costs:	\$25,000
Architectural Costs:	\$75,000

### **FUNDING SOURCES**

DRI Funding:	\$701,750
Volunteer Labor:	\$95,000
Fundraising:	\$30,000
Donated Equipment:	\$60,000
Theater Equity:	\$15,000

### **JOBS CREATED**

The project maintains 3 part time positions at the Theater.

### **NEW RESIDENTIAL UNITS**

The project will not include a residential component but it will improve the livability of downtown for existing and future residents.

### **REGULATORY REQUIREMENTS**

The applicant will need to take the following steps to obtain approval to proceed:

- City Planning Board review and approval: Downtown Design Review and SEQR approval
- County Planning Board 239M Review because the project is located on State Route 5.
- SHPO review and approval
- A City Building Permit will need to be obtained from the Bureau of Code Enforcement.

### **LPC & PUBLIC SUPPORT**

The project received moderate support from LPC members.

Public support was high based on feedback at a DRI Open House.

### **DRI STRATEGY ALIGNMENT**

The project aligns with the following DRI Strategies:

- Provide activities for youth
- Upgrade Main Street facades
- Encourage entertainment, arts/culture and restaurants to locate, improve or expand downtown
- Create an arts/culture district
- Redevelop the mall/City Centre area by demolition or select demolition including removal of concourse

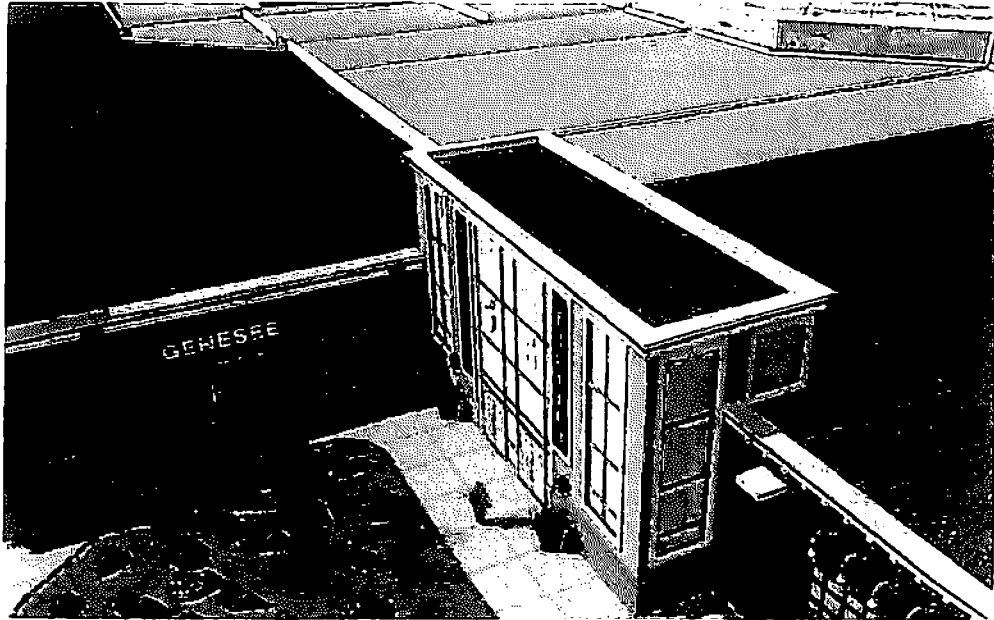
The project also aligns with recommendations from the FLREDC Strategic Plan and other existing local plans:

- Redevelop the underutilized City Centre site and adjacent hospital campus
- Reinforce the identity, sense of place and character of the area through downtown redevelopment, adaptive reuse and historic preservation
- Reinvest in the Mall as a Mixed-Use, Multi-Story Complex
- Encourage redevelopment of underutilized real property

## CONSTRUCT THEATER 56



A view of the proposed theater looking north from Main Street



An aerial view showing the theater's connection to the City Centre site

## **CONSTRUCT THEATER 56**

### **PROJECT BENEFITS**

The project has the following benefits:

- The new theater will fill a gap in downtown Batavia for performing arts which it has been severely lacking.
- The project will improve the financial viability of the non-profit Batavia Players Inc. by increasing revenues by 40 percent.
- Synergies and economic spin off benefits will be realized by local restaurants and retailers with patrons that attend the theater.
- Based on studies prepared by Americans for the Arts, every dollar spent by an Arts organization, four dollars is spent in the community.

### **FEASIBILITY & COST BENEFIT ANALYSIS**

The size of the project is feasible for the applicant. It includes façade work and some basic interior work. Much of the interior work will be performed by volunteers and volunteer professionals. More importantly the theater relocation and expansion will increase revenues for the organization, insuring the groups continued viability.

The construction project will be administered by the construction firm hired for the project and there is funding within the construction budget for that purpose. Also, the theater has obtained letters from the GCEDC and volunteers confirming their interest in potentially providing bridge funding and volunteer hours.

### **PROJECT METRICS**

The project's success will be evaluated on the following project metrics:

- Increased attendance
- Increased revenues
- Number of new performances

### **TIMELINE & READINESS**

- Overall timeline: 1 to 1.5 years
- Fundraising: 1 year (started Jan. 2018)
- Design & construction documents: 4 months
- Planning reviews & permits: 2 months
- Construction: 4-6 months

The applicant has completed the conceptual design documents and initial cost estimates with an architect. In addition, the applicant has secured an agreement and understanding from the City of Batavia Council to rent the space at the City Centre. They have also made arrangements with local banks and others for the construction financing.

COMMERCIAL LEASE  
AGREEMENT

THIS COMMERCIAL LEASE AGREEMENT ("Lease"), made this \_\_\_ the day of month, 2018 by and among City of Batavia, One Batavia City Centre, Batavia, New York 14020 ("Landlord") and Batavia Players, Inc., 2, 35, 39 Batavia City Centre, Batavia, New York 14020 ("Tenant").

WITNESSETH:

WHEREAS, Landlord is the owner of that certain real property located at 2, 35 and 39 Batavia City Centre, City of Batavia, Genesee County, New York and further identified as Tax Parcel Identification Numbers and 84.049-1-52, 84.049-1-55.1, 84.049-1-56 (the "Premises"); and

WHEREAS, Tenant desires to lease a total of approximately 11,052 square foot portion of the Premises from Landlord and Landlord desires to lease the Premises to Tenant on the terms and conditions set forth below.

NOW, THEREFORE, upon the terms and conditions herein set forth, the parties agree as follows:

1. PREMISES, PARKING

(a) Tenant hereby takes and leases from Landlord and Landlord hereby leases to Tenant the Premises, together with the right to use in common with others entitled thereto, all common areas and amenities available at or relating to the Building, including without limitation any lobbies, restrooms, stairways, elevators, walks, driveways, and parking areas serving the Premises.

(b) It is agreed and understood that Tenant shall take the Premises in its "as is" condition and Landlord makes no representations as to the condition of the Premises, the Mall containing the Premises, and any equipment. By taking possession of the Premises, Tenant is deemed to have accepted the condition of the Premises on the Commencement Date.

2. TERM

(a) The initial term of this Lease (the "Initial Term") shall be for a period of 60 months, commencing on month \_\_\_, 2019 (the "Commencement Date") and terminating on month \_\_\_, 2024 (the "Termination Date"), unless earlier terminated or extended as provided for in this Lease.

(b) Tenant shall have the option, so long as Tenant is not in default under the terms of this Lease, to extend the Initial Term for one (1), five-year renewal term (each a "Renewal Term") at Base Rent rate of \$4.00 per square foot. If Tenant wishes to exercise such renewal option, Tenant must provide Landlord with written notice at least 60 days prior to the end of the Initial Term, as applicable. If no such notice is provided, this Lease shall



automatically renew for an additional Renewal Term.

(c) If Tenant fails to vacate the Premises (or any portion thereof) within 30 days past the Termination Date, then Tenant shall be deemed to be a month-to-month Tenant and shall pay Landlord Base Rent in the amount of 110% of the monthly rent then in effect immediately prior to such holdover period as specified in Section 3 for the time Tenant remains in possession.

### 3. BASE RENT

(a) Beginning on the Commencement Date, and thereafter on the first day of each month for the remainder of the Initial Term or Renewal Term, as applicable, Tenant shall pay to Landlord at its address indicated above, or at such other place as Landlord may designate by written notice, the following base rent ("Base Rent"):

<u>Months</u>	<u>Per Square Foot</u>	<u>Monthly Rent</u>
Month 1 to Month 6	\$1.00/SF	\$ 921.00
Month 7 to Month 12	\$2.00/SF	\$1,842.00
Month 13 to Month 18	\$3.00/SF	\$2,763.00
Month 19 to Month 60	\$4.00/SF	\$ 3,684.00

(b) Base Rent shall be paid in advance, without deduction or offset, or demand. In the event any payment of Base Rent or Additional Rent (as defined herein) is not paid within ten (10) days after written notice, such amount shall be subject to a late charge equal to five percent (5%) of the amount so overdue.

(c) Any and all amounts due under this Lease in addition to Base Rent, shall be considered "Additional Rent" and Landlord shall have the same rights with respect to Additional Rent as it does with respect to Base Rent.

### 4. USE OF PREMISES

(a) Tenant is a non-profit organization which shall use the Premises for performing arts center and fine art educational center purposes and ancillary uses reasonably related thereto and for no other purpose whatsoever without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed.

(b) Tenant shall not place any antenna or aerials or similar devices outside of the Premises or on the roof, without the express written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed.

(c) Tenant shall comply with all applicable federal, state, and municipal laws, ordinances, and regulations and shall not directly or indirectly make any use of the Premises which may be prohibited by any such laws, ordinances, and regulations.

### 5. ASSIGNMENT AND SUBLET

(a) Tenant covenants and agrees that it will not sublet, assign, pledge or otherwise encumber said Premises, or allow the Premises to be used by anyone other than Tenant without the express written consent of Landlord. Any assignment or subletting shall not relieve Tenant of any obligations and liabilities set forth in this Lease. Landlord's consent to any transfer, assignment or sublease shall not be deemed to be a waiver on the part of Landlord of any prohibition against any future transfer, assignment, or subletting.

(b) In the event Landlord consents in accordance with Section 5(a) above, Tenant shall deliver to Landlord a written agreement in form and substance reasonably satisfactory to Landlord pursuant to which the transferee, assignee, or sublessee assumes all of the obligations and liabilities of Tenant under this Lease, and a copy of the assignment agreement or sublease.

## 6. ALTERATIONS

(a) Except for de minimus, non-structural alterations totaling less than Two THOUSAND DOLLARS, which alterations shall not require Landlord's consent, Tenant shall not make any alterations to the Premises without prior written consent of Landlord. Alterations within the scope of work of the Downtown Revitalization Initiative (DRI) Grant received by the Tenant are to be proposed for the Premises, Tenant shall provide the Landlord with building plans for review and approval prior to submission to the City Building Department. If Landlord grants its consent, the alterations shall be performed in a good and workmanlike manner and in accordance with all applicable legal and insurance requirements and in accordance with the plans, blueprints or diagrams provided to Landlord by Tenant showing the proposed alterations and approved by Landlord in writing prior to the commencement of any work.

(b) Tenant shall not make any alterations, repairs or installations, or perform any other work to or on the Premises unless prior to the commencement of such work Tenant shall obtain and during the performance of such work keep in force general liability insurance in an amount not less than \$1 million dollars naming the City of Batavia as additional insured, and workmen's compensation insurance to cover every contractor, materialman or any other person to be employed or having access to the Premises. The policy shall be non-cancellable without ten (10) days' advance written notice to Landlord. Landlord shall be named as additional insured with respect to the liability policy. The policy shall be for amounts and in form reasonably satisfactory to Landlord. Prior to the commencement of work, Tenant shall deliver certificates of all policies to Landlord, together with a copy of any permits required by any governmental authority with jurisdiction over the Premises.

(c) If any mechanic or materialman's lien is filed against the Premises as result of any additions, alterations and improvements by Tenant or any other work or act of Tenant, Tenant shall discharge the same by bonding or payment being made within ten (10) days after notice of the lien has been filed with the Genesee County Clerk. If Tenant shall fail to so bond or discharge the lien, Landlord may bond or pay the lien or claim for the account of Tenant after inquiring into the validity of the lien or the claim, and Tenant shall reimburse Landlord, as Additional Rent, upon demand for all costs, expenses and reasonable professional fees

incurred in connection therewith, including the amount paid to discharge such lien.

(d) Landlord accepts all responsibility for and all costs related to removing/relocating of the magnetic resonance imaging (MRI) machine either off or on premise.

7. [INTENTIONALLY OMITTED]

8. INSURANCE REQUIREMENTS

(a) Tenant agrees to maintain in full force throughout the Initial Term or any renewals or extensions, without exception of any kind, at its own cost and expense, one (1) or more policies of general liability and property damage insurance which up to the maximum liability amounts thereof insures Tenant and Landlord (and such other persons designated by the Landlord having an insurable interest) against liability for injury to persons and/or property (and death) of any person or persons in or about the Premises. The limits of liability of such insurance shall be not less than \$1,000,000.00 for injury (or death) caused to any one person, not less than \$2,000,000.00 for injury (or death) to more than one person arising from any accident, and not less than \$500,000.00 with respect to damage to property. The insurance must be issued by an "A" rated, or better, insurance company licensed to conduct business in the State of New York with the New York State Insurance Department/Department of Financial Services. All such policies or certificates thereof shall be deposited with Landlord by Tenant promptly upon the commencement of this Lease and upon each renewal period or within five (5) days upon written request of Landlord; such insurance policies shall name Landlord or its designee as additional insureds and shall contain a further provision by which the insurer agrees that such policy may not be canceled except upon thirty (30) days' advance written notice to Landlord or its designee.

(b) Tenant agrees to pay all premiums and charges for such insurance as set forth in this paragraph and in the event of its failure to make any such payment when due or in the event of its failure to provide any insurance or renewal thereof. Landlord may procure the same and/or pay the premiums thereon and Tenant agrees to pay such premiums to Landlord upon demand and the same shall be deemed to be Additional Rent for such Premises including a ten percent (10%) administrative fee.

(c) Landlord shall maintain, throughout the Initial Term and any Renewal Term, all risk property insurance covering the Mall building, including the Premises and leasehold improvements, in an amount equal to one hundred percent (100%) of the reasonably estimated replacement cost thereof.

9. INDEMNIFICATION AND LIMITATION OF LANDLORD LIABILITY

(a) Tenant shall indemnify and hold Landlord harmless from and against all costs, damages, claims, liabilities and expenses (including reasonable attorney's fees) suffered by or claimed against Landlord arising out of or resulting from (i) Tenant's use and occupancy of the Premises or the business conducted by the Tenant therein, (ii) any negligent act or willful misconduct by Tenant or its employees or guests, or (iii) any breach or default by Tenant in the performance or observance of its covenants or obligations under

this Lease.

(b) Except as may be otherwise herein provided, Landlord and its agents shall not be liable for damages by abatement in rent or otherwise for any damage either to the person or property of Tenant nor for the loss of or damage to any property of Tenant by theft or any other cause whatsoever whether similar or dissimilar to the foregoing. In addition, Landlord or its agents shall not be liable for any injury or damage to persons or property or loss of or interruption to the business of Tenant resulting from fire, explosion, falling plaster, steam, gas, electricity, rain, snow, heating system leaks, leaks from pipes and drums, appliances or the plumbing system from any part of the Building containing the Premises or from the roofs, street, storm and sanitary sewers, parking area or subsurface or from any other place or by the discontinuance of any service to be provided by Landlord to Tenant, unless caused by the negligence or willful misconduct of Landlord.

(c) The Owner of the Premises is a New York municipal corporation ("municipality") and all officials, representations, staff, employees and agents of said municipality, shall have absolutely no personal liability with respect to any provision of this Lease, nor any obligations or liability arising therefrom or in connection herewith.

#### 10. SURRENDER OF PREMISES

(a) Upon termination of this Lease by expiration or otherwise, Tenant shall immediately vacate the Premises and surrender possession thereof, including all keys as herein required to Landlord; Tenant shall surrender the Premises in broom clean condition except for reasonable wear and tear; Tenant grants to Landlord full authority and license to enter the Premises to take possession in the event of any termination of this Lease.

(b) Upon surrender of the Premises, Tenant may not remove any of the leasehold improvements, fixtures, or equipment permanently affixed to the Premises and shall leave the Premises intact and free and clear of all liens or encumbrances whatsoever. Tenant shall remove all trade fixtures and personal property from the Premises and restore the Premises to the condition the Premises were in on the Commencement Date, ordinary wear and tear and approved alterations excepted.

#### 11. ESTOPPEL CERTIFICATE

Landlord and Tenant agree that from time to time upon not less than fifteen (15) business days' prior request by the other party, it will deliver to Landlord a statement in writing certifying that the Lease is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and identifying said modifications) as well as identifying the dates to which rent and other charges have been paid, as well as stating that as far as the person making the estoppel certificate knows the other party is not in default under any provision of this Lease if such is the case.

## 12. DAMAGE AND DESTRUCTION

(a) In the event of destruction of twenty five percent (25%) or less of the Premises by fire or any other casualty, Landlord shall use reasonable efforts to restore or repair said destruction with due diligence, and rent shall be equitably abated in accordance with the proportion of the Premises that shall be rendered untenable and those that may be used safely in accordance with applicable laws. Landlord shall expend such sums as may be required to repair or restore improvements to the conditions they were immediately prior to the date of destruction. Notwithstanding the foregoing, Landlord will notify Tenant within thirty (30) days of the date of such casualty whether Landlord can complete the restoration. If Landlord cannot so complete or fails to complete the same within a reasonable period, Tenant may, at its option, terminate this Lease upon thirty (30) days advance written notice to Landlord.

(b) If in excess of twenty five percent (25%) of the Building containing the Premises shall be destroyed by fire or other casualty, the Landlord shall have the option to terminate this Lease by giving Tenant written notice within thirty (30) days after such destruction, and Base Rent and Additional Rent shall be apportioned as of the date of destruction and prepaid rent and Additional Rent returned to Tenant. If Landlord does not terminate the Lease within thirty (30) days of the date of the casualty, Landlord shall notify Tenant whether or not the restoration can be completed within one hundred twenty (120) days after the insurance proceeds are received. Thereafter, the Premises shall be restored to the condition existing immediately prior to the date of destruction within twelve (12) months after Landlord receives insurance proceeds on such damage. Base Rent and Additional Rent shall abate for the period the Premises are untenable. If such restoration has not been completed or cannot be completed within twelve (12) months from the date of the casualty, Tenant shall be entitled to terminate this Lease (i) within thirty (30) days of Landlord's notice that restoration cannot be completed or (ii) after the expiration of the twelve (12) months period. If Tenant being so entitled does not elect to terminate this Lease, then the same shall remain in full force and effect and rent shall recommence when the restored Premises are returned to Tenant and shall thereafter continue in full force and effect for the remainder of the term of the Lease.

## 13. CONDEMNATION

(a) If a non-substantial portion of the Premises or access to the Premises shall be taken, as herein provided, for public improvements or otherwise, under the exercise of the right of eminent domain and the Premises continue to be reasonably suitable and accessible for the use which is herein authorized, then this Lease shall continue in full force and effect and the Base Rent and Additional Rent herein provided for shall be reduced from the date of such taking in direct proportion to the reduction in usefulness of the Premises.

(b) If the Premises, or access to the Premises as provided in (a) above, shall be taken, condemned or acquired by grant or otherwise for the widening of streets or for other

public improvements, or shall otherwise be taken in the exercise of the right of eminent domain in each such case, so as to render the Premises unfit for the use herein authorized, in Tenant's reasonable discretion, Tenant shall have the right to terminate and cancel this Lease on thirty (30) days written notice to Landlord, and Base Rent and Additional Rent and other charges set forth under this Lease shall abate as of the date of the taking.

#### 14. DEFAULTS OF TENANT

Upon the happening of any of the following:

- (a) If Tenant fails either (i) to pay any installments of Base Rent or of Additional Rent, or any part hereof when due, and such failure shall continue for ten (10) days after written notice, or; (ii) to perform or observe any other agreement or covenant or provision of this Lease and any such failure shall continue for thirty (30) days after written notice; or
- (b) If any voluntary petition or similar pleading under any bankruptcy act or under any federal or state law seeking reorganization or arrangement with creditors or adjustment of debts, is filed by or against Tenant, or if any such petition or pleading is involuntary, and it is not adjudicated favorably to Tenant within thirty (30) days after its filing; or
- (c) If Tenant admits its inability to pay its debts, or if a receiver, trustee or other court appointee is appointed for all or a substantial part of Tenant's property; or
- (d) If the leasehold interest of Tenant is levied upon or attached by process of law; or
- (e) If Tenant makes an assignment for the benefit of creditors or if any proceedings are filed by or against Tenant to declare Tenant insolvent or unable to meet its debts; or
- (f) If a receiver or similar type of appointment or court appointee or nominee of any name or of character is made for Tenant or its property; or
- (g) If Tenant dissolves, voluntarily or otherwise, or is subject to a judicial receivership of any kind.

Then, Landlord, thereupon or at any time thereafter, at its election and with notice, may terminate this Lease, or without prejudice to its right to terminate may take any lawful action available to it, all without such termination or action affecting Landlord's right for recovery of past due or future rents or other obligations of Tenant hereunder. If Tenant abandons the Premises, Landlord may enter for any purposes whatsoever without affecting Tenant's obligations hereunder.

#### 15. REMEDIES OF LANDLORD

In case of any such default, reentry, expiration and/or dispossession by summary proceedings or otherwise:

- (a) The Base Rent, any Additional Rent, and any and/all fees due under this Lease,

shall become due thereupon and be paid by Tenant up to the time of such reentry, dispossession and/or expiration, together with such expenses as Landlord may incur for legal expenses and reasonable attorneys' fees.

(b) Landlord may relet the Premises or any part or parts thereof, for a term, or terms which may at Landlord's option be less than or exceed the period which would have otherwise constituted the balance of the term of this Lease and may grant concessions. Tenant shall receive a credit against any and all Lease obligations hereunder for the amount received by Landlord in connection with such reletting. Any amounts in excess of Tenant's obligations shall be retained by Landlord. Tenant or the legal representatives of Tenant shall also pay Landlord as liquidated damages for the failure of Tenant to observe and perform said Tenant's covenants herein contained, any deficiency between the rent hereby reserved and/or covenanted to be paid and the rent amount, if any, of the rents collected on account of the Lease or leases of the Premises for each month of the period which would otherwise have constituted the balance of the term of this Lease. The failure or refusal of Landlord to relet the Premises or any part or parts thereof shall not release or affect Tenant's liability for damages. In computing such liquidated damages, there shall be added to the deficiency such expenses as Landlord may incur in connection with reletting. Any such liquidated damages shall be paid in monthly installments by Tenant on the rent day specified in this Lease, and any suit brought to collect the amount of the deficiency for any month shall not prejudice in any way the rights of the Landlord to collect the deficiency for any subsequent month by a similar proceeding. Landlord, at Landlord's option, may make such alterations, repairs, replacements and/or decorations in the Premises as the Landlord in Landlord's reasonable judgment considers advisable and necessary for the purpose of reletting the Premises and the making of such alterations and/or decorations shall not operate or be considered to release Tenant from liability hereunder. Landlord shall in no event be liable in any way whatsoever for failure to relet the Premises, or in the event that the Premises are relet for failure to collect the rent thereof under such reletting. In the event of a breach by Tenant of any of the covenants or provisions hereof, Landlord shall have the right to invoke any remedy allowed at law or in equity as if reentry, summary proceedings and other remedies were not herein provided for. Mention in this Lease of any particular remedy shall not preclude Landlord from any other remedy, in law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of Premises, by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise.

(c) Landlord may declare the entire rent for the balance of the Lease term, including any Additional Rent, immediately due and payable by Tenant.

## 16. QUIET ENJOYMENT

Landlord covenants and agrees with Tenant, and upon paying the Base Rent and any Additional Rent and performing all of the terms and conditions on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the Premises, subject, nonetheless, to the terms and conditions of this Lease.

## 17. NOTICES

Any notices or demands to be given pursuant to this Lease shall be in writing and shall be effectively served by either (i) personal delivery to a party or (ii) upon sending the written notice to the Landlord or Tenant as the case may be at the office or residential addresses set forth above (or below with regard to any Guarantor) by certified mail, return receipt requested, or at such other address as either party shall designate by written notice to the other party. Any notice shall be deemed to be given on the date on which the same was delivered personally or on the second day after the notice was deposited in a regularly maintained receptacle for the deposit of United States mail addressed and sent as aforesaid.

## 18. CAPTIONS

Captions used herein are for identification purposes only and in no way, define, limit or describe the scope of this Lease, nor the intent of any provisions thereof.

## 19. ENTIRE AGREEMENT

This Lease cannot be changed, modified or discharged in whole or in part except by written instrument signed by the party against whom enforcement is sought, except Landlord may, in its sole discretion and without prior authorization and/or notice to Tenant, assign this Lease to any purchaser/transferee/grantee/mortgagee/lien holder of the real property containing the Leased Premises.

## 20. LAWS GOVERNING AND VENUE

This Lease is written under and shall be construed in accordance with the laws of the State of New York, with regard to any principles of conflicts of law. Any suit which may be brought to interpret or enforce any of the terms or obligations of the parties in this Lease hereunder shall be brought in State Supreme Court, County of Genesee, State of New York.

## 21. SUCCESSORS IN INTEREST

It is understood and agreed that all of the covenants, agreements, terms, conditions, provisions, and undertakings in this Lease or any renewals thereof shall extend to and be binding upon the heirs, executors, administrators and successors of the respective parties hereto, the same as if they were in every case named and expressed.

## 22. WAIVER OF REDEMPTION

Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause or in the event of Landlord obtaining possession of the Premises by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise.



## 23. INSPECTION/EXAMINATION OF PREMISES

Landlord and its authorized representatives shall have the right upon twenty-four (24) hours' prior notice (or sooner if circumstances warrant a more immediate entry), to enter the Premises at all reasonable times for any of the following purposes:

(a) To determine whether the Premises are in good condition and whether Tenant is complying with all of its obligations under this Lease;

(b) To do any necessary maintenance and to make any required restoration to the Premises; or

(c) To show the Premises to prospective purchasers, or mortgagees, within six (6) months of the Termination Date, as such date may be extended from time to time, tenants. Landlord shall conduct its activities on the Premises as allowed in this paragraph in a manner that will cause the least possible interference to Tenant's business operations at the Premises.

Notwithstanding the above, in the event of an emergency, Landlord may enter the Premises at any time, without notice, to make any repairs required under the circumstances.

## 24. REPAIRS AND MAINTENANCE

(a) Landlord shall make or cause to be made at its expense: (i) structural repairs to exterior walls, structural columns, and structural floors which collectively enclose the Premises; (ii) repairs and replacements of the roof, gutters and downspouts of the building enclosing the Premises; and (iii) repair, maintenance and upkeep of all heating, furnaces and/or boiler and/or air conditioning units, from time to time as such repairs and maintenance are necessary.

Notwithstanding anything contained in this Lease, Landlord, its agents or servants, will be permitted unlimited access, without notice, through the Leased Premises to any part of the Premises or building containing the Premises for the purpose of servicing heat, plumbing, electrical, and/or any other building-related repairs and maintenance matters. If Tenant installs an alarm system, Landlord is to be supplied an access code and if Tenant changes any locks, Landlord is to be supplied new keys. Tenant may not change locks or install any alarm systems without prior notification in writing to Landlord and without providing keys and codes to the same immediately upon such installation.

## 25. INVALIDITY OF PARTICULAR PROVISION

If any term or provision of this Lease or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of each term or provision to parties or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

**26. WAIVER OF COVENANT OR CONDITION**

The failure of either party to insist upon strict performance of any of the covenants or conditions of this Lease or to exercise any option herein conferred in any one or more instances shall not be construed as a waiver or relinquishment for the future of any such covenants, conditions or options, but the same shall be and remain in full force and effect.

**27. SECURITY DEPOSIT**

Landlord agrees to waive the security deposit.

**28. BROKERS**

Tenant warrants that it has not had any dealings with any realtor, broker, or agent in connection with the negotiation of this Lease and agrees to save and hold Landlord harmless from any cost, expense, or liability from any compensation, commission, or charges claimed by any realtor, broker, or agent.

**29. ENVIRONMENTAL COMPLIANCE**

(a) Tenant represents, warrants, and covenants that Tenant will not store or use hazardous materials at or affecting the Premises in any manner which violates federal, state, or local laws, ordinances, rules or regulations governing the use, storage, treatment, transportation, manufacture, refinement, handling, production, or disposal of hazardous materials or substances.

(b) Tenant covenants that it shall keep or cause the Premises to be kept free of hazardous materials or substances and not cause or permit the Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, produce or process hazardous materials or substances, except in compliance with all applicable federal, state and local laws or regulations.

(c) Tenant covenants to ensure compliance by all of its agents, employees, licensees, invitees, customers, operators, and occupants of the Premises with all applicable federal, state, and local laws, ordinances, rules and regulations and will ensure that all such agents, employees, licensees, invitees, customers, operators, and occupants obtain and comply with any and all required approvals, registrations, or permits.

(d) Tenant shall defend, indemnify and hold harmless Landlord, its members, employees, agents, officers, and directors from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature known, including reasonable attorneys' fees contingent or otherwise, arising out of or in any way related to hazardous materials or substances brought onto the Premise by Tenant, its employees, agents, contractors, invitees, or licensee or the soil, water, vapor, vegetation, buildings, personal property, persons, animals, or otherwise and any personal injury (including wrongful death) or property damage arising out of or related to such hazardous materials or substances.

(e) Termination of this Lease as a result of Tenant's default shall not operate as a discharge of Tenant's engagement as to hazardous materials or substances and Tenant shall deliver the Premises to Landlord free of any and all hazardous materials, except to the extent such hazardous materials or substances were present at the Premises prior to the Commencement Date

(f) In the event Tenant does not timely perform any of the above obligations, Landlord may perform said obligations at the expense of Tenant and such expense shall be considered Additional Rent plus a ten percent (10%) administration fee.

The provisions of this paragraph including Tenant representations and warranties contained herein shall survive default, reentry, expiration, and/or dispossession by summary proceedings or Lease termination.

### 30. RIGHTS RESERVED BY LANDLORD

Landlord reserves without affecting Tenant's obligations hereunder the following rights, provided that Landlord shall give Tenant twenty-four (24) hours' notice before exercising same:

(a) To show the Premises to prospective tenants during the last six (6) months of the Initial Term or any Renewal Term, as applicable, during regular business hours in the event the Tenant fails to exercise its right to renew.

(b) To show the Premises to prospective purchasers during the Term or any renewal term of this Lease during regular business hours.

(c) To make repairs required of the Landlord pursuant to this Lease in and about the Premises and for such purposes enter the Premises and during the continuance of said repairs to temporarily close doors, entryways, public spaces, and corridors in the Mall building and to interrupt or temporarily suspend building services and facilities, all without abatement of rent or affecting any Tenant's obligations hereunder if the Premises are accessible and provided that the Landlord proceeds in a reasonably expeditious manner. Nothing herein contained, however, shall be deemed or construed to impose upon Landlord any obligation, responsibility, or liability whatsoever for the care or supervision of the Premises or the Mall building or any part thereof, other than as in this Lease provided.

### 31. FORCE MAJEURE

Except for the payment of Base Rent or Additional Rent, in the event either party shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of an act of God, strikes, lockouts, labor troubles, inability to procure materials (including energy), power, casualty, inclement weather, restrictive governmental laws, orders or regulations, riots, insurrection, war, or any other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of any such act shall be extended for a period equivalent to

the period of such delay.

32. SIGNAGE/AWNINGS

Tenant shall have the right at its sole cost and expense to erect on the exterior of the Premises its standard sign and/or awning previously approved, in writing, by the Landlord as to location, size, style, and content, which shall also be structurally sound and in conformity with all municipal and other applicable regulations. Tenant shall remove any such signs at the termination of this Lease and repair any damage caused by such installation/removal. Any changes to the standard sign of the Tenant, as originally approved by Landlord, shall again be only with the express written consent of the Landlord.

Notwithstanding, any exterior signage and/or awnings that the Tenant desires to be placed on or about the Premises shall be subject to the prior written consent of the Landlord, the Landlord's insurance company, and the municipality having jurisdiction over the Premises as to location, size, style, and content. The cost of the signage, installation, and any required governmental permits and insurance shall be the sole responsibility of the Tenant.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals the day and year first above written.

**City of Batavia:**

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By: Eugene Jankowski, Jr.

Title: City Council President

**Batavia Players, Inc.:**

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By: Patrick Burk

Title: President

**#-2019**

**A RESOLUTION AUTHORIZING COUNCIL PRESIDENT TO SIGN  
LEASE AGREEMENT WITH BATAVIA PLAYERS, INC.**

**Motion of Councilperson**

**WHEREAS**, the City of Batavia and Batavia Players, Inc. are desirous of entering into a Lease Agreement regarding operation of a Performance Arts and Fine Arts Education Center at parcel 2, 35 and 39 Batavia City Centre, Batavia, New York; and

**WHEREAS**, the City Manager has negotiated an acceptable lease with Batavia Players, Inc.; and

**WHEREAS**, the City attorney has reviewed and approved the lease agreement and agrees this may continue for approval; and

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Batavia that the Council President is hereby authorized to execute a lease agreement with Batavia Players, Inc. at 2, 35 and 39 Batavia City Centre, which has been reviewed and is satisfactory to the City Attorney's office. Upon successful notice of award from the Downtown Revitalization Initiative.

**Seconded by Councilperson  
and on roll call**

## **MOTION TO ENTER EXECUTIVE SESSION**

### **Motion of Councilperson**

**WHEREAS**, Article 7, Section 105(1)(f), of the Public Officer's Law permits the legislative body of a municipality to enter into Executive Session to discuss "...the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation..."and;

**NOW, THEREFORE, BE IT RESOLVED**, by the 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**