



Dean Michelson, Director  
Office of Public Works

Agenda Item: 6a

## MEMO

TO: Michael Maniscalco  
FROM: Dean Michelson, Director of Public Works  
DATE: September 20, 2018  
SUBJECT: Public Works Dump Truck Purchase

---

### BACKGROUND

Hine Brothers, 67 Main Street, Southbury, CT has supplied the pricing, using the City of New Haven bid. Their subsidiary, Park City Truck Equipment LLC will build the truck per specifications.

### RECOMMENDED ACTION

It is recommended that the purchase be awarded to Hine Brothers Inc., using the City of New Haven's bid information, for the purchase of a 2018 International, Model 7500 SFA 4x2 Dump Truck with plow, in the amount of \$176,600.

### ALTERNATIVE ACTIONS

Not Applicable

### FISCAL IMPACT

The purchase price of this vehicle is \$176,600.

## **Town of East Hampton, Connecticut Business Incentive Program Ordinance**

### **A. Purpose**

The purpose of the Business Incentive Program is, in accord with the Town's Plan of Conservation and Development (POCD), to attract new businesses to the Town, promote the expansion of existing businesses (including home-based businesses relocating into commercial, industrial, and design development zones), and to encourage the rehabilitation and reuse of vacant commercial and industrial buildings. It is the intent of the Town:

- (1) to assist in the creation of jobs for local residents,
- (2) to create long term tax base growth through the appropriate replacement, reconstruction, expansion or remodeling of existing business facilities,
- (3) to encourage the construction of new commercial and industrial facilities in accord with the Future Land Use Plan found in the Town's POCD, and
- (4) to encourage substantial investment in new machinery, equipment and other personal property subject to taxation within the Town.

### **B. Business Incentive Program Ordinance; Authority**

Subject to Connecticut General Statutes (CGS) Sec. 12-65b and Sec. 12-65h the Town of East Hampton (the Town) shall, by affirmative vote of its legislative body, enter into a written agreement with any party owning or proposing to acquire an interest in real property, or an interest in real property upon which is located or proposed to be located: Office use; retail use; manufacturing use; warehouse, storage or distribution use; structured multilevel parking use necessary in connection with a mass transit system; information technology; recreation facilities; transportation facilities; or mixed-use developments as defined in subdivision (72) of CGS Sec. 12-81, fixing the assessment of the real property and all improvements to be constructed thereon which is the subject of the agreement in accordance with the provisions of Section I of this Ordinance.

### **C. Economic Development Commission**

The East Hampton Economic Development Commission (EDC or "the Commission") shall provide any property owner or lessee with general information concerning the Business Incentive Program (the Program), prepare and supply interested parties with an Application to participate in the Program and any other information that may be reasonably requested by an interested party. An "interested party" is one who owns or proposes to acquire an interest in real property as defined in CGS Sec. 12-65b and who is considering replacement, reconstruction, expansion, or remodeling of existing business facilities located or to be located in East Hampton.

The EDC may perform research about any party applying to participate in the Program and may request of any such party any relevant information that in the opinion of the

EDC bears upon consideration of the application. The EDC shall obtain from the Tax Assessor an evaluation of the impact of any proposed abatement of taxes on the applicable Grand List and an estimate of the impact on future Grand Lists.

#### **D. General Requirements**

Applications properly filed with the Town will be considered for the Program, provided:

- Applicant must possess a good environmental practices history and be able to demonstrate adequate financial strength to finance the proposed capital improvements and expansions to the real property and machinery and equipment purchases that would be the subject of the agreement.
- The proposed use is located in an appropriate zone as defined by East Hampton's Zoning Regulations.
- The proposed use receives approvals, licenses, and permits of the East Hampton Planning and Zoning Commission and of other East Hampton, State of Connecticut and federal agencies, boards, commissions, and officials having jurisdiction with respect to the project, as required.
- No real estate property tax or other tax or fee or municipal charge due East Hampton by the Applicant, the businesses, or any other business organization or entity owned or controlled by the Applicant is unpaid at the time the Application is submitted or at any time thereafter.
- If the Applicant is relocating its business to East Hampton, the applicant should provide a five year history of tax assessments and payments to the municipality or municipalities and/or other political subdivisions in which its business was operated.
- The project must have a clear economic benefit to East Hampton, as described by the Applicant on the application.

Notwithstanding the results of any scoring under Section H, if the project does not constitute a net benefit to the Town – economically, civically, or in quality of life – the Economic Development Commission may decline to refer the application to the Council for consideration.

#### **E. Application Procedure**

All tax incentive requests shall be made in writing on a form referred to as Business Incentive Program Application (“the Application”) published and provided by the EDC and approved by the Town Council (“Council”). The application and all accompanying documentation shall be submitted in duplicate at the Office of the Clerk Upon receipt by the Clerk, one copy of the Application and materials shall be provided to the EDC for preliminary review and the Clerk should provide notice to the Council that an Application has been submitted. “Receipt by the Clerk” means an Application and all accompanying documentation required in accordance with all applicable provisions of this Ordinance is submitted.

The following timeframes for action are not mandatory, but the EDC and the Council should strive to meet them: From date of receipt by the Clerk of the Application the EDC shall have 45 days to review the Application, request additional information and meet with the Applicant and/or the Applicant's representative. Provide the Applicant has submitted all of the information required in the Application, by the Ordinance, and by the EDC, the EDC will within 30 days thereafter report its findings to the Council. The Council will place the report on the agenda of the next regularly scheduled Council meeting for discussion and action. If the Council approves the report, the Town Manager and the Applicant shall enter into a written agreement (Consistent with the proposed agreement in section N ).

#### **F. Assessment of the Property Subject to the Agreement**

The East Hampton Assessor shall, in the Assessor's sole discretion, determine the assessment of the real property or the personal property and any and all improvements constructed or to be constructed on or in the real property which is the subject of the agreement.

#### **G. Guidance for Scoring Applications and Implementing this Ordinance**

The purpose of this ordinance is to encourage economic growth in the Town that is in accord with the POCD in effect at the time of the given application. The POCD reflects the strongest expression of the Town's intentions for its future development, character, and quality of life. Accordingly, there is room for flexibility in scoring under Criteria listed in Section H of this Ordinance.

When scoring a new application, the members of the EDC should strive for consistency and transparency. Like applications should receive like treatment. It is appropriate – even essential – for the EDC to consult the scoring of previously granted applications when scoring a new application. Consistency between like applications must be balanced, however, with the goals of the POCD in effect at the time. Where no similar application has been submitted, care should be taken to score the new application relative to the goals of the POCD and relative to the merits of any previous application.

Only the EDC shall approve or deny an application for consideration by the Council and its decision is not appealable. When approving or denying an application the EDC should issue a written statement showing the scoring and explaining its reasoning. Projects recommended to the Council must evince a clear net benefit to the Town. It is recognized that evaluation of an application under this ordinance requires a blend of quantitative and qualitative reasoning; the Commission to strive to make that reasoning plain.

## H. Scoring Criteria Category Definitions

1. Location: Only projects within those areas zoned “Commercial,” “Industrial,” or “Design Development” according to the Zoning Map for the Town of East Hampton (*see* POCD) are eligible for consideration under this Ordinance. Points under this section may be awarded for Properties located in the following priority areas:
  - a. Village Center: Properties located in the Village Center district as defined by the Zoning Map for the Town of East Hampton are eligible for a maximum of 10 points.
  - b. Cobalt Center: Properties located on Route 66 between its junction with Old Depot Hill Road and its junction with Old Middletown Road are eligible for a maximum of 7 points.
2. Corporation: any company, firm, business, or concern operating as a single legal entity.
3. TIF District: As defined by the Town’s Tax Increment Financing (TIF) District Plan

### **Maximum points: 10**

2. Use: In accord with the needs identified by the POCD and as appropriate to the site and location in town, the following uses may qualify for points: Transient housing (hotels/motels), rental housing, workforce housing, light industrial/light manufacturing, healthcare and medical services, high-technology businesses, retail, and dining. Projects for these uses may be awarded 5 points. At the EDC’s discretion, “high needs” uses under these categories may be awarded up to 10 points.

### **Maximum points: 10**

3. Brownfields: East Hampton contains a number of sites designated as “Brownfields” by the USEPA. Brownfields are real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Cleaning up and reinvesting in these properties protects the environment, reduces blight, and takes development pressures off green spaces and working lands – all of which are goals of East Hampton’s POCD.

Any application that proposes to remediate and commit to reuse a Brownfield as designated by the EPA or the State of Connecticut is eligible for 10 points.

Depending upon the project, financing and other factors, the Town may also seek to partner with the applicant for Federal grant funding or supply other in-kind considerations.

**Maximum points: 10**

5. Use of a Vacant Property: The applicant may be awarded 5 points if proposing to occupy a building which has been unoccupied for a period greater than 12 months at the time the applicant signed a lease or closed on the property. If, in the opinion of the EDC, the property can be considered “blighted,” 10 points may be awarded.

**Maximum points: 10**

6. Number of Jobs Created: Points may be awarded based upon the number of non-seasonal Full Time Equivalent positions (FTEs) the business will generate:

1-5 FTEs: 5 points  
5-10 FTEs: 7 points  
More than 10 FTEs: 10 points

**Maximum points: 10**

7. Cost of Services to the Town: A project or use proposed by an applicant may require the Town to assume an extraordinary cost beyond normal maintenance and upkeep. For example: a chemical manufacturer may require the Town to retrain and potentially re-equip its fire protection services. If the Commission determines such is the case, no points may be awarded under this category.

If no such cost exists, 5 points may be awarded.

The Commission may ask the Applicant to pay for a Fiscal Impact Analysis, to be conducted by a consultant approved by the Commission.

The Applicant may be given the opportunity to show that the Commission’s determination of the cost to the Town is in error, however, the Commission makes the final determination.

**Maximum points: 5**

8. Design of the Building or Renovation: The Commission may award 10 points when applicant can show that the design of the structure is in compliance with current Town Building Design Guidelines for its zone.

**Maximum points: 10**

9. Sustainable Building: The Commission may award 2 points for each of the following and up to 10 points total:

- If the investment will result in the business generating at least 20% of its own energy requirements.
- If the investment will result in the business feeding energy back into the grid.
- If the project meets at minimum LEED Gold standard or equivalent. (As of this writing, LEED is the dominant evaluation system in the US market and the one favored for use by the GSA.)
- If the project requires a public transportation node such as a bus stop.
- If the project supplies a recharge station for electric vehicles.
- Water-saving fixtures throughout.

“Sustainability” characteristics and measures are constantly evolving and the Commission may update this list periodically as it sees fit.

**Maximum points: 10**

10. Amount Invested

- |           |   |
|-----------|---|
| 15 points | \$3M or larger investment in construction or renovations  |
| 14 points | \$1M or larger investment in construction or renovations  |
| 13 points | \$800k or larger investment in construction or renovations  |
| 12 points | \$500k or larger investment in construction or renovations  |
| 11 points | A business new to that parcel investing over \$300k or a business existing on that parcel investing at least \$250k in construction or renovations    |
| 10 points | A business new to that parcel investing over \$200k or a business existing on that parcel investing at least \$100,000 in construction or renovations |

**Maximum points: 15**  
**Total Available Points: 90**

**I. Tax Incentive Tiers and Implementation**

Depending upon the number of points an Application receives, it may be denied or, subject to a vote by the Council, provided with one of tiers of tax abatement as follows:

Fewer than 24 points: Denied

25-44 points: Third tier benefit: 70% of fixed assessment abated for two years, or 50% of fixed assessment abated for four years.

45-69 points: Second tier benefit: 70% of fixed assessment abated for three years, or 50% of fixed assessment abated for five years.

More than 70 points: Highest benefit: 100% of fixed assessment abated for years 1-3, 70% of fixed assessment abated for years 4-5, 50% of fixed assessment abated for year 6.

The Town may abate real estate property taxes based on increased real property tax assessments up to but not more than the percentages shown above.

The fixed assessment period shall commence the first fiscal year for which a tax list is prepared on the October 1 immediately following the issuance of a Certificate of Occupancy by the appropriate building official for construction of the buildings or manufacturing facilities or other structures and all improvements in or on the real property which is the subject of the agreement. Notwithstanding anything written in this Ordinance, the Town may, in its sole discretion, offer to enter into an agreement with the Applicant for the abatement of taxes of a lesser percentage and/or fewer years.

On a case by case basis, the Town may provide other incentives in addition to the incentives provided by CGS Sec. 12-65b and Sec. 12-65h or in lieu thereof as follows: (1) waiver of building permit fees; (2) waiver of filing fees with land use agencies; or, (3) provision of in-kind services such as construction of access roads, or road widening, construction of storm drains and culverts, sidewalks, or curbing, extension of water and/or sewer lines or other public improvements.

Machinery and equipment defined in subdivision (72) of CGS Sec. 12-81 and intended to qualify for tax relief pursuant to Sec. 12-65h shall have for federal income tax purposes a depreciable useful life of five or seven years.

Construction shall commence within six months of, and not prior to, approval by the Town and shall be completed no later than 24 months from the date of approval by the Town. The times for commencement and completion of the construction are mandatory except Applicant's performance may be excused when the Applicant is prevented from performing by causes beyond the Applicant's control, including natural disasters or other calamities or a local, state or national declared state of emergency.

#### **J. Default by the Owner or Lessee Under the Terms of the Agreement; Recapture**

Abatement of taxes under this ordinance constitutes a municipal subsidy to the successful applicant. In the event that the Applicant fails to meet negotiated benchmarks or other requirements as described herein, they shall, by the terms of the Agreement, be required to repay all abated amounts, consistent with CGS 12-146as of the date of default.



In addition to the specific timing benchmarks noted in Section I, the Town is encouraged to establish relevant benchmarks to be met by a successful Applicant related to the nature of the business or the project. At a minimum they must include the following triggers.

In the event the owner or lessee of the real property:

1. At any time fails pay real estate and/or personal property taxes when due and payable;
2. Fails to commence or complete on time the construction of all improvements upon the property which is the subject of the agreement;
3. Within 10 years of the date of the Agreement applicant becomes insolvent or bankrupt or files any debtor proceedings or others file such debtor proceedings against the owner or lessee, in any court, in any jurisdiction, state or federal, and does not withdraw such filing within 90 days or such other proceedings have not been dismissed or withdrawn by such other parties within 90 days or makes an assignment for the benefit of creditors or if the property or lease is taken under and writ of execution or becomes the subject of foreclosure proceedings;
4. Abandons at any time the real property or in the case of the lessee purports to assign its lease without the express consent of the Town as set forth in Section K of this Ordinance; or,
5. Fails to perform any obligation of owner or lessee or attain any benchmark set under the terms of the agreement

such event shall constitute a material default of the agreement and the Town may terminate the agreement on the giving of written notice whereupon (a) the right of the owner and/or lessee under the terms of the agreement shall cease and come to an end; and (b) the property owner and/or lessee shall be obligated to repay the Town the amounts of all tax abatements retroactive to the due date of the first abated tax payment plus interest at the rate set and payable pursuant to provisions of CGS Sec. 12-146, all waived fees, if any, and all actual costs to the Town in providing in-kind considerations to the property owner and/or the lessee.

In the event of failure to pay a tax when due and if such delinquency continues for six months and one day, the Town shall terminate the agreement whereupon (i) the right of the owner and/or lessee to receive the tax abatement and any other considerations granted under the terms of the agreement shall be terminated; and (ii) the property owner and/or lessee shall be obligated to repay the Town the amounts of all tax abatements retroactive to the due date of the first abated tax payment plus interest at the rate set and payable pursuant to provisions of CGS Sec. 12-146, all waived fees, if any, and all actual costs to the Town in providing in-kind considerations to the property owner and/or the lessee.

#### **K. Workout Terms**

It is of no benefit to East Hampton to drive an Applicant in default into further economic straits by virtue of an onerous repayment plan. Terms for the recapture of abated taxes as

described in Section J should be calculated to ensure the recapture of the highest possible percentage of public funds, taking into account the fiscal reality of the Applicant, the circumstances of the default, and the state of the project.

**L. Assignment of the Agreement**

The agreement between the town and the Applicant shall not be assigned by the Applicant to any person(s) or business organization or entity or estate or trust without the express consent of both the Council and the EDC which shall signify their consents by an affirmative vote taken at a separate meeting of each body duly noticed for the stated purpose. A conveyance of real property or a transfer of ownership of the business or substantially all of the assets of the business which is the subject of the agreement to a person or business organization or entity that is not owned or controlled by the Applicant, shall not constitute a valid assignment of the agreement or vest any rights under the agreement in the grantee of the real property or transferee of the business or of the assets of the business or allow for enforcement of any obligations of the Town against the Town by the grantee or transferee including but not limited to any remaining tax abatements under the terms of the agreement. A “controlled entity” means a business which is eighty or more percent owned by the grantor or transferor.

**M. Amendments to Applicable Statutes**

All references in this Ordinance to CGS Sec. 12-65b or Sec. 12-65h or Sec. 12-81 or any other section of CGS made herein shall include all amendments to such statutes enacted and signed into law subsequent to the effective date of this ordinance.

**N. Proposed Agreement**

FORM OF AGREEMENT

TOWN OF EAST HAMPTON  
AGREEMENT REGARDING REAL  
PROPERTY TAX ASSESSMENT

\_\_\_\_\_  
EAST HAMPTON, CONNECTICUT

This Agreement is entered into this \_\_\_ day of \_\_\_\_\_ by and between the TOWN OF EAST HAMPTON, a municipal corporation and body politic having its corporate limits located within the County of Middlesex and State of Connecticut (hereinafter the “Town”), and \_\_\_\_\_ of East Hampton, Connecticut (“Company”) a Connecticut corporation with a principal place of business at \_\_\_\_\_, East Hampton, Connecticut.

WITNESSETH:

WHEREAS, Company is responsible to pay all real property taxes associated with the real property known as \_\_\_\_\_ East Hampton, Connecticut (“the Real Property”); and

WHEREAS, Company intends to make improvements to the land and structures on the Real Property, including the construction of approximately \_\_\_\_\_ square foot commercial office building and associated site improvements located on the Real Property (the “Facility”); and

WHEREAS, the estimated costs to be invested by Company in making the above-described improvements to and constructing the Facility on the Real Property will be a minimum of \$ \_\_\_\_\_; and

WHEREAS, the Town, acting by and through its duly authorized Tax Assessor, will assess and value the Real Property and personal property on the Grand List of October 1, 2018.

WHEREAS, the Town wishes to assist Company in its plans to add real property and personal property value to the Town’s tax base; and

WHEREAS, the Town wishes to assist Company to develop its \_\_\_\_\_ plans to be submitted and approved to the Planning and Zoning Commission; and

WHEREAS, in consideration of the above, the Town is willing to provide tax relief to Company pursuant to the East Hampton Business Incentive Program Ordinance as a Tier \_\_\_\_ tax abatement for a period of \_\_\_\_\_ years commencing with the first date that tax payments are due under the Grand List following the date of issuance of the Certificate of Occupancy for the Facility (the “Abatement Term”); and

NOW, THEREFORE, in consideration of the foregoing, the parties hereby covenant and agree that:

1. Cost of Improvements: The costs for the improvements shall equal or exceed \$ \_\_\_\_\_ in construction costs. Company will install and properly account to the Town for all taxable personal property assets added to or installed in the Facility.
2. Certificate of Occupancy: Company will commence construction within six (6) months, and not prior, to this Agreement and complete construction and obtain a Certificate of Occupancy not later than twenty-four (24) months from the date of this Agreement. Company shall actively operate or cause said Facility to operate as \_\_\_\_\_ at the Real Property for not less than the Abatement Term from the date of the Certificate of Occupancy.
3. Employment: Company shall use its best efforts to employ or cause to be employed at least \_\_\_\_ full-time and \_\_\_\_ part-time employees at said Facility throughout the Abatement Term.
4. Reduction of Assessment: Commencing with the issuance of a Certificate of Occupancy, the Real Property tax assessment shall be established on the Grand List for the period following the issuance of the Certificate of Occupancy, and the Town shall grant to Company a \_\_\_\_% reduction in its Real Property assessment such that the net effect of the reduced assessment reduces the tax liability for the Real Property in the amount of \$ \_\_\_\_\_ over the \_\_\_\_\_ year period according to a schedule attached hereto as Exhibit A, including the above-described Improvements and the construction of the Facility (the “Abatement”).

5. Abatement Period: The Abatement Term shall be for a period of \_\_\_\_\_ years commencing with the first date that tax payments are due under the Grand List following the date of issuance of a Certificate of Occupancy for the Facility; provided, however, that if such assessment is changed by any future Town revaluation, the tax payments due under the new assessed value of the Real Property shall be adjusted for the remainder of the Abatement Term in accordance with the terms of the Abatement set forth in Paragraph 4 above.

6. Tax Payment: Company shall maintain all tax obligations owed by it to the Town current and in good standing during the Abatement Term.

7. Certification of Value of Site Improvements: Company shall be required to provide proof via affidavit of an appropriate officer within one year after the commencement of operations at the Facility as to a) the actual value of the site improvements and that said improvements are substantially in conformance with the provisions hereof as to the scope of construction; b) the cost of construction (a minimum of \$\_\_\_\_\_.00) and c) the number and type (full-time or part-time) of employees employed at such Facility.

8. Ongoing Employment Obligations: Notwithstanding anything herein contained to the contrary, Company and the Town acknowledge and agree that, while Company shall make every good faith effort to maintain and employ at least \_\_\_\_ full-time and \_\_\_\_ part-time employees during the Operating Term, economic circumstances, financial considerations, and employee transience may make it impossible to maintain precisely the level of employment described herein. Accordingly, Company and the Town acknowledge that variations in the numbers of employees will occur and may continue for unspecified periods of time during the Operating Term of this Agreement. Company will, upon request, disclose to Town its employment statistics no more than once per year. Subject to the above requirement of good faith and Company's cooperation in disclosing all efforts made to comply with the employment parameters stated herein, such variations shall not otherwise constitute a default of this Agreement provided the Facility is operating in accordance with applicable law and Company is in compliance with the terms of this Agreement in all other respects.

9. Default: The following events shall constitute and event of default: Company at any time fails pay real estate and/or personal property taxes when due and payable, or; Company fails to commence or complete on time the construction of all improvements upon the property which is the subject of the agreement, or; Company, within 10 years of the date of the Agreement, becomes insolvent or bankrupt or files any debtor proceedings or others file such debtor proceedings against the owner or lessee in any court, in any jurisdiction, state or federal, and does not withdraw such filing within 90 days, or such other proceedings have not been dismissed or withdrawn by such other parties within 90 days, or; Company makes an assignment for the benefit of creditors, or; Company property or lease is taken under a writ of execution or becomes the subject of foreclosure proceedings, or; Company abandons at any time the real property or in the case of the lessee purports to assign its lease without the express consent of the Town as set forth in this Ordinance, or; Company fails to perform any obligation of owner or lessee or attain any benchmark set under the terms of this Agreement. In such event of default, the Town shall provide notice to the Company of such event of default, and the Company shall have thirty (30) days from such notice within which to cure such default. In the event

Company fails to cure the default with thirty (30) days of such notice, then this Agreement shall be null and void and the Company shall reimburse the Town for all tax relief provided to Company, retroactive to the due date of the first abated tax payment plus interest at the rate set and payable pursuant to the provisions of Conn. Gen. Stat. §12-146, or other applicable statute, plus all prior waived fees, if any, plus all actual costs to the Town in providing in-kind considerations to the Company, and the Town shall be under no obligation to grant further tax relief hereunder.

10. Legal Action to Enforce the Terms: In the event that the Town must resort to legal action to enforce the terms of this Agreement, any amount determined by a Court of competent jurisdiction to be due from Company shall be subject to interest at the rate of eighteen percent (18%) per annum. Such interest shall accrue from the postmark date for the notice of default described in Paragraph 9. In addition, the Town shall be entitled to recover from Company all costs of collection, including reasonable attorney's fees, incurred in enforcing this Agreement.

11. No Further Abatement: Company acknowledges and agrees that the Abatement offered pursuant to this Agreement is not binding upon the Town, and shall not continue, beyond the \_\_\_\_\_ year Abatement Term agreed to herein.

12. No Admission as to Values: Company and the Town acknowledge and agree that the values placed upon the Real Property, the Facility, and/or the Improvements as a result of the Abatement shall not now or at any other time be construed as an admission by any party or as evidence of any kind as to the true fair market value of the Real Property, the Facility, and/or the Improvements.

13. Notices: All notices hereunder are to be sent by the Town to Company at the following address or to such other address as requested by the Company or its successors or assigns: \_\_\_\_\_, East Hampton, CT 06424  
Attention: \_\_\_\_\_. All such notices shall be sent via certified mail, return receipt requested, or overnight mail service. Notices are deemed effective upon delivery. Any refusal to accept such delivery shall still constitute the delivery of proper notice.

14. Assignment: Company may not assign or otherwise transfer its rights or obligations under this Agreement without the prior written authorization of the Town Council and Economic Development Commission which shall signify their consents by an affirmative vote taken at a separate meeting of each body duly noticed for the stated purpose. A conveyance of the Real Property or a transfer of ownership of the Company business or substantially all of the assets of the Company to a person or business organization or entity that is not a "controlled entity" which is owned or controlled by the Company, shall not constitute a valid assignment of the Agreement or vest any rights under the Agreement in the grantee of the Real Property or transferee of the Company or the assets of the Company or allow for enforcement of any obligations of the Town against the Town by the grantee or transferee including but not limited to any remaining tax abatements under the terms of the Agreement. A "controlled entity" means a business which is eighty or more percent owned by the Company as grantor or transferor.

15. Release of Liability: Company and/or its successors or assigns releases the Town and its agents, servants and employees from any and all liability, of whatever nature, legal or equitable, which may have arisen or which may arise in connection with this Agreement, including the implementation hereof.

16. Indemnification: Company and/or its successors or assigns shall defend and indemnify the Town and any of its agents, servants and employees against any action, claim or suit of any nature whatsoever, arising from the Town's being a party to this Agreement and/or any undertaking of its obligations hereunder.

17. Execution: This Agreement has been executed by the parties' respective agents, duly authorized and acting in his or her official capacity.

18. Amendment: This Agreement may be amended only by mutual consent of the parties, and any amendments to this Agreement shall be in writing and shall be duly executed and dated by the respective parties.

19. Complete Agreement: This Agreement represents the entire and complete understanding and agreement of the parties, and any and all prior written or oral agreements not otherwise contained in this Agreement shall be and are hereby null and void and of no force or effect.

20. Choice of Law and Venue: In the event that litigation or other dispute resolution process arises, all litigation and dispute resolution shall take place in the State of Connecticut, Judicial District of Middlesex, and the Agreement shall be construed in accordance with Connecticut law, without regard to its conflict of law provisions.

21. Notice of Tax Abatement: Upon the execution of this Agreement, a copy of this Agreement or a proper "Notice of Tax Abatement Agreement" shall be filed upon the land records of the Town with respect to the Real Property.

22. Special Conditions: In addition to all other terms and conditions of this Agreement, the Town's obligations under this Agreement are conditioned on the following ("the Conditions"):

(a) Project Financing: Company demonstrates to the reasonable satisfaction of the East Hampton Finance Director that it has private financing and state and federal grants in place in an amount sufficient to undertake and complete the project;

(b) Property Maintenance: Company demonstrates that it has maintenance contracts in place to keep the property maintained during the period of construction;

(c) Non-Transferable: As set forth in Paragraph 14 herein, Company acknowledges and affirms that this tax abatement is non-transferable and any transfer of the tax abatement to a non-related entity shall be an event of default; and

(d) \_\_\_\_\_ [other specific terms]

In the event that the Company fails to satisfy the Conditions set forth in this Special Conditions paragraph, this Agreement shall be null and void and the Real Property as improved shall be assessed in accordance with the Connecticut General Statutes without regard to the terms and conditions of this Agreement.

REMAINDER OF PAGE INTENTIONAL LEFT BLANK  
SIGNATURES FOLLOW

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

Witnessed By:

COMPANY:

---

By:  
Its CEO, Duly Authorized

---

Witnessed By: TOWN:

---

By: \_\_\_\_\_  
Its Town Manager, Duly Authorized

---

DRAFT

## **Town of East Hampton, Connecticut Business Incentive Program Ordinance**

### **A. Purpose**

The purpose of the Business Incentive Program is, in accord with the Town's Plan of Conservation and Development (POCD), to attract new businesses to the Town, promote the expansion of existing businesses (including home-based businesses relocating into commercial, industrial, and design development zones), and to encourage the rehabilitation and reuse of vacant commercial and industrial buildings. It is the intent of the Town:

- (1) to assist in the creation of jobs for local residents,
- (2) to create long term tax base growth through the appropriate replacement, reconstruction, expansion or remodeling of existing business facilities,
- (3) to encourage the construction of new commercial and industrial facilities in accord with the Future Land Use Plan found in the Town's POCD, and
- (4) to encourage substantial investment in new machinery, equipment and other personal property subject to taxation within the Town.

### **B. Business Incentive Program Ordinance; Authority**

Subject to Connecticut General Statutes (CGS) Sec. 12-65b and Sec. 12-65h the Town of East Hampton (the Town) ~~shall~~ may, by affirmative vote of its legislative body, enter into a written agreement with any party owning or proposing to acquire an interest in real property, or an interest in real property upon which is located or proposed to be located: Office use; retail use; manufacturing use; warehouse, storage or distribution use; structured multilevel parking use necessary in connection with a mass transit system; information technology; recreation facilities; transportation facilities; or mixed-use development manufacturing facility as defined in subdivision (72) of CGS Sec. 12-81, fixing the assessment of the real property and all improvements to be constructed thereon ~~and therein or of the personal property located in the manufacturing facility,~~ which is the subject of the agreement in accordance with the provisions of Section I of this Ordinance.

### **C. Economic Development Commission**

The East Hampton Economic Development Commission (EDC or "the Commission") shall provide any property owner or lessee with general information concerning the Business Incentive Program (the Program), prepare and supply interested parties with an Application to participate in the Program and any other information that may be reasonably requested by an interested party. An "interested party" is one who owns or proposes to acquire an interest in real property as defined in CGS Sec. 12-65b and who is considering replacement, reconstruction, expansion, or remodeling of existing business facilities located or to be located in East Hampton.



The EDC may perform research about any party applying to participate in the Program and may request of any such party any relevant information that in the opinion of the EDC bears upon consideration of the application. The EDC shall obtain from the Tax Assessor an evaluation of the impact of any proposed abatement of taxes on the applicable Grand List and an estimate of the impact on future Grand Lists.

#### **D. General Requirements**

Applications properly filed with the Town will be considered for the Program, provided:

- Applicant must possess a good environmental practices history and be able to demonstrate adequate financial strength to finance the proposed capital improvements and expansions to the real property and machinery and equipment purchases that would be the subject of the agreement.
- The proposed use is located in an appropriate zone as defined by East Hampton's Zoning Regulations.
- The proposed use receives approvals, licenses, and permits of the East Hampton Planning and Zoning Commission and of other East Hampton, State of Connecticut and federal agencies, boards, commissions, and officials having jurisdiction with respect to the project, as required.
- No real estate property tax or other tax or fee or municipal charge due East Hampton by the Applicant, the businesses, or any other business organization or entity owned or controlled by the Applicant is unpaid at the time the Application is submitted or at any time thereafter.
- If the Applicant is relocating its business to East Hampton, the applicant should provide a five year history of tax assessments and payments to the municipality or municipalities and/or other political subdivisions in which its business was operated.
- The project must have a clear economic benefit to East Hampton, as described by the Applicant on the application.

Notwithstanding the results of any scoring under Section H, if the project does not constitute a net benefits to the Town – economically, civically, or in quality of life – the Economic Development Commission may decline to refer the application to the Council for consideration.

#### **E. Application Procedure**

All tax incentive requests shall be made in writing on a form referred to as Business Incentive Program Application (“the Application”) published and provided by the EDC and approved by the Town Council (“Council”). The application and all accompanying documentation shall be submitted in duplicate at the Office of the Clerk (?). Upon receipt by the Clerk, one copy of the Application and materials shall be provided to the EDC for preliminary review and the Clerk should provide notice to the Council that an Application has been submitted. “Receipt by the Clerk” means an Application and all

accompanying documentation required in accordance with all applicable provisions of this Ordinance is submitted.

The following timeframes for action are not mandatory, but the EDC and the Council should strive to meet them: From date of receipt by the Clerk of the Application the EDC shall have 45 days to review the Application, request additional information and meet with the Applicant and/or the Applicant's representative. Provide the Applicant has submitted all of the information required in the Application, by the Ordinance, and by the EDC, the EDC will within 30 days thereafter report its findings to the Council. The Council will place the report on the agenda of the next regularly scheduled Council meeting for discussion and action. If the Council approves the report, the [First Selectman](#) [Town Manager](#) and the Applicant shall enter into a written agreement (~~Consistent with the proposed agreement in section N subject to an affirmative vote~~), by the Board of Finance and the Town Meeting) which agreement accompanied by the report will be referred to the Board of Finance for review and action. ~~If the Board of Finance approves the financial terms of the agreement, the Council shall place the agreement on the agenda of the next Town Meeting for its review and action.~~

#### **F. Assessment of the Property Subject to the Agreement**

The East Hampton Assessor shall, in the Assessor's sole discretion, determine the assessment of the real property or the personal property and any and all improvements constructed or to be constructed on or in the real property which is the subject of the agreement.

#### **G. Guidance for Scoring Applications and Implementing this Ordinance**

The purpose of this ordinance is to encourage economic growth in the Town that is in accord with the POCD in effect at the time of the given application. The POCD reflects the strongest expression of the Town's intentions for its future development, character, and quality of life. Accordingly, there is room for flexibility in scoring under Criteria listed in Section H of this Ordinance.

When scoring a new application, the members of the EDC should strive for consistency and transparency. Like applications should receive like treatment. It is appropriate – even essential – for the EDC to consult the scoring of previously granted applications when scoring a new application. Consistency between like applications must be balanced, however, with the goals of the POCD in effect at the time. Where no similar application has been submitted, care should be taken to score the new application relative to the goals of the POCD and relative to the merits of any previous application.

Only the EDC ~~shall~~ may approve or deny an application for consideration by the Council and its decision is not appealable. When approving or denying an application the EDC should issue a written statement showing the scoring and explaining its reasoning. Projects recommended to the Council must evince a clear net benefit to the Town. It is recognized that evaluation of an application under this ordinance requires a blend of

quantitative and qualitative reasoning; the Commission to strive to make that reasoning plain.

DRAFT

## H. Scoring Criteria Category Definitions

1. Location: Only projects within those areas zoned “Commercial,” “Industrial,” or “Design Development” according to the Zoning Map for the Town of East Hampton (*see* POCD) are eligible for consideration under this Ordinance. Points under this section may be awarded for Properties located in the following priority areas:

- a. Village Center: Properties located in the Village Center district as defined by the Zoning Map for the Town of East Hampton are eligible for a maximum of 10 points.
- b. Cobalt Center: Properties located on Route 66 between its junction with Old Depot Hill Road and its junction with Old Middletown Road are eligible for a maximum of 7 points.

2. Corporation: any company, firm, business, or concern operating as a single legal entity.

3. TIF District: As defined by the Town’s Tax Increment Financing (TIF) District Plan

**Maximum points: 10**

2. Use: In accord with the needs identified by the POCD and as appropriate to the site and location in town, the following uses may qualify for points: Transient housing (hotels/motels), rental housing, workforce housing, light industrial/light manufacturing, healthcare and medical services, high-technology businesses, retail, and dining. Projects for these uses may be awarded 5 points. At the EDC’s discretion, “high needs” uses under these categories may be awarded up to 10 points.

**Maximum points: 10**

3. Brownfields: East Hampton contains a number of sites designated as “Brownfields” by the USEPA. Brownfields are real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Cleaning up and reinvesting in these properties protects the environment, reduces blight, and takes development pressures off ~~greenspaces~~ green spaces and working lands – all of which are goals of East Hampton’s POCD.

Any application that proposes to remediate and commit to reuse a Brownfield as designated by the EPA or the State of Connecticut is eligible for 10 points.

Depending upon the project, financing and other factors, the Town may also seek to partner with the applicant for Federal grant funding or supply other in-kind considerations.

**Maximum points: 10**

4. ~~Revitalization of an existing, inhabited structure, such revitalization defined as at least:~~
- ~~a. Façade improvement: Substantial investment in improving the outward appearance of the structure or to restore non-trivial deterioration as determined by the Commission, or~~
  - ~~b. Rehabilitation: Significant alteration of the interior and/or exterior of a property that would result in a greater than 25% increase in its valuation, or~~
  - ~~c. Historical: Additional points may be awarded to either of the foregoing categories where the property is designated as “historic” by recognized Town, State or National authorities (including the Connecticut Trust for Historic Preservation), or lies within a Town designated historic district, and such designation or location requires the adoption of techniques or design elements.~~

~~The Commission may award between 5 and 10 points for any project that falls into one of these three categories. Placement in the range is at the discretion of the Commission and will take into account such things as the cost and difficulty of the work.~~

**Maximum points: 10**

5. Use of a Vacant Property: The applicant may be awarded 5 points if proposing to occupy a building which has been unoccupied for a period greater than 12 months at the time the applicant signed a lease or closed on the property. If, in the opinion of the EDC, the property can be considered “blighted,” 10 points may be awarded.

**Maximum points: 10**

6. Number of Jobs Created: Points may be awarded based upon the number of non-seasonal Full Time Equivalent positions (FTEs) the business will generate:

- 1-5 FTEs: 5 points
- 5-10 FTEs: 7 points
- More than 10 FTEs: 10 points

**Maximum points: ~~15~~ 10**

7. Cost of Services to the Town: A project or use proposed by an applicant may require the Town to assume an extraordinary cost ~~beyond beyond normal maintenance and upkeep those costs~~ beyond beyond normal maintenance and upkeep ~~contemplated by an impact fee.~~ For

example: a chemical manufacturer may require the Town to retrain and potentially re-equip its fire protection services. If the Commission determines such is the case, no points may be awarded under this category.

If no such cost exists, 5 points may be awarded.

The Commission may ask the Applicant to pay for a Fiscal Impact Analysis, to be conducted by a consultant approved by the Commission.

The Applicant may be given the opportunity to show that the Commission's determination of the cost to the Town is in error, however, the Commission makes the final determination.

**Maximum points: 5**

8. Design of the Building or Renovation: The Commission may award 10 points when applicant can show that the design of ~~the renovation brings~~ the structure is into compliance with current Town Building Design Guidelines for its zone.

~~The Commission may award 5 points when an applicant can show that the design of a new structure complies with current Town Building Design Guidelines for its zone.~~

**Maximum points: 10**

9. Sustainable Building: The Commission may award 2 points for each of the following and up to 10 points total:
  - If the investment will result in the business generating at least 20% of its own energy requirements.
  - If the investment will result in the business feeding energy back into the grid.
  - If the project meets at minimum LEED Gold standard or equivalent. (As of this writing, LEED is the dominant evaluation system in the US market and the one favored for use by the GSA.)
  - If the project requires a public transportation node such as a bus stop.
  - If the project supplies a recharge station for electric vehicles.
  - Water-saving fixtures throughout.

“Sustainability” characteristics and measures are constantly evolving and the Commission may update this list periodically as it sees fit.

**Maximum points: 10**

10. Amount Invested

<del>1510</del> points	\$3M or larger investment in construction or renovations
<del>149</del> points	\$1M or larger investment in construction or renovations
<del>138</del> points	\$800k or larger investment in construction or renovations
<del>127</del> points	\$500k or larger investment in construction or renovations
<del>116</del> points	A business new to that parcel investing over \$300k or a business existing on that parcel investing at least \$250k in construction or renovations
<del>105</del> points	A business new to that parcel investing over \$200k or a business existing on that parcel investing at least \$100,000 in construction or renovations

**Maximum points: 150**

**Total Available Points: ~~7595~~ 90**

**I. Tax Incentive Tiers and Implementation**

Depending upon the number of points an Application receives, it may be denied or, subject to a vote by the Council, provided with one of tiers of tax abatement as follows:

Fewer than 24 points: Denied

25-44 points: Third tier benefit: 70% of fixed assessment abated for two years, or 50% of fixed assessment abated for four years.

45-69 points: Second tier benefit: 70% of fixed assessment abated for three years, or 50% of fixed assessment abated for five years.

More than 70 points: Highest benefit: 100% of fixed assessment abated for years 1-3, 70% of fixed assessment abated for years 4-5, 50% of fixed assessment abated for year 6.

The Town may abate real estate property taxes based on increased real property tax assessments up to but not more than the percentages shown above.

The fixed assessment period shall commence the first fiscal year for which a tax list is prepared on the October 1~~[DATE]~~ immediately following the issuance of a Certificate of Occupancy by the appropriate building official for construction of the buildings or manufacturing facilities or other structures and all improvements in or on the real property which is the subject of the agreement. Notwithstanding anything written in this Ordinance, the Town may, in its sole discretion, offer to enter into an agreement with the Applicant for the abatement of taxes of a lesser percentage and/or fewer years.

On a case by case basis, the Town may provide other incentives in addition to the incentives provided by CGS Sec. 12-65b and Sec. 12-65h or in lieu thereof as follows: (1) waiver of building permit fees; (2) waiver of filing fees with land use agencies; or, (3) provision of in-kind services such as construction of access roads, or road widening, construction of storm drains and culverts, sidewalks, or curbing, extension of water and/or sewer lines or other public improvements.

Machinery and equipment defined in subdivision (72) of CGS Sec. 12-81 and intended to qualify for tax relief pursuant to Sec. 12-65h shall have for federal income tax purposes a depreciable useful life of five or seven years.

Construction shall commence within six months of, and not prior to, approval by the Town and shall be completed no later than 24 months from the date of approval by the Town. The times for commencement and completion of the construction are mandatory except Applicant's performance may be excused when the Applicant is prevented from performing by causes beyond the Applicant's control, including natural disasters or other calamities or a local, state or national declared state of emergency.

#### **J. Default by the Owner or Lessee Under the Terms of the Agreement; Recapture**

Abatement of taxes under this ordinance constitutes a municipal subsidy to the successful applicant. In the event that the Applicant fails to meet negotiated benchmarks or other requirements as described herein, they shall, by the terms of the Agreement, be required to repay all abated amounts, consistent with CGS 12-146~~equal to the rate of inflation~~ as of the date of default.

In addition to the specific timing benchmarks noted in Section I, the Town is encouraged to establish relevant benchmarks to be met by a successful Applicant related to the nature of the business or the project. At a minimum they must include the following triggers.

In the event the owner or lessee of the real property:

1. At any time fails pay real estate and/or personal property taxes when due and payable;
2. Fails to commence or complete on time the construction of all improvements upon the property which is the subject of the agreement;
3. Within 10 years of the date of the Agreement applicant becomes insolvent or bankrupt or files any debtor proceedings or others file such debtor proceedings against the owner or lessee, in any court, in any jurisdiction, state or federal, and does not withdraw such filing within 90 days or such other proceedings have not been dismissed or withdrawn by such other parties within 90 days or makes an assignment for the benefit of creditors or if the property or lease is taken under and writ of execution or becomes the subject of foreclosure proceedings;



4. Abandons at any time the real property or in the case of the lessee purports to assign its lease without the express consent of the Town as set forth in Section K of this Ordinance; or,
5. Fails to perform any obligation of owner or lessee or attain any benchmark set under the terms of the agreement

such event shall constitute a material default of the agreement and the Town may terminate the agreement on the giving of written notice whereupon (a) the right of the owner and/or lessee under the terms of the agreement shall cease and come to an end; and (b) the property owner and/or lessee shall be obligated to repay the Town the amounts of all tax abatements retroactive to the due date of the first abated tax payment plus interest at the rate set and payable pursuant to provisions of CGS Sec. 12-146, all waived fees, if any, and all actual costs to the Town in providing in-kind considerations to the property owner and/or the lessee.

In the event of failure to pay a tax when due and if such delinquency continues for six months and one day, the Town shall terminate the agreement whereupon (i) the right of the owner and/or lessee to receive the tax abatement and any other considerations granted under the terms of the agreement shall be terminated; and (ii) the property owner and/or lessee shall be obligated to repay the Town the amounts of all tax abatements retroactive to the due date of the first abated tax payment plus interest at the rate set and payable pursuant to provisions of CGS Sec. 12-146, all waived fees, if any, and all actual costs to the Town in providing in-kind considerations to the property owner and/or the lessee.

#### **K. Workout Terms**

It is of no benefit to East Hampton to drive an Applicant in default into further economic straits by virtue of an onerous repayment plan. Terms for the recapture of abated taxes as described in Section J should be calculated to ensure the recapture of the highest possible percentage of public funds, taking into account the fiscal reality of the Applicant, the circumstances of the default, and the state of the project.

#### **L. Assignment of the Agreement**

The agreement between the town and the Applicant shall not be assigned by the Applicant to any person(s) or business organization or entity or estate or trust without the express consent of both the Council and the EDC which shall signify their consents by an affirmative vote taken at a separate meeting of each body duly noticed for the stated purpose. A conveyance of real property or a transfer of ownership of the business or substantially all of the assets of the business which is the subject of the agreement to a person or business organization or entity that is not owned or controlled by the Applicant, shall not constitute a valid assignment of the agreement or vest any rights under the agreement in the grantee of the real property or transferee of the business or of the assets of the business or allow for enforcement of any obligations of the Town against the Town by the grantee or transferee including but not limited to any remaining tax abatements

under the terms of the agreement. A “controlled entity” means a business which is eighty or more percent owned by the grantor or transferor.

**M. Amendments to Applicable Statutes**

All references in this Ordinance to CGS Sec. 12-65b or Sec. 12-65h or Sec. 12-81 or any other section of CGS made herein shall include all amendments to such statutes enacted and signed into law subsequent to the effective date of this ordinance.

**N. Proposed Agreement~~Effective Date~~**

~~This ordinance shall become effective fifteen days after publication in a newspaper having circulation in the Town. Adopted \_\_\_\_\_, [date]. Published [paper], [date].~~

FORM OF AGREEMENT

TOWN OF EAST HAMPTON  
AGREEMENT REGARDING REAL  
PROPERTY TAX ASSESSMENT  
EAST HAMPTON, CONNECTICUT

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_ by and between the TOWN OF EAST HAMPTON, a municipal corporation and body politic having its corporate limits located within the County of Middlesex and State of Connecticut (hereinafter the “Town”), and \_\_\_\_\_ of East Hampton, Connecticut (“Company”) a Connecticut corporation with a principal place of business at \_\_\_\_\_, East Hampton, Connecticut.

WITNESSETH:

WHEREAS, Company is responsible to pay all real property taxes associated with the real property known as \_\_\_\_\_ East Hampton, Connecticut (“the Real Property”); and

WHEREAS, Company intends to make improvements to the land and structures on the Real Property, including the construction of approximately \_\_\_\_\_ square foot commercial office building and associated site improvements located on the Real Property (the “Facility”); and

WHEREAS, the estimated costs to be invested by Company in making the above-described improvements to and constructing the Facility on the Real Property will be a minimum of \$ \_\_\_\_\_; and

WHEREAS, the Town, acting by and through its duly authorized Tax Assessor, will assess and value the Real Property and personal property on the Grand List of October 1, 2018.

WHEREAS, the Town wishes to assist Company in its plans to add real property and personal property value to the Town’s tax base; and

WHEREAS, the Town wishes to assist Company to develop its \_\_\_\_\_ plans to be submitted and approved to the Planning and Zoning Commission; and

WHEREAS, in consideration of the above, the Town is willing to provide tax relief to Company pursuant to the East Hampton Business Incentive Program Ordinance as a Tier \_\_\_\_\_ tax abatement for a period of \_\_\_\_\_ years commencing with the first date that tax payments are due under the Grand List following the date of issuance of the Certificate of Occupancy for the Facility (the "Abatement Term"); and

NOW, THEREFORE, in consideration of the foregoing, the parties hereby covenant and agree that:

1. Cost of Improvements: The costs for the improvements shall equal or exceed \$ \_\_\_\_\_ in construction costs. Company will install and properly account to the Town for all taxable personal property assets added to or installed in the Facility.
2. Certificate of Occupancy: Company will commence construction within six (6) months, and not prior, to this Agreement and complete construction and obtain a Certificate of Occupancy not later than twenty-four (24) months from the date of this Agreement. Company shall actively operate or cause said Facility to operate as \_\_\_\_\_ at the Real Property for not less than the Abatement Term from the date of the Certificate of Occupancy.
3. Employment: Company shall use its best efforts to employ or cause to be employed at least \_\_\_\_\_ full-time and \_\_\_\_\_ part-time employees at said Facility throughout the Abatement Term.
4. Reduction of Assessment: Commencing with the issuance of a Certificate of Occupancy, the Real Property tax assessment shall be established on the Grand List for the period following the issuance of the Certificate of Occupancy, and the Town shall grant to Company a \_\_\_\_\_ % reduction in its Real Property assessment such that the net effect of the reduced assessment reduces the tax liability for the Real Property in the amount of \$ \_\_\_\_\_ over the \_\_\_\_\_ year period according to a schedule attached hereto as Exhibit A, including the above-described Improvements and the construction of the Facility (the "Abatement").
5. Abatement Period: The Abatement Term shall be for a period of \_\_\_\_\_ years commencing with the first date that tax payments are due under the Grand List following the date of issuance of a Certificate of Occupancy for the Facility; provided, however, that if such assessment is changed by any future Town revaluation, the tax payments due under the new assessed value of the Real Property shall be adjusted for the remainder of the Abatement Term in accordance with the terms of the Abatement set forth in Paragraph 4 above.
6. Tax Payment: Company shall maintain all tax obligations owed by it to the Town current and in good standing during the Abatement Term.
7. Certification of Value of Site Improvements: Company shall be required to provide proof via affidavit of an appropriate officer within one year after the commencement of operations at the Facility as to a) the actual value of the site improvements and that said improvements are substantially in conformance with the provisions hereof as to the scope of construction; b) the cost of construction (a minimum

of \$ \_\_\_\_\_ .00) and c) the number and type (full-time or part-time) of employees employed at such Facility.

8. Ongoing Employment Obligations: Notwithstanding anything herein contained to the contrary, Company and the Town acknowledge and agree that, while Company shall make every good faith effort to maintain and employ at least \_\_\_\_\_ full-time and \_\_\_\_\_ part-time employees during the Operating Term, economic circumstances, financial considerations, and employee transience may make it impossible to maintain precisely the level of employment described herein. Accordingly, Company and the Town acknowledge that variations in the numbers of employees will occur and may continue for unspecified periods of time during the Operating Term of this Agreement. Company will, upon request, disclose to Town its employment statistics no more than once per year. Subject to the above requirement of good faith and Company's cooperation in disclosing all efforts made to comply with the employment parameters stated herein, such variations shall not otherwise constitute a default of this Agreement provided the Facility is operating in accordance with applicable law and Company is in compliance with the terms of this Agreement in all other respects.

9. Default: The following events shall constitute an event of default: Company at any time fails pay real estate and/or personal property taxes when due and payable, or; Company fails to commence or complete on time the construction of all improvements upon the property which is the subject of the agreement, or; Company, within 10 years of the date of the Agreement, becomes insolvent or bankrupt or files any debtor proceedings or others file such debtor proceedings against the owner or lessee in any court, in any jurisdiction, state or federal, and does not withdraw such filing within 90 days, or such other proceedings have not been dismissed or withdrawn by such other parties within 90 days, or; Company makes an assignment for the benefit of creditors, or; Company property or lease is taken under a writ of execution or becomes the subject of foreclosure proceedings, or; Company abandons at any time the real property or in the case of the lessee purports to assign its lease without the express consent of the Town as set forth in this Ordinance, or; Company fails to perform any obligation of owner or lessee or attain any benchmark set under the terms of this Agreement. In such event of default, the Town shall provide notice to the Company of such event of default, and the Company shall have thirty (30) days from such notice within which to cure such default. In the event Company fails to cure the default with thirty (30) days of such notice, then this Agreement shall be null and void and the Company shall reimburse the Town for all tax relief provided to Company, retroactive to the due date of the first abated tax payment plus interest at the rate set and payable pursuant to the provisions of Conn. Gen. Stat. §12-146, or other applicable statute, plus all prior waived fees, if any, plus all actual costs to the Town in providing in-kind considerations to the Company, and the Town shall be under no obligation to grant further tax relief hereunder.

10. Legal Action to Enforce the Terms: In the event that the Town must resort to legal action to enforce the terms of this Agreement, any amount determined by a Court of competent jurisdiction to be due from Company shall be subject to interest at the rate of eighteen percent (18%) per annum. Such interest shall accrue from the postmark date for the notice of default described in Paragraph 9. In addition, the Town shall be entitled to recover from Company all costs of collection, including reasonable attorney's fees, incurred in enforcing this Agreement.

11. No Further Abatement: Company acknowledges and agrees that the Abatement offered pursuant to this Agreement is not binding upon the Town, and shall not continue, beyond the \_\_\_\_\_ year Abatement Term agreed to herein.

12. No Admission as to Values: Company and the Town acknowledge and agree that the values placed upon the Real Property, the Facility, and/or the Improvements as a result of the Abatement shall not now or at any other time be construed as an admission by any party or as evidence of any kind as to the true fair market value of the Real Property, the Facility, and/or the Improvements.

13. Notices: All notices hereunder are to be sent by the Town to Company at the following address or to such other address as requested by the Company or its successors or assigns: \_\_\_\_\_, East Hampton, CT 06424 Attention: \_\_\_\_\_. All such notices shall be sent via certified mail, return receipt requested, or overnight mail service. Notices are deemed effective upon delivery. Any refusal to accept such delivery shall still constitute the delivery of proper notice.

14. Assignment: Company may not assign or otherwise transfer its rights or obligations under this Agreement without the prior written authorization of the Town Council and Economic Development Commission which shall signify their consents by an affirmative vote taken at a separate meeting of each body duly noticed for the stated purpose. A conveyance of the Real Property or a transfer of ownership of the Company business or substantially all of the assets of the Company to a person or business organization or entity that is not a "controlled entity" which is owned or controlled by the Company, shall not constitute a valid assignment of the Agreement or vest any rights under the Agreement in the grantee of the Real Property or transferee of the Company or the assets of the Company or allow for enforcement of any obligations of the Town against the Town by the grantee or transferee including but not limited to any remaining tax abatements under the terms of the Agreement. A "controlled entity" means a business which is eighty or more percent owned by the Company as grantor or transferor.

15. Release of Liability: Company and/or its successors or assigns releases the Town and its agents, servants and employees from any and all liability, of whatever nature, legal or equitable, which may have arisen or which may arise in connection with this Agreement, including the implementation hereof.

16. Indemnification: Company and/or its successors or assigns shall defend and indemnify the Town and any of its agents, servants and employees against any action, claim or suit of any nature whatsoever, arising from the Town's being a party to this Agreement and/or any undertaking of its obligations hereunder.

17. Execution: This Agreement has been executed by the parties' respective agents, duly authorized and acting in his or her official capacity.

18. Amendment: This Agreement may be amended only by mutual consent of the parties, and any amendments to this Agreement shall be in writing and shall be duly executed and dated by the respective parties.

19. Complete Agreement: This Agreement represents the entire and complete understanding and agreement of the parties, and any and all prior written or oral agreements not otherwise contained in this Agreement shall be and are hereby null and void and of no force or effect.

20. Choice of Law and Venue: In the event that litigation or other dispute resolution process arises, all litigation and dispute resolution shall take place in the State of

Connecticut, Judicial District of Middlesex, and the Agreement shall be construed in accordance with Connecticut law, without regard to its conflict of law provisions.

21. Notice of Tax Abatement: Upon the execution of this Agreement, a copy of this Agreement or a proper "Notice of Tax Abatement Agreement" shall be filed upon the land records of the Town with respect to the Real Property.

22. Special Conditions: In addition to all other terms and conditions of this Agreement, the Town's obligations under this Agreement are conditioned on the following ("the Conditions"):

(a) Project Financing: Company demonstrates to the reasonable satisfaction of the East Hampton Finance Director that it has private financing and state and federal grants in place in an amount sufficient to undertake and complete the project;

(b) Property Maintenance: Company demonstrates that it has maintenance contracts in place to keep the property maintained during the period of construction;

(c) Non-Transferable: As set forth in Paragraph 14 herein, Company acknowledges and affirms that this tax abatement is non-transferable and any transfer of the tax abatement to a non-related entity shall be an event of default; and

(d) [other specific terms]

In the event that the Company fails to satisfy the Conditions set forth in this Special Conditions paragraph, this Agreement shall be null and void and the Real Property as improved shall be assessed in accordance with the Connecticut General Statutes without regard to the terms and conditions of this Agreement.

REMAINDER OF PAGE INTENTIONAL LEFT BLANK  
SIGNATURES FOLLOW

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

Witnessed By: COMPANY:

\_\_\_\_\_

\_\_\_\_\_

By:  
Its CEO, Duly Authorized

\_\_\_\_\_

\_\_\_\_\_

Witnessed By: TOWN:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

By:

Its Town Manager, Duly Authorized

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

DRAFT

**RESOLUTION**  
Setting a One Month Budget

**WHEREAS:** The Town of East Hampton is a municipal corporation formed under the Connecticut General Statutes with the authority to levy taxes;

**WHEREAS:** Annually, by Charter, in May the Town votes, by referendum, on an annual budget;

**WHEREAS:** The annual budget referendum for the general government failed leaving the Town without a complete budget;

**WHEREAS:** The Towns Fiscal year ends on June 30, 2018 and the Town must have a budget to operate by. **NOW, THEREFORE, BE IT RESOLVED:** The Town Council approves a budget for the month of October 2018 as follows:

TEMPORARY BUDGET (2017-2018 Adopted Budget)		Adjustments	Revised Budget	October 2018 Budget
<b>TOWN OPERATIONS</b>				
ADMINISTRATION & FINANCE	\$ 4,228,430	-	\$ 4,228,430	\$ 259,521
PUBLIC SAFETY	2,499,566	-	2,499,566	208,297
HEALTH & HUMAN SERVICES	422,727	-	422,727	35,227
CULTURE & RECREATION	966,165	-	966,165	80,514
REGULATORY	358,848	-	358,848	29,904
PUBLIC WORKS	2,132,171	-	2,132,171	177,681
<b>TRANSFERS TO OTHER FUNDS</b>				
OTHER FUNDS	37,500		37,500	
CAPITAL IMPROVEMENT	778,000	(701,186)	76,814	
DEBT SERVICE	2,789,341	439,045	3,228,386	29,371
<b>TOTAL TOWN OPERATIONS BUDGET</b>	<b>\$ 14,212,748</b>	<b>\$ (262,141)</b>	<b>\$ 13,950,607</b>	<b>\$ 820,515</b>
			<b>Cumulative Budget</b>	<b>\$ 6,780,615</b>



**NEW FACILITY ROAD NAME SUBMISSIONS**

Bell Court/Road/Street

Bell Town Hall Road

Bellelake Road/Drive

Bellringer Road/Lane/Way

Belltown Circle/Drive/Lane/Avenue/Road/Place/Square

Belltown Hall Road

Cattlebrook Road

Chatham Lane/Road/Drive/Boulevard

Charlie Nichols Drive

Constitution Way

East Bell Road

East Hampton Avenue/Drive

Fowler Lane/Rd/Ave/Drive

Heritage Way

Lakebelle Road/Drive

Loos Lane

Municipal Drive/Square

New Town Place

Raymond Thatcher Drive

Ship Bell Drive/Square

Tea Bell Road

Teresa Valli

Town Boulevard

Town Hall Drive

Whitehouse Motel Boulevard



AGENDA  
ITEM # 9a

September 10, 2018

To: Michael Maniscalco, Town Manager  
From: Dennis Woessner, Chief of Police  
Subject: General Order approval

Attached to this memorandum is a General Order which I am submitting for approval:

General Order 1.7, ***Strip and Body Cavity Searches***, is an existing General Order, but I have added a section which deals specifically with juveniles. This addition was based upon the recommendation of Francis Carino, the head Juvenile Prosecutor for the State of Connecticut. The new section is highlighted in yellow.






# EAST HAMPTON POLICE DEPARTMENT

## GENERAL ORDER 1.7

### DEPARTMENT ROLE AND AUTHORITY

<b>SUBJECT: STRIP AND BODY CAVITY SEARCHES</b>		
<b>Issue Date: 5/2/2014</b>	<b>Effective Date: 4/8/2014</b>	<b>Distribution: All Personnel</b>
<b>Amends/Rescinds GO:</b>		<b>Review Date: / /</b>
<b>Per Order of:</b>   <b>Dennis Woessner, Chief of Police</b>		
<i>This General Order is for departmental use only and does not apply in any criminal or civil proceeding. This General Order should not be construed as creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this General Order will only form the basis for departmental administrative sanctions. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting</i>		

#### I. PURPOSE

The purpose of this policy is to establish guidelines and procedures for conducting Strip and Body Cavity searches, which are authorized by state law.

#### II. POLICY

East Hampton Police Department officers shall observe the rights of citizens under the Fourth Amendment to the United States Constitution which guarantees the right of people to be free from unreasonable searches and seizures of their homes, persons, and things. The Department recognizes that the use of strip searches and body cavity searches may, under certain conditions, be necessary to protect the safety of officers, civilians, and other prisoners; to detect and secure evidence of criminal activity; and to safeguard the security, safety, and related interests of the Department's prisoner detention and holding facilities.

#### III. DEFINITIONS

**Strip Search:** A strip search is defined in Connecticut General Statutes § 54-33k as having an arrested person remove or arrange some or all of his or her clothing; or, if an arrested person refuses to remove or arrange his or her clothing, having a peace officer or employee of the police department remove or arrange the clothing of the arrested person so as to permit a visual inspection of the genitals, buttocks, anus, female

breasts, or undergarments used to clothe said anatomical parts of the body.

#### IV. PROCEDURE

##### A. Strip Search and Body Cavity Searches

Such searches shall be conducted only with proper authority and justification, with due recognition and deference for the human dignity of those being searched, in accordance with the procedural guidelines for conducting such searches as set forth in this policy. Strip searches and body cavity searches of persons are strictly governed by Connecticut General Statutes §§ 54-33k and 54-33l.

A "**strip search**" is defined as having an arrested person remove or rearrange some or all of his clothing to permit a visual inspection of the genitals, buttocks, anus, female breasts or undergarments used to cloth these parts of the body. In accordance with § 54-33l (a), no one arrested for a motor vehicle violation or a misdemeanor shall be strip searched unless there is reasonable belief that the person is concealing a weapon, a controlled substance, or contraband. Strip searches must be conducted by a person the same sex as the suspect and where they cannot be observed by persons not physically conducting the search or not absolutely necessary to conduct the search.

Any officer conducting a strip search shall obtain the written permission of the police chief or his designee and prepare a report of the search.

The statute does not define the term "**body cavity search**." The language of the statute suggests, however, that a "strip search" and a "body cavity" search are distinct and different. No search of any **body cavity other than the mouth** may be conducted without a search warrant, which requires probable cause. The warrant must specify that the search be performed under sanitary conditions and be conducted either by or under the supervision of a person licensed to practice medicine.

##### B. Training

All sworn officers shall receive training regarding strip and body cavity searches. Training shall include that which was received at the Connecticut Police Training Academy, during the Field Training and Evaluation Program, and from roll call and in-service training. Such training shall include instruction on the proper, safe, legal, and professional manner in which to conduct a strip search. The Department shall provide officers with annual refresher training on this section regarding strip and body cavity searches.

### **C. Use of in-Custody Search**

Because strip searches of arrestees are not routinely warranted, it is important for officers to rely on pat-down searches performed in the field and at booking to disclose any weapons or contraband that an arrestee might be hiding on his/her person. The importance of these searches cannot be overemphasized. They are essential to officer safety during initial arrest of a suspect, during prisoner transportation, and may be the only opportunity to prevent the introduction of weapons or contraband into the police facility or the destruction of evidence at the station. Field and booking custody searches are often the primary means of establishing reasonable suspicion necessary for conducting a later strip or body cavity search.

### **D. Connecticut State Law**

Connecticut General Statutes § 54-33I specifies that police officers are not excluded from prosecution under any Connecticut Statute for their actions. In addition, a person wrongfully searched is not prohibited from seeking or obtaining civil or injunctive relief.

### **E. General Guidelines**

While safety and security are recognized as legitimate concerns of law enforcement personnel, they are not solely sufficient grounds for conducting strip searches given the highly intrusive nature of these procedures and the privacy interest of arrestees. As a result, the arresting officer plays a major role in determining whether an arrestee should be strip searched based on his/her knowledge of the facts surrounding the arrest and of the individual arrested. Officer input is critical at booking, or during temporary detention, to establish clear justification for conducting or not conducting such searches.

In conjunction with Connecticut General Statutes § 54-33I, as amended, which sets out specific guidelines for a strip search, the following procedures shall be followed when conducting strip and body cavity searches.

#### 1. Authority – With and Without – a Warrant

Persons arrested for motor vehicle violations or misdemeanors shall not be subjected to a strip search unless there is reasonable belief of concealment of a weapon or controlled substance or contraband. Reasonable belief may be based upon, but is not limited to the following:

- a. ***The nature of the offense charged:*** Violent felony offenses and those related to drug possession often provoke suspicion that the offender is concealing weapons or evidence. However, the fact that an individual is arrested on a felony charge alone does not, without reasonable suspicion, always support the use of a strip search.
- b. ***The duration of the detention:*** The duration of the detention can also serve as an aid in determining if a strip search is warranted.

Arrestees being held for a short period of time, and who will be continuously restrained, may not warrant a strip search unless there are other factors present.

- c. ***The arrestee's appearance and demeanor:*** An arrestee, who presents an unusual and inordinately nervous demeanor, conducts himself/herself in a manner that suggests he/she is attempting to conceal something, or acts in a generally suspicious manner, may add to an officer's reasonable suspicion.
- d. ***The circumstances surrounding the arrest:*** The circumstances under which the arrest was made may also constitute a factor in determining reasonable belief. Such circumstances include the area/location in which the arrest was made, (e.g., in an established drug house or area known for the sale/distribution of narcotics or street violence); the individuals with whom the arrestee was associating, (e.g., known felons with violent criminal histories); and the degree of resistance offered by the arrestee, (e.g., indicating the possibility of the arrestee possessing a weapon, evidence, or contraband.)
- e. ***The arrestee's criminal record:*** An individual with a lengthy criminal record, particularly crimes of violence and narcotics offenses, possession and/or use of firearms, or other deadly weapons, and prior involvement in illegal drugs, are pertinent in establishing reasonable belief.
- f. ***The discovery of evidence:*** The discovery of evidence of a major offense in plain view or in the course of a search incident to the arrest.
- g. ***Information/Actions:*** Information or actions of the arrestee indicating the likelihood that evidence, contraband, or a weapon are being concealed.
- h. ***Suspicious objects:*** The detection of suspicious objects beneath the suspect's clothing during a field search incident to the arrest.
- i. ***Whether other reasonable alternatives exist:*** Use of metal detectors or a pat-down of an arrestee may be accomplished in lieu of a strip search when to do so can meet the safety and security needs of the Department. Temporary segregation from other arrestees may also serve as an acceptable alternative to a strip search.

## 2. Provisions for Privacy and Search by Gender

When strip searches are conducted, the following provisions regarding privacy shall apply:

- a. Only sworn officers of this Department are authorized to perform a strip search of arrestees being detained at the East Hampton Police Department. If there is no officer of this Department available to conduct a strip search of an arrestee of the same sex, then the Supervisor shall make arrangements to have a sworn officer of the same sex, from another law enforcement agency, perform the search.
- b. In conformance with approved hygienic procedures and professional practices. Officers shall wear protective gloves and take all other universal precautions as required. To maintain proper hygiene, protect the dignity of the arrestee, and reduce liability and other allegations of wrongdoing, officers shall attempt to avoid contact with an arrestee during the strip search.
- c. In a room specifically authorized for this purpose by the Supervisor, taking precautions to prevent any unauthorized viewing or intrusions into the area.
- d. By the fewest number of personnel necessary and only by those of the same sex. Usually the number of necessary personnel will be no more than two officers, unless the arrestee is violent or other unusual circumstances exist.
- e. Under conditions that provide privacy from all but those authorized to conduct the search.
- f. Field strip searches of prisoners are generally prohibited, except in the rarest of circumstances under exigent circumstances where the life of officers or others may be placed at risk, and only in privacy with the explicit written approval of a Supervisor authorized herein to be a designee of the Chief of Police.

## 3. Strip and Body Cavity searches on Juveniles

- a. Strip and Body Cavity searches of a juvenile (an unemancipated person under the age of 18) that has been arrested for a "delinquent act," as defined in CGS § 46b-120(9), that would be classified as a felony if committed by a person over the age of eighteen are authorized with the approval of the Chief of Police or his designee.

- b. This policy does not permit the Strip and Body Cavity searches of juveniles arrested for a "delinquent act" that would not be classified as a felony if committed by a person over the age of eighteen or a juvenile charged as a member of a family with service needs, as defined in CGS § 46b-120(5), unless there is reasonable belief that the individual is concealing a weapon, controlled substance or contraband. (This would be consistent with CGS § 54-33(a).)
- c. The manner in which the search is conducted should take into consideration the juvenile's age and level of maturity as well as any know or apparent intellectual disabilities or mental illness.
- d. The report of the strip search, as required by CGS § 54-33(d)(2), should be provided to the juvenile and the juvenile's parent or guardian.

#### **F. Reporting Requirements**

Written permission of the Chief of Police, or designee, is required to perform a strip search. Where articulable, reasonable belief exists to conduct a strip search for weapons or contraband, the arresting officer shall make a documented request for such action to the Supervisor, by filling out the *Authorization for Strip Search Form*, which shall clearly state the basis for suspicion. A completed copy of this form will be given to the arrestee. This form shall also include the following information:

- 1) The time and place of the search
- 2) The identity of the individual searched and the name of the officer conducting the search, plus any other person(s) who are present
- 3) A detailed description of the nature and extent of the search

When a strip search is conducted, any weapons, evidence, or contraband found during the search should be fully documented and secured as evidence for possible criminal charges. Any problems encountered or items confiscated should be brought to the attention of a supervisor. The officer's police report shall also include any other pertinent information regarding the search.

#### **G. Body Cavity Searches**

An inspection of the suspect's mouth may not require a search warrant. A search of any other part of the body, however, requires a search warrant. Because body cavity searches are particularly intrusive, they must meet a higher standard in order to be deemed justifiable, and to conform to the requirements of reasonableness in the manner in which they are performed. The requirements of privacy, hygiene, and the training of those who perform such searches are of importance in the context of body cavity searches.



Should visual examination of a suspect during a strip search and/or other information lead an officer to believe that the suspect is concealing a weapon, evidence, or contraband within a body cavity, the following procedures shall be followed:

1. The suspect shall be kept under constant visual surveillance until a body cavity search is conducted or an alternative course of action taken.
2. The officer shall consult with a supervisor to determine whether probable cause exists to seek a search warrant for a body cavity search. The decision to seek a search warrant shall recognize that a body cavity search is highly invasive of personal privacy and is reasonable only where the suspected offense is of a serious nature and or poses a threat to the safety of officers, the arrestee, others and/or the security of the Department's detention operation.
3. If probable cause exists for a body cavity search, an affidavit for a search warrant shall be prepared that clearly defines the nature of the alleged offense and the basis for the officer's probable cause. The warrant shall be specific as to sanitary conditions and conducted either by or under the supervision of a physician under the guidelines of Chapter 370. In addition, a *Medical Authorization for a Body Cavity Search Form* must be completed and a copy given to the arrestee.
4. On the basis of a search warrant, a body cavity search shall be performed by an authorized agency physician or by other medically trained personnel at the physician's direction.
5. For safety and security reasons, the search shall be conducted at a medical facility, or at another authorized facility, and in a room designated for this purpose.
6. The authorized individual conducting the search shall file a report with the Department, which shall be included in the police report. Officers witnessing this search shall complete a supplemental police report containing all pertinent information.



## STRIP SEARCH AUTHORIZATION

DATE: \_\_\_\_\_ CASE # \_\_\_\_\_

LOCATION OF SEARCH: \_\_\_\_\_

Time Search Began: \_\_\_\_\_ Time Search Ended: \_\_\_\_\_

### THE FOLLOWING OFFICER(S):

1. \_\_\_\_\_  
Rank & Name (Printed) Signature
2. \_\_\_\_\_  
Rank & Name (Printed) Signature
3. \_\_\_\_\_  
Rank & Name (Printed) Signature

### HAVE BEEN AUTHORIZED TO CONDUCT A STRIP SEARCH OF:

Subject Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Address: \_\_\_\_\_

**WHO IS IN CUSTODY AND IS SUSPECTED OF BEING IN POSSESSION OF A WEAPON,  
CONTROLLED SUBSTANCE, OR CONTRABAND.**

AUTHORIZED BY: \_\_\_\_\_ Date: \_\_\_\_\_  
*Chief or his Designee Signature*

**NOTE:** Written authorization must first be obtained from the Chief of Police or his designee, prior to conducting a strip search. This Strip Search Authorization Form must be completed in triplicate as follows:

- Original – with case report
- 1 copy – with arrest/court paperwork
- 1 copy – to subject of search



# TOWN OF EAST HAMPTON AGENDA REPORT

AGENDA ITEM: 96

DATE: September 25, 2018  
SUBJECT: East Hampton Public Library Policies  
DEPARTMENT: Library

---

## **BACKGROUND**

It has recently come to our attention that the East Hampton Town Council has never approved a set of operational policies for the East Hampton Public Library. To rectify this oversight, the Library will be presenting the Town Council with drafts of operational policies, that have been approved by the Library Advisory Board, throughout 2018. Our goal is to have a completed policy manual, approved by the Library Advisory Board and the Town Council, by the end of 2018.

In December of 2017, the Town Council approved a number of Library policies including: the Mission and Scope of the East Hampton Public Library, Patron Responsibilities and Code of Conduct, Circulation Policies and Community Contributions to the Library.

The attached document includes the following draft policies for the Town Council's review:

1. Library Facilities and Resources
  - a. Meeting Room Policy
  - b. Photography Policy
  - c. Exhibit Policy
  - d. Bulletin Board Policy
  - e. Hand out Literature Policy
  - f. Reproduction Request Policy
  - g. Internet and Technology Use
  - h. Facsimile Policy
  - i. Program Policy
  - j. Local History Room Policy

All policies have been written in consultation with other Connecticut libraries, best practices as outlined by the American Library Association and upon recommendation of the East Hampton Library Advisory Board.

All attached policies were approved by the Library Advisory Board at their September 10, 2018 meeting.

## **RECOMMENDED MOTION**

Resolved that the Town Council adopts the proposed operational policies for the East Hampton Public Library.

## **FISCAL IMPACT**

No fiscal impact.

**East Hampton Public Library**  
**Library Policies**  
**For Town Council Review**

**Library Facilities and Resources**

**A. Meeting Room Policy**

The East Hampton Public Library maintains meeting rooms primarily for library-related activities. When not in use by the Library, meeting rooms may be reserved by non-profit, community or civic groups at no charge. Commercial entities may use rooms for a fee. Rooms are not available for personal or social use (birthday parties, baby showers, etc.) All events must be free and open to the public.

The library maintains two rooms for use. Maximum seating capacity of the Community Room is 80; the Local History Room has a capacity of 10. Attendance must be limited to the posted capacity of the room.

For a fee, the Community Room may be reserved outside of regular library hours as long as there is an available building custodian to open and close the building. The Local History Meeting Room may only be reserved during normal library hours.

**Room Reservation**

Room reservations will be accepted in the order of priority shown below. The library reserves the right to reschedule meetings based on these priorities.

- 1) Meetings sponsored or co-sponsored by the library.
- 2) Meetings held by a Town Department or Official.
- 3) Meetings held by East Hampton non-profit groups.
- 4) Meetings held by non-profit groups outside of East Hampton.
- 5) Meeting held by for-profit organizations.

The library reserves the right to deny requests for use of the room, or cancel a reservation which has been made. Notice of cancellation of a reservation to use a meeting room, for any reason, will be given as far in advance as possible.

Room reservations may be made up to 6 months in advance.

To request use of a meeting room, room users, excepting academic study groups and student/tutor sessions are required to complete an ***Application for Use of the East Hampton Community Room or Local History Room*** and submit the same to the library. Meetings are not scheduled until approval from the Library Director or his/her designee.

Maximum seating capacity of the Community Room is 80; in-library meeting rooms have a capacity of 6-10. Attendance must be limited to the posted capacity of the room.

The Local History Meeting Room may only be reserved during normal library hours.

For a fee, the Community Room may be reserved outside of regular library hours as long as there is an available building custodian to open and close the building.

### **Fees**

Rooms are available at no charge if the reserving organization is either a government, non-profit, community or civic organization.

A room may be reserved by a commercial entity or for-profit organization for a fee to be set by the Library Director. Fees may be paid by cash or check made out to the 'Town of East Hampton' due upon room use.

If a meeting in the Community Room is to occur fully or partially outside of library hours, a opening and/or closing fee to be set by the Library Director will apply. This fee is payable in cash directly to the building custodian at the time of opening or closing. If no building custodian exists or the building custodian is unable to open or close the building, meetings will not be scheduled outside of normal library hours. Meetings held in in-library meeting rooms must take place and begin/end during the library's public service hours.

The organization will be held financially responsible for any damage to library equipment or premise.

A cleaning fee of \$50 will be assessed if meeting room or kitchen facilities are not left in an orderly and clean condition.

### **Rules and Regulations**

Sales of products or services, soliciting donations other than in conjunction with a program or event sponsored or hosted by the library, and/or fundraisers sponsored by non-profit organizations will be considered on a case-by-case basis, and will be approved at the sole discretion of the library.

Alcoholic beverages may not be served or consumed anywhere on library property. Smoking or vaping is also not allowed.

The reserving organization is responsible for setting up and putting away furniture within the time reserved. The room should be left as found.

Kitchen facilities for serving light refreshments are available by previous arrangement.

Organizations must request prior permission to use the piano in the Community Room. If permission is given for the piano's use, tuning is to be done at the organization's expense by the library tuner.

Organizations must request prior permission to use the projector, sound system or lectern in the Community Room. Reserving organizations are responsible for supplying their own laptop.

Decorations, posters etc. may not be affixed to any part of the building (inside or out) without the express permission of the Library Director or his or her designee.

Cancellations should be made at least 24 hours in advance or as soon as possible by calling the library at 860.267.6621. Multiple cancellations or failures to appear for room reservations may result in the loss of meeting room privileges.

The organization using a Meeting Room is responsible for supervising the meeting and ensuring that meeting attendees adhere to the library's Code of Conduct. Meetings that will interfere with normal library use will not be permitted. Failure to comply with library policies and Code of Conduct will result in a cancellation of the event and/or a denial of future requests for use of the room.

All groups using any meeting room shall agree to hold the Library and Town of East Hampton and all library staff harmless from, and not hold them liable for, all costs, damages, losses, claims and expense incurred directly or indirectly as a result of the group's use of a meeting room.

The signed ***Application for Use of the East Hampton Community Room or Library Meeting Room*** constitutes a release by the group and each and all its members of any claim against the library, the Town of East Hampton and the library staff for any injury to persons or damage to property suffered by such group or any of its members during or as a result of the use of the meeting room.

The library reserves the right to prohibit the use of meeting rooms by any organization that does not comply with this policy.

The Library Director reserves the right to make exceptions to this policy as deemed appropriate and to establish the procedures and fees necessary to implement it.

*(Approved by the Library Advisory Board 9/10/18)*

## B. Photography Policy

The East Hampton Public Library reserves the right to use photographs or video taken at the library for publicity purposes in printed materials and online. All library patrons consent to the use of their photo taken at the library or during library events, unless they specifically inform staff of an objection to such use. No names will be used in conjunction with photos without express written consent.

The library does not permit commercial photography on or in its facilities. The library permits research photography of its materials and resources within certain limitations. Researchers and journalists are responsible for obtaining their own permissions when photographing copyrighted material in the library. Casual amateur photography and videotaping is permitted in library facilities for patrons and visitors wanting a remembrance of their visit. The use of additional equipment such as lighting is not permitted. Any other photography inside or outside of the library is not permitted without previous authorization from the Library Director or his/her designee.

*(Approved by the Library Advisory Board 9/10/18)*

### C. Exhibit Policy

The glass display case in the main library is intended to display materials and the promote library programs. When the case is not scheduled to be used by the library, it is available by advance booking to East Hampton residents, organizations, or businesses for non-commercial, cultural, or educational displays. All displays must be approved by the Library Director or his/her designee.

*(Approved by the Library Advisory Board 9/10/18)*

### D. Bulletin Board Policy

The library's lobby bulletin is used to post general community or government information, as well as announcements of nonprofit community events and cultural activities. Because of limited space, items are posted at the discretion of the library staff, with library information and activities are given preference. Commercial notices are prohibited. All notices must be approved by the Library Director or his/her designee. All notices not previously approved will be removed.

The library may place signs or announcements of library and Town-sponsored events on the exterior of the building or lawn. Lawn sign announcements of non-library, community, and cultural events may be posted at the library's discretion.

*(Approved by the Library Advisory Board 9/10/18)*

## E. Hand out Literature Policy

The library may serve as a distribution point for free literature for government, non-profit or community organizations. All literature must be approved by the Library Director or his/her designee. All literature not previously approved will be removed.

*(Approved by the Library Advisory Board 9/10/18)*

## F. Reproduction Request Policy

The East Hampton Public Library provides a copier and scanner as a convenience for researchers and other patrons who occasionally need a limited number of duplications. The public copier is not intended to serve as an alternative to commercial printing services.

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. The library is not responsible for any copyright infringement or fair use violation committed by individuals using the machine.

Certain rare and fragile materials may not be available for duplication.

Material may not be used in any commercial or public way, other than personal research, without the permission of the library. With permission, attribution must be given.

The library offers copying for a per page fee to be set by the Library Director. Such fees are to offset the expense of paper, ink and upkeep of printers.

*(Approved by the Library Advisory Board 9/10/18)*

## G. Internet and Technology Use

In order to meet the information needs of Town citizens, the East Hampton Public Library provides access to the Internet through wired and wireless connections.

The East Hampton Public Library is unable to monitor or control the content of material available through this medium. While some of the information on the Internet is of very high quality, some material may not be accurate, authoritative, appropriate, or timely.

Guidelines for Computer and Internet Use



- Parents/guardians of children under 18 are responsible for their children's use of the Internet.
- Users must sign in to use the next available computer and sign out at the end of their session.
- Computers are available on a first-come, first-served basis.
- No more than two people are permitted at any workstation.
- The library reserves the right to limit the amount of time permitted at a computer.
- The library reserves the right to terminate an Internet session at any time for inappropriate use.
- The library reserves the right to limit or deny computer use based off fines or fees owed to the library.
- Users may not change settings and configurations of computers.
- When listening to something on the computer, the use of headphones is required. The library does not supply headphones.
- The availability of staff to offer technical assistance with computers or the internet may be limited.
- Patrons assume responsibility for any personal information released on library computers. Library computers may not be secure and may be accessible to others.

The library offers printing for a per page fee to be set by the Library Director. Such fees are to offset the expense of paper, ink and upkeep of printers.

Use of the library's computers or internet connection constitutes an acceptance of its policies. Any violation of library policies may result in suspension or loss of computer, internet or library privileges.

*(Approved by the Library Advisory Board 9/10/18)*

## H. Facsimile Policy

The library offers facsimile services for a per page fee to be set by the Library Director. Such fees are to offset the expense of staff time, paper, ink and upkeep of the facsimile machine.

The library offers a confirmation sheet that the facsimile has been transmitted. It does not guarantee that the facsimile has been received by the recipient.

*(Approved by the Library Advisory Board 9/10/18)*

## I. Program Policy

In order to meet the informational needs of the Town, the East Hampton Public Library provides free programs, events, lectures and workshops.

All library programs are open to the public. Due to space or resource limitations, however, pre-registration may be required for library programs.

The library uses the following criteria when scheduling programming:

- Community needs and interest
- Space, resource and staff availability
- Presentation quality
- Presenter qualifications in content area
- Budget
- Historical or educational significance
- Connection to library collection, resources or exhibits

Library sponsorship of a program does not constitute endorsement of the content of the program. The library does not sponsor programs for commercial, religious or partisan purposes or for the solicitation of a business.

Concerns about library programming should be directed to the Library Director.  
*(Approved by the Library Advisory Board 9/10/18)*

## J. Local History Room Policy

The East Hampton Public Library Local History Room serves as both a meeting room as well as a repository for irreplaceable historical artifacts. As such, patrons wishing to use the room must abide by the rules and procedures contained in this policy. Any violation of library policies may result in suspension or loss of library privileges.

### **Access**

The Local History Room is available for use as a meeting room or for local history and genealogy research during normal library hours.

Under certain conditions, the room may be reserved in advance. Please see: **Meeting Room Policy**.

If the room has not been reserved, use of its space is available on a first-come first-served basis.

As the Local History Room is a public space, users should not assume privacy when using the room. Patrons may not restrict other's use of the room.

The library reserves the right to inspect a patron's personal property when leaving the room.

## **Use and Care of the Collection**

Certain parts of the local history collection are kept in locked cabinets. Patrons may request access to these cabinets at the Circulation Desk. Patrons will be required to sign out a key and leave a driver's license at the desk while using materials. No bags may be brought into the local history room while the key is signed out.

Patrons are expected to handle all items with care. Any damage to library materials should be reported immediately to staff. Some items may not be available for patrons to handle.

Staff may limit the number of materials that patrons may use at one time.

Patrons may make photocopies or take digital photographs of most materials for their own personal use only. The patron assumes all copyright responsibility.

Patrons will leave items on the table to be reshelved by library staff members when finished using them.

*(Approved by the Library Advisory Board 9/10/18)*



AGENDA  
ITEM # 12

Office of the COLLECTOR OF REVENUE  
**KRISTY MERRIFIELD, CCMC**  
kmerrifield@easthamptonct.gov

September 25, 2018

To: The East Hampton Town Council,

The documentation for the tax refunds listed below is available in the Office of the Collector of Revenue for your review. There are five refunds totaling \$1,233.90.

Respectfully Submitted,

Kristy L. Merrifield, CCMC  
Collector of Revenue

294.97   
93.96   
236.37   
336.12   
272.48

005

1,233.90

**BOARD AND COMMISSION SUMMARY  
AUGUST 2018****Arts & Culture Commission**

No meeting

**Board of Finance**

No meeting

**Brownfields Redevelopment Agency**

No meeting

**Clean Energy Task Force**

No meeting

**Commission on Aging**

No meeting

**Conservation-Lake Commission**

The Conservation Lake Commission met on August 9<sup>th</sup>. They had a brief update on the watershed projects. They had an update from the advisory panel stating the last sample taken from the lake showed a count of 60,000. There was a discussion on the Lake Smart program. There were some suggestions on starting some smaller projects, so the Lake Smart program would become more visible to the community. The commission members also agreed that the grant money needs to be spent on projects that bring a more positive change for the Lake Smart program, the community, and for the lake.

**Design Review Board**

The Design Review Board met on August 23<sup>rd</sup>. They looked over three plan reviews approving the Black Walnut Bakery, declined one for She Shed Creations, and advised Planning and Zoning on the last plan review.

**Economic Development Commission**

The EDC met on August 21<sup>st</sup>. The members discussed how to bring more tourism into the town to promote more local business. They also awarded the Business of the Month for August and took a picture with the owner and the commission members. There was discussion of a new 'passport' for local businesses for people in the community to promote 'shop local'. At the end of the year each person participating would be entered in a raffle to win a prize donated/ contributed by the local businesses involved. The Business of the Month banner is hung up at Yellow Marigold and will go to Frill next. And the September Business of the Month was voted on and decided to be The Studio by the commission members. The members reviewed the minutes and report from Planning and Zoning. And the members received a Town Manager's Report and was updated on the changes within the town and community.

### **Ethics Commission**

No meeting

### **Fire Commission**

The Fire Commission held their Annual Meeting on August 13<sup>th</sup>. They elected Brett Salafia to continue as the Chairman and Eric Germain to continue as the Secretary. The Commission held their regular meeting immediately following the Annual Meeting. They approved the purchase of three new water movers from Admiral Fire and Safety not to exceed \$2,000. They discussed dry hydrants, the previous fiscal year budget, changes to the Fire Commission Ordinance and they welcomed their new secretary. They would like to establish a vehicle sinking fund. They also acknowledged the responders to the fatal crash on Route 16 from last month.

### **High School Building Committee**

No minutes received

### **Inland Wetland Watercourses Agency**

The Inland Wetland Watercourse Agency met on August 29<sup>th</sup>.

- Application IW-18-012, WPCA, Lake Dr., to install backup generator at the existing Princess Pocotopaug pump station. Map 9A/Block 70B/Lot 14. Approved (5-0)
- Application IW-18-015, David Hanson, 2 Old Marlborough Rd., stabilization of the bank with stair and walkway. Map 05A/Block 83A/Lot 1. Approved (5-0)

### **Joint Facilities**

No meeting

### **Library Advisory Board**

The Library Advisory Board met on August 6<sup>th</sup>. They discussed the budget, new library policies and the new website. They also discussed the 120<sup>th</sup> Library Birthday party scheduled for August 18<sup>th</sup>.

### **Middle Haddam Historic District Commission**

No meeting

### **Parks & Recreation Advisory Board**

No meeting

### **Planning & Zoning Commission**

The Planning & Zoning Commission met on August 1<sup>st</sup>.

- PZC-18-014 – Aaron Tyler, 13 North Main St., for a Special Permit for a Café Sec. 5.2.C. Map 01A/Block 39A/Lot 28B. Continued (8-0)
- PZC-18-011 – Ryan Noir, 7 Sequonia Trail to add “Formula Business” to Sec. 5.2.C. Map 09A/Block 74/Lot 233. Continued (8-0)
- PZC-18-015 – Global Self Storage, LLC., 182 East High St., for a Special Permit (Sec. 7.6) for commercial excavation, fill and grading of 4.88 acres. Map 32/Block 85/Lots 7B and 7C. Continued (8-0)

- PZC-18-017- Morgan & Molly, LLC., 197 East High St., Site Plan Modification for signage for new Dollar General. Map 32/Block 71/Lot 1-2. Approved with conditions (8-0)
- Preliminary Review: Skyline Estates, LLC – Proposed Modification to Road Design, Skyline Estates, Phase II
- Preliminary Review: West High Enterprises, LLC – Proposed Daycare, 207 East High Street – Map 12/ Block 36/ Lot 2
- Alcohol Regulations – Proposed amendments to Zoning Regulations Sec. 8.4.B Alcoholic Beverages. Continued (8-0)
- Sign regulations – Proposed amendments to Zoning Regulations Sec. 7.2 Outdoor Signs. Continued (8-0)

### **Town Facilities Building Committee**

The Town Facility Building Committee met on August 2, 2018. The members elected Jeff Foran as Vice Chairman for the committee. They received updates on the building project. And they were informed that the town wants to send the early release package and other information to a third-party assessor to keep everything in check and to review everything that went into the project and the decision making. The members approved four invoices for payment. There will be an article in the next Events magazine to update the community on the progress of the project.

The Committee met again on August 9<sup>th</sup>. The members voted to approve an appropriation for a third-party reviewer for the project.

During the August 23<sup>rd</sup> meeting, the Committee discussed the Ground- Breaking Ceremony scheduled for September 28<sup>th</sup> at 1pm. Two invoices were approved and the 250<sup>th</sup> Anniversary clock was discussed as it will now be located at the new facility.

### **Water Pollution Control Authority**

The Water Pollution Control Authority Committee held their regular meeting on Tuesday August 7<sup>th</sup> at 6:00 P.M. A date was set for September 5<sup>th</sup> at 6:30 P. M. for a Public Hearing for the approval of the 2018/19 Sewer Use Rates. Mr. Smith and Mr. Maniscalco met with representatives from Metropolitan District Commission (MDC) the Department of Public Health (DPH) to discuss possible State funds available for a water system. An additional meeting was held with Mr. Maniscalco, MDC, DPH and the Town of Portland to discuss a possible water connection through Portland as well as the possibility of East Hampton WPCA taking over the Portland WPCA.

### **Zoning Board of Appeals**

The Zoning Board of Appeals met on August 13<sup>th</sup>.

- Application ZBA-18-006, Sabrina Pools, Inc., 36 Charles Mary Dr., for a variance to increase the lot coverage from 10% to 10.89% to erect a 20' x 45' inground pool. Map 6/Block 12/Lot 11. APPROVED 5-0