

**Approving The Proposed Certificate Of Incorporation And Consenting To The Formation Of A Local Development Corporation**

The Economic Development and Tourism Committee (Chairman Maloney and Legislators Frey, Hayes, Petit, Sweeney, Terrizzi, Donaldson, Loughran and Rodriguez) offers the following:

BE IT ENACTED by the County Legislature of the County of Ulster, New York (the "County Legislature"), as follows:

WHEREAS, on January 31, 2008, Section 854 of the General Municipal Law, commonly referred to as the Civic Facilities Legislation (the "Law") expired and, since the expiration of the Law, industrial development agencies have not been able to provide financial assistance to projects owned or operated by not-for-profit corporations (hereinafter referred to as "Civic Facility Projects"), and

WHEREAS, the ability to finance Civic Facility Projects with tax-exempt bonds has been a very important tool for the Ulster County Industrial Development Agency (the "Agency"), as the Civic Facility Projects undertaken by the Agency have increased employment opportunities for residents of Ulster County and allowed local not-for-profit corporations to upgrade their facilities at the lowest possible cost, and

WHEREAS, by resolution adopted by the members of the Agency on November 11, 2009 (the "Approving Resolution"), the members of the Agency agreed to request the consent and authorization of the County Legislature to form a local development corporation under Section 1411 of the New York State Not For Profit Corporation Law (the "NFPCL"), and

WHEREAS, local development corporations formed under the NFPCL are created to assist, among others, not for profit corporations that are undertaking projects that further any of the following purposes for which local development corporations are created: (1) relieving and reducing unemployment, (2) promoting and providing for additional and maximum employment, (3) bettering and maintaining job opportunities, (4) instructing or training individuals to improve or develop their capabilities for such jobs, (5) carrying on scientific research for the purpose of aiding a community or geographical area by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area, and (6) lessening the burdens of government and acting in the public interest, and

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WHEREAS, in furtherance of the public purposes set forth above, a local development corporation formed under the NFPCL is empowered to take the following actions: (1) to construct, acquire, rehabilitate and improve for use by others industrial or manufacturing plants in the territory in which its operations are principally to be conducted, (2) to assist financially in such construction, acquisition, rehabilitation and improvement, to maintain such plants for others in such territory, (3) to disseminate information and furnish advice, technical assistance and liaison with federal, state and local authorities with respect thereto, (4) to acquire by purchase, lease, gift, bequest, devise or otherwise real or personal property or interests therein, (5) to borrow money and to issue negotiable bonds, notes and other obligations therefor, and (6) to sell, lease, mortgage or otherwise dispose of or encumber any such plants or any of its real or personal property or any interest therein upon such terms as it may determine to be suitable, and

WHEREAS, under the laws of the State of New York, local development corporations are permitted to issue tax-exempt bonds for the benefit of qualifying Civic Facility Projects, and

WHEREAS, in accordance with Section 1411(a) of the NFPCL, prior to forming a local development corporation, the Agency must obtain the County Legislature's approval of the certificate of incorporation that will be used to form the local development corporation, and

WHEREAS, the Agency has prepared a proposed certificate of incorporation for review by the County Legislature and a copy of such proposed certificate of incorporation is attached hereto as **Schedule A**, and

NOW, THEREFORE, BE IT RESOLVED by the County Legislature as follows:

**Section 1.** The County Legislature authorizes the Agency to form a local development corporation in accordance with Section 1411 of the NFPCL; provided, however, that any obligations issued by the local development corporation, and the premium (if any) and interest thereon, shall be special obligations of the local development corporation and shall never be a debt of the State of New York, the County of Ulster, New York or any political subdivision thereof (other than the local development corporation), and neither the State of New York, the County of Ulster, New York nor any political subdivision thereof (other than the local development corporation) shall be liable thereon.

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**Section 2.** The County Legislature approves the form and substance of the certificate of incorporation presented at this meeting and attached hereto as **Schedule A**, all in substantially the form thereof presented to this meeting, with such changes, variations, omissions and insertions as the Chairman (or Vice Chairman) and the County Attorney shall approve.

**Section 3.** The local development corporation to be formed in accordance with this resolution will require that any project applicant that enters into a financing transaction with the local development corporation will agree to indemnify Ulster County for all claims, causes of action, judgments, liabilities, damages and expenses arising as a result of the undertaking of the financing transaction.

**Section 4.** This resolution shall take effect immediately,

and moves its adoption.

ADOPTED AS AMENDED BY THE FOLLOWING VOTE:

AYES: 31 NOES: 0  
(Absent: Legislators Frey and Wadnola)

Legislator Maloney motioned, seconded by Legislator Robert Parete to amend the resolution to add the following friendly amendment: **“Section 3.** The local development corporation to be formed in accordance with this resolution will require that any project applicant that enters into a financing transaction with the local development corporation will agree to indemnify Ulster County for all claims, causes of action, judgments, liabilities, damages and expenses arising as a result of the undertaking of the financing transaction” and thus changing the former Section 3. to Section 4. as indicated above.

MOTION ADOPTED BY THE FOLLOWING VOTE:

AYES: 31 NOES: 0  
(Absent: Legislators Frey and Wadnola)

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FINANCIAL IMPACT:  
NONE

**Schedule A Attached**

0405

STATE OF NEW YORK

ss:

COUNTY OF ULSTER

This is to certify that I, the undersigned Clerk of the Legislature of the County of Ulster have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 20<sup>th</sup> day of April, 2010, and that the same is a true and correct transcript of said resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the County of Ulster this 21<sup>st</sup> Day of April in the year Two Thousand and Ten.

/s/ Karen L. Binder  
Karen L. Binder, Clerk  
Ulster County Legislature

Submitted to the County Executive this

21<sup>st</sup> Day of April, 2010.

/s/ Karen L. Binder  
Karen L. Binder, Clerk  
Ulster County Legislature

Approved by the County Executive this

30<sup>th</sup> Day of April, 2010.

/s/ Michael P. Hein  
Michael P. Hein, County Executive