

**VILLAGE OF PORT CHESTER  
BOARD OF TRUSTEES  
Meeting, Monday, December 21, 2015  
Regular Meeting: 7:00 P.M.  
PROPOSED EXECUTIVE/CLOSED SESSION 6:00-7:00 P.M.  
VILLAGE JUSTICE COURTROOM  
350 North Main Street  
Port Chester, New York  
AGENDA**

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**TIME: 6:00 P.M.**

| <b>I</b> | <b>PROPOSED MOTION FOR EXECUTIVE SESSION</b>  | <b>ACTION</b> |
|----------|---|---------------|
| 1        | Consultation with the Village Manager regarding particular persons within the Building Department |               |
| 2        | Village Manager Appraisal Discussion  |               |

**TIME: 7:00 P.M.**

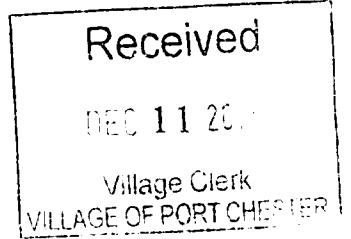
|            |  |               |
|------------|--|---------------|
| <b>II</b>  | <b>PUBLIC COMMENTS</b>   |               |
|            |  |               |
| <b>III</b> | <b>CORRESPONDENCE</b>  |               |
| 1          | From Mellor Engine & Hose Co. No. 3, Inc. on the resignation of Fernando Santamaria from active membership   |               |
| 2          | From Howie Ravikoff re Sewer Rent Law a new proposal   |               |
| 3          | Port North Rezoning Petition Submission Letter 12-16-15  |               |
| 4          | Port North Main St LLC - Rezoning Petition   |               |
|            |  |               |
| <b>IIV</b> | <b>RESOLUTIONS</b>   | <b>ACTION</b> |
| 1          | Setting Fees for Local Law No. 09 - Local Law amending the code of the Village of Port Chester by adding a new chapter Chapter 302, Towing and Booting |               |
| 2          | Resolution to appoint Ronald Daniels as an active member of the Harry Howard Hook & Ladder Co. No. 1   |               |
| 3          | Retaining Special Counsel - Lamb & Barnosky, LLP   |               |
|            |  |               |
|            |  |               |
| <b>V</b>   | <b>REPORT OF THE VILLAGE MANAGER</b>   |               |
| 1          | Board of Trustees Follow-up December 21, 2015-Compiled   |               |
|            |  |               |
| <b>VI</b>  | <b>MINUTES</b>   |               |
| 1          | Minutes from November 16, 2015   |               |
|            |  |               |
| <b>VII</b> | <b>PUBLIC COMMENTS AND BOARD COMMENTS</b>  |               |
|            |  |               |

**TIME:** \_\_\_\_\_



# **Mellor Engine & Hose Co. No 3, Inc.**

**P.O. BOX 575  
PORT CHESTER, NEW YORK 10573**



**Gregg Gregory, *President***  
**Daniel Romanello, *Vice President***  
**John Colucci, *Treasurer***  
**Donna Gordiski, *Secretary***

**Luis Marino, *Captain***  
**Leslie J. Murphy, *1<sup>st</sup> Lieutenant***  
**Scott Sprague, *2<sup>nd</sup> Lieutenant***  
**Frank Gordiski, *Sergeant***  
**Peter Mutz, *Chief Driver***

December 10, 2015

Village of Port Chester  
Village Clerk  
222 Grace Church Street  
Port Chester, NY 10573

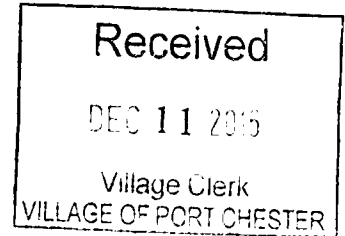
To whom it may concern:

Fernando Santamaria has resigned from active membership from the Port Chester Fire Department: please remove him from active rolls. Fernando's badge will be returned to the Village in a timely fashion.

Sincerely,

Donna C. Gordiski  
Secretary





**M. Ravikoff Assoc. Inc.**

33 New Broad Street  
Port Chester, NY 10573

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Phone 914-934-2424

Fax 914-937-5186

Mayor and Board of Trustees  
c/o Village Clerk  
Village of Port Chester  
222 Grace Church Street  
Port Chester, NY 10573

Re: SEWER RENT LAW, a new proposal

December 10, 2015

To Mr. Mayor and Board Members,

Don't fret...this letter is not another complaint about your lack of action on my sewer rent grievances.

Rather, I would like to offer a suggestion about how to end the loss of revenue to the administrator of this law. Giving up 40% of revenue to United Water Westchester is simply too much and I believe it can be eliminated.

Hear me out...NYC has begun implementing cashless toll at certain bridges on the hi-way. These tolls are no longer "manned," there are no live humans collecting cash from motorists. Motorists either have e-z pass or a camera takes a picture of the vehicle and the City attempts to collect the revenue by tracing the license plate and registration through the DMV. The City knows they will not likely chase down these "fare beaters" and collect the toll revenue. The City has determined the cost of manning the tolls far exceeds the revenue not collected by fare beaters. By eliminating the manned tolls, it's a net gain.

But the City has determined the cost to man the tolls is excessive, just as is United Water Westchester's fees to administer our Sewer Rent Law.

I propose to re-write Local Law #2 of 2014.

Let's not pay United Water Westchester to collect these funds.

Let's re-write the law for the property owner to state his/her water usage just as we all state our income to the IRS.

We fill out a form. We sign our name to it and if we are found to have misstated the truth, the government comes after us.

The Village will send out Sewer Rent forms with clear and simple instructions. The data base already exists.

Property owners will "fill in blanks" with information from their water bills. Guidelines can be given as to how such use is determined. Not unlike an IRS tax form where tax payers fill in blanks and do their own calculations. Property owners will write checks directly to the Village of Port Chester.

I theorize, the saved revenue for NOT having United Water Westchester facilitate this law on our behalf will far out-weigh the fare beaters, thus the total net revenue collected by the Village would be greater.

Further, the law could include the Village's opportunity to "audit" and fine anyone who is proven to have inaccurately declared their water usage. I propose the fine should be excessive.

I am sure there are plenty of attorneys out there would work on a contingency basis for a piece of those fines.

Village could lien any property who does not respond to legal action.

Yes, it's more work for property owner.

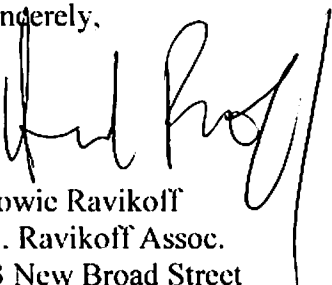
Yes, it's more work for the Village staff and therefore more costs that may not be figured here. It is my belief that those additional costs would be far less than what we pay Untied Water.

Additionally, if the total net revenue to the Village is greater, I would hope the rate could be reduced.

Tony Cerreto was kind enough to hear my idea. I am sure he will be interested in talking with you further and introduce to you when such idea may be well timed, as it is not too far off that the current contract with United Water expires.

I welcome questions and discussion on the topic. Thank you.

Sincerely,



Howie Ravikoff  
M. Ravikoff Assoc.  
33 New Broad Street  
Port Chester, NY 10573

914-934-2424x112

December 15, 2015

*Via Email*

Jesica Youngblood  
Director of Planning  
Village of Port Chester  
222 Grace Church Street  
Port Chester, NY 10573

Re: Port North Main Street LLC - Rezoning Petition  
Property Address: 531-601 N. Main Street, Port Chester, NY  
Tax Map Designation: Section 136.064, Block 64.1, Lot(s) 61 and 33

Dear Ms. Youngblood:

Attached please find a Petition to amend the current C-4 zone to add, “retail store or personal service shop, services clearly incidental to retail sales on the premises or to personal services,” as Special Exception Use or in the alternative to create a new zoning district matching the current C-4 zone except for the addition of this proposed Special Exception Use and the establishment of specific retail use parking requirements where none currently exists.

The requested Special Exception Use is already principally permitted in the C-1, C-2, C-3, C-5, C-5T, CD, and PMU zone and is a SEU in the CDS, DW and W-2 zoning districts.

We respectfully request that you accept the Petition, provide an opportunity for a public presentation at your earliest convenience and schedule a public hearing date.

Respectfully Submitted,  
Tartaglia Law Group, LLC



Daniel D. Tartaglia, Esq.

BOARD OF TRUSTEES: VILLAGE OF PORT CHESTER  
COUNTY OF WESTCHESTER: STATE OF NEW YORK  
-----X

In the Matter of the Application of

PORT NORTH MAIN STREET LLC

PETITION

For amendments to § 345-50 of the Village of Port Chester  
Zoning Code.

-----X

Port North Main Street LLC (the “Petitioner”), by its attorneys Tartaglia Law Group, LLC,  
hereby petitions the Board of Trustees of the Village of Port Chester, as follows:

THE PETITIONER

1. The Petitioner is a limited liability company organized and existing under the laws  
of the State of New York, having an address at 95-25 Queens Blvd., Rego Park, NY 11374.

2. The Petitioner acquired the “Property” (described and defined below) by deed dated  
February 3, 2014, which deed was recorded in the Office of the Westchester County Clerk on  
February 27, 2014 as Control No. 540373480 (hereinafter referred to as “531 N. Main Street”);  
and deed dated February 3, 2014, which deed was recorded in the Office of the Westchester County  
Clerk on February 27, 2014 as Control No. 540383162 (hereinafter referred to as “601 N. Main  
Street”). A perimeter description of the Property is attached hereto as Exhibit “A.”

THE PROPERTY

3. The real property which is the subject of this Petition is an assemblage of 2 parcels  
known and designated on the tax assessment map of the Village as (a) Section 136.064, Block  
64.1, Lot 61 and Section 136.064, Block 64.1, Lot 33 (531 N. Main Street), consisting of

approximately 9,348 square feet and (b) Section 136.064, Block 64.1, and Lot 61 (601 N. Main Street), consisting of approximately 12,466 square feet (collectively the “Property”).

4. The 531 N. Main Street parcel is comprised of an expansive blacktopped parking area and a small vacant boutique-type restaurant. The building, originally constructed and operated as a gas station, is a dimensionally non-compliant structure of approximately 1,235 square feet. This 9,348 square foot parcel is rectangular in shape, generally flat and comprised of 97% impervious surface. Vehicular access to the site currently is from two expansive 2-way curb cuts consistent with gasoline service stations.

5. 601 N. Main Street is comprised of an existing improved parking lot and a vacant bank branch and associated office building. The building, originally constructed as an auto body shop, is a dimensionally non-compliant structure of 4,153 square feet. The 12,466 square foot parcel is rectangular in shape and slopes slightly from N. Main Street toward the Byram River. The site is currently fully developed with a 14-space parking lot, site lighting, and drainage facilities.

6. The total lot area of the combined lots is 21,814 square feet.

#### CURRENT ZONING AND PROPERTY VICINITY

7. The Property is located in the “C-4” General Commercial Zoning District. It is also within the Local Waterfront Revitalization Program (LWRP) Brooksville sub-area and, as such, the applications will be subject to a LWRP Consistency Review before the Village’s Waterfront Commission. Both properties are within the FEMA flood plan zone “AE” as mapped on September 28, 2007.

8. There are no predominant land uses surrounding the Property. Currently, there is a mixed commercial area at the northeast corner of North Main Street and directly to the north of

both sites is the Village-owned William James Memorial Pump Station. Directly to the south is “The Home Store,” which has a showroom for retail sales of fabrics, window treatments, and home decorating accessories. Directly opposite the site, across the street, are an auto repair shop, auto dealership service facility with sales, and a tile and marble warehouse with a retail sales showroom. A location map is attached hereto as Exhibit “B.”

#### THE PROPOSED PROJECT

9. **601 N. Main Street.** This parcel is currently fully developed with a one-story 4,080 square foot office building with the entrance oriented to the north, together with a 14-space parking lot with site lighting, and drainage provided. The parking lot and associated improvements are to remain unchanged and the existing building interior and exterior are to be renovated with no change to the building footprint.

10. **531 N. Main Street.** It is proposed to demolish the existing building and construct a single-story 3,300 square foot building and an improved parking lot with 11 parking spaces. The proposed redevelopment of this property for retail use will add plantings to overall reduce the impervious surface on the lot by 1,525 square feet (16%), provide for storm-water management, site lighting, and a single 2-way curb cut.

11. Renderings of the proposed buildings are attached hereto as Exhibit “C.”

#### REQUESTED ZONING AMENDMENTS

12. To accommodate the Proposed Project, the Petitioner is requesting that the C-4 zoning district be amended to add “Retail store or personal service shop, services clearly incidental to retail sales on the premises or to personal services,” as a special exception use (“SEU”). This category of use is nothing new to the Village. This use is already principally

permitted in the C-1, C-2, C-3, C-5, C-5T, CD, and PMU zone and is a SEU in the CDS, DW and W-2 zoning districts.

13. Petitioner also requests that the Zoning Code be amended to establish a specific retail use parking requirement where none currently exists of one car per 300 square feet of gross floor area. This parking requirement would be consistent with that adopted by the Board of Trustees for the Village Center Redevelopment Area (§345-57.2 B(5)a[8]c).

14. To give the Village more control over retail uses within the C-4 zoning district, the Petitioner proposes that the SEU criteria include: (a) that lot area be no less than 7,500 square feet; (b) floor area ratio not exceed .5; and (c) building height not exceed one story.

15. Alternatively, instead of amending the C-4 Zone as requested, the Board of Trustees may consider creating a new zone to be mapped and applicable to this N. Main Street corridor only that would match the uses and dimensional constraints and requirements of the C-4 Zone, with the exception of the requested Special Exception Use in Article 12 above and the parking requirements in Article 13 above.

#### PLANNING CRITERIA FOR PROJECT

16. The Proposed Project will act as a northern gateway to the Village and establish a consistent retail presence on separate parcels that have heretofore been used as offices and a restaurant.

17. The retail use proposed will be small in scale and bulk and therefore will be limited to supportive neighborhood retail for the convenience of the surrounding residential areas east of North Main Street.

18. The Proposed Project is outside the areas studied by the Village's most recent Comprehensive Plan. However, as stated earlier in this Petition it is within the Local Waterfront

Revitalization Program (LWRP) Brooksville sub-area and, as such, the applications will be subject to a LWRP Consistency Review before the Village's Waterfront Commission.

19. Due to the proposed SEU criteria, the requested zoning amendments will insure that the Village maintains adequate controls over the proposed retail use throughout the C-4 zoning area in the future.

20. The Petitioner is currently vetting the proposed Project before the Village of Port Chester Planning Commission by submission and review of a concept plan. A fully engineered site plan is not envisioned until action by the Board of Trustees on this re-zoning Petition.

COMPLIANCE WITH THE STATE ENVIRONMENTAL QUALITY REVIEW ACT

21. Under the State Environmental Quality Review Act and the regulations promulgated thereunder ("SEQRA"), the actions directly and indirectly proposed by the Petition are classified as "Unlisted."

22. Accordingly, the Petitioner shall comply in all respects with the requirements of SEQRA regarding an Unlisted action. An Environmental Assessment Form prepared by Arconics Architecture, P.C. is being submitted herewith.

WHEREFORE, the Petitioner respectfully requests that this Petition be granted as set forth herein.

Respectfully submitted,  
TARTAGLIA LAW GROUP, LLC  
Attorneys for Petitioner  
800 Westchester Avenue  
Rye Brook, NY 10573  
(914) 481-1880

Dated: Rye Brook, New York  
December 16, 2015





VILLAGE OF  
**PORT CHESTER**

222 Grace Church Street, Port Chester, New York 10573

**AGENDA MEMO**

**Department:** Police Department

**BOT Meeting Date:** 12/21/2015

**Item Type:** Resolution

**Sponsor's Name:** Richard F. Conway, Chief of Police

|                        | Yes                                 | No                                  | Description                         | Yes                      | No                                  |
|------------------------|-------------------------------------|-------------------------------------|-------------------------------------|--------------------------|-------------------------------------|
| Fiscal Impact          | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Public Hearing Required             | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Funding Source:        |                                     |                                     | BID #                               |                          |                                     |
| Account #:             |                                     |                                     | <b>Strategic Plan Priority Area</b> |                          |                                     |
|                        | Yes                                 | No                                  | N/A                                 |                          |                                     |
| Agreement              | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <b>Manager Priorities</b>           |                          |                                     |
| Strategic Plan Related | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | N/A                                 |                          |                                     |

**Agenda Heading Title**  
*(Will appear on the Agenda as indicated below)*

SETTING THE APPLICATION FEE FOR TOWING AND BOOTING LICENSE

**Summary**

**Background:**

This resolution will set the application fee needed for implementation of the Village's recently adopted Towing and Booting Law.

The Chief of Police has recommended the amount of the fee, and it is comparable to that imposed in other jurisdictions.

For the Board's information, the Police Department is preparing for a roll-out of the law for next month. Affected property owners and stakeholders will be noticed.

**Proposed Action**

That the Board of Trustees adopt the Resolution

| <b>Attachments</b> |
|--------------------|
| Resolution         |

ESTABLISHING AN APPLICATION FEE FOR TOWING AND BOOTING LICENSE

On motion of TRUSTEE \_\_\_\_\_, seconded by TRUSTEE \_\_\_\_\_

, the following resolution was adopted by the Board of Trustees of the Village of Port Chester, New York:

WHEREAS, the Village of Port Chester has a new local law regulating the towing and booting of vehicles on certain privately owned property; and

WHEREAS, the Village Police Department will be processing applications for Towing and Booting Licenses as specified in Chapter 302 of the Village Code. Now, therefore, be it

RESOLVED, that the Code of the Village of Port Chester, Chapter 175, Fees, be amended as follows:

Code Reference

Chapter 302- Towing and Booting

Application Fee \$150.00.

Approved as to form:

\_\_\_\_\_  
Anthony M. Cerreto, Village Attorney





VILLAGE OF  
**PORT CHESTER**

222 Grace Church Street, Port Chester, New York 10573

**AGENDA MEMO**

**Department:** Office of the Village Manager

**BOT Meeting Date:** 12/21/2015

**Item Type:** Resolution

**Sponsor's Name:** Christopher D. Steers, Village Manager

|                        | Yes                      | No                                  | Description                         | Yes                      | No                                  |
|------------------------|--------------------------|-------------------------------------|-------------------------------------|--------------------------|-------------------------------------|
| Fiscal Impact          | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Public Hearing Required             | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Funding Source:        |                          |                                     | BID #                               |                          |                                     |
| Account #:             |                          |                                     | <b>Strategic Plan Priority Area</b> |                          |                                     |
|                        | Yes                      | No                                  | N/A                                 |                          |                                     |
| Agreement              | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <b>Manager Priorities</b>           |                          |                                     |
| Strategic Plan Related | <input type="checkbox"/> | <input checked="" type="checkbox"/> | N/A                                 |                          |                                     |

**Agenda Heading Title**  
*(Will appear on the Agenda as indicated below)*

ACCEPTANCE OF NEW ACTIVE MEMBERS TO VOLUNTEER FIRE COMPANIES

**Summary**

**Background:**

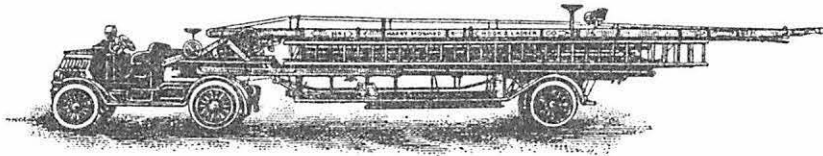
Harry Howard Hook and Ladder has elected a new member to their volunteer fire company.

**Proposed Action**

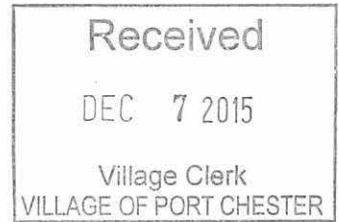
That the Board of Trustees adopt the Resolution

**Attachments**

Resolution for Ronald Daniels



HARRY HOWARD HOOK & LADDER CO. NO. 1  
PORT CHESTER, N.Y. 10573



December 4, 2015

Hon Mayor Dennis Pilla and  
Members of the Village Board of Trustees  
Village of Port Chester  
222 Grace Church Street  
Port Chester, NY 10573  
Attn: Mr. David Thomas – Village Clerk

**Re: Election of New Member  
Ronald Daniels**

Dear Mayor Pilla & Members of the Board:

The purpose of this letter is to inform you that on December 1, 2015, at the regularly scheduled monthly meeting of the Company, the members of Harry Howard Hook & Ladder Company #1 voted for the acceptance of Mr. Ronald Daniels, 33 Barton Place, Port Chester, NY. to active membership in our Company.

Sincerely,

NEIL J. PAGANO  
Secretary

cc: Ronald Daniels  
33 Barton Place,  
Port Chester, NY. 10573

ACCEPTANCE OF RONALD DANIELS AS AN ACTIVE MEMBER OF HARRY HOWARD  
HOOK & LADDER COMPANY NO. 1

On motion of TRUSTEE \_\_\_\_\_, seconded by TRUSTEE \_\_\_\_\_

, the following resolution was adopted by the Board of Trustees of the Village of Port  
Chester, New York:

WHEREAS, on December 1, 2015, the Harry Howard Hook & Ladder Company No. 1 ,  
held an election for a new active member; and

WHEREAS, Ronald Daniels was elected to be a new active member. Now, therefore, be it

RESOLVED, that the Board of Trustees hereby accepts the election of Ronald Daniels to  
Harry Howard Hook & Ladder Company No. 1

Approved as to Form:

\_\_\_\_\_  
Anthony M. Cerreto, Village Attorney



VILLAGE OF  
**PORT CHESTER**

222 Grace Church Street, Port Chester, New York 10573

**AGENDA MEMO**

**Department:** Office of the Village Treasurer

**BOT Meeting Date:** 12/21/2015

**Item Type:** Resolution

**Sponsor's Name:** Leonie Douglas, Village Treasurer

| Description            | Yes                                 | No                                  | Description                         | Yes                      | No                                  |
|------------------------|-------------------------------------|-------------------------------------|-------------------------------------|--------------------------|-------------------------------------|
| Fiscal Impact          | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Public Hearing Required             | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Funding Source:        |                                     |                                     | BID #                               |                          |                                     |
| Account #:             |                                     |                                     | <b>Strategic Plan Priority Area</b> |                          |                                     |
|                        | <b>Yes</b>                          | <b>No</b>                           | N/A                                 |                          |                                     |
| Agreement              | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <b>Manager Priorities</b>           |                          |                                     |
| Strategic Plan Related | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | N/A                                 |                          |                                     |

**Agenda Heading Title**  
*(Will appear on the Agenda as indicated below)*

RETAINING SPECIAL COUNSEL TO PROVIDE SPECIALIZED SERVICES TO THE VILLAGE TREASURER TO ASSURE COMPLIANCE WITH THE PATIENT PROTECTION AND AFFORDABLE CARE ACT

**Summary**

**Background:**

Enacted in 2010, the patient Protection and Affordable Care Act (popularly known as “Obamacare”) represents the most significant changes to the U.S. healthcare system since the passage of Medicare and Medicaid. The Act imposes complex legal requirement that require timely compliance by employers. The Village Treasurer has identified the need for expert assistance so that the Village of Port Chester is in compliance. After consulting with fellow municipal financial officers, the Treasurer recommends the law firm of Lamb & Barnofsky to provide expert assistance This firm has made presentations throughout the State and been retained by many municipalities to assure compliance with the Act. It is not expected that the Treasurer will go beyond the cap of \$5,000 set forth in the fee proposal.



| <b>Proposed Action</b> |
|------------------------|
|------------------------|

That the Board of Trustees adopt the Resolution

| <b>Attachments</b> |
|--------------------|
|--------------------|

Fee proposal  
Presentations

RETAINING SPECIAL COUNSEL TO PROVIDE SPECIALIZED SERVICES TO THE  
VILLAGE TREASURER TO ASSURE COMPLIANCE WITH THE PATIENT PROTECTION  
AND AFFORDABLE CARE ACT

WHEREAS, enacted in 2010, the Patient Protection and Affordable Care Act represents the most significant changes to the U.S. healthcare system since the passage of Medicare and Medicaid, and

WHEREAS, the Act imposes complex legal requirements that require timely compliance by employers; and

WHEREAS, the Village Treasurer has identified the need for expert assistance so that the Village of Port Chester is in compliance. Now, therefore, be it

RESOLVED, the Village Manager is authorized to enter into a retainer agreement with Lamb & Barnosky, LLP, 534 Broadhollow Road, Suite 210, Melville, New York 11747, as set forth in a proposal letter dated December 17, 2015, fee of \$5,000 covering a total of 25 hours, with any excess rates capped as provided therein.

Approved as to Form:

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Anthony M. Cerreto, Village Attorney

# **THE AFFORDABLE CARE ACT: EMPLOYER REPORTING**

Presented to:

**WESTCHESTER COUNTY MUNICIPAL CLERKS  
AND FINANCE OFFICERS ASSOCIATION**

by:

**Alyson Mathews, Esq.**  
**[am@lambbarnosky.com](mailto:am@lambbarnosky.com)**

**Richard K. Zuckerman, Esq.**  
**[rkz@lambbarnosky.com](mailto:rkz@lambbarnosky.com)**

**534 Broadhollow Road, Suite 210  
Melville, New York 11747  
631.694.2300  
[www.lambbarnosky.com](http://www.lambbarnosky.com)**

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**THE AFFORDABLE CARE ACT:  
EMPLOYER REPORTING**

PRESENTED TO:

WESTCHESTER COUNTY MUNICIPAL CLERKS AND FINANCE OFFICERS ASSOCIATION  
**OCTOBER 27, 2015**

- EXHIBIT A:** The Affordable Care Act: Employer Reporting
- EXHIBIT B:** Client Memo: Update on Affordable Care Act Employer Reporting Requirements (August 31, 2015)
- EXHIBIT C:** Client Memo: Affordable Care Act: Final Employer Information Reporting Regulations (January 20, 2015)
- EXHIBIT D:** Biographies



# AFFORDABLE CARE ACT EMPLOYER REPORTING

LAMB & BARNOSKY, LLP  
OCTOBER 27, 2015



# ACA VOCABULARY

- **Affordable Health Insurance Coverage**

- Employee's contribution toward individual coverage in the least expensive health insurance plan offered to him/her is no more than:
  - 9.56% of his/her household income; or
  - 9.5% of his/her W-2 Box 1 wages; or
  - 9.5% of his/her rate of pay; or
  - 9.5% of the Federal Poverty Line.

- **Applicable Large Employer**

- An employer with 50 or more full-time and full-time equivalent employees

# ACA VOCABULARY

## • **Minimum Essential Coverage**

- A government-sponsored health plan
- An employer-sponsored health plan
- Plans in the individual market
- A grandfathered health plan
- Any other plan recognized by the Secretary of Health and Human Services

## • **Minimum Value**

- Plan is designed to pay at least 60% of the total cost of medical services for a standard population, and its benefits include substantial coverage of inpatient hospital and physician services



# IRC SECTION 4980H(A) PENALTY

This penalty is imposed if:

- 1) An employer does not offer “minimum essential coverage” to at least 95% of its full-time employees and their dependents (excluding spouses); and
- 2) At least one full-time employee buys health insurance on a health insurance exchange; and
- 3) That full-time employee receives a cost-sharing reduction or tax credit.

Note: Transition relief available for 2015 including, but not limited to, lowering the 95% threshold to 70%. Thereafter, employers with fewer than 100 full-time employees must offer coverage to all but five full-time employees to avoid the penalty.

# IRC SECTION 4980H(A) PENALTY CALCULATION

- \$2,000 multiplied by the total number of full-time employees, and divided by 12
- The first 30 full-time employees are excluded from this calculation.
  - For the 2015 calendar year, the first 80 full-time employees are excluded.
- The penalty is imposed on a monthly basis.

# IRC SECTION 4980H(B) PENALTY

This penalty is imposed if:

- 1) The “minimum essential coverage” offered does not provide “minimum value” or is unaffordable;
- 2) A full-time employee buys health insurance on a health insurance exchange; and
- 3) That full-time employee receives a cost-sharing reduction or tax credit.

# IRC SECTION 4980H(B) PENALTY CALCULATION

- \$3,000 multiplied by the number of full-time employees who were offered unaffordable coverage or coverage that did not provide minimum value and who received a cost-sharing reduction or tax credit, divided by 12.
- The penalty is imposed on a monthly basis.

# IRC SECTION 6056 REPORTING

- Applies only to Applicable Large Employers (ALEs)
- Reports whether and what health insurance coverage has been offered to full-time employees
- Assists the IRS with determining whether an ALE may be subject to a Section 4980H(a) or (b) penalty

# IRC SECTION 6056 REPORTING FORMS

- IRS Form 1094-C
  - Transmittal form used to submit one or more Forms 1095-C to the IRS
  - Must submit one Form 1094-C designated as the Authoritative Transmittal that reports certain information about the ALE and its offer of coverage
- IRS Form 1095-C
  - Information return or employee statement
  - Contains information specific to each full-time employee and the ALE's offer of coverage (or lack thereof) to him/her



# IRC SECTION 6056 REPORTING REQUIREMENTS

- ALEs offering coverage through non-self-insured plan (*e.g.*, fully insured or multiemployer plan):
  - Complete Parts I and II of Form 1095-C for each full-time employee
  - Do not complete Part III

# IRC SECTION 6056 REPORTING REQUIREMENTS

- ALEs offering coverage through a self-insured plan (includes NYSHIP participating agencies):
  - Also subject to Section 6055 reporting requirements
  - Complete Parts I, II and III of Form 1095-C for each employee who enrolled in coverage, regardless of whether the employee was full-time for any month of the calendar year
  - For an enrolled employee who was part-time for the entire calendar year, complete Parts I and III, and on Part II, enter code 1G on line 14 in “All 12 Months” column or in each separate monthly box (the employer will not need to complete lines 15 and 16 in this case).
  - For enrolled non-employees, option to complete Forms 1094-B and 1095-B instead of 1094-C and 1095-C.



# IRC SECTION 6056 REPORTING REQUIREMENTS

- ALE must file Form 1095-C with the IRS and furnish a copy to the employee
- Form 1094-C must accompany any Form 1095-C filed with the IRS
- Option to furnish Substitute Statements to employees

# IRC SECTION 6055 REPORTING

- Applies to health care providers; *i.e.*, any person or entity providing health insurance coverage, regardless of the number of employees employed
  - Includes an employer providing self-insured coverage
  - Includes NYSHIP participating agencies
- Reports whether certain individuals have minimum essential coverage
- Assists the IRS with determining whether an individual is subject to the individual mandate penalty

# IRC SECTION 6055 REPORTING FORMS

- IRS Form 1094-B
  - Transmittal form used to submit one or more Forms 1095-B
- IRS Form 1095-B
  - Information return
  - Contains information specific to each responsible individual, the coverage provider and the individuals covered under the responsible individual's policy
    - Responsible individual is usually the policy holder

Note: ALEs offering self-insured coverage will use Forms 1094-C and 1095-C for enrolled employees.

# IRC SECTION 6055 REPORTING REQUIREMENTS

- Non-ALEs offering coverage through self-insured plan (includes NYSHIP participating agencies)
  - Complete Form 1095-B for each responsible individual
  - Furnish copy to each responsible individual
  - File copy with IRS, along with Form 1094-B

# IRC SECTION 6055 REPORTING REQUIREMENTS

- ALEs offering coverage through a self-insured plan (includes NYSHIP participating agencies):
  - Also subject to Section 6056 reporting requirements
  - Complete Form 1095-C for each enrolled employee
    - Option to complete Form 1095-B for enrolled non-employees
  - Furnish copy of Form 1095-B or 1095-C to enrolled individual
  - File copy with IRS, along with Form 1094-B or 1094-C

# DEADLINE TO FURNISH STATEMENTS TO EMPLOYEES & RESPONSIBLE INDIVIDUALS

- January 31 (same deadline for an employer to furnish W-2 forms)
- If January 31 falls on a weekend or holiday, the deadline is the next business day.
- For 2016, the deadline is February 1.



# DEADLINE EXTENSIONS

- Extensions are not automatic, but may be requested in writing by sending a letter to the IRS, postmarked on or before the date on which the form is due.
- Letter must include:
  - Employer's name;
  - Employer's tax identification number;
  - Employer's address;
  - Type of return;
  - Statement that extension request is for an individual;
  - Reason for delay; and
  - Signature of employer or authorized agent.
- If granted, extension will generally be a maximum of 30 calendar days.

# PROCEDURE TO PROVIDE STATEMENTS TO EMPLOYEES & RESPONSIBLE INDIVIDUALS

- Mail, hand-deliver or electronically provide on or before the due date
- If mailed, statement must be sent to the individual's last known permanent address or, if no permanent address is known, to his/her temporary address.
- If electronically provided, can provide by e-mail or inform individual how to access the form on the employer's website.
  - To use this method, individual must affirmatively consent in writing on paper or electronically (e.g., by e-mail).
  - If consent is in writing on paper, individual must electronically confirm his/her consent.



# DEADLINE TO FILE FORMS WITH IRS

- If mailed, February 28
  - If February 28 falls on a weekend or holiday, the deadline is the next business day.
  - For 2016, the deadline is February 29.
- If electronically filed, March 31
  - If March 31 falls on a weekend or holiday, the deadline is the next business day.
  - For 2016, the deadline is March 31.

# DEADLINE EXTENSIONS

- Upon request, the IRS will grant an automatic 30-day extension.
  - Use Form 8809 (Application for Extension of Time to File Information Returns)
  - No signature or explanation required
- Additional requests may be granted in certain hardship situations.
  - Must provide “sufficient cause” why the reporting entity was unable to meet the deadline granted by the first extension
  - Form must be signed

# PROCEDURE TO FILE FORMS WITH IRS

- Mail or electronically file on or before the due date
- An employer filing 250 or more forms must electronically file, unless it requested and received a waiver from the IRS.
  - A waiver is requested by submitting Form 8508 (Request for Waiver from Filing Information Returns Electronically).

# PENALTIES

| Action/Inaction to Trigger Penalty  | Penalty   |
|---|---|
| <ul style="list-style-type: none"><li>• Failed to file form with IRS; <i>or</i></li><li>• Failed to provide form to employee or responsible individual; <i>or</i></li><li>• Filed/provided incomplete form; <i>or</i></li><li>• Filed/provided incorrect form;</li></ul> <p style="text-align: center;"><i>And</i></p> <p>Did not file or correct/complete form</p> | <p>\$250 per form</p> <p>\$3 million annual cap</p> |

# PENALTIES

| Action/Inaction to Trigger Penalty   | Penalty  |
|--|--|
| <ul style="list-style-type: none"><li>• Failed to file form with IRS; <i>or</i></li><li>• Failed to provide form to employee or responsible individual; <i>or</i></li><li>• Filed/provided incomplete form; <i>or</i></li><li>• Filed/provided incorrect form;</li></ul> <p style="text-align: center;"><i>And</i></p> <p>Filed or submitted correct/complete form on or before 30 days of filing deadline</p> | <p>\$50 per form</p> <p>\$500,000 annual cap</p> |

# PENALTIES

| Action/Inaction to Trigger Penalty   | Penalty   |
|--|---|
| <ul style="list-style-type: none"><li>• Failed to file form with IRS; <i>or</i></li><li>• Failed to provide form to employee or responsible individual; <i>or</i></li><li>• Filed/provided incomplete form; <i>or</i></li><li>• Filed/provided incorrect form;</li></ul> <p style="text-align: center;"><i>And</i></p> <p>Filed or submitted correct/complete form on or before August 1</p> | <p>\$100 per form</p> <p>\$1.5 million annual cap</p> |



# PENALTIES

| Action/Inaction to Trigger Penalty               | Penalty                         |
|--|---------------------------------|
| Intentionally disregarded reporting requirements | \$500 per form<br>No annual cap |

# PENALTIES

- For forms filed in 2016, the IRS has advised that it will not impose penalties on entities demonstrating good faith efforts to comply with the reporting requirements.
- After 2016, waiver or abatement of return penalties for reasonable cause may apply.



# Q&A

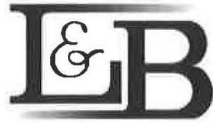
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# DISCLAIMER

THIS PRESENTATION IS MEANT TO ASSIST IN GENERAL UNDERSTANDING OF THE CURRENT LAW AND MAY CONSTITUTE ATTORNEY ADVERTISING. IT IS NOT TO BE REGARDED AS LEGAL ADVICE. THOSE WITH PARTICULAR QUESTIONS SHOULD SEEK THE ADVICE OF COUNSEL.



Keeping you informed...



LAMB & BARNOSKY, LLP  
ATTORNEYS AT LAW

## MEMORANDUM

**TO: OUR EMPLOYER CLIENTS**

**FROM: LAMB & BARNOSKY, LLP**

**DATE: AUGUST 31, 2015**

**RE: UPDATE ON AFFORDABLE CARE ACT EMPLOYER REPORTING REQUIREMENTS**

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As we advised you in our January 20, 2015 client memo (copy attached), the Patient Protection and Affordable Care Act (“the ACA”) requires certain large employers to annually report whether and what health insurance coverage has been offered to full-time employees. This reporting requirement is set forth in Internal Revenue Code (IRC) Section 6056. The ACA also requires health care providers to report certain information about individuals who are covered by the plan. This reporting requirement is set forth in Section 6055. The IRS has issued draft updated forms that can be used to report this information. These forms are available at: <http://www.irs.gov/pub/irs-dft/i109495c--dft.pdf>.

Recent legislation has been enacted that dramatically increases the penalties for failing to report the required information. This memo summarizes the general requirements in a Q&A format.<sup>1</sup>

### **IRC Section 6056 Reporting**

Section 6056 requires an applicable large employer (ALE) to report to the IRS its offer of health insurance coverage to its full-time employees (and their dependents up to age 26) and to furnish a related statement to each full-time employee. The purpose of this reporting requirement is to assist the IRS in determining whether an ALE may be subject to a penalty pursuant to IRC Section 4980H; *i.e.*, the ACA employer shared responsibility provisions. Pursuant to Section 4980H(a), an ALE may be subject to a penalty if it fails to offer coverage to at least 95% of its full-time employees (70% for 2015). Pursuant to Section 4980H(b), an ALE may be penalized if it fails to offer affordable coverage providing minimum value to one or more full-time employees.

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<sup>1</sup> For an explanation of the alternative reporting methods, please see our January 20, 2015 memo.

## **1. Who is required to report?**

The Section 6056 reporting requirement applies to all ALEs. An ALE is an employer employing at least 50 full-time and full-time equivalent employees. A part-time employee is calculated as a fraction of a full-time employee and is included in the total number of employees.

## **2. Which forms must be filed with the IRS and furnished to full-time employees?**

The IRS has designated two forms that can be used to comply with the reporting requirements. They are IRS Forms 1094-C and 1095-C.

Form 1094-C is a transmittal form. It is essentially a cover letter that reports certain information about the ALE and its offer of coverage.

Form 1095-C is an information return or employee statement. It contains information specific to each full-time employee and the ALE's offer of coverage (or lack thereof) to him/her.

To comply with the reporting requirements, an ALE offering coverage through a fully insured plan (not a self-insured plan) must complete Parts I and II of Form 1095-C for each full-time employee. A copy of the Form 1095-C must be furnished to the full-time employee and filed with the IRS. Any time an ALE submits one or more Forms 1095-C to the IRS, the form(s) must be accompanied by a Form 1094-C.

An ALE offering coverage through a self-insured plan is subject to both reporting requirements (Sections 6055 and 6056). This includes any ALE that is a participating agency or employer with the New York State Health Insurance Plan (NYSHIP). The IRS permits "combined reporting" for these ALEs; *i.e.*, an ALE may satisfy its Section 6055 and 6056 reporting obligations by completing Parts I, II and III of Form 1095-C for each full-time employee. A copy is then furnished to the employee and filed with the IRS.

### **Section 6055 Reporting**

IRC Section 6055 requires any person or entity providing health insurance coverage to report to the IRS the individuals who are covered by the plan and to furnish a related statement to those individuals. The purpose of this requirement is to report to the IRS any individual who is covered by minimum essential coverage and therefore not subject to the individual mandate penalty.

## **1. Who is required to report?**

Section 6055 applies to every health care provider. Included in this definition are all employers, regardless of the number of full-time and full-time equivalent employees employed, offering health insurance coverage through a self-insured plan, such as the NYSHIP.

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## **2. Which forms must be filed with the IRS and furnished to responsible individuals?**

The IRS has designated two forms that can be used to comply with the reporting requirements. They are IRS Forms 1094-B and 1095-B.

Form 1094-B is a transmittal form. It is a cover letter that reports certain information about the individual or entity filing one or more statements on behalf of a covered individual(s).

Form 1095-B is an information return. It contains information specific to each responsible individual (in most cases, the policy holder or employee), the coverage provider and the individuals covered under the responsible individual's policy.

Pursuant to the combined reporting option described above, an ALE providing coverage through a self-insured plan can complete Part III of Form 1095-C in lieu of Form 1095-B on behalf of each full-time employee and responsible individual.<sup>2</sup> A copy of the form must be furnished to the individual and filed with the IRS. Again, any time an ALE submits one or more information returns to the IRS, the appropriate transmittal form must accompany the submission.

A small employer providing coverage through a self-insured plan will use Forms 1094-B and 1095-C.

### **Furnishing Statements to Full-Time Employees and Responsible Individuals**

#### **1. What is the deadline by which to furnish the statements?**

The deadline for providing the statements is January 31. If January 31 falls on a weekend or holiday, the deadline is the next business day. For 2016 (the first year in which a statement must be furnished), the deadline is February 1, 2016. This is the same deadline for an employer to furnish W-2 forms.

#### **2. Can the deadline be extended?**

Extensions are not automatic, but may be requested by sending a letter to the IRS.<sup>3</sup> The letter must include: (a) the employer's name; (b) the employer's tax identification number; (c) the employer's address; (d) the type of return; (e) a statement that the extension request is for providing a statement to an individual; (f) the reason for the delay; and (g) the signature of the employer or authorized agent. The letter must be postmarked on or before the date on which the form is due to the individual. If granted, the extension will generally be a maximum of 30 additional days.

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<sup>2</sup> For individuals who are not full-time employees, an ALE may use Form 1095-B.

<sup>3</sup> The mailing address is included in the instructions for the forms.

### **3. How must the statements be provided?**

The statements may be mailed, hand-delivered or electronically provided on or before the due date.<sup>4</sup> If mailed, the statement must be sent to the individual's last known permanent address or, if no permanent address is known, to his/her temporary address. In the alternative, the statement may be electronically provided by email or by informing the individual how to access the form on the employer's or provider's website. To use this method, the individual must affirmatively consent in writing on paper or electronically (*e.g.*, by email) to receive the form in an electronic format. If consent is on paper, the individual must electronically confirm his/her consent. We recommend that the individual also be required to acknowledge in writing that he/she received the form.

### **Reporting to the IRS**

#### **1. What is the deadline by which to file the forms with the IRS?**

The first year for which an employer subject to the reporting requirements must report is 2015. Thus, the first set of annual forms will be due in 2016.

If filing by mail, the forms will meet the deadline if properly addressed and mailed on or before February 28. If February 28 falls on a weekend or holiday, the due date will be the next business day. The deadline in 2016 for paper forms is February 29.

If filing electronically, the forms will meet the deadline if filed by March 31. If that date falls on a weekend or holiday, the due date will be the next business day. The deadline in 2016 for electronic forms is March 31.

#### **2. Can the deadline be extended?**

An employer may receive an automatic 30-day extension by filing the requisite form.<sup>5</sup> No signature or explanation is required. To be eligible for this extension, the form must be filed by the due date for the returns.

#### **3. How must the returns be filed with the IRS?**

The forms can be filed electronically or by mail. An employer filing 250 or more forms must electronically file, unless it requested and received a waiver from the IRS.<sup>6</sup>

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<sup>4</sup> The employer may truncate any social security number on the form; *i.e.*, use asterisks or Xs for the first five digits and only show the last four digits. Truncation is not allowed on forms filed with the IRS.

<sup>5</sup> The requisite form is Form 8809 (Application for Extension of Time to File Information Returns). In certain hardship situations, an employer can apply for an additional 30-day extension. The employer must provide "sufficient cause" why it was unable to meet the deadline granted by the first extension, and the form must be signed.



## Penalties

The federal government recently enacted legislation increasing the reporting requirement penalties. The severity of the penalty depends upon whether the reporting entity failed to file/furnish the forms, filed/furnished incomplete forms or filed/furnished inaccurate forms. It also depends upon how quickly the mistake or omission was corrected, if at all.

| <b>Action/Inaction to Trigger Penalty</b>   | <b>Current Penalty</b>                     | <b>Previous Penalty</b>                    |
|---|--|--|
| <ul style="list-style-type: none"> <li>– Failed to file form with IRS; <i>or</i></li> <li>– Failed to provide form to full-time employee or responsible individual; <i>or</i></li> <li>– Filed/provided incomplete form; <i>or</i></li> <li>– Filed/provided incorrect form;</li> </ul> <p style="text-align: center;"><i>and</i></p> <p>Did not file or correct/complete form</p>  | \$250 per form<br>\$3 million annual cap   | \$100 per form<br>\$1.5 million annual cap |
| <ul style="list-style-type: none"> <li>– Failed to file form with IRS; <i>or</i></li> <li>– Failed to provide form to full-time employee or responsible individual; <i>or</i></li> <li>– Filed/provided incomplete form; <i>or</i></li> <li>– Filed/provided incorrect form;</li> </ul> <p style="text-align: center;"><i>and</i></p> <p>Filed or submitted correct/complete form on or before 30 days of filing deadline</p> | \$50 per form<br>\$500,000 annual cap      | \$30 per form<br>\$250,000 annual cap      |
| <ul style="list-style-type: none"> <li>– Failed to file form with IRS; <i>or</i></li> <li>– Failed to provide form to full-time employee or responsible individual; <i>or</i></li> <li>– Filed/provided incomplete form; <i>or</i></li> <li>– Filed/provided incorrect form;</li> </ul> <p style="text-align: center;"><i>and</i></p> <p>Filed or submitted correct/complete form on or before August 1</p>                   | \$100 per form<br>\$1.5 million annual cap | \$60 per form<br>\$500,000 annual cap      |
| <ul style="list-style-type: none"> <li>– Intentionally disregarded reporting requirements</li> </ul>  | \$500 per form<br>No annual cap            | \$250 per form<br>No annual cap            |

A reporting entity could be subject to “double” penalties for reporting to the IRS and furnishing information returns to individuals. For example, an ALE that fails to file a Form 1095-C with the IRS may be subject to a \$250 penalty. If the ALE also fails to provide a statement to an individual, it may be subject to an additional \$250 penalty, for a total of \$500 per

<sup>6</sup> A waiver is requested by submitting Form 8508 (Request for Waiver from Filing Information Returns Electronically).



form. Thus, the potential liability, other than for intentionally disregarding the reporting requirements, is actually capped at \$6 million.

For forms filed in 2016, the IRS has advised that it will not impose penalties on entities that can show that they have made good faith efforts to comply with the information reporting requirements.<sup>7</sup> For returns filed thereafter, waiver or abatement of return penalties for reasonable cause may apply.<sup>8</sup>

We will continue to keep you updated on new developments with the ACA's reporting forms and requirements. If you have any questions, please contact us.

THIS MEMORANDUM IS MEANT TO ASSIST IN GENERAL UNDERSTANDING OF THE CURRENT LAW. IT IS NOT TO BE REGARDED AS LEGAL ADVICE. THOSE WITH PARTICULAR QUESTIONS SHOULD SEEK THE ADVICE OF COUNSEL.

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<sup>7</sup> It appears that attempting to accurately complete the forms will constitute "good faith efforts," so long as the forms were filed/furnished by the applicable deadline.

<sup>8</sup> A summary of the IRC's general information reporting rules, including when a penalty may be imposed for failure to timely submit or correct a return, is set forth on page four of our January 20, 2015 client memo.



Keeping you informed...



LAMB & BARNOSKY, LLP  
ATTORNEYS AT LAW

## MEMORANDUM

**TO: OUR EMPLOYER CLIENTS**

**FROM: LAMB & BARNOSKY, LLP**

**DATE: JANUARY 20, 2015**

**RE: AFFORDABLE CARE ACT: FINAL EMPLOYER INFORMATION REPORTING REGULATIONS**

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On January 1, 2015, the Affordable Care Act's ("ACA") employer shared responsibility and employer reporting provisions went into effect. "Applicable large employers," *i.e.*, those with at least 50 full-time and full-time equivalent employees, should have already taken steps to plan for the implementation of the shared responsibility requirements and must now plan for the reporting requirements.<sup>1</sup>

Pursuant to ACA employer reporting regulations, applicable large employers are required to annually file with the IRS forms detailing whether and what health insurance coverage has been provided to full-time employees. A separate form must be distributed to each full-time employee. The IRS has prepared forms (IRS Forms 1094-B, 1095-B, 1094-C and 1095-C) that will be used to comply with the requirements. The forms are not yet final, but the drafts can be accessed at: [irs.gov/draftforms](http://irs.gov/draftforms).

The forms are not due until early 2016, but will include information from the 2015 calendar year. As a result, applicable large employers should take steps now to implement a system for tracking the information that must be provided. This memorandum provides an overview of the reporting requirements.

### Annual Information Returns

The annual information return is a packet of documents consisting of individual forms for each full-time employee (Form 1095-C) and a transmittal form (Form 1094-C). The form for

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<sup>1</sup> For the 2015 calendar year, certain employers (public and private) with between 50 and 100 employees are exempt from the shared responsibility provisions, but still must comply with the reporting requirements. As part of this transition relief, the employers must also certify that they meet the criteria for the exemption.

each employee must include the following information:

1. The applicable large employer's name, address and employer identification number ("EIN");
2. The name, address and telephone number of the applicable large employer's contact person;
3. The calendar year for which the information is reported;
4. A certification, by calendar month, as to whether the applicable large employer offered to its full-time employees (and their dependents) the opportunity to enroll in "minimum essential coverage" pursuant to an eligible employer-sponsored plan;
5. The months during the calendar year for which minimum essential coverage was available pursuant to the plan;
6. Each full-time employee's share, by calendar month, of the lowest cost monthly premium for individual coverage providing "minimum value" offered to him/her pursuant to an eligible employer-sponsored plan;
7. The number of full-time employees employed in each month of the calendar year;
8. The name, address, and taxpayer identification number ("TIN") of each full-time employee during the calendar year and the months, if any, during which the employee was covered under the employer-sponsored plan; and
9. Any other information specified in forms, instructions or published guidance.

The annual information return must be filed on or before February 28 (March 31, if filed electronically) of the year following the calendar year to which it relates. The first filing, which will contain information for the 2015 calendar year, will be due on February 29, 2016 (February 28, 2016 being a Sunday), or March 31, 2016, if filed electronically. Employers filing 250 or more returns must file electronically.

#### Annual Employee Statements

Each full-time employee must be provided with an annual employee statement providing the name, address and EIN of the applicable large employer as well as the information on the Form 1095-C that relates to that particular employee. This requirement can be satisfied by giving the full-time employee a copy of the Form 1095-C or by furnishing a statement that includes the same information and complies with the applicable regulations.

Each full-time employee must receive his/her annual employee statement on or before January 31 of the year following the calendar year to which it relates. The first employee

statements; *i.e.*, those relating to the 2015 calendar year, must be furnished by no later than February 1, 2016 (January 31, 2016 being a Sunday). The statements can be furnished electronically, provided that the employer complies with the same rules currently in place for providing W-2 forms by electronic means.

### Alternative Information Reporting Methods

The regulations provide for alternative reporting methods reducing the amount of paperwork that an applicable large employer must submit.

1. *Reporting Based on Certification of Qualifying Offers:* This method allows an applicable large employer to submit a simplified return for full-time employees to whom the employer made a qualifying offer of coverage for all months of the calendar year. "Qualifying offer" means that the employer offered minimum essential coverage providing minimum value to the employee, his/her spouse and his/her dependents and the cost for the employee-only coverage did not exceed 9.5% of the Federal poverty line.<sup>2</sup> For these employees, the employer can certify that a qualifying offer was made for the entire year, rather than report monthly eligibility and cost information.<sup>3</sup>

For 2015 only, an applicable large employer can use this method for employees to whom a qualifying offer was made for less than 12 months of the year, if the employer offered coverage to at least 95% of its full-time employees.

2. *Reporting without Separate Identification of Full-Time Employees (98% offers):* An even more simplified method is available to an applicable large employer certifying that it offered to at least 98% of its employees (full-time and part-time) affordable coverage providing minimum value.<sup>4</sup> The employer need not identify on the annual statement whether the employee was "full-time." If the employer is later contacted by the IRS to determine whether it owes a penalty for failing to offer affordable coverage providing minimum value to a particular employee, the employer could then determine whether the employee was full-time and provide the information to the IRS. As a result, even though this method is less burdensome, it carries some risk.

### Penalties

Pursuant to the Internal Revenue Code of 1986, as amended ("the IRC"), an applicable large employer may be subject to a penalty if it fails to comply with the reporting requirements. In general, the penalty is \$100 for any failure to file with the IRS an information return or any failure to file a correct information return, with the total annual penalty capped at \$1,500,000. In

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<sup>2</sup> The W-2 and rate of pay safe harbor methods for determining affordability may not be used.

<sup>3</sup> An employer that takes advantage of the transition relief allowing delayed dependent coverage for 2015 may not use this alternative reporting method.

<sup>4</sup> Any safe harbor method can be used to determine whether the coverage offered was affordable.

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addition, in general, the penalty is \$100 for any failure to provide an annual payee statement to full-time employees or any failure to include correct information on a payee statement, with the total annual penalty capped at \$1,500,000. For the 2015 calendar year reporting, a penalty will not be imposed on an applicable large employer that files an information return or furnishes an employee statement with incorrect or incomplete information if the employer demonstrates that it made a good faith effort to comply with the requirements. The relief is not available for failure to timely file the annual information return or an employee statement.

However, pursuant to the IRC's general information reporting rules and related Treasury Regulations, an employer that fails to timely file a correct information return or fails to timely furnish a correct payee statement may be eligible for relief from the penalties if it can demonstrate that the failure was due to reasonable cause and not due to willful neglect. The penalty may be waived for reasonable cause if the employer demonstrates that there are significant mitigating factors with respect to the failure or the failure arose from events beyond the employer's control. Significant mitigating factors include, for example, the employer's established history of complying with the information reporting requirements. Events beyond the filer's control include, among other things, the death, serious illness or unavoidable absence of the person with sole responsibility for filing the return or furnishing the payee statement; the unavailability of relevant business records due to a fire, casualty, natural disaster or other disturbance; reasonable reliance on erroneous written advice from the IRS; failure of the employee to provide information necessary for the employer to comply with the information reporting requirements; or the provision of incorrect information by the employee that the employer relied upon in good faith. At this time, it is unclear which of these events the IRS will accept with regard to failures in ACA employer reporting.

Please contact us if you have any questions about or require assistance with the ACA employer reporting requirements.

THIS MEMORANDUM IS MEANT TO ASSIST IN GENERAL UNDERSTANDING OF THE CURRENT LAW. IT IS NOT TO BE REGARDED AS LEGAL ADVICE. THOSE WITH PARTICULAR QUESTIONS SHOULD SEEK THE ADVICE OF COUNSEL.

TAX DISCLOSURE ADVICE. THIS WRITTEN ADVICE WAS NOT WRITTEN TO BE USED, AND IT CANNOT BE USED BY ANY TAXPAYER, FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THE TAXPAYER. THE FOREGOING LEGEND HAS BEEN AFFIXED PURSUANT TO U.S. TREASURY REGULATIONS GOVERNING TAX PRACTICE.





## Trust, Personal Attention and Results



Alyson Mathews represents employers and school districts in education, labor and employment law matters. She has assisted municipal clients with grievance arbitrations, improper practice charges before PERB, disciplinary charges, contract negotiations, compulsory and voluntary interest arbitrations, fact finding proceedings and legislative determinations. Ms. Mathews has comprehensive knowledge of the impact of the Affordable Care Act on employers, including implementation strategies and best personnel practices and procedures. She has frequently lectured on these topics. Ms. Mathews also has experience with student disciplinary hearings, appeals to the Commissioner of Education and special education law. She has been featured in the *Long Island Business News' Who's Who in Women in Professional Services*.

Ms. Mathews is actively involved in the New York State Bar Association (NYSBA) and currently serves on the Electronic Communications Committee and on the Executive Committee of the Labor and Employment Law Section as the Co-Chair of the Membership Committee. She is a co-editor of NYSBA's second edition of *Impasse Resolution under the Taylor Law*. Ms. Mathews is also a member of the American Bar Association and the Suffolk County Bar Association.

Ms. Mathews received her law degree from Brooklyn Law School and her undergraduate degree, *cum laude*, from Boston College. While at Brooklyn Law School, she was a member of the Moot Court Honor Society and the *Journal of Law and Policy*. She participated in the 2003 National First Amendment Moot Court Competition where she placed as a semifinalist. Ms. Mathews also served as the coach of the 2004 First Amendment Moot Court team, Notes and Comments Editor for the *Journal of Law and Policy*, and editor of the *Brooklyn Law School News*.



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Boston College (B.A., English,  
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#### **BAR ADMISSIONS**

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## Trust, Personal Attention and Results



Richard K. Zuckerman represents management in all public and private sector labor and employment law areas, including collective bargaining, discipline and litigation-related matters. His public sector clients include school districts, cities, counties, towns, villages and fire and ferry districts. He also serves as general counsel to school districts and as a hearing officer in General Municipal Law Section 207-a and 207-c disputes.

Mr. Zuckerman is a Fellow of the Governors of The College of Labor and Employment Lawyers. He is also a former President of the New York State Association of School Attorneys and former Chair of the New York State Bar Association (NYSBA) Labor and Employment Law Section, having previously served as Chair of its Committees on Continuing Legal Education and Government Employee Labor Relations. He serves as a member of the NYSBA's House of Delegates and a member of the Executive Committees of the NYSBA's Labor and Employment Law and Municipal Law Sections, and is the Secretary to the Municipal Law Section's Executive Committee. Mr. Zuckerman is also a Fellow of the American and New York Bar Foundations and an Inaugural Member of the Board of Advisors for the St. John's University School of Law Center for Labor and Employment Law. He is one of the three editors for the New York State Bar Association's treatise "Public Sector Labor and Employment Law (3d Edition)," and is an editor for the American Bar Association's treatise entitled "Discipline and Discharge in Arbitration." In addition, he was a contributing author to the 6th edition of the ABA's contract arbitration treatise "How Arbitration Works" (Elkouri & Elkouri), and has also co-authored numerous articles, including those entitled "Romance in the Workplace: Employers Can Make Rules if They Serve Legitimate Needs" and "Romance in the Workplace: To What Extent Can Employers Dictate the Rules?"

Mr. Zuckerman has been named as a Best Lawyer in America® and a New York Super Lawyer® in Labor and Employment Law, and as a *Who's Who in Labor Law* by the *Long Island Business News*. He has presented at numerous legal programs regarding various labor, education and employment law-related topics. He is admitted to practice before the United States Supreme Court, the federal Second Circuit Court of Appeals and the Eastern and Southern Districts of New York, as well as New York State courts. Mr. Zuckerman is a graduate of the Columbia University School of Law, where he served as Director of the First Year Moot Court program. He graduated *summa cum laude* from the State University of New York at Stony Brook, where he was elected to Phi Beta Kappa in his junior year and received the William J. Sullivan Award, the University's most prestigious academic and service award.



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# The PPACA/Obamacare: What Employers Need to Know

Alyson Mathews, Esq.

**LAMB & BARNOSKY, LLP**

December 19, 2014

# Overview of ACA Impact on Employers

- Employer mandate
- Automatic enrollment
- W-2 reporting
- 90-day waiting period
- Summary of Benefits and Coverage
- Dependent coverage for children up to age 26
- Small business tax breaks
- Wellness programs
- Small Business Health Options Program (SHOP)
- Non-discrimination rules
- Information-reporting requirements
- Notice of Exchange

# Summary of Employer Penalties

| Requirement                    | Penalty   |
|--------------------------------|---|
| Employer Mandate               | Section 4980H(a): 1/12 [ $\$2,000 \times (\text{total number of full-time employees} - 80)$ (effective 1/1/16, 30)]         |
|                                | Section 4980H(b): 1/12 ( $\$3,000 \times \text{total number of full-time employees who received tax subsidy on Exchange}$ ) |
| 90-Day Waiting Period          | $\$100 \text{ per day} \times \text{number of affected employees}$  |
| Summary of Benefits & Coverage | Up to $\$1,000 \text{ per day} \times \text{number of affected employees}$  |
| Non-Discrimination Rules       | $\$100 \text{ per day} \times \text{number of employees discriminated against}$   |
| Information Reporting          | $\$100 \text{ per violation up to } \$1,500,000 \text{ per year}$   |
| Notice of Exchange             | $\$0$ (for now)   |



# Four Things You Need to Know

- 1) Effective January 1, 2015, employers may be penalized if they do not **offer** health insurance to at least **95%** of their full-time employees, offer coverage that is unaffordable or offer coverage that does not provide “minimum value.”
- 2) The penalty is **only** assessed if a full-time employee purchases health insurance on a health insurance exchange **and** receives a premium tax credit or cost-sharing reduction.
- 3) Employers **must** prepare now for potential penalties.
- 4) Many of the specifics of the law and the dynamics of how penalties will be assessed and collected have not been finalized.



## Which Employers Are Subject to the Penalties?

- An employer with 50 or more full-time and/or full-time equivalent employees (an “applicable large employer”)



# Who is a Full-Time Employee?

- An employee who is employed on average for 30 or more hours of service per week or 130 hours in a month



# Who is a Full-Time Employee Equivalent?

- An employee who is employed less than an average of 30 hours of service per week or 130 hours in a month





# What Constitutes Hours of Service?

- Each hour for which an employee is paid
- Time for which the employee performs no duties, but is paid due to vacation, sick or personal leave, holiday, incapacity, layoff, jury duty, military duty or leave of absence
- Excludes time worked as a bona fide volunteer and hours performed as part of work-study program



# Determining Full-Time Equivalent Employees

- Add up the total hours of service of all non-full-time employees (including seasonal employees) worked in a particular month (up to 120 hours per employee), and divide that number by 120

$$\frac{40 \text{ part-time employees} \times 90 \text{ hours of service}}{120} = 30 \text{ full-time equivalent employees}$$



# Automatic Enrollment

- Applies to employers with 200 or more Full-Time Employees
- General Rule – Enroll Full-Time Employees within 90 days of commencing employment
- Implementing regulations have not been issued
- No compliance required until final regulations are issued



## Section 4980H(a) Penalty

This penalty is imposed if:

- 1) An employer does not offer “minimum essential coverage” to all but 5% (or, if greater, all but five) of its Full-Time Employees and their dependents (excluding spouses);
- 2) At least one Full-Time Employee buys health insurance on a health insurance exchange; and
- 3) That Full-Time Employee receives a cost-sharing reduction or tax credit.



## What is Minimum Essential Coverage?

- A government-sponsored health plan
- An employer-sponsored health plan
- Plans in the individual market
- A grandfathered health plan
- Any other plan recognized by the Secretary of Health and Human Services



# What constitutes an “offer”?

- An offer of coverage must give the employee an effective opportunity to elect to enroll (or decline to enroll) in coverage at least once during the plan year.
- Whether an employee has an effective opportunity is determined based on all of the relevant facts and circumstances, including adequacy of notice of the availability of the offer of coverage, the period of time during which acceptance of the offer of coverage may be made, and any other conditions on the offer.



# Who is Entitled to a Premium Tax Credit or Cost-Sharing Reduction?

- Penalties are only assessed if employees buy health insurance on New York's health insurance exchange and receive either a cost-sharing reduction or a tax credit.
- The exchange must notify the employer and IRS that an employee has purchased health insurance on an exchange
- A cost-sharing reduction is a federal government subsidy available to individuals who buy health insurance on an exchange and whose income is less than 250% of the Federal Poverty Line (FPL)
- Tax credits are available to individuals who buy health insurance on an exchange and whose income is between 100% and 400% of the FPL



## EXAMPLE

- An employer employs 60 Full-Time Employees. To avoid the Section 4980H(a) penalty, coverage must be offered to all but 5% (or, if greater, all but five) of the employer's Full-Time Employees. Five percent of 60 is three. Five is greater than three. Thus, the employer must offer coverage to at least 55 Full-Time Employees (and their dependents) or potentially pay a penalty.





## Section 4980H(a) Penalty Calculation

- \$2,000 multiplied by the total number of Full-Time Employees, and divided by 12
- The first 30 Full-Time Employees are excluded from this calculation.
  - For the 2015 calendar year, the first 80 full-time employees are excluded.
- The penalty is imposed on a monthly basis.

## EXAMPLE

- An employer with 330 Full-Time Employees offers to less than 95% of its Full-Time Employees the opportunity to enroll in its healthcare plan. The employer receives certification that one Full-Time Employee who was not offered the opportunity purchased health insurance on an exchange and received a tax credit. The monthly penalty would be:

$$\frac{\$2,000 \times (330-30)}{12} = \$50,000 \text{ per month}$$



## Section 4980H(b) Penalty

This penalty is imposed if:

- 1) The “minimum essential coverage” offered does not provide “minimum value” or is unaffordable;
- 2) A Full-Time Employee buys health insurance on a health insurance exchange; and
- 3) That Full-Time Employee receives a cost-sharing reduction or tax credit.



## What Is Minimum Value?

A plan provides “minimum value” if, in general, it covers at least 60% of the total plan costs.



## What Is Affordable Coverage?

An employee's required contribution toward the premium for individual coverage under the employer's least expensive plan is not more than 9.5% of the employee's household income



## The W-2 Safe Harbor

The employee's premium contribution toward individual coverage in the employer's least expensive plan is not more than 9.5% of the employee's "Box 1" wages on his/her Form W-2, Wage and Tax Statement. This includes all wages and compensation from the employer (e.g., overtime and deferred compensation).



# The Rate of Pay Safe Harbor

The employee's monthly premium contribution toward individual coverage in the employer's least expensive plan is not more than 9.5% of the employee's hourly rate in effect at the beginning of the plan year. This calculation varies depending on if the employee is paid hourly or by a salary.



# The Rate of Pay Safe Harbor

- Hourly employees – Take the hourly rate of pay and multiply it by 130 to obtain the employee's monthly equivalent rate of pay. Determine whether the employee contributes more than 9.5% of this monthly equivalent.
- Salaried employees – Determine whether the employee contributes more than 9.5% of the monthly salary.





# The Rate of Pay Safe Harbor

## Hourly Employees

$$M \leq 9.5\% (H \times 130)$$

M = Employee's monthly contribution

H = Employee's hourly rate

## Salaried Employees

$$M \leq 9.5\% (S/12)$$

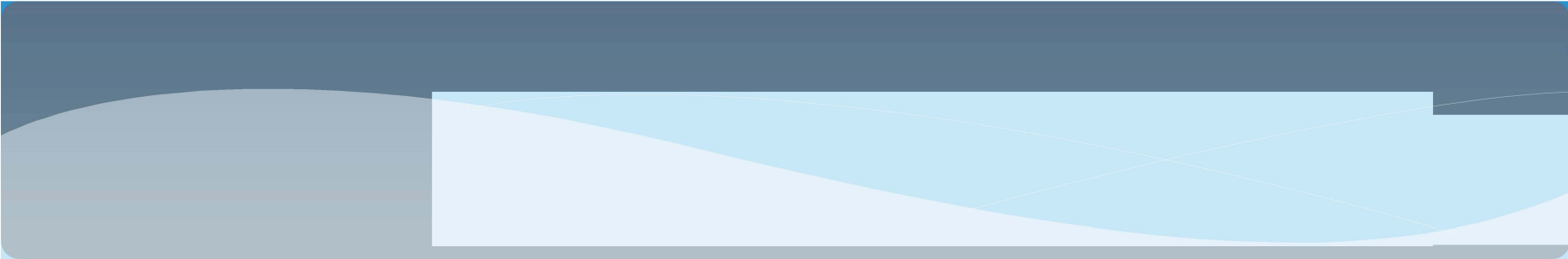
M = Employee's monthly contribution

S = Employee's salary



# The Federal Poverty Line Safe Harbor

- The employee's monthly premium contribution toward individual coverage in the employer's least expensive plan is not more than 9.5% of the Federal Poverty Line for an individual, divided by 12.
- The 2013 Federal Poverty Line for the 48 contiguous states is \$11,490 for an individual.



## Section 4980H(b) Penalty

- \$3,000 multiplied by the number of Full-Time Employees who were offered unaffordable coverage or coverage that did not provide minimum value, divided by 12.
- The penalty is imposed on a monthly basis.



# Maximum Penalty

- If the Section 4980H(b) penalty is greater than the Section 4980H(a) penalty, then the employer's penalty is capped at the Section 4980H(a) amount.

## EXAMPLE

- An employer offers minimum essential coverage to all of its 100 full-time employees. The coverage is unaffordable for 10 of them. Eight receive subsidized coverage in a healthcare exchange. The monthly penalty would be:

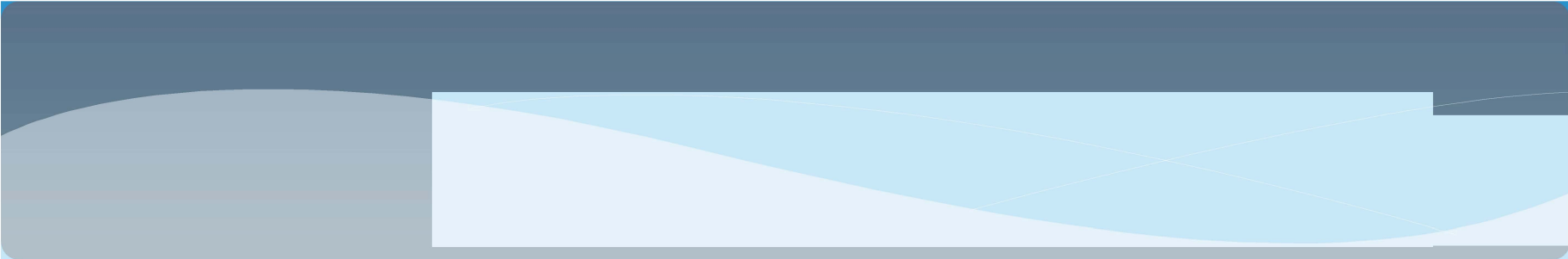
$$\frac{\$3,000 \times 8}{12} = \$2,000 \text{ per month}$$

12



# Notice of Potential Penalty & Opportunity to Appeal

- Employers will receive notice from the Department of Health and Human Services (HHS) or a health insurance exchange that employee(s) received health insurance through an exchange and received a premium tax credit or cost sharing reduction.
- Employers have 90 days from the date the notice is sent to request an appeal challenging that it did not offer health insurance to 95% of its Full-Time Employees, did not provide minimum essential coverage or provided coverage that was unaffordable with respect to the employee.
- Employee(s) will be notified of the employer's appeal
- The employer and employee(s) will have the opportunity to submit additional information to the Exchange or HHS to support their positions.
- Impartial officials not directly involved in the determination will have 90 days from the receipt of the appeal request to review the information and render a decision.
- If the appeal is not successful, penalties will be imposed under 4980H.



## Notice of Potential Penalty & Opportunity to Appeal (cont'd)

- It is not clear if the computation of penalties is determined by the exchange or by the IRS
- Effective in 2015, employers will be required to report health insurance coverage information to the IRS
- 4980H penalties will be assessed by the IRS and collectible in the same manner as taxes



## Determining Who Is Full-Time: Counting Hours of Service

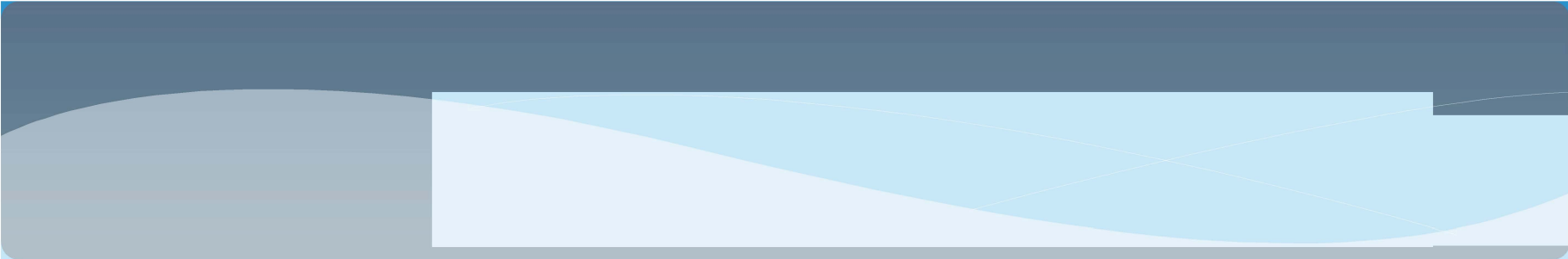
- Hourly employees: count actual hours of service
- Non-hourly employees: use one of three methods
  - (1) count actual hours of service (the same procedure as is used for hourly employees);
  - (2) use a days-worked equivalency method, which credits employees with 8 hours of service for each day of service; or
  - (3) use a weeks-worked equivalency method, which credits employees with 40 hours of service for each week served.





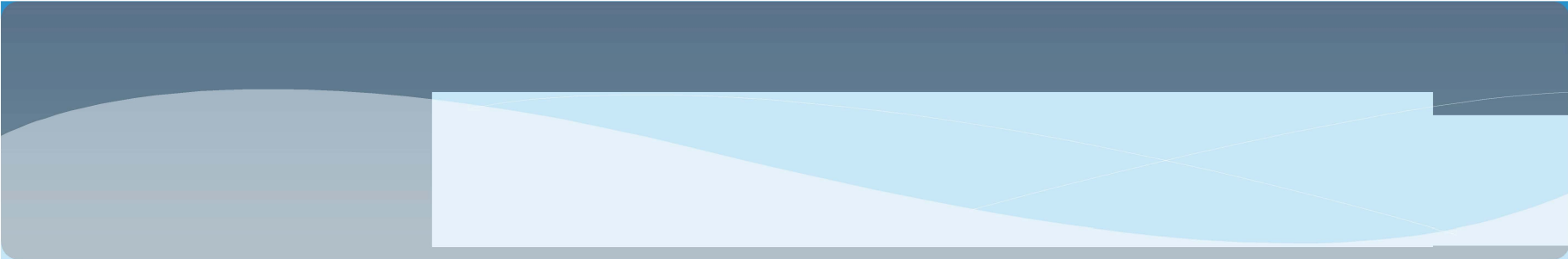
## Determining Who Is Full Time: The Monthly Measurement Method

- Measure employee status in “real time” each month
- Can only be used for the purpose of determining status as an applicable large employer or liability for the Section 4980H penalties



## The Monthly Measurement Method: Deadline to Offer Coverage to a Full-Time Employee

- Three calendar month waiting period beginning from the first day of the first full calendar month after the employee is determined to be full-time (employee must be able to enroll before the deadline)
  - If an employer does not offer coverage by this deadline, it could be liable for the Section 4980H(a) penalty retroactive to the first day on which the employee was determined to be full-time.
  - If the coverage offered provides minimum value, the employer will avoid the Section 4980H(b) penalty for the first three full calendar months that the employee was full-time.



## The Monthly Measurement Method: Optional Use of Weekly Periods

- Can determine monthly hours of service using full calendar week (Sunday to Saturday) periods
  - Begin counting on first day of the week that includes the first day of the calendar month and exclude the week that includes the last day of the calendar month (unless the week ends with the last day of the calendar month, in which case it is included); or
  - Begin counting on the first day of the week immediately subsequent to the week that includes the first day of the calendar month (unless the week begins on the first day of the calendar month, in which case it is included) and include the week in which the last day of the calendar month falls



## The Monthly Measurement Method: Monthly Equivalent

- The monthly equivalent of a full-time employee for calendar months with five weekly periods is 150 hours of service.
- The monthly equivalent of a full-time employee for calendar months with four weekly periods is 120 hours of service.



## Determining Who Is Full Time: The Look-Back Measurement Method

- Measure employee status over a specific period of time and then apply those measurements during a set subsequent period of time
- Can only be used for the purpose of determining liability for the Section 4980H penalties



## The Three Time Frames of the Look-Back Measurement Method

- (1) A period during which to measure an employee's hours (“the standard measurement period”)
- (2) An optional period during which the employer can assess the data obtained during the standard measurement period and send notifications to employees with regard to an offer of coverage (“the administrative period”)
- (3) A period during which the employer's determination about which employees are full-time remains in place or is stabilized (“the stability period”)



## The Basic Rules for the Three Time Frames: Ongoing Employees

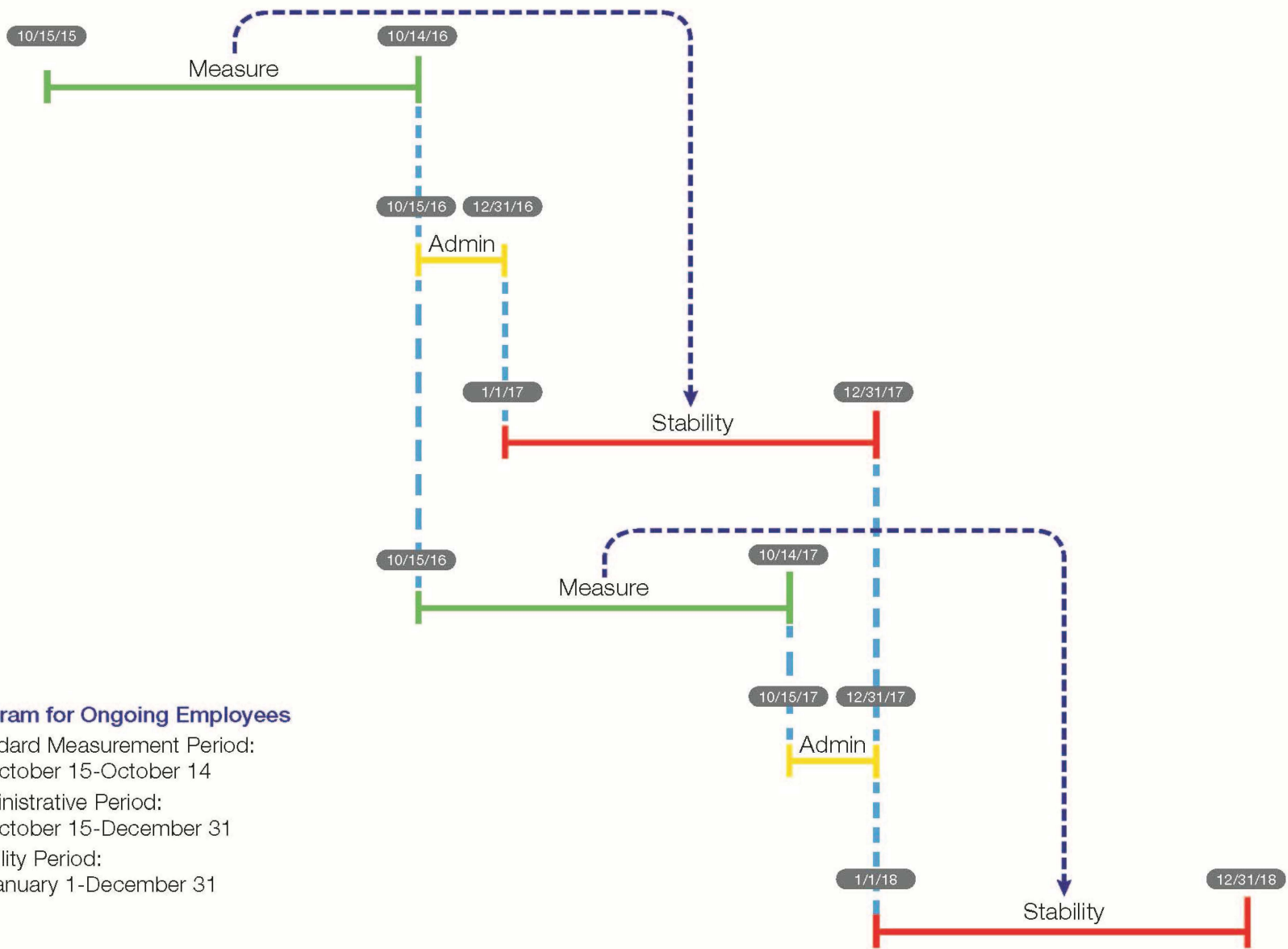
- **Standard Measurement Period:** Between three and 12 consecutive months
- **Administrative Period:** Up to 90 days
- **Stability Period:** At least six consecutive months, but no shorter than the standard measurement period

# Ongoing Employees

## EXAMPLE

| Ongoing Employees<br>Year 1    |  | Ongoing Employees<br>Year 2    |  |
|--------------------------------|--|--------------------------------|--|
| Standard<br>Measurement Period | October 15, 2015-<br>October 14, 2016  | Standard<br>Measurement Period | October 15, 2016-<br>October 14, 2017  |
| Administrative<br>Period       | October 15, 2016-<br>December 31, 2016 | Administrative<br>Period       | October 15, 2017-<br>December 31, 2017 |
| Stability Period               | January 1, 2017-<br>December 31, 2017  | Stability Period               | January 1, 2018-<br>December 31, 2018  |





**Diagram for Ongoing Employees**

Standard Measurement Period:

October 15-October 14

Administrative Period:

October 15-December 31

Stability Period:

January 1-December 31



## The Look-Back Measurement Method: New Non-Variable Hour and Non-Seasonal Employees

- Three-month waiting period
- Employers will be penalized for not offering coverage to new employees within the first three months of employment, even if the employee works on average 30 or more hours per week. Employees must be able to enroll before the three months have concluded.
- If an employer does not offer coverage within the three months, it may be penalized for any months during which coverage was not offered, including the first three months.



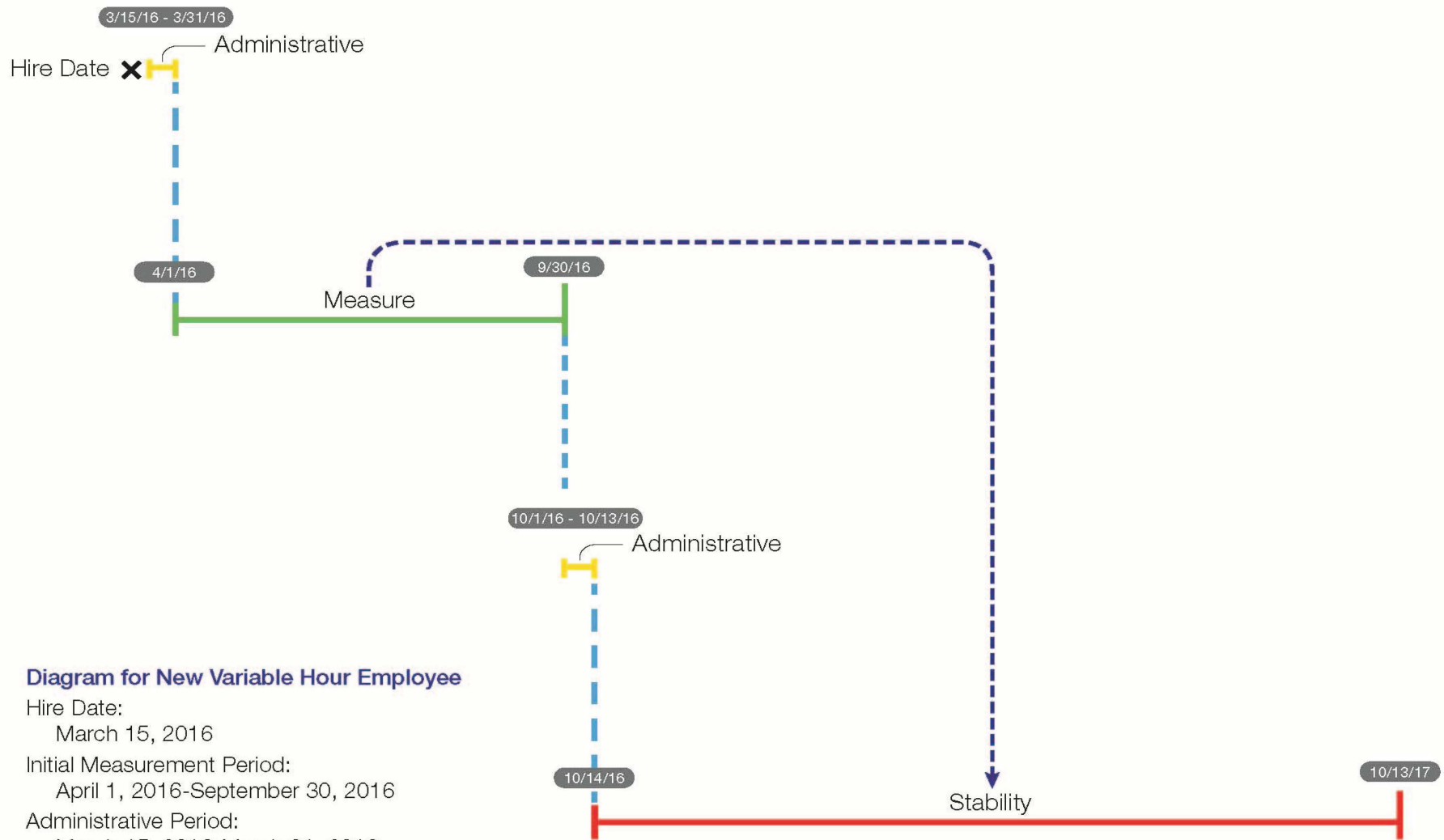
## The Look-Back Measurement Method: New Variable Hour and Seasonal Employees

- ***Initial Measurement Period:*** Between three and 12 consecutive months beginning no later than the first day of the next month after the employee begins employment
- ***Administrative Period:*** Up to 90 days
- ***Stability Period:*** At least six consecutive months and at least as long as the initial measurement period and the administrative period; must be the same length as the stability period for ongoing employees; cannot exceed remainder of standard measurement and administrative period for ongoing employees in which initial measurement period ends

# New Variable Hour Employees

## EXAMPLE

| New Employee – Hired March 15, 2016<br>Year 1 |   |
|---|---|
| Initial Measurement Period                    | Five months (April 1, 2016 – September 30, 2016)  |
| Administrative Period                         | 30 days (March 15, 2016 – March 31, 2016 (17 days))<br>(October 1, 2016 – October 13, 2016 (13 days)) |
| Stability Period                              | 12 months (October 14, 2016 – October 13, 2017)   |



**Diagram for New Variable Hour Employee**

Hire Date:  
 March 15, 2016  
 Initial Measurement Period:  
 April 1, 2016-September 30, 2016  
 Administrative Period:  
 March 15, 2016-March 31, 2016  
 October 1, 2016-October 13, 2016  
 Stability Period:  
 October 14, 2016-October 15, 2016



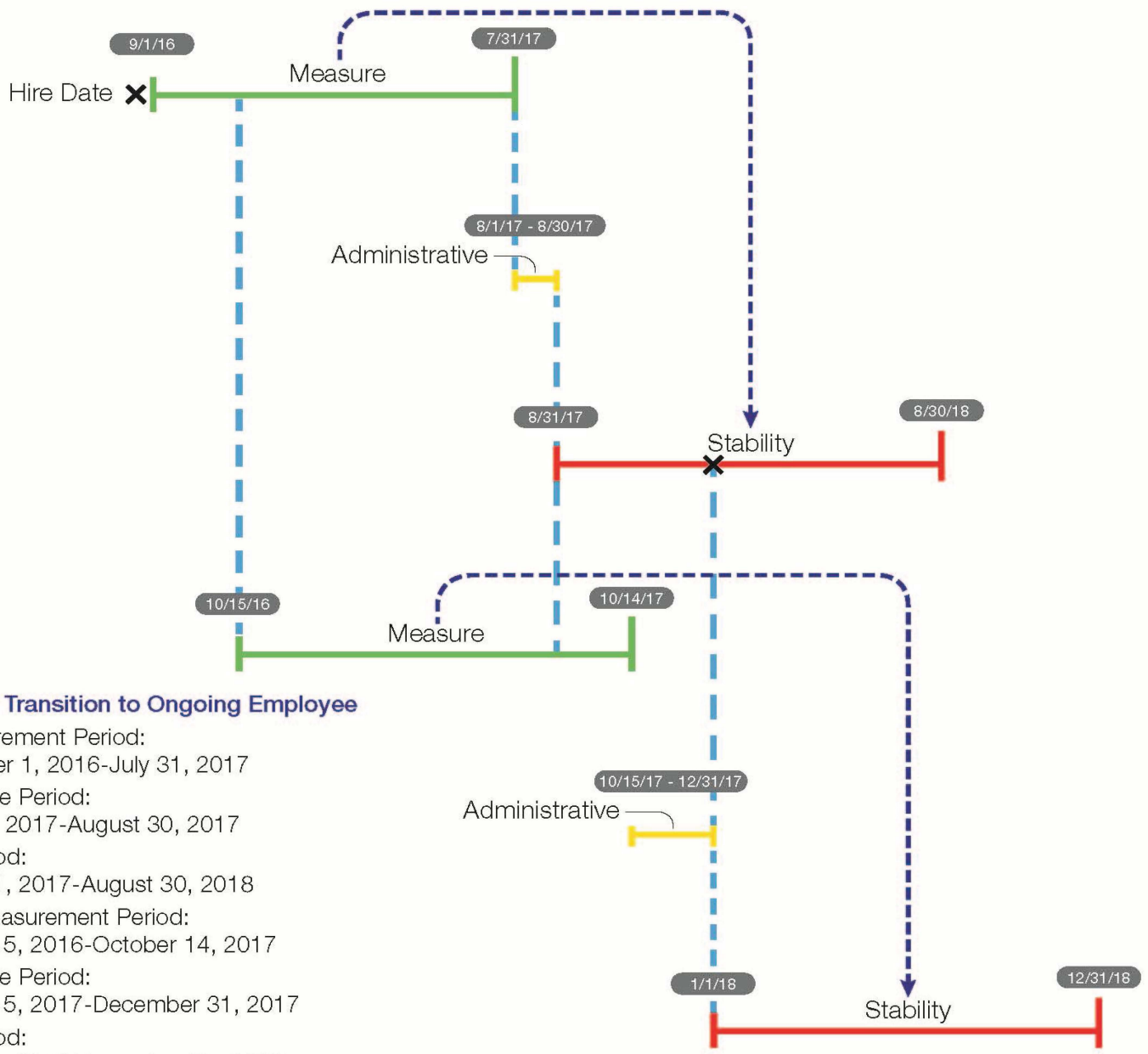
## New Variable Hour Employees **EXAMPLE**

- The Village of Candlewood has a 12-month standard measurement period beginning on October 15 and ending on October 14, a 78-day administrative period beginning on October 15 and ending on December 31 and a 12-month stability period beginning on January 1 and ending on December 31.
- For its new variable hour employees, the Village has designated an 11-month initial measurement period beginning on the employee's hire date, a one month administrative period and a 12-month stability period.
- Jane begins employment as a variable hour employee on September 1, 2016. Her work schedule varies, and the Village cannot reasonably determine whether she will be full-time. Thus, Jane is a new variable hour employee.
- On October 15, 2016, the Village begins to measure Jane's hours for standard measurement period purposes.
- The Village measures Jane's hours of service from September 1, 2016-July 31, 2017. The Village determines during the one-month administrative period that, except for during the month of July (an employment break), Jane averages 28 hours of service per week. Thus, Jane is not a full-time employee.
- The Village treats Jane as not full-time beginning on September 1, 2017.
- On October 14, 2017, the standard measurement period for ongoing employees concludes. Jane is now an ongoing employee and must transition to the ongoing schedule. This means the stability period is cut short on December 31, 2017. The Village will tally Jane's hours from October 15, 2016-October 14, 2017 and determine whether Jane is full-time. The determination remains in place during the stability period (January 1, 2018 - December 31, 2018).

# New Variable Hour Employee: Transition to Ongoing Employee EXAMPLE

| New Employee –<br>Hired September 1, 2016<br>First Measurement Period |                                  |
|---|----------------------------------|
| Initial Measurement Period  | Sept. 1, 2016 –<br>July 31, 2017 |
| Administrative Period   | Aug. 1, 2017 –<br>Aug. 30, 2017  |
| Stability Period  | Aug. 31, 2017 –<br>Aug. 30, 2018 |

| Ongoing Employee –<br>Hired September 1, 2016<br>Second Measurement Period |                                  |
|--|----------------------------------|
| Standard Measurement Period  | Oct. 15, 2016 –<br>Oct. 14, 2017 |
| Administrative Period  | Oct. 15, 2017 –<br>Dec. 31, 2017 |
| Stability Period   | Jan. 1, 2018 –<br>Dec. 31, 2018  |



**Diagram for Transition to Ongoing Employee**

- Initial Measurement Period:  
September 1, 2016-July 31, 2017
- Administrative Period:  
August 1, 2017-August 30, 2017
- Stability Period:  
August 31, 2017-August 30, 2018
- Standard Measurement Period:  
October 15, 2016-October 14, 2017
- Administrative Period:  
October 15, 2017-December 31, 2017
- Stability Period:  
January 1, 2018-December 31, 2018





## Special Rules for Certain Unpaid Leave and Employment Breaks

- Rules do not apply to monthly measurement method
- Special Unpaid Leave: leave taken pursuant to the Family and Medical Leave Act, the Uniformed Services Employment and Reemployment Rights Act or jury duty obligations
- Employment break of at least four consecutive weeks
  - Credit employee with his/her average hours of service or exclude leave/break period
    - Up to 501 hours can be credited/excluded
    - Cannot credit/exclude special unpaid leave that falls during employment break

# The Individual Mandate in Dollars:

The greater of a flat dollar amount or percentage of family income

| Year | Flat Dollar Amount  |
|------|---|
| 2014 | \$95 per adult<br>\$47.50 per child<br>\$285 maximum per family     |
| 2015 | \$325 per adult<br>\$162.50 per child<br>\$975 maximum per family   |
| 2016 | \$695 per adult<br>\$347.50 per child<br>\$2,085 maximum per family |

| Year | Percentage of Family Income |               |         |
|------|-----------------------------|---------------|---------|
|      | %                           | Family Income | Penalty |
| 2014 | 1.0                         | \$40,000      | \$400   |
|      | 1.0                         | \$80,000      | \$800   |
|      | 1.0                         | \$120,000     | \$1,200 |
| 2015 | 2.0                         | \$40,000      | \$800   |
|      | 2.0                         | \$80,000      | \$1,600 |
|      | 2.0                         | \$120,000     | \$2,400 |
| 2016 | 2.5                         | \$40,000      | \$1,000 |
|      | 2.5                         | \$80,000      | \$2,000 |
|      | 2.5                         | \$120,000     | \$3,000 |

# Information-Reporting for Applicable Large Employers

- \* Effective for 2015 tax year
- \* Forms due on or before February 28 (March 1 if filed electronically) of following year
- \* Forms to be used for administering Section 4980H and eligibility for tax subsidies

# Information Reported to IRS

Information return (IRS Forms 1094-C and 1095-C) for each full-time employee showing:

- \* Name, address and employer ID number
- \* Employer's name and telephone number
- \* Calendar year for which information is reported
- \* Certification, by calendar month, whether full-time employees were offered the opportunity to enroll in minimum essential coverage
- \* Each full-time employee's share, by calendar month, of lowest cost monthly premium for individual coverage providing minimum value
- \* Number of full-time employees by calendar month
- \* Name address and tax ID number of each full-time employee during the calendar year and months when he/she was covered by the employer's plan

# Statement to Be Furnished to Each Full-Time Employee

- \* Form must include a written statement showing:
  - \* Name, address and employer ID number; and
  - \* All information required on IRS form with regard to the full-time employee
- \* Obligation can be satisfied by providing Form 1095-C to employee
- \* Statement must be provided by January 31

# Alternative Reporting Methods: Certification of Qualifying Offer

- \* Certify on transmittal form that made qualifying offer:
  - \* “Qualifying offer” is an offer of affordable, minimum essential coverage that provides minimum value to one or more full-time employees for all months of the year for which the employee was full-time, and includes offer to employees’ spouses and dependents
    - \* “Affordable” is based off of 9.5% of FPL
- \* Provide Form 1095-C to IRS
- \* Provide statement to each full-time employee to whom qualifying offer was made for all 12 months of calendar year

# Alternative Reporting Methods: Report without ID'ing Full-Time Employees

- \* Must meet other reporting requirements, but need not identify offer made to each full-time employee by calendar month if:
  - \* Certify that offered affordable minimum essential coverage that provides minimum value to at least 98% of full-time employees (and their dependents), regardless of whether employee is a full-time employee for purposes of Section 4980H for a particular calendar month of that year



# Other ACA Considerations

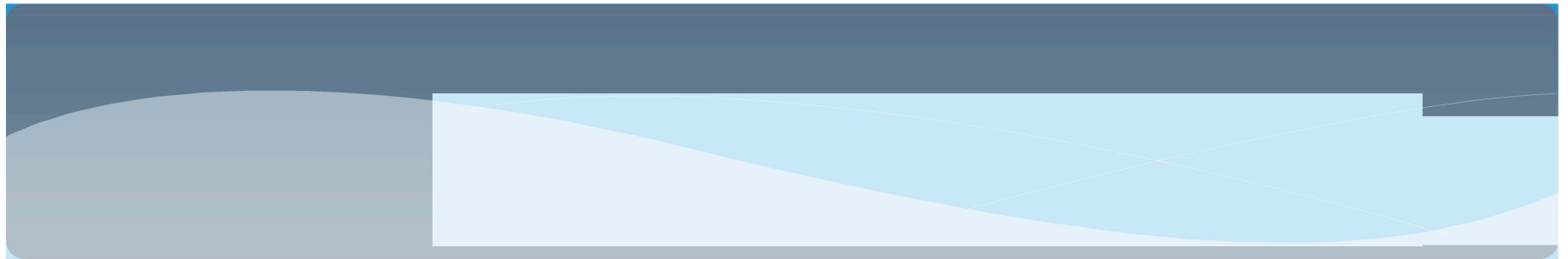
- Anti-Abuse Rules
- Nondiscrimination Rules
- Summary of Benefits and Coverage
- Notice of Exchanges
- Cadillac Tax





## Duty to Bargain Issues (Union Employees)

- Health Insurance
  - Offer of coverage
  - Employee's contribution
  - Plan options
  - Open enrollment
  - Waiting period
  - Waiver for buyout
- Measurement Period
- Affordability Safe Harbors
- Reducing Hours of Service
- Access to Employee Household Income
- More Flexibility with Non-Union Employees



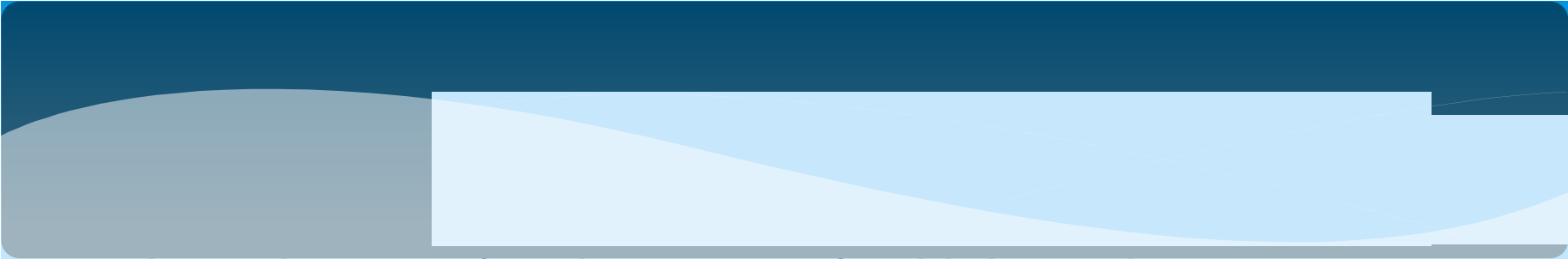
## Personnel Issues

- Payroll
  - Integrate look-back measurement method
  - Implement strategy for detecting when part-time employees are close to 30-hour threshold
- Forms
  - Offer of coverage
  - Exchange Notice
  - COBRA Notice
  - Summary of Benefits and Coverage
  - W-2 Reporting



# Conclusion

- Plan Now –
  - Budget
  - Labor Relations
  - Health Insurance Options
  - Measurement periods
- Monitor changes in obligations as regulations are issued and finalized



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# ACA: What Public Sector Employers Need to Do Now

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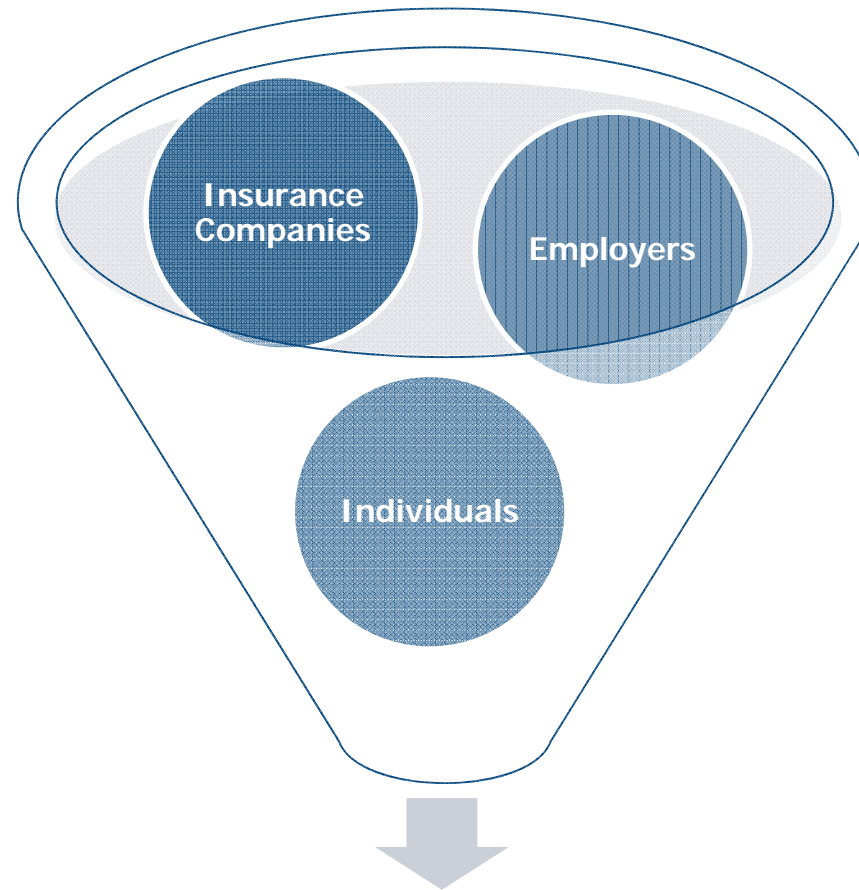
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# Who Does the ACA Impact?



**Better, Cheaper Health Care?**

# Overview of ACA Impact on Insurance Companies

- No out-of-pocket cost for essential health benefits and preventive services
- Dependent coverage for children up to age 26
- No discrimination based upon pre-existing conditions
- Life-time limits and annual spending caps eliminated
- Rate hike reform
- Summary of Benefits and Coverage (SBC)
- Cadillac Tax

# Overview of ACA Impact on Individuals

- Individual mandate
- Insurance subsidies
- Limits on flexible spending accounts



# Overview of ACA Impact on Employers

- Employer mandate
- Automatic enrollment
- W-2 reporting
- 90-day waiting period
- Summary of Benefits and Coverage
- Dependent coverage for children up to age 26
- Small business tax breaks
- Wellness programs
- Small Business Health Options Program (SHOP)
- Non-discrimination rules
- Information-reporting requirements
- Notice of Exchange

# Summary of Employer Penalties

| Requirement                    | Penalty   |
|--------------------------------|---|
| Employer Mandate               | Section 4980H(a): 1/12 [\$2,000 x (total number of full-time employees – 80 (effective 1/1/16, 30))]        |
|                                | Section 4980H(b): 1/12 (\$3,000 x total number of full-time employees who received tax subsidy on Exchange) |
| 90-Day Waiting Period          | \$100 per day x number of affected employees  |
| Summary of Benefits & Coverage | Up to \$1,000 per day x number of affected employees  |
| Non-Discrimination Rules       | \$100 per day x number of employees discriminated against   |
| Information Reporting          | \$100 per violation up to \$1,500,000 per year  |
| Notice of Exchange             | \$0 (for now)   |

# Employer Mandate

Three elements:

- 1.** Effective 1/1/15, an employer with at least 100 full-time and full-time equivalent employees (effective 1/1/16, 50) may be penalized if it does not offer minimum essential coverage to at least 70% (effective 1/1/16, 95%) of its full-time employees (and their dependents) that is affordable and provides "minimum value."
- 2.** Full-time employee who was not offered affordable coverage that provides "minimum value" purchases insurance on the Exchange.
- 3.** Full-time employee receives a tax subsidy.

# Employer Mandate Vocabulary

- **Full Time:** Employee is employed on average for at least 30 hours of service per week or 130 hours of service per month
- **Hour of Service:** Each hour for which an employee is paid

# Employer Mandate Vocabulary

- **Offer of Coverage:** Must give employee an effective opportunity to enroll (or decline to enroll) at least once during each plan year



Should the offer be made to the union or the employee?

# Employer Mandate Vocabulary

**Affordable:** Employee's contribution toward individual coverage in the least expensive plan available to him/her is not more than 9.5% of his/her:

1. Household income (effective 1/1/15, 9.56%);
2. "Box 1" wages;
3. Hourly rate (based on monthly premium contribution); or
4. Federal Poverty Line for an individual, divided by 12 (based on monthly premium contribution)

# Employer Mandate: Who Is Full-Time?

- **Hourly employees:** Count hours of service
- **Non-hourly employees:** Use one of three methods:
  1. Count hours of service;
  2. Use days-worked equivalency method (credit employee with eight hours for each day worked); or
  3. Use weeks-worked equivalency method (credit employee with 40 hours for each week worked)

# Employer Mandate: Measuring Hours of Service

- **Monthly Measurement**
- **Method:** Measure hours of service in “real time” on a calendar month basis
- **Look-Back Measurement**  
**Method:** Measure hours of service over a specific period of time and apply those measurements during a subsequent period of time



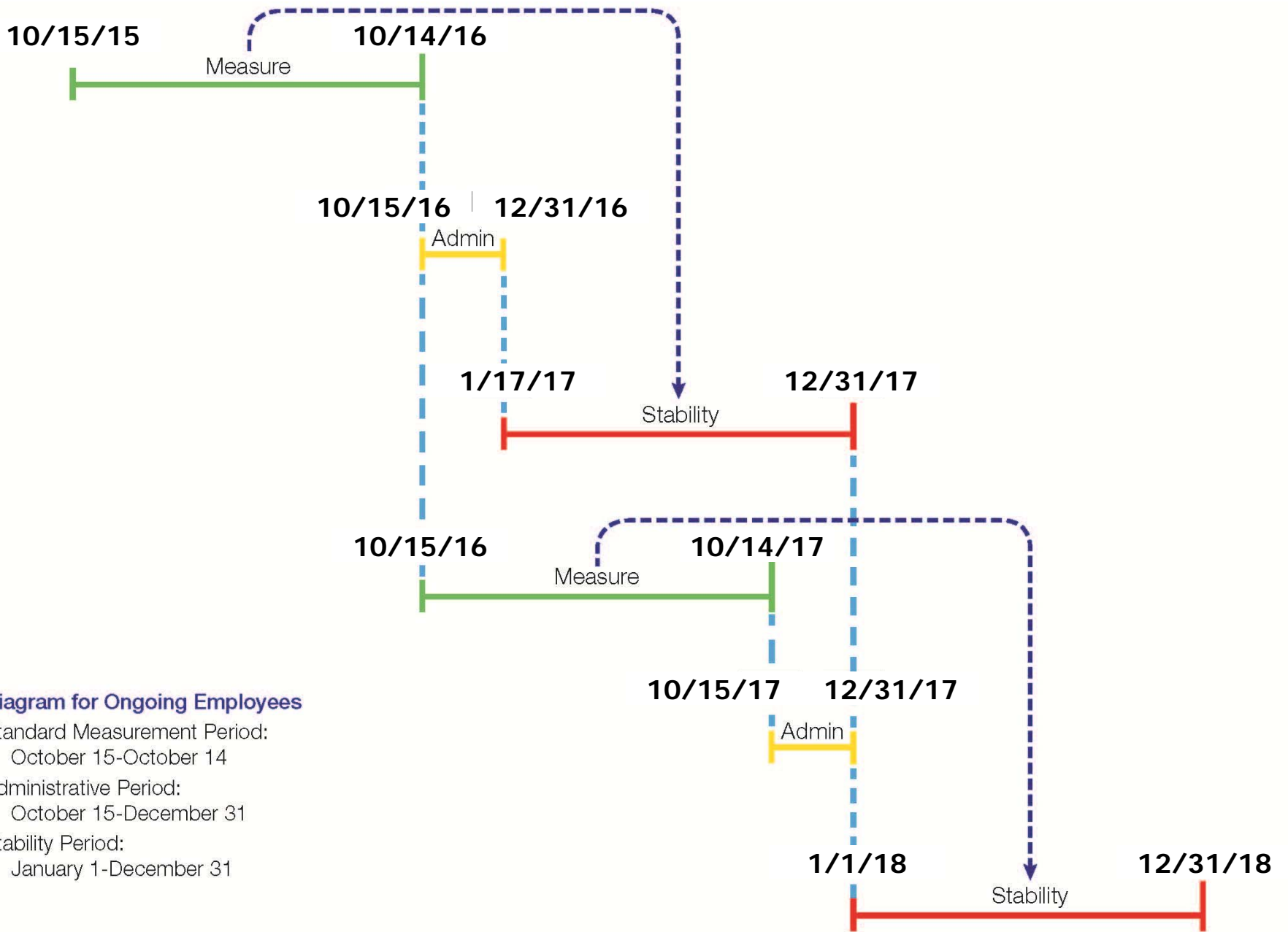


# Ongoing Employees

## *Example*

| Ongoing Employees<br>Year 1 |                                    |
|-----------------------------|------------------------------------|
| Standard Measurement Period | October 15, 2015-October 14, 2016  |
| Administrative Period       | October 15, 2016-December 31, 2016 |
| Stability Period            | January 1, 2017-December 31, 2017  |

| Ongoing Employees<br>Year 2 |                                    |
|-----------------------------|------------------------------------|
| Standard Measurement Period | October 15, 2016-October 14, 2017  |
| Administrative Period       | October 15, 2017-December 31, 2017 |
| Stability Period            | January 1, 2018-December 31, 2018  |



**Diagram for Ongoing Employees**

Standard Measurement Period:

October 15-October 14

Administrative Period:

October 15-December 31

Stability Period:

January 1-December 31

# The Look-Back Measurement Method: New Non-Variable Hour and Non-Seasonal Employees

- Three-month waiting period
- Employers will be penalized for not offering coverage to new employees within the first three months of employment, even if the employee works on average 30 or more hours per week. Employees must be able to enroll before the three months have concluded.
- If an employer does not offer coverage within the three months, it may be penalized for any months during which coverage was not offered, including the first three months.

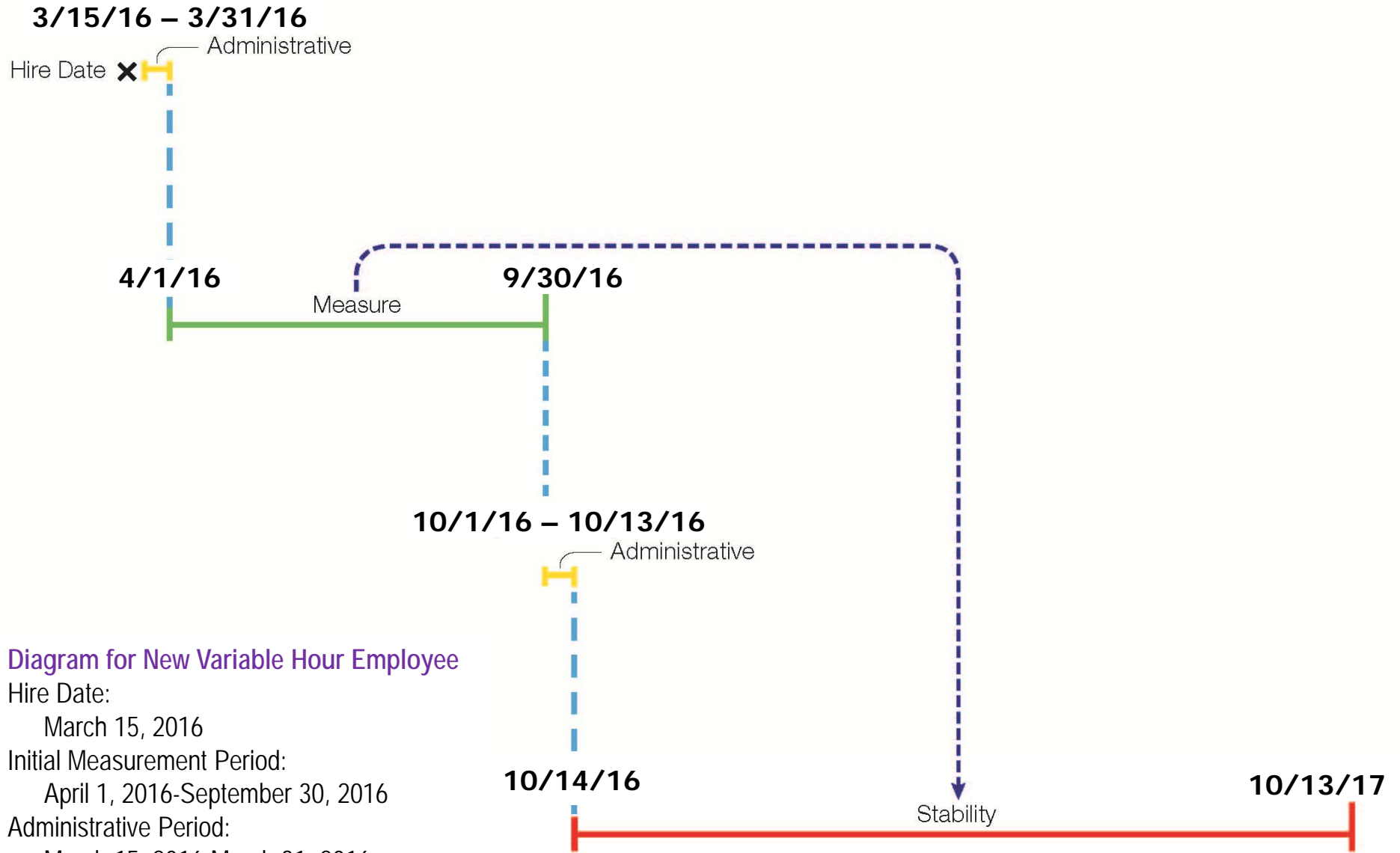
# The Look-Back Measurement Method: New Variable Hour and Seasonal Employees

- **Initial Measurement Period:** Between three and 12 consecutive months beginning no later than the first day of the next month after the employee begins employment
- **Administrative Period:** Up to 90 days
- **Stability Period:** At least six consecutive months and at least as long as the initial measurement period and the administrative period; must be the same length as the stability period for ongoing employees; cannot exceed remainder of standard measurement and administrative period for ongoing employees in which initial measurement period ends

# New Variable Hour Employees

## *Example*

| <b>New Employee—Hired March 15, 2016<br/>Year 1</b> |   |
|---|---|
| Initial Measurement Period                          | 5 months (April 1, 2016-September 30, 2016)   |
| Administrative Period                               | 30 days (March 15, 2016-March 31, 2016 [17 days])<br>(October 1, 2016-October 13, 2016 [13 days]) |
| Stability Period                                    | 12 months (October 14, 2016-October 13, 2017)   |



**Diagram for New Variable Hour Employee**

Hire Date:

March 15, 2016

Initial Measurement Period:

April 1, 2016-September 30, 2016

Administrative Period:

March 15, 2016-March 31, 2016

October 1, 2016-October 13, 2016

Stability Period:

October 14, 2016-October 13, 2017

# New Variable Hour Employees

## *Example*

- The Village of Candlewood has a 12-month standard measurement period beginning on October 15 and ending on October 14, a 78-day administrative period beginning on October 15 and ending on December 31 and a 12-month stability period beginning on January 1 and ending on December 31.
- For its new variable hour employees, the Village has designated an 11-month initial measurement period beginning on the employee's hire date, a one month administrative period and a 12-month stability period.
- Jane begins employment as a variable hour employee on September 1, 2016. Her work schedule varies, and the Village cannot reasonably determine whether she will be full-time. Thus, Jane is a new variable hour employee.
- On October 15, 2016, the Village begins to measure Jane's hours for standard measurement period purposes.

# New Variable Hour Employees

## *Example (continued)*

- The Village measures Jane's hours of service from September 1, 2016-July 31, 2017. The Village determines during the one-month administrative period that, except for during the month of July (an employment break), Jane averages 28 hours of service per week. Thus, Jane is not a full-time employee.
- The Village treats Jane as not full-time beginning on September 1, 2017.
- On October 14, 2017, the standard measurement period for ongoing employees concludes. Jane is now an ongoing employee and must transition to the ongoing schedule. This means the stability period is cut short on December 31, 2017. The Village will tally Jane's hours from October 15, 2016-October 14, 2017 and determine whether Jane is full-time. The determination remains in place during the stability period (January 1, 2018-December 31, 2018).



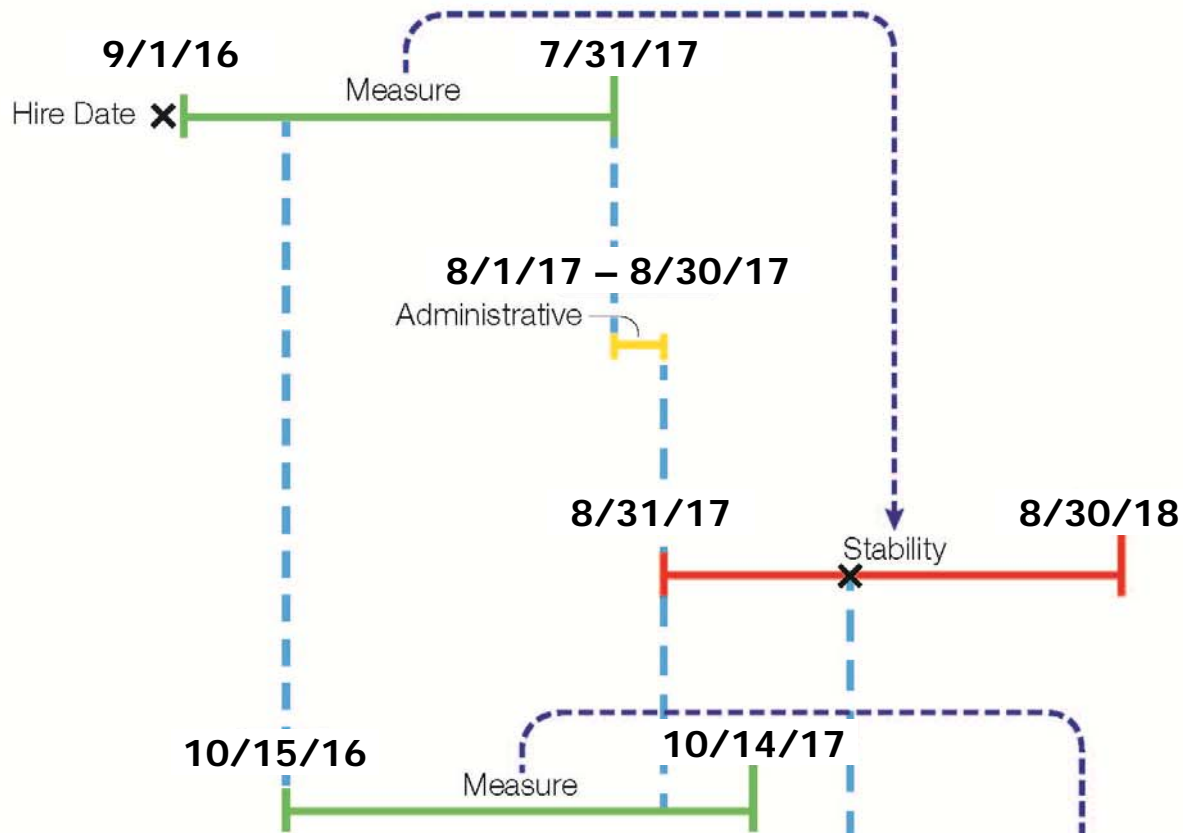
# New Variable Hour Employee: Transition to Ongoing Employee *Example*

## **New Employee—Hired September 1, 2016 First Measurement Period**

|                            |                                 |
|----------------------------|---------------------------------|
| Initial Measurement Period | September 1, 2016-July 31, 2017 |
| Administrative Period      | August 1, 2017-August 30, 2017  |
| Stability Period           | August 31, 2017-August 30, 2018 |

## **Ongoing Employee—Hired September 1, 2016 Second Measurement Period**

|                             |                                    |
|-----------------------------|------------------------------------|
| Standard Measurement Period | October 15, 2016-October 14, 2017  |
| Administrative Period       | October 15, 2017-December 31, 2017 |
| Stability Period            | January 1, 2018-December 31, 2018  |



**Diagram for Transition to Ongoing Employee**

Initial Measurement Period:  
September 1, 2016-July 31, 2017

Administrative Period:  
August 1, 2017-August 30, 2017

Stability Period:  
August 31, 2017-August 30, 2018

Standard Measurement Period:  
October 15, 2016-October 14, 2017

Administrative Period:  
October 15, 2017-December 31, 2017

Stability Period:  
January 1, 2018-December 31, 2018

10/15/17 – 12/31/17  
Administrative

1/1/18 Stability 12/31/18

## Key Takeaways

- Determine your goals
- Determine the best measurement method and time periods to meet those goals
- Establish your measurement method and time periods via a written, adopted resolution or policy
- Forward a copy of the resolution or policy to each union
- Maintain detailed records regarding your offer of coverage and hours of service calculations

# 90-Day Waiting Period

- Effective 1/1/14 (or, for non-calendar plan years, the first day of the plan year beginning after 1/1/14)
- 90-day period includes holidays and weekends and days during prior plan year, but excludes “reasonable and bona fide orientation period”
  - Orientation period cannot exceed one month
- Must be eligible to enroll before end of 90 days in addition to applicable orientation period
- Excludes variable hour employees in initial measurement period and associated administrative period

## Key Takeaways

- Review and update any policies, employment contracts and collective bargaining agreements that contain non-ACA-compliant waiting periods
- Establish a system for determining when the 90-day waiting period expires
- Maintain records regarding when an employee first becomes full-time

# Summary of Benefits and Coverage

- A Summary of Benefits and Coverage (SBC) is a standardized concise document prepared by a health insurance carrier that describes the benefits and coverage offered through a health insurance plan.
- Model is available at:  
<http://www.dol.gov/ebsa/pdf/SBCtemplate.pdf>

# When Must the SBC Be Provided?

For all plan years or open enrollment periods beginning on or after 9/23/12:

- Upon application to enroll in the plan (no later than seven business days following receipt of the health insurance application)
- By first day of coverage (if the SBC provided upon application for enrollment changed before the first day of coverage)
- Upon renewal
- Upon request
- When the plan makes any material change to any plan or coverage terms that is not reflected on the most recently provided SBC, notice of modification must be provided no later than 60 days prior to the effective date of the modification.

# How May the SBC Be Delivered?

- **For Enrollees:**

- Paper copy
- Electronic copy in accordance with 29 C.F.R. § 2520.104B-1 (limited to certain employees)

- **For Eligible Individuals Not Yet Enrolled:**

- Paper copy
- Electronic Copy





## Key Takeaways

- Determine whether you have the obligation to provide the SBC to employees
- Properly deliver the SBC
- Maintain detailed records regarding to whom the SBC was delivered, the date on which it was delivered, the reason for its delivery and how it was delivered

# Information-Reporting for Applicable Large Employers

- Effective for 2015 tax year
- Forms due on or before February 28 (March 1 if filed electronically) of following year
- Forms to be used for administering Section 4980H and eligibility for tax subsidies



# Information Reported to IRS

Information return (IRS Forms 1094-C and 1095-C) for each full-time employee showing:

- Name, address and employer ID number
- Employer's name and telephone number
- Calendar year for which information is reported
- Certification, by calendar month, whether full-time employees were offered the opportunity to enroll in minimum essential coverage
- Each full-time employee's share, by calendar month, of lowest cost monthly premium for individual coverage providing minimum value
- Number of full-time employees by calendar month
- Name address and tax ID number of each full-time employee during the calendar year and months when he/she was covered by the employer's plan

# Statement to Be Furnished to Each Full-Time Employee

- Form must include a written statement showing:
  - Name, address and employer ID number; and
  - All information required on IRS form with regard to the full-time employee
- Obligation can be satisfied by providing Form 1095-C to employee
- Statement must be provided by January 31

# Alternative Reporting Methods: Certification of Qualifying Offer

- Certify on transmittal form that made qualifying offer:
  - “Qualifying offer” is an offer of affordable, minimum essential coverage that provides minimum value to one or more full-time employees for all months of the year for which the employee was full-time, and includes offer to employees’ spouses and dependents
    - “Affordable” is based off of 9.5% of FPL
- Provide Form 1095-C to IRS
- Provide statement to each full-time employee to whom qualifying offer was made for all 12 months of calendar year

# Alternative Reporting Methods: Report without ID'ing Full-Time Employees

- Must meet other reporting requirements, but need not identify offer made to each full-time employee by calendar month if:
  - Certify that offered affordable minimum essential coverage that provides minimum value to at least 98% of full-time employees (and their dependents), regardless of whether employee is a full-time employee for purposes of Section 4980H for a particular calendar month of that year

## Key Takeaways

- Establish method for tracking hours of service on a calendar month basis
- Establish method for providing notices to employees
- Maintain detailed records regarding to whom the written statements were delivered, the date on which it was delivered and how it was delivered

# Excise Tax on High Cost Plans

## Effective in 2018

- 40% tax on excess over threshold
- Based on total cost of coverage; employer plus employee premium share

## Cost Threshold for Tax (indexed after 2018)

- \$10,200 Single, \$27,500 Family
- Increased by \$1,650 Single, \$3,450 Family:
  - For retired individuals age 55 or older and not eligible for Medicare
  - If majority of employees covered by the plan are:
    - Engaged in a high-risk profession (list in statute), or
    - Employed to repair/install electrical or telecommunications lines

Multiemployer plans use family threshold



# Cost Threshold

- Cost threshold based on COBRA cost of plan:
  - Lowering employee contributions does not affect the cost of the plan or the Excise Tax threshold
  - Consequently, the value of the plan must be lowered to avoid reaching the threshold—cost shifting to participants does not lower the value of the plan
- Age/gender adjustments
- Health cost adjustment increases thresholds if the actual growth in the cost of U.S. health care between 2010 and 2018 exceeds the projected growth for that period
- Excepted benefits not counted
- On-site medical clinic value counted



# Excise Tax Forecasting

## Health Plan

- Single coverage \$503 (400 participants)
- Family coverage \$1,389 (600 participants)

## Trend Factors

- Base: 8%
- Low: 6%
- High: 10%

## Threshold \$27,500

- Projected increase for 2019: CPI-U +1% (3.5%)
- 2020 and after: CPI-U (2.5%)

# Excise Tax Forecasting

## Sample Output 1

Client ABC Projections of the ACA Excise Tax Plan Name XYZ  
 Single Employer Basis, 2-Tier Rating  
**SINGLE COVERAGE**

Active Population  
**Per Employee Excise Tax**

| Calendar Year | Tax Free Threshold | Projected Single Cost @6.0% Trend | Expected Annual Excise Tax | Projected Single Cost @8.0% Trend | Expected Annual Excise Tax | Projected Single Cost @10.0% Trend | Expected Annual Excise Tax |
|---------------|--------------------|-----------------------------------|----------------------------|-----------------------------------|----------------------------|------------------------------------|----------------------------|
| 2018          | \$10,200           | \$8,078                           | \$0                        | \$8,869                           | \$0                        | \$9,721                            | \$0                        |
| 2019          | \$10,550           | \$8,562                           | \$0                        | \$9,578                           | \$0                        | \$10,693                           | \$57                       |
| 2020          | \$10,800           | \$9,076                           | \$0                        | \$10,345                          | \$0                        | \$11,762                           | \$385                      |
| 2021          | \$11,050           | \$9,620                           | \$0                        | \$11,172                          | \$49                       | \$12,939                           | \$755                      |
| 2022          | \$11,350           | \$10,198                          | \$0                        | \$12,066                          | \$286                      | \$14,233                           | \$1,153                    |

Active Population  
**Aggregate Excise Tax**

| Calendar Year | Enrollment | Projected Single Cost @6.0% Trend | Expected Annual Excise Tax | Projected Single Cost @8.0% Trend | Expected Annual Excise Tax | Projected Single Cost @10.0% Trend | Expected Annual Excise Tax |
|---------------|------------|-----------------------------------|----------------------------|-----------------------------------|----------------------------|------------------------------------|----------------------------|
| 2018          | 400        | \$3,231,012                       | \$0                        | \$3,547,546                       | \$0                        | \$3,888,415                        | \$0                        |
| 2019          | 400        | \$3,424,873                       | \$0                        | \$3,831,349                       | \$0                        | \$4,277,257                        | \$22,903                   |
| 2020          | 400        | \$3,630,365                       | \$0                        | \$4,137,857                       | \$0                        | \$4,704,983                        | \$153,993                  |
| 2021          | 400        | \$3,848,187                       | \$0                        | \$4,468,886                       | \$19,554                   | \$5,175,481                        | \$302,192                  |
| 2022          | 400        | \$4,079,078                       | \$0                        | \$4,826,397                       | \$114,559                  | \$5,693,029                        | \$461,212                  |

# Excise Tax Forecasting

## Sample Output 2

Client ABC Projections of the ACA Excise Tax Plan Name XYZ  
 Single Employer Basis, 2-Tier Rating  
**FAMILY COVERAGE**

Active Population  
**Per Employee Excise Tax**

| Calendar Year | Tax Free Threshold | Projected Family Cost @6.0% Trend | Expected Annual Excise Tax | Projected Family Cost @8.0% Trend | Expected Annual Excise Tax | Projected Family Cost @10.0% Trend | Expected Annual Excise Tax |
|---------------|--------------------|-----------------------------------|----------------------------|-----------------------------------|----------------------------|------------------------------------|----------------------------|
| 2018          | \$27,500           | \$22,306                          | \$0                        | \$24,491                          | \$0                        | \$26,844                           | \$0                        |
| 2019          | \$28,450           | \$23,644                          | \$0                        | \$26,450                          | \$0                        | \$29,528                           | \$431                      |
| 2020          | \$29,150           | \$25,063                          | \$0                        | \$28,566                          | \$0                        | \$32,481                           | \$1,332                    |
| 2021          | \$29,900           | \$26,566                          | \$0                        | \$30,851                          | \$381                      | \$35,729                           | \$2,332                    |
| 2022          | \$30,650           | \$28,160                          | \$0                        | \$33,319                          | \$1,068                    | \$39,302                           | \$3,461                    |

Active Population  
**Aggregate Excise Tax**

| Calendar Year | Enrollment | Projected Family Cost @6.0% Trend | Expected Annual Excise Tax | Projected Family Cost @8.0% Trend | Expected Annual Excise Tax | Projected Family Cost @10.0% Trend | Expected Annual Excise Tax |
|---------------|------------|-----------------------------------|----------------------------|-----------------------------------|----------------------------|------------------------------------|----------------------------|
| 2018          | 600        | \$13,383,326                      | \$0                        | \$14,694,456                      | \$0                        | \$16,106,388                       | \$0                        |
| 2019          | 600        | \$14,186,326                      | \$0                        | \$15,870,013                      | \$0                        | \$17,717,027                       | \$258,811                  |
| 2020          | 600        | \$15,037,505                      | \$0                        | \$17,139,614                      | \$0                        | \$19,488,730                       | \$799,492                  |
| 2021          | 600        | \$15,939,756                      | \$0                        | \$18,510,783                      | \$228,313                  | \$21,437,603                       | \$1,399,041                |
| 2022          | 600        | \$16,896,141                      | \$0                        | \$19,991,645                      | \$640,658                  | \$23,581,363                       | \$2,076,545                |

# Excise Tax Forecasting

## *Sample Output 3*

Client ABC Projections of the ACA Excise Tax Plan Name XYZ  
 Single Employer Basis, 2-Tier Rating  
**TOTAL ALL COVERAGE TIERS**

Active Population  
**Aggregate Excise Tax**

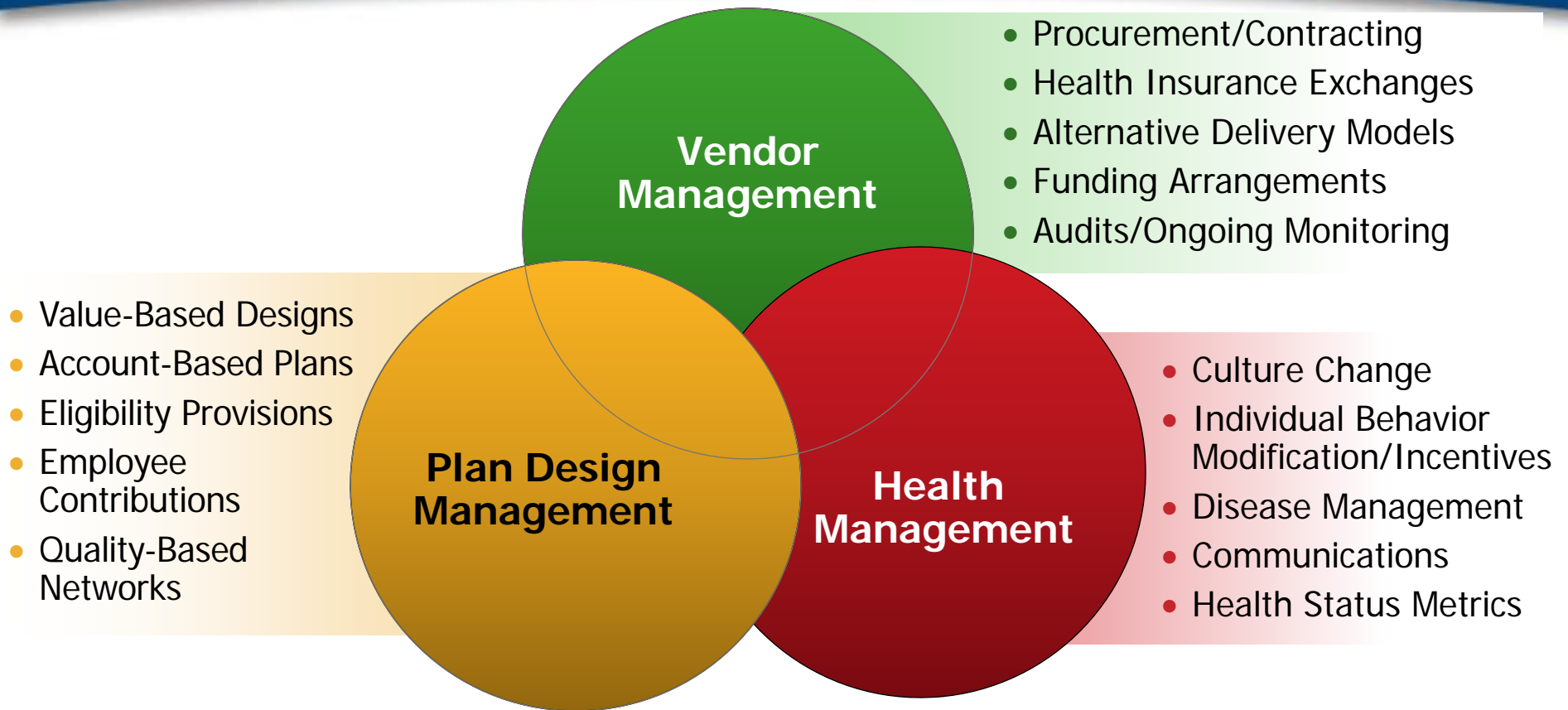
| Calendar Year | Enrollment | Projected Total Cost @6.0% Trend | Expected Annual Excise Tax | Projected Total Cost @8.0% Trend | Expected Annual Excise Tax | Projected Total Cost @10.0% Trend | Expected Annual Excise Tax |
|---------------|------------|----------------------------------|----------------------------|----------------------------------|----------------------------|-----------------------------------|----------------------------|
| 2018          | 1,000      | \$16,614,338                     | \$0                        | \$18,242,002                     | \$0                        | \$19,994,804                      | \$0                        |
| 2019          | 1,000      | \$17,611,198                     | \$0                        | \$19,701,362                     | \$0                        | \$21,994,284                      | \$281,714                  |
| 2020          | 1,000      | \$18,667,870                     | \$0                        | \$21,277,471                     | \$0                        | \$24,193,713                      | \$953,485                  |
| 2021          | 1,000      | \$19,787,943                     | \$0                        | \$22,979,669                     | \$247,867                  | \$26,613,084                      | \$1,701,234                |
| 2022          | 1,000      | \$20,975,219                     | \$0                        | \$24,818,042                     | \$755,217                  | \$29,274,392                      | \$2,537,757                |

# Key Takeaways

- Determine current baseline costs
- Forecast the costs to determine when Excise Tax may affect the plan
- Assess opportunities (i.e., population health risk profile, prevalent health risk factors, plan design features) to slow rate of increase to delay impact of Excise Tax
- Develop a strategy now to reduce cost of plan using—plan design, medical management, wellness, etc.

# Controlling Plan Sponsor Costs

## *Key Areas of Focus*



**To avoid the ACA Excise Tax, plan sponsors can deploy strategies in all three areas.**

# Price Waterhouse Coopers Study Shows Avoidable and Unnecessary Medical Care Contributes to Health Care System Costs



**Behavioral** \$493 billion (18.9%\*)

**Clinical** \$312 billion (11.9%\*)

**Operational** \$134 billion (5.1%\*)

**Total \$939 billion**

**In 2012, \$939 billion of the \$2.6 trillion spent on medical care in the United States was avoidable due to factors related to patient behaviors, clinical ineffectiveness, and operational inefficiency in the delivery of health care.**

\* **NOTE:** Percentage of total health dollars spent in 2012 in the United States that were avoidable or excessive  
DelaWELL is focused on behavioral factors, however, progress is being made through other avenues, i.e. grants, Governor's Council on Health Promotion and Disease Prevention, other committees, etc.

**Source:** PricewaterhouseCoopers Health Research Institute 2012 study, "The Price of Excess, Identifying Waste in Healthcare Spending"



# Unhealthy Behaviors Factor into the Cost of Avoidable Medical Care

- **Obesity/Overweight:** \$200B
- **Smoking:** \$191B
- **\*Non-adherence to drug regimens:** \$100B-\$290B
- **Alcohol abuse:** \$2B



**Over 50% of avoidable healthcare is attributable to preventable risk factors linked to behavior.  
Example: Overweight diabetic not controlling blood sugar level.**

\* New England Healthcare Institute 2012 study of medication non-adherence: \$290 billion. Pricewaterhouse Coopers Health Research Institute 2012 study of waste in the health care system: \$100 billion.

# Opportunity Cost of Patient Behavior

## Delaware Plan

- FY2013 Medical Costs\*      \$457,000,000
- FY2013 Drug Costs\*      \$133,000,000
- **Total**      **\$590,000,000**

\*Projected

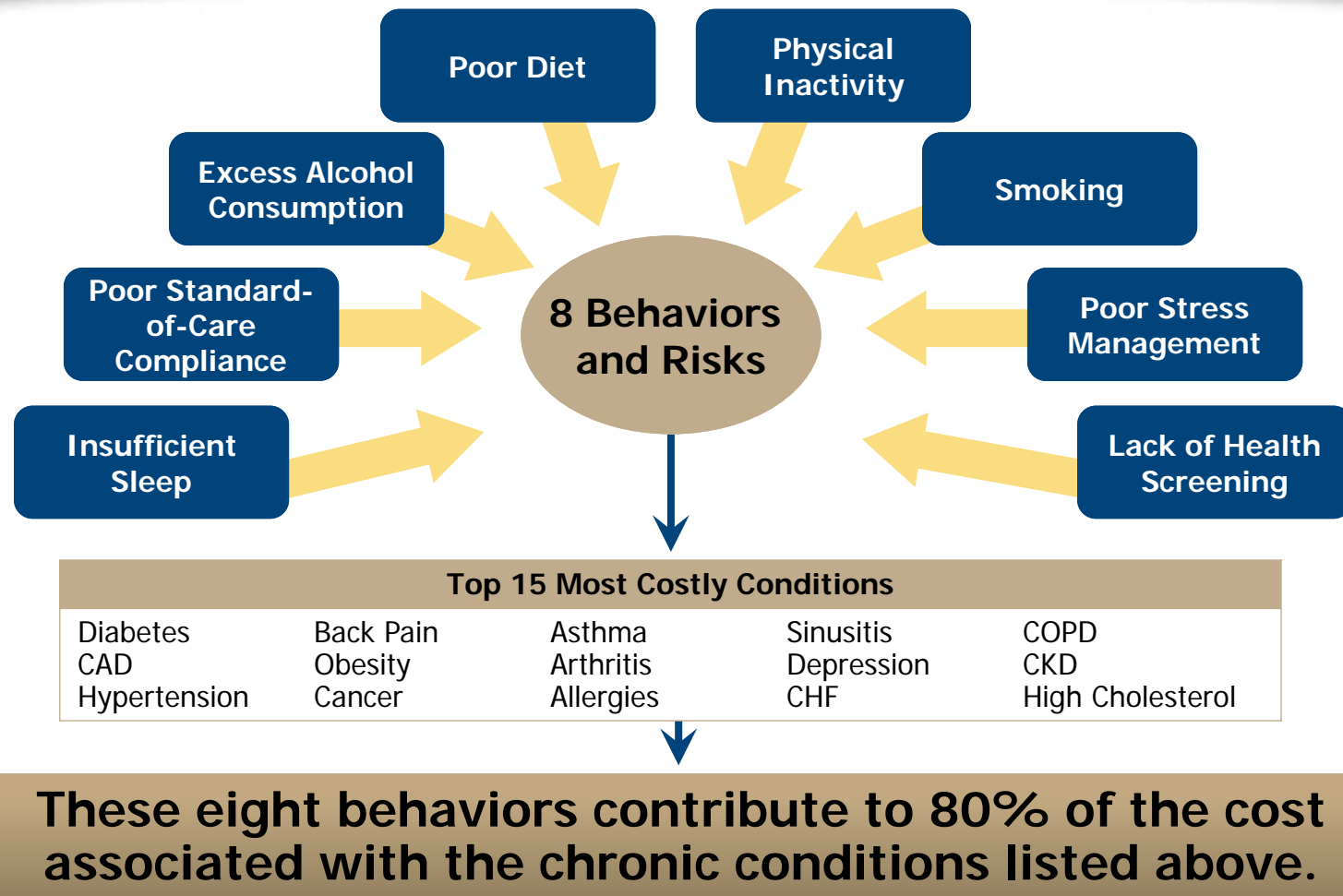
Applying the results of the study reported on the previous pages to Delaware, there is the potential to achieve savings as follows:

## Cost Associated with Unnecessary Medical Care

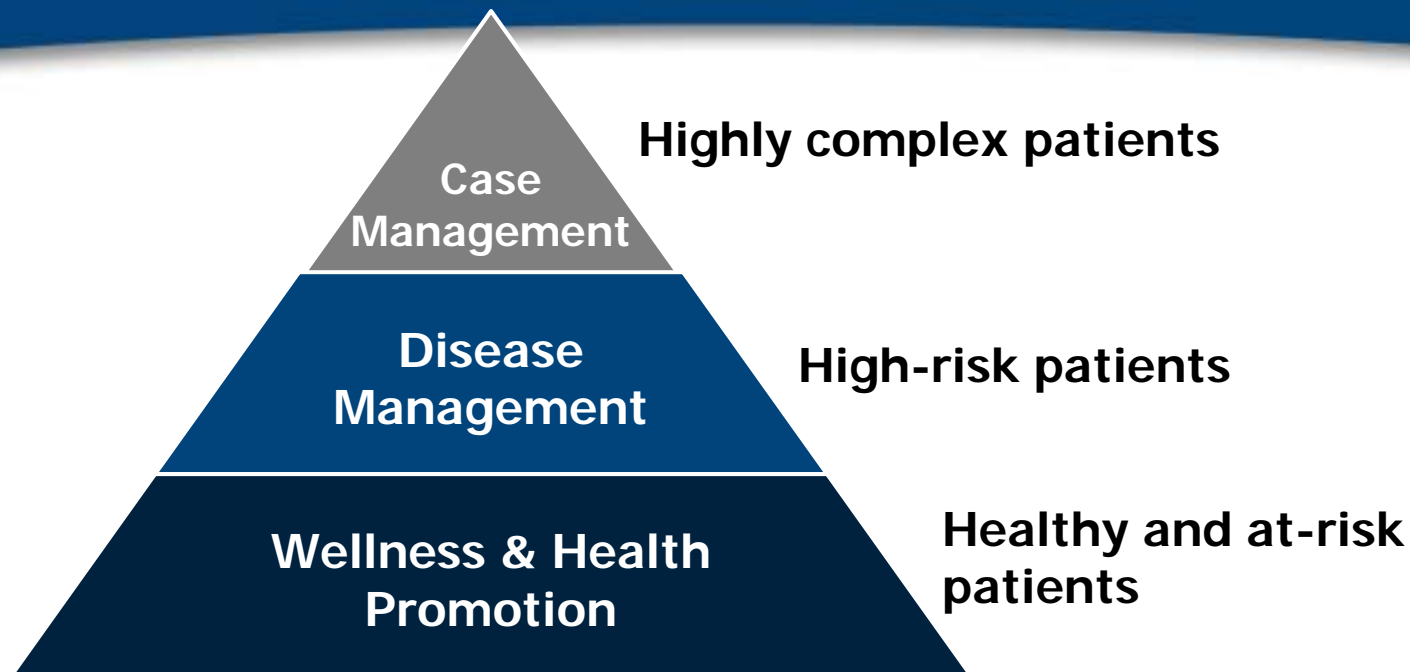
- Savings from Behavioral Modifications: **\$111,510,000** (18.9%)

**The employer has initiatives in place focused on improving participant behaviors that contribute to avoidable claims expenditures.**

# What Are the Participant Behaviors That Are Worth Managing or Influencing?



# The Success of Health Management Programs Depends on Active Engagement of Participants that Leads to Behavior Change



Initiatives should be in place to support the wide range of population needs. The challenge is to get participants to engage in the various initiatives and modify unhealthy behaviors.

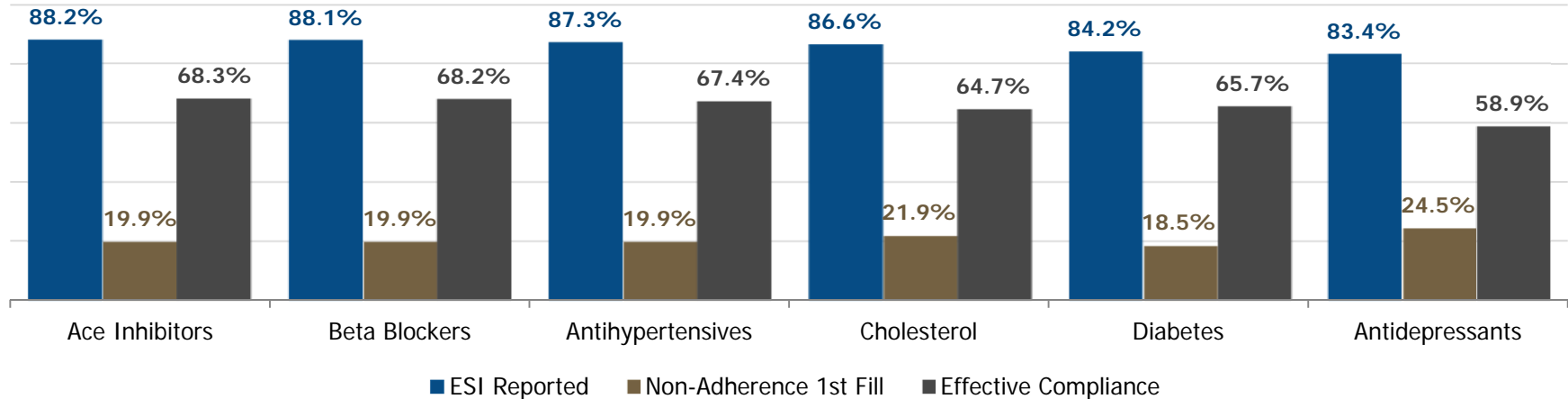
# Compliance Rates for Key Chronic Illnesses

| Condition                       | Test/Exam                          | Plan Sponsor Compliance | Norm |
|---------------------------------|------------------------------------|-------------------------|------|
| <b>Coronary Artery Disease</b>  | ACE Inhibitor/ARB Therapy          | 70%                     | 66%  |
|                                 | Event Cholesterol Test             | 76%                     | 65%  |
|                                 | Beta Blocker Therapy 6 Mos Post MI | 64%                     | 63%  |
|                                 | Annual LDL, HDL, Trigl.            | 80%                     | 70%  |
|                                 | Antiplatelet Therapy               | 21%                     | 45%  |
|                                 | LDL Lowering Drug Therapy          | 68%                     | 84%  |
| <b>Congestive Heart Failure</b> | ACE Inhibitor/ARB Therapy          | 76%                     | 61%  |
|                                 | Beta Blocker Therapy               | 70%                     | 72%  |
|                                 | LVF Assessment                     | 88%                     | 93%  |
| <b>Diabetes</b>                 | Annual LDL, HDL, Trigl.            | 74%                     | 67%  |
|                                 | Eye Exam                           | 42%                     | 30%  |
|                                 | Kidney Function                    | 79%                     | 74%  |
|                                 | Hemoglobin A1c                     | 80%                     | 74%  |

**Employer treatment compliance for people with chronic conditions is better than many populations.**

# Medication Adherence Opportunity to Improve

- ESI data indicates generally good compliance to prescribed medication; however, emerging research on prescription first fill rates suggest routine reporting of compliance may be overstated
- “28% – 31% of new prescriptions are not filled” —*Journal of General Internal Medicine 2010 April, 25(4) 284-290*
- For the State, adjusting the ESI reported compliance rates to account for estimated new prescriptions that are not filled, shows “effective compliance” may be significantly lower




ESI Reported Compliance = State specific medication possession ratio for 2012; Non-Adherence 1<sup>st</sup> Fill is non-State specific estimate of new prescriptions not filled, based on study from *Journal of Family Practice* 2011, June Vol. 60 No. 6. Effective Compliance is ESI Reported compliance less estimated Non-Adherence 1<sup>st</sup> Fill.

# Preventive Screening Rates Are Significantly Below Desired Levels

| Category                  | Criteria     | Recommended Frequency of Testing   | FY12Q3 | Norm  |
|---------------------------|--------------|--|--------|-------|
| Cervical Cancer Screening | Female 21-64 | Every 1-3 Years  | 39.8%  | 41.9% |
| Colon Cancer Screening    | Age 50-70    | <ul style="list-style-type: none"> <li>• Annual fecal occult blood test, or</li> <li>• A flexible Sigmoidoscopy every 5 years, or</li> <li>• Both annual fecal occult blood test and a flexible sigmoidoscopy every 5 years, or</li> <li>• A colonoscopy every 10 years</li> </ul> | 15.4%  | 18.8% |
| Breast Cancer Screening   | Female 40-69 | Every 1-2 years  | 50.7%  | 47.6% |
| Prostate Cancer Screening | Male, 50-70  | Annual visit   | 38.9%  | 40.8% |

**One of the issues seen is barriers to receiving care: unable to take time off work, too far to go to screening lab, unable to fast for blood tests.**

# State of Tennessee

| Program   | Incentive  | Criteria  |
|---|--|---|
| <p><b>Partnership PPO Plan</b></p> <p><b>Partnership Promise 2011, 2012, and 2013</b></p> <p><b>*Note: Members must meet the 2012 Partnership Promise requirements to remain eligible for the Partnership PPO in 2013</b></p> | <p><b>Subscribers/Spouses receive as part of the Partnership PPO plan:</b></p> <ul style="list-style-type: none"> <li>• \$25 premium reduction</li> <li>• \$350 reduction in annual deductible</li> <li>• \$5 to \$20 differential for medications related to diabetes, cholesterol and blood pressure if obtained from 90-day network or mail order</li> <li>• \$350 differential in out of pocket maximum</li> <li>• 90% of medical costs paid by the plan</li> </ul> <p><b>Disincentive:</b> Members who do not keep their promise are shifted to the lower benefit plan the following year</p> | <p><b>2011 Promise:</b> Subscribers/spouses must:</p> <ul style="list-style-type: none"> <li>• Take the health assessment online</li> <li>• Complete a biometric screening (i.e., blood pressure)</li> <li>• Complete preventive screenings (i.e., mammogram)</li> </ul> <p><b>2012 Promise:</b> Subscribers/spouses must:</p> <ul style="list-style-type: none"> <li>• Participate in health coaching or disease management if identified</li> <li>• Keep address, phone number and email, if they have one, current with their employer</li> </ul> <p><b>2013 Promise:</b> Subscribers/spouses** must:</p> <ul style="list-style-type: none"> <li>• Complete one healthy activity</li> <li>• Participate in health coaching or disease management if identified</li> <li>• Keep address, phone number and email, if they have one, current with their employer</li> </ul> |
|    |  | <p>** New employees must complete Wellness Assessment and screening with their physician within 120 days of their insurance coverage effective date</p>   |



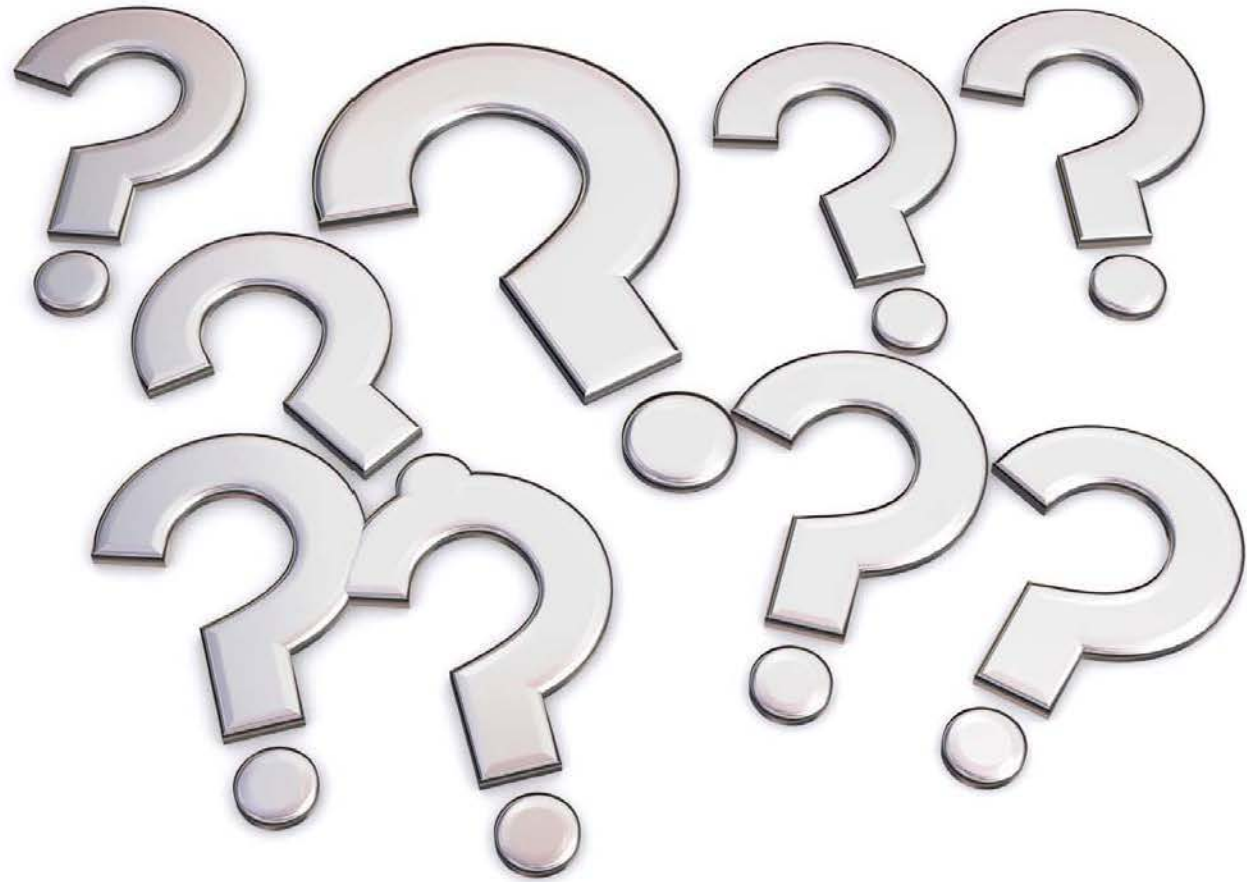
# State of Connecticut

| Program  | Incentive  | Criteria   |
|--|--|--|
| <p><b>Health Enhancement Program (HEP)</b></p> | <p><b>Members identified with chronic conditions:</b></p> <ul style="list-style-type: none"> <li>• Zero copay PCP/specialty</li> <li>• Reduced copays for medication adherence</li> <li>• \$100 cash reward for adhering to disease management program</li> </ul> <p><b>Disincentive:</b></p> <p>Penalty for nonparticipation:</p> <ul style="list-style-type: none"> <li>• \$100 monthly premium increase</li> <li>• \$350 (\$1,400) increase in annual deductible</li> </ul> | <p><b>All members:</b></p> <ul style="list-style-type: none"> <li>• Complete physical exam</li> <li>• Complete vision exam</li> <li>• Complete dental exams (twice per year)</li> <li>• Complete preventive screenings (i.e., mammograms)</li> </ul> <p><b>Members identified with chronic conditions:</b></p> <ul style="list-style-type: none"> <li>• Visit doctor twice per year</li> <li>• Adhere to disease management program</li> </ul> |



# Key Takeaways

- A lot of unnecessary and avoidable claims costs in all plans
- Plan sponsors have to get serious about addressing the issues of avoidable and unnecessary claim costs in plans
- Focus the population health strategy on those areas where opportunities are greatest
- Act now and don't assume that the Excise Tax is going away



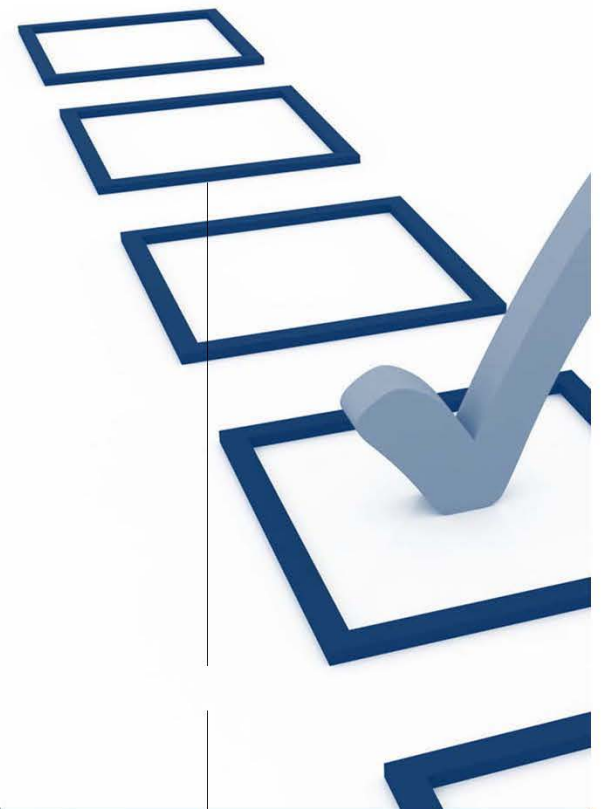
# Collective Bargaining Issues

- Reopen contracts
- Include reopener clause in new contracts
- Negotiate health insurance changes:
  - Plan options
  - Offer of coverage
  - Contribution rate
  - Measurement periods
  - Waiting period
  - Waiver for buyout
  - Cadillac Tax



# Human Resources Issues

- Payroll System
  - Integrate measurement method
  - Implement system for detecting when part-time employees are close to the 30-hour threshold
- Forms
  - Offer of coverage
  - Exchange Notice
  - COBRA Notice
  - Summary of Benefits and Coverage
  - W-2 Reporting
  - Information-Reporting



# 2015 Educational Programs

## –Public Plans–

### Trustees and Administrators Institutes

February 9-11, 2015

Lake Buena Vista (Orlando), Florida

[www.ifebp.org/trusteesadministrators](http://www.ifebp.org/trusteesadministrators)

### Washington Legislative Update

May 4-5, 2015

Washington, D.C.

[www.ifebp.org/washington](http://www.ifebp.org/washington)

### Wharton School Investment Courses

Portfolio Concepts  
and Management

April 27-30, 2015

Philadelphia, Pennsylvania

Alternative Investment  
Strategies

July 27-29, 2015

San Francisco, California

[www.ifebp.org/wharton](http://www.ifebp.org/wharton)

### Benefits Conference for Public Employees (System Highlight)

June 16-17, 2015

Albany, New York

[www.ifebp.org/publicemployee](http://www.ifebp.org/publicemployee)

Related Reading  
Available in the Bookstore:

*PSCA's 2014 403(b) Plan Survey*  
Item #9008

# The Affordable Care Act: Employer obligations and implementation strategies

Alyson Mathews, Esq.  
**LAMB & BARNOSKY, LLP**

September 27, 2013

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## What is the status of the employer mandate?

- Delayed until January 1, 2015
  - Pending legislation to change “30-hours” standard for full-time status to 40 hours
  - Transition rules are likely no longer applicable
-





# Employer Mandate Checklist

- ✓ Determine your overall goals for compliance with the ACA
  - ✓ Brainstorm about how to coordinate the implementation of the look-back measurement method within your existing health care benefits administration framework
  - ✓ Run sample scenarios to determine the durations of the standard measurement, administrative (if any) and stability periods which work best for your goals
-

# Employer Mandate Checklist

- ✓ Via resolution, designate the standard, administrative (if any) and stability periods for ongoing employees, and the initial measurement, administrative (if any) and stability periods for new variable hour employees
  - ✓ Determine your potential Section 4980H(a) and (b) liability (including whether your plan provides “minimum value”) and whether you want to make any changes
  - ✓ Prepare a form to be signed by each full-time employee memorializing your offer of health insurance coverage and the contribution rate
-



## What is the New York Health Benefit Exchange?

- Virtual marketplace where individuals and small businesses can purchase health insurance policies
  - Available plans and 2014 monthly rates are available at: [www.healthbenefitexchange.ny.gov](http://www.healthbenefitexchange.ny.gov)
-

# What is the New York Health Benefit Exchange?



The screenshot shows a Windows Internet Explorer browser window displaying the New York State of Health website. The address bar shows the URL <http://www.healthbenefitexchange.ny.gov/>. The browser's address bar also shows the user is logged in as "Smithtown, NY CSE Chairperson". The website header includes "New York State" and "State Agencies" with a search bar for "Search all of NY.gov". The main content area features the "nystateofhealth" logo and a navigation menu with links for "HOME", "WHAT IS AN EXCHANGE?", "INFO FOR YOU", and "NEWS & EVENTS". Below the navigation is a "RESOURCES" section. The main content area is dominated by a large banner image of a smiling woman in a bakery. The banner text reads: "New York State of Health: The Official Health Plan Marketplace". Below this, it says: "It's your place to shop, compare and enroll in a low-cost quality plan that's right for you. And it's the only place you can receive financial assistance based on your income, to lower your costs even more." A "Read More" link is provided. At the bottom of the banner, there are two yellow buttons: "Stay Informed" and "Connect with us".

New York State of Health | The Official Health Plan Marketplace for New York State - Windows Internet Explorer

http://www.healthbenefitexchange.ny.gov/

Smithtown, NY CSE Chairperson

Windows Live ny health benefit exchange

What's New Profile Mail Photos Calendar MSN Share

Sign in

New York State

State Agencies

Search all of NY.gov

**nystateofhealth**  
The Official Health Plan Marketplace

HOME WHAT IS AN EXCHANGE? INFO FOR YOU NEWS & EVENTS

RESOURCES

**New York State of Health: The Official Health Plan Marketplace**

It's your place to shop, compare and enroll in a low-cost quality plan that's right for you. And it's the only place you can receive financial assistance based on your income, to lower your costs even more.

[Read More »](#)

Stay Informed Connect with us



## **What is an employer's obligation with regard to the Healthcare Exchange?**

- By October 1, 2013, provide written notice to all current employees of the availability of the Healthcare Exchange
  - On and after October 1, 2013, provide same notice to any new employees upon hire (for 2014, within 14 days of the employee's start date)
-




## What information must be included in the Notice of Healthcare Exchange?

- Existence of Exchange, including a description of the services provided and the manner in which the employee may contact the Exchange to request assistance
  - Availability of premium tax credits if employee purchases insurance on the Exchange and eligibility criteria for same
  - Purchase of insurance on the Exchange may result in loss of employer's contribution and that all or a portion of that contribution may be excludable from income for federal income tax purposes
-



## How must an employer distribute the Notice of Healthcare Exchange form?


- First Class Mail
  - Electronic format (limited)
-



## To whom may an employer electronically distribute the Notice of Healthcare Exchange form?

- Employee who:
    - Has the ability to effectively access documents furnished in electronic form at any location where the employee is reasonable expected to perform his/her job duties; and
    - Has access to the employer's electronic information systems as part of integral part of his/her job duties
-





## Under what circumstances may an employer distribute the Notice of Healthcare Exchange form via electronic mail?

- Employer must take reasonable steps to ensure that:
    - Electronic delivery results in actual receipt of document (*i.e.*, using return-receipt or notice of undelivered e-mail features)
    - Confidentiality of each employee's information is protected
-

## Under what circumstances may an employer distribute the Notice of Healthcare Exchange form via electronic mail?

- Employer must provide notice to each employee that:
    - Apprises him/her of the document's significance which is not otherwise reasonably evident as transmitted (*i.e.*, "Attached is a document describing the benefits available to you pursuant to the New York Health Benefit Exchange."); and
    - Upon request, he/she will be provided with a paper version of the form (include in e-mail attaching notice)
-

# Where can an employer find a model Notice of Healthcare Exchange form?

- U.S. Department of Labor  
([www.dol.gov/ebsa/healthreform](http://www.dol.gov/ebsa/healthreform))
    - One form for employers which offer health insurance to some or all of their employees
    - One form for employers which do not offer health insurance
    - Both forms are available in MS Word format
-


## How does the Exchange Impact COBRA?

- COBRA Continuation Coverage Election Notice must inform qualified individuals of their coverage options through the Exchange
-



## Where can an employer find a revised model COBRA Continuation of Coverage Election Notice?

- U.S. Department of Labor  
([www.dol.gov/ebsa/healthreform](http://www.dol.gov/ebsa/healthreform))
    - Model form
    - Redlined Model form
-



## What is a Summary of Benefits and Coverage (SBC)?

- Standardized concise document prepared by a health insurance carrier that describes the benefits and coverage offered through a health insurance plan
-

## What information must be included on the SBC?

- Uniform definitions of standard insurance and medical terms (“Uniform Glossary”)
  - Description of coverage, including cost sharing, for specific categories of benefits
  - Exceptions, reductions and limitations of coverage
  - Cost-sharing provisions, including deductible, co-insurance and co-payment obligations
  - Renewability and continuation of coverage provisions
  - Coverage examples required by federal regulations for common benefit scenarios (*i.e.*, pregnancy; serious or chronic medical conditions)
-

## What information must be included on the SBC?

- A statement about whether the plan or coverage provides “minimum essential coverage” (for coverage beginning on or after January 1, 2014)
  - A statement indicating that the SBC is only a summary and that the plan document, policy, certificate or contract controls
  - Contact information for questions and obtaining a copy of the plan document or insurance policy, certificate or contract
  - Contact information for obtaining a list of network providers
  - Contact information for obtaining information on prescription drug coverage
  - Internet address for obtaining the Uniform Glossary and contact information to obtain a paper copy, and a disclosure that paper copies are available
-



## When must the SBC be provided?

- For all plan years or open enrollment periods beginning on or after September 23, 2012:
    - Upon application to enroll in the plan (no later than seven business days following receipt of the health insurance application)
    - By first day of coverage (if the SBC provided upon application for enrollment changed before the first day of coverage)
    - Upon renewal
    - Upon request
    - When the plan makes any material change to any plan or coverage terms that is not reflected on the most recently provided SBC, notice of modification must be provided no later than 60 days prior to the effective date of the modification.
-

## Who must provide the SBC to enrollees?

- For insured group employer plans and HMOs, the insurer and the employer determine who will be responsible (Empire Plan SBC's are available at: [www.cs.ny.gov/sbc/index.cfm](http://www.cs.ny.gov/sbc/index.cfm))
  - For self-insured plans, the employer
  - For an individual health plan, the insurer
-



## What is the penalty for not complying with the SBC requirements?

- \$1,000 for each covered individual (paid by the entity responsible for providing the SBC)
  - Only applies to willful noncompliance
-


## **What are the nondiscrimination rules with regard to highly compensated employees?**

- Regulations have not yet been issued
  - No obligation to comply until regulations are issued
  - Regulations will be “similar” to rules already in place for self-insured plans
-




## What are the nondiscrimination rules for self-insured plans?

- Plan cannot discriminate in favor of “highly compensated individuals” with regard to eligibility to enroll and the benefits provided
-



## What is the definition of “highly compensated individual?”

- Five highest paid officers of the employer
  - Shareholder who owns more than 10% in value of the company’s stock
  - Among the highest paid 25% of all employees
-



## What is the penalty for not complying with the nondiscrimination rules?

- \$100 per day per non-highly compensated individual who was discriminated against
  - If all non-highly compensated individuals were discriminated against, an employer could be penalized for \$100 per day times 75% of the number of employees (*i.e.*, all those who are not highly compensated) in the employer's workforce.
-

# What are the whistleblower protection rules?

- Prohibit retaliation against an employee who:
    - Reports an alleged violation of Title I of the ACA;
    - Testifies, or is about to testify, at a proceeding concerning an alleged violation;
    - Assisted or participated, or is about to assist or participate, at a proceeding concerning an alleged violation;
    - Objected to, or refused to participate in, any activity, policy, practice or assigned task that the employee reasonably believes is a violation of the ACA;
    - Receives a health insurance premium tax credit; or
    - Receive a cost-sharing reduction
-



# An Overview of the Whistleblower Complaint Procedure

- File complaint with OSHA within 180 days of aggrieved conduct
    - Employee must show that the protected activity was a contributing factor
  - OSHA investigates the complaint and issues a final order
  - Final order may be reviewed by U.S. Court of Appeals
  - Potential damages include back pay with interest, front pay, compensatory damages and up to \$1,000 in attorneys' fees
-

# Collective Bargaining Issues

- Reopener
    - Reopen existing contracts to change offer of coverage or contribution rate
    - Include in new contracts a reopener tied to ACA changes
  - Health Insurance
    - Plan options
    - Offer of coverage
    - Contribution rate
    - Measurement periods
    - Open enrollment
    - Waiting period
    - Waiver for buyout
    - Health Reimbursement Arrangement (HRA)
    - Health Savings Account (HSA)
    - Cadillac Plan Excise Tax
    - Flexible Spending Account
-

# Personnel Issues

- Payroll


- Integrate look-back measurement method
- Implement strategy for detecting when part-time employees are close to 30-hour threshold

- Forms

- Offer of coverage
  - Exchange Notice
  - COBRA Notice
  - Summary of Benefits and Coverage
  - W-2 Reporting
-

## What else should employers know?

- Employer reporting requirement delayed until January 1, 2015
  - Automatic enrollment continues to be delayed
  - “Minimum Value” calculator is available on-line
-



THIS PRESENTATION IS MEANT TO ASSIST IN GENERAL UNDERSTANDING OF THE CURRENT LAW AND MAY CONSTITUTE ATTORNEY ADVERTISING. IT IS NOT TO BE REGARDED AS LEGAL ADVICE. THOSE WITH PARTICULAR QUESTIONS SHOULD SEEK THE ADVICE OF COUNSEL.

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# Overview of Wellness Programs

- Program Goals:
  - Promote health and prevent disease
  - Keep healthy individuals healthy
  - Encourage unhealthy individuals to change their behavior to reduce or eliminate risk factors
- Incentives (“Carrot & Stick Approach”)
  - Carrot → Reward
    - Reduction in premium costs
    - Waiver of copays or deductibles
  - Stick → Penalty
    - Surcharge

# HIPAA Non-Discrimination Rules

- The Health Insurance Portability and Accountability Act (HIPAA) prohibits a group health plan from discriminating against similarly situated participants based upon health status.
- A wellness program is not a group health plan if, in general, the program is offered to all employees regardless of whether they are enrolled in the employer's health plan and the program does not provide any medical care.
  - Example: A wellness program that provides employees with a discounted gym membership is not a group health plan.

# HIPAA Non-Discrimination Rules

- Providing medical care may include:
  - Health assessments
  - Screenings
  - Immunizations
- In addition, a wellness program becomes a group health plan if it provides rewards or penalties with regard to premiums.
- The final wellness program regulations, as amended by the Affordable Care Act, set forth the requirements for wellness programs to comply with the HIPAA non-discrimination rules.
  - Regulations apply to any group health plan (grandfathered or nongrandfathered) and group health insurance issuers offering coverage for plan years beginning on or after January 1, 2014



# Two Types of Wellness Programs

- Participatory
  - Eligibility for reward is unrelated to a health factor; or
  - No reward offered
  - Must be available to all “similarly situated individuals,” regardless of health status
- Health-Contingent
  - Must satisfy a standard related to a health factor in order to obtain a reward; or
  - Must do more than a similarly situated individual based on a health factor to obtain the same reward

## Examples of Participatory Wellness Programs that Are Unrelated to a Health Factor

- Reimburse employees for all or part of cost for gym membership
- Reward for participation in diagnostic testing program (without regard to outcome)
- Encourage preventive care by waiving copay or deductible
- Reimbursement for participating in smoking cessation program (without regard to whether employee quits)
- Reward for attending a monthly, no-cost health education seminar
- Reward for completing health risk assessment regarding current health status

# Two Types of Health-Contingent Wellness Programs

- Activity-Only
  - Requires individual to perform or complete an activity that is related to a health factor in order to obtain a reward, but does not require a specific outcome
    - Examples: Diet or exercise program
- Outcome-Based
  - Requires individual to attain or maintain a specific health outcome in order to obtain a reward or avoid a penalty
    - Examples: Attain/maintain healthy BMI or cholesterol level

# Requirements for Health Contingent Programs

Generally, the same requirements apply to activity-only and outcome-based wellness programs.

- Frequency: Must be able to qualify for full reward at least once per year
- Size of Reward: up to 30% of total cost of employee coverage, or up to 50% if additional percentage is in connection with a program designed to prevent or reduce tobacco use
  - If spouses and dependents can participate in the wellness program, then the size of the reward is based on the total cost of the coverage in which they are enrolled.

# Requirements for Health Contingent Programs

- Reasonable Design:
  - Must have reasonable chance of improving the health of, or preventing disease in, participating individuals
  - Must not be overly burdensome
  - Must not be a subterfuge for discriminating based upon a health factor
  - Must not be highly suspect in the method chosen to promote health or prevent disease

# Requirements for Health Contingent Programs

- Uniform Availability and Reasonable Alternative Standards:  
must be available to all similarly situated individuals
  - Achieved by providing reasonable alternative standard (or waiver of otherwise applicable standard)
  - Differences between activity-only and outcome-based wellness programs

# Requirements for Health Contingent Programs

- Notice of Availability of Reasonable Alternative Standard:
  - All plan materials describing the terms of the wellness program must disclose the availability of a reasonable alternative standard (or the possibility of a waiver)
  - Must include contact information for obtaining a reasonable alternative standard
  - Must include a statement that the recommendations of an individual's personal physician will be accommodated
  - For outcome-based programs, must also include the availability of a reasonable alternative standard in any disclosure that an individual did not satisfy the initial outcome-based standard

## Uniform Availability & Reasonable Alternative Standard Activity-Only Wellness Programs

- Plan must provide a reasonable alternative standard for obtaining the reward (or waiver of otherwise applicable standard) for any individual for whom, for that period, it is:
  - Unreasonably difficult due to a medical condition to satisfy the otherwise applicable standard; or
  - Medically inadvisable to attempt to satisfy the otherwise applicable standard
- No obligation to determine a reasonable alternative standard in advance, but one must be furnished upon request or the condition for obtaining the reward must be waived.



## Uniform Availability & Reasonable Alternative Standard Activity-Only Wellness Programs

- All facts and circumstances are taken into account to determine whether the plan offered a reasonable alternative standard including, but not limited to:
  - If the reasonable alternative standard is an educational program, the program is made available by the plan (or assistance is given for finding one) and is free of charge.
  - If the reasonable alternative standard is a diet program, the plan must pay for the membership or participation fee, but not the cost of food.
  - Whether required time commitment is reasonable
  - If individual's personal physician states that a plan standard is not medically appropriate, plan must provide a reasonable alternative standard that accommodates the physician's recommendations.

# Uniform Availability & Reasonable Alternative Standard Activity-Only Wellness Programs

- A reasonable alternative standard may be participatory, activity-only or outcome-based
  - If participatory, the individual is eligible for the reward so long as he/she participates. No additional reasonable alternative standard must be provided if the individual elects not to participate.
  - If activity-only, a second reasonable alternative standard must be provided if the first reasonable alternative standard was unreasonably difficult to complete due to a medical condition or medically inadvisable to attempt to complete.
  - If outcome-based, must satisfy rules for outcome-based programs

# Uniform Availability & Reasonable Alternative Standard Outcome-Based Wellness Programs

- Plan must provide reasonable alternative standard (or waiver of otherwise applicable standard) for any individual who does not meet the initial standard based on the measurement, test or screening
  - Does not matter whether initial standard was unreasonably difficult
  - Does not matter whether initial standard was medically inadvisable to attempt to achieve
  - Cannot require physician verification that a health factor makes it unreasonably difficult to satisfy or medically inadvisable for the individual to attempt to satisfy the otherwise applicable standard as a condition of providing a reasonable alternative standard
- Whether plan furnished a reasonable alternative standard depends on the facts and circumstances (same rules as for activity-only)

# Uniform Availability & Reasonable Alternative Standard Outcome-Based Wellness Programs

- A reasonable alternative standard may be participatory, activity-only or outcome-based
  - If participatory, the individual is eligible for the reward so long as he/she participates. No additional reasonable alternative standard must be provided if the individual elects not to participate.
  - If activity-only, then a second reasonable alternative standard must be provided if the first reasonable alternative standard was unreasonably difficult to complete due to a medical condition or medically inadvisable to attempt to complete.
  - If outcome-based, must satisfy rules for outcome-based programs, subject to additional special rules.

# Uniform Availability & Reasonable Alternative Standard Outcome-Based Wellness Programs

- **Special Rules**

- Reasonable alternative standard cannot be a requirement to meet a different level of the same standard without additional time to comply that takes into account the individual's circumstances.
  - Example: If the initial standard is achieving a BMI of less than 30, the reasonable alternative standard cannot be to achieve a BMI of less than 31 as of the same deadline. A permissible reasonable alternative standard could be to reduce the individual's BMI by a small percentage over a realistic period of time, such as one year.
- Individual must be given the opportunity to comply with the recommendations of his/her personal physician as a second reasonable alternative standard, but only if the physician joins in the request. The individual may request to involve his/her personal physician's recommendations at any time, and the personal physician can adjust his/her recommendations at any time, "consistent with medical appropriateness."



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December 17, 2015

**BY EMAIL (csteers@portchesterny.com)**

Christopher Steers, Village Manager  
Village of Port Chester  
222 Grace Church Street  
Port Chester, NY 10573

Re: Village of Port Chester

Dear Mr. Steers:

Thank you and the Village Board for engaging Lamb & Barnosky, LLP, a limited liability partnership pursuant to New York State law ("the Firm"). We believe that it is important to share a clear understanding of the basis upon which the Firm will provide professional legal services to the Village. The purpose of this letter, therefore, is to confirm the terms and conditions pursuant to which the Village has engaged the Firm.

**1. Scope of Engagement**

The scope of this representation will include, effective as of January 1, 2016, serving as the Village's special counsel for providing advice and counsel on the Patient Protection and Affordable Care Act ("the ACA"). This will include, but not be limited to, assisting the Village with determining its potential liability, if any, pursuant to the ACA's employer shared responsibility provisions, assisting the Village with fulfilling the employer and health care provider reporting requirements and providing advice and counsel regarding the Village's ongoing ACA compliance.

**2. The Client's Duty to Cooperate**

The Village understands and agrees that, in order for the Firm to effectively represent the Village, it is necessary for the Village to assist and cooperate with the Firm. The Village agrees to: (1) make itself (including principals and employees, if applicable) available to discuss issues as they arise in this matter, and to make decisions regarding the matter when necessary; (2) attend and participate in meetings, conferences, preparation sessions, court and administrative proceedings and other activities in connection with the representation; (3) provide complete and accurate information and documents to the Firm on a timely basis; and (4) pay the Firm's invoices on a timely basis as provided herein.

**3. Responsibility and Team Members**

I will be the attorney of the Firm primarily responsible for the Village's representation. As appropriate, the Firm will draw upon the knowledge and skills of other attorneys in the Firm and may also assign legal assistants as appropriate.

**4. Keeping You Informed**

The Firm is committed to keeping the Village informed about our work on the Village's behalf. This includes letting the Village know who is working on each matter, updating the Village on the progress of the matter, advising the Village of any potential problems or delays, and keeping the Village notified of costs. To this end, the Firm will provide the Village with a report on the status of each matter as regularly as the Village requires. In the event the Village needs to reach one of our attorneys and the person sought is unavailable, please leave a message describing the nature and urgency of the inquiry. It is the Firm's policy to promptly respond to all inquiries.

**4. Fees, Expenses and Billings****(a) Legal Fees**

Our fees for services will be based upon a variety of facts, including the time and labor involved; the difficulty of the questions and the skill required to perform those services properly; time limitations imposed either by the Village or by the circumstances; the nature and length of the professional relationship between us; and the experience of the lawyers assigned to do the work. The hourly billing rates for attorneys and paralegals in our Firm vary and are re-adjusted periodically. Our hourly rates are attached.

Notwithstanding our current fee schedule, we have agreed to a retainer agreement that will include our professional services during the period from January 1, 2016 through December 31, 2016 at a fee of \$5,000, payable in equal monthly installments, plus reasonable expenses incurred. The retainer will cover a total of 25 hours, with any excess



hours billed at the rates set forth below. This retainer fee does not include any amounts which may be added to a particular invoice for disbursements and charges.

We have also agreed that time will be billed at our regular hourly rates, which will be capped at \$275 per hour for partners' and counsels' time, \$225 per hour for associates' time and \$150 per hour for paralegals', law clerks' and legal interns' time. These rates are subject to periodic adjustment. In the case of partners and counsel, adjustment usually occurs in January of each year; in the case of associates, adjustment usually occurs when they step up to the next level of seniority. Hourly billing will be in quarters of an hour (*i.e.*, 15-minute units per hour (four to the hour)) for time spent on the matter. These rates do not include any amounts that may be added to a particular invoice for disbursements and charges.

Depending upon the complexity of the matter, the specialized expertise brought to it, the extent to which the matter requires urgent attention or the deferral of other matters, and the results achieved, the Firm's fees may exceed our normal hourly rates, subject to the Village's approval.

**(b) Disbursements and Charges**

Beyond hourly fees, certain other costs and expenses may be incurred in this representation. These disbursements might include travel and mileage expenses, computerized legal research, process and subpoena service fees, filing fees, overnight mail fees and similar items. These costs and expenses will be billed in the same manner as our fees or we may ask the Village to make direct payment to the party making the charge. We will not charge you for day-to-day photocopying, domestic telephone calls, postage costing less than \$1 or facsimiles.

**(c) Billing Arrangements**

Statements of fees, disbursements and charges will be sent by the Firm to the Village on a monthly basis. The Village agrees that payment will be made within 30 days of receipt of the invoice. If the Village anticipates that payment will be delayed, please discuss this delay with us at the earliest possible opportunity. If the Village has any questions regarding an invoice, please immediately contact us so that we may promptly answer them.

**5. Communication Technology**

We are mindful of our obligation to safeguard our clients' proprietary, sensitive, or otherwise confidential information. It is important that we agree on the kinds of communication technology that will be employed in the course of this engagement. If there are particular forms of communication technology that the Village does not wish us to use, or if there are other specific safeguards that the Village would like us to put in

place, please promptly advise us of what they are. If the Village does not so advise us, we will presume that the Village has given its consent to, and accepted any risks attendant upon, the use of any means of communication that we deem to be appropriate (including cell phones, electronic mail and facsimiles).

**6. Files**

The Firm generally retains clients' files for at least seven years after conclusion of the matter for which representation was provided. However, once the matter has been concluded, the Village may take possession of the files at any time by delivering a written and signed request to the Firm. If, upon the expiration of seven years after conclusion of the matter, no request has been received, the Firm reserves the right to destroy the files without further notice to the Village.

**7. Questions and Termination**

The Firm has procedures to address any issue that the Village would like to raise, and we encourage the Village to inform us if at any time our services do not meet the Village's expectations. We will strive to promptly address any problem and in a professional manner.

The Village may end this relationship at any time by giving the Firm written notice, subject to the Village's obligation to pay us according to the terms of this Agreement and the legal doctrine of *quantum meruit*. The Firm, in turn, may withdraw from the representation upon written notice in the event that the Village fails to cooperate with us in any way that we may reasonably request, the Village fails to pay our invoices in full as submitted, or we determine in our reasonable discretion that it would be improper pursuant to the New York Rules of Professional Conduct or impractical to continue our relationship.

**8. Resolution of Disputes – Mediation and Arbitration**

Although we do not expect that differences will arise between us, we recognize that disagreements can happen and it is, therefore, wise to agree upon a procedure for fairly and expeditiously resolving them. Accordingly, if collection efforts made by the Firm including, without limitation, collection efforts made by our attorneys or staff, or by any outside agency retained by the Firm, are unsuccessful, then any dispute, controversy or claim arising out of or relating to our rendering of professional services to the Village, or our billed fees, disbursements and charges, will be submitted to private, confidential non-binding mediation with a mediator jointly selected by the Village and the Firm. If resolution through mediation is not possible, the dispute, controversy or claim will be finally resolved by private, confidential binding arbitration as follows: (a) to the extent that the New York Fee Dispute Resolution Program (Part 137 of 22 NYCRR), which provides for the informal and expeditious resolution of fee disputes between attorneys

and clients, applies to the dispute, controversy or claim, then resolution will be in accordance with the rules and procedures of the Fee Dispute Resolution Program (a copy is available upon request); or (b) if the Fee Dispute Resolution Program does not apply to the dispute, controversy or claim, then the arbitration will be conducted in Suffolk County in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and any decision or award issued in that arbitration will be final and binding and non-appealable.


**9. Entire Agreement**

This letter represents the entire agreement between us concerning the terms and conditions of this engagement. By signing below, the Village acknowledges that this letter has been reviewed and understood and that the Village agrees to be bound by its terms and conditions. By signing this retainer letter, the Village consents to being listed as one of the Firm's clients in any of our promotion-related materials or activities. The Village's permission to be listed can be revoked by the Village at any time. No change or waiver of any of the provisions of this letter will be binding on either the Village or the Firm unless the change is in writing and signed by both the Village and us.

If the Village is in agreement with the foregoing terms and conditions, please sign and return a copy of this letter to us.

Once again, we thank the Village for engaging Lamb & Barnosky, LLP as your ACA counsel!

Very truly yours,



Alyson Mathews

AM:rf

AGREED:

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Dated: \_\_\_\_\_

**2015 ATTORNEY AND PARALEGAL BILLING RATES**

| <b><u>Partners</u></b> | <b><u>2015<br/>Hourly Rates</u></b> |
|------------------------|-------------------------------------|
| Eugene R. Barnosky     | \$500                               |
| Sharon N. Berlin       | \$450                               |
| Robert H. Cohen        | \$450                               |
| Michelle S. Feldman    | \$425                               |
| Marcia L. Finkelstein  | \$425                               |
| Steven Godsberg        | \$550                               |
| Michael J. Heller      | \$490                               |
| Scott M. Karson        | \$450                               |
| P.L. Lamb              | \$750                               |
| Joel M. Markowitz      | \$525                               |
| Alyson Mathews         | \$375                               |
| Jeffrey A. Zankel      | \$525                               |
| Richard K. Zuckerman   | \$550                               |

LAMB & BARNOSKY, LLP

| <u>Counsel</u>      | <u>Hourly Rates</u> |
|---------------------|---------------------|
| Patricia C. Delaney | \$350               |
| Mara N. Harvey      | \$330               |
| Douglas E. Libby    | \$325               |
| Diane J. Moffet     | \$350               |
| Michael F. Mullen   | \$400               |
| Richard A. Shane    | \$350               |
| Rita F. Sheena      | \$300               |
| <u>Of Counsel</u>   |                     |
| Gary Holman         | \$430               |
| Arthur A. Lane      | \$500               |
| Thomas A. O'Rourke  | \$300               |
| <u>Associates</u>   |                     |
| Jacob Chase         | \$250               |
| Lindsay T. Crocker  | \$330               |
| Gregory A. Gillen   | \$300               |
| Candace J. Gomez    | \$300               |
| Matthew J. Mehnert  | \$300               |
| Lauren Schnitzer    | \$300               |
| Alyssa L. Zuckerman | \$250               |

**LAMB & BARNOSKY, LLP**

**Legal Assistants**

|                    |       |
|--------------------|-------|
| Janice Byington    | \$175 |
| Kinda M. Jefferson | \$175 |
| Elizabeth A. Leux  | \$175 |
| Jacqueline Power   | \$175 |
| Virginia Spagna    | \$175 |




# Village of Port Chester

Office of the Village Manager

## MEMORANDUM

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**TO:** Mayor and the Board of Trustees



**FROM:** Christopher D. Steers, Village Manager

**DATE:** December 21, 2015

**RE:** Updates

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### **INITIATIVES/PRIORITIES:**

- **Strategic Planning: Strategic Actions** (*Opportunity Areas #1 Downtown TOD, #2 Downtown: Municipal Center, #3 Waterfront Redevelopment/Revitalization, #4 Fox Island, #5 United Hospital Site Redevelopment*). We continue to move forward with various strategic planning initiatives (see *Planning and Economic Development activities report* for more detail).

#### **1) Opportunity Area #1:**

- **Retail D (Background & Status):** Applicant, G&S Port Chester LLC, has submitted a formal zoning petition pursuant to §345-34 to the Board of Trustees regarding former “Coney’s lot” (aka “Retail D”/“Unit 2B”). Again, the Applicant presented zoning petition to the BOT April 2015 and to the Planning Commission May 2015. Applicant submitted revised petition October 2015 which included incorporation of Planning Commission, Board, and Staff comments. The Board adopted a resolution scheduling a presentation by the Applicant for Oct. 19 with a subsequent joint public hearing with the Planning Commission on November 2, 2015.

**Amended Petition:** The Applicant’s amended zoning petition reduces the total square footage of allowed development to approximately 72,000 square feet (from 90,000 sqft) to include approximately seventy-nine (79) rental dwelling units comprised primarily of studios and one-bedroom units and includes a density bonus provision: specifically, the Applicant requests the following bulk and density regulations applied:

- Maximum building height: 5 stories/70 feet

- Maximum Floor Area Ratio: 3.7;
- Minimum Lot Area per Dwelling Unit: 240 sq. ft.
- Front/Side/Rear Setbacks: None.
- Usable Open Space per Unit: None.

**Next Steps:**

- The joint public hearing is adjourned until January 4, 2016; the Applicant is working concurrently with staff to provide additional material for Board consideration regarding potential environmental impacts and all required analysis under SEQRA.
- Village consultants and staff reviewing additional material submitted regarding potential environmental impacts, as requested, in preparation of January 4 public hearing.

**2) Opportunity Area #2:** The National Development Council (NDC) has been engaged by the BOT to study the feasibility of developing a municipal center. The scope of work is to be conducted in phases leading up to an indicative Guaranteed Maximum Price for the construction of the building.

- The Appraisals for 222 Grace Church Street and 350 N Main Street came in and are summarized as follows:
  - **222 Grace Church Street**  
 Fee Simple Interest- Senior Center Building- \$1.28 Million  
  
 Fee Simple Interest- Village Office Building- \$6.67 Million  
 Fee Simple Interest- Assumed Nursing Home Conversion- \$11.9 Million
  - **305 N. Main**  
 Fee Simple Interest- As though Vacant- \$1.79 Million  
 Fee Simple Interest- As is- \$1.8 Million

**Municipal Center Subcommittee**

- Per Board and Committee recommendation Trustee Ceccarelli and I held a conference call with McClaren, Wilson, & Lawrie Architects and Planners relating to the subject study, related programming needs, and construction cost. Mr. McClaren’s initial comments on the NDC/STV Programming Analysis and Construction estimates were quite favorable, based upon cursory review. I have asked Mr. McClaren for a scope of services and cost in order for him to render a formal opinion.



- 3) **Opportunity Area #3:** Bulkhead: DOS-LWRP FY2013-2014: awarded \$225,420 for design and construction plans + permits. BOT authorized budget amendment for dedicated fund for grant. The required Steering Committee has been established. Boswell Engineering is now in the data gathering phase. The anticipated Schedule is attached for your information.
- 4) **Opportunity Area #5:** Redevelopment of the former United Hospital Site (Starwood). The Mixed-use redevelopment proposal for the former United Hospital site located within the Village's PMU Planned Mixed Use District to permit: 500 "Millennial" housing units, 240 age-restricted housing units, an approx. 138-key limited service hotel, 100,000-200,000 square feet of medical office, approx. 90,000 square feet of retail, ample public and green space, and improved access to Abendroth Park.
- **Status:** Preliminary DEIS provided by Applicant December 30, 2014. Applicant submitted revised DEIS documentation May, June and July 2015 for consultant and staff review for completeness per SEQRA law. BOT adopted Applicant's DEIS as complete July 20, 2015. First SEQRA public hearing scheduled August 25, 2015, second scheduled September 21, 2015 with time devoted to traffic discussion. Topic specific public hearing Oct 5 for school, fiscal, and community facility impacts. Public comment closing October 30, 2015. Applicant currently preparing draft Final Environmental Impact Statement.
    - **AKRF:** reviewed the DEIS pursuant to SEQRA and delivered comments and recommendations regarding the substantive content of the DEIS. The Economics analysis is also underway: the applicant has shared confidential financial information, and this has started the in-depth economic analysis. An in depth update was provided at the prior regular meeting.
    - Staff has been meeting with AKRF and the applicant routinely (weekly) to keep forward progress. On Thursday 12/17 I met with our Village Engineer and the applicant's Engineer and successfully worked out a few obstacles to the completion of the FEIS. More updates will be provided as they become available.

#### **ACTIONS:**

- **MTA Capital Projects:** Met again with representatives from MTA on 12/17/15 regarding the Willet Avenue bridge replacement. Progress has been made on project staging and management aimed at minimizing the impacts to downtown and other negative effect to traffic flows. MTA still has not completed adequate traffic analysis. Staff and consulting engineers continue to work with MTA to complete a more viable plan. Attached are other pending MTA capital projects. NOTE: each project may require board approvals at some level and will be brought to BOT at appropriate time.

➤ **New York State Consolidated Funding Application:**

- We have received a grant award relating to the Village's 150<sup>th</sup> anniversary in the amount of \$10,000. As we approach this tremendous milestone in the Village's history it gives us an opportunity for the development of some real strategies for marketing, branding, etc. Again, staff has proposed the formation of a steering committee to complete specific beautification projects in anticipation of the Village's 150<sup>th</sup> anniversary in 2018. Board input is requested on the formation of the committee and the initiative. Possible projects include:
  - Streetscape improvements
  - Area branding
  - Placemaking Charette
  - Historic preservation designation
  - New/improved greenspace and/or bike and pedestrian amenities
  - Area-wide programs/events/initiatives
- We are also the Beneficiaries of the recent CFA award to the Village of Sleepy Hollow. They are Acting as the Lead Agency administering a grant award of \$343,854 by NYS DEC for 18 communities (with MS4 permits) to complete the mapping of their municipal storm water systems utilizing the latest technology available.

➤ **New York State Environmental Facilities Corporation – State Revolving Fund:** This is a new state program to facilitate the replacement and repair of wastewater infrastructure and to fund projects that will result in the greatest reduction in risk to public health. Eligible projects include rehabilitation of wastewater treatment plants, repair/rehabilitation of sanitary sewers, and energy efficiency upgrades to wastewater treatment plants. Staff consulted with Village Engineer and Dept. of Environmental Conservation plus offices of Senator Latimer and Assemblyman Otis. Staff submitted Intended Use Plan (IUP) applications by Sept. 4 deadline and received confirmation of such projects added to the IUP. Awards are announced at year-end 2015. Staff working with Village Engineer and Millennium Strategies for anticipated 2016 follow-through.

**DEPARTMENT UPDATES:**

➤ **Treasurer's Office:**

The contract for the new Payroll/Time Clock System has been executed. The kick off meeting has been held. The new server and Software has been installed and tested. Walk through for the placement and installation of Remote Data Terminals (RTD's) to occur within the next two weeks. Data entry is ongoing. Live testing and go live within the next 3-4 weeks beginning in Justice Court and Fire Department. Procedure manual in development.

➤ **Engineering:**

- **Flow Monitoring:** On going
- **Smoke Testing / Manhole Inspections:** On going.
- **Television Inspection:** On going.
- **Sewer Repairs: On going.**
- **Glen Ave & N. Ridge Traffic Signal:** Bids are scheduled to go out the week of December 21st with return of responses due the first week of January. Estimated completion between the end of January and the middle of February (based on date of bid award).

➤ **Village Attorney:** See attached report.

➤ **Voter Education Coordinator:** See attached report.

➤ **Justice Court:** See attached report.

➤ **Parks and Recreation:** See attached Report.

➤ **Planning and Economic Development:** See Planning and Development Assistant Director's report attached.

➤ **Police Department:** See Police Chief's report attached.

➤ **Senior Center / Nutrition:** See report attached

➤ **Staffing (for information only):** Note: Civil Service rules and regulations add an excessive amount of time and energy to the hiring process.

- The Planning and Development Director Position: I will be bringing a recommendation to the Board for an appointment of same on or about January 4<sup>th</sup>. Again, as a critical position will be recommending the finalist that is not only best qualified but who will also continue to challenge us on moving the Village forward.
- The Village Engineer's position: An offer of employment was made to the finalist. Approvals were received from Westchester County HR and NYS. The preferred applicant met with staff this past Monday, and this past Thursday declined to accept the position. Staff is coordinating secondary interviews with the next finalist.
- The Building Inspector List has been received and is currently being canvassed.
- The Code Enforcement Director position has been advertised.

Attachments

CC: Senior / Executive Staff  
Maryanne Veltri, Office Assistant File





**VILLAGE OF PORT CHESTER**  
**DEPARTMENT OF PLANNING & DEVELOPMENT**

**222 Grace Church Street, Rm. 202**  
**Port Chester, NY 10573**  
**(P) 914.937.6780**  
**(F) 914.939-2733**

Jesica Youngblood, Assistant Director of Planning  
and Development  
Andrea Sherman, Assistant Planner  
Constance Phillips, Planning Commission Secretary

**ACTIVE PLANNING AND DEVELOPMENT INITIATIVES**

**PLANNING**

| INITIATIVE   | SUMMARY   | STATUS   |
|--|---|--|
| Redevelopment of the former United Hospital Site (Starwood)                          | Mixed-use redevelopment proposal for the former United Hospital site located within the Village’s PMU Planned Mixed Use District to permit: 500 “Millennial” housing units, 240 age-restricted housing units, an approx. 138-key limited service hotel, 100,000-200,000 square feet of medical office, approx. 90,000 square feet of retail, ample public and green space, and improved access to Abendroth Park. | Preliminary DEIS provided by Applicant December 30, 2014. Applicant submitted revised DEIS documentation May, June and July 2015 for consultant and staff review for completeness per SEQRA law. BOT adopted Applicant’s DEIS as complete July 20, 2015. First SEQRA public hearing scheduled August 25, 2015, second scheduled September 21, 2015 with time devoted to traffic discussion. Topic specific public hearing Oct 5 for school, fiscal, and community facility impacts. Public comment closing October 30, 2015. Applicant currently preparing draft Final Environmental Impact Statement. |
| Lot Line Adjustment  | Land subdivision law amendment to allow for administrative approval of minor lot line adjustments or apportionments that will not create additional buildable lots or alter zoning districts.   | Local law adopted July 6, 2015.  |
| School Children Generation Mitigation Formula (Funded, initiated by the Village IDA) | Development of mitigation formula applicable to multi-family residential development seeking to provide monetary contribution to any additional impact to the school district as a result of the project.   | Presentation to BOT, December 2014. Consultant revised final document to include additional multi-family development examples.   |



**VILLAGE OF PORT CHESTER**  
**DEPARTMENT OF PLANNING & DEVELOPMENT**

**222 Grace Church Street, Rm. 202**  
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Jesica Youngblood, Assistant Director of Planning  
and Development  
Andrea Sherman, Assistant Planner  
Constance Phillips, Planning Commission Secretary

|  |   |   |
|--|---|---|
| Project Proposal Forms                   | Intake and processing of proposals which may require review by the Planning Commission, Zoning Board, and Waterfront Commission.  | Ongoing. Allow for tracking market trends relative to existing zoning provisions.   |
| Planning Workshops                       | Workshop meetings with the Planning Commission to discuss various topics regarding the implementation of Comprehensive Plan recommendations and zoning amendments for BOT review. | Ongoing.  |
| Village-School District Liaison Meetings | Purposed to provide collaborative forum for projects and initiatives that involve both the school district and Village.   | Meetings ongoing since early 2015. Most recent meeting held December 10 at Village Hall.  |
| Redevelopment of "Retail D"              | Redevelopment proposal to amend the Marina Urban Redevelopment (MUR) Plan and Section 345-67 of the Village Code to create a mixed use project.                                   | Applicant presented zoning petition to the BOT April 2015 and to the Planning Commission May 2015. Applicant submitted revised petition October 2015 which included incorporation of Planning Commission, Board, and Staff comments. The Board adopted a resolution scheduling a presentation by the Applicant for Oct. 19 with a subsequent joint public hearing with the Planning Commission on November 2, 2015. The joint public hearing is adjourned until January 4, 2016. Village consultants and staff reviewing additional material submitted regarding potential environmental impacts, as requested, in preparation of January 4 public hearing. |

**GRANTS**

| <b>INITIATIVE</b>   | <b>SUMMARY</b>  | <b>STATUS</b>   |
|---|---|---|
| <p>Grant Writing Services:<br/>Millennium Strategies, LLC</p>                         | <p>A major priority of the village continues to be grant application submissions throughout local, state and federal sources. A professional grant writing firm to augment services provided by village staff bolsters successful applications.</p>   | <p>BOT awarded contracted grant writing services to Millennium Strategies, LLC on Sept. 21, 2015.</p> <p>Millennium and Staff are currently preparing application for the 'Assistance to Firefighter's Grant.' Application made available early December 2015 with applications due January 15, 2016. Had consultations with the fire chiefs regarding priorities both for training and equipment.</p> <p>Pre-planning efforts underway for hazard mitigation and green infrastructure projects under FEMA and New York State. Continued work with Village Engineer to solidify project work.</p> |
| <p>Dept. of State Grant: Bulkhead Design and Construction Documentation + Permits</p> | <p>Application, management and oversight of awarded 2013 Department of State Local Waterfront Revitalization Program grant for the repair of the collapsed bulkhead with new public activity platform: implementation of for final design and construction documentations plus all applicable permits for the collapsed bulkhead. Application, management and oversight of other applicable local, state and federal grant opportunities.</p> | <p>DOS-LWRP FY2013-2014: awarded \$225,420 for design and construction plans + permits. Contract with DOS executed October 2014. BOT selected Boswell Engineering on July 6, 2015. BOT also adopted via resolution a bond to cover the full amount of the grant on November 2, 2015.</p> <p>The BOT established a project advisory committee per DOS contract agreement. Staff working with Boswell to structure kick off meeting January 2016.</p>   |

|  |   |   |
|--|---|---|
| <p>New York State Regional Economic Development Council (REDC) Grant Funding</p> | <p>The Regional Economic Development Council initiative (REDC) is a key component of Governor Andrew M. Cuomo's transformative approach to State investment and economic development. In 2011, Governor Cuomo established 10 Regional Councils to develop long-term strategic plans for economic growth for their regions. The Councils are public-private partnerships made up of local experts and stakeholders from business, academia, local government, and non-governmental organizations.</p> <p>The Regional Councils have redefined the way New York invests in jobs and economic growth by putting in place a community-based, bottom up approach and establishing a competitive process for State resources.</p> | <p>2015 CFA Process opened May 1, 2015 and closed July 31, 2015. Staff attended June 9, 2015 CFA workshop. The Village submitted applications for waterfront enhancements, downtown revitalization, and transit oriented development strategies to improve economic development.</p> <p>Announced December 11, 2015, the Mid-Hudson Regional Economic Development Council awarded Port Chester a \$10,000 grant under the Empire State Development – Market New York program. Staff submitted application during 2015 CFA process. Grant focuses on promotional strategies to regionally market Port Chester in light of the village's 150<sup>th</sup> anniversary in 2018.</p> <p>Village currently discussing strategies for anticipated CFA 2016 program/grants with Millennium Strategies.</p> |
| <p>New York State Community Development Block Grant Funding</p>                  | <p>State funding through the Office of Homes and Community Renewal (OHCR) including housing, public infrastructure, public facilities, economic development, etc. Total funding allocated for Westchester Communities is \$4.1 million.</p>   | <p>Program announced July 2015. Staff attended informational workshop July 28 and August 10, 2015. Village staff submitted Community Development Block Grant (CDBG) applications through New York State Office of Community Renewal for both public facilities and public infrastructure</p>  |



|  |   |   |
|--|---|---|
|  |   | (~\$1.15M in total) for October 23 deadline. The State anticipates award announcements by year-end 2015.  |
| New York State Environmental Facilities Corporation – State Revolving Fund | New state program to facilitate the replacement and repair of wastewater infrastructure and to fund projects that will result in the greatest reduction in risk to public health. Eligible projects include rehabilitation of wastewater treatment plants, repair/rehabilitation of sanitary sewers, and energy efficiency upgrades to wastewater treatment plants. | Staff consulted with Village Engineer and Dept. of Environmental Conservation plus offices of Senator Latimer and Assemblyman Otis. Staff submitted Intended Use Plan (IUP) applications by Sept. 4 deadline and received confirmation of such projects added to the IUP.<br><br>Awards announced year-end 2015. Staff working with Village Engineer and Millennium Strategies for anticipated 2016 follow-through. |

**ENVIRONMENTAL PLANNING**

| <b>INITIATIVE</b>                             | <b>SUMMARY</b>  | <b>STATUS</b>   |
|---|---|---|
| FEMA Emergency Management Planning            | The Federal Emergency Management Agency aims to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards. The Village is currently undertaking an action plan for hazard mitigation and resiliency planning, and staff will continue working with FEMA to execute proper procedures concurrent with local, state, and federal objectives. | Village staff have met on multiple occasions with FEMA representatives to provide an overview of village operations. Staff will continue to work with FEMA to execute high standards for public safety as related to disaster mitigation.   |
| Hazard Mitigation Planning (County-wide Plan) | Westchester County preparation county-wide hazard mitigation planning, i.e. hurricanes, blizzards, flooding, etc. Completion ensures eligibility for emergency management funding.  | Final draft report distributed to municipalities April 2015. Staff presented report at the May 18, 2015 meeting. Draft report reviewed and approved by FEMA and Westchester County. BOT must adopt inclusion into County-wide plan early 2016 to ensure federal funding opportunities |

|  |   |  |
|--|---|--|
|  |   | for hazard mitigation and/or disaster recovery.  |
| MS4 Permit Management                          | Municipal separate storm sewer system (MS4) permit required by Federal Government under the Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) program to prevent harmful pollutants from being washed or discharged into a waterbody. | Annually. NYSDEC Audit completed June 2 for compliance review. Village Staff provides structure and assistance for future audits.  |
| Local Waterfront Revitalization Program (LWRP) | Update to adopted 1992 village waterfront policy and vision plan. Guidelines for Waterfront Commission project consistency review.  | BOT adopted a resolution authorizing new trajectory work on the draft LWRP. Staff working with the NY Department of State (DOS) to make amendments and move towards official 60 Day Document Review. Formal BOT adoption required subsequent to formal review. |

**VISIONING, BRANDING, AND ECONOMIC DEVELOPMENT STRATEGIES**

|   |  |  |
|---|--|--|
| Economic Development Promotional Material | Economic development promotional materials citing Comprehensive Plan, Strategic Plan, LWRP vision. Coordination with IDA Strategic Planning efforts.   | Ongoing. Staff works with the Industrial Development Agency and provides project information where applicable. |
| 150 <sup>th</sup> Anniversary             | Proposed formation of a steering committee to complete specific beautification projects in anticipation of the Village's 150 <sup>th</sup> anniversary in 2018. Possible projects include: <ul style="list-style-type: none"> <li>• Streetscape improvements</li> <li>• Area branding</li> <li>• Placemaking Charette</li> <li>• Historic preservation designation</li> <li>• New/improved greenspace and/or bike and pedestrian amenities</li> <li>• Area-wide programs/events/initiatives</li> </ul> | Ongoing.   |

**ADMINISTRATION**

| <b>INITIATIVE</b>           | <b>SUMMARY</b>   | <b>STATUS</b> |
|-----------------------------|--|---------------|
| Records Management          | Maintains and records all planning, zoning files including escrow accounting for active applications | Ongoing       |
| Board/Commission Management | Staff, professional development; professional certification  | Ongoing       |
| IDA Management              | Records and maintains all IDA files; liaise between Village and IDA.                                 | Ongoing       |
| Web Management              | Maintains Planning, Zoning IDA, LDC webpages.  | Ongoing       |

# Planning Commission, Zoning Board of Appeals, and IDA Applications

The Office of Planning & Development oversees activities for the Planning Commission, Zoning Board of Appeals, Waterfront Commission, Industrial Development Agency and Board of Trustees. Below are two tables of both active and recently approved applications managed by the Office of Planning & Development. Additional information is available through the Office's website ([http://www.portchesterny.com/Pages/PortChesterNY\\_Planning/index](http://www.portchesterny.com/Pages/PortChesterNY_Planning/index)).

## ACTIVE PLANNING APPLICATIONS

| Address                  | Project Description   | Status of Project                                    |
|--------------------------|---|--|
| 70 Grove Street          | Site plan approval for legally non-conforming auto body, office uses. | Public hearing scheduled for January 2016.           |
| 314-316 Boston Post Road | New retail and office building of approximately 17,000 sqft.          | Adjourned public meeting scheduled for January 2016. |
| 141 Abendroth Ave        | Site plan conditions amendments.                                      | Public hearing adjourned to January 2016.            |
| 999 High Street          | Special Exception use renewal.  | Public meeting scheduled January 2016.               |

## APPROVED APPLICATIONS

| Address                 | Project Description   |
|-------------------------|---|
| 74-78 Fox Island Road   | Wireless facility upgrade on DPW smoke stack.   |
| 400 N Main Street       | Accessory storage structure for restaurant use.   |
| 509 Boston Post Road    | New boutique health club facility.  |
| 14 University Place     | New property structures, tenant storage units.  |
| 110 Westchester Ave     | New dental office.  |
| 74, 98 Fox Island Road  | Relocation of existing laundry facility at 98 Fox Island Road to 74 Fox Island Road with expansion of existing warehouse at 98 Fox Island Road. |
| 110 Westchester Ave     | New dental office.  |
| 10 Pearl Street         | Demolition of existing building for new restaurant and four floors of office.   |
| 29, 37-39 N Main Street | Expansion of existing restaurant into outdoor patio space.  |
| 10 Bulkley Ave          | Site plan approval for woodworking shop.  |
| 141 Willett Ave         | New health club.  |
| 21 Abendroth Ave        | Shared parking approval.  |
| 141 Willett Ave         | New health club.  |
| 120 N Pearl             | New multi-family building (50 units) with high-end amenities + parking.   |
| 163 N. Main             | Tarry Market Alley way.   |
| 8 Slater                | Warehouse expansion for vehicle storage.  |
| 25 Willett Ave          | Creation of American Bar & Restaurant.  |
| 242 King St             | Expansion of existing office building.  |
| 264 Boston Post Road    | Legalization of freezer at existing drive-thru restaurant.  |
| 411 Westchester Ave     | Modification of existing base station and renew existing special exception use permit for wireless telecomm facility (Verizon).                 |

|                         |   |
|-------------------------|---|
| 411 Westchester Ave     | Modification of existing base station and renew existing special exception use permit for wireless telecomm facility (Sprint).  |
| 135 S Main Street       | Site plan approval for construction of two new two-family residences.   |
| 117 N Main Street       | Open a family oriented Papa John's pizza restaurant.  |
| 999 High Street         | Renewal for special exception use permit for wireless telecomm facility (AT&T).   |
| 167-169 Terrace Ave     | Modification of existing base station and renew existing special exception use permit for wireless telecomm facility (Sprint).  |
| 999 High Street         | Modification of existing base station and renew existing special exception use permit for wireless telecomm facility (Sprint).  |
| 222 Grace Church St     | Modification of existing base station and renew existing special exception use permit for wireless telecomm facility (Sprint).  |
| 45 Townsend             | Remove an existing two family dwelling and use the parcel for open storage of materials.  |
| 126 North Main St       | Gastropub styled restaurant featuring weekend acoustic performances.  |
| 33 New Broad St         | Open micro distillery as part of larger sustainable/farming operation.  |
| 152 King Street         | Proposed interior renovations to a 1-story building to convert existing repair bays to a convenience store.   |
| 96 Perry Ave            | Two-lot subdivision   |
| 145 Westchester Ave     | Expansion of use and operation of the space by annexing it into the adjacent existing overall operations of The Capitol Theatre.  |
| 149-151 Westchester Ave | Capitol Theatre expansion of capacity use/increase occupancy from 1,835 to 2,205; add exterior walk in cooler, use of sidewalk hydraulic material lift and addition of mobile stand up bars.  |
| 36 Midland Avenue       | Installation of sectional overhead doors & relocation of 3 parking spaces.  |
| 104 North Main Street   | Reconfigure existing takeout restaurant & expand kitchen & dining room into existing adjacent tenant spaces, renovate existing basement for auxiliary use to restaurant on 1st floor, install new NFPA Sprinkler System throughout entire building. |
| 110 Midland Avenue      | Installation of a self-contained cosmetic spray booth within open warehouse space in accordance with Westchester County emission permit.  |
| 110 North Main Street   | Raise existing roof structure to provide habitable space. Existing 2nd floor to be used as an office, storage, private dining and a service kitchen for private dining.   |
| 400 Westchester Ave     | Construct a rear handicap-accessible rear facility entrance with canopy and fence;<br>Replace playground equipment  |
| 275 Boston Post Road    | Renovate existing vacant food service establishment into a Popeye's franchise restaurant with drive-thru.   |
| 110 Westchester Ave     | Provide pedestrian access from Village owned muni parking lot to rear of common property line, install new exit door, walkway with lighting new fencing and new lawn.   |
| 26 Putnam Ave           | Site Plan approval for continued use of an existing Sign/Graphic Design Shop (2nd fl.) and approval for a change of use (1st fl.) for current non-conforming use as a laundromat.   |
| 21 Abendroth            | Shared parking approval   |
| 411 Westchester Ave     | Modification of existing wireless facilities.   |
| 500 N. Main Street      | Health club approval  |
| 110 Midland             | Amendment to approved site plan; special exception use.   |
| 3 West Street           | New two-family home with on-site parking.   |
| 528 Willett Ave         | Site plan approval for new underground storage tank, site improvements and convenience store.   |



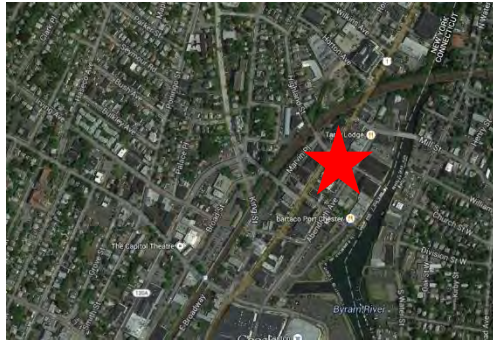
**VILLAGE OF PORT CHESTER**  
**DEPARTMENT OF PLANNING &**  
**DEVELOPMENT**

**222 Grace Church Street, Rm. 202**  
**Port Chester, NY 10573**  
**(P) 914.937.6780**  
**(F) 914.939-2733**

Jesica Youngblood, Assistant Director of  
Planning & Development  
Constance Phillips, Planning  
Commission Secretary

To: Chairman Gregory and Planning Commissioners  
From: Jesica Youngblood, Assistant Director of Planning & Development  
Re: December 1, 2015 Planning Commission Meeting Comment Memorandum  
CC: C. Steers, T. Cerreto, P. Miley, D. Rotfeld, C. Phillips  
Date: November 24, 2015

**1. 141 Abendroth Avenue/21 Willett Avenue (Case #2015-0118)**  
*Formerly #679(F113) & 408E(F113)*



Section, Block, Lot: 142.23-2-47 (formerly 142.23-2-13, 142.23-2-14, 142.23-2-15)  
Zoning District: C2 Main Street Business District  
Lot size: 60,559 sqft,  
Owner: Mariner Port Chester LLC  
Applicant: Anthony Gioffre, Esq. of Cuddy & Feder, LLP o/b/o The Mariner Port Chester, LLC

**Project Overview:**

The Applicant seeks relief from conditions numbers 16, 22, and 31 of the adopted Site Plan Resolution (dated January 25, 2010):

- **Condition #16:** *“The applicant shall place all overhead utilities underground, shall reconstruct all sidewalks and curbs and shall install street landscaping and associated facilities immediately surrounding the site in accordance with Village standards and specifications, prior to the issuance of a Certificate of Occupancy.”*
- **Condition # 31:** *“All on-site utilities shall be installed underground.”*

- Condition # 22: *“The Applicant shall fund an escrow account of sufficient amount to provide monitoring of the Abendroth Avenue/Willett Avenue intersection at 6 month intervals for a period of two years after 75% of the units in the building are occupied. Said monitoring shall be supplied to the Planning Commission in a timely manner. If, in the sole opinion of the Planning Commission, the Levels of Service or overall traffic conditions at the intersection deteriorate appreciably, the applicant shall install a traffic light at this intersection, at its sole expense, to mitigate this situation.”*

**SEORA Classification:**

The project is classified as a Type II Action under the State Environmental Quality Review Act and requires no further action.

**Required Approvals:**

- Site Plan amendment approval (Planning Commission)

**Next Steps:**

As requested from the Commission, ConEdison representatives Paul Cherian, construction manager, and Jane Solnick, Director of Public Affairs, attended the March 30 meeting to discuss options and alternatives to burying the existing power lines. As a result of the meeting, additional discussion among ConEdison, The Mariner, and the Village occurred on May 4, 2015. The Applicant requested adjournment until the September 28, 2015 meeting, at which the Planning Commission requested the Applicant present an update on consultation(s) with ConEdison related to the requested variances and demonstrate design alternatives and related cost estimates for power line re-wiring feasibility at the October 26, 2015 Planning Commission meeting.

The Applicant hosted a meeting with Village staff on October 13, 2015 and presented two design alternatives as devised by ConEdison. Both the Applicant and representatives from ConEdison (Paul Cherian and Luigi Vingo) will be present to answer questions regarding the design alternatives.

At the October 26, 2015 Planning Commission meeting, the Applicant presented one design to bury ConEdison cables underground and an alternative design proposal to relocate ConEdison cables across the street. The Planning Commission requested the Applicant present more detailed analysis and preliminary plans for the proposed relocation plan and coordinate said efforts with the Village Engineer.

The Applicant requests adjournment until January 25, 2016 in order to continue developing proposed relocation plans and address concerns raised by the Commission during the October meeting. Until then, the Applicant will continue working through engineering/feasibility considerations and provide an updated presentation at the January 2016 meeting.

## 2. 70 Grove Street (Case #2015-0124)



Section, Block, Lot: 142.30-1-5  
Zoning District: R2F Two Family Residence  
Lot size: .117 acres  
Owner: Colley W. Criss  
Applicant: Criss Grove Street

### **Project Overview:**

The Applicant seeks to expand an existing legally non-conforming auto body repair shop at 70 Grove Street (Section 142.30-1-5) located in the R2F Two-Family Residence District. The parcel is mixed-use with a 3-family home at the front of the parcel toward Grove Street, and the auto body shop at the rear of the parcel. The applicant must legalize the expanded ground-floor auto body shop use plus the second-floor storage space.

Proposal includes 1,469 square feet of existing ground-floor auto body repair and 1,469 of expanded second-floor storage space. Applicant proposes no off-street parking.

### **Zoning Compliance Review:**

The Zoning Compliance Form completed and certified by the Village Building Inspector indicates that the proposed expansion of the legally non-conforming auto body garage in the R2F Two Family District requires a use variance from the Zoning Board of Appeals prior to receiving site plan approval from the Planning Commission. Area variances for single and combined side yard setback and rear yard setback are also required.

### **SEQRA Classification:**

The Project is classified as an Unlisted Action under the State Environmental Quality Review Act and requires a determination of significance prior to formal action.



### **Required Approvals:**

- Site plan approval (Planning Commission)
- SEQRA Determination of Significance (Planning Commission)
- Use and area variances (Zoning Board of Appeals)
- Notification to Westchester County Planning Board (Village Staff)

### **Next Steps:**

The Planning Commission referred the Applicant to the Zoning Board of Appeals for the required use and area variances on May 28, 2015. On August 20, 2015 the ZBA adjourned the case until the September 17 meeting due to insufficient presentation of material. On September 17, 2015 the Zoning Board of Appeals directed the Village Attorney to draft favorable findings for the requested use and area variances. At the October 15, 2015 meeting, the Zoning Board of Appeals upheld the September action and granted both use and area variances. The ZBA also discussed compliance considerations extended to the Planning Commission to consider, such as prohibiting auto-body work in the driveway, compliance with County Dept. of Health regulations, etc. The property must adhere to all building and fire code regulations as overseen by the Building Department during the permitting stage.

The Application still requires site plan approval from the Planning Commission to include the relief granted by the ZBA in October. As such, the Planning Commission raised concerns at the May 28 meeting regarding the following items: business operation overview; street parking information; and addressing all Village Engineer comments

The Applicant must fully address all previous comments raised, at minimum, prior to close of a public hearing. Further, the Applicant must submit an amended site plan incorporating all planning and engineering changes made since May.

**Continue to Next Page**

### 3. Fox Island Road/DPW Smokestack (Case #2015-0129)



Section, Block, Lot: 142.55-1-3  
Zoning District: DW Design Waterfront  
Lot size: 374,126 sq ft  
Owner: Village of Port Chester  
Applicant: Md7 on behalf of AT&T (lessee)

**Project Overview:** The Applicant seeks to improve cellular service for AT&T by removing and replacing three (3) antennas, collocating three (3) remote radio head (RRH) units; and collocating various cabling to support the aforementioned antennas and RRH units at 82-84 Fox Island Road within the DW Design Waterfront District.

The applicant submitted a special exception use application alongside a site plan application. The applicant also provided an On-Site Radio Frequency Safety Survey Report and demonstrates compliance with FCC rules and regulations for radio emissions.

The Village Wireless Consultant, Ronald Graiff, reviewed the application and deemed it compliant with FCC electromagnetic radio frequency compliance. A copy of his report is included in the Commissions' packets. Upon further review and request, the Applicant submitted a structural analysis of the smoke stack which will be subject to review and certification prior to issuance of a building permit.

Pursuant to 47 U.S.C. § 1455 and Section 6409 of the *Middle Class Tax Relief and Job Creation Act* (2012), the Application meets the requirements as an eligible facilities list for non-substantial modifications. These federal regulations remove discretionary authority from the Planning Commission and preclude the Commission from denying the application. Therefore, this Commission cannot deny special exception use and site plan approval.

**Required Approvals:**

- Special Exception, Site Plan approvals (Planning Commission)
- Notification to Westchester County Planning Board, Town of Greenwich (Village Staff)

**Next Steps:**

To comply with FCC regulations, this Commission set the public hearing for the application for December 1<sup>st</sup> and must accept a resolution of approval for SEQRA, special exception use, and site plan at that time.





# Village of Port Chester

## Office of the Village Attorney

### MEMORANDUM

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TO: Christopher D. Steers, Village Manager

FROM: Anthony M. Cerreto *ACU*

DATE: December 16, 2015

RE: Monthly Report November to December 16, 2015

#### Board of Trustees

Reviewed final agenda and attended meetings of the Board of Trustees. Prepared and approved all resolutions. Prepared and approved local laws for zoning amendments for 52 Eldridge Street, Marina Redevelopment Project Retail "D" and honorary street naming all set for public hearing on January 4, 2016. Prepared legal notice for local law regarding permit amnesty program. Meeting with Police Department to review implementation of local law adopted regarding booting and towing licensing. Prepared memo to village officers and employees to implement local law regarding gifts and nepotism.

Meeting with School District subcommittee.

Meeting with G & S subcommittee regarding Marina Parking Lot and bulkhead issues.

#### Litigation

##### *Betsy Brown Road Proposed Group Home*

Engaged Philip Semprevivo's firm on a limited retainer to prepare Article 78 proceeding challenging the agency's determination  
Response to Trustee inquiry  
Prepared media statement  
Review and approval of court papers  
Consultations with Mr. Semprevivo and opposing counsel regarding issues of timing and transfer to appellate court

##### *Save the Sound*

Consultations with NYMIR and insurance broker regarding insurance coverage  
Engaged Mark Chertok's firm on a limited retainer to develop legal strategy, propose a response to Westchester County regarding their proposed inter-municipal agreement on a related issue and contact plaintiffs as to potential settlement prior to Village's answer/motion to dismiss

Review and approval of correspondence to County regarding IMA

### *Voting Education Act*

Consultations with attorneys for Department of Justice and the Intervenor regarding operational issues for 2016 Village Election, including necessary Third Addendum to Consent Decree.

### *Abandoned and Distressed Properties*

Followed up with court on 1 Betsy Brown Road; fully submitted and awaiting decision on request for demolition order.

Attended court conference on 167 Irving Avenue request for demolition order. .

### Contracts

Prepared agreements with regard to Cerebral Palsy (School District program placing disadvantaged high school students), En-Tech (sewer lining and manhole rehabilitation Phase 3), ELQ (close out of prior year road resurfacing project), Capitol Theater and Stratmar Realty (license agreements), MTA.Metro-North (interim agreement for clearing of snow and ice on sidewalks), ITS (parking pay station extension of warranty) and Gentile (201 Grace Church Street demolition).

### Planning and Zoning

Attended meetings of the Planning Commission and Zoning Board of Appeal. Prepared four proposed findings of facts for two applications decided by the Zoning Board. Attended meetings and telephone conference calls with regard to the Starwood, Castle, mariner and G & S retail "D" development projects.

Interviews with candidates for Director of Planning and Development position.

Researched local laws with regard to blasting permits. (in anticipation of Starwood Project)

### Labor

Conference calls with Labor Counsel on personnel matters in Court Clerk's office, Department of Public Works, Village Clerk's office. Police Department and Fire Department.

### Other Boards and Commissions

Attended meetings of Board of Ethics. Prepared a draft local law regarding use of municipal property for presentation to the Board of Trustees. Researching issue of campaign contributions, jurisdiction and budgets for boards of ethics. Setting up Board of Ethics training for village officers and employees in March 2016.

### Other

Reviewed responses from Request for Proposals for title work around the railroad station and for legal assistance with regard to condemnation of vacant property.

Researched regulatory requirements and "best practices" and discussions with elevator companies preparatory to negotiating a maintenance agreement to service elevators in village buildings.

Followed up with Federal Transit Administration and attorney who brought suit against the MTA regarding disabled access at railroad station.

Conference calls with actuarial firm to finalize report on workers compensation fund.

Consultations with attorney retained to investigate correspondence between Mayor and Village Manager.





## **Voter Education Plan: Monthly Coordinator Report #3**

**Reporting Period: November 1- 30, 2015**

### **Narrative by Voter Education Coordinator Belia Gomez-Tagle**

The following represents the tasks that I have undertaken in order to meet the requirements set by the Department of Justice Decree. As the Coordinator of the Voter Education program I:

1. Continue to work with the Village Clerk to increase my understanding of the electoral process.
2. Continue to encourage people and distribute NY Voter Registration forms to get ready to vote when I go to any meeting, restaurant or store in Port Chester. I address all PTA or PTO meetings and leave registration forms in all the main offices of each school.
3. Went to the Latino U College Access event where I met some of the stakeholders and spoke about the program.
4. Attended the Labor Council for Latin American Advancement LCLAA Gala and spoke in front of more than 200 people about our program. I will send any communications to its President.
5. Continue to oversee and translate documents needed e.g. informational flyer for the first forum, election dates informational flyer, and candidate-qualifying forum dates.
6. Outreach to Don Bosco Community Center, Corpus Christi Church Holy Rosary Church, Assembly of God World Vision, Carver Center, JFK School, Edison School and Middle School to secure these facilities for the forums. The Senior Community Center has been reserved for the first forum on the Trustees candidacy requirements, early voting and cumulative voting system.
7. Attended the Upstate Network for Immigrant Rights UNIR board meeting at Carver Center. Some of the leaders are working on "Language Access" campaign. Other community leaders are interested in doing a campaign on Real ID. I introduced myself and explained my job to them and talked about Cumulative voting system and early voting. I got their contact information so they would

spread the word about our voting program. I will send flyers and any communications via e-mail.

8. The Village Clerk and I met Rev. Bruce Baker from All Souls Church and Ken Manning Chairman of the Chamber of Commerce. Mr. Manning offered to include our flyers on the website to help us get the word out. Rev Baker invited me to participate in different events. Next step is to send him the flyer via e-mail and in person if possible.
9. Attended 12pm Mass and reception for Rev. Morales Corpus Christi Church Holy Rosary Church and spoke with Rev. Pat Angelucci and Sister Maruja about our program and the possibility of bringing our educational program to the Corpus Christi Holy Rosary community. Next step is to bring some flyers for the church.
10. Attended almost all BOE meetings and PTA or PTO meetings where I spoke about our program of early voting and Cumulative voting system. I will continue distributing flyers and any communication print or via oral.
11. Attended some of the stakeholders' board meetings (League of Women Voters, Latino Network board, NAACP, Council of Community Services etc). I sent already the candidate qualifying forum's flyer so they can help us to get the wo
12. Attended almost all parenting leadership programs (Second Cup of Coffee, "Latinos en Acción" and Parenting leadership program at Edison) to keep my engagement and update them with information and the forum dates. Some of the mothers are going to help me distribute flyers on December 11<sup>th</sup>.
13. Spoke in front of approximately 50 people at the "Dreamers Among US, Immigration ad Education" at the Temple Beth Abraham. I will continue sending our flyers.
14. Met with Blanca Lopez from the Human Development Services of Westchester to talk about strategies on how to get the vote out. She invited me to her meetings on housing and immigration where I distributed registration forms and spoke to attendees. Next step is to distribute our next flyer and communications.
15. Attended prayer groups and services in different churches to keep my engagement with the groups and keep updating them about our forums. I

distributed flyers. The next step is to distribute the flyer with all the forum locations and dates as soon as it is authorized.

16. Secured sites for the educational and qualification process for candidacy forums.

The schedule is as follows:

December 29th, Tues @ 6:30 pm · English and Spanish Forum - important information for potential candidates on the candidate qualifying process · Port Chester Senior Center, 222 Grace Church Street, Port Chester, NY 10573

January 7th, Thurs @ 6:30 pm · English and Spanish Forum - important information for potential candidates on the candidate qualifying process · Don Bosco Community Center, 22 Don Bosco Place, Port Chester, NY 10573

January 16th, Sat @1:00 pm - English and Spanish Educational Forum · Assembly of God World Vision Church, 225 King Street, Port Chester, NY 10573

January 20th, Wed @ 6:30pm · English and Spanish Educational Forum · Carver Center, 400 Westchester Avenue, Port Chester, NY 10573

February 9th, Tues @ 6:30pm · English and Spanish Educational Forum · John F. Kennedy Magnet School, 40 Olivia Street, Port Chester, NY 10573

March 2nd, Wed @ 4:30pm · English and Spanish Educational Forum · Library of Port Chester Middle School, 113 Bowman Avenue, Port Chester, NY 10573

March 8th, Tues @ 6:30pm · English and Spanish Educational Forum · Thomas A. Edison Elementary School, 113 Rectory Street, Port Chester, NY 10573

Respectfully submitted,

Belia Gomez-Tagle

Voter Education Coordinator

## **Port Chester Village Court**

### **Regina Hill, Court Clerk**

**December 14, 2015**

---

- Assist the Judge on the Bench during court sessions on Mondays, Thursdays and Fridays
- Traffic night court 11/24/15, 12/8/15
- Processed Criminal Disposition Reports (CDRs) after court
- Completed court paperwork after court sessions
- Update excel spreadsheets with Bail disbursements from court
- Electronically transmitted 329 Criminal Dispositions Reports (CDRs) to New York State Division of Criminal Justices Services as of December 14, 2015
- Reconciled Judge Troy Justice Account. Ending Bank Balance as of 11/30/15 - \$75,899.03
- Prepared November 2015 Monthly Report to the N.Y. State Comptroller's Office- Justice Court Fund for Judge Troy - \$76,289 to be reviewed and electronically submitted by Judge Troy
- Reconciled Judge Castaneda Account. Ending Bank Balance as of 11/30/15- \$49,994.81
- Prepared November 2015 Monthly Report to the N.Y. State Comptroller's Office- Justice Court Fund for Judge Castaneda \$50,042.81 to be reviewed and electronically submitted by Judge Castaneda
- Reconciled Judge Sisca Justice Account. Ending Bank Balance as of 11/30/15-\$93,950.86
- Prepared November 2015 Monthly Report to the N.Y. State Comptroller's Office- Justice Court Fund for Judge Sisca - \$94,216.50 to be reviewed and electronically submitted by Judge Sisca
- Reconciled Tow Account. Ending Bank Balance as of 11/30/15 - \$415.00
- Prepared vouchers and Payroll to be sent to the Finance Department
- Staff Meeting held on November 18
- One person resigned so I have been doing her work for the past month (entering cases, preparing the court calendar and all paperwork, daily deposit, setting up cases, etc.)



## MEMORANDUM

To: Christopher D. Steers  
Village Manager

From: Heather Krakowski  
Recreation Supervisor

Subject: Monthly Report (November 2015 – December 15, 2015)

Date: December 15, 2015

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Please see a list of meetings I have attended and a list of programs that are running or upcoming. This list is usually included in my monthly reports to the Recreation Commission.

### **Meetings**

11/17 D. Mc Dermott, CCHR vice principal  
11/17 New Employee Payroll System Meeting  
11/18 R. Morabito, DPW Foreman  
11/18 Monthly staff meeting  
11/19 Phil Mutino, Carver Center – Winter Soccer  
11/23 Eileen Pellegrini, PCYBL  
12/2 Pre-Agenda Meeting  
12/6 Special Citizens Luncheon  
12/7 D. Hidalgo, Soccer Club  
12/9 R. Morabito, DPW Foreman, Santa in the Park Event  
12/9 Agenda Review  
12/10 Santa in the Park Event  
12/14 After School Staff – Programs Reading/Art

**Programs/Events**

**Registered/ Attended**

**Christmas Tree Lighting/ Santa in the Park**  
December 10<sup>th</sup> (Rain Date Dec 11<sup>th</sup>)

**2000**

**Special Citizens Holiday Lunch**

**40**

**Adult Men's Basketball**

**After School Reading & Art**  
Starts November 2015-May 2016

**40**

**After School 3<sup>rd</sup> – 5<sup>th</sup> Grade basketball**  
Starts November 17<sup>th</sup>

**35**

**Drop – in Basketball**  
(Teens)

**25**

**Coat Drive (starts November)**

**150 (as of 12/15)**

**UPCOMING Programs/Events**

**Registered/ Attended**

**Winter Soccer**  
Starts January 18<sup>th</sup>

**Winter Clay Art Classes**

**Floor Hockey**  
(1<sup>st</sup> and 2<sup>nd</sup> Grades)

**Winter Mini Camp**  
February Break

**From November 12<sup>th</sup> - December 15<sup>th</sup>**

- **Organized and Overseeing currently running programs listed above**
- **Overseeing the After School Staff & park permits applications**
- **Upcoming contracts**
- **Organizing the upcoming programs (Examples – Santa in the Park , Winter Soccer, After School Programs, Basketball, Coat Drive)**
- **Completed Winter/Spring/ Summer Activities Brochure (will be mailed to all the residents)**
- **Working on Winter/ Spring / Summer Activities Schedule –Staff, Equipment**
- **Interviewed Seasonal Staff and Upcoming Programs (After School Programs)**
- **Santa in the Park Event (coordinate, volunteers, Santa, gifts, music)**
- **Coat Drive ( coordinates with local cleaners, organizations and schools) coats distributed throughout Port Chester**
- **Working on Budget 2016-2017**
- **Completing Budget paperwork for Office of Children and Family Services**
- **Preparing staffing and schedules for Spring and Summer Programs**





**POLICE DEPARTMENT  
PORT CHESTER, NEW YORK**

## **MONTHLY REPORT- NOVEMBER, 2015**

**Training:**

November saw an intense focus on training with 12 members of the Department attending advanced training courses.

- Police Officers Mike Giandurco and Arthur Dusenbury completed the month long SWAT school held at the Westchester County Police Academy. This physically demanding 4 week course of study covered topics including small unit tactics, use of patrol rifles, room clearing, and counter sniper operations. The rigorous program required candidates to complete the Cooper Fitness Battery with a score over 80%. Police Officers Giandurco and Dusenbury are the first Department members to complete this level of training.
- Police Officers Jeffrey Cave, Nick Stella, and Jason Behar successfully completed the Advanced Active Shooters Course. This 3 day intensive course held at the NYS Preparedness Training Center in Oriscany NY. trains officers in response to active shooter scenarios. Students are put into past active shooter scenarios prepared by former Special Forces Operators. After overcoming the threat, officers must coordinate the follow response with EMS and assist with medical aid.
- Police Officers Mike Sprague, Efrain Roman, Annette Sosa, Vincent Fiumara, and Nick Stella successfully completed the Breath Test Operator Certification Course held at the Westchester County Police Academy. This three day course of study lead to certification as a Breath Test Operator for DWI cases.

## **Narcotics Enforcement**

With the increase in drug overdoses experienced in the metropolitan area, we have made a Department wide thrust to disrupt the supply of narcotics in the Village. Below is a tally of 2015 narcotics arrests made as of December 1st:

- 149 Felony Drug Charges
- 228 Misdemeanor Drug Charges
- 97 Violation level Drug Charges

Seized as a result of these arrests:

- 491 Decks of Heroin
- 316 Bags of Cocaine
- 203 Bags of Marijuana
- 209 Prescription Pills
- \$26,444 in US Currency

## **Public Affairs:**

The objective of the Public Affairs Initiative is to promote positive interaction between the Department and the public.

On November 15, the Department through the Port Chester Police association conducted its annual food drive at Costco. Braving the windy cold weather for over 4 hours, Department members on their off duty hours managed to fill 4 trucks with much needed supplies for the food pantries of Don Bosco and Carver Center. The Department also participated in:

1. Port Chester Cares, Life Skills Program
2. Youth Police Initiative (planning)

### Arrest in Death Investigation

In early morning hours of November 28th officers from the midnight tour responded to a report of an unconscious man lying on the sidewalk of Abendroth Avenue near Adee Street. The subject, later identified as a 32 year old Village man, showed no vital signs and was rushed by EMS to Greenwich Hospital. Despite all efforts, the victim was declared dead shortly thereafter. No obvious cause of death was apparent and a death investigation was started. Within an hour of initiating the investigation it became apparent that the decedent was the victim of a robbery prior to his death. An intensive investigation was launched including a full call out of the Detective Bureau. Operating on information obtained from the public, an arrest was made by detectives later that night. The suspect, a 24 year old Village man with an extensive criminal record was charged with Robbery 2nd degree, a felony. The Westchester County District Attorneys' Office is awaiting final autopsy findings on the victim to determine if charges will be upgraded

| <b>Statistics</b>        |                  |                  |                  |                 |                 |             |             |             |             |            |            |
|--------------------------|------------------|------------------|------------------|-----------------|-----------------|-------------|-------------|-------------|-------------|------------|------------|
| <b>FBI Part 1 Crimes</b> | <b>Jan. 1/14</b> | <b>Feb. 2/14</b> | <b>Mar. 3/14</b> | <b>Apr 4/14</b> | <b>May 5/14</b> | <b>June</b> | <b>July</b> | <b>Aug.</b> | <b>Sept</b> | <b>Oct</b> | <b>Nov</b> |
| <b>Assault</b>           | 4                | 4                | 4                | 5               | 5               | 7           | 6           | 6           | 6           | 6          | 7          |
|                          | 2                | 3                | 6                | 7               | 8               |             |             |             |             |            |            |
| <b>Burglary</b>          | 4                | 1                | 4                | 2               | 1               | 1           | 5           | 3           | 2           | 3          | 6          |
|                          | 1                | 4                | 2                | 1               | 5               |             |             |             |             |            |            |
| <b>Larceny</b>           | 28               | 31               | 31               | 40              | 41              | 41          | 41          | 50          | 54          | 42         | 41         |
|                          | 34               | 26               | 37               | 43              | 39              |             |             |             |             |            |            |
| <b>Murder</b>            | 0                | 0                | 0                | 0               | 0               | 0           | 0           | 0           | 0           | 0          | 1          |
|                          | 0                | 0                | 0                | 0               | 0               |             |             |             |             |            |            |
| <b>Motor Veh. Theft</b>  | 0                | 0                | 0                | 1               | 2               | 0           | 0           | 0           | 1           | 3          | 1          |
|                          | 1                | 1                | 0                | 1               | 0               |             |             |             |             |            |            |
| <b>Rape</b>              | 0                | 0                | 0                | 1               | 0               | 0           | 1           | 1           | 1           | 0          | 0          |
|                          | 1                | 0                | 0                | 0               | 0               |             |             |             |             |            |            |
| <b>Robbery</b>           | 1                | 2                | 1                | 1               | 1               | 3           | 3           | 4           | 4           | 5          | 7          |
|                          | 4                | 0                | 2                | 1               | 5               |             |             |             |             |            |            |

|                        |      |      |      |      |      |      |                    |       |      |      |      |
|------------------------|------|------|------|------|------|------|--------------------|-------|------|------|------|
| <b>Parking Tickets</b> | 5312 | 3661 | 4240 | 4393 | 4093 | 3575 | 4,415 <sup>1</sup> | 4,996 | 4704 | 4813 | 4331 |
| <b>Traffic Tickets</b> | 559  | 433  | 555  | 643  | 582  | 425  | 581 <sup>2</sup>   | 376   | 505  | 513  | 265  |
| <b>Arrests</b>         | 161  | 130  | 157  | 140  | 172  | 133  | 145 <sup>3</sup>   | 164   | 146  | 157  | 128  |

| <b>Common Calls for Service</b> | <b>January</b> | <b>February</b> | <b>March</b> | <b>April</b> | <b>May</b> | <b>June</b> | <b>July</b> | <b>Aug</b> | <b>Sept</b> | <b>Oct</b> | <b>Nov</b> |
|---------------------------------|----------------|-----------------|--------------|--------------|------------|-------------|-------------|------------|-------------|------------|------------|
| <b>Aided, Medical</b>           | 192            | 150             | 154          | 144          | 157        | 142         | 150         | 152        | 165         | 170        | 158        |
| <b>Accidents</b>                | 108            | 108             | 116          | 102          | 115        | 122         | 126         | 113        | 97          | 125        | 139        |
| <b>Alarms</b>                   | 106            | 96              | 80           | 86           | 83         | 86          | 120         |            | 97          | 70         | 86         |
| <b>Directed Patrols</b>         | 166            | 116             | 101          | 109          | 87         | 51          | 57          | 68         |             | 14         | 68         |
| <b>Domestic</b>                 | 12             | 30              | 22           | 24           | 21         | 10          | 20          | 26         | 14          | 25         | 22         |
| <b>School Crossings</b>         | 45             | 32              | 17           | 19           | 25         | 55          | 0           | 0          | 7           | 15         | 8          |
| <b>Total Calls for Service</b>  | 1637           | 1401            | 1556         | 1525         | 1611       | 1551        | 3436        | 1626       | 1647        | 1711       | 1443       |

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<sup>1</sup> Average for 2014-4627

<sup>2</sup> Average for 2014-390

<sup>3</sup> Average for 2014-112



## *Monthly Report - Port Chester Senior Center (Nutrition Program)*

*December, 2015*

**17,419 Meals served to date: (Nov, 2015-May, 2016 )**

**40 Home Bound Seniors received their meals at home, per day Monday-Friday**

**60 seniors attend the Saturday Program.**

### **Senior Center Calendar:**

**Dec. 5<sup>th</sup>-Holiday Shopping Fair 10-4 p.m., Dec. 8<sup>th</sup>—Holiday Decorating Contest, Dec. 9<sup>th</sup>-Trip to Kmart, Dec. 12<sup>th</sup>- Holiday Party, Dec. 14<sup>th</sup>-Decorating Gingerbread Houses Dec. 15<sup>th</sup>-Kwanzaa, Dec. 18<sup>th</sup>—Westchester Dinner Theatre, Dec. 21<sup>st</sup>—Hot Chocolate Social Christmas Carol singalong, Dec. 24<sup>th</sup>-Christmas Eve Breakfast, Dec. 31<sup>st</sup>-New Year's Eve Party 12-2 p.m.**

Every Thursday—Zumba 10:30 a.m. Every other Tuesday Tai Chi—10:30 a.m. Art Class every Friday morning at 10-12, Bingo Wed and Thurs afternoons Mah Jong played every Friday afternoon at 1 p.m. Ang Rubino singers every Friday at 1 p.m.

Dec. 10<sup>th</sup>.---100 Grocery Bags with fresh produce have been given out on the second Thursday of each month to PC seniors. Bags are prepared by the Food Bank of Westchester.

### **Community Center Calendar:**

**Dec. 1<sup>st</sup>-Planning Commission Meeting, Dec. 3<sup>rd</sup>-PCYBL meeting, Dec. 6<sup>th</sup>-Special Citizen's Christmas Party, Dec. 8<sup>th</sup>-Coast Guard Meeting, Dec. 12<sup>th</sup>-Senior's Holiday Party, Dec. 13<sup>th</sup>-PC PBA Children's Christmas Party, Dec. 29<sup>th</sup>-Port Chester Candidates Forum Jan. 10<sup>th</sup>—PC Soccer Awards.**

***Insurance complaints being addressed.***

***New Westchester County Grant received for \$4,440.for additional transportation money.***

***One new CDL driver hired with above grant money. Driver will work 3 days a week and Gus will work 3 days. Additional service will be on Saturdays.***

***submitted—12/14/2015***

***Carol Nielsen***







Date: **December 17, 2015**

Location:

**Port Chester Village Hall**

Project: **Replacement of Metro-North's Willet Ave Bridge in Port Chester, NY**

Topics to Discuss:

1. INTRODUCTION
2. MNR INVESTMENT IN PORT CHESTER INFRASTRUCTURE

**2010 to 2014 MTA Capital Program**

- Port Chester Station Improvements (~\$4M): completed.

**2015-2019 MTA Capital Program**

- Replacement of Willet Ave Undergrade Bridge (~\$11M)
  - 1891: 124 year old bridge.
  - Demolish and replace bridge superstructure for all four tracks.
  - Advertise: June 2016
  - Award: December 2016
  - Complete: December 2018
- Port Chester Elevator (~\$3M)
  - Construct a new elevator on Westchester Ave >> ADA access on outbound platform.
  - Advertise: March 2016
  - Award: July 2016
  - Complete: July 2017
- William Street Bridge: Near Term Repair Work (~1.3M)
  - Built 1887; 128 years old.
  - 5 ton load posting?
  - Perform near term repair work on the bridge using in-house forces.
  - To be performed in 2016. Schedule TBD.
  - Continuous 4 week bridge closure required for spot deck repairs and repaving.
- William Street Bridge: Future Bridge Replacement (~\$600K)
  - Hire a design consultant in 2018 to design the bridge replacement for inclusion into the 2020-2024 Capital Program; 36 ton capacity new bridge.
- Embankment Stabilization at Willet Motors Site (~\$4M)
  - Design and construct a new retaining wall from the track to stabilize the embankment on the outbound side.
  - Schedule TBD

**Total Investment Planned in the 2015-2019 CP ~ \$20M**

**Reconstruction of William Street Bridge in the 2020-2024 CP ~ \$9M**

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### 3. WILLET AVE BRIDGE REPLACEMENT

- Willet Ave bridge is a critical piece of Metro-Norths infrastructure.
- 51 million riders commute on this bridge each year (376 daily trains)
- The bridge is in poor condition and is 128 years old.
- MNR has been unable to advertise an \$11M project to replace this bridge because of on-going traffic study disagreements with the VPC.
- MNR has scaled back the initial Willet Ave road closure request from 24 months to 8 weeks; 1 week intervals separated by 9 weeks of construction.
- No resolution is in sight. Consultation with the Village on this matter has already taken 28 months. Projected time to replace the bridge is 24 months.
- VPC consultant is recommending further traffic studies which will delay the project for an estimated additional 12 months.
- The bridge continues to deteriorate. MNR may be forced to implement emergency repairs at some point in the future to keep the bridge functional and safe.
- MNR does not agree that additional studies are required, however, MNR has a proposal
- MNR proposal
  - Implement the four mitigation measures proposed from the Phase II study
  - Reassess the length of the continuous closure periods of Willet Ave
  - Require that the Resident Engineering firm overseeing construction have a traffic / transportation expert on-staff that can quickly respond to inquiries from VPC.
  - Once a Contractor is on-board, MNR has the ability to modify and improve the MPT as needed and based on actual traffic conditions.

### 4. TIMELINE OF PAST CORRESPONDANCE

- *August 1, 2013*: MNR meeting with VPC to present the Willet Ave project. MNR requested a 24 month closure on Willet Ave which was not agreed to. VPC preferred short term closures and recommended a traffic study be performed to investigate the effects of the closure.
  - *September 30, 2013*: MNR submitted revised MPT plans depicting one week closure periods for the demolition and reconstruction efforts: 8 weeks total closure although not consecutively. Also submitted was a proposed traffic and parking study plan.
  - *March 4, 2014*: follow-up MNR Meeting with VPC: VPC agreed to the study limits and conditions of the proposed traffic and parking study (Phase I). Based on this agreement, MNR consultant performed the Phase I study and submitted to VPC for review along with a proposed outline of the Phase II study parameters.
  - *July 22, 2014*: VPC Engineer responded approving the initial evaluation and proposed Phase II outline though requesting that the study be postponed till September.
  - *September 8, 2014*: MNR received comments prepared by Adler Consulting for the Phase I study which contradicted the scope and limits of the agreed upon study parameters.
  - *October 6, 2014*: Letter from Terrence McCauley (MNR) to Christopher Steers (VPC) stating MNRs position that the Phase II study would proceed as per previous agreement so as to determine what traffic mitigation measures would be best taken to minimize effects on the Villages traffic patterns.
  - *February 24, 2015*: Email from Terrence McCauley (MNR) to Christopher Steers (VPC) and Dolph Rotfeld (VPC Engineer) providing Phase II Traffic Study Results.
-

- *August 5, 2015*: MNR received VPC comments via Dolph Rotfeld, Adler Consulting regarding the Phase II study. Additional studies requested.

## 5. BRIDGE STATISTICS

### **New Haven Line Statistics**

- Metro-North: 39.6 Million riders in 2014 on 336 daily trains
- Amtrak: Acela and Regional Intercity Service: 11.4 Million riders on 40 daily trains
- Freight: 3 daily trains; CSX, P&W
- *51 Million Riders per Year*

### **William Street**

- Average Daily Traffic Count (2009) = 702. Comparable to Hillside Ave in Harrison
- Compare with Willet Ave: ADT = 5,603

### **I-95 Statistics**

- ~75,000 Average Weekday Traffic in both directions (~150,000 total) at CT/NY Border.
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## **MEETING HELD NOVEMBER 16, 2015**

A meeting of the Board of Trustees of the Village of Port Chester, New York, was held on Monday, November 16, 2015, in the Court Room of the Police Headquarters Building, 350 North Main Street, Port Chester, New York, with Deputy Mayor Gregory Adams presiding.

Present in addition to Mayor Pilla were Trustees Saverio Terenzi, Daniel Brakewood, Gene Ceccarelli, Luis Marino and Gregory Adams.

Also present were: Village Attorney Tony Cerreto; Village Treasurer, Leonie Douglas; Chief of Police, Richard Conway; Christopher Ameigh Administrative Aide to the Village Manager; Assistant Director of Planning & Development, Jesica Youngblood; Legal Intern, David Kenny; Fire Chief, Edward Quinn

On motion of TRUSTEE ADAMS, seconded by TRUSTEE MARINO, the public meeting was declared opened at 6:00 p.m.

### **ROLL CALL**

**AYES:** Trustees Terenzi, Brakewood, Ceccarelli, Marino, Adams and Mayor Pilla

**NOES:** None.

**ABSENT:** Trustee Kenner

On motion of TRUSTEE MARINO, seconded by TRUSTEE CECCARELLI, the Board went into executive session to discuss:

- 1. Legal strategy regarding proposed MTA contract negotiations.*
- 2. Appointment of particular persons to a Bulkhead Steering Committee*
- 3. Legal strategy regarding Save the Sound litigation*
- 4. Particular personnel in the police department*

### **ROLL CALL**

**AYES:** Trustees Terenzi, Brakewood, Ceccarelli, Marino, Adams and Mayor Pilla

**NOES:** None.

**ABSENT:** Trustee Kenner

At 7:20 the Board came out of executive session.

On motion of TRUSTEE MARINO, seconded by TRUSTEE CECCARELLI, the meeting was declared opened at 7:22 p.m.

### **ROLL CALL**

**AYES:** Trustees Terenzi, Brakewood, Ceccarelli, Marino, Adams and Mayor Pilla

**NOES:** None.

**ABSENT:** Trustee Kenner

## **PRESENTATIONS**

### **Swearing-in of Port Chester Village Clerk David Thomas.**

Mayor Pilla presided over the swearing-in ceremony of David Thomas.

### **Presentation of Historical Documents to the Village by John Reavis.**

Mr. Reavis presented a historical plaque to the Village that had been given to him by a former supervisor. The plaque depicts the history with the Statue of Liberty. It involves the Group of Eight women from Port Chester.

### **Presentation of the annual Village Financial Audit by Drescher & Malecki LLP**

They presented a summary of their opinion of the results of the end-of-year audit. They covered the General Fund and the Sewer Fund and their communications. They finished up with their observations regarding the Capital Projects Fund. Overall the Village is in a stable financial position.

## **AFFIDAVIT OF PUBLICATION AND NOTICE OF PUBLICATION RE:**

1. A PUBLIC HEARING TO CONSIDER THE ADVISABILITY OF ADOPTING A LOCAL LAW AMENDING THE PORT CHESTER PERMIT AMNESTY PROGRAM

On motion of TRUSTEE ADAMS, seconded by TRUSTEE CECCARELLI, the public hearing was declared open.

### **ROLL CALL**

**AYES:** Trustees Terenzi, Brakewood, Ceccarelli, Marino, Adams and Mayor Pilla.

**NOES:** None.

**ABSENT:** Trustee Kenner

## **PUBLIC COMMENTS:**

Ms. Goldie Solomon commented on how this will affect people whose homes were built early in the 1900's. Elderly people should not have to pay to have things redone. Mayor Pilla replied that this is not for things to be redone, but things that were not done properly.

Mr. Richard Abel commented the extension of the Amnesty Program is a good idea, but you are not addressing the actual problem of open permits. The problem is open permits and never having the final inspection. This needs to be addressed in the future. Village Manager Steers commented that people are notified by the Village when their permits have expired or are about to expire. They are notified at 30-days out.

Mr. Bart Didden commented we saved the people of Port Chester hundreds of thousands of dollars in fines and fees with this program. I support the law wholeheartedly in extending the time frame.

Mr. Bob Burke commented this is a wonderful idea it is being extended. Trustee Brakewood commented that if someone complains about your property and it gets caught up in Code Enforcement you are no longer eligible for the program.

Ms. Bea Conetta commented that the fees and fines were made by the Village, not saving the residents' money. There should be no expiration.

Mr. G. Ford commented that fines are based on violations. That is why people are applying for amnesty. The open permits are normally for one year and if they are not closed you should be in violation. If you need more time you would apply for an extension. He is not in favor of extending the amnesty.

Mr. Abel commented that we now have 100 multi-family homes that are now safe. If someone owns a three-family house or more, make sure they are inspected.

Ms. Conetta commented that Peter Miley has retired from Port Chester. He followed the rules that were handed to him.

On motion of TRUSTEE TERENZI, seconded by TRUSTEE MARINO, the public hearing was declared closed.

#### ROLL CALL

AYES: Trustees Terenzi, Brakewood, Ceccarelli, Marino, Adams and Mayor Pilla.

NOES: None.

ABSENT: Trustee Kenner

On motion of TRUSTEE CECCARELLI, seconded by TRUSTEE TERENZI, to adopt a local law amending the Port Chester permit amnesty program extending it until June 30, 2016

#### ROLL CALL

AYES: Trustees Terenzi, Brakewood, Ceccarelli, Marino, Adams and Mayor Pilla.

NOES: None.

ABSENT: Trustee Kenner

2. A PUBLIC HEARING TO CONSIDER THE ADVISABILITY OF ADOPTING A LOCAL LAW AMENDING THE CODE OF ETHICS WITH REGARD TO DEFINITIONS, GIFTS AND NEPOTISM

On motion of TRUSTEE ADAMS, seconded by TRUSTEE BRAKEWOOD, the public hearing was declared open.

ROLL CALL

AYES: Trustees Terenzi, Brakewood, Ceccarelli, Marino, Adams and Mayor Pilla

NOES: None.

ABSENT: Trustee Kenner

**PUBLIC COMMENTS:**

Mr. John Reavis commented on whether this document will be shared with the general community. We are quite concerned about nepotism in the school district.

Ms. Goldie Solomon commented that people in the fire department and police department have children who want to be in the department.

Mr. Richard Abel commented this local law is a good idea. Since nobody can bring a complaint to the Ethics Board about someone else, how can this be adjudicated? He is in favor of having employees bring questionable behavior to the Ethics Board.

Mr. Bart Didden commented on the language in the proposed local law. Corporate money needs to come out of the election. It should come from homeowners. This proposed law does not go far enough.

Mr. Abel commented that developers before the Board should not be allowed to make campaign contributions.

Mr. Reavis commented when this document is completed, will individuals in the community be able to go to it. If employees have to go to a supervisor, they may be intimidated.

Mr. Didden commented that we should stop the funding through the County. Limit it to property owners, rather than commercial or residential.

Mr. Chris Scala commented he is flabbergasted that G&S could do any more work in this town. They built Costco and the pier is falling in.

**BOARD COMMENTS:**

Trustee Ceccarelli commented he would like to follow up on Bart Didden's comments. Grandparents should be added to Nepotism.

On motion of TRUSTEE BRAKEWOOD, seconded by TRUSTEE ADAMS, the public hearing was declared closed.

ROLL CALL

AYES: Trustees Terenzi, Brakewood, Ceccarelli, Marino, Adams and Mayor Pilla

NOES: None.

ABSENT: Trustee Kenner

On motion of TRUSTEE ADAMS, seconded by TRUSTEE MARINO, to adopt a local law amending the code of ethics with regard to definitions, gifts and nepotism

ROLL CALL

AYES: Trustees Terenzi, Brakewood, Ceccarelli, Marino, Adams and Mayor Pilla.

NOES: None.

ABSENT: Trustee Kenner

### **PUBLIC COMMENTS AFTER THE PUBLIC HEARINGS**

Ms. Goldie Solomon thanked the police, fire, EMTs and DPW. She welcomed Dave Thomas as our Village Clerk. She commented on the flyers distributed for the Port Chester Drama Club.

Ms. Bea Conetta commented on the overcrowding in Port Chester. The G&S condo project in the center of town should be stopped. The Starwood project has changed and is a ridiculous number of units. All we are suffering now with the condos were approved by a previous administration. She thanked Trustee Ceccarelli for his article in the *Westmore News*. Our overpopulation is a strain on our resources. It is hard to find a place to park in downtown.

Mr. Lou DelBianco updated the Board on the Adopt-an-Island program. He included all islands and some parks. He also included Chris Ameigh's proposal. He commented we would like to get this on the agenda for next month, have a formal discussion and go to resolution and get this off the ground.

Mr. Bart Didden commented that the state of New York issued their report on the July 28<sup>th</sup> hearing on developmental disabilities. In regard to the Ability Beyond Disability application, the Village residents have been quite vocal each time a not-for-profit takes over property. He asked the Board to consider an add-on resolution so the Village Attorney can file an Article 78 Proceeding. Mayor Pilla asked for an add-on so this matter could be discussed in executive session with the Village Attorney.



Mr. Frank Ferrara commented on the resignation of Chris Gomez, our Village Clerk and Peter Miley, our Building Department head. This is not a healthy employee turnover. The staff needs to focus on critical issues such as United Hospital, and the Bulkhead, G&S proposal. The Board is interfering in the work of Village employees. Without a full staff our Village is in jeopardy.

Mr. Scala commented on the Betsy Brown proposal. This is not an existing home; they are taking existing open space and building a facility.

Ms. K. Scala commented this facility is not going to be built in our neighborhood. Do not allow Ability Beyond Disabilities to build this single level facility. Keep the neighborhood informed.

Mr. Abel asked why we have two audits. The state comes in and looks at municipalities that are in distress. They use special audits.

Ms. Linda Turturino commented on the dog park. We are working with Chris Ameigh on signage. The lock is not working. Regarding Parkway Drive going one-way we will need another crosswalk nearing Birch Street. There should not be parking on both sides of Parkway. The road is a speedway.

Mr. Ford spoke on development in the Village. He likes G&S and their planned development; and also the United Hospital development. We need to partner with the developers to bring density in, but either to maintain it. When the Capitol has concerts you can't navigate the streets. We need to drive the slumlords out and bring in the smart developers.

Mr. Abel commented on Sewer Rent and the Housing Authority. They have an outstanding amount. Mayor Pilla said they have paid the money in their budget, but no more. We asked them to go to the state but that money is not available until 2017.

Mr. Didden commented on the appointment of Robert Reese to the Waterfront Commission. Does the Board consult with the Commissions on resumes of those who are appointed?

## **RESOLUTIONS**

### RESOLUTION# 1

#### APPOINTMENT OF MEMBER OF THE PLANNING COMMISSION

On motion of TRUSTEE MARINO, seconded by TRUSTEE BRAKEWOOD, the following resolution was adopted by the Board of Trustees of the Village of Port Chester, New York:

RESOLVED, that Joseph J. Montesano, residing at 47 Tower Hill Drive, Port Chester, New York, hereby is appointed as a full member of the Port Chester Planning Commission to fill the seat previously held by Michael Brescio, effective immediately with said term to expire June 16, 2016.

#### ROLL CALL

AYES: Trustee Terenzi, Brakewood, Ceccarelli, Marino, Adams and Mayor Pilla

NOES: None

ABSENT: Trustee Kenner

DATE: November 16, 2015

## RESOLUTION# 2

### APPOINTMENT OF MEMBER OF THE WATERFRONT COMMISSION

On motion of TRUSTEE CECCARELLI seconded by TRUSTEE MARINO, the following resolution was adopted by the Board of Trustees of the Village of Port Chester, New York:

RESOLVED, that Robert Reis, residing at 70 Munson Street, Port Chester, New York, hereby is appointed as a full member of the Port Chester WATERFRONT COMMISSION, effective immediately, and to expire December 2, 2017.

ROLL CALL

AYES: Trustee Terenzi, Brakewood, Ceccarelli, Marino, Adams and Mayor Pilla

NOES: None

ABSENT: Trustee Kenner

DATE: November 16, 2015

## RESOLUTION# 3

### FORMATION OF BULKHEAD DESIGN GRANT PROJECT ADVISORY COMMITTEE

The Dept. of State Local Waterfront Revitalization Program (DOS-LWRP) awarded the village a grant up to \$225,420 on January 9, 2014 for design and construction plans + permits to install a new bulkhead with increased public waterfront access and an activity node. Per the executed contract with DOS, the Village must establish a project advisory committee (PAC) subject to review and approval by the DOS. In accordance with DOS-LWRP policies, the PAC should be a balanced cross section of 7-10 technical and non-technical individuals purposed to demonstrate both compliance and commitment to DOS goals and objectives. This group may include members of existing village approval bodies, project area landowners, and other non-governmental/community agents. Village staff will serve as liaisons on the PAC. Ultimately, the PAC will work cooperatively with Boswell Engineering, Village Staff and municipal officials to provide advisory comment regarding the design alternatives.

On motion of TRUSTEE ADAMS, seconded by TRUSTEE BRAKEWOOD, to establish a Bulkhead Design Steering committee:

On motion of TRUSTEE ADAMS, seconded by TRUSTEE CECCARELLI, to amend the resolution to include the following names:

Michael Scarola – Planning Commission

Gerard Espinosa – Planning and Zoning Board of Appeals

Robert Reis – Waterfront Commission

Greg Wasser – G&S

Dennis Pilla – Port Chester Board of Trustees

Emily Imbesi – Public

Herbert Diaz – Public

On motion of TRUSTEE CECCARELLI, seconded by TRUSTEE TERENCE, to amend the resolution to include the following name:

Tav Passerelli – Waterfront Commission

ROLL CALL

AYES: Trustees Terenzi, Brakewood, Ceccarelli, Marino, Adams and Mayor Pilla

NOES: None

ABSENT: Trustee Kenner

Vote on the motion to establish a Bulkhead Design Steering committee:

ROLL CALL

AYES: Trustees Brakewood, Ceccarelli, Adams and Mayor Pilla

NOES: Trustees Terenzi and Marino.

ABSENT: Trustee Kenner

#### RESOLUTION# 4

#### PROHIBITING PARKING AT ALL TIMES ON THE SOUTH SIDE OF ARMETT STREET

On motion of TRUSTEE CECCARELLI, seconded by TRUSTEE MARINO, the following resolution was adopted by the Board of Trustees of the Village of Port Chester, New York:

WHEREAS, complaints have been received from the Fire Chief regarding the ability of emergency vehicles to traverse Arnett Street under current parking regulations; and

WHEREAS, the Traffic Commission, and Emergency Services Departments are in agreement as to the means of addressing this condition; and

WHEREAS, having had a discussion with a presentation from the Chairman of the Traffic Commission, the Board affirms such approach to protect the public safety. Now, therefore, be it

RESOLVED, that the Code of the Village of Port Chester, Chapter 319, Vehicles and Traffic, Section 319-74, Schedule XIII, is hereby amended to read as follows:

Section 319-74 Schedule XIII: No Parking or Standing at Any Time

In accordance with the provisions of 319-20, the parking or standing of vehicles is prohibited at all times in the following locations:

| Name of Street         | Side  | Location   |
|------------------------|-------|--|
| (Remove) Arnett Street | South | From Grace Church Street west for a distance measured 112 feet |
| (Add) Arnett Street    | South | From Grace Church Street to Midland Avenue                     |

and; be it further

RESOLVED, that the Code of the Village of Port Chester, Chapter 319, Vehicles and Traffic, Section 319-75, Schedule XIV, is hereby amended as follows:

Section 319-75 Schedule XIV: Nighttime Parking Prohibited Certain Hours

A. In accordance with the Provisions of 319-21A, The parking of vehicles between the hours of 1:00 a.m. and 6:00a.m. is prohibited in the following locations:

| <u>Name of Street</u> | <u>Side</u> | <u>Location</u>  |
|-----------------------|-------------|--|
| (Remove)Arnett Street | South       | From the East curb of Weber Drive to the sharp bend in the roadway |

and; be it further

RESOLVED, that the Code of the Village of Port Chester, Chapter 319, Vehicles and Traffic, Section 319-76, Schedule XV, is hereby amended as follows:

Section 319-76 Schedule XV: Parking Prohibited Certain Times.

In accordance with the provisions of 319-22, the parking of vehicles is prohibited at the times and in the locations as follows:

| Name of Street         | Side  | Time                               | Location   |
|------------------------|-------|------------------------------------|--|
| (Remove) Armett Street | South | Tuesdays 8:30a.m.<br>to 11:30 a.m. | From the east curb of Weber<br>Drive east to sharp bend in the roadway |

and; be it further

RESOLVED, that this resolution shall be deemed effective upon the directive of the Village Manager.

**ROLL CALL**

**AYES:** Trustee Terenzi, Brakewood, Ceccarelli, Marino, Adams and Mayor Pilla

**NOES:** None

**ABSENT:** Trustee Kenner

**DATE:** November 16, 2015

**RESOLUTION# 5**

**CREATING A ONE WAY STREET ON PARKWAY DRIVE AND LIMITING PARKING ADJACENT TO CROSSWALKS FOR PEDESTRIAN SAFETY**

On motion of TRUSTEE ADAMS, seconded by TRUSTEE BRAKEWOOD, the following resolution was adopted by the Board of Trustees of the Village of Port Chester, New York:

WHEREAS, complaints have been received from the Fire Chief regarding the ability of emergency vehicles to fit through Parkway Drive with current parking congestion; and

WHEREAS, Safety is affected by the inability of the first responders to access this street; and

WHEREAS, bottlenecks at times limit passing of two lanes of traffic; and

WHEREAS, the Traffic Commission, and Emergency Services Departments are in agreement on the following resolution. Now, therefore, be it

RESOLVED, that the Code of the Village of Port Chester, Chapter 319, Vehicles and Traffic, is hereby amended to read as follows:

Section 319-69 Schedule VIII: Stop Intersections

In accordance with the provisions of 319-12, the following described intersections are designated as stop intersections:

| Street                 | Side  | Location      |
|------------------------|-------|---------------|
| (Remove) Parkway Drive | North | Putnam Avenue |

Section 319-65 Schedule IV: One-Way Streets

In accordance with the provisions of S319-8, the following described streets or parts of streets are designated as one way streets in the direction indicated.

| Name of Street      | Direction | Location                  |
|---------------------|-----------|---------------------------|
| (Add) Parkway Drive | West      | Putnam Ave to King Street |

Section 319-74 Schedule XIII: No Parking or Standing at Any Time.

In accordance with the provisions of S319-74 The parking or standing of vehicles is hereby prohibited at all times in the locations described in Schedule XIII (§ 319-74).

| Name of Street         | Side  | Location   |
|------------------------|-------|--|
| (Add) Parkway Drive    | North | within 30 feet of the crosswalk at Pine Place on either side |
| (Add) Parkway Drive    | South | within 30 feet of the crosswalk at Pine Place on either side |
| (Remove) Parkway Drive | South | from Pine Place west for 30 feet                             |
| (Remove) Parkway Drive | South | from Pine Place east for 30 feet                             |

Approved as to Form:

On motion of TRUSTEE Ceccarelli, seconded by TRUSTEE MARINO, the resolution was tabled and the village staff was directed to consult a traffic engineer:

**ROLL CALL**

**AYES:** Trustee Terenzi, Brakewood, Ceccarelli, Marino, Adams and Mayor Pilla

**NOES:** None

**ABSENT:** Trustee Kenner

**DATE:** November 16, 2015

**RESOLUTION# 6**

**TO AUTHORIZE THE VILLAGE MANAGER TO ENTER INTO AGREEMENT AND CONTRACT WITH WESTCHESTER COUNTY DEPARTMENT OF SENIOR PROGRAMS AND SERVICES FOR ADDITIONAL CSE TRANSPORTATION SERVICES CONTRACT PY 2015-2016**

On motion of TRUSTEE ADAMS, seconded by TRUSTEE MARINO, the following resolution was adopted by the Board of Trustees of the Village of Port Chester, New York:

WHEREAS, the Village of Port Chester Nutrition Program for the Elderly requires agreements and contracts; and

WHEREAS, such services have been appropriated in the 2015 to 2016 Village Budget;

RESOVLED, that the Board of Trustees hereby authorizes the Village Manager to enter into the following agreement and contract with regard to the Village of Port Chester Senior Citizens Programs;

Community Services for the Elderly Act (CSE) contract for Transportation Services to be provided by the Village of Port Chester for the program year April 1, 2015 through March 31, 2016.

**ROLL CALL**

**AYES:** Trustee Terenzi, Brakewood, Ceccarelli, Marino, Adams and Mayor Pilla

**NOES:** None

**ABSENT:** Trustee Kenner

**DATE:** November 16, 2015

**RESOLUTION# 7**

**AWARDING BID FOR DEMOLITION  
OF STRUCTURE AT 201 GRACE CHURCH STREET**

On motion of TRUSTEE CECCARELLI, seconded by TRUSTEE MARINO, the following resolution was adopted by the Board of Trustees of the Village of Port Chester, New York:

WHEREAS, the Village of Port Chester has advertised that it was seeking bids for demolition work for 201 Grace Church Street (BID# 2015-12); and

WHEREAS, the Village received two bids for this work; and

WHEREAS, Gentile Construction has submitted the lowest bid of \$21,950.00.

WHEREAS, the Building Inspector, Peter Miley recommends that this bid be accepted which is in compliance with the bid specifications. Now therefore, be it

RESOLVED, that the Board of Trustees hereby awards the contract for Bid # 2015-12 Demolition of 201 Grace Church Street to Gentile Construction., located at 451 Old Nepperhan Avenue, Yonkers New York, 10703, and be it further

RESOLVED, that the Village Manager is hereby authorized to enter into an agreement with the contractor; and be it further

RESOLVED, that the funding for said work be appropriated from Account Code 5.7110.400.2012.122 "201 Grace Church Street".

AYES: Trustee Brakewood, Ceccarelli, Marino, Adams and Mayor Pilla

NOES: Trustee Terenzi

ABSENT: Trustee Kenner

DATE: November 16, 2015

#### RESOLUTION# 8

**AUTHORIZING THE VILLAGE TREASURER TO BORROW \$101,200 FOR REPAIRS AND REPLACEMENT OF FIRE HOUSE APRONS AT FIRE HQ AND WASHINGTON PARK STATIONS**

On motion of TRUSTEE ADAMS, seconded by TRUSTEE MARINO, this resolution was tabled until we receive an estimate.

#### RESOLUTION# 9

**AUTHORIZATION OF FREE HOLIDAY PARKING FOR DECEMBER 2015**

On motion of TRUSTEE MARINO, seconded by TRUSTEE ADAMS, the following resolution was adopted by the Board of Trustees of the Village of Port Chester, New York:



WHEREAS, by letter from the President of the Chamber of Commerce dated November 4, 2015, request has been made that there be free parking on North Main Street between the railroad bridge and Westchester Avenue, South Main Street, Abendroth Avenue, Willett Avenue between Abendroth Avenue and Marvin Place, Adee Street, Marvin Place, Westchester Avenue, Lower King Street to the Railroad Bridge, and the Highland-Adee-Willett Avenue and Broadway Street Lots from December 21, 2013 to December 30, 2015 for the Holiday Season; and

WHEREAS, this practice has been a tradition in the Village of Port Chester for many years; and

WHEREAS, this practice encourages shoppers and visitors to the Village and promotes our reputation as the "Entertainment and Restaurant Capital of Westchester County". Now, therefore, be it

RESOLVED, that enforcement be suspended so that there will be free parking within all posted limitations of parking time limits and hours on North Main Street between the railroad bridge and Westchester Avenue, South Main Street, Abendroth Avenue, Willett Avenue, Adee Street, Marvin Place, Westchester Avenue east of the Library, Lower King Street to the Railroad Bridge, and the Highland Street, Broadway and Adee Street Lots from December 21, 2013 to December 30, 2015 for the Holiday Season.

AYES: Trustee Terenzi, Brakewood, Ceccarelli, Marino, Adams and Mayor Pilla

NOES: None

ABSENT: Trustee Kenner

DATE: November 16, 2015

#### RESOLUTION# 10

#### AWARDING BID FOR 2015 SANITARY SEWER LINING AND MANHOLE REHABILITATION PHASE 3 BID# 2015-13

On motion of TRUSTEE CECCARELLI, seconded by TRUSTEE MARINO, the following resolution was adopted by the Board of Trustees of the Village of Port Chester, New York:

WHEREAS, the Village of Port Chester has advertised that it was seeking bids for demolition work for 2015 Sanitary Sewer Lining and Manhole Rehabilitation Phase 3 (Bid # 2015-13); and

WHEREAS, the Village received three bids for this work; and

WHEREAS, En-Tech Corp has submitted the low bid of \$939,625.00.

WHEREAS, the Village Engineer, Dolph Rotfeld, recommends that this bid be accepted which is in compliance with the bid specifications. Now therefore, be it

RESOLVED, that the Board of Trustees hereby awards the contract for Bid # 2015-13 2015 Sanitary Sewer Lining and Manhole Rehabilitation Phase 3 to En-Tech Corp., 304 Harrington Avenue, Closter, New Jersey 07624, and be it further

RESOLVED, that the Village Manager is hereby authorized to enter into an agreement with the company; and be it further

RESOLVED, that the funding for said work be appropriated from Sewer Improvement project 5.8120.400.2013.132 in the Capital Fund.

#### ROLL CALL

AYES: Trustee Terenzi, Brakewood, Ceccarelli, Marino, Adams and Mayor Pilla

NOES: None

ABSENT: Trustee Kenner

DATE: November 16, 2015

#### RESOLUTION# 11

#### ACCEPTING THE ELECTION OF EDWIN VILLA, ARRION MULLIGAN AND DONIGI FURANO TO THE PORT CHESTER VOLUNTEER FIRE DEPARTMENT

On motion of TRUSTEE ADAMS, seconded by TRUSTEE MARINO, the resolution was adopted by the Board of Trustees of the Village of Port Chester, New York:

#### ROLL CALL

AYES: Trustee Terenzi, Brakewood, Ceccarelli, Marino, Adams and Mayor Pilla

NOES: None

ABSENT: Trustee Kenner

DATE: November 16, 2015

#### **REPORT OF THE VILLAGE MANAGER**

Village Manager Christopher Steers commented we are approaching the Village's 150<sup>th</sup> Anniversary. We should start preparing for the event. Planning staff has recommended that we put together a steering committee. We will be ready for discussion by the next meeting.

We attended the meeting on Airport Capacity and the agreement that is in place. The airport is looking to better manage the capacity. There is a possibility for expansion of the terminal.

Mayor Pilla commented on the Terminal Use Agreement, which covers only commercial flights

Trustee Brakewood commented that we are on January 4<sup>th</sup> Public Hearing on the G&S Development. On the C1 neighborhood analysis – we are waiting to hear from the Planning Commission. We need regular updates. We should put time on the next meeting agenda to go over Code Enforcement and the Building Department reports.

Trustee Terenzi commented on the appraisal for 350 North Main Street. It is due November 21<sup>st</sup>.

Mayor Pilla asked when AKRF will return to the Board with their financial study. Village Manager Steers replied their estimate was 6 to 9 weeks and they are now in their 3<sup>rd</sup> or 4<sup>th</sup> week. Mayor Pilla inquired where we stand on hiring a Planner and Engineer. Mr. Steers replied that we are waiting on the State regarding the current engineering candidates. We've been interviewing Planners.

## **DISCUSSION**

### **Street naming policy**

Trustee Terenzi commented on the two people to be honored have historical connections to the streets. We need to do an add-on resolution for a public hearing for a local law.

On motion of TRUSTEE ADAMS, seconded by TRUSTEE TERENZI, an add-on resolution for a public hearing for A LOCAL LAW AMENDING THE CODE OF THE VILLAGE OF PORT CHESTER, CHAPTER 284, STREET NAMING

### **ROLL CALL**

AYES: Trustee Terenzi, Brakewood, Ceccarelli, Marino, Adams and Mayor Pilla

NOES: None

ABSENT: Trustee Kenner

DATE: November 16, 2015

On motion of TRUSTEE ADAMS, seconded by TRUSTEE BRAKEWOOD, a public hearing will be held at the January 4, 2016 meeting to adopt A LOCAL LAW AMENDING THE CODE OF THE VILLAGE OF PORT CHESTER, CHAPTER 284, STREET NAMING

### **ROLL CALL**

AYES: Trustee Terenzi, Brakewood, Ceccarelli, Marino, Adams and Mayor Pilla

NOES: None

ABSENT: Trustee Kenner

**CORRESPONDENCE**

*From Dwayne Edwards on his resignation from the Board of Ethics.*

Noted

*From Mellor Engine & Hose Co. No. 3 Inc. on the election of Edwin Villa of Port Chester to active membership and*

*From Mellor Engine & Hose Co. No 3, Inc. on the election of Aarion Mulligan of Bronx, NY to active membership and*

*From Harry Howard Hook & Ladder Co. No. 1 on the election of Donigi (Gino) Furano to active membership.*

Noted

*From the Port Chester-Rye Brook-Rye Town Chamber of Commerce requesting the authorization of free parking in the downtown for the week of Dec. 21-Dec. 30 (Holiday Parking).*

The Board approved and we have ample time to advertise for it to be effective.

*From Anthony R. Tirone on behalf of Frank Testa, 52 Eldredge Street Realty LLC, petitioning for a rezoning of the property known as 52 Eldredge Street.*

This was referred to staff and they are meeting with the applicant.

Attorney Tirone requested a zoning change for this property. He will make a presentation on December 7<sup>th</sup>.

On motion of TRUSTEE MARINO, seconded by TRUSTEE CECCARELLI, to add-on a public hearing to accept a petition for a zoning change on 52 Eldredge Street scheduled for January 4<sup>th</sup>.

ROLL CALL

AYES: Trustee Terenzi, Brakewood, Ceccarelli, Marino, Adams and Mayor Pilla

NOES: None

ABSENT: Trustee Kenner

DATE: November 16, 2015

**MINUTES:**

There were no minutes to approve.

### **PUBLIC COMMENTS AT THE END OF THE MEETING:**

Mr. Richard Abel commented that where the Castle is now they wanted to change the zooming because they were bordered on three sides by C1. That is how we ended up with the Castle. When you awarded a million dollar bid for sewer linings, there is no money mentioned.

### **BOARD COMMENTS:**

Trustee Terenzi commented that we have hired some quality people with our budget.

Trustee Brakewood welcomed Dave Thomas. Our Deputy Clerk did a fantastic job filling in.

Trustee Ceccarelli commented on 39,000+ parking tickets were issued January to June 2015. This is something that supports the Village budget. It seems that by not having convenient parking we need a parking steering committee. We have to focus on the parking. He viewed Ossining's court and police department. He wished all a Happy Thanksgiving.

Trustee Marino commented on the loss of Corey Smith.

Trustee Adams congratulated Leonie and Chris on the audit. He welcomed Dave Thomas. He wished the Port Chester residents a Happy Thanksgiving.

Mayor Pilla commented tonight we established a Bulkhead Committee. We spoke about G&S co-funding this. We are half-way through the year and asked Village Treasurer Douglas for a cost adjustment for raises, etc. for 2016-2017 in January. We should establish target deadlines for some of our projects. We are losing our Code Enforcement Director, Peter Miley; Mr. Steers will do an exit interview. He complimented the Police Chief for his advance training for emergency.

### **PROPOSED MOTION FOR EXECUTIVE SESSION**

On motion of TRUSTEE ADAMS, seconded by TRUSTEE MARINO, the Board went into executive session to discuss:

- 1. Village Manager Evaluation***
- 2. Regarding particular personnel in the Building/Code Enforcement Department***
- 3. Add-On session with the Village Attorney regarding Ability Beyond Disability***

ROLL CALL

AYES: Trustee Terenzi, Brakewood, Ceccarelli, Marino, Adams and Mayor Pilla

NOES: None

ABSENT: Trustee Kenner

The meeting was adjourned at 11:54 p.m.