

**APRIL 17, 2019  
REGULAR TOWN BOARD MEETING**

**Town Hall**

**7:00 P.M.**

Greg Post, Supervisor led the pledge to the flag.

**Roll Call**

**Present:** Supervisor Post  
Deputy Supervisor Underhill  
Councilwoman White  
Councilwoman Michalak  
Councilman Zambito

**Others**

**Present:** Town Clerk Morasco  
Brian Quinn, Daily News Reporter

The Supervisor called the meeting to order at 7:00 P.M.

**Public Hearing Local Law 2 of 2019-** The Supervisor called the Public Hearing to Order for Local Law 2 of 2019 – Sexual Harassment Policy at 7:01 P.M. - Minutes for public hearing entered separately.

**March 13, 2019 Special Town Board Meeting and March 20, 2019 Regular Town Board Meeting:**

Motion Deputy Supervisor Underhill, second Councilman Zambito to approve the minutes as written.

**Ayes:** Underhill, Zambito, White, Michalak, Post

**MOTION CARRIED by unanimous vote (5-0)**

**RESOLUTION NO. 76:**

Councilwoman White offered the following:

**RESOLUTION ADOPTING LOCAL LAW No. 2 of 2019**

**WHEREAS**, proposed Local Law No. 2 of 2019 of the Town of Batavia entitled “A Local Law to Adopt Sexual Harassment Policy for the Town of Batavia”, which proposed Local Law in its final form was presented to the Town Board at the meeting held March 20, 2019, and a copy thereof was kept with the Town Clerk and copies both laid upon the desks of the members of said Town Board Members and mailed to each member of the Town Board Members not in attendance at said meeting; and

**WHEREAS**, a public hearing on the advisability of enacting said proposed Local Law was held on April 17, 2019, before this Town Board, pursuant to public notice duly published in The Daily News according to law, at which time all interested persons were heard; and

**WHEREAS**, the Town Board of the Town of Batavia, New York is of the opinion that adoption of said proposed Local Law No. 2 of 2019 is in the best interest of the Town of Batavia, New York,

**NOW, THEREFORE, BE IT RESOLVED**, by the Town Board of the Town of Batavia, New York that said proposed Local Law No. 2 of 2019 be and the same hereby is adopted; and

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**BE IT FURTHER RESOLVED**, that a certified copy of said Local Law No. 2 of 2019 be filed with the New York State Secretary of State in accordance with Law.

Local Law Filing

New York State Department of State  
41 State Street, Albany, NY 12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

~~County~~  
~~City~~ of Batavia, Genesee County, New York  
~~Town~~  
~~Village~~

Local Law No. 2 of the year 2019.

A local law known as Local Law to Adopt Sexual Harassment Policy for the Town of Batavia, New York  
(Insert Title)

Be it enacted by the Town Board of the  
(Name of Legislative Body)

~~County~~  
~~City~~ of **Batavia, Genesee County, New York** as follows:  
~~Town~~  
~~Village~~

**SECTION I. TITLE AND AUTHORITY**

This local law is entitled "A Local Law to Adopt Sexual Harassment Policy for the Town of Batavia," and is adopted pursuant to authority granted in the Municipal Home Rule Law of the State of New York.

**SECTION II. ADOPTION OF SEXUAL HARASSMENT POLICY**

The Town of Batavia hereby adopts the following Sexual Harassment Policy, to wit:

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**TOWN OF BATAVIA**  
**COMBATTING SEXUAL HARASSMENT POLICY**

**Introduction**

Town of Batavia is committed to maintaining a workplace free from sexual harassment. Sexual harassment is a form of workplace discrimination. All employees are required to work in a manner that prevents sexual harassment in the workplace. This Policy is one component of the Town of Batavia's commitment to a discrimination-free work environment. Sexual harassment is against the law<sup>1</sup> and all employees have a legal right to a workplace free from sexual harassment and employees are urged to report sexual harassment by filing a complaint internally with Town of Batavia. Employees can also file a complaint with a government agency or in court under federal, state or local antidiscrimination laws.

**Policy:**

1. Town of Batavia's policy applies to all employees, applicants for employment, interns, whether paid or unpaid, contractors and persons conducting business, regardless of immigration status, with Town of Batavia in the remainder of this document, the term "employees" refers to this collective group.
2. Sexual harassment will not be tolerated. Any employee or individual covered by this policy who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action (e.g., counseling, suspension, termination).
3. Retaliation Prohibition: No person covered by this Policy shall be subject to adverse action because the employee reports an incident of sexual harassment, provides information, or otherwise assists in any investigation of a sexual harassment complaint. Town of Batavia will not tolerate such retaliation against anyone who, in good faith, reports or provides information about suspected sexual harassment. Any employee of Town of Batavia who retaliates against anyone involved in a sexual harassment investigation will be subjected to disciplinary action, up to and including termination. All employees, paid or unpaid interns, or non-employees<sup>2</sup> working in the workplace who believe they have been subject to such retaliation should inform a Department Head, Town Supervisor or Secretary to the Supervisor. All employees, paid or unpaid interns or non-employees who believe they have been a target of such retaliation may also seek relief in other available forums, as explained below in the section on Legal Protections.

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<sup>1</sup> While this policy specifically addresses sexual harassment, harassment because of and discrimination against persons of all protected classes is prohibited. In New York State, such classes include age, race, creed, color, national origin, sexual orientation, military status, sex, disability, marital status, domestic violence victim status, gender identity and criminal history.

<sup>2</sup> A non-employee is someone who is (or is employed by) a contractor, subcontractor, vendor, consultant, or anyone providing services in the workplace. Protected non-employees include persons commonly referred to as independent contractors, "gig" workers and temporary workers. Also included are persons providing equipment repair, cleaning services or any other services provided pursuant to a contract with the employer.

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4. Sexual harassment is offensive, is a violation of our policies, is unlawful, and may subject Town of Batavia to liability for harm to targets of sexual harassment. Harassers may also be individually subject to liability. Employees of every level who engage in sexual harassment, including managers and supervisors who engage in sexual harassment or who allow such behavior to continue, will be penalized for such misconduct.
5. Town of Batavia will conduct a prompt and thorough investigation that ensures due process for all parties, whenever management receives a complaint about sexual harassment, or otherwise knows of possible sexual harassment occurring. Town of Batavia will keep the investigation confidential to the extent possible. Effective corrective action will be taken whenever sexual harassment is found to have occurred. All employees, including managers and supervisors, are required to cooperate with any internal investigation of sexual harassment.
6. All employees are encouraged to report any harassment or behaviors that violate this policy. Town of Batavia will provide all employees a complaint form for employees to report harassment and file complaints.
7. Managers and supervisors are **required** to report any complaint that they receive, or any harassment that they observe or become aware of, to the Town Supervisor or Secretary to the Supervisor.
8. This policy applies to all employees, paid or unpaid interns, and non-employees and all must follow and uphold this policy. This policy must be provided to all employees and should be posted prominently in all work locations to the extent practicable (for example, in a main office, not an offsite work location) and be provided to employees upon hiring.

**What Is “Sexual Harassment”?**

Sexual harassment is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender.

Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual’s sex when:

- Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive work environment, even if the reporting individual is not the intended target of the sexual harassment;
- Such conduct is made either explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual’s employment.

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A sexually harassing hostile work environment includes, but is not limited to, words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, which interfere with the recipient's job performance.

Sexual harassment also occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions or privileges of employment. This is also called "quid pro quo" harassment.

Any employee who feels harassed should report so that any violation of this policy can be corrected promptly. Any harassing conduct, even a single incident, can be addressed under this policy.

**Examples of sexual harassment**

The following describes some of the types of acts that may be unlawful sexual harassment and that are strictly prohibited:

- Physical acts of a sexual nature, such as:
  - Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body or poking another employee's body;
  - Rape, sexual battery, molestation or attempts to commit these assaults.
- Unwanted sexual advances or propositions, such as:
  - Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion or other job benefits or detriments;
  - Subtle or obvious pressure for unwelcome sexual activities.
- Sexually oriented gestures, noises, remarks or jokes, or comments about a person's sexuality or sexual experience, which create a hostile work environment.
- Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.
- Sexual or discriminatory displays or publications anywhere in the workplace, such as:
  - Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity and the status of being transgender, such as:

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- Interfering with, destroying or damaging a person’s workstation, tools or equipment, or otherwise interfering with the individual’s ability to perform the job;
- Sabotaging an individual’s work;
- Bullying, yelling, name-calling.

**Who can be a target of sexual harassment?**

Sexual harassment can occur between any individuals, regardless of their sex or gender. New York Law protects employees, paid or unpaid interns, and non-employees, including independent contractors, and those employed by companies contracting to provide services in the workplace. Harassers can be a superior, a subordinate, a coworker or anyone in the workplace including an independent contractor, contract worker, vendor, client, customer or visitor.

**Where can sexual harassment occur?**

Unlawful sexual harassment is not limited to the physical workplace itself. It can occur while employees are traveling for business or at employer sponsored events or parties. Calls, texts, emails, and social media usage by employees can constitute unlawful workplace harassment, even if they occur away from the workplace premises, on personal devices or during non-work hours.

**Retaliation**

Unlawful retaliation can be any action that could discourage a worker from coming forward to make or support a sexual harassment claim. Adverse action need not be job-related or occur in the workplace to constitute unlawful retaliation (e.g., threats of physical violence outside of work hours).

Such retaliation is unlawful under federal, state, and (where applicable) local law. The New York State Human Rights Law protects any individual who has engaged in “protected activity.” Protected activity occurs when a person has:

- made a complaint of sexual harassment, either internally or with any anti-discrimination agency;
- testified or assisted in a proceeding involving sexual harassment under the Human Rights Law or other anti-discrimination law;
- opposed sexual harassment by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of harassment;
- reported that another employee has been sexually harassed; or
- encouraged a fellow employee to report harassment.

Even if the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful.

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However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

**Reporting Sexual Harassment**

**Preventing sexual harassment is everyone's responsibility.** Town of Batavia cannot prevent or remedy sexual harassment unless it knows about it. Any employee, paid or unpaid intern or non-employee who has been subjected to behavior that may constitute sexual harassment is encouraged to report such behavior to a Department Head, Town Supervisor or Secretary to the Supervisor. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a Department Head, Town Supervisor or Secretary to the Supervisor.

Reports of sexual harassment may be made verbally or in writing. A form for submission of a written complaint is attached to this Policy, and all employees are encouraged to use this complaint form. Employees who are reporting sexual harassment on behalf of other employees should use the complaint form and note that it is on another employee's behalf.

Employees, paid or unpaid interns or non-employees who believe they have been a target of sexual harassment may also seek assistance in other available forums, as explained below in the section on Legal Protections.

**Supervisory Responsibilities**

All Department Heads who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing behavior or for any reason suspect that sexual harassment is occurring, **are required** to report such suspected sexual harassment to the Town Supervisor or Secretary to the Supervisor.

In addition to being subject to discipline if they engaged in sexually harassing conduct themselves, supervisors and managers will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue.

Department Heads will also be subject to discipline for engaging in any retaliation.

**Complaint and Investigation of Sexual Harassment**

**All** complaints or information about sexual harassment will be investigated, whether that information was reported in verbal or written form. Investigations will be conducted in a timely manner and will be confidential to the extent possible.

An investigation of any complaint, information or knowledge of suspected sexual harassment will be prompt and thorough, commenced immediately and completed as soon as possible. The investigation will be kept confidential to the extent possible. All persons involved, including complainants, witnesses

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and alleged harassers will be accorded due process, as outlined below, to protect their rights to a fair and impartial investigation.

Any employee may be required to cooperate as needed in an investigation of suspected sexual harassment. Town of Batavia will not tolerate retaliation against employees who file complaints, support another's complaint or participate in an investigation regarding a violation of this policy.

While the process may vary from case to case, investigations should be done in accordance with the following steps:

- Upon receipt of complaint, Town Supervisor will conduct an immediate review of the allegations, and take any interim actions (e.g., instructing the respondent to refrain from communications with the complainant), as appropriate. If complaint is verbal, encourage the individual to complete the "Complaint Form" in writing. If he or she refuses, prepare a Complaint Form based on the verbal reporting.
- If documents, emails or phone records are relevant to the investigation, take steps to obtain and preserve them.
- Request and review all relevant documents, including all electronic communications.
- Interview all parties involved, including any relevant witnesses;
- Create a written documentation of the investigation (such as a letter, memo or email), which contains the following:
  - A list of all documents reviewed, along with a detailed summary of relevant documents;
  - A list of names of those interviewed, along with a detailed summary of their statements;
  - A timeline of events;
  - A summary of prior relevant incidents, reported or unreported; and
  - The basis for the decision and final resolution of the complaint, together with any corrective action(s).
- Keep the written documentation and associated documents in a secure and confidential location.
- Promptly notify the individual who reported and the individual(s) about whom the complaint was made of the final determination and implement any corrective actions identified in the written document.
- Inform the individual who reported of the right to file a complaint or charge externally as outlined in the next section.

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**Legal Protections And External Remedies**

Sexual harassment is not only prohibited by Town of Batavia but is also prohibited by state, federal, and, where applicable, local law.

Aside from the internal process at Town of Batavia, employees may also choose to pursue legal remedies with the following governmental entities. While a private attorney is not required to file a complaint with a governmental agency, you may seek the legal advice of an attorney.

In addition to those outlined below, employees in certain industries may have additional legal protections.

**State Human Rights Law (HRL)**

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to all employers in New York State with regard to sexual harassment, and protects employees, paid or unpaid interns and non-employees, regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with the Division of Human Rights (DHR) or in New York State Supreme Court.

Complaints with DHR may be filed any time **within one year** of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, **within three years** of the alleged sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Complaining internally to Town of Batavia does not extend your time to file with DHR or in court. The one year or three years is counted from date of the most recent incident of harassment.

You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If sexual harassment is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying of monetary damages, attorney's fees and civil fines.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400 or visit: [www.dhr.ny.gov](http://www.dhr.ny.gov).

Contact DHR at (888) 392-3644 or visit [dhr.ny.gov/complaint](http://dhr.ny.gov/complaint) for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State.

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**Civil Rights Act of 1964**

The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime within 300 days from the harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court.

The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination is found to have occurred. In general, private employers must have at least 15 employees to come within the jurisdiction of the EEOC.

An employee alleging discrimination at work can file a “Charge of Discrimination.” The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at [www.eeoc.gov](http://www.eeoc.gov) or via email at [info@eeoc.gov](mailto:info@eeoc.gov).

If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

**Local Protections**

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists. For example, employees who work in New York City may file complaints of sexual harassment with the New York City Commission on Human Rights. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 40 Rector Street, 10th Floor, New York, New York; call 311 or (212) 306-7450; or visit [www.nyc.gov/html/cchr/html/home/home.shtml](http://www.nyc.gov/html/cchr/html/home/home.shtml).

**Contact the Local Police Department**

If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.

**SECTION III: EFFECTIVE DATE AND SEVERABILITY**

This local law shall take effect upon the filing with the Secretary of State in accordance with the Municipal Home Rule Law and Town Law. If any part or section of this local law shall be held to be invalid, the remaining provisions thereof shall not fail but shall remain in full force and effect. All local laws, ordinances, rules or regulations, or parts or portions thereof that conflict or are contrary to any portion of this local law are

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hereby repealed.

**(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)**

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. 2 of 2019, of the ~~(County)~~ (City) (Town) (Village) of Batavia, New York was duly passed by the Town Board on \_\_\_\_\_, in accordance with the applicable provisions of law.

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_ of the ~~(County)~~ (City) (Town) (Village) \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved) (not disapproved) (repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_ 2017, in accordance with the applicable provisions of law.

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_ of the ~~(County)~~ (City) (Town) (Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_, and was (approved) (not disapproved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_. Such local law was submitted to the people by reason of a (mandatory) (permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special) (annual) election held on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_ of the ~~(County)~~ (City) (Town) (Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved) (~~not disapproved~~) (~~repassed after disapproval~~) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20\_\_, in accordance with the applicable provisions of law.

**\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve**

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**or veto local laws or ordinances.**

**5. (City local law concerning Charter revision proposed by petition.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36) (37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special) (general) election held on \_\_\_\_\_ 20\_\_\_\_, became operative.

**6. (County local law concerning adoption of Charter.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the County of \_\_\_\_\_, State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1, above.

(SEAL)

\_\_\_\_\_  
Teressa M. Morasco  
Town Clerk, Town of Batavia

Date: \_\_\_\_\_, 2019

**(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality.)**

STATE OF NEW YORK  
COUNTY OF GENESEE

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

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\_\_\_\_\_  
Andrew W. Meier  
Town Attorney  
County \_\_\_\_\_  
City of Batavia  
Town \_\_\_\_\_  
Village \_\_\_\_\_

Date: \_\_\_\_\_, 2019

**RESOLUTION NO. 77:**

Deputy Supervisor Underhill offered the following:

**TRAINING WORKSHOP**

**RESOLVED**, the Batavia Town Board hereby authorizes the following personnel to attend training workshops:

Planning Board and Zoning Board Members- Creation of Pollinator Habitats Co-Existing With Proposed Solar Farms Presentation (was) March 19, 2019. Each member in attendance will be credited for one (1) hour of training.

Teressa Morasco- NYMIR Discrimination & Harassment Complaint Train the Trainer Training (was) April 8, 2019 in West Seneca. There was no cost for the training.

Paul McCullough – Agrovoltaico Solar System Presentation at Genesee County Building (was) April 15, 2019. There was no cost for this training.

Teressa Morasco and Sandy Baubie- NYS Archives Legal Aspects of Records Management Workshop April 24, 2019. There is no cost for this training. A Town vehicle will be used.

Joseph Neth, Paul Barrett and Greg Lang – Fundamentals of Underground Utility Locating April 30, 2019 in Clarence. The cost for this training is \$175.00 each.

Tom Lichtenthal- 2019 Association of Towns Highway School June 3 – 5, 2019. The cost for the training and lodging is \$497.00.

**Second by:** Councilwoman White

**Ayes:** Underhill, White, Michalak, Zambito, Post

**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO. 78:**

Supervisor Post offered the following:

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**MEMORIAL DAY  
WREATHS FOR CEMETERIES**

**WHEREAS**, the Town of Batavia has provided three wreaths for Memorial Day in honor of our veterans; and

**WHEREAS**, the Town would like to continue to provide wreaths; and

**WHEREAS**, the wreaths will be placed at Daws Corners Cemetery and Grandview Cemetery by the Batavia Memorial Day Committee (Disabled American Veterans, VFW, American Legion, Marine Corp League, and Vietnam Veterans of America).

**NOW, THEREFORE, BE IT**

**RESOLVED**, the Batavia Town Board hereby authorizes three (3) wreaths to be purchased from Floral Fantasies at a cost of sixty-five dollars (\$65.00) each; and be it further

**RESOLVED**, the expenditure will be appropriated from line item A6510.400-Veterans Services.

**Second by:** Deputy Supervisor Underhill

**Ayes:** Post, Underhill, Michalak, Zambito, White

**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO. 79:**

Councilwoman Michalak offered the following:

**MEMORIAL DAY  
FLAGS FOR CEMETERIES**

**WHEREAS**, the Daughters of American Revolution and the American Legion place flags at the grave sites of our veterans on Memorial Day in the Town Cemeteries; and

**WHEREAS**, these organizations have requested the Town of Batavia to provide the flags as it was done in the past; and

**WHEREAS**, the 2019 budget reflects appropriations for this purchase; and

**WHEREAS**, the flags will be placed at Daws Corners Cemetery and Grandview Cemetery by the Daughters of the American Revolutionary War and/or the Batavia Memorial Day Committee (Disabled American Veterans, VFW, American Legion, Marine Corp League, and Vietnam Veterans of America).

**NOW, THEREFORE, BE IT**

**RESOLVED**, the Batavia Town Board hereby authorizes the purchase five (5) gross 8" x 12" poly-cotton American Stick Flags from AmericanLegionFlags.com at a cost of \$89.95 per

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gross plus \$35.95 shipping for a total cost of \$485.70; and be it further

**RESOLVED**, the expenditure will be appropriated from line item A6510.400-Veterans Services.

**Second by:** Councilman Zambito

**Ayes:** Michalak, Zambito, White, Underhill, Post

**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO. 80:**

Councilman Zambito offered the following:

**RESOLUTION CALLING A PUBLIC HEARING  
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING  
PROJECT #83ED886-17-  
FREIGHTLINER/WESTERN STAR**

**WHEREAS**, the Town of Batavia has received Federal grant assistance in the amount of four hundred, sixty-five thousand dollars (\$465,000.00) from the New York State Housing Trust Fund Corporation represented by the New York State Office of Community Renewal through the Community Development Block Grant Program (OCR Grant #83ED886-17) for the purpose of providing financing to assist Freightliner/Western Star in establishing operations on State Street Road in the Town of Batavia, New York; and

**WHEREAS**, the Town is required to hold a public hearing to obtain citizen views regarding any aspect of the project's implementation including, but not limited to any construction, financing, and employment opportunities resulting from the project.

**NOW, THEREFORE BE IT**

**RESOLVED**, that the Batavia Town Board hereby calls for a Public Hearing whereat all interested parties shall be heard; and be it further

**RESOLVED**, that the Public Hearing shall be held on May 15, 2019 at 7:00 PM at the Batavia Town Hall, located at 3833 West Main Street Road, Batavia, New York; and be it further

**RESOLVED**, that the Town Clerk is hereby directed to have published at least once in The Daily News at least seven (7) days before the date scheduled for the Public Hearing, the Public Hearing Notice that is attached hereto.

**Second by:** Councilwoman Michalak

**Ayes:** Zambito, Michalak, White, Underhill, Post

**APPROVED by unanimous vote (5-0)**

**LEGAL NOTICE  
NOTICE OF PUBLIC HEARING  
TOWN OF BATAVIA**

**APRIL 17, 2019**  
**REGULAR TOWN BOARD MEETING**

**NYS OFFICE OF COMMUNITY RENEWAL**  
**GRANT PROGRAM**

**NOTICE IS HEREBY** given that the Batavia Town Board will hold a public hearing on May 15, 2019 at 7:00 P.M. at the Batavia Town Hall located at, 3833 West Main Street, Batavia, NY 14020, to discuss the implementation of the Freightliner-Western Star Project that received Community Development Block funding from the New York State Office of Community Renewal (Project No. 83ED886-17). The purpose of the hearing is to obtain citizen views regarding any aspect of the project's implementation including, but not limited to any construction, financing, and employment opportunities resulting from the project. The hearing facilities are handicapped accessible. Written comments are invited and will be accepted upon delivery to the address above.

**Dated:** April 17, 2019

Teresa M. Morasco  
Town of Batavia  
Town Clerk/Tax Collector

**RESOLUTION NO. 81:**

Councilwoman White offered the following:

**PURCHASE NEW VEHICLE FOR**  
**TOWN WATER/SEWER DEPARTMENT**

**WHEREAS**, the Town Water and Sewer Department recently hired two new employees to assist with maintenance and repairs of the water/wastewater systems and these employees need vehicles to perform their duties; and

**WHEREAS**, the Town solicited bids for a new 2019 F250 pickup truck via the NYSOGS mini bid process under NYS contract PC 67318, Award#22898, mini bid #19040022. Five (5) bids were received and are being reviewed; and

**WHEREAS**, the Town would also like to purchase a new 2019 F150 pickup truck from Van Bortle Ford by piggy backing off the Onondaga County bid# 8771 2019 at a cost of \$31,062.57.

**NOW, THEREFORE, BE IT**

**RESOLVED**, the Batavia Town Board hereby authorizes the purchase a new a 2019 F150 pickup truck from Van Bortle Ford at a price of \$31,062.57 and be it

**FURTHER RESOLVED**, the expenditure will be appropriated from the Water/Sewer Department accounts SS1-8120.200, SS2-8120.200, and SW-8340.200.

**Second by:** Councilman Zambito

**Ayes:** White, Zambito, Underhill, Michalak, Post

**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO. 82:**

**APRIL 17, 2019  
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Deputy Supervisor Underhill offered the following:

**RESOLUTION AUTHORIZING SPECTRUM BUSINESS  
INTERNET UPGRADE**

**WHEREAS**, the Town of Batavia authorized a high-speed internet access service upgrade with Spectrum Business for the Town Hall and Highway Facility at the March 21, 2018 Town Board meeting; and

**WHEREAS**, Spectrum Business never changed the service from 35 Mbps X 5 to the 200 Mbps x 15 Mbps; and

**WHEREAS**, Spectrum Business no longer offers the 200 Mbps x 15 Mbps and has now proposed an internet upgrade to 400 Mbps X 20 Mbps at a cost of \$199.99 per month, no voice lines (quote attached); and

**WHEREAS**, Spectrum Business services are on a month to month basis.

**NOW, THEREFORE, BE IT**

**RESOLVED**, the Batavia Town Board hereby accepts Spectrum Business proposal for 400 Mbps X 20 Mbps at a cost of \$199.99 per month; and be it further

**RESOLVED**, there is no cost for installation.

**Second by:** Councilwoman White

**Ayes:** Underhill, White, Michalak, Zambito, Post

**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO. 83:**

Supervisor Post offered the following:

**BID AWARD  
AG-PARK PUMP STATION EQUIPMENT PROCUREMENT**

**WHEREAS**, the Town of Batavia received bids on April 10, 2019 for the procurement of equipment and materials to be used in the upgrade to the Ag-Park Pump Station; and

**WHEREAS**, Fluid Kinetics, Inc., was the lowest (and only) responsible bidder at a cost of Eighty-nine thousand five hundred twenty-four dollars and no cents (\$89,524.00); and

**WHEREAS**, Fluid Kinetics, Inc., has provided the equipment and materials for the past five pump station projects and are therefore qualified; and

**WHEREAS**, CPL has completed a review of the low bidder (attached); and

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**WHEREAS**, the Town Engineer has reviewed the same and due to only one bid provided, compared the pricing to the five other project which Fluid Kinetics completed, and this bid was found to be in line with each of those projects and therefore also recommends award of the contract to Fluid Kinetics, Inc.

**NOW THEREFORE BE IT**

**RESOLVED**, the Batavia Town Board hereby awards the bid to Fluid Kinetics, Inc. at a cost of Eighty-nine thousand five hundred twenty-four dollars (\$89,524.00) for equipment and materials for the Ag-Park Pump Station Procurement; and

**BE IT FURTHER RESOLVED**, the Batavia Town Board hereby authorizes the Supervisor to execute an agreement with Fluid Kinetics, Inc.

**Second by:** Councilman Zambito

**Ayes:** Post, Zambito, White, Underhill, Michalak

**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO. 84:**

Councilwoman Michalak offered the following:

**RESOLUTION TO APPROVE AN INTERMUNICIPAL AGREEMENT WITH  
THE LIVINGSTON COUNTY WATER & SEWER AUTHORITY (LCWSA)  
FOR SHARED SERVICES**

**WHEREAS**, the Livingston County Water & Sewer Authority (LCWSA) desires to use certain portable sewer flow meter equipment owned by the Town of Batavia, and

**WHEREAS**, the Town of Batavia Attorney has drafted a proposed “Intermunicipal Agreement for Shared Services with the LCWSA”, which has been reviewed and approved by the Town Engineer.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Board of the Town of Batavia, New York, that a proposed “Intermunicipal Agreement for Shared Services with the LCWSA”, a copy of which shall be made a part of the Town Board Minutes, is hereby approved, and the Town Supervisor is authorized and directed to sign this Agreement on behalf of the Town of Batavia.

**Second by:** Deputy Supervisor Underhill

**Ayes:** Michalak, Underhill, Zambito, White, Post

**APPROVED by unanimous vote (5-0)**

**INTERMUNICIPAL AGREEMENT FOR**

**APRIL 17, 2019**  
**REGULAR TOWN BOARD MEETING**

**SHARED SERVICES WITH THE  
LIVINGSTON COUNTY WATER & SEWER AUTHORITY (LCWSA)**

**THIS AGREEMENT** made the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the **TOWN OF BATAVIA**, a municipal corporation organized and existing under the Laws of the State of New York, having its principal office located at 3833 West Main Street Road, Batavia, New York 14020, (hereinafter referred to as “Batavia”), and the **LIVINGSTON COUNTY WATER & SEWER AUTHORITY**, a municipal corporation organized and existing under the Laws of the State of New York, having its principal office located at 1997 D’Angelo Drive, Lakeville, New York 14480, (hereinafter referred to as “LCWSA”).

**WHEREAS**, pursuant to Article 5-G of the General Municipal Law, Batavia and LCWSA are authorized to enter into an intermunicipal cooperative agreement for the provisions of shared services, as set forth herein, and

**WHEREAS**, LCWSA desires to use certain equipment owned by the Town of Batavia.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, it is agreed as follows:

1. Until October 1, 2019, Batavia will allow LCWSA to use, on a shared basis, Batavia’s portable sewer flow meter equipment.
2. At the end of the term of this Agreement, as aforesaid, LCWSA will return the equipment in a clean and working order.
3. During the use of the equipment, LCWSA will be responsible for any necessary maintenance and/or repair.
4. In the event that any portion of the equipment is damaged beyond repair, LCWSA will replace said damaged equipment on an in-kind basis.
5. LCWSA hereby agrees to indemnify and hold Batavia harmless from all claims, losses, costs and damages arising out of any activities of LCWSA pursuant to the terms and conditions of this Agreement, including costs of settling any action and reasonable attorney’s fees for defense. Each party will provide the other with timely notice of any claims and shall fully cooperate with each other to defend the same.
6. This Agreement may not be assigned by either party, in whole or in party, without the prior written consent of the other party. Any assignment in violation of the foregoing shall be deemed void.

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7. This Agreement shall be binding upon and shall inure to the benefit of each of the parties hereto and their successors and permitted assigns.

8. This Agreement and any transactions between the parties hereunder shall be governed by, construed and interpreted in accordance with the Laws of the State of New York.

9. There are no other agreements or understandings, either oral or written, between the parties affecting this Agreement. No changes, additions or deletions of any portions of this Agreement shall be valid or binding upon the parties hereto unless the same is approved in writing by both parties.

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

TOWN OF BATAVIA

LCWSA

\_\_\_\_\_  
By: Gregory H. Post, Town Supervisor

\_\_\_\_\_  
By: Michelle Baines, Executive Director

State of New York }  
County of Genesee }ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned, personally appeared Gregory H. Post, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

State of New York }  
County of Livingston }ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned, personally appeared Michelle Baines, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public

**SUSPEND THE RULES**-Motion Councilwoman Michalak, second Councilman Zambito to suspend the rules to introduce an additional resolution.

**Ayes:** Michalak, Zambito, White, Underhill, Post

**MOTION CARRIED by unanimous vote (5-0)**

**RESOLUTION NO. 85:**

Councilman Zambito offered the following:

**RESOLUTION AUTHORIZING EMPIRE ACCESS  
INTERNET**

**WHEREAS**, the Town of Batavia requested a quote for high speed internet service from Empire Access Corporation; and

**WHEREAS**, Empire Access Corporation proposed a three-year service contract for 400 Mbps X 20 Mbps internet service at a cost of \$90.00 per month plus \$10.00 per month for a Static IP address, (quote attached); and

**NOW, THEREFORE, BE IT**

**RESOLVED**, the Batavia Town Board hereby accepts Empire Access Corporation three-year service contract proposal, a copy of which is annexed hereto and made a part of the minutes, for 400 Mbps X 20 Mbps internet service and a Static IP address at a cost of \$100.00 per month, for a term of 36 months; and be it further

**RESOLVED**, the Supervisor is hereby authorized to execute the service contract and any related documents; and be it further

**RESOLVED**, there is no cost for installation.

**Second by:** Councilwoman Michalak

**Ayes:** Zambito, Michalak, White, Underhill, Post

**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO. 86:**

Councilwoman White offered the following:

**RESOLUTION TO ESTABLISH LINE ITEMS FOR  
HIGHWAY EXCAVATOR EQUIPMENT BAN-  
WATER-WASTEWATER SHARE OF EXCAVATOR  
2019 BUDGET**

**RESOLVED**, the Batavia Town Board hereby establishes the following Debt Service line items for the Highway Equipment BAN for the Water-Wastewater share of the excavator:

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SS19730.602 Principal-Excavator  
SS19730.702 Interest-Excavator

SS29730.602 Principal-Excavator  
SS29730.702 Interest-Excavator

SW9730.602 Principal-Excavator  
SW9730.702 Interest-Excavator

**Second by:** Deputy Supervisor Underhill  
**Ayes:** White, Underhill, Michalak, Zambito, Post  
**APPROVED by unanimous vote (5-0)**

**Abstract No. 4-2019:** Motion Deputy Supervisor Underhill, second Councilwoman White to authorize the Supervisor to pay the following vouchers:

General	\$48,058.64
Highway	8,571.24
Sewer No. 1	3,589.88
Sewer No. 2	6,517.64
Water	326,208.78
Sewer Capacity	2,488.87
Ellicott Trail	447.59
West Side Sanitary	25.50
Twln Joint Water	3,556.47
<b>Total</b>	<b>\$399,464.61</b>

Check numbers 21989 thru 22044, SM: 1120-1121, ACH: \$42,845.54; Online: \$8,841.53  
**Ayes:** Underhill, White, Michalak, Zambito, Post  
**MOTION CARRIED by unanimous vote (5-0)**

**Supervisor's Report:**

**Status Report** on expenditures and revenues is available for the Board's review.

**GAM** -There will be a GAM meeting tomorrow evening at Genesee County Building 2, hosted by Genesee County.

**COMMUNICATIONS:**

**The Town Clerk reported on the following:**

**March Town Clerk** monthly report collected a total of \$5,159.10, remitted \$4,961.74 to the Supervisor for the Local Share.

**March Tax Collection-** Collected \$508,228.30, remitted \$10,412.20 to the Supervisor for the penalties collected and the remainder was remitted to the Genesee County Treasurer to close out the

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2019 Town/County Tax Collection.

**National Prescription Drug Take Back Day** is April 27, 2019. The Pharmaceutical drop box locations in Batavia are located at the Batavia Police Department, Genesee County Sheriff's, and the New York State Police.

**Genesee County Animal Shelter Reports-** Received the Genesee County Dog Control Officer Inspection Report and the Municipal Shelter Inspection Report from NYS Ag and Market. Dog shelter service and dog control officer services is rated Satisfactory.

**ADJOURNMENT:**

Motion Deputy Supervisor Underhill, second Councilman Zambito to adjourn the Regular Town Board Meeting at 7:23 P.M.

**Ayes:** Underhill, Zambito, Michalak, White, Post

**MOTION CARRIED by unanimous vote (5-0)**

Respectfully submitted,

Teresa M. Morasco  
Town Clerk