

BYLAWS
OF
TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY

ARTICLE I

Section 1. Name. The name of the Agency shall be "Town of Amherst Industrial Development Agency."

Section 2. Seal of Agency. The seal of the Agency shall be in the form of a circle and shall bear the name of the Agency and the year of its organization.

Section 3. Office of the Agency. The office of the Agency shall be at 4287 Main Street in the Town of Amherst, New York, but the Agency may have other offices at such other places as the Agency may from time to time designate by resolution.ⁱ

ARTICLE II

Section 1. Officers. The officers of the Agency shall be a Chairperson, a Vice Chairperson, a Secretary, a Treasurer, one or more Assistant Secretaries, an Executive Director and a Chief Financial Officer.ⁱⁱ

Section 2. Chairperson. The Chairperson shall be an "independent member" of the Agency within the meaning of Section 2825 of the New York Public Authorities Law and preside at all meetings of the Agency. The Chairperson shall sign all agreements, contracts, deeds and any other instruments on behalf of the Agency, except as otherwise authorized or directed by resolution of the Agency. The Chairperson shall submit his or

herⁱⁱⁱ recommendations and such information as he or she shall deem pertinent concerning the business, affairs and policies of the Agency, at each meeting.

Section 3. Vice Chairperson. The Vice Chairperson shall be a member of the Agency and perform the duties of the Chairperson in the absence or incapacity of the Chairperson. In the event of the resignation or death of the Chairperson, the Vice Chairperson shall become acting Chairperson and perform the duties of the Chairperson until such time as the Agency shall appoint a new Chairperson.

Section 4. Secretary. The Secretary shall be a member of the Agency. The Secretary, shall act as secretary at the meetings of the Agency, and shall keep, or cause to be kept, minutes of the proceedings of the Agency in compliance with the provisions of the Open Meetings Law. The Secretary shall have the power to affix the seal of the Agency to all contracts and other instruments that are authorized by the Agency to be executed, where such seal is required. The Secretary shall perform all duties incident to the office.

Section 5. Assistant Secretary(ies). The Assistant Secretary (or Assistant Secretaries if there are more than one, but no more than two) shall be legal counsel for the Agency, and may not be a member of the Agency. In the absence or incapacity of the Secretary, the Assistant Secretary, or if there are more than one, the Assistant Secretary designated by the Chairperson, shall perform the duties of the Secretary. In case of the resignation or death of the Secretary, the Assistant Secretary, or if there are more than

one, the Assistant Secretary designated by the Chairperson, shall perform the duties of the Secretary until such time as the Agency shall appoint a new Secretary.^{ivv}

Section 6. Treasurer. The Treasurer shall be an “independent member” of the Agency and shall exercise supervision and control over the Chief Financial Officer of the Agency. The Treasurer shall review financial reports prepared by the Chief Financial Officer and shall report to the Board on such measures.

Section 7. Executive Director. The Executive Director shall not be a member of the Agency. The Executive Director shall be the Chief Executive Officer (CEO) of the Agency. The Executive Director shall be appointed by a majority of the members of the Agency for such term of employment as the Agency determines proper and shall exercise supervision and control of all administrative functions of the Agency. The Executive Director shall be responsible for the implementation of all resolutions, orders, programs or projects of the Agency. The Executive Director shall have the power to sign and execute, on behalf of the Agency, all contracts, agreements, deeds, notes, bonds, or other evidence of indebtedness and to affix and attest to the seal of the Agency as authorized by the Agency. The Executive Director shall attend all meetings of the Agency and shall make recommendations to the Agency from time to time. The Executive Director shall have all necessary and incidental powers to perform and exercise any of the duties and functions as specified or lawfully delegated to him or her.

Section 8. Chief Financial Officer. The Chief Financial Officer (CFO) may not be a member of the Agency and shall be appointed by a majority of the members of the

Agency for such term of employment as the Agency determines proper. The Chief Financial Officer shall have the care and custody of all funds of the Agency and shall have all such funds deposited in the name of the Agency in such banks as the Agency may designate. Except as otherwise provided by resolution of the Agency, the Chief Financial Officer shall sign all instruments of indebtedness, orders and checks for the payment of money by the Agency pursuant to the direction of the Agency. Except as otherwise authorized by resolution of the Agency, all such instruments of indebtedness, orders and checks, shall be countersigned by an authorized member of the Board. The Chief Financial Officer shall have regular books of account kept on an accrual basis, showing all receipts and expenditures. The Chief Financial Officer shall report to the Treasurer of the Agency who shall exercise care and supervision of him. The Chief Financial Officer shall provide the information required by the Treasurer to allow the Treasurer to render to the Agency at each regular meeting an account of the financial transactions and current financial condition of the Agency. The Chief Financial Officer shall give such bond for the faithful performance of his or her duties as the Agency may determine. The Agency shall pay the cost of any bond so required by the Agency.

Section 9. Additional Duties. The Officers of the Agency shall perform such other duties and functions as may from time to time be required by the Agency, by its bylaws, or by its rules and regulations.

Section 10. Appointment of Officers. The Chairperson, Vice Chairperson,

Secretary, and Treasurer of the Agency shall be appointed at the annual meeting of the Agency from among the members of the Agency and shall hold office for one year or until their successors are appointed. If the term of an Agency member should terminate, his or her term of office as an officer shall also terminate. The Assistant Secretary(ies) shall be appointed at the annual meeting, but need not be a member of the Agency. The CEO and CFO may not be members of the Agency.^{vi}

Section 11. Vacancies. Should any office become vacant, the Agency shall convene the Nominating Committee to solicit interest from interested members and recommend a successor at the next regular meeting. The appointment shall be for the unexpired term of said office.^{vii}

Section 12. Members of the Agency. The term of office of each member of the Agency shall be established by the Town Board of Amherst and each member shall continue to hold office until his or her successor is appointed. A majority of the members of the Agency must be “independent members” of the Agency within the meaning of Section 2825 of the Public Authorities Law.

ARTICLE III

COMMITTEES

Section 1. Executive Committee. There shall be an Executive Committee which shall consist of the Chairperson, Vice Chairperson and Treasurer. The Executive Director and Chief Financial Officer shall each be non-voting members of the Executive

Committee. The Executive Committee shall function as a steering committee and shall advise and make recommendations to the membership of the Agency.

Section 2. Governance Committee. There shall be a Governance Committee appointed by the Chairperson with the consent of the entire membership of the Agency. The Governance Committee shall consist of the Chairperson and two other members of the Agency and must be “independent members” of the Agency within the meaning of Section 2825 of the New York Public Authorities Law. No more than one member of the Executive Committee may serve on the Governance Committee. The Chairperson may authorize the Vice Chairperson to serve as the Committee Chair in the absence of the Chairperson. The Governance Committee shall keep the Board informed of current best governance practices, review corporate governance trends, suggest updates to the Agency’s corporate governance principles and shall advise those responsible for appointing members to the Board of the skills and experience required of potential Board members. The Governance Committee shall also have such other duties and responsibilities as set forth in the Governance Committee Charter, as the same may from time to time be amended.^{viii}

Section 3. Finance & Audit Committee. There shall be a Finance & Audit Committee consisting of the Treasurer and two additional “independent members” appointed by the Chairperson, with the consent of the entire membership of the Agency, which members shall, to the extent practicable, be familiar with corporate financial and accounting practices. No more than one member of the Executive

Committee may serve on the Finance & Audit Committee. The Finance & Audit Committee shall provide assistance to the members of the Agency in fulfilling their fiduciary responsibilities relating to accounting, reporting and regulatory compliance practices. The Finance & Audit Committee shall approve the budget for submission to the Board for approval, review and approve transfers of moneys under the budget and make recommendations to the Board as to other financial matters. The Finance & Audit Committee shall recommend the hiring of a certified independent accounting firm and shall provide direct oversight over the performance of the independent audit performed by the accounting firm hired for such purposes and receive and review reports from such accounting firm. The Finance & Audit Committee shall also ensure that the proper submissions are made to the governmental authorities having audit authority and fiscal oversight of the Agency.

The Finance & Audit Committee shall periodically report to the members of the Agency, at least annually, the findings of the independent accountants and auditors. Such reports shall highlight any weaknesses in the manner in which the Agency is operating and suggest actions that should be taken to correct such weaknesses. The Finance & Audit Committee shall also have such other duties and responsibilities as set forth in the Finance & Audit Committee Charter, as the same may from time to time be amended.^{ix}

Section 4. Nominating Committee. There shall be a Nominating Committee appointed by the Chairperson with the consent of the entire membership of the Agency

annually in October. The Nominating Committee shall consist of three members of the Agency whose terms are not expiring, and must be “independent members” of the Agency within the meaning of Section 2825 of the New York Public Authorities Law. No more than one member of the Executive Committee may serve on the Committee.

The Nominating Committee shall solicit interest for officer and committee positions for the following calendar year and present the slate of candidates to the members of the Agency at the Annual Meeting.^x

ARTICLE IV

MEETINGS

Section 1. Annual Meeting. The annual meeting of the Agency shall be held on the third Friday of January, at 8:30 a.m. at the regular meeting place of the Agency, or at such place and time as the Agency shall designate.^{xi}

Section 2. Regular Meetings. Regular meetings of the Agency may be held at such times and places as from time to time may be determined by the Agency.

Section 3. Special Meetings. The Chairperson of the Agency may when he or she deems it desirable, and shall, upon written request of two members of the Agency, call a special meeting of the Agency for the purpose of transacting any business designated in the call. The call for a special meeting may be delivered personally to each member, or by regular or electronic mail to the business, home, or electronic mail address of each member of the Agency at least two (2) days prior to the date of such special meeting. Waivers of Notice may be signed by any member failing to receive a

proper notice. At such special meeting, no business shall be considered other than as designated in the call, but if all members of the Agency are present at a special meeting, with or without notice thereof, and are all agreeable thereto, any and all business may be transacted at such special meeting.^{xii}

Section 4. Executive Session. Upon majority vote of the members, the Agency may enter into executive session and exclude non-members from such session in accordance with Section 105 of the Open Meetings Law.^{xiii}

Section 5. Quorum. At all meetings of the Agency, a majority of the members of the Agency shall constitute a quorum for the purpose of transacting business; provided that a smaller number may meet and adjourn to some other time or until a quorum is obtained.

Section 6. Order of Business. At the regular meetings of the Agency, the following shall be the order of business:

1. Roll Call
2. Reading and approval of the minutes of the previous meeting
3. Bills and communications
4. Treasurer's Report
5. Public Comment
6. Executive Director's Report
7. Committee Reports
8. Unfinished Business

9. New Business

10. Adjournment

All resolutions shall be in writing and shall be recorded in the journal of the proceedings of the Agency. At its discretion, the members may change the order of business at any meeting by majority vote.^{xiv}

Section 7. Manner of Voting. The voting on all questions coming before the Agency shall be by roll call or by acclamation, but in either case the yeas and nays shall be entered on the minutes of such meeting, except in the case of appointments when the vote may be by ballot. Any action of the Agency shall be binding, upon determination by a majority of the members of the Agency.

ARTICLE V

AMENDMENTS

Section 1. Amendments to Bylaws. The bylaws of the Agency may be amended by affirmative vote of a majority of the members of the Agency at a regular meeting or at a special meeting called for that purpose; but no such amendment shall be adopted unless at least thirty days' written notice thereof has been previously given to all members of the Agency.

ARTICLE VI

POLICIES & PROCEDURES

Section 1. Projects to be considered by this Agency. It is the policy of the Agency that any project shall be considered by it which shall conform to the letter and spirit of the Laws of New York State.

Section 2. Site of Agency Projects.

1. The Agency shall not approve any project to be located on a site or within an area, which does not conform to or has not been granted a variance from the zoning laws of the Town of Amherst.

2. The Agency shall not approve any project, which shall be in violation of the anti-pollution laws of the Federal, State, County or Town government.^{xv} 3. The Agency shall not approve any project, which shall be in violation of the health, labor or other laws of the State of New York or the United States, or the local laws of the County of Erie or local laws and ordinances of the Town of Amherst.

Section 3. Payment in Lieu of Taxes. The Agency shall provide to the Town Board any changes in its payment in lieu of tax policy prior to their adoption.

Section 4. Audit of Records and Accounts

1. The Agency shall annually file a copy of the audit prepared by the certified independent accounting firm retained by the Board upon the recommendation of the Finance & Audit Committee with the Town Board of Amherst within one hundred and twenty days after the close of the Agency's fiscal year for its proceedings and its activities during the preceding fiscal year.^{xvi}

2. The Agency may require any other operating statements, which it shall determine are required for daily operation.

Section 5. Conveyance of Property. The Agency may insert in a contract for a project that upon the payment in full of all notes, bonds and indebtedness incurred in connection with a project that the Agency will convey the lands, buildings and equipment involved in said project and so paid for to the tenant or operator of the same upon terms set forth in such contract that the additional consideration for such conveyance may be nominal.

Section 6. The Agency by resolution may adopt such rules, regulations, policies and procedures as it may deem necessary and appropriate to the operation so long as the same shall not be contrary to these bylaws as they may be amended from time to time.

Section 7. Any sale or disposal of property of the Agency must be in compliance with the provisions of Title 5-A of the Public Authorities Law.

ⁱ Section 1 amended 2006 reflecting new address.

ⁱⁱ Section 1 amended 2016 to add additional Assistant Secretary and eliminate Assistant Treasurer.

ⁱⁱⁱ Several areas of the By-Laws amended in 2016 to account for gender neutrality in positions.

^{iv} Section 5 amended 1990 to allow for legal counsel to act as Assistant Secretary.

^v Section 5 amended 2016 to account for more than one Assistant Secretary.

^{vi} Section 10 amended 2016 to clarify term and service of board members.

^{vii} Section 11 amended 2016 establishing the role of the Nominating Committee to fill officer positions.

^{viii} Section 2, Committees, amended 2016 to reflect Governance Committee duties noted in its Charter.

^{ix} Section 3, Committees, amended 2016 to reflect Audit & Finance Committee duties noted in its Charter.

^x Section 4, Committees, establishes in 2016 a Nominating Committee.

^{xi} Section 1 amended 1990.

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- ^{xii} Section 3, Meetings, establishes in 2016 means by which Members of the Agency are notified of Special Meetings.
- ^{xiii} Section 4, Meetings, establishes in 2016 when the Agency can enter into Executive Session.
- ^{xiv} Section 6, Meetings, amended in 2016 to reflect current order of business of Agency.
- ^{xv} Section added in 1990.
- ^{xvi} Section amended in 1990.