

CALENDAR
for
SPECIAL MEETING OF THE COUNCIL
of the
CITY OF LONG BEACH
held
TUESDAY, APRIL 13, 2021

1. Resolution Authorizing the Settlement of the Offset Issues in the Haberman Litigation.
2. Resolution Authorizing the Retention of M3 Partners, LP.
3. Resolution Authorizing the Retention of Outside Counsel.

April 13, 2021

Item No. 1
Resolution No.

The following Resolution was moved by
and seconded by :

Resolution Authorizing the Settlement of the Offset Issue in the Haberman
Litigation.

WHEREAS, the City of Long Beach and the City's Zoning Board of Appeals are defendants in the matter known as *Sinclair Haberman and Belair Building, LLC v. City of Long Beach, et al.* (Nassau County Index No. 001138/04) ("Haberman Litigation"); and

WHEREAS, plaintiff in the Haberman Litigation also brought an action against defendant Xander Corp. (Nassau County Index No. 21508/2010), the facts of which are related to the Haberman Litigation ("Xander Litigation"); and

WHEREAS, the parties in the Xander Litigation agreed to a bifurcated trial, the liability portion of which was determined in favor of the plaintiff; and

WHEREAS, both the Haberman Litigation and Xander Litigation were scheduled for a joint bench inquest on the issue of damages; and

WHEREAS, on the morning of commencement of the scheduled joint hearing, the parties to the Xander Litigation resolved and settled the damages issue for \$23 million; and

WHEREAS, in November of 2020, an inquest on the measure of damages in the Haberman litigation was conducted in the Supreme Court of the State of New York, Nassau County; and

WHEREAS, by decision dated January 11, 2021, former State Supreme Court Justice Jack L. Libert awarded plaintiff in the Haberman Litigation damages in the amount of \$131,292,386.00 against the City; and

WHEREAS, in that same decision, the court ordered a separate inquest be conducted to determine what portion of the \$23 million settlement in the Xander Litigation shall serve as an offset against the judgment in the Haberman Litigation ("Offset Inquest"); and

WHEREAS, the Offset Inquest is currently scheduled to move forward; and

WHEREAS, the City has been represented in this litigation by the law firm of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP in conjunction with the Office of the Corporation Counsel and, after due deliberation and negotiation, has reached an agreement in principle with plaintiff to resolve and settle the Offset Inquest for the amount of \$20.5 million, which shall serve to offset the judgment against the City in the Haberman Litigation.

April 13, 2021

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Item No. 1
Resolution No.

NOW, THEREFORE, be it

RESOLVED, by the City Council of the City of Long Beach, New York, that the Acting Corporation Counsel and the City's attorneys be and are hereby authorized to settle the above-referenced Offset Inquest for the amount of \$20.5 million, which shall serve to offset the judgment against the City in the Haberman Litigation.

April 13, 2021

Item No. 2
Resolution No.

The following Resolution was moved by
and seconded by :

Resolution Authorizing the Retention of M3 Partners, LP.

WHEREAS, the City of Long Beach faces current and prospective financial obligations which could exceed \$460 million; and

WHEREAS, the City's history of borrowing money to fulfill its financial obligations, among other factors, have contributed to the decline of its fiscal health and has led to a credit status of Baa2 with a negative outlook; and

WHEREAS, the City of Long Beach desires to engage the services of a financial consulting firm to assist in turning around and/or restructuring the City's financial obligations; and

WHEREAS, M3 Partners, LP, 1700 Broadway, 19th Floor, New York, NY 10019 has a team of professionals specializing in financial turnaround and restructuring; and

WHEREAS, the City of Long Beach desires to retain the consulting services of M3 Partners, LP, 1700 Broadway, 19th Floor, New York, NY 10019.

NOW, THEREFORE, be it

RESOLVED, by the City Council of the City of Long Beach, New York, that the City Manager be and is hereby authorized to enter into a limited retainer agreement with M3 Partners, LP, 1700 Broadway, 19th Floor, New York, NY 10019 to work with the City and its consultants to provide services which include, but are not limited to: (a) a rolling 13-week cash flow forecast to assess liquidity & identify inflow/outflow timing issues; (b) assisting the City in developing long-term budget projections in conjunction with the City's existing advisor to provide visibility on severity of fiscal issues; (c) identifying credible strategic alternatives to address operational and financial issues; and (d) assist the City in implementing/executing a restructuring plan.

April 13, 2021

Item No. 3
Resolution No.

The following Resolution was moved by
and seconded by :

Resolution Authorizing the Retention of Outside Counsel.

WHEREAS, the City of Long Beach faces current and prospective financial obligations which could exceed \$460 million; and

WHEREAS, the City's history of borrowing money to fulfill its financial obligations, among other factors, have contributed to the decline of its fiscal health and has led to a credit status of Baa2 with a negative outlook; and

WHEREAS, the City of Long Beach desires to retain legal counsel regarding the restructuring of its financial obligations; and

WHEREAS, the law firm of O'Melveny & Myers LLP, 7 Times Square, New York, NY 10036 has a team of lawyers well-versed and highly-regarded in financial restructuring; and

WHEREAS, the City of Long Beach desires to retain the services of O'Melveny & Myers LLP, 7 Times Square, New York, NY 10036; and

NOW, THEREFORE, be it

RESOLVED, by the City Council of the City of Long Beach, New York, that the City Manager be and is hereby authorized to enter into a limited retainer agreement with the firm of O'Melveny & Myers LLP, 7 Times Square, New York, NY 10036 to work with the City and its consultants to provide legal advice on financial restructuring, which includes the analysis of strategic alternatives related to the City's financial obligations and matters related to such financial obligations.

NOTICE OF SPECIAL MEETING

**TO THE HONORABLE MEMBERS OF THE CITY COUNCIL
OF THE CITY OF LONG BEACH**

NOTICE IS HEREBY GIVEN that a Special Meeting of the City Council of the City of Long Beach, New York, is scheduled for Tuesday, April 13, 2021 at 7:00 p.m. for the purpose of acting on the following matters, and due to the public health and safety concerns related to COVID-19, the City Council meeting will be held via videoconferencing. Information can be found at [longbeachny.gov/council meetings](http://longbeachny.gov/council-meetings).

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2. Resolution Authorizing the Retention of M3 Partners, LP.
3. Resolution Authorizing the Retention of Outside Counsel.

JOHN BENDO
President

Dated: April 9, 2021