

**Town of Amherst Industrial Development Agency
Policy for Recapture and/or Termination of Financial Assistance**

Adopted: June 17, 2016

Purpose:

To establish and provide a fair procedure compliant with Sections 874 and 875 of the New York State General Municipal Law and Town of Amherst IDA (AIDA) policies establishing a policy for recapture and/or termination and/or modification of all or a portion of Agency Financial Assistance.

Establishment of Material Factors: For each project which is approved for Financial Assistance, the AIDA Board of Directors may establish material factors (each referred to herein as a “Material Factor”), which, along with other considerations, will be utilized in determining whether all or a portion of Agency Financial Assistance will be terminated, modified and/or recaptured. It is intended that a Material Factor will set forth an objective, measurable standard by which the AIDA Board of Directors can determine a company’s success in achieving the objectives of the project. Any Material Factors for a project will be included in AIDA’s inducement resolution and in the transaction documents.

Annual Review:

The AIDA will review annual reports it receives from companies to determine compliance with the Material Factors set forth in the inducement resolution. If a company is found to be in violation of a Material Factor, the project will be considered non-compliant and will enter full review. The Chairman of the AIDA will be notified of companies that are non-compliant prior to notification of the company.

Non-Compliance Process:

1. The AIDA shall notify the company in writing that in the Agency’s determination they are in violation of a Material Factor. The notification will include the Material Factor(s) violated and seek an explanation from the company that may include economic or natural factors that led to the default. These factors should be discussed and predetermined to the extent possible by the Board and may include items such as, natural disaster, industry dynamics, unfair competition or economic events that were outside the control of the company. The company shall be given an opportunity to remedy the violation and will have ten (10) business days to provide a written response or seek an extension of such response.
2. Upon receipt of the company’s response, AIDA staff will review with the Executive Committee. The company shall be provided the opportunity to present before the Executive Committee, any information as outlined in #1 above regarding why the Material Factor was not achieved. The Executive Committee may enter into executive session to discuss the company’s non-compliance with a Material Factor to the extent permitted by Section 105 of the Open Meetings Law.
3. Upon hearing the company’s position, the Executive Committee will suggest a course of action for consideration by the entire AIDA Board of Directors. The written record will clearly state the reason to, or not to, recapture and/or modify and/or reduce financial assistance

4. After a referral from the Executive Committee, the AIDA Board of Directors shall determine, in its discretion, whether, and to what degree, any Financial Assistance shall be modified, terminated and/or recaptured based on a failure to comply with a Material Factor. The decision of the AIDA Board of Directors shall be communicated by AIDA staff to the company.

Compliance Period:

For projects that involve a PILOT, unless otherwise noted in the project's inducement resolution, each Material Factor will need to be maintained for the time period that a PILOT agreement is in effect. By way of illustration, if a project involves new construction, new equipment and the creation and retention of employment, once construction is complete, and the company has met its employment targets, it must maintain those Material Factors for the duration of the PILOT agreement.

For projects that do not involve a PILOT, unless otherwise note in the project's inducement resolution, each Material Factor will need to be maintained for three calendar years after employment goals are met. By way of illustration, projects where employment is a Material Factor are typically afforded two (2) years after project completion to hire new employees. The applicant would then have to maintain that employment for an additional three (3) years to maintain compliant with this policy.

Distribution of Recaptured Financial Assistance:

Any and all such returned/recaptured amounts of Agency Financial Assistance shall be redistributed to the appropriate tax jurisdiction unless agreed to otherwise by any local taxing jurisdiction.

Other Grounds for Termination, Modification or Recapture of Financial Assistance:

Notwithstanding the foregoing, the AIDA, acting through its staff, retains the right to terminate Agency benefits for reasons other than a violation of a Material Factor. Cause for such termination of Agency benefits may include, but are not limited to, failure to make PILOT payments, failure to make reports to the AIDA as detailed in the transaction documents, failure to maintain insurance requirements, or other uncured breaches of or defaults under AIDA transaction documents.

In addition, the AIDA Board of Directors may, in its discretion, require a recapture of all or a portion of the Financial Assistance provided to a company based upon any of the following:

1. A closure of the project or relocation by the company of its operations to a location outside of the Town of Amherst within the time period during which the company is receiving AIDA Financial Assistance.
2. A determination that the company knowingly and intentionally submitted false or intentionally misleading information in its application or in any report or certification submitted to AIDA for the purpose of obtaining or maintaining any Financial Assistance from AIDA.

Statutory Requirements:

Any recapture pursuant to this policy shall be in addition to, and not in lieu of, any recapture required pursuant to Article 18-A of the New York General Municipal Law or other statutory provisions, including Section 875 of the General Municipal Law.