

## CITY COUNCIL MEETING

April 13, 2015

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Mayor Nelson called the meeting to order and asked the Clerk to call the roll:

PRESENT: Mayor Nelson, Councillors Ashley, Hosmer, Mitchell, Morley, Skamperle and Stevenson

ABSENT: None

### PROCLAMATION

1. Mayor Nelson read a proclamation declaring April 12<sup>th</sup> through April 18<sup>th</sup> as National Library Week.

2. Mayor Nelson read a proclamation declaring Tuesday, April 14, 2015 as Equal Pay Day in Ogdensburg, NY.

### PRESENTATION

1. City Attorney Andy Silver addressed Council regarding the Executive Session held on March 23, 2015. Attorney Silver explained Council can exempt the public body to confer with its counsel to seek legal advice and to protect attorney/client privileged information. Attorney Silver said the purpose of the executive session was to get his legal opinion on the Adaptive Reuse District law. Attorney Silver said Council has been very concerned that matters be discussed in a transparent session and only enter executive session when necessary. Councillor Morley said Council discussed the possibility of a lawsuit but an actual lawsuit had not been commenced. Attorney Silver explained the executive session to seek legal advice regarding proposed, pending or current litigation was held in accordance with the law because he has an established attorney/client relationship with Council.

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### PUBLIC HEARING

1. A public hearing regarding an ordinance amending Chapter 157, “Peddling and Soliciting”, Article II, “Street Festivals, §157-25(A) entitled “Alcoholic beverages; games of chance or skill” of the Code of the City of Ogdensburg was held. No one being present to speak, the hearing was declared closed.

2. A public hearing regarding an ordinance to amend the Ogdensburg Municipal Code, Chapter 177 entitled Sewers was held. No one being present to speak, the hearing was declared closed.

3. A public hearing regarding a Local Law to amend the Ogdensburg Municipal Code, Chapter 79 entitled Bingo was held. No one being present to speak, the hearing was declared closed.

### PERSONAL APPEARANCE

1. Adrian Vielhauer, Sr. addressed Council regarding raising homing pigeons in the City. Mr. Vielhauer asked Council to amend the Municipal Code so residents can raise homing pigeons and up to six hens.

2. Wade Davis of the Ogdensburg Bridge and Port Authority advised Council that the cruise ships will be docking in Clayton, not Ogdensburg. Mr. Davis explained his office was notified on March 24<sup>th</sup> that a Facilities Security Plan was required by the US Coast Guard for the ships to dock at the Dobisky Center. Mr. Davis said although OBPA already had such a plan for freight shipped to their facility, an amendment was required for passenger ships. Mr. David explained OBPA paid \$10,000 to file the amendment, the necessary training was completed and the Facilities Security Plan was submitted to the US Coast Guard on April 2<sup>nd</sup> for approval. Mr. Davis said we are prepared to help cruise ships in the future.

Councillor Morley asked if the cruise ships could dock at the McEwen House since it is already a secure facility. Mr. Davis explained security regulations do not permit docking at that location. Councillor Morley said if the cruise ships dock at OBPA there will be a cost to transport the passengers.

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Mr. Davis explained the plan will address transportation issues. Councillor Stevenson asked if the procedures for American ships are different. Mr. Davis said yes because foreign flag vessels need an enhanced Facilities Security Plan. Mr. Davis explained these cruise ships have 200 visitors and U.S. Customs and border protection screenings are required. Councillor Stevenson thanked Mr. Davis for providing an explanation of the procedure. Mr. Davis said there are other cruise lines, and we will reach out to them. Sam LaMacchia of the Ogdensburg Bridge and Port Authority said the plan is to move forward.

3. Sue Ellen Piercey, 1407 Knox Street, expressed disapproval with the City Council meeting format. Mrs. Piercey said she still has questions about the Planned Development Request (PDD) request.

4. Dean Hebert, 516 Park Street, requested Council admit that they held an illegal executive session at the March 23<sup>rd</sup> Council Meeting. Mr. Hebert urged Council to listen to the taxpayers who elected them.

### CONSENT AGENDA

Mayor Nelson moved that the claims as enumerated in General Fund Warrant #7-2015 in the amount of \$1,494,161.18 and Library Fund Warrant #7-2015 in the amount of \$42,364.74 and Capital Fund Warrant #7-2015 in the amount of \$21,307.00 and Community Development Fund Warrant #7-2015 in the amount of \$296.00 and Community Renewal Fund Warrant #7-2015 in the amount of \$0.00 and NSP Funds Warrant #7-2015 in the amount of \$2,500.00 as audited, be and the same are ordered paid and Councillor Ashley seconded the motion.

The vote was:

CARRIED, AYES ALL

ITEMS FOR COUNCIL ACTION

1. Councillor Skamperle moved an ordinance amending Chapter 157, “Peddling and Soliciting”, Article II, “Street Festivals, §157-25(A) entitled “Alcoholic beverages; games of chance or skill” of the Code of the City of Ogdensburg, and Councillor Ashley seconded to wit:

ORDINANCE #5 - 2015  
AMENDING CHAPTER 157, “PEDDLING AND SOLICITING”, ARTICLE II,  
“STREET FESTIVALS”, SECTION 157-25. (A)  
ENTITLED "ALCOHOLIC BEVERAGES; GAMES OF CHANCE OR SKILL" OF  
THE MUNICIPAL CODE OF THE CITY OF OGDENSBURG

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OGDENSBURG AS  
FOLLOWS:

ITEM ONE:

That Chapter 157 entitled “Peddling and Soliciting”, Article II entitled “Street Festivals”, Section 157-25.(A) entitled “Alcoholic beverages; games of chance or skill”, is hereby deleted in its entirety and replaced with the following:

A. No alcoholic beverages shall be sold or served at any street festival, excluding Farmer’s Market events. No games of skill or chance shall be conducted during the operation of the festival unless and before the sponsor or the vendors obtain a proper and legal license to conduct games of skill or chance from the State of New York, the city or any other regulatory agency.

ITEM TWO:

This ordinance shall take effect ten (10) days after publication of notice that shall give the title and describe same in summary form.

The vote was:

CARRIED, AYES ALL

2. Mayor Nelson moved an ordinance to amend the Ogdensburg Municipal Code, Chapter 177 entitled Sewers, and Councillor Morley seconded to wit:

ORDINANCE #6 - 2015  
AN ORDINANCE AMENDING CHAPTER 177 ENTITLED SEWERS  
OF THE MUNICIPAL CODE OF THE CITY OF OGDENSBURG

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OGDENSBURG,  
NEW YORK, AS FOLLOWS:

ITEM ONE: That Chapter 177 entitled Sewers (Table of Contents), Part 1 entitled “Sewer Rates”, Article VI entitled “Use of Public Sewers”, §177-43. entitled “Accidental Discharges” of the Code of the City of Ogdensburg, is hereby deleted and replaced with the following:

§177-43. Accidental and Slug Discharges

ITEM TWO: That Chapter 177 entitled Sewers, Part 2 entitled “Sewer Connections and Use”, Article II entitled “Definitions and Word Usage”, §177-12. entitled “Definitions and Word Usage” of the Code of the City of Ogdensburg, is hereby deleted in its entirety and replaced with the following:

A. Unless the context specifically indicates otherwise, the meanings of terms used in this Part 2 shall be as follows:

ACT OR THE ACT -- The Federal Water Pollution Control Act, also known as the "Clean Water Act," as amended, 33 U.S.C. § 1251 et seq.

AUTHORIZED REPRESENTATIVE OF INDUSTRIAL USER -- An authorized representative of an industrial user may be:

- (1) A principal executive officer of at least the level of vice president, if the industrial user is a corporation.
- (2) A general partner or proprietor if the industrial user is a partnership or proprietorship, respectively.

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(3) A duly authorized representative of the individual designated above if such representative is responsible for the overall operation of the facilities from which the indirect discharge originates.

**BOD** (denoting "biochemical oxygen demand") The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20° C. expressed in parts per million.

**BUILDING DRAIN** -- That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer inside the inner face of the building wall nearest the sewer line.

**BUILDING SEWER** -- The extension from the inner face of the building wall to the public sewer or other place of disposal.

**CITY ENGINEER** -- The City Engineer of the City of Ogdensburg or his/her duly authorized deputy, agent or representative.

**COMBINED SEWER** -- A sewer receiving both surface runoff and sewage.

**COMPOSITE SAMPLE** -- A combination of individual samples of water or wastewater taken at selected intervals, generally hourly for some specified period, to minimize the effect of the variability of the individual sample. Individual samples may have equal volume or may be roughly proportioned to the flow at time of sampling.

**COOLING WATER** -- The water discharged from any use such as air conditioning, cooling or refrigeration or to which the only pollutant added is heat.

**CONTROL AUTHORITY** -- The City of Ogdensburg.

**EASEMENT** -- An acquired legal right for the specific use of land owned by others.

**GARBAGE** -- Solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

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**GRAB SAMPLE** -- A sample which is taken from a waste stream on a one-time basis with no regard to the flow in the waste stream and shall be collected over a period of time not to exceed fifteen minutes.

**INDUSTRIAL WASTES** -- The liquid wastes from industrial manufacturing processes, trade or business as distinct from sanitary sewage.

**INDUSTRIAL USER** -- A discharger to the POTW who discharges non-domestic wastewater.

**INTERFERENCE** -- Inhibition or disruption of the POTW treatment processes or operations or which contributes to a violation of any requirement of the City's NPDES permit. The term includes prevention of sewage sludge use or disposal by the POTW in accordance with Section 405 of the Act, (33 U.S.C. § 1345) or any criteria, guidelines or regulations developed pursuant to the Solid Waste Disposal Act (SWDA), the Clean Air Act, the Toxic Substances Control Act or more stringent state criteria (including those contained in any state sludge management plan prepared pursuant to Title IV of SWDA) applicable to the method of disposal or use employed by the POTW.

**NATIONAL CATEGORICAL PRETREATMENT STANDARD** – Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307 (B) and (C) of the Act (22 U.S.C. 1347), which applies to a specific category of industrial users which appear in 40 CFR Chapter I, Subchapter N, Parts 405-471. These standards apply at the end of the categorical process (“end of process”).

**NATURAL OUTLET** -- Any outlet into a watercourse, pond, ditch, lake or other body of Surface or ground water.

**NEW SOURCE** -- Any building, structure, facility or installation from which there is or may be a Discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under section 307(c) of the Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, provided that:

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- (i) The building, structure, facility or installation is constructed at a site at which no other source is located; or
- (ii) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
- (iii) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site.

In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

pH -- The logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

PASS THROUGH – Shall mean a discharge which exits the City’s POTW into water of the State in quantities which, alone or in conjunction with discharges from other sources, is a cause of a violation of any requirement of the POTW’s SPDES Permit (including an increase in the magnitude or duration of a violation).

PRETREATMENT -- The reduction of the amount of pollutants, the elimination of pollutants or the alteration of the nature of the pollutant properties in wastewater prior to discharge to the City of Ogdensburg wastewater facilities.

PRETREATMENT STANDARD -- Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Clean Water Act, as amended, which applies to industrial users including the general and specific prohibitions found in 40 CFR Part 403.5.

PROPERLY SHREDDED GARBAGE -- The wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions, normally prevailing in public sewers, with no particle greater than 1/2 inch (1.27 centimeters) in any dimension.

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**PUBLIC SEWER** -- A sewer in which all owners of abutting properties have equal rights, and is owned or controlled by public authority.

**PUBLICLY OWNED TREATMENT WORKS or POTW** -- A treatment works as defined by section 212 of the Act, which is owned by a State or municipality (as defined by section 502(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

**SANITARY SEWER** -- A sewer which carries sewage and to which storm-, surface and ground waters are not intentionally admitted.

**SANITARY SEWAGE** – Liquid wastes from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, factories, or institutions, and free from stormwater, surface water, industrial and other wastes.

**SEWAGE** -- A combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such ground-, surface and storm waters as may be present.

**SEWAGE TREATMENT PLANT** -- Any arrangement of devices and structures used for treating sewage.

**SEWAGE WORKS** -- All facilities for collecting, pumping, treating and disposing of sewage.

**SEWER** -- A pipe or conduit for carrying sewage.

## **SIGNIFICANT INDUSTRIAL USER**

- (1) All industries subject to promulgated Categorical Pretreatment Standards (categorical industries).

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- (2) Industries having substantial impact, either singly or in combination with other contributing industries, on the operation of the treatment works.
- (3) Except as provided in 40 CFR 403.3(v) (3), any other industrial user that discharges an average of 25,000 gallons per day or more of process wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater) to the POTW.
- (4) Except as provided in 40 CFR 403.3(v) (3), any other industrial user that contributes  
a process waste stream which makes up 5 percent or more average dry weather hydraulic or organic capacity of the POTW treatment plant.
- (5) All facilities permitted under 6 NYCRR Part 360 or Part 364 which discharge or transport leachate from sanitary landfills to any portion of the City's collection or treatment system. [Added 11-25-1991]
- (6) Any other industrial user that the Control Authority designates as having a reasonable potential for adversely affecting the POTW's operation or for violating a pretreatment standard or requirement.

**SIGNIFICANT NON-COMPLIANCE** – A user is in significant non-compliance when its violation(s) meet one or more of the following criteria:

- (1) Chronic violations of wastewater Discharge limits, defined here as those in which 66 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits;
- (2) Technical Review Criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);
- (3) Any other violation of a Pretreatment Standard or Requirement (daily maximum, long-term average, instantaneous limit, or narrative Standard) that the POTW determines has caused, alone or in combination with other Discharges, Interference or Pass Through (including endangering the health of POTW personnel or the general public);

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(4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge;

(5) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

(6) Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(7) Failure to accurately report non-compliance;

(8) Any other violation or group of violations, which may include a violation of Best Management Practices, which the POTW determines will adversely affect the operation or implementation of the local Pretreatment program.

SLUG -- any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, local limits or permit conditions, including, but not limited to, any discharge of water, sewage or industrial waste which in concentration of any given constituent or in quantity of flow, that exceeds, for any period of duration longer than 15 minutes more than five times the average twenty-four-hour concentration or flows during normal operation.

SPDES (DENOTING "STATE POLLUTION DISCHARGE ELIMINATION SYSTEM") -- A permit issued pursuant to Section 402 of the Act (33 U.S.C. § 1342).

STANDARD INDUSTRIAL CLASSIFICATION (SIC) -- A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office Management and Budget 1972, or newest edition.

STORM SEWER OR STORM DRAIN -- A sewer which carries storm- and surface water and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

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**SUSPENDED SOLIDS** -- Solids that either float on the surface of or are in suspension in water, sewage or other liquids, and which are removable by laboratory filtering.

**TOXICS** -- Any of the pollutants designated by federal regulations pursuant to Section 307(a) (1) of the Clean Water Act, as amended.

**WASTEWATER** -- The liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities and institutions, together with any groundwater, surface water and stormwater that may be present, whether treated or untreated, which is contributed into or permitted to enter the POTW.

**WATERCOURSE** -- A channel in which a flow of water occurs, either continuously or intermittently.

B. Industrial or commercial classifications which bear upon applications, rates, fees or other considerations shall be determined solely by the Common Council.

C. "Shall" is mandatory; "may" is permissive.

ITEM THREE: That Chapter 177 entitled Sewers, Part 2 entitled "Sewer Connections and Use", Article VI entitled "Use of Public Sewers", §177-36. entitled "Unlawful discharges" of the Code of the City of Ogdensburg, is hereby deleted in its entirety and replaced with the following:

A. No user shall contribute or cause to be contributed, in any manner or fashion, directly or indirectly, any pollutant or wastewater which will interfere with the operation or performance of the POTW or cause pass through. These general prohibitions apply to all such users of a POTW whether or not the user is subject to National Categorical Pretreatment Standards, or any other National, State or Local Pretreatment Standards or Requirements.

Except as hereinafter provided, no person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewer:

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- (1) Any liquid or vapor having a temperature higher than 104° F. (40° C.) or heat in amounts that will inhibit the biological activity at the sewage treatment plant, resulting in interference.
- (2) Any waters or wastes which contain grease or oil or other substances that will solidify or become discernibly viscous at temperatures between 32° F. and 104° F.
- (3) Any waters or wastes containing emulsified oil and grease exceeding an average of 50 parts per million (417 pounds per million gallons) of ether-soluble matter.
- (4) Any gasoline, benzine, naphtha, fuel oil or mineral oil or other flammable or explosive liquid, solid or gas which cause a flame-type explosivity meter to read 40% of the lower explosive limit (LEL) for 15 minutes or when the reading exceeds 60% of the LEL for any period.
- (5) Any noxious or malodorous gas such as hydrogen sulfide, sulfur dioxide or nitrous oxide or other substance, which either singly or by interaction with other wastes is capable of creating a public nuisance or hazard to life or of preventing entry into sewers for their maintenance and repair.
- (6) Any garbage that has not been properly pulverized or ground to fine powder.
- (7) Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastic, wood, paunch manure, hair and fleshings, entrails, lime slurry, lime residues, beer and distillery slops, chemical residues, paint residues, cannery, waste bulk solids or any other solid or viscous substance capable of causing obstruction to the flow of the sewers or other interference with the proper operation of the sewage system, including debris from disposable products utilized by hospitals, nursing homes or correctional institutions.
- (8) Any waters or wastes, acid and alkaline in reaction, having corrosive properties capable of causing damage or hazard to structures, equipment and personnel of the sewage system. Free acids and alkalis must be neutralized, at all times, within a permissible pH range of 6.0 to 9.5.
- (9) Any cyanides in excess of the concentrations listed in Subsection A (14) of this section.

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(10) Any radioactive waste or isotopes of such half-life or concentrations as may exceed limits established by the City Engineer in compliance with applicable state or federal regulations.

(11) Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a Discharge at a flow rate and/or pollutant concentration which will cause Interference with the POTW. Any waters or wastes that for a duration of 15 minutes has a concentration greater than five times the average of that of normal sanitary sewage (defined in Subsection B of this section) as measured by suspended solids and BOD and/or which is discharged continuously at a rate exceeding 1,000 gallons per minute except by special permit. A special permit shall not allow discharges of any pollutants that released in a discharge at a flow rate or concentration which will cause interference at the POTW.

(12) Any stormwater, cistern or tank overflow, cellar drain, discharge from any vehicle wash rack or water motor or the contents of any privy vault, septic tank or cesspool or the discharge of effluent from any air-conditioning machine or refrigeration unit.

(13) Any wastes containing odor- or color-producing substances exceeding concentration limits which may be established by the City Engineer for purposes of meeting the City's SPDES permit.

(14) Any substance which creates a fire or explosion hazard in the POTW, including but not limited to, waste streams with a closed cup flash point of less than 140 degrees F (60 degrees C) using the test methods specified in 40 CFR 261.21.

(15) Any waters or wastes with high biochemical oxygen demand (BOD), of high chlorine demand or containing a toxic or poisonous substance or containing suspended solids of high volume, all acting singly or in combination, and of sufficient quantity to damage or interfere with the sewage treatment process, contaminate the sludge produced at the treatment plant, constitute a hazard to humans or animals or create any hazard in the waters receiving the discharge from the treatment plant.

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(a) Toxic substances shall be limited to the average concentrations listed below and as promulgated in the Categorical Pretreatment Standards, pursuant to Section 307 of the Act. At no time shall the concentration exceed two times the twenty-four-hour average concentration.

Parameter	Concentration Limits	
	30-Day Average (mg/l)	24-Hour Average (mg/l)
Cadmium	0.25	0.5
Hex. chromium	0.1	0.2
Total chromium	1.70	3.4
Copper	2.05	4.1
Lead	0.4	0.8
Mercury	0.1	0.2
Nickel	2.0	4.0
Zinc	1.5	3.0
Arsenic	0.1	0.2
Available chlorine	15.0	15.0
Cyanide-free	0.2	0.4
Cyanide, total	0.65	1.3
Selenium	0.1	0.2
Sulfide	3.0	6.0
Barium	2.0	4.0
Manganese	2.0	4.0
Gold	0.1	0.2
Silver	0.2	0.4
Fluorides	2.0	4.0
Phenol	2.0	4.0
Total toxic organics	1.0	2.0

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Except for Hex, Chromium, all concentrations listed for metallic substances shall be as “total Metals”, which shall be defined as the value measured in a sample acidified to a pH of 2 or less, without prior filtration.

(b) Samples are to be gathered using procedures as approved by the City Engineer.

(16) Any substance which may cause the sewage treatment plant's effluent or any other product of the sewage treatment plant, such as residues, sludges or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process where the sewage treatment plant is pursuing a reuse and reclamation program. In no case shall a substance discharged to the sewage treatment plant cause the treatment plant to be in noncompliance with sludge use or disposal criteria, guidelines or regulations developed under Section 405 of the Act; any criteria, guidelines or regulations affecting sludge use or disposal developed pursuant to the Solids Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act or state criteria applicable to the sludge management method being used.

(17) Any trucked or hauled wastewater unless permitted as provided for in § 177-67. [Added 12-12-1994 by Ord. No. 12-1994]

B. Normal sanitary sewage shall be construed to fall below the following maximum levels in the effluent of the commercial establishment or industrial plant in question:

<u>Constituents</u>	<u>Maximum Levels (ppm)</u>
BOD	300
Suspended solids (SS)	350
Chlorine demand	15

C. In case the state or federal regulations come into conflict with the pollutant discharge concentrations given in this Part 2, the strictest level shall apply.

D. Treatment Bypasses

(1) A bypass of the treatment system is prohibited unless all of the following conditions are met:

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- (a) The bypass was unavoidable to prevent the loss of life, personal injury, or severe property damage;
- (b) There was no feasible alternative to the bypass, including the use of auxiliary treatment or retention of the wastewater;
- (c) The industrial user properly notified the City Engineer as described in paragraph (2) below.

(2) Industrial users must provide immediate notice to the City Engineer upon discovery of an unanticipated bypass. If necessary, the City Engineer may require the industrial user to submit a written report explaining the cause(s), nature, and duration of the bypass, and the steps taken to prevent its recurrence.

(3) An industrial user may allow a bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it is for essential maintenance to ensure efficient operation of the treatment system. Industrial users anticipating a bypass must submit notice to the City Engineer at least 10 days in advance. The City Engineer may only approve the anticipated bypass if the circumstances satisfy those set forth in paragraph (1) above.

ITEM FOUR: That Chapter 177 entitled Sewers, Part 2 entitled “Sewer Connections and Use”, Article VI entitled “Use of Public Sewers”, §177-39.(A) entitled “Pretreatment requirements and facilities” of the Code of the City of Ogdensburg, is hereby deleted in its entirety and replaced with the following:

A. When pretreatment regulations are adopted by USEPA or the City of Ogdensburg for any industry, then that industry must immediately conform to the USEPA, NYSDEC or City timetable for adherence to federal, state or local pretreatment requirements and any other applicable requirements promulgated in accordance with Section 307 of the Clean Water Act as amended. The National Categorical Standards, found in 40 CFR Chapter I, Subchapter N, Parts 405 – 471, are hereby incorporated into these regulations.

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ITEM FIVE: That Chapter 177 entitled Sewers, Part 2 entitled “Sewer Connections and Use”, Article VI entitled “Use of Public Sewers”, §177-43. entitled “Accidental discharges” of the Code of the City of Ogdensburg, is hereby deleted in its entirety and replaced with the following:

§177-43. Accidental and Slug discharges

A. If, for any reason, a user does not comply with or will be unable to comply with any prohibition or limitations in this Part 2, the user responsible for such discharge shall immediately notify the City Engineer so that corrective action may be taken to protect the treatment system. In addition, a written report addressed to the City Engineer detailing the date, time and cause of the accidental or slug discharge, the quantity and characteristics of the discharge and corrective action taken to prevent future discharges shall be filed by the responsible industrial facility within five days of the occurrence of the noncomplying discharge.

B. This notification will not relieve users of liability for any expense, loss or damage to the sewer system, treatment plant, treatment process or any other damage to person or property, nor shall such notification relieve the user of any fines, civil penalties or other liability which may be imposed by this article or on the municipality under applicable state and federal regulations.

(1) Excessive discharge. No user shall ever increase the use of process water or in any way attempt to dilute a discharge as a partial or complete substitute for adequate treatment in order to achieve compliance with the limitations contained in the Federal Categorical Pretreatment Standards, as amended, or in any other pollutant-specified limitation developed by the state or City.

(2) Accidental and Slug discharges. Each user shall provide protection from accidental and slug discharge of prohibited materials or of exceeding the limitations of other substances regulated by this Part 2. If deemed necessary by the City Engineer, facilities to prevent accidental and slug discharge shall be provided and maintained at the owner's expense. Detailed plans, showing facilities and operation procedures to provide this protection, shall be submitted to the City Engineer for review and shall be approved by the City Engineer prior to construction of the facility.

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Review and approval of such plans and operating procedures shall not relieve the industrial or commercial user from the responsibility to modify the user's facility as necessary to meet the other requirements of this Part 2. At the request of the City, the user shall develop a slug control plan which includes a description of the discharge practices including non-routine batch discharges; a description of the stored chemicals; procedures for immediately notifying the POTW of slug discharges and if necessary procedures to prevent adverse impact from accidental spills. The slug control plan shall be updated by the User as changes are made to the facility.

(3) The industrial user shall develop a compliance schedule including milestone dates for the installation of technology required to meet a pretreatment standard, as necessary. The POTW shall develop compliance schedules and report requirements to the POTW. The industrial users shall be required to comply with the compliance schedule and any succeeding revisions to that schedule.

### C. Upset Provision

(1) Definition. For the purposes of this section, Upset means an exceptional incident in which there is unintentional and temporary noncompliance with categorical Pretreatment Standards because of factors beyond the reasonable control of the Industrial User. An Upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) Effect of an upset. An Upset shall constitute an affirmative defense to an action brought for noncompliance with categorical Pretreatment Standards if the requirements of paragraph (3) are met.

(3) Conditions necessary for a demonstration of upset. An Industrial User who wishes to establish the affirmative defense of Upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (a) An Upset occurred and the Industrial User can identify the cause(s) of the Upset;
- (b) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures;

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(c) The Industrial User has submitted the following information to the POTW and Control Authority within 24 hours of becoming aware of the Upset (if this information is provided orally, a written submission must be provided within five days):

- (i) A description of the indirect discharge and cause of noncompliance;
- (ii) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue;
- (iii) Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.

(4) Burden of proof. In any enforcement proceeding the Industrial User seeking to establish the occurrence of an Upset shall have the burden of proof.

(5) Reviewability of agency consideration of claims of upset. In the usual exercise of prosecutorial discretion, EPA enforcement personnel should review any claims that non-compliance was caused by an Upset. No determinations made in the course of the review constitute final EPA action subject to judicial review. Industrial users will have the opportunity for a judicial determination on any claim of Upset only in an enforcement action brought for noncompliance with categorical Pretreatment Standards.

(6) User responsibility in case of upset the industrial user shall control production or all discharges to the extent necessary to maintain compliance with categorical Pretreatment Standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

ITEM SIX: That Chapter 177 entitled Sewers, Part 2 entitled “Sewer Connections and Use”, Article VII entitled “Inspections”, §177-45 entitled “Right of entry; limitations” of the Code of the City of Ogdensburg, is hereby deleted in its entirety and replaced with the following:

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The City Engineer and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing in accordance with the provisions of this Part 2. The City Engineer and other duly authorized employees shall also have the right to review and copy records from the files of industrial users. Inspections of residential premises shall be performed in proper observance of the resident's civil rights. The City Engineer or other duly authorized employees of the City shall have the right to set up on the user's property, such devices as are necessary to conduct sampling and flow measurement.

ITEM SEVEN: That Chapter 177 entitled Sewers, Part 2 entitled "Sewer Connections and Use", Article VII entitled "Inspections", §177-47 entitled "Entry on easements" of the Code of the City of Ogdensburg, is hereby deleted in its entirety and replaced with the following:

The City Engineer and other employees of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds an easement for the purpose of, but not limited to, inspection, observation, measurement, sampling, repair, replacement, improvement and maintenance of any portion of the sewage works lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private properties involved.

ITEM EIGHT: That Chapter 177 entitled Sewers, Part 2 entitled "Sewer Connections and Use", Article VI entitled "Use of Public Sewers", §177-49(B)(4) and (H) entitled "Penalties for offenses" of the Code of the City of Ogdensburg, is hereby deleted in its entirety and replaced with the following:

### B. Written notice of violation.

(4) The City shall annually publish, in the largest daily newspaper of the area, a list of the industrial users who were in significant non-compliance (SNC) with their industrial discharge permits or other applicable pretreatment requirements or standards during the previous 12 months. The notification shall also give the location of the specific violation date and summaries of enforcement actions which were taken against the user(s) during the same 12 months.

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### H. Enforcement Response Plan

The City shall prepare an Enforcement Response Plan. The Enforcement Response Plan, in a step-by-step fashion, shall outline the procedures to be followed to identify, document, and respond to violations by Users of the POTW. All violations by Users of the POTW shall be met with some type of enforcement response. The response shall be comprehensive and effective.

The Enforcement Response Plan shall:

- (1) describe how the City will investigate instances of non-compliance
- (2) describe the types of escalated enforcement actions that the City will take in response to all anticipated types of User violations and the time periods within which to initiate and follow-up these actions
- (3) adequately reflect the Town Board's responsibility to enforce all applicable standards and requirements.

The Enforcement Response Plan shall contain:

- (1) criteria for scheduling periodic inspection and/or sampling visits to POTW Users
- (2) forms and guidelines for documenting compliance data in a manner which will enable the information to be used as evidence
- (3) systems to track due dates, compliance schedule milestones, and pending enforcement actions
- (4) criteria, responsible personnel, and procedures to select and initiate an enforcement action.

The range of appropriate enforcement actions shall be based on the nature and severity of the violation and other relevant factors, such as:

- magnitude of the violation
- duration of the violation
- effect of the violation on the receiving water
- effect of the violation on the POTW
- effect of the violation on the health and safety of the POTW employees
- compliance history of the User
- good faith of the User

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(5) and shall promote consistent and timely use of enforcement remedies.

The City Council shall approve the Enforcement Response Plan. The Enforcement Response Plan shall be reviewed at least every five years.

The remedies provided for in the Enforcement Response Plan are not exclusive. The City of Ogdensburg may take any, all, or any combination of actions included in the Enforcement Response Plan against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the City's enforcement response plan. However, the City of Ogdensburg may take other action against any user when the circumstances warrant. Further, the City of Ogdensburg is empowered to take more than one enforcement action against any noncompliant user.

ITEM NINE: That Chapter 177 entitled Sewers, Part 2 entitled "Sewer Connections and Use", Article X entitled "Industrial Discharge Permit System", §177-55 entitled "Discharge permit required" of the Code of the City of Ogdensburg, is hereby deleted in its entirety and replaced with the following:

All establishments which produce industrial wastes and who propose to connect to or discharge into any part of the wastewater treatment system must first obtain a discharge permit prior to any connection or discharge to any part of the wastewater treatment system.

ITEM TEN: That Chapter 177 entitled Sewers, Part 2 entitled "Sewer Connections and Use", Article X entitled "Industrial Discharge Permit System", §177-56 entitled "Permit application" of the Code of the City of Ogdensburg, is hereby deleted in its entirety and replaced with the following:

A. Users seeking a wastewater discharge permit shall complete and file with the City Engineer an application on the form included as Appendix I of this Part 2<sup>1</sup> and accompanied by the applicable fee. In support of this application, the user shall submit the following information:

(1) The name, address and SIC number of the applicant.

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- (2) The volume of wastewater to be discharged.
- (3) Wastewater constituents and characteristics, including but not limited to those set forth in Article IX of this Part 2 as determined by a reliable analytical laboratory.
- (4) The time and duration of discharge.
- (5) The average and thirty-minute peak wastewater flow rates, including daily, monthly and seasonal variations, if any.
- (6) Site plans, floor plans, mechanical and plumbing plans and details to show all sewers and appurtenances by size, location and elevation.
- (7) A description of activities, facilities and plant processes on the premises, including all materials and types of materials which are or could be discharged.
- (8) Each product produced by type, amount and rate of production.
- (9) The number and type of employees, and hours of work.
- (10) Categorical Industrial Users must submit a Baseline Monitoring Report (BMR) which fulfills the requirements outlined in 40 CFR 403.12(b). This BMR must contain the certification found in 40 CFR 403.6(a) (2) (ii) and 40 CFR 403.12(b) (6).
- (11) If additional pretreatment and/or Operation & Maintenance (O&M) will be required to meet the standards, then the industrial user shall provide the shortest schedule to accomplish such additional treatment and/or O&M. The completion date in this schedule shall not be longer than the compliance date established for the applicable pretreatment standard. The following conditions shall apply to this schedule:

The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include hiring an engineer, completing preliminary plans, completing final plans, executing contracts for major components, commencing

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- (a) construction, completing construction, beginning operation, and beginning routine operation).
- (b) No increment referred to in (a) above shall exceed nine (9) months, nor shall the total compliance period exceed 18 months.
- (c) No later than 14 calendar days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the City of Ogdensburg including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of the progress, the reason for delay, and the steps being taken by the user to return to the established schedule. In no event shall more than nine (9) months elapse between such progress reports to the City of Ogdensburg.

(12) Any other information as may be deemed by the City Engineer to be necessary to evaluate the permit application.

(13) Information and data.

(a) Information and data on a user obtained from reports, questionnaires, permit application, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the City that the release of such information would divulge information, processes or methods or production entitled to protection as trade secrets of the user.

(b) When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made available upon written request to governmental agencies for uses related to this Part 2, the National Pollutant Discharge Elimination System (NPDES) permit, State Disposal System permit and/or pretreatment programs; provided, however, that such portions of a report shall be available for use by the state or any agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

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(c) Information accepted by the City as confidential shall not be transmitted to the general public by the City. A ten day notification will be given to the user informing them of the confidential information that will be given to a governmental agency.

B. The City Engineer will evaluate the data furnished by the user and may require additional information. After evaluation and acceptance of the data furnished, the City Engineer may issue a wastewater discharge permit subject to terms and conditions provided herein.

ITEM ELEVEN: That Chapter 177 entitled Sewers, Part 2 entitled “Sewer Connections and Use”, Article X entitled “Industrial Discharge Permit System”, §177-57 entitled “Permit conditions” of the Code of the City of Ogdensburg, is hereby deleted in its entirety and replaced with the following:

Wastewater discharge permits shall be expressly subject to all provisions of this Part 2 and all other regulations, user charges and fees established by the City. The conditions of wastewater discharge permits shall be uniformly enforced in accordance with this Part 2 and applicable state and federal regulations. Permit conditions will include the following:

A. The unit charge or schedule of user charges and fees for the wastewater to be discharged to the system.

B. The average and maximum wastewater constituents and characteristics.

C. Limits on rate and time of discharge or requirements for flow regulations and equalization.

D. Requirements for installation of inspection and sampling facilities, and specifications for monitoring programs.

E. Requirements for maintaining and submitting technical reports and plant records relating to wastewater discharges.

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F. Daily average and daily maximum discharge rates or other appropriate conditions when pollutants subject to limitations and prohibitions are proposed or present in the user's wastewater discharge.

G. Compliance schedules.

H. All reports shall contain the following certification:

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that the qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

I. The 90 day compliance report for new discharges shall contain the certification statement found in 40 CFR 403.12(b) (6), a statement indicating whether pretreatment standards are met.

J. All reports must be signed by the appropriate official as defined in 40 CFR 403.12(l).

K. Requirements to control Slug Discharges, including the development of a Slug Control Plan, if determined by the POTW to be necessary.

L. Other conditions to ensure compliance with this Part 2.

ITEM TWELVE: That Chapter 177 entitled Sewers, Part 2 entitled “Sewer Connections and Use”, Article X entitled “Industrial Discharge Permit System”, §177-58 entitled “Duration of permits; modifications” of the Code of the City of Ogdensburg, is hereby deleted in its entirety and replaced with the following:

§ 177-58. Duration of permits; modifications.

A. Permits shall be issued for a specified time period, not to exceed three years.

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A permit may be issued for a period of less than one year or may be stated to expire on a specified date. If the user is not notified by the City Engineer 30 days prior to the expiration of the permit, the permit shall automatically be extended for six months. The terms and conditions of the permit may be subject to modification and change by the City Engineer during the life of the permit. The user shall be informed of any proposed changes in his permit at least 30 days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

B. A request for a permit modification must be requested by the permittee prior to any change in production or process that would alter any of the wastewater characteristics.

C. The industrial discharge permit of industrial users subject to national categorical or state pretreatment standards shall be revised to require compliance with such standards within the time frame prescribed by such standard. The permit shall be revised as soon as possible by the Control Authority. Where a user, subject to a National Categorical or State Pretreatment Standard, has not previously submitted an application for an industrial discharge permit as required by this Part 2, the user shall apply for an industrial discharge permit within 180 days after the promulgation of the applicable pretreatment standard. In addition, the user with an existing industrial discharge permit shall submit to the City Engineer, within 180 days after the promulgation of an applicable National Categorical or State Pretreatment Standard, the information required by the form included as Appendix I of this Part 2<sup>74</sup> and as amended by the City Engineer.

ITEM THIRTEEN: That Chapter 177 entitled Sewers, Part 2 entitled “Sewer Connections and Use”, Article X entitled “Industrial Discharge Permit System”, §177-60(B) entitled “Revocation of permit” of the Code of the City of Ogdensburg, is hereby deleted in its entirety and replaced with the following:

B. Failure of the user to report significant changes in operations or wastewater constituents and characteristics prior to changing the discharge;

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ITEM FOURTEEN: That Chapter 177 entitled Sewers, Part 2 entitled “Sewer Connections and Use”, Article X entitled “Industrial Discharge Permit System”, §177-61 entitled “Discharge reports” of the Code of the City of Ogdensburg, is hereby deleted in its entirety and replaced with the following:

A. Every significant industrial user shall file a periodic discharge report at such intervals as are designated by the City Engineer. The City Engineer may require any other industrial users discharging or proposing to discharge into the treatment system to file such periodic reports.

B. The discharge report shall include, but, in the discretion of the City Engineer, shall not be limited to: nature of process, volume, rates of flow, mass emission rate, production quantities, hours of operation, concentrations of controlled pollutants or other information which relates to the generation of waste. Such reports may also include the chemical constituents and quantity of liquid materials stored on site even though they are not normally discharged. In addition to discharge reports, the City Engineer may require information in the form of industrial discharge permit applications and self-monitoring reports.

C. The reports or documents required to be submitted or maintained under this section shall be subject to:

- (1) The provisions of 18 USC Section 1001 relating to fraud and false statements;
- (2) The provisions of Section 309(c) (4) of the Act, as amended, governing false statements, representation or certification; and
- (3) The provisions of Section (c) (6) of the Act, as amended, regarding corporate officers.

D. Baseline Monitoring Report - Within 180 days after promulgation of an applicable Federal Categorical Pretreatment Standard, existing sources subject to that standard shall submit, to the City Engineer, the information required by paragraphs 40 CFR 403.12(b)(1)-(5).

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At least 90 days prior to commencement of discharge, New Sources, and sources that become Industrial Users subsequent to the promulgation of an applicable categorical Standard shall be required to submit to the Control Authority a report which contains the information listed in paragraphs 40 CFR 403.12(b)(1)–(5). CITY New sources shall also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New Sources shall give estimates of the information requested in paragraphs 403.12(b) (4) and (5).

E. 90 Day Compliance Report - Within 90 days following the date for final compliance with applicable pretreatment standards, or in the case of a new source, following commencement of the introduction of wastewater into the POTW, any user subject to pretreatment standards and requirements shall submit, to the City Engineer, a report indicating the nature and concentration of all pollutants in the discharge, from the regulated process, which are limited by pretreatment standards and requirements, and the average and maximum daily flow for these process units in the user's facility which are limited by such pretreatment standards and requirements.

The report shall state whether the applicable pretreatment standards and requirements are being met on a consistent basis and if not, what additional O&M and/or pretreatment is necessary to bring the user into compliance with the applicable pretreatment standards. This statement shall be signed by an authorized representative of the industrial user, and certified by a qualified professional.

F. Violation Report - If sampling, performed by the user, indicates a violation of this Law and/ or the user's discharge permit, the user shall notify the City Engineer within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the City Engineer within 30 days after becoming aware of the violation. The user is not required to resample if the POTW performs monitoring of the user's discharge at least once a month for the parameter which violated, or if the POTW performs sampling, for the parameter which was violated, between the user's initial sampling and when the user receives the results of this sampling.

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G. Notification of Hazardous Waste Discharge - All industrial users shall notify in writing the City of Ogdensburg, the State and the EPA, of any discharge which would be considered hazardous waste as defined by 40 CFR Part 261 if disposed of in a different manner. The one time notification must include the name of the hazardous waste under 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the Industrial User discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the Industrial User: An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the waste stream discharged during that calendar month, and an estimation of the mass of constituents in the waste stream expected to be discharged during the following twelve months.

All notifications must take place within 180 days of the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide the notification no later than 180 days after the discharge of the listed or characteristic hazardous waste. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under 40 CFR 403.12 (j).

ITEM FIFTEEN: That Chapter 177 entitled Sewers, Part 2 entitled “Sewer Connections and Use”, Article X entitled “Industrial Discharge Permit System”, §177-62 (A) entitled “Records; monitoring” of the Code of the City of Ogdensburg, is hereby deleted in its entirety and replaced with the following:

A. All industrial users who discharge or propose to discharge wastewaters to the wastewater treatment system shall maintain such records of production and related factors, effluent flows and pollutant amounts or concentrations as are necessary to demonstrate compliance with the requirements of this Part 2 and any applicable State or Federal Pretreatment Standards or requirements for a minimum of three years or longer in case of unresolved litigation or when requested by the Approval Authority.

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ITEM SIXTEEN: That Chapter 177 entitled Sewers, Part 2 entitled “Sewer Connections and Use”, Article X entitled “Industrial Discharge Permit System”, §177-63 (B) entitled “Inspections; sampling; analysis” of the Code of the City of Ogdensburg, is hereby deleted in its entirety and replaced with the following:

B. Analysis of industrial wastewaters. All wastewater sampling and analysis for the local pretreatment program must be conducted using methods and procedures in 40 CFR Part 136. Analysis of those pollutants not covered by 40CFR Part 136 Laboratory analysis of industrial wastewater samples shall be performed in accordance with the current edition of Standard Methods or Methods for Chemical Analysis of Water and Waste, published by the United States Environmental Protection Agency.

ITEM SEVENTEEN: That Chapter 177 entitled Sewers, Part 2 entitled “Sewer Connections and Use”, Article X entitled “Industrial Discharge Permit System”, §177-64 (A) entitled “Determination of pollutant concentrations” of the Code of the City of Ogdensburg, is hereby deleted in its entirety and replaced with the following:

A. The pollutant concentration of any sewage, industrial waste or other wastes shall usually be determined from representative samples of the effluent discharged to public sewers, taken by the City Engineer at sampling stations, at any period or time and of such duration and in such manner as the City Engineer may elect or at any place or manner mutually agreed upon between the user and City Engineer. The intent of any sampling procedure is to establish the pollutant concentration in the sewage discharged during an average or typical working day. This concentration may be derived according to the best judgment of the City Engineer, by combination of repeated sub-samplings during any one day, by combination of a series of such days or by combination of a number of multiple samples. The analysis of samples taken shall be performed in a laboratory designated by the City Engineer and the surcharge and/or the acceptability of the wastes shall be determined from said analyses.

ITEM EIGHTEEN: This ordinance shall take effect ten (10) days after publication of notice which shall give the title and describe same in summary form.

The vote was:

CARRIED, AYES ALL

3. Councillor Morley moved a Local Law to amend the Ogdensburg Municipal Code, Chapter 79 entitled Bingo, and Councillor Skamperle seconded to wit:

LOCAL LAW #2 - 2015

A LOCAL LAW AMENDING CHAPTER 79 ENTITLED BINGO  
OF THE MUNICIPAL CODE OF THE CITY OF OGDENSBURG

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF  
OGDENSBURG, NEW YORK, AS FOLLOWS:

ITEM ONE: That Chapter 79 entitled Bingo, §79-1 entitled “Definitions” of the Code of the City of Ogdensburg, is hereby deleted in its entirety and replaced with the following:

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

**AUTHORIZED ORGANIZATION** -- Any bona fide religious or charitable organization or bona fide educational, fraternal, civic or service organization or bona fide organization of veterans or volunteer firemen, which by its charter, certificate of incorporation, constitution or act of the legislature shall have as its dominant purpose or purposes one (1) or more of the lawful purposes as defined in the Bingo Licensing Law,<sup>2</sup> provided that each shall operate without profit to its members, and provided that each such organization has engaged in serving one (1) or more of the lawful purposes as defined in the Bingo Licensing Law, Article 14-H of the General Municipal Law, for a period of one (1) year immediately prior to applying for a license under the Licensing Law.

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<sup>2</sup> Editor's Note: See Art. 14-H of the General Municipal Law.

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BINGO or GAME -- Includes a specific game of chance, commonly known as "bingo" or "lotto" in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random.

COMMISSION – New York State Gaming Commission.

LICENSE -- A license issued pursuant to the provisions of this chapter.

ITEM TWO: That Chapter 79 entitled Bingo, §79-3 entitled “License Applications” of the Code of the City of Ogdensburg is hereby deleted in its entirety and replaced with the following:

- A. Each applicant shall file with the City Clerk of the City of Ogdensburg a written application in the form prescribed in the rules and regulations of the New York State Gaming Commission duly executed and verified.
- B. In each application there shall be designated an active member or members of the applicant organization under whom the game or games of chance described in the application are to be held, operated and conducted, and there shall be appended to the application a statement executed and verified by the applicant and by the member or members so designated that he, she or they will be responsible for the holding, operation and conduct of such games of chance in accordance with the terms of the license and the provisions of this chapter, the Bingo Licensing Law and the rules and regulations of the New York State Gaming Commission, if such license is granted.
- C. In the event that any premises upon which any such game of chance is to be held, operated or conducted or which is to be used for any other purpose in connection with the holding, operation or conduct thereof is to be leased or rented from any person, persons or corporations, the application shall be accompanied by a written statement signed and verified under oath by such person or persons or on behalf of such corporation, stating his or its address, the amount of rent to be paid for such premises and stating that such lessor, lessors or, if a corporation, all of its officers and each of its stockholders who hold ten percent (10%) or more of its stock issued and outstanding, are of good moral character and have not been convicted of a crime.

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ITEM THREE: That Chapter 79 entitled Bingo, §79-4 entitled “Restrictions” of the Code of the City of Ogdensburg is hereby deleted in its entirety and replaced with the following:

Any game or games licensed hereunder shall be subject to the following restrictions in addition to such other restrictions as may be provided herein contained in the rules and regulations of the New York State Gaming Commission:

- A. No person, firm, association, corporation or organization other than a licensee under the provisions of Article 14-H of the General Municipal Law shall conduct such game or shall lease or otherwise make available for conducting bingo, a hall or other premises for any consideration whatsoever, direct or indirect.
- B. No bingo games shall be held, operated or conducted on or within any leased premises if rental under such lease is to be paid, wholly or in part, on the basis of a percentage of the receipts or net profits derived from the operation of such game.
- C. No authorized organization licensed under the provisions of Article 14-H of the General Municipal Law shall purchase or receive any supplies or equipment specifically designed or adapted for use in the conduct of bingo games from other than a supplier licensed under the Bingo Control Law<sup>3</sup> or from another authorized organization.
- D. The entire net proceeds of any game of bingo and of any rental shall be exclusively devoted to the lawful purposes of the organization permitted to conduct the same.
- E. The aggregate of the tiered prizes awarded in any single game shall not exceed \$1,000 and the aggregate of tiered bingo games shall not cause the series of prizes to exceed \$3,000 in prizes during any occasion.
- F. No person except a bona fide member of any such organization shall participate in the management or operation of such game.

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<sup>3</sup> Editor's Note: See § 430 et seq. of the Executive Law.

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- G. No person shall receive any remuneration for participating in the management or operation of any game of bingo.
- H. The unauthorized conduct of a bingo game and any willful violation of any provisions of this chapter shall constitute and be punishable as a misdemeanor.
- I. Limited period bingo shall be conducted in accordance with the provisions of Article 14-H of the General Municipal Law and the rules and regulations of the New York State Gaming Commission.

ITEM FOUR: That Chapter 79 entitled Bingo, §79-7 entitled “Form of License” of the Code of the City of Ogdensburg, is hereby deleted in its entirety and replaced with the following:

Each license shall be in such form as shall be prescribed in the rules and regulations promulgated by the New York State Gaming Commission.

ITEM FIVE: That Chapter 79 entitled Bingo, §79-8 entitled “Supervision; suspension or revocation; inspections” of the Code of the City of Ogdensburg, is hereby deleted in its entirety and replaced with the following:

The Police Department shall exercise control and supervision over all games of chance held, operated or conducted under such license, and shall have the power and authority to suspend any such license, and, after notice and hearing, to revoke the same for violation of any provision of such license, this chapter, §475 to §499 of the General Municipal Law or the rules and regulations of the New York State Gaming Commission. The premises where any game of bingo is conducted, or where it is intended that any game of bingo shall be conducted or where it is intended that any equipment be used, shall, at all reasonable times, be open to inspection by the commission and the municipal governing body, and the officers, agents and employees thereof.

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ITEM SIX: That Chapter 79-12 entitled Bingo, §79-12 entitled “Persons operating games; equipment; compensation” of the Code of the City of Ogdensburg, is hereby deleted in its entirety and replaced with the following:

No person shall hold, operate or conduct any game or games of chance under any license issued under this chapter except an active member of the authorized organization to which the license is issued, and no person shall assist in the holding, operating or conducting of any game or games of chance under such license except such an active member or a member of an organization or association which is an auxiliary to the licensee or a member of an organization or association of which such licensee is an auxiliary or a member of an organization or association which is affiliated with the licensee by being, with it, auxiliary to another organization or association and except bookkeepers or accountants as hereinafter provided, and no such game of chance shall be conducted with any equipment except such as shall be owned absolutely or used without payment of any compensation therefor by the licensee, and no item of expense shall be incurred or paid in connection with the holding, operating or conducting of any game of chance held, operated or conducted pursuant to any license issued under this chapter, except such as are bona fide items of reasonable amount for goods, wares and merchandise furnished or services rendered which are reasonably necessary to be purchased or furnished for the holding, operating or conducting thereof under any circumstances whatsoever; no rental shall be paid for the use of any premises for holding, operating or conducting thereof under any circumstances whatever; no rental shall be paid for the use of any premises for holding, operating or conducting any such game of chance thereon or for any other purpose in connection with the holding, operating or conducting thereof unless the amount of such rental is stated in a statement annexed to the application for the license as provided in § 79-3 of this chapter or which is in excess of the sum stated as the rental to be charged therefor in such statement; and no commission, salary, compensation, reward or recompense whatever shall be paid or given, directly or indirectly, to any person holding, operating or conducting, or assisting in the holding, operation or conduct of any game of chance so held, operated or conducted, except that reasonable compensation may be paid to bookkeepers or accountants for bookkeeping or accounting services rendered according to a schedule of compensation prescribed by the rules of the New York State Gaming Commission.

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ITEM SEVEN: That Chapter 79 entitled Bingo, §79-13 entitled “Admission fees; prize limitations” of the Code of the City of Ogdensburg, is hereby deleted in its entirety and replaced with the following:

- A. Not more than five dollars (\$5.) shall be charged by any licensee for admission to any room or place in which any game or games of chance are to be held, operated and conducted under any license issued under this chapter, which admission fee, upon payment thereof, shall entitle the person paying the same to a card entitling him to participate without additional charge, in all regular games of chance to be played under such license on such occasion, and no charge in excess of one dollar (\$1.) shall be made for a single opportunity to participate in all special games to be played under such license on such occasion. An admission card may be offered as part of a package that includes extra regular cards and special cards provided such admission card is readily distinguishable from all other bingo opportunities sold and provided identical admission cards are also offered for sale separately by the licensee for a price not to exceed \$5. No person shall be permitted entry into any room or place in which any bingo game is to be conducted without purchasing at least an admission card, except a person licensed to manage or assist in the conduct of bingo or licensed games of chance, a person authorized to operate the food concession, security personnel or, when present solely to effect repairs on the premises of a lessor, the licensed lessor or an agent thereof. No person shall be permitted to participate in any bingo game without purchasing at least an admission card. No person shall be required to purchase any bingo opportunity other than an admission card or cards to gain entry, and no person shall be sold or shall be permitted to play more than one admission card or package per bingo occasion.
- B. No prize greater in amount or value than one thousand dollars (\$1,000.) shall be offered or given in any single game conducted under any such license and the aggregate amount or value of all prizes offered or given in all games played on a single occasion shall not exceed three thousand dollars (\$3,000.), and all winners shall be determined and all prizes shall be awarded in any game played on any occasion within the same calendar day as that upon which the game was played.

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No alcoholic beverages shall be offered or given as a prize in any such game.

ITEM EIGHT: That Chapter 79 entitled Bingo, §79-15 entitled “Statement of receipts and expenses” of the Code of the City of Ogdensburg, is hereby deleted in its entirety and replaced with the following:

Within seven (7) days after the conclusion of any occasion of bingo, the authorized organization which conducted the same, and its members who were in charge thereof, and when applicable the authorized organization which rented its premises therefor, shall each furnish to the New York State Gaming Commission and a copy to the Clerk of the City of Ogdensburg a statement subscribed by the member in charge and affirmed by him as true, under the penalties of perjury, showing the amount of the gross receipts derived therefrom and each item of expense incurred, or paid, and each item of expenditure made or to be made, the name and address of each person to whom each such item has been paid, or is to be paid, with a detailed description of the merchandise purchased or the services rendered therefor, the net proceeds derived from such game or rental, as the case may be, and the use to which such proceeds have been or are to be applied and a list of prizes offered and given, with the respective values thereof, and it shall be the duty of each licensee to maintain and keep such books and records as may be necessary to substantiate the particulars of each such statement.

ITEM NINE: That Chapter 79 entitled Bingo, §79-14 entitled “Advertising games” of the Code of the City of Ogdensburg, is hereby deleted in its entirety and replaced with the following:

A licensee may advertise the conduct of an occasion of bingo to the general public by means of newspaper, radio, circular, handbill and poster, and by one sign not exceeding 60 square feet in area, which may be displayed on or adjacent to the premises owned or occupied by a licensed authorized organization; and when an organization is licensed to conduct bingo occasions on the premises of another licensed organization or of a licensed commercial lessor, one additional such sign may be displayed on or adjacent to the premises in which the occasions are to be conducted.

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Additional signs may be displayed upon any fire-fighting equipment belonging to any licensed authorized organization which is a volunteer fire company, or upon any equipment of a first-aid or rescue squad in and throughout the community served by such volunteer fire company or such first-aid or rescue squad, as the case may be. All advertisements shall be limited to the description of such event as bingo, the name of the licensed authorized organization conducting such occasions, the license number of the authorized organization as assigned by the clerk, and the date, location and time of the bingo occasion, and shall not include any misleading information or representations.

ITEM TEN: That Chapter 79 entitled Bingo, §79-16 entitled “Examination of books and records” of the Code of the City of Ogdensburg, is hereby deleted in its entirety and replaced with the following:

The New York State Gaming Commission or the municipal governing body or their representatives shall have power to examine or cause to be examined the books and records of any authorized organization to which any such license is issued so far as they may relate to any transactions connected with the holding, operating and conducting of any game of chance thereunder and to examine any manager, officer, director, agent, member or employee thereof under oath, in relation to the conduct of any such game of chance under any such license, but any information so received shall not be disclosed except so far as may be necessary for the purpose of carrying out the provisions of this chapter.

ITEM ELEVEN: That Chapter 79 entitled Bingo, §79-17 entitled “Appeals” of the Code of the City of Ogdensburg, is hereby deleted in its entirety and replaced with the following:

Any applicant for or holder of any license issued or to be issued under this chapter aggrieved by any action of the city, its officers or agents, concerning an application which has been made or a license which has been issued, may appeal to the New York State Gaming Commission from the determination of the city, its officers or agents, by filing with the City Council a written notice of appeal within thirty (30) days after the determination or action appealed from, and, upon the hearing of such appeal, the evidence, if any, taken before the City Council, and any additional evidence may be

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produced and shall be considered in arriving at a determination of the matters in issue, and the action of the New York State Gaming Commission upon said appeal shall be binding upon the city and all parties to said appeal.

ITEM TWELVE: This Local Law shall take effect immediately upon filing with the Secretary of State.

The vote was:

CARRIED, AYES ALL

4. Mayor Nelson moved a resolution to provide for public notice and public hearing with regard to an amendment to the Ogdensburg Municipal Code, Chapter 111 entitled Games of Chance, and Councillor Stevenson seconded to wit:

RESOLUTION  
INTRODUCING LOCAL LAW #3 FOR 2015

BE IT RESOLVED that proposed Local Law #3 of the year 2015 entitled:

Amendment to Chapter 111, entitled Games of Chance, of the Ogdensburg Municipal Code of the City of Ogdensburg be and it hereby is introduced before the City Council of the City of Ogdensburg, NY, and

BE IT FURTHER RESOLVED that copies of the aforesaid proposed Local Law be laid upon the desk of each member of the City Council, and

BE IT FURTHER RESOLVED, that the City Council hold a Public Hearing on said proposed Local Law at the City Council Chambers at 7:00 pm on Monday, April 27, 2015, and

BE IT FURTHER RESOLVED that the City Clerk publish or cause to be published a public notice in the official newspaper of the City of Ogdensburg of said public hearing at least seven days prior thereto.

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The vote was:

CARRIED, AYES ALL

5. Councillor Ashley moved a resolution to approve the 2015 Tax Warrant, and Councillor Skamperle seconded to wit:

Resolution

WHEREAS, the Tax Roll of the City of Ogdensburg, for the fiscal year January 1, 2015 through December 31, 2015, has been completed, and,

WHEREAS, Section C70 of the City Charter directs that when the tax rolls have thus been completed, a warrant signed by the City Manager and the City Clerk shall be attached hereto directing the Comptroller to collect from the persons named in the rolls the sum specified as levied against the parcels as owned by them, and

WHEREAS, the tax was computed on the taxable valuation of \$269,927,135 and the tax rate is \$17.210995 per thousand for the General City Tax and the taxable valuation of \$270,066,069 and the tax rate is \$9.699067 per thousand for the General County Tax for the fiscal year January 1, 2015 through December 31, 2015 and the tax roll will produce the following:

CITY AND COUNTY TAX	\$	7,265,102.83
DUE WATER ACCOUNT		164,266.17
DUE SEWER ACCOUNT		194,000.82
DUE MISCELLANEOUS ACCOUNT		18,497.08
OMITTED TAXES		<u>4,153.50</u>
TOTAL	\$	<u>7,646,020.40</u>

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NOW THEREFORE, pursuant to Section C70 of the City Charter, the Tax Roll of the fiscal year 2015 is confirmed and the warrant in the sum of \$7,646,020.40 annexed thereto and be signed for the collections of all taxes in two installments; the first installment commencing April 15, 2015 and the second installment commencing July 15, 2015, and that all taxes shall be liens on the real property against which the sum levied is superior to all other liens and encumbrances from the date of signing of said warrant.

The vote was:

CARRIED, AYES ALL

6. Mayor Nelson moved a resolution introducing an ordinance and providing for public notice and public hearing with regard to the sale of City-owned property located at 905 Mechanic Street, and Councillor Morley seconded to wit:

RESOLUTION OF CITY COUNCIL INTRODUCING AN ORDINANCE  
AND PROVIDING FOR PUBLIC NOTICE  
AND PUBLIC HEARING

BE IT RESOLVED, that Ordinance No. \_\_ entitled "An Ordinance to Offer for Sale at Public Auction City-Owned Property " be and it hereby is introduced before the City Council of the City of Ogdensburg, New York, and

BE IT FURTHER RESOLVED, that the City Council shall hold a public hearing in the matter of the adoption of the aforesaid ordinance to be held at the Council Chambers in the City of Ogdensburg, New York, on the 27th day of April, 2015, at 7:00 p.m., and

BE IT FURTHER RESOLVED that the City Clerk give notice of such public hearing by publication in the official newspaper at least seven (7) days before the hearing date of a notice setting forth the time and place and describing the proposed ordinance in summary form.

The vote was:

CARRIED, AYES ALL

7. Councillor Stevenson moved a resolution approving the Ogdensburg Housing Authority Administrative and Maintenance salary structure and pay increases. This is a five (5) year contract with a two percent (2%) cost of living increase each year for the next five (5) years, effective April 1, 2015 through March 31, 2020, by modification to its existing salary structure, and Councillor Skamperle seconded to wit:

#### RESOLUTION

WHEREAS, in conformity with the requirements of the New York State Public Housing Law §32, Sub Division 1, compensation for Ogdensburg Housing Authority employees can be fixed only upon the approval of the local legislative body, which is the City Council of the City of Ogdensburg, and

WHEREAS, the Ogdensburg Housing Authority has reported that based on a comparability review of salaries for their employees with prevailing local government salaries, it is the desire of the Ogdensburg Housing Authority Board to authorize a five (5) year contract with a two percent (2 %) cost of living increase for all employees effective April 1, 2015, and

WHEREAS, by resolution adopted on March 12, 2015, the Ogdensburg Housing Authority Board approved a five (5) year contract with a two percent (2 %) cost of living increase each year for the next (5) years, effective April 1, 2015, by modification to its existing Administrative and Maintenance salary structure,

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Ogdensburg hereby approves the April 1, 2015 through March 31, 2020 salary structure for all employees of the Ogdensburg Housing Authority which contains a two percent (2 %) cost of living increase, effective April 1, 2015, salary structures are attached and made part of this resolution, and

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BE IT FURTHER RESOLVED that the City Manager, John Pinkerton, is hereby authorized and directed to forward certified copies of the resolution to the Ogdensburg Housing Authority.

Councillor Ashley asked why Council is voting on the Ogdensburg Housing Authority payroll increases when it has not been done in the past. City Manager John Pinkerton said the oversight was discovered while looking into the Ogdensburg Housing Authority bylaws. Mr. Pinkerton said our City Clerk confirmed with the City of Watertown that Housing Authority salaries must be approved by City Council as per Public Housing Law §32. Mr. Pinkerton explained we are rectifying an error.

The vote was:

CARRIED, AYES ALL

8. Mayor Nelson moved a resolution providing for public notice and public hearing regarding an amendment to the Ogdensburg Municipal Code, Chapter 181 entitled Solid Waste, and Councillor Mitchell seconded to wit:

RESOLUTION  
INTRODUCING ORDINANCE # \_\_\_ FOR 2015

BE IT RESOLVED that proposed Ordinance # \_\_\_ of the year 2015 entitled:

Amendment to Chapter 181, entitled Solid Waste, of the Ogdensburg Municipal Code of the City of Ogdensburg be and it hereby is introduced before the City Council of the City of Ogdensburg, NY, and

BE IT FURTHER RESOLVED that copies of the aforesaid proposed Ordinance be laid upon the desk of each member of the City Council, and

BE IT FURTHER RESOLVED, that the City Council hold a Public Hearing on said proposed Ordinance at the City Council Chambers at 7:00 pm on Monday, April 27, 2015, and

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BE IT FURTHER RESOLVED that the City Clerk publish or cause to be published a public notice in the official newspaper of the City of Ogdensburg of said public hearing at least seven days prior thereto.

The vote was:

CARRIED, AYES ALL

9. Mayor Nelson moved a resolution providing for public notice and public hearing regarding an amendment to the Ogdensburg Municipal Code, Chapter 131 entitled Littering, and Councillor Morley seconded to wit:

RESOLUTION  
INTRODUCING ORDINANCE #\_\_ FOR 2015

BE IT RESOLVED that proposed Ordinance # \_\_ of the year 2015 entitled:

Amendment to Chapter 131, entitled Littering, of the Ogdensburg Municipal Code of the City of Ogdensburg be and it hereby is introduced before the City Council of the City of Ogdensburg, NY, and

BE IT FURTHER RESOLVED that copies of the aforesaid proposed Ordinance be laid upon the desk of each member of the City Council, and

BE IT FURTHER RESOLVED, that the City Council hold a Public Hearing on said proposed Ordinance at the City Council Chambers at 7:00 pm on Monday, April 27, 2015, and

BE IT FURTHER RESOLVED that the City Clerk publish or cause to be published a public notice in the official newspaper of the City of Ogdensburg of said public hearing at least seven days prior thereto.

The vote was:

CARRIED, AYES ALL

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10. Mayor Nelson moved a resolution providing for public notice and public hearing regarding an amendment to the Ogdensburg Municipal Code, Chapter 189 entitled Streets and Sidewalks, and Councillor Ashley seconded to wit:

RESOLUTION  
INTRODUCING ORDINANCE #\_\_ FOR 2015

BE IT RESOLVED that proposed Ordinance # \_\_ of the year 2015 entitled:

Amendment to Chapter 189, entitled Streets and Sidewalks, of the Ogdensburg Municipal Code of the City of Ogdensburg be and it hereby is introduced before the City Council of the City of Ogdensburg, NY, and

BE IT FURTHER RESOLVED that copies of the aforesaid proposed Ordinance be laid upon the desk of each member of the City Council, and

BE IT FURTHER RESOLVED, that the City Council hold a Public Hearing on said proposed Ordinance at the City Council Chambers at 7:00 pm on Monday, April 27, 2015, and

BE IT FURTHER RESOLVED that the City Clerk publish or cause to be published a public notice in the official newspaper of the City of Ogdensburg of said public hearing at least seven days prior thereto.

The vote was:

CARRIED, AYES ALL

11. Councillor Mitchell moved a resolution authorizing the City Manager to apply to the Sweetgrass Foundation for grant funds to develop a historic tour along State Street, and Councillor Stevenson seconded to wit:

RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT  
A SWEETGRASS FOUNDATION GRANT APPLICATION  
TO DEVELOP A HISTORIC TOUR ALONG STATE STREET

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WHEREAS, the City of Ogdensburg is steeped in rich local history; and

WHEREAS, the mission of the Fort la Presentation Association, Ogdensburg Historic Commission and the City Historian is to educate both children and adults about Ogdensburg's rich and colorful past; and

WHEREAS, the City Historian would like to feature historic sites along State Street and develop a Historic Tour; and

WHEREAS, the purpose of the Sweetgrass Foundation is to 'Cultivate generosity, simplify giving, build endowments, and distribute funds to benefit the community.

NOW, THEREFORE BE IT RESOLVED, the Ogdensburg City Council hereby authorizes the filing of an application to the Sweetgrass Foundation for grant funds in the amount of \$ 1,235., to develop a historic tour along State Street; and

BE IT FURTHER RESOLVED, that the City Manager, is hereby authorized to submit the application, and if awarded, to administer the grant, including executing all necessary documents relating to the application or administration of the grant.

The vote was:

CARRIED, AYES ALL

12. Mayor Nelson moved a resolution providing for public hearing and public notice on a proposed ordinance Amending Chapter 221 entitled "Zoning". (Lincoln School property bounded by Rosseel Street, Knox Street, Jay Street and Judson Street in the City of Ogdensburg to be rezoned from Single Family Residential (SFR) to a Planned Development District (PDD), and Councillor Ashley seconded to wit:

RESOLUTION OF THE CITY COUNCIL INTRODUCING  
AN AMENDMENT TO THE ZONING ORDINANCE  
AND PROVIDING FOR PUBLIC NOTICE AND PUBLIC HEARING

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BE IT RESOLVED, that the ordinance entitled “Ordinance Amending Chapter 221 Entitled ‘Zoning’ of the City of Ogdensburg Municipal Code” be and it hereby is introduced before the City Council of the City of Ogdensburg, New York, and

BE IT FURTHER RESOLVED, that the City Council shall hold a public hearing in the matter of the adoption of the aforesaid ordinance to be held in the City Council Chambers, City Hall, 330 Ford Street, Ogdensburg, New York, on Monday the 11<sup>th</sup> day of May, 2015, at 7:00 p.m., and

BE IT FURTHER RESOLVED, that the City Clerk give notice of such public hearing by publication, in the official newspaper, at least seven days before the hearing date, of a notice setting forth the time and place and describing the proposed ordinance in summary form.

City Manager John Pinkerton explained the City received a request from an entity to enter into a Planned Development District (PDD). Councillor Morley said he understood the entity was interested in the Adaptive Reuse District (ARD). Mr. Pinkerton explained when a parcel is two or more acres it can be a PDD or ARD. Councillor Morley said Council was close to completing the ARD proposal and now the rules are changing. Mr. Pinkerton explained the PDD is already in the Municipal Code and an option the applicant always had. Mr. Pinkerton said the City is not bringing the application forward. Director of Planning and Development Andrea Smith explained the PDD application and approval/denial process in detail.

City Attorney Andy Silver said there is a law on the books for PDD and the applicant submitted a complete application. Attorney Silver said the public hearing is the time to address concerns and balance whether or not the PDD application should be approved. Attorney Silver explained Council should keep the PDD and ARD separate. Attorney Silver urged Council not to defer a decision on the PDD application. Councillor Morley asked if the application will automatically go to the Planning Board if Council approves the public hearing tonight. Attorney Silver explained Council has 62 days after the public hearing is held to reach a decision. Attorney Silver said Council is bound by statute to move forward with the PDD application. Attorney Silver explained Council can override a Planning Board denial or recommendation with changes by a majority plus one vote. Councillor Morley added Council can disapprove the application with a simple majority vote. Attorney Silver explained Council is in charge of the process.

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Attorney Silver said the application is complete and Council needs to process it. Attorney Silver explained Council must refer the application to the Planning Board because the ARD is currently not an option. Attorney Silver said the Municipal Code mandates Council review all PDD applications and a vote. Attorney Silver explained if the application is approved by the Planning Board with no conditions, Council can approve or deny the application with a simple majority vote. Attorney Silver explained if the application is approved with modifications or denied by the Planning Board, Council can approve the application with a majority vote plus one. Councillor Morley asked if Council can table this until the ARD is addressed. Attorney Silver explained ARD has no impact on this application because ARD does not currently exist. Councillor Skamperle said he would rather table this than vote no. Councillor Hosmer questioned the consequences if Council tables this matter. Attorney Silver explained the applicant could sue Council because the Municipal Code mandates were not followed.

Director of Planning and Development Andrea Smith explained that she advised Council at the November 2014 Council Meeting that a number of properties qualified for both PDD and ARD. Councillor Morley said he understood the proposed ARD properties were not large enough for a PDD application. Ms. Smith explained she provided Council with a memo at that meeting and noted the Municipal Code has not been changed with respect to PDD since being added in 1992. Ms. Smith said OMC §221.30(b) states a parcel over two acres can apply for PDD status. Ms. Smith explained the Planning Board has the right to hold a public hearing. Councillor Skamperle said he wants to prohibit the PDD and place this building under ARD. Ms. Smith explained there is no ARD, only the PDD. Ms. Smith said this project has been in discussion since July 2014. Ms. Smith explained there are several parcels that don't meet the PDD requirements and have no other option unless the ARD is approved. Councillor Morley said Council specified what they wanted in the ARD. Mayor Nelson said we do not have an ARD at this time, but do have a PDD. Councillor Morley said Council does not have to approve this tonight. Mayor Nelson said this resolution is simply calling for a public hearing. Councillor Hosmer said he is concerned about the timeframe if Council tables this matter. Mayor Nelson explained the applicant has met the PDD application requirements and there is no reason why the Council should not process this application.

Councillor Skamperle moved to table to matter, and Councillor Morley seconded the motion.

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The vote to table was:

AYES: Councillors Ashley, Morley and Skamperle

NAYS: Mayor Nelson, Councillors Hosmer,  
Mitchell and Stevenson

DEFEATED, 4 TO 3

The vote on the resolution was:

AYES: Mayor Nelson, Councillors Ashley,  
Hosmer, Mitchell and Stevenson

NAYS: Councillor Skamperle

ABSTAIN: Councillor Morley

CARRIED, 5 TO 1

13. Mayor Nelson moved a resolution providing for public notice and public hearing to add Article VII, Adaptive Reuse District to the Ogdensburg Municipal Code, and Councillor Ashley seconded to wit:

RESOLUTION OF THE CITY COUNCIL INTRODUCING  
THE ADDITION OF ARTICLE VII – ADAPTIVE REUSE DISTRICT  
TO THE CODE OF THE CITY OF OGDENSBURG  
AND PROVIDING FOR PUBLIC NOTICE AND PUBLIC HEARING

BE IT RESOLVED that the ordinance entitled "Ordinance Adding Article VII Entitled 'Adaptive Reuse District (ARD)' to the Code of the City of Ogdensburg" and it hereby is introduced before the City Council of the City of Ogdensburg, New York, and

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BE IT FURTHER RESOLVED that the City Council shall hold a public hearing in the matter of the adoption of the aforesaid ordinance to be held in the City Council Chambers, City Hall, 330 Ford Street, Ogdensburg, New York, on Monday the 11<sup>th</sup> day of May, 2015, at 7:00 p.m., and

BE IT FURTHER RESOLVED that the City Clerk give notice of such public hearing by publication, in the official newspaper, at least seven days before the hearing date, of a notice setting forth the time and place and describing the proposed ordinance in summary form.

Councillor Skamperle asked for an explanation of the voting requirements. City Manager John Pinkerton explained General Municipal Law §239(m) states a majority plus one vote is required to override a Planning Board disapproval or approval with conditions. Councillor Skamperle asked if the language of Ogdensburg Municipal Code §221-28(b) can be altered or omitted. City Attorney Andy Silver said that language is mandated by General Municipal Code §239(m) Law. Councillor Hosmer asked if Council can disapprove an application with a simple majority vote. Attorney Silver explained if the Planning Board approves the application with no modifications, Council can disapprove it with a simple majority vote. Attorney Silver said the statute is complicated and no one has been misled.

Councillor Skamperle questioned the consequences of removing “or approval with modifications” from §221-28.B. of the Municipal Code. Attorney Silver explained that action could invalidate the law, and the ARD could be overturned in the future.

Councillor Morley asked if the St. Lawrence County Planning Board notifies neighbors of an application for rezoning. Director of Planning and Development Andrea Smith said she is unsure of their procedures. Councillor Stevenson suggested we notify neighbors of the County Planning Board meeting date, time and location.

Councillor Skamperle said although he would like those four words removed, the ARD provides more protection for neighbors than the PDD. Mayor Nelson said the ARD document was crafted to allow the most input from residents, but we cannot override General Municipal Law.

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The vote was:

AYES: Mayor Nelson, Councillors Ashley, Hosmer,  
Mitchell, Morley and Stevenson

NAYS: Councillor Skamperle

CARRIED, 6 TO 1

14. Mayor Nelson moved a resolution providing for public notice and public hearing to amend Chapter 221 entitled "Zoning" of the City of Ogdensburg Municipal Code, pending County Review, and Councillor Ashley seconded to wit:

RESOLUTION OF THE CITY COUNCIL INTRODUCING  
AN AMENDMENT TO THE ZONING ORDINANCE  
AND PROVIDING FOR PUBLIC NOTICE AND PUBLIC HEARING

BE IT RESOLVED that the ordinance entitled "Ordinance Amending Chapter 221 entitled 'Zoning' of the City of Ogdensburg Municipal Code" be and it hereby is introduced before the City Council of the City of Ogdensburg, New York, and

BE IT FURTHER RESOLVED that the City Council shall hold a public hearing in the matter of the adoption of the aforesaid ordinance to be held in the City Council Chambers, City Hall, 330 Ford Street, Ogdensburg, New York, on Monday the 11<sup>th</sup> day of May, 2015, at 7:00 p.m., and

BE IT FURTHER RESOLVED that the City Clerk give notice of such public hearing by publication, in the official newspaper, at least seven days before the hearing date, of a notice setting forth the time and place and describing the proposed ordinance in summary form.

The vote was:

CARRIED, AYES ALL

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15. Mayor Nelson moved a resolution to approve the sale of 116 Woodford Avenue to Brian Green and Renee Hall, and Councillor Ashley seconded to wit:

RESOLUTION TO APPROVE THE SALE  
OF CITY OWED REAL PROPERTY

WHEREAS, the City of Ogdensburg took ownership of 116 Woodford Ave by Tax Sale; and

WHEREAS, the City held an auction on April 8, 2015 to sell said property; and

WHEREAS, the City received a bid that met the minimum bid, of \$1,050.00 (includes estimated \$400. Attorney fees and \$ 350. SLC recording fees), with the required restrictions, set by City Council; and

WHEREAS, the City is desirous of putting unused surplus property back on the tax roll.

NOW THEREFORE BE IT RESOLVED, that the City Council approves the sale of 116 Woodford Avenue, Tax Map # 59.029-1-6, to Brian Green and Renee Hall for the price of \$1,050.00, and

BE IT FURTHER RESOLVED, that said transfer will take place once all appropriate paper work is completed.

The vote was:

CARRIED, AYES ALL

OLD BUSINESS

1. Councillor Stevenson asked for an update on the proposed City Museum at the Dobisky Center. City Manager John Pinkerton said the idea was passed on to the Historic Commission and the City Historian for review.

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2. Councillor Stevenson asked for an update on her request for City Staff to compare meeting practices of other communities. Councillor Morley said he believes executive sessions should be moved to the end of the meeting. Mayor Nelson said Council typically meets in executive session at the end of a meeting. Mayor Nelson explained when legal advice is needed for an agenda item, the session must be held earlier. Councillor Morley suggested holding a ten minute public input period after the Items for Discussion section, with a two minute limit per person. Councillor Stevenson suggested we check the templates of other municipalities before making changes.

There was a consensus of Council for City Manager John Pinkerton to obtain additional information for the next meeting.

3. Councillor Morley asked for an update on the four parcels recently offered at auction. City Manager John Pinkerton said two of the parcels were sold at auction. Mr. Pinkerton added that the City Clerk is sending letters to those who initially expressed an interest in the other two parcels but did not attend the auction.

4. Councillor Skamperle advised members of the audience that the Council Meeting Agenda format is determined by City Council pursuant to the Administrative Regulations.

### NEW BUSINESS

1. Councillor Morley asked for an update on the condition of the Oswegatchie Dam. City Manager John Pinkerton said the damage is minor and the flow over the dam is being monitored by Director of Public Works Scott Thornhill and Head Facilities Maintenance Worker Matt Denner. Councillor Morley asked if the City obtained any grant or FEMA funding to repair the estimated \$1.7 million in damage from last year. Mr. Pinkerton said the City was not successful through the CFA application. Mr. Pinkerton explained we met the County's total damage limit, but no federal money was received because the State did not meet the required limit.

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2. Councillor Mitchell asked when the brush pickup will begin. City Manager John Pinkerton said brush pickups will begin on April 20<sup>th</sup>.

3. Councillor Morley asked when the Paterson Street Reconstruction Project would begin. City Manager John Pinkerton said it started today.

On a motion duly made and seconded, the meeting was adjourned.