



# CATTARAUGUS COUNTY

John R. Searles, County Administrator

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The Legislature of Cattaraugus County will meet in adjourned session at the County Center, Little Valley, New York, on **Wednesday, June 24, 2015** for the transaction of such business as may properly come before the meeting.

Contingent Fund Balance: \$318,235

3:00 p.m.      CALL TO ORDER  
ROLL CALL  
INVOCATION  
MINUTES OF PREVIOUS MEETING  
COMMUNICATIONS  
PRIVILEGE OF THE FLOOR  
    • Public Hearing – Local Law No. 6-2015  
RESOLUTIONS READY FOR ACTION  
RESOLUTIONS – IMMEDIATE CONSIDERATION  
UNFINISHED BUSINESS  
ADJOURNMENT

ACT NO.

RESOLUTIONS NOT READY FOR ACTION

## TO BE CONSIDERED FOR AMENDMENTS ONLY

272-15

Mr. Weller and Mr. Koch

LOCAL LAW NUMBER 5-2015 - A LOCAL LAW AMENDING LOCAL LAW NUMBER 10-2012 (INTRO NO. 12-2012) REGARDING UNIFORM GUIDELINES FOR DETERMINING THE RESPONSIBILITY OF BIDDERS

**AMENDED:** in Section 1., delete "bidders", replace with "bidder;

Section 3., delete the first "\$35,000", replace with "the threshold for bidding established by the General Municipal Law.; delete the second "\$35,000" and after "threshold" add "for bidding public works projects"; also delete "hereby", add "by the General Municipal Law";

Section 4, paragraph H, delete "Subcontractors proposed to be used on a project must also complete the Form before the subcontractor is approved by the County.", replace with "Subcontractors proposed to be used on a project must also compete and submit the Form within five (5) days after the preconstruction meeting before the subcontractor is approved by the County.";

Section 7, delete "no later than the date and time of the contract award. Contractor and/or subcontractor submissions deemed non-responsive will result in automatic rejection of the bid", replace with "for approval. Failure to submit the Form may lead to the rejection of the bid of the subcontractor at the County's discretion. Contractor submissions deemed non-responsive will result in automatic rejection of the bid."

Approved by 8 Finance, previously approved by 9 Public Works

## RESOLUTIONS READY FOR ACTION

- 306-15 Ms. Edstrom and Mrs. Stockman  
LOCAL LAW NUMBER 6-2015 - A LOCAL LAW AMENDING LOCAL LAW NUMBER 10-2011 (INTRO NUMBER 16-2011), ENTITLED "A LOCAL LAW REGULATING ELECTRONIC CIGARETTES ["E-CIGARETTES"] AND HERBAL CIGARETTES"
- \* \* \* \* \*
- 312-15 Mr. Weller and Mr. Koch  
BID ACCEPTANCE FOR MILLING AND PAVING OF PORTIONS OF COUNTY ROAD NO. 65 AND COUNTY ROAD NO. 10 (Department of Public Works)  
Approved by 9 Finance and 9 Public Works
- 313-15 Mr. Weller and Mr. Koch  
BID ACCEPTANCE FOR EMERGENCY STREAMBANK RESTORATION (Department of Public Works)  
Approved by 9 Finance and 9 Public Works
- 314-15 Mr. Weller and Mr. Koch  
BID ACCEPTANCE FOR PURCHASE OF ALUMINUM ROUND 8500 GALLON TANK TRAILER (EXTERIOR RING) (Department of Public Works)  
Approved by 9 Finance and 9 Public Works
- 315-15 Mr. Weller and Mr. Koch  
AUTHORIZING THE CHAIR TO EXECUTE CONTRACT WITH GREENMAN-PEDERSEN, INC. FOR ENGINEERING CONSULTANT SERVICES FOR 2016 BRIDGE PAINTING PROGRAM  
***Additional sponsor: Mr. Lamberson***  
Approved by 9 Finance and 9 Public Works
- 316-15 Mr. Weller and Mr. Koch  
AUTHORIZING THE CHAIR TO EXECUTE CONTRACT WITH GEITER DONE OF WNY, INC. FOR WASTE TIRE RECYCLING PROGRAM  
***Additional sponsor: Mr. Lamberson***  
Approved by 9 Finance and 9 Public Works
- 317-15 Ms. Vickman  
AUTHORIZING THE CHAIR TO EXECUTE ATTESTATION CONFIRMING THAT 2% FUNDING INCREASES WILL BE USED TO SUPPORT SALARY AND SALARY-RELATED FRINGE BENEFIT COSTS TO CERTAIN STAFF AT NOT-FOR-PROFIT PROVIDERS (Department of Aging)  
Approved by 9 Finance and 7 Senior Services and 5 Labor Relations
- 318-15 Ms. Edstrom and Mrs. Stockman  
AUTHORIZING THE CHAIR TO EXECUTE CONTRACT WITH KATHLEEN E. EBERSOLE D/B/A KEE CONCEPTS CONSULTING FOR HEALTH DEPARTMENT SCALE INITIATIVE CONSULTANT SERVICES  
Approved by 9 Finance and 7 Human Services

- 319-15 Ms. Edstrom and Mrs. Stockman  
AUTHORIZING THE CHAIR TO EXECUTE CONTRACTS WITH VARIOUS ENTITIES FOR  
RESIDENTIAL INSTITUTIONAL FOSTER CARE  
***Additional sponsor: Mr. Lamberson***  
Approved by 9 Finance and 7 Human Services
- 320-15 Ms. Edstrom and Mrs. Stockman  
AUTHORIZING THE CHAIR TO EXECUTE CONTRACTS WITH VARIOUS ENTITIES FOR  
DEPARTMENT OF SOCIAL SERVICES PSYCHOLOGICAL EVALUATIONS AND ASSESSMENTS  
Approved by 9 Finance and 7 Human Services
- 321-15 Ms. Edstrom and Mrs. Stockman  
AUTHORIZING THE CHAIR TO EXECUTE CONTRACT WITH CATTARAUGUS COMMUNITY  
ACTION, INC., FOR YOUTH PLACEMENT PREVENTION PROGRAMMING (FAST) AND  
TEENAGE SERVICE ACT (TASA) SERVICES  
Approved by 9 Finance and 7 Human Services
- 322-15 Mr. VanRensselaer and Mr. Boser  
AUTHORIZING THE CHAIR TO EXECUTE CONTRACT WITH SENECA-SALAMANCA AREA  
CHAMBER OF COMMERCE, INC., FOR INFORMATION CENTER MANAGER/COORDINATOR  
***Additional sponsor: Mr. Koch***  
Approved by 9 Finance and 6 Development & Agriculture
- 323-15 Mr. Felton and Ms. Vickman  
REJECTING CERTAIN DEPARTMENT OF NURSING HOMES BIDS FOR FOOD SERVICE –  
OLEAN CAMPUS (Department of Nursing Homes)  
Approved by 9 Finance and 7 Senior Services
- 324-15 Mr. Felton and Ms. Vickman  
AUTHORIZING THE CHAIR TO EXECUTE CONTRACT EXTENSION WITH HEALTHCARE  
SERVICES GROUP, INC. FOR DEPARTMENT OF NURSING HOMES DIETARY  
MANAGEMENT SERVICES FOR OLEAN CAMPUS AND REGISTERED DIETICIAN SERVICES  
FOR OLEAN & MACHIAS CAMPUSES  
Approved by 9 Finance and 7 Senior Services
- 325-15 Mr. VanRensselaer and Mr. Boser  
AUTHORIZING THE CHAIR TO APPLY FOR FUNDING THROUGH THE CENTER FOR  
COMMUNITY PROGRESS TECHNICAL ASSISTANCE SCHOLARSHIP PROGRAM  
Approved by 9 Finance and 6 Development & Agriculture
- 326-15 Ms. Edstrom and Mrs. Stockman  
AUTHORIZING THE CHAIR TO EXECUTE CONTRACT WITH CORNELL CORRECTIONS OF  
CALIFORNIA, INC. FOR RESIDENTIAL INSTITUTIONAL FOSTER CARE  
Approved by 9 Finance and 7 Human Services

327-15

Mr. Murphy

AUTHORIZING THE CHAIR TO EXECUTE MEMORANDUM OF UNDERSTANDING WITH COUNCIL ON ADDICTION RECOVERY SERVICES, INC., FOR HEALTHY CATTARAUGUS COUNTY: A DRUG FREE COALITION

Approved by 9 Finance, 7 Human Services and 7 Public Safety

**LOCAL LAW NUMBER 6-2015  
COUNTY OF CATTARAUGUS, NEW YORK**

Pursuant to Article 13F of the Public Health Law and  
Section 10 of the Municipal Home Rule Law.

**A LOCAL LAW AMENDING LOCAL LAW NUMBER 10-2011 (INTRO NUMBER 16-2011),  
ENTITLED "A LOCAL LAW REGULATING ELECTRONIC CIGARETTES  
["E-CIGARETTES"] AND HERBAL CIGARETTES"**

BE IT ENACTED by the County Legislature of the County of Cattaraugus as follows:

SECTION 1. Legislative Intent. It is the intent of this Local Law to amend Local Law Number 10-2011 (Intro Number 16-2011) to reflect that the provisions of such local law relating to the sale of electronic cigarettes to minors have been preempted by state law and to otherwise amend such local law.

SECTION 2. Amendments. Local Law Number 10-2011 (Intro Number 16-2011), entitled "A Local Law Regulating Electronic Cigarettes ("E-Cigarettes") and Herbal Cigarettes" is hereby amended as follows:

A. Section 1 thereof, entitled "Legislative Intent", is amended by deleting therefrom subparagraph (c) and by relettering former subparagraphs (d) and (e) as subparagraphs (c) and (d) respectively; and by deleting the following words from subparagraph d (formerly e) thereof: "and to ban the sale of such products to persons under the age of eighteen (18)".

B. Section 2 of such local law, entitled "Definitions", is amended in the following respects:

(1) by adding a new subparagraph (f) thereof, which shall read as follows:

"f) "Business" shall mean a sole proprietorship, corporation, limited liability company, partnership or other enterprise in which the primary activity is the sale, manufacture or promotion of e-cigarettes, e-cigarette cartridges, e-cigarette cartridge filler, or accessories, either at wholesale or retail, and in which the sale, manufacture or promotion of other products is merely incidental. A Business shall include but not be limited to a lounge where e-cigarette use is permitted as well as any establishment which sells e-cigarette materials.";

(2) by adding a new subparagraph (g) thereof, which shall read as follows:

"g) "Director" shall mean the Director of the Cattaraugus County Department of Health."; and

(3) by adding a new subparagraph (h) thereof, which shall read as follows:

"h) "Department" shall mean the Cattaraugus County Department of Health".

C. Section 3 of such local law, entitled "Sale to Minors Prohibited", is hereby rescinded and deleted in its entirety.

D. Section 4 of such local law, entitled "Restrictions on Smoking of Herbal or E-Cigarettes", is renumbered as Section 3 and amended to read as follows:

“The smoking of herbal and electronic cigarettes shall not be permitted and no person shall smoke electronic or herbal cigarettes in any areas in which smoking tobacco products is prohibited or restricted pursuant to the Public Health Law. For violations of this section, it shall be an affirmative defense that during the relevant time period actual control of the indoor area open to the public was not exercised by the respondent, but rather by a lessee, a sub-lessee or any other person. To establish an affirmative defense, the respondent shall submit an affidavit and may submit any other relevant proof indicating that the respondent did not exercise actual control of said area during the relevant time period. Such affidavit and other proof shall be mailed by certified mail to the Board within 30 days of receipt of such notice of violation.”

E. A new Section 4 is hereby added as follows:

“SECTION 4. Business Registration. Any Business which relies on the provision of on-site sampling as a mechanism to market and/or sell e-cigarettes, e-cigarette cartridges or e-cigarette cartridge fillings and accessories may register with the Department as a Certified E-Cigarette Business. The Department shall develop, and make available to Businesses, a certification form by which a Business may certify that it meets the definition of Business contained within this local law. The certification will also include any provisions which the Department finds necessary to protect the health and safety of the residents of Cattaraugus County. When a Business completes the certification form to the Department’s satisfaction, the Department shall add such Business to a registry of Certified E-Cigarette Businesses which it shall control and maintain.”

F. A new Section 5 is hereby added as follows:

“SECTION 5. Application. The restrictions contained in Section 3 of this local law shall not apply to Businesses registered as Certified E-Cigarette Businesses pursuant to Section 4 above or to individuals while they are patronizing a Certified E-Cigarette Business. Otherwise, the terms and conditions of this local law shall have general effect county wide.”

G. By renumbering the remaining sections of such local law as Sections 6 through 11, respectively.

H. Section 6 of such local law, entitled “Enforcement”, subparagraph (c) is hereby amended as follows: at the end, add: “, and in addition thereto, may suspend or revoke any certification issued to the Business committing such violation”.

SECTION 3. SEQRA Determination: This Legislature, being the state environmental quality review act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II Action pursuant to Section 617.5(c)(20), (21), and/or (27) of Title VI of the New York Code of Rules and Regulations and within the meaning of Section 8-0109(2) of the New York Environmental Conservation Law as a promulgation of regulations, rules, policies, procedures and legislative decisions in connection with continuing agency administration, management and information collection. The County Administrator is hereby directed to circulate any appropriate SEQRA notice of determination of non-applicability or non-significance in accordance with this law.

SECTION 4. Effective Date. This local law shall become effective upon filing with the Secretary of State.

**LOCAL LAW NUMBER 5- 2015  
COUNTY OF CATTARAUGUS, NEW YORK**

Pursuant to Section 10 of the Municipal Home Rule Law and  
Section 103 of the General Municipal Law.

**A LOCAL LAW AMENDING LOCAL LAW NUMBER 10-2012 (INTRO NO. 12-2012)  
REGARDING UNIFORM GUIDELINES FOR DETERMINING THE RESPONSIBILITY OF BIDDERS**

BE IT ENACTED by the Legislature of the County of Cattaraugus ("the County"), as follows:

Section 1. Amendment. This Local Law shall amend Local Law Number 10-2012 (Intro No. 12-2012), as previously amended ("the law"), which established uniform guidelines for determining the responsibility of ~~bidders~~ **bidder**. Sections 1 through 7 thereof, inclusive, shall, from and after the effective date of this local law, read as follows:

"Section 1. Legislative Intent. It is the intent of this Local Law to enhance the County's ability to identify the lowest "responsible bidder" on public works construction projects by instituting more comprehensive submission requirements and an evaluation system which is in compliance with New York State General Municipal Law. The County, based upon its experience, has determined that quality workmanship, efficient operation, safety, and timely completion of projects are not necessarily assured by awarding a public works contract solely on the basis of the low price. This Local Law establishing uniformity of guidelines for determining the responsibility of apparent low bidders will assure efficient use of taxpayer dollars, will promote public safety, and is in the public interest.

Section 2. Applicability. This Local Law shall apply to construction projects subject to the competitive bidding requirements of General Municipal Law §103 and advertised for bids on or after the effective date.

Section 3. Public Works. For purposes of this Local Law, the term "public works" shall mean the following: any constructing, altering, reconstructing, repairing, rehabilitating, refinishing, refurbishing, remodeling, remediating, renovating, custom fabricating, maintenance, landscaping, improving, moving, wrecking, painting, decorating, demolishing, and adding to or subtracting from any public building, structure, highway, roadway, street, alley, bridge, sewer, drain, ditch, sewage disposal plant, water work, parking facility, railroad, excavation, or other project, development, real property, or improvement, or to any part thereof, whether or not the performance of the work herein described involves the addition to, or fabrication into, any structure, project or development, real property or improvement herein described of any material or article of merchandise, which is paid for out of public funds in an amount exceeding ~~\$35,000.00~~ **the threshold for bidding established by the General Municipal Law**. The term also includes any public works leased by the County under a lease containing an option to purchase exceeding the ~~\$35,000.00~~ threshold **for bidding public works projects** established ~~hereby by~~ **the General Municipal Law**.

Section 4. Cattaraugus County Vendor Responsibility Form and Procedure.

A. A questionnaire (which shall be titled the "Cattaraugus County Vendor Responsibility Form"), hereinafter "the Form", shall be prepared and, as he/she may deem appropriate, revised by the Cattaraugus County Commissioner of Public Works ("Commissioner").

B. The Commissioner shall provide the Form to the apparent low bidder on all County public works projects.

C. The County shall promptly notify the apparent low bidder of its status as such and provide such entity with a copy of the Form either in electronic or paper format. The most current version of the Form shall also be posted on the Cattaraugus County website.

D. The apparent low bidder shall file the Form in in the Office of the Commissioner not more than five (5) business days after receiving it or, if the form is mailed to the apparent low bidder, within ten (10) business days after the date of mailing.

E. In the event that the apparent low bidder fails to file the fully completed Form in the Commissioner's Office within the required time, its bid will be rejected and any bid bond submitted may, at the County's sole discretion, be forfeited.

F. If the apparent low bidder is deemed not responsible, or fails to submit the Form within the required time, then the next lowest bidder will be deemed the apparent low bidder and so on until the lowest bidder is deemed responsible and selected as the lowest responsible bidder.

G. Not later than five (5) calendar days prior to a final determination that the apparent low bidder is not responsible, the County will notify the bidder of same, in writing, and by certified mail, return receipt, stating the reasons. Except in the case of the rejection of an apparent low bid solely because the vendor failed to timely submit a completed Form, such notice shall set forth a time, date and place for the apparent low bidder to appear and be heard, not less than five (5) business days after such notice is served.

H. ~~Subcontractors proposed to be used on a project must also complete the Form before the subcontractor is approved by the County.~~ **Subcontractors proposed to be used on a project must also complete and submit the Form within five (5) days after the preconstruction meeting before the subcontractor is approved by the County.** Failure by a subcontractor to submit the Form or unsatisfactory responses to questions may lead to rejection of the bid of the subcontractor at the County's discretion.

I. If the bid of the apparent low bidder appears disproportionately low when compared with estimates obtained by or on behalf of the County and/or compared to other bids submitted (10% or greater disparity), the County reserves the right to inquire further of the apparent low bidder to determine whether the bid contains mathematical errors, omissions and/or erroneous assumptions, and whether the apparent low bidder has the capability to perform and complete the contract for the bid amount.

J. If a bidder is found to have willfully violated New York Labor Law §220 within the previous five (5) years, that bidder shall automatically be deemed "not responsible" and its bid shall be rejected unless the Commissioner, subject to review by the Public Works Committee of the Cattaraugus County Legislature, determines otherwise. In all other cases, based on all of the information collected pursuant to this local law and any other factor deemed relevant, the Commissioner, or other department heads soliciting public works bids, shall determine if the apparent lowest bidder is in fact "responsible."



Section 5. Additional Requirements.

A. Contractors and all subcontractors shall classify their workers as employees rather than as independent contractors, unless those workers meet the definition of "independent contractor" as defined by the Internal Revenue Service, and shall treat said employees accordingly for purposes of workers' compensation insurance coverage, unemployment insurance, employment taxes, and social security taxes.

B. The contractors and all subcontractors shall submit certified payrolls to the Commissioner.

Section 6. Procedure. Cattaraugus County will make its own determinations of responsibility for low bidders. A bidder recognized by the state as a responsible vendor must still satisfy the requirements of this local law by submitting the required Cattaraugus County Vendor Responsibility Form within the required time frame.

Section 7. Incomplete Submissions by Bidders and Subcontractors. It is the sole responsibility of the contractor to comply with all submission requirements to the County. The submission requirements also apply to all subcontractors, except that the contractor shall submit all subcontractor questionnaires to the County of Cattaraugus ~~no later than the date and time of the contract award. Contractor and/or subcontractor submissions deemed non-responsive will result in automatic rejection of the bid.~~ *for approval. Failure to submit the Form may lead to the rejection of the bid of the subcontractor at the County's discretion. Contractor submissions deemed non-responsive will result in automatic rejection of the bid.*

Section 2. Renumbering. Sections 10, 11, 12 and 13 of Local Law No. 10-2012 (Intro No. 12-2012) are hereby renumbered as Sections 8, 9, 10 and 11, respectively.

Section 3. Effective Date. This Local Law shall take effect upon filing in the Office of the Secretary of State, in accordance with Section 27 of the New York State Municipal Home Rule Law.