

A regular Town Board meeting of the Town of Hamburg, County of Erie and State of New York was held at the Town Hall, 6100 South Park Avenue, Hamburg, New York on the 23rd day of July 2018.

**2.**

On a motion of Supervisor Shaw, seconded by Councilman Best, the following resolution was

ADOPTED	Ayes	5	Shaw, Best, Farrell, Mosey, Petrie
	Noes	0	

**RESOLVED**, that the Town Board adjourn Executive Session and move into the Town Board meeting at 7:08 P.M.

**TOWN BOARD MEMBERS PRESENT:**

James M. Shaw	Supervisor
Thomas Best, Jr.	Councilman
Elizabeth Farrell	Councilman
Michael Mosey	Councilman
Michael Petrie	Councilman

**ALSO PRESENT:** Catherine A. Rybczynski, Town Clerk; Erika B. Rettig, Deputy Town Clerk; Steve Walters, Town Attorney; Jerry Giglio, Traffic Safety Coordinator and Health and Safety Coordinator; Samantha Tarczynski, Director of Administration and Finance; Drew Reilly, Planning Consultant; Kurt Allen, Supervising Code Enforcement Officer; Michael Quinn, Engineering Consultant; Captain Kevin Trask, Police Department; Joe Wenzel, Recreation Department; Sean Doyle, Executive Director of the Hamburg Industrial Development Agency.

Supervisor Shaw opens the meeting at 7:11 P.M.

The Pledge of Allegiance was recited.

Information on location of Fire exits was provided.

Catherine A. Rybczynski, Town Clerk, reads the following as published in the Front Page, the Hamburg Sun, on the Town of Hamburg's website and the Town Clerk's bulletin board:

Legal Notice  
Town of Hamburg  
Notice of Hearing Proposed Local Law #5, 2018

PLEASE TAKE NOTICE that there has been presented to the Town Board of the Town of Hamburg on June 25, 2018, pursuant to the Municipal Home Rule Law, a proposed local law to be known as proposed local law #5, 2018; the proposed local law amends Chapter 12 of the Hamburg Town Code entitled "Defense and Indemnification of Officers and Employees", to specifically address payment of harassment claims.

A copy of the proposed amendment will be available, for public review, during regular business hours at **HAMBURG TOWN HALL**, Town Clerk's Office, 6100 South Park Avenue, Hamburg, New York 14075.

THEREFORE, pursuant to the statutes and the provisions of the Municipal Home Rule Law, the Town Board of the Town of Hamburg will hold a public hearing on the aforesaid law, at the Hamburg Town Hall, 6100 South Park Avenue, Hamburg, New York, at 7:00 p.m. on July 23, 2018, at which time all persons interested may be heard.

Dated: June 25, 2018

Catherine Rybczynski  
Town Clerk  
Town of Hamburg

No Correspondence was received.

The following spoke concerning the public hearing:

Supervisor Shaw, Councilman Best

**3.**

On a motion of Supervisor Shaw, seconded by Councilman Petrie, the following resolution was  
 ADOPTED           Ayes 5       Shaw, Best, Farrell, Mosey, Petrie  
                           Noes 0

**RESOLVED**, that the Town Board close the Public Hearing.

**4.**

On a motion of Supervisor Shaw, seconded by Councilman Farrell, the following resolution was  
 ADOPTED           Ayes 5       Shaw, Best, Farrell, Mosey, Petrie  
                           Noes 0

**RESOLVED**, that the Town Board adopt this amendment to the Local Law as submitted.

## **Chapter 12: Defense and Indemnification of Officers and Employees**

### **§ 12-1 Legislative intent.**

The purpose of this chapter is to provide legal and financial protection for those individuals serving the Town of Hamburg as to claims which may be brought against them in their individual capacities for actions taken while in the performance of their official duties and responsibilities. The State of New York has enacted similar provisions for the legal and financial security of its officers and employees. Such security is also required for local personnel. By enactment of this chapter, the Town Board does not intend to limit or otherwise abrogate any existing right or responsibility of the town or its officers and employees with regard to indemnification or legal defense. It is solely the intent of this chapter to provide coverage for local officers and employees pursuant to Public Officers Law, § 18 in order to continue to attract qualified individuals to local government service.

### **§ 12-2 Definitions.**

As used in this chapter, unless the context otherwise requires, the following terms shall have the meanings indicated:

**EMPLOYEE:** Any person holding a position by election, appointment or employment in the service of the Town of Hamburg, whether or not compensated, or a volunteer expressly authorized to participate in a municipally sponsored volunteer program, but shall not include an independent contractor. The term "employee" shall include a former employee, his estate or judicially appointed personal representative.

**§ 12-3 Duty to defend.**

A. Upon compliance by the employee with the provisions of § 12-4D of this chapter, the town shall provide for the defense of the employee in any civil action or proceeding in any state or federal court arising out of any alleged act or omission which occurred or is alleged in the complaint to have occurred while the employee was acting within the scope of public employment or duties, or which is brought to enforce a provision of 42 U.S.C. § 1981 or § 1983. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or on behalf of the Town of Hamburg.

B. Subject to the conditions set forth in Subsection A of this section, the employee shall be entitled to be represented by the Town Attorney; provided, however, that the employee shall be entitled to representation by private counsel of choice in any civil judicial proceeding whenever the Town Attorney determines, based upon investigation and review of the facts and circumstances of the case, that representation by the Town Attorney would be inappropriate or whenever a court of competent jurisdiction, upon appropriate motion or by a special proceeding, determines that a conflict of interest exists and that the employee is entitled to be represented by private counsel of choice. The Town Attorney shall notify the employee in writing of such determination that the employee is entitled to be represented by private counsel of choice. The Town Attorney may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of employees be represented by the same counsel. If the employee or a group of employees is entitled to representation by private counsel under the provisions of this chapter, the Town Attorney shall so certify to the Town Board. Reasonable attorney's fees and litigation expenses shall be paid by the town to such private counsel from time to time during the pendency of the civil action or proceeding subject to certification that the employee is entitled to representation under the terms and conditions of this chapter by the head of the department, commission, division, office or agency in which such employee is employed and upon the audit and warrant of the Town Board. Any dispute with respect to representation of multiple employees by a single counsel or the amount of litigation expenses or the reasonableness of attorney's fees shall be resolved by the court upon motion or by way of a special proceeding.

C. Where the employee delivers process and a request for a defense to the Town Attorney, as required by § 12-4D of this chapter, the Town Attorney shall take the necessary steps, including the retention of private counsel, under the terms and conditions provided in Subsection B of this section on behalf of the employee to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

D. Notwithstanding any other provision contained in this title herein, an employee is deemed to have waived his or her right to a defense pursuant to this title if the employee elects to defend the matter pro se or to engage a law firm in which the employee has an interest, affiliation or direct business relationship.

**§ 12-4 Duty to indemnify.**

A. The town shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in any state or federal court or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or settlement arose occurred while the employee was acting within the scope of public employment or duties; the duty to indemnify and save harmless prescribed by this section shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee.

B. An employee represented by private counsel shall cause to be submitted to the Town Board any proposed settlement which may be subject to indemnification by the town. The attorney shall review such proposed settlement as to form and amount and shall give his approval if in his judgment the settlement is in the best interest of the town. Nothing in this section shall be construed to authorize the town to indemnify or save harmless an employee with respect to a settlement not reviewed and approved by the Town Attorney.

C. Notwithstanding any other provision contained in this title herein, any settlement or judgment against an employee for actions characterized as sexual harassment as defined in the "Town of Hamburg Policy Regarding Harassment Claims Brought Against Town of Hamburg Employees" shall be deemed outside the scope of public employment or duties and to have resulted from intentional wrongdoing or recklessness on the part of the employee. In such instances, the employee shall not be entitled to indemnification of any form pursuant to this title or any other law, statute, rule regulation, or policy of the Town of Hamburg or any other governmental unit. Should the Town be obligated to pay any settlement or judgment for actions described in this paragraph, the Town shall pursue any and all remedies permitted by the "Town of Hamburg Policy Regarding Harassment Claims Brought Against Town of Hamburg Employees" against the offending employee to recover such payments made by the Town.

D. Upon entry of a final judgment against the employee or upon the settlement of the claim, the employee shall cause to be served a copy of such judgment or settlement, personally or by certified or registered mail within 30 days of the date of entry or settlement, upon the Supervisor; and if not inconsistent with the provisions of this chapter, such judgment or settlement shall be certified for payment by such Supervisor. If the attorney concurs in such certification, the judgment or settlement shall be paid upon the audit and warrant of the Town Board.

E. The duty to defend or indemnify and save harmless provided by this chapter shall be conditioned upon delivery to the Town Attorney or his assistant, at his office, by the employee of the original or a copy of any summons, complaint, process, notice, demand or pleading within five days after he is served with such document; and the full cooperation of the employee in the defense of such action or proceeding and in defense of any action or proceeding against the town based upon the same act or omission, and in the prosecution of any appeal. Such delivery shall be deemed a request by the employee that the town provide for his defense pursuant to this chapter.

**§ 12-5 Limitation of applicability.**

A. The benefits of this chapter shall inure only to employees as defined herein and shall not enlarge or diminish the rights of any other party, nor shall any provision of this section be construed to affect, alter or repeal any provision of the Workers' Compensation Law.

B. The provisions of this chapter shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

C. The provisions of this chapter shall apply to all actions and proceedings pending upon the effective date thereof or thereafter instituted.

D. Except as otherwise specifically provided in this chapter, the provisions of this chapter shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity available to or conferred upon any unit, entity, officer or employee of the town, or any right to defense and/or indemnification provided for any governmental officer or employee by, in accordance with or by reason of any other provision of state or federal statutory or common law.

**§ 12-6 Severability.**

If any provision of this chapter or the application thereof to any person or circumstance be held unconstitutional or invalid in whole or in part by any court of competent jurisdiction, such holding of unconstitutionality or invalidity shall in no way affect or impair any other provision of this chapter or the application of any such provision to any other person or circumstance.

**§ 12-7 When effective.**

This chapter shall take effect immediately upon filing with the Secretary of State and the State Comptroller.

## 5.

On a motion of Supervisor Shaw, with a unanimous second, the following resolution was

ADOPTED           Ayes   5       Shaw, Best, Farrell, Mosey, Petrie  
                       Noes   0

**RESOLVED**, that the Town Board approve the recommendation of the Chief of Police in hiring WILLIAM BLETTE AND RYAN DREYER to the vacant positions of POLICE OFFICER, probationary, effective August 5, 2018. This is pending the physical, psychological and polygraph tests. They are on the Civil Service list #62-731. Salary is \$25.10 per hour; funds available in B3120.100.

## 6.

On a motion of Councilman Best, seconded by Councilman Mosey, the following resolution was

ADOPTED           Ayes   5       Shaw, Best, Farrell, Mosey, Petrie  
                       Noes   0

**RESOLVED**, the Town Board adopt the minutes of the following meetings:

06/25/2018	Work Session
06/25/2018	Town Board Meeting

## 7.

On a motion of Councilman Farrell, seconded by Councilman Petrie, the following resolution was

ADOPTED           Ayes   5       Shaw, Best, Farrell, Mosey, Petrie  
                       Noes   0

**RESOLVED**, that the Town Board approve the Family Medical Leave Act policy for the Town of Hamburg effective immediately.

## **Town of Hamburg** **Federal Family and Medical Leave Policy**

As an eligible employee of Town of Hamburg, you are allowed to take unpaid Family and/or Medical Leave under federal law, the Family and Medical Leave Act (FMLA).

### **Eligibility**

To be eligible for leave, you must be employed by the Town of Hamburg for at least 12 months. In addition, in the 12 months immediately preceding the beginning of the leave, you must have worked at least 1,250 hours to qualify for federal FMLA.

### **Amount of Leave Available**

As stated above, eligible employees are generally eligible for *up to* a total of 12 weeks of protected leave, except for service member family leave, within a rolling twelve-month

period, measured backward from the date an employee uses any Federal leave for any combination of reasons listed below. Where leave is taken to care for a covered service member who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status or is otherwise on the temporary disability retired list, for a serious injury or illness, a spouse, son, daughter, parent or next of kin may take up to 26 weeks of unpaid leave during a single 12-month period.

Under the federal FMLA, spouses employed by the Town of Hamburg are jointly entitled to a combined total of 12 weeks of family leave for the birth or placement of a child for adoption or foster care, to care for a parent who has a serious health condition, and for any qualifying exigency regarding active duty of a family member in the military. (The federal FMLA does not cover care for a parent-in-law.) Spouses employed by the Town of Hamburg are jointly entitled to a combined total of 26 weeks of family leave to care for a covered service member with a serious injury or illness, for the birth or placement of a child for adoption or foster care, or to care for a parent who has a serious health condition.

### **Types of Leave Available**

**Birth or Placement for Adoption or Foster Care:** Family leave is available to eligible male and female employees for the birth of a child or for placement of a child with the employee for purposes of adoption or foster care. Federal leave must be completed within 12 months of the birth or placement.

*Non-continuous leave.* Federal leave may not be taken intermittently. See below for more details on intermittent leave.

*Certification process.* The need for leave must be documented by your treating healthcare provider through our medical certification process (see below) or documented proof of placement of a child.

**Serious Health Condition of Employee:** If, as an eligible employee, you experience a *serious health condition* as defined by federal law, you may take medical leave under this policy (see “Definitions” for the definition of serious health condition). A serious health condition generally occurs when you:

- Receive inpatient care in a hospital, hospice or nursing home;
- Suffer a period of incapacity accompanied by continuing outpatient treatment/care by a healthcare provider; or
- Have a history of a chronic condition that may cause episodes of incapacity.

*Non-continuous leave.* Medical leave may be taken all at once or, when medically necessary, intermittently (see below).

*Certification process.* The need for leave must be documented by your treating healthcare provider through our medical certification process (see below).

*Fitness-for-duty statement.* A fitness-for-duty statement **is required** in order for you to return from a medical leave. Failure to provide the statement will result in a delay in the return to work.

**Serious Health Condition of Immediate Family Member:** If, as an eligible employee, you need family leave in order to care for your son, daughter, spouse or parent who experiences a serious health condition as defined by federal law (see “Definitions” for definitions of child, spouse, parent and serious health condition), you may take medical leave under this policy.

*Non-continuous leave.* Medical leave may be taken all at once or, when medically necessary, intermittently (see below).

*Certification process.* The need for leave must be documented by the family member’s treating healthcare provider through our medical certification process (see below).

**Active Duty Because of Any Qualifying Exigency:** If, as an eligible employee, you need family leave because of any qualifying exigency arising out of the fact that your spouse, son, daughter, or parent is on active duty, or has been notified that they will be called or ordered to active duty in the Armed Forces in support of a contingency operation, you may take family leave under this policy.

*Non-continuous leave.* Family leave for any qualifying exigency arising out of the active duty of a family member may be taken all at once or intermittently (see below).

*Certification process.* The need for leave must be documented by a certification in a form and in such manner as the US Department of Labor and the Secretary of Defense prescribe (see below).

**Service Member Family Leave:** If, as an eligible employee, you need family leave to care for a covered service member who is your spouse, son, daughter, parent or next of kin and who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status or is otherwise on the temporary disability retired list, for a serious injury or illness incurred in the line of duty on active duty, you may take up to 26 weeks of unpaid leave during a single 12-month period under this policy.

*Non-continuous leave.* Service Member family leave may be taken all at once or, when medically necessary, intermittently (see below).

*Certification process.* The need for leave must be documented by the family member’s treating healthcare provider through our medical certification process (see below).

### **Notifying the Town of Hamburg of the Need for Family or Medical Leave**

Generally, an application for leave must be completed for all leave taken under this policy. These forms are available from Personnel Department. The need to take non-emergency leave should generally be requested from the Personnel Department at least 30 days, or as soon as practicable, in advance of the need. In cases of emergency, verbal notice should be given as soon as possible (or by your representative if you are incapacitated), and the application form should be completed as soon as practicable. Failure to provide adequate notice may, in the case of foreseeable leave, result in a delay or denial of the leave. It is your responsibility to notify your Department Head and the Personnel Department of absences that may be covered by FMLA.

You must provide sufficient information regarding the reason for an absence for the Town of Hamburg to know that protection may exist under this policy. Failure to provide this information will result in delay and/or forfeiture of rights under this policy. This means the absence may then be counted against your record for purposes of discipline for attendance, etc.

### **Medical Certification Process**

In addition to an application for leave, you will be required to complete a medical certification form where leave is for a family member's or your own serious health condition. The certification form needs to be signed by the health care provider. The short-term disability certification may be sufficient where the information required is duplicative. These forms are available from Personnel Department. Second or third certifications from health care providers and periodic re-certification at the Town of Hamburg's and/or your expense may be required under certain circumstances.

We may also require periodic reports during federal FMLA leave regarding your status and intent to return to work.

### **Certification for Active Duty Because of Any Qualifying Exigency**

In addition to an application for leave, you will be required to complete a Certification of Qualifying Exigency For Military Family Leave form and to furnish to the Town of Hamburg in a timely manner any certification that your family member is issued regarding their active duty or call to active duty in the Armed Forces.

### **Substituting Paid Leave for Unpaid Leave**

Federal FMLA leave is unpaid. However, Town of Hamburg employees are required to utilize any accrued benefit time as follows:

***Personal serious illness or injury leave.*** Employees will be required to first use accrued paid leave time in the following order: sick leave, accrued compensatory time, vacation, personal leave and any other accrued leave while taking FMLA leave.

***Well baby leave, Family member serious illness or injury leave, Service member family serious illness or injury leave or Military qualifying exigency leave.***

Employees will be required to first use accrued paid leave time in the following order accrued compensatory time, vacation and personal leave. Sick leave may not be used for other than an employee's own personal illness.

Once such benefit time is exhausted, the balance of the leave will be without pay unless the employee is eligible for short-term disability benefits in accordance with applicable state law.

When an employee is absent due to a work-related illness or injury that meets the definition of a serious health condition, the absence will be counted against the employee's entitlement under this policy. In other words, the employee is using FMLA leave concurrently with the workers' compensation absence. An employee is not required to substitute paid time off for an absence covered under workers' compensation. However, an employee may choose to utilize sick leave while under workers' compensation as provided by the employee's collective bargaining agreement, if a non-bargaining employee, pursuant to any appropriate Town Board resolutions.

You may be paid for all or part of a medical leave to the extent you are eligible for benefits such as short-term disability.

### **Intermittent/Reduced Leave**

Intermittent and/or reduced leave will be permitted only when it is medically necessary or for a qualifying exigency/call to active duty as explained above. In all cases, the total amount of leave taken in a calendar year should not exceed your total allotment as defined earlier in this policy.

Intermittent and reduced schedule leave must be scheduled with minimal disruption to an employee's job. To the extent an employee or family member has control, medical appointments and treatments related to an employee's or family member's serious health condition should be scheduled outside of working hours or at such times that allow for a minimal amount of time away from work.

If you request non-continuous federal FMLA leave which is foreseeable based on planned medical treatment for purposes of providing care to a child, spouse or parent with a serious health condition, for your own serious health condition, or for service member family leave, you may be required to transfer temporarily to an available alternative position offered by the Town of Hamburg for which you are qualified and which better accommodates recurring periods of leave than your regular employment position. You will be entitled to equivalent pay and benefits, but will not necessarily be assigned the same duties in the alternative position.

### **Benefit Continuation During Leave**

Employees of the Town of Hamburg who provide a statement of intent to return to work will maintain group health insurance coverage and other employment benefits (such as group life insurance, AD&D, health and dependent flexible spending accounts, etc.)

while on FMLA leave whenever such insurance was provided to you before the leave was taken and on the same terms as if you had continued to work.

An employee will be required to pay his or her regular portion of insurance premiums. Employees who pay a portion of the health insurance premium must make payment on the first day of each month. The Town of Hamburg may cancel coverage if an employee's premium contribution is more than 30 days late. If the premium contribution is 15 days late, the Town of Hamburg will notify the employee that their health care coverage will terminate if the premium contribution is not received within the next 15 days, subject to the availability of continuation coverage under COBRA. Contact Personnel Department for an explanation of your options.

All benefits that operate on an accrual basis, *e.g.*, vacation and sick days will cease to accrue during any period of FMLA leave which is unpaid for more than one-half ( $\frac{1}{2}$ ) of the workdays in any given month. Accruals will resume upon return to active employment. Benefit and longevity dates will be adjusted for unpaid leave.

In some instances, the Town of Hamburg may recover premiums it paid to maintain health insurance coverage for an employee who fails to return to work from FMLA leave.

Employees who fail to return to work from FMLA leave or provide a notice of intent not to return to work are not entitled to a continuation of health care benefits during any unpaid portion of the leave, except as covered by COBRA.

### **Returning to Work**

If the reason for FMLA leave is for your own serious health condition, you may be required to present a Fitness-For-Duty certification immediately upon return to work.

If you wish to return to work before the scheduled expiration of an FMLA leave, you must notify the Town of Hamburg of the changing circumstances as soon as possible but no later than two working days prior to your desired return date.

An employee who fails to return to work immediately after the expiration of the leave period will be considered to have voluntarily terminated his/her employment.

### **Rights Upon Return From Leave**

Upon return from Family or Medical Leave, you will be returned to the position you held immediately prior to the leave if the position is vacant. Certain exceptions exist for Key Employees as defined by law. If the position is not vacant, you will be placed in an equivalent employment position with equivalent pay, benefits, and other terms and conditions of employment. If you exhaust all leave under this policy and are still unable to return to work, your situation will be reviewed to determine what rights and protections might exist under other Town of Hamburg policies.

The law provides that an employee has no greater rights upon a return from leave than the employee would have if the employee had continued to work. Therefore, you may

be affected by a layoff, termination or other job change if the action would have occurred had you remained actively at work.

*If you do not qualify for the types of leave described in this policy, the Town of Hamburg may approve a personal leave of absence, depending on your circumstances. Except where mandated by law, we cannot guarantee that benefits will continue or that your position will remain open in your absence.*

*This policy provides an introduction to the rights and provisions of the federal FMLA. Department of Labor form WHD Publication 1420 is attached to this policy and further explains the FMLA's provisions and the procedures for filing complaints of violations of the FMLA with the US Wage and Hour Division. Questions you may have about this law should be directed to Personnel Department.*

## **Definitions**

### ***Spouse***

'A husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides.

### ***Parent***

'A biological parent or an individual who provides or provided day-to-day care and financial support to the employee when the employee was a child. This includes foster parent, adoptive parent, step-parent, and legal guardian. Parent does not mean a parent-in-law.

### ***Child***

'A biological, adopted or foster child, stepchild, legal ward, or under the federal FMLA, the child of a person having day-to-day care and financial responsibility for the child who is under age 18. Child includes a person 18 years of age or older who is incapable of self-care because of a mental or physical disability. For Qualifying Exigency Leave or Service Member Family Leave, the child does not have to be a minor (under the age of 18) and can be of any age.

### ***Incapable of self-care***

'The child requires active assistance or supervision to provide daily self care in three or more "activities of daily living," or "instrumental activities of daily living," including adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, eating, or instrumental activities such as shopping, taking public transportation, maintaining a residence, etc.

### ***Physical or mental disability***

'A physical or mental impairment that substantially limits one or more major life activities of the individual.

### ***Next of Kin***

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Used with respect to an individual, means the nearest blood relative of that individual, other than the spouse, parent or child. See Personnel Department for more details.

***Serious Health Condition”***

Illness, injury, impairment or physical or mental condition that involves:

- Inpatient care in a hospital, hospice or residential medical care facility.
- A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition) that also involves: 1) treatment two or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist, by or under the orders of a health care provider; or 2) treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of a health care provider. The first (or only) visit must occur in person within seven days of the first day of incapacity.
- Any incapacity due to pregnancy or for prenatal care.
- Chronic conditions requiring periodic treatment by or under the supervision of a health care provider which continue over an extended period of time and may cause an episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
- Permanent/long-term conditions requiring supervision for which treatment may not be effective (e.g., Alzheimer’s, a severe stroke, or the terminal stages of a disease).
- Multiple treatments by or under the supervision of a health care provider either for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity of more than three calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy), severe arthritis (physical therapy) or kidney disease (dialysis).

***Serious Injury or Illness”***

In the case of a member of the Armed Forces, including a member of the National Guard or Reserves, an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating.

Adopted: July \_\_\_\_\_, 2018

**8.**

On a motion of Councilman Mosey, seconded by Councilman Best, the following resolution was ADOPTED Ayes 5 Shaw, Best, Farrell, Mosey, Petrie  
Noes 0

**RESOLVED**, that the Town Board authorizing alcohol waivers for the following August 2018 Taylor Road rentals:

08/02/18	08/03/18	08/04/18	08/05/18	08/06/18
08/09/18	08/10/18	08/11/18	08/12/18	08/17/18
08/18/18	08/19/18	08/23/18	08/24/18	08/25/18
08/26/18	08/31/18			

**9.**

On a motion of Councilman Best, seconded by Councilman Farrell, the following resolution was ADOPTED Ayes 5 Shaw, Best, Farrell, Mosey, Petrie  
Noes 0

**BE IT RESOLVED**, that the Town Board approve the hiring of personnel for the Police Department as follows:

#	Emp #	Emp Name	N or R	Position	Start date	Full time hrly rate	PT/Sea/temp hrly rate	Term date
1	1485	O'BRIEN, JOSEPH	N	Security Officer - Seasonal	6/26/2018		\$20.00	
2	4905	GAWLEY, GREGORY	N	Security Officer - Seasonal	6/26/2018		\$20.00	

**10.**

On a motion of Councilman Petrie, seconded by Councilman Farrell, the following resolution was ADOPTED Ayes 5 Shaw, Best, Farrell, Mosey, Petrie  
Noes 0

**BE IT RESOLVED**, that the Town Board hereby remove from the table the Resolution #13 from the Town Board meeting minutes of June 11, 2018.

**11.**

On a motion of Supervisor Shaw, seconded by Councilman Petrie, to amend resolution #13 was ADOPTED Ayes 5 Shaw, Best, Farrell, Mosey, Petrie  
Noes 0

**RESOLVED**, that the Board Liaison for the Planning and Zoning Department be changed to Michael Mosey removing Michael Petrie.

**12.**

On a motion of Councilman Farrell, seconded by Supervisor Shaw, to amend resolution #13 was

ADOPTED	Ayes	5	Shaw, Best, Farrell, Mosey, Petrie
	Noes	0	

**RESOLVED**, that with regard to reviewing vouchers of the Highway Department is consistent with appropriate sections of the highway law.

**13.**

On a motion of Councilman Petrie, seconded by Councilman Farrell, the following resolution was

ADOPTED	Ayes	4	Shaw, Farrell, Mosey, Petrie
	Noes	1	Best

**WHEREAS**, in an effort to help Town Board members understand and familiarize themselves with how taxpayers' money is spent in day-to-day operations and to help identify areas for improvement,

**BE IT RESOLVED**, that the Town Board hereby adopts the Town of Hamburg Voucher Approval Procedure policy.

## Town of Hamburg

### Voucher Approval Procedure

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In an effort to gain an understanding of each department's costs and find potential cost savings to taxpayers, the voucher payment process will be changing effective immediately. After a voucher is properly completed and signed by a department head, it must be submitted to their Town Board liaison for signature approval. The Board member will sign the voucher in the bottom left corner under the department's signature. The Board member review is to verify what items/services are being purchased and at what cost. The Finance Department will still check the voucher for mathematical accuracy, appropriate account numbers and signatures, and the omission of sales tax. Once the liaison signs the voucher, it is the Board member's responsibility to submit the voucher to the Finance Office by the Friday afternoon prior to a Monday Town Board meeting. As each of the Board members have different schedules and availability to review vouchers, the deadline for each department to submit to their liaison will vary. Please see the below

deadlines for your applicable department. If a department is not on this list, please see <http://www.townofhamburgny.com/town-board/> for a list of all department and liaison assignments.

Department:	Board Liaison	Voucher Deadline
Finance	James M. Shaw	Tuesday at Noon
Legal	James M. Shaw	Tuesday at Noon
Community Development	James M. Shaw	Tuesday at Noon
Justice Court	Tom Best Jr.	Monday at Noon
Police/Public Safety	Tom Best Jr.	Monday at Noon
Town Clerk	Tom Best Jr.	Monday at Noon
Building Inspection	Michael Petrie	Tuesday at Noon
Engineering	Michael Petrie	Tuesday at Noon
Planning	Michael Mosey	Tuesday at Noon
Zoning	Michael Mosey	Tuesday at Noon
Buildings and Grounds	Elizabeth Farrell	Monday at Noon
Domestic Violence	Elizabeth Farrell	Monday at Noon
Highway	Elizabeth Farrell	Monday at Noon
Historian	Elizabeth Farrell	Monday at Noon
Assessing	Michael Mosey	Monday at Noon
Information Technology	James M. Shaw	Monday at Noon
Recreation/Senior Services/Youth	Michael Mosey	Monday at Noon

Board member deadlines may be changed at their discretion without further Board resolution.

While Department heads should seek a liaison signature prior to voucher submission, they are permitted to submit vouchers if they lack a liaison signature. The voucher will then be reviewed after submission; however, securing a signature prior to submission (as is encouraged) will better assist timely voucher processing than would the alternative.

Feedback from all departments is vital as this process is implemented. Please communicate all questions and concerns. The goal of this is to not make the process more burdensome, so we are open to suggestions and expect improvements to this process to be made as we see what works well and what does not. Thank you in advance for your cooperation.

The following spoke regarding this resolution:

Supervisor Shaw, Councilman Farrell, Dennis Chapman, Councilman Petrie, Councilman Best

**14.**

On a motion of Supervisor Shaw, seconded by Councilman Farrell, the following resolution was

ADOPTED               Ayes 5       Shaw, Best, Farrell, Mosey, Petrie  
                               Noes 0

**WHEREAS**, PROSPECT LAWN CEMETERY ASSOCIATION, INC. presently operates the Prospect Lawn Cemetery located on 6561 Gowanda State Road, Town of Hamburg, and

**WHEREAS**, the Town of Hamburg recognizes the benefits provided to Town residents by the Prospect Lawn Cemetery Association, Inc.; and

**WHEREAS**, General Municipal Law §165-a provides that "Any municipal corporation may appropriate and provide funding to a public cemetery corporation as defined in article fifteen of the not-for-profit corporation law. In lieu of or in addition to providing funding to a public cemetery corporation, any municipal corporation may provide goods and/or services to a public cemetery corporation as defined in article fifteen of the not-for-profit corporation law"; and

**WHEREAS** the Town is willing to assist Prospect Lawn to see these programs continue,

**NOW THEREFORE BE IT RESOLVED** that the Town of Hamburg renew the Agreement with Prospect Lawn Cemetery Association to provide services, and funding in monthly installments of \$1,500.00 commencing on September 1, 2018 through August 31, 2019. The agreement shall terminate on August 31, 2019, unless a successor agreement is made and executed before the termination date.

**15.**

On a motion of Supervisor Shaw, seconded by Councilman Mosey, the following resolution was

ADOPTED               Ayes 5       Shaw, Best, Farrell, Mosey, Petrie  
                               Noes 0

**BE IT RESOLVED**, that the Town Board approve the termination and rehiring of personnel for the Information Technology Department as follows:

#	Emp #	Emp Name	N or R	Position	Start date	Full time hrly rate	PT/Sea/temp hrly rate	Term date
1	3163	Heidi Brunner	R	Clerk Typist FULL-TEMP			\$18.25	7/21/2018
2	3163	Heidi Brunner	R	Clerk Typist PT	7/23/2018		\$18.25	

**16.**

On a motion of Supervisor Shaw, with a unanimous second, the following proclamation was

ADOPTED                   Ayes   5           Shaw, Best, Farrell, Mosey, Petrie  
                                   Noes   0

## **In Recognition of Kathy Scharlock**

**WHEREAS, Kathy Scharlock** has served the people of the Town of Hamburg with dedication and good cheer for almost thirty years; and

**WHEREAS, Kathy Scharlock's** commitment to her responsibilities has been an example to the public and her co-employees; and

**WHEREAS, Kathy Scharlock** has greeted her fellow workers and the community with a warm and engaging smile. Her courtesy and professionalism has set a standard in the Justice Court of Hamburg for all to follow; and

**WHEREAS,** Upon her retirement on 6/29/18, she will enjoy a well-deserved rest and extended time with her family and grandchildren.

**NOW THEREFORE BE IT RESOLVED,** that the Town Board of the Town of Hamburg extends it's best wishes to Kathy Scharlock and it's grateful recognition of her service to the people of our Township. She will be greatly missed by all who have worked with her, yet we will be happy in knowing that her best years are still to come.

**IN WITNESS WHEREOF,** I have caused the seal of the Town of Hamburg to be affixed this 29<sup>th</sup> day of June 2018.

---

James M. Shaw, Supervisor  
Town of Hamburg

Thomas Best, Jr., Councilperson  
Elizabeth Farrell, Councilperson  
Michael Mosey, Councilperson  
Michael Petrie, Councilperson

**17.**

On a motion of Supervisor Shaw, seconded by Councilman Petrie, the following resolution was

ADOPTED	Ayes	4	Shaw, Best, Farrell, Petrie
	Noes	1	Mosey

**WHEREAS**, the Information Technology Department must assess current and potential future technology needs,

**NOW, THEREFORE BE IT RESOLVED**, that the Town Board of the Town of Hamburg establish a Technology Committee,

**BE IT FURTHER RESOLVED**, that the Town Board of the Town of Hamburg appoint the following employees to the Technology Committee:

Jennifer Robertson     Elizabeth Farrell

Cathy Rybczynski     Sean Crotty

Christopher Hull     Kevin Trask

The following spoke in opposition of this resolution:

Councilman Mosey

**18.**

On a motion of Supervisor Shaw, seconded by Councilman Mosey, the following resolution was

ADOPTED	Ayes	5	Shaw, Best, Farrell, Mosey, Petrie
	Noes	0	

**BE IT RESOLVED THAT** the Hamburg Town Board authorize the Department of Community Development to advertise bids for the purpose of completing the following 2018 CDBG projects:

- 1) Village of Hamburg Waterline Reconstruction project (Huntington Court).
- 2) Village of Blasdell Road Reconstruction project (Maple Avenue).

**19.**

On a motion of Supervisor Shaw, seconded by Councilman Petrie, the following resolution was

ADOPTED                   Ayes   5           Shaw, Best, Farrell, Mosey, Petrie

                              Noes   0

**WHEREAS**, the County Executive has informed the Hamburg Town Supervisor that the County has completed a traffic safety study relating to an appropriate speed limit on Lakeview Rd; now therefore, be it

**RESOLVED**, that the speed limit on Lakeview Road (CR 65) in the Town of Hamburg from the Town/Village line to .5 miles east of Smith Road, shall be reduced to 35 mph by direction of the Erie County Department of Public Works, Division of Highway, and be it further,

**RESOLVED**, that the Town is granted permission to install, alter or relocate traffic signs, signals or markings in conformity with the permit application that the Town Supervisor is authorized to sign and submit to the Deputy Commissioner of Public Works for Erie County.

ERIE COUNTY DEPARTMENT OF PUBLIC WORKS  
DIVISION OF HIGHWAYS  
95 Franklin Street  
Buffalo, New York 14202



PERMIT TO INSTALL, ALTER OR RELOCATE  
TRAFFIC SIGNS, SIGNALS OR MARKINGS

The undersigned hereby requests permission to furnish, install and maintain a 35 MPH SPEED LIMIT on Lakeview Road (CR 65) in the Town of Hamburg from Town/Village line to 0.5 miles east of Smith Road.

As a condition of granting this permit, it is agreed that:

1. The applicant shall furnish the necessary parts, equipment, traffic signs or signals and pay all costs of installation, maintenance and operation.
2. R2-1 signs shall be installed and maintained per the National Manual on Uniform Traffic Control Devices (NMUTCD), and New York State Supplement to the NMUTCD, at the west and east boundaries of this speed limit.

Where traffic may enter this zone from an intersecting road and where an intermediate sign does not exist immediately beyond that road for west or eastbound traffic, an additional sign is recommended.

The signs shall be erected with breakaway posts in accordance with Erie County Highway Standard Specifications, the NMUTCD, and State Supplement to the NMUTCD.

3. All signals shall be suspended centrally over the pavement, with a minimum clearance of 15 to 17 feet.
4. All signs, signals or markings covered by this permit shall conform to the standards and future revisions of the National Manual on Uniform Traffic Control Devices.
5. The work authorized by this permit shall be performed under the supervision and to the satisfaction of the Deputy Commissioner of Public Works - Highways of Erie County.
6. Traffic shall be maintained; and traffic and public shall be properly protected at all times during the progress of the work authorized by this permit.

- 7. All portions of the highway or street which may be disturbed during the progress of the work authorized by this permit shall be restored to their original condition.
- 8. The applicant hereby agrees that it will keep insured during the performance of the above described work, such employees as are required to be insured under the provisions of Chapter 41 of the Laws of 1914 and acts amendatory thereof, known as the Workmen's Compensation Law.
- 9. The applicant agrees to maintain the sign, signal or marking and any equipment or necessary parts thereof in good condition, and in a manner which will not constitute a hazard to traffic.
- 10. The applicant hereby agrees to hold the County harmless on account of damages of any kind which may arise during the progress of the work authorized by this permit, or by reason thereof, including any damage that may result from failure of signal to operate at any time.
- 11. This permit is revocable at the discretion of the Deputy Commissioner of Public Works - Highways after a hearing and for due cause.

The person executing this application on behalf of the applicant certifies that he has full authority to execute this application, and if the applicant is a village, town or school board, he has annexed hereto a certified copy of a resolution by such body, authorizing him to make this application.

Dated: 7/16/18

TOWN of Hamburg  
(Name of authority requesting permit)

By: James M. Alar / Supervisor  
(Title)

APPROVED UNDER CHAPTER 63, SECTION 136, OF THE LAWS OF 1936

Dated: \_\_\_\_\_

\_\_\_\_\_  
DEPUTY COMMISSIONER DPW - HIGHWAYS

**20.**

On a motion of Councilman Best, seconded by Councilman Mosey, the following resolution was

ADOPTED           Ayes 5       Shaw, Best, Farrell, Mosey, Petrie

Noes 0

**WHEREAS**, Marianne Chiumento and Robert Kaiser, members of the Public Library Board have submitted their resignations; therefore, be it

**RESOLVED**, that the Town Board approve the appointment of Joseph Lowry and Matt Chandler as new members of the Public Library Board; and be it further,

**RESOLVED**, that Mr. Joseph Lowry shall be appointed for a full five year term; and be it further

**RESOLVED**, that Matt Chandler be appointed to complete the remainder of the term of Robert Kaiser whose term expires in 2019.

**21.**

On a motion of Supervisor Shaw, seconded by Councilman Petrie, the following resolution was

ADOPTED           Ayes 3       Shaw, Farrell, Petrie  
                       Noes 2       Best, Mosey

**WHEREAS**, the Legal Department of the Town of Hamburg has significantly curtailed the expense that the Town incurs when matters in litigation are referred to outside law firms or attorneys; and

**WHEREAS**, a year-to-date comparison for calendar year 2018 (6/29/18) to similar 6-month periods in prior years from 2013 -2017 reveals the following:

Litigation Expenses through:

	June	December	% of expense through June
2018	\$14,732	\$29,464*Projected based upon monthly average	
2017	\$43,860	\$73,237	59.89%
2016	\$36,939	\$83,123	44.44%
2015	\$36,014	\$71,074	50.67%
2014	\$183,988	\$238,384	77.18%
2013	\$67,362	\$255,411	26.37%

And

**WHEREAS**, the Town Supervisor, the Town Attorney and Deputy Town Attorney have prioritized a program to ensure the continued reduction in expenses incurred for matters in litigation that involve the Town of Hamburg; and

**WHEREAS**, the Town Board of the Town of Hamburg desires to memorialize a policy for the conduct of certain functions of the Legal Department and establish compensation rates for specific employees as indicated below.

**NOW THEREFORE, BE IT RESOLVED**, that any matter in litigation whereupon the Town is made aware of the litigation through a Notice of Claim will be handled by the Town Legal Department to the point at which a 50-h hearing is conducted, unless the matter requires referral to outside counsel (for reasons such as a conflict of interest or uniqueness of the subject matter of the law suit). Should it be determined that the Legal Department needs to refer to outside counsel a 50-h hearing, the Town Attorney will provide written explanation to the Supervisor; and, be it further

**RESOLVED**, that upon the completion of a 50-h hearing, the Town Attorney will make a determination as to whether the given case should be referred to an outside attorney or law firm. Should it be determined that the Legal Department needs to refer to outside counsel, the Town Attorney will provide written explanation to the Supervisor; and

**BE IT FURTHER RESOLVED**, the Town Attorney will work to ensure that any referral of any matter in litigation to outside counsel is to be undertaken at a reasonable hourly fee, with the priority to fees of \$200 per hour or less; and

**BE IT FURTHER RESOLVED**, that the Town Attorney's office will handle all Article 78 petitions that may be filed prospectively, unless the matter requires referral to outside counsel (for reasons such as conflict of interest or uniqueness of the subject matter); and

**BE IT FURTHER RESOLVED**, that the Legal Department shall provide a litigation status report to the Supervisor on a quarterly basis which the Supervisor in turn shall share with the members of the Hamburg Town Board; and

**BE IT FURTHER RESOLVED**, in consideration of the policy above-referenced and the significant savings as a result thereof, the Town Attorney's salary shall be increased by \$7,000 for the calendar year 2018, prospectively on a pro-rated basis, and that the Deputy Town Attorney's salary shall be increased by \$8,000 per year for the calendar year 2018, prospectively on a pro-rated basis, and that Paralegal, Cindy Conlon, shall receive a wage increase in the amount of \$3,000 for the calendar year 2018, prospectively on a pro-rated basis. These adjustments in salary and wages are made in consideration of the cost savings generated in the management of the Legal Department, and the added responsibilities that the Attorneys and support staff of that department have undertaken; and

**BE IT FURTHER RESOVLED**, that adjustments shall be made to A.1420.100 Personal Services from A.1420.457 Litigation.

The following spoke concerning this resolution:

Don Wiess, Town Resident, Bob Mahoney, Tax Payer, Councilman Mosey, Dennis Chapman, Resident, Councilman Best, Councilman Petrie, Supervisor Shaw, Councilman Farrell, Kathy Morlock,

**22.**

On a motion of Supervisor Shaw, seconded by Councilman Petrie, the following resolution was

ADOPTED                   Ayes   5           Shaw, Best, Farrell, Mosey, Petrie

                              Noes   0

**WHEREAS**, the Hamburg Town Board has established for the public record that it will not recommend further municipal efforts to locate and construct a multiplex sports complex for ice hockey, and other sports activities; and

**WHEREAS**, pursuant to the foregoing, the Town has been presented with an invoice from a consulting firm that it contracted with in July of 2016 to provide certain services as are enumerated in the contract for a sum claimed to be \$145,000.

**NOW THEREFORE, BE IT RESOLVED**, that the Town of Hamburg shall establish an ad-hoc committee comprised of the Town Supervisor, the Deputy Town Attorney, Kenneth Farrell, Town Council Member, Michael Petrie and the Director of Finance, Samantha Tarczynski, to review all appropriate files, prior invoices, billing statements, time and work related records to verify the accuracy of the invoice and to determine to what extent the Town may be legitimately obligated to pay for such consulting services.

**23.**

On a motion of Supervisor Shaw, seconded by Councilman Mosey, the following resolution was

ADOPTED                   Ayes   5           Shaw, Best, Farrell, Mosey, Petrie

                              Noes   0

**WHEREAS**, the Town of Hamburg is a Community Development Block Grant (CDBG) entitlement community, receiving Federal Funds from the United States Department of Housing and Urban Development (HUD); and

**WHEREAS**, the Department of Community Development of the Town of Hamburg has jurisdiction and oversight over Community Development Block Grant Funds and is responsible for insuring that said funds are utilized in accordance with all Federal Laws and requirements; and

**WHEREAS**, the Hamburg Town Board has directed that a portion of the CDBG funds shall be utilized for economic development purposes and specifically for job creation/job retention activities per the current regulations of the CDBG program;

**NOW, THEREFORE, BE IT RESOLVED**, that pursuant to the laws and regulations of the Federal CDBG program, the Town of Hamburg Supervisor along with the Department of Community Development are directed to sign a new one year agreement by and between the Town of Hamburg and the Hamburg Development Corporation for the use of the Town of Hamburg's CDBG program income funds that (i) were utilized by HDC within the previous agreements and (ii) to be created through this agreement with HDC, and be it further,

**RESOLVED**, that the Town's Department of Community Development shall continue it's oversight and management role for this new one year agreement to commence on July 1, 2018. (documentation attached)

**“Agreement”**

**By and between the Town of Hamburg, New York and the  
Hamburg New York Development Corporation for use of  
the  
Town of Hamburg’s Community Development Block Grant  
(CDBG) funds.**

This “Agreement”, entered into this 1st day of July, by and between the Town of Hamburg, a municipal corporation of the State of New York, with principal offices located at 6100 South Park Avenue, Hamburg, New York 14075 (herein referred to as the "Grantee" and the Hamburg New York Development Corporation (HDC), a not-for-profit corporation organized under the laws of the State of New York and having its principal place of business at 6122 South Park Avenue, Hamburg, New York 14075 (herein referred to as the "Sub-recipient")

**WITNESSETH:**

WHEREAS, the Town of Hamburg is a Community Development Block Grant (CDBG) entitlement community receiving federal funds from the United States Department of Housing and Urban Development (HUD), and

WHEREAS, the Department of Community Development has jurisdiction and oversight over the Community Development Block Grant funds and is responsible for ensuring that said funds are utilized in accordance with all federal laws and requirements, and

WHEREAS, the Hamburg Town Board has directed that a portion of the CDBG funds shall be utilized for economic development purposes and specifically for job creation/job retention activities per the current regulations of the CDBG program.

NOW THEREFORE BE IT RESOLVED that pursuant to the laws and

regulations of the federal CDBG program, the Town of Hamburg Supervisor be authorized to sign a new one year agreement by and between the Town of Hamburg and the Hamburg Development Corporation for the use of Town of Hamburg's CDBG program income funds (i) that were utilized by the HDC within the previous Agreement(s), and (ii) to be created through this agreement with the HDC.

BE IT FURTHER RESOLVED that the towns Department of Community Development continues its oversight and management role for this new one year agreement.

**Section I - Scope of Services:**

The Sub-recipient shall use the Grantee's Community Development Block Grant funding in the form of "Program Income" only for the purpose of implementing a Revolving Loan Fund (hereinafter the "RLF") to provide financing to for-profit businesses in the Town of Hamburg that will create or retain jobs for low and moderate income persons. The Sub-recipient will be responsible for administering the "RLF" in a manner satisfactory to the Grantee and in a manner that is consistent with all standards required of the federal government for its Community Development Block Grant (CDBG) program. In implementing the "RLF", the following shall apply:

(A) **Job Creation:**

**For each borrower assisted with CDBG Funds pursuant to this Agreement that will create new permanent jobs, the Sub-recipient shall require that at least 51% of the jobs be held by or made available to low and moderate income persons. The Sub-recipient's compliance with this requirement shall be in the manner described at 24 CFR 570.208(a)(4), and shall include the following:**

The execution of a written agreement between the Sub-recipient and each borrower that includes, at a minimum, the following.

- (1) A listing by job title of the full-time and part-time permanent jobs expected to be created by the borrower as a result of assistance being provided;
- (2) A commitment by the borrower that at least 51% of the jobs on a full-time equivalent basis will be held by, or made available, to low- and moderate-income persons;
- (3) Requirements for the borrower's use of appropriate forms and systems for the collection from all job applicants of family income information and other information required pursuant to the regulations at 24 CFR Part 570;
- (4) Requirements for periodic reporting by the borrower to the Sub-recipient of all employment and job applicant information required pursuant to the CDBG program, such reporting to be on no less than an annual basis;
- (5) For jobs that are made available to low and moderate income persons, a requirement that the borrower provide information regarding the

positions and the recruitment process sufficient to make the determinations detailed at 24 CFR 570.208(a)(4)(iii)(A) and (B); and

- (6) Default provisions that apply appropriate remedies in the event of the borrower's noncompliance with the requirements of this Section (I).

**(B) Job Retention:**

**For each borrower assisted with CDBG Funds pursuant to this Agreement that will retain permanent jobs, the Sub-recipient must document that the jobs would actually be lost without the CDBG assistance and that either or both of the following conditions apply with respect to at least 51 percent of the jobs at the time the CDBG assistance is provided:**

- (1) The job is known to be held by a low or moderate income person; or
- (2) The job can reasonably be expected to turn over within the following two years and that steps will be taken to ensure that it will be filled by or made available to, a low or moderate income person upon turnover.

**Section II - National Objective:**

The Sub-recipient hereby certifies that the activities carried out with Community Development Block Grant funds provided under this Agreement will meet the Community Development Block Grant program's National Objective of benefitting low and moderate income persons. With the creation and/or retention of jobs, the majority of which will be held by or made available to low and moderate income persons.

**Section III - Levels of Accomplishment:**

The Sub-recipient agrees to the following level of program services for job creation or retention activities.

- (A) For each loan of CDBG funds provided by the Sub-recipient, a minimum of one full-time equivalent job for every \$35,000.00 of CDBG funds expended; and

- (B) For all loans of CDBG funds provided by the Sub-recipient, an aggregate average of a minimum of one full-time equivalent job for every \$35,000.00 of CDBG funds expended.

**Section IV - Additional CDBG Compliance Requirements:**

The Sub-recipient (HDC) agrees to:

- (A) As part of its “RLF” marketing materials, loan application form, and in providing program information to any prospective loan applicant, the HDC shall cite that the source of all “RLF” funding is from the Town of Hamburg Community Development Block Grant (CDBG) program as granted by the federal Department of Housing & Urban Development (HUD).
- (B) Inform all prospective “RLF” applicants of the rules and regulations involving the use of the federal CDBG funds including, but not limited to employment and related reporting requirements and the applicability of federal prevailing wage rates for construction, etc.
- (C) Include in its “RLF” loan application form and in its loan closing documents the specific employment and reporting requirements of HDC and of the CDBG program; and
- (D) Include in its loan closing documents all applicable requirements of the CDBG program including, but not limited to employment and related reporting requirements and any remedies for non-compliance relating thereto.
- (E) The Sub-recipient agrees to enforce all rules and regulations pertaining to the use of federal CDBG funds, including the timely use of funds which is addressed under this Section B.
  - (1) If after three consecutive months of over \$250,000.00 within the CDBG Program Income Account also known as the “HDC Restricted Account”, the Grantee must be given the excess funding above the \$250,000.00 level. This will ensure that the financial regulations of the

CDBG program and the IDIS (Integrated Disbursement Information System) remain in compliance.

- (2) The funding in excess of the \$250,000.00 shall be returned to the “Town of Hamburg” via the Department of Community Development so it can address the timeliness issue of the CDBG program regulations and the Integrated Disbursement Information System(IDIS).
  - (3) If and/or when the CDBG Program Income Account also known as the “HDC Restricted Account” is shown over the \$250,000.00 threshold for three consecutive months the excess funding within said account shall be returned to the Grantee via its Department of Community Development. For such payments, issue a certified check payable to the “Hamburg Program Income Account”. Such payments shall be made within ten business days of the third consecutive month over the \$250,000.00 threshold.
- (F) The Sub-recipient shall procure and provide to the Grantee, as soon as possible after a loan application has been submitted, appropriate information to facilitate Grantee’s CDBG environmental review responsibilities. This shall include the name of the applicant, the address of the project, the amount of funding requested, the number of jobs to be created/retained and any other information required to facilitate the completion of the environmental regulations of the CDBG program.

**Section V - Performance and Monitoring:**

The Grantee will monitor the performance of the Sub-recipient against the standards required herein.

- (A) It is the responsibility of the Sub-recipient (HDC) to adhere to and perform in a manner that follows the Community Development Block Grant program regulations. The Sub-recipient shall submit quarterly progress reports to the Grantee the activities carried out with Community Development Block Grant funds. Such reports shall include, at a minimum, the following:

- (1) A listing of the names and addresses of parties who requested loan applications during the reporting period;
  - (2) A listing of the names and addresses of parties who submitted loan applications to the Sub- recipient during the reporting period;
  - (3) A listing of loans made during the reporting period, if any, including the name and address of the borrower, the borrower's DUNS number, the loan amount, the amortization schedule for the loan, and any security required for the loan;
  - (4) For each loan made during the reporting period, a listing of the projected employment positions to be created that includes the position title, the requisite skills, education and experience for each position, the salary or wage for each position, and the manner in which the positions will be advertised and filled;
  - (5) The amount of CDBG Program Income received by the Sub-recipient during the reporting period and the CDBG Program Income balance at the end of the reporting period; and
  - (6) Such other information as the Grantee may request or need to fulfill federal requirements under the Community Development Block Grant program
- (B) On an annual basis, the Sub-recipient will provide two (2) original, fully completed, annual financial reports completed by an independent auditor to the Grantee within thirty days of the completion of such annual report.
- (C) On an annual basis, the Sub-recipient will provide to the Grantee, the Town of Hamburg Supervisor, and any Town Board member so requesting, an in-person update on the Sub-recipient's progress with its CDBG-funded activities. This update shall include the effectiveness of its use of CDBG funds, the amount of funding lent, the number of jobs created or retained for persons of low and/or moderate incomes, information on loan applications that are in process, and an updated financial review of the Sub-recipient's records.
- (D) The Sub-recipient's compliance with this Section 5 shall be in conformance with the following CDBG, HUD and United States regulatory citations: 24 CFR 570.610; Uniform Administrative Requirements and Cost Principles. Section 84.21; Standards for Financial Management

Systems. OMB Circulars A - 110; A - 122 and A - 133.

**Section 6 - Performance vs. Substandard Performance:**

Substandard performance, as determined by the Grantee, will constitute non-compliance with this “Agreement” and will necessitate corrective actions by the Town of Hamburg and specifically by its Department of Community Development, who has administrative oversight over the Town of Hamburg CDBG program. If action to correct such substandard performance is not taken by the Sub- recipient within a period of thirty (30) days from the date of first being notified by the Grantee, contract termination procedures can/shall be initiated.

- (A) Substandard performance can be determined by the Grantee for any one of the following reasons:
- (1) Failure to provide reports as required within this agreement:
  - (2) Failure to comply with the requirements of the federal CDBG program, including provisions of the environmental notification to the grantee which will allow the grantee to perform its environmental duties as required of its CDBG program.
  - (3) Failure to complete the level of job creation as required within this Agreement.
  - (4) Failure to expend funds in a timely manner as determined by this Agreement. See Section IV - B (1 - 3)

**Section 7 - Time of Performance:**

The provisions of this Agreement and the rights and obligations of the Sub- recipient shall start on April 1, 2018 and shall end on the March 31, 2019. The term of this Agreement and the provisions herein may be extended to cover further time increments of “one year” if agreed upon by both parties. Prior to the end of the contract period, a program review will be conducted by the Grantee to ensure regulatory compliance, timely expenditure of funds, funds on hand and program effectiveness. This review shall include representatives from the Grantee and the Sub-recipient. Upon completion of said review, the contract may be extended to include increments of time agreed on by both parties. If no agreement or contract extension can be agreed to, one of the following two options may take

place:

- (A) A new agreement must be authorized by the Hamburg Town Board via a Town Board resolution.
- (B) The funding provided to the Sub-recipient for its program purposes shall revert back to the Grantee as stated in 570.503(8) of the regulations for the CDBG program.

**Section 8 - Budget:**

Upon the execution of this Agreement, the Grantee commits funds from the current Sub-recipient Restricted Loan Account (Program Income Account) on hand as of March 31, 2018 plus any and all future Program Income payments received from Economic Development activities performed by the Sub-recipient through the duration of this agreement. The budget in this regard for the 2018 Program Year (4/1/18 - 3/31/19) is estimated to be (Program Income April 1, 2018 - March 31, 2019) \$ 100,000.00\*.

*\* = The amount of funds above is the estimated Program Income to be received from the 2018 Program year.*

- (1) All payments of principal and interest received from loan recipients of the “RLF” as well as deposits or investments made by the Sub-recipient utilizing Community Development Block Grant funds shall be considered Program Income as such term is defined by federal regulations implementing the Community Development Block Grant program.
- (2) All CDBG funds and CDBG Program Income received by the Sub-recipient pursuant to this Agreement shall only be utilized by the Sub-recipient for additional “RLF” loans in compliance with the regulations for the CDBG program and the provisions of this Agreement.
- (3) All Sub-recipient Program Income shall be placed into an interest bearing account and all interest earned on such account shall be paid to the Town of Hamburg Department of Community Development on an annual basis, based upon a standard calendar year (January 1<sup>st</sup> - December 31<sup>st</sup>). The interest payment to the Department of Community Development must be paid by January 20<sup>th</sup> of each year so the Grantee can return said interest payment back to the United States Treasury.

**Section 9 - Payment:**

It is expressly agreed and understood that the total amount to be paid by the Grantee under this

Agreement shall be the amounts stated in Section 8 above, if any, plus any future Program Income. All Community Development Block Grant regulations, and amendments thereto, for the use of CDBG funds shall remain in full effect with the Sub-recipient's utilization of Program Income funds and the Sub-recipient acknowledges the Grantee's right and responsibility in enforcing the regulations pertaining to the CDBG program including the recapture of funds provided in this Agreement for reasons listed under Section 6(a) of this Agreement. This Agreement shall be valid only to the extent that funds are made available to the Town pursuant to its 2014 program year application under Title I of the Housing and Community Development Act of 1974, as amended. If the 2015 CDBG program funding as granted to the Town by HUD is reduced.

**Section 10 - Notices:**

Communication and details concerning this Agreement shall be directed to the following representatives from the Grantee and the Sub-recipient:

**GRANTEE:**

**Supervisor James M. Shaw  
President  
Town of Hamburg  
Corporation  
6100 South Park Avenue  
Hamburg, New York 14075  
14075  
(716) 649-6111**

**Christopher Hull; Director  
Director  
Town of Hamburg  
Development Corporation Department of Community Development  
Park Avenue  
6100 South Park Avenue  
14075  
Hamburg, New York 14075  
(716) 648-6216**

**SUB-RECIPIENT:**

**Heather Sidorowicz;  
  
Hamburg Development  
  
6122 South Park Avenue  
Hamburg, New York  
  
(716) 648-4145**

**Sean Doyle; Executive  
  
Hamburg  
6122 South  
  
Hamburg, New York  
  
(716) 648-4145**

## **Section 11 - Special Conditions:**

### Principal Tasks.

The Sub-recipient will be responsible for administering Community Development Block Grant funds in a manner satisfactory to the Grantee and consistent with any standards required as a condition of providing these funds. The Sub-recipient will administer all tasks in connection with the “RLF” in compliance with all applicable Federal, state and local rules and regulations governing these funds. Changes to the program focus and objectives, scope of services, schedule or budget contained in this Agreement, unless otherwise noted, may only be made through a written amendment to this Agreement, executed by the Grantee and the Subrecipient. The focus of the Subrecipient efforts under this Agreement will be the provision of low-interest loans to private for-profit businesses located within the Town of Hamburg that will result in the creation or retention of jobs at those businesses, principally for low- and moderate-income persons. The principal objective of the “RLF” will be the creation of jobs for low and moderate income persons based upon the National Objective of the HUD Community Development Block Grant (CDBG) Program.

#### (A) Activities:

- (1) “RLF” Program Design. Subject to the review of the Grantee, the Sub-recipient shall establish, or make any necessary revisions to, the “RLF” program design, procedures, and forms (including but not limited to the underwriting criteria, collateral/loan security requirements, standards for loan value-to-job creation ratio(s), repayment terms, loan review procedures, standard application forms and loan documents, loan servicing terms and procedures, and loan re-negotiation, default and/or foreclosure policies).
- (2) Outreach. The Sub-recipient shall advertise and market the economic development loan program and also conduct other forms of outreach. The Sub-recipient’s outreach efforts shall be designed to generate enough demand to be able to close loans that produce jobs for low- and moderate-income persons.
- (3) Loan Applications and Underwriting. The Sub-recipient shall assist for-profit businesses in completing loan applications and shall perform an assessment of each loan request to determine the Community Development Block Grant eligibility of the loan, evaluate the loan's job creation potential relative to meeting the National Objective, and ascertain that the loan will minimize, to the

extent practicable, displacement of existing businesses and jobs in the neighborhoods. The Sub-recipient will perform a front-end assessment to determine whether each loan and the financing terms associated with it are appropriate, and as part of this assessment will consider the need for financial assistance, the feasibility of the proposed venture or business activity, the past business experience of the applicant, the reasonableness of the proposed costs and return to the applicant, the commitment of other sources of funds, and the extent of public benefit that will be derived.

- (4) For each “RLF” loan for which CDBG funds are used, the Sub-recipient shall apply the underwriting guidelines set forth at 24 CFR 570.209 and Appendix thereto to determine the following:
- (a) That the project costs are reasonable;
  - (b) That all other sources of financing for the project have been committed;
  - (c) That Community Development Block Grant funds are not substituted for non-Federal financial support;
  - (d) That the project is financially feasible;
  - (e) That the return on the owner's equity investment will not be unreasonably high; and
  - (f) That Community Development Block Grant funds are disbursed on a pro rata basis with other finances provided to the project.
- (5) Standards for Evaluating Public Benefit. The Sub-recipient is responsible for ensuring that at least a minimum level of public benefit is obtained from the expenditure of Community Development Block Grant funds. The following standards identify the types of public benefit that will be recognized for this purpose and the minimum level of each that must be obtained for the amount of Community Development Block Grant funds used.
- (a) Activities covered under this agreement must either create or retain at least one full- time equivalent, permanent job for low- or moderate-income persons per \$35,000 of Community Development Block Grant funds used (Program Income

- included).
- (b) The Sub-recipient shall apply this standard to all activities for which Community Development Block Grant funds are first obligated within each single Community Development Block Grant program year, without regard to the source year of the funds.
  - (c) The Sub-recipient shall apply the standards to the number of jobs created as determined at the time of obligation of funds to an activity.
  - (d) All activities are expected to create or retain jobs.
  - (e) Where Community Development Block Grant assistance is used for job training or placement and/or other employment services, the jobs assisted with Community Development Block Grant funds shall be considered to be created for the purpose of applying these standards.
- (6) Any of the following categories will be considered by the Department of Housing and Urban Development and the Town of Hamburg to provide insufficient public benefit and may therefore under no circumstances be assisted with Community Development Block Grant funds.
- (a) The amount of Community Development Block Grant assistance exceeds \$35,000 per full-time equivalent permanent job created.
  - (b) General promotion of the community as a whole.
  - (c) Assistance to professional sports teams.
  - (d) Assistance to privately-owned recreational facilities that serve a predominately higher income clientele, where the recreational benefit to users or members clearly outweighs employment or other benefits to low- and moderate-income persons.
  - (e) Assistance to privately-owned retail establishments, where there is no benefit to employment or other benefits to low- and moderate-income persons.

- (f) Acquisition of land for which no specific use has been determined.
  - (g) Assistance to a for-profit business while that business or any other business owned by the same person(s) or entity(ies) is the subject of unresolved findings of noncompliance relating to previous Community Development Block Grant assistance provided.
- (7) If after the Sub-recipient enters into a contract/commitment to provide assistance to a project, the scope or the financial elements of the project change significantly or to the extent that a contract amendment is necessary, the project must be re-evaluated.
- (8) The Sub-recipient shall maintain sufficient records to demonstrate the level of public benefit based on the above standards that is actually achieved upon completion of the Community Development Block Grant assisted “RLF” activity and how that compares to the level of such benefit anticipated when the Community Development Block Grant assistance was obligated. This information shall be included in the quarterly updates provided to the Grantee.
- (9) The Sub-recipient shall identify and obtain loan collateral, or other appropriate forms of loan security, sufficient to reduce the financial risk associated with each Community Development Block Grant funded loan, consistent with the program intent of providing financing in situations where adequate conventional financing is not available.
- (B) Loan Review Committee. The Sub-recipient shall establish and maintain a Loan Review Committee consisting at a minimum of a representative of the Sub-recipient, two representatives of the Grantee (subject to the Grantee’s designation of such representatives and which may include, at the Grantee’s option, one representative of the Department of Community Development), and three representatives of local financial institutions. The Loan Review Committee shall review all loan recommendations forwarded to it by staff of the Sub-recipient. No loan will be made under the “RLF” program without the approval of a majority of the members of the Loan Review Committee.
- (C) Loan Closings and Disbursements. Upon the approval of an “RLF” loan by

the Sub-recipient's Board of Directors, the Sub-recipient may, if it has insufficient CDBG funds on hand to fund the loan, request a draw of CDBG funds from the Grantee. Such requests shall be delivered to the Grantee a minimum of fifteen business days prior to the anticipated loan disbursement date. The Sub-recipient shall procure and maintain appropriate documentation of all project costs prior to disbursing CDBG funds, and the loan documents executed with loan recipients shall include explicit provisions in that regard.

- (D) Loan Servicing and Portfolio Management. The Sub-recipient shall establish and maintain a consistent method for recording monthly payments, maintain up-to-date ledgers, and perform timely reconciliations (at least monthly). The Sub-recipient shall establish a system to monitor the financial health of ventures funded in order to anticipate repayment problems. The Sub-recipient will apply its policies and procedures regarding late payments, defaults, loan re-negotiation and foreclosure in a timely and consistent manner.
- (E) Monitoring and Enforcement of Employment Covenants. The Sub-recipient shall monitor loan recipients to assess their progress in creating jobs for low and moderate income persons, and will institute default and foreclosure of the loan (with penalties if appropriate) in instances where the loan recipient fails to take sufficient action to satisfy the Community Development Block Grant and National Objective regulatory requirement(s). The Sub-recipient shall include in the "RLF" loan documents appropriate requirements for the borrower's employment and related reporting obligations.
- (F) Management of Program Income. Any CDBG Program Income generated in connection with the "RLF" program, including loan repayments, recaptures or proceedings from foreclosure, will be utilized consistent with the regulations of the Community Development Block Grant program including National Objective requirements. The Sub-recipient shall apply this Program Income only toward additional loans under the economic development loan program. The Sub-recipient acknowledges the Grantee's rights and responsibilities in enforcing the CDBG regulations pertaining to the Sub-recipient's use of CDBG Program Income including the recapture of funds.
- (G) Maintenance of Records: In addition to the financial records regarding loan repayment cited above, the Sub-recipient will maintain sufficient records to fully document the following for each loan for a minimum period of four

(4) years after the expiration of this Agreement:

- (1) The loan application and underwriting review, including front-end assessment of Community Development Block Grant eligibility and appropriateness of the loan;
- (2) The final terms and conditions of the loan, including collateral or other forms of loan security; and
- (3) Satisfaction of the Community Development Block Grant National Objective consistent with the requirements of the federal CDBG program.

### **Section 12 - General Conditions:**

The Subrecipient hereby certifies that the activities carried out with Community Development Block Grant funds provided under this Agreement will meet the Community Development Block Grant program's National Objective of principally benefitting low and moderate income persons by the creation and/or retention of jobs, the majority of which will be held by or made available to low and moderate income persons.

General Compliance. The Sub-recipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)). The Sub-recipient agrees to comply with all other applicable Federal, state, and local laws, regulations and policies governing the funds provided under this Agreement. The Sub-recipient agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

Independent Contractor. Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Sub-recipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers Compensation Insurance on behalf of the Sub-recipient.

Hold Harmless. The Sub-recipient shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Sub-recipient's performance or nonperformance of the services or subject matter called for in this Agreement.

Insurance and Bonding. The Sub-recipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage and as a minimum shall purchase a blanket fidelity bond covering all of its employees in an amount at least equal to cash advances from the Grantee. The Sub-recipient shall comply with the bonding and

insurance requirements of Attachment B of OMB Circular A-110, Bonding and Insurance.

### **Section 13 – Grantor Recognition**

The Sub-recipient shall ensure recognition of the role of the United States Department of Housing and Urban Development (HUD), the Grantee (Town of Hamburg) and the town's Department of Community Development in providing services pursuant to this Agreement. All activities, facilities, items utilized pursuant to this contract, "RLF" forms/applications, any/all brochures and any advertising shall be prominently labeled as to funding source. In addition, the Sub-recipient shall include a reference to the support provided herein in all of its "RLF" publications.

#### (A) Funding Source:

All funding for the "RLF" program comes to the Sub-recipient from the federal Community Development Block Grant (CDBG) program funds issued through the Town of Hamburg and its Department of Community Development.

### **Section 14 - Amendments to Program:**

The Grantee or Sub-recipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, are executed in writing, are signed by a duly authorized representative of both organizations, and are approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Sub-recipient from its obligations under this Agreement. Any such amendment to this Agreement that specifically addresses changes to the federal CDBG portion of this Agreement may not be in excess of the amount listed under the Grantee's Citizen Participation Plan for the appropriate year, in this case the 2015 program year. If changes in excess of the amount listed within the Grantees Citizen Participation Plan are to be made to the program, specific public hearing and comment periods are to be adhered to as outlined within the Grantees Citizen Participation Plan which is attached to this Agreement as Exhibit "A".

- (A) The Grantee may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both the Grantee and the Sub-recipient.

**Section 15 - Suspension or Termination:**

Either party may terminate this contract at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least fifteen (15) days before the effective date of such termination. In the event of any termination for convenience, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the Sub-recipient under this agreement shall, at the option of the Grantee, become the property of the Grantee. The Grantee may also suspend or terminate this Agreement, in whole or in part, if the Sub-recipient materially fails to comply with any term of this Agreement, or with any of the rules, regulations or provisions referred to herein; and the Grantee may declare the Sub-recipient ineligible for any further participation in the Grantee's contracts, in addition to other remedies as provided by law. In the event there is probable cause to believe the Sub-recipient is in noncompliance with any applicable rules or regulations, the Grantee may revoke and recapture said contract funds until such time as the Sub-recipient is found to be in compliance by the Grantee, or is otherwise adjudicated to the compliance. Immediately upon any program termination, all Community Development Block Grant funds listed under Section 8 "Budget" shall revert back to the Grantee, the Town of Hamburg, through its Department of Community Development. In addition, all Program Income and all accounts receivable attributable to the use of Community Development Block Grant funds shall also immediately revert back to the Grantee, the Town of Hamburg, through its Department of Community Development.

**Section 16 - Administrative Requirements:**

(A) Financial Management

- (1) Accounting Standards. The Sub-recipient agrees to comply with Attachment F of OMB Circular A-110 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.
- (2) Cost Principles. The Sub-recipient shall administer its program in conformance with OMB Circular A-122, "Cost Principles for Non-Profit Organizations".

(B) Documentation and Record Keeping

- (1) Records to be Maintained. The Sub-recipient shall maintain all records required by the Federal regulations specified in 24 CFR Part 570.506 that are pertinent to the activities to be funded under this

Agreement. Such records shall include but not be limited to:

- (a) Records providing a full description of each activity undertaken.
  - (b) Records demonstrating that each activity undertaken meets the National Objective of the CDBG program as outlined in I; C, 1.
  - (C) Records required to determine the eligibility of activities.
  - (d) Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance.
  - (e) Records documenting compliance with the fair housing and equal opportunity components of the CDBG program.
  - (f) Financial records as required by 24 CFR Part 570.502, and OMB Circular A-110.
  - (g) Other records necessary to document compliance with Subpart K of 24 CFR 570.
- (2) Retention of Records. The Sub-recipient shall retain all records pertinent to expenditures incurred under this contract for a period of four (4) years after the termination of all activities funded under this Agreement. Records for any displaced person must be kept for four (4) years after he/she has received final payment. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four year period, whichever occurs later.
- (a) Client Data. The Sub-recipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to the Grantee or its designees for review upon request.

- (b) Disclosure. The Sub-recipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Sub-recipient's responsibilities with respect to services provided under this contract, is prohibited unless written consent is obtained from both the Grantee and such person or business receiving service and, in the case of a minor, that of a responsible parent/guardian.
- (c) Property Records. The Sub-recipient shall maintain real property inventory records which clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform with the "changes in use" restrictions specified in 24 CFR Parts 570.503(b)(8), as applicable.
- (d) Close-Outs. The Sub-recipient obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, Program Income balances, and accounts receivable to the Grantee), and determining the custodianship of records.
- (e) Audits and Inspections. All Sub-recipient records with respect to any matters covered by this Agreement shall be made available to the Grantee, HUD, their designees or the Federal Government, at any time during normal business hours, as often as the Grantee or HUD deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Sub-recipient within 30 days after receipt by the Sub-recipient. Failure of the Sub-recipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholdings or withdrawal of future payments. The Sub-recipient hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning Sub-recipient audits and, as applicable, under OMB Circular A-133.

(3) Reporting and Payment Procedures

- (a) Program Income. The Sub-recipient shall report monthly all Program Income generated by activities carried out with CDBG funds made available under this contract. The Sub-recipient may use such income during the contract period for activities permitted under this Agreement and shall reduce requests for additional funds by the amount of any such Program Income balance on hand program. All unused Program Income shall be returned to the Grantee at the end of the contract period unless a written agreement between both parties for extension of this agreement has been executed. Any interest earned on cash advances from the US Treasury is not Program Income and shall be remitted promptly to the Grantee. The Sub-recipient acknowledges the Grantee's right and responsibility in enforcing the regulations pertaining to the CDBG program including the recapture of funds provided in this agreement for reasons listed above.
- (b) Payment Procedures (Line of Credit, if applicable). The Grantee will pay to the Sub-recipient funds available under this contract based upon information submitted by The Sub-recipient and consistent with any approved budget and Grantee policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Sub-recipient, and not to exceed actual cash requirements. Payments will be adjusted by the Grantee in accordance with advance fund and Program Income balances available in Sub-recipient accounts. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Sub-recipient. All payment requests shall be submitted to the Grantee a minimum of fifteen business days in advance of use.
- (4) Procurement. The Sub-recipient shall procure all services paid for in whole or in part with CDBG funds in accordance with the requirements of Attachment O of OMB Circular A-110, Procurement Standards, and shall subsequently follow Attachment N, Property Management Standards as modified

by 24 CFR 570.502 (b)(6), covering utilization and disposal of property.

**Section 17 - Relocation, Real Property Acquisition and One-For-One Housing Replacement:**

(b) requirements of 24 CFR 570.606c) governing the Residential Antidisplacement and Relocation Assistance Plan under Section 104(d) of the HCD Act; and c) the requirements in 570.606(d) governing optional relocation policies. The Sub-recipient shall provide relocation assistance to persons (families, individuals, businesses, nonprofit organizations and farms) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. The Sub-recipient also agrees to comply with applicable Grantee ordinances, resolutions and policies concerning the displacement of persons from their residence.

**Section 18 - Federal Requirements:**

The Sub-recipient agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with the Executive Order 11246 as amended by Executive Orders 11375 and 12086.

**The Sub-recipient will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, marital status, disability, national origin, source of income, sexual orientation or marital/familial status.**

- (A) This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-

352) and 24 CFR 570.601 and 602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, The Sub-recipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The Sub-recipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

- (B) The Sub-recipient agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706), which prohibits discrimination against the handicapped in any Federally assisted program. The Grantee shall provide the Sub-recipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this contract.
- (C) The Sub-recipient will use its best efforts to afford minority- and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the term "minority and female business enterprise" means a business at least fifty-one

(51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Sub-recipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

- (D) With respect to the provisions of this Section 18, the Sub-recipient shall furnish and cause each of its subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.
- (E) The Sub-recipient will, in all solicitations or advertisements for employees placed by or on behalf of the Sub-recipient, state that it is an Equal Opportunity or Affirmative Action employer.
- (F) The Sub-recipient will include the provisions of this Section 18 in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subcontractors.
- (G) The Sub-recipient is prohibited from using funds provided herein for political activities; sectarian or religious activities; lobbying; political patronage, salaries or bonuses and nepotism activities.
- (H) The Sub-recipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act, the Copeland "Anti-Kickback" Act (40 U.S.C. 276A-276a-5;40 USC 327 and 40 USC 276c) and all other applicable Federal, state and local laws and regulations

pertaining to labor standards insofar as those acts apply to the performance of this contract. The Sub-recipient shall maintain documentation which demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request. The Sub-recipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the Grantee pertaining under 29 CFR Parts 1,3,5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided, that if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Sub-recipient of its obligation, if any, to require payment of the higher wage. The Sub-recipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

- (I) The Sub-recipient agrees to include the following language in all construction contracts executed under this Agreement: "The work to be performed under this contract is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low-income residents of the project area and contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low and very low income persons residing in the metropolitan area in which the project is located."
- (J) The Sub-recipient shall not assign or transfer any interest in this contract without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Sub-recipient from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.
- (K) The Sub-recipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Grantee prior to the execution of such agreement.
- (L) The Sub-recipient will monitor all subcontracted services on a regular basis

to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

- (M) The Sub-recipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.
- (N) The Sub-recipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis.
- (O) The Sub-recipient agrees that no funds provided, nor personnel employed under this contract, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.
- (P) The Sub-recipient agrees to abide by the provisions of 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Sub-recipient further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by the Sub-recipient hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the Grantee, or of any designated public agencies or Sub-recipient which are receiving funds under the CDBG Entitlement program.
- (Q) The Sub-recipient hereby certifies that:
  - (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal Loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - (2) If any funds other than Federal appropriated funds have been paid

or will be paid to any person for influencing or attempting to influence an office or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

- (3) It will require that the language of paragraph (d) of this certification be included in the award documents for all sub-awards at all tier (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all Sub-recipient shall certify and disclose accordingly; and
  - (4) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- (R) If this contract results in any copyrightable material or inventions, the Grantee and/or Grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and authorize others to use, the work for government purposes.
  - (S) The Sub-recipient agrees that funds provided under this contract will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with the Federal regulations specified in 24 CFR 570.200 (j).

**Section 19 - Environmental Conditions:** For each loan generated, the Sub-recipient shall provide to the Grantee, a detailed description of the loan which shall include: The name and address of the loan recipient and sufficient detail regarding the nature of the project to be assisted with loan funds to allow the Grantee to perform the requisite NEPA and SEQRA reviews (including any pictures of the property to be purchased or any equipment to be purchased). Such information shall be provided to the Grantee prior to the final loan approval by the Sub-recipient so as to provide the Grantee sufficient time to complete the required environmental reviews.

A) It is required that all environmental reviews be completed prior to any funding being given to any loan recipient. Failure to provide the Grantee with the specific, required environmental information shall be grounds for program suspension and/or termination.

(B) The Sub-recipient agrees to comply with the following requirements insofar as they apply to the performance of this contract:

- (1) Clean Air Act, 42 U.S.C., 7401, et seq.
- (2) Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- (3) Environmental Protection Agency (EPA) regulations pursuant to 40 C.F.R., Part 50, as amended.

(C) In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC 4001), the Sub-recipient shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for any and all projects.

- (1) Project location information shall be provided to the Grantee prior to any funding being given to any loan recipient. Failure to provide the Grantee with the specific, required site information shall be grounds for program suspension and/or termination. Such information shall be provided to the Grantee prior to the final loan approval by the Sub-recipient so as to provide the Grantee sufficient time to complete the required reviews.
  
- (D) The Sub-recipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR, Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this contract. Such information shall be provided to the Grantee prior to the final loan approval by the Sub-recipient so as to provide the Grantee sufficient time to complete the required reviews. (In general, this review process requires concurrence from the New York State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on any federal, state, or local historic property list.

**Section 20 - Severability:** If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected. Thus, all other parts of this Agreement shall nevertheless be in full force and effect. In addition, regulations pertaining to the federal CDBG program shall take precedence over any other citations within this Agreement.

In Witness Whereof, the Parties have executed this contract as of the date first written above.

Town of Hamburg, New York

By: \_\_\_\_\_ James M. Shaw; Supervisor

\_\_\_\_\_

By: Christopher Hull; Director of Community Development

\_\_\_\_\_

STATE OF NEW YORK  
COUNTY OF ERIE SS:

On the \_\_\_\_ day of \_\_\_\_\_, in the year 2018, before me, the undersigned, a notary public in and for said state, personally appeared James M. Shaw personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_

Notary Public

STATE OF NEW  
YORK COUNTY  
OF ERIE SS:

On the \_\_\_\_ day of \_\_\_\_\_, in the year 2018, before me, the undersigned, a notary public in and for said state, personally appeared Christopher Hull, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_

Notary Public

Hamburg New York Development Corporation:

By: \_\_\_\_\_ Heather Sidorowicz; President

\_\_\_\_\_

By: \_\_\_\_\_ Sean Doyle; Executive Director

\_\_\_\_\_

STATE OF  
NEW  
YORK  
COUNTY  
OF ERIE

SS:

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2018, before me, the undersigned, a notary public in and for said state, personally appeared Heather Sidorowicz, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_

Notary Public

STATE OF  
NEW  
YORK  
COUNTY  
OF ERIE

SS:

On the \_\_\_\_ day of \_\_\_\_\_, in the year 2018, before me, the undersigned, a notary public in and for said state, personally appeared Sean Doyle, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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Notary Public

**24.**

On a motion of Councilman Best, seconded by Councilman Farrell, the following resolution was

ADOPTED                   Ayes   5           Shaw, Best, Farrell, Mosey, Petrie  
                                  Noes   0

**WHEREAS**, The Town of Hamburg (Town” or “Employer”) and Police Chief Gregory Wickett (“Chief”) are parties to a certain Agreement between the Town and the Chief dated April 1, 2015, which covers the calendar years January 1, 2015 through December 31, 2017; and

**WHEREAS**, said Agreement provides that the Town may opt to extend said Agreement for an additional 3 years and

**WHEREAS**, the Town and the Chief have reached an additional Agreement with respect to the Chief’s continued employment with the Town through calendar year 2020; and

**NOW THEREFORE BE IT RESOLVED**, the Town Board of the Town of Hamburg authorizes the Supervisor to execute the attached Addendum to the April 1, 2015 Agreement modifying and extending said Agreement through December 31, 2020.



**25.**

On a motion of Supervisor Shaw, seconded by Councilman Farrell, to amend resolution #26 was

ADOPTED                   Ayes 5       Shaw, Best, Farrell, Mosey, Petrie  
                                   Noes 0

**RESOLVED**, that Deputy Town Supervisor Best be inserted in place of Town Supervisor. That Highway Superintendent Casey is added to the committee.

**26.**

On a motion of Councilman Farrell, seconded by Councilman Petrie, the following resolution was

ADOPTED                   Ayes 5       Shaw, Best, Farrell, Mosey, Petrie  
                                   Noes 0

**WHEREAS**, the Town of Hamburg is in the eighth year of a ten year contract term with the State of New York Department of Parks and Recreation as it relates to the operation and maintenance of the State Park known as Woodlawn Beach; and

**WHEREAS**, the Town of Hamburg and the State of New York have had initial discussions regarding the renewal of the operating agreement for an additional ten year term; and  
**WHEREAS**, the Parties have informally expressed their intentions to negotiate and conclude an agreement prior to the expiration of the calendar year 2018; and

**NOW THEREFORE BE IT RESOLVED**, that an ad-hoc committee be established to negotiate with the appropriate public officers of the State of New York the terms and conditions of a new ten year contract during the remaining months of the calendar year 2018, and that the committee to negotiate the contract shall consist of the Deputy Town Supervisor Best, the Town Attorney, Councilwoman Farrell, Martin, Denecke, Director of Recreation and Senior Services, and Highway Superintendent Casey; and

**BE IT FURTHER RESOVLED**, that this negotiating group shall report on a regular basis to the Hamburg Town Board as to the status of negotiations and confer with the Town Board as may be appropriate to secure direction and guidance relative to the realization of an agreement prior to the end of the calendar year 2018.

**27.**

On a motion of Councilman Farrell, seconded by Councilman Mosey, the following resolution was

ADOPTED	Ayes	5	Shaw, Best, Farrell, Mosey, Petrie
	Noes	0	

**WHEREAS**, as identified in Section IV of the Town of Hamburg Local Waterfront Revitalization Program (updated 2012), there has been a stated need for a marina facility in the Town of Hamburg. Moreover, the 2010 Comprehensive Plan notes the potential future development of a break wall (creating a protected harbor), fishing docks, and a marina for 200 boat slips.

**WHEREAS**, the Town of Hamburg has authorized and directed EECG Consulting, LLC to complete the necessary grant application materials for a Town of Hamburg Lake Erie Waterfront Revitalization Study to be prepared under the NYS Department of State — Local Waterfront Revitalization Program (LWRP) and submit to them on behalf of the Town of Hamburg; and

**WHEREAS**, the Town of Hamburg Boat Launch at Town Park and surrounding area has been identified as priority for this study due to existing and ongoing dredging expenditures, maintenance costs, and an antiquated structure; and

**WHEREAS**, the Local Waterfront Revitalization Program (LWRP) is a reimbursement program through the NYS Environmental Protection Fund (EPF) and administered by the NYS Department of State. Should the proposed study be approved by the NYS Department of State, NYS Department of State will reimburse the Town of Hamburg for approximately 75% of the total cost of the study,

**BE IT FURTHER RESOLVED**, that the Town Board considers the proposed study to be worthwhile and is in full support of the completion and submission of the grant application and related materials to the NYS Department of State — Local Waterfront Revitalization Program (LWRP).

**28.**

On a motion of Supervisor Shaw, seconded by Councilman Petrie, the following resolution was

ADOPTED	Ayes	5	Shaw, Best, Farrell, Mosey, Petrie
	Noes	0	

**WHEREAS**, the Hamburg Town Code contains and specifies the local laws, and ordinances of the Town of Hamburg; and

**WHEREAS**, the Hamburg Code Review Committee has evaluated these regulations as they relate to issues raised by property owners, business owners and the Building Department; Signage, Plumbing licenses, Mandatory training and allowed uses in the M-2 Light Industrial and M-1 Industrial Park zoning districts; and

**WHEREAS**, the Hamburg Code Review Committee has determined that the revisions need to be made to these Codes and has directed the drafting of amendments to these Codes and has now recommended them to the Town Board, and

**WHEREAS**, pursuant to Municipal Home Rule Law, the Town Board is proposing to enact a local law as follows:

Be it enacted by the Town Board of the Town of Hamburg, New York, that the Hamburg Town Board amends the following sections of the Hamburg Town Code as follows (full copies attached):

Amend Chapter 280 (Zoning), “Article XXXVI. Sign Regulations”.

Amend Chapter 76 (Building Construction and Fire Protection). Section 24.

Amend Chapter 34 (Mandatory Training), Article I

Amend Chapter 280 (Zoning), Article XIX

Amend Chapter 280 (Zoning), Article XVIII

**WHEREAS**, the Town Board would like to start the process of considering these zoning revisions by referring these proposed code revisions to the Hamburg Planning Board and to Erie County in accordance with General Municipal Law section 239-m.

**NOW, THEREFORE, BE IT RESOLVED**, that the Hamburg Town Board authorizes the referral of these amendments to the Hamburg Planning Board and Erie County, and sets a Public Hearing on these proposed amendments at the Hamburg Town Hall, 6100 South Park Avenue, Hamburg, NY at 7:00 pm on September 10, 2018.

## Chapter 280. Zoning

### Article XXXVI. Sign Regulations

#### 280-233. Statement of purpose and legislative intent

The purpose of these sign regulations is to regulate signs of all types in all districts. In the interest of promoting the general health, safety and welfare of the residents of the Town of Hamburg, these regulations are herein established to provide for the placement, location, type and size of signs in a sensible manner. As more specifically set forth herein, the intent of these sign regulations is:

- A. To encourage the effective use of signs as a means of identification and communication;
- B. To maintain an aesthetic environment;
- C. To strengthen Hamburg's ability to attract sources of economic development and growth;
- D. To prohibit the erection of signs in such numbers, sizes, designs and/or locations that may create a hazard to pedestrian and vehicular traffic;
- E. To minimize the possible adverse effect of signs on nearby public and private property;
- F. To promote and maintain attractive residential, commercial and industrial districts by preventing the blighting influence of excessive signage;
- G. To provide reasonable, yet appropriate, conditions for identifying residential developments, institutions, businesses and industrial establishments;
- H. To control the number and size of signs, and to avoid excessive competition for large or multiple signs, so that permitted signs provide adequate identification and direction while minimizing clutter, unsightliness and confusion.

## 280-234. Definitions

### **ABANDONED SIGN**

A sign which for period of ninety consecutive days has not correctly or exhorted any person, advertised a bona fide business, lessor, owner, product, event or activity conducted or product available on the premises where such sign is displayed.

### **ANIMATED SIGN**

Any sign that uses movement or a change of lighting to depict action or create a special effect or scene.

### **AWNING/CANOPY SIGN**

Any sign that is a part of or attached to an awning, canopy, or other fabric, plastic, or structural protective cover over a door, entrance window, or outdoor service area. A marquee is not a canopy.

### **BALLOON/INFLATABLE ADVERTISING SIGN**

Any inflatable self-contained membrane which floats above the ground and possesses an animated shape or character and/or contains any graphics, images and/or displays messages for the purpose of advertising a product, activity or event.

### **BANNER SIGN**

Any sign of light fabric or similar material that is intended to be hung either with or without being mounted to a frame, attached to a pole or building. National flags, or the official flag of any institution or business shall not be considered banners.

### **BEACON**

Any light with one or more beams directed into the atmosphere or directed at one or more points not on the same parcel or lot as the light source; also, any light with one or more beams that rotate or move, commonly referred to as a search light. These beacons are to be used temporarily (not to exceed three calendar days in duration) exclusively for special events, such as grand openings, concerts and other public assembly venues.

### **BILLBOARD SIGN**

Any sign that attracts attention to an object, product, service, place activity, institution, organization or business that is not available or located on the parcel where the sign is located.

### **CHANGEABLE LETTER SIGN**

A sign where the supporting frame or structure is permanent and only the letters, displays

or illustrations are changeable or temporary.

### **DIGITAL SIGN**

An exterior computer programmable sign capable of displaying words, symbols, figures or pictures images that can be altered or rearranged by remote or automatic without altering the face or surface of the sign. Typically, these signs utilize LEDs (or light-emitting diodes), plasma or LCD technology to produce the character and graphic of the display.

### **FREESTANDING SIGN**

Any sign, including a monument sign, supported by structures or foundation supports that are placed on, or anchored in the ground that is independent from any building or other structure. Free standing signs would include pole and ground signs.

### **FLAG/SAIL SIGN**

Any lightweight plastic, fabric, or other material, whether or not containing a message of any kind, supported by a pole designed to move in the wind.

### **INCIDENTAL SIGN**

A sign, generally informational, such as “no parking”, “entrance”, “loading only”, “telephone”, and other similar directives. No sign with a commercial message legible from a position off the lot on which the sign is located shall be considered incidental.

**INSTITUTION SIGN** - a sign displaying the name and/or organization occupying the premises of a public or quasi-public use restricted to: churches or other place of religious worship; fire halls; hospitals; cemeteries governmentally owned and/or operated facilities; Private and publicly operated schools.

### **INSTRUCTIONAL SIGN**

An exterior sign that has a purpose secondary to the use on the lot that is intended to instruct employees, customers, visitors or users as to: specific parking requirements; the location or regulations pertaining to specific activities on the site or in the building; security system advisories; specific services offered; or methods of payments accepted. Examples of instructional signs include: “Honk Horn for Service”; “Restrooms Inside”; “Parking for Customers Only”; “Parking for Residents Only”; menu boards; drive-up tellers; and “self-serve.” No sign with a commercial message legible from a location off the premises on which the sign is located shall be considered an Instructional Sign.

### **INTERNALLY ILLUMINATED SIGN**

Any sign incorporating or electrically supplied light source which illuminates the sign face from within.

**MONUMENT SIGN**

A freestanding sign having a low profile, supported by a solid masonry, wood (or similar material) constructed base with no open space beneath the sign but limited to no more than two feet of open space between the ground and the bottom of sign face. Such signs shall be surrounded by landscaping treatment. Commonly referred to as a ground sign.

**NEON SIGN**

Any sign or design detail which features exposed glass tubing filled with fluorescent gas.

**NONCOMMERCIAL MESSAGE SIGN**

Any sign which provides any message, opinion, view point, either political or religious in nature exercising a persons right to free speech, belief or expression.

**NON-CONFORMING SIGN**

Any sign that does not conform to the requirements of this regulation.

**STATIC NUMERIC DISPLAY** - A digital sign which singular function is only capable of displaying numbers and letters in static mode only. These signs are restricted in operation, limited only to displaying gas/fuel prices at auto services stations, hotel room rates, time /temperature and can only operate for that specified purpose.

**OFF PREMISE SIGN**

A sign which directs attention to a business, product, activity or service which is generally conducted, sold, or offered elsewhere than upon the premises where such sign is located.

**PENNANT/ STREAMERS**

Any lightweight plastic, fabric, or other material, whether or not containing a message of any kind, suspended from a rope, wire, or string, or supported by a pole usually in series designed to move in the wind.

**POLE SIGN**

Any freestanding elevated sign in which the sign face is supported by one or multiple vertical structural columns, poles or posts.

**POLITICAL SIGN**

A temporary non commercial sign advocating action on a public issue, generally indicating support for candidate for public office in advance of an upcoming election.

**PROJECTING SIGN**

Any sign affixed to a building or wall in such matter that its leading edge extends more than twelve inches beyond the surface of such building or wall.

**REAL ESTATE SIGN**

A temporary sign which directs attention to the rental, sale or lease of the property on which the sign is located.

**REQUIRED PUBLIC PURPOSE/SAFETY SIGN**

Any sign, including emergency warning signs and street identification signs, erected by a public authority, utility, public service organization or private industry upon the public right-of-way or on private property which is required by law or otherwise intended to control traffic, direct, identify or inform the public, or provide needed public service as determined by the rules and regulations of governmental agencies or through public policy. Public purpose/safety signs include “No Parking Fire Lane.”

**RESIDENTIAL IDENTIFICATION SIGN** - means a sign identifying the name and address of a completed residential subdivision, a cluster development, or a multi-family development.

**ROOF SIGN**

Any sign erected and constructed wholly on and over the roof, gutter, eave line of a building or structure, and extending vertically above the highest portion of the roof.

**SANDWICH BOARD SIGN**

Any sign which consists of two message boards joined together at the top (usually a hinged connection), commonly referred to as an “A-frame sign”. This type of sign would include any temporary two-sided supported on a base or any temporary sign which functions to display changeable promotional message for a single business establishment.

**SIGN**

Any letters, figures, design, symbol, trademark or illuminating device intended to attract attention to any place, subject, person, firm, corporation, public performance, article, machine or merchandise whatsoever and printed or constructed and displayed in any manner whatsoever out of doors for advertising purposes. However, this shall not include any governmental, court or public notices nor the flag, emblem or insignia of a government, school or religious group when displayed for official purposes.

**SIGN FACE AREA**

The entire area within the single, continuous perimeter enclosing the extreme limits of the written representation, emblem or figure or similar character, together with any material or color forming an integral part of the display or used to differentiate such sign from the background against which it is placed. The supports, uprights or structures on which sign is supported shall not be included in determining the sign area unless such supports, uprights or structures are designed in such a manner as to form an integral part of the

display.(**DELETE**) Where a sign has two or more faces, the area of all faces shall be the area of the sign.

**STATIC NUMERIC DISPLAY** - A digital sign which singular function is only capable of displaying numbers and letters in static mode only. These signs are restricted in operation, limited only to displaying gas/fuel prices at auto services stations, hotel room rates, time /temperature and can only operate for that specified purpose.

**TEMPORARY PROMOTIONAL SIGN**

A temporary sign of any type (other than a construction, political, or real estate sign) intended to announce special events, promotions or sales, including garage and estate sales in residential districts.

**TEMPORARY SIGN**

Any Sign, including a portable sign, which is intended to be displayed for a limited time only. Such signs include construction, political, real estate and temporary promotional signs.

**WALL SIGNS**

Any sign attached parallel to, but within twelve inches of, a wall, painted on the wall surface of, or erected and confined within the limits of an outside wall of any building or structure, which is supported by such wall or building, and which displays only one sign surface.

**WINDOW SIGN**

Any sign, pictures, symbol, or combination thereof, designed to communicate information about an activity, business, commodity, event, sale, or service, that is placed inside a window or upon the window panes or glass and is visible from the exterior of the window.

**280-235. General Regulations**

- A. No sign may be erected, placed, established, painted, created, or maintained in the Town of Hamburg except in conformance with the standards, procedures, exemptions, and other requirements of this Chapter. (Reference Code Section 280-276. Visibility at intersections and Code Section 280-278. D. Sight obstructions.)
- B. Except as otherwise provided herein, it shall be unlawful for any person to erect, construct, enlarge, move or convert any sign in the Town of Hamburg, or cause the same to be done, without first obtaining a sign permit for each such sign unless otherwise deemed an unregulated sign.

- C. All signs must be set back so that every part of the sign and any supporting structure is no closer than 10 feet to the road or street right-of-way or property lines.
- D. All signs shall be maintained in good structural condition, in compliance with all building and electrical codes, in a neat, clean, and attractive condition, and in conformance with this code, at all times. A sign in good repair shall be free of peeling or faded paint, shall not show uneven soiling or rust streaks; shall not have chipped, cracked, broken or bent letters, panels or framing; shall not otherwise show deterioration.
- E. No sign may contain or consist of flags, banners, pennants, ribbons, streamers, strings of light bulbs, spinners or other similar moving devices. These devices when not part of any sign are similarly prohibited unless they are permitted specifically by other local law.
- F. No animated, flashing, rotating, noise making, reflecting, mirrored or intermittently illuminated signs shall be permitted to be erected, except for Required Public Purpose/Safety Signs.
- G. Illuminated signs shall be so designated and arranged that any external illuminations is so effectively shielded that no direct rays of light are cast into surrounding residential areas or public streets. No exposed reflective type bulb or incandescent lamp which exceeds 15 watts shall be used on the exterior surface of any sign so as to expose the face of the bulb, light or lamp to any public street or adjacent property.
- H. The following operational restrictions and regulations apply to all permitted Digital Signs (Institutional) and Digital Signs which existed prior to the adoption of these regulations:
  - (1) Operational limitations. Such displays shall be limited to stationary displays. The frequency and method by which messages/graphics that appear or disappear from the display is to be regulated. Special effects or operational modes such as scroll, travel and spinning actions or the use of similar transitions and frame effects that have text, graphics or images that appear to move or change in size, or are revealed sequentially rather than all at once, are prohibited.

- (2) Full animation, flashing or video display is expressly prohibited,
- (3) Minimum display time, Each message, graphic or image on the sign must be displayed for a minimum of ten seconds.
- (4) Existing billboards, posters and bulletins that have been previously approved by the Town are allowed to be converted to digital messaging, provided they fully comply with the requirements as provided in this chapter.
- (5) All existing and new electronic variable message signs require an annual license fee to defray the Town's cost to monitor and regulate their operational mode in accordance with the provisions of this chapter. The cost of this fee shall be established as deemed appropriate through approval of Town Board resolutions.

I. Only two numeric signs are allowed per parcel. The character height of numbers or letters contained in these sign types cannot exceed 18 inches.

J. Nonconforming Signs.

- (1) Nonconforming signs existing at the time of the Adoption of this article which do not conform to the requirements in this article shall be considered nonconforming signs and shall only be replaced with signs that fully comply with the provisions of this article; provided however nonconforming signs may be maintained, repainted or repaired, such repair solely in conjunction with incurrence of damage or deterioration of the sign and provided that such repainting or repairs do not exceed the dimensions of the existing sign. Exception: The compliant replacement sign can be placed in the same exact location as the existing nonconforming sign if it has been determined that it does not create a hazard.
- (2) A nonconforming sign shall not be enlarged or replaced by another nonconforming sign. Any change in use of the business or activity for which the nonconforming sign was intended shall require that the sign be brought into full conformance to this article. The replacement of a sign face will require permit in order to insure that the entire sign is brought into compliance with the current regulations.

- K. Any sign that becomes abandoned or is located on a property which becomes vacant or relates to a business no longer operating on the property, or any sign which pertains to a time, event or purpose which no longer applies, shall be deemed abandoned (see definitions, “abandoned sign”) and be removed in its entirety, including all sign structure and supporting members, by the owner of the sign or the owner of the premises.

### **280-236. Prohibited signs**

All signs as listed are expressly prohibited and under no circumstances will not qualify for a permit in the Town of Hamburg. The following listed signs are considered unlawful and will be considered a violation subject to enforcement action as deemed necessary by the Town. Such signs include, but are not limited to:

- A. Roof Signs
- B. Off-Premise Signs
- C. Pole Signs
- D. Animated or Rotating Signs, except required public purpose/safety signs.
- E. Billboard Signs
- F. Banners, Pennant, Sail/flag, and/or Portable Signs, except as temporary signs in accordance with this Article.
- G. Balloon/Inflatable Advertising Sign.
- H. Any sign or part thereof on a vehicle or trailer parked on a public-right-of-way, public property or on private property so as to be intended to be viewed from a motorized vehicular public right-of-way, which has for its basic purpose the providing of an advertisement of products or directing people to a business or activity located on the same or nearby property or any other premises. This subsection is not intended to prohibit any form of vehicular signage, such as a sign attached to a bus or lettered on a motor vehicle or signs that are part of a vehicle such as a construction trailer, whose primary purpose is not advertising to the public-right-of-way.
- I. Any sign erected or maintained which might be confused with any traffic control device or which might interfere with the vision or discernment of any traffic sign or which might cause danger to public travel, including

any sign which make use of words such as “Stop”, “Look”, “One Way”, “Danger”, “Yield”, or similar words, phrases, symbols, lights or characters in such a manner as to interfere with, mislead or confuse traffic.

- J. Strings of lights not permanently mounted to a rigid background, except those exempt under this Article.
- K. Inflatable signs and tethered balloons.
- L. Abandoned signs.
- M. Neon signs outside of fiber-optic signage or any use of neon to outline or highlight a structure except within storefront windows.
- N. Any sign painted on or attached to a fence.
- O. Any sign attached or installed on an utility pole, (including light pole) or affixed to the existing supporting sign structure (pole or structural support intended for a permitted sign).
- P. Any sign attached or suspended from a tree.

### **280-237. Signs exempt from regulation under this chapter**

The following signs shall be exempt from regulation under this Chapter and as such do not require a permit.

- A. Any non-illuminated Noncommercial sign placed within the front yard on an occupied property and not exceeding eight square feet in area and not exceeding six feet higher than the surrounding grade.
- B. Any public notice or warning required by a valid and applicable federal, state, or local law, regulation, or ordinance.
- C. Any sign inside a building, not attached to a window or door, that is not visible from any exterior perspective.
- D. Any New York State inspection station identification sign or New York State authorized repair shop identification sign which is at a height which does not exceed 10 feet and is located on an exterior or interior wall of the motor vehicle service station.

- E. Traffic control signs on private property, such as "Stop", "Yield", and similar signs, the face of which meet Department of Transportation standards and which contain no commercial message of any sort.
- F. Private Sale , Rental or Lease Signs, when posted not more than 7 days before a sale, and removed within 7 days thereafter, and which sales may occur at any particular residence no more than 3 times a year.
- G. Open/closed business signs which do not exceed two square feet.
- H. Official public information signs, memorial signs, building names, erection dates or similar information cut into masonry or other permanent surface or constructed of bronze or other combustible material, not to exceed 16 square feet.
- I. Signs and markers in cemeteries designating graves and memorials
- J. On-site farm stand signs that do not exceed 16 square feet in size, 32 square feet cumulatively for all signs for any one property.
- K. Beacons
- L. Historical site markers
- M. No-trespassing signs and Posted (no hunting, fishing and trapping) signs, provided the signs do not exceed two square feet in area per sign.
- N. Street number identification plates
- O. Vacancy/no vacancy signs which do not exceed three square feet.

### **280-238. Temporary Signs**

The following temporary signs are not allowed in a right-of-way, but are allowed on private property without a sign permit. All temporary signs not specifically listed in this chapter do require a sign permit.

- A. Special event sign: A temporary sign not exceeding forty (40) square feet in area is permitted specifically for the advertisement of special events only on private property locations. Only one such sign is allowed per lot and cannot be placed within any public right of way or obstruct visibility.

A temporary sign permit is required. The temporary sign permit expires within 45 calendar days and cannot be renewed for another 90 calendar days.

- B. **Construction Signs:** Signs which identify the architects, engineers, contractors and other individuals or firms involved with the construction and/or the purpose for which the building is intended. One temporary construction sign shall be allowed per lot, and such sign shall not exceed a maximum area of 16 square feet. The sign shall be confined to the site of the construction and shall be removed within 14 days of completion of the project.
- C. **Political Signs:** Nonilluminated political signs, which shall not be located on any public property, shall not be erected more than thirty calendar days prior to the election (or primary event) and must be removed within five days after the election or primary. Any political election sign attached to a building shall not exceed eight square feet in area and shall be attached only to the front wall of the principal building of an occupied premises. Any detached, freestanding political election sign shall not exceed eight square feet in area, shall be erected only in the front setback area of occupied premises and shall be at least ten feet from any property line or street line.
- D. **Real Estate Signs:** Signs advertising the sale, rental, or lease of the premises or part of the premises on which the signs are displayed, up to a total area of 8 square feet in residential and 16 square feet in commercial and industrial zones. Such signs shall be removed within 14 days of the sale, rental or lease. No off-premises signs advertising the sale, rental or lease of property are permitted in any zone. Directional signs for an open house occurring for a limited period of time are permitted off-premise provided that maximum sign area shall not exceed 8 square feet
- E. **Business “Grand” Opening Signs (commercial districts only):** Signs, which may include fabric banners, temporarily attached to the front wall or windows of a building, announcing the opening of a completely new enterprise or the re-opening under new management of the business operating within. Business opening signs may be of any size that does not extend beyond the horizontal or vertical limits of the front wall of the building or, in the case of buildings housing more than one business, of that portion of the building occupied by the new business. Business opening signs shall not be displayed for a period no longer than 30 days

- F. **Temporary Business/Identification Signs:** These signs shall be authorized on individual private commercial properties, when, in the judgement of the Building Enforcement Officer, operation of existing businesses on such properties are temporarily disadvantaged during road construction or sewer and water main installation, and/or public maintenance projects. A business is considered to be temporarily disadvantaged when such construction is taking place at the time of application within 1000 feet of the lot upon which the business is located. However, no such sign shall be erected until a permit specifying the period of authorization has been obtained from the Code Enforcement Officer. In no case shall a temporary sign exceed a width of three feet and height above ground level of six feet. With reference to businesses located within shopping centers, consisting of eight or more businesses/tenants, one sign directing entrance into the shopping center will be allowed, but individual sign for each business within the center will not be allowed.
- G. **NO TEMPORARY SIGNS, AS ALLOWED UNDER THIS SECTION, SHALL BE ELECTRIFIED** (ie., illuminated, etc.)

### **280-239. Signs allowed in Residential Districts.**

The following regulations apply to all signage located in within Residential districts. These districts include: R-A, R-E, R-1, R-2, R-3, R-4, PRD and residential portions of PUD. The following non-illuminated signs are allowed without a permit unless otherwise noted:

- A. Noncommercial signs, in accordance with the regulations of this Article.
- B. Temporary signs, in accordance with the regulations of this Article. Temporary signs located in Residential Districts shall be no larger than 8 square feet and not exceed 4 feet in height.
- C. Nameplate signs for professional occupations not exceeding 4 square feet.
- D. House number signs in accordance with New York codes of sufficient size to allow identification from the street (and which may be illuminated by customary outdoor household illumination), which are on the dwelling, a sign post not exceeding 5 feet in height or mailbox, but no numbers painted on rocks shall be allowed.
- E. Residential subdivision identification (temporary): A freestanding sign to be temporary in nature, to be removed within 14 days after the last lot in a subdivision is sold, no larger than 16 square feet, one per subdivision entrance, not exceeding six feet in height for freestanding. Wall signs are not allowed for

this type of sign.

- F. Residential subdivision identification (permanent): A landscaped, permanent monument sign no greater than 6 feet in height, no larger than 16 square feet, to be approved by the Planning Board, one sign per subdivision entrance (a permit is required).

Wall signs are not allowed for this type of sign. No permanent Residential Subdivision Identification Sign shall be built unless the applicant provides to the Town proof that said sign will be maintained in perpetuity by a homeowners association, and which maintenance requirement shall be evidenced by a recorded restrictive covenant granting the Town the power to assess the property owners in the subdivision for any maintenance costs incurred if the association, after an opportunity to cure and public hearing, does not maintain said sign in good repair.

- G. Institutional Signs: A landscaped, permanent monument sign no greater than 6 feet in height, no larger than 40 square feet on properties is permitted on a lot with a minimum of 200 feet of frontage on public right of way (a permit is required).

- H. Institutional wall sign requirements:

- (1) Wall signs shall be attached to or incorporated in the building wall. Such signs shall have:
- (a) An aggregate area not in excess of 5% of the area of the building front to which such signs are affixed, not to exceed 50 square feet in area.

## **280-240. Signs allowed in Commercial and Industrial Districts.**

The following regulations apply to business signs in C or M Districts. These districts include NC, C-1, C-2, C-3, HC, WC, M-1, M-2, M-3 and commercial signs in PUD. Unless otherwise noted all signs listed in this Chapter require a sign permit.

- A. A wall sign is permitted for each establishment on each side of a building fronting a public street or containing a public entrance, except on a side facing onto a contiguous R District.
- B. Wall sign requirements:
- (1) Wall signs shall be attached to or incorporated in the building wall. Such

signs shall have:

- (a) An aggregate area not in excess of 10% of the area of the building front to which such signs are affixed, not to exceed 120 square feet in area.
  - (b) A maximum width of 75% of the building wall's horizontal measurement, except that, where such horizontal measurement is 20 feet or less, the maximum width may be 90% of such measurement.
- (2) Wall signs shall not:
- (a) Extend more than two feet above top of the parapet or eave of building.
  - (b) Extend more than one foot beyond the wall to which it is attached.
- C. Projecting signs. Projecting signs shall not:
- (1) Exceed 20 square feet in area.
  - (2) Project into a public right-of-way
  - (3) Extend more than five feet from a building wall
  - (4) Extend more than 18 feet above ground level
  - (5) Be less than nine feet above ground level
- D. At the entrance to business establishments above the first floor, the nameplates of such establishments may be mounted flat at the side of such entrances, and the size shall not exceed two (2) square feet in area.
- E. A monument sign may be permitted where it has been confirmed that the following conditions are met :
- (1) The principal building to which said monument sign is accessory thereto is set back from the street line a distance in excess of 40 feet.
  - (2) The property has a minimum of 200 feet of frontage along a public right of way. (Exception: the minimum frontage requirement is waived to allow monument sign to replace an existing nonconforming pole sign.)

- F. Such monument signs shall:
- (1) Be located no closer than five feet from the front property line and be no less than 20 feet from any other property line.
  - (2) Have a maximum area of 40 square feet.
  - (3) Have a height no greater than 8 feet measured from the top of the sign to the highest grade surrounding the sign.
  - (4) Have landscaping treatment immediately surrounding the sign subject to Town review and approval.
- G. No commercial sign within 100 feet of any R District boundary shall have a surface area larger than twenty square feet.
- H. In community and regional shopping centers, monument signs, shall be permitted at the entrance or entrances to such shopping center and shall not be larger than 100 square feet of total area or exceed 12 feet in height. Such monument signs shall designate only the name of the shopping center and may include a theater panel listing current attractions and advertising of public affairs or public events in the community.
- J. Sandwich board signs shall not be greater than nine square feet, shall not be taller than three feet from the ground to the top of the sign and shall not be wider than three feet. Only one such sign shall be allowed per business or enterprise. No such sign shall be permitted in a public right-of-way area unless the applicant seeking to display the sign has filed with the Town of Hamburg Code Enforcement Department an indemnification and hold harmless agreement in a form acceptable to the Town. All existing and new sandwich board signs require an annual license fee to defray the Town's cost to monitor and regulate their use in accordance with the provisions of this chapter. The cost of this fee shall be established as deemed appropriate through approval of Town Board Resolution.
- K. Institutional Sign: A landscaped, permanent monument sign no greater than 8 feet in height, no larger than 40 square feet is permitted on a lot with a minimum of 200 feet of frontage on public right of way.

**280-241. Permit procedures for signs.**

- A. Application: An application for a sign permit shall be made to the Code Enforcement Department upon prescribed forms and shall contain the following:
- (1) The name, address and telephone number of the applicant including the name and contact information of the contractor installing the sign.
  - (2) The location of the building, structure or land to which or upon which the sign is to be erected
  - (3) The application shall be accompanied by two sets of plans of the sign, drawn to scale on sheets of a minimum of 8 ½ inches by 11 inches. Sign plans shall include dimensions, proposed design, colors, materials, details of any illumination source, wiring and other electrical details and structural details, including fastening and joining methods and materials. Upon receiving an application, the Code Enforcement Official may determine, depending on the specific circumstances regarding the sign and its installation, that additional engineering may be required and that the sign shall be designed and constructed under the supervision of a structural engineer.
  - (4) A survey of the parcel on which the sign is to be placed shall also be submitted, delineating property lines, street lines, building locations and dimensions, parking areas, location and dimensions of all other signs on the premises.

All permits shall be securely fastened to the authorized sign(s). Upon expiration of a permit, the authorized sign shall be removed within 24 hours after expiration.

**280-242. Computation of signs area/height.**

- A. Computation of Height - The height of a sign shall be computed as the distance from the base of the sign at normal grade to the top of the highest portion of the actual sign. Normal grade shall be constructed to be the lower of: (1) existing grade prior to construction; or (2) newly established grade after construction, exclusive of any filing, berms, mounding, or excavating solely for the purpose of locating the sign. In cases in which the normal grade cannot reasonably be determined, sign height shall be computed on the assumption that the elevation of the normal grade at the base of the sign is equal to the elevation of the nearest point of the crown of a public street or the grade of the land at the principal entrance to the principal structure on the zone lot, whichever is lower.
- B. Computation of Area of Multifaceted Signs. Any sign may be double facing and

all faces shall be counted in determining conformity to sign area limitations. When computing the area of any monument, detached or projecting sign, only one face of the two sides is used in the computation.

- C. Computation of Area of Individual Signs: The area of a sign face (which is also the sign area of a wall sign or other sign with only one face) shall be computed by means of the smallest square, circle, rectangle, triangle, or combination thereof that will encompass the extreme limits of the writing, representation, emblem, or other display together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including any supporting framework, and bracing.

### **280-243 Administration and Enforcement.**

- A. The Town Code Enforcement Department shall have the jurisdiction and authority to inspect, verify and determine and cite any noted violation of the provisions of this chapter.
- B. Any owner, tenant, lessee or person otherwise in charge or control of any sign found to be in violation of any regulation as defined herein shall be jointly and individually responsible for not complying with the provisions of this chapter.
- C. The Zoning Board of Appeals upon hearing an application for a use or area variance involving signs shall not grant any variance unless the applicant can establish without question of doubt that he or she meets all the criteria necessary for approval as enumerated in Article XLV. Section 280-310. A. (2) and (3).

### **280-244. When effective.**

This chapter shall become effective immediately upon its enactment by the Town Board, after proper filing with the offices of the State Comptroller and Secretary of State.

## **Proposed Amendments to Chapter 76 Building Construction and Fire Prevention**

### **Section 76-24. Plumbing and site utility work administrative rule and regulations.**

#### **Section 280-76-24. G. Renewals.**

A lapse license may be renewed at a fee as established by the Town Board on an annual basis. A license which been verified to have lapsed for more than three (3) consecutive years cannot be renewed and it will be necessary to obtain a new license pursuant to Subsections B. and C. of this section.

#### **Section 280-76-24. I. Waiver of Examination, reciprocity.**

- I. The Code Enforcement Official or duly appointed Plumbing License Examiner shall have the authority to grant a waiver of examination for plumbers and site utility contractors when the applicant meets the following requirements:
  - (1) The applicant as an individual must provide documented proof that he or she current possesses a minimum of two (2) valid licenses granted from a local municipality located within Erie County, in the State of New York. A copy of a current (not expired) license from a municipality would signify as documented proof subject to review and approval (only when it has been determined that the municipality has a plumbing licensing policy that is proven acceptable to the Code Enforcement Official or duly appointed Plumbing License Examiner).
  - (2) Plumbers and site utility contractors must make application on a Town of Hamburg prescribed form ( Plumbers and Site Utility Contractor Reciprocal Application) and make payable a fee as determined by the Town Board on an annual basis. The form shall contain an affidavit attesting to the fact that the applicant has held the licenses at least one full year and has not had a license revoked or suspended from any other municipality within the last five years.

CODE REVISIONS; Training, M-1 and M-2 Zoning districts  
7/23/18 Town Board Meeting

1. Training: Amend Chapter 34. Mandatory Training, Article I. Planning Board and Zoning Board of Appeals as follows: Section 34-4. Acceptable providers- amend to read:  
**Acceptable providers of training shall include the Town Planner or other approved planning consultant; regional planning counsels; County Planning Agencies; a New**

**York State agency; a New York State association, e.g. the Association of Towns, Conference of Mayors or New York Planning Federation; and an accredited college, or any other provider approved by the Town Board in advance of a member's attendance at such training.**

*This revision was first brought up by the Legal Department and the Town Clerk has also provided input. The Code Review committee at their April, 2017 meeting voted to allow "on-line" training programs of up to two hours per year. Like other training, it will require approval of the Town Board prior if using this type of training. To accomplish this the following additional revisions would be necessary:*

Amend Section 34.3. Acceptable/nonacceptable forms of training to read: **Acceptable forms of training shall include traditional classroom-style training and up to two (2) hours per year of approved on-line training. In accordance with Section 34-5. and 34-6. of this Chapter, on-line training will require a methodology to receive "certificates of completion" and will require Town Board approval of any on-line training program or course.**

2. Allowing other types of uses in the M-2 District

Amend Article XIX: M-2 Light Industrial District as follows:

**Under Section 280-126 B. Accessory uses and structures**

- **Add a new paragraph (4) as follows:**

**(4) The repair of trucks in association with other allowable uses.**

*The above recommended amendment addresses the issue of truck repair in the M-2 district (can manufacture trucks but not repair?).*

3. Allowing other types of uses in the M-1 District

Amend Article XVIII: M-1 Industrial Park – Research and Development District as follows:

**Under Section 280-119 A. Principal uses and structures**

- **Amend paragraph (6) as follows:**

**(a) Commercial uses as allowed in the C-2 district, uses groups: (4), (5), (6), (7), (9), (10), and (15).**

*The above recommended amendment addresses the issue of other uses that could be allowed in the M-1 district.*

**29.**

On a motion of Supervisor Shaw, seconded by Councilman Farrell, to amend resolution #30 was

ADOPTED           Ayes 5       Shaw, Best, Farrell, Mosey, Petrie  
                      Noes 0

**RESOLVED**, to eliminate the phrase “considered and” by deleting.

**30.**

On a motion of Councilman Petrie, seconded by Councilman Farrell, the following resolution was

ADOPTED           Ayes 5       Shaw, Best, Farrell, Mosey, Petrie  
                      Noes 0

**WHEREAS**, the Town Board sets policy for the hiring of personnel of the Town of Hamburg; and

**WHEREAS**, the Town Board is desirous that all potential employees be subject to a criminal background check prior to being hired by the town.

**NOW THEREFORE BE IT RESOLVED**, that it is Town of Hamburg policy that any and all prospective employees of the Town of Hamburg undergo a criminal background check by the Town of Hamburg Police Department in accordance with the department’s established policies and practices; and

**BE IT FURTHER RESOLVED**, that the criminal background check is to be conducted prior to the prospective employee being considered and presented for formal action by the Town Board, and

**BE IT FURTHER RESOLVED**, that the Police Department should provide a confidential summary of results to the Hamburg Legal Department upon completion of the criminal background check.



**33.**

On a motion of Supervisor Shaw, seconded by Councilman Best, to amend resolution #34 was

ADOPTED           Ayes 5       Shaw, Best, Farrell, Mosey, Petrie  
                      Noes 0

**RESOLVED**, at the end of the first line add Seasonal to Part-Time/Seasonal.

**34.**

On a motion of Councilman Best, seconded by Councilman Mosey, the following resolution was

ADOPTED           Ayes 5       Shaw, Best, Farrell, Mosey, Petrie  
                      Noes 0

**RESOLVED**, that the Town Board approve the hiring of Denise Wickett for the Part-Time/Seasonal Clerk position in the Town Justice Court with an hourly wage of \$15.00, with a start date of Monday, August 6, 2018.

**35.**

On a motion of Supervisor Shaw, with a unanimous second, the following resolution was

ADOPTED           Ayes   5       Shaw, Best, Farrell, Mosey, Petrie  
                      Noes   0

**WHEREAS**, the Penn Dixie Fossil Park and Nature Reserve is one of our country's most significant archeological wonders; and

**WHEREAS**, it is known as a major example of geological finds from the Devonian Period, some 400 to 359 million years ago, an important early chapter in the earth's history since life on land was just starting to take root; and

**WHEREAS**, in the middle of the Devonian Period and lasting for 60 million years, what is now Hamburg, New York became a unique assemblage of fossils; and

**WHEREAS**, in Western New York Trilobites were a major component of the Devonian oceans. Trilobites are extinct, marine arthropods which have been unique to the Penn Dixie excavation. Trilobites were known for their excellent vision, and they were the first animals to evolve true eyes that could not only sense light and dark but distinguish shapes, and while they are extinct the closest living relative today is the horseshoe crab; now therefore, be it

**RESOLVED**, the Town of Hamburg offers its sincere gratitude to Dr. Phil Stokes, the Director of the Penn Dixie Fossil Park and Nature Reserve for his outstanding scholarship, and his determined efforts to make the Penn Dixie Fossil Park one of the major tourist attractions of Western New York; and be it further

**RESOLVED**, that the Penn Dixie Fossil Park and Nature is a credit to the Hamburg community and an asset for its citizens and all people of Western New York; and be it further

**RESOLVED**, that Hamburg, New York is the home of Trilobites.

The following spoke concerning this resolution:

Don Wiess, Resident, Councilman Farrell

**36.**

On a motion of Supervisor Shaw, seconded by Councilman Mosey, the following resolution was

ADOPTED           Ayes 5       Shaw, Best, Farrell, Mosey, Petrie  
                      Noes 0

**RESOLVED**, that the Town Board approve the membership of the following into the Armor Volunteer Fire Company, Inc.:

Jennifer Soreng  
4514 Clark Street  
Hamburg, NY 14075

**37.**

On a motion of Supervisor Shaw, seconded by Councilman Best, the following resolution was

ADOPTED           Ayes 5       Shaw, Best, Farrell, Mosey, Petrie  
                      Noes 0

**RESOLVED**, that the Town Board approve the membership of the following into the Lake Shore Volunteer Fire Company, Inc.:

Ben Heilig  
5457 Abel Road  
Hamburg, NY 14075

Johnathon Strawbrich  
5710 Lakeview Terrace  
Lake View, NY 14085

**38.**

On a motion of Supervisor Shaw, seconded by Councilman Petrie, the following resolution was ADOPTED  
 Ayes 5 Shaw, Best, Farrell, Mosey, Petrie  
 Noes 0

**RESOLVED**, that the Town Board approve the Audit of Cash Disbursements as follows:

TOWN BOARD AUDIT OF CASH DISBURSEMENTS - July 23, 2018			
			VOUCHER #'S
OPERATING FUND:			
BATCH #			
BATCH #	91	\$362,159.19	96650-96670
BATCH #	92	\$77,992.63	96855-96909
BATCH #	93	\$121,103.01	96910-96959
BATCH #	94	\$17,092.10	96960-96993
BATCH #	95	\$644,856.98	96994-97013
BATCH #	96	\$480.46	97014
BATCH #	97	\$39,972.51	97015-97072
BATCH #	98	\$177,480.49	97189-97237
TOTAL OPERATING FUND DISBURSEMENTS:			\$1,441,137.37
TRUST AGENCY			
BATCH #			
BATCH #			
TOTAL TRUST & AGENCY DISBURSEMENTS:			\$0.00
CAPITAL FUND DISBURSEMENTS:			
BATCH #	12	\$82,239.54	
BATCH #			
TOTAL CAPITAL FUND DISBURSEMENTS:			\$82,239.54
PAYROLL:			
PR #	13	\$760,186.76	
PR #	14	\$832,419.99	
TOTAL PAYROLL DISBURSEMENTS:			\$1,592,606.75
PETTY CASH			
TOTAL CASH DISBURSEMENTS SUBMITTED FOR AUDIT:			\$3,115,983.66

### **Reports from Department Heads**

Michael Quinn, Engineering Consultant, states the garden is complete at the Village of Hamburg Library. Pat Ryan is working on scheduling an inspection of the HVAC at the Lakeshore Library and hopes there will be some resolution to that shortly.

Jerry Giglio, Traffic Safety Coordinator and Health and Safety Coordinator, states they have two items coming up at their next meeting. One is a signage request on Woodlawn Avenue adjacent to Woodlawn Beach and the second is a dead end sign on Monckton Drive.

Supervisor Shaw states the Town Board will be voting on the policy Jerry Giglio, Traffic Safety Coordinator and Health and Safety Coordinator, drafted regarding automobile usage for Town Employees. Jerry Giglio, Traffic Safety Coordinator and Health and Safety Coordinator, adds it will be on the agenda at the August meeting.

Joe Wenzel, Recreation Department, states this weekend Saturday, July 28<sup>th</sup>, they will be celebrating Dash and Slash and Blast on the Beach events being held at the Town Beach.

Catherine A. Rybczynski, Town Clerk, thanks her staff for covering for her while she had a much needed surgery and states everything went well. Her office turned over unpaid taxes to the County in the beginning of July and they are gearing up for school tax collection.

### **Reports from the Town Board**

Councilman Farrell states that after the Dash and Splash people can stay for the Blast on the Beach. The Blast on the Beach is a full day of events. The Rejuvenation Committee has been working for a very long time with a lot of volunteers to bring about what's always a very popular event. She thanks Mr. Baker the Town Historian who worked with his volunteers on the fundraiser that was very well attended. It will continue the work that they do at the Historical Society. She applauds the very important work that Hamburg Central School District is doing by providing mental health first-aid training to all of their staff.

Councilman Petrie comments he has been working on the status of Town playgrounds. He presented to the Town Board at the Work Session his plans and ideas for the playgrounds. He plans to meet with Martin Denecke, Director of Youth, Recreation and Senior Services, regarding the playgrounds.

Councilman Mosey thanks the residents that attended the Burger Fest this past weekend. He states it was a great time. He thanks Catherine A. Rybczynski, Town Clerk, and her staff who were selling tickets and everyone involved in the Burger Fest. He states that he is the liaison for the Seaway Trail and that the Highway Superintendent Ted Casey is working on getting the access to the beach resolved.

**Reports from the Floor**

Joe Killian, representing the Lake Erie Seaway Trail Center Committee, discusses the stairwell at Wanakah Beach. Supervisor Shaw states he will call Ted Casey, Highway Superintendent, and that he expedites the railings being put back up. Councilman Mosey states there is a need for more garbage cans on the beach. Lynn Braun, representing the Lake Erie Seaway Trail Center Committee, states she is trying to promote the area. Don Wiess, resident, discuss the changes, history and the need for access to Wanakah Beach.

John McKendry, Resident, and Captain Trask discuss the opioid crisis and that the Hamburg Police are trained and do carry Narcan.

John McKendry discusses the clean air coalition with regards to trains.

**39.**

On a motion of Supervisor Shaw, seconded by Councilman Farrell, the following resolution was  
ADOPTED           Ayes 5       Shaw, Best, Farrell, Mosey, Petrie  
                          Noes 0

**RESOLVED**, that the Town Board adjourn the Town Board meeting at 8:37 PM.

**Open Meetings Law, Public Officers Law, Article 7, §106. Minutes.**

**Minutes shall be taken at all open meetings of a public body which shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon.**

**These minutes are an unofficial copy unless the original signature of the Town Clerk is affixed below. The original official paper minutes are stored in the Town’s vault.**

\_\_\_\_\_  
Catherine A. Rybczynski, R.M.C.  
Town Clerk