



COURTROOM
1 MUNICIPAL PLAZA
BEACON, NY 12508
AND LIVE VIA ZOOM

Mayor Lee Kyriacou
Councilmember George Mansfield, At Large
Councilmember Paloma Wake, At Large
Councilmember Molly Rhodes, Ward 1
Councilmember Justice McCray, Ward 2
Councilmember Wren Longno, Ward 3
Councilmember Dan Aymar-Blair, Ward 4
City Administrator Chris White

**January 31, 2022
7:00 PM
City Council Agenda**

Roll Call

Workshop Agenda Items

- | | |
|--|----|
| 1. Notice of Meeting Location January 31, 2022 | 5 |
| 2. Swearing in of City of Beacon Police Sergeant Kristopher Phillips | 5 |
| 3. Resolution Authorizing the City Administrator to Enter into a Contract with Cedarwood Engineering and Environmental Services, PLLC for Development of a Lake Management Plan for the City of Beacon Reservoirs | 5 |
| 4. Resolution Approving a Proposed Budget Amendment to the 2022 Operating Budget | 5 |
| 5. Resolution Authorizing the City Administrator to Enter into an Agreement with TAM Enterprises, Inc. for Primary Settling Tanks Equipment Replacement and Concrete Repair | 5 |
| 6. Appointment of Joseph Oakes to the Position of Water and Sewer Maintenance Mechanic | 5 |
| 7. Appointment of Manuel Galarza to the Position of Maintenance Helper | 5 |
| 8. Appointment of Peter Delfico to the Position of Senior Automotive Mechanic | 5 |
| 9. Appointment of Daniel Wysocki to the Position of Firefighter | 5 |
| 10. Resolution Authorizing the City Administrator to Enter into a Contract with Choice Words LLC for the Provision of Municipal Grant Research and Writing Services | 5 |
| 11. Resolution Authorizing the City Administrator to Enter into a Contract with Mental Health America for Provision of a Mental Health Worker Intensive Case Management Staffperson for the City of Beacon Police Department | 5 |
| 12. Local Law Amending City of Beacon City Code to Allow Firefighters to Live Within a 30 Mile Radius of the City of Beacon and to Allow the Fire Chief to Live Within a Radius Left to the Discretion of the City of Beacon Mayor | 5 |
| 13. City Council 2022 Agenda | 10 |
| 14. Good Cause Eviction | 20 |

City of Beacon City Council Agenda
01/31/2022

Title:

Notice of Meeting Location January 31, 2022

ATTACHMENTS

[Notice of Meeting Location January 31, 2022](#)



NOTICE OF PUBLIC MEETING LOCATION

PLEASE TAKE NOTICE that the City of Beacon City Council will be holding the City Council Workshop of January 31, 2022 in the Courtroom at 1 Municipal Plaza, Beacon, NY 12508. The meeting will simultaneously be streamed via Zoom. The public can attend in the Courtroom, or access the meeting via Zoom at

<https://us02web.zoom.us/j/86919893837?pwd=VmFpRVlFT1ZhSkcyRG1Obm1oYlI3QT09>

Webinar ID: 869 1989 3837 Passcode: 441729. To the extent internet access is not available, the public can attend via telephone by dialing + 1 929 205 6099 and entering the Webinar ID: 869 1989 3837 Passcode: 441729.

PLEASE TAKE FURTHER NOTICE, that the City Council Workshop of January 31, 2022 at 7:00 pm can be accessed live at <https://www.youtube.com/channel/UCvPpigGwZDeR7WYmw-SuDxg>

City of Beacon City Council Agenda
01/31/2022

Title:

Swearing in of City of Beacon Police Sergeant Kristopher Phillips

ATTACHMENTS

City of Beacon City Council Agenda
01/31/2022

Title:

Resolution Authorizing the City Administrator to Enter into a Contract with Cedarwood Engineering and Environmental Services, PLLC for Development of a Lake Management Plan for the City of Beacon Reservoirs

ATTACHMENTS

Cedarwood Engineering and Environmental Services, PLLC Proposal for Development of a Lake Management Plan for the City of Beacon Reservoirs

Draft Contract with Cedarwood Engineering and Environmental Services, PLLC for Development of a Lake Management Plan for the City of Beacon Reservoirs

Development of a Lake Management Plan for the Beacon Drinking Water Reservoirs: Cargill Reservoir, Melzingah Reservoir, and Mount Beacon Reservoir

City of Beacon, Dutchess County, NY

(Revised December 20, 2021)

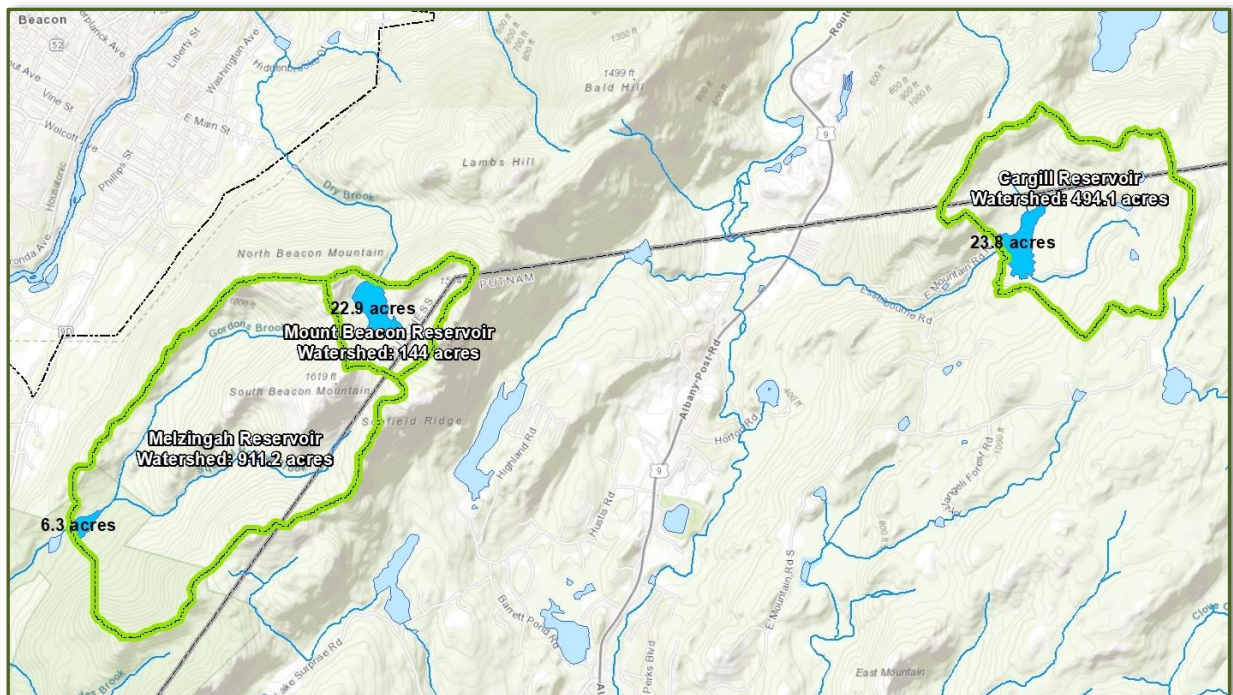
Prepared for:

City of Beacon Department of Water and Wastewater

470 Liberty Street, Beacon, NY 12508

Attn: Ed Balicki, Superintendent

(315) 654-5728 • ebalicki@beaconny.gov



Proposal Contact

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Executive Summary

Cedarwood Engineering Services, PLLC (Cedarwood) of Warrensburg, NY is pleased to present this proposal to the City of Beacon Department of Water and Wastewater for the development of a Lake Management Plan (LMP) for the City's three primary drinking water reservoirs – Cargill Reservoir, Mezingah Reservoir and Mount Beacon Reservoir. The purpose of the management plan is to assess the water quality and limnological characteristics of the reservoirs, diagnose water quality issues, examine feasible alternatives for restoration and/or treatment, and develop a comprehensive plan in order to manage the reservoirs as surface source water for the City of Beacon. Cedarwood's expertise in lake management and water supply treatment and design combine to ensure that the LMP for the City's reservoirs is relevant and takes into account the existing infrastructure, system capacity and demand.

About Cedarwood Engineering

Cedarwood is a full-service engineering design firm. We provide a vast array of services ranging from water and wastewater, civil and environmental engineering, architectural design, lake and watershed management and environmental planning, as well as engineering research and development work.

Our environmental science team is led by Michael R. Martin, a certified lake manager with over 30 years of experience in lake and watershed management, aquatic plant management, and the development of geographic information systems for environmental and municipal planning. Mr. Martin is a past president of the North American Lake Management Society (NALMS), past Regional Director for NALMS and the New York Federation of Lake Associations and was a founding member of the Indiana Lake Management Society. Mr. Martin's broad experience includes the development and implementation of lake and watershed management plans and aquatic plant and algal management plans, along with mapping and management of aquatic plants, including non-native and invasive species control via mechanical and chemical methods.

As a Certified Lake Manager, Mr. Martin has studied and developed management programs on hundreds of water bodies throughout New York, New Hampshire, Pennsylvania, New Jersey, Delaware, West Virginia, Virginia, and Indiana and has written over 75 publications and reports on lake and watershed management, lake restoration, and the effects of acid precipitation and global climate change on aquatic environments. He is an expert in the spatial and temporal analysis of large water quality data sets. As the founding Executive Director of the Adirondack Aquatic Institute (now known as the Adirondack Watershed Institute), a not-for-profit research institute examining human impacts on Adirondack lakes and ponds, he helped establish a volunteer lake monitoring program and brought to light critical water resource issues facing the Adirondack region.

Mr. Martin will serve as principal investigator and take the lead in all aspects of this project. He will be the primary contact for the City of Beacon/Department of Water and Wastewater and will be assisted by environmental staff in conducting field work and analyzing data. Water engineers will provide input regarding matters relating to the Beacon Water Supply system as it relates to

lake management. Our computer capabilities include ArcGIS 10, AutoCAD and Civil 3D, as well as SyStat, SigmaPlot and Surfer for graphical and statistical analyses of water quality trends.

Cedarwood is committed to understanding and addressing the needs of the client as well as conducting all work with an emphasis on honesty, integrity, and a commitment to quality. We look forward to the future and hope that our unmatched level of expertise and quality of service may be considered for your needs.

Cedarwood's Approach to the Project

Cedarwood will work closely with the City of Beacon and the Beacon Department of Water and Wastewater to ensure the successful completion of the project goals and objectives as outlined in this proposal. We understand that close communication throughout the project is integral to this project. We also recognize the importance of this project to the City of Beacon, its residents and to the long-term management of the City's water supply.

Our approach to this project will be to collect sound data, expertly analyze all available data, be responsive to the needs of the City and Department and provide the expertise and work products leading to the development of the Beacon Reservoirs Lake Management Plan. We will provide advice and assistance to the City and Department as needed throughout the project.

About Lake Management Planning

The U.S Environmental Protection Agency has provided a guidance document containing the 9 elements of watershed (lake management) plans (USEPA 2008). This guidance has been adopted by the NYS Department of Environmental Conservation and will be used to guide future funding for State grants.

- a. Identification of causes of impairment and pollutant sources that need to be controlled to achieve needed load reductions
- b. Estimate of the load reductions expected from management measures
- c. Description of the nonpoint source (NPS) management measures that need to be implemented to achieve load reductions and description of the critical areas in which those measures will be needed
- d. Estimate of the amounts of technical and financial assistance needed, associated costs, and sources and authorities that will be relied upon to implement this plan
- e. Information and education component to enhance public understanding of the project and encourage early and continued participation in selecting, designing and implementing NPS measures
- f. Schedule for implementing the NPS management measures identified in the plan
- g. Description of interim measurable milestones for determining whether NPS measures are being implemented
- h. Set of criteria that can be used to determine whether loading reductions are being achieved over time and substantial progress is being made toward attaining water quality standards
- i. Monitoring component to evaluate the effectiveness of the implementation efforts measured against criteria (item h)

The City's reservoirs are somewhat unique in that they are situated in controlled and nearly entirely undeveloped watersheds, therefore not all of this would apply. However, the reservoirs still experience water quality issues, such as cyanobacteria blooms. It is therefore important that

the management plan follows as closely as possible to EPA guidance so that it might be used for future planning and applications for State funding.

Scope of Work

The following Scope of Work details the tasks that will be accomplished by Cedarwood in the development of a LMP for the City of Beacon Reservoirs. The project's objectives are to:

1. Assess the Current Conditions in the Reservoirs (Tasks 1-4)
2. Identify Water Quality Issues/Establish Management Goals (Task 5)
3. Evaluate Management Alternatives (Task 6)
4. Create the Lake Management Plan (Tasks 7-8)

The project's goal is to protect the water supply by minimizing algae blooms within the reservoirs.

Kick-off Meeting with City

Cedarwood will meet with representatives of the City of Beacon and Department of Water and Wastewater at the start of the project, prior to initiating any field work or analyses, to obtain existing information and ensure that we fully understand the goals and objectives of this project. Cedarwood will communicate at least monthly with the project contact(s) to provide updates on project status throughout the life of this project. Depending upon the amount of information to be conveyed and/or discussed, these communications will take the form of emails, conference calls or face-to-face meetings in Beacon, NY.

Task 1: Background Information and Watershed Analyses

Cedarwood will examine all available historical water quality data that exists for the reservoirs provided by the City, Department, NYS DEC and other sources. This process will include a review of any past management activities that have taken place in the reservoirs as well as any available history on past algal blooms. Historical weather data will be obtained and used to examine any impact that climatic conditions have on water quality within the reservoirs. Cedarwood will identify any data gaps and make recommendations for additional monitoring and assessments to fill in those data gaps. These data will be summarized in graphical and tabular form.

Cedarwood will use GIS to prepare an analysis of watershed conditions, including land use and land cover, soils, topography, hydrology and other conditions that are relevant to the development of the management plan. This information will be summarized using maps and tables as appropriate.

Cedarwood will familiarize itself with the water supply system currently in use by the City of Beacon, including sources, transmission and treatment. This information will be useful when evaluating management objectives and assessing the feasibility of management alternatives.

Task 2: Water Quality Monitoring

Cedarwood understands that there is little direct water quality data available for the City's reservoirs. This information is critical for assessing reservoir health and developing the management plan. Therefore, Cedarwood will sample the reservoirs near their deepest point once per month from May through October during 2022 (see Figure 1 for sample locations). On each sample date and for each of the three reservoirs, Cedarwood will measure Secchi transparency, dissolved oxygen and temperature profiles, and collect samples in the upper and lower waters for the analysis of total phosphorus, soluble reactive phosphorus, total nitrogen, nitrate/nitrite nitrogen, ammonia, pH, alkalinity, chlorophyll-*a* (upper waters only) and specific conductivity. Cedarwood will collect samples on each sample date from each reservoir for the enumeration of phytoplankton (algae), which will be identified and counted.

On each sample date, Cedarwood will also collect samples from the tributaries to the reservoirs (Figure 1). Two streams come together to form one inlet at the northeast end of Mezingah Reservoir. Cedarwood will sample this stream. A smaller intermittent stream enters on the south side that will not be sampled since its drainage area is so small and flow is unlikely to be significant throughout the monitoring season. In Cargill Reservoir, two small tributaries to the northwest drains undeveloped land, one of which is intermittent. The tributary to the southeast drains lands containing low density development. The two main inlets will be sampled. The intermittent stream will not be sampled since its drainage area is so small and flow is unlikely to be significant throughout the monitoring season. The tributary samples will be analyzed for the same parameters as the reservoirs, except chlorophyll-*a*. The Beacon Reservoir watershed does not have any tributaries therefore no samples will be collected.

These data will be used to assess the current trophic status of each reservoir, examine watershed inputs, to evaluate conditions that may inhibit or promote the growth of algae and cyanobacteria, and to determine the ecological "health" of the reservoirs as it relates to drinking water quality. These data will be summarized in graphical and tabular form.

If the City is unable to provide boats for the purpose of sampling the reservoirs, Cedarwood will use canoes or kayaks that have been carefully cleaned to ensure that no invasive species are transported into the reservoirs.

Task 3: Bathymetric Analysis

The morphometric characteristics of a lake are important in assessing water quality health and developing a lake management plan. Cedarwood will use the existing bathymetric data provided by the City or Department. The bathymetric data will be imported into our GIS and used to calculate important morphometric characteristics of each reservoir including maximum depth, mean depth and lake volume. We will also create hypsographic curves to determine the volume of water at each depth of each reservoir. The morphometric characteristics will also be used to calculate flushing rates, turnover rates and phosphorus retention coefficients.

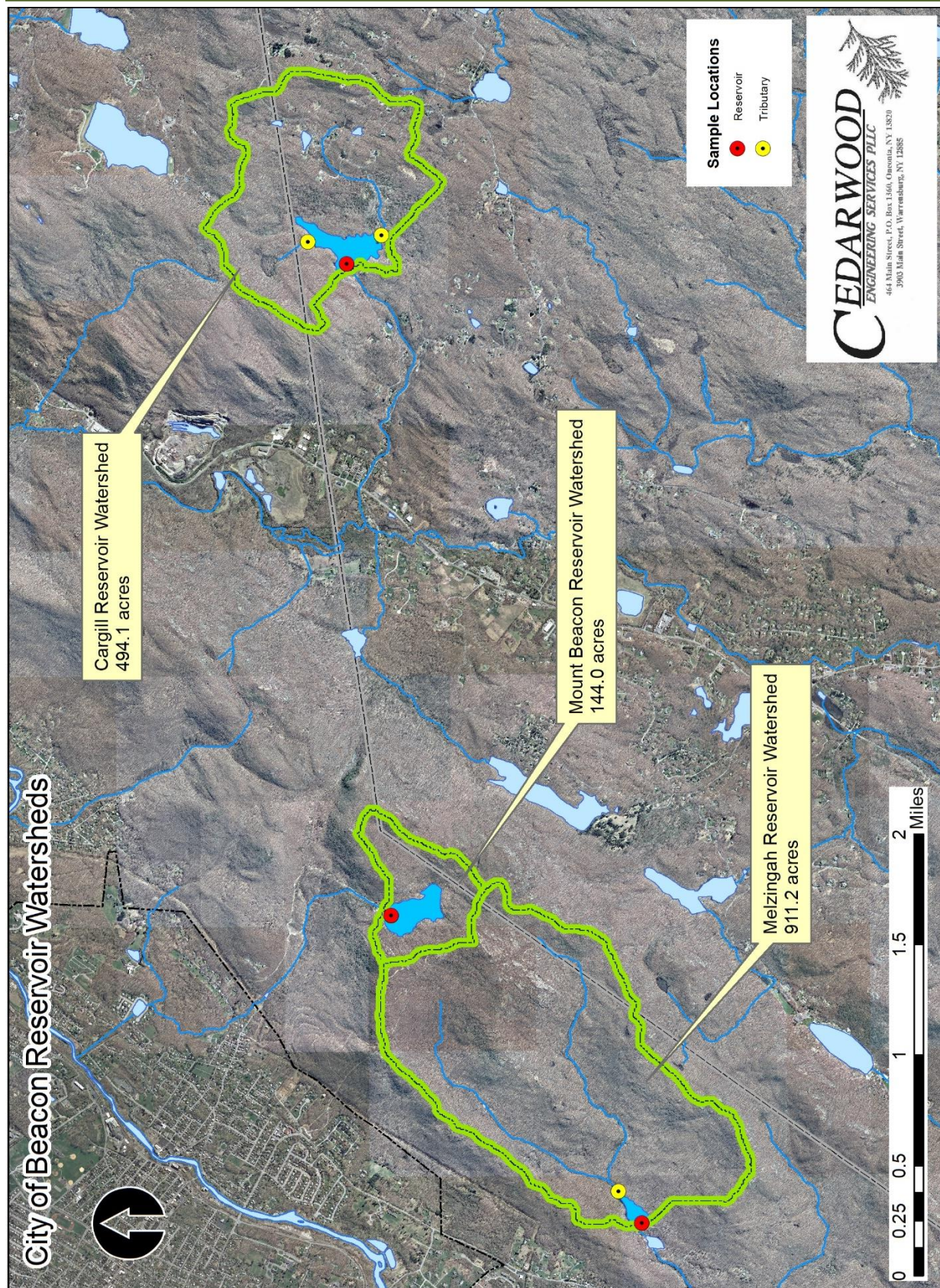


Figure 1 City of Beacon Reservoir Watersheds and Proposed Sampling Locations

Task 4: Macrophyte Mapping

Cedarwood will conduct macrophyte (aquatic plant) mapping to determine aquatic plant abundance and distribution in each of the reservoirs. Macrophyte mapping will be conducted using a combination of visual observation and rake-toss method to quantify both the distribution and abundance of aquatic plant species within the lake. Cedarwood will use these data to create maps of plant distribution and abundance, both for all plant species and individual key species. Cedarwood will also create tables of aquatic plant species overall and relative abundances.

If the City is unable to provide boats for the purpose of mapping the reservoirs, Cedarwood will use canoes or kayaks that have been carefully cleaned to ensure that no invasive species are transported into the reservoirs.

Task 5: Identify Water Quality Issues & Establish Management Goals

Cedarwood will work closely with the City of Beacon and Department of Water and Wastewater and use the products of Task 1 through Task 4 to identify the key water quality issues that effect the City's reservoirs limnologically and ecologically. We will work with the City and Department, providing supporting analyses, to develop a prioritized list of issues that impact the reservoirs and the City's drinking water supply.

Task 6: Evaluate Management Alternatives

Cedarwood will conduct a feasibility analysis of available and appropriate management strategies for management of the City's reservoirs. The feasibility analysis will examine the cost and suitability for achieving the management goals of the City and Department. Cedarwood will present a cost-benefit analysis to the City, propose recommended management strategies and work closely with the City to establish suitable management goals for the reservoirs.

A review of management alternatives will include recommendations for future and ongoing monitoring, addressing any water quality issues identified in Task 2 such as anoxic conditions in deeper areas of the reservoirs, and evaluate long-term and short-term techniques for managing nutrients and cyanobacteria blooms.

Task 7: Create the Lake Management Plan

Draft LMP

Cedarwood will prepare a Draft LMP for review and comment by the City. The LMP will detail the methodologies and present the results of all of the work conducted under this project. The LMP will define the current conditions of the reservoirs and provide recommendations for managing the reservoirs. Findings and recommendations will be presented separately for each reservoir within the LMP. Cedarwood will meet with the City/Department (Task 8) to present and discuss the report, its findings and recommendations.

Final LMP

Cedarwood will take into consideration the comments of City and Department and any additional feedback from the meeting with the City to prepare the Final LMP. Cedarwood will deliver four (4) printed copies of the final LMP along with an electronic version on an USB flash drive to the City.

Task 8: Meetings & Reservoir Management

Meetings

Cedarwood will participate in up to three meetings (not including the kick-off meeting) with representatives of the City of Beacon and the Department of Water and Wastewater in order to present preliminary findings and involve the stakeholders in the decision-making process. These meetings will tentatively be held to establish management goals, discuss the feasibility of management options and present the draft Lake Management Plan. The first two meetings will take place to coincide with field work. The third meeting, to present the draft report, will be a separately scheduled since all field work will have been complete by that time.

Cyanobacteria Bloom Rapid Response Plan

Cedarwood will work with the Department to create a rapid response plan that can be used should cyanobacteria blooms occur in the lake and threaten the drinking water supply for the City. Cedarwood will also be available on-call should blooms occur to identify the bloom-causing organism and help with the decision to treat or not treat the reservoir(s).

Project Schedule

Cedarwood will commence the project upon completion of an executed contract. The kickoff meeting will take place between January and March of 2022. Background information and watershed analysis will commence immediately and continue through October 2022. The field work is planned to take place between May and October 2022, with a draft report in January 2023. The final report will be completed by March 2023.

Budget

Cedarwood will complete the project as described in the above Scope of Work for a fee of \$37,353. A breakdown of our costs by task is presented below.

Beacon Reservoir LMP Budget	
Task Description	Cost
Task 1 - Background Information & watershed analysis	\$2,990
Task 2 - Water Quality Monitoring	\$19,718
Task 3 - Bathymetric Analysis	\$690
Task 4 - Aquatic Plant Mapping	\$3,145
Task 5 - Establish Management Goals	\$1,840
Task 6 - Evaluate Management Alternatives	\$1,840
Task 7 - Prepare Management Plan	\$4,600
Task 8 – Meetings & Reservoir Management	\$2,530
Total	\$37,353

Cedarwood Engineering Services, PLLC

**AGREEMENT
BETWEEN
THE CITY OF BEACON
AND
CEDARWOOD ENGINEERINGS SERVICES, PLLC
DEVELOPMENT OF A LAKE MANAGEMENT PLAN FOR THE BEACON
DRINKING WATER RESERVOIRS: CARGILL RESERVOIR, MELZINGAH
RESERVOIR, AND MOUNT BEACON RESERVOIR
CITY OF BEACON, DUTCHESS COUNTY, NY
CES Project Number 21-070**

THIS IS AN AGREEMENT made effective _____, 2022, between the CITY OF BEACON, located at 1 Municipal Plaza, Beacon, NY 12508 (CITY), and CEDARWOOD ENGINEERING SERVICES, PLLC, located at 3903 Main Street, Warrensburg, New York 12885 (CES):

CITY intends to enlist the professional services of CES to provide engineering services for the Development of a Lake Management Plan for the Beacon Drinking Water Reservoirs: Cargill Reservoir, Melzingah Reservoir, and Mount Beacon Reservoir as specified in the Scope of Professional Services and Deliverables below.

CITY and CES, in consideration of their mutual covenants, herein agree in respect of the performance or furnishing of professional engineering services by CES with respect to the Project and the payment for those services by CITY as set forth below. Execution of this Agreement by CES and CITY constitutes CITY's written authorization to CES to proceed on the date first above written with the services detailed in the Scope of Professional Services and Deliverables.

GENERAL

With this Engineering agreement, CITY is retaining CES to provide the tasks described in the Scope of Professional Services for the Development of a Lake Management Plan (LMP) for the Beacon Drinking Water Reservoirs: Cargill Reservoir, Melzingah Reservoir, and Mount Beacon Reservoir.

SCOPE OF PROFESSIONAL SERVICES AND DELIVERABLES

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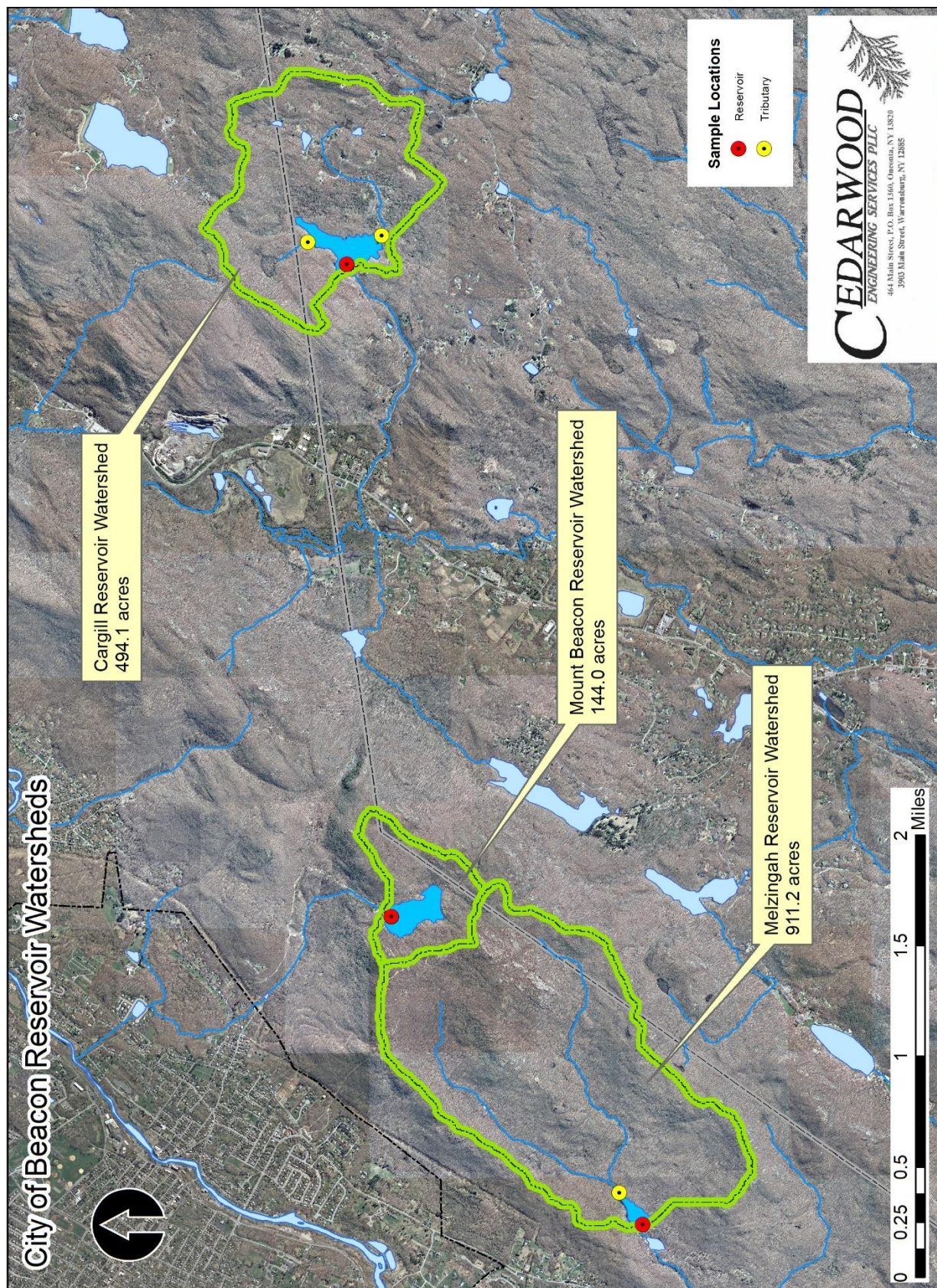


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Final LMP

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Task 8: Meetings & Reservoir Management

Meetings

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Cyanobacteria Bloom Rapid Response Plan

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PROJECT SCHEDULE

Cedarwood will commence the project upon completion of an executed contract. The kickoff meeting will take place between January and March of 2022. Background information and watershed analysis will commence immediately and continue through October 2022. The field work is planned to take place between May and October 2022, with a draft report in January 2023. The final report will be completed by March 2023.

SUMMARY OF COSTS

CES will perform the described services for the FIXED FEES provided below. These fees include all sample collection, laboratory analysis and report preparation.

Beacon Reservoir LMP Budget	
Task Description	Cost
Task 1 - Background Information & watershed analysis	\$2,990
Task 2 - Water Quality Monitoring	\$19,718
Task 3 - Bathymetric Analysis	\$690
Task 4 - Aquatic Plant Mapping	\$3,145
Task 5 - Establish Management Goals	\$1,840
Task 6 - Evaluate Management Alternatives	\$1,840
Task 7 - Prepare Management Plan	\$4,600
Task 8 – Meetings & Reservoir Management	\$2,530
Total	\$37,353

ADDITIONAL SERVICES

Additional services can be provided by the CES if deemed necessary and approved by the CITY. Compensation for additional services can be negotiated as needed.

Services not indicated or included in the above-listed scope of services, or which are subsequently requested, either verbally or in writing, will be considered additional services. The fee will be based upon either a mutually agreed fixed fee or an hourly basis at rates in effect at the time the services are performed, plus subcontracts and reimbursable expenses as outlined in the Rate Schedule for the year in which the work is being performed.

COMPENSATION

The CITY will pay CES fees in accordance with the project budget presented in the Scope of Work.

CES invoices will be submitted to the CITY on a monthly basis based on percent complete for each task. Payment shall be made to the CES within forty-five (45) calendar days of the date of the invoice. Checks shall be forwarded to Cedarwood Engineering Services PLLC, PO Box 1360, Oneonta, NY 13820.

STANDARD CONTRACT TERMS AND CONDITIONS

The terms and conditions contained on the attached sheet apply to this contract.

LOCAL IN-KIND SERVICES

CITY agrees to provide or make available to CES the following local resources and services to assist in development of the LMP:

1. Access to reservoirs
2. All reservoir data that may be used in developing the management plan, including but not limited to, bathymetric data, past treatments and water quality data.
3. Drinking Water process information (system flow diagrams, flows, withdrawals, treatments)
4. Other information as may become known to exist that would assist in preparing the LMP

ATTACHMENTS

- 2022 Rate Schedule
- Standard Terms and Conditions

ENDORSEMENTS

The following signatures establish the foregoing:

(CITY)

**CITY OF BEACON
DUTCHESS COUNTY, NY**

By: _____
(signature)

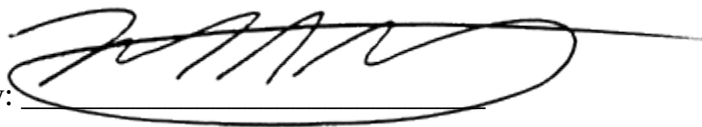
Print Name: _____

Title: _____

Date: _____

(CES)

**CEDARWOOD ENGINEERING
SERVICES PLLC**

By: _____
(signature)

Print Name: Michael R. Martin, CLM

Title: Environmental Scientist/Project
Manager

Date: January 14, 2022



CEDARWOOD ENGINEERING SERVICES PLLC
2022 RATE SCHEDULE

A. LABOR

<u>Personnel Category</u>	<u>Rate \$/Hour</u>
• Principal	\$130 - \$160
• Senior Project Engineer	\$120 - \$150
• Project Manager/Engineer	\$115 - \$140
• Project Scientist	\$115 - \$140
• Engineering Technician	\$90 - \$120
• Construction Inspector	\$80 - \$125 + per diem
• Technician/Operator	\$90 - \$115
• Clerical	\$60

B. SUBCONTRACT COSTS – At Cost + 15 percent

C. MATERIAL COSTS – At Cost

D. DIRECT EXPENSES

• In-house Copies: 8-1/2"x11" b/w	\$0.20 per page
8-1/2"x11" color	\$0.60 per page
24"x36" drawings b/w	\$2.00 per page
24"x36" drawings – color	\$6.00 per page
• US Mail	At Cost
• Mileage	At Federal Rate Per Mile
• Other Allowable Direct Costs	At Cost

1. STANDARD OF CARE. Services shall be performed in accordance with the standard of professional practice ordinarily exercised by the applicable profession at the time and within the locality where the Services are performed. Professional services are not subject to, and ENGINEER can not provide, any warranty or guarantee, express or implied, including warranties or guarantees contained in any uniform commercial code. Any such warranties or guarantees contained in any purchase orders, requisitions or notices to proceed issued by CLIENT are specifically objected to.

2. CHANGE OF SCOPE. The scope of Services set forth in this Agreement is based on facts known at the time of execution of this Agreement, including, if applicable, information supplied by CLIENT. For some projects involving conceptual or process development services, scope may not be fully definable during initial phases. As the Project progresses, facts discovered may indicate that scope must be redefined.

3. SAFETY. ENGINEER has established and maintains corporate programs and procedures for the safety of its employees. Unless specifically included as a service to be provided under this Agreement, ENGINEER specifically disclaims any authority or responsibility for general job site safety and safety of persons other than ENGINEER employees.

4. DELAYS. If events beyond the control of CLIENT or ENGINEER, including, but not limited to, fire, flood, explosion, riot, strike, war, process shutdown, act of God or the public enemy, and act or regulation of any government agency, result in delay to any schedule established in this Agreement, such schedule shall be amended to the extent necessary to compensate for such delay. In the event such delay exceeds 60 days, ENGINEER shall be entitled to an equitable adjustment in compensation.

5. TERMINATION/SUSPENSION. Either party may terminate this Agreement upon 30 days written notice to the other party. CLIENT shall pay ENGINEER for all Services, including profit relating thereto, rendered prior to termination, plus any expenses of termination.

In the event either party defaults in its obligations under this Agreement (including CLIENT'S obligation to make the payments required hereunder), the non-defaulting party may, after 7 days written notice stating its intention to suspend performance under the Agreement if cure of such default is not commenced and diligently continued, and failure of the defaulting party to commence cure within such time limit and diligently continue, suspend performance under this Agreement.

6. OPINIONS OF CONSTRUCTION COST. Any opinion of construction costs prepared by ENGINEER is supplied for the general guidance of the CLIENT only. Since ENGINEER has no control over competitive bidding or market conditions, ENGINEER cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to CLIENT.

7. RELATIONSHIP WITH CONTRACTORS. ENGINEER shall serve as CLIENT'S professional representative for the Services, and may make recommendations to CLIENT concerning actions relating to CLIENT'S contractors, but ENGINEER specifically disclaims any authority to direct or supervise the means, methods, techniques, sequences or procedures of construction selected by CLIENT'S contractors.

8. CONSTRUCTION REVIEW. For projects involving construction, CLIENT acknowledges that under generally accepted professional practice, interpretations of construction documents in the field are normally required, and that performance of construction-related services by the design professional for the project permits errors or omissions to be identified and corrected at comparatively low cost. CLIENT agrees to hold ENGINEER harmless from any claims resulting from performance of construction-related services by persons other than ENGINEER.

9. INSURANCE. ENGINEER will maintain insurance coverage for Professional, Comprehensive General, Automobile, Worker's Compensation, and Employer's Liability in amounts in accordance with legal, and ENGINEER'S business requirements. Certificates evidencing such coverage will be provided to CLIENT upon request. For projects involving construction, CLIENT agrees to require its construction contractor, if any, to include ENGINEER as an additional insured on its policies relating to the Project. ENGINEER'S coverages referenced above shall, in such case, be excess over contractor's primary coverage.

10. HAZARDOUS MATERIAL. Hazardous materials may exist at a site where there is no reason to believe they could or should be present. ENGINEER and CLIENT agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work. ENGINEER agrees to notify CLIENT as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. CLIENT acknowledges and agrees that it retains title to all hazardous material existing on the site and shall report to the appropriate federal, state or local public agencies, as required, any conditions at the site that may present a potential danger to the public health, safety or the environment. CLIENT shall execute any manifests or forms in connection with transportation, storage and disposal of hazardous materials resulting from the site or work on the site or shall authorize ENGINEER to execute such documents as CLIENT'S agent. CLIENT waives any claim against ENGINEER and agrees to defend, indemnify, and save ENGINEER harmless from any claim or liability for injury or loss arising from ENGINEER'S discovery of unanticipated hazardous materials or suspected hazardous materials.

11. INDEMNITIES. To the fullest extent permitted by law, CLIENT and ENGINEER each agree to indemnify and hold the other harmless, and their respective officers, employees, agents, and representatives, from and against liability for all claims, losses, damages, and expenses, including reasonable attorneys fees, to the extent such claims, losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors, or omissions. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of CLIENT and ENGINEER, they shall be borne by each party in proportion to its negligence.

12. LIMITATIONS OF LIABILITY. No employee or agent of ENGINEER shall have individual liability to CLIENT.

CLIENT agrees that, to the fullest extent permitted by law, ENGINEER'S total liability to CLIENT for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, ENGINEER'S negligence, errors, omissions, strict liability, or breach of contract and whether claimed directly or by way of contribution shall not exceed the total compensation received by ENGINEER under this Agreement or [alternative, in effect if strike through not in place] shall be limited in the aggregate to the amount of ENGINEER'S insurance or If CLIENT desires a limit of liability greater than that provided above, CLIENT and ENGINEER shall include as an attachment to this Agreement the amount of such limit and the additional compensation to be paid to ENGINEER for assumption of such additional risk.

IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL ENGINEER BE LIABLE TO CLIENT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES.

13. ACCESS. CLIENT shall provide ENGINEER safe access to any premises necessary for ENGINEER to provide the Services.

14. REUSE OF PROJECT DELIVERABLES. Reuse of any documents or other deliverables, including electronic media, pertaining to the Project by CLIENT for any purpose other than that for which such documents or deliverables were originally prepared, or alteration of such documents or deliverables without written verification or adaptation by ENGINEER for the specific purpose intended, shall be at the CLIENT'S risk. Further, all title blocks and the engineer's seal, if applicable, shall be removed if and when CLIENT provides deliverables in electronic media to another entity. CLIENT agrees that relevant analyses, findings and reports provided in electronic media shall also be provided in "hard copy" and that the hard copy shall govern in the case of a discrepancy between the two versions, and shall be held as the official set of drawings, as signed and sealed. CLIENT shall be afforded a period of 30 days in which to check the hard copy against the electronic media. In the event that any error or inconsistency is found as a result of this process, ENGINEER shall be advised and the inconsistency shall be corrected at no additional cost to CLIENT. Following the expiration of this 30-day period, CLIENT shall bear all responsibility for the care, custody and control of the electronic media. In addition, CLIENT represents that it shall retain the necessary mechanisms to read the electronic media, which CLIENT acknowledges to be of only limited duration. CLIENT agrees to defend, indemnify, and hold harmless ENGINEER from all claims, damages, and expenses, (including reasonable litigation costs), arising out of such reuse or alteration by CLIENT or others acting through CLIENT.

15. AMENDMENT. This Agreement, upon execution by both parties hereto, can be amended only by a written instrument signed by both parties.

16. ASSIGNMENT. Except for assignments (a) to entities which control, or are controlled by, the parties hereto or (b) resulting from operation of law, the rights and obligations of this Agreement cannot be assigned by either party without written permission of the other party. This Agreement shall be binding upon and inure to the benefit of any permitted assigns.

17. STATUTES OF LIMITATION. To the fullest extent permitted by law, parties agree that, except for claims for indemnification, the time period for bringing claims under this Agreement shall expire one year after Project completion.

18. DISPUTE RESOLUTION. Parties shall attempt to settle disputes arising under this agreement by discussion between the parties senior representatives of management. If any dispute can not be resolved in this manner, within a reasonable length of time, parties agree to attempt non-binding mediation or any other method of alternative dispute resolution prior to filing any legal proceedings.

19. NO WAIVER. No waiver by either party of any default by the other party in the performance of any particular section of this Agreement shall invalidate any other section of this Agreement or operate as a waiver of any future default, whether like or different in character.

20. NO THIRD-PARTY BENEFICIARY. Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including CLIENT'S contractors, if any.

21. SEVERABILITY. The various terms, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.

22. AUTHORITY. The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

23. COMPENSATION. ENGINEER will prepare and submit invoices to the CLIENT on a monthly basis. CLIENT shall make payment to the ENGINEER within 30 calendar days of the date of the invoice.

24. ADDITIONAL SERVICES. Additional services can be provided if deemed necessary and approved by the CLIENT. Compensation for additional services can be negotiated as needed. Additional work will be approved by the CLIENT prior to the execution of the additional tasks.

Services not indicated or included in the above-listed scope of services or which are subsequently requested, either verbally or in writing, will be considered additional services. The fee will be based upon either a mutually agreed fixed fee or an hourly basis at rates in effect at the time the services are performed, plus subcontracts and reimbursable expenses as outlined in the Rate Schedule for the year in which the work is being performed.

City of Beacon City Council Agenda
01/31/2022

Title:

Resolution Approving a Proposed Budget Amendment to the 2022 Operating Budget

ATTACHMENTS

[Proposed City of Beacon 2022 Operating Budget Amendment](#)

Council Budget Amendments
February 7, 2022 Meeting

1. Amend the 2022 Water Fund Budget to provide for a Lake Management Plan for the City's three reservoirs. Below is the proposed budget amendment:

Transfer to:

F -08-8340-454000- ENGINEERS	<u>\$ 37,353</u>
------------------------------	------------------

Transfer from:

F -01-1990-400001- CONTINGENCY FUND	<u>\$ 37,353</u>
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Respectfully submitted,
Susan K. Tucker CPA

City of Beacon City Council Agenda
01/31/2022

Title:

Resolution Authorizing the City Administrator to Enter into an Agreement with TAM Enterprises, Inc. for Primary Settling Tanks Equipment Replacement and Concrete Repair

ATTACHMENTS

[Lanc and Tully Engineering and Surveying, P.C. Recommendation for Bid Award for Primary Settling Tanks Equipment Replacement and Concrete Repair](#)

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.

January 20, 2022

Mr. Christopher White, City Administrator
City of Beacon City Hall
1 Municipal Plaza
Beacon, New York 12508

Re: Primary Settling Tanks Equipment
Replacement and Concrete Repair
Wastewater Treatment Plant
City of Beacon Award Recommendation

Dear Mr. White:

A total of four (4) bid proposals were submitted and opened on January 18, 2022, for the base bid for the above referenced project for the Beacon Wastewater Treatment Plant. The four (4) proposals were carefully reviewed; all multiplication between estimated quantities and unit prices checked; and addition of total prices were checked against the total contract amount. All proposals submitted were complete. One of the submitted proposals was found to have mathematical errors within the bid form, as submitted by Billman Ross & Associates, Inc.

The following tabulation shows the order from lowest bidder, the name of the bidder, the total contract amount and the corrected contract amount if errors were found. The engineer's estimated cost for the project was \$2,138,397.00.

NAME OF BIDDER	TOTAL CONTRACT AMOUNT	CORRECTED CONTRACT AMOUNT
TAM ENTERPRISES	\$1,898,540.00	N/A
EVENTUS CONSTRUCTION	\$2,382,000.00	N/A
BILLMAN ROSS & ASSOC.	\$2,704,729.00	\$2,746,904.62
RAPID PUMP & METER	\$2,965,625.00	N/A

The lowest bidder is Tam Enterprises, Inc. with a total bid of \$1,898,540.00. Tam Enterprises, Inc. has submitted information related to projects in which they have completed the work as outlined within the proposed project or are of similar nature. References supplied were called and checked to verify the work completed by the prospective low bidder and were found to be acceptable. In our opinion, Tam Enterprises, Inc. should be considered the lowest responsible bidder, based upon submitted information, completion of past projects with the City and Chapter 53 of the City Code. Along with the bid, the contractor has submitted a Non-Collusive Bidding Certificate, and a Bid Bond.

It is our recommendation to the City Council to award the Primary Settling Tanks Equipment Replacement and Concrete Repair project to Tam Enterprises, Inc.

Mr. White

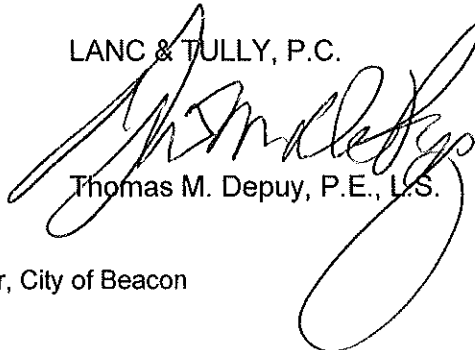
-2-

January 20, 2022

If you have any questions, or need any further information, please do not hesitate to contact our office.

Very truly yours,

LANC & TULLY, P.C.

A large, stylized handwritten signature in black ink, appearing to read 'T. M. Depuy', is written over the typed name and firm name.

Thomas M. Depuy, P.E., L.S.

cc: David Tavernier, Chief Waste Plant Operator, City of Beacon
Nick Ward-Willis, City Attorney
John Russo, P.E.

City of Beacon City Council Agenda
01/31/2022

Title:

Appointment of Joseph Oakes to the Position of Water and Sewer Maintenance Mechanic

ATTACHMENTS

Superintendent of Water and Sewers Memorandum for the Promotion of Joseph Oakes to the
Position of Water and Sewer Maintenance Mechanic



CITY OF BEACON New York

WATER DEPARTMENT

845-831-3136

To: Christopher White
City of Beacon Administrator

From: Edward Balicki

Re: Department Promotion

Date: January 6, 2022

Christopher,

I am recommending Joseph Oakes for promotion to Water and Sewer Maintenance Mechanic. This promotion would be one step higher than his current position as Water and Sewer Maintenance Mechanic Helper.

Joseph has distinguished himself as a very dependable, conscientious and responsible employee. During his employment with the City, Joseph has acquired the knowledge to perform water taps, flush or rod plugged sewers, shut off water mains, and repair broken water mains. While being employed by the City, Joseph has acquired his Commercial Driver's License, allowing him to operate equipment such as the vac truck, sewer jet truck and drive the large dump trucks. Joseph also assists the Highway Department with snow plowing, snow removal and milling and paving of City streets.

This promotion was included in the 2022 operating budget. If you have any questions, please feel free to contact me. Thank you for your consideration.

Respectfully,

Edward Balicki
City of Beacon
Superintendent of Water and Sewer

City of Beacon City Council Agenda
01/31/2022

Title:

Appointment of Manuel Galarza to the Position of Maintenance Helper

ATTACHMENTS

Highway Superintendent Memorandum for the Promotion of Manuel Galarza to the Position of Maintenance Helper

Memorandum

Highway Department



To: City of Beacon Administrator Christopher White
City of Beacon City Council

From: Michael Manzi

Re: Maintenance Helper Promotion

Date: Jan 6, 2022

Manuel (Angel) Galarza has been employed with the city as a Cleaner since 2018 and at this time I would like to promote Angel to the position of Maintenance Helper.

As you know, Angel has been a reliable and instrumental part of the team, especially as we have dealt with the COVID-19 Pandemic these past years. Angel goes above and beyond just cleaning; he also takes care of basic maintenance and coordinates with Dave Way for assistance and guidance on other repairs. Many of these tasks fall under the title of Maintenance Helper.

This promotion has been budgeted for and is well deserved. At this time, with your support, I would like to move forward with his promotion. Thank you.

Sincerely,

Michael Manzi

Michael Manzi
City of Beacon
Highway Superintendent

City of Beacon City Council Agenda
01/31/2022

Title:

Appointment of Peter Delfico to the Position of Senior Automotive Mechanic

ATTACHMENTS

Highway Superintendent Memorandum for the Promotion of Peter Delfico to the Position of Senior Automotive Mechanic

Memorandum
Highway Department



To: City of Beacon Administrator Christopher White
City of Beacon Council

From: Michael Manzi

Re: Senior Automotive Mechanic Promotion

Date: Jan 6, 2022

Peter Delfico has been employed with the city as an Automotive Mechanic since 2002 and at this time I would like to promote Pete to the position of Senior Automotive Mechanic.

Pete is a diesel mechanic by trade and is very knowledgeable in his field. He is familiar with and has worked on a broad range of city-owned equipment, including, but not limited to, fire trucks, large highway trucks, sweepers, leaf trucks, and loaders. With his knowledge and expertise, Pete has also recently been involved in the purchasing of new equipment and vehicles.

This promotion has been budgeted for and is well deserved. At this time, with your support, I would like to move forward with his promotion. Thank you.

Sincerely

Michael Manzi

Michael Manzi
City of Beacon
Highway Superintendent

City of Beacon City Council Agenda
01/31/2022

Title:

Appointment of Daniel Wysocki to the Position of Firefighter

ATTACHMENTS

[Fire Chief Memorandum for the Appointment of Daniel Wysocki to the Position of Firefighter](#)



MEMORANDUM

To: Mayor Kyriacou, Administrator White, and the City Council
From: Gary Van Voorhis, Fire Chief
Date: January 20, 2022
Subject: City of Beacon Fire Department request to fill an open Career Firefighter's Position

Due to a retirement, the City of Beacon Fire Department is short one position. I am requesting the City Council approve the hiring of applicant Daniel Wysocki. Daniel Wysocki was on the Dutchess County Civil Service written exam list and scored a 100. All nine 100's on the list were canvased. An interview committee was made up of the Fire Chief and Lieutenant Eric Schmidt. Six applicants were eligible to attend an interview. Interviews were conducted January 14, 2022. The selection for Daniel Wysocki was determined by his exam score, resume, qualifications, experience, leadership skills, and the interview process. The committee agreed on moving forward with the hiring of Daniel Wysocki. Daniel Wysocki has passed his background check and physical. If approved by the Council, Daniel Wysocki will begin a 17-week training course at the Westchester Training Center.

Daniel Wysocki

- Started in the fire service in 2007 as a Volunteer with the Beekman FD.
- Certified NYSEMT.
- Works at IBM Emergency Control and Ossining Ambulance Corps.
- Worked at NYS Dept. of Corrections.
- Served in the U.S. Army.
- Multiple New York State Fire Certifications.
- Multiple Emergency Service Awards and Citations.

For Official Use Only

City of Beacon City Council Agenda
01/31/2022

Title:

Resolution Authorizing the City Administrator to Enter into a Contract with Choice Words LLC for the Provision of Municipal Grant Research and Writing Services

ATTACHMENTS

[Draft Contract with Choice Words for the Provision of Municipal Grant Research and Writing Services](#)

AGREEMENT BY AND BETWEEN THE CITY OF BEACON AND CHOICE WORDS LLC

This Agreement (the “Agreement”) is made and entered into effective the ____ day of _____, 2022 by and between **CHOICE WORDS LLC (the “CONSULTANT”)**, with offices at 134 Main Street, New Paltz, New York 12561 and the **CITY OF BEACON (the “CITY”)**, a municipal corporation of the State of New York with offices at 1 Municipal Plaza, Beacon, New York 12508 for the purpose of assessing and referring people in need of services within the jurisdiction of the CITY (together, the “Parties”). The Terms and Conditions are as follows:

1. **SERVICES:** The CONSULTANT will provide municipal grant research and writing services to the CITY as requested by the CITY (the “Service”). Choice Words shall research, write, submit, and provide support for grant applications on behalf of the CITY, seeking funding from a variety of federal, state, and private sources. CHOICE WORDS shall recommend to the CITY potential grant funding opportunities and prepare grant applications after consultation with and approval from the City Administrator or Mayor. CHOICE WORDS shall collaborate with CITY officials throughout this process, including scheduling telephone and in-person meetings as needed. THE CONSULTANT shall provide detailed monthly work logs that accompany invoices.
2. **COMPENSATION:** The CITY shall pay the CONSULTANT an hourly rate of ninety dollars (\$90) per hour (“Hourly Rate”) with a not-to-exceed in 2022 of twenty thousand dollars (\$20,000), which shall be billed to the CITY on a monthly basis by the fifteenth (15th) day of the following month. The CONSULTANT shall not provide Services in excess of this amount without the prior written consent of the City Administrator or Mayor. The CITY shall reimburse the CONSULTANT for all reasonable and pre-approved expenses necessary to its provision of the Services. Hours for travel time shall be billed at fifty percent (50%) of the Hourly Rate. Mileage shall be reimbursed at \$0.58 per mile traveled. It is hereby acknowledged that the CONSULTANT will provide for no additional fee a total of ____ hours of Services that were prepaid in 2021 and which shall be provided to the CITY prior to any additional fee generation and billing.
3. **TERM:** This Agreement shall commence on March 1, 2022 (the “Effective Date”) and continue until December 31, 2022 unless sooner terminated or amended pursuant to the terms and provisions of this agreement. This Agreement may be extended for up to four (4) additional one (1) year terms if agreed to by both Parties without additional approval from the City Council. Either Party may terminate this agreement at any time on written notice of no less than thirty (30) days.
4. **INDEPENDENT CONTRACTOR STATUS:** Subject to the terms and conditions of this Agreement, the City of Beacon hereby engages the CONSULTANT as an independent contractor to perform the services set forth herein. The Contractor agrees to be responsible for the payment of all employment taxes and withholdings specified by law, which may be due in regard to compensation by the CITY. The CONSULTANT shall have no claim against

the CITY hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

5. **CONFIDENTIALITY:** The CONSULTANT acknowledges that during the Term of this Agreement, the CONSULTANT and its associates shall have access to and become acquainted with information, records, and other confidential information owned or licensed by the CITY and/or used by the CITY in connection with the operation of its business, including, without limitation, documents, accounts, grant portal passwords, and procedures. The CONSULTANT shall not disclose any of the aforesaid, directly or indirectly, or use any of them in any manner, either during the term of this Agreement or at any time thereafter, without prior written approval from the City Administrator or Mayor.
6. **INTELLECTUAL PROPERTY:** All Intellectual Property used or developed during the provision of the Services shall be the sole property of the CITY, including but not limited to, all written materials, graphics, photos, presentations, publicity materials, and proposals.
7. **NON-ASSIGNMENT:** This Agreement may not be assigned, transferred, or pledged by MHA without the written consent of the CITY, which consent may be withheld at the discretion of the CITY.
8. **NO DISCRIMINATION:** MHA agrees for itself, and its successors and assigns that MHA shall not discriminate in the performance of its obligations under this Agreement upon the basis of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to enter into this Agreement as of the dates set forth below, effective as of the beginning date set forth in Paragraph 3 above.

CHOICE WORDS LLC

CITY OF BEACON

Name: Steve Densmore
Title: CEO
Date: _____

Name: Christopher White
Title: CITY ADMINISTRATOR
Date: _____

City of Beacon City Council Agenda
01/31/2022

Title:

Resolution Authorizing the City Administrator to Enter into a Contract with Mental Health America for Provision of a Mental Health Worker Intensive Case Management Staffperson for the City of Beacon Police Department

ATTACHMENTS

[Draft Contract with Mental Health of America Agreement for Provision of a Mental Health Worker Intensive Case Management Staffperson for the City of Beacon Police Department](#)

**AGREEMENT BY AND BETWEEN
THE CITY OF BEACON, NEW YORK AND
MENTAL HEALTH AMERICA OF DUTCHESS COUNTY**

This Agreement (the “Agreement”) is made and entered into effective the 1st day of March, 2022 by and between **MENTAL HEALTH AMERICA of DUTCHESS COUNTY, INC. (“MHA”)**, with offices at 253 Mansion Street, Poughkeepsie, New York 12601 and the **CITY OF BEACON (the “CITY”)**, a municipal corporation of the State of New York with offices at 1 Municipal Plaza, Beacon, New York 12508 for the purpose of assessing and referring people in need of services within the jurisdiction of the CITY (together, the “Parties”). The Terms and Conditions are as follows:

1. **SERVICES:** MHA shall provide one (1) Mental Health Worker Intensive Case Management Staffperson (“MHW ICM”) to work with the CITY’s Police Department (the “Department”). The MHW ICM shall work with the Department thirty-five (35) hours per week. The individual’s duties and responsibilities shall include but are not limited to: accompanying police officers on calls for service involving a person in crisis who may be in immediate need of assessment by a mental health professional; working closely with the Department’s Juvenile Division Youth Worker to meet the needs of children and their parents who may be experiencing mental health related illnesses; following-up on calls of service where a mental health professional was not present; and accompanying the Behavior Evaluation and Assessment Team (“BEAT”) on routine patrol.
2. **FEE SCHEDULE:** The CITY shall pay MHA an amount not to exceed seventy-two thousand five hundred dollars (\$72,500) for thirty-five (35) hours per week for one year for the services provided pursuant to this Agreement. The CITY shall not be responsible for any other costs. MHA shall submit monthly invoices detailing the hours worked by the MHW ICM assigned to the CITY. The hours worked shall commence when the MHW ICM reports to the police station or remote work location to perform services pursuant to this Agreement. The CITY is a tax-exempt organization and as such, shall not reimburse for sales tax. MHA is responsible to pay all payroll taxes, benefits, unemployment and related expenses.
3. **TERM:** This Agreement shall commence on March 1, 2022 and continue until March 1, 2023 unless sooner terminated or amended pursuant to the terms and provisions of this agreement. This Agreement may be extended for up to four (4) additional one (1) year terms upon mutual written agreement of the parties hereto. Pursuant to Resolution No. 2022-_____, the City Council has authorized the City Administrator to execute any amendments and extensions to this Agreement provided that any increase in the cost of the services provided pursuant to this Agreement does not exceed 10% of the prior year’s cost. All amendments and extensions of this Agreement shall be subject to review by the City Attorney as to form and substance.
4. **INDEPENDENT CONTRACTOR STATUS:** The Parties hereto intend that the relationship with the CITY shall be that of an independent contractor. No officer, agent, and/or employee of MHA shall be considered an officer, agent, and/or

employee of the CITY . MHA and MHA's officers, employees and/or agents, if any, are retained by the CITY only for the purposes, and to the extent, set forth in this Agreement. MHA acknowledges that it will not hold itself, its officers, employees and/or agents out as employees of the CITY . MHA shall not hold itself out as anything other than an independent contractor of the CITY. MHA and MHA's officers, employees and/or agents shall not be entitled to any rights or benefits afforded to the CITY's employees, including, without limitation, disability or unemployment insurance, workers' compensation, medical insurance, sick leave, retirement or any other employment benefit. MHA is responsible for providing, at MHA's sole expense, disability, unemployment, workers' compensation and all other forms of insurance, training, permits and licenses for MHA and for MHA's officers, employees and/or agents. MHA shall maintain all rights and obligations to supervise its employees, however, such personnel shall be subject to direction by the CITY's Chief of Police or their designee with respect to assignments and insuring compliance with Department Policies. Decisions regarding employment, discipline or termination of a MHA'S employees shall be made solely by MHA.

5. **CHOICE OF LAW, VENUE:** This Agreement and the rights and obligations of the Parties and their successors and assigns hereunder shall be interpreted, construed, and enforced in accordance with the laws of the State of New York without regard to its choice and/or conflict of laws provisions. Any legal action resulting from, arising under, out of or in connection with, directly or indirectly, this Agreement shall be commenced exclusively in the Supreme Court, State of New York, County of Dutchess or the U.S. District Court for the Southern District of New York. The Parties hereby submit themselves to the jurisdiction of any such court and agree that service of process on them in any such action, suit or proceeding may be affected by the means by which notices are to be given under this Agreement.
6. **NOTICES:** All notices, requests, demands and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand or mailed, express, certified or registered mail, return receipt requested, with postage prepaid, or sent priority next day delivery by a nationally recognized overnight courier service that regularly maintains records of items picked up and delivered to the Parties at the addresses first set forth above or to such other person or address as a Party shall notify the other in writing. Notices delivered personally shall be deemed communicated as of the date of actual receipt, mailed notices shall be deemed communicated as of the date three (3) business days after mailing, and notices sent by courier shall be deemed communicated as of the date two (2) business days after pick-up.
7. **TAX EXEMPTION:** The CITY is a tax-exempt entity under the rules of the Internal Revenue Service and will provide MHA with a copy of its tax-exempt status.
8. **ENTIRE AGREEMENT:** This Agreement contains the entire terms and obligations between the Parties as to subject matter herein and supersedes all prior agreements whether oral or written between the Parties hereto. This Agreement may be modified only by a written instrument signed by the Parties.

9. **COUNTERPARTS:** This Agreement may be executed in counterparts each of which shall be deemed an original and all of which taken together shall constitute one and the same Agreement. Delivery of an executed counterpart of this Agreement by facsimile or email shall be equally as effective as delivery of a manually executed counterpart of this Agreement.
10. **INSURANCE REQUIREMENTS:**
- A. Prior to commencement of any services, MHA shall, at its sole expense, maintain the following insurance on its own behalf, and on behalf of any Mental Health Worker Intensive Case Management employee:
 - (i) Worker's Compensation and Employers Liability Policy, covering operations in New York State. Policy shall include all employees, volunteers, owners/partners and provide statutory Workers Compensation limits.
 - (ii) General Liability Policy, with limits of no less than \$1,000,000 each occurrence/\$2,000,000 annual aggregate limits for Bodily Injury and Property Damage. The insurance policy shall be written on a primary and non-contributing coverage basis, including any self-insured retentions. To the extent permitted by New York law, MHA waives all rights of subrogation or similar rights against the CITY, its assigns, officers, employees, representatives and agents. The CITY and its agents, officers, volunteers, directors and employees shall be named as additional insureds and included in a waiver of subrogation endorsement.
 - (iii) Umbrella Liability, with limits of no less than \$1,000,000, including coverage for General, Automobile and Professional Liability. The insurance policy shall be written on a primary and non-contributing coverage basis, including any self-insured retentions. To the extent permitted by New York law, MHA waives all rights of subrogation or similar rights against the CITY, its assigns, officers, employees, representatives and agents.
 - (iv) Professional Liability, with limits of no less than \$1,000,000.
 - B. All insurance coverages must be from an A.M. Best Rated "secured" (B+-A++), New York State admitted insurer.
 - C. Certificates shall provide that thirty (30) days written notice, by registered mail with return receipt requested, prior to cancellation or expiration be given to the CITY. Policies that lapse and/or expire during term of work shall be recertified and received by the CITY no less than thirty (30) days prior to expiration or cancellation.

- D. MHA shall furnish to the CITY Certificates of Insurance as evidence of coverage and proof of Workers Compensation coverage prior to commencement of any services and naming the CITY, its officers, officials and employees as an Additional Insured on the Commercial General Liability, Umbrella and Professional Liability Policies.
11. **DEFENSE AND INDEMNIFICATION:** MHA shall hold the CITY harmless from, defend and indemnify it against all damages, losses, expenses (including, without limitation, reasonable attorneys' fees and disbursements) and liability for injury to, or death of, persons or property caused by or arising from its performance or lack of performance under this Agreement. MHA shall pay all costs (including, without limitation, reasonable attorneys' fees and disbursements) that may be incurred by the CITY in enforcing this indemnity. The CITY may, at its own expense, retain separate counsel and participate in any suit or action.
12. **CONFIDENTIAL INFORMATION:** MHA understands that in performing the services under this Agreement it may have access to or acquire confidential information in possession of the CITY or others, including, but not limited to names, facts or information about individuals, businesses and families. MHA may also have access to or acquire confidential information, potentially including but not limited to personnel information and records; confidential business information; trade secrets; information regarding sensitive, confidential or internal CITY matters and other protected information or data. It is agreed that the definition of confidential information includes all documentary, electronic or oral information made known to MHA through any activity related to this Agreement, except information available to MHA from third parties on an unrestricted basis. MHA agrees it, its officers, employees and/or agents shall keep all confidential information in a secure place and further agrees not to publish, communicate, divulge, use, or disclose, for their own benefit or for the benefit of another, either during or after the performance of this Agreement, the content of such confidential information, directly or indirectly to any third-party, except as explicitly provided for in this Agreement or as explicitly authorized in writing by the CITY. MHA understands that any unauthorized disclosure, publication and/or communication of such confidential information shall be considered a breach of this Agreement. MHA agrees that if it receives a request for disclosure of confidential information obtained from the CITY pursuant to a statute, subpoena or court order, it shall notify the CITY prior to disclosing the CITY's confidential information, unless providing notice of the disclosure is expressly prohibited by the statute, subpoena or court order. The Parties further agree that the terms and conditions set forth in this Confidentiality section shall survive the expiration and/or termination of this Agreement.
13. **NON-DISCRIMINATION REQUIREMENTS:** MHA agrees for itself, and its successors and assigns that MHA shall not discriminate in the performance of its obligations under this Agreement upon the basis of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or

domestic violence victim status.

14. **BREACH OF CONTRACT:** In the event of a material breach of any of the terms of this Agreement, the non-breaching party shall notify the breaching party in writing specifying the breach. The breaching party shall have ten (10) days from the date of written notice (the "Cure Period") to cure the breach. If the breach has not been cured within the Cure Period, then at its option the non-breaching party may either terminate this Agreement by sending written notice thereof to the breaching party or it may institute any proceedings necessary to obtain such remedy as it deems desirable, including but not limited to proceedings to compel specific performance.
15. **ENFORCED DELAY:** For purposes of this Agreement, neither Party shall be considered in default of its obligations provided for herein in the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, force majeure, acts of the public enemy, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, or delays of subcontractors and suppliers due to such causes; it being the purpose and intent of this provision that, in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the party shall be extended for the period of the enforced delay.
16. **WAIVER:** No waiver made by either Party with respect to the performance, or manner or time thereof, or any obligation of the other party or any condition to its own obligation hereunder shall be considered a waiver of any of the rights of that party with respect to any other default or breach. No such waiver shall be valid unless it is in writing duly signed by the party waiving the right or rights.
17. **SEVERABILITY:** If any term or provision of this Agreement shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and in force to the fullest extent permitted by law. This Agreement shall be governed by and construed under the laws of the State of New York.
18. **NON-ASSIGNMENT:** This Agreement may not be assigned, transferred or pledged by MHA without the written consent of the CITY, which consent may be withheld at the discretion of the CITY.
19. **TERMINATION:** Either Party to this Agreement may immediately terminate the same, with or without cause, at any time upon written notice to the other.

SIGNATURE PAGE FOLLOWS

The signing of the enclosed copy and returning to MHA will indicate the CITY'S acceptance of this Agreement, and the Terms and Conditions contained therein.

Accepted by:

**MENTAL HEALTH AMERICA OF
DUTCHESS COUNTY**

CITY OF BEACON

Name: Andrew O'Grady, LCSW-R
Title: CEO
Date: _____

Name: Christopher White
Title: CITY ADMINISTRATOR
Date:_____

City of Beacon City Council Agenda
01/31/2022

Title:

Local Law Amending City of Beacon City Code to Allow Firefighters to Live Within a 30 Mile Radius of the City of Beacon and to Allow the Fire Chief to Live Within a Radius Left to the Discretion of the City of Beacon Mayor

ATTACHMENTS

[Proposed Amendments to Local Law Regarding Residency of Firefighters and Fire Chief](#)

LOCAL LAW NO. ____ OF 2022

CITY COUNCIL
CITY OF BEACON

PROPOSED LOCAL LAW TO AMEND CHAPTER 31, SECTIONS 8 AND 10 OF
THE CODE OF THE CITY OF BEACON

A LOCAL LAW to amend
Chapter 31, Sections 8 and 10 of
the City of Beacon concerning
residency requirements for career
firefighters and the Fire Chief.

BE IT ENACTED by the City Council of the City of Beacon as follows:

Section 1. Chapter 31, Section 8 entitled “Qualifications for membership,” is hereby amended to modify subsection E as follows:

§ 31-8 Qualifications for membership.

...

- E. All active members shall reside no more than 30 miles from the nearest boundary line of the City and be able to render assistance in the time of need.

...

Section 2. Chapter 31, Section 10 entitled “Career firefighters and career Fire Chief,” is hereby amended as follows:

§ 31-10 Career firefighters and career Fire Chief.

- A. The career Fire Chief and career firefighters shall be legal residents of the United States. They shall be without a record of felony conviction.
- B. All career firefighters, other than the Fire Chief, shall be residents of the City of Beacon or reside no more than 30 miles from the nearest boundary line of the City, except for the Fire

Chief, whose location of residency from the City shall be at the Mayor's discretion, subject to the consent of the Council.

- C. Names of eligible candidates for the position of the career Fire Chief or career firefighter shall come from the Dutchess County Civil Service List. Notwithstanding the foregoing, persons already or previously employed as a career Fire Chief or career firefighter in another municipality shall also be eligible for the position of the career Fire Chief and career firefighter as a lateral transfer as long as all civil service and local qualifications are satisfied.
- D. It shall be the duty of the career firefighter on duty to respond to all alarms as dispatched. Additional firefighting duties, as the incident dictates, may also be undertaken.
- E. It shall be the duty of the career firefighters assigned to each station to maintain said station according to the Fire Department Rules and Regulations and to report any and all problems with the fire apparatus or station to the Fire Chief or Assistant Chiefs as appropriate.
- F. Minimum training for career firefighter shall consist of those requirements as stated in Chapter XII, Office of Fire Prevention and Control, Part 426, New York Code of Rules and Regulations, and the Executive Law § 159-d.

Section 3. Ratification, Readoption and Confirmation

Except as specifically modified by the amendments contained herein the Code of the City of Beacon is otherwise to remain in full force and effect and is otherwise ratified, readopted and confirmed.

Section 4. Numbering for Codification

It is the intention of the City of Beacon and it is hereby enacted that the provisions of this Local Law shall be included in the Code of the City of Beacon; that the sections and subsections of this Local Law may be re-numbered or re-lettered by the Codifier to accomplish such intention; that the Codifier shall make no substantive changes to this Local Law; that the word "Local Law" shall be changed to "Chapter," "Section," or other appropriate word as required for codification; and that any such rearranging of the numbering and editing shall not affect the validity of this Local Law or the provisions of the Code affected thereby.

Section 5. Severability. The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their petition to other persons or circumstances. It is hereby declared to be the legislative intent that this Local law would have been adopted if such illegal, invalid, or unconstitutional provision, clause, sentence, subsection, word, or part had not been included therein, and if such person or circumstance to which the Local Law or part hereof is held inapplicable had been specifically exempt there from.

Section 6. Effective Date

This local law shall take effect immediately filing with the Office of the Secretary of State.

City of Beacon City Council Agenda
01/31/2022

Title:

City Council 2022 Agenda

ATTACHMENTS

[Mayor Kyriacou 2022 Agenda](#)

[City Council 2022 Agenda](#)

[City Administrator 2022 Agenda](#)

Mayor's Agenda 2022-23 – Draft for Discussion

1. **Zoning / Planning Efforts:** *(incl. housing-related)*
 - *Housing-Related Rezoning:* (see Mayor's full proposal list) ongoing
 - *Short-Term Rentals:* Limit apartment conversions; put violators on notice 1H22
 - *5G:* Simplify cell tower zoning to get broadband competition. 1H22
 - *HDLO/Viewshed Additions:* Other historic properties and viewsheds 2022
 - *Recreation/Community Survey* 1H22
 - *Camp Beacon:* Take control of planning 2022
 - *University Settlement:* Consider master planning 2023
2. **Housing:** *(also see Zoning above)*
 - *Parking Lot Repurposing:* Select city parking lot; develop concept/RFP 2022
 - *Tenant Education/Assistance:* Develop initial program Jan 22
 - *Housing Study:* Continue to participate in county-wide effort 1H22
3. **Main Street Access Implementation:** *(also see Housing above)*
 - *Signage/Spaces:* Complete stop signs, signage, striping, other short-term 1H22
 - *Green Space:* Select one Main St park area to develop; draft plan 2022
 - *Funding/Grants:* Assess need for parking fees/fund for projects 2022
 - *Other:* Review full recommendations to establish schedule/priorities 1H22
 - *Reapply for DRI:* Downtown Revitalization Initiative \$10 mil grant 2022
4. **Focused Development/Capital Projects:** *(also see City Administrator Agenda)*
 - *Central Fire Station:* Incl. architectural design; BVAC assessment; 2022
 - *Tompkins Hose Lot:* Develop use plan 2022
 - *Water/Sewer:* Complete sewer; bid dam/well projects Ongoing
 - *Tioronda Bridge:* Engineering; Fjord trail connection; 555 access 2022
 - *Real Estate Transactions:* (Exec Session) 2022
 - *Greenway/Trail Expansion:* Incl. east creek, link to Fjord/Highlands
 - *Mase & Memorial Buildings / Community Center:* Plan 2023
Review survey results; partner with BCSD for some facilities; develop plan
5. **Other**
 - **Police Advisory Committee:** Review/implement committee recs 2022
 - **Sustainable (Green Beacon) Initiative:** Continue agenda (see City Admin) ongoing
 - **e-Beacon Initiative:** Continue improving electronic access/info/services ongoing
 - **Sales Tax:** Negotiate with cities/county 1H22

APPENDIX

Mayor's Housing Policy Proposals Lee Kyriacou, Mayor City of Beacon, 2 August 2021

What Beacon's Already Done

The City of Beacon has long been a leader in progressive zoning and housing inclusion. Here are key examples:

- The percent of subsidized low- and moderate-income units in Beacon is among the highest in Dutchess County.
- Beacon permitted accessory apartments in single-family neighborhoods 25+ years ago, long before the concept became popular for creating affordable units.
- Beacon's short-term rental ("AirBnB") law prevents housing from being turned into exclusive short-term rentals, which elsewhere has reduced rental stock and raised rents.
- Approved and constructed projects over the last 10 years have included more than 20% affordable, workforce and senior housing.
- In the last two years, a surplus city-owned lot was used to create 72 affordable units.
- Beacon's inclusionary zoning requires one workforce unit for every ten units (10%) in new developments.
- Multifamily housing is permitted in all commercial districts.
- Artist live/work housing is permitted and encouraged in almost all zones.
- Beacon's zoning on Main Street, the train station, and along Fishkill Creek include required commercial space, to encourage job creation and a live-work community.
- Main Street fourth floors require a public benefit, such as affordable housing.

What's Being Proposed for Discussion

Across the country, as cities have regained popularity, housing has increased in price while zoning has often made it difficult to build additional housing. To provide more affordable housing in popular urban areas, local public policy must encourage increased development targeting affordability – while also supporting public amenities and quality of life. The Mayor proposes that the Council begin policy development for the following priorities.

- 1. Rezone to focus on smart growth that can increase affordability.**
 - a. Allow smaller lot sizes for new homes and increased clustering.
 - b. Allow two-family homes in single-family districts.
 - c. Consider multi-family homes in more zoning districts.
 - d. Make multi-family a permitted use in the RD districts.
 - e. Increase development potential near public transportation.

- f. Encourage walkable, traditional neighborhood development.
- 2. Encourage accessory dwelling units (ADUs) – for renter and owner affordability.**
 - a. Make ADU approval as-of-right across City.
 - b. Revise minimum and maximum square footage.
 - c. Eliminate or reduce set-back and parking requirements.
- 3. Reduce or eliminate required parking standards.**
 - a. Update Beacon’s outdated parking standards, which were created in 1974.
 - b. Strategically reduce parking standards in Main Street and transit-friendly districts.
 - c. Decrease or waive parking requirements for designated affordable units.
 - d. Manage public parking as a public resource, with fees into a parking fund.
- 4. Streamline the approval process for buildings with affordable units.**
 - a. Make step-backed four-story buildings in the Central Main Street district permitted uses when they meet higher affordable unit standard.
 - b. Provide incentives in Central Main Street, Linkage District, Fishkill Creek, and Waterfront Development districts for affordable housing.
- 5. Target city-owned lots and underutilized lands for affordable housing development.**
 - a. Require significant percentage (e.g., 50%) of affordable housing on these lots.
 - b. Develop a form-based code that reduces approval time and costs.
 - c. Prepare a Generic Environmental Impact Statement (GEIS) to speed review.
 - d. Package multiple City parking lots into one RFP for development.
- 6. Provide flexibility to allow building of smaller (i.e., more affordable) units.**
 - a. Revise zoning to allow for square footage of residential space, not unit number (permitting additional smaller units vs. fixed number).
 - b. Provide incentives for creating smaller, more affordable units.
- 7. Further restrict short-term rentals (STRs) – which reduce available rental housing stock.**
 - a. Review STR law to make sure that permanent housing is not crowded out by STRs.
- 8. Revise local requirements for the State Environmental Quality Review (SEQR).**
 - a. Classify development incentives for affordable housing as Type II Actions.
- 9. Advocate for changes in state and federal housing policies.**
 - a. State legislation to allow ADUs by right across State.
 - b. Additional New York State bonding for affordable housing construction.
 - c. Statewide tenant protection legislation and/or additional legal services funding for tenant protection.
 - d. Additional federal government funding of Section 8 housing program.

For Further Consideration As the Schedule Permits

- **Further Increasing the City's inclusionary zoning percentage of affordable units.**
 - Beacon already has a high inclusionary percentage, and an incremental increase will not generate a large number of affordable units.
 - There is no evidence that affordable rent for a unit can recoup the current cost of construction for that unit.
 - There are significant potential unintended consequences.
- **Adopting Emergency Tenant Protection Act in Beacon.**
 - The eligible number of units in Beacon is quite small – only a couple percent.
 - The implementation effort and expense is substantial for a small number of units.
 - The Act does not target those in need with lower incomes, and could afford a financial benefit for those who do not need one.
 - There are other significant potential unintended consequences.

Beacon City Council 2022 Proposed Agenda

2021 Council Platform

- Build a New Beacon Community Center: Fund a gathering place with programs and resources for ages 1 to 100
- Provide Municipal Internet: Bring affordable, high-quality broadband to Beacon
- Improve Safety and Services: Expand social services and make streets safe for walkers, bikers and children with a focus on racial and economic justice
- Secure Housing Justice: Increase affordable housing for all incomes and protect tenants' rights
- Lead the Hudson Valley in Environmental Stewardship: Protect and invest in our natural resources, parks, and trails and take action on our climate goals
- Take Care of our City: Balance development, parking, and traffic while improving our city infrastructure
- Prioritize Civic Engagement: Commit to transparency and increased civic participation

2022 Detailed Agenda

January-February 2022

Protect tenants' rights

- Good Cause Eviction
- Legal information/support for tenants and landlords (including on court's housing day)
- "For Renter" informational website for tenants
- ERAP communications

Civic Participation

- Announcement: Public forums to solicit priorities and proposals from the public
 - Agenda to include presentations as well as opportunities for feedback
 - Themes of 2022 meetings
 - 1st (late March): Community Safety & Police Reform
 - 2nd (late June): Budget and Capital Plan
 - 3rd (late September): Climate Goals + Infrastructure
 - 4th (early December): TBD
- Update communication strategy and public relations (how do we ensure all Beaconites get important messages?)
 - Meeting language accessibility (ASL, Spanish)

Recreation Study priorities

- Must go out to organizations supporting community, seniors, students, families

- [Council preference: Community center on Verplanck and Matteawan with connections to bus routes and to include community kitchen]

Other Old Business

- Accessory Dwelling Units: Jan 18 public hearing

March - April 2022

Civic Participation

- Plan for Participatory Budgeting funds
- Plan to involve young people

Creating new affordable housing

- Increased carve-out for affordable housing in new development
- Other ideas

May - June 2022

Fishkill Creek

- Green infrastructure requirements, updates to stormwater management
- Wetlands protections
- Review of zoning in FCD
- Dam removal
- Other environmental protections for waterways and adjacent streams

Municipal broadband goals and study

July - August 2022

Social services

- Clear communication to public and access about social services available to them
- Partnerships with county and schools
- Inventory of social services and existing gaps (ex. animal control)
 - Identify areas where we can expand services without duplicating

Public safety and Police reform

- Recommendations from police advisory committee due when?

September - October 2022

Traffic

- Capital plan and sidewalks
 - Safe paths to schools, safety issues
- Review of progress on Main Street Access Committee recommendations
- Radar controls

Land Acknowledgement

- Consultant to review how Beacon can honor indigenous stewardship of land

November - December 2022

Climate goals and detailed plan of how we meet them

Other new ideas

- HR procedures for a more anti-racist workforce
- Public transportation review
- Rewilding public land and pollinator pathways

Other ongoing business - timing TBD

- Unified fire house
- South Avenue Bridge
- Greenway Trail Committee
 - Bike trails past Beacon
 - East side of Fishkill Creek
- Locations for viewsheds and historic properties (off Main St)
- Update on municipal composting
- Supporting State and County legislation
 - New York Health Act
 - Public Power
 - Housing
 - Redistricting
 - Public Transportation
- Status of and strategy for Camp Beacon proposal (executive session)



CITY OF BEACON New York

Christopher White
City Administrator

OFFICE OF CITY ADMINISTRATOR

845-838-5000

MEMO

TO: Mayor Lee Kyriacou and Members of City Council
FROM: Christopher White, City Administrator
DATE: January 7, 2022
RE: Overview of Administration Priority Projects and Initiatives for 2022

In preparation for the City Council discussion regarding the 2022 Agenda, I respectfully submit the following priorities for my office for the coming year:

Budgeting and Financial Matters:

- Submit five-year capital program to Council by May 31, 2022
- Adopt capital program by July 31, 2022
- Present 2023 operating budget by October 3, 2022
- Adopt 2023 operating budget by December 31, 2022
- Negotiate and approve new Sales Tax Agreement with Dutchess County (Spring)
- Rebid garbage and recycling collection and disposal by late 2022
- Review sewer and water agreements with New York State

Capital Projects:

- Repave and Restripe of Main Street (Spring)
- Assess Main Street Signals at Main Street and Teller Avenue
- Rehabilitate of Primary Settling Tanks at Wastewater Treatment Plant (Spring)
- Rehabilitate Mount Beacon and Pocket Dams (Spring)
- Replace Municipal Center Roof (Spring)
- Replace Municipal Center Chiller (Spring)
- Upgrade Hanna Lane Sewer Infrastructure (Spring/ Summer)
- Install Computerized Maintenance Management System (CMMS) at Wastewater Treatment Plant
- Complete Engineering Design of West Main Pump Station (Spring/ Summer)
- Complete Design and Construction of South Avenue Sidewalk Replacement (Summer)
- Complete Architectural Final Design for Tompkins Hose Fire Station Expansion/ Rehabilitation (Summer/Fall)
- Replace/ Construct Sidewalks and Repaving of Fishkill and Teller Avenues (Summer/ Fall?)
- Implement Washington Avenue Wingwall Replacement (TBD)
- Reconstruct South Avenue Park Retaining Wall (Summer/ Fall?)
- Finalize Engineering Design for Melzingah Dam Rehabilitation (ongoing)

- Re-evaluate Engineering Design for Tioronda Bridge Reconstruction (Summer/Fall?)
- Replace Water Meters (TBD; need to evaluate further)
- Start Scoping/ Engineering Design for replacement of dewatering system at WWTP

Planning/ Zoning/ Main Street:

- Continue implementation of Main Street Access Committee recommendations (including signage, parking, and parking lot redevelopment)
- Review and identify critical viewsheds for protection
- Evaluate possible additions to the Historic District and Landmark Overlay (HDLO) zone
- Consider rezoning alternatives for affordable housing creation
- Identify City-owned properties to leverage for housing/ in-fill development
- Improve Short-term Rental Law/ set up enforcement with Dutchess County
- Evaluate options for redevelopment of Camp Beacon property
- Examine fee schedule for Small Cell Local Law/ Consider Revisions

Recreation/ Environmental Initiatives:

- Conduct Recreation Needs Assessment (starting February or March 2022)
- Develop potential study for Settlement Camp Park improvements
- Install two additional electric vehicle charging stations
- Evaluate solar PV system on Highway Garage
- Institute energy efficiency assessment for City-owned facilities (TBD)
- Implement and assess compost pilot programs (with CAC)
- Work with Dutchess County to optimize Beacon Loop Bus Routes
- Review and report on Green Fleet implementation progress
- Continue discussions with Dutchess County and Metro-North Railroad about Beacon-Hopewell Junction Rail Trail

Human Resources/ Personnel:

- Complete update of Collective Bargaining Agreement (CBA) with CSEA
- Hire new Director of Human Resources
- Update drug policy in CBA with CSEA
- Review and update all employee policies/ create employee handbook
- Implement new employee payroll tracking system
- Evaluate alternative health and dental benefits with three unions
- Address crossing guard shortage
- Revamp and improve employee trainings

Miscellaneous:

- Continue Police Reform Committee/ Report out to Council by Summer
- Work with Dutchess County Planning on Census undercount (Fishkill Correctional)
- Convene redistricting committee to reapportion wards/ districts
- Negotiate potential property transfers: TBD/ Executive Session

City of Beacon City Council Agenda
01/31/2022

Title:

Good Cause Eviction

ATTACHMENTS

Letter from New York State Conference of Mayors and Municipal Officials Regarding Good Cause Eviction

New York City Resolution in Support of New York State Good Cause Eviction Law and Citizen Action of New York Press Release

Memorandum from City Attorney Summarizing New Jersey Good Cause Eviction Law

New Jersey Just Cause Eviction Law

City of Beacon Proposed Draft Local Law

Memorandum from City Attorney Regarding Good Cause Eviction Decision Tree

Memorandum from City Attorney Regarding Good Cause Eviction

Good Cause Eviction Comparison Chart

Summons and Complaint Filed in matter of Deborah Pusatere et al v The City of Albany

Answer Filed by the City of Albany in the Matter of Deborah Pusatere et al v The City of Albany

Status Chart of Good Cause Eviction Laws in New York State

Legal Aid Society Memorandum Regarding Good Cause Eviction

CUNY School of Law Memorandum Regarding Good Cause Eviction



Peter A. Baynes
Executive Director

119 Washington Avenue, Albany, New York 12210
(518) 463-1185 www.nycom.org

January 18, 2022

Mayor Lee Kyriacou
City of Beacon
1 Municipal Plaza
Beacon, NY 12508
By Email

Re: Good Cause Eviction

Dear Mayor Kyriacou:

I am writing in response to your inquiry regarding the ability of a city to enact a local good cause eviction regulation. Please note that NYCOM attorneys do not maintain an attorney-client relationship with NYCOM members or their employees or officers. This letter is an opinion of the NYCOM legal staff.

Your inquiry involves the recent trend of state and local governments to adopt “good cause eviction” regulations that impose restrictions on removing or evicting residential tenants, restrictions which are above and beyond the terms of the rental agreement entered into between the tenant and the landlord. While there is no universal definition of what constitutes good cause eviction or what additional grounds are imposed for removing or evicting tenants, the common elements of good cause eviction regulations are (1) mandating landlords renew leases except under specific circumstances and (2) limiting the rent increases that landlords may impose even after the expiration of the term of the lease.

In examining the legality of such restrictions, a review of case law did not reveal any court decisions directly on point. Nor are there any New York State agency opinions that address good cause eviction.

While there are no cases that directly address the legality of “good cause eviction,” State courts have addressed the ability of local governments to enact regulations relating to the State’s eviction process. In Tartaglia v. McLaughlin, the City of New York enacted an emergency eviction control local law which restricted evictions. Specifically, the City prohibited landlords from removing tenants unless the Temporary City Housing Rent Commission first issued a certificate attesting to the existence of one or more grounds for eviction. In reviewing the City’s local law, the Court observed that the “general State statute applicable to the civil practice in all courts of record in the State and that the organization of courts and the procedure to be followed therein are matters exclusively of state concern.” Tartaglia v. McLaughlin, 190 Misc. 266 (1947), *affd.* 273 App.Div. 821, *revd on other grounds* 297 N.Y. 419 (1948). In applying that legal principle to the City’s emergency eviction control law, the Court determined that the local law had the effect of abrogating State law by assuming to impose restrictions upon the rights of litigants to bring actions or proceedings in the courts to recover possession of dwelling space.

In striking down the City’s eviction restrictions, the Court noted that the City’s regulatory powers “must be exercised in a manner consistent with the authority granted by the Constitution and City

Home Rule Law” but that the local law in question before the Court was an attempt “to legislate in a field which has been preempted by the State [and therefore] was not a valid exercise of local legislative power.” While not exactly analogous to the New York City regulation in the Tartaglia case, good cause eviction local laws appear to be extremely similar to the eviction restrictions the Court struck down in Tartaglia.

Proponents of good cause eviction have argued that local governments may enact such regulations locally because the State has not expressly preempted the field and because the State’s eviction regulations provide only a *minimal level* of protection to tenants. However, it must be noted that the State’s eviction laws do not exist solely to protect tenants. Rather, the statutory scheme put in place by the New York State Legislature is a balancing of the rights and needs of both tenants and landlords. The State, in crafting the process of resolving landlord-tenant disputes, has taken into consideration the need to protect the rights not only of tenants, but also the rights of landlords, along with the economic realities of building and maintaining residential properties.

Proponents may cite Zorn v. Howe, 276 A.D.2d 51 (3rd Dept. 2000) as supporting the argument that local governments are *not* preempted from enacting local regulations related to the eviction process. In Zorn, the City of Ithaca enacted a local law that authorized evictions on the ground that the premises have been used or occupied for the purpose of using or possessing illegal drugs. However, the Zorn court distinguished New York City’s regulations in the Tartaglia case from Ithaca’s local law, noting that whereas New York City’s regulation restricted the grounds for evicting tenants, Ithaca’s regulation placed “no impediment upon landowners’ free access to the courts or to the remedies provided in the RPAPL” but merely supplemented “the State statutory scheme by providing an additional ground for eviction.” Consequently, the courts have recognized that the State’s eviction laws are designed and intended to protect landlords just as much as they are to protect tenants.

In addition to the State’s likely preemption of the residential tenant eviction process, the State has also preempted the field with respect to rent restrictions. In 2019, the State Legislature amended the Emergency Tenant Protection Act, enacting the Statewide Tenant Protection Act of 2019, which establishes a procedure whereby local governments may enact local rent control regulations. The Statewide Tenant Protection Act procedures are extensive, requiring local governments to adopt local rent control laws subject to the annual guidelines for rent adjustments as established by the governing rent guidelines board. Even assuming for argument’s sake that local governments are not preempted from adopting local laws that place additional restrictions on the eviction process, the State’s comprehensive Statewide Tenant Protection Act clearly preempted the field with respect to imposing residential rental restrictions. Consequently, if local government officials want to adopt restrictions on residential rent increases within their municipality, NYCOM recommends that they either follow the process set forth in the Statewide Tenant Protection Act or seek special authority from the New York State Legislature.

I hope that this opinion is helpful. If you have any questions or would like to discuss this issue further (or any issue for that matter), do not hesitate to contact me at (518) 463-1185 or by email at wade@nycom.org.

Respectfully,

Wade Beltramo

Wade Beltramo

NYCOM General Counsel



Legislation Text

File #: Res 1840-2021, **Version:** A

Res. No. 1840-A

Resolution calling upon the New York State Legislature to pass and the Governor to sign A.5573/S.3082, in relation to prohibiting eviction without good cause.

By Council Members Kallos, the Speaker (Council Member Johnson), Gibson, Cabán, Rosenthal, Louis, Rose and the Public Advocate (Mr. Williams)

Whereas, According to the 2017 New York City Housing Vacancy Survey (HVS), a little over two-thirds of New York City households rent their units; and

Whereas, The 2021 Income and Affordability Study by the NYC Rent Guidelines Board estimated that 50.1 percent of renters in New York City (NYC or the City) are rent burdened, which means that they are paying 30 percent of their income towards rent; and

Whereas, 26.2 percent of these rent burdened renters are considered to be severely rent burdened since they are spending 50 percent or more of their income towards rent, according to that same study; and

Whereas, Tenants who are rent burdened or severely rent burdened could become homeless due to an unexpected financial setback, illness or personal crisis; and

Whereas, Research from the Right to Counsel NYC Coalition, a tenant advocacy group, documented that there were 152,284 eviction cases in New York State on March 13, 2020, at the start of the COVID-19 pandemic, and as of October 3, 2021, there were 224,341 active eviction cases; and

Whereas, An increase in the number of evictions sought by landlords could be detrimental for many impacted renters and put enormous pressure on the City's homeless service programs; and

Whereas, According to the Coalition for the Homeless, a homeless advocacy group, in the past few years homelessness in NYC has reached the highest levels since the Great Depression of the 1930s; and

Whereas, As of August 2021, research from the Coalition of the Homeless showed 18,357 single adults and 47,979 households, including 14,881 homeless children, were sleeping each night in the City's shelter system; and

Whereas, A report titled, "Turning the Tide on Homelessness in New York City" by the NYC Department of Homeless Services highlighted that New York City has more than 3.4 million housing units, however that many of these units are unaffordable to many low income and middle income families; and

Whereas, That same report emphasized that the City's vacancy rate is 3.5 percent and the vacancy rate for apartments with a rent that costs \$800 or less is 1.8 percent, which is a problem for a household searching for an affordable unit, and that the availability of affordable rental housing has not kept up with the City's need; and

Whereas, A way to cut the proportion of people becoming homeless is by giving renters in NYC protections against unconscionable rent hikes and offering them a lease renewal option; and

Whereas, A.5573, sponsored by Assembly Member Pamela Hunter in the New York State Assembly and companion bill S.3082, sponsored by State Senator Julia Salazar in the New York State Senate, would prohibit landlords from taking any action to evict, to fail to renew a lease or to remove a tenant from a housing accommodation unless it was done for a good cause; and

Whereas, Under A.5573/S.3082, some of the proposed grounds for eviction would be narrowed to situations such as if the tenant fails to pay rent, conducts nuisance activities in the unit or on the premise, and if there are substantive lease violations; and

Whereas, Cities such as Albany and Hudson have recently passed legislation that would prohibit eviction without a good cause, while cities such as Kingston, Poughkeepsie, New Paltz, Ithaca, Beacon and Newburgh currently have legislation pending in their respective jurisdictions; and

Whereas, New York City needs A.5573/S.3082 to help provide some comfort and relief to its overburdened tenants; now, therefore, be it

Resolved, That the Council of the City of New York calls on the New York State Legislature to pass, and the Governor to sign, A.5573/S.3082, in relation to prohibiting eviction without good cause

JLC/AS
12/14/21 9:57 a.m.
LS 11358, 11360, 12813, and 16308

NEW YORK CITY COUNCIL PASSES GOOD CAUSE EVICTION RESOLUTION

by Dana Willbanks | Dec 20, 2021 | Housing, Media, New York City, Press Releases, Statement

New York City, NY – New York City Councilmembers and Citizen Action of New York united at City Hall to mark the passage of their resolution calling on the New York State legislature to pass Good Cause Eviction legislation on Wednesday, December 15.

The resolution marks a significant milestone in the growing demands for Good Cause across the state. Following the passage of this legislation in communities like Albany, Hudson, New Paltz and Newburgh, the mandate is clear. Communities thrive when everyone has a safe and reliable place to rest their heads, but as of January 15, tens of thousands of New Yorkers could become homeless and displaced by predatory developers. New York City is sending a clear message to state leaders: Good Cause eviction is the will of the people and housing is a human right. The state legislature must pass Good Cause Eviction at the start of the 2022 legislative session.

“Equitable housing is not just about having a roof over our heads. It’s about having the ability to build a healthy family underneath that roof,” said Vanessa Rosser, member of Citizen Action of New York. “Black and brown families should not have to worry about maintaining the stability of their homes on top of all the other compounding issues. If the State is really concerned about New Yorkers then let’s adhere to the call from NYC to protect all of New York’s communities. That is true equity!” said **Vanessa Rosser, Member Leader for the New York City Chapter of Citizen Action of New York.**

“Keeping folks in their homes is vital to making New York the safe and healthy city we need and deserve. I am proud to vote for this resolution as one of my first acts in the City Council,” said **Councilmember Tiffany Cabán, District 22.** “It sends a strong signal to Albany that we urgently need to pass Good Cause before the eviction moratorium expires next month. Without it, our constituents face increased risk of homelessness, violence, poor health, and getting caught up in the criminal legal system.”

“I need Good Cause Eviction to pass in the State of New York because I am tired of my Black communities leaving because it is increasingly expensive and challenging to maintain stable housing,” said **Jamell N.A. Henderson, Regional Board Chair for the New York City Chapter of Citizen Action of New York.** “Do we really want to see a mass exodus of New Yorkers being evicted and leaving our state? Do you know the long-term effects of that politically, economically and socially? It’s time for our lawmakers to stand with integrity and pass Good Cause Eviction now! You know what to do in 2022!”

MEMORANDUM

TO: Mayor Kyriacou and Members of the City Council
Of the City of Beacon

FROM: Keane & Beane, P.C.

RE: Good Cause Eviction in New Jersey

DATE: January 24, 2022

The Anti-Eviction Act, N.J.S.A. 2A:18-61.1 to -61.12, was enacted in 1974 and amended over the years. The Anti-Eviction Act was designed to limit the eviction of tenants to reasonable grounds and to provide for suitable notice of tenants in the event of an eviction proceeding. This memorandum provides a summary of Section 2A:18-61.1 of New Jersey's Anti-Eviction Act concerning grounds for removal of residential tenants.

Please note, our firm does not practice law in New Jersey. The purpose of this memorandum is to identify the permitted grounds for removal of residential tenants under New Jersey's law. This memorandum does not provide any further analysis of New Jersey's Anti-Eviction Act.

What constitutes "just cause" to evict a tenant?

With few exceptions, tenants in New Jersey can only be evicted for "just cause." This means that, with just a few exceptions, tenants can be evicted only under one of the causes or grounds for eviction listed in the Anti-Eviction Act. New Jersey's Anti-Eviction Act, N.J.S.A. 2A:18-61.1, sets forth the grounds for good cause. A copy of this section is attached hereto. The law covers tenants in all types of rental property: single-family houses, apartment buildings or complexes, rooming and boarding houses, or mobile homes.

The few exceptions to eviction for cause in New Jersey

The Anti-Eviction Act does not apply to tenants residing in buildings or houses with three or fewer apartments where the owner lives in one of the apartments. This is known as the "owner-occupied" exception. Although they must still be taken to court, tenants subject to the "owner-occupied" exception may be evicted at the end of the lease term for any reason.

Other exceptions involve certain situations where one of the tenants has a developmental disability, and the dwelling is owned by a trust or a member of the

immediate family of the disabled tenant. The Anti-Eviction Act does not protect tenants in these situations. The aim of this provision is to enable the eviction without cause of co-tenants living with the developmentally disabled tenant.

Protection Under the Anti-Eviction Act

Tenants covered by the Anti-Eviction Act cannot be evicted just because their leases have ended. This is because the Anti-Eviction Act says that every lease, whether oral or written, must be renewed. A tenant can only be evicted if the landlord can prove one of the good causes for eviction under the law. The ending or expiration of a lease is not one of these good causes.

The Only Legal Grounds for Eviction under the New Jersey Anti-Eviction Law

1. Not paying rent
2. Disorderly conduct that disturbs other tenants
3. Damage or destruction of the landlord's property
4. Violation of landlord's rules and regulations
5. Violation of lease agreement
6. Violation of public housing lease agreement provision prohibiting illegal use of drugs or other illegal activities
7. Not paying a rent increase
8. Housing or health code violations
9. Landlord wants to permanently retire building from residential use
10. Not accepting changes in the lease
11. Paying rent late month after month (habitual lateness)
12. Conversion to condominium or cooperative
13. The owner wants to live in the apartment or house
14. Tenant loses a job that includes rental unit
15. Conviction of a drug offense
16. Conviction of assaulting, attacking, or threatening the landlord
17. Engaging or being involved in drug activity, theft, or assaults or threats against a landlord
18. Conviction of theft offense
19. Human Trafficking

Unconscionable Rent

Subsection (f) of Section 2A:18-61.1 of New Jersey's Anti-Eviction Act provides that a tenant may be removed by the Superior Court from the leased residential property when the tenant "has failed to pay rent after a valid notice to quit and notice of increase of said rent, provided that the increase in rent is not unconscionable and complies with any and all other laws or municipal ordinances governing rent increases." New Jersey courts have determined that landlords have the burden of establishing that the proposed rent increase is not "unconscionable," before the

courts will determine that the landlord has good cause to evict the tenant. While the term “unconscionable” is not defined in the statute, case law has held that the court in determining whether a proposed rent increase is unconscionable for purposes of the Anti-Eviction Act may consider the following: “(1) the amount of the proposed rent increase; (2) the landlord's expenses and profitability; (3) how the existing and proposed rents compare to rents charged at similar rental properties in geographic area, (4) the relative bargaining position of parties; and (5) based on judge's general knowledge, whether rent increase would shock the conscience of a reasonable person.” *Fromet Properties, Inc. v. Buel*, 294 N.J.Super. 601, 615(A.D.1996). This list is not exhaustive as there may be other factors which court may consider on case-by-case basis.

New Jersey Statutes Annotated

Title 2a. Administration of Civil and Criminal Justice (Refs & Annos)

Subtitle 4. Civil Actions

Chapter 18. Civil Actions in County District Courts (Refs & Annos)

Article 9. Proceedings Between Landlord and Tenant (Refs & Annos)

C. Residential Tenants

N.J.S.A. 2A:18-61.1

2A:18-61.1. Removal of residential tenants; grounds

Effective: July 1, 2013

[Currentness](#)

No lessee or tenant or the assigns, under-tenants or legal representatives of such lessee or tenant may be removed by the Superior Court from any house, building, mobile home or land in a mobile home park or tenement leased for residential purposes, other than (1) owner-occupied premises with not more than two rental units or a hotel, motel or other guest house or part thereof rented to a transient guest or seasonal tenant; (2) a dwelling unit which is held in trust on behalf of a member of the immediate family of the person or persons establishing the trust, provided that the member of the immediate family on whose behalf the trust is established permanently occupies the unit; and (3) a dwelling unit which is permanently occupied by a member of the immediate family of the owner of that unit, provided, however, that exception (2) or (3) shall apply only in cases in which the member of the immediate family has a developmental disability, except upon establishment of one of the following grounds as good cause:

- a. The person fails to pay rent due and owing under the lease whether the same be oral or written; provided that, for the purposes of this section, any portion of rent unpaid by a tenant to a landlord but utilized by the tenant to continue utility service to the rental premises after receiving notice from an electric, gas, water or sewer public utility that such service was in danger of discontinuance based on nonpayment by the landlord, shall not be deemed to be unpaid rent.
- b. The person has continued to be, after written notice to cease, so disorderly as to destroy the peace and quiet of the occupants or other tenants living in said house or neighborhood.
- c. The person has willfully or by reason of gross negligence caused or allowed destruction, damage or injury to the premises.
- d. The person has continued, after written notice to cease, to substantially violate or breach any of the landlord's rules and regulations governing said premises, provided such rules and regulations are reasonable and have been accepted in writing by the tenant or made a part of the lease at the beginning of the lease term.
- e. (1) The person has continued, after written notice to cease, to substantially violate or breach any of the covenants or agreements contained in the lease for the premises where a right of reentry is reserved to the landlord in the lease for a violation of such covenant or agreement, provided that such covenant or agreement is reasonable and was contained in the lease at the beginning of the lease term.

(2) In public housing under the control of a public housing authority or redevelopment agency, the person has substantially violated or breached any of the covenants or agreements contained in the lease for the premises pertaining to illegal uses of controlled dangerous substances, or other illegal activities, whether or not a right of reentry is reserved to the landlord in the lease for a violation of such covenant or agreement, provided that such covenant or agreement conforms to federal guidelines regarding such lease provisions and was contained in the lease at the beginning of the lease term.

f. The person has failed to pay rent after a valid notice to quit and notice of increase of said rent, provided the increase in rent is not unconscionable and complies with any and all other laws or municipal ordinances governing rent increases.

g. The landlord or owner (1) seeks to permanently board up or demolish the premises because he has been cited by local or State housing inspectors for substantial violations affecting the health and safety of tenants and it is economically unfeasible for the owner to eliminate the violations; (2) seeks to comply with local or State housing inspectors who have cited him for substantial violations affecting the health and safety of tenants and it is unfeasible to so comply without removing the tenant; simultaneously with service of notice of eviction pursuant to this clause, the landlord shall notify the Department of Community Affairs of the intention to institute proceedings and shall provide the department with such other information as it may require pursuant to rules and regulations. The department shall inform all parties and the court of its view with respect to the feasibility of compliance without removal of the tenant and may in its discretion appear and present evidence; (3) seeks to correct an illegal occupancy because he has been cited by local or State housing inspectors or zoning officers and it is unfeasible to correct such illegal occupancy without removing the tenant; or (4) is a governmental agency which seeks to permanently retire the premises from the rental market pursuant to a redevelopment or land clearance plan in a blighted area. In those cases where the tenant is being removed for any reason specified in this subsection, no warrant for possession shall be issued until P.L.1967, c. 79 (C.52:31B-1 et seq.) and P.L.1971, c. 362 (C.20:4-1 et seq.) have been complied with.

h. The owner seeks to retire permanently the residential building or the mobile home park from residential use or use as a mobile home park, provided this subsection shall not apply to circumstances covered under subsection g. of this section.

i. The landlord or owner proposes, at the termination of a lease, reasonable changes of substance in the terms and conditions of the lease, including specifically any change in the term thereof, which the tenant, after written notice, refuses to accept; provided that in cases where a tenant has received a notice of termination pursuant to subsection g. of section 3 of P.L.1974, c. 49 (C.2A:18-61.2), or has a protected tenancy status pursuant to the "Senior Citizens and Disabled Protected Tenancy Act," P.L.1981, c. 226 (C.2A:18-61.22 et al.), or pursuant to the "Tenant Protection Act of 1992," P.L.1991, c. 509 (C.2A:18-61.40 et al.), the landlord or owner shall have the burden of proving that any change in the terms and conditions of the lease, rental or regulations both is reasonable and does not substantially reduce the rights and privileges to which the tenant was entitled prior to the conversion.

j. The person, after written notice to cease, has habitually and without legal justification failed to pay rent which is due and owing.

k. The landlord or owner of the building or mobile home park is converting from the rental market to a condominium, cooperative or fee simple ownership of two or more dwelling units or park sites, except as hereinafter provided in subsection l. of this section. Where the tenant is being removed pursuant to this subsection, no warrant for possession shall be issued until this act has been complied with. No action for possession shall be brought pursuant to this subsection against a senior citizen tenant or disabled tenant with protected tenancy status pursuant to the "Senior Citizens and Disabled Protected Tenancy Act," P.L.1981, c. 226 (C.2A:18-61.22 et al.), or against a qualified tenant under the "Tenant Protection Act of 1992," P.L.1991, c. 509 (C.2A:18-61.40 et al.), as long as the agency has not terminated the protected tenancy status or the protected tenancy period has not expired.

l. (1) The owner of a building or mobile home park, which is constructed as or being converted to a condominium, cooperative or fee simple ownership, seeks to evict a tenant or sublessee whose initial tenancy began after the master deed, agreement establishing the cooperative or subdivision plat was recorded, because the owner has contracted to sell the unit to a buyer who seeks to personally occupy it and the contract for sale calls for the unit to be vacant at the time of closing. However, no action shall be brought against a tenant under paragraph (1) of this subsection unless the tenant was given a statement in accordance with section 6 of P.L.1975, c. 311 ([C.2A:18-61.9](#));

(2) The owner of three or less condominium or cooperative units seeks to evict a tenant whose initial tenancy began by rental from an owner of three or less units after the master deed or agreement establishing the cooperative was recorded, because the owner seeks to personally occupy the unit, or has contracted to sell the unit to a buyer who seeks to personally occupy it and the contract for sale calls for the unit to be vacant at the time of closing;

(3) The owner of a building of three residential units or less seeks to personally occupy a unit, or has contracted to sell the residential unit to a buyer who wishes to personally occupy it and the contract for sale calls for the unit to be vacant at the time of closing.

m. The landlord or owner conditioned the tenancy upon and in consideration for the tenant's employment by the landlord or owner as superintendent, janitor or in some other capacity and such employment is being terminated.

n. The person has been convicted of or pleaded guilty to, or if a juvenile, has been adjudicated delinquent on the basis of an act which if committed by an adult would constitute an offense under the "Comprehensive Drug Reform Act of 1987," [N.J.S.2C:35-1](#) et al., involving the use, possession, manufacture, dispensing or distribution of a controlled dangerous substance, controlled dangerous substance analog or drug paraphernalia within the meaning of that act within or upon the leased premises or the building or complex of buildings and land appurtenant thereto, or the mobile home park, in which those premises are located, and has not in connection with his sentence for that offense either (1) successfully completed or (2) been admitted to and continued upon probation while completing, a drug rehabilitation program pursuant to [N.J.S.2C:35-14](#); or, being the tenant or lessee of such leased premises, knowingly harbors or harbored therein a person who has been so convicted or has so pleaded, or otherwise permits or permitted such a person to occupy those premises for residential purposes, whether continuously or intermittently, except that this subsection shall not apply to a person harboring or permitting a juvenile to occupy the premises if the juvenile has been adjudicated delinquent upon the basis of an act which if committed by an adult would constitute the offense of use or possession under the said act. No action for removal may be brought pursuant to this subsection more than two years after the date of the adjudication or conviction or more than two years after the person's release from incarceration whichever is the later.

o. The person has been convicted of or pleaded guilty to, or if a juvenile, has been adjudicated delinquent on the basis of an act which if committed by an adult would constitute an offense under [N.J.S.2C:12-1](#) or [N.J.S.2C:12-3](#) involving assault, or terroristic threats against the landlord, a member of the landlord's family or an employee of the landlord; or, being the tenant or lessee of such leased premises, knowingly harbors or harbored therein a person who has been so convicted or has so pleaded, or otherwise permits or permitted such a person to occupy those premises for residential purposes, whether continuously or intermittently. No action for removal may be brought pursuant to this subsection more than two years after the adjudication or conviction or more than two years after the person's release from incarceration whichever is the later.

p. The person has been found, by a preponderance of the evidence, liable in a civil action for removal commenced under this act for an offense under [N.J.S.2C:20-1](#) et al. involving theft of property located on the leased premises from the landlord, the leased premises or other tenants residing in the leased premises, or [N.J.S.2C:12-1](#) or [N.J.S.2C:12-3](#) involving assault or terroristic threats against the landlord, a member of the landlord's family or an employee of the landlord, or under the "Comprehensive Drug Reform Act of 1987," [N.J.S.2C:35-1](#) et al., involving the use, possession, manufacture, dispensing or distribution of a controlled dangerous substance, controlled dangerous substance analog or drug paraphernalia within the meaning of that act within or upon the leased premises or the building or complex of buildings and land appurtenant thereto, or the mobile home park, in which those premises are located, and has not in connection with his sentence for that offense either (1) successfully completed or (2) been admitted to and continued upon probation while completing a drug rehabilitation program pursuant to [N.J.S.2C:35-14](#); or, being the tenant or lessee of such leased premises, knowingly harbors or harbored therein a person who committed such an offense, or otherwise permits or permitted such a person to occupy those premises for residential purposes, whether continuously or intermittently, except that this subsection shall not apply to a person who harbors or permits a juvenile to occupy the premises if the juvenile has been adjudicated delinquent upon the basis of an act which if committed by an adult would constitute the offense of use or possession under the said "Comprehensive Drug Reform Act of 1987."

q. The person has been convicted of or pleaded guilty to, or if a juvenile, has been adjudicated delinquent on the basis of an act which if committed by an adult would constitute an offense under [N.J.S.2C:20-1](#) et al. involving theft of property from the landlord, the leased premises or other tenants residing in the same building or complex; or, being the tenant or lessee of such leased premises, knowingly harbors therein a person who has been so convicted or has so pleaded, or otherwise permits such a person to occupy those premises for residential purposes, whether continuously or intermittently.

r. The person is found in a civil action, by a preponderance of the evidence, to have committed a violation of the human trafficking provisions set forth in section 1 of [P.L.2005, c. 77 \(C.2C:13-8\)](#) within or upon the leased premises or the building or complex of buildings and land appurtenant thereto, or the mobile home park, in which those premises are located; or, being the tenant or lessee of such leased premises, knowingly harbors or harbored therein a person who has been engaged in human trafficking, or otherwise permits or permitted such a person to occupy those premises for residential purposes, whether continuously or intermittently. No action for removal may be brought pursuant to this subsection more than two years after the alleged violation has terminated. A criminal conviction or a guilty plea to a crime of human trafficking under section 1 of [P.L.2005, c. 77 \(C.2C:13-8\)](#) shall be considered prima facie evidence of civil liability under this subsection.

For purposes of this section, (1) "developmental disability" means any disability which is defined as such pursuant to section 3 of P.L.1977, c. 82 ([C.30:6D-3](#)); (2) "member of the immediate family" means a person's spouse, parent, child or sibling, or a spouse, parent, child or sibling of any of them; and (3) "permanently" occupies or occupied means that the occupant maintains no other domicile at which the occupant votes, pays rent or property taxes or at which rent or property taxes are paid on the occupant's behalf.

Credits

L.1974, c. 49, § 2, eff. June 25, 1974. Amended by L.1975, c. 311, § 1, eff. Feb. 19, 1976; L.1981, c. 8, § 1, eff. Jan. 26, 1981; L.1981, c. 226, § 13, eff. July 27, 1981; L.1989, c. 294, § 1, eff. Jan. 12, 1990; L.1991, c. 91, § 68, eff. April 9, 1991; L.1991, c. 307, § 1, eff. Nov. 7, 1991; L.1991, c. 509, § 19, eff. June 1, 1992; L.1993, c. 342, § 1, eff. Dec. 27, 1993; L.1995, c. 269, § 1, eff. Dec. 8, 1995; L.1996, c. 131, § 1, eff. Dec. 5, 1996; L.1997, c. 228, § 1, eff. Dec. 1, 1997; L.2000, c. 113, § 3, eff. Sept. 8, 2000; L.2013, c. 51, § 7, eff. July 1, 2013.

Editors' Notes**SENATE COUNTY AND MUNICIPAL GOVERNMENT COMMITTEE STATEMENT****Assembly, No. 3251--L.1991, c. 307**

The Senate County and Municipal Government Committee reports favorably Assembly Bill No. 3251 with Senate committee amendments.

Assembly Bill No. 3251, as amended by the committee, expands the definition of who may evict under the State's "anti-eviction law" (P.L.1974, c. 49; C.2A:18-61.1 et al.) to address a specific situation which has arisen with regard to developmentally disabled persons.

Section 2 of P.L.1974, c. 49 (C.2A:18-61.1) establishes the grounds for eviction and the residents of any dwellings that are exempted from its provisions may be subject to eviction without regard for the good cause provisions listed therein. That section of law currently exempts from its application "owner-occupied premises with not more than two rental units." To qualify for this exemption, however, the actual "owner" (i.e., holder of title) to the premises must reside there.

Assembly Bill 3251 Sca extends the right of eviction to cover the following accommodations: (1) a dwelling unit which is held in trust on behalf of a member of the immediate family of the person or persons establishing the trust, provided that the member of the immediate family on whose behalf the trust is established permanently occupies the unit; and (2) a dwelling unit which is permanently occupied by a member of the immediate family of the owner of that unit.

The right to evict in these situations would only apply in cases in which the member of the immediate family has a "developmental disability." The term is used consistently with the definition contained in the "Developmentally Disabled Rights Act," P.L.1977, c. 82 (C.30:6D-1 et seq.)

The bill defines an "immediate family" member to include a person's spouse, parent, child or sibling, and a spouse, parent, child or sibling of any of those persons. "Permanent" occupation is defined to mean that the occupant maintains no other domicile at which the occupant votes, pays rent or property taxes or at which rent or property taxes are paid on the occupant's behalf.

Although the "anti-eviction law" was meant to protect tenants from unreasonable eviction, it inadvertently creates considerable hardship for a class of tenants it might otherwise have meant to protect. Developmentally disabled adult relatives who live independently but with tenant companions or roommates in quarters owned by family members are not accorded the right to evict under section 1 of P.L.1974, c. 49 (C.2A:18-61.1) as non-owners. The right to evict is accorded only to owner-occupants; a developmentally disabled relative of an owner would not, therefore, be able to evict an inappropriate co-tenant nor would the owners have that right as non-residents.

Given the extreme shortage of space in community residences for the developmentally disabled and the desire, on the part of family members, for alternative living arrangements for their developmentally disabled relatives, it is the committee's intent to encourage the development of these alternatives. It is not the committee's intent, in protecting tenants, to increase the vulnerability of developmentally disabled persons in independent living situations by removing an important means of redress if those living arrangements are unsatisfactory. Nor is it the committee's intent to undermine the protections the Legislature meant to extend to tenants when it originally enacted the "anti-eviction" law in 1974.

The committee amended the bill to provide that the exemption from the good cause provisions of the “anti-eviction law” applies only to situations in which the developmentally disabled member of the immediate family of the owner permanently occupies the dwelling unit which is the subject of the exemption or occupies the dwelling unit which is being held in a trust established by a member of their immediate family.

The committee also amended the bill to define the terms “developmental disability,” “member of the immediate family,” and “permanently” occupies or occupied.

This bill as amended by the committee is identical to Senate Bill No. 3302 with amendments adopted by the committee on June 10, 1991.

[Notes of Decisions \(343\)](#)

N. J. S. A. 2A:18-61.1, NJ ST 2A:18-61.1

Current with laws through L.2021, c. 308 and J.R. No. 8.

End of Document

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Dated January 24, 2022

LOCAL LAW NO. ____ OF 2022

CITY COUNCIL
CITY OF BEACON

PROPOSED LOCAL LAW TO AMEND
CHAPTER 173 OF THE
CODE OF THE CITY OF BEACON

A LOCAL LAW to amend
Chapter 173 of the Code of the
City of Beacon concerning
rental properties to prohibit
eviction without good cause.

BE IT ENACTED by the City Council of the City of Beacon as follows:

Section 1. Purpose :

Tenants require additional protections to prevent displacement. The purpose of this local law is to protect tenants from eviction by requiring good cause be shown before a property owner can evict a tenant and to enforce the rental property registration requirement by prohibiting collection of rent during periods of noncompliance.

Section 2. Chapter 173 of the Code of the City of Beacon entitled “Rental Properties Registration” is hereby repealed in its entirety.

Section 3. Chapter 173 of the Code of the City of Beacon entitled “Rental Properties” is hereby created as follows:

Chapter 173. Rental Properties

Article I. Definitions

§ 173-1 Definitions.

A. As used in this chapter, these terms shall have the following meanings:

ACTION or PROCEEDING

Any action or proceeding which may be instituted in the City Court of the City of Beacon, or any other court of competent jurisdiction, to enforce this chapter.

BUILDING

Any improved real property, residential, commercial (nonresidential) or mixed use (commercial-residential), located within the City of Beacon.

DISABLED PERSON

A person who has any condition which substantially limits one or more of such person's major life activities, and which are expected to be either permanent or to last for more than six months; or a person who is regarded to have such an impairment.

HOUSING ACCOMODATION

Any residential premises offered for rent within the City of Beacon.

LANDLORD

Any owner, lessor, sublessor, assignor, or other person receiving or entitled to receive rent for the occupancy of any housing accommodation or an agent of any of the foregoing.

NON-OWNER-OCCUPIED PROPERTY

A property that does not qualify as owner-occupied.

OWNER

Any individual or individuals, partnership or corporation or other organization, whether for-profit or otherwise, in whose name title to a building stands, including a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm or corporation in control of the property.

OWNER-OCCUPIED PROPERTY

A property used by the property owner(s) as their primary residence. If the property is owned by a business entity, all owners of the business entity must use the property as their primary residence. When a property is titled in the name of a trustee, the property shall be considered an occupied primary residence if the grantor or grantee is the occupant of the property.

PRIMARY RESIDENCE

The primary location that a person inhabits and resides for at least 180 days in the calendar year.

PROCESS

Any notice, summons or other process issued under any provision of the Code of the City of Beacon or any law or regulation of the State of New York.

RENT

Any consideration, including any bonus, benefit or gratuity demanded or received for or in connection with the possession, use or occupancy of housing accommodations.

RENTAL PROPERTY

Any property which is rented, intended for rental, leased, let or hired out to be occupied for residential, commercial (nonresidential) or mixed use (commercial - residential)..

TENANT

A tenant, sub-tenant, lessee, sublessee, assignee, an occupant of a rooming house or hotel as defined in section seven hundred eleven of the Real Property Actions and Proceedings Law or any other person entitled to the possession, use or occupancy of any housing accommodation.

Article II. Non-Owner-Occupied Registration Requirements

§ 173-2 Intent.

The City of Beacon finds that there are numerous City residential and commercial properties owned by persons who do not occupy said property. It is important for the effective enforcement of applicable fire and housing codes and to better protect the health and safety of those located in and near non-owner-occupied residential and commercial properties that a current list of such owners be maintained by the City through a registration filing process.

§ 173--3 Registration of property required.

- A. The owner of non-owner-occupied property shall register the property with the Building Department of the City of Beacon on a form provided by the Building Department of the City of Beacon. This form shall be known as the "Landlord Registration Statement," which shall be signed by the owner under oath.
- B. It shall be a violation of this article for an owner to offer any non-owner occupied building for rent, or to rent any building, or to allow any building to be occupied other than by an owner without having registered pursuant to this article.

§ 173-4 Landlord registration statement; managing agent designation.

- A. Every owner of a non-owner-occupied property shall file with the Building Department of the City of Beacon a landlord registration statement, on forms to be provided by the Building Department of the City of Beacon, containing the following:

- (1) A description of the premises by street number or block and lot number, including tax identification number.
- (2) The owner's name, residential address and mailing address, business telephone number, home telephone number, cell telephone number, fax number and e-mail address, and if such owner is a corporation or other organization, the name and address of such entity and the name and residential and business address, together with the business telephone number, cell phone number, fax number and e-mail address, of the president and of the treasurer of such corporation or organization.
- (3) Designation of managing agent.

- (a) In the event an owner does not reside within a fifteen-mile radius of the City of Beacon, the owner shall provide the following information to the Building Department of the City of Beacon, with respect to the managing agent:

[1] The name, the residence, business and e-mail addresses and the business and residential telephone and fax numbers of a natural person, 18 years of age or over, who shall reside within a fifteen-mile radius and who shall be designated by such owner as the managing agent responsible for and in control of the maintenance and operation of such non-owner-occupied property and who shall be designated as the person upon whom process may be served on behalf of the owner.

- (b) The managing agent or owner shall keep a current record of all tenants, and their names and addresses, who are renting, leasing or living in the premises. There shall be endorsed upon such designation statement a written consent to such designation signed by the managing agent. An

owner who is a natural person and who meets the requirements of this subsection as to the location of the residence or place of transacting business of a managing agent may designate himself or herself as such managing agent.

- (c) Nothing contained in this section shall be construed as preventing a corporation which is an owner of real property from designating as its managing agent any officer of such corporation who meets the requirements of this subsection as to location of the residence or the place of transacting business of the managing agent.
- (d) Any designation of managing agent made pursuant to this section shall remain in full force and effect until changed or terminated as hereinafter provided.
- (e) The owner is required to keep this designation information current, and when there is a change in ownership or managing agent, the owner shall be required to update such information by amending the landlord registration statement and designation accordingly within 15 days from the date of any such change.

- B. Upon submission of the completed landlord registration statement, the Statement shall be reviewed by the Building Department of the City of Beacon within three business days of submission. Should the Building Department of the City of Beacon determine that the statement is incomplete, defective or untrue, the statement shall be rejected and returned to the filer, and the owner shall be deemed not in compliance with this article.
- C. The owner of the rental property shall notify the Building Department of the City of Beacon, in writing, whenever the information provided in the landlord registration statement is no longer accurate or complete.
- D. A copy of the landlord registration statement shall be annexed to any non-owner-occupied agreement with a tenant, and the filing and approval of such statement by Building Department of the City of Beacon shall be required for the owner to rent any non-owner-occupied unit in the non-owner-occupied property.
- E. If, after filing the landlord registration statement pursuant to this article, the owner of such non-owner-occupied property shall have transferred or granted to another his/her right, title or interest therein, such owner shall file with the Building Department of the City of Beacon, within 15 days after such grant or transfer, a written statement, under oath, which shall contain the name and residence, business address, business and home telephone number, cell telephone number, fax number, and e-mail of the grantee, transferee or other successor to the owner or, if such grantee, transferee or successor is a corporation or other organization, the name and address of such entity, including the name of its president and its treasurer, and their addresses, business and residence

telephone numbers and cell numbers, as well as, their e-mail addresses and fax numbers. If the owner is unable to secure the foregoing information from the grantee, transferee or purchaser, then the owner shall immediately so notify the Building Department of the City of Beacon, in writing, of such inability.

- F. If, after the filing of any landlord registration statement with the Building Department of the City of Beacon pursuant to this article, any change, other than a designation of a different managing agent or different ownership, occurs in any name, residence or any business address set forth in such statement, the owner, within 15 days after such change, shall notify the Building Department of the City of Beacon, in writing, under oath, setting forth the particulars of such change so as to supply the information necessary to correct the last filed landlord registration statement.
- G. An owner may terminate such managing agent designation by filing with the Building Department of the City of Beacon a written statement, under oath, designating a new managing agent made in conformity with the provisions of this article.
- H. Any landlord registration statement or designation of managing agent required to be filed with the Building Department of the City of Beacon shall be signed by such owner or, if such owner is a corporation or other organization, by the president or treasurer thereof, under oath.
- I. Any landlord registration statement or designation of managing agent shall be deemed prima facie proof of the truth of the statement or designation in any action or proceeding instituted by the City of Beacon or other agency against an owner or managing agent of a rental property in the City of Beacon.

§ 173-5 Public access to records.

Any person, upon request, may inspect and copy a landlord registration statement or designation of managing agent form on file with the City's Building Department pursuant to the Freedom of Information Law.

§ 173-6 Non-owner-occupied permit required.

- A. Non-owner-occupied permit. A non-owner-occupied property shall not be occupied by any tenant without a valid non-owner-occupied permit issued by the Building Department.
- B. The Building Department of the City of Beacon shall issue such permit after approval of a valid landlord registration statement, which shall be approved or denied within three business days of its submission. Such non-owner-occupied permit shall be valid until such time as the owner or any new owner is required to file a new landlord registration statement.

§ 173-7 Revocation or suspension of permit.

Any permit issued pursuant to this article may be revoked or suspended by the Building Department of the City of Beacon for cause, after notice to the owner and after an opportunity for the owner to be heard by the Building Department, upon a finding by the Building Department that any requirement of this article has been violated.

§ 173-8 Permit fees.

Each applicant for a non-owner-occupied permit, pursuant to this article requiring the filing of a landlord registration statement, shall pay a non-owner-occupied permit fee once every three years in an amount set forth in the City of Beacon fee schedule .

§ 173-9 Effect on other laws.

Nothing in this article shall be deemed to preempt the laws of the State of New York for the rental of residential or commercial property or the application of other City of Beacon laws and ordinances and the Code to the premises, including inspection of the premises.

§ 173-10 Prohibition on collection of rent and eviction.

The owner of a non-owner-occupied property shall be prohibited from collecting rent or evicting a tenant during any period of noncompliance with this article. The owner of a non-owner-occupied property shall also be prohibited from collecting rent for any unit that is not in compliance with the certificate of occupancy or any provision of the applicable provisions of the Uniform Code or City Code. Nothing herein shall prevent a landlord, upon receipt of the rental property registration, from receiving the equitable value of the occupancy of the premises from the earliest date of occupancy, but in no event shall a landlord recover in excess of the agreed rent. Failure on the part of the tenant to pay the equitable value of the occupancy of the premises from the earliest date of occupancy until the landlord's receipt of the rental property registration may not be used as a basis for eviction.

§ 173-11 Enforcement.

The City of Beacon shall enforce compliance with this article by seeking civil penalties, instituting a criminal proceeding, or both.

- A. Criminal proceeding. A summons or appearance ticket for any violation of this article may be served on the owner, or in the event that an owner designates a managing agent pursuant to § 173-4A(3), of this article, process may be served on the managing agent of the non-owner-occupied property with equal force and effect as if served on the owner.

§ 173-12 Service of notice of violation.

Notice of noncompliance with this article shall be made:

- A. By delivering to, and leaving a copy of a notice of violation of this article with, any person or persons violating the provisions of this article.

- B. By sending, by registered or certified mail, a notice of violation to the owner or managing agent at the address on file in the landlord registration statement.
- C. By sending, if no such address is on file, a notice of violation to the most current address in the City Assessor's Office, by registered or certified mail, to the owner and managing agent.
- D. If such person or persons cannot be served by any of the aforesaid methods, then such notice or order may be served by posting the same in a conspicuous place upon the non-owner-occupied property where such violation is alleged to exist, or upon the rental property to which such notice may refer, which shall be the equivalent of personal service of said notice upon all parties, including the owner and/or managing agent of the non-owner-occupied property.
- E. By any other method or service authorized pursuant to the New York Civil Practice Law and Rules.

§ 173-13 Penalties for offenses.

Violations of this article constitute an offense within the meaning of the Penal Law of the State of New York, punishable as provided by law. In addition, a violation of any provision of this article shall be subject to the following penalties under this article:

- A. For the first offense by an owner or managing agent of up to five non-owner-occupied units: a fine of \$200;
- B. For the first offense by an owner or managing agent of between six and 10 non-owner-occupied units: a fine of \$500;
- C. For the first offense by an owner or managing agent of more than ten non-owner-occupied units: a fine of \$750; and
- D. For each subsequent offense in each foregoing unit category of ownership or management: a fine of \$400, \$1,000, and \$1,500, respectively.

Article III Prohibition of Eviction Without Good Cause Law

§ 173-14 Applicability.

This article shall apply to all housing accommodations except:

- A. Premises with four residential units or less.

- B. Premises where the possession, use or occupancy of which is solely incidental to employment and such employment is being lawfully terminated.
- C. Premises otherwise subject to regulation of rents or evictions pursuant to state or federal law to the extent that such state or federal law requires “good cause” for termination or non-renewal of such tenancies.
- D. Premises sublet pursuant to section two hundred twenty-six-b of the NYSRPL or otherwise, whether the sub-lessor seeks in good faith to recover possession of such housing accommodation for personal use and occupancy.

§ 173-15 Necessity for good cause.

No landlord shall, by action to evict or to recover possession, by exclusion from possession, by failure to renew any lease, or otherwise, remove any tenant from housing accommodation except for good cause as defined in section 17 of this article.

§ 173-16 Grounds for removal of tenants.

- A. No landlord shall remove a tenant from any housing accommodation, or attempt such removal or exclusion from possession, notwithstanding that the tenant has no written lease or that the lease or other rental agreement has expired or otherwise terminated, except upon order of a court of competent jurisdiction entered in an appropriate judicial action or proceeding in which the petitioner or plaintiff has established one of the following grounds as good cause for removal or eviction:
 - (1) The tenant has failed to pay rent due and owing, provided, however, that the rent due and owing, or any part thereof, did not result from a rent increase or pattern of rent increases which, regardless of the tenant's prior consent, if any, is unconscionable or imposed for the purpose of circumventing the intent of this article. In determining whether all or part of the rent due and owing is the result of an unconscionable rent increase or pattern of rent increases, the Court may consider, among other factors, i) the rate of the increase relative to the tenant's ability to afford said increase, ii) improvements made to the subject unit or common areas serving said unit, iii) whether the increase was precipitated by the tenant engaging in the activity described at section 223-b (1(a)-(c) of the Real Property Actions and Proceedings Law, iv) significant market changes, v) the condition of the unit or common areas serving the unit, vi) the consumer price index, vii) the frequency that the landlord increases rent, viii) the amounts of previous rent increases, and ix) building sale price, , and it shall be a rebuttable

presumption that the rent for a dwelling not protected by rent regulation is unconscionable or imposed for the purpose of circumventing the intent of this article if said rent has been increased in any calendar year by a percentage exceeding five percent, unless such rent increase is justified by one or more factors set forth herein,

- (2) The tenant is violating a substantial obligation of their tenancy, other than the obligation to surrender possession, and has failed to cure such violation after written notice that the violation cease within ten (10) days of receipt of such written notice, provided however, that the obligation of tenancy for which violation is claimed was not imposed for the purpose of circumventing the intent of this article;
- (3) The tenant is committing or permitting a nuisance in such housing accommodation, or is maliciously or by reason of negligence damaging the housing accommodation; or the tenant's conduct is such as to interfere with the comfort of the other tenants or occupants of the same rental property;
- (4) Occupancy of the housing accommodation by the tenant is in violation of or causes a violation of law and the landlord is subject to civil or criminal penalties therefore; provided however that the City of Beacon Building Inspector has issued an order requiring the tenant to vacate the housing accommodation. No tenant shall be removed from possession of a housing accommodation on such ground unless the court finds that the cure of the violation of law requires the removal of the tenant and that the landlord did not, through neglect or deliberate action or failure to act, create the condition necessitating the order to vacate. In instances where the landlord does not undertake to cure conditions of the housing accommodation causing such violation of the law, the tenant shall have the right to pay or secure payment in a manner satisfactory to the court, to cure such violation provided that any tenant expenditures shall be applied against rent to which the landlord is entitled. In instances where removal of a tenant is absolutely essential to their health and safety, the removal of the tenant shall be without prejudice to any leasehold interest or other right of occupancy the tenant may have and the tenant shall be entitled to resume possession at such time as the dangerous conditions have been removed. Nothing herein shall abrogate or otherwise limit the right of a tenant to bring an action for monetary damages against the landlord to compel compliance by the landlord with all applicable laws;
- (5) The tenant is using or permitting the housing accommodation to be used for an illegal purpose;

- (6) The tenant has unreasonably refused the landlord access to the housing accommodation for the purpose of making necessary repairs or improvements required by law or for the purpose of showing the housing accommodation to a prospective purchaser, mortgagee, or other person having a legitimate interest therein;
- (7) The landlord seeks in good faith to recover possession of a housing accommodation located in a building containing fewer than twelve units because of immediate and compelling necessity for their own personal use and occupancy as their principal residence, or the personal use and occupancy as a principal residence of their immediate family member including but not limited to a partner, spouse, parent, child, stepchild, father-in-law, ~~or~~ mother-in-law, grandparent etc. when no other suitable housing accommodation in such building is available. This paragraph shall permit recovery of only one housing accommodation and shall not apply to a housing accommodation occupied by a tenant who is sixty-two years of age or older or who is a disabled person;
- (8) The landlord seeks in good faith to recover possession of any or all housing accommodations located in a building with less than five (5) units to personally occupy such housing accommodations as their principal residence;
- (9) Where the tenant has refused in bad faith to enter into a written lease which has been offered in good faith to the tenant by the landlord, subject to the following.
- (a) The proposed written lease must have been offered to the tenant in writing on at least two occasions at least two weeks apart, which such written offer to include,
- [1] an original and one copy of the proposed written lease, executed by the landlord or their designee;
- [2] notice of the landlord's intention to pursue eviction within 120 days pursuant to this article if the tenant rejects the proposed written lease and/or does not enter into said lease within forty-five days of the initial offer;
- [3] clear instructions to the tenant concerning the manner in which the tenant is to communicate to the landlord acceptance or rejection of the written lease; and
- [4] Notice of any proposed increase equal to or greater than 3.5% shall be provided in compliance with NY Real Property Law Section 226-C.

- (b) The proposed written lease shall not supersede an existing, active lease to which the landlord and the tenant are parties;
- (c) The terms of the proposed written lease may not:
 - [1] be unreasonable and/or mandate or proscribe activities not rationally related to the regulation of activities which would create a nuisance at the property or cause discomfort to the tenants or occupants of the same or adjacent buildings or structures as described at section A(3) above; or
 - [2] substantially alter the terms any of any existing lease;
- (d) The proposed written lease shall not be offered for the purposes of circumventing this article;
- (e) The tenant shall be entitled to dismissal of any eviction petition brought for the tenant's refusal to enter into a lease according to these terms if:
 - [1] the tenant consents to enter into the proposed written lease presented in the first offer pursuant to subsection 10(a) at any time prior to the execution of the warrant of eviction regardless of landlord's willingness to accept said consent at the time it is communicated; and/or
 - [2] prior to the commencement of the eviction proceeding the tenant attempted in good faith to negotiate the terms of the proposed written lease and that the landlord refused in bad faith to engage in such negotiation; and/or
 - [3] the tenant's failure to enter into the proposed written lease was due to a good faith failure to comprehend the terms of the proposed written lease;
 - [4] the tenant is a victim of domestic violence as defined by NY Social Service Law §459-A and is unable to safely enter into the proposed written lease due to good faith concerns for the tenant's personal safety; and/or
 - [5] the proposed written lease includes an increase in rent or increase in the tenant's responsibility for recurring payments associated with the tenancy which is unreasonable or imposed for the purposes of circumventing the intent of this article per subsection (A), above.

(f) That any proceeding for eviction pursuant to this subsection shall have been commenced within 120 days of the proposed written lease first having been offered to the tenant.

- B. A tenant required to surrender a housing accommodation by virtue of the operation of paragraph (7), (8), or (9) of subsection (A) of this section shall have a cause of action in any court of competent jurisdiction for damages, declaratory, and injunctive relief against a landlord or purchaser of the premises who makes a fraudulent statement regarding a proposed use of the housing accommodation. In any action or proceeding brought pursuant to this provision a prevailing tenant shall be entitled to recovery of actual damages, and reasonable attorneys' fees.
- C. Nothing in this section shall abrogate or limit the tenant's right, pursuant to section 751 of the NY Real Property Actions and Proceedings Law, to permanently stay the issuance or execution of a warrant or eviction in a summary proceeding, whether characterized as a nonpayment, objectionable tenancy, or holdover proceeding, the underlying basis of which is the nonpayment of rent, so long as the tenant complies with the procedural requirements of section 751 of the NY Real Property Actions and Proceedings Law.

§ 173-17 Intimidation and Illegal Conduct.

- A. It shall be a rebuttable presumption that the eviction is not for good cause if there is a history of landlord intimidation of the tenant or illegal conduct pertaining to the landlord tenant relationship.
- B. For the purpose of this Section, illegal conduct and intimidation shall be deemed established by the Tenant's establishment through written proof, such as a police report or testimony demonstrating illegal behavior or the use of aggressive methods by the landlord in an attempt to pressure or harass a tenant.

§ 173-18 Preservation of existing requirements of law.

No action shall be maintainable and no judgment of possession shall be entered for housing accommodations pursuant to this article, unless the landlord has complied with any and all applicable laws governing such action or proceeding and has complied with any and all applicable laws governing notice to tenants including, without limitation, the manner and the time of service of such notice and the contents of such notice.

§ 173-19 Waiver of rights void.

Any agreement by a tenant heretofore or hereinafter entered into in a written lease or other rental agreement waiving or modifying their rights as set forth in this article shall be void as contrary to public policy.

Section 4. City Council Review

The City Council shall review the proposed local law in June 2023 to determine the impacts of Article III and reevaluate the need of the good cause eviction provisions.

Section 5. Ratification, Readoption and Confirmation

Except as specifically modified by the amendments contained herein the Code of the City of Beacon is otherwise to remain in full force and effect and is otherwise ratified, readopted and confirmed.

Section 6. Numbering for Codification

It is the intention of the City of Beacon and it is hereby enacted that the provisions of this Local Law shall be included in the Code of the City of Beacon; that the sections and subsections of this Local Law may be re-numbered or re-lettered by the Codifier to accomplish such intention; that the Codifier shall make no substantive changes to this Local Law; that the word “Local Law” shall be changed to “Chapter,” “Section” or other appropriate word as required for codification; and that any such rearranging of the numbering and editing shall not affect the validity of this Local Law or the provisions of the Code affected thereby.

Section 7. Severability.

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their petition to other persons or circumstances. It is hereby declared to be the legislative intent that this Local law would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part hereof is held inapplicable had been specifically exempt there from.

Section 8. Effective Date

This local law shall take effect immediately filing with the Office of the Secretary of State.

MEMORANDUM

TO: Mayor Kyriacou and Members of the City Council
of the City of Beacon

FROM: Keane & Beane, P.C.

RE: Good Cause Eviction Local Law
Decision Tree Memo Responses

DATE: January 21, 2021

As the January 10, 2022 City Council workshop meeting, the City Council discussed amendments to the City Code concerning the draft good cause eviction local law. This memorandum outlines the questions the City Council considered regarding the regulation of good cause eviction and the City Council's decisions. Our office also prepared a revised draft good cause eviction local law to incorporate the City Council's recommendations into the City Code.

1. What housing accommodations shall be subject to the law (How should the law define housing accommodation)? Does the City want to exempt owner-occupied premises with four or less units? Or Owner-occupied premises with less than two units? The City must decide the threshold number of units that would trigger the application of the provisions of the law.
 - a. At the City Council's recommendation, the draft good cause eviction provisions shall apply to all housing accommodations except:
 - i. Premises with four residential units or less.
 - ii. Premises where the possession, use or occupancy of which is solely incident to employment and such employment is being lawfully terminated.
 - iii. Premises otherwise subject to regulation of rents or evictions pursuant to state or federal law to the extent that such state or federal law requires good cause for termination.
 - iv. Premises sublet pursuant to section two hundred twenty-six-b of the NYSRPL or otherwise, whether the sub-lessor seeks in good faith to recover possession of such housing accommodation for personal use and occupancy.

2. What factors should be included in the law to determine whether all or part of the rent due or owing is the result of an unconscionable rent increase or pattern of rent increases?
 - a. At the City Council's recommendation, in determining whether all or part of the rent due and owing is the result of an unconscionable rent increase or pattern of rent increases, a court may consider, among other factors, i) the rate of the increase relative to the tenant's ability to afford said increase, ii) improvements made to the subject unit or common areas serving said unit, iii) whether the increase was precipitated by the tenant engaging in the activity described at section 223-b (1(a)-(c) of the Real Property Actions and Proceedings Law, iv) significant market changes, v) the condition of the unit or common areas serving the unit, vi) the consumer price index, vii) the frequency that the landlord increases rent, viii) the amounts of previous rent increases, and ix) building sale price.
3. If the City decides to determine whether an unconscionable rent increase exists based on "significant market changes relevant to the subject unit, how does the City want to define "significant market changes" in the draft local law?
 - a. The City Council would like to leave room for a court of competent jurisdiction to determine what constitutes a "significant market change" and has decided to not define this term.
4. What is the unconscionable rent increase for a calendar year?
 - a. At the City Council's recommendation, the draft local law states that "unconscionable rent" shall be a rebuttable presumption that the rent for a dwelling not protected by rent regulation is unconscionable or imposed for the purpose of circumventing the intent of this article if said rent has been increased in any calendar year by a percentage exceeding five percent. The law is clear that a landlord may increase rent by more than five percent if such increase is supported by the factors set forth in paragraph 2.
5. If a landlord does not raise rent for several years, can the landlord raise it by more than the unconscionable amount in one calendar year to catch up with the market? In such instance, how much can a landlord raise the rent?
 - a. At the City Council's recommendation, this issue has been added as a factor to be considered by the court in Section 173-16.A(1) of the draft local law.

6. Can good cause be established by a landlord if a tenant is committing or permitting a nuisance in such housing accommodation?
 - a. At the City Council's recommendation, the draft local law allows a landlord to establish good cause to evict a tenant if the tenant is committing or permitting a nuisance in such housing accommodation, or is maliciously or by reason of negligence damaging the housing accommodation; or the tenant's conduct is such as to interfere with the comfort of the other tenants or occupants of the same rental property. The City Council has decided to not include any specific examples of nuisances in the draft local law.
7. Can good cause be established by a landlord if the owner-landlord has in good-faith entered into a contract for the sale of the housing accommodation?
 - a. At the City Council's recommendation, under the draft local law an owner-landlord cannot establish good cause to evict a tenant in instances where there is a contract for the sale of the housing accommodation.
8. Can good cause be established if the tenant has refused to enter into a written lease? Does the City want to include lease requirements in the draft local law?
 - a. At the City Council's recommendation, under the draft local law an owner-landlord may establish good cause to evict a tenant where the tenant has refused in bad faith to enter into a written lease which has been offered in good faith to the tenant by the landlord, subject to the lease requirements set forth in Section 173-16.A(9) of the draft local law.
9. Can good cause be established if the landlord has notified the tenant in writing of their intention not to renew the lease by providing advance notice (for example six months advance notice)?
 - a. At the City Council's recommendation, the draft local law does not permit a landlord to establish good cause to evict a tenant in instances where the landlord has notified the intention not to renew the lease.
10. In reviewing the draft local law, are there other categories that may establish good cause for eviction that the City would like to add to the draft local law? Are there any categories that the City would like to remove from the draft local law?
 - a. The City Council did not add any additional categories that may establish good cause for eviction.

11. Does the City want to include language that it shall be a rebuttable presumption that the eviction is not for good cause if there is a history of landlord intimidation and illegal conduct of the tenant?
 - a. At the City Council's recommendation, the draft local law states it shall be a rebuttable presumption that the eviction is not for good cause if there is a history of landlord intimidation of the tenant or illegal conduct pertaining to the landlord-tenant relationship. The draft local law does not include examples of intimidation or illegal conduct.
12. Does the City want to include a sunset provision on the local law to state that this local law shall expire and shall be of no further force and effect on and after January 1, 2024? At such time, the City Council can evaluate the effectiveness of the law and assess the need for the provisions set forth therein.
 - a. The City Council did not want to include a sunset provision. At the City Council's recommendation, the draft local law includes language in Section 4 that the City Council shall review the local law in June 2023 to determine the positive and negative impacts of the good cause eviction provisions and reevaluate the need for the legislation.

MEMORANDUM

TO: Mayor Kyriacou and Members of the City Council
of the City of Beacon

FROM: Keane & Beane, P.C.

RE: Good Cause Eviction

DATE: January 7, 2021

In order to assist the City Council's discussion and review of the proposed Good Cause Eviction Local Law please find attached the following materials:

1. Status Chart of Good Cause Eviction Laws in New York State. Please be advised that the City of Hudson voted on and denied the proposed Good Cause Eviction Local Law on December 26, 2021. According to a new article "Council members cited displeasure about the current version of the bill, which does not include a provision allowing landlords to evict tenants if they are selling their property, as well as fears the city could be sued." Click this link to read the article: [Albany Times Union Article](#).
2. Good Cause Eviction Comparison Chart. This chart compares the provisions of good cause eviction laws introduced and adopted in New York State, Albany, New Paltz (Village), Kingston, Poughkeepsie (City), Newburgh (City) and Hudson. We do not represent this to be a comprehensive list, just a list of those we are aware of being considered.
3. Summons and Complaint filed in the *Matter of Deborah Pusatere et al v. The City of Albany*, Index No. 909653-21. The Complaint was filed on November 16, 2021. The Plaintiffs seek a declaration that the City of Albany's Good Cause Eviction Law is preempted by the N.Y. Emergency Tenant Protection Act, the N.Y. Local Emergency Housing Rent Control Act, 2 the N.Y. Emergency Housing Rent Control Law,³ Article 7 of the N.Y. Real Property Law, General Obligations Law § 5-703(2), and Article 7 of the N.Y. Real Property Actions and Proceedings Law. The Plaintiffs also seek a declaration that Albany's Law is unconstitutional, claiming it is in violation of the "takings" clauses of the United States Constitution and is an unlawful, ultra vires exercise of municipal police power that unduly interferes with the Plaintiffs' and other landlords' property rights under well-settled New York doctrine concerning the limits of municipal authority.

Albany filed its Answer, attached, to the Complaint this afternoon, but as it was just filed with the Court, we have not completed our review as of the issuance of this memo.

4. Decision Tree Memo. Based upon the City Council's discussion, this memorandum sets forth specific questions for City Council to review when considering drafting a good cause eviction law.
5. Proposed Draft Local Law to amend Chapter 173 to prohibit eviction without good cause. This local law modifies Chapter 173 in its entirety and includes the good cause eviction provisions provided by Councilmember Aymar-Blair in Article II of the proposed local law. All modifications made to the provisions originally provided by Councilmember Aymar-Blair are highlighted in blue.

Our office submitted a letter to the Attorney General's Office on October 4, 2021, to request an opinion regarding whether the adoption of a Good Cause Eviction Law by the City as a local law is preempted by State Law. We understand Ithaca and New Paltz also submitted a similar request. We have waited for an opinion for over three months. We do not expect the Attorney General's Office will ever render an opinion, especially now that there is litigation over Albany's ordinance.

Good Cause Eviction Comparison Chart

Topic	Newburgh	Hudson	Poughkeepsie	Kingston	Albany	New Paltz	NYS
Local Law	Local Law 6 of 2021, adopted October 25, 2021	Denied on December 21, 2021	Local Law 21-04. Adopted on November 15, 2021.	In review.	Local Law F-2021, adopted on July 19, 2021. (Proceeding Initiated to Challenge Law)	Under consideration.	Bill S3082/A5573
Basis and Purpose for Local Law	Housing Needs Assessment and the Newburgh Housing Report. The purpose of the law is to implement a policy recommendation of the City of Newburgh Housing Needs Assessment and Newburgh Housing Report intended to protect tenants from exorbitant and a predatory rent increases that could result in a significant increase in homelessness in the City.	The purpose of this local law is to protect tenants from exorbitant rent increases that could result in increased homelessness in the City.	Same as Hudson.	No purpose provided.	The proposed good cause eviction legislation codifies an existing practice in Albany City Court landlord-tenant proceedings wherein a landlord seeks a judicial warrant of eviction against their tenant. This legislation will prevent landlords from removing their tenants without first obtaining an order from an Albany City Court judge. Good cause eviction law flips the script. Under a good cause eviction statute, each tenant in the City of Albany will be entitled to a renewal lease and protection against an unconscionable rent hike, unless the landlord can substantiate a good cause for the tenant's eviction. The proposed legislation outlines common sense and practical grounds for eviction. A landlord must satisfy only one of the grounds for eviction before a judge	The proposed good cause eviction legislation codifies an existing practice in New Paltz Justice Court landlord-tenant proceedings wherein a landlord seeks a judicial warrant of eviction against their tenant. This legislation will prevent landlords from removing their tenants without first obtaining an order from a New Paltz Justice Court judge; each tenant in the Village of New Paltz will be entitled to a renewal lease and protection against an unconscionable rent hike, unless the landlord can substantiate a good cause for the tenant's eviction. The proposed legislation outlines common sense and practical grounds for eviction.	The purpose of this legislation is to prohibit the eviction of residential tenants or the non-renewal of residential leases without good cause.

Topic	Newburgh	Hudson	Poughkeepsie	Kingston	Albany	New Paltz	NYS
					may grant the warrant of eviction against the tenant.		
Definition of Tenant	A tenant, sub-tenant, lessee, sub-lessee, assignee, manufactured home tenant as defined in paragraph one of subsection (A) of section two hundred thirty-three of the New York State Real Property Law, an occupant of a rooming house or hotel as defined in section seven hundred eleven of the New York State Real Property Actions and Proceedings Law, or any other person entitled to the possession, use or occupancy of any housing accommodation.	No definition section.	No definition section.	No definition section.	Same as Newburgh	The term “tenant” as used in this article shall mean a tenant, sub-tenant, lessee, sublessee, assignee, an occupant of a rooming house or hotel as defined in section seven hundred eleven of the Real Property Actions and Proceedings Law or any other person entitled to the possession, use or occupancy of any housing accommodation.	The term “tenant” as used in this article shall mean a tenant, sub-tenant, lessee, sublessee, assignee, manufactured home tenant in paragraph one of subdivision A of section two hundred thirty-three of this chapter, an occupant of a rooming house or hotel as defined in section seven hundred eleven of the Real Property Actions and Proceedings Law, or any other person entitled to the possession, use or occupancy of any housing accommodation.
Definition of Housing Accommodation	A residential premises, including a dwelling, dwelling unit, or rooming unit as defined in this Chapter, located in the City of Newburgh.	No definition section	No definition section	No definition section.	Any residential premises located in the City of Albany.	Any residential premises located in the Village of New Paltz.	Any residential premises, including a mobile home or land in a mobile home park.
Applicability	Applies to all housing accommodations except: 1. Owner-occupied premises with less than four units. 2. Premises where the possession, use or occupancy of which is solely incident to employment and such	No applicability section. Appears to apply to all landlords.	Same as Newburgh	No applicability section provided. Appears to apply to all landlords.	Same as Newburgh, except Albany exempts owner-occupied premises with four or less units.	This article shall apply to all housing accommodations except: 1. Owner-occupied premises with less than two units; 2. Premises where the possession, use or occupancy	Applies to all housing accommodations except: 1. Owner-occupied premises with less than four units. 2. Premises sublet pursuant to section two hundred twenty six-b of this chapter, or otherwise, whether the sub-lessor seeks in

Topic	Newburgh	Hudson	Poughkeepsie	Kingston	Albany	New Paltz	NYS
	employment is being lawfully terminated. 3. Premises otherwise subject to regulation of rents or evictions pursuant to state or federal law to the extent that such state or federal law requires good cause for termination. 4. Premises sublet pursuant to section two hundred twenty six-b of the NYSRPL or otherwise, whether the sub-lessor seeks in good faith to recover possession of such housing accommodation for personal use and occupancy.					of which is solely incident to employment and such employment is being lawfully terminated (<i>Same as Newburgh</i>); and 3. Premises otherwise subject to regulation of rents or evictions pursuant to state or federal law to the extent that such state or federal law requires “good cause” for termination or non-renewal of such tenancies. (<i>Same as Newburgh</i>) Does not include #4 from Newburgh.	good faith to recover possession of such housing accommodation for personal use and occupancy. 3. Premises the possession, use or occupancy of which is solely incident to employment and such employment is being lawfully terminated. 4. Premises otherwise subject to regulation of rents or evictions pursuant to state or federal law to the extent that such state or federal law requires good cause for termination.
Collection of Rents Section	None	None	None	None	None	No landlord, building manager, owner, agent, or other person in charge -- referred to as “landlord” hereafter - - shall collect rents during any period of noncompliance with Article II of Chapter 129 Housing Standards which would otherwise be due and owing for the rental of premises unless and until the	None

Topic	Newburgh	Hudson	Poughkeepsie	Kingston	Albany	New Paltz	NYS
						landlord shall have complied with the provisions herein. Nothing herein shall be construed to prevent a landlord, upon receipt of the rental property registration, from receiving the equitable value of the occupancy of the premises from the earliest date of occupancy, but in no event shall a landlord recover in excess of the agreed rent. Failure on the part of the tenant to pay the equitable value of the occupancy of the premises from the earliest date of occupancy until the landlord's receipt of the rental property registration may not be used as a basis for eviction.	
Eviction Section	None	None	None	None	None	No landlord, building manager, owner, agent, or other person in charge -- referred to as "landlord" hereafter - - shall file for an eviction during any period of noncompliance with Article II of Chapter 129 Housing Standards. A landlord of multiple rental	None

Topic	Newburgh	Hudson	Poughkeepsie	Kingston	Albany	New Paltz	NYS
						properties or units in the Village of New Paltz shall not file for an eviction of residents at any one property during any period of noncompliance with Article II of Chapter 129 Housing Standards at any one of their rental properties. Failure on the part of the tenant to pay the equitable value of the occupancy of the premises during any period of landlord's noncompliance with Article II of Chapter 129 Housing Standards may not be used as a basis for eviction. Further, any landlord with open/unresolved cases concerning hazardous or immediately hazardous housing code violations or immediately hazardous or major construction code violations in any of their rental properties, shall not file for an eviction of tenants at any one of their properties.	

Topic	Newburgh	Hudson	Poughkeepsie	Kingston	Albany	New Paltz	NYS
Necessity for Good Cause Section	No landlord shall, by action to evict or to recover possession, by exclusion from possession, by failure to renew any lease, or otherwise, remove any tenant from housing accommodation except for good cause as defined in [Number Here] of this article.	No section	No section	No section	Same as Newburgh	Same as Newburgh	No landlord shall, by action to evict or to recover possession, by exclusion from possession, by failure to renew any lease, or otherwise, remove any tenant from housing accommodations covered by section two hundred twelve of this article except for good cause as defined in section two hundred fourteen of this article.
Grounds for Removal (General Statement)	No landlord shall remove a tenant from any housing accommodation, or attempt such removal or exclusion from possession, notwithstanding that the tenant has no written lease or that the lease or other rental agreement has expired or otherwise terminated, except upon order of a court of competent jurisdiction entered in an appropriate judicial action or proceeding in which the plaintiff or petition has established one of the grounds for good cause for removal or eviction set forth in the law.	Same as Newburgh	Same as Newburgh	Same as Newburgh	Same as Newburgh	Same as Newburgh	No landlord shall remove a tenant from any housing accommodation, or attempt such removal or exclusion from possession, notwithstanding that the tenant has no written lease or that the lease or other rental agreement has expired or otherwise terminated, except upon order of a court of competent jurisdiction entered in an appropriate judicial action or proceeding in which the petitioner or plaintiff has established grounds for good cause removal or eviction.
Good Cause for failure to Pay Rent. Factors to determine unconscionable rent.	The Court may consider, among other factors, 1. the rate of the increase relative to the tenant's ability to afford said increase,	The Court may consider, among other factors, 1. improvements made to the subject unit or	Same as Newburgh	Same as Newburgh	Same as Newburgh	Same as Newburgh	The tenant has failed to pay rent due and owing, providing however that the rent due and owing, or any part thereof, did not result form a rent increase

Topic	Newburgh	Hudson	Poughkeepsie	Kingston	Albany	New Paltz	NYS
	2. improvements made to the subject unit or common areas serving said unit, 3. whether the increase was precipitated by the tenant engaging in the activity described at section 223-b (1(a)-(c) of the Real Property Actions and Proceedings Law, 4. significant market changes relevant to the subject unit, and 5. the condition of the unit or common areas serving the unit	common areas serving said unit, 2. whether the increase was precipitated by the tenant engaging in the activity described at section 223-b (1(a)-(c) of the Real Property Actions and Proceedings Law, 3. the condition of the unit or common areas serving the unit.					which is unreasonable or imposed for the purpose of circumventing the intent of this article. (No factors)
Unconscionable Rent	Any rent increase in any calendar year by a percentage exceeding five percent.	Same as Newburgh	Same as Newburgh	Same as Newburgh	Same as Newburgh	Same as Newburgh	Unreasonable if said rent has been increased in any calendar year by a percentage exceeding either three percent or one and one-half times the annual percentage change in the consumer price index for the region in which the housing accommodation is located; whichever is greater.
Good Cause for violating obligation of their tenancy	The tenant is violating a substantial obligation of their tenancy, other than the obligation to surrender possession, and has failed to cure such violation after written notice that the violation cease within ten	Same as Albany	“Legal obligation of their tenancy”	Same as Albany	“Reasonable Obligation of their tenancy”	Same as Newburgh	Same as Newburgh

Topic	Newburgh	Hudson	Poughkeepsie	Kingston	Albany	New Paltz	NYS
	days of receipt of such written notice, provided however, that the obligation of tenancy for which violation is claimed was not imposed for the purpose of circumventing the intent of this article.						
Good cause for committing or permitting nuisance.	The tenant is committing or permitting a nuisance in such housing accommodation, or is maliciously or by reason of negligence damaging the housing accommodation; or the tenant's conduct, including but not limited to, smoking inside the dwelling unit where smoking inside the dwelling unit has been prohibited by the landlord and such prohibition has been communicated to the tenant, failing to dispose of waste created by the tenant's pet(s) from the property on which the dwelling unit is located in accordance with relevant laws, and causing the accumulation of excessive rubbish and/ or garbage in the dwelling unit and common areas, is such as to interfere with the comfort of the landlord or other tenants or occupants of the same or adjacent buildings or structures.	Same as Albany	Same as Albany	Same as Albany	Same as Newburgh but includes the following examples: smoking inside the residential unit where smoking inside the residential unit has been prohibited by the landlord and such prohibition has been communicated to the tenant, failing to dispose of waste created by the tenant's pet(s) from the property on which the residential unit is located in accordance with relevant laws, <u>repeatedly engaging in activities that cause an unreasonable amount of noise or allowing others to do so without taking appropriate steps to mitigate such noise.</u> and causing the accumulation of excessive rubbish and/or garbage in the residential unit and common areas.	Same language as Newburgh but <u>does not</u> include specific reference to the following: smoking inside the dwelling unit where smoking inside the dwelling unit has been prohibited by the landlord and such prohibition has been communicated to the tenant, failing to dispose of waste created by the tenant's pet(s) from the property on which the dwelling unit is located in accordance with relevant laws, and causing the accumulation of excessive rubbish and/ or garbage in the dwelling unit and common areas, is such as to interfere with the comfort of the landlord or other tenants or occupants of the same or adjacent buildings or structures.	The tenant is committing or permitting a nuisance in such housing accommodation, or is maliciously or by reason of negligence damaging the housing accommodation; or the tenant's conduct is such as to interfere with the comfort of the landlord or other tenants or occupants of the same or adjacent buildings or structures.

Topic	Newburgh	Hudson	Poughkeepsie	Kingston	Albany	New Paltz	NYS
Good Cause for occupancy in violation of law.	Occupancy of the housing accommodation by the tenant is in violation of or causes a violation of law and the landlord is subject to civil or criminal penalties therefore; provided however that the [municipal] Building Department has issued an order requiring the tenant to vacate the housing accommodation. No tenant shall be removed from possession of a housing accommodation on such ground unless the court finds that the cure of the violation of law requires the removal of the tenant and that the landlord did not, through neglect or deliberate action or failure to act, create the condition necessitating the order to vacate. In instances where the landlord does not undertake to cure conditions of the housing accommodation causing such violation of the law, the tenant shall have the right to pay or secure payment in a manner satisfactory to the court, to cure such violation provided that any tenant expenditures shall be applied against rent to which the landlord is entitled. In instances where removal of a tenant is absolutely essential to their health and safety, the	Same as Newburgh	Same as Newburgh	Same as Newburgh	Same as Newburgh	Same as Newburgh	Same as Newburgh

Topic	Newburgh	Hudson	Poughkeepsie	Kingston	Albany	New Paltz	NYS
	removal of the tenant shall be without prejudice to any leasehold interest or other right of occupancy the tenant may have and the tenant shall be entitled to resume possession at such time as the dangerous conditions have been removed. Nothing herein shall abrogate or otherwise limit the right of a tenant to bring an action for monetary damages against the landlord to compel compliance by the landlord with all applicable laws;						
Good Cause for use in violation of law.	The tenant is using or permitting the housing accommodation to be used for an illegal purpose.	Same as Newburgh	Same as Newburgh	Same as Newburgh	Same as Newburgh	Same as Newburgh	Same as Newburgh
Good Cause for refusing access to make repairs.	The tenant has unreasonably refused the landlord access to the housing accommodation for the purpose of making necessary repairs or improvements required by law or for the purpose of showing the housing accommodation to a prospective purchaser, mortgagee, or other person having a legitimate interest therein.	Same as Newburgh	Same as Newburgh	Same as Newburgh	Same as Newburgh	Same as Newburgh	Same as Newburgh
Good Cause because landlord needs to use property as principal dwelling unit.	The landlord seeks in good faith to recover possession of a housing accommodation located in a building containing fewer than twelve units	Same as Newburgh	Same as Newburgh	Same as Newburgh	Same as Newburgh	Same as Newburgh	Same as Newburgh

Topic	Newburgh	Hudson	Poughkeepsie	Kingston	Albany	New Paltz	NYS
(Fewer than 12 units)	because of immediate and compelling necessity for their own personal use and occupancy as their principal residence, or the personal use and occupancy as principal residence of their partner, spouse, parent, child, stepchild, father-in-law or mother-in-law, when no other suitable housing accommodation in such building is available. This paragraph shall permit recovery of only one housing accommodation and shall not apply to a housing accommodation occupied by a tenant who is sixty-two years of age or older or who is a disabled person;						
Good Cause because landlord needs to use property as principal dwelling unit. (Fewer than 5 units)	The landlord seeks in good faith to recover possession of any or all housing accommodations located in a building with less than five units to personally occupy such housing accommodations as their principal residence;	Same as Newburgh	Same as Newburgh	Same as Newburgh	Same as Newburgh	Same as Newburgh	Same as Newburgh
Good Cause for sale of unit.	The owner-landlord has in good faith entered into a contract for the sale of the housing accommodation and such contract requires that the housing accommodation be transferred free and clear of any and all residential tenancy obligations as a	No	Same as Newburgh	No	Same as Newburgh	Same as Newburgh.	No

Topic	Newburgh	Hudson	Poughkeepsie	Kingston	Albany	New Paltz	NYS
	condition of such sale where the owner-landlord has no shared financial or other interest with the potential buyer other than the sale of the housing accommodation in question and submitted sufficient proof to the court thereof;						
Good Cause for failure to enter into written lease.	Where the tenant has refused in bad faith to enter into a written lease which has been offered in good faith to the tenant by the landlord. Proceeding for eviction shall be commenced within 120 days of the proposed written lease first having been offered.	Same as Albany	Same as Albany	Same as Albany	Same as Newburgh, but includes the following additional language: provided, however, the landlord may commence the process for execution of a lease pursuant to this subdivision by submitting a new or revised lease to the tenant that would recommence the 120-day time period for a potential eviction action pursuant to this subdivision.	No	No
Lease requirements	Law includes specific lease requirements.	Law includes lease requirements same as Newburgh.	Law includes lease requirements same as Newburgh	Law includes specific lease requirements which are the same as Newburgh.	Law includes specific lease requirements which are the same as Newburgh.	No lease requirements specified.	No lease requirements specified.
Good Cause if owner-landlord has notified tenant in writing of intention not to renew.	No	No	No	No	No	Except where notice is issued pursuant this subsection for the purpose of circumventing the intent of this article, where the owner-	No

Topic	Newburgh	Hudson	Poughkeepsie	Kingston	Albany	New Paltz	NYS
						landlord has notified the tenant in writing of the owner-landlord's intention not to renew a written lease not less than five months in advance of the non-renewal date and the tenant consents, provided that at the time of filing of an eviction proceeding the landlord has in good-faith entered into an enforceable lease agreement with a different party in an arms-length transaction for the premises occupied by the tenant. The non-renewal notice provided for in this section must include language advising the tenant of their right to renew their tenancy and thereby reject the non-renewal, that tenant's consent must be provided in writing and that the tenant may not be subjected to retaliation for such rejection. The tenant's consent may be withdrawn any time prior to the owner-landlord's entrance into new lease agreement for the subject premises.	

Topic	Newburgh	Hudson	Poughkeepsie	Kingston	Albany	New Paltz	NYS
What can a tenant do?	A tenant required to surrender a housing accommodation by virtue of the operation of paragraph (7)(recover possession), (8)(recover possession), or (9)(sale of property) of subsection (A) of this section shall have a cause of action in any court of competent jurisdiction for damages, declaratory, and injunctive relief against a landlord or purchaser of the premises who makes a fraudulent statement regarding a proposed use of the housing accommodation. In any action or proceeding brought pursuant to this provision a prevailing tenant shall be entitled to recovery of actual damages, and reasonable attorneys' fees.	No language	No language	No language	Same as Newburgh	Same as Newburgh.	A tenant required to surrender a housing accommodation by virtue of the operation of paragraph (G)(recover possession), (H)(recover possession) of subdivision one of this section shall have a cause of action in any court of competent jurisdiction for damages, declaratory, and injunctive relief against a landlord or purchaser of the premises who makes a fraudulent statement regarding a proposed use of the housing accommodation. In any action or proceeding brought pursuant to this provision a prevailing tenant shall be entitled to recovery of actual damages, and reasonable attorneys' fees.
NYSRPAPL Section	Nothing in this section shall abrogate or limit the tenant's right, pursuant to section seven hundred fifty-one of the Real Property Actions and Proceedings Law, to permanently stay the issuance or execution of a warrant or eviction in a summary proceeding, whether characterized as a nonpayment, objectionable tenancy, or holdover	No language.	No language	No language	Same as Newburgh	Same as Newburgh	Same as Newburgh

Topic	Newburgh	Hudson	Poughkeepsie	Kingston	Albany	New Paltz	NYS
	proceeding, the underlying basis of which is the nonpayment of rent, so long as the tenant complies with the procedural requirements of section seven hundred fifty-one of the Real Property Actions and Proceedings Law.						
Preservation of existing requirements of law	No language	No language	No language	No language	Same as New Paltz.	No action shall be maintainable and no judgment of possession shall be entered for housing accommodations pursuant to this article, unless the landlord has complied with any and all applicable laws governing such action or proceeding and has complied with any and all applicable laws governing notice to tenants including, without limitation, the manner and the time of service of such notice and the contents of such notice.	Same as New Paltz
Waiver of Rights Void	No language.	No language	No language	No language	No language	Any agreement by a tenant heretofore or hereinafter entered into in a written lease or other rental agreement waiving or modifying their rights as set forth in this article shall be void	Same as New Paltz

Topic	Newburgh	Hudson	Poughkeepsie	Kingston	Albany	New Paltz	NYS
						as contrary to public policy.	

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

DEBORAH PUSATERE, ROSSWORKS LLC, JOHN
C. THOMAS, JR., GUS LAZIDES and GGJ
CORPORATION,

SUMMONS

Plaintiffs,

-against

Index No.:

THE CITY OF ALBANY, KATHY M. SHEEHAN in
her capacity as Mayor of the City of Albany, THE
COMMON COUNCIL OF THE CITY OF ALBANY,
and the ALBANY CITY COURT,

Defendants.

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue in Albany County is that the defendants maintain their principal offices there, and the legislative action complained of occurred there.

Dated: Troy, New York
November 16, 2021

Respectfully submitted,

E. STEWART JONES HACKER MURPHY, LLP

By:



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STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

DEBORAH PUSATERE, ROSSWORKS LLC, JOHN
C. THOMAS, JR., GUS LAZIDES and GGJ
CORPORATION,

Plaintiffs,

-against

VERIFIED COMPLAINT

Index No.:

THE CITY OF ALBANY, KATHY M. SHEEHAN in
her capacity as Mayor of the City of Albany, THE
COMMON COUNCIL OF THE CITY OF ALBANY,
and the ALBANY CITY COURT,

Defendants.

Plaintiffs Deborah Pusatere, Rossworks LLC, John C. Thomas, Jr., Gus Lazides and GGJ Corporation (collectively, the “Plaintiffs”), as and for a Complaint against the above-captioned defendants, allege as follows:

1. This is an action for a declaratory judgment and permanent injunctive relief. The plaintiffs seek a declaration that City of Albany Local Law F of 2021 (“Local Law F,” **Exhibit A** hereto) is preempted by the N.Y. Emergency Tenant Protection Act,¹ the N.Y. Local Emergency Housing Rent Control Act,² the N.Y. Emergency Housing Rent Control Law,³ Article 7 of the N.Y. Real Property Law, General Obligations Law §5-703(2), and Article 7 of the N.Y. Real Property Actions and Proceedings Law.

¹ N.Y. Unconsolidated Laws Title 23, Chapter 5.

² N.Y. Unconsolidated Laws Title 23, Chapter 4.

³ N.Y. Unconsolidated Laws Title 23, Chapter 3.

2. The Plaintiffs also seek a declaration that Local Law F is void and should be permanently enjoined for the separate and distinct reason that it is an unlawful, *ultra vires* exercise of municipal police power that unduly interferes with the Plaintiffs' and other landlords' property rights under well-settled New York doctrine concerning the limits of municipal authority.

3. The Plaintiffs also seek a declaration that Local Law F is void and should be permanently enjoined for the separate and distinct reasons that it is: unconstitutional in violation of the "takings" clauses of the Fifth Fourteenth Amendment of the United States Constitution (as incorporated by the Fourteenth Amendment) and Article I, §7 of the New York State Constitution; in violation of the contracts clause in Article I, §10 of the United States Constitution; and unconstitutionally vague in part in violation of the due process clauses of the Fourteenth Amendment of the United States Constitution and Article I, §6 of the New York State Constitution.

THE PARTIES

4. Plaintiff Deborah Pusatere is a natural person residing at 749 Tanner Road, Clifton Park, N.Y. Ms. Pusatere is the fee simple owner of premises located at multiple parcels on Clinton Avenue, in Albany, N.Y., having street address numbers of 392, 601, 609 and 611. Each of those premises are improved by buildings. Ms. Pusatere, as landlord, rents each of those premises to tenants pursuant to written leases, in exchange for rent, for fixed periods of time. Ms. Pusatere does not reside at any of said premises. Each of said premises are "housing accommodations" within the meaning of Local Law F §30-325(A), and Ms. Pusatere is a "landlord" within the meaning of Local Law F §30-325(B).

5. Plaintiff Rossworks LLC ("Rossworks") is a New York domestic limited liability company with a principal place of business at 749 Tanner Road, Clifton Park, N.Y. Rossworks is the fee simple owner of premises located at 95 Clinton Avenue and 355 Clinton Avenue, in Albany,

N.Y. 12206. Each of those premises are improved by buildings. Rossworks, as landlord, rents each of those premises to tenants pursuant to written leases, in exchange for rent, for fixed periods of time. Rossworks does not reside at any of said premises. Each of said premises are “housing accommodations” within the meaning of Local Law F §30-325(A), and Rossworks is a “landlord” within the meaning of Local Law F §30-325(B).

6. Plaintiff John C. Thomas, Jr. is a natural person residing at 107 Jefferson Road, Glenmont, N.Y. Mr. Thomas is the fee simple owner of premises located at 10 Albion Avenue, Albany, N.Y. 12209. Those premises are improved by a building. Mr. Thomas, as landlord, rents those premises to tenants pursuant to written leases, in exchange for rent, for fixed periods of time. Mr. Thomas does not reside at said premises. Said premises is a “housing accommodation” within the meaning of Local Law F §30-325(A), and Mr. Thomas is a “landlord” within the meaning of Local Law F §30-325(B).

7. Plaintiff Gus Lazides is a natural person residing at 268-93d Street, Brooklyn, N.Y. Mr. Lazides is the fee simple owner of premises located at 431 Clinton Avenue, Albany, N.Y. 12206. Those premises are improved by a building. Mr. Lazides, as landlord, rents those premises to tenants pursuant to written leases, in exchange for rent, for fixed periods of time. Mr. Lazides does not reside at said premises. Said premises is a “housing accommodation” within the meaning of Local Law F §30-325(A), and Mr. Lazides is a “landlord” within the meaning of Local Law F §30-325(B).

8. Plaintiff GGJ Corporation (“GGJ”) is a New York domestic business corporation with a principal place of business at 431 Clinton Avenue, Albany, N.Y. GGJ is the fee simple owner of premises located at 442 Clinton Avenue, Albany, N.Y. 12206. Those premises are improved by a building. GGJ, as landlord, rents those premises to tenants pursuant to written

leases, in exchange for rent, for fixed periods of time. GGJ does not reside at said premises. Said premises is a “housing accommodation” within the meaning of Local Law F §30-325(A), and GGJ is a “landlord” within the meaning of Local Law F §30-325(B).

9. Each and every one of the foregoing Plaintiffs owned their respective premises (identified above) both prior and subsequent to the adoption of Local Law F, and have tenancies in effect there that began before the adoption of Local Law F.

10. As landlords of housing accommodations in the City of Albany, each and every one of the foregoing Plaintiffs are directly impacted by Local Law F, and are injured by its preempted, unconstitutional and illegal restrictions discussed below. As more fully illustrated in the allegations below, the Plaintiffs are plainly impacted by Local Law F in a real and concrete way that is different from the public at large.

11. The defendant City of Albany (“Albany”) is a New York municipal corporation with a principal governmental office at 24 Eagle Street, Albany, N.Y. 12207.

12. The defendant Kathy M. Sheehan is the Mayor of the City of Albany, and signed Local Law F into law in her capacity as Mayor.

13. The defendant Common Council of the City of Albany is a “common council” of and for the City of Albany, organized and operating pursuant to the New York General City Law, and with the powers and duties specified therein. The Common Council’s principal location is 24 Eagle Street, Albany, New York. The Common Council adopted Local Law F by a legislative vote held on July 19, 2021.

14. The defendant Albany City Court is a city court organized and operating in accordance with the New York Uniform City Court Act, with a principal location at 24 Eagle

Street, Albany, New York. Local Law F appoints the Albany City Court with the duty of carrying out and applying the provisions of Local Law F.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

A. The Enactment of City of Albany Local Law F of 2021

15. On July 19, 2021, the Albany Common Council (Albany's legislative body) voted to adopt *Local Law F of 2021* (previously defined herein as "Local Law F.").

16. Thereafter, Albany Mayor Kathy Sheehan signed Local Law F into law on August 6, 2021.

17. A true and accurate copy of Local Law F is annexed hereto as **Exhibit A**.

18. Local Law F purports to add a new Article XIII to the Albany City Court Act, which is codified in Part I, Chapter 30 of the Code of the City of Albany. The sections in the new Article XIII are numbered §30-324 through §30-331. (See Exhibit A, pg. 1 – 6.)

19. The purported purpose of these provisions is to bar landlords in Albany from evicting tenants without "good cause." Section 30-377 provides:

Necessity for good cause.

No landlord shall, by action to evict or to recover possession, by exclusion from possession, by failure to renew any lease, or otherwise, remove any tenant from any housing accommodation except for good cause as defined in [§30-328] of this article.

20. The definition of "good cause" in §30-328 substantially alters the substantive rights and obligations of landlords and tenants in Albany in ways discussed further below. These interferences are unlawful because they are preempted by a host of interlocking New York State laws regulating landlord-tenant relations, and limiting localities' roles in regulating rent and evictions. Local Law F also runs afoul of several provisions in the United States and New York State Constitutions.

B. New York State's Legislative and Regulatory Scheme.

21. Over the years, New York State has enacted a comprehensive legislative and regulatory scheme concerning landlord-tenant relations, rent and eviction control, and the role of localities in these areas. In relevant part, these authorities are found in the following spaces: (i) Title 23 of the Unconsolidated Laws of the State of New York; (ii) Article 7 of the N.Y. Real Property Law; (iii) Article 7 of the N.Y. Real Property Actions and Proceedings Law (“RPAPL”); and (iv) Article V of the General Obligations Law.

(i) Title 23 of the Unconsolidated Laws

22. Several important rent and eviction control laws are found in Title 23 of the Unconsolidated Laws, three portions of which are significant to this case:

- The Emergency Housing and Rent Control Law (Chapter 3, §§8581 - 8596), a true and accurate copy of which is annexed hereto as **Exhibit B**;
- The Local Emergency Rent Control Act (Chapter 4, §§8602 – 8615), a true and accurate copy of which is annexed hereto as **Exhibit C**; and
- The Emergency Tenant Protection Act (Chapter 5, §§8622 – 8634), a true and accurate copy of which is annexed hereto as **Exhibit D**.

23. Each of those laws authorize very particular—and exclusive—kinds of rental and eviction regulation by state and local authorities.

(a) The Emergency Housing and Rent Control Law (1946 - Present)

24. The *Emergency Housing and Rent Control Law* (Exhibit B), initially adopted in 1946 and amended from time to time since then, establishes one particular way in which “maximum rents” could be established in New York State.

25. Specifically, this law authorized a Temporary State Housing Rent Commission (“TSHRC”) to set “maximum rents” in certain housing accommodations that were previously rent-

controlled as of March 1, 1950, under a prior, World War II-era federal law and under certain World War II-era local laws in New York City and Buffalo. (See Exhibit B §§8583 and 8584.)

26. The Emergency Housing and Rent Control Law specified particular methodologies by which the TSHRC could set the maximum rents (*id.* §8584), and established a form of special proceeding in which a landlord could appeal his or her maximum rent to the TSHRC (*id.* §8588) and, if unsuccessful there, seek judicial review in Supreme Court pursuant to CPLR Article 78 (*id.* §8589).

27. The Emergency Housing and Rent Control Law also created certain tenant protections. For housing accommodations that are rent-controlled under this law, a landlord generally may not evict the tenant (even at the end of the lease term) so long as the tenant is paying the maximum rent. (*Id.* §8585[1].) There are certain other instances in which the landlord may evict a rent-paying tenant, such as if the tenant is creating a nuisance, damaging the home, or the tenancy is illegal, or the tenant unreasonably refuses to enter into a written lease, etc. (*Id.*) The landlord, however, could apply to the TSHRC for leave to evict a tenant for other reasons not specified in the legislation. (*Id.* §8585[2].)

28. This legislative scheme, conspicuously and by design, entrusted rent and eviction controls to *the State*. In fact, §8594 of the Emergency Housing Rent Control Law *expressly preempts* localities from regulating in this area:

...[U]nless otherwise provided herein, no municipality shall have the power to adopt local laws with respect to the registration or control of rents or evictions or otherwise to the subject matter of this act.

(*Id.* §8594[4][emphasis added].)

29. Moreover, the Declaration and Findings of the Emergency Housing and Rent Control Law specifically states that this law was a targeted measure intended to assist particular

covered rent-control tenancies, while generally preserving a “state policy” of “normal free market bargaining between landlord and tenant” for those tenancies outside the coverage of this law:

[T]he transition from regulation to a ***normal market of free bargaining between landlord and tenant, while still the objective of state policy***, must be administered with due regard for [housing emergencies]; that in order to prevent uncertainty, hardship and declaration, ***the provisions of this act*** are declared to be necessary and designed to protect the public health, safety and general welfare.

(Exhibit B §8581[1][emphasis added].)

30. By virtue of the foregoing, the Emergency Housing and Rent Control Law preempted localities from interfering with free-market bargaining between landlord and tenant, unless and until the State authorized it through subsequent State legislation. The law reflects an overarching state policy of free market bargaining between landlord and tenants and, by its express preemption language in §8594, prohibits local interference with the landlord-tenant relationship except as the *State* may from time to time allow in other enactments.⁴ As discussed immediately below, the State has passed some additional enactments, *none* of which authorize what Albany purports to do in Local Law F.

(b) The Local Emergency Housing Rent Control Act (1962-Present)

31. The State did build on the Emergency Housing and Rent Control Law with new legislation in the *Local Emergency Housing Rent Control Act* (Exhibit C), initially adopted in 1962 and amended from time to time since then.

⁴ Upon information and belief, New York’s rent-regulated housing inventory once covered by the Emergency Housing and Rent Control Law (Exhibit B) was largely, subsequently subsumed by the rent control and rent stabilization laws passed in subsequent decades, annexed hereto as Exhibits C and D (and discussed further below). But, importantly, the Legislature has never repealed the Emergency Housing and Rent Control Law (Exhibit B) or its express preemption clause in §8594.

32. In the Local Emergency Housing Rent Control Act, the State granted New York City—and only New York City—the power to adopt local laws concerning rent and eviction control. More particularly, the Act provides that in cities “having a population of one million or more,” the “regulation and control of residential rents and evictions” shall “be a matter for local determination.” (Exhibit C §8603; *see also* §§8605 and 8606.) To date, New York City is the only city in the State with a population of one million persons or more.

33. Generally speaking, the Local Housing Rent Control Act permits New York City to “adopt and amend local laws or ordinances in respect of the regulation and control of residential rents” and “the regulation of evictions.” (Exhibit C §8605.)

34. By granting cities with a population of one million or more (*i.e.*, New York City), the power to regulate rent and eviction control locally, the State impliedly *withheld* that power from all municipalities with populations below one million, including the City of Albany.

35. The Local Emergency Housing Rent Control Act’s legislative findings express the continued state policy of “free bargaining between landlord and tenant,” and note that provisions of the Act are a targeted attempt to balance that objective against local concerns:

[T]he transition to a normal market of free bargaining between landlord and tenant, while still the objective of state policy, must be administered with due regard for [a housing emergency]; and that the policy herein expressed should now be administered locally within cities having a population of one million or more by an agency of the city itself.

(Exhibit C §8602.)

36. In the Local Emergency Housing Rent Control Act, the State did *not* authorize localities with a population below one million to disturb the state policy of free bargaining between landlord and tenant. The Local Housing Rent Control Act reflects continued Legislative judgment

that the interests of localities with populations of less than one million do not warrant disruption of this State policy of free market bargaining through local regulation.

- (c) The Emergency Tenant Protection Act (1974 – Present, with substantial amendments in 2019).

37. In 1974 the State adopted the Emergency Tenant Protection Act (Exhibit D) which it has amended from time to time, most substantially in 2019.

38. The Emergency Tenant Protection Act authorizes—in a very particular way—another type of rent and eviction regulation in localities, colloquially known as “rent stabilization.”

39. Broadly speaking, the type of regulation that is often called “rent stabilization,” entails the formation of a special commission at the local level to set rent and eviction restrictions, from which landlords and tenants may seek variances. The commission is made up of appointed individuals, some of whom represent tenant interests, some of whom represent landlord interests, and some of whom have expertise in the economics of real estate.

40. Before 2019, the Emergency Tenant Protection Act only allowed cities with a population of one million or more (*i.e.*, New York City) to adopt rent stabilization programs.

41. However, the 2019 amendments to the Emergency Tenant Protection Act opened rent stabilization options to all municipalities in New York subject to certain important prerequisites and limitations described below. It is clear from the text of the law that the establishment of a rent stabilization scheme under the Emergency Tenant Protection Act is the only way that cities with a population of one million or less (such as Albany) are authorized to regulate rental rates, evictions or the prolonging of tenancies. This is a core reason why Albany Local Law F is preempted—it eschews the Emergency Tenant Protection Act for a different approach entirely that the State has never authorized.

42. First, under the Emergency Tenant Protection Act, a city with a population below one million (such as Albany) may only invoke local regulation if the city declares the “existence of a public emergency requiring the regulation of residential rents [].” (Exhibit D §8623[a].) Moreover, the city can only declare such an emergency if there is a scarcity of residential rental units available, specifically a vacancy rate of 5% or less:

A declaration of emergency may be made as to any class of housing accommodation if the vacancy rate for the housing accommodations in such class within such municipality is not in excess of five percent [].

(*Id.*) Moreover, the city must declare that the emergency is over once the vacancy rate exceeds 5%. (*Id.* §8623[b].)

43. Second, if the city does declare an emergency, the city government itself does not get to regulate rents, evictions or the prolonging of tenancies—instead, the *county* in which the city is located must create a nine-member “rent guidelines board” to establish rent guidelines, and enforcement of the rent and eviction restrictions is handled by the New York State Department of Housing and Community Renewal. (Exhibit D §8624[a].)

44. The county legislature nominates the nine members of the rent guidelines board, and the NYS Department of Housing and Community Renewal approves and appoints them. (*Id.*) The law also specifies that the nine rent guidelines board members must be made up of the following:

- Two members who are representative of tenants;
- Two members who are representative of property owners; and
- Five “public members,” who must have at least five years experience in either finance, economics or housing.

(*Id.*)

45. This nine-member board, as a body, is empowered to “establish annual guidelines for rent adjustments.” (Exhibit D §8624[b].) In doing so, the board must take a variety of factors into consideration, such as the economic condition of the residential real estate industry in the affected area, real estate taxes, prevalent operating maintenance costs, insurance costs and fees, financing costs, overall housing supply and vacancy rates, and data from cost of living indices. (*Id.*) The board may promulgate different rental guidelines for different “zones or jurisdictions” of the county, based on these criteria. (*Id.*)

46. When the board establishes its annual rent guidelines, it must issue findings and publish the “maximum rate or rates of rent adjustment [].” (*Id.*) This gives landlords and tenants alike prospective notice of the limits on rental increases (which, as discussed below, is markedly different from the unlawful approach adopted by Albany, which leaves the landlord uncertain of whether his/or her most recent rental increase was allowed until he or she sues for eviction and a judge decides).

47. Generally, a landlord may not charge rent in excess of the maximum rent established by the rent guidelines board (Exhibit D §8626[a]), although there are exceptions for cases in which there has been a substantial modification to the dwelling space of the building, substantial rehabilitation of the building, or certain major capital improvements in the building (*id.* §8626[d]).

48. A landlord may apply to the NYS Division of Housing and Community Renewal for a variance from the maximum rent based on individual circumstances. (Exhibit D §8629[a].) Similarly, a tenant may apply to the NYS Division of Housing and Community Renewal for a downward adjustment of the maximum rent for his or her unit based on individual circumstances. (*Id.* §8629[b].)

49. The Act authorizes the NYS Division of Housing and Community Renewal to promulgate regulations concerning its oversight of county rent guidelines boards and its handling of variance applications from landlords and tenants. (Exhibit D §8630.) The Division has, in fact, developed extensive regulations for this purpose. (See 9 NYCRR Subtitle S, Chapter VIII.)

50. The Emergency Tenant Protection Act, like the prior enactments discussed above, reiterates the “normal market of free bargaining between landlord and tenant” as an objective of state policy, and proffers that the Act’s rules are a targeted, authorized departure from that objective:

[T]he transition from regulation to a normal market of free bargaining between landlord and tenant, while the ultimate objective of state policy, must take place with due regard for [a declared housing emergency]; and that the policy herein expressed shall be subject to determination of the existence of a public emergency requiring the regulation of residential rates within any city, town or village by the local legislative of such city, town or village.

(Exhibit D §8622 [emphasis added].)

51. The Emergency Tenant Protection Act did not authorize cities to regulate rent in the absence of an emergency declaration, nor did it authorize cities to regulate rent in any way other than the process set forth in the Act—namely, oversight by a nine-member rent guidelines board and the NYS Division of Housing and Community Renewal.

(ii) Article 7 of the Real Property Law

52. Much of New York’s regulatory scheme concerning landlord and tenant relations is also found in Article 7 of the N.Y. Real Property Law. Although the rules in Article 7 are extensive, certain of them merit particular attention here for their conflicts with Local Law F.

53. Among other things, Real Property Law §226-c provides that when a landlord intends to offer to renew a tenancy with a rent increase of 5% or more, or if the landlord “does not intend to renew the tenancy,” the landlord must give the tenant timely written notice of this

decision. If the landlord gives the required notice, he/she may increase the rent as stated, or not renew the tenancy at its conclusion.

54. Among other things, Real Property Law §228 provides that a landlord may terminate a “tenancy at will” (one entered into without a specific duration) or a “tenancy at sufferance” (one created by a tenant’s hold over after the expiration of a lease term) by giving “written notice of not less than thirty days.” The section further provides that “At the expiration of thirty days after the service of such notice, the landlord may re-enter, maintain an action to recover possession, or proceed, in the manner prescribed by law, to remove the tenant, without further or other notice to quit.”

55. Among other things, Real Property Law §232-c provides that when a tenant whose term is longer than one month holds over after the expiration of such term, “the landlord may proceed, in any manner permitted by law, to remove the tenant.”

(iii) General Obligations Law §5-703

56. General Obligations Law §5-703(1) provides that “An estate or interest in real property, other than a lease for a term not exceeding one year, or any trust or power, over or concerning real property, or in any manner relating thereto, cannot be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the person creating, granting, assigning, surrendering or declaring the same, or by his lawful agent, thereunto authorized by writing.”

57. General Obligations Law §5-703(2) provides that “A contract for the leasing for a longer period than one year, or for the sale, of any real property, or an interest therein, is void unless the contract or some note or memorandum thereof, expressing the consideration, is in

writing, subscribed by the party to be charged, or by his lawful agent thereunto authorized by writing.”

(iv) Article 7 of the Real Property Actions and Proceedings Law (RPAPL).

58. Article 7 of the Real Property Actions and Proceedings Law sets forth a number of a landlord’s remedies for recovering possession of real property. It also explicitly provides that certain occurrences are “grounds” for evicting a tenant as a matter of law, such as when:

- a. “The tenant continues in possession of any portion of the premises after the expiration of his term without the permission of the landlord...” (RPAPL §711[1]);
or
- b. “The tenant has defaulted in the payment of rent, pursuant to the agreement under which the premises are held, and a written demand of the rent has been made with at least fourteen days’ notice...” (RPAPL §711[2]); or
- c. “The tenant, in a city, defaults in the payment,” of taxes or assessments that he/she has agreed to pay, “for sixty days after the same shall be payable” (RPAPL §711[4]); or
- d. “The tenant, under a lease term of three years or less, has during the term” been adjudicated bankrupt. (RPAPL §711[4].)

C. Albany Local Law F’s Invasion of Preempted Space and Other Constitutional Infringements.

59. The City of Albany has not declared a housing emergency under the Emergency Tenant Protection Act (Exhibit D).

60. The City of Albany has not completed a vacancy study to determine whether the residential rental vacancy rate within the city is 5% or less, as required to declare a housing emergency under the Emergency Tenant Protection Act (Exhibit D).

61. No municipality within the County of Albany has declared a housing emergency under the Emergency Tenant Protection Act (Exhibit D).

62. Consequently, the County of Albany has not established a rent guidelines board under the Emergency Tenant Protection Act (Exhibit D).

63. Through adopting Local Law F (Exhibit A), Albany has attempted to circumvent the regulatory scheme prescribed in the Emergency Tenant Protection Act, and regulate rent, evictions and the conditions and durations of tenancies in a way that is not authorized by that Act, and which otherwise conflicts with the overall State regulatory scheme described above.

(i) Purported Right of Ongoing, Perpetual Tenancy at the Tenant's Election

64. As noted, Local Law F purports to prohibit a landlord from evicting a tenant “except for good cause” (as defined in that law).

65. Local Law F’s definition of “good cause” appears in §30-328. Importantly, the “good cause” definition excludes one of the most common reasons for evicting a tenant: the expiration of the lease term. The preamble language of that section prohibits evictions absent “good cause” “notwithstanding that the tenant has no written lease or that the lease or other rental agreement has expired or otherwise terminated [].”

66. Moreover, the list of “good cause[s]” that appear below the preamble in subdivisions (A)(1) through (A)(10) do not include expiration or termination of a lease or tenancy as allowable reasons for an eviction.

67. Furthermore, §30-328(A)(2) expressly excludes at tenant’s refusal to surrender the premises as “good cause” for eviction. More particularly, it defines one good cause for eviction as follows: “The tenant is violating a reasonable obligation of their tenancy, *other than the*

obligation to surrender possession” (emphasis added). Inversely, the tenant’s breach of its obligation to surrender possession is, according to Local Law F, not good cause for eviction.

68. There are many reasons why a landlord might not want to renew an expiring lease with a tenant (or might want to ask a month-to-month tenant to vacate). For example: another person might be willing to pay higher rent than the current tenant; the landlord might prefer to rent the space to a friend; the tenant may be taking poor care of the property; perhaps the landlord and tenant simply do not get along; or, maybe the landlord would rather convert the building into a commercial use. Even though the landlord is the owner of the property and would traditionally have the right to decline the continuation of a tenancy (for any of these reasons or innumerable others), Local Law F purports to strip the landlord of that right, and grant the *tenant* a presumptive right to extend the tenancy perpetually (unless some other “good cause” for eviction happens to arise).

69. One type of “good cause” for eviction that Local Law F does include, in §30-328(A)(10), is the tenant’s refusal “in bad faith to enter into a written lease” when the landlord offers one “in good faith.” In other words, if the landlord proposes a new written lease to a tenant who’s lease is expiring, or to a month-to-month tenant who had no prior lease in the first place, only the tenant’s “bad faith” refusal to sign it is “good cause” for eviction. That section is of no help to landlords for at least two reasons.

70. First, it requires the landlord to *offer* the tenant a new lease even if the landlord does not want to. Here again, a landlord might want to end an expiring or month-to-month tenancy for any number of reasons (*i.e.*, a preference to rent to an acquaintance or someone willing to pay higher rent, or converting to a commercial use, *etc.*), but under Local Law F, the landlord cannot

do that—he or she must offer a lease (continued tenancy) and can only evict if the tenant refuses to sign it in “bad faith.”

71. Second, §30-328(A)(10)(c) further restricts the landlord’s traditional rights, as property owner, by specifying that the new lease the landlord offers cannot “substantially alter the terms of any existing lease.” That is, not only does Local Law F purportedly compel the landlord offer a new lease to a tenant (despite, perhaps, preferring not to), it “substantially” locks the landlord into the terms of the *existing* lease it negotiated with the tenant, thereby substantially reducing the landlord’s right to negotiate the terms of the continued tenancy. A landlord desiring to pivot to a “no pets” or “no smoking” lease, for example, may be denied the ability to do so.

72. These restrictions on the Plaintiffs’ ability to decline renewal of a tenancy, or to end a month-to-month tenancy on due notice, are expressly preempted by §8594(4) of the Emergency Housing Rent Control Act (Exhibit B), which provides that “no municipality shall have the power to adopt local laws with respect to the registration or control of rents or evictions [].”

73. These restrictions on the Plaintiffs’ ability to decline renewal of a tenancy, or to end a month-to-month tenancy on due notice, are also preempted by the whole of the State laws described above (*i.e.*, “field preemption”). The Emergency Housing and Rent Control Law (Exhibit B), the Local Emergency Rent Control Act (Exhibit C) and the Emergency Tenant Protection Act (Exhibit D) collectively espouse a State policy of “a normal market of free bargaining between landlord and tenant,” which may only be restrained by localities in the manner authorized in those laws. Local Law F’s approach—a right of perpetual tenancy as a matter of local law in terms not specified in the State laws—is not authorized by those State laws.

74. These restrictions on the Plaintiffs' ability to decline renewal of a tenancy, or to end a month-to-month tenancy on due notice, also conflict with, and are thus preempted by, various other State laws. For example:

- a. They conflict with General Obligations Law §5-703, which provide that an interest in real property exceeding one year cannot be created unless expressly granted by a landlord in writing. Local Law F purports to expand the tenant's leasehold interest in perpetuity (unless the tenant happens to commit some other "good cause" offense such as creating a nuisance) despite the landlord's lack of consent.
- b. They conflict with Real Property Law §226-c, which specifically allows a landlord who "does not intend to renew a tenancy" to elect non-renewal by giving the tenant timely written notice.
- c. They conflict with Real Property Law §228, which expressly grants landlords a right to terminate tenancies at will (without a written lease) or at sufferance (after expiration of a lease) by giving 30 days notice.
- d. They conflict with RPAPL §711(1), which expressly grants the landlord a remedy of eviction against a "tenant [who] continues in possession of any portion of the premises after the expiration of his term without the permission of the landlord..." (RPAPL §711[1])

75. The foregoing illegal and preempted restrictions on the Plaintiffs' ability to decline renewal of a tenancy, or to end a month-to-month tenancy unlawfully, restrict and impair the Plaintiffs' property rights.

76. These provisions purporting are also void and as being ultra vires and in excess of the City's police power as more fully set forth below.

77. These provisions purporting to circumscribe a landlord's right to decline renewal of a tenancy (or terminate a month-to-month tenancy) are also unconstitutional and void as both physical and regulatory takings without just compensation in violation of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, §7 of the New York State Constitution, as further set forth below.

78. These provisions purporting to circumscribe a landlord's right to decline renewal of a tenancy (or terminate a month-to-month tenancy) are also unconstitutional and void for their impairment of contractual rights and obligations in violation of Article I, §10 of the United States Constitution, as set forth below.

(ii) Purported Regulation of Rents and Rent Increases

79. Local Law F also purports to regulate a landlord's ability to increase rent from one tenancy cycle to the next.

80. Specifically, Local Law F §30-328 recognizes a tenant's failure to pay rent is "good cause" for eviction, *but only if*:

the rent due and owing, or any part thereof, **did not result from a rent increase or pattern of rent increases** which, regardless of the tenant's prior consent, if any, **is unconscionable or imposed for the purpose of circumventing the intent of this article**. In determining whether all or part of the rent due and owing is the result of an unconscionable rent increase or pattern of rent increases, the Court may consider, among other factors, i) the rate of the increase relative to the tenant's ability to afford said increase, ii) improvements made to the subject unit or common areas serving said unit, iii) whether the increase was precipitated by the tenant engaging in the activity described at section 223-b(1(a)-(c) of the Real Property Actions and Proceedings Law, iv) significant market changes relevant to the subject unit, and v) the condition of the unit or common areas serving the unit, and it shall be a **rebuttable presumption** that the rent for a dwelling not protected by rent regulation is unconscionable or imposed for the purpose of circumventing the intent of this article if said rent has increased in any calendar year by a percentage exceeding **five percent**.

(Exhibit A, §30-328[A][1][emphasis added]; see also §30-328[e][5].)

81. This purports to regulate the Plaintiffs' (and all landlords') ability to increase rent. It "presumptively" bars a rent increase of more than 5% (requiring the landlord to rebut that presumption in court), and also vaguely prohibits rent increases made "for the purpose of circumventing the intent of this article" (whatever that is supposed to mean).

82. This restriction on rent increases is expressly preempted by §8594(4) of the Emergency Housing Rent Control Act (Exhibit B), which provides that "no municipality shall have the power to adopt local laws with respect to the registration or control of rents or evictions []."

83. This restriction on rent increases is also preempted by the whole of the State laws described above (*i.e.*, "field preemption"). The Emergency Housing and Rent Control Law (Exhibit B), the Local Emergency Rent Control Law (Exhibit C) and the Emergency Tenant Protection Act (Exhibit D) collectively espouse a State policy of "a normal market of free bargaining between landlord and tenant," which may only be restrained by localities in the manner authorized in those laws.

84. The Emergency Tenant Protection Act is (Exhibit D) specifies what is clearly intended to be the exclusive form of rent regulation available to localities with fewer than 1 million occupants. That Act allows a city to declare an "emergency," but only if there is a vacancy rate of 5% or less in the city. And even when that occurs, the Act requires that the rent guidelines be promulgated by a balanced, nine-member, *County*-administered "rent guidelines board," made up of two tenant representatives, two property owner representatives, and five public members with "at least five years experience in either finance, economics or housing" (all of which is subject to review by a State agency, the NYS Division of Housing and Community Renewal). The

pervasiveness and specificity of this scheme implies that cities cannot make an end run around these procedures and adopt local laws that unilaterally presume that a rent increase of more than 5% is unlawful, or which allow one person (a city court judge) to decide on the appropriateness of rent increases on a case by case basis, instead of leaving them to a 9-member commission of experts prospectively.

85. This is yet another antithetical feature of Local Law F. Obviously one of the intended benefits of the Tenant Emergency Protection Act's endorsement of the 9-member "rent guidelines committee" is to give landlords and tenants advance notice of what is allowable rent, so that they can make their leases accordingly or prospectively seek variances from the NYS Division of Housing and Community Renewal. Local Law F thwarts this "advance notice" benefit by, instead, inefficiently leaving the legality of a rent increase unknowable until the issue comes before the judge in an eviction case.

86. Local Law F's restrictions on rent increases also expressly conflicts with other State laws and is preempted for that additional reason. For example, it conflicts with:

- a. Real Property Law §226-c, which specifically allows a landlord to offer a tenancy renewal with "a rent increase of 5% or more" if the landlord gives the tenant adequate written notice of the increase. Local Law F's presumption that a rent increase of more than 5% is unlawful is directly at odds with this statute; and
- b. RPAPL §711(2), which expressly grants the landlord a right to eviction if "The tenant has defaulted in the payment of rent, *pursuant to the agreement* under which the premises are held" (emphasis added).

87. The foregoing illegal and preempted restrictions on the Plaintiffs' ability to adjust rent unlawfully restrict and impair the Plaintiffs' property rights.

88. These provisions on restrictions on the Plaintiffs' ability to adjust rent are also void and as being ultra vires and in excess of the City's police power as more fully set forth below.

89. These restrictions on the Plaintiffs' ability to adjust rent are also unconstitutional and void as both physical and regulatory takings without just compensation in violation of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, §7 of the New York State Constitution, as further set forth below.

90. These restrictions on the Plaintiffs' ability to adjust rent are also unconstitutional and void for their impairment of contractual rights and obligations in violation of Article I, §10 of the United States Constitution, as set forth below.

(iii) Prohibition Against Substantially Altering a Lease and/or Limiting of Lease Terms to Nuisance Conditions.

91. Another offensive feature of Local Law F is §30-328(A)(10)(c)(ii) thereof, which purports to prohibit a landlord from "substantially alter[ing]" the terms of a lease when negotiating a renewal.

92. Specifically, as noted, pursuant to §30-328(A)(10), a tenant's "bad faith" refusal to enter into a written lease offered by the landlord is classified as "good cause" for eviction, but subject to several limitations including that the landlord's proposed lease purportedly cannot "substantially alter the terms of any existing lease." (See Exhibit A §§30-328[A][10][c][ii].)

93. The net effect of this provision is that when a tenant's lease term is expiring, the landlord is deprived of, or unreasonably limited in, his or her right as property owner to negotiate for changes to the lease terms.

94. Relatedly, Local Law F, §30-328(A)(10)(c)(1) provides that eviction of a tenant for failure to sign a lease offered by the landlord is not good cause for eviction if the lease "mandate[s]

or proscribes activities not rationally related to the regulation of activities which could create a nuisance at the property or cause discomfort to tenants or occupants....”

95. There is more to residential leases than establishing the rental rate and the lease duration (which have been separately addressed above), and to avoiding nuisances. From lease term to lease term, a landlord may have a desire or need to bargain for other common terms, such as terms requiring the tenant to maintain certain thresholds of renter’s insurance, terms restricting the tenant’s right to make alterations or improvements to the property, terms concerning the tenant’s responsibility for utilities, terms allocating the responsibility of maintenance and repair between the landlord and tenant, terms concerning the allowance or disallowance of pets, and terms concerning the allowance or disallowance of smoking, among other things. From one lease term to the next the landlord may learn from experience that it is wise to add any of these types of terms to a renewal lease, or to bargain for changes in these types of terms in a renewal lease (such as changing the amount of renter’s insurance expected, or distinguishing between types of allowed or disallowed pets, for example).

96. Section 30-328(A)(10)(c)(ii)’s putative prohibition against “substantially altering” a lease, and §30-328(A)(10)(c)(i)’s prohibition against lease terms unrelated to controlling nuisances, would bar or drastically limit a landlord’s ability to bargain for common and customary terms such as those recited in the preceding paragraph. This prohibition locks the landlord into “substantially” the form of lease that it made with the tenant during the tenancy that happened to be in place when Local Law F became effective.

97. These purported prohibitions are expressly preempted by §8594(4) of the Emergency Housing Rent Control Act (Exhibit B), which provides that “no municipality shall

have the power to adopt local laws with respect to the registration or control of rents or evictions
[].”

98. These purported prohibitions are also preempted by the whole of the State laws described above (*i.e.*, “field preemption”). The Emergency Housing and Rent Control Law (Exhibit B), the Local Emergency Rent Control Law (Exhibit C) and the Emergency Tenant Protection Act (Exhibit D) collectively espouse a State policy of “a normal market of free bargaining between landlord and tenant,” which may only be restrained by localities in the manner authorized in those laws. Local Law F’s approach—including its prohibition against substantially altering existing leases—is not authorized by those State laws.

99. These purported prohibitions are also in conflict with, and is thus preempted by General Obligations Law §5-703, which provide that an interest in real property exceeding one year cannot be created unless expressly granted by a landlord in writing. Local Law F’s prohibition against substantially altering the terms of an “any existing lease” extends the terms of the existing lease, in substantial part, indefinitely beyond one year without the landlord’s consent.

100. These purported prohibitions are also void and as being ultra vires and in excess of the City’s police power as more fully set forth below.

101. These purported prohibitions are also unconstitutional and void for their impairment of contractual rights and obligations in violation of Article I, §10 of the United States Constitution, as set forth below.

102. These purported prohibitions also constitute both a physical and a regulatory taking without just compensation in violation of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, §7 of the New York State Constitution.

AS AND FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment and Injunction – Express Preemption)

103. The Plaintiffs re-state, re-allege and incorporate by reference each of the allegations set forth in all of the preceding paragraphs of this Complaint, as though fully set forth in this paragraph.

104. The entirety of Local Law F is expressly preempted by §8594 of the Emergency Housing Rent Control Law (Exhibit B), which provides: “[U]nless otherwise provided herein, no municipality shall have the power to adopt local laws with respect to the registration or *control of rents or evictions* or otherwise to the subject matter of this act” (emphasis added).

105. On its face, Local Law F is a local law that purports to “control rents or evictions.” The very premise of the law is to redefine the circumstances in which the Plaintiffs (and all affected landlords) may evict tenants, requiring a showing of so-called “good cause.”

106. The definition of “good cause” purports to exclude one of the most fundamental circumstances in which the Plaintiffs (and all affected landlords) would otherwise have the right to pursue an eviction: the expiration of a lease term, or the termination of a month-to-month tenancy. That, by itself, purports to be a major “control” of evictions.

107. Local Law F’s backdoor restriction on rent modification in §30-328(A)(1) and (A)(10)(e)(5) is a local law that purports to “control” rents. It concretely presumes that any rent increase above 5% is unlawful and unenforceable, and it also vaguely provides that rent increases that are “unconscionable” or “imposed for the purpose of circumventing the intent” of the local law is unlawful and unenforceable.

108. The provisions of Local Law F §30-328(A)(10)(c)(i) and (ii), purporting to disallow eviction for a landlord who has proposed “substantial” alterations to a renewal lease or terms that

are “not rationally related to the regulation of activities that would create a nuisance” are a regulation of evictions.

109. The remainder of Local Law F §§30-327 and §30-328, purporting to specify particular conditions in which the Plaintiffs (and all affected landlords) may or may not evict tenants, likewise purport to “control” evictions.

110. Accordingly, the entirety of Local Law F is expressly preempted by §8594 of the Emergency Housing Rent Control Law (Exhibit B), and is void for that reason alone.

111. There is a real and concrete controversy between the parties as to the issues set forth herein.

112. The Plaintiffs have no adequate remedy at law.

113. The Plaintiffs are entitled to, and seek: (i) a declaratory judgment decreeing that Local Law F is unconstitutional and void as preempted by New York State law; and (ii) a permanent injunction, enjoining the Defendants from enforcing Local Law F.

AS AND FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment and Injunction – Field Preemption)

114. The Plaintiffs re-state, re-allege and incorporate by reference each of the allegations set forth in all of the preceding paragraphs of this Complaint, as though fully set forth in this paragraph.

115. The Emergency Housing and Rent Control Law (Exhibit B), the Local Emergency Housing Rent Control Act (Exhibit C) and the Emergency Tenant Protection Act (Exhibit D), and portions of the Real Property Law, RPAPL and General Obligations Law, together constitute a pervasive, in-depth legislative scheme of State law, which preempt the field in the area of rent control, rent regulation, and the respective rights and obligations of landlords and tenants with respect to the leased premises.

116. In the Emergency Housing and Rent Control Law, the Local Emergency Housing Rent Control Act, and the Emergency Tenant Protection Act, the Legislature expressed that “normal market of free bargaining between landlord and tenant” is an “objective of state policy.” (Exhibit B §8581, Exhibit C §8602, Exhibit D §8622.) In all three of those laws, the State interposed carefully measured rules to provide some relief to eligible tenants, while still preserving the objective of free market bargaining.

117. In the Emergency Housing and Rent Control Law (Exhibit B) the State authorized some limited rent control (and, therefore, indefinite tenancy) in cities with a population of 1 million or more, and withheld those enactments from all other parts of the State. In the Local Emergency Housing Rent Control Act (Exhibit C), the State expanded rent control (and indefinite tenancy) in cities with a population of 1 million or more, and again withheld those enactments from the rest of the State. In the Emergency Tenant Protection Act (Exhibit D), in 1974, the State authorized rent stabilization schemes in cities with a population of 1 million or more, and again withheld that enactment from the rest of the State until the amendments in 2019, when the State extended rent stabilization (and only rent stabilization) to other localities that “opt in” to it.

118. The Emergency Tenant Protection Act (Exhibit D) itself is very specific about when and how the cities with less than 1 million persons may enter the fray of interfering with rents and tenancies. A city is authorized to act if it declares a housing emergency that the vacancy rate is 5% or lower. (Id. §8623.) By implication, it is not authorized to act in the absence of such an emergency.

119. The City of Albany has not declared a housing emergency, nor has it completed a vacancy study resulting in a finding of vacancy of 5% or lower.

120. Even when a city does declare an emergency, the Emergency Tenant Protection Act (Exhibit D) withholds the power to regulate rent and tenancies from the cities themselves. The Act directs that the *County* in which the city is located establish a nine-member “rent guidelines board” to set rent guidelines annually, subject to review and appeal by the NYS Division of Housing and Community Renewal. (Id. §8624, §8629.)

121. Plainly the Legislature adopted this scheme—entrusting the critical rent regulation roles to counties and a state agency—to ensure consistency of regulation across localities. The Legislature did not approve, and has never approved, an open wilderness in which cities or towns may regulate rents or rewrite the property rights of landlords and tenants.

122. Local Law F intrudes on the field preempted by the State in numerous ways, including, without limitation:

- a. Regulating the conditions of lease-making, evictions and rental adjustments without having made a declaration of emergency or any findings that the relevant vacancy rate was less than 5%.
- b. Regulating the conditions of lease-making, evictions and rental adjustments by local law fiat, rather than instigating the creation of a nine-member rent guidelines committee.
- c. Purporting to nullify rental increases that violate Local Law F including, (presumptively) rent increases of more than 5% or (vaguely) increases that are “unconscionable” or inconsistent with “the purposes” of Local Law F.
- d. By granting the power to decide what are or are not legal rental rates to an individual city court judge on a case-by-case basis, rather than a balanced, appointed committee to determine rent guidelines annually and prospectively.

- e. By denying landlords the inherent property right of declining to renew an expiring tenancy, or terminating a month-to-month tenancy—rights which are endowed to property owners by the various provisions of the Real Property Law, RPAPL and General Obligations Law discussed above (and from the common-law before that).
 - f. By denying landlords the right to “substantially alter” existing leases, and/or denying them the right to bargain for lease conditions beyond those aimed at controlling tenant nuisances.
123. Local Law F falls well out of the bounds drawn by the State in the foregoing laws, and is void.
124. There is a real and concrete controversy between the parties as to the issues set forth herein.
125. The Plaintiffs have no adequate remedy at law.
126. The Plaintiffs are entitled to, and seek: (i) a declaratory judgment decreeing that Local Law F is unconstitutional and void as preempted by New York State law; and (ii) a permanent injunction, enjoining the Defendants from enforcing Local Law F.

AS AND FOR A THIRD CAUSE OF ACTION
(Declaratory Judgment and Injunction – Conflict Preemption)

127. The Plaintiffs re-state, re-allege and incorporate by reference each of the allegations set forth in all of the preceding paragraphs of this Complaint, as though fully set forth in this paragraph.
128. Local Law F §30-328(A)—and in particular its restrictions on the Plaintiffs’ (and all affected landlords’) right to decline renewal of a tenancy or to terminate a month-to-month tenancy—conflict with and are preempted by General Obligations Law §5-703. These provisions

of Local Law F essentially purport to grant the tenant a perpetual leasehold interest in the property without the landlord's written consent, in contravention of General Obligations Law §5-703.

129. Local Law F §30-328(A)—and in particular its restrictions on the Plaintiffs' (and all affected landlords') right to decline renewal of a tenancy or to terminate a month-to-month tenancy—conflict with and are preempted by Real Property Law §226-c. Real Property Law §226-c expressly allows a landlord who “does not intend to renew the tenancy” to effectuate a non-renewal by giving written notice to the tenant.

130. Local Law F §30-328(A)—and in particular its restrictions on the Plaintiffs' (and all affected landlords) right to decline renewal of a tenancy or to terminate a month-to-month tenancy—conflict with and are preempted by Real Property Law §228. Real Property Law §228 expressly grants landlords the right to terminate tenancies at will or by sufferance.

131. Local Law F §30-328(A)—and in particular its restrictions on the Plaintiffs' (and all affected landlords) right to decline renewal of a tenancy or to terminate a month-to-month tenancy—conflict with and are preempted by RPAPL §711(1). RPAPL §711(1) expressly grants the landlord a remedy of eviction against a “tenant [who] continues in possession of any portion of the premises after the expiration of his term without the permission of the landlord...”

132. Local Law F §30-328(A)—and in particular its restrictions on the Plaintiffs' (and all affected landlords) right to decline renewal of a tenancy or to terminate a month-to-month tenancy—conflict with and are preempted by Real Property Law §232-c. Real Property Law §232-c expressly provides that when a tenant whose term is longer than one month holds over after the expiration of such term, “the landlord may proceed, in any manner permitted by law, to remove the tenant.”

133. Local Law F §30-328(A)(1) and (A)(10)(e)(v)—and in particular their restrictions on the Plaintiffs’ (and all affected landlords’) right to increase rent from one tenancy period to the next (including the presumption of illegality for rent increases above 5%)—conflict with and are preempted by Real Property Law §226-c. Real Property Law §226-c expressly allows a landlord to offer a tenancy renewal with a rent increase of 5% or more, upon adequate written notice to the tenant.

134. Local Law F §30-328(A)(1) and (A)(10)(e)(v)—and in particular their restrictions on the Plaintiffs’ (and all affected landlords’) right to increase rent from one tenancy period to the next (including the presumption of illegality for rent increases above 5%) conflicts with, and is preempted by, RPAPL §711(2), which expressly grants the landlord a right to eviction if “The tenant has defaulted in the payment of rent, *pursuant to the agreement* under which the premises are held” (emphasis added).

135. Local Law F §30-328’s purported prohibition against “substantially altering” the terms of “any existing lease,” and §30-328(A)(10)(c)(i)’s prohibition against lease terms unrelated to controlling nuisances, is in conflict with, and is thus preempted by General Obligations Law §5-703(1), which provide that an interest in real property exceeding one year cannot be created unless expressly granted by a landlord in writing. Local Law F’s prohibition against substantially altering the terms of an “any existing lease” extends the terms of the existing lease, in substantial part, indefinitely beyond one year without the landlord’s consent.

136. There is a real and concrete controversy between the parties as to the issues set forth herein.

137. The Plaintiffs have no adequate remedy at law.

138. The Plaintiffs are entitled to, and seek: (i) a declaratory judgment decreeing that Local Law F is unconstitutional and void as preempted by New York State law; and (ii) a permanent injunction, enjoining the Defendants from enforcing Local Law F.

AS AND FOR A FOURTH CAUSE OF ACTION
(Declaratory Judgment and Injunction – Ultra Vires/Exceeds
Municipal Police Power)

139. The Plaintiffs re-state, re-allege and incorporate by reference each of the allegations set forth in all of the preceding paragraphs of this Complaint, as though fully set forth in this paragraph.

140. A municipality enjoys only limited police power to interfere with a property owner's beneficial ownership of his or her property.

141. Local Law F interferes with the Plaintiffs' beneficial ownership and enjoyment of their property, by: (i) depriving them of the right to decline to renew a tenancy if they so choose, or to terminate a month-to-month tenancy if they so choose; and (ii) limiting their ability to increase rent and/or negotiate lease extensions; and (iii) by preventing them from substantially altering existing leases at renewal and/or from including lease terms that are unrelated to nuisance control.

142. Albany's adoption of Local Law F exceeds the city's lawful police powers because Albany did not act in response to a "dire necessity," nor does Local Law F reasonably alleviate or prevent a "crisis condition."

143. There is a real and concrete controversy between the parties as to the issues set forth herein.

144. The Plaintiffs have no adequate remedy at law.

145. The Plaintiffs are entitled to, and seek: (i) a declaratory judgment decreeing that Local Law F is unlawful and void under the foregoing principles of municipal authority; and (ii) a permanent injunction, enjoining the Defendants from enforcing Local Law F.

AS AND FOR A FIFTH CAUSE OF ACTION
(Declaratory Judgment and Injunction – Unconstitutional Taking)

146. The Plaintiffs re-state, re-allege and incorporate by reference each of the allegations set forth in all of the preceding paragraphs of this Complaint, as though fully set forth in this paragraph.

147. As noted above Local Law F's definition of "good cause" for eviction excludes the expiration of a lease term, by itself, as a ground for eviction. Local Law F, therefore, purports to deprive the Plaintiffs (and all affected landlords) of their right, to decline renewal of a tenancy or terminate a month-to-month tenancy at will. This subjects the Plaintiffs (and all affected landlords) to indefinite tenancies, and perhaps perpetual tenancies, notwithstanding the Plaintiffs' preferences.

148. New York courts have recognized that the most important of the various rights that an owner of property holds is the right of possession, which includes the right to exclude others from occupying or using the space. The right to exclude entails, among other things, the landlord's freedom to refuse any occupancy at all by other persons, and the right to refuse continued occupancy by a particular person or persons for any non-discriminatory reason, and the right to refuse new or continued occupancy for the landlord's desire to make other use of the property (such as converting from a residential use to a commercial use).

149. The right of property ownership also entails freedom to contract the terms on which the landlord will let premises to a tenant.

150. Local Law F effectuates an unconstitutional “physical taking” of the Plaintiffs’ property without just compensation, in violation of the Fifth Amendments of the United States Constitution (extended to regulate state and local lawmaking through the Fourteenth Amendment) and Article I, §7 of the New York State Constitution.

151. Compelling a landlord to continue a tenancy with a particular tenant against his/her will results in continued occupancy and physical possession by the tenant, and violates the landlord’s right to exclude. Local Law F is government action that compels the Plaintiffs (and other affected landlords) to endure a perpetual and/or permanent physical occupation of their property.

152. In the alternative, Local Law F’s interference with the Plaintiffs’ (and all affected landlords’) right to exclude constitutes a “regulatory taking” without just compensation, in violation of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, §7 of the New York State Constitution.

153. Among other circumstances, a regulatory taking occurs when the regulation of private property does not substantially advance a legitimate governmental interest.

154. Local Law F does not substantially advance a legitimate governmental interest. Albany has not completed a vacancy study or achieved any other findings to the effect that there is any housing emergency within the City warranting these interferences with a landlord’s right to exclude. As noted, New York State aspires to “a normal market of free bargaining between landlord and tenant,” and has carefully crafted *state* laws that seek to achieve a balance between the rights of landlord and tenant. A local government like the City of Albany has no legitimate interest in subjectively re-aligning these rights, or compromising the landlord’s right to exclude by granting tenants the right to perpetual tenancies at will.

155. Local Law F unreasonably interferes in the Plaintiffs' rights (and all affected landlords' rights) by denying them the freedom to non-renew tenancies at will, by denying them the freedom to terminate tenancies at-will when they would otherwise be allowed to but for Local Law F, by denying them the freedom to choose a different tenant at the expiration of a lease term for non-discriminatory reasons, by denying them the right to substantially alter the terms of any existing lease when negotiating a renewal (and/or limiting landlords to lease conditions aimed only at controlling tenant nuisances), and by denying them the freedom to alter the use of their property from residential leasing to any other use (such as commercial uses) that are not included in Local Law F's definition of "good cause" to evict. All of these impairments are caused by Local Law F's failure to include the expiration of a lease tenancy (or the absence of a lease for a definite term) as "good causes" for eviction.

156. Local Law F also constitutes a regulatory taking in its limitation (without legislative authority) on a landlord's ability to increase rent in a renewal or new tenancy to the limits specified in Local Law F §30-328(A)(1).

157. Even if Local Law F were aimed at addressing a legitimate government interest (which it is not), for these same reasons the law unfairly forces landlords (including the Plaintiffs) to bear more than just a share of obligations which should rightfully be those of society at large.

158. There is a real and concrete controversy between the parties as to the issues set forth herein.

159. The Plaintiffs have no adequate remedy at law.

160. The Plaintiffs are entitled to, and seek: (i) a declaratory judgment decreeing that Local Law F is unconstitutional and void pursuant to the Fifth and Fourteenth Amendments of the

United States Constitution and/or Article I, §7 of the New York State Constitution; and (ii) a permanent injunction, enjoining the Defendants from enforcing Local Law F.

AS AND FOR A SIXTH CAUSE OF ACTION
(Declaratory Judgment and Injunction – Unconstitutional
Impairment Of Contracts)

161. The Plaintiffs re-state, re-allege and incorporate by reference each of the allegations set forth in all of the preceding paragraphs of this Complaint, as though fully set forth in this paragraph.

162. Article I, §10 of the United States Constitution prohibits state and local governments from enacting laws impairing of the obligation of contracts.

163. Each of the Plaintiffs have contracts (leases) with their tenants in the City of Albany for terms of definite duration, which obligate the tenant to surrender the premises at the end of the term, and entitle the landlord to recover possession at the end of the term. Each of the Plaintiffs had such contracts with their tenants prior to the adoption of Local Law F.

164. Local Law F imposes a substantial impairment on the Plaintiffs' contractual relationships with their tenants. Local Law F's exclusion of *tenancy expiration* as a "good cause" for eviction has the practical effect of nullifying the tenant's contractual obligation to vacate, and the landlord's contractual right to recover possession.

165. There is a real and concrete controversy between the parties as to the issues set forth herein.

166. The Plaintiffs have no adequate remedy at law.

167. The Plaintiffs are entitled to, and seek: (i) a declaratory judgment decreeing that Local Law F is unconstitutional and void pursuant to Article I, §10 of the United States

Constitution; and (ii) a permanent injunction, enjoining the Defendants from enforcing Local Law F.

AS AND FOR A SIXTH CAUSE OF ACTION
(Declaratory Judgment and Injunction – Due Process Vagueness)

168. The Plaintiffs re-state, re-allege and incorporate by reference each of the allegations set forth in all of the preceding paragraphs of this Complaint, as though fully set forth in this paragraph.

169. The Due Process Clauses of the United States and NYS Constitutions preclude legislation that is vague in such a manner that individuals of ordinary intelligence are forced to guess at its meaning. All legislation must at least: (i) give a person of ordinary intelligence a reasonable opportunity to know what the law requires or prohibits; and (ii) provide explicit standards for those who apply it, to guard against the risk of discriminatory or inconsistent application.

170. Local Law F, §30-328(A)(1) is vague in its use of the phrase “imposed for the purpose of circumventing the intent of this article.” Specifically, that section provides that a tenant’s non-payment of rent is not “good cause” for eviction if, among other things, it results from a rent increase that was “imposed for the purpose of circumventing the intent of this article.” That is vague and standardless, leaving the Plaintiffs to guess at what it means when negotiating rent, and leaving City Court judges to guess at what it means in eviction proceedings. It is susceptible to arbitrary application.

171. Local Law F, §30-328(A)(10)(d) is likewise vague in its use of the phrase “imposed for the purpose of circumventing the intent of this article.” Specifically, that section provides that a tenant’s refusal to enter into a lease offered by the landlord is not good cause for eviction if the “the proposed written lease [is] offered for the purposes of circumventing this article.” That is

vague and standardless, leaving the Plaintiffs to guess at what it means when negotiating rent, and leaving City Court judges to guess at what it means in eviction proceedings. It is susceptible to arbitrary application.

172. There is a real and concrete controversy between the parties as to the issues set forth herein.

173. The Plaintiffs have no adequate remedy at law.

174. The Plaintiffs are entitled to, and seek: (i) a declaratory judgment decreeing that the foregoing sections of Local Law F are unconstitutional and void pursuant to Article I, §10 of the United States Constitution; and (ii) a permanent injunction, enjoining the Defendants from enforcing Local Law

WHEREFORE, the Plaintiffs demand judgment declaring Local Law F null and void in its entirety and enjoining the Defendants and their agencies, departments and officers from enforcing and applying its terms, in addition to costs and attorneys' fees to the extent awardable at law, together with such other relief in favor of the Plaintiffs as the Court may deem just and proper.

Dated: Troy, New York
November 16, 2021

Respectfully submitted,

E. STEWART JONES HACKER MURPHY, LLP

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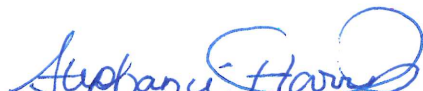
ATTORNEY VERIFICATION

STATE OF NEW YORK)
)s.s.:
 COUNTY OF ALBANY)

Benjamin F. Neidl, an attorney duly admitted to practice law in the State of New York, affirms under penalty of perjury, the following: That deponent is the attorney for Plaintiffs Deborah Pusatere, Rossworks LLC, John C. Thomas, Jr., Gus Lazides and GGJ Corporation; that deponent has read the foregoing Complaint and knows the contents thereof; that the same is true to the deponent's own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters believes them to be true; and the reason this verification is made by the deponent is that the defendant is not located within the County where the deponent-attorney maintains his office. The basis for the deponent's knowledge and belief as to the matters alleged in the foregoing Complaint are his discussions with the Plaintiffs and review of documents provided from same, as well as the deponent's review and firsthand knowledge of the local and state laws that are the subject of the Complaint.


 Benjamin F. Neidl

Sworn to before me this
 16th day of November, 2021


 Notary Public

STEPHANIE HARRIS
 Notary Public, State of New York
 Qualified in Schenectady County
 No.: 01LO6083461
 Commission Expires on 11/12/22

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

DEBORAH PUSATERE, ROSSWORKS LLC, JOHN
C. THOMAS, JR., GUS LAZIDES and GGJ
CORPORATION,

ANSWER

Index No.: 909653-21

Plaintiffs,

-against-

THE CITY OF ALBANY, KATHY M. SHEEHAN in
her capacity as Mayor of the City of Albany, THE
COMMON COUNCIL OF THE CITY OF ALBANY,
and the ALBANY CITY COURT,

Defendants.

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:
CITY OF ALBANY)

The Defendant CITY OF ALBANY, KATHY M. SHEEHAN, and THE COMMON
COUNCIL OF THE CITY OF ALBANY, above named, appearing by Robert Magee, Esq and
Laura Gulfo, Esq on behalf of Marisa Franchini, Esq, Corporation Counsel for the City of Albany,
answer the Complaint as follows:

COUNTER-STATEMENT OF FACTS

1. The negative impacts of eviction and the threat of no-cause eviction permeate every aspect of public and private life in the City of Albany.
2. Evicted households, particularly their children, are indelibly marked by the experience of eviction and tend to lead lives that are shorter, less healthy, less stable, and less safe.
3. These personal impacts are felt city-wide in neighborhoods and communities that, as a result of eviction and particularly no-cause eviction, are systematically destabilized by the involuntary removal of people and families that make them up.

4. Eviction underlies and/or contributes to every social ill grappled with by the City of Albany and makes life in the City demonstrably worse.
5. Faced with this reality, the City of Albany Common Council passed and the City of Albany Mayor Kathy Sheehan signed into law Local Law F, which amended certain City of Albany Court procedures as they relate to summary eviction proceedings.
6. Specifically, Local Law F, now Albany City Code §30-327, requires that a party seeking an eviction warrant in a summary eviction proceeding in Albany City Court plead and prove “good cause” for the eviction warrant.
7. Local Law F is an exercise of municipal authority squarely within the City of Albany’s Municipal Home Rule §10 power to pass laws for “the government, protection, order, conduct, safety, health and well-being of persons or property” and does not conflict with and is not superseded by any state law.
8. Local Law F is a product of an extensive public outreach effort undertaken by City of Albany officials concerning how best to address the massive human cost of eviction and the ongoing housing crisis in the City of Albany and cities across New York State are chiefly responsible for managing.
9. The “good cause” requirement of Local Law F seeks to reduce evictions in the City of Albany and to encourage the resolution of landlord-tenant disputes without resort to eviction and its myriad negative consequences.

Evictions Represent an Ongoing Public Health Crisis Which Directly Threatens Sixty Percent of City of Albany Residents

10. The impact of an eviction, an increasingly normal life event for tenant households, is devastating.

11. Eviction often proves to be a turning point in the lives of low-income working families which triggers a cascade of negative personal health, economic, and social consequences.
12. Evicted individuals are 11% to 15% more likely to experience a loss of employment and medical insurance as compared to individuals who have not been evicted.¹
13. This loss of employment is directly attributable to the eviction itself, which requires time-consuming court appearances and housing searches, which require the head of household to miss work, thereby reducing their income or resulting in the loss of employment entirely.
14. Households where the head of household has recently lost their job are also more likely to be evicted, thereby exacerbating the negative impacts of job loss and placing the household at greater risk of homelessness and making it harder to secure new employment or housing in the future.²
15. Hastily secured new housing is likely to be further from the evicted household's source of income, resulting in increased transportation costs or difficulty complying with a work schedule, and is often more expensive or in a less safe neighborhood in which the household lacks social ties.
16. Evictions impose additional debilitating costs on the evicted household in the form of application fees for new apartments, storage fees, move-in costs such as new security deposits and advance rent payments, loss of personal property, and hotel costs.
17. Evicted households are more likely to need sustained public assistance, however, in the immediate event eviction often results in a disruption of public assistance as household

¹ Matthew Desmond & Carl Gershenson, *Housing and Employment Insecurity among the Working Poor*, Social Problems, Jan 11, 2016 available at <https://scholar.harvard.edu/mdesmond/publications/housing-and-employment-insecurity-among-working-poor> [last accessed Jan 6, 2022].

² Matthew Desmond & Carl Gershenson, *Who Gets Evicted? Assessing Individual, Neighborhood, and Network Factors*, Social Science Research, Aug 31, 2016 available at <https://scholar.harvard.edu/files/mdesmond/files/desmondgershenson.ssr.2016.pdf> [last accessed Jan 6, 2022].

heads, preoccupied with the need to obtain shelter, miss appointments or fail to respond to correspondence from the Department of Social Services.³

18. Children victimized by eviction are typically forced to transfer schools; a traumatic destruction of stable educational and peer relationships that has been shown to have a lasting negative impact on childhood development.⁴

19. Mothers who have been evicted experience higher rates of material hardship, depression, and worse health outcomes for themselves for two years following an eviction compared to similarly situated mothers who have not been evicted.⁵

20. A child born to a parent who has recently been evicted is more likely to die in infancy, have an unhealthily low birth weight, be borne prematurely, and be hospitalized during their childhood than their stably housed counterparts.⁶

21. Negative health outcomes trail children for at least two years following an eviction.⁷

22. Studies show that the social stigma accompanying eviction leads to lifelong negative mental health consequences among adolescents.⁸

³ Anna Kahlmeter, Olof Bäckman, & Lars Brännström, *Housing Evictions and Economic Hardship. A Prospective Study*, European Sociological Review, February 2018 available at <https://academic.oup.com/esr/article/34/1/106/4781369?login=true> [last accessed Jan 6, 2022].

⁴ Russell W. Rumberger, *Student Mobility: Causes, Consequences, and Solutions*, Nat'l Education Policy Center, June 2015 available at <https://nepc.colorado.edu/publication/student-mobility> [last accessed Jan 6, 2022].

⁵ Matthew Desmond & Rachel Tolbert Kimbro, *Eviction's Fallout: Housing, Hardship and Health*, Social Forces, Feb. 24, 2015 available at https://scholar.harvard.edu/files/mdesmond/files/desmondkimbro.evictions.fallout.sf2015_2.pdf [last accessed Jan 6, 2022]

⁶ Gracie Himmelstein & Matthew Desmond, *Eviction And Health: A Vicious Cycle Exacerbated By a Pandemic*, Health Affairs, April 1, 2021 available at <https://www.healthaffairs.org/doi/10.1377/hpb20210315.747908/full/> [last accessed Jan 6, 2022].

⁷ *Id.*

⁸ Morgan Hoke & Courtney E. Boen, *The Health Impacts of Eviction: Evidence from the National Longitudinal Study of Adolescent Mental Health*, University of Pennsylvania Population Center Working Papers, February 26, 2021 available at https://www.urban.org/sites/default/files/publication/103501/the-future-of-headship-and-homeownership_0.pdf [last accessed Jan 6, 2022].

23. Housing instability has also been linked to increased risk to children of abuse and hospitalization for abuse as well as malnutrition and increased cortisol (thereby subjecting them to increased risk of heart disease, diabetes, and a host of other chronic diseases).⁹
24. All adult populations, once evicted, experience higher-all cause mortality, increased instances of emergency room visits, higher rates of addiction and relapse, depression, and suicide.¹⁰
25. Housing instability has been found to contribute to elevated blood pressure and unhealthy weight gain, greater presence of chronic medical conditions, and cardiovascular-related mortality among all populations.¹¹
26. Eviction facilitates domestic violence by forcing households escaping domestic violence to move back in with an abusive partner or remain with an abusive partner for fear of eviction and homelessness.¹²
27. This effect of eviction is particularly pronounced at a time of escalating rates of domestic violence occasioned by the covid-19 pandemic.¹³
28. The negative effects of eviction are felt most acutely by historically disadvantaged and disenfranchised communities and serve to reinforce historical injustices directly attributable to past policies of enforced racial bias.

⁹ *Id.*

¹⁰ *Id.* See also Hoke & Boen, *The Health Impacts of Eviction*; William Damon, Ryan McNeil, M-J Milloy, et al, *Residential Eviction Predicts Initiation of or Relapse into Crystal Methamphetamine Use Among People Who Inject Drugs: A Prospective Cohort Study*, Journal of Public Health, March 2019 available at <https://pubmed.ncbi.nlm.nih.gov/29425315/> [last accessed Jan 6, 2022].

¹¹ Hoke & Boen, *The Health Impacts of Eviction*.

¹² Sara K. Pratt, *Memorandum: Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHA) and the Violence Against Women Act (VAWA)*, US Department of Housing and Urban Development, Feb. 9, 2011 available at <https://www.hud.gov/sites/documents/FHEODOMESTICVIOLGUIDENG.PDF> [last accessed Jan 6, 2022].

¹³ Brad Boserup, Mark McKenney, Adel Elkbuli, *Alarming Trends in US Domestic Violence During the COVID-19 Pandemic*, American Journal of Emergency Medicine, Apr 28, 2020 available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7195322/> [last accessed Jan 6, 2022].

29. In this way, eviction perpetuates cycles of poverty which condemn members of these communities to increased health and safety risks and decreased opportunity for economic stability or freedom.
30. In 2021, of the nearly 700 evictions filed in Albany City Court notwithstanding several State and Federal eviction moratoriums, just over 64% of eviction proceedings heard in Albany City Court involved properties located in majority-minority neighborhoods.
31. Studies demonstrate that, nationally, evictions disproportionately impact already disadvantaged city-residents such as Black and Hispanic women and low-income families with children and exacerbate trends of endemic racial discrimination and inequality.¹⁴
32. Indeed, the more children a tenant household has, the greater likelihood it will be evicted.¹⁵
33. Data also shows that households with “downward ties”, such as family members or friends who have experienced “poverty shocks” such as teenage pregnancy, incarceration, or eviction, increases the likelihood that the household will be evicted, further reinforcing historic cycles of poverty which plague the City of Albany.¹⁶
34. Nationally, evicted individuals on probation are at an increased risk of recidivism and evicted individuals are, in general, 10% more likely not the stably housed to be incarcerated following an eviction.¹⁷
35. Having an eviction on a household’s record jeopardizes it from receiving many forms of public housing assistance and often disqualifies it from such assistance outright.

¹⁴ Himmelstein & Desmond, *Eviction And Health*.

¹⁵ Desmond & Gershenson, *Who Gets Evicted?*

¹⁶ *Id.*

¹⁷ Leah A. Jacobs & Aaron Gottlieb, *The Effect of Housing Circumstances on Recidivism: Evidence From a Sample of People on Probation in San Francisco*, Criminal Justice and Behavior, Aug. 2, 2020 available at <https://journals.sagepub.com/doi/10.1177/0093854820942285> [last accessed Jan 6, 2022].

36. For instance, an eviction may be used to reject an application for a Section 8 housing voucher or an application of a Section 8 voucher holder for housing.¹⁸

37. The threat of no-cause eviction discourages tenants from advocating for their right to safe housing and, in this way, contributes to higher instances of lead poisoning, asthma, and asbestos exposure among evicted households.¹⁹

The City of Albany is Responsible for Managing and Mitigating the Myriad Negative Impacts of Eviction

38. The personal crises which are directly caused by eviction strain public safety and emergency housing resources in the immediate event of eviction and metastasize into broader social crises that linger and are renewed indefinitely.

39. In this way, the eviction trauma experienced directly by the 8.4% of City of Albany residents, and one in six rental households, who are the subject of an eviction petition in a typical year is felt city-wide by residents to whom the evicted are friends, family members, coworkers, and neighbors.

40. In 2019, 4,120 petitions for an eviction warrant were filed in Albany City Court.

41. These evictions directly impacted an estimated 8,400 tenants in a City of 99,225.

42. The lifting of covid-19 pandemic-related eviction moratoriums will result in an unprecedented wave of evictions that will greatly exacerbate the eviction crisis which has been building in the City of Albany and elsewhere for several years.

43. Surveys of landlords who own property in the City of Albany have confirmed that 60% of landlords intend to file at least one eviction petition in Albany City Court as soon as the

¹⁸ Department of Housing & Urban Development, *Housing Choice Voucher Program Guidebook: Eligibility Determination and Denial of Assistance*, November 2019 available at https://www.hud.gov/sites/dfiles/PIH/documents/HCV_Guidebook_Eligibility_Determination_and_Denial_of_Assistance.pdf [last accessed Jan 6, 2022].

¹⁹ Hoke & Boen, *The Health Impacts of Eviction*.

state-wide covid-19 related eviction moratorium expires, which is set to occur on January 15, 2022.

44. The post-moratorium wave of eviction petitions will greatly expand what is already a substantial backlog of existing petitions for eviction which have been stayed pending the lifting of the moratorium.

45. Covid-19 related employment layoffs have decreased tenants' ability to pay rent and/or resulted in missed rent payments which tenant households have been unable to pay down even where they have been able to resume employment.

46. In many cases during the pandemic, tenant households incurred significant costs and expenses in defending themselves from illegal eviction attempts, such as utility shut-offs and illegal lockouts or covid-19 related medical expenses or lost wages.

47. Between 2016 and 2021, only 2.47% of households subjected to a petition for eviction in Albany City Court were represented by an attorney, as compared to 89% of petitioners seeking eviction.

48. This substantial power imbalance in petitioners' favor taxes Albany City Court with a substantial number of *pro se* litigants, over 15,600 between 2016 and 2021, who require significant guidance from the court personnel as they navigate what is a personally traumatic legal fight.

49. The post-moratorium eviction wave will also exacerbate the spread of covid-19 as it has been confirmed that the lifting of eviction moratoriums in other states has contributed to an increase in both the spread and death toll of covid-19 there.²⁰

²⁰ Kathryn M. Leifheit, Sabriya L Linton, & Julia Raifman, et al, *Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality*, American Journal of Epidemiology, Aug. 22, 2021 available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3739576 [last accessed Jan 6, 2022].

50. This accelerated covid-19 spread is caused by an eviction's tendency to compel evicted households to move in with often older and more vulnerable relatives or to simply crowd into too-small homes of more stably housed households.²¹
51. The tendency of evicted households to "double-up" with friends or relatives often increases these friends and relatives' risk of eviction or loss of public assistance.
52. The instability caused by eviction contributes to increased neighborhood crime.²²
53. The threat of a no-cause eviction discourages City of Albany residents from reporting building code violations, thereby putting both themselves and the public at risk of building-related disasters such as fire or structural collapse.
54. City schools are forced by evictions to undertake significant administrative efforts to ensure students forced to switch schools do not miss critical lessons or educational opportunities.
55. This is particularly true where the evicted student requires an individualized educational plan due to a developmental disability.
56. Of evictions filed in Albany City Court in 2021, 45.6% of subject buildings had been cited for code violations since 2021 as compared to only 15.9% of all residential rental properties during the same period.
57. Of eviction petitions filed in Albany City Court in 2021, 43.7% involved residential dwelling units which did not have a valid residential occupancy permit as required by Albany City Code §231-131.

²¹ *Id.*

²² Daniel C Semenza, Richard Stansfield, & Jessica M. Grosholz, et al, *Eviction and Crime: A Neighborhood Analysis in Philadelphia, Crime and Delinquency*, August 3, 2021 available at <https://journals.sagepub.com/doi/abs/10.1177/00111287211035989> [last accessed Jan 6, 2022].

58. Of evictions filed in Albany City Court in 2021, landlords with active eviction proceedings were nearly five times more likely than landlords without active eviction proceedings to have been involved in designated “landlord-tenant incidents” requiring intervention by the City of Albany Police Department.
59. The City of Albany Police Department’s involvement in landlord-tenant disputes has increased 11% since the beginning of the covid-19 pandemic, a trend that will accelerate as evictions recommence in earnest upon expiration of the state moratorium.
60. Compounding the problems above, the City of Albany must contend with the reality that the number of renters in the City of Albany, where 60% of households are renters as compared to 36% nationally, is going to rise as a proportion of the total population for the foreseeable future.²³
61. Market trends confirm a future in which a greater share of the population remains in rental housing, and therefore at risk of eviction, for their entire lives.²⁴
62. According to the Zillow Home Value Index, the cost of the average home in the City of Albany rose 14.8% percent in 2021 to \$250,648.²⁵
63. This figure is simply unaffordable for most city residents given the median City of Albany household income of \$45,825 and the fact that 22.9% of the City of Albany’s population lives beneath the poverty level.²⁶

²³ Drew Silver, *As National Eviction Ban Expires, a Look at Who Rents and Who Owns in the U.S.*, Pew Research Center, Aug 2, 2021 available at <https://www.pewresearch.org/fact-tank/2021/08/02/as-national-eviction-ban-expires-a-look-at-who-rents-and-who-owns-in-the-u-s/> [last accessed Jan 6, 2022].

²⁴ Laurie Goodman, Jun Zhu, *Urban Institute Research Report: The Future of Headship and Homeownership*, UrbanInstitute, Jan 21, 2021, available at <https://www.urban.org/research/publication/future-headship-and-homeownership> [last accessed Jan 5, 2022].

²⁵ Zillow.com, <https://www.zillow.com/albany-ny/home-values/> [last accessed Jan 6, 2022].

²⁶ United States Census Bureau, QuickFacts Albany city, New York, <https://www.census.gov/quickfacts/albanycitynewyork> [last accessed Jan 6, 2022].

64. Nationally, rents have increased more than 13% since 2001 while wages have only increased 0.5%, a dynamic that makes it increasingly difficult for renter households to save the money needed to purchase a home, especially when coupled with increasing food, healthcare, and transportation costs.²⁷
65. This dynamic is acutely felt by low-income households, 50% of which nationally are rent-burdened (defined by the Department of Housing and Urban Development as spending more than 30% of income on rent), and spend more than 50% of their income on rent and other housing costs.²⁸
66. Twenty-five percent of low-income families, the majority of which receive no governmental housing assistance, spend more than 70% of their household income on housing costs.²⁹
67. Eviction, an ever-present threat faced by tenant households, significantly damages the evicted household's credit, further decreasing the household's ability to obtain stability by purchasing a home.³⁰
68. Evictions themselves have also been on the rise nationally, increasing from 518,873 in 2000 to 898,479 in 2016.³¹

²⁷ Alicia Mazzara, *Census: Income-Rent Gap Grew in 2018*, Center on Budget and Policy Priorities Blog, Sept. 27, 2019, <https://www.cbpp.org/blog/census-income-rent-gap-grew-in-2018> [last accessed Jan 6, 2022].

²⁸ US Gov't Accountability Office, *Rental Housing: As More Households Rent, the Poorest Face Affordability and Housing Quality Challenges*, May 2020; Matthew Desmond, *Unaffordable America: Poverty, Housing, and Eviction*, Fast Focus: Institute for Research on Poverty, March 2015 available at <https://www.irp.wisc.edu/publications/fastfocus/pdfs/FF22-2015.pdf> [last accessed Jan 6, 2022].

²⁹ Frederick Eggers & Foua Moumen, *Investigating Very High Rent Burdens Among Renters in the American Housing Survey*, U.S. Department of Housing and Urban Development, Washington, D.C., August 2010 available at https://www.huduser.gov/portal/publications/ahsrep/investing_veryhigh.html [last accessed Jan 6, 2022].

³⁰ John Eric Humphries, Nicholas Mader, Daniel Tannenbaum, & Winnie van Dijk, *Does Eviction Cause Poverty? Quasi-Experimental Evidence from Cook County, IL*, Cowles Foundation for Research in Economics, July 2019 available at <https://cowles.yale.edu/sites/default/files/files/pub/d21/d2186.pdf> [last accessed Jan 6, 2022].

³¹ Matthew Desmond, Ashley Gromis, & Lavar Edmonds, et al., *Eviction Lab National Database: Version 1.0*, Princeton: Princeton University, available at <https://evictionlab.org/national-estimates/> [last accessed Jan 6, 2022].

69. These economic trends will decrease the ability of City of Albany residents to pass on generational wealth to their children, further undermining the ability of City of Albany residents to afford their own homes for decades to come.

70. As these trends continue and accelerate, it is imperative that New York State's cities retain the ability to regulate eviction as eviction quickly becomes an increasingly normal life event for city residents.³²

Local Law F Was the Result of a Comprehensive Outreach Effort to Landlords, Tenants, and Community Leaders About How the City of Albany Could Address the Eviction Crisis

71. The decision to pursue passage of Local Law F came after City of Albany officials undertook an extensive outreach effort among landlord and tenant stakeholders in the City of Albany throughout 2019.

72. This outreach effort consisted of several public workshops with landlord and tenant groups where city officials received feedback from residents, tenants, and landlords about how the City of Albany government could improve life in their neighborhoods.

73. It also included dozens of individual conversations with community members and leaders in which City of Albany officials sought out to ensure they received a diversity of perspectives and opinions on how best to combat issues like blight, poverty, and crime and improve the quality of life for City residents.

74. A common theme that emerged from this outreach effort was that tenants were hesitant to contact City of Albany code enforcement for fear of being evicted in retaliation.

75. Many tenants that City of Albany officials spoke to were aware of existing retaliatory eviction protections, but were unaware of how to assert them in court or had not been protected by those protections from retaliatory eviction in the past.

³² Himmelstein & Matthew Desmond, *Eviction And Health*.

76. Tenants also expressed that because they were always at risk of being evicted they were discouraged from establishing roots in a given neighborhood and that as a result residents of neighborhoods where eviction was common were not able to cohere into robust communities that could care for each other, discourage crime, and self-advocate to improve their quality of life.
77. This discouragement most profoundly affects neighborhoods with high eviction rates, such as the City of Albany's minority-majority South End, Arbor Hill, and West Hill neighborhoods, where strong community organization is most needed.
78. Landlords similarly expressed frustration with the pace and conduct of eviction proceedings in Albany City Court due in large part to the difficulties unrepresented tenants had in navigating the expedited summary eviction process.
79. Landlords also expressed frustration with the behavior and conduct of many of their tenants and their inability to police it effectively.
80. Albany City Court officials expressed difficulty in processing the thousands of eviction petitions that were filed in Albany City Court on an annual basis.
81. The City of Albany, its powers to intervene more meaningfully in the eviction crisis circumscribed by the economy and the law and faced with the impending post-moratorium escalation of the eviction crisis, passed Local Law F.
82. Local Law F is a minor adjustment of the burden of proof in the context of summary eviction proceedings in Albany City Court by requiring that a party seeking an eviction warrant in a summary eviction proceeding plead "good cause" for the warrant.
83. Good cause for an eviction per Local Law F, now incorporated as Albany City Code §30-327, includes i) non-payment of rent, ii) violation of a lease obligation, iii) a tenant-created

nuisance, iv) occupancy which subjects the landlord to criminal or civil penalties (ie. in violation of a municipal condemnation order), v) illegal occupancy, vi) unreasonable refusal of access to the landlord, vii) the petitioner's desire to use the property for personal or family use, viii) the petitioner seeks to sell the building, ix) the tenant's refusal to enter into a written lease.

Local Law F is Rationally Related to the Mitigation of the Eviction Crisis

84. Local Law F addresses the eviction crisis and the input from the public that city officials received during the 2019 outreach effort.
85. By requiring a showing of "good cause", Local Law F provides a greater degree of stability to tenants who abide their lease obligations, pay their rent, and are good neighbors.
86. This opportunity for stability incentivizes adherence to lease obligations by tenant households and encourages tenant households to put down roots in their neighborhoods and communities in ways that will improve quality of life and reduce crime, including blight.
87. This stability also improves the ability of tenant households to plan and prepare for the future by, among other things, saving for their own home.
88. The "good cause" requirement also prevents petitioners from disguising a retaliatory eviction as a simple holdover and provides greater protection to tenants who assert their right to safe housing by asking their landlord to make necessary repairs or contacting code enforcement concerning potential code violations in their building.
89. The "good cause" requirement, by explicitly allowing eviction for bad conduct, preserves landlords' ability to use eviction and the threat of eviction to enforce the lease and general social obligations.

90. However, by requiring that “good cause” for eviction be shown in a summary eviction proceeding, Local Law F encourages landlords to resolve disputes with their tenants without resorting to the dramatic and socially caustic remedy of summary eviction.
91. The “good cause” requirement of Local Law F, by requiring better-developed pleadings and discouraging eviction overall, will improve Albany City Court’s ability to process its eviction caseload as petitions for eviction will more clearly identify the issues in dispute.
92. This will improve Albany City Court’s ability to develop precedent and dispose of cases fairly and quickly.
93. This better identification of the issues in dispute required by the “good cause” requirement will also help tenants to better prepare themselves for court, which will also serve to expedite eviction proceedings.
94. By requiring a petitioner to demonstrate good cause before pursuing an eviction warrant in Albany City Court, Local Law F ensures that tenants who have complied with their lease obligations and have paid their rent can maintain stable housing.
95. By increasing the landlord’s burden of proof in a summary eviction proceeding in Albany City Court, Local Law F will reduce the number of evictions in the City of Albany and thereby reduce the countless negative impacts of eviction discussed above.
96. It also protects tenants who are being evicted for impermissible reasons, such as race, having asserted their rights under the lease, or having children, by requiring landlords to articulate a permissible ground for pursuing eviction.
97. These measures are designed to calm the rate of evictions the Albany City Court and the City of Albany are expected to face in the coming months and encourage informal resolution of landlord-tenant disputes which avoids eviction and its worst consequences.

98. Though Local Law F will not be able to address the myriad ways in which eviction undermines public health and safety, it is a reasonably measured and targeted step towards addressing the eviction crisis that is entirely within the City of Albany's authority to take.

Local Law F is a Valid Exercise of the City of Albany's Municipal Home Rule Authority

99. Local Law F is a permissible exercise of the City of Albany's authority per Municipal Home Rule §10(11) to pass laws for "the government, protection, order, conduct, safety, health and well-being of persons or property."

100. A local law may be invalid through the application of state law where a state law specifically conflicts with the local law or where the state legislature has intended to "occupy the field" in the regulation of a particular matter.

101. "For a local law to be invalid pursuant to the conflict preemption doctrine, the State must specifically permit the conduct the local law prohibits or provide some other indication that deviation from state law is prohibited." *People v Torres*, 2021 NYLEXIS 2172, *13, [Oct 12, 2021] [quotation omitted].

102. There is simply no component of Local Law F that conflicts with state law or intrudes on a field occupied by state regulation.

103. In order for a local law to be deemed invalid by occupation of the field, state regulation must evince some intent to exercise exclusive regulatory authority over a given matter. *People v Diack*, 24 NY3d 674, 682 [2015].

104. The State has not occupied the field with respect to the regulation of residential tenancy. *See, e.g. Zorn v Howe*, 276 AD2d 51 [3d Dep't 2000]; *People v Christensen*, 77 AD3d 174 [2d Dep't 2010].

105. Otherwise, Local Law F is not in conflict with any state law.

Local Law F Does Not Conflict with Title 23 of the Unconsolidated Laws

106. The Plaintiffs allege that the Emergency Housing and Rent Control Law, Local Emergency Rent Control Act, and Emergency Tenant Protection Act preempt the City of Albany's authority to regulate residential rental rates. [Complaint ¶¶22-51].
107. This allegation of preemption is easily dispensed with because Local Law F does not seek to regulate residential rental rates.
108. In setting out that non-payment of rent is a good cause for eviction, Local Law F includes language that non-payment of a rental increase "imposed for the purpose of circumventing the intent of" Local Law F is not a permissible ground for eviction.
109. Local Law F creates a rebuttable presumption that a rental increase was made for the purpose of circumventing Local Law F where the increase in rent is more than 5%.
110. Local Law F does not deem any rental amount or increase illegal and it does not in any way restrict a landlord's right to recover rent, or indeed enforce any lease term, in any proceeding outside of a summary eviction proceeding in Albany City Court.
111. Local Law F merely empowers the Albany City Court to find a lack of good cause notwithstanding the non-payment of rent where the non-payment was occasioned by an increase in rent for the purpose of circumventing Local Law F.
112. The Petitioner's assertion that requiring a rationale for a rent increase of above 5% correlates to rent regulation is unfounded. Local Law F simply requires that if a landlord has increased the rent and is trying to evict their tenant they must rebut that it is not unconscionable by providing a rationale for the rent increase in court documents.

Local Law F Is Not in Conflict with Any Provision of Article 7 of the Real Property Law

113. The Plaintiffs allege that Local Law F conflicts with several of the notice provisions of Article 7 of the Real Property Law. [Complaint ¶¶52-55].
114. Real Property Law §226-C, requires that landlords provide notice to their tenants of a rent increase depending on the length of tenancy to provide notice of the increase regardless of the justification for the increase.
115. Local Law F is silent with respect to the notice required in order to impose a rental increase.
116. Real Property Law §228 imposes notice requirements on landlords seeking to terminate “a tenancy at will or by sufferance” and provides for repossession of the premises in an “action to recover possession, or proceed, *in the manner prescribed by law*, to remove the tenant, without further or other notice to quit.” (emphasis supplied).
117. Real Property Law §228 certainly cannot be said to provide a right to an eviction warrant in a special proceeding in Albany City Court.
118. Real Property Law §228 explicitly contemplates the reality that eviction proceedings will be subject to regulation like Local Law F.
119. Additionally, Local Law F is silent on the manner in which such a lease may be terminated and notice requirements related to lease terminations.
120. Real Property Law §232-c, in allowing a landlord to “proceed, in any manner permitted by law, to remove the tenant”, like Real Property Law §228, again contemplates regulation of eviction proceedings on a local level where the “manner permitted by law” may be determined.

Local Law F Does not Conflict with General Obligations Law §5-703

121. Plaintiffs allege that Local Law F is preempted by General Obligations Law §5-703, New York State's statute of frauds, which requires that the conveyance of an interest in real property be in writing.

122. Local Law F is not preempted by General Obligations Law §5-703 because Local Law F does not seek to regulate the conveyance of property interests, it merely regulates the circumstances in which the City of Albany Court issues eviction warrants in summary eviction proceedings.

Local Law F Does not Conflict with the Real Property Actions and Proceedings Law

123. The Plaintiffs argue that Local Law F conflicts with various provisions of the Real Property Actions and Proceedings Law, which establishes the procedure for summary eviction proceedings. [Complaint ¶58].

124. Article 7 of the Real Property Actions and Proceedings Law provides that “[a] special proceeding to recover real property may be maintained in a . . . court of civil jurisdiction in a city” RPAPL §701(1).

125. Local Law F does not regulate when a landlord may bring a special proceeding under Real Property Actions and Proceedings Law §711 such that none of the prerequisites for filing enumerated therein preempt Local Law F.

126. Even if it did, while Real Property Actions and Proceedings Law §711(1) states that an eviction proceeding may be maintained “upon the expiration of [a tenant household's] term”, it is silent as to what constitutes a residential lease term or how such a term may be terminated.

127. This is confirmed elsewhere in the Real Property Actions and Proceedings Law, specifically section 741, which requires without specification that the petitioner seeking an eviction “state the facts upon which the special proceeding is based”. RPAPL §741(4).

Local Law F Does Not Create a Perpetual Tenancy

128. Local Law F applies to summary eviction proceedings in Albany City Court and provides ample grounds upon which a landlord may obtain an eviction.

129. Local Law F does not foreclose a landlord’s ability to pursue an eviction warrant in any court other than the Albany City Court or outside the context of a summary eviction proceeding.

130. For the same reasons, among others, Local Law F does not run afoul of the New York State or United States Constitution.

131. The Plaintiffs’ allegation that the slight adjustment of the burden of proof in a summary eviction proceeding in City of Albany Court represented by Local Law F intrudes on their legal, economic, and constitutional right and prerogatives does not withstand scrutiny.

ANSWER

132. Acknowledges the Plaintiffs’ characterization of the action and Plaintiffs’ request for relief as set out at paragraphs 1, 2, 3, and 119.

133. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 4, 5, 6, 7, 8, 9, 10, 163, and 164.

134. Admits the allegations contained at paragraphs 11, 12, 13, 14, 15, 16, 17, 18, and 19.

135. Defendant neither admits nor denies the allegations contained at paragraphs 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71,

72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 115, 116, 117, 118, 120, 121, 122, 123, 124, 125, 126, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 140, 141, 142, 143, 144, 145, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 162, 165, 166, 167, 169, 170, 171, 172, 173, and 174 insofar as they raise questions of law for the Court to decide.

136. Defendant City of Albany responds to the incorporation of foregoing allegations at paragraphs 103, 114, 127, 139, 146, 161, and 168 in same manner as they are responded to above.

137. Any allegation set forth in the Complaint which is not explicitly responded to herein or for which inconsistent responses have been provided herein is denied.

First Affirmative Defense

138. The Plaintiffs lack standing to bring this action.

Second Affirmative Defense

139. If any portion of Local Law F is found to have been preempted by state law, Defendants may be enjoined from enforcing that portion of Local Law F without being enjoined from enforcing the entirety of Local Law F.

Third Affirmative Defense

140. The present action is premature.

Fourth Affirmative Defense

141. The declaratory judgment sought by the Plaintiffs will serve no useful purpose to the parties.

Fifth Affirmative Defense

142. The Court should decline to hear the Plaintiffs' action as the Plaintiffs' have other adequate, more appropriate, remedies available.

Sixth Affirmative Defense

143. The Plaintiffs' have failed to identify a justiciable controversy.

Seventh Affirmative Defense

144. The controversy relied on by the Plaintiffs is moot and/or may become moot during the pendency of this action.

Eighth Affirmative Defense

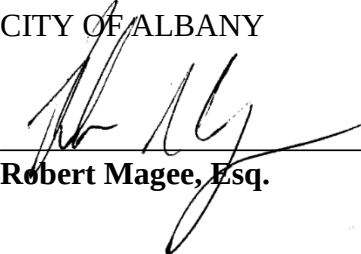
145. The controversy presented by the Plaintiffs is not ripe for adjudication and has been brought prematurely.

WHEREFORE, the Defendant City of Albany, Kathy M. Sheehan, and the Common Council of the City of Albany respectfully prays for judgment dismissing the Complaint herein, together with the costs, disbursements and attorney's fees incurred in the defense of this action, and for such other and further relief to the Court deems just and proper.

DATED: January 7, 2022
Albany, New York

Yours, etc.
MARISA FRANCHINI
CORPORATION COUNSEL
CITY OF ALBANY

By:


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Good Cause Eviction Laws

Municipality	Status	Litigation
Albany (Adopted)	- Adopted Law on July 19, 2021 - Last Amended August 16, 2021	- Summons and Complaint filed <i>Deborah Pusatere et al v. The City of Albany</i>, Index No. 909653-21 - Answer to be filed by January 7, 2022.
Hudson (Denied)	- First Version approved by Council vetoed by Mayor October 7, 2021. - Second Version of Law Denied December 26, 2021, no majority vote.	
Ithaca (Under Consideration)	- Introduced September 15, 2021 - At its November 10, 2021 meeting, the Planning and Economic Development Committee decided to hold off on voting on the draft law until the Attorney General renders an opinion. There was no request to counsel to submit a letter to the Attorney General requesting an opinion. - Discussed most recently at December 8, 2021 Planning and Economic Development Committee meeting	
Kingston (Adopted)	- Common Council held special session to consider on January 13, 2022 and voted to approve legislation - Public Hearing January 24, 2022 - Adopted Law January 25, 2022 after Mayor signature	
Newburgh (Adopted)	Adopted Law October 25, 2021	
New Paltz	Introduced 2019, revised in 2020	

(Under Consideration)	Discussed most recently at November 10, 2021 Town Board Meeting. Mayor requested the Village attorney send letter to Attorney General Requesting an Opinion.	
New York State (Under Consideration)	- Proposed Bill 2021-22 A.5573/S.3082 in Committee - Hearing being held before Senate Committee on January 7th	
Poughkeepsie (Adopted)	City Council passed the Law on November 15, 2021 and was not approved by the Mayor on December 6, 2021, but under their Charter, is considered to have been enacted into law.	
Ulster County (Under Consideration)	Introduced, Public Hearing commenced on January 4, 2022 Considering Adoption, no vote yet.	
New York City (Approved Resolution asking for NYS Action)	- Resolution passed on December 15, 2021 urging the New York State Legislature to pass Good Cause Eviction legislation. - New York City has neither introduced nor discussed enacting a local law to this effect of its own.	

Home Rule Memo

Legal Issue

Does the home rule under Article IX of the New York Constitution allow localities to pass “good cause” eviction laws in the absence of a state “good cause” eviction law?

Answer

Yes, localities may pass “good cause” eviction laws independent from the state legislature. The home rule under Article IX of the New York Constitution grants localities the right to control local matters, restricting the state’s ability to meddle in local issues. See N.Y. Const. art. IX, §1. While the state can limit local rule through the “state concern” doctrine and preemption doctrine, neither strategy would adequately prevent localities from issuing “good cause” eviction laws based on local needs. Furthermore, the New York courts are likely to uphold local eviction laws under the home rule.

Relevant State and Local Legislation

The Home Rules General Allows Localities to Control Local Laws with Some State Limitations via the “State Concern” and Preemption Doctrines.

Home rule—the law governing the right of localities to control local matters— is a well-established constitutional principle in New York state. See *People ex. Rel. Metro. S. Ry. Co. v. State Bd. of Tax Comm’rs*, 67 N.E. 69, 70 (1903) (“The principle of the home rule, or the right of self-government as to local affairs, existed before we had a constitution.” Article IX of the New York Constitution was included to protect the home rule more extensively than those in

most other states. *See* N.Y. BAR ASS’N, REPORT AND RECOMMENDATIONS CONCERNING CONSTITUTIONAL HOME RULE ADOPTED BY THE COMMITTEE ON THE NEW YORK STATE CONSTITUTION, 6 (2016). In the 1963 iteration of the article, the state legislature extended the home rule to all counties outside New York City as well as all cities, towns, and villages. *See* N.Y. Const. art. IX, §3(d)(1). As the New York Bar Association notes, the government intended to expand the powers of local governments. *See* N.Y. BAR ASS’N, REPORT AND RECOMMENDATIONS CONCERNING CONSTITUTIONAL HOME RULE ADOPTED BY THE COMMITTEE ON THE NEW YORK STATE CONSTITUTION, 6 (2016). At the time of the Article’s passage, Governor Nelson A. Rockefeller asserted that Article IX would “strengthen the government’s closest to the people so that they may meet the present and emerging needs of our times.” *See* ROBERT B. WARD, THE NEW YORK STATE GOVERNMENT 545, 547 (2d ed. 2006).

Specifically, Article IX protects the home rule and local government power through two avenues. First, it affirmatively gives power to local governments to adopt local laws. Article IX requires the state to create a “statute of local governments” that provides local governments with the power to control local legislation and administration. *See* N.Y. Const. art. IX, §2(b)(1). Consequently, the state legislature enacted the Statute of Local Governments, giving quasi-constitutional protection to the home rule. Under this statute, local government powers cannot be “repealed, diminished, impaired, or suspended” except through action by two successive legislatures with governor approval. *See Id.*

Second, Article IX restricts the state legislature from acting in relation to local governments. Section 2(b)(2) prohibits the state from legislating on issues involving the “property, affairs or government” of any local government except through general law, directed at all localities (“all counties...all cities, all towns, or all villages”), or special law, targeting

specific localities. *See* N.Y. Const. art. IX, §2(b)(2). Special laws can only be enacted at the request of two-thirds of the local legislative body or by the chief executive officer with concurrence from a majority of the legislature. *See id.* If a law is unrelated to the “property, affairs or government” of a local government, the state is free to legislate.

Home rule power is limited through two means. First, the state utilizes the “State concern’ doctrine to limit a locality’s affirmative power. Under this doctrine, the state legislature can regulate local matters that relate to a state concern. *See generally Wambat Realty Corp. v. State*, 393 N.Y.S.2d 949 (N.Y. 1977). Second, the preemption doctrine limits local power to create local laws. If a state issues a general or special law, as mentioned above, then the state occupies the field on the local matter. Thus, any local law that conflicts with a state statute becomes unenforceable.

The preemption doctrine particularly limits the home rule because outright conflict is not necessary. Express field preemption occurs when a state statute explicitly states intent to preempt local laws on the matter. *See Consol. Edison Co. v. Town of Red Hook*, N.Y.S.2d 596, 599 (N.Y. 1983). A local law may also be impliedly preempted if there is evidence that a state legislature had “intent to occupy the field.” *See Albany Area Builders Ass’n. v. Guilderland*, 547 N.Y.S.2d 627, 632 (N.Y. 1982). Courts will assert implied preemption exists when “either the purpose and scope of the regulatory scheme will be so detailed or the nature of the subject of regulation will be such that the court may infer a legislative intent to preempt, even in the absence of an express statement of preemption.” *See* Laura D. Hermer, *Municipal Home Rule in New York: Tobacco Control at the Local Level*, 65 BROOKLYN L. REV. 321, 349 (1999).

State Law Regarding Evictions

Currently, Article 7 of the Real Property Actions and Proceedings Law (“RPAPL”) govern eviction proceedings and regulate the eviction process. Under the Article, evictions may only occur after a special proceeding. *See generally* N.Y. Real Prop. Acts. Law §711 (2019). Section 711 specifically outlines the grounds under which a special eviction proceeding may occur. *See Id.* If the court finds that the tenant’s behavior meets one of the grounds for removal, then their removal is lawful. While the Housing Stability and Tenant Protection Act of 2019 touches on unlawful eviction practices, it did not alter or revise section 711 significantly. Thus, the grounds for eviction under Section 711 remain. A “good cause” eviction law would further narrow the grounds for removal beyond the state statute.

Discussion

The Home Rule Can Be Used To Pass Local “Good Cause” Eviction Laws.

While the New York state legislature has used the “state concern” and “preemption” doctrines to regulate localities or undermine local property laws, localities still have the affirmative power to pass local “good cause” eviction laws. In the absence of state law, localities are free to pass property related laws based on the locality’s needs. New York state eviction laws have not explicitly stated that any eviction law preempts all local eviction laws. Thus, localities may pass a “good cause” eviction law based on local needs.

It is true that the Court has upheld state legislation attempting to regulate local property when the state explicitly identifies a ‘state concern’ within a statute, preempting all local legislation on the matter. Once the state has deemed an issue as a “state concern,” the legislature may issue a law occupying the field. For instance, in *Wambat Realty Corp.*, 393 N.Y.S.2d at 953 (N.Y. 1977), the Court upheld the Adirondack Park Agency Act, which creating a zoning

program for all public and private lands in the park despite those already in place by local governments, because the act explicitly identified an issue of “state concern.”

However, localities would not face the same threat of explicit preemption if they adopt a “good cause” eviction law. The state has never issued an eviction law that explicitly identifies eviction as a “state concern” or asserted an explicit preemption of local eviction laws. While RPAPL §711 details the situations in which a landlord can maintain an eviction proceeding against a tenant, it does not explicitly state an intention to preempt specific local eviction laws. Although a locality may not pass a law that contradicts a specific rule within §711—for instance, by passing a law that bans landlords from bringing eviction proceedings against a tenant who defaulted in the payment of rent—a locality can pass a “good cause” eviction law in the absence of explicit preemption.

Courts Will Likely Uphold “Good Cause” Eviction Laws Under the Home Rule Power.

Localities face a more significant challenge by the courts, which may find that “good cause” eviction laws are implicitly preempted by state eviction laws, particularly RPAPL §711. If the courts find that §711 intended to occupy the field of eviction by legislating on the issue, then localities would be barred from maintaining their “good cause” eviction laws. However, precedent suggests that the courts are likely to uphold local “good cause” eviction laws.

First, in 2000, the court found in *Zorn v. Howe* that there is no historical evidence suggesting the state has intended to preempt local laws on eviction. See *Zorn v. Howe*, 716

N.Y.S.2d 128, 130 (App. Div. 2000). In *Zorn*, New York Municipal Code, chapter 177, stated that an eviction proceeding may be maintained when the premises is being “used or occupied for the purpose of using or possessing illegal drugs.” A tenant argued that this local law violated N.Y. Real Prop. Law §231(1), which states that the owner of a premises can void lease if the property is being use for “illegal trade, manufacture, or other business.” The tenant argued that the state intended to preempt the area of eviction, and since this state law makes no mention of private noncommercial drug use, then local governments cannot allow landlords to evict on that basis. See 716 N.Y.S.2d at 129. The appellate court found that the state never intended to preempt the entire field of eviction, stating, “it is only when the state has evidences desire or design to occupy an entire field to the exclusion of local law that the city is powerless to act.” See 716 N.Y.S.2d at 131 (citing *People v. Judiz*, 381 N.Y.S.2d 467, 470 (N.Y. 1976)). Based on this precedent, localities can create a “good cause” eviction law absent a state preemption law.

Second, New York courts consistently affirm that state and local governments can have rules governing the same subject matter. In *Ba Mar, Inc. v. County of Rockland*, 566 N.Y.S.2d 298, 305 (N.Y. App. Div. 1990). The Court stated, “The mere fact that both the state and local governments seek to regulate the same subject matter does not, in and of itself, render the local legislation invlaid on preemption grounds.” See *Id.* Courts often cite this proposition in *Ba Mar* to permit specific laws in areas that the state has legislated in more broadly. See *Jancyn Mfg. Corp. v. County of Suffolk*, 524 N.Y.S.2d 8, 14 (N.Y. 1987). See also *Zorn*, 716 N.Y.S.2d at 131. The Court further asserted such an understanding of N.Y. Real Prop. Law §231(1) would overly restrain localities, reaffirming that “situations may arise where laws of state-wide application are appropriately tailored by municipalities to fit their own peculiarly local needs.” *Id.* (citing *Kahmhi v. Yorktown*, 548 N.Y.S.2d 144, 149 (N.Y. 1989)). Thus, in the context of eviction law,

even though the state has passed RPAPL 711 regulating evictions, it does not automatically bar localities from issuing their own eviction ordinances tailored to their needs.

Third, Courts regularly uphold local laws regulating specifics of an area of law on which the state statute is silent. In *Zorn*, the court noted that courts traditionally uphold local laws that speak to details not touched on by a related statute. *See Zorn*, 716 N.Y.S.2d at 132. According to the court, it is appropriate for a local law to supplement, rather than supplant, state legislation. *See id.* *See also Matter of JIJ Realty Corp. v. Costello*, 658 N.Y.S.2d 92 (a state law dealing with petroleum storage did not preempt a zoning ordinance prohibiting the storage of petroleum products). In *Jancyn Mfg. Corp. v. County of Suffolk*, a state law required manufacturers of cesspool additives to provide information on the environmental impact of their product. *See Jancyn Mfg. Corp. v. County of Suffolk*, 524 N.Y.S.2d 8, 14 (N.Y. 1987). Then, a local law prohibited the sale of all cesspool additives, which was challenged by a manufacturer. *See id.* Since an accompanying declaration by the legislature claimed that the state’s goal was to prevent pollution of water sources through the sewage system, and there is no explicit intent to create a uniform protective system of the water supply, the court asserted that the local law, although more restrictive than the state law, is proper. *See id.* at 16.

In the context of eviction law, local “good cause” eviction laws would serve to supplement, not supplant, RPAPL Section 711. Section 711 limits the grounds on which a landlord can bring a special eviction proceeding against a tenant. A “good cause” eviction law would further supplement those limitations by requiring the presence of additional elements before a tenant can be removed. As in *Jancyn*, there is no indication that the state wanted to create a uniform system for allowable evictions. While the state law is limiting a locality’s ability to allow evictions beyond the grounds provided, it does not suggest that localities cannot impose

further limitations. Thus, local “good cause” eviction laws would not be preempted by existing state laws.

Conversely, local “good cause” eviction laws in the context of mobile homes have been ruled invalid and preempted by state law in *Halpern v. Sullivan Cty.* and *Ba Mar, Inc. v. Cty. of Rockland*. See generally *Halpern v. Sullivan Cty.*, 574 N.Y.S.2d 837 (App. Div. 1991). See also *Ba Mar, Inc. v. Cty. of Rockland*, 566 N.Y.S.2d 298 (App. Div. 1991). Real Property Law §223 regulates the rights and obligations of mobile home park owners and tenants. See *Halpern*, 574 N.Y.S.2d at 148. In *Ba Mar*, Rockland County adopted a local law requiring a good cause to evict a mobile home owner based on findings that the state law regulating mobile home parks, Real Property law §223, did not adequately safeguard mobile home owners from arbitrary evictions by park owners. See *Ba Mar*, 566 N.Y.S.2d at 300. The *Ba Mar* court notes that, although §223 does not explicitly preempt the field of mobile home law, the area of mobile home regulation is preempted by the section’s “comprehensive and detailed regulatory scheme.” See *Id.* at 299. Since §223 is broad, covering almost all aspects of mobile home life and regulation, the state’s intent to preempt local law is clear. See *Id.* The strongest indicator that the state intended to preempt local laws is that §223 requires mobile home park owners to register with the state. See *Id.*

Furthermore, the court noted that even if it found the state did not intend to preempt the field of mobile home park regulation, the local law is also inconsistent with §223 by prohibiting actions that are “permissible under state law,” rendering the local law invalid. See *Ba Mar*, 566 N.Y.S.2d 307. Specifically, the local law does not list holdover tenancy as a grounds for eviction whereas §223 was specifically amended to allow for holdover tenant evictions. See *Id.* at 308.

A general “good cause” eviction law, however, would not face the same challenges as a “good cause” eviction law in the context of mobile home regulation. First, the state legislature more clearly intended to occupy the field of mobile home regulation than it does in the area of evictions generally. The legislature purposely carved out rules and regulations concerning mobile home park owners and tenants based on a series of unfair park owner practices. *See Id.* at 302. Regulating mobile home evictions was just one part of a much larger regulatory scheme attempting to prevent the exploitation of mobile home owners. Since the state specifically targeted the mobile park owner/tenant relationship for regulation, isolating it from the general tenant/landlord regulatory scheme, it is clearer that the state intended to occupy the field, which covers mobile home evictions. In the context of general eviction law, there is no specific legislative carve out for evictions that would show an intention to occupy the field. Even when the state made changes to evictions in the Housing Stability and Tenant Protection Act of 2019, they did so in the context of general rent reform and did not alter §711 on appropriate grounds for eviction. Thus, the state does not intend to occupy the field of evictions as clearly as it does with mobile home regulation.

Additionally, a general “good cause” eviction law would not be inconsistent with state laws on eviction, assuming that the language of the law does not conflict with §711. First, the local mobile home eviction law statute in *Ba Mar* did not allow evictions based on holdover tenancy. This explicitly contradicts the state law, which lists holdover tenancy as one of the grounds for eviction. Section 711 also allows special proceedings on the grounds of holdover tenancy. As long as a “good cause” eviction law keeps this section intact, then it would not be inconsistent with §711.

Even if a “good cause” eviction law limited special proceedings on the basis of a holdover or a default to situations in which it is the tenant’s fault, this would not be inconsistent with §711, as it would be in the case of mobile homes. New York Real Property Law §223 on mobile home eviction explicitly states that manufactured home park owners “may not evict a tenant other than” the following reasons listed. This shows an explicit intention to control the grounds for eviction. The statutory language in §711 does not use the same limiting and definitive language. Section 711 states, “A specially proceeding may be maintained under this article upon the following grounds...” The language “may be maintained” is less restrictive and does not demonstrate a similar desire to control general eviction as does the language used in §223. Thus, local governments have more room to create local rules that limit aspects of §711 without being wholly inconsistent with the law.

MEMORANDUM

To: For the Many; Brahvan Ranga
From: Community and Economic Development Clinic, CUNY School of Law
Re: Good Cause Eviction – Response to Preemption Concerns in Beacon
Date: October 18, 2021

Overview:

- The Beacon Good Cause Eviction Law will likely not be preempted by state law because it does not interfere with the state law that allows a landlord to bring a summary eviction proceeding after the expiration of a tenancy.
- The New York State Constitution gives localities broad powers to legislate. However, local law cannot conflict with state law; if it does, it will be preempted and struck down. Localities may legislate on the landlord-tenant relationship, as long as the local law does not conflict with the state law.¹
- The state law that governs evictions, the Real Property Actions and Proceedings Law (RPAPL) § 711, grants both tenants and landlords the right to access a specific procedural court process – the summary proceeding – when a landlord seeks to evict a tenant. The State Legislature enacted the summary proceeding as a way to provide owners with a more streamlined process to recover property than the cumbersome common law ejectment action.
- The Beacon Good Cause Eviction Law does not remove or restrict owners’ right to a summary eviction proceeding when they seek to recover possession of an apartment.
- RPAPL § 711(1) allows landlords to initiate summary eviction proceedings after the expiration of a tenant’s term. Beacon can legislate when and how a tenancy expires without interfering with RPAPL § 711(1).
- Courts have upheld local laws that define portions of the RPAPL and have had the effect of narrowing the permissible grounds for eviction. For example, a New York City law that narrowed the definition of “objectionable behavior” in the RPAPL § 711 was upheld.²
- Courts would likely uphold local good cause eviction legislation that defines the grounds for the expiration of a tenancy because such legislation does not restrict RPAPL § 711’s right to a summary eviction proceeding and it does not limit landlords’ ability to bring a summary eviction proceeding after the expiration of a tenancy.

¹ *Zorn v. Howe*, 276 A.D.2d 51, 53-54 (3d Dep’t 2000).

² *Rose Towers Realty v. Aviv*, 121 Misc. 2d 1016, 1020-23 (Queens Cty. Civ. Ct. 1983).

Summary:

This memo is in response to the public memo released by Keane & Beane on October 5, 2021, on the issue of Beacon’s proposed Good Cause Eviction Law. This memo responds to the concerns raised in the Keane & Beane memo that local good eviction cause legislation conflicts with – and is preempted by – state law. Keane & Beane’s memo asserts, and we agree, that the State and localities may legislate on the landlord-tenant relationship, provided that the local law does not conflict with state law. Keane & Beane October 5, 2021 Public Memo at 4; *Zorn v. Howe*, 276 A.D.2d 51, 53-54 (3d Dep’t 2000). As such, this memo focuses on the particular conflict preemption question of whether local good cause eviction legislation restricts rights granted by state law. We conclude that a court would likely uphold local good cause eviction legislation because such legislation does not restrict a landlord’s right under RPAPL § 711 to commence summary eviction proceedings upon the expiration of a tenant’s term. Instead, local good cause eviction legislation permissibly defines the circumstances under which a tenancy can expire.

Local Governments have Broad Legislative Authority, but Local Laws Cannot Restrict Rights Granted by State Law

The New York State Constitution affirms the power of local governments to make laws that “secure . . . the rights, powers, privileges and immunities granted to them.” N.Y. Const. art. IX, § 2. These rights, powers, privileges, and immunities are to be liberally construed, N.Y. Const. art. IX, § 3(c), and local legislation enjoys a strong presumption of validity. *MHC Greenwood Vill. NY, L.L.C. v. Cty. of Suffolk*, 18 Misc. 3d 312, 319 (Nassau Cty. Sup. Ct. 2007). Despite these broad powers, local laws must be consistent with the State Constitution and with general state law. N.Y. Mun. Home Rule Law § 10 (McKinney 2021). “A local law will be preempted either where there is a direct conflict with a state statute (conflict preemption) or where the legislature has indicated its intent to occupy the particular field (field preemption).”³ *Garcia v. New York City Dep’t of Health & Mental Hygiene*, 31 N.Y.3d 601, 617 (2018). A local law is inconsistent with the State Constitution or a general state law where “the local law permits conduct prohibited by State law, prohibits conduct specifically permitted by State law or imposes restrictions on rights granted by the State.” *Zorn*, 276 A.D.2d at 55. Recently, the Court of Appeals cautioned that a broad reading of conflict preemption “risks rendering the power of local governments illusory.” *Garcia*, 31 N.Y.3d at 617 (2018).

State Law Grants Landlords and Tenants the Right to Summary Proceedings After the Expiration of a Tenant’s Term

Article 7 of the New York Real Property Actions and Proceedings Law (RPAPL) authorizes the use of summary proceedings to recover possession of real property. N.Y. Real Prop. Acts. Law § Ch. 81, art. 7 (McKinney 2021). RPAPL § 711 is the general state law that governs evictions in the landlord-tenant context. RPAPL § 711 grants landlords the right to a summary proceeding when they seek to recover possession of a dwelling or housing

³ The Keane & Beane memo does not contend that field preemption is at issue here. Keane & Beane October 5, 2021 Public Memo at 4. We agree.

accommodation from a tenant or lawful occupant. N.Y. Real Prop. Acts. Law § 711 (McKinney 2021). The State legislature granted landlords this right as an alternative to lengthy and expensive common law ejectment actions that were previously the only legal means available for landlords to evict tenants.⁴ *Velazquez v. Thompson*, 451 F.2d 202, 204 (2d Cir. 1971). RPAPL § 711 also grants tenants and lawful occupants the right to court process prior to eviction. N.Y. Real Prop. Acts. Law § 711 (McKinney 2021).

In addition to ensuring the right to a summary proceeding, RPAPL § 711(1) permits the initiation of a summary proceeding “*after* the expiration of a tenant’s term.” N.Y. Real Prop. Acts. Law § 711 (McKinney 2021) (emphasis added). “After” is notable because it indicates that RPAPL § 711(1) is only operative once a tenant’s term has expired. The State Legislature does not define expiration, nor does the text of the statute explain what causes a term to expire. See N.Y. Real Prop. Acts. Law § 711 (McKinney 2021).

Keane & Beane’s memo mischaracterizes the right granted in RPAPL § 711 as the “landlord’s ability to evict a tenant and regain possession of property.” Keane & Beane October 5, 2021 Public Memo at 2. RPAPL § 711 does not grant the ability to evict and regain possession; this right existed in common law and long predates the RPAPL. *Velazquez*, 451 F.2d at 204. Instead, RPAPL § 711 grants both tenants and landlords the right to access a specific procedural court process – the summary proceeding – when a landlord seeks to evict a tenant. N.Y. Real Prop. Acts. Law § 711 (McKinney 2021). Finally, RPAPL § 711(1) gives landlords the right to evict tenants whose terms – for whatever reason – have already expired, but it does not preclude localities from regulating when and how tenancies expire. *Id.*

Local Good Cause Eviction Legislation Does Not Restrict the Right to Summary Proceedings

Local good cause eviction legislation does not restrict the rights granted in RPAPL § 711. Under local good cause eviction legislation, owners still have access to summary proceedings as a means of eviction, and tenants still have the protection of court process prior to an eviction. As such, Keane & Beane’s reliance on *Tartaglia v. McLaughlin* is misplaced. The local law at issue in *Tartaglia* is much more extreme than the proposed Beacon Good Cause Eviction Law because it required preliminary administrative approval from a local official before a landlord could even commence an eviction case. The court found that state law preempted the local law in *Tartaglia* because it allowed a local administrative body to “determine whether litigants may or may not avail of the legal forum in actions and proceedings to recover possession of real property.” *Tartaglia v. McLaughlin*, 190 Misc. 266, 271 (Sup. Ct. Kings Cty. 1947), *aff’d*, 273 A.D. 821 (App. Div. 1948), *rev’d* on other grounds, 297 N.Y. 419 (1948). Unlike the law in *Tartaglia*, the local good cause eviction legislation does not create a preliminary administrative step, or any other analogous measure, that would restrict access to summary proceedings. A local good cause eviction law merely defines the grounds on which landlords may cause the expiration of

⁴ “A special proceeding is a quick and inexpensive way to implement a right. It’s as plenary as an action, culminating in a judgment, but is brought on with the ease, speed, and economy of a mere motion. Combining the best of both worlds, the special proceeding is of course preferable to the ordinary action, but it may be used only when explicitly authorized by law in a particular case.” David D. Siegel, *New York Practice* § 547 (6th ed. 2021).

tenancies. Once a tenancy has expired, it allows landlords to go directly to court to initiate a summary eviction proceeding, just as they are currently able to do.

Another case relied on by Keane & Beane, *Gennis v. Milano*, decided in 1929, has limited applicability because it is based on a state statutory scheme no longer in use. *Gennis v. Milano*, 135 Misc. 209, 210 (App. Term 1st Dep't. 1929). The local law at issue in *Gennis* re-wrote portions of the New York Civil Practice Act that dealt with summary proceedings. *Id.* The mechanics of summary proceedings are currently governed by Article 4 of New York's Civil Practice Law and Rules (CPLR). N.Y. C.P.L.R. Ch. EIGHT, Art. 4 (McKinney 2021). Local good cause eviction legislation does not attempt to amend, interfere with, or influence the operation of the CPLR's special proceedings, of which summary proceedings are a subset. *Id.* Instead, local good cause eviction legislation leaves special proceedings intact, including a landlord's right to access such proceedings for the purpose of recovering property.

Localities Can Regulate When and How Tenancies Expire without Conflicting with the Right to Initiate a Summary Proceeding After the Expiration of a Tenant's Term

Where the state legislature does not define, or does not exhaustively define, a word or term used in a statute, and where there is no evidence that the state intends to preempt any local legislation in the area, local legislatures may exercise their home rule power to define the terms in question. *See e.g., Garcia*, 31 N.Y.3d 601 (finding New York City allowed to add flu vaccine to list of mandated state vaccines); *New York State Club Ass'n, Inc. v. City of New York*, 69 N.Y.2d 211, 219 (1987), *aff'd*, 487 U.S. 1, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988) (upholding New York City local law defining portion of State Human Rights Law so as to restrict the ability of associations to discriminate).

Courts have upheld local laws that define terms in Article 7 of the RPAPL, even in cases where these local laws narrow the available grounds for eviction. *Ross v. Baumblyt*, 46 Misc. 3d 637 (Kings Cty. Civ. Ct. 2014); *Rose Towers Realty v. Aviv*, 121 Misc. 2d 1016 (Queens Cty. Civ. Ct. 1983). RPAPL § 711(1) allows landlords to “recover possession of real property by reason of the termination of the term fixed in the lease pursuant to a provision contained therein giving the landlord the right to terminate the time fixed for occupancy under such agreement if he deem the tenant objectionable.” N.Y. Real Prop. Acts. Law § 711 (McKinney 2021). A court upheld a local New York City law that prohibited evictions on the basis of pet ownership where an owner knew or should have known of the pet's existence for longer than three months, even if there was a “no pet clause” in the lease. *Rose Towers*, 121 Misc. 2d at 1020-23 (Queens Cty. Civ. Ct. 1983). This “no pet clause” law limits the definition of objectionable behavior. The law was upheld as a valid exercise of local authority, even though it restricted the grounds for which a landlord could evict a tenant. *Rose Towers*, 121 Misc. 2d at 1020-23. Like good cause eviction legislation, this outcome, created by definitions in local laws, shifted the grounds required for a summary eviction proceeding, but it did not remove a landlord's ability to evict an occupant all together.

As noted above, RPAPL § 711(1) permits the initiation of a summary proceeding “after the expiration of a tenant's term.” N.Y. Real Prop. Acts. Law § 711 (McKinney 2021). Applying

the principles from *Garcia*, *New York State Club Ass’n*, and *Rose Towers*, the State Legislature’s choice to leave “expiration” undefined provides space for local governments to exercise their home rule powers to define the grounds for expiration without coming into conflict with RPAPL § 711. Good cause eviction legislation that defines the grounds for the “expiration of a tenant’s term” is not in conflict with RPAPL § 711 because the good cause legislation would operate *prior* to the expiration of a tenant’s term, rather than *after* expiration (“after” being the period governed by RPAPL § 711). Good cause grounds for the expiration of a tenant’s term can include things like occupancy in violation of the law, or where a tenant creates a nuisance, and can exclude things like the end of a tenant’s lease.

Such a local law would not conflict with *Zorn v. Howe*, which affirms that localities can add detail to the provisions of RPAPL Article 7. *Zorn*, 276 A.D.2d at 53-54. The local law at issue in *Zorn* expanded the grounds upon which a landlord could bring a special proceeding to include illegal drug use and possession. *Zorn*, 276 A.D.2d at 53. In upholding the law, the court reasoned that a local law that expands the grounds for eviction does not interfere with “the remedies provided in the RPAPL.” *Id.* at 54. Local good cause eviction legislation that defines the ground for the expiration of a tenancy is consistent with this reasoning: like the law at issue in *Zorn*, local good cause legislation that operates prior to the expiration of a tenant’s term does not prohibit conduct allowed by state statute. Local good cause legislation simply defines the grounds for the expiration of a tenancy, but it does not conflict with the remedies provided in RPAPL § 711(1) because landlords could still bring a summary eviction proceeding once the tenancy has expired.

Conclusion

Local good cause eviction legislation is not preempted by state law because it does not remove or restrict owners’ right to a summary eviction proceeding when they are otherwise entitled to recover possession of an apartment. Nor does it restrict an owner’s ability to bring a summary proceeding once a tenant’s term has expired. Rather, local good cause eviction legislation defines the grounds upon which a tenancy expires. Because courts have upheld local laws that define portions of state law, even where those definitions limit the grounds for eviction, a court would likely uphold local good cause eviction legislation as a valid exercise of Beacon’s home rule authority.