

Legislation

Meeting Agenda



Committee Chair: Colin Smith

800 Michaelian Office Bldg.
148 Martine Avenue, 8th Floor
White Plains, NY 10601
www.westchesterlegislators.com

Monday, April 15, 2024

1:00 PM

Committee Room

CALL TO ORDER

Please note: Meetings of the Board of Legislators and its committees are held at the Michaelian Office Building, 148 Martine Avenue, White Plains, New York, 10601, and remotely via the WebEx video conferencing system. Legislators may participate in person or via Webex. Members of the public may attend meetings in person at any of its locations, or view it online on the Westchester County Legislature's website:
<https://westchestercountyny.legistar.com/> This website also provides links to materials for all matters to be discussed at a given meeting.

Joint with Law & Major Contracts and Budget & Appropriations committees.

Legislator Emiljana Ulaj will be participating remotely from 520 White Plains Road, Tarrytown, NY 10591.

MINUTES APPROVAL

Monday, March 25, 2024 at 12:00 p.m.

Wednesday, April 3, 2024 at 2:00 p.m.

I. ITEMS FOR DISCUSSION

1. 2024-119 PH - Local Law Amending Chapter 780

A RESOLUTION to set a Public Hearing on "A LOCAL LAW amending Chapter 780 of the Laws of Westchester County relating to the requirement that the County receive prior written notice of a defective condition to maintain a civil action." [Public Hearing set for _____, 2024 at _____.m.]. LOCAL LAW INTRO: 2024-120.

COMMITTEE REFERRAL: COMMITTEE ON LEGISLATION AND LAW & MAJOR CONTRACTS

Joint with Law & Major Contracts committee.

Guest: Law Dept.: Jason Whitehead, Senior Assistant County Attorney

2. 2024-120 LL - Amending Chapter 780

A LOCAL LAW amending Chapter 780 of the Laws of Westchester County relating to the requirement that the County receive prior written notice of a defective condition to maintain a civil action."

COMMITTEE REFERRAL: COMMITTEE ON LEGISLATION AND LAW & MAJOR CONTRACTS

Joint with Law & Major Contracts committee.

Guest: Law Dept.: Jason Whitehead, Senior Assistant County Attorney

3. 2024-160 PH-Amend Lease Agreement with Port Chester Gateway LLC

A RESOLUTION to set a Public Hearing on "A LOCAL LAW authorizing the County of Westchester to amend the lease agreement with Port Chester Gateway LLC, in order to extend the term of the lease for an additional five (5) years commencing on June 1, 2024, with a County option to further extend the term of the lease for an additional five (5) years commencing on June 1, 2029. [Public Hearing set for _____, 2024 at _____.m.j. LOCAL LAW INTRO: 2024-161.

COMMITTEE REFERRAL: COMMITTEES ON LEGISLATION AND BUDGET & APPROPRIATIONS

Joint with Budget & Appropriations committee.

Guest: Law Dept.: Carla Chaves, Senior Assistant County Attorney; CE's Office: Christopher Steers, Director of Countywide Administrative Services; Dept. of Health: Rachel Bikoff, Program Director

4. 2024-161 LOCAL LAW-Amend Lease Agreement with Port Chester Gateway LLC

A LOCAL LAW authorizing the County of Westchester to amend the lease agreement with Port Chester Gateway LLC, in order to extend the term of the lease for an additional five (5) years commencing on June 1, 2024, with a County option to further extend the term of the lease for an additional five (5) years commencing on June 1, 2029.

COMMITTEE REFERRAL: COMMITTEES ON LEGISLATION AND BUDGET & APPROPRIATIONS

Joint with Budget & Appropriations committee.

Guest: Law Dept.: Carla Chaves, Senior Assistant County Attorney; CE's Office: Christopher Steers, Director of Countywide Administrative Services; Dept. of Health: Rachel Bikoff, Program Director

II. OTHER BUSINESS**III. RECEIVE & FILE**

1. 2024-204 CLERK OF THE BOARD - Independent Office of Assigned Counsel - 2023

Forwarding the 2023 Annual Report for the Independent Office of Assigned Counsel.

COMMITTEE REFERRAL: COMMITTEE ON LEGISLATION

ADJOURNMENT



John M. Nonna
County Attorney

February 8, 2024

Westchester County Board of Legislators
800 Michaelian Office Building
148 Martine Avenue, 8th Floor
White Plains, New York 10601

Dear Honorable Members of the Board:

I respectfully request that your Honorable Board adopt the attached “A Local Law amending Chapter 780 of the Laws of Westchester County relating to the requirement that the County receive prior written notice of a defective condition to maintain a civil action.”

New York State Law provides that the county is liable for damages or injuries to a person or property as a result of property that is “defective, out of repair, unsafe, or dangerous . . . in [a county’s] actual physical possession, control or operation” (New York State County Law (County Law) § 53(2)), but every local government is empowered to adopt and amend local laws in regards to the “presentation, ascertainment, disposition, and discharge of claims against it” (New York State Municipal Home Rule Law (MHRL) § 10(1)(ii)(a)(5)).

In an exercise of their home rule power, local governments may choose to limit their liability in regards to “any street, highway, bridge, culvert, sidewalk or crosswalk” in their charge and control by requiring that they receive “prior written notice” of a defective condition within a reasonable time, in order for a claimant to maintain a lawsuit for personal injuries against the municipality. New York State General Municipal Law (GML) § 50-e(4). New York State Law requires, however, that where there is no prior written notice of a defective condition, a local municipality may nevertheless be held liable if it had constructive notice of the defect, but only in regards to highways, bridges, and culverts. New York State Highway Law (HL) § 139(2).

In 1992, pursuant its home rule power, Westchester County enacted Chapter 780 of the Laws of Westchester County (LWC) to require prior written notice as a condition precedent to any lawsuit against the County for any defect, unsafe or dangerous condition, including the existence of snow or ice, on any “road, street, highway, bridge, culvert, sidewalk or crosswalk.” LWC §§ 780.01. The County’s prior written notice law also provides a constructive notice exception to the prior notice limitation as required by New York State Law, but the exception was expanded beyond New York State law to include streets, sidewalks, and crosswalks. *Id.*

The County's prior written notice law is expansive, outdated, and should be amended to incorporate favorable developments in decisional law, in addition to placing limitations on the application of constructive notice not mandated by New York State Law.

First, the New York State Court of Appeals has expanded prior written notice protection to include that which is the "functional equivalent" of those categories allowed under New York State Law. *See Woodson v. City of New York*, 93 N.Y.2d 936 (1999) (extending protection to a public stairway or staircase because it "functionally fulfills the same purposes that a standard sidewalk would serve" in providing a passageway for the public); *Groninger v. Village of Mamaroneck*, 17 N.Y.3d 125, 128 (2011) (extending prior written notice protection to a parking lot because it served the functional equivalent of a highway); *Hinton v. Pulaski*, 33 N.Y.3d 931, 932-933 (2019) (stairs from a public road leading down to a local fishing hole); *Walker v. County of Nassau*, 147 A.D.3d 806, 807-08 (2d Dep't 2017) ("landing on the exterior steps of the building where accident occurred provided the public with a general right of passage, and thus served the same functional purpose as a sidewalk, which is one of the locations specifically enumerated in General Municipal Law § 50-e(4)").

Second, while New York State Law requires counties to provide a constructive notice exception with regard to defects or dangerous conditions on highways, bridges, and culverts (except those involving snow and ice), the County's law goes further and has its constructive notice exception apply to streets, sidewalks, and crosswalks as well. (*Compare LWC § 780.01 with HL § 139(2)*)

As a consequence, the County is and has been needlessly liable over the last thirty years for damages as a result of claims that would otherwise be dismissed for lack of prior written notice, if the constructive notice exception in LWC § 780.01 did not apply so broadly. *See, for example, Sundack v. County of Westchester*, 2019 N.Y. Misc. LEXIS 24350, *1, 3-5, 2019 NY Slip Op. 34666(UJ) (Sup. Ct., West. Cty. Dec. 13, 2019) (constructive notice saved the plaintiff's claims that she tripped and fell on a branch while running on a pathway in a park, which claim would have been dismissed for lack of prior written notice); *Smith v. County of Westchester*, 2021 NY Slip Op. 32929(U), 2021 N.Y. Misc. LEXIS 7328, *3-8 (Sup. Ct., West. Cty. Oct. 15, 2021) (No prior written notice, but lawsuit maintained based on constructive notice of a pothole or divot in a parking lot).

The proposed amendments incorporate the Court of Appeals' expansion of prior written notice protection in *Woodson*, *Groninger*, and *Hinton* to cover stairways, parks, and parking lots, as well as any encumbrances thereon or attachments thereto that are necessary for the functioning of a building, structure, or encumbrance or attachment under the jurisdiction of the County. The proposed amendments also eliminate the constructive notice exception for streets sidewalks, and crosswalks since it is not required by New York State law.

The proposed amendments further eliminate the constructive notice exception language for highways and roadways because it is not necessary to have such a provision since the Courts have routinely read the exception into local municipal laws that do not expressly provide it. *Tanner W. by Leone v. County of Onondaga*, 225 A.D.2d 1074, 1074 (4th Dep't 1996) ("the local law, however, must be interpreted in conjunction with Highway Law § 139 (2) to permit an action against the County based on constructive notice of a dangerous highway condition"); *Bernardo v. County of Nassau*, 150 A.D.2d 320, 320 (2d Dep't 1989) ("the Supreme Court correctly found that Nassau County Administrative Code § 12-4.0 (e) should be construed in accord with Highway Law § 139 (2), which allows for tort recovery based on constructive notice where written notice is lacking"); *Carlino v. Albany*, 118 A.D.2d 928, 930 (3d Dep't 1986) ("there is no clear inconsistency between the statute

and the county's local law; the county's local law does not expressly prohibit civil actions which have their provenance in constructive notice. Accordingly, rather than invalidate the county's local law, we interpret it as providing for constructive notice"). As such, it is recommended that constructive notice be removed from the County's law since it is already a requirement of New York State law for highways and roadways.

These amendments would help to preserve taxpayer dollars and county resources from having to be spent on defending the County against certain personal injury claims. Therefore, I respectfully request that your Honorable Board adopt the attached "A Local Law amending Chapter 780 of the LWC relating to the requirement that the County receive prior written notice of a defective condition to maintain a civil action."

Sincerely,



John M. Nonna
County Attorney

JN/nm
Enclosures

TO: BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee recommends the adoption of "A LOCAL LAW amending Chapters 780 of the Laws of Westchester County relating to the requirement that the County receive prior written notice of a defective condition to maintain a civil action."

Your Committee is advised that New York State Law provides that the county is liable for damages or injuries to a person or property as a result of property that is "defective, out of repair, unsafe, or dangerous . . . in [a county's] actual physical possession, control or operation" (New York State County Law (County Law) § 53(2)), but every local government is empowered to adopt and amend local laws in regards to the "presentation, ascertainment, disposition, and discharge of claims against it" (New York State Municipal Home Rule Law (MHRL) § 10(1)(ii)(a)(5)).

Your Committee is further advised that, in an exercise of their home rule power, local governments may choose to limit their liability in regards to "any street, highway, bridge, culvert, sidewalk or crosswalk" in their charge and control by requiring that they receive "prior written notice" of a defective condition within a reasonable time, in order for a claimant to maintain a lawsuit for personal injuries against the municipality. New York State General Municipal Law (GML) § 50-e(4). New York State Law requires, however, that where there is no prior written notice of a defective condition, a local municipality may nevertheless be held liable if it had constructive notice of the defect, but only in regards to highways, bridges, and culverts. New York State Highway Law (HL) § 139(2).

Your Committee is informed that, in 1992, pursuant its home rule power, Westchester County enacted Chapter 780 of the Laws of Westchester County (LWC) to require prior written notice as a condition precedent to any lawsuit against the County for any defect, unsafe or dangerous condition,

including the existence of snow or ice, on any “road, street, highway, bridge, culvert, sidewalk or crosswalk.” LWC §§ 780.01. The County’s prior written notice law also provides a constructive notice exception to the prior notice limitation as required by New York State Law, but the exception was expanded beyond New York State law to include streets, sidewalks, and crosswalks. *Id.*

Your Committee is further informed that the County’s prior written notice law is expansive and outdated and should be amended to incorporate favorable developments in decisional law, in addition to placing limitations on the application of constructive notice not mandated by New York State Law. The New York State Court of Appeals has expanded prior written notice protection to include that which is the “functional equivalent” of those categories allowed under New York State Law. While New York State Law requires that counties must provide for constructive notice with regard to defects or dangerous conditions on highways, bridges, and culverts (except those involving snow and ice), the County’s law goes further and makes its constructive notice exception apply to streets, sidewalks, and crosswalks as well. (*Compare* LWC § 780.01 with HL § 139(2)).

Your Committee notes that, as a consequence, the County is and has been needlessly liable over the last thirty years for damages as a result of claims that would otherwise be dismissed for lack of prior written notice, if the constructive notice exception in LWC § 780.01 did not apply so broadly.

Your Committee is further notes that the proposed amendments incorporate the Court of Appeals’ expansion of prior written notice protection to cover stairways, parks, and parking lots, as well as any encumbrances thereon or attachments thereto that are necessary for the functioning of a building, structure, encumbrance or attachment under the jurisdiction of the County. The proposed amendments also eliminate the constructive notice exception for streets sidewalks, and crosswalks since it is not required by New York State law.

Your Committee is further informed that the proposed amendments also eliminate the constructive notice exception language because it is not necessary to have such a provision since the Courts have routinely read the exception into local municipal laws that do not expressly provide it. As such, it is recommended that constructive notice be removed from the County's law since it is already a requirement of New York State law.

Your Committee is further informed that the proposed amendments do not meet the definition of an action under New York State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617. Please refer to the memorandum from the Department of Planning dated January 8, 2024, which is on file with the Clerk of the Board of Legislators.

Your Committee, after careful consideration, recommends adoption of this Local Law.

Dated: , 2024
White Plains, New York

COMMITTEE ON

RESOLUTION NO. ____ - 2024

RESOLVED, that this Board hold a public hearing pursuant to Section 209.141(4) of the Laws of Westchester County on Local Law Intro. No. ____ - 2024, entitled, "A LOCAL LAW amending Chapter 780 of the Laws of Westchester County relating to the requirement that the County receive prior written notice of a defective condition to maintain a civil action." The public hearing will be held at ____ .m. on the ____ day of _____, 2024 in the Chambers of the Board of Legislators, 8th Floor, Michaelian Office Building, White Plains, New York. The Clerk of the Board shall cause notice of the time and date of such hearing to be published at least once in one or more newspapers published in the County of Westchester and selected by the Clerk of the Board for that purpose in the manner and time required by law.

LOCAL LAW INTRO. NO. 2024

A LOCAL LAW a Local Law amending Chapter 780 of the Laws of Westchester County relating to the requirement that the County receive prior written notice of a defective condition to maintain a civil action.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. Chapter 780 of the Laws of Westchester County is hereby amended to read as follows:

Chapter 780

Sec. 780.01. - Notice of defective condition required prior to maintenance of civil action.

- a. No civil action shall be maintained against the County or any of its departments, agencies, offices, boards, commissions, subdivisions, its officers or employees for damages or injuries to person or property sustained in consequences by reason of any road, street, parking lot and parking field, highway, guide rail, bridge, viaduct or overpass, culvert, sidewalk, or crosswalk, walkway, pathway, boardwalk, step, stairs, or stairway, crosswalk, underpass, ramp, runway or taxiway, tree, tree limb, bush, or vegetation, or building or other property and land, or any part or portion of any of the foregoing including any encumbrances thereon or attachments thereto, under the jurisdiction of the County, allegedly being defective, out of repair, unsafe, dangerous, or obstructed, or in consequence of the existence of snow or ice thereon, unless the County received prior written notice within a reasonable time before said injury or property damage was sustained, of such defective, unsafe, dangerous, or obstructed condition, or that snow or ice existed on or around the items identified above, specifying the particular place and nature of the alleged condition, was actually given to the Clerk of the Board of Legislators or the Commissioner of Public

~~Works and Transportation~~ and there was a failure or neglect within a reasonable time after the giving of such notice to repair or remove the defect, danger, or obstruction, or snow or ice complained of or to make the place otherwise reasonably safe, in the absence of such notice, unless such defective, unsafe, dangerous, or obstructed condition existed for so long a period that the same should have been discovered and remedied in the exercise of reasonable care and diligence; nor shall any civil action be maintained against the County, its officers or employees for damages or injuries to person or property sustained solely in consequence of the existence of snow or ice upon any road, street, highway, bridge, culvert, sidewalk or crosswalk, unless prior written notice thereof, specifying the particular place, was actually given to the Clerk of the Board of Legislators or Commissioner of Public Works and Transportation and there was a failure or neglect to cause such snow or ice to be removed or to make the place otherwise reasonably safe within a reasonable time after the receipt of such notice.

- b. "Reasonable time" shall mean (i) at least 30 days for conditions other than ice and snow, and (ii) at least 72 hours for conditions caused by snow or ice prior to an incident, in which damages or injuries to a person or property occurred.
- c. Prior written notice shall be made in writing by certified or registered mail to the Clerk of the Board of Legislators or Commissioner of Public Works and Transportation.

Sec. 780.11. - Submission of notices to Clerk.

The Commissioner of Public Works and Transportation shall transmit in writing to the Clerk of the Board of Legislators, within ten days after receipt thereof, all written notices received by him or her pursuant to section 780.01.

Sec. 780.21. – Record of notices.

The Clerk of the Board of Legislators shall keep an indexed record, in a separate book, of all written notices which he or she shall receive pursuant to section 780.01 or section 780.11 of the existence of such defective, unsafe, dangerous, ~~or~~-obstructed condition, ~~or snow or ice~~ which record shall set forth the date of receipt of such notice, the nature and locations of the condition stated to exist and the name and address of the person from whom the notice is received. The record of each notice shall be preserved for a period of five years after the date it is received.

Sec. 780.31. – Other duties not affected.

Nothing set forth in this chapter shall relieve a claimant from compliance with any other provision of law, including but not limited to timely service of a notice of claim in accordance with law.

Section 3. Effective Date. This Local Law shall take effect immediately after enactment.

jsw-2-8-2024

Memorandum

Office of the County Executive
Michaelian Office Building

March 13, 2024

TO: Hon. Vedat Gashi, Chair
Hon. Jose Alvarado, Vice Chair
Hon. Tyrae Woodson-Samuels, Majority Leader
Hon. Margaret Cunzio, Minority Leader

FROM: George Latimer 
Westchester County Executive

RE: Message Requesting Immediate Consideration: **Local Law – Amend Lease Agreement with Port Chester Gateway LLC.**

This will confirm my request that the Board of Legislators allow submission of the referenced communication to be submitted to the Board of Legislators March 18, 2024 Agenda.

Transmitted herewith for your consideration and approval is a proposed Local Law, which, if adopted by your Honorable Board, would authorize the County of Westchester (the “County”), acting by and through its Department of Public Works and Transportation, to amend its lease agreement (the “Lease”) with Port Chester Gateway LLC (the “Landlord”).

Therefore, since this communication is of the utmost importance, it is respectfully submitted that the County Board of Legislators accepts this submission for March 18, 2024 “blue sheet” calendar.

Thank you for your prompt attention to this matter.

Westchester County

George Latimer
County Executive

March 7, 2024

Westchester County Board of Legislators
800 Michaelian Office Building
White Plains, New York 10601

Dear Honorable Members of the Board of Legislators:

Transmitted herewith for your consideration and approval is a proposed Local Law, which, if adopted by your Honorable Board, would authorize the County of Westchester (the "County"), acting by and through its Department of Public Works and Transportation, to amend its lease agreement (the "Lease") with Port Chester Gateway LLC (the "Landlord"), pursuant to which the County leases approximately 1,680 square feet of space on the first floor of the building located at 55 S. Main Street, Port Chester, New York 10573, commonly known as "One Gateway Plaza" (the "Leased Premises"), for a term of five (5) years, which commenced on June 1, 2019 and expires on May 31, 2024, in order to, among other things, extend the initial term of the Agreement for a term of five (5) years, commencing on June 1, 2024 and expiring on May 31, 2029, with the County having the option, at its sole discretion, to further extend the term of the Lease for an additional term of five (5) years, commencing on June 1, 2029 and expiring on May 31, 2034, for a term under the Lease of fifteen (15) years total (the "First Amendment").

On August 1, 2019, the Board of Acquisition and Contract authorized the County to enter into the Lease for a term of five (5) years, commencing on June 1, 2019 and expiring on May 31, 2024 (the "Initial Term"). The Lease was duly executed on or about November 5, 2019. Pursuant to Section 104.11(5)(e) of the Laws of Westchester County, however, leases of the property of others for County purposes for terms exceeding ten years may be made only by local law. As the proposed First Amendment may extend the term of the Lease beyond the authority of the Board of Acquisition and Contract, it is necessary for your Honorable Board to authorize the proposed First Amendment.

Under the proposed First Amendment, the County will, among other things, extend the Initial Term of the Lease for an additional term of five (5) years, commencing on June 1, 2024 and expiring on May 31, 2029 ("First Renewal Term"), with the County having the option, at its sole discretion, to further extend the term of the Lease for an additional term of five (5) years, commencing on June 1, 2029 and expiring on May 31, 2034 ("Second Renewal Term"), for a term under the Lease of fifteen (15) years total.

Pursuant to the First Amendment, the Base Rent for the first year of the First Renewal Term will remain the same as the Base Rent for the last year of the Initial Term. Thereafter, the Base Rent will increase annually by three percent (3%) each year during the term of the proposed First Amendment, as set forth below:

During the First Renewal Term, the Annual Base Rent and Monthly Base Rent for the Leased Premises shall be as follows:

<u>Period</u>	<u>Annual Base Rent</u>	<u>Monthly Base Rent</u>
6/1/24 to 5/31/25	\$45,360.00	\$3,780.00
6/1/25 to 5/31/26	\$46,720.80	\$3,893.40
6/1/26 to 5/31/27	\$48,122.42	\$4,010.20
6/1/27 to 5/31/28	\$49,566.10	\$4,130.51
6/1/28 to 5/31/29	\$51,053.08	\$4,254.42

If the County exercises its option to further extend the term of the Lease, the Annual Base Rent and Monthly Base Rent for the Leased Premises during the Second Renewal Term shall be as follows:

<u>Period</u>	<u>Annual Base Rent</u>	<u>Monthly Base Rent</u>
6/1/29 to 5/31/30	\$52,584.67	\$4,382.06
6/1/30 to 5/31/31	\$54,162.21	\$4,513.52
6/1/31 to 5/31/32	\$55,787.08	\$4,648.92
6/1/32 to 5/31/33	\$57,460.69	\$4,788.39
6/1/33 to 5/31/34	\$59,184.51	\$4,932.04

In addition, under the proposed First Amendment, the County will continue to pay annually, during the term of the First Amendment, its proportionate share of Landlord's operating costs, which covers operating and service expenses associated with the County's use of the Leased Premises during the term of the proposed First Amendment.

In consideration for the extension of the term under the First Amendment, the Landlord will complete the following work, during non-business hours, on a mutually agreeable work schedule, no later than six (6) months after the commencement of the First Renewal Term, at no cost to the County:

- (i) repaint all offices, including the server and storage rooms;
- (ii) replace the water fountain with a small hand-washing sink; and
- (iii) use its best efforts to install soundproofing between the Leased Premises and the adjacent space being used by a dental office.

As additional consideration, the Landlord will also provide the following additional services during the term of the proposed First Amendment, at no cost to the County:

- (i) service the dehumidifiers at the Leased Premises on a monthly basis; and
- (ii) make warm/hot water available to the Leased Premises.

In addition, pursuant to the proposed First Amendment, the Landlord will now be responsible for any extermination services needed at the Leased Premises. Furthermore, the Landlord will use its

best efforts to provide the County with the right to park an additional compact car in a third assigned parking space ("Third Assigned On-Site Space"). If the Landlord fails to provide the County with the Third Assigned On-Site Space, the number of unassigned parking spaces in the MTA parking garage ("Off-Site Spaces") will be increased by one (1), for a total of four (4) Off-Site Spaces under the Lease.

The Leased Premises are occupied by the Westchester County's Department of Health, for the Women, Infant and Children Nutrition Services ("WIC") Program. The public purpose of the Lease and the proposed First Amendment is to continue to provide for the continuance of the operation of the essential WIC Program.

Prior to taking any action on the proposed Local Law, your Honorable Board must hold a public hearing pursuant to 209.141 (4) of the Laws of Westchester County, and a resolution providing for the hearing is annexed hereto.

I believe this proposed First Amendment is in the County's best interests, and I urge approval of the attached Local Law.

Very truly yours,



George Latimer
County Executive

GL/HG/cmc
Attachment

**HONORABLE BOARD OF LEGISLATORS
THE COUNTY OF WESTCHESTER**

Your Committee is in receipt of a communication from the County Executive wherein he requests that your Honorable Board adopt a Local Law, which, if adopted by your Honorable Board, would authorize the County of Westchester (the “County”) acting by and through its Department of Public Works and Transportation, to amend the lease agreement (the “Lease”) with Port Chester Gateway LLC (the “Landlord”), for the leasing by the County of 1,680 square feet of space on the first floor of the building located at 55 S. Main Street, Port Chester, New York 10573, commonly known as the “One Gateway Plaza” (the “Leased Premises”), for a term of five (5) years, which commenced on June 1, 2019 and expires on May 31, 2024, in order to, among other things, extend the initial term of the Agreement for an additional term of five (5) years, commencing on June 1, 2024 and expiring on May 31, 2029, with the County having the option, at its sole discretion, to further extend the term of the Lease for an additional term of five (5) years, commencing on June 1, 2029 and expiring on May 31, 2034, for a term under the Lease of fifteen (15) years total (the “First Amendment”).

Your Committee is advised that on August 1, 2019, the Board of Acquisition and Contract authorized the County to enter into the Lease for a term of five (5) years, commencing on June 1, 2019 and expiring on May 31, 2024 (the “Initial Term”). The Lease was duly executed on or about November 5, 2019. Pursuant to Section 104.11(5)(e) of the Laws of Westchester County, however, leases of the property of others for County purposes for terms exceeding ten years may be made only by local law. As the proposed First Amendment may extend the term of the Lease beyond the authority of the Board of Acquisition and Contract, it is necessary for your Honorable Board to authorize the proposed First Amendment.

Your Committee is also advised that under the proposed First Amendment, the County will, among other things, extend the Initial Term of the Lease for a term of five (5) years, commencing on June 1, 2024 and expiring on May 31, 2029 (“First Renewal Term”), with the County having the option, at its sole discretion, to further extend the term of the Lease for an

additional term of five (5) years, commencing on June 1, 2029 and expiring on May 31, 2034 (“Second Renewal Term”), for a term under the Lease of fifteen (15) years total.

Pursuant to the First Amendment, the Base Rent for the first year of the First Renewal Term will remain the same as the Base Rent for the last year of the Initial Term. Thereafter, the Base Rent will increase annually by three percent (3%) each year during the term of the proposed First Amendment, as set forth below:

During the First Renewal Term, the Annual Base Rent and Monthly Base Rent for the Leased Premises shall be as follows:

<u>Period</u>	<u>Annual Base Rent</u>	<u>Monthly Base Rent</u>
6/1/24 to 5/31/25	\$45,360.00	\$3,780.00
6/1/25 to 5/31/26	\$46,720.80	\$3,893.40
6/1/26 to 5/31/27	\$48,122.42	\$4,010.20
6/1/27 to 5/31/28	\$49,566.10	\$4,130.51
6/1/28 to 5/31/29	\$51,053.08	\$4,254.42

If the County exercises its option to further extend the term of the Lease, the Annual Base Rent and Monthly Base Rent for the Leased Premises during the Second Renewal Term shall be as follows:

<u>Period</u>	<u>Annual Base Rent</u>	<u>Monthly Base Rent</u>
6/1/29 to 5/31/30	\$52,584.67	\$4,382.06
6/1/30 to 5/31/31	\$54,162.21	\$4,513.52
6/1/31 to 5/31/32	\$55,787.08	\$4,648.92
6/1/32 to 5/31/33	\$57,460.69	\$4,788.39
6/1/33 to 5/31/34	\$59,184.51	\$4,932.04

Your Committee is further advised that, under the proposed First Amendment, the County will continue to pay annually, during the term of the First Amendment, its proportionate share of Landlord’s operating costs, which covers operating and service expenses associated with the County’s use of the Leased Premises during the term of the proposed First Amendment.

Your Committed is advised that in consideration for the extension of the term under the First Amendment, the Landlord will complete the following work, during non-business hours, on a

mutually agreeable work schedule, no later than six (6) months after the commencement of the First Renewal Term, at no cost to the County

- (i) repaint all offices, including the server and storage rooms;
- (ii) replace the water fountain with a small hand-washing sink; and
- (iii) use its best efforts to install soundproofing between the Leased Premises and the adjacent space being used by a dental office.

Your Committee is further advised that as additional consideration, the Landlord will also provide the following additional services during the term of the proposed First Amendment, at no cost to the County:

- (i) service the dehumidifiers at the Leased Premises on a monthly basis; and
- (ii) make warm/hot water available to the Leased Premises.

Your Committee is further advised that, pursuant to the proposed First Amendment, the Landlord will now be responsible for any extermination services needed at the Leased Premises. Furthermore, the Landlord will use its best efforts to provide the County with the right to park an additional compact car in a third Assigned On-Site Space ("Third Assigned On-Site Space"). If the Landlord fails to provide the County with the Third Assigned On-Site Space, the number of unassigned parking spaces in the MTA parking garage ("Off-Site Spaces") will be increased by one (1), for a total of four (4) Off-Site Spaces under the Lease.

Your Committee is also advised that the Leased Premises are occupied by the Westchester County's Department of Health, for the Women, Infant and Children Nutrition Services ("WIC") Program. The public purpose of the Lease and the proposed First Amendment is to continue to provide for the continuance of the operation of the essential WIC Program.

The Department of Planning has advised your Committee that based on its review, the authorization of the proposed First Amendment may be classified as a Type "II" action pursuant to the State Environmental Quality Review Act and its implementing regulations, 6 NYCRR Part 617.5(c)(1) ("SEQR"). Therefore, no environmental review is required. Your Committee has reviewed the annexed SEQR documentation and concurs with this recommendation.

Prior to taking any action on the proposed Local Law, this Honorable Board must hold a public hearing pursuant to Section 209.141(4) of the Laws of Westchester County, and a resolution providing for the hearing is annexed hereto.

Upon careful consideration, your Committee finds the proposed First Amendment to be in the County's best interests and therefore your Committee recommends approval of the proposed Local Law.

Dated: , 2024
White Plains, New York

COMMITTEE ON

c/cmc/03.07.24

FISCAL IMPACT STATEMENT

SUBJECT: 1 Gateway Plaza Lease Renewal NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ 26,460

Total Current Year Revenue \$ -

Source of Funds (check one): Current Appropriations Transfer of Existing Appropriations

Additional Appropriations Other (explain)

Identify Accounts: 101-46-3300-3343-4320-GGDS

Potential Related Operating Budget Expenses: Annual Amount _____

Describe: _____

Potential Related Operating Budget Revenues: Annual Amount _____

Describe: _____

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: _____

Next Four Years: The Operating expenses for this lease extension are: \$46,153.80 (2025),
\$47,538.41 (2026), \$48,964.57 (2027), \$50,433.50 (2028) and \$21,272.12 (2029).

Prepared by: Anthony Finateri

Title: Director of Administrative Services

Department: Public Works & Transportation

Date: February 20, 2024

Reviewed By: Christian Paupato

Budget Director

Date: 3/12/24

TO: Carla Chaves, Senior Assistant County Attorney
Department of Law

FROM: David S. Kvinge, AICP, RLA, CFM 
Assistant Commissioner

DATE: March 6, 2024

SUBJECT: **STATE ENVIRONMENTAL QUALITY REVIEW FOR LEASE OF
ONE GATEWAY PLAZA, PORT CHESTER**

PROJECT/ACTION: Lease of approximately 1,680 square feet of office space at One Gateway Plaza, located at 55 South Main Street in Port Chester, for use by the County's Department of Health in connection with its Women, Infant and Children Nutrition Services (WIC) Program. The County has been leasing this space for this purpose since 2019. A local law is needed to allow the County to continue leasing this site beyond 5 years. The current authorization will allow the County to lease the space for 5 more years with an option to renew for an additional 5 years. The lease includes the use of several parking spaces as well as a short list of interior improvements to be undertaken by the landlord.

With respect to the State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617, the Planning Department recommends that no environmental review is required because the project/action may be classified as a TYPE II action pursuant to section(s):

- **617.5(c)(1):** maintenance or repair involving no substantial changes in an existing structure or facility; and
 - **617.5(c)(32):** license, lease and permit renewals, or transfers of ownership thereof, where there will be no material change in permit conditions or the scope of permitted activities.
-

COMMENTS: None.

DSK/cnm

cc: Andrew Ferris, Chief of Staff
Paula Friedman, Assistant to the County Executive
Tami Altschiller, Assistant Chief Deputy County Attorney
Claudia Maxwell, Principal Environmental Planner

RESOLUTION NO. - 2024

RESOLVED, that this Board hold a public hearing pursuant to Section 209.141(4) of the Laws of Westchester County on Local Law Intro. No. -2024 entitled "A LOCAL LAW authorizing the County of Westchester to amend the lease agreement with Port Chester Gateway LLC, in order to extend the term of the lease for an additional five (5) years commencing on June 1, 2024, with a County option to further extend the term of the lease for an additional five (5) years commencing on June 1, 2029." The public hearing shall be held at m. on the day of , 2024, in the Chambers of the Board of Legislators, 8th Floor, Michaelian Office Building, White Plains, New York. The Clerk of the Board shall cause notice of the time and date of such hearing to be published at least once in one or more newspapers published in the County of Westchester and selected by the Clerk of the Board for that purpose in the manner and time required by law.

Dated: , 2024
White Plains, New York

A LOCAL LAW authorizing the County of Westchester to amend the lease agreement with Port Chester Gateway LLC, in order to extend the term of the lease for an additional five (5) years commencing on June 1, 2024, with a County option to further extend the term of the lease for an additional five (5) years commencing on June 1, 2029.

NOW, THEREFORE, BE IT ENACTED by the Board of Legislators of the County of Westchester as follows:

Section 1. The County of Westchester (“County”) is hereby authorized to amend its lease agreement (the “Lease”) with Port Chester Gateway LLC (the “Landlord”), the term of which commenced on June 1, 2019 and expires on May 31, 2024, for 1,680 square feet of space on the first floor of the building located at 55 S. Main Street, Port Chester, New York 10573, commonly known as the “One Gateway Plaza” (the “Leased Premises”), in order to extend the term of the Lease for an additional five (5) years commencing on June 1, 2024 (the “First Renewal Term”), and grant the County an option to further extend the term of the Lease for an additional term of five (5) years commencing on June 1, 2029 (“Second Renewal Term”), similar to the form annexed hereto and made a part hereof as Schedule “A” (the “First Amendment”).

§2. The Base Rent for the first year of the First Renewal Term will remain the same as the Base Rent for the last year of the initial term, expiring on May 31, 2024. Thereafter, the Base Rent will increase annually by three percent (3%) during the term of the First Amendment, as set forth below.

During the First Renewal Term, the Annual Base Rent and Monthly Base Rent for the Leased Premises shall be as follows:

<u>Period</u>	<u>Annual Base Rent</u>	<u>Monthly Base Rent</u>
6/1/24 to 5/31/25	\$45,360.00	\$3,780.00
6/1/25 to 5/31/26	\$46,720.80	\$3,893.40
6/1/26 to 5/31/27	\$48,122.42	\$4,010.20
6/1/27 to 5/31/28	\$49,566.10	\$4,130.51
6/1/28 to 5/31/29	\$51,053.08	\$4,254.42

During the Second Renewal Term, the Annual Base Rent and Monthly Base Rent for the Leased Premises shall be as follows:

<u>Period</u>	<u>Annual Base Rent</u>	<u>Monthly Base Rent</u>
6/1/29 to 5/31/30	\$52,584.67	\$4,382.06
6/1/30 to 5/31/31	\$54,162.21	\$4,513.52
6/1/31 to 5/31/32	\$55,787.08	\$4,648.92
6/1/32 to 5/31/33	\$57,460.69	\$4,788.39
6/1/33 to 5/31/34	\$59,184.51	\$4,932.04

§3. As consideration for the extension of the term under the First Amendment, the Landlord shall complete the following work, during non-business hours, on a mutually agreeable work schedule, no later than six (6) months after the commencement of the First Renewal Term, at no cost to the County:

- (i) repaint all offices, including the server and storage rooms;
- (ii) replace the water fountain with a small hand-washing sink; and
- (iii) use its best efforts to install soundproofing between the Leased Premises and the adjacent space being used by a dental office.

§4. As additional consideration under the First Amendment, the Landlord shall also provide the following additional services during the term of the First Amendment, at no cost to the County:

- (i) service the dehumidifiers at the Leased Premises on a monthly basis; and
- (ii) make warm/hot water available to the Leased Premises.

§5. The Landlord shall also be responsible for any extermination services needed at the Leased Premises and use its best efforts to provide the County with the right to park an additional compact car in one additional Assigned On-Site Space ("Third Assigned On-Site Space"). If the Landlord fails to provide the County with the Third Assigned On-Site Space, the number of unassigned parking spaces in the MTA parking garage ("Off-Site Spaces") will be increased by one (1), for a total of four (4) Off-Site Spaces under the Lease.

§6. All other terms and conditions of the Lease, shall remain unchanged and in full force and effect.

§7. The County Executive or his duly authorized designee is hereby authorized to execute and deliver all instruments approved as to form and substance by the County Attorney as are necessary and appropriate to effectuate the purposes of this Local Law.

§8. This Local Law shall take effect immediately.

FIRST AMENDMENT TO LEASE

THIS First Amendment to Lease ("First Amendment"), dated as of the ___ day of December, 2023 (the "Effective Date") by and between **PORT CHESTER GATEWAY LLC** ("Landlord"), a New York limited liability company having an address at c/o DeLaurentis Management Corp., 384 Mamaroneck Avenue, White Plains, NY 10605, and **THE COUNTY OF WESTCHESTER** ("Tenant"), having an address at c/o Office of the County Executive, 148 Martine Avenue, Room 901, White Plains, New York 10601

WITNESSETH:

WHEREAS, Landlord and Tenant are parties to that certain Lease, dated as of June 1, 2019 (the "Lease"), covering certain premises (the "Premises") consisting of approximately 1,680 rentable square feet located on the first floor in the building (the "Building") known as and having an address at One Gateway Plaza, 55 S. Main Street, Port Chester, NY 10573 (said Building and the land upon which the Building is located, together with any other improvements on said land, are hereinafter, collectively, referred to as the "Real Property");

WHEREAS, the Term of the Lease is scheduled to expire on May 31, 2024; and

WHEREAS, Landlord and Tenant desire to extend the Term of the Lease for five (5) years from the June 1, 2024 until May 31, 2029 and to otherwise amend the Lease, as more specifically set forth herein below;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. AMENDED LEASE TERMS:

(a) Option to Extend: Tenant shall have two (2) options to extend (the first option to extend shall be hereinafter referred to as the "First Option to Extend", the second option to extend shall be hereinafter referred to as the "Second Option to Extend", and both options to extend shall be hereinafter, collectively, referred to as the "Options to Extend") the Term of the Lease, each for an additional period of five (5) years (the first option term shall be hereinafter referred to as the "First Option term", the second option term shall be hereinafter referred to as the "Second Option Term", and both option terms shall be hereinafter, collectively, referred to as the "Option Terms"). Each Option Term shall be on all of the terms and conditions of the Lease, except that the Base Rent for each Option Term shall be as set forth in subparagraph 1(c) below and the Expiration Date (as such term is used in the Lease) during the First Option Term shall be "May 31, 2029" and the Expiration Date during the Second Option Term shall be "May 31, 2034". Each Option to Extend may be exercised only by written notice of exercise given by Tenant in accordance with Section 14 of the Lease at least thirty (30) days prior to the then applicable Expiration Date with time of the essence as to said time period. Failure to so exercise within such period shall render any subsequent attempted exercise void and of no effect, any principles of law to the contrary notwithstanding. Each Option to Extend may not be exercised if (i) Tenant has assigned this Lease or has at any times subleased any

portion of the Premises, (ii) Tenant shall have committed a default hereunder which has not been cured either at the time of the attempted exercise or at the time of the proposed commencement of the applicable Option Term, or (iii) Tenant has defaulted in payment of Base Rent more than two (2) times in any lease year prior to said attempted exercise of the applicable Option to Extend.

(b) Exercise of First Option to Extend: Notwithstanding anything contained in the Lease or this First Amendment to the contrary, (i) it is acknowledged by the parties that Tenant hereby exercises the First Option to Extend and (ii) the First Option Term shall commence June 1, 2024 and the Expiration Date shall be May 31, 2029.

(c) Rent: During the First Option Term, the Annual Base Rent and Monthly Base Rent for the Premises shall be as follows:

<u>Period</u>	<u>Annual Base Rent</u>	<u>Monthly Base Rent</u>
6/1/24 to 5/31/25	\$45,360.00	\$3,780.00
6/1/25 to 5/31/26	\$46,720.80	\$3,893.40
6/1/26 to 5/31/27	\$48,122.42	\$4,010.20
6/1/27 to 5/31/28	\$49,566.10	\$4,130.51
6/1/28 to 5/31/29	\$51,053.08	\$4,254.42

During the Second Option Term, the Annual Base Rent and Monthly Base Rent for the Premises shall be as follows:

<u>Period</u>	<u>Annual Base Rent</u>	<u>Monthly Base Rent</u>
6/1/29 to 5/31/30	\$52,584.67	\$4,382.06
6/1/30 to 5/31/31	\$54,162.21	\$4,513.52
6/1/31 to 5/31/32	\$55,787.08	\$4,648.92
6/1/32 to 5/31/33	\$57,460.69	\$4,788.39
6/1/33 to 5/31/34	\$59,184.51	\$4,932.04

(d) Landlord's Work: In consideration of the extension of the Term of the Lease as set forth above, Landlord hereby agrees to do the following work, during non-business hours, on a mutually agreeable work schedule, and shall complete said work no later than six (6) months after the commencement of the First Option Term:

- (i) repaint all offices, including the server and storage rooms;
- (ii) replace the water fountain with a small hand-washing sink; and
- (iii) Landlord shall use its best efforts to install soundproofing between the Premises and the adjacent space being used by a dental office.

Notwithstanding the foregoing to the contrary, in the event the soundproofing work completed by the Landlord is insufficient to eliminate or reduce the sound noise derived from the

dental office to reasonable levels, the County, may require the Landlord to conduct additional soundproofing work, or, in the alternative, may, but shall not be obligated, to undertake, further soundproofing and offset costs against future rent owed under this Lease.

(e) Additional Obligations: Landlord hereby agrees to provide the following services during the Term:

- (i) service the dehumidifiers at the Premises on a monthly basis; and
- (ii) make warm/hot water available to the Premises.

(f) Real Estate Tax Escalations: Section 6.1(e) of the Lease is hereby amended by inserting the following at the end of the third sentence of said Section 6.1(e), as follows:

"For the purpose of determining this amount during the term of the First Amendment, the base value of Taxes applicable to the Real Property shall be, collectively, all of the real estate taxes, special and other assessments levied, assessed or imposed upon or against the Real Property and all water and sewer charges for the Real Property (collectively, the "Taxes") for the tax year 2023/2024, (i.e. for (i) town and county taxes the tax year January 1, 2024 thru December 31, 2024, (ii) school taxes the tax year July 1, 2023 thru June 30, 2024, and (iii) village taxes the tax year June 1, 2023 thru May 31, 2024 (collectively, the "Base Tax Year"))."

(g) Operating Expenses: Section 6.1(f) of the Lease is hereby amended by inserting the following at the end of the first sentence of said Section 6.1(f), as follows:

"Commencing for calendar year 2025 (i.e. January 1, 2025 thru December 31, 2025) and for each calendar year thereafter during the Term, Tenant shall pay, as Additional Rent, Tenant's Proportionate Share of any increase in Operating Costs (as hereinafter defined) for the Real Property over the Operating Costs for the calendar year 2024 (i.e. January 1, 2024 thru December 31, 2024) (the "Base Operating Cost Year")."

(h) Pest Control: Section 11.7 of the Lease is hereby amended by deleting the last sentence of said Section 11.7 and replacing it with the following:

"Landlord, at its sole cost and expense, shall be responsible for any extermination services needed at the Premises."

(i) Parking: Section 2.4 of the Lease is hereby amended by inserting the following at the end of said Section 2.4:

"Landlord shall use its best efforts to provide Tenant with the right to park a compact car in one (1) more Assigned On-Site Space ("Third Assigned On-Site Space"). In the case that the Landlord's best efforts fail to provide Tenant with the Third Assigned On-Site Space the Off-Site Spaces shall be increased one (1) for a total of four (4) Off-Site Spaces and all terms and conditions set forth in this Section 2.4 shall apply to said fourth (4th) Off-Site Space."

(j) Estoppels: Landlord and Tenant shall each, within thirty (30) days after receipt of a written request from the other, execute and deliver an estoppel certificate to those parties as are reasonably requested by the other (including a mortgagee or prospective purchaser).

2. NO OTHER MODIFICATIONS:

Except as herein modified, all the terms, covenants and conditions of the Lease are hereby reaffirmed and shall remain in full force and effect.

3. BENEFIT OF PARTIES:

This First Amendment shall be binding upon, and inure to the benefit of, the parties to it and their respective successors and assigns.

4. AUTHORITY:

Each signatory of this First Amendment represents hereby that he or she has the authority to execute and deliver the same on behalf of the party hereto for which such signatory is acting.

5. ENTIRE AGREEMENT:

This First Amendment sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements.

6. INCONSISTENCIES:

In the case of any inconsistency between the provisions of the Lease and this First Amendment, the provisions of this First Amendment shall govern and control.

7. DEFINED TERMS:

The capitalized terms used in this First Amendment shall have the same definitions as set forth in the Lease to the extent that such capitalized terms are defined therein and not redefined in this First Amendment.

8. COUNTERPARTS / ELECTRONIC OR FACSIMILE TRANSMITTAL:

This First Amendment may be executed in counterparts and shall constitute an agreement binding on all parties notwithstanding that all parties are not signatories to the original or

the same counterpart provided that all parties are furnished a copy or copies thereof reflecting the signature of all parties. The execution and delivery of any counterpart by any authorized person shall have the same force and effect as if that person had executed and delivered all other counterparts.

9. **ENFORCEABILITY**

This First Amendment shall not be enforceable until signed by both parties and approved by the Office of the County Attorney.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed on their behalf the day and year first above written.

LANDLORD:

PORT CHESTER GATEWAY LLC

By: _____
Edmond DeLaurentis Jr., as a duly authorized
Managing Member and not individually

TENANT:

THE COUNTY OF WESTCHESTER

By: _____
Name: Hugh J. Greechan, Jr., P.E.
Title: Commissioner, Department of Public
Works and Transportation

Authorized by the Board of Legislators of the County of Westchester on the _____ day of
_____, 2024, by Act No. 2024 - _____.

Approved:

Senior Assistant County Attorney
The County of Westchester
First Amendment to Lease - County of Westchester
121523.cmc.03.06.2024

ACKNOWLEDGEMENT

STATE OF NEW YORK)
)
) ss.:
COUNTY OF WESTCHESTER)

On this _____ day of _____, 2024, before me personally came
_____, to me known, and known to me to be the
of _____,
the limited liability company described in and which executed the within instrument, who being
by me duly sworn did depose and say that he, the said _____

resides at _____ and that
he is _____ of said limited liability company.

Notary Public County

**CERTIFICATE OF AUTHORITY
(LIMITED LIABILITY COMPANY)**

I, _____,
(member or manager other than person executing the agreement)

certify that I am a _____ of _____
(member/manager) (Name of Limited Liability Company)

(the "LLC") duly organized under the Laws of the State of _____;
(Name of State)

that _____ who signed said Agreement on behalf of
(Person Executing Agreement)

the LLC was, at the time of execution, a manager of the LLC; that said Agreement was duly signed for and on behalf of said LLC and as the act of said LLC for the purposes therein mentioned.

_____ (Signature)

STATE OF _____)
COUNTY OF _____) ss.:
)

On the _____ day of _____ in the year 20____ before me, the undersigned, a Notary Public in and for said State, _____ personally appeared, personally known to me or proved to me on the basis of satisfactory evidence to be the member/manager described in and who executed the above certificate, who being by me duly sworn did depose and say that he/she resides at _____, and he/she is a member/manager of said LLC; that he/she is duly authorized to execute said certificate on behalf of said LLC, and that he/she signed his/her name thereto pursuant to such authority.

Date: _____

Notary Public

INDEPENDENT OFFICE OF ASSIGNED COUNSEL

Annual Report for 2023

Submitted by the Board of Directors of the Independent Office of Assigned Counsel

Wendy Marie Weathers, Esq. Chair

Overview of the Office

The Independent Office of Assigned Counsel (OAC) is Westchester County's largest provider of mandated representation as defined by County Law Article 722, offering high quality legal representation by approximately 280 independent lawyers in private practice to low-income people with cases in the Criminal and Family Courts of the County as well as criminal and family law appeals and matters related to parole violations, revocations and appeals.

The office was created and operates pursuant to Westchester County Law Chapter 186, passed unanimously by this Honorable Board and signed into law by County Executive George Latimer in 2021. It is governed by a Board of Directors comprised of members selected in accordance with the law. Oversight of this office is also provided by the New York State Office of Indigent Legal Services (ILS).

Summary of State Funds Intended to Support the OAC

The primary source of funds to support this office and its initiatives are state grant funding provided by the New York State Office of Indigent Services (ILS). ILS has 2 main grants:

- Distribution Funding—a lump sum is granted to the County for the County to determine allocation among providers. It is a 3-year budget cycle. This funding covers funding for resources to support Family Court attorneys as well as Criminal Court attorneys. The OAC is the primary provider of parental legal representation. In the vast majority of cases, at least 2 assigned attorneys are involved in each case. Legal Services of the Hudson Valley is the other provider of parental representation. They do not receive funding from this funding stream.
- Hurrell-Harring Settlement Funds—ILS determines funding to each provider of criminal defense representation. The Legal Aid Society of Westchester and the OAC provide this representation.

There are also 3 smaller grants:

- Counsel at First Appearance in Criminal Cases (CAFA)—a lump sum is granted to the County to provide stipends to ensure counsel at arraignment in after court hours in criminal cases. This is a 3-year budget cycle.
- Upstate Quality Improvement Grant—a lump sum granted to the County to determine allocation among providers. This is a 3-year budget cycle. Funds can be used for both Family and Criminal.
- Second Upstate Family Representation Grant—a competitive 3-year grant submitted by the County to provide pre-petition representation to parents in Article 10 (abuse/neglect) cases and to provide support for attorney resources to improve the quality of representation.

Board of Directors Summary

The Board met regularly during the year to review reports from the Administrator and Deputy Administrator. Meetings were primarily public, but on occasion some parts of the meetings were conducted in Executive Sessions.

Board member Ron Abad resigned in October, 2023. The County Executive's Office was notified of this and the resulting vacancy on the OAC Board.

Administrator's Summary

In General

OAC provided important resources for attorney use in furtherance of high-quality legal representation and greater access to counsel by low-income litigants detailed under "Accomplishments" on the next page. It should be noted that, as discussed above, state grant funding through ILS is intended to be the primary funder of this office designed by this Honorable Board to replicate the resources, supports and accountability measures typically available in an institutional provider setting, (minus their high administrative costs).

Attorney Billing/Attorney Retention

In June, OAC implemented an overhaul of the attorney billing process by instituting the first phase of a digital billing system, streamlining the billing process and leaving more time for attorneys to work on their cases.

OAC introduced the E-Voucher system in June via live Webex trainings, a videotaped training, a set of 7 pieces of written how-to materials, group and private tutorials in the office and in Peekskill and Port Chester to accommodate attorneys from across the county, and designated drop-in and calling hours to review the system and troubleshoot for attorneys.

Also, in its first full year of operation, OAC's new administrative support team cleared an extensive inherited backlog that had resulted in delayed payments to attorneys, which in turn threatened to adversely impact attorney retention.

Data Highlights

From January 1, 2023-November 17, 2023 the OAC opened over 17,000 cases in the case management system. Opening a case permits attorneys to bill for services rendered on them. The number of cases opened in 2023 does not correlate to the number of cases assigned to attorneys during that time period as the OAC has also continued to open cases and create vouchers on cases that pre-dated the opening of the office in October 2022.

During the same time period, the OAC reviewed, corrected when necessary, and sent 10,542 vouchers to Finance. As of November 17, 2023, OAC is 100% up-to-date processing vouchers, inputting preliminary payment data and sending them to Finance for payment.

Accomplishments

Below is a table that lists notable accomplishments in 2023:

ACCOMPLISHMENTS	DESCRIPTION
Securus Video Visitation	virtual lawyer/client visitation for all 18-B attorneys courtesy of our DOC partners
Language Line	instant access to counsel for all non-English speaking clients via certified interpreters, on telephone and/or video platform
Lexis legal research subscription	immediate access to perform online legal research, to enhance their cases and their representation. Previously, only 100 of the 280+ attorneys on the panel had this access. Also enhanced research & writing tools for Appellate attorneys.
Training Director	Assists attorneys in obtaining experts, including investigators. Provides training for attorneys. Prepares practice advisories on matters of legal significance and new decisions.
Accountant	Maximization of reimbursable expenses.
E-vouchering program	Overhaul and modernization of billing system.
Overcame backlog	Worked quickly to address the backlog of un-reviewed vouchers and cases that were never opened.
Limited Voucher Forgiveness Program	Payment to attorneys who were unable to timely bill due to factors beyond their control.
Osborne Association	Partnered to provide case management and mitigation services.
Stipends	Stipend for attorneys to handle both parole violations and Raise the Age cases. It has been difficult to attract attorneys to handle these cases.
2 nd Upstate Family Representation Grant	Funding for pre-petition representation in Abuse/Neglect cases and consultation with criminal defense lawyers in appropriate circumstances.
Temporary staffing	ILS agreed to fund temporary staff positions to address backlog and facilitate modernization of billing system.

Staffing

In addition to the Training Director and Accountant noted above, due to the departure of Deputy Administrator Karen Beltran, a search for a new Deputy was undertaken. Stephanie Perez, a former Assistant District Attorney and attorney at the Family Court Bureau of the County Law Department, accepted the position and has been instrumental in developing and advancing the OAC agenda since she started in March.

As a result of the deferment in the hiring of Training Director David Hymen, ILS permitted OAC to hire 2 temporary hourly administrative support staffers whose hard work has complemented the superb work performed by our small permanent support team of Bouchra Loumhrari and Saju Peter.

Attorney Rate Increase

In May 2023, the New York State Legislature voted an historic retroactive rate increase for assigned counsel that provides partial reimbursement (\$41.50 for felonies and family cases; \$49 for misdemeanors) to counties for 1 year, necessitating the implementation of policies to address already submitted bills eligible for the increase. To optimize reimbursement claiming, OAC proposed to the Finance Department and Budget Office another overhaul of the billing process designed to optimize reimbursement during the 1 year of guaranteed state reimbursement to be claimed quarterly. Our accountant is focused on submitting claims to ILS for reimbursement of attorney hours. As of November 17, 2023, there is \$82,000 of reimbursements for attorney hours to be claimed at the end of the 4th Quarter. We expect the number of reimbursable hours to grow as attorneys continue to submit vouchers that include services post April 1, 2023.

2024 County Budget

The OAC budget was timely submitted to the County Budget Office. Anticipated revenue from State reimbursement is intended to offset the cost of all staff except 2 permanent administrative support staff (1 full-time, 1 part-time), \$40,000 to the Westchester County Bar Association, miscellaneous expenses, such as bar memberships for legal staff and, all pre-April 1, 2023 hourly attorney fees and a portion of those post-April 1, 2023 hourly attorney fees. As such, as compared to County tax levy impact prior to the OAC, there is a \$700,000 savings to taxpayers in administrative operating expenses.

Office Space

In January 2023, the County signed a lease for office space at 235 Main Street in White Plains and the OAC moved from its temporary space at the Probation Department. OAC is very grateful to the Probation Department for its generosity and support during the transition period.

DPW&T handled all moving-related issues and IT retrofitted the office space to ensure all tech needs were met prior to move-in.

During the summer, OAC overcame challenges within the office: air conditioning and ventilation failed in the office; a flood and several leaks from upstairs' tenants; and an isolated roach infestation. Additionally, there were unsanitary conditions in the bathrooms and broken locks on the stalls preventing use. By October, the HVAC system was replaced, and conditions in the bathrooms have improved and are now accessible. OAC also informed Landlord that the contracted janitorial services inside OAC's office were not being performed, and improvements have been made there as well.

Despite this, attorneys regularly visited the office to conduct business, ask questions, hone their e-vouchering skills, discuss legal and practice issues, and the like.

Objectives for 2024

The OAC intends to focus on:

- early access to counsel for low-income litigants (CAFA)
- the creation of a rotation of attorneys in courts to foster attorney independence
- the implementation of standards for high quality representation that all panel attorneys will be required to meet
- expansion of the digital billing platform.
- Submitting reimbursement claims to ILS

Counsel at First Appearance (CAFA)

OAC has requested that the County authorize a fair share of new State **Distribution** grant funds. Before Local Law Chapter 186 came into effect, 85% or more of these funds were distributed to the Legal Aid Society -Westchester County (LASW) which was charged with administering the assigned counsel panel. OAC requests these funds on behalf of Domestic Violence victims in Family Court matters, Adolescent Offenders (16-18 year olds), parolees subject to incarceration, and newly arrested individuals charged with crimes to ensure that they have assigned counsel at after-hours arraignment

OAC requested 50% of the CAFA grant fund described above. LASW requested and received 100% of CAFA past grants, resulting in a disparity between the institutional provider and assigned counsel that creates a disincentive to assigned counsel to provide representation after hours. It is essential to have counsel at this critical stage in a legal action. Beyond that and with respect to criminal matters, funds for CAFA would go a long way toward instituting a fair rotation of attorneys that in turn best assures attorney independence—a key ingredient of high-quality legal representation and a mandate of Local Law Chapter 186.

Administrative Support to Expand Digital Billing Program

OAC is requesting funds from Distribution funds to support 2 additional administrative support staff members to effectuate the intended expansion of the digital billing platform. One of these positions appeared in the 2023 Adopted Budget, however, in consideration of fiscal prudence and in order to maximize the opportunity for State funding of this important staff addition, hiring was deferred until a new State grant budget cycle was announced in the hope that the County would reallocate State grant funds from the other recipient to the OAC. That funding cycle was announced in August, 2023 and was due to the State October 31, 2023. The OAC submitted a proposed budget to the County in September 2023.

ILS agreed to fund an accountant for the OAC, in parity with funding already provided to LASW for a Grants Manager. OAC's Accountant II, Chinmy Roy, started in August and it was determined that she will be paid using prior unspent ILS funds. OAC requested, however, that the County create a line for this position in the new Distribution funding cycle to ensure that it is sustainable. The accountant is focused on obtaining state reimbursement for expenses covered by grant funding as well as for the partial reimbursement of the hourly rate increase.

Outlook for 2024

The outlook for 2024 is uncertain. Funds from the **Hurrell-Harring Settlement** will permit the OAC to start a mentoring and second chair program to benefit less experienced attorneys as well as provide some funding for non-attorney experts and training as well as pay office expenses and most staff salaries. The small amount of **Distribution** funds are used to pay for online research and interpreters for non-English speaking clients.

Conclusion

In its first full year of operations, the OAC modernized and streamlined billing for the over 280 panel attorneys, resulting in the successful completion of the extensive voucher backlog and OAC currently directing vouchers to Finance within 2 business days of OAC's receipt. This is due to the extraordinary efforts of the OAC team.

We provided attorneys with key resources to facilitate access by clients to their attorneys as well as online research tools comparable to that available at the Law Department and District Attorney's Offices. This is available to all panel attorneys for their assigned cases at no cost to them.

With this, we are poised to continue building a solid foundation in furtherance of the intent of Local Law Chapter 186-- to ensure that the legal rights and interests of low-income litigants are protected through high quality, well-resourced legal representation. As a result of the major structural change that occurred in the County with the creation of the OAC, a rethinking of the allocation of ILS funds is essential to the continued success of the Independent Office of Assigned Counsel.