

CITY OF MIDDLETOWN
COMMON COUNCIL MEETING AGENDA
JULY 06, 2021

1. PLEDGE OF ALLEGIANCE
2. ROLL CALL (COUNCIL CLERK)
3. APPROVAL OF MINUTES Council Meeting, June 01, 2021
4. CORRESPONDENCE, COMMUNICATIONS AND REPORTS (COUNCIL CLERK)
5. FOR THE GOOD OF THE CITY (PUBLIC PARTICIPATION)
6. REMARKS OF THE MAYOR
7. REMARKS OF DEPARTMENT HEADS
8. PUBLIC HEARINGS AND GRIEVANCES (NOTHING THIS EVENING)
9. PETITIONS AND COMPLAINTS (NOTHING THIS EVENING)
10. REMARKS OF THE ALDERMAN AND REPORTS OF COMMITTEES
11. UNFINISHED BUSINESS (NOTHING THIS EVENING)
12. NEW BUSINESS (RESOLUTIONS)
 - Resolution to approve and authorize the Mayor to sign an audit agreement with Troy and Banks, Inc. to audit cable franchise fees.
 - Resolution to approve an extension of time of six (6) months for two resolutions dated May 04, 2021, #98-21 and #98-21 for the Presidential Heights Realty Subdivision.
 - Resolution to close any and all streets and intersections necessary for the Run 4 Downtown, Saturday, August 21, 2021 beginning at 8:00 a.m.
 - Resolution to authorize the Treasurer to accept a donation o \$400.00 for the development of the Disc Golf Course.
 - Resolution to authorize acceptance of a grant in the amount of \$15,250 from the New York State Department of Criminal Justice Services under the G.I.V.E 2021-2022.
 - Resolution to approve the Cap Ex Plan for 2021-2022.
 - Resolution authorizing various capital items in and for the City at a total maximum coast of \$885,864 and authorizing the issuance of \$885,864 bonds to pay the costs.
 - Resolution to approve and authorize the Mayor to sign an agreement with ChargePoint for the payments of the EV charging stations.
 - Resolution to approve and authorize the Mayor to sign an agreement with RBT to review the City's American Rescue Plan.



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- 13. LOCAL LAWS (NOTHING THIS EVENING)
- 14. AUDIT OF CLAIMS AND ACCOUNTS (FINANCE COMMITTEE CHAIR)
- 15. ADJOURNMENT

**The agenda is tentative and established on all accessible information at this time.
Items may be eliminated at any time. Resolutions are added on an emergency basis.**





Common Council
City of Middletown
June 1, 2021

1. Pledge of Allegiance – President Rodrigues asked all to stand for the pledge.
2. Roll Call: Ald. Ramkissoo, Tobin, Kleiner, Johnson, Jean-Francois, Burr, Green, Masi, President Rodrigues - 9
3. Approval of Minutes

Motion of Ald. Green seconded by Ald. Masi to accept the minutes of March 16, 2021, April 20, 2021 and May 4, 2021.

All in favor.

4. Correspondence

Nothing this evening

5. For the Good of the City

Kenneth Sweeney: Kenneth Sweeney 39 Burnt Corners Road, Middletown, New York. My wife Cindy Sweeney, same address, we're here as representatives of Harvey A. Shower, 9 Claremont Court, it's a little tough for him to get up and speak.

Cindy Sweeney: I'm his daughter.

Kenneth Sweeney: The reason we're here tonight is unequal application of city ordinances and laws. While I was away, my father-in-law gets a memorandum of violation cause he had water on top of his pool cover, and this has been a continual harassment of my father-in-law for years now. My father-in-law built his house 61 years, 61 years ago, never had a problem.

Fifty years ago he put his in-ground pool, never had a problem. None of the residents, none of the neighbors, nobody had a problem with the pool. About 10-12 years ago, an individual built the house on Ashland, the last house on the left as you go down, right next to the wetlands. They had a pipe, a drainage pipe that actually came out of Davidge Park, and they capped it. Then the neighbor across Ashland, at 10 Ashland, started having water problems.

When the original subdivision went in, there was a 4-foot spillway that was supposed to run behind all the houses on Ashland and all the houses on Claremont Court, that was supposed to remain clear and open for drainage. It's been filled in by numerous neighbors. City doesn't seem to want to enforce that part of the zoning. But the, but, I'm away, I'm down in Texas, burying my brother, and my father-in-law calls up frantic because he has a violation. I was able to get my son to come into his house, put a sump pump on and pump the water into the pool.

But it's a continuum. I know the individual that constantly calls up. One day it was, there must be something dead in his yard, call the cops. There's vultures on the shed, go find out. Another time he sprang toxic fumes. My mother-in-law, my wife and my father-in-law are painting their foundation. Another time is, oh, they're there spraying, must be spraying something dangerous. Go up: my father-in-law is spray painting picture frames that he built. And on, and on, and on. This individual seems to feel that his water problem is my father-in-law's fault, because the pool is an in-ground pool, with raised elevation.

A ditch has been opened. I have pictures of the...

So we called Mr. Post, who wrote the citation. How did you see the pool? If you look from the, from the road, I have pictures you all can have. You can't see the pool from the road. So did he trespass, 'cause he's got to have permission to go on our, on his property to inspect. Just, I have a complaint. So my wife pressed him — well, first off we tried calling the council persons for our Ward. One's answering machine was full, couldn't leave a message. The other, left a message, never got a call back. Cause we're just trying to figure out what the heck's going on.

Tried to call the the gentleman, Mr. Post, who cited this; oh, he's sick today. There was a time that he's supposed to come back on the following Tuesday. We flew back in on Sunday, called on the Monday, Tuesday, he's supposed to come back on the 24th, which is when he was supposed to be there for re-inspection. My wife went in there to wait for him. He still hadn't shown up, so she calls: he called out sick. Couldn't somebody let us know that he wasn't showing up? Guess not.

So when will he be back in? Oh, he's going to be sick through Thursday. Wow, I wish I could predict how long I'm going to be sick. So on Thursday we're anticipating a phone call. Zots. Finally Friday...

Cindy Sweeney: So I called on Thursday afternoon, and left a message on Mr. Post's answering machine, and did not get anything back on Friday.

Around 3 on Friday I called, I asked for Susan, who I spoke with originally in

the department that answered. She's very nice, and she actually is the only one from the town that has returned any phone calls for me. So I asked to speak to her, she wasn't in. So the woman said, well Mr. Post is in his office, so he finally answered the phone then; and when I spoke to him, after going around and around, he actually never came to see the water problem. He just took the hearsay of the person that made the complaint. Now, if he had actually gone to that person's property, he would have known he has a swamp back there, and he cannot, he cannot mow the lawn.

Kenneth Sweeney: Excuse me. The only way that he could legally see the pool, was to go through my father-in-law's back-door neighbors, which is Mr. C. on Ashland. To walk across his property, he would have had to have hip waders on.

Cindy Sweeney: He would have had to give him a violation.

Kenneth Sweeney: He would have had to be violated for that. Plus, his grass was too tall, higher than the adjoining neighbor that got a violation because his grass was too tall. Why didn't Mr. C. get those violations? So it's, it so that's how we pressed him. Where's the pictures? I don't need pictures. So it's hearsay.

Cindy Sweeney: So, so that's why I feel we...

Kenneth Sweeney: If there's no pictures, it's hearsay. I can say, it never happened. Prove that it did. I mean, that's pathetic. And it's pathetic on Mr. C's part, because it seems to be kind of stupidity that we keep doing the same thing and expecting a different result. He constantly badgers my father-in-law and never wins, because he's always wrong.

Cindy Sweeney: So I want to, I'm going to pass these around, and you can see where the neighbor has put a water pipe through our fence, my father's fence, and pumping his problem onto our water problem, and where I threw the hose back out, so it goes back on his problem; and then he returned it, because we own 6-inches on the other side of the fence, so that still on our property. Then you can see where he has a sump pump, he has an electric line in his shed, pumping the water which goes through the pipes and to the backyard. And then, you see the tall grass, and then there's one of his neighbor, next to him, who has blocked the water flow halfway up the fence.

Kenneth Sweeney: The city is supposed to make sure this is clear for drainage, which they never do. But the inspector never saw that. Never so blind as eyes that cannot see.

Cindy Sweeney: And then we also have, if you're going by this violation that we got, that person next to Mr. C., which is 12 Ashland Avenue. From the road you can see the pile of brush laying right there. No, that one's not in the ditch, but then we also have 14 Ashland Avenue, with another same violation, which says brush and other accumulations. And then, if you go down, at the end of Claremont Court and Ashland Avenue, where your drainage ditch is, and you see that, this one is hard to see, but you can see that there's a tree

right in that drainage ditch, that is half-dead, half-alive. And then if you look at this picture, and this picture here, is all the brush from the dead tree that piles up, which is another violation. And I didn't even go on anybody's property, I just stood on the road and took these pictures.

Kenneth Sweeney: If Mr. Post had made his way out of his office, he might have seen some of this and could have corrected the problem, therefore we wouldn't have gotten, you know, the hard time from Mr. C. on Ashland.

Cindy Sweeney: And this is a picture of the tree that is actually dead. And then, I don't want to really complain about my other neighbor. 'cause she's very nice, but her pool didn't get a violation, and she has water and debris on hers. And so all of this I feel is a constant harassment, and I feel that the city needs to start doing something to fix the problem.

Kenneth Sweeney: After Mr. Post hung up, well, my wife got disgusted and kinda hung up, she said we'll take care of it. He said on Tuesday, maybe we'll come and talk with you. And then she hung up, he hung up, whatever. Then a few minutes later he called back, I think he realized he stuck his foot in his mouth, now he's starting to talk to her. Oh, by the way, you know there's garbage inspectors out there too. What's that, more intimidation? He's trying to intimidate us, have us not come to the city council. And for the threat that if we come to you guys, and for some resolution, that he'll send the inspector on the garbage cans, that they have to be 35' from the street, and I can't be seen from the street and na-na-na-na-na-nah. Just covering himself. The man never left the office, he takes care of an acquaintance. He won't tell us who lodged the complaint. It's not real hard to figure out. Mr. C. tried to get all the neighbors to sue my in-laws saying that the water problem was there because of the pool. You know, it's just perpetual. An 89-year-old man has to put up with that kind of garbage. Pretty sad. Thank you. Thank you for listening to us.

Cindy Sweeney: I hope that you will all address the water issue that goes between all of those properties. My son is a civil engineer. He said, anybody that isn't a civil engineer knows enough that, if you are higher here and then lower down there, if everything is open the water will flow. And if you don't give everybody a violation for opening that ditch...

Kenneth Sweeney: No, because, by him filling that ditch they got an extra 4-foot of property, 4-foot of backyard. And Mr. C. can't see where the problem really lies.

Pres. Rodrigues: Thank you. The council heard it, I believe the Commissioner of DPW heard it, and also the Mayor. We'll definitely address the issue. Anyone else would like to address the council? Do we have anybody online?

Eileen: We do not.

6. Remarks of the Mayor

Mayor DeStefano:

Good evening. Yesterday I joined with members of the Common Council, including our only veteran on the board, Mr. Masi, and I know Dr. Johnson, Mr. Tobin, Jean-Francois, Mr. Kleiner were all there and the others sent their best wishes and wished they were there, to attend the Veterans Day at the American Legion, as we remembered and honored our heroes. As you know, Memorial Day is the day we honor and pay respect to those very brave men and women who paid the ultimate price, and we remember the pain and suffering that their families went through and continue to go through. It was a ceremony by the Legion, it was a solemn day and a day of remembrance and in a day to say thank you; and I want to thank the council members that were there along with the public that was there, and thank the board for their support that we offer to the, to the local veteran groups on both Memorial Day and Veterans Day. This year — the past two years — has been a little bit different and they've limited the attendance. Hopefully next year we'll all be back to normal, even hopefully by November, we'll be back to normal in regards to honoring those veterans in November.

To move on, the garbage non-compliance issue. You have in your emails the brochure that we did send out on social media. Basically, we've had quite a few weeks now with the new system, at least to the majority of the properties in the city. The downtown business improvement district does not have their cans. Anyone who can accommodate it now within the district is entitled to get one, but most properties are waiting for us to do the sanitation plan, or give them some guidance on that, and we're waiting for the smaller cans to come in before we start doing enforcement in the downtown. But basically for the neighborhoods, you can look at the pictures. You can see this is what we're trying to avoid. This is the reason why we did it, this is where we're going with it. (aside) The one TV is off I think, is it?

This is where we're going with it, with the program, to avoid things like this. This is just unacceptable, so the idea as we move forward is, the brochure that is available on social media and on our website will be delivered, hand-delivered, to properties such as this; and properties that do not fall into compliance with the guidelines and rules will get a personal visit by the code department. Just advising them of what the law is, and what's available to them. One or two of these look like it's either commercial or maybe a multiple dwelling; they have access to additional cans if they need them. It is an additional charge under the system that we adopted, but properties like this, that garbage will not be picked up. As you can see, the blue can is out. We are accepting right now, up until June 13th, we are allowing the blue cans, the recycle cans, to be used for pickup. We may allow them to be used during high-volume weeks, like Christmas or holiday season, and we're developing that final plan. But for now, once June 13th comes, any garbage that is not in the green can will not be picked up. The property owner will get a follow-up visit, they will probably get a warning. They will be advised they have to bring the garbage back in or dispose of it in another way if possible, or they can probably do it for a charge, if they want it picked up immediately. But we are not going to continue to pick up trash as you see in these pictures. I recommend people go online and read the sanitation plan that we put in place. As I said,

effectively the green can is for household garbage only, the blue is for recycling. I had probably a 10-minute discussion with a lady regarding this, who operates a small business out of her home. She was insistent that she's a) not paying for another can, and b) that "I'll put my garbage in the recycling can if if you don't pick up my garbage." Well, we will not pick up recycling, and it is a violation if you have garbage in your recycling bin, so you need to recycle appropriately. It's not complicated.

Most communities go with the one can system, go with a much smaller can than we have. They usually go with like a 60+ gallon can. We're going with a 95-gallon can with a large wheel. It's easily maneuverable, but if not, you have the option of going to a smaller can if you don't produce a lot of waste. As you see in the pictures here, the second reason why we went to the system was our workforce. In this picture you can see what it's like in the winter time, to lift these heavy cans. It was one analysis that we did, when we came to the idea of going in this direction, was that 50% of our workman's compensation claims for the year were related to the sanitation department. The number has since come down because we started putting a lift on the back of the trucks. We will be going to the automated arm later this year, when the trucks do come in, but in the meantime all of the trucks are equipped with a lift and the sanitation department is not allowed to lift the can into the truck. They have to use the automatic lift. It is one can per single-family home, one green can — unless as I did, you pay the extra \$100 per year for the additional can. That one can, the guidelines are that one can will handle about a family of at least five to seven people. According to this the normal guidelines of the sanitation standards that they have throughout the country and that's especially if you recycle, so you have the opportunity to also reduce your trash flow by recycling more. Some of the questions have been; the pick-up schedule: they remain the same. Nothing has changed in regards to pick up. Doesn't mean somewhere down the line it may not or may change, but as of now it is the same pickup schedule that we've been using. The size of the cans that we've talked about is — and we have exchanged some, but we have run out of the 65-gallon and a 35-gallon cans for now, they are on back order; but when they do come in, if you're not a large producer of trash, you can swap your larger can for the smaller can. You cannot, unfortunately, swap two smaller cans for one of the larger cans. You know, the idea is also... but we do have some accommodations for handicapped folks in the law also, to make an appeal. But basically it's one can per person, or one can, one set of cans, for single-family home; two sets of cans for a commercial or mixed-use property, and then they can also, a multi-family property can also purchase additional cans. That can all be done through the Department of Public Works.

Another point we'd like to emphasize, and riding around over the last few days early in the morning, we noticed people are using them for yard waste. They are not to be used for yard waste at all. The yard waste you put in your old garbage cans if you like, or bag it, or do what is necessary. You cannot use either the green or the blue can for yard waste. It will not be picked up and will be left sitting there with it on your, on your curb. You also need to bring the containers back. They referenced, the people spoke earlier, made

reference to 35 feet. I believe it's 30 feet, or if you don't have the ability of 30 feet, they have to be in a presentable way, as much as possible hidden from the street view. Just, it's just normal resolutions, normal laws that have been in place for many, many years here. Obviously, we don't want people leaving their garbage cans out, curbside, 7 days a week. So you need to bring them back in within a reasonable amount of time, which is the next day. Your trash is usually picked up very early in the morning, and hopefully by that evening, you'll have the cans back into your own yard when you come back from work. The business improvement district is different, and we'll get into that when we approach that. You should keep the lid closed and prevent overfilling, and prevent animals from getting in. As I mentioned earlier, we will be mentioning additional pickups and how we would go about it with the additional pickups, whether that be an additional pick-up day, or allowing for the use of the blue can that week for additional garbage. The brochure will be available to the council members to hand out to your constituents. For now the original print is going to go for education to people who we're having problems with, or who might not be aware of the law, don't watch channel 20, or not on social media. So we're hoping to do that in a personal visit, but at some point, you know, after June 13th, people are going to know that if, by the fact that their garbage is not getting picked up, that they weren't following the appropriate procedures.

Parks and Recreation: the basketball hoops are back up as of May 19th, once the governor made the change in the standard. So you can call the Parks department, 346-4180, for other issues but that was the, seemed the one thing many of you inquired about on a regular basis, for the basketball hoops. Once the governor released it, we put them up that very day. We are having a problem though with some summer employment, as everyone else in the country is having the same problem, the same issue and unfortunately the problem of late. Lifeguard recruitment could affect our ability to open all three pools for the summer programs. These are some of the efforts that our Parks department has made regarding opening the pools. As you know, without lifeguards we can't safely open the pools, so if you know any young person, old person, doesn't matter who, as long as they've had some training, I mean, and had the certification, we would be interested in talking to them. You can contact the parks department at 346-4180. It's important. We're already talking and putting in place a plan to reduce not only hours, but to possibly close maybe one, or maybe two pools, and only going with one at Fancher-Davidge. That's how critical the lifeguard situation is. So please, if you know anybody looking for some work, and also want to help out the youth in our community, let them give the Parks department a call.

We are going to have the fireworks once again, as you know, you did budget it. A bunch of times we talked about the possibility of having them, and we are going to be able to do so on July 2nd, which I believe is Thursday night, or Friday. I'm sorry, Maria is in the back correcting me. Fireworks only, there will be no live entertainment, no vendors, no activities. People are welcome to go up to the park and social distance. Of course, if you don't have the vaccine, you need to wear a mask per the CDC guidelines, but the fact that we

will have people mingling around up there doesn't mean that everything with COVID is A-OK, so you need to follow the guidelines. If you don't have a vaccine, wear a mask, if your kids are over the age of 2, they need to wear a mask. It should be a nice night, will be a little break for something that we all missed last year.

On Saturday, the Juneteenth celebration to be the first for the city, and as you know with the, the Tulsa riots getting a lot of attention, something in our history that none of us, I don't think any of us, learned in high school, and the disaster that happened there. If you watch the CNN Dreamland series that started the other night, it's, really it tears your heart out. Juneteenth is not that, but they are related in a way. So, the Juneteenth celebration, basically marking the end of slavery, the real end of slavery with when they went into Texas, will be on the 19th. We are a co-sponsor along with the business improvement district and the organization is on the screen, Nobody... I can't read it... Because It Matters. Because It Matters 24/7. I had my organizations mixed up there for a second. But that's Anthony Williams and his wife Yaa Yaa Williams. They are the organizers, and it should be a nice event. We're keeping it small, we're going to be practicing the covid practices, a limited number of people will be at Festival Square, and it's not a party, but it is a celebration as it says, of Juneteenth. So obviously there's more than just Festival Square, more that in the surrounding area we can also accommodate. But if you do attend and it's busy, you know, please mingle around so you can participate in a way, but maybe not directly at the event.

This will be our first of what we hope will be an annual event, that starts at 11 a.m. and goes to 3 p.m. I want to thank the organizers for being such an important of bringing this to the city. If you notice, the city is, as I said, one of the sponsors along with the BID District. We are doing not many of these types of events this year for a variety of reasons, one being covid, one being the restrictions that are imposed by the CDC, the amount of time and effort that will take, the fact that we have employee shortages at many areas; so it's a combination of things. So we are not, this is probably the only new event that we're doing. We're getting tons of calls from people about wanting to do, whether it's a fundraiser, or this or that. Some people are calling about using charge events; they want to do a fundraiser where they can charge people. If you do get those calls, we do not rent out City facilities for people to do charge events, so they can charge per head to get in. That's what the Paramount Theatre's for, if they want to rent the Paramount Theater. But we don't rent out our parks. What we're doing is we're starting to review the guidelines that we have in Parks and Rec, and with the BID district, who operates the Festival Square, they manage that. With the Pavilion coming up we're anticipating more of that, so we are putting together a package that we're hoping the council will adopt in the next month or so, that will outline the requirements, including reviews by different departments. We're not going to be in a position where we can keep subsidizing these events every week, and the number of events we get. So we can be very selective in what we want to co-sponsor and I think some of the ethnic issues that we were doing now make a lot of sense. I know we do the Girl Scouts, the Niño de los... de los Niños, the

Girl Scouts do the the cleanup, the community cleanup. Those are the types of things that we will be involved in, at least from my perspective. Hopefully you'll adopt some guidelines because, I'm telling you, in the Pavilion, the cement was poured for the Pavilion today, and that just started an awful lot of chatter. People wanted to rent it, people want to have parties, people... That's not what it's for. It's a community facility, Festival Square is a community facility. These are not for private events. So you'll be getting more on that.

Dolson Avenue sidewalk improvements are going well. It looks nice, while being ripped up but, as you see, the sidewalks go down. They're doing an excellent job. We were getting a few concerns about the business entries, they are steel plated. I don't know if you if you're getting any direct complaints just forward them to the Commissioner of Public Works immediately. We had one today and ended up being really not valid, but we do try to follow up immediately on the safety issues, so if anyone in the public has a complaint, please call either the police if it's outside of hours, or DPW, and we will address the construction areas immediately.

Cannabis local law: I know some of you have responded to me about your opinions on it, and believe me I have a pretty strong opinion on it. The local law process is where a local law gets introduced to you by a member. I can introduce, I introduced this to you, I don't know if a member has sponsored it yet but hopefully one will, for the reading, to get it on the agenda for a reading. There are... The process basically is, cities, towns, and villages can opt out by December 31st. I understand there are different opinions on this too, and the local law process is kind of crazy, because the public hearing is held by me as Mayor, but it's not held until after you adopt the local law. So since I'm introducing it to you I guess the idea was whether, to convince me, whether it's a good local law or bad local law. Not me personally, but the Mayor's position. That's why the public hearing is being held afterwards.

Since I'm introducing it to you, I think we should have a local law, I mean a public hearing, on this prior to the vote. There's no timeline other than December 31st. I would appreciate if the Council President would hold a public hearing on the local opt out. There are other options, one member talked about the opting out of the cafe type of situation, and allowing for the buy-and-go, and there are different options. There are revenues associated with this, maybe those are important to some people. One members spoke about the, the intent of the legislation was to reinvest that tax money back into black and brown communities. I think that's more on a statewide level, I don't think that's on a local level. On the local level I don't know quite how you do that, but if but if there's a plan, I think the public hearing or prior to the public hearing would be the opportunity for all of you to lay out your individual positions, if you have one that's different from what I'm proposing, and so that people can come and comment on those positions and those options.

But, the dispensaries are... Alex is also working with me on a second change in the law and John's working with us on that also, and through the Chief, and which we are identifying all city properties and city parks. For example, we don't want, if you're not aware of it, you're allowed to smoke pot wherever you

can smoke cigarettes under the state law now. So if you're allowed to smoke cigarettes on the sidewalk next to the skate park, you would be allowed to smoke pot on the sidewalk next to the skate park, or next to the Little League field, as long as you're off the field premises. So we're proposing a distance, and I think Alex is doing the research on it, similar to what we do with schools and I think there's even something in the law about within 500 feet of a school or a church, that you can't have a dispensary either. So there are some protections in that way. So we're going to come back to you with some recommendations about where kids are, and the ability for someone to smoke marijuana in that area. I mean, we're going to get people that are going to act stupid, especially at the beginning. They're going to flaunt it, they're going to... We already had one person stand in front of the Police station smoking pot, saying hurray for me; and we're going to get this stupidity where the people are going to challenge, you know, some of the things that were we're going to be doing, what we're going to be proposing. But I'm open enough to listen to what the public in Middletown has to say. Doesn't mean I'll agree with it in the end, but I would like to hear what they have to say, so I would encourage you to do a public hearing.

Technically, in the law itself, as I said, you have to opt out by the 31st but what's interesting is, if you opt out by the 31st, you can opt back in at some future point. So if we say, hey we made a mistake, this thing is going to generate, you know, a half a million dollars a year for Middletown, and we can do this program, that program, this program, and help our taxpayers; and maybe it's worth it because people are still smoking pot here, then that would be another discussion. I don't, I don't agree with that point of view, but that's certainly a valid argument, open for discussion. We can opt out of one or both of the dispensary or the cafe type on-site consumption, and we can always opt back in, but you can't opt out after 12/31, so once you opt out for 12/31 you're out until then. And then at some point in the future you can opt back in. So that's my view on it. I'm hoping and thank you for the folks who did respond, but I'm hoping that we will now do it in a public way. It is a big issue. Just remember, 5 million dollars in sales at one of these locations, will generate \$150,000 in revenue to the city. I don't know what the projections are for one of these facilities for their projected sales for a year, but 5 million seems to be a high number for me, just off the top of my head, knowing what businesses do. I guess the question is whether it's worth \$150,000 or maybe more, maybe less. Well, ball's in your court, hopefully you'll have a first reading tonight, second reading can be anytime after you have the public hearing, and then we can see where we stand.

As for COVID-19, we got the case load again, it's statewide, nationwide, they're all good numbers, good, trending well. City Hall is reopened, we no longer have the gentleman sitting in the hallway, screening our visitors. All visitors to the building must wear masks, whether they're vaccinated or not. We are not checking, so we're just requesting — not requesting, we're requiring — you to wear masks. Employees, we have our own internal employee policy for those that have had the vaccine and they don't have vaccines. It's been discussed with the union, so everyone is good with it, and so we're clear

on that. I believe almost everybody here is has a vaccine, so we are a little bit more free when we're not around the public, but we do require you, if you're visiting City Hall or any of the city buildings as a guest, to wear a mask unless you're in a private meeting and all parties have the vaccine, and all parties agreed to remove masks. So that's the policy for now, and will continue until we see more direction from CDC or New York State. As I said, COVID is still a threat to health and safety, remember to wear your mask and get vaccinated if you can.

I see Mr. Masi either fell asleep or is yawning on me over there, so that's all I have. Any questions?

Ald. Kleiner: Thank you. I'll make this fast. Reading in the local law, where the local law talks about permissive referendum; does that mean if we passed the local law it goes to a permissive referendum?

Mayor DeStefano: No, that would be a mandatory referendum. Subject to permissive referendum means that whatever we adopt, someone from the public can organize a petition, and go out and get a certain number of signatures, that number I don't know, and then force the city to place it on the ballot. So that's the meaning of permissive referendum. If it was mandatory, than we would be required to go to put it on the ballot.

Ald. Kleiner: Thank you.

Mayor DeStefano: You're welcome. Anyone else?

Pres. Rodrigues: Thank you Mayor.

7. Remarks of Dept. Heads

Maria Bruni, Economic Development: Good evening everyone. Just a few updates. First, a reminder that the farmers market is starting this Saturday on Union Street. We're going to start on the street, and then one Erie Way Park is completed, we will start moving into Erie Way Park. So, a new location and we're looking forward to all the farmers coming back and the farm-type vendors. We will be following COVID guidelines as per New York State and CDC.

Also, the Paramount Theater, the facade is moving along. I know the doors are arriving, the main doors are arriving tomorrow, so work is progressing very nicely. We are going to start planning our reopening for movies, hopefully sometime in July, so I'm working with staff down there on our reopening, and like I said, after discussions with the Mayor, we're looking to start movies — bring back movies, and then keep moving forward as restrictions lighten up. We do have capacity issues right now for the venue. Also we're looking at a modified concert series for Festival Square, so we're working on that. Stay tuned, we'll give you more information once we get that all planned.

We also have to submit to New York State the safety plan on all the, all these events and reopening, so we're working on all that as well. And that's all I have for tonight.

Pres. Rodrigues: Questions for Maria? Thank you Maria. DPW Commissioner.

Jacob Tawil, Commissioner of DPW: Good evening all. I'll start off with Mr. Harvey and his daughter, and his son-in-law.

I'm really shocked about what I heard. I've been meeting with Mr. Harvey at his house for a number of years, to try to resolve issues in the drainage. And we have been resolving issues with the drainage. Every time they call, I jump, go over there and meet with them, many times they come and meet with me in my office. I'm shocked and disappointed to hear that they feel that the DPW has been picking on them for 10 to 12 years. First time I ever hear of that, and I'm very, very sorry that they feel this way. I have a lot of respect for Mr. Harvey. I met with him like I said, over the years, numerous times.

As a matter of fact, one of the neighbors called about that drainage ditch, the drainage ditch is in-between, it's in the backyards of houses, between Ashland Avenue and Claremont. The backyards slope towards the property line that is shared obviously between the two, between the properties, one on Ashland, that one's on Ashland versus the one on Clairmont Court. There's an easement that the city owns 4 feet on either side of that property line, which we maintain. Every now and then we do get phone calls in there, and they say, oh, the neighbors blocked it, or something happened in there. We go personally, I go personally there; take a look at it, meet with the neighbors, and then we have the right to trespass. We ordered people to make corrections, we've done that over the years.

And as a matter of fact, one of the neighbors called about a month ago, or maybe three weeks ago. I went there and usually I take the Deputy Commissioner with me, so I took Mr. Brian Smith with me, and met with a neighbor, and we listened to the grievance that he had, and then we went, we maintained the ditch in there. We dug it up, cleared the pipe down there, we installed new grates on top of the catchment basin, and that's within the easement, down the property, down the road or downstream from Mr. Harvey's property. So I'm saddened to hear this, about somebody potentially picking on them, and I will, we will address that. The Mayor and I will address that. We'll make sure that doesn't happen, but it's just totally shocking to me, because I've been, I've been meeting with this family for years, and we were there two weeks ago making some improvements on the drainage ditch. You know, it's, Mr. Harvey is a dear, dear, man to me. I've known him for many years and I'm saddened personally by him being hurt emotionally about what he thinks happened. So we'll look into it, and we'll get to the bottom of it.

Moving on to the grass issues in there for Alderman, Council President Rodrigues. We sent out 688 letters of notice to cut the grass. Thankfully, 644 residents of the 688, they cut their own grass, and for that we're very appreciative and we thank you very much for that then, cooperating and heeding the warnings me when you get the letter. The city cut 37 properties so far and they billed \$5,300 for private properties. If somebody sees anything that is out of... out of whack, let me call it this way; very high grass that we missed,

please feel free to call us at DPW. You don't have to mention your name or anything like that, just give us the location because we can't be there everywhere, we can't be there all the time. Just give us a call, say, "this property's got high grass, guys." You know, that's the address, and we will attend to it and will make sure it is addressed. So please help us out by reporting any potential violators.

The traffic operation project: I'm trying to cover the projects that the Mayor did not update you on. The traffic operations in there. The project has been approved by DOT, local projects, the actual design. Now we're waiting for a meeting on June 8th with the county and Orange County Transportation Council, so that we can shift money around within the budget for the Orange County Transportation Council, what they call the TIP, Transportation Improvement Plan. Then this way, that will allow the Federal Highway Administration to give us the notice to proceed to bid the project. Once we have that, hopefully soon after June 8th, we will be able to go out for bids, so we'll advertise it as a project for bid. Again, that's a 21 million dollar project in there. There's some small local match. Right now we're just fine-tuning the scope of work to make sure that we can utilize all the funding that's available for us. We're very excited about it. Again, this is about all the signalized intersections in the City of Middletown. They're going to be upgraded and redone with a state-of-the-art traffic operational system and ADA-accessible interceptions covering two hundred and fifty feet away from each intersection. That's going to be done under this project, the curbs and sidewalks and roads as well.

I'm going to jump now into the milling and paving program. This year we're doing a very ambitious program in milling and paving. Please visit our website to see how many, what streets are included. We started the milling last week, and we are continuing. This year we're doing about four to five times as much as we've done the previous years — not combined, annual paving operation, paving program. Four to five times we're doing. So it's a tremendous program for us, and it's in the middle of all the other projects, the curbs and sidewalks and ADA accessibility on Dolson Avenue and downtown, so there's a lot of work, tremendous amount of work that is taking place in the City of Middletown.

Moving forward, just want to report to you about the... Usually I don't update you too much about the water line project, but we have the 20-inch and a 12-inch finished water lines replacement from the water treatment plant all the way down to Monhagen Avenue. This is an extremely important project. We got two obstacles there right now. Obstacle number 1 is Orange & Rockland. We met with them a few years ago when we were doing the design. They were supposed to abandon their water, their gas main on 211, Route 211, which is outside the City and inside the City of Middletown. And when they abandon their gas main they leave it in place, and the deal was, when our contractor comes in, he will remove the abandoned gas main and install the new 20 inch or 24 inch water lines. When we started doing that, the contractor got up to

that point, Orange & Rockland came and they stopped us, said, wait a minute, this existing gas main is potentially contaminated with PCV and asbestos, so it has to be abated, it has to be removed properly, and so on and so forth. Which was a tremendous, shocking news to us, so that held us back a little bit.

We were able to find more work for the contractor, to do the connection of the water treatment plant, I reported that to you a couple of weeks ago. The connection was made very well and everything went smoothly. Now we're going to be energizing or commissioning these newly installed water lines up to Pilgrims' State entrance. So that's obstacle number 1. We're working with Orange & Rockland, they're going to come in with their own contractors; they promised to get us some information today or by the end of the week hopefully, and there they will bring their own specialty contractors to remove the old gas main so we can continue putting our new gas main in. We looked at the alternate routes, nothing is very, very, very easily, could easily be done without spending much more money; so we're waiting for Orange & Rockland on that.

Another issue in that project is, you may recall back in 2016, DOT replaced the culvert that crosses under 211. They shut down the road, they replaced the culvert under New York State 211. At that time, when we started working on the design with them, we told them, hey guys, can you put a pipe for us in there so we don't have to dig up here your culvert, because of our finished water main that goes through there. Yes, sure, we'll do it, so they have done it. In 2016 we have a PE stamp, pressure testing and disinfection, all the certification required. We're happy. We were planning for years, when we come in like we're doing now, to go under the brook. We wanted to avoid going under the brook. So, fast forward to the project taking place right now. We're pressure testing the pipe DOT installed for us, unfortunately it has been failing, so we've been digging down joint, by joint, by joint, in there to try to tighten it, to find out what the issues are; and it's costing us some money. So it goes to say, you know the saying goes, you get what you pay for. We got it for free, and unfortunately we're paying for it now. It just, it's very unfortunate, but these are the two obstacles.

We're trying to work on them; and fix the leak on the bypass that goes under the brook so we don't have to deal with the DEC and the stream disturbance permit, and going through the brook, so on and so forth.

With that being said, please listen to what the Mayor said, his advice with the garbage cans, try to put your garbage just on one can. After, I think, I believe you said June 13th, after that, the garbage outside the can is going to stay there and you're going to get the violations for it and the penalties are relatively steep. We don't want to do it, so please just bear that in mind.

With that, if you have any questions for me?

Pres. Rodrigues: Any questions for Jacob? I did get a text message that the Department Heads should have a time limit. Just saying. Thank you Jacob.

Police Chief.

John Ewanciw, Chief of Police: Good evening. I'm going to be sort of a broken record over the next couple of meetings, in regards to fireworks, the enforcement aspects of it. To once again, I'd like to get it out there that it is against the law here in the City of Middletown to possess, use, light them and so on and so forth. And to sell them. As I mentioned the last time, we'll be doing some compliance enforcement on that as well as City Code enforcement going forward. Something else that we're dealing with here now with the nice weather is the ATVs and dirt bikes. We are dealing with a challenge with them, and I'm asking members of the public to try to help us with that. What I mean is, if you could tell us where they're coming from, where they're going to, if you know anybody, any type of information, you could be supplying us with the missing piece of the puzzle that will help us put an end to the nuisance that arises with ATVs and dirt bikes.

As the Mayor mentioned before, the smoking in the parks. That is not permitted in most parks right now, and we are looking to extend that. We're working with the city code, or City Council, on that currently. Other than that, I have nothing unless you have questions for me.

Pres. Rodrigues: Any questions for the Police Chief?

Ald. Tobin: Have you had a chance to look at the Poughkeepsie law they just passed about dirt bikes, or is anything on that?

John Ewanciw, Chief of Police: So, what they're doing is actually, I called up there myself the other day, and they are actually looking to adopt the same law that this Council adopted last year. It's going before their board. I did speak with their detective that was in charge of this Last Detail that was published in the newspaper. One thing that made them effective in that, was that they used aerial surveillance, through the use of drones, so that is something that we are looking into as well now, because there's a lot of dangers with pursuing those vehicles, so that's a unique way to try to combat them. But the biggest thing I think, is having members of the public really help us by identifying the locations where they coming from and to.

Pres. Rodrigues: Anyone else? Thank you Chief. City Clerk?

John Naumchik, City Clerk: At the direction of the Mayor, today I sent out an email to everyone about the parking plan for downtown. If any of you, it's up to you guys, if you want to have a public hearing I will need to know that. That is the final draft so far, if there's any changes you want to make, correct Mayor? You have to let us know, and if you want to schedule a public hearing, and when you want that public hearing to be. Thank you.

Pres. Rodrigues: Any questions for John? All right.

8. Public Hearings & Grievances

Nothing this evening

9. Petitions & Complaints

Nothing this evening

10. Remarks of Aldermen and reports of committees

Ald. Masi: I just want to thank American Legion Post 151, yesterday, for their program on Memorial Day. I'd like to say that of all the speeches yesterday, the Mayor's was the most moving, and the most honest, and the best of all.

Ald. Tobin: I'd like to talk about the opt-out and the local law. I'd like to thank the Mayor for being open to different opinions. I was one of the folks that I emailed him, I am against opting out. I'm just kind of going to lay out why. I'm not one to speak a lot, but tonight I'm going to a little bit more. I don't think it's more of a quality-of-life issue. I think it's more of a civil rights issue, more of a racial justice issue.

For a long time, you know, marijuana — not that I'm pro-pot or anything, but I realize that people do smoke it. But it was thought of as a gateway drug. Well, it's really been a gateway for many people of color into the criminal justice system. And you know, it's a clear example of what we call systematic racism, where we can't point to one officer, one law, that, you know, is over, you know, over-policing marijuana. If you look at the statistics, you can see the systematic racism. Just last year, New Yorkers of color made up 94% of the cannabis-related arrests and summons in 2020. People of color are four times more likely to be arrested for use of cannabis, when they use it at the same rate as white folks. So there's definitely, when you look at the statistics, clearly there's some kind of systematic racism in place.

The new law will prioritize social equity programs, and community investment funds, and grants. They are projecting 75 million for local government and I do remain skeptical, I understand the Mayor saying sometimes, they promised a lot and they under deliver. But as it is now, 40% of the tax revenue will go to public education, 40% to community-related reinvestment funds, and 20% to drug treatment; and this money could be used for nonprofits, or for job placement, adult education, housing initiatives and community reinvestment grants; and focusing on communities that been disproportionately impacted by the cannabis prohibition. I think this use of these funds to help fix the collateral consequences of cannabis convictions from the last 90 years, and reverse some of those harms. That's why I think it's more of a social justice issue. Maybe these funds could be used for economic development for folks that have been harmed by the over policing.

I do fear that maybe the town of Wallkill or Wawayanda will opt in, or not out down, and then we'll have you know your pot depot on the highway, we'll have one maybe in Playtogs Plaza, which is town of Wallkill, right? One on 211. And you know, those communities may be especially Wawayanda, are not minority-majority communities, will be getting funding that you know really is earmarked for people of color that suffered from over policing. Not that our Police department is out there, I talk about systematic racism, and I would like to hear from the black community, and I'd like to maybe, hopefully the people

that were convened for the police community commission could come back in. And you know, so, to hear from the people that you know this, this law is focusing on trying to help right the wrongs of the past. So I'll be voting against that tonight, but I do hope to hear from the community before roe move forward. Thank you.

Ald. Green: Thank you very much. I do hope everyone enjoyed their Memorial Day and took a moment to reflect on the the true meaning of it and and why we are able to be here and and enjoy the day. I also will just point out that we have next, not next Monday, but Monday the 14th which is in fact Flag Day as well; so Monday the 14th at 7 p.m. here in City Hall, we will have our Second Ward constituents' meeting and it will be again here in City Hall for the first time in a while. So again at 7 p.m. on Monday the 14th. Thank you.

Ald. Johnson: Thank you. Mr. Tobin, you gave me a lot of food for thought in the cannabis conversation. My first blush is to opt out. I think conceptually you make a lot of good points. My concern as a public, public policy guy, around for a while: implementation may not live up to the expectations of concept-conceptualization.

I like the idea that we could opt in. I hear what you're saying, that we may have lost the economic impetus to opt in, when everybody else has already done that. I have to think about that. I'm not seeing it through those eyes. I'm seeing through the eyes of trying to regulate and maintain order in our community, so I'll give it a lot of food for thought.

I agree with Mr. Masi, I think the Mayor did a good job. I think it was, it was a good ceremony, it was a lot of clarification that Veterans' Day and Memorial Day are two different days and they are not about the same thing. And I think the point was made that some people that we pay attention to on Memorial Day, they've returned home in a virtual coffin and not a real one, 'cause they have PTSD, and all the issues that come about, including suicide for those people, so I think that was a point well taken.

Parking: I don't need a public hearing, I think we're good. We had a town meeting, we discussed, it, discussed it, discussed it, so for me personally, I'm okay with that.

On a lighter note, the Governor rescinded — if you are a pet owner — the Governor rescinded the curbside mandate for veterinarians last Monday. I had a gentleman who was sitting in my office Friday, and said, "wow, this is so cool." I said, you realize how sad that is, that you think it's cool that you're sitting inside your veterinarian's office. But we'll take it for what it's worth.

Dreamland; I did watch that. Part of it. You know, Black Lives Matter has been around for a while now, and everybody has their own interpretation of what exactly that means or should mean, or shouldn't mean, and should we have it or not have it. But when you watch that particular series, and you, you hear an interview with a woman who is 106 years old, who remembers the day that people came and lit her house on fire while she was in it; that woman

is in our country today, remembering that. So when she says Black Lives Matter, I think she's coming from a different background than others. And it's, another thing is, they said for 100 years the solution was, well let's just not talk about it. So I guess we need to. Thank you.

Ald. Ramkisson: Good evening. I'll be really quick. I just wanted to touch briefly on the people who came in this evening from Claremont. I personally was out there a number of years ago; so I was a little bit, a little bit my own shock on it, 'cause it is the first I'm hearing of it again. This was prior to the work on the sewer project at Bonnell, behind Bonnell, which we thought was going to relieve some of the real drainage issues that affect Ashland and Claremont. I'm sad that it's not a resolved the issue, and something we have to continue to maintain. Jacob, I'm relieved to hear that that is being addressed, when it's brought to your attention regularly, 'cause I know that you and I have walked out together, those properties, that area, so it's it's definitely a struggle for the people that live there. Just on a personal note, as a pool owner; that is the first I've ever heard that we violate people for having water on their pool cover, 'cause you're talking about the state of my pool cover the entire winter. So that's a little concerning, and alarming that that has happened, so I'm sure there is code that backs that up, I just didn't know that was something we were doing. That's news to me. I believe that, you know, now that this has been brought to the city's attention, we can take a closer look at what's going on in that area and what's happening with them. After that, I really am going to keep it short tonight and I hope everyone has a good evening.

Ald. Kleiner: Thank you. The Memorial Day Celebrations. I went to both, because usually we go from the Town of Wallkill down to Thrall Park or from Thrall Park up to the Town of Wallkill, and they're both very good. So, you know, it's the Wallkill-Middletown Veterans' Council, and the emphasis this year really was very much on Memorial Day, remembering that it started as Decoration Day, and it was decorating the graves, and it was honoring and remembering those people who gave their lives fighting for this country. So, it was good to hear that. It was good to hear that appreciation of it, and it was more solemn that way. After not having really any events last year, it was just good to be out, and be with the veterans again, and hear the ceremony.

I want to thank the Mayor, I agree very much with having a public hearing, I was going to request that we put this in committee, or do something; that we discuss this, whether to opt-in or opt-out. I actually heard a lot about that during Memorial Day, being that a few people came up to me and said, are you really opting out? It's just there are so many sides to the issue, the extra training that you might need, at least the Police Chief talked about the DRE training, and I would hope that we would do some of that anyway, because as Alderman Tobin said, we're going to be surrounded by it, even if we do opt out.

Middletown's famous for having a bar in every corner and the middle of every block, basically. You know, that's that's what it's been, it's been a blue-collar town, so we certainly have had alcohol consumption. This is a different issue;

and we don't allow public alcohol consumption, but this apparently would allow public smoking any place it's not banned. So there are a lot of things to talk about and I thank the Mayor for approaching all sides of it, and I hope we'll set a public hearing, and hear from the public on this, and have a better idea of what's involved.

As Alderman Johnson said, you know, 100 years ago, this this was actually, a hundred years, the second day of the Tulsa Massacre. And people were massacred just because they had been successful, just because they had built their own community, and just because that wasn't supposed to happen, 'cause they were supposed to be inferior. So that kind of hatred, we see it popping its ugly head up around the country here and there, it's not gone away, and I hope we continue to understand: democracy is fragile and we need to protect it.

I will see you hopefully on Flag Day on June 14th, right here at 7 p.m. for our constituents' meeting. Glad to be back doing them inside, so anyone can come to those meetings. Thank you.

Ald. Jean-Francois: Yes, good evening. Lately we've been having a few fires in the Fourth Ward. We had one on Woodlake and also Concord Lane. I'd like to thank the First Responders, the police department, and also our Firemen and women who always put their lives out on a daily basis for what they do. We had a few families that's been displaced and hurt by the fire, and so it's, it's such a tragedy when these things happen. Lucky nobody got hurt, but I would like to thank the Fire Department for putting themselves out there on a daily basis, and for what they do. Thank you.

Ald. Burr: Nothing this evening.

Pres. Rodrigues: All right. Just to go back to the local law. There is word and talk about opting out, not enforcing. Mayor, could you just clarify a couple things on the local law?

Mayor DeStefano: Yeah. I appreciate the dialogue, but I think it's a little misleading. You're convoluting the state law with the local law. The City of Middletown, by opting out of the sale in the dispensaries, and the cafes, or say, a marijuana hookah lounge, is not saying that someone cannot possess marijuana in Middletown. That's totally misleading. That's a state law. This is not talking about expunging the record, those are all statewide effects that the state legislature and the Governor decided were important, and, and I might agree with some of them, regarding the expunging of certain records. That has nothing to do with Middletown opting out. So, if Middletown opts out of the legislation, it doesn't mean people in Middletown don't have their record expunged if they have a conviction for that low-level pot dealing. This is strictly the consumption, and it's two parts, what I'm proposing. One is the local law to opt out, and that is for the retail sale and the on-site consumption. So I don't know the answer, because the on-site, you have this vision of a

hookah lounge, of people going in, smoking pot and then coming out into your downtown. I don't think it's a good, a good fit, but we'll have the public hearing on that. But it absolutely is not prohibiting you from complying, or from exercising your rights under the state law, whether we agree with it or not, for public pot consumption, for home cultivation of cannabis, the expunging of records. I don't, I don't see the, I'm hoping, that the feedback won't be from that direction, because that's an argument in a debate that was had and was won by advocates of people who wanted to legalize marijuana on the state level.

Where I hope the argument, or discussion is, or the dialogue is, is what's good for Middletown, New York. And the fact that Wawayanda has a pot store; they also have an adult bookstore maybe, or they also have certain other things that are not something that you want to see in your downtown, because I'm sure that's where the focus is going to be. It's going to be the downtown area, or I'm sure that regardless of the skin color of the person smoking, that I don't care if they're black or white, I don't want that person, that 21 year old standing next to the 10 year old at the skatepark, smoking pot, or ay Watts Park, smoking pot. I think we need to listen to our Police. This has nothing to do with expunging of the records, this has nothing to do whatsoever with reinvestment of the state money back into black and brown communities. Alderman Tobin raised the issue: what are we going to take, we're going to take that money that's generated locally, and invest it where? In black and black communities? Hello. Middletown is 70%, 80 % black and brown. That's our population. I think it's more, you can look at it almost like, if you're a fan of The Godfather movies; I have a little trouble with the argument that by selling pot, and making pot available to people, to smoke publicly -- and Jerry made a good point, it's not like it's controlled like alcohol, this is free, is good, and then, to then circle around and use some of that money for drug treatment. Invest in drug treatment. Don't sell pot to fund drug treatment. Those are my larger beliefs.

But if you watch The Godfather movie, there's a message and the message was directed at the black and brown community. When narcotics were first in the United States of America and where the underground and the mob got involved in the sale of narcotics: who did they target? They targeted the black and brown community. And it's a fact, and you can see it in in any of the documentaries that you see on how drugs were sold. And I mean, it's an argument that black and brown communities have made for years, is that you've channeled these illegal narcotics, heroin, and cocaine, into the black and brown community, and you destroyed them. And I'm not saying that by selling pot here is going to destroy us, because people are still going to be able to smoke pot. I think it's a bad message. I think we have a program like DARE where they're going into the schools and telling kids not to do certain things.

And then we as a body, are going to say, for a few bucks out of a 55 million dollar budget, that maybe 100 or \$150,000 is more important than sending that message? You want to go out in the town of Wallkill and buying a joint, or buy whatever the hell you want to buy, and go smoke it in your house? Do so. But if you go out to the Town of Wallkill and come back and smoke it next to our skatepark, you're going to get arrested, no matter what color you are. That's my program and my policy. So I'm interested in what the public has to say. I don't know if they're all going to come out in support, but I think the discussion has to stay focused on what opting out means. That argument about taxation, about reinvestment, is about all the things that happen on the state level. This is strictly about opting out here in Middletown. Do you want to see on Franklin Square, a bong in the window, and a building full of people smoking pot? That's the decision you have to make, and I hope we'll have a more thorough discussion on it.

Pres. Rodrigues: Thank you Mayor for the clarification.

11. Unfinished Business

Nothing this evening

12. New Business

119.21 - Resolution to authorize the Mayor to sign the 2020 Sponsor Authorization Form for the Middletown Firefighters LOSAP program.

On motion of Ald. Masi, seconded by Ald. Ramkissoon.

Roll Call: Ayes: Ramkissoon, Tobin, Kleiner, Johnson, Jean-Francois, Burr, Green, Masi, Pres. Rodrigues – 9

RESOLVED; that the Common Council of the City of Middletown concurs with the Board of Estimate and Apportionment to authorize the Mayor to sign the attached 2020 Sponsor Authorization Form for the City of Middletown Firefighters LOSAP program

120.21 - Resolution authorizing the issuance of an additional \$115,000.00 bonds to pay part of the cost of the Sterling Street sewer improvement project.

On motion of Ald. Tobin, seconded by Ald. Jean-Francois

Roll Call: Ayes: Ramkissoon, Tobin, Kleiner, Johnson, Jean-Francois, Burr, Green, Masi, Pres. Rodrigues – 9

WHEREAS, all conditions precedent to the financing of the capital project hereinafter described, including compliance with the provisions of the State Environmental Quality Review Act, have been performed; and

WHEREAS, it is now desired to authorize additional bonds for the financing thereof, NOW, THEREFORE,

BE IT RESOLVED, by the affirmative vote of not less than two-thirds of the total voting strength of the Common Council of the City of Middletown, Orange County, New York, as follows:

Section 1. For the object or purpose of paying part of the cost of the Sterling Street Sewer Improvement Project, including original equipment, machinery, apparatus, appurtenances and incidental costs and expenses in connection therewith, in and for the City of Middletown, Orange County, New York, there are hereby authorized to be issued an additional \$115,000 bonds pursuant to the provisions of the Local Finance Law. Said specific object or purpose is hereby authorized at the new maximum estimated cost of \$5,450,000.

Section 2. The plan for the financing of such \$5,450,000 maximum estimated cost is as follows:

- a) By the issuance of the \$775,000 bonds of said City heretofore authorized to be issued therefor pursuant to a bond resolution dated June 7, 2016;
- b) By the issuance of the \$600,000 bonds of said City heretofore authorized to be issued therefor pursuant to a bond resolution dated August 21, 2021;
- c) By the issuance of the \$3,960,000 bonds of said City heretofore authorized to be issued therefor pursuant to a bond resolution dated August 10, 2009; and
- d) By the issuance of the additional \$115,000 bonds of said City herein authorized; provided, however, that the amount of obligations ultimately to be issued will be reduced by any State and/or Federal grants-in-aid to be received by said City for said purpose.

Section 3. It is hereby determined that the period of probable usefulness of the aforesaid object or purpose is 40 years, pursuant to subdivision 4 of paragraph a of Section 11.00 of the Local Finance Law, computed from the date of the first obligations issued therefor.

Section 4. The faith and credit of said City of Middletown, Orange County, New York, are hereby irrevocably pledged for the payment of the principal of and interest on such obligations as the same respectively become due and payable. An annual appropriation shall be made in each year sufficient to pay the principal of and interest on such obligations becoming due

and payable in such year. There shall annually be levied on all the taxable real property of said City, a tax sufficient to pay the principal of and interest on such obligations as the same become due and payable.

Section 5. Subject to the provisions of the Local Finance Law, the power to authorize the issuance of and to sell bond anticipation notes in anticipation of the issuance and sale of the bonds herein authorized, including renewals of such notes, is hereby delegated to the City Treasurer, the chief fiscal officer. Such notes shall be of such terms, form and contents, and shall be sold in such manner, as may be prescribed by said City Treasurer, consistent with the provisions of the Local Finance Law.

Section 6. Such bonds shall be in fully registered form and shall be signed in the name of the City of Middletown, Orange County, New York, by the manual or facsimile signature of the City Treasurer and a facsimile of its corporate seal shall be imprinted or impressed thereon and may be attested by the manual or facsimile signature of the City Clerk.

Section 7. All other matters, except as provided herein relating to such bonds, including determining whether to issue such bonds having substantially level or declining debt service and all matters related thereto, prescribing whether manual or facsimile signatures shall appear on said bonds, prescribing the method for the recording of ownership of said bonds, appointing the fiscal agent or agents for said bonds, providing for the printing and delivery of said bonds (and if said bonds are to be executed in the name of the City by the facsimile signature of the City Treasurer, providing for the manual countersignature of a fiscal agent or of a designated official of the City), the date, denominations, maturities and interest payment dates, place or places of payment, and also including the consolidation with other issues, shall be determined by the City Treasurer. It is hereby determined that it is to the financial advantage of the City not to impose and collect from registered owners of such serial bonds any charges for mailing, shipping and insuring bonds transferred or exchanged by the fiscal agent, and, accordingly, pursuant to paragraph c of Section 70.00 of the Local Finance Law, no such charges shall be so collected by the fiscal agent. Such bonds shall contain substantially the recital of validity clause provided for in section 52.00 of the Local Finance Law and shall otherwise be in such form and contain such recitals in addition to those required by section 52.00 of the Local Finance Law, as the City Treasurer shall determine.

Section 8. The City Treasurer is hereby further authorized, at his sole discretion, to execute a project finance and/or loan agreement, and any other agreements with the New York State Environmental Facilities Corporation, including amendments thereto, and including any instruments (or amendments

thereto) in the effectuation thereof, in order to effect the financing or refinancing of the object or purpose described in Section 1 hereof, or a portion thereof, by a bond or note issue of said City in the event of the sale of same to the New York State Environmental Facilities Corporation.

Section 9. The validity of such bonds and bond anticipation notes may be contested only if:

- 1) Such obligations are authorized for an object or purpose for which said City is not authorized to expend money, or
- 2) The provisions of law which should be complied with at the date of publication of this resolution are not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or
- 3) Such obligations are authorized in violation of the provisions of the Constitution.

Section 10. This resolution shall constitute a statement of official intent for purposes of Treasury Regulations Section 1.150-2. Other than as specified in this resolution, no monies are, or are reasonably expected to be, reserved, allocated on a longterm basis, or otherwise set aside with respect to the permanent funding of the object or purpose described herein.

Section 11. This resolution, which takes effect immediately, shall be published in summary form in the official newspaper of said City, together with a notice of the City Clerk in substantially the form provided in Section 81.00 of the Local Finance Law.

121.21 - Resolution to authorize the Mayor to sign an agreement with St. Paul's Church allowing the City access to their parking lot

On motion of Ald. Green, seconded by Ald. Kleiner

Roll Call: Ayes: Ramkissoon, Tobin, Kleiner, Johnson, Jean-Francois, Burr, Green, Masi, Pres. Rodrigues – 9

RESOLVED; that the Common Council of the City of Middletown concurs with the Board of Estimate and Apportionment to authorize the Mayor to sign the attached agreement with St. Paul's Church allowing the City access to their parking lot.

122.21 - Resolution to approve Equilibrium Brewery to lease the garage, owned by the City at 12 South Street.

On motion of Ald. Johnson, seconded by Ald. Ramkissoon

Roll Call: Ayes: Ramkissoon, Tobin, Kleiner, Johnson, Jean-Francois, Burr, Green, Masi, Pres. Rodrigues – 9

WHEREAS: Equilibrium Brewery has requested leasing out the garage at 12 South Street that the City owns which is utilized for storage, equipment and supplies for the BID and Paramount, and

WHEREAS: Equilibrium Brewery, would provide the City a new 22x25 metal garage adjacent to the Paramount & BID office parking lot, which would cost Equilibrium approximately \$14,000.00 structure and base, and

WHEREAS: in return Equilibrium is asking to lease the garage at 12 South Street for \$1 year, up to 10 years, brewery must remain operational during that period and City to have a cancelation clause. Equilibrium will be responsible for maintaining and any necessary improvements during the term of the lease to the garage.

LET IT BE RESOLVED; that the Common Council of the City of Middletown concurs with the Board of Estimate to approve Equilibrium Brewery to lease the garage at 12 South Street for \$1 year, up to 10 years and approve for the Mayor to sign the lease for the garage at 12 South Street.

LET IT BE FURTHER RESOLVED; the Equilibrium Brewery must remain operational during that period and City to have a cancelation clause and the brewery will be responsible for maintaining and any necessary improvements during the term of the lease to the garage.

123.21 - Resolution to authorize the Mayor to sign the Young Explosives Fireworks Exhibition agreement, which will be held on Friday, July 2, 2021.

On motion of Ald. Ramkissoon, seconded by Ald. Kleiner

Roll Call: Ayes: Ramkissoon, Tobin, Kleiner, Johnson, Jean-Francois, Burr, Green, Masi, Pres. Rodrigues – 9

RESOLVED; that the Common Council of the City of Middletown authorizes the Mayor to sign the attached Young Explosives Fireworks Exhibition agreement 2021 fireworks display which will be held on Friday, July 2, 2021.

124.21 - Resolution to authorize the Mayor to sign an agreement with CherryRoad Technologies to provide Technology Investment Assessment Services for the City.

On motion of Ald. Kleiner, seconded by Ald. Green

Roll Call: Ayes: Ramkisson, Tobin, Kleiner, Johnson, Jean-Francois, Burr, Green, Masi, Pres. Rodrigues – 9

RESOLVED; that the Common Council of the City of Middletown concurs with the Board of Estimate and Apportionment to authorize the Mayor to sign the attached agreement with CherryRoad Technologies to provide Technology Investment Assessment Services for the City of Middletown.

13. Local Laws

Introduction only of Local Law #1 of 2021

Introduced by Ald. Masi

A LOCAL LAW OPTING OUT OF THE ESTABLISHMENT OF CANNABIS RETAIL DISPENSARY LICENSES AND ONSITE CONSUMPTION LICENSES WITHIN THE CITY OF MIDDLETOWN

BE IT ENACTED BY THE COMMON COUNCIL OF THE CITY OF MIDDLETOWN AS FOLLOWS:

Section 1. Purpose of this Enactment. The purpose of this enactment is to prohibit the establishment of retail dispensary licenses and onsite consumption licenses regarding cannabis within the City of Middletown pursuant to Section 131 of the Cannabis Law.

Section 2. Pursuant to Section 131 of the Cannabis Law, the City of Middletown hereby requests the Cannabis Control Board of the State of New York to prohibit the establishment of cannabis retail dispensary licenses and usages and to prohibit the establishment of cannabis onsite consumption licenses and usages within the jurisdiction of the City of Middletown.

Section 3. Pursuant to Section 131 of the Cannabis Law, this Local Law is subject to a permissive referendum governed by Section 24 of the Municipal Home Rule Law.

Section 4. Severability.

If the provisions of any article, section, subsection, paragraph, subdivision or

clause of this Local Law shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this Local Law.

Section 5. Effective Date.

This Local Law shall be effective upon filing with the office of the Secretary of State.

14. Audit of claims and accounts

On motion of Ald. Masi seconded by Ald. Johnson

I move that the accounts be audited, the claims be adjusted, and the City Treasurer be authorized to issue warrants for their payment.

Roll Call: Ayes: Ramkissoon, Tobin, Kleiner, Johnson, Jean-Francois, Burr, Green, Masi, Pres. Rodrigues – 9

15. Adjournment

There being no further business, meeting adjourned at 9:18 PM

Respectfully submitted,

Andrea Greco

**CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By Ald. _____

Sec'd by Ald. _____

Date of Adoption 07-06-21

Index No: _____

NAMES	AYES	NOES	ABSTAIN	ABSENT
Ald. Ramkissoon				
Ald. Tobin				
Ald. Kleiner				
Ald. Johnson				
Ald. Jean-Francois				
Ald. Burr				
Ald. Green				
Ald. Masi				
Pres. Rodrigues				
TOTAL				

RESOLVED; that the Common Council of the City of Middletown concurs with the Board of Estimate and Apportionment to approve and authorize the Mayor to sign an audit agreement with Troy and Banks, Inc. to audit cable franchise fees to find the fees being under reported and paid they start a collection proceeding and any amounts recovered they share 50/50 with the City.

TROY & BANKS

◆ CONSULTANTS LLC ◆

THOMAS T. RANALLO
EDGAR H. FOSTVEIT
SCOTT LEWIS, CPA
GARY L. SHARP
KEITH N. WIESE
KEITH G. TYSON

2216 KENSINGTON AVENUE
KENSINGTON AT SARATOGA
BUFFALO, NY 14226
TOLL FREE (800) 499-8599
PHONE (716) 839-4402
FAX (716) 839-4452

Agreement

This Agreement is entered into as of _____ between Troy & Banks Consultants, LLC
("TB") and _____ with an address
at _____ (the "Client").

In consideration of the mutual agreements hereafter set forth, TB and Client agree as follows:

1. The Client engages TB to conduct a cable television franchise fee compliance audit for the purpose of verifying the accuracy of the franchise fees paid or due to the Client. TB agrees to conduct such audit.
2. Audit – TB shall identify what specific sources of revenue are subject to franchise fees, examine relevant accounting data, examine franchisee accounting data and supporting documentation, identify all revenue sources by classification, and verify calculations. TB shall also evaluate allocation methodology with respect to non-subscriber revenue, conduct a search for unreported revenues and examine the cable operators' database to determine if all active addresses within the Client's boundaries were included in the franchise fee remittances.
3. Refunds – Client agrees that TB will receive as its compensation for this service a contingency fee of fifty percent (50%) of the underpayments identified and recoverable under its franchise agreement and/or state and federal law.
4. TB has made and makes no guarantee or assurance that our audit will produce a refund due to franchise fee underpayments.
5. **If there is no recoverable underpayment identified for the benefit of the Client, TB acknowledges that there will be no fee payable.**
6. In connection with any litigation arising out of this Agreement, the prevailing party should be entitled to recover reasonable attorney's fees and court costs, including such fees and cost incurred in trial and in appellate proceedings. The parties recognize that other provisions of this Agreement provide for consideration for this provision.
7. Client agrees to assist TB in collection of identified recoverable amounts by enforcing the related provisions of its franchise agreement with the cable television operator.
8. This Agreement sets forth the entire understanding and agreement between the parties.

[Client Name] _____

Troy & Banks Consultants, LLC

By: _____

By: _____

Thomas T. Ranallo, Manager

Name: _____

Title: _____

Telephone: _____

Telefax: _____

**PLEASE RETYPE THIS AUTHORIZATION FORM
ONTO YOUR COMPANY LETTERHEAD**

Date:

Our television cable company is:

Dear Representative:

We have retained the firm Troy & Banks, Inc. to examine the records of our television cable provider, in accordance with the applicable provisions of the Franchise Ordinance. The objective of this examination is to determine the accuracy of the franchise fees remitted to client.

Please respond to Troy & Banks, Inc. in all matters pertaining to this engagement. This includes providing all information needed to complete the examination. This authorization shall continue until same is canceled in writing from our office.

Troy & Banks is hereby authorized to pursue all amounts due the client should any underpayments be identified as a result of this engagement.

Their representative will present this request when contacting your office.

Sincerely,

Print Name:

Title:

**CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By Ald. _____

Sec'd by Ald. _____

Date of Adoption 07-06-21

Index No: _____

NAMES	AYES	NOES	ABSTAIN	ABSENT
Ald. Ramkissoon				
Ald. Tobin				
Ald. Kleiner				
Ald. Johnson				
Ald. Jean-Francois				
Ald. Burr				
Ald. Green				
Ald. Masi				
Pres. Rodrigues				
TOTAL				

RESOLVED; that the Common Council of the City of Middletown approves an extension of time in the amount of six (6) months for two resolutions dated May 04, 2021, #98-21 and #98-21 for the Presidential Heights Realty Subdivision due to the need that the project has to obtain outside agency approvals for the NYSDEC and OCDOH for watermain and sewermain extensions before the map can be filed.

LANC & TULLY
ENGINEERING AND SURVEYING, P.C.

John J. O'Rourke, P.E., Principal
David E. Higgins, P.E., Principal
John Queenan, P.E., Principal

Rodney C. Knowlton, L.S., Principal
Jerry A. Woods, L.S., Principal

John D. Russo, P.E., Principal
John Lanc, P.E., L.S.
Arthur R. Tully, P.E.

June 17, 2021

RECEIVED

Mr. John Naumchick, City Clerk
Clerk of the Common Council
City of Middletown
16 James Street
Middletown, New York 10940

JUN 21 2021
City Clerk
City of Middletown

RE: Presidential Heights Realty Subdivision
Request for Extension

Dear Mr. Naumchick:

In regard to the above referenced project and the approval for subdivision granted by the Common Council, we respectfully request an extension of time in the amount of six (6) months beyond the sixty (60) day period set forth in the Common Council Resolution dated May 25, 2021 due to the need that the project has to obtain outside agency approvals from the NYSDEC and OCDOH for watermain and sewermain extension before the map can be filed.

Thank you in advance for your consideration in this matter. If you have any questions, please do not hesitate to contact our office.

Very truly yours,

LANC & TULLY, P.C.



John Queenan, P.E.

cc: Alex Smith, Esq.
Ron Kossar, Esq.
J&G Builders, Applicant

LANC & TULLY
ENGINEERING AND SURVEYING, P.C.

John J. O'Rourke, P.E., Principal
David E. Higgins, P.E., Principal
John Queenan, P.E., Principal

Rodney C. Knowlton, L.S., Principal
Jerry A. Woods, L.S., Principal

John D. Russo, P.E., Principal
John Lenc, P.E., L.S.
Arthur R. Tully, P.E.

June 17, 2021

RECEIVED

JUN 18 2021

City Clerk
City of Middletown

Mr. John Naumchick, City Clerk
Clerk of the Common Council
City of Middletown
16 James Street
Middletown, New York 10940

RE: Presidential Heights Realty Subdivision
Request for Extension

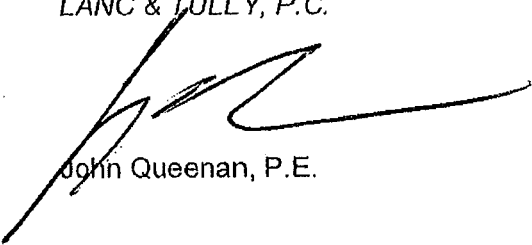
Dear Mr. Naumchick:

In regard to the above referenced project and the approval for subdivision granted by the Common Council, we respectfully request an extension of time in the amount of six (6) months beyond the sixty (60) day period set forth in the Common Council Resolution dated May 25, 2021 due to the need that the project has to obtain outside agency approvals from the NYSDEC and OCDOH for watermain and sewermain extension before the map can be filed.

Thank you in advance for your consideration in this matter. If you have any questions, please do not hesitate to contact our office.

Very truly yours,

LANC & TULLY, P.C.



John Queenan, P.E.

cc: Alex Smith, Esq.
Ron Kossar, Esq.
J&G Builders, Applicant

**CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By Ald. Jean-Francois

Sec'd by Ald. Burr

Date of Adoption 05-04-21

Index No: 98-21

NAMES	AYES	NOES	ABSTAIN	ABSENT
Ald. Ramkissoon	X			
Ald. Tobin	X			
Ald. Kleiner	X			
Ald. Johnson	X			
Ald. Jean-Francois	X			
Ald. Burr	X			
Ald. Green	X			
Ald. Masi	X			
Pres. Rodrigues				X
TOTAL	8			1

WHEREAS, the City of Middletown Common Council has been presented with a proposal for a 7-lot subdivision for property located at 32 Davidge Road & 67 Highland View Place, Middletown, New York, known as Middletown tax parcels Section 55, Block 1, Lots 88, 89.2, and 106.22.

WHEREAS, the proposed subdivision constitutes an Unlisted Action pursuant to the State Environmental Quality Review Act ("SEQRA") regulations, and

WHEREAS, the Common Council is the only involved agency under SEQRA for this subdivision request, and therefore would be the Lead Agency for the SEQRA review of this action, and

WHEREAS, the Common Council has received a Short Environmental Assessment Form describing this action, and

WHEREAS, the City of Middletown Common Council has identified the relevant areas of environmental concern and thoroughly considered the criteria for determining significance set forth at 6 NYCRR Part 617.7 (c).

NOW, THEREFORE, BE IT RESOLVED that the City of Middletown Common Council declares itself Lead Agency with respect to this subdivision request pursuant to 6 NYCRR § 617.6(b)(1), and be it

FURTHER RESOLVED that the Common Council, after reviewing the Application materials, including the Short EAF, hereby determines that the application is an Unlisted Action under SEQRA.

FURTHER RESOLVED that the Common Council hereby declares that the proposed action will not result in a significant adverse impact on the environment, and an environmental impact statement will not be prepared, and be it

FURTHER RESOLVED that this Negative Declaration is made pursuant to Article 8 of the Environmental Conservation Law.

COMMON COUNCIL
CITY OF MIDDLETOWN
CERTIFICATION OF RESOLUTION

I, John C. Naumchik, City Clerk and Common Council Clerk of the City of Middletown, do hereby certify that I have compared the foregoing copy of this resolution with the original on file in my office, and that the same is a true and correct transcript of said original resolution and of the whole thereof, as duly adopted by said Common Council at a meeting duly called and held at City Hall on _____ by the required and necessary vote of the members to approve the resolution.

WITNESS My Hand and the Official Seal of the City of Middletown, New York, this _____ day of _____, 2021.

John C. Naumchik
City Clerk
Clerk of the Common Council
City of Middletown, NY

Seal

**CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By Ald. Burr

Sec'd by Ald. Tobin

Date of Adoption 05-04-21

Index No: 99-21

NAMES	AYES	NOES	ABSTAIN	ABSENT
Ald. Ramkissoon	X			
Ald. Tobin	X			
Ald. Kleiner	X			
Ald. Johnson	X			
Ald. Jean-Francois	X			
Ald. Burr	X			
Ald. Green	X			
Ald. Masi	X			
Pres. Rodrigues				X
TOTAL	8			1

WHEREAS, the applicant, J&G Builders, has submitted a proposal for a 7-lot subdivision for property located at 32 Davidge Road and 67 Highland View Place, Middletown, New York, known as Middletown tax parcels Section 55, Block 1, Lots 88, 89.2, and 106.22, and

WHEREAS, the purpose of this subdivision is to create five single family lots in the subject zoning district, and

WHEREAS, the Planning Board has issued a resolution recommending approval of this application, and

WHEREAS, this Council has issued a Negative Declaration for SEQRA purposes, and

WHEREAS, the applicant has complied with all applicable requirements for final subdivision approval, and

WHEREAS, a public hearing was held on April 20, 2021.

NOW THEREFORE BE IT RESOLVED by the Common Council of the City of Middletown that final subdivision approval be and hereby is granted to the application to subdivide the property located at Section 55, Block 1, Lots 88, 89.2, and 106.22 as shown

on a map entitled "Subdivision For Country Club Estates Phase II" prepared by Lanc & Tully, last revised on September 23, 2020, and filed in the Office of the Middletown Common Council Clerk, and

BE IT FURTHER RESOLVED by the Common Council that the final plan and all conveyances contain, adhere to and continue all deed restrictions contained in any parent lot, and

BE IT FURTHER RESOLVED by the Common Council that the applicant is directed to submit all necessary documents to the Office of the Orange County Clerk to file and record this subdivision within 60 days of this Resolution.

COMMON COUNCIL
CITY OF MIDDLETOWN
CERTIFICATION OF RESOLUTION

I, John C. Naumchik, City Clerk and Common Council Clerk of the City of Middletown, do hereby certify that I have compared the foregoing copy of this resolution with the original on file in my office, and that the same is a true and correct transcript of said original resolution and of the whole thereof, as duly adopted by said Common Council at a meeting duly called and held at City Hall on _____ by the required and necessary vote of the members to approve the resolution.

WITNESS My Hand and the Official Seal of the City of Middletown, New York, this _____ day of _____, 2021.

John C. Naumchik
City Clerk
Clerk of the Common Council
City of Middletown, NY

Seal

**CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By Ald. _____

Sec'd by Ald. _____

Date of Adoption 07-06-21

Index No: 135-21

NAMES	AYES	NOES	ABSTAIN	ABSENT
Ald. Ramkissoo				
Ald. Tobin				
Ald. Kleiner				
Ald. Johnson				
Ald. Jean-Francois				
Ald. Burr				
Ald. Green				
Ald. Masi				
Pres. Rodrigues				
TOTAL				

RESOLVED, that the Common Council of the City of Middletown hereby authorizes the Commissioner of Public Works, and/or his designee, and the Chief of Police, and/or his designee, to close any and all streets and intersections necessary and at their discretion, for the Run 4 Downtown, Saturday, August 21, 2021 beginning at 8:00 a.m. and lasting until such time as it is no longer needed.

LET IT BE IT FURTHER RESOLVED; that the Common Council of the City of Middletown hereby grants the Annual Run 4 Downtown application to sell beer and wine, conditioned upon the execution of the attached agreement by the applicant and the fulfillment of all requirements set forth in the agreement by the applicant and to supply the City with the proper insurance documents and authorize the Mayor to sign the application from the SLA for the selling of beer and wine and temporarily lift the requirements of the City's open container ordinance for this application.

LET IT BE IT FURTHER RESOLVED; that the Common Council of the City of Middletown hereby grants the Annual Run 4 Downtown permission to have the race with all requirements of the Department of Health and the CDC.

ROUTE: Map attached to this Resolution.



Approximate Course Map with Mile Markers



R4DT Course

Start: North St. at Jerry's Park, heading South onto South Street

Rt on Webb Rd

Rt on Waywayanda Ave

Left on Fulton

Straight on Monhagen Ave

Left on West Main St

Rt on Maryland Ave

Rt on Monhagetn Ave

Left on West Main St.

Left on Wickham Ave

Rt on Liberty St

Rt on Highland Ave

Left on West Main St.

Finish at Franklin Square

John Naumchik

From: jewanciw@middletownpolice.com
Sent: Monday, June 21, 2021 9:13 AM
To: Mayor; Maria Bruni; John Naumchik
Subject: FW: R4DT - NYSDOH Regulations
Attachments: Covid Race Protocols.pdf

8/21/21

Below is the correspondence from the DOH, pertaining to the Run 4 Downtown, it appears they have meet all current requirements, and their safety plan is attached. Unless there are any additional questions/concerns, we should have it added to the Council agenda.

John Ewanciw – Chief of Police

City of Middletown Police Department

2 James St.

Middletown, NY 10940

(845)346-4004 office

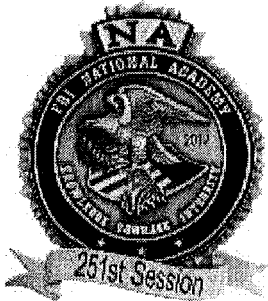
(845)346-4041 fax

jewanciw@middletownpolice.com

The City of Middletown Police Department

Serving The Public With Integrity Since 1888

Please Visit our Website @ www.middletownpolice.com



From: run4downtown@hvc.rr.com <run4downtown@hvc.rr.com>

Sent: Friday, June 18, 2021 6:18 PM

To: jewanciw@middletownpolice.com

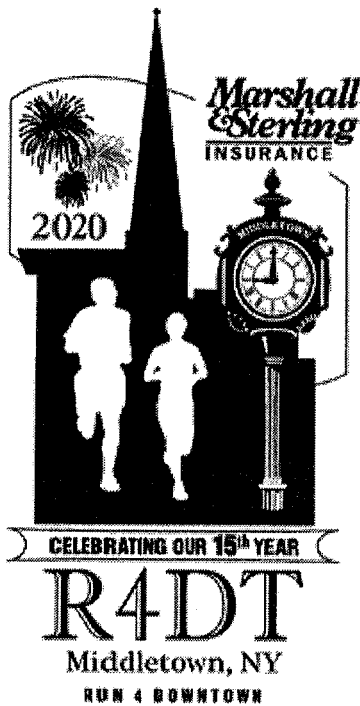
Subject: FW: R4DT - NYSDOH Regulations

Hi John,

This response was received earlier today from the Department of Health. Let me know what you next need from us. I have also forwarded this message to Maria Bruni.

Thanks,

David Madden, Co-Director, Marshall & Sterling Insurance Run 4 Downtown



From: Gaeta, Timothy <tgaeta@orangecountygov.com>

Sent: Friday, June 18, 2021 8:37 AM

To: run4downtown@hvc.rr.com; Ericson, Christopher <CEricson@orangecountygov.com>

Cc: Galdun, Janine M. <JMGaldun@orangecountygov.com>

Subject: RE: R4DT - NYSDOH Regulations

Good Morning David,

With the governor's latest press release the other day most COVID restrictions have been lifted for events, please see link below.

<https://www.governor.ny.gov/news/governor-cuomo-announces-covid-19-restrictions-lifted-70-adult-new-yorkers-have-received-first>

Restrictions that remain in place include the following:

Unvaccinated individuals continue to be responsible for wearing masks, in accordance with federal CDC guidance. Consistent with the State's implementation of the recent CDC guidance, masks are still required for unvaccinated individuals. Further, the State's health guidelines continue to be in effect for large-scale indoor event venues, pre-K to grade 12 schools, public transit, homeless shelters, correctional facilities, nursing homes, and health care settings per CDC guidelines.

Since you have indicated no food services at this event- at this time you have satisfied your obligation with the Department of Health for your event.

Good luck with this event.

Tim

Tim Gaeta, Principal Public Health Sanitarian

Orange County Department of Health
Division of Environmental Health
124 Main Street
Goshen, NY 10924
Orange County Environmental Health
845 291 2331- Phone
845 291 4078- Fax

PLEASE TAKE NOTICE: This e-mail message, as well as the information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material, and may not be distributed to unauthorized individuals. Any review, retransmission, dissemination, copying, disclosure or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you are not the addressee indicated in this message (or responsible for delivery of the message to such person), and/or you receive this transmission in error, please contact the sender immediately and delete the material from your computer.

From: run4downtown@hvc.rr.com <run4downtown@hvc.rr.com>

Sent: Thursday, June 17, 2021 4:24 PM

To: Ericson, Christopher <CEricson@orangecountygov.com>; Gaeta, Timothy <tgaeta@orangecountygov.com>

Subject: RE: R4DT - NYSDOH Regulations

Good Afternoon,

Just checking in to see if anything more is needed from me at this point? Is there anything that I can share with City of Middletown leaders concerning the Run 4 Downtown?

Thank you in advance,

David Madden, Co-Director, Marshall & Sterling Insurance Run 4 Downtown



From: Ericson, Christopher <CEricson@orangecountygov.com>
Sent: Sunday, June 13, 2021 8:50 AM
To: run4downtown@hvc.rr.com; Gaeta, Timothy <tgaeta@orangecountygov.com>
Subject: Re: R4DT - NYSDOH Regulations

David

Thank you for the follow up. Copied on this is Tim Gaeta from my office also. We will review and if we have any questions will be in contact.

Thank you

Chris

Christopher Ericson, MPA
Deputy Commissioner
Orange County Department of Health.
124 Main Street Goshen, NY 10924
845.360.6604

From: run4downtown@hvc.rr.com <run4downtown@hvc.rr.com>
Sent: Saturday, June 12, 2021 6:10:01 PM
To: Ericson, Christopher <CEricson@orangecountygov.com>
Subject: RE: R4DT - NYSDOH Regulations

Hi Chris,

I have completed the Required Notice to Health Department. Even opening the form in Chrome, I could not enter 'N/A' where a number was to be selected (room capacity and capacity at 50%), so I used 1000 and 500. There will also be no food service but I could not submit the form without naming first and second contacts under the food service portion so I just used my own name for both.

At this point we desire to have a single start for the runners and we will gladly cap our list at 499 if needed, but in years past we've started the walkers 15 minutes ahead of the runners - so if we did that again could we surpass 499 provided neither the number of walkers nor the number of runners surpassed 499?

Our safety plan which was submitted to the Department of Health previously far surpasses current guidelines and may be modified to better fit current trends and standards.

Any advice and/or guidance is greatly appreciated.

David Madden, Co-Director, Marshall & Sterling Insurance Run 4 Downtown



From: Ericson, Christopher <CEricson@orangecountygov.com>

Sent: Tuesday, May 25, 2021 3:38 PM

To: run4downtown@hvc.rr.com

Subject: R4DT - NYSDOH Regulations

David:

This is just a follow up to the message I left for you. Thank you for reaching out and trying to get some more clarification to the state guidance documents. For sure there has been lots of changes to guidance and regulations that have been coming down from NYS.

The links to the documents that Scott sent you are typical for any large event that is being held these days. The forms are standardized and not all questions would apply to every type of event. Do your best to get as much information in them as possible. The COVID Safety Plan is a good exercise to go through as it makes you think about safety measures and precautions you should put in place.

Required Notice to Health Department: <http://clg.orangecountygov.com/>

COVID Safety Plan:

https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/NYS_BusinessReopeningSafetyPlanTemplate.pdf

Business Affirmation: <https://forms.ny.gov/s3/ny-forward-affirmation>

Finally, the capacity numbers are something that can make this a little easier. If you keep your outdoor event to under 500 racers it would be less restrictive. If you go over that number, then you start getting into a situation where participants may need to show proof of COVID-19 vaccination. Ultimately, the thing you are trying to avoid is a large congregation of people at either the start or end of the race. Potentially breaking it up into "heats" or "staggered starts" may also make it a smaller and easier to manage.

Feel free to give me a call to discuss if you need to.

Chris

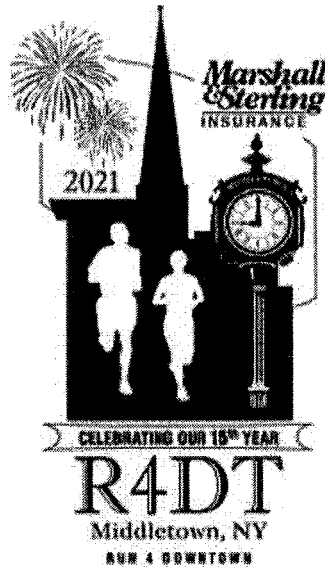
Christopher Ericson, MPA

Deputy Commissioner
Orange County Department of Health.
124 Main Street Goshen, NY 10924
845.360.6602
cericson@orangecountygov.com

CONFIDENTIALITY NOTICE:

This e-mail message, as well as the information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material and may not be distributed to unauthorized individuals. Any review, retransmission, dissemination, copying, disclosure or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you are not the addressee indicated in this message (or responsible for delivery of the message to such person), and/or you receive this transmission in error, please contact the sender immediately and delete the material from your computer.

This communication may contain confidential information and is intended only for the individual or entity to whom it is addressed. Any review, dissemination, or copying of this communication by anyone other than the intended recipient is strictly prohibited. If you are not the intended recipient, please contact the sender, and destroy all copies of the original message. No responsibility is accepted by Orange County Government for any loss or damage arising in any way from receiving this communication.



The organizing committee of the annual Run 4 Downtown event would like to see the 15th edition of the R4DT to include all of the features of the previous 14. With that said, we understand that should the race be scheduled for today, April 24, that would not be possible. The proposal stated below should allow for a safe event that would meet all of the current regulations stated in the New York Forward Guidelines. If it is deemed acceptable in August to back off some of our restrictions stated below we would be willing to adjust our procedures and protocols.

As we recognize that a lot of businesses have had a challenging past 13 months and since we do not expect this year's R4DT to be a typical event, our mission of raising money for Downtown improvements will not be prioritized. We will reach out by mail to all of our past sponsors one time only to see if they are willing to support us again this year, but in an effort to keep people safe, we will not send volunteers out to meet with business owners to solicit their support.

It is our hope, and the hope of the running community in general, that local community events such as the Run 4 Downtown do not fall victim to the pandemic. If hosting the race this year with no post-race party or Taste of the Towns is the only way that is deemed acceptable, then we feel that that is a better alternative to cancelling the event for the second consecutive year. The spirit of the event must continue.

The organizing committee of the Run 4 Downtown has been blessed with 14 years of a strong public/private partnership with the City of Middletown and we look forward to the continuance of this relationship.

2021 Procedures and Protocols

1. Mandatory Action Item:
 - a. All Participants must sign a waiver agreeing to all COVID Procedures before entering the race.
2. Location:
 - a. Start and Finish, Downtown Middletown
 - b. Course would be the standard R4DT course.
3. Registration and Packet Pickup
 - a. There will be no race day registration – all registrations must be done online and by noon on Wednesday, August 18.
 - b. Each participant's registration will require them to submit a seed time – that is how long they expect it to take them to finish the race.
 - c. Packet pickup must be done in advance. Packet pickup will be available during the evenings of the three days prior to August 21, outdoors in Run 4 Downtown Park.
4. Wave Start Format:
 - a. We will start 50 people every 5 minutes, beginning at **8:30**. This format has been utilized multiple times locally including the Turkey Trot and Elves on the Run, two races held in Orange County Parks during November and December 2020 and backed by Orange County and the Department of Health.
 - b. All participants will be assigned a starting time that they must utilize. Start times will be assigned based on their submitted seed times, with the slowest people starting first and the fastest starting last – this should help minimize the road closure time. Assigned starting times will be provided upon packet pickup and via email.
 - c. Participants are asked to not show up early. If they need to warm-up they should do so away from the start/finish lines of the event.
 - d. They should make their way to the starting line only after the start immediately prior to their own.
5. General Covid Protocols
 - a. Masks must be worn at the starting line and can only be removed after their start and once they can maintain social distancing. They must not discard their masks. Masks should be worn upon completion of the race and prior to leaving the area.
 - b. Participants are not required to wear masks while running / walking, but to be considerate while passing others.
 - c. In an effort to reduce the number of people Downtown, participants should not have spectators at the start/finish lines.
 - d. The event will have a pump jug of liquid hand sanitizer at the start and finish for the use of participants and volunteers.
 - e. Participants and volunteers are strongly encouraged to bring their own hand sanitizer, using it pre/post contact with any common surfaces, especially porta-johns.
 - f. Any entrant with fever, persistent cough, or with exposure to an individual who is/was COVID positive within 14 days of the event are asked not to race this year, and will have registrations rolled into 2022

6. Start Time Format / Procedure

- a. The event will have staggered start-times with 50 runners sent off every 5 minutes. Note: the event is chip-timed, so while we'll try to get as close as we can to planned start times, actual start and finish times will be accounted for when participants cross the start and finish mats.

7. Course Configuration

- a. The R4DT course follows a loop format ensuring that runners will not have to pass over the same area twice, which increases social distancing.

8. Water Stations

- a. Water stations are deemed critical for an August event and thus will be in their regular locations
- b. Volunteers will assemble four tables at each station, two will be set up to the left of the participants and two to the right. Each pair of tables will be spaced apart.
- c. Volunteers will fill cups and set them on the tables for participants to grab and go. There will be no handing out of water at the water stations as is typically done.
- d. Volunteers will be wearing masks and gloves.

9. Swag

- a. Swag will be provided at packet-pickup and include: custom long sleeve event T-shirt, bib number and any other product donated by local merchants.

10. Awards

- a. There will be no awards ceremony this year in an effort to reduce crowds around the finish. Winners will be notified via email and then will pick up their awards at Confluence Running in Goshen.

11. Finish Times

- a. Timing will be managed by: Super Race Systems
- b. Participants are strongly encouraged to note their start and finish times just in case chips misread.
- c. Timing and results will be reported online that day. No on-site results will be posted as to discourage participants from staying after they finish.

12. Post Race Food

- a. We will not be offering the Taste of the Towns this year per our need to reduce points of contact and post-race hanging around / crowding.

13. Course Marking

- a. The course will have markings at every turn and a map of the course is available online.

14. Bathrooms

- a. Participants are encouraged to utilize hand sanitizer pre and post porta john use.
- b. Porta johns will not be stacked next to each other to assist in reducing crowding.
- c. Participants will be expected to social distance while waiting for a porta john.

**CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By Ald. _____

Sec'd by Ald. _____

Date of Adoption 07-06-21

Index No: _____

NAMES	AYES	NOES	ABSTAIN	ABSENT
Ald. Ramkissoon				
Ald. Tobin				
Ald. Kleiner				
Ald. Johnson				
Ald. Jean-Francois				
Ald. Burr				
Ald. Green				
Ald. Masi				
Pres. Rodrigues				
TOTAL				

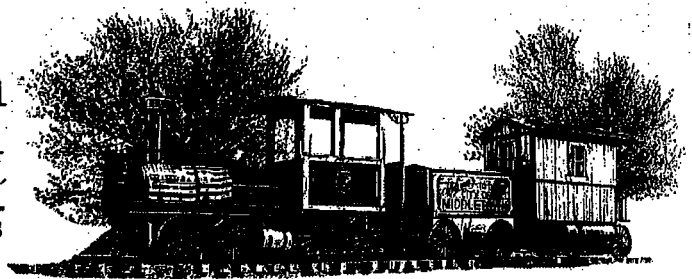
WHEREAS; The Middletown Recreation Department was given a donation in the amount of \$400.00 from Kevin McCormack.

WHEREAS; The Middletown Recreation & Parks Department is requesting that the Common Council accept this donation and authorize the Treasurer to deposit the donation into the existing trust and agency account T.0043 Recreation Donations; and,

NOW, THEREFORE BE IT RESOLVED, that the Common Council of the City of Middletown, NY, does hereby authorize the Treasurer to accept the donation and deposit it into the existing trust and agency account T.0043 for the amount of \$400.00 for the development of the Disc Golf Course.

Middletown Recreation and Parks Department

393 CR-78, Middletown, New York 10940 Tel: (845)346-4180 Fax: (845)344-2918



Monday, June 21, 2021

RECEIVED

JUN 21 2021

City Clerk
City of Middletown

Dear Board of Estimates & Council Members:

The Middletown Recreation & Parks Department received a \$400.00 donation to go towards the development of the Disc Golf Course in Fancher Davidge Park

WHEREAS; The Middletown Recreation Department was given a donation in the amount of \$400.00 from Kevin McCormack.

WHEREAS; The Middletown Recreation & Parks Department is requesting that the Common Council accept this donation and authorize the Treasurer to deposit the donation into the existing trust and agency account T.0043 Recreation Donations; and,

NOW, THEREFORE BE IT RESOLVED, that the Common Council of the City of Middletown, NY, does hereby authorize the Treasurer to accept the donation and deposit it into the existing trust and agency account T.0043 for the amount of \$400.00 for the development of the Disc Golf Course.

Thank you for your continued assistance and support.

Sincerely,

Christine Brinckerhoff, Superintendent
Middletown Recreation & Parks Dept.

**CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By Ald. _____

Sec'd by Ald. _____

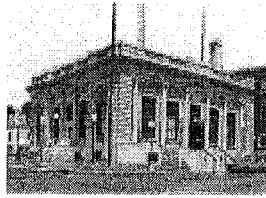
Date of Adoption 07-06-21

Index No: _____

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Ald. Ramkissoon				
Ald. Tobin				
Ald. Kleiner				
Ald. Johnson				
Ald. Jean-Francois				
Ald. Burr				
Ald. Green				
Ald. Masi				
Pres. Rodrigues				
TOTAL				

RESOLVED; that the Common Council of the City of Middletown concurs with the Board of Estimate and Apportionment to authorize acceptance of a grant in the amount of \$15,250 from the New York State Department of Criminal Justice Services under the G.I.V.E 2021-2022 (Gun Involved Violence Elimination) grant for the period of July 1, 2021 through June 30, 2022.and to add it to our established G.I.V.E grant budget line after July 1, 2021.

JOHN EWANCIW
CHIEF OF POLICE



TELEPHONE
845-343-3151
FAX NUMBER
845-343-2660

CITY OF MIDDLETOWN POLICE DEPARTMENT

2 JAMES STREET
MIDDLETOWN, NEW YORK 10940
ESTABLISHED 1888

RECEIVED

June 22, 2021

JUN 23 2021

**City Clerk
City of Middletown**

Honorable Joseph DeStefano
Mayor - City of Middletown
Board of Estimate and Apportionment
City Hall
16 James Street
Middletown, New York 10940

Dear Mayor DeStefano and members of the BOE,

The City of Middletown Police Department has been approved for a grant in the amount of \$15,250 from the New York State Department of Criminal Justice Services under the G.I.V.E 2021-2022 (Gun Involved Violence Elimination) grant for the period of July 1, 2021 through June 30, 2022.

I am requesting that the City of Middletown authorize acceptance of this grant and to add it to our established G.I.V.E grant budget line after July 1, 2021.

This project would be paid in full through the New York State GIVE grant administered by the New York State Department of Criminal Justice Services. This grant will bring about reimbursement for accrued expenditures by the New York State Department of Criminal Justice Services.

If you have any questions, please contact me.

Very truly yours,

John Ewanciw
Chief of Police

JE:ccd

GIVE VIII Strategy and Budget Summary

For each question noted below, provide a bulleted summary based on the jurisdiction's response to each of the required questions. Please include overall comments in the notes section at the end of this document.

County Name: Albany Co.

- 1) Identify underlying issues that contributed to the jurisdiction's shooting or aggravated assault problem in GIVE VII.
 - Substantial increase in confirmed shots fired, shooting incidents and victims
 - Anonymity of suspects hiding behind COVID masks = more risky behavior
 - Increased number of shell casings at scenes (multiple firearms used – magazines emptied)
 - Uncooperative witnesses (intimidation)
 - 38% of victims previously involved in shooting incidents
 - Prevalence of juvenile offenders
 - Retaliation
 - Bail reform
 - Reduced contact with probationers due to COVID, curfew checks suspended
 - Courts closed

- 2) What challenges were noted in implementing the jurisdiction's GIVE VII Comprehensive plan. How did COVID and other factors affect implementation?
 - Difficult to implement Evidence-Based strategies
 - Contacts between APD and the community were minimized
 - Proactive policing was curtailed
 - Adults placed in lockup dropped 69%
 - Jail access stopped
 - Intel gathering was hampered
 - Custom notifications ceased
 - Parole/Probation details were put on pause
 - Civil unrest
 - Executive orders temporarily suspended/modified laws
 - Court sessions reduced
 - Probation home visit contacts dropped



Division of Criminal Justice Services

ANDREW M. CUOMO
Governor

MICHAEL C. GREEN
Executive Deputy Commissioner

JEFFREY P. BENDER
Deputy Commissioner

Grant Award Notice

Grantee/Contractor: Middletown City Police Department	Date: June 7, 2021
Program Name: GIVE (2021-2022)	Award Amount: \$15,250
Signatory Name and Title: John Ewanciw Chief of Police	Term Dates: July 1, 2021 through June 30, 2022
Email: jewanciw@middletownpolice.com	Project ID No.: GV21-1042-D00
SFS Vendor ID No.: 1000002266	Contract No.: T484816
Congratulations on your 2021-22 award for the DCJS Gun Involved Violence Elimination (GIVE) initiative. Please find attached the approved budget for the funded agencies within your county. If you have any programmatic questions, please contact Raymond Neves in the DCJS Office of Public Safety (OPS) at (518) 402-8455, or e-mail at Raymond.Neves@dcjs.ny.gov. Your DCJS Public Safety Grants Representative will be contacting you shortly to review any remaining contract requirements. Please note that prompt completion of necessary items will facilitate timely execution of your contract.	
The award amount listed above is contingent upon approval and execution of the grant contract by the Division of Budget, the Attorney General and the Office of the State Comptroller. If you have any contractual questions about this award, please contact: Dave Martin Public Safety Grants Representative 3 NYS Division of Criminal Justice Services Office of Program Development and Funding (518) 485-9607 or David.Martin@DCJS.NY.GOV Attachment (1)	

**CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By Ald. _____

Sec'd by Ald. _____

Date of Adoption 07-06-21

Index No: _____

NAMES	AYES	NOES	ABSTAIN	ABSENT
Ald. Ramkissoo				
Ald. Tobin				
Ald. Kleiner				
Ald. Johnson				
Ald. Jean-Francois				
Ald. Burr				
Ald. Green				
Ald. Masi				
Pres. Rodrigues				
TOTAL				

RESOLVED; that the Common Council of the City of Middletown concurs with the Board of Estimate and Apportionment to approve the Cap Ex Plan for 2021-2022:

Truck 2022 Ford F-250 STP	43,800
Door STP	7,348
Septage Screen	32,273
Pole Barn Garage STP	32,960
Two Each 2022 Dodge RAM 3500 Street	100,072
Paint Machine Street	9,560
Jeep Cherokee Code Enforcement	33,351
Skid Steer Water	69,000
Truck RAM 3500 Water	45,036
Roof WTP	225,000
Playground Equipment Davidge	80,000
Restrooms Reservoir	50,000
Self Contained Breathing Apparatus, Fire	157,464
Total	885,864

City of Middletown
Capital Expenditures August - September 2021-2022

DPW

STP

Description

Truck (2022 Ford F-150)	\$43,800.00
Front Door	7,348.00
Screen for Septage Receiving Machine	32,273.33
Pole Barn/Garage	32,960.00
	116,381.33

Street

Description

Truck (2022 Dodge Ram 3500)	50,036.47
Truck (2022 Dodge Ram 3500)	50,036.47
Paint Machine	9,560.00
	109,632.94

Code Enforcement

Description

2021 Jeep Cherokee Latitude + Radio & Lights	33,351.42
--	-----------

Water

Description

Skid Steer	69,000.00
Truck (2022 Dodge Ram 3500)	45,036.47
Roof	225,000.00
	339,036.47

Parks & Recreation

Description

Playground Equip Davidge Park	80,000.00
Permanent Restrooms - Reservoir	50,000.00
	130,000.00

Fire Department

Description

Self Contained Breathing Apparatus (SCBA)	157,464.48
	157,464.48

Grand Total Capital Expen. \$885,866.64

Revised 6/22/21

**CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By Ald. _____

Sec'd by Ald. _____

Date of Adoption 07-06-21

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Ald. Tobin				
Ald. Kleiner				
Ald. Johnson				
Ald. Jean-Francois				
Ald. Burr				
Ald. Green				
Ald. Masi				
Pres. Rodrigues				
TOTAL				

BE IT RESOLVED, by the Common Council of the City of Middletown, Orange County, New York,
as follows:

Section 1. The following are hereby authorized in and for the City of Middletown, Orange
County, New York:

- a) Purchase of trucks, at a maximum estimated cost of \$192,259, being a class of objects or purposes having a period of probable usefulness of three years pursuant to subdivision 77 of paragraph a of Section 11.00 of the Local Finance Law;
- b) Door installation at STP, at a maximum estimated cost of \$7,348, being a specific object or purpose having a period of probable usefulness of five years pursuant to subdivision 35 of paragraph a of Section 11.00 of the Local Finance Law;
- c) Purchase of a septage screen, at a maximum estimated cost of \$32,273, being a specific object or purpose having a period of probable usefulness of fifteen years pursuant to subdivision 28 of paragraph a of Section 11.00 of the Local Finance Law;
- d) Pole barn garage at STP, at a maximum estimated cost of \$32,960, being a specific object or purpose having a period of probable usefulness of fifteen years pursuant to subdivision 11 of paragraph a of Section 11.00 of the Local Finance Law;
- e) Street paint machine, at a maximum estimated cost of \$9,560, being a specific object or purpose having a period of probable usefulness of five years pursuant to subdivision 28 of paragraph a of Section 11.00 of the Local Finance Law;

- f) Purchase of a Skid Steer, at a maximum estimated cost of \$69,000, being a specific object or purpose having a period of probable usefulness of fifteen years pursuant to subdivision 28 of paragraph a of Section 11.00 of the Local Finance Law;
- g) Roof replacement at WTP, at a maximum estimated cost of \$225,000, being a specific object or purpose having a period of probable usefulness of twenty-five years pursuant to subdivision 12(a)(1) of paragraph a of Section 11.00 of the Local Finance Law;
- h) Playground equipment, at a maximum estimated cost of \$80,000, being a class of objects or purposes having a period of probable usefulness of fifteen years pursuant to subdivision 19 of paragraph a of Section 11.00 of the Local Finance Law;
- i) Restrooms at the reservoir, at a maximum estimated cost of \$50,000, being a class of objects or purposes, having a period of probable usefulness of fifteen years pursuant to subdivision 11 of paragraph a of Section 11.00 of the Local Finance Law; and
- j) Self-contained breathing apparatus for the Fire Department, at a maximum estimated cost of \$157,464, being a class of objects or purposes having a period of probable usefulness of twenty years pursuant to subdivision 27 of paragraph a of Section 11.00 of the Local Finance Law.

Section 2. The aggregate maximum estimated cost of the aforesaid objects or purposes is \$885,864, and the plan for the financing thereof is by the issuance of the \$885,864 serial bonds authorized by Section 1 hereof, allocated to each of the objects or purposes in accordance with the maximum estimated cost of each as stated in Section 1 hereof; provided, however, that the amount of bonds to be issued shall be reduced to the extent of grants received in connection therewith.

Section 3. The faith and credit of said City of Middletown, Orange County, New York, are hereby irrevocably pledged for the payment of the principal of and interest on such obligations as the same respectively become due and payable. An annual appropriation shall be made in each year sufficient to pay the principal of and interest on such obligations becoming due and payable in such year. There shall annually be levied on all the taxable real property of said City, a tax sufficient to pay the principal of and interest on such obligations as the same become due and payable.

Section 4. Subject to the provisions of the Local Finance Law, the power to authorize the issuance of and to sell bond anticipation notes in anticipation of the issuance and sale of the bonds herein authorized, including renewals of such notes, is hereby delegated to the City Treasurer, the chief fiscal officer. Such notes shall be of such terms, form and contents, and shall be sold in such manner, as may be prescribed by said City Treasurer, consistent with the provisions of the Local Finance Law.

Section 5. Such bonds shall be in fully registered form and shall be signed in the name of the City of Middletown, Orange County, New York, by the manual or facsimile signature of the City Treasurer and a facsimile of its corporate seal shall be imprinted or impressed thereon and may be attested by the manual or facsimile signature of the City Clerk.

Section 6. All other matters, except as provided herein relating to such bonds, including determining whether to issue such bonds having substantially level or declining debt service and all matters related thereto, prescribing whether manual or facsimile signatures shall appear on said bonds, prescribing the method for the recording of ownership of said bonds, appointing the fiscal agent or agents for said bonds, providing for the printing and delivery of said bonds (and if said bonds are to be executed in the name of the City by the facsimile signature of the City Treasurer, providing for the manual countersignature of a fiscal agent or of a designated official of the City), the date, denominations, maturities and interest payment dates, place or places of payment, and also including the consolidation with other issues, shall be determined by the City Treasurer. It is hereby determined that it is to the financial advantage of the City not to impose and collect from registered owners of such serial bonds any charges for mailing, shipping and insuring bonds transferred or exchanged by the fiscal agent, and, accordingly, pursuant to paragraph c of Section 70.00 of the Local Finance Law, no such charges shall be so collected by the fiscal agent. Such bonds shall contain substantially the recital of validity clause provided for in section 52.00 of the Local Finance Law and shall otherwise be in such form and contain such recitals in addition to those required by section 52.00 of the Local Finance Law, as the City Treasurer shall determine.

Section 7. The validity of such bonds and bond anticipation notes may be contested only if:

- 1) Such obligations are authorized for an object or purpose for which said City is not authorized to expend money, or
- 2) The provisions of law which should be complied with at the date of publication of this resolution are not substantially complied with,

and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or

- 3) Such obligations are authorized in violation of the provisions of the Constitution.

Section 8. This resolution shall constitute a statement of official intent for purposes of Treasury Regulations Section 1.150-2. Other than as specified in this resolution, no monies are, or are reasonably expected to be, reserved, allocated on a long-term basis, or otherwise set aside with respect to the permanent funding of the object or purpose described herein.

Section 9. This resolution, which takes effect immediately, shall be published in summary form in The Times Herald Record, the official newspaper, together with a notice of the City Clerk in substantially the form provided in Section 81.00 of the Local Finance Law.

RECEIVED

JUL 02 2021

City Clerk
City of Middletown

July 2, 2021

VIA E-MAIL (dparis@middletown-ny.com)

Mr. Donald Paris
City Treasurer
City of Middletown
16 James Street
Middletown, New York 10940

Re: City of Middletown, Orange County, New York
2021 Capital Projects - \$885,864 Bonds
Orrick File: 42347-2-500

Dear Don:

I have prepared and enclose herewith a draft form of bond resolution relating to the above matter, for adoption by the Common Council at its next meeting.

At that time this resolution is to be adopted by the affirmative vote of at least two-thirds of the entire voting strength of the Common Council. After adoption, the Legal Notice of estoppel of the resolution, a form of which I enclose herewith for your convenience, should be published once in the official newspaper of the City.

When available kindly return to me a certified copy of the enclosed resolution, together with an original printer's affidavit of publication of the Legal Notice of estoppel thereof.

Please do not hesitate to call if you have any questions.

With best wishes,

Very truly yours,

Tom

Thomas E. Myers
/es
Enclosures

cc: Ms. Janet Morley
Mr. John Naumchik



Orrick, Herrington & Sutcliffe LLP
51 West 52nd Street
New York, NY 10019-NEW42

+1 212 506 5000

orrick.com

Thomas E. Myers

E tmyers@orrick.com

D +1 212 506 5212

F +1 212 506 5151

John Naumchik

From: Donald Paris
Sent: Tuesday, June 22, 2021 2:16 PM
To: Mayor; John Naumchik; Myers, Thomas E.; Janet Morley
Cc: Janet Gallo
Subject: Closing Schedule 2021

Schedule for BAN/Bond 2021 Financing

Given historically low LT bond interest rates we are recommending turning as many BANS into bonds as possible locking in the lower cost in anticipation of probable inflation.

We are reviewing with Capital Markets for the most advantageous way to allocate long and short term borrowing with intentions to close on 8/25/21.

Schedule

- City responds to information requests by 6/28/21
- Need borrowing resolutions by 6/30/21 for BOE meeting. Tom, Please Note
 - Renew BANS
 - Issue LT bonds
 - Issue new BANS for 2021-2022 Cap Ex.
- Resolutions to be voted on at July 6, 2021 CC Meeting
- Publish Notice on July 9, 2021 (20 Days)
- Sell Securities August 11, 2021
- Close BANS/Bonds August 25, 2021
- Pay 2020 BANS August 26, 2021

Janet Morley, please double check and confirm.

Thanks,

Don

Donald J. Paris
Treasurer
(845) 346-4153
(845) 343-1101 Fax
dparis@Middletown-NY.com

Inter-Office Memo

June 23, 2021

To: The Board of Estimate

From: Don Paris

Don Paris is requesting the Board to approve borrowing resolutions prepared by Bond Counsel to authorizing annual borrowing Scheduled for August 25th:

BAN Renewals	\$21,068,353
Long- Term Bonds	16,165,289
New BANS for 2021 and 2022 Cap Ex.	<u>885,864</u>
Total	\$38,119,506

**CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By Ald. _____

Sec'd by Ald. _____

Date of Adoption 07-06-21

Index No: _____

NAMES	AYES	NOES	ABSTAIN	ABSENT
Ald. Ramkissoon				
Ald. Tobin				
Ald. Kleiner				
Ald. Johnson				
Ald. Jean-Francois				
Ald. Burr				
Ald. Green				
Ald. Masi				
Pres. Rodrigues				
TOTAL				

RESOLVED; that the Common Council of the City of Middletown concurs with the Board of Estimate and Apportionment to approve and authorize the Mayor to sign the attached agreement with ChargePoint for the payment of the EV charging stations in the James Street parking lot with terms as per the attached agreement.

Department of Public Works

RECEIVED

Memorandum

JUN 24 2021
City Clerk
City of Middletown

To: Honorable Mayor Joseph DeStefano, Honorable Members of the Board of Estimate and Apportionment and Treasurer Donald Paris

Cc: City Clerk John Naumchik, Corporation Counsel Alex Smith

From: Jacob S. Tawil, P.E., Commissioner of Public Works J. S.

Date: 6/23/2021

RE: Request for Approval of Charge Point Service Agreement

Enclosed, please find the ChargePoint master service agreement for review and approval. We will be sending the agreement independently to Alex Smith and Greg Townsend for review and comments and will change the conditions of the agreement per their suggestions.

The City purchased and installed two (2) EV charging stations with two (2) ports each for a total of four (4) ports. The installation cost includes one-year software support and one-year warranty for labor and equipment. The cost for future years will be \$329 per year multiplied by four (4) ports for the software portion for a total of \$1,316 plus \$740 per year per station for the warranty for labor and equipment. The total annual charge will be \$2,796.00 (\$1,316 + \$740 + \$740=\$2,796)

We can explore multiple year subscriptions for a discounted rate in the future. The company, ChargePoint, will handle all services including charging the customers and making direct deposits into the City's designated account for all collected fees. ChargePoint will carry all risk for billing customers and any potential default and will charge 10% of the total fee collected from the customers.

ChargePoint is suggesting charging a rate of \$.25 per KWH, consistent with the Volkswagen dealership on Dolson Avenue. There is a charging station in Goshen that charges \$2.00 per hour of charging. It is estimated that 7 kWh charges in one hour of charging time.

We recommend using the \$.25 per KWH, which can be adjusted at any point in the future.

Thank you

kg

CHARGEPOINT®
MASTER SERVICES AND SUBSCRIPTION AGREEMENT

IMPORTANT: THIS MASTER SERVICES AND SUBSCRIPTION AGREEMENT IS A LEGAL AGREEMENT BETWEEN YOU OR THE CORPORATION, PARTNERSHIP OR OTHER LEGAL ENTITY YOU REPRESENT ("SUBSCRIBER") AND CHARGEPOINT, INC., A DELAWARE CORPORATION ("CPI"). PLEASE READ IT CAREFULLY. BY USING ANY OF THE CHARGEPOINT SERVICES, YOU INDICATE YOUR ACCEPTANCE OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH ANY OF THESE TERMS AND CONDITIONS, DO NOT USE ANY CHARGEPOINT SERVICES.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A CORPORATION, PARTNERSHIP OR OTHER LEGAL ENTITY, THAT ENTITY REPRESENTS THAT YOU HAVE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS. IF YOU DO NOT HAVE SUCH AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, YOU MAY NOT ENTER INTO THIS AGREEMENT AND SUCH ENTITY MAY NOT USE THE CHARGEPOINT SERVICES.

1. AGREEMENT.

1.1 SCOPE OF AGREEMENT. This Agreement governs the following activities:

- (a) Provisioning of Subscriber's Charging Station(s), if any, on ChargePoint;
- (b) Activation and use of the ChargePoint Services on Subscriber's Charging Station(s), if any;
- (c) Subscriber's use of the APIs as part of the ChargePoint Services;
- (d) Each grant of Rights by Subscriber; and
- (e) Each grant of Rights by a third party to Subscriber.

1.2 EXHIBITS AND PRIVACY POLICY. This Agreement includes the CPI Privacy Policy, as amended from time to time, and the following Exhibits, which are made a part of, and are hereby incorporated into, this Agreement by reference.

- Exhibit 1: Flex Billing Terms
- Exhibit 2: API Terms
- Exhibit 3: Terms Regarding Granting and Receipt of Rights

In the event of any conflict between the terms of this Agreement on the one hand, and the Privacy Policy or any Exhibit on the other hand, this Agreement shall govern. Capitalized terms not otherwise defined in any Exhibit or the Privacy Policy shall have the same meaning as in this Agreement.

2. DEFINITIONS. The following terms shall have the definitions set forth below when used in this Agreement:

2.1 "Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control", for purposes of this definition, means direct or indirect ownership or control of fifty percent (50%) or more of the voting interests of the subject entity.

2.2 "APIs" means, individually or collectively, the application programming interfaces which are made available to Subscriber from time to time, as and when updated by CPI.

2.3 "ChargePoint Connections" shall have the meaning ascribed to it in the applicable data sheet. The term ChargePoint Connections shall also mean any successor service provided by CPI.

2.4 *"ChargePoint®"* means the open-platform network of electric vehicle charging stations and the vehicle charging applications the network delivers, that is operated and maintained by CPI (as defined below) in order to provide various services to, among others, Subscriber and its employees.

2.5 *"ChargePoint Services"* means, collectively, the various cloud services offerings (including, without limitation, APIs and application Cloud Plans) made available for subscription by CPI.

2.6 *"ChargePoint Application"* means any of the applications established and maintained by CPI which will allow Subscriber to access ChargePoint Services.

2.7 *"Charging Station"* means the electric vehicle charging station(s) purchased by Subscriber, whether manufactured by CPI or by a CPI authorized entity, which are registered and activated on ChargePoint.

2.8 *"Content"* means all data collected or maintained by CPI in connection with the operation of ChargePoint.

2.9 *"CPI Marks"* means the various trademarks, service marks, trade names, logos, domain names, and other distinctive brand features and designations used in connection with ChargePoint and/or CPI manufactured Charging Stations, including without limitation, ChargePoint.

2.10 *"CPI Property"* means (i) ChargePoint, (ii) the ChargePoint Services (including all Content), (iii) all data generated or collected by CPI in connection with the operation of ChargePoint and ChargePoint Services, (iv) the CPI Marks, (v) the ChargePoint Cards, and (vi) all other CPI-supplied material developed or provided by CPI for Subscriber use in connection with the ChargePoint Services.

2.11 *"Documentation"* means written information (whether contained in user or technical manuals, product materials, specifications or otherwise) pertaining to ChargePoint Services and/or ChargePoint and made available from time to time by CPI to Subscriber in any manner (including on-line).

2.12 *"Effective Date"* means the earlier of (a) the date that Subscriber electronically accepts this Agreement, or (b) the date of Subscriber's first use of the ChargePoint Services.

2.13 *"Intellectual Property Rights"* means all intellectual property rights, including, without limitation, patents, patent applications, patent rights, trademarks, trademark applications, trade names, service marks, service mark applications, copyrights, copyright applications, franchises, licenses, inventories, know-how, trade secrets, Subscriber lists, proprietary processes and formulae, all source and object code, algorithms, architecture, structure, display screens, layouts, inventions, development tools and all documentation and media constituting, describing or relating to the above, including, without limitation, manuals, memoranda and records.

2.14 *"Malicious Code"* means viruses, worms, time bombs, Trojan horses and all other forms of malicious code, including without limitation, malware, spyware, files, scripts, agents or programs.

2.15 *"Party"* means each of CPI and Subscriber.

2.16 *"PII"* means personally identifiable information regarding Subscriber or a User (e.g., name, address, email address, phone number or credit card number) that can be used to uniquely identify, contact or locate Subscriber or such User.

2.17 *"Provisioning"* means activating Charging Stations, warranties and Cloud Plans on ChargePoint

2.18 *"Rights"* means the rights, authorizations, privileges, actions, information and settings within the ChargePoint Services which a Rights Grantor grants to an Rights Grantee, to enable such Rights Grantee to access, obtain and use certain portions of the ChargePoint Services and certain information available therein in the course of providing services to or on behalf of such Rights Grantor in connection

with one or more of the Rights Grantor's Charging Stations. A Rights Grantor shall be deemed to have granted Rights to the entity that will be responsible for creating Subscriber's account and Provisioning Subscriber's Charging Stations. Such deemed grant may be terminated by Subscriber at any time.

2.19 "Cloud Plan(s)" means subscription plans to the ChargePoint Services which are offered and sold by CPI from time to time, which vary according to their features, privileges and pricing.

2.20 "Subscriber Content and Services" means any content and/or services that a Subscriber provides or makes available to Users and/or the general public in connection with the ChargePoint Services, other than Content, ChargePoint Services and CPI Property.

2.21 "Subscriber Marks" means the various trademarks, service marks, trade names, logos, domain names, and other distinctive brand features and designations used by Subscriber in connection with its business and/or Charging Stations.

2.22 "Subscription Fees" means the fees payable by Subscriber for subscribing to any ChargePoint Services.

2.23 "Taxes" shall mean all present and future taxes, imposts, levies, assessments, duties or charges of whatsoever nature including without limitation any withholding taxes, sales taxes, use taxes, service taxes, value added or similar taxes at the rate applicable for the time being imposed by any national or local government, taxing authority, regulatory agency or other entity together with any penalty payable in connection with any failure to pay or any delay in paying any of the same and any interest thereon.

2.24 "Token(s)" means the serialized proof of purchase of a Cloud Plan that is used by CPI in connection with enabling Services and/or provisioning Charging Stations.

2.25 "User" means any person using a Charging Station.

3. AVAILABLE CHARGEPOINT SERVICES & CLOUD PLANS. A description of the various ChargePoint Services and Cloud Plans currently available for subscription is located on the CPI website. CPI may make other ChargePoint Services and/or Cloud Plans available from time to time, and may amend the features or benefits offered with respect to any ChargePoint Service or Cloud Plan at any time and from time to time. Subscription Fees are based on Subscriber's choice of Cloud Plan and not on actual usage of the Subscription.

4. CPI'S RESPONSIBILITIES AND AGREEMENTS.

4.1 OPERATION OF CHARGEPOINT. CPI agrees to provide and shall be solely responsible for: (i) provisioning and operating, maintaining, administering and supporting ChargePoint and related infrastructure (other than Subscriber's Charging Stations and infrastructure for transmitting data from Charging Stations to any ChargePoint operations center); (ii) provisioning and operating, maintaining, administering and supporting the ChargePoint Applications; and (iii) operating ChargePoint in compliance with all applicable laws. CPI will protect the confidentiality and security of PII in accordance with all applicable laws and regulations and the CPI Privacy Policy and acknowledges that it is responsible for the security of "cardholder data" (as that term is defined for purposes of the Payment Card Industry – Data Security Standards), if any, that CPI possesses, otherwise stores, processes or transmits on behalf of Subscriber or for any impact, if any, on the security of Subscriber's cardholder data environment.

4.2 LIMITATIONS ON RESPONSIBILITY. CPI shall not be responsible for, and makes no representation or warranty with respect to the following: (i) specific location(s) or number of Charging Stations now, or in the future, owned, operated and/or installed by persons other than Subscriber, or the total number of Charging Stations that comprise ChargePoint; (ii) continuous availability of electrical service to any of Subscriber's Charging Stations; (iii) continuous availability of any wireless or cellular

communications network or Internet service provider network necessary for the continued operation by CPI of ChargePoint; (iv) availability of or interruption of the ChargePoint Network attributable to unauthorized intrusions; and/or (v) charging stations that are not registered with and activated on the ChargePoint Network.

5. SUBSCRIBER'S RESPONSIBILITIES AND AGREEMENTS.

5.1 GENERAL.

(a) All use of ChargePoint and ChargePoint Services by Subscriber, its employees and agents and its grantees of Rights shall comply with this Agreement and all of the rules, limitations and policies of CPI set forth in the Documentation. All ChargePoint Services account details, passwords, keys, etc. are granted to Subscriber solely for Subscriber's own use (and the use of its grantees of Rights), and Subscriber shall keep all such items secure and confidential. Subscriber shall prevent, and shall be fully liable to CPI for, any unauthorized access to or use of ChargePoint or ChargePoint Services via Subscriber's Charging Stations, ChargePoint Services account(s) or other equipment. Subscriber shall immediately notify CPI upon becoming aware of any such unauthorized use.

(b) Subscriber shall be solely responsible for: (i) Provisioning of its Charging Stations, if any; (ii) keeping Subscriber's contact information, email address for the receipt of notices hereunder, and billing address for invoices both accurate and up to date; (iii) updating on the applicable ChargePoint Application, within five (5) business days, the location to which any of Subscriber's Charging Stations are moved; (iv) the maintenance, service, repair and/or replacement of Subscriber's Charging Stations as needed, including informing CPI of the existence of any Charging Stations that are non-operational and not intended to be replaced or repaired by Subscriber; and (v) compliance with all applicable laws.

(c) Subscriber shall deliver in full all benefits promised to Users by Subscriber in exchange for such Users connecting with Subscriber using ChargePoint Connections.

5.2 REPRESENTATIONS AND WARRANTIES OF SUBSCRIBER. Subscriber represents and warrants to CPI that: (i) it has the power and authority to enter into and be bound by this Agreement and shall have the power and authority to install the Charging Stations and any other electrical vehicle charging products which are registered and activated on the ChargePoint Network; (ii) the electrical usage to be consumed by Subscriber's Charging Stations will not violate or otherwise conflict with the terms and conditions of any applicable electrical purchase or other agreement including, without limitation, any lease, to which Subscriber is a party; and (iii) It has not installed or attached and will not install or attach Charging Stations on or to infrastructure not owned by Subscriber without proper authority, or in a manner that will block any easement or right of way.

5.3 CHARGEPOINT CARDS. Subscriber may be permitted by CPI, in CPI's sole discretion, to obtain CPI-provisioned radio-frequency identification cards ("ChargePoint Cards") which enable the individual card recipients to access and use ChargePoint. Subscriber may distribute such ChargePoint Cards to individuals, and each individual ChargePoint Card recipient is responsible for activating his or her ChargePoint Card on ChargePoint directly with CPI on the CPI web site. In no event will Subscriber create any separate ChargePoint accounts for any ChargePoint Card recipients or other third parties, nor will Subscriber create anonymous ChargePoint accounts associated with any ChargePoint Card.

5.4 USE RESTRICTIONS AND LIMITATIONS. Subscriber shall not:

(a) sell, resell, license, rent, lease or otherwise transfer the ChargePoint Services or any Content therein to any third party;

(b) interfere with or disrupt the ChargePoint Services, servers, or networks connected to the ChargePoint Services, or disobey any requirements, procedures, policies, or regulations of networks connected to the ChargePoint Services;

(c) restrict or inhibit any other user from using and enjoying the ChargePoint Services or any other CPI services;

(d) attempt to gain unauthorized access to the ChargePoint Network or the ChargePoint Services or related systems or networks or any data contained therein, or access or use ChargePoint or ChargePoint Services through any technology or means other than those provided or expressly authorized by CPI;

(e) create any ChargePoint Services user account by automated means or under false or fraudulent pretenses, or impersonate another person or entity on ChargePoint, or obtain or attempt to obtain multiple keys for the same URL;

(f) reverse engineer, decompile or otherwise attempt to extract the source code of the ChargePoint Services or any part thereof, or any Charging Station, except to the extent expressly permitted or required by applicable law;

(g) create derivative works based on any CPI Property;

(h) remove, conceal or cover the CPI Marks or any other markings, labels, legends, trademarks, or trade names installed or placed on the Charging Stations or any peripheral equipment for use in connection with Subscriber's Charging Stations;

(i) except as otherwise expressly permitted by this Agreement or in any applicable data sheet relating to a ChargePoint Service, copy, frame or mirror any part of the ChargePoint Services or ChargePoint Content, other than copying or framing on Subscriber's own intranets or otherwise solely for Subscriber's own internal business use and purposes;

(j) access ChargePoint, any ChargePoint Application or the ChargePoint Services for the purpose of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purpose, or for any improper purpose whatsoever, including, without limitation, in order to build a competitive product or service or copy any features, functions, interface, graphics or "look and feel;"

(k) use any robot, spider, site search/retrieval application, or other device to retrieve or index any portion of the ChargePoint Services or Content or collect information about ChargePoint users for any unauthorized purpose;

(l) upload, transmit or introduce any Malicious Code to ChargePoint or ChargePoint Services;

(m) use any of the ChargePoint Services if Subscriber is a person barred from such use under the laws of the United States or of any other jurisdiction; or

(n) use the ChargePoint Services to upload, post, display, transmit or otherwise make available (A) any inappropriate, defamatory, obscene, or unlawful content; (B) any content that infringes any patent, trademark, copyright, trade secret or other proprietary right of any party; (C) any messages, communication or other content that promotes pyramid schemes, chain letters, constitutes disruptive commercial messages or advertisements, or is prohibited by applicable law, the Agreement or the Documentation.

5.5 CONTENT.

(a) ChargePoint Content (including but not limited to Charging Station data and status) is provided for planning purposes only. Subscriber may find that various events may mean actual Charging Station conditions (such as availability or pricing) differ from what is set forth in the Content. In addition, certain Charging Station-related Content, including Charging Station name and use restrictions, is set by the Charging Station owner and is not verified by CPI. Subscriber should exercise judgment in Subscriber's use of the Content.

(b) Certain Content may be provided under license from third parties and is subject to copyright and other intellectual property rights of such third parties. Subscriber may be held liable for any unauthorized copying or disclosure of such third party-supplied Content. Subscriber's use of such Content may be subject to additional restrictions set forth in the Documentation.

(c) Subscriber shall not copy, modify, alter, translate, amend, or publicly display any of the Content except as expressly permitted by the Documentation. Subscriber shall not present any portion of the Content in any manner, that would (i) make such Content false, inaccurate or misleading, (ii) falsify or delete any author attributions or labels of the origin or source of Content, or (iii) indicate or suggest that the Charging Station locations provided as part of the Content are anything other than ChargePoint® Network Charging Stations.

(d) Subscriber shall not remove, obscure, or alter in any manner any proprietary rights notices (including copyright and trademark notices), warnings, links or other notifications that appear in the ChargePoint Service.

6. SUBSCRIPTION FEES AND PAYMENT TERMS.

6.1 SUBSCRIPTION FEES. Subscriber shall pay all Subscription Fees within thirty (30) days of its receipt of CPI's invoice. All payments shall be made in U.S. Dollars by check, wire transfer, ACH payment system or other means approved by CPI. Customer may not offset any amounts due to CPI hereunder against amounts due to Customer under this Agreement or any other agreement. Subscription fees payable to CPI do not include any Taxes imposed thereon, and Subscriber is responsible for any and all such Taxes. All such Taxes shall be set forth on the invoice provided by CPI to Subscriber; provided that, CPI's failure to include any such Tax on an invoice shall not relieve Subscriber's liability therefor. Except as otherwise set forth in this Agreement, all payment obligations under this Agreement are non-cancelable and non-refundable.

6.2 LATE PAYMENTS. Late payments shall be subject to a charge equal to the lesser of (i) one and one-half percent (1.5%) per month or (ii) the maximum rate permitted by law. Subscriber will reimburse CPI for attorneys' fees and other expenses reasonably incurred by CPI in the collection of any late payments. If any amount owing by Subscriber under this Agreement is more than thirty (30) days overdue, CPI may, without otherwise limiting CPI's rights or remedies, (a) terminate this Agreement, (b) suspend the use by Subscriber of the ChargePoint Services until such amounts are paid in full, and/or (c) condition future ChargePoint Service renewals and other Subscriber purchases on payment terms other than those set forth herein; provided that CPI shall not exercise any such rights if Subscriber has reasonably disputed such charges and is cooperating diligently in good faith to resolve the dispute.

7. INTELLECTUAL PROPERTY RIGHTS AND LICENSES.

7.1 CPI PROPERTY. As between CPI and Subscriber, CPI retains and reserves all right, title and interest (including all related Intellectual Property Rights) in and to the CPI Property and any

improvements thereto. No rights are granted to Subscriber in the CPI Property hereunder except as expressly set forth in this Agreement.

7.2 SUBSCRIBER PROPERTY. As between CPI and Subscriber, Subscriber retains and reserves all right, title and interest (including all related Intellectual Property Rights) in and to (i) all Subscriber Marks and (ii) all Subscriber Content and Services (collectively, the "Subscriber Property"). No rights are granted to CPI in the Subscriber Property hereunder except as expressly set forth in this Agreement.

7.3 LIMITED LICENSE TO SUBSCRIBER. CPI hereby grants to Subscriber a royalty-free, non-assignable, non-transferable, and non-exclusive license to use the CPI Property solely in accordance with the terms of this Agreement (including without limitation all limitations and restrictions on such use) to the extent necessary for Subscriber to access, use and receive the ChargePoint Services as permitted herein.

7.4 LIMITED LICENSE TO CPI. Subscriber hereby grants to CPI a non-assignable, non-transferable, and non-exclusive license to use the Subscriber Property solely in accordance with the terms of this Agreement (including without limitation all limitations and restrictions on such use) to the extent necessary for CPI to provide the ChargePoint Services. CPI may utilize the Subscriber Marks to advertise that Subscriber is using the ChargePoint Services. The foregoing license includes a perpetual and irrevocable right of CPI to reproduce, adapt, modify, translate, publicly perform, publicly display and distribute all Subscriber Content and Services submitted, posted or displayed by Subscriber in the ChargePoint Services, solely for the purpose of enabling CPI to operate, market and promote the ChargePoint Services, and to index and serve such Subscriber Content and Services as search results through ChargePoint Services. CPI shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable perpetual license to use or incorporate in the ChargePoint Services any suggestions, enhancement requests, recommendations or other feedback provided by Subscriber or Subscriber Rights Grantees relating to the ChargePoint Services.

7.5 ADDITIONAL TERMS REGARDING CPI MARKS.

(a) USE LIMITATIONS. Subscriber shall display the CPI Marks in connection with Subscriber Charging Stations as required in this Agreement during the term of Subscriber's Cloud Plan. Subscriber shall not use any of the CPI Marks for or with any products other than its Charging Stations. From time to time, CPI may provide updated CPI Mark usage guidelines on the ChargePoint Application or elsewhere in the Documentation, and Subscriber shall thereafter comply with such updated guidelines. For any use of the CPI Mark not authorized by such guidelines, or if no such guidelines are provided, then for each initial use of the CPI Mark, Subscriber must obtain CPI's prior written consent, which shall not be unreasonably withheld or delayed, and after such consent is obtained, Subscriber may use the CPI Mark in the approved manner. All use by Subscriber of CPI's Marks (including any goodwill associated therewith) will inure to the benefit of CPI.

(b) PROHIBITIONS. Subscriber shall not use or display any CPI Mark (or any likeness of a CPI Mark):

(i) as a part of the name under which Subscriber's business is conducted or in connection with the name of a business of Subscriber or its Affiliates;

(ii) in any manner that (x) implies a relationship or affiliation with CPI other than as described under the Agreement, (y) implies any sponsorship or endorsement by CPI, or (z) can be reasonably interpreted to suggest that any Subscriber Content and Services has been authored by, or represents the views or opinions of CPI or CPI personnel;

(iii) in any manner intended to disparage CPI, ChargePoint, or the ChargePoint Services, or in a manner that is misleading, defamatory, infringing, libelous, disparaging, obscene or otherwise objectionable to CPI;

(iv) in any manner that violates any law or regulation; or

(v) that is distorted or altered in any way (including squeezing, stretching, inverting, discoloring, etc.) from the original form provided by CPI.

(c) **NO REGISTRATION OF CPI MARKS.** Subscriber shall not, directly or indirectly, register or apply for, or cause to be registered or applied for, any CPI Marks or any patent, trademark, service mark, copyright, trade name, domain name or registered design that is substantially or confusingly similar to a CPI Mark, patent, trademark, service mark, copyright, trade name, domain name or registered design of CPI, or that is licensed to, connected with or derived from confidential, material or proprietary information imparted to or licensed to Subscriber by CPI. At no time will Subscriber challenge or assist others to challenge the CPI Marks (except to the extent such restriction is prohibited by law) or the registration thereof by CPI.

(d) **TERMINATION AND CESSATION OF USE OF CPI MARKS.** Upon termination of this Agreement, Subscriber will immediately discontinue all use and display of all CPI Marks.

8. LIMITATIONS OF LIABILITY.

8.1 DISCLAIMER OF WARRANTIES. CHARGEPOINT AND THE CHARGEPOINT SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" FOR SUBSCRIBER'S USE, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, CPI DOES NOT WARRANT THAT (A) SUBSCRIBER'S USE OF THE CHARGEPOINT SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, FREE FROM ERROR, OR MEET SUBSCRIBER'S REQUIREMENTS; (B) ALL CONTENT AND OTHER INFORMATION OBTAINED BY SUBSCRIBER FROM OR IN CONNECTION WITH THE CHARGEPOINT SERVICES WILL BE ACCURATE AND RELIABLE; (C) ALL DEFECTS IN THE OPERATION OR FUNCTIONALITY OF THE CHARGEPOINT SERVICES WILL BE CORRECTED. ALL CONTENT OBTAINED THROUGH THE CHARGEPOINT SERVICES IS OBTAINED AT SUBSCRIBER'S OWN DISCRETION AND RISK, AND SUBSCRIBER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO SUBSCRIBER'S COMPUTER SYSTEM OR OTHER DEVICE, LOSS OF DATA, OR ANY OTHER DAMAGE OR INJURY THAT RESULTS FROM THE DOWNLOAD OR USE OF ANY SUCH CONTENT.

8.2 EXCLUSION OF CONSEQUENTIAL AND RELATED DAMAGES. REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT WILL CPI BE LIABLE FOR ANY LOST REVENUE OR PROFIT, LOST OR DAMAGED DATA, BUSINESS INTERRUPTION, LOSS OF CAPITAL, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY OR WHETHER ARISING OUT OF THE USE OF OR INABILITY TO USE THE CHARGEPOINT NETWORK, ANY CHARGEPOINT SERVICES, THIS AGREEMENT, A GRANT OR RECEIPT OF RIGHTS OR OTHERWISE OR BASED ON ANY EXPRESSED, IMPLIED OR CLAIMED WARRANTIES BY SUBSCRIBER NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT.

8.3 ELECTRICAL, CELLULAR AND INTERNET SERVICE INTERRUPTIONS. Neither CPI nor Subscriber shall have any liability whatsoever to the other with respect to damages caused by: (i) electrical outages, power surges, brown-outs, utility load management or any other similar electrical service interruptions, whatever the cause; (ii) interruptions in wireless or cellular service linking Charging Stations to ChargePoint; (iii) interruptions attributable to unauthorized ChargePoint Network intrusions; (iv) interruptions in services provided by any Internet service provider not affiliated with CPI; or (v) the

inability of a Charging Station to access ChargePoint as a result of any change in product offerings (including, without limitation, the any network upgrade or introduction of any "next generation" services) by any wireless or cellular carrier. This includes the loss of data resulting from such electrical, wireless, cellular or Internet service interruptions.

8.4 LIMITATION OF LIABILITY. CPI's aggregate liability under this Agreement shall not exceed aggregate Subscription Fees paid by Subscriber to CPI in the twelve (12) calendar months prior to the event giving rise to the liability.

8.5 CELLULAR CARRIER LIABILITY. IN ORDER TO DELIVER THE CHARGEPOINT SERVICES, CPI HAS ENTERED INTO CONTRACTS WITH ONE OR MORE UNDERLYING WIRELESS SERVICE CARRIERS (THE "UNDERLYING CARRIER"). SUBSCRIBER HAS NO CONTRACTUAL RELATIONSHIP WITH THE UNDERLYING CARRIER AND SUBSCRIBER IS NOT A THIRD PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN CPI AND THE UNDERLYING CARRIER. SUBSCRIBER UNDERSTANDS AND AGREES THAT THE UNDERLYING CARRIER HAS NO LIABILITY OF ANY KIND TO SUBSCRIBER, WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE. SUBSCRIBER AGREES TO INDEMNIFY AND HOLD HARMLESS THE UNDERLYING CARRIER AND ITS OFFICERS, EMPLOYEES, AND AGENTS AGAINST ANY AND ALL CLAIMS, INCLUDING WITHOUT LIMITATION CLAIMS FOR LIBEL, SLANDER, OR ANY PROPERTY DAMAGE, PERSONAL INJURY OR DEATH, ARISING IN ANY WAY, DIRECTLY OR INDIRECTLY, IN CONNECTION WITH USE, FAILURE TO USE, OR INABILITY TO USE THE WIRELESS SERVICES EXCEPT WHERE THE CLAIMS RESULT FROM THE UNDERLYING CARRIER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THIS INDEMNITY WILL SURVIVE THE TERMINATION OF THE AGREEMENT. SUBSCRIBER HAS NO PROPERTY RIGHT IN ANY NUMBER ASSIGNED TO IT, AND UNDERSTANDS THAT ANY SUCH NUMBER CAN BE CHANGED. SUBSCRIBER UNDERSTANDS THAT CPI AND THE UNDERLYING CARRIER CANNOT GUARANTEE THE SECURITY OF WIRELESS TRANSMISSIONS, AND WILL NOT BE LIABLE FOR ANY LACK OF SECURITY RELATING TO THE USE OF THE CHARGEPOINT SERVICES.

8.6 ADDITIONAL RIGHTS. BECAUSE SOME STATES OR JURISDICITONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES AND/OR THE DISCLAIMER OF IMPLIED WARRANTIES AS SET FORTH IN THIS SECTION 8, ONE OR MORE OF THE ABOVE LIMITATIONS MAY NOT APPLY; PROVIDED THAT, IN SUCH INSTANCES, CPI'S LIABILITY AND/OR IMPLIED WARRANTIES GRANTED IN SUCH CASES SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

9. TERM, RENEWAL AND TERMINATION.

9.1 TERM OF AGREEMENT. This Agreement shall become effective on the Effective Date and shall continue until the expiration of all of Subscriber's Cloud Plans.

9.2 CLOUD PLAN TERM. Each Cloud Plan acquired by Subscriber shall commence as follows: Each Cloud Plan acquired for use with a new Charging Station will commence on the earlier to occur of (i) the date of Provisioning such new Charging Station, or (ii) one year from the date the Token(s) necessary for Provisioning such new Charging Station is made available to Subscriber or its installer. Upon expiration of the original term, this Agreement will renew automatically for successive one-year terms at the list price applicable thereto, subject to increases (not to exceed 5% annually) and Subscriber's right to terminate below. Should the renewal be cancelled and subsequently be requested to be reinstated by Subscriber, reinstatement will be subject to the payment of Subscription Fees for any lapse period plus reasonable reinstatement fee. If, however, at any time after the original term Subscriber wishes to terminate a Cloud Plan that has been automatically renewed, Subscriber may do so by providing CPI thirty (30) days' written notice of cancellation and CPI will issue Subscriber a pro-rata refund of any funds paid for periods from the effective date of cancellation to the end of the auto-renewed term. Renewals of Cloud Plans will commence on the date of the expiration of the Subscription being renewed. All other Cloud Plans will commence on the date of activation of such Cloud Plans, but in no event more than one

year after the date the Token(s) necessary for such activation is made available to Subscriber. Each Subscriber Cloud Plan shall continue for the applicable duration thereof, unless this Agreement is terminated earlier in accordance with its terms.

9.3 TERMINATION BY CPI.

(a) This Agreement may be immediately terminated by CPI: (i) if Subscriber is in material breach of any of its obligations under this Agreement, and has not cured such breach within thirty (30) days (or within five (5) days in the case of any payment default) of Subscriber's receipt of written notice thereof; (ii) Subscriber becomes the subject of a petition in bankruptcy or any other proceeding related to insolvency, receivership, liquidation or an assignment for the benefit of creditors; (iii) upon the determination by any regulatory body that the subject matter of this Agreement is subject to any governmental regulatory authorization or review that imposes additional costs of doing business upon CPI; or (iv) as otherwise explicitly provided in this Agreement. Regardless of whether Subscriber is then in breach, CPI may, in its reasonable discretion, determine that it will not accept any renewal by Subscriber of its subscription to ChargePoint Services. In such case, this Agreement shall terminate upon the later of the expiration of all of Subscriber's subscriptions to ChargePoint Services.

(b) CPI may in its discretion suspend Subscriber's continuing access to the ChargePoint Services or any portion thereof if (A) Subscriber has breached any provision of this Agreement, or has acted in manner that indicates that Subscriber does not intend to, or is unable to, comply with any provision of this Agreement; (B) such suspension is required by law (for example, due to a change to the law governing the provision of the ChargePoint Services); or (c) providing the ChargePoint Services to Subscriber could create a security risk or material technical burden as reasonably determined by CPI.

9.4 TERMINATION BY SUBSCRIBER.

This Agreement may be immediately terminated by Subscriber without prejudice to any other remedy of Subscriber at law or equity: (i) if CPI is in material breach of any of its obligations under this Agreement, and has not cured such breach within thirty (30) days of the date of its receipt of written notice thereof, (ii) CPI becomes the subject of a petition in bankruptcy or any other proceeding related to insolvency, receivership, liquidation or an assignment for the benefit of creditors, or (iii) upon providing thirty (30) days prior written notice.

9.5 REFUND OR PAYMENT UPON TERMINATION. Upon any termination of this Agreement for cause by Subscriber pursuant to Section 9.4(i) or by CPI pursuant to Section 9.3(a)(iii), CPI shall refund to Subscriber a pro-rata portion of any pre-paid Subscription Fees based upon the remaining Cloud Plan term. Upon any termination for any other reason, Subscriber shall not be entitled to any refund of any Subscription Fees as a result of such termination. Except as otherwise set forth in this Agreement, in no event shall any termination relieve Subscriber of any unpaid Subscription Fees due CPI for the Cloud Plan term in which the termination occurs or any prior Cloud Plan term.

9.6 SURVIVAL. Those provisions dealing with the Intellectual Property Rights of CPI, limitations of liability and disclaimers, restrictions of warranty, Applicable Law and those other provisions which by their nature or terms are intended to survive the termination of this Agreement will remain in full force and effect as between the Parties hereto regardless of the termination of this Agreement.

10. INDEMNIFICATION. Subscriber hereby agrees to indemnify, defend and hold CPI, its officers, directors, agents, affiliates, distribution partners, licensors and suppliers harmless from and against any and all claims, actions, proceedings, costs, liabilities, losses and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "Claims") suffered or incurred by such indemnified parties

resulting from or arising out of Subscriber's actual or alleged use (directly, or through a grantee of Rights by Subscriber) of the ChargePoint Services, ChargePoint or Subscriber Content and Services. Subscriber will cooperate as fully as reasonably required in the defense of any claim. CPI reserves the right, at its own expense, to assume the exclusive defense and control of any matter subject to indemnification by Subscriber.

11. GENERAL.

11.1 AMENDMENT OR MODIFICATION. CPI reserves the right to modify this Agreement from time to time. CPI will provide notice of each such modification to Subscriber. Subscriber's continued use of the ChargePoint Services following such notice will constitute an acceptance of the modified Agreement.

11.2 WAIVER. The failure of either Party at any time to enforce any provision of this Agreement shall not be construed to be a waiver of the right of such Party to thereafter enforce that provision or any other provision or right.

11.3 FORCE MAJEURE. Except with respect to payment obligations, neither CPI nor Subscriber will be liable for failure to perform any of its obligations hereunder due to causes beyond such party's reasonable control and occurring without its fault or negligence, including but not limited to fire, flood, earthquake or other natural disaster (irrespective of such Party's condition of any preparedness therefore); war, embargo; riot; strike; labor action; any lawful order, decree, or other directive of any government authority that prohibits a Party from performing its obligations under this Agreement; material shortages; shortage of transport; and failures of suppliers to deliver material or components in accordance with the terms of their contracts:

11.4 ARBITRATION. This Agreement is to be construed according to the laws of the State of California, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any conflict of law provisions that would require application of another choice of law. Except with respect to any matter relating to Subscriber's violation of the intellectual property rights of CPI, any dispute arising from or relating to this Agreement shall be arbitrated in Santa Clara, California. The arbitration shall be administered by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, and judgment on any award may be entered in any court of competent jurisdiction. If the Parties agree, a mediator may be consulted prior to arbitration. All claims shall be brought in the parties' individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding. With respect to any matter relating to the intellectual property rights of CPI, such claim may be litigated in a court of competent jurisdiction. The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs.

11.5 NOTICE TO CALIFORNIA CUSTOMERS.

(a) California's Low Carbon Fuel Standard ("LCFS") was enacted to ensure that the mix of fuels sold by California oil refiners and distributors meets applicable greenhouse gas emissions targets. California has a statewide goal to reduce carbon intensity of transportation fuels by at least 10% by 2020.

(b) The ChargePoint Network can track the fueling of electric vehicles, which positively contributes to reducing California's carbon intensity. If applicable reporting requirements are met, LCFS credits are issued by the California Air Resources Board. An available LCFS credit may be claimed by certain owners and operators of electric vehicle charging stations, including both Subscriber and CPI. However, the LCFS credits are only available to one party, meaning any available credits may be claimed by either Subscriber or CPI, but not by both. CPI intends to claim available LCFS credits generated from use of the Charging Stations, but will not claim any available LCFS credits that Subscriber intends to claim.

If Subscriber intends to claim the LCFS credits, it must engage in the reporting and other administrative obligations necessary to generate such credits.

(c) Subscriber agrees that it will provide CPI with written notice of its intent to claim LCFS credits within ten (10) days of the date of the Effective Date. If Subscriber does not currently intend to claim the LCFS credits, but desires to do so at any time in the future, Subscriber may, by providing written notice to CPI, elect to claim LCFS credits generated thirty (30) days or more after the date of such notice. Subscriber represents and warrants to CPI that, in the absence of providing written notice, Subscriber will not claim any LCFS credits. All notices shall be provided by email to CPI at lcfsnotification@chargepoint.com.

11.6 NOTICE TO OREGON CUSTOMERS

(a) Oregon's Clean Fuel Program ("OCFP") was created with the purpose of reducing greenhouse gas emissions in the transportation sector.

(b) The fueling of electric vehicles, and the operation of the ChargePoint Network, contributes to reducing Oregon's greenhouse gas emissions and is eligible for OCFP credits, which are issued by the Oregon Department of Environmental Quality. By reporting the amount of electric vehicle fueling, ChargePoint is able to help Oregon track the growing use of electric vehicles in the state, for which ChargePoint will receive OCFP credits.

(c) An available OCFP credit may be claimed by certain owners and operators of electric vehicle charging stations, including both Subscriber and CPI. However, the OCFP credits are only available to one party. This means any available credits may be claimed by either Subscriber or CPI, but not by both. CPI intends to claim available OCFP credits generated from use of the Charging Stations, but will not claim any available OCFP credits that Subscriber intends to claim.

(d) Subscriber agrees that it will provide CPI with written notice of its intent to claim OCFP credits within ten (10) days of the date of the Effective Date. If Subscriber does not currently intend to claim the OCFP credits, but desires to do so at any time in the future, Subscriber may, by providing written notice to CPI, elect to claim OCFP credits generated thirty (30) days or more after the date of such notice. Subscriber represents and warrants to CPI that, in the absence of providing written notice, Subscriber will not claim any OCFP credits. All notices shall be provided by email to CPI at lcfsnotification@chargepoint.com.

11.7 NOTICE REGARDING RIN DATA. For Subscriber's located in the United States, CPI will participate in an application to the U.S. Environmental Protection Agency ("EPA") to permit vehicle charging data ("Charging Data") collected by CPI from centrally networked charging stations to be utilized in a process to generate an environmental credit called a Renewable Identification Number ("RIN") under the Renewable Fuel Standard program. CPI must establish its exclusive right to utilize the Charging Data and the associated environmental attributes underlying the charging events represented by the Charging Data (Charging Data and such environmental attributes referred to collectively as, the "RIN Data") for the purposes of RIN generation. Subscriber confirms that it will not pursue utilizing RIN Data for the purposes of RIN generation and that, as between Subscriber and CPI, CPI has the exclusive right to use the RIN Data for the purpose of RIN generation.

11.8 NOTICES. Other than the notices required in Sections 11.5 and 11.6, any notice required or permitted by this Agreement shall be sent (a) if by CPI, via electronic mail to the address indicated by Subscriber in Subscriber's ChargePoint Services account; or (b) if by Subscriber, via electronic mail to mssa@chargepoint.com.

11.9 INJUNCTIVE RELIEF. Subscriber acknowledges that damages for improper use of the ChargePoint Services may be irreparable; therefore, CPI is entitled to seek equitable relief, including but not limited to preliminary injunction and injunction, in addition to all other remedies.

11.10 SEVERABILITY. Except as otherwise specifically provided herein, if any term or condition of this Agreement or the application thereof to either Party will to any extent be determined jointly by the Parties or by any judicial, governmental or similar authority, to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to this Agreement, the Parties or circumstances other than those as to which it is determined to be invalid or unenforceable, will not be affected thereby.

11.11 ASSIGNMENT. Subscriber may not assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of CPI (not to be unreasonably withheld). In the event of any purported assignment in breach of this Section, CPI shall be entitled, at its sole discretion, to terminate this Agreement upon written notice given to Subscriber. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns. CPI may assign its rights and obligations under this Agreement.

11.12 NO AGENCY OR PARTNERSHIP. CPI, in the performance of this Agreement, is an independent contractor. In performing its obligations under this Agreement, CPI shall maintain complete control over its employees, its subcontractors and its operations. No partnership, joint venture or agency relationship is intended by CPI and Subscriber to be created by this Agreement. Neither Party has any right or authority to assume or create any obligations of any kind or to make any representation or warranty on behalf of the other Party, whether express or implied, or to bind the other Party in any respect whatsoever.

11.13 ENTIRE AGREEMENT. This Agreement (including the attached Exhibits) contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes and cancels all previous and contemporaneous agreements, negotiations, commitments, understandings, representations and writings. All purchase orders issued by Subscriber shall state that such purchase orders are subject to all of the terms and conditions of this Agreement, and contain no other term other than the type of Cloud Plan, the number of Charging Stations for which such Cloud Plan is ordered, the term of such Cloud Plans and applicable Subscription Fees. To the extent of any conflict or inconsistency between the terms and conditions of this Agreement and any purchase order, the Agreement shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in any other documentation shall be incorporated into or form any part of this Agreement, and all such purported terms and conditions shall be null and void.

11.14 COPYRIGHT POLICIES. It is CPI's policy to respond to notices of alleged copyright infringement that comply with applicable international intellectual property law (including, in the United States, the Digital Millennium Copyright Act) and to terminate the accounts of repeat infringers.

11.15 THIRD PARTY RESOURCES. The ChargePoint Services may include hyperlinks to other websites or resources. CPI has no control over any web sites or resources that are provided by companies or persons other than CPI. Subscriber acknowledges and agrees that CPI is not responsible for the availability of any such web sites or resources, CPI does not endorse any advertising, products or other materials on or available from such web sites or resources, and CPI is not liable for any loss or damage that may be incurred by Subscriber as a result of any reliance placed by Subscriber on the completeness, accuracy or existence of any advertising, products, or other materials on, or available from, such websites or resources.

11.16 COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute but one and the same document.

11.17 ENGLISH LANGUAGE AGREEMENT GOVERNS. Where CPI has provided Subscriber with a translation of the English language version of this Agreement, Subscriber agrees that the translation is provided for Subscriber's convenience only and that the English language version of this Agreement governs Subscriber's relationship with CPI. If there is any conflict between the English language version of this Agreement and such translation, the English language version will prevail.

EXHIBIT 1
FLEX BILLING TERMS

This Exhibit sets forth certain additional terms and conditions ("**Flex Billing Terms**") pursuant to which Subscriber may charge Users fees for the use of Subscriber's Charging Stations. In order to charge such fees, Subscriber must subscribe to a Cloud Plan that includes CPI's management, collection and/or processing services related to such fees ("**Flex Billing**").

1. **DEFINITIONS.** The following additional defined terms shall apply to these Flex Billing Terms:

1.1 **"CPI Fees"** means a fee, currently equal to ten percent (10%) of Session Fees, charged for a particular Session. CPI Fees are charged by CPI in exchange for its collection and processing of Session Fees on behalf of Subscriber. CPI will provide Subscriber with thirty (30) days prior written notice (which may include, without limitation, notice provided by CPI through its regular newsletter to Subscriber) of any increase in CPI Fees.

1.2 **"Net Session Fees"** means the total amount of Session Fees collected on behalf of the Subscriber by CPI, less CPI Fees and Taxes, if any, required by law to be collected by CPI from Users in connection with the use of Charging Stations. Except as required by law, Subscriber shall be responsible for the payment of all Taxes incurred in connection with use of Subscriber's Charging Stations.

1.3 **"Session" or "Charging Session"** means the period of time during which a User uses Subscriber's Charging Station to charge his or her electric vehicle for a continuous period of time not less than two (2) minutes commencing when a User has accessed such Charging Station and ending when such User has terminated such access.

1.4 **"Session Fees"** means the fees set by the Subscriber for a Charging Session, inclusive of any applicable Taxes.

2. **FLEX-BILLING SERVICE FOR CHARGING STATIONS.**

2.1. **SESSION FEES.** Subscriber shall have sole authority to determine and set Session Fees. Subscriber shall be solely responsible for determining and charging Session Fees in compliance with all applicable laws and regulations (including without limitation any restriction on Subscriber's use of per-kWh pricing). Subscriber acknowledges that CPI is not responsible for informing Subscriber of applicable laws or changes thereto, and CPI will not be liable to Subscriber or any third party for any alleged or actual failure of Subscriber to comply with such applicable laws and regulations.

2.2 **DEDUCTIONS FROM SESSION FEES.** In exchange for CPI collecting Session Fees on behalf of the Subscriber, the Subscriber hereby authorizes CPI to deduct from all Session Fees collected: (i) CPI Fees and (ii) to the extent required by Section 3, applicable Taxes.

2.3 **PAYMENT TO SUBSCRIBER OF NET SESSION FEES.** CPI will remit Net Session Fees to Subscriber, not less than quarterly, provided that the amount due to Subscriber hereunder is at least two hundred and fifty U.S. Dollars (\$250) (or, if Subscriber is located in Canada, two hundred and fifty Canadian dollars) or more. Notwithstanding, the foregoing, CPI shall remit any unpaid Net Session Fees, regardless of the amount, to Subscriber at least annually and within thirty (30) days of the expiration or termination

of this Agreement. All payments shall be made by ACH. In order to facilitate such payments, Subscriber agrees to provide to CPI, or its payment provider, Subscriber's bank information to enable electronic remittance of the Net Session Fees. If the Subscriber requests payment in a manner other than ACH (e.g., check or wire transfer), Subscriber agrees to bear the reasonable costs related to such request.

3. TAXES. If applicable, Subscriber is responsible for setting pricing on a Tax inclusive basis. CPI is not responsible for remittance of any Taxes on behalf of Subscriber and Subscriber shall be responsible to report and remit any and all applicable taxes whether state, federal, provincial or otherwise; provided that CPI is solely responsible for all Taxes assessable based on CPI's income, property and employees. Where CPI is required by law to collect and/or remit the Taxes for which Subscriber is responsible, the appropriate amount shall be invoiced to Subscriber and deducted by CPI from Session Fees, unless Subscriber has otherwise provided CPI with a valid tax or regulatory exemption certificate or authorization from the appropriate taxing or regulatory authority.

EXHIBIT 2
API TERMS

This Exhibit sets forth certain additional terms and conditions ("API Terms") governing Subscriber's use of the APIs in connection with Subscriber's use of the ChargePoint Services. The API Terms are part of the Agreement, and all such use of the APIs remains subject to the Agreement terms.

1. ADDITIONAL DEFINITIONS. The following additional definitions shall apply to the API Terms.

1.1 "API Implementation" means a Subscriber software application or website that uses any of the APIs to obtain and display Content in conjunction with Subscriber Content and Services.

1.2 "API Documentation" means all Documentation containing instructions, restrictions or guidelines regarding the APIs or the use thereof, as amended and/or supplemented by CPI from time to time.

1.3 "CPI Site Terms" means the Terms and Conditions displayed on CPI's website, governing use of CPI's website and the ChargePoint Services by visitors who are not Cloud Plan subscribers.

2. API USE. Subscriber may use the APIs as and to the extent permitted by Subscriber's Cloud Plan and the API Documentation, subject to the terms and conditions of the Agreement.

2.1 AVAILABLE APIs AND FUNCTION CALLS. The APIs give Subscriber access to information through a set of function calls. The particular APIs and API function calls made available by CPI from time to time (and the Content available through such APIs and function calls) will be limited by Subscriber's Cloud Plan, and Subscriber's particular Cloud Plan may not include all APIs and function calls then available from CPI.

2.2 USE AND DISPLAY OF CONTENT. Subscriber is permitted to access, use and publicly display the Content with Subscriber Content and Services in Subscriber's API Implementation, subject to the following requirements and limitations.

(a) All Charging Station locations provided to Subscriber as part of the Content shall be clearly identified by Subscriber in Subscriber's API Implementation as ChargePoint® Network Charging Stations and shall contain the Brand Identifiers required by the API Documentation. In no event shall Subscriber's API Implementation identify or imply that any Charging Station is a part of any network of charging stations other than ChargePoint.

(b) Subscriber shall keep the Content used by Subscriber's API Implementation current with Content obtained with the APIs to within every forty eight (48) hours.

(c) Content provided to Subscriber through the APIs may contain the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of CPI's business partners and/or other third party rights holders of Content indexed by CPI, which may not be deleted or altered in any manner.

(d) Subscriber shall not:

(i) pre-fetch, cache, or store any Content, except that Subscriber may store limited amounts of Content for the purpose of improving the performance of Subscriber's API Implementation if Subscriber does so temporarily, securely, and in a manner that does not permit use of the Content outside of the ChargePoint Service;

(ii) hide or mask from CPI the identity of Subscriber's service utilizing the APIs, including by failing to follow the identification conventions listed in the API Documentation; or

(iii) defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others.

2.3 REQUIRED INFORMATION. Subscriber must:

(a) display to all viewers and users of Subscriber's API Implementation the link to the CPI Site Terms and Conditions as presented through the ChargePoint Services or described in the Documentation;

(b) explicitly state in the use terms governing Subscriber's API Implementation that, by using Subscriber's API Implementation, such viewers and users are agreeing to be bound by the CPI Site Terms; and

(c) include in Subscriber's API Implementation, and abide by, a privacy policy complying with all applicable laws; and

(d) comply with all applicable laws designed to protect the privacy and legal rights of users of Subscriber's API Implementation.

2.4 REPORTING. Subscriber must implement reporting mechanisms, if any, that CPI requires in the API Documentation.

3. CPI BRANDING REQUIREMENTS AND RESTRICTIONS.

3.1 MANDATORY CPI BRANDING. Subject to Section 3.2 below and the restrictions on use of CPI Marks set forth in the Agreement, Subscriber agrees that each page comprising Subscriber's API Implementation will include a ChargePoint logo and will state that Subscriber's application or website is provided, in part, through the ChargePoint Services.

3.2 RESTRICTIONS. Subscriber shall not:

(a) display any CPI Mark as the most prominent element on any page in Subscriber's API Implementation or Subscriber's website (except as used in connection with the display of Charging Stations); or

(b) display any CPI Mark anywhere in Subscriber's API Implementation or on Subscriber's website if Subscriber's API Implementation or website contains or displays adult content or promotes illegal activities, gambling, or the sale of tobacco or alcohol to persons under twenty-one (21) years of age.

EXHIBIT 3
TERMS REGARDING GRANTING OF RIGHTS

This Exhibit sets forth certain additional terms and conditions applicable to Rights Grantors and Rights Grantees regarding the granting of Rights ("Rights Terms"). The Rights Terms are part of the Agreement, and all use of the ChargePoint Services permitted pursuant to the Rights Terms remains subject to the Agreement.

1. ADDITIONAL DEFINITIONS. The following additional definitions shall apply.

1.1 *"Rights Grantor"* means Subscriber.

1.2 *"Rights Grantee"* means any person to whom Subscriber has granted Rights. For purposes of this Agreement, a Subscriber shall be deemed to have granted Rights to the entity assisting Subscriber with creating its account and initiating Subscriber's access to Services.

2. TERMS. This Section governs Subscriber's granting of Rights as a Rights Grantor.

2.1 LIMITED RIGHTS. A Rights Grantee's right to access and use the ChargePoint Services for and on behalf of a Rights Grantor is limited to the specific Rights granted by such Rights Grantor to such Rights Grantee. Such Rights may be limited according to the Cloud Plan(s) subscribed to by Subscriber. Subscriber may revoke Rights, or any portion thereof, it has granted to a Rights Grantee at will and such Rights will thereafter be terminated with respect to such Rights Grantee. In no event may Subscriber grant Rights in excess of those provided to it through the Cloud Plan(s) to which it has subscribed.

2.2 RESPONSIBILITY FOR AUTHORIZED USER. All use of the ChargePoint Services by a Rights Grantee exercising Rights granted by Subscriber shall be subject to the terms and conditions of the Agreement (including without limitation Subscriber's indemnification obligation pursuant to Section 10 thereof). Subscriber shall be responsible for the actions, omissions, or performance of such Rights Grantee while exercising any such Rights, as if such action, omission or performance had been committed by Subscriber directly.

2.3 NO AGREEMENT. Subscriber acknowledges and agrees that the ChargePoint Services merely enable a Rights Grantor to extend Rights to Rights Grantees. The mere extension of such Rights by a Rights Grantor to a Rights Grantee does not constitute an agreement between Rights Grantor and the Rights Grantee with respect to the granted Rights or the exercise of such Rights by the Rights Grantee. CPI does not, either through the terms of the Agreement or the provision of ChargePoint Services undertake to provide any such agreement. It is the responsibility of the Rights Grantor and the Rights Grantee to enter into such an agreement on terms mutually acceptable to each. CPI expressly undertakes no liability with respect to such an agreement and Rights Grantor fully and unconditionally releases CPI from any liability arising out of such an agreement. Further Rights Grantor agrees to indemnify and hold CPI, its officers, directors, agents, affiliates, distribution partners, licensors and suppliers harmless from and against any and all claims, actions, proceedings, costs, liabilities, losses and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "Claims") suffered or incurred by such indemnified parties resulting from or arising out of such agreement.

**CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By Ald. _____

Sec'd by Ald. _____

Date of Adoption 07-06-21

Index No: _____

NAMES	AYES	NOES	ABSTAIN	ABSENT
Ald. Ramkissoo				
Ald. Tobin				
Ald. Kleiner				
Ald. Johnson				
Ald. Jean-Francois				
Ald. Burr				
Ald. Green				
Ald. Masi				
Pres. Rodrigues				
TOTAL				

RESOLVED; that the Common Council of the City of Middletown concurs with the Board of Estimate and Apportionment to approve and authorize the Mayor to sign an agreement with RBT to review the City's American Rescue Plan monies at a fee to be capped at \$10,000.00 which future funds will come from the American Rescue Plan program itself.

Inter-Office Memo

RECEIVED

JUN 29 2021

City Clerk
City of Middletown

June 29, 2021

To: The Board of Estimate

From: Don Paris

I am recommending that we enter into an agreement with RBT to review the City's ARP plan to:

- Draw down funds
- Determine eligibility of payments made
- Help to create standardized documentation that will be approved at the end of the program
- Advise on specific accounting procedures being created around this program

We should cap this initial effort at \$10,000 for future evaluation of this long-term project. The funding will come from the ARP program itself.

Don

**CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE**

THE AUDIT OF THE COMMON COUNCIL

By Alderman Masi

Sec'd by Alderman

Date of Adoption: 07-06-21

NAMES	AYES	NOES	ABSTAIN	ABSENT
Ald. Ramkissoon				
Ald. Tobin				
Ald. Kleiner				
Ald. Johnson				
Ald. Jean-Francois				
Ald. Burr				
Ald. Green				
Ald. Masi				
Pres. Rodrigues				
TOTAL				

**I MOVE THE ACCOUNTS BE AUDITED, THE CLAIMS ADJUSTED AND THE
TREASURER BE AUTHORIZED TO ISSUE WARRENTS FOR THEIR PAYMENTS**