

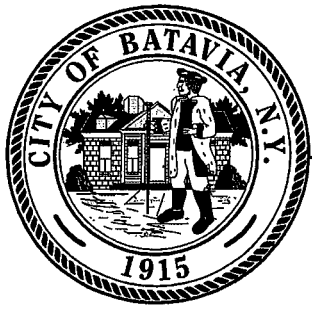
BATAVIA CITY COUNCIL CONFERENCE MEETING

**City Hall - Council Board Room
One Batavia City Centre
January 24, 2022 at 7:00 p.m.**

AGENDA

- I. Call to Order
- II. Invocation – Councilmember Briggs
- III. Pledge of Allegiance
- IV. Public Comments
- V. Council Response to Public Comments
- VI. Communications
- VII. Council President Report
 - a. Announcement of the next City Council Business Meeting to be held on Monday, February 14, 2022 at 7:00 p.m. at the City Hall Council Board Room, 2nd Floor, City Centre
 - b. Budget Work Sessions:
 - i. Monday, January 24th after Council Meeting (Strategic Plan, General Gov't and Administration)
 - ii. Tuesday January 25th at 6:00 p.m. (DPW)
 - iii. Monday, January 31st at 6:00 p.m. (Police and Fire)
 - iii. Monday February 7th at 6:00 p.m. (if needed)
- VIII. Cloven Hoofed Animals – Council Member Jankowski
- IX. Public Hearing To Provide Information To The Public On An Ordinance Amending Chapter 190 Entitled “Zoning” Of The City Of Batavia Municipal Code To Amend The Zoning Map Of The City Of Batavia
- X. Batavia Development Corporation 2022 Presentation
- XI. SEQR for 145 and 147 Pearl Street
- XII. Zoning Amendment 145 and 147 Pearl Street
- XIII. Septage Rate Increase
- XIV. Budget Resolutions That Require A Public Hearing

- XV. 2022 Capital Resolution
- XVI. Ice Rink Naming Rights
- XVII. Adjournment



City of Batavia

Memorandum

To: Honorable City Council Members

From: Jill M. Wiedrick, AICP, Assistant City Manager

Date: January 24, 2022

Subject: SEQRA and Recommendation to Rezone 145 and 147 Pearl Street

City Council recently sent a request to rezone 145 and 147 Pearl Street to the Planning and Development Committee (PDC) for review and recommendation.

The PDC met and reviewed the rezoning for these properties on December 14, 2021, recommending the rezoning of 145 and 147 Pearl Street from Planned Development (P-1) to Residential (R-2).

The zoning change is consistent with the City's Comprehensive Plan.

On January 24, 2022, City Council will hold a public hearing on the matter and review SEQRA. After these reviews are satisfactorily concluded, I recommend that City Council approve the rezoning request for 145 and 147 Pearl Street to R-2 Residential.

#XX-2022

A RESOLUTION ESTABLISHING THE CITY OF BATAVIA AS LEAD AGENCY UNDER THE STATE ENVIRONMENTAL QUALITY REVIEW ACT ("SEQR") FOR AN AMENDMENT TO THE ZONING MAP FOR RE-ZONING 145 AND 147 PEARL STREET FROM A P-1 PLANNED DEVELOPMENT DISTRICT TO A R-2 RESIDENTIAL DISTRICT AND DETERMINING SIGNIFICANCE UNDER SEQR

Motion of Councilmember

WHEREAS, the City of Batavia has proposed to amend the zoning map to rezone land located at 145 and 147 Pearl Street from P-1 Planned Development District to R-2 Residential District; and

WHEREAS, the amendment of the City's zoning map with respect to the foregoing parcels is an Unlisted Action under SEQR; and

WHEREAS, in accordance with SEQR the City Council of the City of Batavia has declared its intent to act as lead agency for the Action; and

WHEREAS, a Environmental Assessment Form has been completed for the Action, a copy of which is attached hereto as Schedule A; and

WHEREAS, the City Council has carefully reviewed the potential environmental impacts of the proposed action against the criteria set forth in 6 NYCRR 617.7(c) and has taken a hard look at the potential environmental impacts required by SEQR.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Batavia in accordance with SEQR and 6 NYCRR 617.6 hereby establishes itself as Lead Agency for the purpose of completing SEQR review of the amendment to the City's zoning map; and

BE IT FURTHER RESOLVED, that the City Council having reviewed a completed Environmental Assessment Form and accompanying narrative which is part of the record of this Action and having considered the environmental impacts of the proposed action against the criteria in 6 NYCRR 617.7(c), finds that the proposed action will not result in any significant adverse environmental impact; and

BE IT FUTHER RESOLVED, the City Council does hereby authorize and direct the City Clerk to duly file this Negative Declaration.

**Seconded by Councilmember
And on roll call**

Short Environmental Assessment Form

Part 1 - Project Information

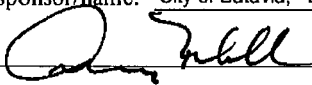
Instructions for Completing

Part 1 – Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 – Project and Sponsor Information			
City of Batavia			
Name of Action or Project: Rezone of 145 and 147 Pearl Street			
Project Location (describe, and attach a location map): 145 Pearl St., Batavia, NY 14020 and 147 Pearl St., Batavia, NY 14020			
Brief Description of Proposed Action: Zoning change that would remove two residential use properties (145 and 147 Pearl St.) from an industrial use district and include them in the surrounding R-2 residential use district.			
Name of Applicant or Sponsor: City of Batavia (Douglas Randall, Code Enf. Officer)		Telephone: 585-345-6327	
Address: One Batavia City Centre		E-Mail: drandall@batavianewyork.com	
City/PO: Batavia		State: NY	Zip Code: 14020
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval:			YES <input type="checkbox"/>
3. a. Total acreage of the site of the proposed action? _____ .47 acres b. Total acreage to be physically disturbed? _____ 0 acres c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ .47 acres			
4. Check all land uses that occur on, are adjoining or near the proposed action: <input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input checked="" type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban) <input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other(Specify): <input type="checkbox"/> Parkland			

5. Is the proposed action,	NO	YES	N/A
a. A permitted use under the zoning regulations?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Consistent with the adopted comprehensive plan?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels? b. Are public transportation services available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: <u>This action is for rezone only</u>	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____ Water service is already connected to existing dwellings	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____ Waste water connection is already provided for these existing dwellings	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Is the project site located in the 100-year flood plan?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe:	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment:	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe:	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe:	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor/name: <u>City of Batavia, Douglas Randall, Code Enf. Officer</u> Date: <u>11/29/21</u> Signature: <u></u> Title: <u>Code Enf. Officer</u>		

PRINT FORM

Agency Use Only [If applicable]

Project:	Rezone 145 & 147 Pearl St
Date:	11/29/21

**Short Environmental Assessment Form
Part 2 - Impact Assessment**

Part 2 is to be completed by the Lead Agency.

Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action impact existing:		
a. public / private water supplies?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. public / private wastewater treatment utilities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action create a hazard to environmental resources or human health?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

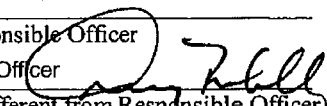
PRINT FORM

Project: **Rezone 145 & 147 Pearl**

Date: **11/29/21**

**Short Environmental Assessment Form
Part 3 Determination of Significance**

For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

<input type="checkbox"/> Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.	
<input checked="" type="checkbox"/> Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.	
Batavia City Council	
Name of Lead Agency	Date
Eugene Jankowski Jr.	City Council President
Print or Type Name of Responsible Officer in Lead Agency	Title of Responsible Officer
	Douglas Randall, Code Enf Officer
Signature of Responsible Officer in Lead Agency	Signature of Preparer (if different from Responsible Officer)
	

PRINT FORM

#XX-2022

**A RESOLUTION TO ADOPT AN ORDINANCE AMENDING CHAPTER 190
ENTITLED "ZONING" OF THE CITY OF BATAVIA MUNICIPAL CODE TO
AMEND THE ZONING MAP OF CITY OF BATAVIA**

Motion of Councilmember

WHEREAS a proposed Ordinance entitled "AN ORDINANCE AMENDING CHAPTER 190 ENTITLED "ZONING" OF THE CITY OF BATAVIA MUNICIPAL CODE TO AMEND ZONING MAP OF THE CITY OF BATAVIA" was introduced before the City Council of the City of Batavia, New York; and

WHEREAS copies of the aforesaid proposed Ordinance were laid upon the desk of each member of the City Council; and

WHEREAS the City Council held a public hearing on said proposed Ordinance at the City Hall, One Batavia City Centre, Batavia, New York, at 7:00 P.M. on Monday, January 24, 2022; and

WHEREAS the City Clerk published a public notice in the official newspaper of the City of said public hearing at least five days prior thereto; and

BE IT RESOLVED that the City Council Adopts Ordinance #XX-2022 entitled an Ordinance Amending Chapter 190 Entitled "Zoning" of the City of Batavia Municipal Code to amend the zoning map of the City of Batavia to rezone premises at 145 Pearl Street and 147 Pearl Street from a P-1 District to a R-2 District.

**Seconded by Councilmember
and roll call**

AN ORDINANCE AMENDING CHAPTER 190 ENTITLED "ZONING" OF THE CITY OF BATAVIA MUNICIPAL CODE TO AMEND THE ZONING MAP OF THE CITY OF BATAVIA

SECTION 1. AMENDMENT OF THE ZONING MAP OF THE CITY OF BATAVIA TO REZONE PREMISES AT 145 PEARL STREET FROM A P-1 DISTRICT TO A R-2 DISTRICT.

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Batavia, County of Genesee, and State of New York, and distinguished by being part of Village Lot #62, bounded as follows:

BEGINNING at the intersection of the south bounds of Pearl Street with the northwesterly bounds of a road laid out by N.K. Cone, Surveyor for Harry Wilber; being the northeast corner of land conveyed October 10, 1925 by deed recorded in Liber 257 of Deeds at page 563; thence southwesterly along the southerly bounds of Pearl Street 159 feet to the northeast corner of land conveyed to Theodore Yasses and wife by deed recorded in Liber 305 of Deeds at page 356; thence southerly on the easterly bounds of the land so conveyed to Yasses 118.1 feet to the northerly bounds of the Conhocton Grade so called; thence southeasterly on the northerly bounds of said Grade 34.4 feet to the northwesterly bounds of said road laid out by N.K. Cone, Surveyor, thence northeasterly on said bounds 180.1 feet plus or minus to the place of beginning. Containing land, more or less.

SECTION 2. AMENDMENT OF THE ZONING MAP OF THE CITY OF BATAVIA TO REZONE PREMISES AT 147 PEARL STREET FROM A P-1 DISTRICT TO A R-2 DISTRICT.

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Batavia, County of Genesee and State of New York, bounded and described as follows:

BEGINNING at a point located on the southerly bounds of Pearl Street, a distance of 159.0 feet from the west line of an 8' Right of Way along the westerly line of lands now or formerly owned by Wilber and Carrie Van De Bogart, as conveyed in Genesee County Clerk's Office in Liber 259 of Deeds at page 546;

Thence South $12^{\circ} 38'$ East a distance of 118.10 feet to a point being located on the north line of Cohocton Grade;

Thence North $85^{\circ} 19'$ West, a distance of 94.30 feet to a point, said point being located on the east line of lands now or formerly owned by Theodore and Josephine Yasses as conveyed in Genesee County Clerk's Office in Liber 300 of Deeds at page 421;

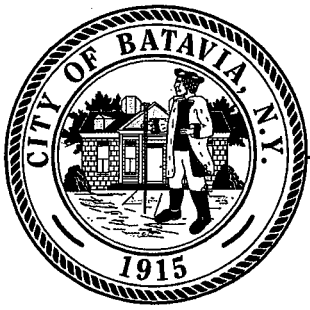
Thence North $12^{\circ} 38'$ West along the easterly line of Yasses lands, a distance of 90.03 feet to a point, said point also being located on the southerly line of Pearl Street;

Thence North 77° 22' East along the southerly line of Pearl Street, a distance of 90.03 feet to a point, said point being the point or place of beginning.

SECTION 3. EFFECTIVE DATE

This Ordinance shall take effect immediately after the date of passage and in accordance with law.

DRAFT



Memorandum

To: Rachael Tabelski, City Manager
From: Bill Davis, Superintendent Water and Wastewater
Date: December 16, 2021
Subject: Septic Receiving Rate Increase WWTF

At the present time we accept waste from bulk haulers at the Wastewater Treatment Plant at the rate of \$35/1000 gallons.

The strength of the waste received is typically much higher than that of household waste and costs much more to treat. The average strength is estimated at:

- BOD 7,000 mg/l
- TSS 15,000 mg/l
- Phosphorus 250 mg/l

I have checked with other treatment plants in the area and they charge:

- Van Leer \$45.00/1000 Gallons
- Lewiston \$42.00/1000 Gallons

We also currently charge on the honor system. Most other plants charge the full tank capacity regardless of how full the tank is. This eliminates any possible under charges for the City.

I would recommend we raise our fee to \$40/1000 Gallons and change our policy that each time a truck dumps it is charged for a full tank capacity. This should impact revenues by an additional \$11,400 per year. We do not have a way to calculate the charging for truck capacity as there is not a way we track this.

This would take effect on April 1, 2022.

#XX-2022

A RESOLUTION TO INCREASE THE COST OF BULK WASTE DISCHARGE

Motion of Councilmember

WHEREAS, The City of Batavia currently accepts waste from bulk haulers at the rate of \$35.00 per 1000 gallons; and

WHEREAS, This is higher concentrated waste this fee does not cover the treatment cost; and

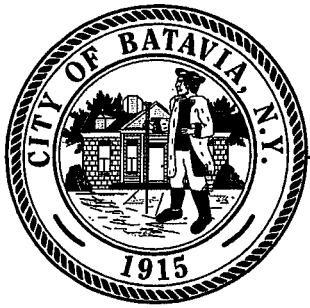
WHEREAS, The City bases its charge on the word of the hauler how many gallons are being discharged; and

WHEREAS, The rate should be increased to \$40 per 1000 gallons and charged on full tank capacity of vehicle discharging was;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Batavia that the City Council President is hereby authorized on behalf of the City to increase the rate of bulk waste hauled to the Wastewater treatment Plant to \$40 per 1000 gallons and charge on the basis of full capacity of the tank delivering the waste.

**Seconded by Councilmember
And on the roll call**

DRAFT



City of Batavia

Memorandum

To: Honorable City Council

From: Rachael J. Tabelski, City Manager

Date: January 18, 2022

Subject: Budget Resolutions That Require a Public Hearing

Attached are two resolutions introducing the proposed Budget Ordinance and the Water Rate changes for the Fiscal Year 22/23, that begins on April 1, 2022. The proposed Budget Ordinance and Water Rate changes require a public hearing prior to consideration to execution.

I recommended that the Budget Ordinance and Water Rate changes are introduced at tonight's Conference Meeting and the public hearings be conducted on February 28th at the Conference meeting. Any resolution can be amended prior to the public hearing; however any substantial changes following the public hearing would require another public hearing prior to adoption.

It is recommended that these two resolutions be moved to the February 14th Business meeting for approval to schedule the public hearings for February 28th.

##-2022

**A RESOLUTION INTRODUCING 2022-2023 BUDGET ORDINANCE AND
SCHEDULING A PUBLIC HEARING**

Motion of Councilmember

WHEREAS, the City Manager prepared and submitted to the City Council a Proposed Budget for the 2022-2023 fiscal year on January 10, 2022 pursuant to Section 16.3 of the City Charter, copies of which were received by all members of the City Council and a copy placed on file in the City Clerk's Office; and

WHEREAS, a Public Hearing is required for compliance with the City Charter and the public hearing will be held on February 28, 2022 at 7:00 PM in the Council Board Room of City Hall.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Batavia that the 2022-2023 Budget Ordinance is hereby introduced pursuant to Section 3.13 of the City Charter.

BE IT FURTHER RESOLVED, that the City Council hold a public hearing on said Budget Ordinance in the Council Board Room, Second Floor, One Batavia City Centre, Batavia, New York, at 7:00 PM on Monday, February 28, 2022; 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 (5) days prior thereto.

**Seconded by Councilmember
and on roll call**

ORDINANCE #001-2022
AN ORDINANCE ADOPTING THE 2022-2023 BUDGET AND DETERMINING THE
AMOUNT OF TAX TO BE LEVIED ON ALL REAL PROPERTY FOR THE 2022-2023
FISCAL YEAR

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

SECTION 1. The proposed Budget for 2022-2023, submitted by the City Manager pursuant to Sections 16.3, 16.4, and 16.5 of the City Charter on January 10, 2022, setting forth the estimates of revenues and expenditures for the fiscal year 2022-2023, including all wage adjustments and salary schedules for all employees covered under collective bargaining agreements, and non-union, part-time and seasonal employees (due to minimum wage increases), of the various funds of the City of Batavia, namely, General Fund, Water Fund, Sewer Fund, City Centre Fund, Workers' Compensation Fund, and Health Insurance Fund is hereby approved and that the several amounts allowed as estimated expenditures be and are hereby appropriated to the use of the several departments of the City of Batavia for the purpose set forth in each estimate in the proposed budgets for the fiscal year 2022-2023.

SECTION 2. The City Council does hereby finally ascertain, fix, and determine that the entire amount necessary, proper, and legal be raised by tax to defray the expenditures of the City of Batavia for the fiscal year of 2022-2023 is \$5,986,000.

SECTION 3. The sum of \$5,986,000 the entire amounts heretofore ascertained, fixed, and determined as necessary, proper, and legal be raised by tax to defray the expenditures of the City of Batavia for the fiscal year 2022-2023, be and the same is hereby levied on all the real property subject to taxation by the City of Batavia according to valuation upon the assessment roll for the fiscal year 2022-2023.

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

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

SECTION 6. This Ordinance shall become effective April 1, 2022.

Budget Summaries

General Fund

General Fund – Reserves	\$	314,352.00
City Council	\$	47,620.00
City Manager	\$	186,150.00
Finance	\$	120,086.00
Administrative Services	\$	307,716.00
Clerk/Treasurer	\$	146,975.00
City Assessment	\$	144,490.00
Legal Services	\$	238,250.00
Personnel	\$	277,983.00
Engineering	\$	12,500.00
Elections	\$	29,195.00
Public Works Administration	\$	67,723.00
City Facilities	\$	321,410.00
Information Systems	\$	112,287.00
General Fund - Contingency	\$	186,556.00
Police	\$	4,157,023.00
Fire	\$	3,958,742.00
Control of Dogs	\$	1,390.00
Inspection	\$	385,835.00
Vital Statistics	\$	20,060.00
Maintenance Administration	\$	133,790.00
Street Maintenance	\$	844,510.00
Public Works Garage	\$	486,800.00
Snow Removal	\$	480,830.00
Street Lights & Traffic Signals	\$	264,760.00
Sidewalk Repairs	\$	0.00
Parking Lots	\$	41,000.00
Community Development	\$	6,000.00
Economic Development	\$	95,000.00
Council on Arts	\$	2,250.00
Parks	\$	526,370.00
Summer Recreation	\$	75,091.00
Youth Services	\$	124,967.00
Historic Preservation	\$	900.00
Community Celebrations	\$	13,060.00
Planning & Zoning Boards	\$	1,300.00
Storm Sewer	\$	188,820.00
Refuse & Recycling	\$	101,490.00
Street Cleaning	\$	125,040.00
General Fund - Debt Service/Bonds	\$	358,084.00
General Fund – BAN	\$	0.00

Install Pur Debt - Install Purch Debt	\$	28,587.00
Gen. Fund – Debt Srvc-Energy Lease	\$.00
Gen. Fund – Transfer for Cap Proj	\$	170,000.00
General Fund - Transfer/Other Funds	\$	2,679,630.00
TOTAL GENERAL FUND	\$	17,784,622.00

Water, Wastewater & Workers Comp Funds

**PROPOSED
2022/23**

Water Administration	\$	2,577,399.00
Pump Station & Filtration	\$	1,384,420.00
Water Distribution	\$	418,280.00
Water Fund Contingency	\$	20,000.00
Water Fund - Debt Service/Bonds	\$	244,785.00
Install Pur Debt – Install Purch Debt	\$.00
Water Fund– Debt Srvc-Energy Lease	\$.00
Water Fund - Transfer to Other Funds	\$	587,160.00
Water Fund - Reserve	\$	78,515.00
Water Fund – Debt Service - BAN	\$	0.00
TOTAL WATER	\$	5,310,559.00
Wastewater Administration	\$	436,873.00
Sanitary Sewers	\$	703,690.00
Wastewater Treatment	\$	1,025,380.00
WW Fund Contingency	\$	20,000.00
WW Fund - Debt Service/Bonds	\$	386,788.00
WW Fund - Debt Srvc-Energy Lease	\$.00
Install Pur Debt – Install Purch Debt	\$.00
WW Fund – Interfund Transfer	\$	273,740.00
WW Fund - Reserve	\$	315,164.00
TOTAL WASTEWATER	\$	3,161,635.00
Workers' Compensation	\$	242,750.00
Transfer to Reserves	\$.00
TOTAL WORKER'S COMP	\$	242,750.00
TOTAL WATER, WASTEWATER, WORKERS' COMP	\$	8,714,944.00

**CITY CENTRE & HEALTH
INSURANCE FUNDS**

Administration	\$	185,848.00
Contingency	\$	7,508.00
City Centre Fund-Transfer to Other Funds	\$	32,910.00
TOTAL CITY CENTRE	\$	226,266.00

Medical Insurance	\$	2,905,690.00
Transfer to Reserves	\$	0.00

TOTAL HEALTH INSURANCE	\$	2,905,690.00
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TOTAL CITY CENTRE & HEALTH INSURANCE	\$	3,131,956.00
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TOTAL ALL FUNDS **\$ 29,631,522**

##-2022

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

Motion of Councilmember

BE IT RESOLVED, that Local Law No. 1 of the Year 2022 entitled “**LOCAL LAW NO. 1 OF THE YEAR 2022 CITY OF BATAVIA TO AMEND §184-41 (A), (B), (C), AND (O) OF THE CODE OF THE CITY OF BATAVIA TO ESTABLISH NEW WATER RATES, METER FEES AND A CAPITAL IMPROVEMENT FEE**” be introduced before the City Council of Batavia, New York; and

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

BE IT FURTHER RESOLVED, that the City Council hold a public hearing on said proposed Local Law in the Council Board Room, Second Floor, One Batavia City Centre, Batavia, New York, at 7:00 p.m. on Monday, February 28, 2022; and

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

**Seconded by Councilmember
and on roll call**

**LOCAL LAW NO. 1 OF THE YEAR 2022
CITY OF BATAVIA**

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

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

Section 1. § 184-41. Water rates.

A. Water Rates

City – Water – Quarterly Schedule

~~\$5.88~~ [\$5.97] per 1,000 gallons

Town Served Directly by the City – Building and Hydrants

\$7.54 [\$7.65] per 1,000 gallons

~~B. Bulk rate at water plant fill station: \$7.61 [\$7.88] per 1,000 gallons; cards: \$12.50 each.~~

Section 3. Effective Date

The foregoing amendment shall become effective with the water consumed ~~April 1, 2021~~
~~as billed on and after June 1, 2021~~ [April 1, 2022 billed on and after June 1, 2022]

C. Quarterly meter service and availability charge for meters:

Type	Size in Inches	Quarterly Fee
Disc	5/8	\$11.45 [\$11.62]
Disc	3/4	\$14.49 [\$14.71]
Disc	1	\$15.27 [\$15.50]
Disc	1 ½	\$25.94 [\$26.33]
Disc	2	\$36.02 [\$36.56]
Compound	2	\$30.51 [\$30.97]
Compound	3	\$116.04 [\$117.78]
Compound	4	\$184.71 [\$187.48]
Compound	6	\$279.02 [\$283.21]
Turbo	3	\$68.66 [\$69.69]
Turbo	4	\$116.04 [\$117.78]
Fireline	4	\$116.04 [\$117.78]
Fireline	6	\$184.71 [\$187.48]

Fireline	8	\$257.48 [\$261.34]
Fireline	10	\$336.24 [\$341.28]

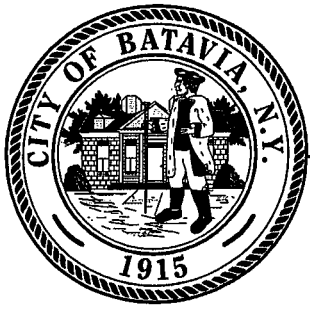
All of the above meter service charges include the required remote reading encoder systems.

O. Quarterly Capital Improvement fee for meters:

Type	Size in Inches	Quarterly Fee
Disc	5/8	\$7.97 [\$8.09]
Disc	3/4	\$10.10 [\$10.25]
Disc	1	\$10.63 [\$10.79]
Disc	1 1/2	\$18.07 [\$18.34]
Disc	2	\$25.09 [\$25.47]
Compound	2	\$21.26 [\$21.58]
Compound	3	\$80.84 [\$82.05]
Compound	4	\$128.67 [\$130.60]
Compound	6	\$194.38 [\$197.30]
Turbo	3	\$47.83 [\$48.55]
Turbo	4	\$80.84 [\$82.05]
Fireline	4	\$80.84 [\$82.05]
Fireline	6	\$128.67 [\$130.60]
Fireline	8	\$179.37 [\$182.06]
Fireline	10	\$234.24 [\$237.75]

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

DRAFT



City of Batavia

Memorandum

To: Honorable City Council

From: Rachael J. Tabelski, City Manager

Date: January 19, 2022

Subject: Capital Project Resolution

Attached is the updated 2022 Capital Resolution that outlines the capital projects that the City will undertake in the upcoming years. Recently, the resolution was updated in the Fall of 2021 to reflect the American Rescue Plan Act (ARPA) funding received and additional projects.

The additional projects that have been added to the resolution for 2022 include:

1. Walnut Street Mill and Fill
2. Ice Rink Project – interior improvements
3. Multiple Water Plant Projects
 - a. Precipitator
 - b. Lime and Ferric Feeders
 - c. Backwash Pump Improvements
 - d. Interior Water Plant Improvements
4. Sewer Bypass Repairs (vales in the WWTP ponds)
5. Maple and Mill St. Sanitary Sewer Project
6. Sewer Lining Improvements

The City is requesting passage of this resolution in advance of the budget due to the timeliness of the Water Plant Improvement Projects.

I recommend that City Council advance this resolution to the Business Meeting on February 14th for approval.

#XX-2022

**A RESOLUTION TO ESTABLISH AND UPDATE CURRENT CAPITAL PROJECTS
AND TRANSFER FUNDS FOR CAPITAL PROJECT BUDGETS**

Motion of Councilmember

WHEREAS, the City of Batavia has included funds in its budget for capital projects and uses grant and reserve funds to complete projects.

NOW, THEREFORE, BE IT RESOLVED, that the following capital projects be established and budget be adjusted as follows; and

BE IT FURTHER RESOLVED, the following projects are authorized to be completed for no more than the said estimated amount and may extend no later than March 31, 2024 and that this resolution should take effect immediately upon passage.

<u>PROJECT</u>	<u>PROJECT COST</u>	<u>FUNDING SOURCE</u>	<u>FISCAL YEAR</u>
<u>General Fund</u>			
Highway PM-Transportation Improvement Program (TIP) Richmond/Harvester	\$ 2,040,370 \$ 382,569 \$ 127,523	Federal Grant Marchiselli CHIPs	21/22/23
Facilities Capital Plan – Bureau of Maintenance /Fire Department	\$ 1,255,000	Facilities Reserve \$1,100,000 ARPA \$100,000 FEMA Grant \$55,000	21/22/23
ERP Software Conversion Project	\$ 45,000 \$ 750,000	Admin. Reserves Finance	19/20/21/22
IT Capital Improvement Phase I	\$ 190,000	Administrative Reserves	19/21/22
IT Capital Improvement Phase II Richmond & Harvester	\$ 200,000 \$3,600,000	Administrative Reserves TIP Grant CHIPs/Marchiselli	19/21/22 20/21/22/23
Jackson Square Capital Project DRI	\$950,000	DOS Grant National Grid Grant	21/22
LED NYPA Street Light Conversion	\$549,033	Finance	21/22
Playground at Austin Park	\$800,000	ARPA \$400,000 Grants \$400,000	21/22/23
Police Facility	\$10,800,000	Finance/Grants	21/22/23/24
Walnut Street	\$300,000	State Aid	22/23/24
Ice Rink Project	\$170,000	Reserves/Grants	22/23/24

Water Fund

Lead Services	\$ 554,112	DOH Grant	20/21
Richmond Ave Water Main Abandonment	\$ 400,00	Reserves	21/22/23
Cohocton Water Line/ NMROW	\$800,000	Reserves \$400,000 ARPA \$400,000	21/22
Refurbish Water Treatment Plant Filters	\$900,000	County WIIA Grant	21/22
Bank Street 8" Water Project	\$418,000	NBRC Grant \$334,000 Water Fund Reserves \$84,000	21/22/23/24
Jackson Street Water Project	\$1,414,017	CDBG Grant \$1,000,000 Water Fund Reserves \$414,017	22/23/24
Precipitator – Water Plant	\$1,500,000	County WIIA Grant	22/23/24
Lime and Ferric Feeders- Water Plant	\$775,000	County WIIA Grant	22/23/24
Backwash Pump Improvements- Water Plant	\$186,300	County WIIA Grant	22/23/24
Water Plant Heating, Ventilation, Roof, Tunnel and Electrical	\$283,000	County WIIA Grant	22/23/24

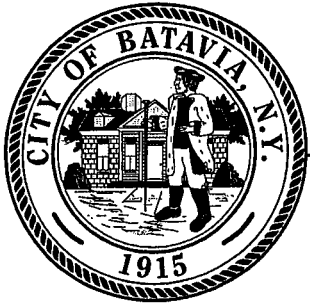
Sewer Fund

WWTP Air System Blower, Motor and VFD	\$1,000,000	Reserves	21/22
Bypass System Repairs	\$500,000	Reserves	22/23/24
Maple and Mill Street Sanitary	\$460,000	Finance	22/23/24
Sewer Lining Improvements	\$270,000	Finance	22/23/24

City Centre Fund

Mall Roof II	\$160,000	Facility Reserve	21/22
City Centre DRI	\$1,000,000	DRI Grant – Empire State Development	21/22/23

**Second by Councilmember
and on roll call**



City of Batavia

Memorandum

To: Honorable City Council Members

From: Jill M. Wiedrick, AICP, Assistant City Manager

Date: January 24, 2022

Subject: Naming Rights Agreement for the Batavia Ice Arena – The David McCarthy Memorial Ice Arena

Following a Request for Sponsorship process, Pellegrino Auto Sales and the David M. McCarthy Memorial Foundation submitted a bid of \$3,100 annually for ten years to purchase the naming rights for the Batavia Ice Arena. A Naming Rights Agreement has been prepared by the City Attorney, reviewed by Pellegrino's Attorney, as well as the attorney for the David M. McCarthy Foundation, and has been found acceptable by both parties. The Agreement allows Pellegrino/The David M. McCarthy Foundation to:

- 1) Erect Signage on the Ice Arena's façade
- 2) One Sign (to be painted) on an interior wall for Pellegrino Auto Sales
- 3) Hold two events up to two hours each at the Arena annually
- 4) Be included in all promotional material and other media (press releases, etc.) in cooperation with the City and Firland Management

The Agreement indemnifies and holds harmless each of the parties against actions by the other party. Pellegrino/The David M. McCarthy Foundation will pay for the installation and removal of the façade sign and any major maintenance of the façade sign. Pellegrino will pay for the painting and removal of the interior wall signage and any maintenance of the interior wall signage.

#XX-2022

A RESOLUTION TO AUTHORIZE THE COUNCIL PRESIDENT TO SIGN A NAMING RIGHTS AGREEMENT FOR THE BATAVIA ICE ARENA

Motion of Councilmember

WHEREAS, the City of Batavia advertised for and sent out Request for Sponsorships to area businesses and organizations for an opportunity to submit proposals for the Naming Rights to the Batavia Ice Arena; and

WHEREAS, Pellegrino Auto Sales and the David M. McCarthy Memorial Foundation submitted the most competitive proposal of \$3,100 annually for ten years; and

WHEREAS, the City Attorney has prepared a Naming Rights Agreement outlining the rights and responsibilities of Pellegrino Auto Sales, the David M. McCarthy Memorial Foundation, and the City regarding said Naming Rights; and

NOW THEREFORE, BE IT RESOLVED, by the Council of the City of Batavia, that it authorizes the City Council President to sign the Naming Rights Agreement, with Pellegrino Auto Sales and the David M. McCarthy Memorial Foundation; and

BE IT FURTHER RESOLVED, that the Batavia Ice Arena will be renamed "The David McCarthy Memorial Ice Arena" during the ten year term of the Agreement and any renewals thereafter.

**Seconded by Councilmember
and on roll call**

CITY OF BATAVIA ICE ARENA NAMING RIGHTS AGREEMENT

This **NAMING RIGHTS AGREEMENT** (“Agreement”) is made as of the _____ day of February, 2022, by and between the **CITY OF BATAVIA, NEW YORK**, a municipal corporation having its principal office located at One Batavia City Centre, Batavia, New York 14020 (“Owner”) and Pellegrino Auto Sales, a domestic corporation having its principal office located at 4060 Pearl Street Road, Batavia, New York 14020 (“Pellegrino”) and David M. McCarthy Memorial Foundation, a domestic not-for-profit corporation having its principal office located at 17 Brooklyn Avenue, Batavia, New York 14020 (“the Foundation”).

WITNESSETH:

A. Owner owns and leases out for operation an ice arena (“Ice Arena”) located at 22 Evans Street, Batavia, New York, which consists of one sheet of ice; warming room; locker rooms and refreshment stand.

B. The ice arena is located in the City of Batavia, New York and currently is unnamed having been formerly known as the Falletti Ice Arena.

C. The owner has renovated and enhanced the ice arena which is currently leased to a third party, Firland Management Inc. (“Firland”).

D. Pellegrino, the Foundation and Owner are desirous of entering into an agreement whereby, in exchange for Pellegrino and the Foundation’s agreement to contribute the Rights Fee to the Owner, as described in this Agreement, Owner shall be required to use the designation: “The David McCarthy Memorial Ice Arena” exclusively as the name of the ice arena in accordance with the terms and conditions set forth herein, and solely for that purpose will Pellegrino and the Foundation grant to Owner certain rights in use of David McCarthy Foundation’s name.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises and considerations in this Agreement, and other good and valuable consideration, the receipt and

sufficiency of which are hereby acknowledged, Owner, Pellegrino and the Foundation agree as follows:

1. Grant.

(a) As used herein, the following terms shall have the following meanings:

(i) The "Mark" shall mean the words "The David McCarthy Memorial Ice Arena."

(ii) The "Logo" shall mean the Mark written in the style and typeface designated.

(iii) The "Intellectual Property" shall mean the "Mark" and the "Logo" collectively.

(b) Subject to the remaining terms of this Agreement, Pellegrino and the Foundation grant Owner the right to use the Intellectual Property in connection with this Agreement. The foregoing grant is non-exclusive and non-assignable except as hereinafter provided. Owner has not acquired any right, title, interest or claims of ownership in the Intellectual Property except for the license granted in this Agreement. Upon termination of the Agreement, any and all rights granted to Owner in the Intellectual Property shall automatically terminate. Owner further will not alter, modify, dilute or misuse the Intellectual Property, bring any of it into dispute, or challenge Pellegrino and the Foundation rights in or to the same.

2. Indemnity.

Owner shall hold Pellegrino and the Foundation harmless from and indemnify and defend Pellegrino and the Foundation against all suits, actions, claims, loss, demands, damages, liabilities, costs and expenses of every kind, including costs and reasonable attorney's fees for defending same, which may relate to or arise or result from the operation of the ice arena, including, but no limited to, the exercise by the Owner of the rights granted in this Agreement.

Pellegrino and the Foundation shall hold Owner harmless from and indemnify and defend Owner against any and all suits, actions, claims, losses, demands, damages, liabilities, costs and expenses of every kind, including costs and reasonable attorney's fees for defending same, which may relate to or result from infringement or unfair competition claims against Owner arising out of or related to Owner's use of the Intellectual Property as permitted by this Agreement.

3. Term.

The term of this Agreement is for a period of ten (10) years commencing on the 1st day of the month following the full execution of this Agreement. In addition, Pellegrino and the Foundation shall have an option to renew this Agreement for a period of five (5) years commencing immediately following the expiration of the initial ten (10) year term upon mutual written agreement of the Owner.

The Owner is a municipal corporation and if Owner determines that discontinuance of public ownership is appropriate, the Owner shall have the right to terminate this Agreement on sixty (60) days written notice. In the event of termination by Owner, Pellegrino and the Foundation will be relieved from any future payments under this agreement. Further, Pellegrino and the Foundation may seek a pro-rated refund for the annual payment made based on the remaining calendar days following termination.

4. Placement and Use of Mark and Logo, Link on Owner Website and Events.

During the Term, Owner, hereby agrees to display the Intellectual Property in accordance with the graphics and color guidelines established by Pellegrino and the Foundation and approved by Owner from time to time. Owner further agrees, without limitation, as follows:

(a) To use the Mark and cause the Mark to be used as the exclusive name of the Ice Arena;

(b) To allow Pellegrino and the Foundation to cause the Mark and Logo to be displayed on an exterior wall sign located on the façade of the Ice Arena, (Pellegrino and the

Foundation to incur expense of installation of sign), which sign or signs shall bear the Mark and Logo;

(c) To allow Pellegrino to cause the Pellegrino Auto Sales mark and logo to be displayed on an interior wall located in the Ice Arena, (Pellegrino to incur expense of painting of sign of signage on interior wall), which sign shall bear the mark and logo of Pellegrino Auto Sales;

(d) To cause the Mark and Logo to be displayed on any new signs that are installed at or around the Ice Arena that identify the Ice Arena;

With regard to the foregoing requirements, the parties agree to act in good faith to agree upon the exact size, location and/or depiction of the Mark and Logo to be employed by Owner, it being agreed that Pellegrino and the Foundation shall be responsible for all of the costs and expenses for installation and maintenance of the foregoing signage and for the removal of the signage at the termination of this Agreement for any reason. Owner agrees to maintain the signage however, Pellegrino and the Foundation agree to replace any of the signage if it needs to be replaced from time to time.

(e) A link on the City of Batavia website (www.batavianewyork.com), the Ice Arena website (www.bataviaicearena.com) and inclusion in all promotional materials in cooperation with Firland or any successor to Firland.

(f) The Mark, and/or Logo to be used in e-newsletters, press releases, maps, programs, maps, social media, and any and all material that highlights the location and name of the rink.

(g) Pellegrino and the Foundation will have the right to hold two (2) company events of up to two (2) hours each, one in the Fall/Winter and the other in the Spring/Summer at no expense to Pellegrino and the Foundation, which shall be coordinated with the Tenant at the Ice Arena.

5. Rights Fee.

In consideration for the rights granted under this Agreement, Pellegrino and the Foundation agree to pay Owner a Rights Fee in the aggregate amount of Thirty-One Thousand Dollars (\$31,000.00). A first installment of the Rights Fee in the amount of Three Thousand One Hundred Dollars (\$3,100.00) shall be due and payable upon the execution of this Agreement from the Foundation and a similar payment of Three Thousand One Hundred Dollars (\$3,100.00) shall be made on the annual anniversary date of the execution of this Agreement for the next nine (9) years. The same rights fee amounts and terms shall apply for the renewal period, if exercised by Pellegrino and the Foundation and approved by the Owner. Pellegrino and the Foundation will have the right to pre-pay in full the remaining balance of the rights fee by full payment of the balance to the Owner during the term of this Agreement.

6, Default and Remedies.

(a) Default by Pellegrino and the Foundation. In the event that Pellegrino and the Foundation fail to pay any installment of the Rights Fee when due, and such failure continues for a period of fifteen (15) days after written notice to Pellegrino and the Foundation, or in the event Pellegrino and the Foundation fail to comply with any obligation of Pellegrino and the Foundation herein contained and such failure continues for a period of thirty (30) days after written notice to Pellegrino and the Foundation, Owner shall be entitled to exercise any or all of the following remedies:

(i) If and only if such failure is for non-payment of the Rights Fee, to cause the Term to end on a date designated in such notice, which date may not be less than thirty (30) days after the date of such notice; or

(ii) To seek an appropriate legal or equitable remedy from a court of competent jurisdiction;

(iii) Owner to have the option to remove the sign at Pellegrino and the Foundation's expense.

(b) Default by Owner.

(i) If Owner shall fail to comply with any of its obligations under this Agreement, which failure shall continue for a period of thirty (30) days after notice thereof to Owner from Pellegrino and the Foundation; provided, however, if such failure is not reasonably curable within thirty (30) days, Owner shall be afforded a reasonable period of time not to exceed ninety (90) days to cure or remedy such failure so long as Owner in good faith is attempting, at all reasonable times during such period, to cure such failure; or

(ii) If Owner shall utilize as the name of the Ice Arena any name other than the Mark;

(iii) If Owner shall, on one or more occasions, voluntarily and without the occurrence of a Force Majeure cease Ice Arena operations for an aggregate period of more than ninety (90) days; or

(iv) Upon the occurrence of a Force Majeure which results in a cessation of Ice Arena Operations for more than one hundred eighty (180) days.

For the purposes of this Agreement, (A) "Force Majeure" shall mean a fire or other casualty, act of God, strike, lockout, or other cause beyond the control of Owner, and (B) "Ice Arena Operations" shall mean the events and activities normally conducted at the Ice Arena throughout the year.

(c) Pellegrino and the Foundation Remedies.

In the event of a default by Owner, Pellegrino and the Foundation shall be entitled to any or all of the following remedies:

(i) To cease any further payments due to Owner; or

(ii) To seek reimbursement of any unearned portion of naming rights fees and unamortized costs of the signage; or

(iii) To seek an appropriate legal or equitable remedy from a court of competent jurisdiction;

7. Assignment; Merger or Acquisition of Ice Arena.

Neither party shall transfer or assign its rights or obligations under this Agreement without the other party's prior written consent. In the event the Owner sells the Ice Arena during the Term, Owner shall have the right to terminate this Agreement upon fifteen (15) days notice to Pellegrino and the Foundation and Pellegrino and the Foundation shall be reimbursed its unamortized cost of the sign.

8. Morals Clause.

If Pellegrino and the Foundation or any of their officers or directors commit any act which, in the reasonable and good faith opinion of the Owner, would disparage or impair the reputation and integrity of the Owner (including, without limitation, any criminal indictment, ethical violations or any other act of moral turpitude), the Owner shall have the right to terminate this Agreement upon thirty (30) days written notice.

9. Miscellaneous Provisions.

(a) Notices. All notices, offers, consents or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given or made if delivered personally or by regular mail, and addressed to the address of the intended recipients at the following addresses:

To Owner: City of Batavia
 Attn: Rachael Tabela, City Manager
 One Batavia City Centre
 Main Street

Batavia, New York 14020

To Pellegrino: Pellegrino Auto Sales
4060 Pearl Street Road
Batavia, New York 14020

To The Foundation: David M. McCarthy Memorial Foundation
17 Brooklyn Avenue
Batavia, New York 14020

Either party may change its address by giving notice writing stating its new address to the other party.

(b) Relationship. Neither party hereto shall be or become the agent of the other party for any purpose in connections herewith. Pellegrino and the Foundation shall not be liable for Owner's acts and omissions and Owner shall not be liable for Pellegrino and the Foundation's acts and omissions. This is not a franchise agreement and does not create a partnership or joint venture. Nothing herein contained shall be construed to give Pellegrino and the Foundation any control over the Ice Arena.

(c) No delay or omission of either party to exercise rights or powers under this Agreement shall impair any such right or power or Shall be construed to be a waiver of any default or acquiescence therein. No waiver of any default shall be construed, taken or held to be a waiver of any other default, or waiver, acquiescence in, or consent to any further or succeeding default of the same nature.

(d) Attorney's Fees. In the event that either party is required to commence any legal proceedings to enforce the provisions hereof or to seek any other legal redress, the prevailing party shall be entitled to recover its reasonable attorneys' fees incurred in connection herewith.

(e) Entire Agreement. This Agreement contains the entire understanding between the parties and supersedes any prior understandings and written or oral agreements between them respecting this subject matter. That are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Agreement that are not fully expressed in the Agreement.

(f) Governing Law. This Agreement shall be interpreted under the laws of the State of New York. Any actions concerning interpretation or enforcement of this Agreement shall be brought in the County of Genesee, New York.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

CITY OF BATAVIA, NEW YORK

By: Eugene Jankowski, Jr., Council President

PELLEGRINO AUTO SALES

By: Guy Pellegrino, President

FOUNDATION

DAVID M. McCARTHY MEMORIAL

By: _____

Brian McCarthy, President

DRAFT