

UCCRC

Ulster County Capital Resource Corporation
P.O. Box 4265, Kingston, NY 12402-4265

GOVERNANCE COMMITTEE

September 1, 2021 – 1:30 PM
Legislative Chambers
County Office Building, 6th Floor
244 Fair Street, Kingston, NY 12401

MEETING AGENDA

1. Call to order
2. Roll call **(page 2)**
3. Approval of minutes of the June 22, 2021 meeting **(page 3)**
4. Public comment on agenda items only
5. Old business
 - a. Amendment to Enforcement of Agency Projects **(page 6)**
6. New business
 - a. Policies to be created
 - i. IDA fees shared with CRC
 - ii. Cost Benefit Analysis Policy
 - b. Policies to be amended
 - i. UTEP and Matrix
7. Adjournment

The mission of the Ulster County Capital Resource Corporation (UCCRC) is to promote community and economic development in Ulster County in ways that complement the work of Ulster County, primarily through issuing and selling bonds for non-profit institutions.

Item 2.

Roll Call

	<u>Present</u>	<u>Absent</u>
Michael J. Ham, Committee Chairman	_____	_____
Diane Eynon	_____	_____
Richard O. Jones	_____	_____

UCCRC

Ulster County Capital Resource Corporation

ULSTER COUNTY CAPITAL RESOURCE CORPORATION GOVERNANCE COMMITTEE MINUTES June 22, 2021

A meeting of the Governance Committee of the Ulster County Capital Resource Corporation was held on Tuesday June 22, 2021, at 1:01 P.M., immediately following the Governance Committee meeting of the Ulster County Industrial Development Agency, via Zoom.

Roll Call:

The following committee members were present:

Michael J. Ham	Committee Chairman
Richard O. Jones	
Diane Eynon	

The following committee members were absent with notice:

The following additional Agency members were present:

Additional Attendees:

Rose Woodworth	Chief Executive Officer
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The meeting was called to order at 1:01 P.M. by Committee Chairman Michael J. Ham.

ROLL CALL

The roll was called, and it was noted that a quorum was present.

APPROVAL OF MINUTES

The members of the Committee reviewed the draft minutes from the April 6, 2021 meeting.

Motion: Richard Jones, seconded by Diane Eynon, moved to approve the minutes of the April 6, 2021 Governance Committee meeting.

Vote: The motion was unanimously adopted (3-0).

OLD BUSINESS

FOIL Policy

Motion: Richard Jones, seconded by Michael J. Ham, made a motion to move the FOIL Policy to the Board for consideration.

Vote: The motion was unanimously adopted (3-0).

NEW BUSINESS

Mentoring Program

Motion: Diane Eynon, seconded by Richard O. Jones, moved to accept the changes to the Mentoring Program as previously reported in the UCIDA Governance Meeting.

Vote: The motion was unanimously adopted (3-0).

Policies to Be Created

Motion: Richard O. Jones, seconded by Diane Eynon, made a motion to bring the changes to the Policy for Return of All or Part of Financial Assistance, Policy for the Suspension, Discontinuance, or Modification of Financial Assistance, Resolution Approving Public Comment Policy for Meetings and Record Retention & Disposition Policy, to the full Board for approval.

Vote: The motion was unanimously adopted (3-0).

Policies to Be Amended

Motion: Diane Eynon, seconded by Richard O. Jones, made a motion to bring the changes for the Procurement Policy to the full Board for approval.

Vote: The motion was unanimously adopted (3-0).

Compensation Policy

Motion: Richard O. Jones, seconded by Diane Eynon, made a motion to bring the changes for the Compensation Policy to the full Board for approval.

Vote: The motion was unanimously adopted (3-0).

In the interest of time, the remainder of the agenda was tabled until the next Committee meeting.

PUBLIC COMMENT

No public comment received.

ADJOURNMENT

Motion: Richard Jones, seconded by Diane Eynon, moved to adjourn the meeting.

Vote: The motion was unanimously adopted (3-0).

The meeting was adjourned at 1:06 P.M.

Respectfully submitted,

Michael J. Ham, Committee Chair

UCCRC

Ulster County Capital Resource Corporation

ENFORCEMENT OF CORPORATION PROJECTS POLICY

SECTION 1. PURPOSE AND AUTHORITY.

The purpose of this policy is to outline the procedures utilized by the Ulster County Capital Resource Corporation (UCCRC) to review compliance with UCCRC requirements relating to project implementation, policy conformance and reporting. The UCCRC was created in order to promote community and economic development in Ulster County. The intent of the Enforcement Policy of the UCCRC is to maintain the integrity and accountability of UCCRC projects, while being supportive of and constructive with project entities that are attempting in good faith to implement their project commitments and goals.

SECTION 2. DEFINITIONS.

- (A) "Active projects" shall mean projects that are approved and have received UCCRC benefits and/or are subject to an agreement with UCCRC that has not completed its term.
- (B) "Full Time Equivalent (FTE) jobs" are defined as the total number of person hours, at a given point in time, working as of that time, divided by the number of person hours that the employer has designated as full time. The minimum weekly full time hours shall be thirty-five.

SECTION 3. REQUIREMENTS OF THE APPLICANT.

- (A) Background. The UCCRC is required to submit certain annual reports relating to UCCRC projects to the New York State Office of the Comptroller and to the NYS Authority Budget Office. In order to satisfy its annual reporting requirements and other requirements, as well as the policies of the UCCRC, the UCCRC will require applicants for financial assistance to satisfy the requirements described in Section 3(B) below.
- (B) Applicant Requirements. Each applicant for financial assistance from the UCCRC will agree to satisfy the following requirements as a condition to the receipt of such financial assistance:

- i. The applicant shall insure that all employees and applicants for employment with regard to the Project are afforded equal employment opportunities without discrimination.
- ii. Except as otherwise provide by collective bargaining agreements, new employment opportunities created as a result of the project will be listed with the New York State Department of Labor Community Services Division (the "DOC") and the Ulster County Office of Employment and Training (the "UCOET") such programs collectively with the DOC, hereinafter referred to as the "Workforce Investment Program."
- iii. Except as otherwise provided by collective bargaining agreements, where practicable, the applicant will first consider persons eligible to participate in the Workforce Investment Program who shall be referred by DOC and the UCOET for new employment opportunities created as a result of the Project.
- iv. The applicant must, whenever requested by the UCCRC, provide and certify or cause to be provide or certified such information concerning the applicant, its finances and other topics as the UCCRC from time to time reasonably considers necessary or appropriate, including, but not limited to such information as to enable the UCCRC to make any reports required by law or governmental regulation.
- v. Within ~~sixty-thirty-one~~ (3160) days after the end of each calendar year, the applicant shall furnish to the UCCRC a certificate of an Authorized Representative of the applicant stating that no Event of Default under the Installment Sale Agreement (or Lease Agreement) has occurred or is continuing or, if any Event of Default exists, specifying the nature and period of existence thereof and what action the applicant has taken or proposes to take with respect thereto, and setting forth the unpaid principal balance of the Bonds and accrued but unpaid interest thereon and that no defenses, offsets or counterclaims exist with respect to the indebtednessevidenced thereby.
- vi. In cases where the UCCRC has administered a payment in lieu of tax (PILOT) program for an applicant, within ~~sixty-thirty-one~~ (6310) days afterthe end of each calendar year, the applicant shall furnish to the UCCRC a certificate of an Authorized Representative of the applicant stating that all such PILOT payments for the prior calendar year have been paid on time. In the event that PILOT payments have not been paid on time, the applicant shall certify as to the nature and period of non-payment and what action the applicant has taken or proposes to take with respect compliance with future payment requirements.

- vii. The applicant must file with the UCCRC, no later than ~~sixty-thirty-one~~ (6310) days after the end of each calendar year, reports regarding the number of people employed at the Project Facility and certain other matters.
- viii. The applicant must annually file and cause any sub-lessee or other operator of the Project Facility to file annually, with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "Annual Sales Tax Report"), a statement of the value of all sales and use tax exemptions claimed by the applicant and all contractors, subcontractors, consultants and other agents of the applicant under the authority granted to the applicant pursuant to the Installment Sale Agreement (or this Lease Agreement) and/or the Final Inducement Resolution and/or the Sales Tax Exemption Letter.
- ix. The applicant must furnish to the UCCRC a copy of each such annual report submitted to the New York State Department of Taxation and Finance by the applicant.

SECTION 4. COMPLIANCE.

- (A) Monitoring. UCCRC project monitoring shall be the responsibility of the Chief Executive Officer or his or her designee which shall include but not limited to the following:
 - i. The UCCRC will perform a monitoring visit of every active project site ~~at least every two (2) years~~ every year.
 - ii. The UCCRC will, at least annually, collect information for each active project involving a PILOT that will enable it to reasonably verify that PILOT invoicing has been done correctly, that payments due for the same have been made, that jobs have been substantially retained or created as projected, and that major project objectives have been substantially achieved.
 - iii. Annually collect information as of the last day of the calendar year:
 - Copies of NYS Form – 45 for each calendar quarter for the year in question
 - Copies of payroll journals summarized by employee showing hours worked and gross wages totaled by employee and project applicant for the year in question
 - Certificates evidencing the project applicant's general liability insurance, workers' compensation insurance (C-105.2) and disability insurance
 - Copies of the NYS ST-340 Form for the year in question (if applicable)
 - Copies of the project applicant's bond statement showing the principal repayment and outstanding principal on the Agency's bond issue (if applicable)
 - Check or money order in the amount of \$100 made

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~~payable to the Agency for reimbursement of payroll/insurance verification (such amount subject to change).~~

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~~At the expense to the project entity a certified public accountant shall verify and certify that the aforesaid numbers are consistent with the payroll data submitted to the State of New York in the entity's NYS-45, Proof of Workers' Compensation coverage.~~

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~~iii. for the number of full time equivalent (FTE) jobs projected in the application for the year being reported on, the number of FTE jobs currently employed, and the total dollar payroll amount. At the expense to the project entity a certified public accountant shall verify and certify that the aforesaid numbers are consistent with the payroll data submitted to the State of New York in the entity's NY45, Proof of Workers' Compensation coverage.~~

- iv. During project site visits the UCCRC will require the applicant, upon request, to show copies of payroll related documents, which may include but not be limited to, NYS-45, proof of Workers'

Compensation coverage, proof of Disability Insurance coverage, proof of Unemployment Insurance, etc.

v. Annually collect for each active project other information relating to project performance.

(B) Annual Reports. Within ~~seventy-five-ninety~~ (7905) days after the end of each calendar year, the audit committee of the UCCRC will prepare an internal compliance annual report describing the compliance by applicants with the requirement described in Section 3 above, including the filing of annual reports and the number of jobs created and retained by the applicant.

(C) UCCRC Review. Projects that are administratively deemed out of compliance will be reviewed by the Governance Committee, which may make enforcement action recommendations to the UCCRC. The UCCRC will review the internal compliance report at a regular meeting of the UCCRC. The UCCRC will take such actions as it deems necessary, including but not limited to, (1) scheduling meetings with applicants to review non-compliance and to discuss remedial actions, (2) considering enforcement action against applicants that fail to comply with the requirements described in Section 3 above, as described in Section 5 below, and (3) preparation of letters of commendation or other form of congratulation to those applicants that have created and/or retained jobs consistent with (or in excess of) the estimates contained in the applicants original application to the UCCRC.

SECTION 5. ENFORCEMENT.

(A) General. Upon completion of the report prepared by UCDC regarding compliance by the applicants with the requirements described in Section 3 above, the UCCRC will initiate enforcement action against those applicants that have failed to comply with such requirements.

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(B) Compliance. Compliance action by the UCCRC may include, but not be limited to, the following:

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i. An active economic development project for which less than ~~98~~0% of the projected jobs have been retained and/or created after three years from closing will be subject to review and possible enforcement action.

ii. An active project that has not substantially achieved its construction, expansion or services goals after three years from closing will be subject to review and possible enforcement action.

iii. The UCCRC will notify the concerned entity in writing of the fact if its project is administratively determined to warrant compliance review, will require that they report to the UCCRC on project status within sixty (60) days of the date of the letter, and will schedule

i. meetings with the entities in question to discuss explanations and remedial actions. The following will be used to determine if an explanation exists for failure to achieve the economic benefits projected by the company:

- Natural Disaster: if a natural disaster such as a fire, flood, or tornado disrupts the business.
- Industry Trends: An evaluation of industry trends will be made relevant to the company, and a determination reached as to whether the company is in a market that is declining. International and national data will be used in the evaluation. An industry is considered in decline when, measured by the appropriate SIC code, it experiences employment or revenue declines—beyond its control--of 10% or more over 3 years.
- Loss of Major Supplier or Customer: if the loss of a customer or supplier represents 15% or more of the sales of the company.
- Productivity Improvements: if new technology, equipment or general productivity improvements result in the need for less than projected employees or investment
- Unfair Competition: if an international competitor utilizes an unfair competitive advantage to acquire market share.
- Public health crisis: if a public health crisis such as a pandemic disrupts the business.
- Other economic reversals.

(C) Enforcement Action.- The CRC granting the economic incentive retains all rights to impose, delay, or waive penalties. Further the Corporation, at its sole discretion, may waive all or any portion of any payment owing by the Company. Otherwise, eEnforcement action by the UCCRC may include, butnot be limited to, the following:

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- i. Requesting the information and/or compliance by a final notice letter.
- ii. Forwarding an event of default notice to the involved parties, including the lender.
- iii. Forwarding an event of PILOT nonpayment to the affected taxing jurisdictions.
- iv. Notifying appropriate New York State, Ulster County, and local municipal agencies of the applicant's failure to comply with such requirements.
- v. Terminating all or a portion of the financial assistance provide by the UCCRC, including any sales tax exemption letters and PILOT agreements.

vi. Recapturing any or all benefits provided to an applicant under a PILOT agreement or sales tax exemption letter or other agreement, in which case the UCCRC will return any such recovered funds to the taxing jurisdictions affected.

vii. Referral to appropriate agencies for criminal or civil prosecution.

(D) Recovery of Incentives. The terms of Project Agreement will, depending upon the terms of a project, include the following formulas in case of the occurrence of a Recapture Event and subject to the provisions of Section 4.02(B) hereof, the Company shall pay to the Agency the following amounts as recapture:

ii. For a 10-year PILOT

- one hundred percent (100%) of the Benefits if the Recapture Event occurs prior to the Completion of Project Construction, or within the first (1st) or second (2nd) year after the Completion of Project Construction; or
- ninety percent (90%) of the Benefits if the Recapture Event occurs during the third (3rd) year after the Completion of Project Construction; or;
- eighty percent (80%) of the Benefits if the Recapture Event occurs during the fourth (4th) year after the Completion of Project Construction; or;
- seventy percent (70%) of the Benefits if the Recapture Event occurs during the fifth (5th) year after the Completion of Project Construction; or;
- sixty percent (60%) of the Benefits if the Recapture Event occurs during the sixth (6th) year after the Completion of Project Construction; or;
- fifty percent (50%) of the Benefits if the Recapture Event occurs during the seventh (7th) year after the Completion of Project Construction; or;
- forty percent (40%) of the Benefits if the Recapture Event occurs during the eighth (8th) year after the Completion of Project Construction; or;
- thirty percent (30%) of the Benefits if the Recapture Event occurs during the ninth (9th) year after the Completion of Project Construction; or;
- twenty percent (20%) of the Benefits if the Recapture Event occurs during the tenth (10th) year after the Completion of Project Construction; or;
- ten percent (10%) of the Benefits if the Recapture Event occurs during the eleventh (11th) year after the Completion of Project Construction;

Year	Amount of Recapture
<u>1</u>	<u>100% of the Project Financial Assistance</u>
<u>2</u>	<u>100% of the Project Financial Assistance</u>
<u>3</u>	<u>90% of the Project Financial Assistance</u>
<u>4</u>	<u>80% of the Project Financial Assistance</u>
<u>5</u>	<u>70% of the Project Financial Assistance</u>
<u>6</u>	<u>60% of the Project Financial Assistance</u>
<u>7</u>	<u>50% of the Project Financial Assistance</u>

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<u>8</u>	<u>40% of the Project Financial Assistance</u>
<u>9</u>	<u>30% of the Project Financial Assistance</u>
<u>10</u>	<u>20% of the Project Financial Assistance</u>
<u>11</u>	<u>10% of the Project Financial Assistance</u>

iii. For a 15-year PILOT

- one hundred percent (100%) of the Benefits if the Recapture Event occurs prior to the Completion of Project Construction, or within the first (1st) or second (2nd) year after the Completion of Project Construction; or
- ninety-three percent (93%) of the Benefits if the Recapture Event occurs during the third (3rd) year after the Completion of Project Construction; or;
- eighty-six percent (86%) of the Benefits if the Recapture Event occurs during the fourth (4th) year after the Completion of Project Construction; or;
- seventy-nine percent (79%) of the Benefits if the Recapture Event occurs during the fifth (5th) year after the Completion of Project Construction; or;
- seventy-two percent (72%) of the Benefits if the Recapture Event occurs during the sixth (6th) year after the Completion of Project Construction; or;
- sixty-five percent (65%) of the Benefits if the Recapture Event occurs during the seventh (7th) year after the Completion of Project Construction; or;
- fifty-eight percent (58%) of the Benefits if the Recapture Event occurs during the eighth (8th) year after the Completion of Project Construction; or;
- fifty-one percent (51%) of the Benefits if the Recapture Event occurs during the ninth (9th) year after the Completion of Project Construction; or;
- forty-four percent (44%) of the Benefits if the Recapture Event occurs during the tenth (10th) year after the Completion of Project Construction; or;
- thirty-seven percent (37%) of the Benefits if the Recapture Event occurs during the eleventh (11th) year after the Completion of Project Construction; or;
- thirty percent (30%) of the Benefits if the Recapture Event occurs during the twelfth (12th) year after the Completion of Project Construction; or;
- twenty-three percent (23%) of the Benefits if the Recapture Event occurs during the thirteenth (13th) year after the Completion of Project Construction; or;
- sixteen percent (16%) of the Benefits if the Recapture Event occurs during the fourteenth (14th) year after the Completion of Project Construction; or;
- nine percent (9%) of the Benefits if the Recapture Event occurs during the fifteenth (15th) year after the Completion of Project Construction; or;
- two percent (2%) of the Benefits if the Recapture Event occurs during the sixteenth (16th) year after the Completion of Project Construction;

<u>Year</u>	<u>Amount of Recapture</u>
<u>1</u>	<u>100% of the Project Financial Assistance</u>
<u>2</u>	<u>100% of the Project Financial Assistance</u>
<u>3</u>	<u>93% of the Project Financial Assistance</u>
<u>4</u>	<u>86% of the Project Financial Assistance</u>
<u>5</u>	<u>79% of the Project Financial Assistance</u>
<u>6</u>	<u>72% of the Project Financial Assistance</u>
<u>7</u>	<u>65% of the Project Financial Assistance</u>
<u>8</u>	<u>58% of the Project Financial Assistance</u>
<u>9</u>	<u>51% of the Project Financial Assistance</u>
<u>10</u>	<u>44% of the Project Financial Assistance</u>
<u>11</u>	<u>37% of the Project Financial Assistance</u>
<u>12</u>	<u>30% of the Project Financial Assistance</u>
<u>13</u>	<u>23% of the Project Financial Assistance</u>
<u>14</u>	<u>16% of the Project Financial Assistance</u>
<u>15</u>	<u>9% of the Project Financial Assistance</u>
<u>16</u>	<u>2% of the Project Financial Assistance</u>

iv. For any longer PILOTs

- one hundred percent (100%) of the Benefits if the Recapture Event occurs prior to the Completion of Project Construction, or within the first (1st) or second (2nd) year after the Completion of Project Construction; or
- X percent (X%) of the Benefits if the Recapture Event occurs during each year from the third year after the Completion of Project Construction forward;
 - vii. "X" shall be 100% divided by the length of the PILOT and rounded up to the nearest whole percentage. For example, a 20-year PILOT will decrease by 5% each year beginning with the third year.

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Re-affirmed: January 20, 2024