

TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY

POLICY FOR RECAPTURE AND/OR TERMINATION OF FINANCIAL ASSISTANCE

Purpose:

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

For purposes of this Recapture Policy:

1. “Recapture” of Agency Financial Assistance means to have a company pay back all or a portion of Agency Financial Assistance it has received.
2. “Termination” of Agency Financial Assistance means to end a company’s Agency Financial Assistance it would have received in the future.
3. “Modification” of Agency Financial Assistance means to amend the amount of Agency Financial Assistance received in the future by a company (e.g., an amendment to a company’s PILOT Agreement to require the company to make increased payments in the future).

Establishment of Material Factors:

For each project that is approved for Agency 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 between the company and the Agency.

Annual Review:

AIDA will review annual reports it receives from companies to determine compliance with the Material Factors set forth in the inducement resolution and/or transaction documents. 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. AIDA staff will notify the Chair of the AIDA of those companies that are not in compliance with Material Factors for a project prior to any issuance of notification to those companies.

Procedure to Address Non-Compliance with Material Factors and the Termination and/or Modification and/or Recapture of Agency Financial Assistance:

1. 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, a statement as to the potential for termination, modification and/or recapture of Agency Financial Assistance, and request that the company provide an explanation to AIDA regarding its non-compliance. The company’s explanation may cite to economic or other factors that led to the default.

These factors that may lead to a company defaulting on one or more Material Factors should be discussed and predetermined to the extent possible by the AIDA Board. These factors 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 the response with the AIDA Chair and members of the Executive Committee. Upon request by the Executive Committee and Chair, the company shall be provided the opportunity to meet with the Executive Committee, in order to provide information as outlined in #1 above regarding why the Material Factor was not achieved for the company's project.
3. The Executive Committee will review all information provided by the company and recommend a course of action for consideration by the AIDA Board of Directors. The written record of the Executive Committee's recommendation will clearly state the reason to, or not to, recapture and/or modify and/or terminate Agency Financial Assistance.
4. The AIDA Board of Directors will review and consider the recommendation made by the Executive Committee. The AIDA Board shall, in its discretion, determine whether, and to what degree, any Agency Financial Assistance shall be modified, terminated and/or recaptured based on a company's failure to comply with one or more Material Factors. A decision to terminate and/or modify and/or recapture Agency Financial Assistance shall not be effective unless adopted by a majority vote of the AIDA Board of Directors. 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 one calendar year after employment goals are met.

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, AIDA, acting through its staff, retains the right to terminate Agency Financial Assistance for reasons other than a violation of a Material Factor. Cause for such termination of Agency Financial Assistance may include, but are not limited to, failure to make PILOT payments, failure

to make reports to AIDA as detailed in the transaction documents, failure to maintain insurance requirements, or other uncured breaches of or defaults under AIDA transaction documents. Such termination of benefits shall be reported by the Chief Executive Officer at the next meeting of the AIDA Board of Directors and shall be included in an annual report to the AIDA Board.

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

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.

Adopted: June 17, 2016

Amended and Re-Adopted: July 17, 2026