MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

May 30, 2013

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	*Berman, Linda & Gerstein, Justin H. v.Erie County Board of Elections, et al.*
Document Received:	Summons and Complaint
Name of Claimant:	Linda Berman, 88 Woodshire North Getzville, New York 14068 Justin H. Gerstein, 25 Ivy Green Court Amherst, New York 14228
Claimant's attorney:	Jerome D. Schad, Esq. 199 Meadowview Lane Williamsville, New York

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Jeremy C. Toth
Second Assistant County Attorney
jeremy.toth@erie.gov

JCT:dld
Enclosure

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

This paper received at the
Erie County Board of Election's Office
From Jerome D. Schad
On the 30 day of May 2013
At 3:38 am/pm
Signature of BOE Employee

LINDA BERMAN
88 Woodshire North
Getzville, NY 14068

JUSTIN H. GERSTEIN
25 Ivy Green Ct.
Amherst, NY 14226

Plaintiffs,

vs.

TOWN OF AMHERST NEW YORK
and
TOWN BOARD of the TOWN OF AMHERST NEW YORK,
5583 Main Street
Williamsville, NY 14221

SUMMONS

ERIE COUNTY BOARD OF ELECTIONS,
RALPH M. MOHR and **DENNIS E. WARD,** Commissioners
134 West Eagle Street
Buffalo, NY 14202

INDEX NO.

2013 - 603025

FILED
05/30/2013/ 10:59:57
ERIE COUNTY CLERK
RCPT # 13086504
I 2013603025

MARJORY JAEGER, TOWN CLERK of the TOWN of AMHERST, NEW YORK
5583 Main Street
Williamsville, NY 14221

Defendants,

You are hereby summoned to answer the attached Complaint within twenty (20) days if service of this Summons and the Complaint are personally served upon you or within thirty (30) days if service of the Summons and Complaint are not served personally upon you but by other means. Failure to answer the Summons and the Complaint may result in a default judgment against you for the relief set forth in the Complaint.

This is an action for Declaratory Judgment to declare that the Town of Amherst and the Town Board of the Town of Amherst and the Town Clerk of the Town of Amherst may not legally restructure the Town Board twice in the same decade.

Venue for this action is in Supreme Court, Erie County, New York, the residence of the Plaintiffs and where the Town of Amherst is located and where the actions of the Town Board and Town Clerk, which complained of, occurred.

May 30, 2013
Amherst, N.Y.

Jerome D. Schad, Esq.
Attorney for Plaintiffs
199 Meadowview Lane
Williamsville, NY 14221-3531
716.634.8906
716.445.0842 (cell)

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

LINDA BERMAN
88 Woodshire North
Getzville, NY 14068

JUSTIN H. GERSTEIN
25 Ivy Green Ct.
Amherst, NY 14226

Plaintiffs,

vs.

TOWN OF AMHERST NEW YORK
and
TOWN BOARD of the TOWN OF AMHERST NEW YORK,
5583 Main Street
Williamsville, NY 14221

ERIE COUNTY BOARD OF ELECTIONS,
RALPH M. MOHR and **DENNIS E. WARD**, Commissioners
134 West Eagle Street
Buffalo, NY 14202

MARJORY JAEGER, TOWN CLERK of the TOWN of AMHERST, NEW YORK
5583 Main Street
Williamsville, NY 14221

Defendants,

VERIFIED Complaint

INDEX NO.

2013 - 603025

FILED
05/30/2013/ 10:59:57
ERIE COUNTY CLERK
RCPT # 13086504
I 2013603025

Plaintiffs, by their attorney, Jerome D. Schad, Esq., for their Verified Complaint, do allege upon information and belief, that:

PLAINTIFFS

1. Plaintiff LINDA BERMAN resides at 88 Woodshire North, Getzville, NY 14068 within the Town of Amherst.
2. Plaintiff BERMAN is a property owner, taxpayer, a registered voter, and qualified elector in the Town of Amherst

3. Plaintiff JUSTIN H. GERSTEIN resides at 25 Ivy Green Ct., Town of Amherst, New York 14226 within the County of Erie, State of New York.
4. Plaintiff GERSTEIN is a registered voter and qualified elector of the Town of Amherst.

DEFENDANTS:

5. Defendant TOWN OF AMHERST NEW YORK [hereinafter either "Town" or "Amherst"] is a duly incorporated town of the first class within the State of New York.
6. Defendant TOWN BOARD of the TOWN OF AMHERST NEW YORK [hereinafter the "Town Board"] is the duly constituted legislative body consisting of the elected town councilmen and councilwomen (hereinafter, collectively "councilmembers") and the elected supervisor.
7. Defendant TOWN CLERK, MARJORY JAEGER, [hereinafter the "Town Clerk"] is the duly elected Town Clerk of the Town of Amherst.
8. Defendant ERIE COUNTY BOARD OF ELECTIONS (Ralph M. Mohr and Dennis E. Ward, Commissioners) (heretofore and hereinafter, the "Board of Elections") is the administrative agency charged with the legal duty to certify ballots and the wording of propositions to appear on such ballots to be submitted to voters in general and special elections and, in connection with special elections exclusively conducted by local governments in Erie County, is the body which prints and provides the ballots to the Town of Amherst to conduct a Special Election on June 11, 2013 and which provides the voting machines and enrollment books to conduct such special election.

JURISDICTION

9. This is a declaratory judgment action pursuant to Civil Practice Law and Rules Section 3001.
10. Plaintiffs seeks a declaration that Defendants Town, Town Board, and Town Clerk may <u>not</u> legally conduct the currently-scheduled Special Election on June 11, 2013 to restructure the

Town of Amherst government for a second time within the same decade and may not legally restructure the Town of Amherst government for a second time within the same decade in violation of New York State's Municipal Home Rule Law [hereinafter "MHRL"] and may not restructure the Town of Amherst government, beginning January 2014, with an even-numbered governing legislative body consisting of five (5) councilmembers and one (1) supervisor.

First Restructuring of Amherst Town Board in the Current Decade

11. By Local Law No. 17-2010, the Amherst Town Board reduced the size of the (then) six-(6) councilmember board to a four (4) councilmember board.
12. Local Law No. 17-2010 was codified as Chapter 56A of the Code of the Town of Amherst a true copy of which, form the Official Website of the Town of Amherst, is attached hereto and incorporated herein as **Exhibit A.**
13. Local Law No. 17-2010 was subject to a mandatory referendum and was submitted to the voters of the Town of Amherst at the November 2, 2010 general election.
14. Amherst voters approved Local Law No. 17-2010 in the November 2, 2010 election with 28,962 voters in favor of the downsizing from six (6) to four (4) councilmembers and only 12,010 votes against downsizing.
15. The Amherst voters approved Local Law No. 17-2010 in the November 2, 2010 election by a 70 percent margin of approval.
16. Under Local Law No. 17-2010, effective January 1, 2011, for the 2011 local general election, only two (2) councilmember seats were placed on the ballot for election.
17. Local Law No. 17-2010, Chapter 56A of the Code of the Town of Amherst, provided for only two (2) councilmember seats to be placed on the 2013 local general election.

18. Because three councilmembers (originally elected for four year terms in 2009) remained in office for the period of January 1, 2012 through December 31, 2013, Local Law No. 17-2010 contemplated that one of the two councilmember seats eliminated by the downsizing vote would be allowed to phase out for that period, thereby leaving five (5) councilmembers through December 31, 2013.

19. Because only two councilmember seats would be on the 2013 general election ballot, as of January 2, 2014, the Town Board completed its reduction from six (6) councilmembers to four (4) councilmembers, over the two-year period ending on December 31, 2013.

20. On February 27, 2013, Defendant Town Clerk, as required by the Election Law, certified that there are currently only two (2) vacant councilmember seats to be filled on the Amherst Town Board in the 2013 general election. A true copy of Defendant Jaeger's certification is attached hereto as **Exhibit B**.

21. Designating petitions for the only two (2) vacant seats to be filled on the Amherst Town Board in the 2013 general election will begin circulation on the first date for obtaining signatures – namely, June 4, 2013.

Second Restructuring of Amherst Town Board in the Current Decade

22. At a meeting held on Monday, April 8, 2013, the Amherst Town Board, enacted Local Law No. 1 (2013) which purportedly seeks to "maintain" the number of councilmembers in the Town of Amherst at five (5). A true copy of Local Law No. 1 (2013), as introduced and printed for the Public Hearing regarding during its approval process, containing the proposed amendments to Chapter 56A of the Code of the Town of Amherst is attached hereto as **Exhibit C**.

23. The Town Board's April 8, 2013 action was initiated, orchestrated and voted into being by a self-interested Republican majority to deny 28,962 Amherst voters the power and legal effect of

their 2010 vote to downsize the Town Board from six (6) councilmembers to four (4) councilmembers and protect Republican power within the Town at the expense of resident voters.

24. At a regularly scheduled meeting on April 29, 2013, the Town Board passed a resolution to hold the mandatory referendum to change the number of councilmembers from four (4) to five (5) by a special election. A true copy of the April 29, 2013 Amherst Town Board resolution with the attached text of proposition as authorized by the Town Board is attached hereto as **Exhibit D.**
25. Defendant Town Board scheduled the special referendum election to be held on Tuesday, June 11, 2013, at only four designated locations within the Town from the hours of 9 a.m. to 9 p.m.

Local Law No. 1 (2013)'s Proposed Change in the Number of Council Members From four (4) to five (5) is a Prohibited Restructuring within Ten Years:

26. MHRL Section 10 sets forth the general powers of a town to adopt and amend local laws.
27. Specifically, MHRL Section 10 subdivision 1. (ii) a. (13) (f.) places a specific restriction on the list of enumerated subject areas in which a town legislature body may enact a local law.
28. Defendant Town Board is a legislative body bound by the specific restriction on the list of enumerated subject areas in which the Defendant Town board may enact a local law.
29. The applicable MHRL provision states in part that:

> (f.) Notwithstanding any inconsistent provisions of any general or special law, or any local law, ordinance, resolution or city or county charter heretofore or hereafter adopted, **no local government may restructure its local legislative body** (pursuant to provision of the chapter or any other provision of law) **more than once in each decade commencing with the year nineteen hundred seventy**. . . . [emphasis added]

30. The reduction in the number of councilmembers from six (6) to four (4), by the Town Board's 2010 local law, constituted a 'restructuring' of the local legislative body.

31. Such restructuring occurred in November 2010 (when approved by voters) or, more logically, when its implementation began at the November 2011 general election or when the terms of the two newly elected councilmembers began, on January 1, 2012.

32. The 2013 action by the Town Board, by adoption of Local Law No. 1 (2013) and the resolution to schedule a special election on June 11, 2013, seeks to hold a mandatory referendum to approve the Town Board's attempt to impose a "second restructuring" of the Amherst Town Board in less than three (3) years.

33. The MHRL prohibits more than one such restructure in a "decade" of either any ten year period or for a decade defined as the ten year period starting with a year ending in "0" and ending with the year end in "9".

34. The 2013 actions of the Town Board violate the MHRL prohibition on a second restructuring of the Town Board under either interpretation of 'decade".

35. Since the "decade" could be defined as 2010 – 2019 it clearly is the second re-structure within that decade.

36. Alternatively, the passage of less than three (3) years since the first re-structuring (be it 2010 or 2011) is an obvious violations of a "10-year" Rule.

37. Either way, the attempted actions by the Town, Town Board and Town Clerk violate the prohibition of MHRL Section 10 subdivision 1. (ii) a. (13) (f.).

38. Plaintiffs are entitled to a judgment pursuant to CPLR Section 3001, declaring that Local Law No. 1 (2013) is unauthorized, unlawful, void, and unenforceable, and declaring that the Defendants' attempt to restructure the Amherst Town Board a second time within a decade is unauthorized, unlawful, void and unenforceable and in specific violation of the MHRL's prohibition on restructuring more than once in a decade, and Plaintiffs are entitled to a judgment

directing that the Defendant Erie County Board of Elections not prepare a ballot or a special election for June 11, 2013 and not deliver such ballots if already prepared and directing and enjoining the Defendants Town, Town Board and Town Clerk to cease and desist from all actions intended to cause a special election to be held to restructure Amherst government and to cease and desist from taking any further actions to attempt to implement Local Law No. 1 (2013) and declaring.

39. No request has been made to this or any other court for the relief sought herein.

RELIEF REQUESTED

WHEREFORE, based upon the illegality of the action of the Amherst Town Board, this Court should declare the purported local law and accompanying Referendum illegal and direct the cancellation of the special election scheduled for June 11, 2013 and further direct entry of an Order and Judgment granting the following relief:

(A) A declaration that Defendants Town, Town Board, and Town Clerk may <u>not</u> legally conduct the currently-scheduled Special Election on June 11, 2013 to restructure the Town of Amherst government for a second time within the same decade; and

(B) A declaration that Defendants Town, Town Board, and Town Clerk may <u>not</u> legally restructure the Town of Amherst government for a second time within the same decade and that their attempts to do so violate New York State's Municipal Home Rule Law and Local Law No. 1 (2013) is unauthorized, illegal, void and of no legal effect whatsoever; and

(C) A preliminary and permanent injunction enjoining and restraining Defendants Town, Town Board, and Town Clerk from conducting the currently-scheduled June 11, 2013 special election; and

(D) An order and judgment prohibiting the Defendants Town, Town Board, and Town Clerk from taking any further action in furtherance of a restructuring of the Town Board for a second time during the current decade and directing that they cancel the special election scheduled for June 11, 2013; and

(E) A preliminary and permanent injunction enjoining the Defendant Board of Elections from printing and providing ballots to the Town, Town Board or Town Clerk for the special election and from delivering voting machines and poll books to the Town, Town Board or Town Clerk for the special election; and

(F) A judgment for such other, further and different relief as to the Court may deem just and appropriate under the circumstances, together with costs and disbursements of this action.

May 30, 2013
Amherst, N.Y.

Jerome D. Schad, Esq.
Attorney for Plaintiffs
199 Meadowview Lane
Williamsville, NY 14221-3531
716.634.8906
716.445.0842 (cell)

VERIFICATION:

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

Linda Berman being duly sworn deposes and says that she is one of the **PLAINTIFFS** in this action; that she has read the foregoing **VERIFIED COMPLAINT** and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters she believes them to be true.

Linda Berman

Sworn to before me this 30th day of May 2013

Jerome D. Schad
Notary Public
Qualified in Erie County
My Commission Expires June 30, 2015

VERIFICATION:

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

Justin Gerstein being duly sworn deposes and says that he is one of the **PLAINTIFFS** in this action; that he has read the foregoing **VERIFIED COMPLAINT** and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes them to be true.

Justin Gerstein

Sworn to before me this 30th
day of May 2013

Jerome D. Schad
Notary Public
Qualified in Erie County
My Commission Expires June 30, 2015

Exhibit A

Town of Amherst, NY
Wednesday, May 29, 2013

Chapter 56A. TOWN BOARD

[HISTORY: Adopted by the Town Board of the Town of Amherst by L.L. No. 17-2010. Amendments noted where applicable.]

GENERAL REFERENCES
Administration of government — See Ch. **4**.
Compensation of elected officials — See Ch. **10**.
Code of Ethics — See Ch. **19**.
Supervisor — See Ch. **54**.
Term limits — See Ch. **55**.

§ 56A-1. Purpose; word usage.

The purpose of this Local Law is to decrease the number of Town Councilmen from six to four, under the authority of the Municipal Home Rule Law. Pursuant to New York State Town Law §20-5-a, the terms "Councilman" and "Councilmen" whenever used in this Local Law shall include persons of both the male and female gender.

§ 56A-2. Number of Councilmen.

The number of Town Councilmen shall be decreased from six to four, as hereinafter set forth.

§ 56A-3. Election of Councilmen.

A. The Councilman position which is vacant on the date that the Town Board adopts this local law shall be eliminated effective January 1, 2011.

B. For the biennial town election to be held in November 2011, and thereafter, two Councilmen shall be elected for a term of four years each.

C. One Councilman position shall be eliminated effective January 1, 2014. In the event that a Councilman position that was elected at the biennial town election on November 3, 2009 becomes vacant, at any time prior to January 1, 2014 that position shall be immediately eliminated and no additional position will be eliminated.

D. For the biennial town election to be held in November 2013, and thereafter, two Councilmen shall be elected for terms of four years each.

§ 56A-4. Authority.

This Local Law is enacted pursuant to the authority granted to towns by Section 10(1)(ii)(a)(1) and (d)(3) of the Municipal Home Rule Law to adopt legislation concerning the number of its officers and its property, affairs and government. To the extent that this Local Law is inconsistent with Sections 20, 24, 24-a, 64 and 81 of the Town Law of the State of New York, these Sections are superseded by this Local Law.

§ 56A-5. Effective Date.

This Local Law shall take effect upon the affirmative vote of a majority of qualified electors voting thereon at the General Election to be held on November 2, 2010, and upon filing in the Office of the Secretary of State of New York in accordance with the Municipal Home Rule Law and the Code of the Town of Amherst.

Exhibit B

CERTIFICATION OF OFFICES TO BE FILLED

County of Erie **Town of Amherst**

Return To:
Erie County Board of Elections
134 West Eagle Street
Buffalo, NY 14202

I DO HEREBY CERTIFY, pursuant to Sec. 4-106 of the New York State Election Law which requires each Town Clerk at least eight months before a General Election, to make and transmit to the Board of Elections, a certificate stating every Town Office, respectively to be voted for at the General Election to be held in the Town of Amherst on November 5, 2013.

NAME OF OFFICIAL PRESENTLY SERVING
(Give date of appointment if this person is serving in a vacancy)

OFFICE	
A Supervisor (4 year term) now held by	BARRY A. WEINSTEIN
A Supervisor (to fill vacancy) now held by	
A Councilman	Councilman (4 year term) in accordance with Local Law of 2010
A Councilman	Councilman (4 year term) in accordance with Local Law of 2010
A Councilman (to fill vacancy) now held by	
A Councilman (to fill vacancy) now held by	
A Town Clerk (4 year term) now held by	
A Town Clerk (to fill vacancy) now held by	
A Town Justice (4 year term) now held by	MARK G. FARRELL
A Town Superintendent of Highways (4 year term) now held by	
A Town Superintendent of Highways (to fill vacancy) now held by	

The term of offices will expire on the last day of December unless otherwise specified.

GIVEN UNDER MY HAND AND SEAL, IN THE COUNTY OF ERIE, STATE OF NEW YORK ON THE 27 DAY OF February, 20 13.

Town Clerk

1. §4-108 "Whenever any proposal, proposition or referendum as provided by law is to be submitted to a vote of the people, at an election conducted by the Board of Elections, the clerk, at least thirty-six days prior to the election, shall transmit to the Board of Elections a certified copy of the text of such ballot proposal, proposition or referendum and a statement of the form in which it is to be submitted. If a special election is to be held, such transmittal shall also give the date of such election."
2. In addition, the transmittal shall contain an abstract, concisely stating the purpose of the question and the form of the ballot proposal: the latter to be submitted with the subject matter indicated briefly and clearly, i.e. "using words with common and everyday meanings."
3. §4-106(4) Within three days after the occurrence of a vacancy, the clerk is required to file with this office a certificate indicating the vacancy and the position which is to be filled.
4. §6-158(14) A vacancy occurring before September 20, in any Public Office, to be filled at a General Election, shall be filled at the *NEXT GENERAL ELECTION.*
5. An individual appointed to an elected office must be elected to remain in office until the term expires.

THIS CERTIFICATION MUST BE RETURNED BY March 5, 2013

04/11/2013 11:29 7168586667 BOAR OF ELECTIONS PAGE 01/01

Exhibit C

Public Hearing: a Local Law to Maintain the Number of Councilmen in the Town of Amherst, New York at Five.

LOCAL LAW INTRODUCTION NO. ____ -2013

TOWN OF AMHERST
COUNTY OF ERIE, STATE OF NEW YORK

A LOCAL LAW ENTITLED "A LOCAL LAW TO MAINTAIN THE NUMBER OF COUNCILMEN IN THE TOWN OF AMHERST, NEW YORK AT FIVE"

Be it enacted by the Town Board of the Town of Amherst as follows:

Section 1. Title

This Local Law shall be referred to as, "A Local Law To Maintain The Number Of Councilmen In The Town Of Amherst, New York At Five."

Section 2. Purpose

The purpose of this Local Law is to maintain the current number of Town Councilmen at five, by amending Chapter 56A of the Code of the Town of Amherst as enacted by Local Law No. 17-2010 and approved by a majority vote of qualified electors at an election held on November 2, 2010.

Section 3.

Chapter 56A of the Code of the Town of Amherst is hereby amended as follows:

1.) **§56A-1.Purpose; word usage.**

The purpose of this Local Law is to ~~decrease~~ maintain the current number of Town Councilmen ~~from six to four~~ at five under the authority of the Municipal Home Rule Law. Pursuant to New York State Town Law §20-5-a, the terms "Councilman" and "Councilmen" whenever used in this Local Law shall include persons of both the male and female gender.

2.) **§56A-2.Number of Councilmen.**

The number of Town Councilmen shall be five ~~decreased from six to four,~~ as hereinafter set forth.

3.) **§56A-3.Election of Councilmen.**

A. The Councilman position which ~~is~~ was vacant on the date that the Town Board originally adopted ~~adopts~~ this Chapter 56A ~~local law~~ shall remain ~~be~~ eliminated. ~~effective January 1, 2011~~.

B. ~~For the biennial town election to be held in November 2011, and thereafter, two Councilmen shall be elected for a term of four years each.~~ B. For the biennial town election to be held in November 2013, two Councilmen shall be elected for a term of four years each and one additional Councilman shall be elected for an initial term of two years. The two-year term Councilman position shall be separately identified and voted upon, as a separate position from, the four-year term Councilmen positions.

C. ~~One Councilman position shall be eliminated effective January 1, 2014. In the event that a Councilman position that was elected at the biennial town election on November 3, 2009 becomes vacant, at any time prior to January 1, 2014 that position shall be immediately eliminated and no additional position will be eliminated.~~ Effective January 1, 2016, the two-year term Councilman position shall have a four-year term.

D. ~~For the biennial town election to be held in November 2013, and thereafter, two Councilmen shall be elected for terms of four years each.~~ It is the intent of this Local Law to have three Councilmen positions to be elected at the biennial town election to be held in November 2015 and every four years thereafter and two Councilmen positions, together with the Supervisor position, to be elected at the biennial town election to be held in November 2017 and every four years thereafter. All board positions shall be four-year terms as hereinbefore set forth.

Section 4. Authority:

This Local Law is enacted pursuant to the authority granted to towns by Section 10 (1)(ii)(a)(1) and (d)(3) of the Municipal Home Rule Law to adopt legislation concerning the number of its officers and its property, affairs and government. To the extent that this Local Law is inconsistent with Sections 20, 24, 24-a, 64, ~~and~~ 81 and 87 of the Town Law of the State of New York, these Sections are superseded by this Local Law.

Section 6. Effective Date:

This Local Law shall take effect upon the affirmative vote of a majority of qualified electors voting thereon at a Special ~~General~~ Election to be held on June 11, 2013 ~~held on November 2, 2010~~, and upon filing in the Office of the Secretary of State of New York in accordance with the Municipal Home Rule Law and the Code of the Town of Amherst.

Marjory Jaeger
Town Clerk
Town of Amherst
Erie County, New York

Exhibit D

Town of Amherst
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Marjory Jaeger
Town Clerk

Meeting: 04/29/13 07:00 PM
Department: Town Clerk
Initiated by: **Kathleen Cooper**
SCHEDULED

DOC ID: 10127

RESOLUTION 2013-406

Special Election June 11, 2013

WHEREAS: On April 8, 2013 the Town Board of the Town of Amherst enacted a Local Law Introduction No. 1, entitled "A LOCAL LAW TO MAINTAIN THE NUMBER OF COUNCILMEN IN THE TOWN OF AMHERST, NEW YORK AT FIVE"; and

WHEREAS, New York Town Law Article 6 requires the Amherst Town Board to provide for the conduct of this Referendum;

NOW, THEREFORE, BE IT RESOLVED, that this Referendum shall take place at a Special Election on Tuesday, June 11, 2013, more than sixty (60) days following the date of adoption of the aforementioned Local Law; and

BE IT FURTHER RESOLVED, that this proposition shall be designated Proposition No. 1 of the Town of Amherst; and

BE IT FURTHER RESOLVED, that the hours of 9:00 o'clock in the morning through 9:00 o'clock in the evening, constituting at least six (6) consecutive hours between 8:00 o'clock in the morning and 8:00 o'clock in the evening on June 11, 2013 are hereby designated as the hours when the polls for such Special Election shall be open; and

BE IT FURTHER RESOLVED, that the following locations are designated as the places where the polls shall be open during the aforementioned hours for the conduct of the Special Election, and where all qualified Town of Amherst voters residing in the election districts said opposite thereto may cast their votes on the Proposition:

POLLING PLACE
Amherst Center for Senior Services
370 John James Audubon Parkway
Amherst, New York 14228

ELECTION DISTRICTS
39, 40, 41, 50, 51, 59, 60, 61, 62, 63, 64, 65, 66, 67, 76, 77, 78

POLLING PLACE
Clearfield Community Center
730 Hopkins Road
Williamsville, New York 14221

ELECTION DISTRICTS
43, 44, 45, 46, 47, 48, 49, 52, 53, 54, 55, 56, 57, 58, 68, 69, 70, 71, 72, 73, 74, 75, 79

POLLING PLACE
Harlem Road Community Center
4255 Harlem Road
Amherst, New York 14226

ELECTION DISTRICTS
8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 33, 34, 35, 36, 37, 38

POLLING PLACE
Amherst Municipal Building (Town Hall)
5583 Main Street
Williamsville, New York 14221

ELECTION DISTRICTS
1, 2, 3, 4, 5, 6, 7, 20, 21, 22, 23, 24, 25, 28, 27, 28, 29, 30, 31, 32, 42

BE IT FURTHER RESOLVED, that no later than May 20, 2013, the Amherst Town Board upon consultation with Carl Balmas, Chair of the Amherst Republican Committee; and Jerome Schad, Chair of the Amherst Democrat Committee, shall designate twenty-four (24) election inspectors from a list of qualified active polling inspectors provided by the Erie County Board of Elections to serve as election inspectors at the Special Election, and to serve as a board of registration, and shall also provide a qualified list of alternate election inspectors to serve, if needed, as election inspectors at the Special Election, and to serve as a board of registration; and

BE IT FURTHER RESOLVED, that local personal registration for the purpose of voting by ballot on such Proposition is hereby set for May 28, 2013, between the hours of 12:00 noon and 4:00 o'clock p.m. Such registration to be held at:

Amherst Town Hall, 5583 Main Street
Harlem Road Community Center, 4255 Harlem Road
Clearfield Community Center, 730 Hopkins Road
Amherst Center for Senior Services, 370 John James Audubon Pkwy

in the Town of Amherst, New York and the Town Clerk is hereby directed to give notice of such personal registration by publication thereof and posting thereof, as required by law. Those so registering shall be added to the roll of those personally registered as the same as maintained by the Erie County Board of Elections so as to qualify as an elector for the purposes of this special election; and

BE IT FURTHER RESOLVED, that the Amherst Town Clerk is herby directed to contact and make necessary arrangements with the Erie County Board of Elections for the purpose of bipartisan selection and designation of qualified election inspectors and of the board of registration for the aforesaid local personal registration for the special election and further for the purposes of provision of voting machines and ballots in sufficient quantity for use at such special election and registration and to prepare for use of the election officers the necessary oaths and certificates of election and to procure and deliver such election officers any and all necessary equipment for the proper conduct of such election; and

BE IT FURTHER RESOLVED, that the Amherst Town Clerk shall give notice of the special election, at the expense of the Town, by publishing a notice in the Amherst Bee, a newspaper published in the Town of Amherst and having general circulation within the Town; and

BE IT FURTHER RESOLVED, that such notice shall specify the time when and places where the special election will by held, and the Proposition that will be voted upon; and that such notice shall be published in the Amherst Bee on May 15, 2013; and

BE IT FURTHER RESOLVED, that the Amherst Town Clerk shall post or cause to be posted a copy of such notice on the Town of Amherst sign-board, maintained pursuant to New York Town Law Section 30(6), no later than May 15, 2013; and

BE IT FURTHER RESOLVED, that copies of an abstract of the Proposition and the Proposition to be submitted to the qualified voters of the Town of Amherst at said special election are attached hereto; and

BE IT FURTHER RESOLVED, that this resolution shall take effect immediately.

FISCAL IMPACT:

Payment for election inspectors: $3,520.00

Printing ballots and set-up:	$ 890.00
Printing absentee ballots:	$ 120.00
Machine delivery:	$ 600.00
Poll books:	$ 950.00
Postcard notification:	$4,600.00
Absentee ballot postage:	$ 740.00
Legal Notices (estimate):	$ 500.00
Envelopes labels supplies	$ 750.00
10% contingency	$1,267.00

Total: $13,937.00

FINANCIAL IMPACT:

$13,937

PROPOSITION NO. 1
ABSTRACT OF LOCAL LAW

ABSTRACT OF LOCAL LAW ENTITLED "A LOCAL LAW TO MAINTAIN THE NUMBER OF COUNCILMEN IN THE TOWN OF AMHERST, NEW YORK, AT FIVE" adopted by the Town Board of the Town of Amherst, New York on the 8th day of April, 2013, to be submitted as Proposition No. 1 of the Town of Amherst and voted upon in the Town of Amherst at a special election to be held on the 11th day of June, 2013.

The purpose and effect of the Local Law is to maintain the current total number of Town Councilmen/Councilwomen positions on the Town of Amherst Town Board at five (5).

If approved, this Local Law would amend Local Law 17-2010 which decreases the number of councilmen/councilwomen to four (4) effective January 1, 2014.

This Local Law is intended to supersede certain New York State statutes.

The foregoing abstract, together with a proposition herewith submitted, is prepared by the Town Clerk of the Town of Amherst, New York with advice of the Town Attorney of the Town of Amherst, New York pursuant to Section 25 of the Municipal Home Rule Law of the State of New York.

DATED: April 23, 2013

Marjory Jaeger, Town Clerk
Town of Amherst, New York

E. Thomas Jones, Esq.
To n of Amherst, New York

Attachment: Spec Elect Prop Abstr (RES-2013-406 : Approval of Details for June 11, 2013 Special Election)

Proposition No. 1 of the Town of Amherst

Shall there be approved and adopted in the Town of Amherst, New York, a Local Law entitled "A Local Law To Maintain The Number Of Councilmen In The Town Of Amherst, New York At Five" as enacted by the Town Board of the Town of Amherst on the 8th day of April, 2013?

NOTICE OF SUBMISSION OF
PROPOSITION AT A SPECIAL ELECTION

NOTICE is hereby given that pursuant to Section 23 of the Municipal Home Rule of the State of New York, the following proposition will be submitted to be voted upon at a special election in the Town of Amherst, Erie County, New York, on the 11th day of June, 2013, to wit:

Proposition No. 1 of the Town of Amherst

Shall there be approved and adopted in the Town of Amherst, New York, a Local Law entitled "A Local Law To Maintain The Number Of Councilmen In The Town Of Amherst, New York At Five" as enacted by the Town Board of the Town of Amherst on the 8th day of April, 2013?

Voting shall take place at the locations set forth on Schedule A attached hereto and made a part of this notice.

Absentee ballot applications will be available at the Town Clerk's Office, 5583 Main Street, Williamsville, New York, starting May ___, 2013 during the hours of 8:30 a.m. – 4:30 p.m., Monday through Friday.

If not already registered to vote with the Board of Elections, local required personal registration will be available at the voting locations designated herein on May 28, 2013 between the hours of 12:00 noon and 4:00 o'clock p.m.

For the purpose of voting, polls will be open on June 11, 2013 between the hours of 9:00 a.m. and 9:00 p.m.

DATED: April ___, 2013

_____
Marjory Jaeger, Town Clerk
Town of Amherst