

1. Agendas

Documents:

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PUBLIC HEARING

PLEASE TAKE NOTICE that the City Council of the City of Newburgh will hold a public hearing on Tuesday, May 29, 2012 at 7:00 p.m. in the 3rd floor Council Chambers, City Hall, 83 Broadway, Newburgh, NY to hear public comment concerning the development of the long term control plan for the City of Newburgh combined sewer overflow.

**LORENE VITEK
CITY CLERK**

DATED: May 15, 2012

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**May 23, 2012 (Hudson Valley Press
& Mid-Hudson Times)**

LOCAL LAW NO.: 3 - 2012

OF

JUNE 18, 2012

A LOCAL LAW AMENDING CHAPTER 248 "SEWERS"
OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH
AMENDING ARTICLE IV ENTITLED
"STORMWATER MANAGEMENT REGULATIONS"

BE IT ENACTED by the City Council of the City of Newburgh as follows:

SECTION 1 - TITLE

This Local Law shall be referred to as "A Local Law Amending Chapter 248, 'Sewers', Article IV entitled 'Stormwater Management Regulations' of the Code of the City of Newburgh".

SECTION 2 - PURPOSE AND INTENT

The purpose of this local law is to comply with New York State Department of Environmental Conservations related to Stormwater Management/Control and Prohibition of Illicit Discharges and Connections to City MS4 System.

SECTION 3 - AMENDMENT

Chapter 248 entitled "Sewers", Article IV entitled "Stormwater Management Regulations" of the Code of the City of Newburgh is hereby amended by to read as follows:

§ 248-58. Definitions and word usage.

STORMWATER MANAGEMENT OFFICER (SMO)

An employee or officer designated by the municipality to accept and review stormwater pollution prevention plans, forward the plans to the applicable municipal board, inspect stormwater management practices and enforce the provisions of this Local Law in conjunction with other City officials and departments and other municipal agencies. Unless otherwise designated, the City Stormwater Management Officer shall be the City Consulting Engineer.

STORMWATER MANAGEMENT PLAN

~~The detailed analysis of stormwater and drainage as described in and required by these regulations, including standards, criteria, requirements and enforcement thereof.~~

STORMWATER POLLUTION PREVENTION PLAN (SWPPP)

A plan for controlling stormwater runoff and pollutants from a site during and after construction activities, and as described in and required by these regulations, including standards, criteria, requirements and enforcement thereof.

§ 248-59. Applicability.

- A. This Local Law shall apply to all water and other substances and materials entering the MS4 generated on any developed and/or undeveloped lands unless explicitly exempted by law, statute, rule or regulation or by an authorized enforcement agent or agency.
- B. A ~~stormwater management plan~~ and stormwater pollution prevention plan developed in compliance with the New York State Stormwater Management Design Manual dated latest revision and prepared in accordance with the specifications herein must be submitted by the Owner and/or by his agent as authorized hereunder for review and acceptability to all City agencies and officials having jurisdiction over approval of a project land development activity, as defined in this Local Law, including any one or more of the following:
 - (1) A subdivision of land.
 - (2) The approval of a site plan.
 - (3) Issuance of a building permit where greater than one acre of property will be impacted.
 - (4) Construction or extension of an existing City street or property, or private roadway.
 - (5) Alteration of an existing drainage system or watercourse.
 - (6) Redevelopment of existing sites.
 - (7) Such other project undertaken within the boundaries of the City or on or adjacent to property in which the City has an interest which poses an impact upon such property and which in the opinion of the City Engineer requires the creation and implementation of such plan or plans as necessary to satisfy the Purpose and Objectives of this Law.

§ 248-60. Exemptions.

The following development activities are exempt from the ~~Stormwater Management and Stormwater Pollution Prevention Plan Requirements~~.

- A. Developments which disturb less than one acre of land and which in the professional opinion of the ~~City Engineer and/or~~ Stormwater Management Officer will not cause or may be reasonably anticipated to not cause stormwater accumulation, discharges, or flows equivalent to or greater than such as are regulated under and restricted or prohibited hereunder, or which will not cause or may be reasonably anticipated to not cause prohibited discharges, pollution, erosion, sedimentation, flooding or other impacts intended to be regulated, restricted or prohibited by this Local Law, regardless of the size of the parcel of land being developed or re-developed.
- B. Agricultural land management activities.
- C. Maintenance or improvement of an existing structure which will not have an impact on the quantity and/or quality of surface water discharge from the site, and which are performed in such manner as to maintain pre-existing grade, facilities, boundaries, hydraulic capacity and/or function and purpose.
- D. Repairs to any stormwater management practice or facility deemed required by the Stormwater Management Officer ~~and/or City Engineer~~.
- E. Cemeteries, graves, and plots therein which existed prior to the enactment of this law and/or which are exempt under State law, rule or regulation.
- F. Emergency activities undertaken to protect the life, health and safety of any person(s), or property or natural resources, as same may be deemed an emergency by the City Manager or by the Stormwater Management Officer.
- G. Home gardening undertaken for the personal benefit of the owner which does not generate the impacts intended to be regulated hereby.

§248-61. Prohibitions of illegal discharges.

No private or corporate person, owner, developer, contractor, site operator or other party or entity or agent shall discharge or cause to be discharged into any stormwater collection or conveyance system, natural watercourse or water body within the City of Newburgh or the MS4 any materials other than stormwater except as provided in Subsection A(1) hereinbelow. The commencement, conduct or continuance of any illegal discharge to the MS4 is prohibited except as described as follows:

- A. The following discharges are exempt from discharge prohibitions established by this article, unless the Department or the municipality has determined them to be substantial contributors of pollutants or the cause of impacts prohibited hereunder: water line flushing or flushing of other portable water sources, landscape irrigation or lawn watering, existing diverted stream flows, rising groundwater, uncontaminated groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains, crawl space or basement sump pumps, air-conditioning condensate, irrigation water, springs, water from individual residential car washing, natural riparian habitat or wetland flows, dechlorinated swimming pool discharges, residential street washwater, water from fire-fighting activities, and any other water source not containing pollutants or causing impacts prohibited hereunder. Such exempt discharges shall be made in accordance with an appropriate plan for reducing pollutants or mitigating or eliminating prohibited impacts. With the exception of the discharges identified herein, no discharge piping from any floor drain, sanitary drains, process piping or other similar source shall be connected to any City-owned or -maintained stormwater collection and conveyance system. The Building Inspector and/or Code Enforcement Officer shall be authorized to enforce the provisions of this section.
- B. Discharges approved in writing by the SMO to protect life or property from imminent harm or damage, provided that such approval shall not be construed to constitute compliance with other applicable laws and requirements, and further provided that such discharges may be permitted for a specified time period and under such conditions as the SMO may deem appropriate to protect such life and property while reasonably maintaining the purpose and intent of this article.
- C. Dye testing in compliance with applicable state and local laws is an allowable discharge but requires a verbal notification to the SMO prior to the time of the test.
- D. This prohibition shall not apply to any discharge permitted under an SPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Department, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the MS4.
- E. Violations of this section shall be punishable by the penalties set forth in § 248-76 herein. Every new day, measured from 12:00 midnight, during all of part of which a violation is found to exist shall constitute a separate violation hereof. In addition to such penalty, the City may bring a separate civil action in any court of competent jurisdiction to recover from any violator(s) the cost of any damages caused by such violation plus the cost of remediating such damage, plus any legal and attorneys' fees and costs associated with such action, including the right of the City to compel compliance or to restrain by injunction

any such violations of this section. This shall be in addition to any other penalties or remedies provided by any other law, regulation, or rule or section hereof.

§248-68. Access and monitoring of discharges.

A. Applicability. This section applies to all facilities that the SMO must inspect to enforce any provision of this Law, or whenever the authorized enforcement agency has ~~probable~~ cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this Law.

B. Access to Facilities.

1. The SMO shall be permitted to enter and inspect facilities subject to regulation under this Law as often as may be necessary to determine compliance with this Law. If a person who is the owner or is in control of or is responsible for such premises or who is a discharger has security measures in force which require proper identification and clearance before entry into its premises, such person(s) shall make the necessary arrangements to allow access to the SMO.
2. Facility operators shall allow the SMO ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records as may be required to implement this law.
3. The municipality shall have the right to set up on any facility subject to this Law such devices as are necessary in the opinion of the SMO to conduct monitoring and/or sampling of the facility's stormwater discharge.
4. The municipality has the right to require the facilities subject to this Law to install monitoring equipment at the expense of the owner, operator or responsible person(s) or discharger(s) as is reasonably necessary to determine compliance with this Law. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by such person(s) at their own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
5. Unreasonable delays in allowing the municipality access to a facility subject to this Law is a violation of this Law. A person who is the owner, operator, person responsible for or discharger of a facility subject to this Law commits an offense if the person denies the municipality reasonable access to the facility for the purpose of conducting any activity authorized or required by this Law. Such offense shall be

considered a Class A Misdemeanor and may be prosecuted as set forth in §248-76 ~~§248-66B and as set forth in §248-65A(2) hereinabove.~~

6. If the SMO has been refused access to any part of the premises from which is stormwater discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Law, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Law or any order issued hereunder, then the SMO may seek issuance of a search warrant from any court of competent jurisdiction in addition to all other remedies as set forth in this Chapter.

§ 248- 70. Contents of a stormwater ~~management~~ pollution prevention plan

The ~~stormwater management~~ and stormwater pollution prevention plan shall fully document compliance with the requirements of NYSDEC construction SPDES permit and New York State Stormwater Management Design Manual. All sites requiring a ~~stormwater management plan~~ and/or a stormwater pollution prevention plan to be implemented must document a zero increase in peak discharge from the predevelopment conditions as compared to postdevelopment conditions.

§ 248- 71. Components of a stormwater ~~management~~ pollution prevention plan

- A. Stormwater ~~Management~~ Pollution Prevention Plans shall be prepared by a professional licensed by the State of New York to prepare such documents. Plans shall consist of an analysis of the predevelopment runoff rates, versus post development runoff rates with engineering controls implemented to assure that predevelopment peak discharge at property lines, streams or water courses are not exceeded in the post development conditions for each design storm event and return frequency. Each stormwater management report shall take into account existing soils, vegetation and cover types, and topography in the analysis. Reports shall identify engineering computations and variables utilized in all calculations. Any assumptions utilized in the calculations shall be clearly identified. Stormwater management reports shall comply with the requirements of the New York State Stormwater Management Design Manual, (year of latest revision), and appropriate regulatory guidelines and standards. Additional information shall be provided as requested by the Planning Board, Building Inspector, Stormwater Management Officer ~~or City Engineer~~. Stormwater management reports will address both water quantity control as well as water quality control including storage requirements for water quality and/or volume, stream, brook and other water and watercourse protection, ten-year peak runoff control and a 100 year flood control. Detention ponds shall be analyzed for a 25 year return frequency storm event for pre and post development runoff analysis. This local law by reference will utilize the New York State Stormwater Management Design Manual (year of latest revision) as a basis for stormwater management and design

guidelines for stormwater management practices; and shall include such other and further provisions as the ~~City Engineer and/or~~ Stormwater Management Officer may reasonably require as being in the best interests of the City and as are required or defined in all applicable laws, rules and regulations.

B. Such Plans shall include but not be limited to the following:

(1) Background information and erosion and sediment controls:

- (a) Background information about the scope of the project, including location, type and size of project.
- (b) Site map/construction drawing(s) for the project, including a general location map. At a minimum, the site map should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharges; *Site map should be at a scale no smaller than 1" = 100.*
- (c) Description of the soil(s) present at the site.
- (d) Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the New York Standards and Specifications for Erosion and Sediment Control (Erosion Control Manual), not more than five (5) acres shall be disturbed at any one time unless pursuant to an approved Stormwater Management Pollution Prevention Plan.
- (e) Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff.
- (f) Description of construction and waste materials expected to be stored on-site with updates as appropriate, and a description of controls to reduce pollutants from these materials including storage practices to minimize exposure of the materials to stormwater, and spill prevention and response.

- (g) Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project from initial land clearing and grubbing to project close-out.
 - (h) A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice.
 - (i) Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins.
 - (j) Temporary practices that will be converted to permanent control measures.
 - (k) Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place.
 - (l) Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice.
 - (m) Name(s) of the receiving water(s).
 - (n) Delineation Plan implementation responsibilities for each part of the site.
 - (o) Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable.
 - (p) Any existing data that describes the stormwater runoff at the site.
- (2) Conditions A, B and C. In addition to the foregoing, land development activities as defined in this Law and meeting conditions "A", "B" or "C" below shall also include water quantity and water quality controls (post-construction stormwater runoff controls) as set forth below as applicable and as may be required by the Stormwater Management Officer ~~and/or City Engineer~~.
- (a) Condition A: Stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water identified on the Department's 303(d) list of impaired waters or a Total Maximum Daily Load (TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.

- (b) Condition B: Stormwater runoff from land development activities disturbing five (5) or more acres.
 - (c) Condition C: Stormwater runoff from land development activity disturbing between one (1) and five (5) acres of land during the course of the project, exclusive of the construction of single family residences and construction activities at agricultural properties.
- (3) SWPPP Requirements for Condition A, B and C:
- (a) All information in §248-71(B) (a-p) of this Local Law.
 - (b) Description of each post-construction stormwater management practice.
 - (c) Site map/construction drawing(s) showing the specific location(s) and size(s) of each post-construction stormwater management practice.
 - (d) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms.
 - (e) Comparison of post-development stormwater runoff conditions with pre-development conditions.
 - (f) Dimensions, material specifications and installation details for each post-construction stormwater management practice.
 - (g) Maintenance schedule to ensure continuous and effective operation of each post-construction stormwater management practice.
 - (h) Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easement shall be recorded on the plan and shall remain in effect with transfer of title to the property.
 - (i) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with the provisions of this local law.

C. Plan certification.

- (1) The Stormwater ~~Management~~ Pollution Prevention Plan shall be prepared by a landscape architect, certified professional or professional engineer and must be

signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meets the requirements in this local law.

- (2) Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or stormwater management practice installation shall sign and date a copy of the following certification statement before undertaking any land development activity: "I certify under penalty of law that I understand and agree to comply with the terms and conditions of the Stormwater Pollution Prevention Plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards." The certification must include the name and title of the person providing the signature, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.
- (3) A copy of the SWPPP shall be retained at the site of the land development activity during construction from the date of initiation of construction activities to the date of final stabilization.

D. Other environmental permits. The applicant shall assure that all other applicable environmental or legal permits and other approvals have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.

§ 248-73. Maintenance.

A. The Applicant or Developer

- (1) Stormwater management and stormwater pollution prevention plans shall address maintenance of all stormwater related improvements on subdivisions and site plans. Maintenance activity shall be the responsibility of the Owner and/or responsible party as defined herein of the site. Erosion control plans, in compliance with NYSDEC standards and as approved by the Planning Board, Zoning Board of Appeal, Building Department, Office of Code Compliance, ~~City Engineer~~ or Stormwater Management Officer, or any office, department, agency or officer charged with enforcement of law, codes or regulations, shall be implemented prior to construction activities commencing on a site. Soil erosion control methods and techniques shown on the approved plans and any additional controls required by the Code Compliance Supervisor, Building Inspector, Stormwater Management Officer and/or City Engineer shall be implemented and maintained throughout the project construction phase. Erosion and sediment control devices shall remain properly maintained on the site until the site has been stabilized. Maintenance of stormwater management appurtenances on site plans shall continue to be the responsibility of the site Owner and/or responsible party as defined herein. Periodic maintenance of stormwater management control is

required to assure their functions. Maintenance shall be performed in accordance with the stormwater pollution prevention plan and sound environmental practices, and as may be reasonably required by the Stormwater Management Officer ~~and/or City Engineer~~. Maintenance activities shall include, but are not limited to, mowing of vegetation, removal of debris, removal of sediment, cleaning of catch basins and pipes, repair and replacement of defective structures, equipment, or devices. During construction, sediment shall be removed from sediment traps, sediment ponds and other sediment collection facilities and points as soon as and whenever their total design capacity has been reduced for any reason or cause by fifty (50%) percent.

- (2) Post development maintenance of stormwater management facilities designed and constructed on a residential subdivision shall be performed by a Homeowners Association, or other individual, partnership, association, corporation, Owner or other legally-responsible party, or a drainage district established by the City Council in order to provide for required maintenance activities. Appropriate easements shall be provided to City and to other parties as necessary, for access to and maintenance of all stormwater management facilities. Costs for maintenance shall be borne either by a Homeowners Association, or other individual, partnership, association, corporation, Owner or other legally-responsible party, or a drainage district. Cost associated with maintenance within a district shall be assessed to each individual property annually on an ad valorem basis, as same is approved by the State Comptroller and as is assessed and administered under law.
 - (3) The applicant or developer or their representative shall be on site at all times when construction or grading activity takes place and shall inspect and document the effectiveness of all erosion and sediment control practices. Inspection reports shall be completed every 7 days and within 24 hours of any storm event producing 0.5 inches of precipitation or more. The reports shall be delivered to the Stormwater Management Officer and also copied to the site log book.
- B. Maintenance Easement(s). Prior to the issuance of any approval that has a stormwater management facility as one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility. The easement shall provide for access to the facility at all reasonable times for periodic inspection by the City of Newburgh to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this local law. The easement shall be recorded by the grantor in the office of the County Clerk after approval by the Corporation Counsel for the City of Newburgh.
- C. Stormwater Management and Maintenance after Construction.

- (1) Owners and/or other responsible parties are hereby made responsible for the continued operation and maintenance of all stormwater management facilities on properties, construction sites and subdivisions. The policy of the City of Newburgh is to reduce negative impacts associated with construction activities, including reducing impacts to receiving water quality as well as to maintain appropriate erosion, run-off and flood control from developed sites. All temporary soil erosion and sediment control devices and appurtenances required during the construction phase shall be maintained until sites become stabilized either through the provision of impervious surfaces or the establishment of vigorous vegetative growth, or the permanent establishment of such facilities and controls as the Stormwater Management Officer ~~and/or City Engineer~~ may reasonably require. All areas disturbed during construction shall be revegetated sufficiently to control erosion from all disturbed areas. Prior to issuance of a Certificate of Occupancy for a site plan or the first residential structure on a subdivision, the involved engineer shall certify to the ~~City of Newburgh Engineer and Code Compliance Supervisor and Stormwater Management Officer and/or Building Department official~~ that all stormwater management facilities have been constructed in conformance with the applicable stormwater pollution prevention plan. All appropriate and necessary elements of the stormwater pollution prevention plan shall become part of the approved site plan/subdivision and shall be enforceable by the City code enforcement officer. The City of Newburgh hereby recognizes that the stormwater management and soil erosion sediment control plans are an important part of site development plans and therefore require enforcement of the implementation of said plans as part of the site development building permit process, as well as of such other and further legal procedures as may be proper under applicable law, rules and regulations. All site plans and subdivisions which are subject to this stormwater management Local Law shall contain appropriate notes under seal of the authorized and licensed professional responsible therefor requiring ongoing maintenance of all stormwater management facilities and devices during construction. Annual review and inspection of the stormwater management facilities by the Owner, homeowners association, or other responsible party, or district as may be applicable, shall be required; and such other further and more frequent reviews, inspections and reports thereupon shall be performed as the ~~City Engineer and/or~~ Stormwater Management Officer may reasonably require.
- (2) The owner or operator of permanent stormwater management practices installed in accordance with this law shall be operated and maintained to achieve the goals of this law. Proper operation and maintenance shall include as a minimum, the following:

- (a) A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this law.
- (b) Written procedures for operation and maintenance and training and qualification of new maintenance personnel.
- (c) Discharges from the SMP's shall not exceed design criteria or cause or contribute to water quality standard violations.

D. Maintenance Agreements. The City of Newburgh may approve a formal maintenance agreement for stormwater management facilities binding on all subsequent landowners and recorded in the office of the County Clerk as a deed restriction on the property prior to final plan approval. The maintenance agreement shall be consistent with the terms and conditions of this local law and all applicable provisions of local or State code, rules and regulations. The City of Newburgh, in lieu of a maintenance agreement, at its sole discretion may accept dedication of any existing or future stormwater management facility, provided such facility meets all the requirements of this local law and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

E. Maintenance Bonds; Required documents and filing

- (1) ~~The Planning Board and/or City Council shall have authority to require a maintenance bond be posted to meet the construction, improvement and/or maintenance obligations for stormwater management facilities. The bonds if required shall be posted prior to final approval of a plan before the Planning Board or the issuance of a building permit by the Building Inspector, or the issuance of formal final City Council approval, as may be required, whichever occurs first. Maintenance bonds shall cover the estimated cost of maintaining the system for five years after issuance of the final certificates of occupancy on a site plan, subdivision or building permit. Ownership and responsibility for operational maintenance of stormwater management appurtenances of residential subdivisions shall be determined by the terms and provisions of this and/or other applicable laws, rules and regulations, or by the City Council or Planning Board, with the advice and recommendations of the City Engineer and/or Stormwater Management Officer. Owners, developers and/or their authorized agents shall execute necessary agreements, documents, deed restrictions, covenants or easements, and any and all other required documents required to comply with this and other provisions of this local law, and shall be responsible for satisfying all filing and certification requirements prior to final approval of a residential subdivision by the City Planning Board.~~

(2) Construction completion guarantee. In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the City in its approval of the Stormwater Pollution Prevention Plan, the City may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the City of Newburgh as the beneficiary. The security shall be in an amount to be determined by the City based on submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the City, provided that such period shall not be less than one year from the date of final acceptance or such other certification that the facility(ies) have been constructed in accordance with the approved plans and specifications and that a one year inspection has been conducted and the facilities have been found to be acceptable to the City. Per annum interest on cash escrow deposits if any shall be reinvested in the account until the surety is released from liability.

(3)(2) Maintenance guarantee. Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required in the City's discretion to provide the City with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction, and until the facilities are removed from operation. If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the City may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs. Owners, developers and/or their authorized agents shall execute necessary agreements, documents, deed restrictions, covenants or easements, and any and all other required documents required to comply with this and other provisions of this local law, and shall be responsible for satisfying all filing and certification requirements prior to final approval of a residential subdivision by the City Planning Board.

~~§ 248-75. Prohibited discharges, penalties, civil action and other remedies.~~

~~A. Prohibited discharges.~~

(1) ~~No private or corporate person, owner, developer, contractor, site operator or other party or entity or agent shall cause to be discharged to any stormwater collection or~~

~~conveyance system, natural watercourse or water body within the City of Newburgh any substance other than naturally occurring surface water discharges, naturally occurring melted snow and ice, uncontaminated groundwater discharges from foundation footing drains, air-conditioning or other uncontaminated nontoxic condensate, irrigation waters, springs, water from crawl space and basement sump pumps, lawn watering, individual residential car washing, dechlorinated swimming pool discharges, street washwater and fire-fighting water.~~

- (2) ~~The above discharges must be free from any hazardous or toxic chemicals or substances, petroleum products, sanitary sewage, pesticides, herbicides or other noxious, dangerous or harmful chemicals, pollutants or substances.~~
- (3) ~~With the exception of the discharges identified above, no discharge piping from any floor drain, sanitary drains, process piping or other similar source shall be connected to any City-owned or maintained stormwater collection and conveyance system. The Building Inspector and/or Code Enforcement Officer shall be authorized to enforce the provisions of this section.~~

B. ~~Violations of this section shall be punishable by the penalties set forth in § 248-77 herein. Every new day, measured from 12:00 midnight, during all or part of which a violation is found to exist shall constitute a separate violation hereof. In addition to such penalty, the City may bring a separate civil action in any court of competent jurisdiction to recover from any violator(s) the cost of any damages caused by such violation plus the cost of remediating such damage, plus any legal and attorneys' fees and costs associated with such action, including the right of the City to compel compliance or to restrain by injunction any such violations of this section. This shall be in addition to any other penalties or remedies provided by any other law, regulation, or rule or section hereof.~~

§ 248-76 75. Fees for services.

The City of Newburgh may require any person undertaking land development or other activities regulated by this article to pay reasonable costs at prevailing rates for review of SWPPPs, inspections, or SWP maintenance performed by the City or performed by a third party for or on behalf of the City. The City may require the payment of such fees and/or the establishment of an escrow account in an amount to be determined by the City upon the recommendation of the City ~~Engineer and/or~~ Stormwater Management Officer to provide a fund sufficient to pay the reasonably anticipated costs thereof.

§ 248-77 76. Enforcement; penalties for offenses; civil action and other remedies.

A. Notice of violation.

- (1) The City shall have the right to gain access to and to inspect any stormwater sewer or other collection system or conduct, whether man-made or natural or combination of both, in the same manner and with the same authority as provided by this article or by any law, code, rule or regulation which provides the City with the authority to gain access to and inspect property and structures to ensure and enforce compliance with all state and local building, fire, safety and health codes, rules and regulations, including but not limited to this article. When the City determines that a land development activity is not being carried out in accordance with the requirements of this article or that a person has violated a provision hereof, it may issue a written notice of violation to the landowner, operator, person responsible for same or the discharger. The notice of violation shall contain:
 - (a) The name and address of the landowner, developer, applicant, operator, discharger and/or responsible party.
 - (b) The address, when available, or a description of the building, structure or land upon which the violation is occurring.
 - (c) A statement specifying the nature of the violation.
 - (d) A description of the remedial measures required of the owner, operator, person responsible or discharger necessary to bring the land development activity and/or to eliminate any illicit or illegal connections or discharges and to bring such premises and persons into compliance with this article, and a time schedule for the completion of such remedial action.
 - (e) A statement of the penalty or penalties that are, shall be or may be assessed against the person to whom the notice of violation is directed.
 - (f) A statement and description of any monitoring, analysis and reporting requirements to be imposed.
 - (g) A statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within 15 days of service of notice of violation with the Code Compliance Office.
 - (h) The description of the required implementation of source control or treatment BMPs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.
- (2) Cease and desist/stop-work orders. The City may issue a cease and desist and/or a stop-work order for violations of this article. Persons receiving a cease and desist or stop-work order shall be required to halt all land development activities, except those activities that address the violations leading to the order as the City may allow. The order shall be in effect until the City confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure to obey an order

in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this article.

- (3) Injunctions. Any land development or other activity that is commenced or is conducted contrary to this article may be restrained by injunction or otherwise abated in a manner provided by law. The City may recover from the violator(s) any and all of its costs and expenses, including attorneys' fees incurred in securing injunctive relief, fines or other relief or remedies.
- (4) Withholding of certificate of occupancy or other approval or permit. If any building or land development or other activity is installed or conducted in violation of this article, the City Engineer, Stormwater Management Officer and/or Code Enforcement Officer may prevent the occupancy of said building or land by withholding, suspending or rescinding a certificate of occupancy or other permit issued by any City agency or official.
- (5) Restoration of lands. Any violator may be required to restore land and related facilities to its undisturbed condition and to remove or to require corrections of defective or noncompliant or illegal connections to any storm sewer system or other system or conduit, whether man-made or natural or any combination thereof. In the event that restoration is not undertaken within a reasonable time after notice, the City may take necessary corrective action, the cost of which shall become a lien upon the property until paid. If said cost remains unpaid, it shall become a tax upon the premises and may be enforceable by the City in the same manner as provided by law for the enforcement of unpaid taxes, as provided for and as described in § 248-65A(2) hereinabove.
- (6) Appeal of notice of violation. Any person receiving a notice of violation may appeal the determination of the SMO to the City Manager within 15 days of its issuance, who shall hear the appeal within 30 days after the filing of the appeal, and within five days of making a decision, shall file such decision in the office of the Municipal Clerk and mail a copy of the decision by certified mail to the violator(s).

B. Alternative remedies.

(1) Where a person has violated a provision of this article, he/she may be eligible for alternative remedies in lieu of a civil penalty, upon recommendation of the City Manager and/or SMO and/or Director of Code Compliance, where:

- (a) The violation was unintentional.
- (b) The violator has no history of previous violations of this article.
- (c) Environmental damage was minimal.
- (d) The violator acted quickly to remedy the violation.
- (e) The violator cooperated in investigation and resolution.
- (f) Other significant mitigating factors exist.

- (2) Alternative remedies may consist of one or more of the following:
- (a) Attendance at compliance workshops.
 - (b) Storm drain stenciling or storm drain making.
 - (c) River, stream or creek cleanup activities.
 - (d) Any other activity deemed by the City to be a significant contribution to the health, safety and welfare of the City of Newburgh, its citizens and/or the environment.
- C. Penalties. Any person who commits any act in violation of any provision of this article shall be deemed to have committed an offense and shall be liable for penalties imposed herein for such violation. Each act committed in violation of any provision of this article shall constitute a separate offense. Each day a violation continues shall be deemed a separate act.
- (1) Except as otherwise provided in this article, for every violation of every provision of this article, a person shall be subject to a fine of not less than \$200 but not more than \$1,000 or imprisonment not exceeding 15 days, or both.
- (2) Any person violating this article shall be subject to a civil penalty enforceable and collectable by the City in the amount of \$500 for each such offense.
- (3) In addition to the above-provided penalties, the City also may bring an action or proceeding in the name of the City in the City Court of the City of Newburgh, or other court of competent jurisdiction, to compel compliance with, or to restrain by injunction or otherwise, the violation of this article, or of the New York State Department of Environmental Conservation Rules and Regulations, notwithstanding that a penalty or other enforcement measure for such violation has otherwise been provided or imposed.
- (4) In addition to the foregoing and at the City's discretion, after due notice and opportunity to correct any violation(s) have been given by the City, the City may undertake any and all necessary and proper actions to correct such violation(s). The City may, then seek full reimbursement for all of its costs and expenses, including attorneys fees and court costs, which the City has incurred for such corrections and any legal action brought hereunder, as provided in § ~~248-65A(2)~~ hereinabove.
- D. Remedies not exclusive. The remedies listed in this article are not exclusive of any other remedies available under this article; under any other local law, regulation, rule, code or ordinance; or under any applicable federal, state, county or regulatory law, code, rule or regulation, and it shall be within the discretion of the City and its enforcement officers to seek individual or cumulative or any combination of such remedies.

RESOLUTION NO.: 87 - 2012

OF

JUNE 18, 2012

RESOLUTION OF THE CITY COUNCIL ACCEPTING
LAND USE STREAMLINING RECOMMENDATIONS
FOR THE CITY OF NEWBURGH

WHEREAS, the Pace Law School Land Use Law Center has met with each of the City's land use boards individually and conducted two training sessions with land use board members and City staff to identify problems with the City's current land use project and approval process and researched best land use practices from other municipalities within New York State and across the country, and submitted a report to the City Council making recommendations for the streamlining of the City's land use process; and

WHEREAS, the City Council supports the land use streamlining process and finds that continuing the process is in the best interests of the City of Newburgh.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh, New York hereby adopts the following:

1. The City Council hereby accepts the Streamlining Newburgh's Land Use Process report and recommendations; and
2. The City Council hereby supports the review and updating of the City's land use laws, including an update of the City's entire Zoning Code;
3. The City Council hereby authorizes the City Manager to take such steps as are necessary to seek funding sources for a comprehensive update of the City's Zoning Code and to take other steps necessary and appropriate to implement the recommendations set forth in the Streamlining Newburgh's Land Use Process report.

RESOLUTION NO.: 88 - 2012

OF

JUNE 18, 2012

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE AN AGREEMENT FOR THE PAYMENT IN
LIEU OF TAXES BY AND AMONG THE CITY OF
NEWBURGH AND VOISINS OF NEWBURGH, INC.**

WHEREAS, the City of Newburgh (the "City") encourages a sufficient supply of adequate, safe and sanitary dwelling accommodations properly planned for families and senior citizens of low income; and

WHEREAS, Voisins of Newburgh, Inc. (the "HDFC"), a New York not-for-profit corporation organized under Article XI of the New York Private Housing Finance Law ("PHFL") and Section 402 of the NYS Not-for-Profit Corporation Law has constructed, owned and maintained certain improved real property located at 51 Leroy Place, City of Newburgh, Orange County, New York, Tax Map No. Section 4, Block 8, Lot 24 (the "Land"), consisting of approximately seventy-eight (78) residential units for families and senior citizens of low income and known as Voisins of Newburgh, Inc. (the "Project"); and

WHEREAS, the HDFC's plan for the continued use of the Project constitutes a "housing project" as that term is defined in the PHFL; and

WHEREAS, the HDFC is a "housing development fund company" as the term is defined in Section 572 of the PHFL and Section 577 of the PHFL authorizes the City Council to exempt the Project from real property taxes; and

WHEREAS, the HDFC is seeking a new PILOT Agreement whereby they will make annual payments in lieu of taxes to the City as set forth in the PILOT Agreement presented to the City Council for approval;

NOW THEREFORE, BE IT RESOLVED, that the members of the City Council hereby exempt the Project from real property taxes to the extent authorized by Section 577 of the PHFL and approve the proposed PILOT Agreement by and among the City of Newburgh and the HDFC, in substantially the form presented at this meeting, providing for annual payments as set forth in such agreement; and

BE IT FURTHER RESOLVED, that the City Manager is hereby authorized to execute and deliver the foregoing PILOT Agreement, in substantially the same form with other documents as Corporation Counsel may require, on behalf of the City.

**AGREEMENT FOR PAYMENT IN LIEU OF TAXES (PILOT) BY AND AMONG
THE CITY OF NEWBURGH AND VOISINS OF NEWBURGH, INC.**

THIS AGREEMENT FOR PAYMENT IN LIEU OF TAXES (the "PILOT Agreement" or "Agreement"), dated _____, 2012, by and among the **CITY OF NEWBURGH, NEW YORK**, a municipal corporation organized and existing under the laws of the State of New York, having its principal office located at 83 Broadway, Newburgh, New York 12550 (the "City"), **VOISINS OF NEWBURGH, INC.**, a New York not-for-profit corporation organized pursuant to Article XI of the Private Housing Finance Law of the State of New York, having its principal office located at 51 Leroy Place, Newburgh, New York 12550 (the "HDFC").

WHEREAS, the HDFC is the record owner of certain improved real property located at 51 Leroy Place, City of Newburgh, Orange County, New York, Tax Map No. Section 4, Block 8, Lot 24 (the "Property"); and

WHEREAS, the HDFC is a corporation established pursuant to section 402 of the Not-For-Profit Corporation Law and Article XI of the Private Housing Finance Law ("PHFL"); and

WHEREAS, the HDFC has been formed for the purpose of providing residential rental accommodations for low income families and senior citizens; and

WHEREAS, the HDFC will continue to own, redevelop, rehabilitate, renovate, maintain and operate a housing project on the Property consisting of approximately 78 dwelling units; and

WHEREAS, the HDFC's plan for the use of the Property constitutes a "housing project" as that term is defined in the PHFL; and

WHEREAS, the HDFC is a "housing development fund company" as the term is defined in Section 572 of the PHFL; and

WHEREAS, pursuant to Section 577 of the PHFL, the local legislative body of a municipality may exempt the real property of a housing project of a housing development fund company from local and municipal taxes, including school taxes, other than assessments for local improvements, to the extent of all or a part of the value of the property included in the completed project; and

WHEREAS, the City Council members of the City of Newburgh, New York, by resolution adopted _____, approved and authorized the execution of this Agreement,

NOW, THEREFORE, it is agreed as follows:

1. Pursuant to Section 577 of the PHFL, the City hereby exempts from local and municipal taxes, other than assessments for local improvements, one hundred percent (100%) of the value of the Property, including both land and improvements. "Local and Municipal Taxes" shall mean any and all real estate taxes levied by Orange County ("County"), the City of Newburgh ("City"), the Newburgh City School District ("School District") or other taxing

jurisdiction. Exclusions from the exemption described herein (in addition to assessments for local improvements) shall include special tax and/or special assessment districts, if any.

2. This tax exemption will operate for a period of twenty-five (25) years from July 1, 2012. This Agreement shall not limit or restrict the HDFC's right to apply for or obtain any other tax exemption to which it might be entitled upon the expiration of this Agreement.

3. So long as the exemption hereunder continues, the HDFC shall make annual payments in lieu of taxes ("PILOT") in the amount of the greater of Twenty-two Thousand and 00/100 Dollars (\$22,000.00) or Eighteen Percent (18%) of the effective gross rents ("PILOT Payment") to cover all Local and Municipal Taxes owed in connection with the Property and the Project. Annual PILOT Payments shall be due on _____ of each calendar year. PILOT Payments shall be mailed via First Class mail through the United States Postal Service to the City of Newburgh, Attention Tax Collector at 83 Broadway, Newburgh, New York 12550. So long as the tax exemption remains in effect, tenant rental charges for restricted units shall not exceed the maximum established or allowed by law, rule or regulation, and the Property shall be operated in conformance with the provisions of Article XI of PHFL.

4. The tax exemption provided by this Agreement will continue for the term described above provided (a) the Property continues to be used as housing facilities for families and senior citizens of low income, and (b) any of the following occur (i) the HDFC operates the Property in conformance with Article XI of the PHFL; or (ii) in the event an action is brought to foreclosure a mortgage upon the Property, and the legal and beneficial interest in the Property shall be acquired at the foreclosure sale or from the mortgagee, or by a conveyance in lieu of such sale, by a housing development fund corporation organized pursuant to Article XI of the PHFL, or by the Federal government or an instrumentality thereof, or by a corporation which is, or by agreement has become subject to the supervision of the superintendent of banks or the superintendent of insurance, such successor in interest shall operate the Property in conformance with Article XI of the PHFL.

5. The failure to make the required payment will be treated as failure to make payment of taxes and will be governed by the same provisions of law as apply to the failure to make payment of taxes, including but not limited to enforcement and collection of taxes and assessment of interest and penalties to the extent permitted by law. In the event the City commences a proceeding to enforce the provisions of this Agreement, then, in addition to the remedies to which the City shall be entitled, it shall have the right to award reasonable attorney fees. Notwithstanding the above, the City may terminate this Agreement, and the tax exemption shall thereupon terminate, pursuant to Section 6 hereof.

6. This Agreement and the exemption granted hereunder shall terminate pursuant to Section 5 above or in an event of default as follows:

(a) Failure of the HDFC to pay in full any payment due under this Agreement within thirty (30) days of mailing of written notice by the City stating that said payment is past due.

(b) Failure of the HDFC to comply with or perform any provision of this

Agreement if such failure continues in whole or in part for more than thirty (30) days after mailing of written notice by the City of such failure to comply or perform.

In the event of a default hereunder, in addition to the termination of this Agreement and the tax exemption, the City may exercise any and all rights or remedies permitted by law.

Notwithstanding any provision hereof to the contrary, the mortgagees of record with respect to the Property (the "Lender") shall have an additional period of thirty (30) days after the cure periods of the Borrower set forth in this Section 6 to cure any monetary defaults and an additional period of up to one hundred twenty (120) days to cure non-monetary defaults provided that the Lender shall diligently pursue such cure.

7. All notices and other communications hereunder shall be in writing and shall be sufficiently given when delivered to the applicable address stated above (or such other address as the party to whom notice is given shall have specified to the party giving notice) by registered or certified mail, return receipt requested or by such other means as shall provide the sender with documentary evidence of such delivery. Copies of notices to the Company shall be provided to the Lender and investor for the Project at such address as may be designated in writing by the HDFC.

8. This Agreement shall inure to the benefit of and shall be binding upon the City, and the HDFC and their respective successors and assigns, including the successors in interest of the HDFC. There shall be no assignment of this Agreement except in accordance with Section 4 hereof or with written consent of the other party, which consent shall not be unreasonably withheld.

9. If any provision of this Agreement or its application is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to other persons or circumstances shall be enforced to the greatest extent permitted by law.

10. This Agreement may be executed in any number of counterparts with the same effect as if all the signing parties had signed the same document. All counterparts shall be construed together and shall constitute the same instrument.

11. This Agreement constitutes the entire agreement of the parties relating to payments in lieu of taxes with respect to the Property and supersedes all prior contracts, or agreements, whether oral or written, with respect thereto.

12. Each of the parties individually represents and warrants that the execution, delivery and performance of this Agreement, (i) has been duly authorized and does not require any other consent or approval, (ii) does not violate any article, by-law or organizational document or any law, rule, regulation, order, writ, judgment or decree by which it is bound, and (iii) will not result in or constitute a default under any indenture, credit agreement, or any other agreement or instrument to which any of them is a party. Each party represents that this Agreement shall constitute the legal, valid and binding agreement of the parties enforceable in accordance with its terms.

Remainder of page intentionally left blank.

IN WITNESS WHEREOF, the City and the HDFC have caused this Agreement to be executed in their respective names by their duly authorized representatives and their respective seals to be hereunder affixed, all as of the date above-written.

DATED: _____, 2011

CITY OF NEWBURGH, NEW YORK

By: _____

Name: Richard Herbek

Title: City Manager

DATED: _____, 2011

VOSINS OF NEWBURGH, INC.

By: _____

Name:

Title:

STATE OF NEW YORK)
) SS.:
COUNTY OF)

On the ____ day of _____ in the year 2012, before me personally appeared Richard Herbek, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

STATE OF NEW YORK)
) SS.:
COUNTY OF)

On the ____ day of _____ in the year 2012, before me personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

RESOLUTION NO.: 89 - 2012

OF

JUNE 18, 2012

RESOLUTION AMENDING RESOLUTION NO: 238-2011,
THE 2012 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK
TO TRANSFER \$38,000.00 FROM CONTINGENCY TO
CODE COMPLIANCE IN CONNECTION WITH THE PURCHASE
OF TWO VEHICLES FOR USE BY THE CITY OF NEWBURGH
DEPARTMENT OF CODE COMPLIANCE

BE IT RESOLVED, by the Council of the City of Newburgh, that Resolution No: 238-2011, the 2012 Budget of the City of Newburgh, is hereby amended as follows:

	<u>Decrease</u>	<u>Increase</u>
A.1900.1990. Contingency	\$38,000.00	
A.3620 Code Compliance 0202. Motor Vehicle		\$38,000.00

RESOLUTION NO: 90 - 2012

OF

JUNE 18, 2012

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO APPLY FOR AND ACCEPT IF AWARDED MONIES
FROM THE NEW YORK STATE DEPARTMENT OF EDUCATION
FOR THE 21ST CENTURY COMMUNITY LEARNING CENTERS GRANT AND
AUTHORIZING ANY AND ALL EXPENDITURES NECESSARY TO FUND
THE PROGRAM THROUGHOUT ITS ENTIRETY THROUGH VENDOR
CONTRACTS AND OTHER PROGRAM RELATED COSTS
AS PER THE STATE APPROVED BUDGET
IN AN AMOUNT NOT TO EXCEED \$1,300,000.00

WHEREAS, under the Federal 21st Century Community Learning Centers Program, a key component of the Federal *No Child Left Behind* Act, funds are available to community collaboratives to provide expanded academic enrichment opportunities for children attending low performing schools; and

WHEREAS, the legislation's specific purposes are to: (1) provide opportunities for academic enrichment, including providing tutorial services to help students (particularly students in high-poverty areas and those who attend low-performing schools) meet State and local student performance standards in core academic subjects such as reading and mathematics; (2) offer students a broad array of additional services, programs, and activities, such as youth development activities, drug and violence prevention programs, counseling programs, art, music, and recreation programs, technology education programs, and character education programs, that are designed to reinforce and complement the regular academic program of participating students; and (3) offer families of students served by community learning centers opportunities for literacy and related educational development; and

WHEREAS, the City of Newburgh wishes to apply for and accept if awarded a grant under the Federal 21st Century Community Learning Centers Program in an amount not to exceed \$1,300,000.00; and

WHEREAS, the City's 21st Century Community Learning Centers Program partners with the Armory Unity Center, Best Resources, SUNY Orange, St. Luke's Cornwall Hospital, and the Newburgh Enlarged City School District for strengthening and expanding opportunities afterschool for children and youth; and

WHEREAS, this Council has determined that making such application and accepting if awarded is in the best interests of the City of Newburgh and its residents;

NOW THEREFORE BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager is hereby authorized to apply for and accept if awarded the 21st Century Community Learning Centers grant in an amount not to exceed \$1,300,000.00 to support and expand, in collaboration with our valued community partners, quality afterschool services for children and youth in the City of Newburgh; and is authorized to execute such contracts with providers as will enable such programs to be carried out in keeping with the budget for same as approved by New York State.

RESOLUTION NO.: 91 - 2012

OF

JUNE 18, 2012

A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR
AND ACCEPT IF AWARDED A GRANT FROM THE NEW YORK STATE
OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES
FOR ENFORCING UNDERAGE DRINKING LAWS
WHICH IS ADMINISTERED THROUGH CATHOLIC CHARITIES
IN AN AMOUNT NOT TO EXCEED \$9,300.00

WHEREAS, the City of Newburgh wishes to apply for and accept if awarded a grant from the New York State Office of Alcoholism and Substance Abuse Services ("OASAS") for Enforcing Underage Drinking Laws ("EUDL") in an amount not to exceed \$9,300.00; and

WHEREAS, such grant is administered through Catholic Charities and is a reimbursable grant which requires the City to first expend monies to obtain reimbursement; and

WHEREAS, this Council has determined that said grant is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to apply for and accept if awarded from the New York State Office of Alcoholism and Substance Abuse Services for Enforcing Underage Drinking Laws which is administered through Catholic Charities in an amount not to exceed \$9,300.00 Dollars.

ORDINANCE NO.: 3 - 2012

OF

JUNE 18, 2012

AN ORDINANCE AMENDING SECTION 220-19, "AQUATIC CENTER AND ATHLETIC
FIELDS" OF CHAPTER 220, "PARKS AND RECREATION AREAS"
OF THE CODE OF ORDINANCES

BE IT ORDAINED, by the Council of the City of Newburgh, New York that Section 220-19, "Aquatic Center and Athletic Fields" of Chapter 220, Parks and Recreation Areas, of the City Code of Ordinances of the City of Newburgh be and are hereby amended as follows:

Section 1. § 220-19. Aquatic Center and Athletic Fields.

- A. Use of the City's Aquatic Center shall be at the rates set forth in Chapter 163, Fees of this Code.
- B. All requests to use the athletic fields, except by City departments, boards or agencies, shall be submitted in writing to the City Manager or the City Manager's designee no less than 30 days prior to the date requested, except that all requests to use the athletic fields between May 1 and August 31 shall be submitted no earlier than February 1 of the current year. All such requests shall be on a form to be provided by the City Manager or the City Manager's designee and shall be accompanied by the fees set forth in Chapter 163, Fees, of this Code.
- C. Conditions and rules for use of athletic fields.
 - 1. The City Manager or the City Manager's designee shall have the sole authority to cancel or delay game(s) due to inclement weather and/or due to unsafe field conditions.
 - 2. No alcoholic beverages be served, distributed, used or possessed on City property.
 - 3. The City Manager or the City Manager's designee shall determine the hours during which games can be played Monday through Friday and maximum number of games to be played in a single weekday. On Saturdays, no games shall begin before ~~10:00 am~~ 9:00 am and must end no later than ~~5:00~~ 10:00 pm. On Sundays, no games shall begin before 12:00 pm and must end no later than 5:00 pm.

Section 2. This Ordinance shall take effect immediately.

Strikethrough denotes deletions
Underlining denotes additions

ORDINANCE NO.: 4 - 2012

OF

JUNE 18, 2012

**AN ORDINANCE AMENDING CHAPTER 293 ENTITLED "WATER"
OF THE CODE OF THE CITY OF NEWBURGH TO REQUIRE
CONNECTION TO CITY WATER SYSTEM AND PROHIBIT WATER WELLS**

WHEREAS, Chapter 293, entitled "Water" of the Code of Ordinances of the City of Newburgh provides for rules and regulations governing the use of water within the City of Newburgh, and

WHEREAS, in order to preserve and protect the integrity of the City of Newburgh water supply and distribution system and to provide for the public health, safety and welfare, the City Council of the City of Newburgh determines that it is necessary and appropriate to prohibit the installation and use of any and all new water wells servicing property within the City and to require all properties within the City to connect to the City's water supply and distribution system; and

WHEREAS, in order to accomplish this purpose, it is necessary to add Article VIII and to further amend Chapter 293, entitled "Water" of the Code of Ordinances of the City of Newburgh.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the City of Newburgh, New York that Chapter 293, entitled "Water" of the Code of the City of Newburgh be and is hereby amended to read as follows:

SECTION 1. Chapter 293, WATER

§ 293-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

OWNER

Any individual or individuals, partnership or corporation or any similar type of business organization, whether for profit or otherwise, in whose name title to a building stands.

Strikethrough denotes deletions

Underlining denotes additions

§ 293-8. Connection to City water system required. Permission of Superintendant required to take water from municipal water system.

- A. The owner of any house, building, or property used for human occupancy, employment, recreation, commercial or other purpose, situated within the City are required, at such owner's expense, to install waterline facilities and connect such facilities directly to the City's water supply and distribution system in accordance with the provisions of this Chapter.
- B. No person shall use or take water from the municipal water system without permission from the Superintendent. New building operations which require water must make the necessary connections to the water system and install meters before drawing any water.

§ 293-8. Bills due when rendered; penalty.

All bills shall be due when rendered. ~~Bills remaining unpaid 30 days after rendition shall be subject to the penalties set forth in Section C8.89 of the City Charter a penalty of 5%. Bills remaining unpaid 90 days after rendition will bear interest at the rate of 10% per annum dated from the date of rendition in addition to the penalty of 5%.~~

Article VIII. Water Wells

§ 293.39. Installation and use of water wells within the City prohibited.

- A. No owner of any house, building or property used for human occupancy, employment, recreation, commercial or other purpose situated within the City shall construct, dig, install or use a water well on such property and shall not supply such property with water from a well of any type.
- B. This section shall not apply to properties within the City that are supplied with water from a well prior to the effective date of this ordinance.

§ 293.40. Registration of water wells.

The owner of each water well within the City shall register with the Superintendent of Water all operational and non-operational water wells. The information shall be provided on a form approved and supplied by the Superintendant of Water and shall include the name and address of the owner or person responsible for the well, the exact location of the well, the size and depth of the will, the amount of water pumped per day, the amount of pressure on the discharge of the pump and whether there is any protective devise installed on the waterline to prevent a backflow into the City's waterline.

~~Strikethrough~~ denotes deletions
Underlining denotes additions

§ 293.40. Discontinuance.

Whenever, upon examination, it shall appear that water from a well is contaminated with substances injurious to health or which may become injurious to health, the use of such water shall be discontinued and the well shall be filled in, unless otherwise determined by the Superintendent of Water that such use of the water shall not endanger the public health.

§ 293.41. Out of City users.

The provisions of this Article shall apply to all current and future out-of-City users that are or will be connected to the City's water supply and distribution system.

SECTION 2. This Ordinance shall take effect immediately.

RESOLUTION NO.: 92 - 2012

OF

JUNE 18, 2012

A RESOLUTION AUTHORIZING THE EXECUTION OF
A LICENSE AGREEMENT FOR THE USE OF THE STADIUM
LOCATED AT DELANO-HITCH RECREATION PARK
BY THE NEWBURGH HOOK ELITE BOXING CLUB
AND EBC SPORTS MINISTRY

WHEREAS, the Newburgh Hook Elite Boxing Club and EBC Sports Ministry wishes to enter into a license agreement with the City of Newburgh for the use of the stadium located at Delano-Hitch Recreation Park for a youth boxing program; and

WHEREAS, a copy of such license agreement is annexed hereto and made a part of this resolution; and

WHEREAS, the City Council has examined such license agreement and determined it to be in the best interests of the City of Newburgh to enter into such license agreement.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and is hereby authorized to execute and enter into the attached license agreement, in substantially the same form and with other terms as Corporation Counsel may require, on behalf of the City of Newburgh.

AGREEMENT

THIS AGREEMENT, entered into this _____ day of _____, 2012, by and between:

THE CITY OF NEWBURGH, a municipal corporation having its principal place of business at 83 Broadway, City Hall, Newburgh, New York 12550, hereinafter called the "City"; and

THE NEWBURGH HOOK ELITE BOXING CLUB and EBC SPORTS MINISTRY, c/o Leonard Lee, 70 Johnes Street, Newburgh, New York 12550 hereinafter called "Licensee".

WITNESSETH, that the City and Licensee, for the consideration hereinafter named, agree as follows:

ARTICLE 1: Term.

This Agreement shall run from June 1, 2012 to December 31, 2012.

ARTICLE 2: Obligation of the City.

The City shall grant to the Licensee a revocable license to use the municipal stadium located in the Delano-Hitch Recreation Park in the City of Newburgh for a youth boxing program by the Newburgh Hook Elite Boxing Club for the period of time set forth above pursuant to a written schedule to be submitted to and approved in writing by the City Manager or his designee. The City shall provide space for players/participants in a location in the Delano-Hitch Recreation Park to be determined by the City Manager or his designee.

ARTICLE 3: Obligation of Licensee.

A. The Licensee shall provide the City Manager or his designee a written schedule of all programs and other uses of the facility for the term of the Agreement and failure to do so may result in City canceling any or all such program(s). No programs or other uses may be schedule to start after 8:00 p.m.

B. The Licensee shall pay the cost of all personnel, supplies and equipment necessary and proper for the maintenance of the facility as is required by their use thereof.

C. The Licensee shall, after each day of programs, return the facility to the City on that same day to a clean condition free of all equipment, garbage and debris. Licensee shall clean up all garbage generated in the area designated for use and deposit in proper trash receptacle. The Licensee shall repair all damage incurred to the area designated for use during the exercise of the license at its own sole expense. Such repairs shall be performed immediately. Licensee agrees that if such damages are not promptly and completely repaired, Licensee shall remain liable for all consequences, direct and

indirect, consequential and incidental, to the City resulting from the damages and from the unavailability of such facilities resulting therefrom.

D. The Licensee shall have a representative with authority over all programs and activities present at all times. Licensee shall secure the facility after each use. Noise levels shall be kept at appropriate decibel levels so as not to disturb neighbors.

E. The Licensee shall cooperate with City authorities to provide necessary security and supervision of minors, participating in programs or present as spectators, during the period of this agreement. The Licensee shall be liable for any damage done to the premises by its officers, agents, servant, employees or invitees during the period of this agreement.

ARTICLE 4: Payment.

The Licensee shall pay to the City, as and for a fee for the use of the facility during the period of this agreement, ONE THOUSAND (\$1,000.00 AND 00/100) DOLLARS.

ARTICLE 5: Insurance.

The Licensee shall not commence any program under this agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the City.

A. Compensation Insurance - The Licensee shall take out and maintain during the life of this agreement such Workers' Compensation Insurance for its employees or members to be assigned to the work hereunder as may be required by New York State Law.

B. General Liability and Property Damage Insurance - The Licensee shall take out and maintain during the life of this agreement such general liability and property damage insurance as shall protect it from claims for damages for personal injury including accidental death, as well as from claims for property damage which may arise from operations under this agreement. The amounts of such insurance shall be as follows:

1. General Liability Insurance in an amount not less than \$1,000,000.00 for injuries including wrongful death to any one person and subject to the same limit for each person, in an amount not less than \$3,000,000.00 on account of any one occurrence.
2. Property Damage Insurance in an amount not less than \$50,000.00 for damage on account of all occurrences.

The Licensee shall furnish the above insurance to the City and shall also name the City as an additional named insured in said policies. Such insurance shall be maintained in force during the entire term of this contract.

C. Any accident shall be reported to the Office of the City Manager as soon as possible and not later than twenty-four hours from the time of such accident. A detailed written report must be submitted to the City as soon thereafter as possible and not later than three (3) days after the date of such accident.

ARTICLE 6: Representations of Licensee.

The Licensee represents and warrants:

A. That it is financially solvent and that it is experienced and competent to perform the type of work or to furnish the consideration to be furnished by it; and

B. That it is familiar with all federal, state, municipal and department laws, ordinances and regulations which may in any way affect the work or play or those employed or engaged therein. It is understood and agreed between the parties that the Licensee shall have no right to control the actions of City employees nor any duty to supervise the actions of City employees.

ARTICLE 7: Permits and Regulations.

The Licensee shall procure and pay for all permits and licenses necessary for the services to be rendered hereunder.

ARTICLE 8: City's Right to Terminate Agreement.

The City shall have the right to stop work or terminate this agreement under the following terms and conditions:

1. (a) The Licensee refuses or fails to perform any of its obligations under this agreement; or
(b) The Licensee fails to make prompt payment or perform work as required by this agreement; or
(c) The Licensee fails or refuses to comply with all applicable laws or ordinances; or
(d) The Licensee is guilty of substantial violation of any provision of this agreement.
(e) In the event the City elects to stop work or terminate this agreement on any ground or grounds set forth in subparagraphs (a) - (d) of this paragraph, the City shall provide the Licensee with written notice, no less than fourteen (14) days prior to such stop work or termination of this agreement, of the City's intent to so stop work or terminate this agreement and the ground or grounds therefore. In the event the Licensee shall cure such ground or grounds prior to the date noticed for stop work or termination of this agreement, the City shall not stop work or terminate the agreement on such grounds.

2. The City, at its sole discretion and, with or without cause, may, without prejudice to any other rights or remedy it may have, by fourteen (14) days notice to the Licensee, terminate the agreement with the Licensee.

ARTICLE 9: Damages.

It is hereby mutually covenanted and agreed that the relation of the Licensee to the work to be performed by it under this agreement shall be that of an independent contractor. As an independent contractor, it will be responsible for all damage, loss or injury to persons or property that may arise in or be incurred during the conduct and progress of said performances, whether or not the Licensee, its agents or employees have been negligent. The Licensee shall hold and keep the City free and discharged of and from any and all responsibility and liability of any sort or kind. The Licensee shall assume all responsibility for risks or casualties of every description, for loss, death or injury to persons or property arising out of the nature of the performance, other than those wholly caused by Acts of God or conditions pre-existing this license. The Licensee shall make good any damages that may occur in consequence of the performances or any part of it. The Licensee shall assume all blame, loss and responsibility of any nature by reason of the Licensee's neglect or violation of any federal, state, county or local laws, regulations or ordinances applicable to the Licensee and/or the nature of its performance.

ARTICLE 11: Indemnity and Save Harmless Agreement.

A. The Licensee agrees to indemnify and save the City, its officers, agents and employees harmless from any liability imposed upon the City, its officers, agents and/or employees arising from the negligence, active or passive, of the Licensee.

B. The City agrees to indemnify and save the Licensee, its officers, agents and employees harmless from any liability imposed upon the Licensee, its officers, agents and/or employees arising from the negligence, active or passive, of the City.

ARTICLE 12: No Assignment.

The Licensee is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this agreement or of its right, title or interest in this agreement or its power to execute this agreement to any other person or corporation without the previous consent in writing of the City.

ARTICLE 13: Required Provisions of Law.

Each and every provision of law and clause required by law to be inserted in this agreement shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or otherwise, then upon the application of either party, this agreement shall be physically amended forthwith to make such insertion.

ARTICLE 14: Notices.

Any and all notices and payments required hereunder shall be addressed as follows or to such other address as may hereafter be designated in writing by either party hereto:

TO: The City of Newburgh
City Manager
City Hall, 83 Broadway
Newburgh, New York 12550
(845) 569-7301

TO: Newburgh Hook Elite Boxing Club
c/o Leonard Lee
70 Johnes Street
Newburgh, New York 12550
(845) 857-0612

ARTICLE 15: Waiver.

No waiver of any breach of any condition of the agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

ARTICLE 16: Modification:

This agreement constitutes the complete understanding of the parties. No modification or any provisions thereof shall be valid unless in writing and signed by both parties.

Remainder of page intentionally left blank.

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

THE CITY OF NEWBURGH

by: _____
RICHARD F. HERBEK
City Manager

NEWBURGH HOOK ELITE BOXING CLUB

by: _____
LEONARD LEE

EBC SPORTS MINISTRY

By: _____
DR. BRUCE DAVIS
Pastor

Approved as to form:

MICHELLE KELSON
Corporation Counsel

CHERYL A. GROSS
City Comptroller

RESOLUTION NO.: 93 - 2012

OF

JUNE 18, 2012

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO A LICENSE AGREEMENT WITH HOUSE OF REFUGE
TO ALLOW USE OF CITY OWNED PROPERTY LOCATED AT
140 BROADWAY FOR THE TUESDAY FARM MARKET**

WHEREAS, the City of Newburgh is the owner of several parcels of real property located at 132, 136, 138, 140, 140A, 144, 146 and 148 Broadway; 6, 10, 12, 16 and 18 Johnston Street; and 6, 8 and 10 Lander Street, and more accurately described on the official tax map of the City of Newburgh as Section 30, Block 3, Lot(s) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37 and 38, City of Newburgh, New York, hereinafter collectively referred to as "140 Broadway"; and

WHEREAS, the Tuesday Farm Market has been held on the south side of Broadway between the House of Refuge and the Armory Building; and

WHEREAS, House of Refuge, the Tuesday Farm Market Manager and Orange County propose moving the Tuesday Farm Market to 140 Broadway, the City-owned land on the north side of Broadway, commonly referred to as the "Mid-Broadway site"; and

WHEREAS, the benefits of moving the Tuesday Farm Market include:

1. To provide greater visibility to attract more buyers and vendors;
2. To promote positive activity on Broadway; and
3. To provide more space for Orange County agencies to provide information and conduct demonstrations for the community; and

WHEREAS, moving the Tuesday Farm Market to 140 Broadway the requires the parties to execute a license agreement, a copy of which is attached hereto and made a part of this resolution; and

WHEREAS, this Council has reviewed such license and has determined that entering into the same would be in the best interests of the City of Newburgh and its further development;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into the attached license agreement with House of Refuge to allow access to and use of several City-owned properties for the purpose of holding the Tuesday Farm Market.

LICENSE AGREEMENT

This Agreement, made this _____ day of _____, two thousand and twelve, by and between the HOUSE OF REFUGE, with offices at _____ as "LICENSEE; and the CITY OF NEWBURGH, a municipal corporation organized and existing under the laws of the State of New York with offices at 83 Broadway, City Hall, Newburgh, New York 12550 as "LICENSOR";

WITNESSETH THAT:

WHEREAS, Licensee desires the license or privilege of gaining access to the premises of Licensor and in substantially the location and position shown as set forth on the map or plan hereto attached and made a part hereof and bearing the following address:

132, 136, 138, 140, 140A, 144, 146 and 148 Broadway; 6, 10, 12, 16 and 18 Johnston Street; and 6, 8 and 10 Lander Street, and more accurately described on the official tax map of the City of Newburgh as Section 30, Block 3, Lot(s) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37 and 38, City of Newburgh, New York, hereinafter collectively referred to as "140 Broadway".

AND WHEREAS, Licensor is willing to give said license or privilege on the following terms and conditions:

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and conditions hereinafter contained, it is hereby agreed as follows:

First: Licensor hereby gives to Licensee, upon the conditions hereinafter stated, the license or privilege of entering upon Licensor's property located at 140 Broadway, in the City of Newburgh, New York, and taking thereupon such vehicles, equipment, tools, tables, chairs and other materials as may be necessary; for the purposes of hosting a farmer's market, including but not limited to the sale of farm products, produce and other general information and demonstrations by Orange County agencies on property owned by Licensor. No permanent improvements may be erected on the premises.

Second: Licensee agrees to use and maintain said facilities in such manner as will comply fully with the provisions of any laws, ordinances or other lawful authority obtaining any and all permits required thereby.

Third: Licensor acknowledges that the use of the subject property shall inure to the benefit of both parties, and shall be satisfactory, adequate and sufficient consideration for the Licensee granted hereunder.

Fourth: Licensee hereby agrees to defend, indemnify and hold Licensor harmless against any claims, actions and proceedings brought against Licensor arising out of, in connection with and/or relating to Licensee's use of the premises. Licensee has posted evidence of and shall maintain throughout the term of this License public liability insurance naming the Licensor as additional insured in a minimum coverage amount of One Million (\$1,000,000.00) Dollars.

Fifth: This Agreement and the license or privilege term is from July 1, 2012 to November 1, 2012.

Seventh: It is understood and agreed that no vested right in said premises is hereby granted or conveyed from either party to the other, and that the privileges hereby given are subject to any and all encumbrances, conditions, restrictions and reservations upon or under which the parties hold said premises.

Eighth: Without limitation to the general provisions of this Agreement, it is understood and agreed that said facilities shall be installed in substantially the location and position shown in the attachments hereto, and in accordance with details and specifications as set forth on map or plan hereto attached and hereby made a part hereof.

WITNESSETH:

THE CITY OF NEWBURGH

LICENSOR

By: _____
Richard F. Herbek, City Manager

HOUSE OF REFUGE

LICENSEE

By: _____
Bishop Jeffrey Woody

RESOLUTION NO.: 94 - 2012

OF

JUNE 18, 2012

RESOLUTION OF THE NEWBURGH CITY COUNCIL, AS THE ELECTED LEGISLATIVE BODY OF THE CITY OF NEWBURGH, NEW YORK, IN ACCORDANCE WITH SECTION 147(F) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), APPROVING THE ISSUANCE BY THE NEWBURGH HOUSING AUTHORITY OF UP TO \$10,000,000 AGGREGATE PRINCIPAL AMOUNT MULTI-FAMILY HOUSING REVENUE BONDS (BURTON TOWERS, LLC PROJECT), SERIES 2012

WHEREAS, the Newburgh City Council (the "Council"), as the elected legislative body of the City of Newburgh, New York (the "City"), has been advised by the Newburgh Housing Authority (the "Issuer") that, in order to assist in the financing of a certain Project (as defined below) for the benefit of Burton Towers, LLC (the "Company"), a New York limited liability company, the Issuer proposes to issue, contingent upon the adoption of this Resolution, its Multi-Family Housing Revenue Bonds (Burton Towers, LLC Project), Series 2012, in an aggregate principal amount not to exceed \$10,000,000 (the "Bonds"); and

WHEREAS, the project (the "Project") shall consist of: (A) the acquisition by the Issuer of title to or a leasehold (or other) interest in an approximately 3.90-acre site located at 36 Cerone Place, Newburgh, New York, TMID No. 33.00-6-3.1 (the "Land") and the existing improvements located thereon, including a multi-story building structure with 126 housing units and related storage facilities (the "Existing Improvements"); (B) the renovation, reconstruction, refurbishing and equipping by the Company as agent of the Issuer of the Existing Improvements in order to (i) modernize approximately one hundred twenty five (125) one-bedroom apartments and one (1) two-bedroom Superintendent apartment, in accordance with the Internal Revenue Code of 1986, as amended (the "Code") and applicable regulations promulgated by the United States Department of Housing and Urban Development ("HUD") and New York State Housing Finance Agency ("HFA") and/or Division of Housing and Community Renewal ("DHCR"), which are and will be leased to households of persons 62 years of age or older and earning 60% or less of the area's median gross income, (ii) modernize one non-subsidized superintendent's apartment, and (iii) install, construct and equip certain structural and mechanical upgrades and improvements to the Existing Improvements, including renovations to the common areas, heating systems, plumbing, roof, windows and elevators (items (i), (ii) and (iii) collectively, the "Improvements"); (C) the acquisition of and installation in and around the Existing Improvements and Improvements of certain machinery, fixtures, equipment and other items of tangible personal property (the "Equipment" and, collectively with the Land, the Existing Improvements and the Improvements, the "Facility"); and (D) paying certain costs and expenses incidental to the issuance of the Bonds (the costs associated with items (A) through (D) above being hereinafter collectively referred to as the "Project Costs"); and

WHEREAS, pursuant to Section 147(f) of the Code, interest on the Bonds will not be excluded from gross income for Federal income tax purposes unless the issuance of the Bonds is approved by the Council after a public hearing to consider both the issuance of the Bonds and the nature and location of the facilities financed therewith has been conducted following reasonable public notice; and

WHEREAS, on March 8, 2012, the Issuer held such a public hearing upon proper notice in compliance with Section 147(f) of the Code; and

WHEREAS, to aid the Council in its deliberations, the Issuer has made available to the members of the Council prior to this meeting (a) the Company's application to the Issuer for financial assistance; (b) the notice of public hearing published by the Issuer in *Times Herald-Record*, along with the affidavit of publication of such newspaper; and (c) the minutes of such public hearing held on March 8, 2012; and

WHEREAS, the Council, after due consideration of the foregoing, as the "applicable elected representative" of the City, within the meaning of Section 147(f)(2)(E) of the Code, desires to approve the issuance of the Bonds, provided THE PRINCIPAL, PREMIUM, IF ANY, AND INTEREST ON THE BONDS SHALL BE SPECIAL OBLIGATIONS OF THE ISSUER AND SHALL NEVER BE A DEBT OF THE STATE OF NEW YORK (THE "STATE") OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING WITHOUT LIMITATION THE CITY OF NEWBURGH, AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING WITHOUT LIMITATION THE CITY, SHALL BE LIABLE THEREON.

NOW, THEREFORE, BE IT RESOLVED BY THE NEWBURGH CITY COUNCIL OF THE CITY OF NEWBURGH, NEW YORK:

Section 1. For the purpose of satisfying the approval requirement of Section 147(f) of the Code, the Council hereby gives its approval of the issuance by the Issuer of the Bonds and related acts to be taken by the Issuer as part of the Project, provided that the Bonds, and the premium (if any) and interest thereon, shall be special obligations of the Issuer and shall never be a debt of the State or any political subdivision thereof, including without limitation the City of Newburgh, New York, and neither the State nor any political subdivision thereof, including without limitation the City of Newburgh, shall be liable thereon. This approval is given pursuant to Section 147(f) of the Code for the sole purpose of qualifying the interest payable on the Bonds for exclusion from gross income for federal income tax purposes pursuant to the provisions of Sections 103 and 141-150 of the Code.

Section 2. This Resolution shall be deemed to be made for the benefit of the holders of the Bonds.

Section 3. This Resolution shall take effect immediately.

The foregoing Resolution was offered by _____
and seconded by _____.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	<u>YEA</u>	<u>NAY</u>	<u>ABSENT</u>	<u>ABSTAIN</u>
Mayor Judy Kennedy	[]	[]	[]	[]
Councilwoman Regina M. Angelo	[]	[]	[]	[]
Councilman Cedric Brown	[]	[]	[]	[]
Councilman Curlie Dillard	[]	[]	[]	[]
Councilwoman Gay Lee	[]	[]	[]	[]

The Resolution was thereupon duly adopted.

CERTIFICATION

STATE OF NEW YORK)
)
COUNTY OF ORANGE) *ss.:*

This is to certify that I, the undersigned, Clerk of the City Council of Newburgh, New York, have compared the foregoing copy of resolution with the original resolution now on file in the office and which was passed by the Newburgh City Council on the ____ day of June, 2012, a majority of all the members elected to the Council voting in favor thereof, and that the same is a correct and true transcript of such original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of the Newburgh City Council, this ____ day of June, 2012.

Clerk of the Newburgh City Council

[SEAL]

RESOLUTION NO.: 95 - 2012

OF

JUNE 18, 2012

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A MEMORANDUM OF UNDERSTANDING NUNC PRO TUNC
BETWEEN THE CITY OF NEWBURGH AND ST. LUKE'S CORNWALL HOSPITAL
TO ALLOW FOR THE PARTICIPATION IN THE DRUG DISCOUNT PROGRAM
ESTABLISHED UNDER SECTION 340B OF THE PUBLIC HEALTH SERVICES ACT

WHEREAS, St. Luke's Cornwall Hospital is a New York not-for-profit hospital that provides a disproportionate share of healthcare services to the Medicaid population in addition to supporting programs that benefit the indigent, uninsured or underinsured population in the State of New York; and

WHEREAS, St. Luke's Cornwall Hospital desires to participate in the Drug Discount Program established under Section 340B of the Public Health Services Act (the "340B Program"); and

WHEREAS, in order to participate in the 340B Program, St. Luke's Cornwall Hospital must enter into an agreement with a unit of the state or local government pursuant to which St. Luke's Cornwall Hospital commits to provide health care services to low-income individuals who are neither entitled to benefits under Title XVIII of the Social Security Act nor eligible for assistance under the State plan of Title XIX under this Act; and

WHEREAS, St. Luke's Cornwall Hospital desires to make such a formal commitment to the City of Newburgh and

WHEREAS, this Council has determined that it is in the best interests of the City of Newburgh to agree to accept such commitment on behalf of the citizens of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute a Memorandum of Understanding Nunc Pro Tunc between the City of Newburgh and St. Luke's Cornwall Hospital to allow for the participation in the Drug Discount Program established under Section 340B of the Public Health Services Act.

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained herein and for other good a valuable consideration, the receipt and sufficiency of which hereby are acknowledged, it is mutually agreed and covenanted, under seal, by and between the parties to this Agreement, as follows:

1. Commitment of St. Luke's Cornwall Hospital to Provide Indigent Care.

During the term of this Agreement, St. Luke's Cornwall Hospital agrees to continue its historic commitment to the provision of health care to indigent, uninsured and underinsured residents of the City of Newburgh. In 2011 this commitment totaled approximately 20 million dollars in lost charges. Pursuant to this commitment, it is the intention of St. Luke's Cornwall Hospital that indigent care provided during the term of this Agreement will range generally between 15 and 25 million dollars. In any event, the City of Newburgh will assume that all patients will receive necessary care, as required by law, regardless of ability to pay.

2. Acceptance and Acknowledgements of the City of Newburgh.

- (a) The City of Newburgh accepts the commitment of St. Luke's Cornwall Hospital set forth above;
- (b) the City of Newburgh has executed a certification form, attached hereto, which acknowledges that the healthcare services provided by St. Luke's Cornwall Hospital are being provided to low-income individuals who are neither entitled to benefits under Title XVIII of the Social Security Act nor eligible for assistance under the State plan of Title XIX under this Act; and
- (c) the City of Newburgh authorizes St. Luke's Cornwall Hospital to submit the attached certification in support of St. Luke's Cornwall Hospital's application to enroll in the 340B program.

3. Representations of St. Luke's Cornwall Hospital.

St. Luke's Cornwall Hospital represents that as of the date hereof:

- (a) St. Luke's Cornwall Hospital constitutes a corporation duly organized and validly existing in good standing under the laws

WITNESS:

Title:

Legal Department

Name: _____

RESOLUTION NO.: 96 - 2011

OF

JUNE 18, 2012

A RESOLUTION REQUESTING THE STATE LEGISLATURE
TO ENACT LEGISLATION TO ALLOW FOR A THIRD FULL-TIME
CITY COURT JUDGE IN THE CITY OF NEWBURGH

WHEREAS, Newburgh City Court Judges preside over all of the prosecution of misdemeanor and criminal violations, preliminary felony proceedings, specialized Domestic Violence and Regional Drug Court matters, traffic and parking violations, as well as building and property code violations and all civil matters such as landlord-tenant proceedings and small claims; and

WHEREAS, the City of Newburgh recognizes that in addition to adjudicating criminal cases, improving the quality of life for our residents represents one of our biggest challenges; and

WHEREAS, the City of Newburgh issues an average of 2,200 fire and building code violations per year to City Court for adjudication and has significant housing problems with many absentee landlords along with dilapidated and abandoned buildings; and

WHEREAS, the two City Court Judges are burdened with an extremely heavy workload; and

WHEREAS, the newly constructed City Courthouse has three courtrooms and is ready to welcome a third judge at any time; and

WHEREAS, this Council has determined that it is in the best interests of the City of Newburgh that Newburgh City Court be assigned a third Judge dedicated to presiding over quality of life offenses and meting out appropriate penalties and remedies; and

NOW, THEREFORE, BE IT RESOLVED, that this Council of the City of Newburgh, New York, does hereby request that the State Legislature enact Legislation to allow for a third full-time City Court Judge in the City of Newburgh.

RESOLUTION NO.: 97-2012

OF

JUNE 18, 2012

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO SUBMIT AN APPLICATION TO NEW YORK STATE DEPARTMENT
OF ENVIRONMENTAL CONSERVATION FOR A PROJECT GRANT UNDER
THE ROUND 11 URBAN AND COMMUNITY FORESTRY PROGRAM
FOR THE PURPOSE OF PLANTING TREES ON CITY STREETS
FOR AN AMOUNT NOT TO EXCEED \$5,000.00 REQUIRING AN EQUAL MATCH

WHEREAS, the New York State Department of Environmental Conservation Urban and Community Forestry Program has funding available for urban forestry tree planting projects; and

WHEREAS, the Shade Tree Commission has identified a project for the re-planting of street trees in the City entitled "Greening Broadway"; and

WHEREAS, the Shade Tree Commission is seeking a grant from the above-mentioned program in the amount of \$5,000.00 for the planting of trees and shrubs, with an equal match from the City of Newburgh to be derived from other funding sources and/or in-kind services; and

WHEREAS, this Council has determined that applying for and, if awarded, accepting such grant funds is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to submit an application the New York State Department of Environmental Conservation for a project grant under the Round 11 Urban and Community Forestry Program for a project known as Greening Broadway in an amount not to exceed \$5,000.00 with an equal match and to accept said grant if awarded; and to carry out the terms of said program including the authority to execute documents and take all necessary and appropriate actions in connection therewith.

RESOLUTION NO.: 98 - 2012

OF

JUNE 18, 2012

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF NEWBURGH, NEW YORK SUPPORTING THE
CONSOLIDATED FUNDING APPLICATION OF
THE RITZ THEATER-NEWBURGH, INC. FOR URBAN INITIATIVES
PROGRAM FUNDING THROUGH THE OFFICE OF
COMMUNITY RENEWAL

WHEREAS, the purpose of the Urban Initiatives Program is to provide funding to New York communities for the restoration and improvement of housing, commercial areas and public facilities in urban neighborhoods; and

WHEREAS, Urban Initiatives Program funding will be awarded to organizations with a direct interest in improving the health, safety and economic viability of a distressed urban neighborhood; and

WHEREAS, The Ritz Theater- Newburgh, Inc is requesting funding for the restoration of the Ritz Theater which will help to create a viable cultural and tourist destination, providing education and employment opportunities and enhancing and revitalizing the City of Newburgh through the creation of density and vitality; and

WHEREAS, monies granted will be used to create a vibrant professional performing arts venue in the city of Newburgh that revitalizes the local economy, enriches the education of youth, and enhances community pride;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh, New York fully supports the Consolidated Funding Application of The Ritz Theater- Newburgh, Inc for Urban Initiatives Program funding through the Office of Community Renewal.

RESOLUTION NO.: 99 2012

OF

JUNE 18, 2012

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH, NEW YORK
SUPPORTING THE CONSOLIDATED FUNDING APPLICATION OF BEST RESOURCE
CENTER, INC. FOR WORKFORCE DEVELOPMENT INITIATIVES PROGRAM
FUNDING THROUGH THE EMPIRE STATE DEVELOPMENT GRANT PROGRAM
FUNDING.

WHEREAS, the purpose of the Consolidated Workforce Plan Initiative is to provide comprehensive education and workforce training to the Newburgh disadvantaged unemployed/under-employed community residents; The Best Resource Center, Inc Workforce Development plan incorporates a wide spectrum of occupational demand training options that directly respond to local and regional employer needs. The offerings will include the following menu of specific training options: Call Center, Customer Service, Green job, literacy, ESOL, remediation, tutoring, professional skill development, technology, healthcare, retail, manufacturing, and service industry sector employment education and training. This will include speakers of other languages.

WHEREAS, Workforce Initiatives Program funding will be awarded to organizations with a direct interest in improving the workforce skills, and employment options while enhancing the overall talent pipeline through education and skill training offerings; and

WHEREAS, Best Resource Center, Inc. is requesting funding to implement the above listed training opportunities. By advancing the skill acquisition of Newburgh residents, this initiative will respond directly to local employer and industry need; As a result the overall economic development health will be improved considerably.

WHEREAS, monies granted will be used for improving the competitiveness and profitability/productivity of the local employer population, as well as create a skilled labor pool enhancing the overall talent pipeline, while enhancing the creation of employment, employment options and retention.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of Newburgh, New York fully supports the Consolidation Workforce Plan Initiative for the New York State Consolidated funding Application allocation in support of Best Resource Center, Inc. application.

RESOLUTION NO.: 100 - 2012

OF

JUNE 18, 2012

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF NEWBURGH, NEW YORK SUPPORTING THE
CONSOLIDATED FUNDING APPLICATION OF
SAFE HARBORS OF THE HUDSON FOR URBAN INITIATIVES
PROGRAM FUNDING THROUGH THE OFFICE OF
COMMUNITY RENEWAL

WHEREAS, the purpose of the Urban Initiatives Program is to provide funding to New York communities for the restoration and improvement of housing, commercial areas and public facilities in urban neighborhoods; and

WHEREAS, Urban Initiatives Program funding will be awarded to organizations with a direct interest in improving the health, safety and economic viability of a distressed urban neighborhood; and

WHEREAS, Safe Harbors is requesting funding for the restoration of 1,500 square feet of commercial space in the Cornerstone Residence, Safe Harbors' supportive housing project on lower Broadway; and

WHEREAS, monies granted will be used to create a healthy, affordable café in Newburgh's downtown, enhancing and revitalizing the City through the creation of jobs, density and vitality; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh, New York fully supports the Consolidated Funding Application of Safe Harbors on the Hudson for Urban Initiatives Program funding through the Office of Community Renewal.

RESOLUTION NO.: 101 - 2012

OF

JUNE 18, 2012

A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR
AND ACCEPT IF AWARDED STATE GRANT FOR FUNDING
UNDER THE NEW YORK MAIN STREET PROGRAM
FOR FAÇADE UPGRADES AND STREETScape IMPROVEMENTS
IN AN AMOUNT NOT TO EXCEED \$250,000.00

WHEREAS, the City of Newburgh is committed to complimenting the efforts of the private sector in promoting community revitalization efforts; and

WHEREAS, the State of New York has made funding available under the New York Main Street Program to assist in upgrading their Downtown Core Commercial Areas; and

WHEREAS, the City of Newburgh is a qualified applicant under this program; and

WHEREAS, the City of Newburgh has a successful history in delivering development programs throughout the City;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept if awarded a grant for funding under the New York Main Street program for façade upgrades and streetscape improvements in an amount not to exceed \$250,000.00.

RESOLUTION NO.: 102 - 2012

OF

JUNE 18, 2012

A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ACCEPT IF AWARDED GRANTS FROM THE REGIONAL TOURISM MARKETING GRANT INITIATIVE, ENVIRONMENTAL PROTECTION FUND MUNICIPAL GRANT PROGRAM, AND THE LOCAL WATERFRONT REVITALIZATION PROGRAM THROUGH THE EMPIRE STATE DEVELOPMENT GRANT PROGRAM

WHEREAS, the City of Newburgh wishes to submit an application through the Hudson Valley Regional Councils Consolidated Funding Application process for the funding from Regional Tourism Marketing Grant Initiative, Environmental Protection Fund Municipal Grant Program, and The Local Waterfront Revitalization Program; and

WHEREAS, monies granted will be used to fund tourism, specifically the operation of the City of Newburgh Art and History Tour bus, the Water Storage Tank Improvements Project which includes the rehabilitation of two water storage tanks and replacement of one water storage tank, and the Local Waterfront Redevelopment Project; and

WHEREAS, this Council has determined that making such applications are in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept if awarded grants from the Empire State Development Grant Program through New York State Consolidated Funding Application.

RESOLUTION NO.: 103 - 2012

OF

JUNE 18, 2012

A RESOLUTION AUTHORIZING THE SETTLEMENT OF
LITIGATION REGARDING THE IN REM TAX FORECLOSURE
OF LIENS FOR THE YEAR 2010 AND 2011 RELATIVE TO
98 GIDNEY AVENUE (SECTION 7, BLOCK 7, LOT 25)

WHEREAS, The City of Newburgh commenced proceedings for the foreclosure of certain tax liens, such actions being designated as Orange County Index Numbers 2010-012561 and 2012-001071; and

WHEREAS, the daughters' of property owner Gary Borel, by their attorney, have advised the City that they are prepared to settle such actions; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to settle these matters;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to withdraw the liens on the property located at 98 Gidney Avenue (Section 7, Block 7, Lot 25), in the City of Newburgh, from the List of Delinquent Taxes, provided that the sum of Fourteen Thousand Nine Hundred Fifteen And 33/100 (\$14,915.30) Dollars representing all past due tax liens, together with all interest and penalties accruing thereon, together with all currently due taxes and charges, including but not limited to all open 2010-2011 school taxes, water charges and sewer charges, are all paid in full by certified or bank check on or before June 30, 2012.

RESOLUTION NO.: 104-2012

OF

JUNE 18, 2012

A RESOLUTION APPROVING THE CONSENT JUDGMENT AND AUTHORIZING THE CITY MANAGER TO SIGN SUCH CONSENT JUDGMENT IN CONNECTION WITH THE TAX CERTIORARI PROCEEDING AGAINST THE CITY OF NEWBURGH IN THE ORANGE COUNTY SUPREME COURT BEARING ORANGE COUNTY INDEX NO. 7258-2011, INVOLVING SECTION 58, BLOCK 1, LOTS 1.48, 1.7, 1.17, 1.25, 1.27 AND 1.28 (PAUL & JOSEPH MANAGEMENT, INC.)

WHEREAS, Paul & Joseph Management, Inc. has commenced a tax certiorari proceeding against the City of Newburgh in the Supreme Court of the State of New York, County of Orange for the 2011-2012 tax assessment year bearing Orange County Index No. 7258-2011; and

WHEREAS, it appears from the recommendation of the City Assessor, Joanne Majewski and Richard B. Golden, Esq. of Burke, Miele & Golden, LLP, Special Counsel for the City of Newburgh in the aforesaid proceedings, upon a thorough investigation of the claims that further proceedings and litigation by the City would involve considerable expense with the attendant uncertainty of the outcome, and that settlement of the above matters as more fully set forth below is reasonable and in the best interests of the City; and

WHEREAS, Paul & Joseph Management, Inc. is willing to settle these proceedings without interest, costs or disbursements, in the following manner:

- 1- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2011-2012 as tax map number 58-1-1.48 be reduced to a market value of \$ 107,910.
- 2- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2011-2012 as tax map number 58-1-1.7 be reduced to a market value of \$ 80,050.
- 3- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2011-2012 as tax map number 58-1-1.17 be reduced to a market value of \$ 85,545.
- 4- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2011-2012 as tax map number 58-1-1.25 be reduced to a market value of \$ 90,345.
- 5- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2011-2012 as tax map number 58-1-1.28 be reduced to a market value of \$ 83,790.
- 6- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2011-2012 as tax map number 58-1-1.27 be reduced to a market value of \$ 94,050.

NOW, THEREFORE BE IT RESOLVED, that the proposed settlement as set forth and described above and the attached Consent Judgment is hereby accepted pursuant to the provisions of the General City Law and other related laws.

BE IT FURTHER RESOLVED, that Richard F. Herbek, City Manager of the City of Newburgh; Joanne Majewski, Assessor of the City of Newburgh; and Richard B. Golden, Esq. on behalf of Burke, Miele & Golden, LLP, as Special Counsel, be and they hereby are designated as the persons for the City who shall apply for such approval pursuant to the aforesaid laws.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
In the Matter of the Application of
PAUL & JOSEPH MANAGEMENT, INC.,

Petitioner,

- against -

CITY OF NEWBURGH ASSESSOR'S OFFICE,
FERNANDO L. GONZALEZ, ASSESSOR,

Respondents.

CONSENT JUDGMENT

Index No.: 7258-2011

To review a certain real property Assessment for the year
2011 under Article 7 of the Real Property Tax Law.

-----X
PRESENT: HON. CATHERINE M. BARTLETT

UPON THE CONSENT attached hereto duly executed by the attorneys for all the parties and by all the parties, it is

ORDERED, that the real property of Petitioner described on the City of Newburgh tax rolls for the tax year 2011-2012 as follows:

Tax Map No. 58-1-1.48

be reduced in market value from \$161,500.00, to a market value of \$107,910.00, prior to the application of any real property tax exemptions, if any; and it is further,

ORDERED, that the real property of Petitioner described on the City of Newburgh tax rolls for the tax year 2011-2012 as follows:

Tax Map No. 58-1-1.-7

be reduced in market value from \$100,000.00, to a market value of \$80,050.00, prior to the application of any real property tax exemptions, if any; and it is further,

ORDERED, that the real property of Petitioner described on the City of Newburgh tax rolls for the tax year 2011-2012 as follows:

Tax Map No. 58-1-1.-17

be reduced in market value from \$114,500.00, to a market value of \$85,545.00, prior to the application of any real property tax exemptions, if any; and it is further,

ORDERED, that the real property of Petitioner described on the City of Newburgh tax rolls for the tax year 2011-2012 as follows:

Tax Map No. 58-1-1.-25

be reduced in market value from \$120,500.00, to a market value of \$90,345.00, prior to the application of any real property tax exemptions, if any; and it is further,

ORDERED, that the real property of Petitioner described on the City of Newburgh tax rolls for the tax year 2011-2012 as follows:

Tax Map No. 58-1-1.-27

be reduced in market value from \$127,500.00, to a market value of \$94,050.00, prior to the application of any real property tax exemptions, if any; and it is further,

ORDERED, that the real property of Petitioner described on the City of Newburgh tax rolls for the tax year 2011-2012 as follows:

Tax Map No. 58-1-1.-28

be reduced in market value from \$111,000.00, to a market value of \$83,790.00, prior to the application of any real property tax exemptions, if any; and it is further,

ORDERED, that the Petitioner's real property taxes on said parcels above described for the 2011-2012 School, County and City taxes be adjusted accordingly and that any overpayment by Petitioner be refunded upon the entering of this Consent Judgment with the Orange County Clerk's Office; and it is further,

ORDERED, that the officer or officers having custody of the aforesaid City of Newburgh assessment rolls shall make or cause to be made upon the proper books and records and upon the assessment roll of said City the entries, changes and corrections necessary to conform such reduced market values; and it is further,

ORDERED, that there shall be audited, allowed and credited to the Petitioner by the City of Newburgh and/or the County Commissioner of Finance, as the case may be, the amounts, if any, paid as City taxes and City Special District taxes against the original assessments in excess of what said taxes would have been if the market values had been determined as herein; and it is further,

ORDERED, that there shall be audited, allowed and credited to the Petitioner by the County of Orange, the amounts, if any, paid as County taxes and County Special District taxes

against the original assessments in excess of what said taxes would have been if the market values had been determined as herein; and it is further,

ORDERED, that there shall be audited, allowed and credited to the Petitioner by the Newburgh City School District, the amounts, if any, paid as School District taxes against the original assessments in excess of what said taxes would have been if the market values had been determined as herein; and it is further,

ORDERED, that any interest required to be paid hereby shall be waived in the event payment is made within ninety (90) days from the date of service of this Consent Judgment with notice of entry upon the respective taxing entities; and it is further,

ORDERED, that these proceedings are settled without costs or disbursements to either party as against the other.

Signed: June____, 2012
Goshen, New York

ENTER:

HON. CATHERINE M. BARTLETT
SUPREME COURT JUSTICE

ON CONSENT:

HON. RICHARD F. HERBEK
Acting City Manager
Dated:

JOSEPH E. SUAREZ, ESQ.
PAUL & JOSEPH MANAGEMENT, INC.
Managing Partner
Dated:

HON. JOANNE MAJEWSKI
Assessor
Dated:

RICHARD B. GOLDEN, ESQ.
Burke, Miele & Golden, LLP
Attorney for Respondents
Dated:

RESOLUTION NO.: 105 - 2012

OF

JUNE 18, 2012

RESOLUTION RESCINDING RESOLUTION NOS.: 192-2010, 193-2010 AND 194-2010 OF AUGUST 16, 2010 AND AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENTS TO THE LAND PURCHASE AGREEMENT DATED JUNE 19, 2008 BY AND BETWEEN THE CITY OF NEWBURGH AND BLUESTONE DEVELOPERS, INC. AND AUTHORIZING THE CITY MANAGER TO CLOSE TITLE FOR THE LIBERTY STREET SCHOOL PROPERTY KNOWN AS 1 LIBERTY STREET BEING SECTION 45, BLOCK 5, LOT 18 AND THE ASSOCIATED PROPERTIES LOCATED AT 5 AND 9 JOHNES STREET KNOWN AS SECTION 46, BLOCK 1, LOTS 14 AND 15

WHEREAS, the City of Newburgh ("City") and Bluestone Developers, Inc. ("Bluestone") executed a Land Purchase Agreement dated June 19, 2008 ("LPA") for purchase and redevelopment of the Liberty Street School Property known as 1 Liberty Street being Section 45, Block 5, Lot 18 on the tax assessment maps of the City of Newburgh ("Liberty Street School"); and

WHEREAS, the City and Bluestone executed an Option to Purchase Agreement dated November 6, 2009 ("OA") for purchase of properties for parking accessory to the Liberty Street School Property known as 5 and 9 Johnes Street being Section 46, Block 1, Lots 14 and 15; and

WHEREAS, by Resolution Nos. 192-2010, 193-2010 and 194-2010 of August 16, 2010, the City Council of the City of Newburgh rescinded Resolution No. 144-2012 of July 12, 2010 thereby withdrawing its approval of certain amendments to the LPA and OA, authorized the City Manager to serve a Notice to Cure on Bluestone and directed that a stop work order be issued by the City Manager and Building Inspector to Bluestone; and

WHEREAS, the City and Bluestone have engaged in negotiations and now wish to execute amendments to the LPA in the form attached hereto; and

WHEREAS, this Council feels it would be in the best interests of the City of Newburgh and its continuing development to execute amendments to the LPA;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that Resolution Nos. 192-2010, 193-20120 and 194-2010 of August 16, 2012 are hereby rescinded; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to withdraw the Notice to Cure, dated August 16, 2010; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, Newburgh, New York that the City Manager and the Building Inspector be and hereby are authorized to lift the stop work issued to Bluestone in connection with work at the Liberty Street School; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and hereby is authorized to execute amendments to the LPA in the form attached hereto and to close title as required by the LPA, as amended and the OA.

AMENDMENT
TO
LAND PURCHASE AGREEMENT
THE CITY OF NEWBURGH, NEW YORK AS SELLER
WITH
BLUESTONE DEVELOPERS, INC. AS PURCHASER

WHEREAS, the City of Newburgh, New York ("City") and Bluestone Developers, Inc. ("Bluestone") entered into an agreement entitled "Land Purchase Agreement" ("LPA") dated June 19, 2008, regarding the redevelopment and purchase of the properties located at 1 Liberty Street, 5 Johnes Street, and 9 Johnes Street in the City of Newburgh, which properties are more particularly described in the LPA, and

WHEREAS, the City and Bluestone are desirous of amending the LPA as herein provided, and

WHEREAS, the City has authorized this Amendment by Resolution No. ____ of 2012 of the City Council, dated June __, 2012, and further authorized the City Manager to execute this Amendment on behalf of the City, the parties acknowledging adequate consideration therefor in the form of the mutual promises and conditions stated herein,

NOW, THEREFORE, the City and Bluestone hereby amend the LPA as follows:

1. Bluestone shall comply with the directives and obligations of the variance Decision No. 10-1022 of the New York State Department of Labor, dated September 30, 2010, regarding the premises described therein as "Former School No. 6, 1 Liberty Street, Newburgh, New York," and apply for and comply with any subsequent variance decisions that are necessary or required.

2. Bluestone shall adhere to the following revised milestone-driven timeline and work activities, all previous stop work orders by the City being hereby withdrawn:

(a) Bluestone must submit full construction plans, sufficient in scope and detail to support a building permit to allow full construction of the project within four (4) months of the execution of this Amendment.

(b) The City will issue a full construction building permit within thirty (30) days of the submission of complete, accurate and full construction plans, which will allow for the closing of the property within thirty (30) days thereafter. The closing date shall be extended by one (1) day for each day that the City fails to issue such building permit within said 30-day time frame.

(c) Completion of the redevelopment project in accordance with the PLA shall occur within 18 months of the closing. This 18-month period shall be as defined in subparagraph "3" of Schedule "C" of the PLA, except that said 18-month period may be extended for (i) unforeseeable causes (weather is only an unforeseeable cause if owing to severe weather events such as hurricanes or tornados, or, if such severe weather is due to rain and/or snow, then such rain and/or snow must be demonstrated, by official United States records, that it is a substantial departure from the relevant historical monthly averages), (ii) substantial interference by the City that is not due to the neglect or failure of Bluestone, or (iii) the failure of the City to transfer to Bluestone the Johnes Street parking lot. The City Building Department will cooperate with Bluestone in its endeavor to complete the project within the 18-month timeframe by allowing Bluestone to have occasional plan review meetings with the Building Department to assess Bluestone's progress, and issue comments or clarifications regarding Bluestone's performance and the Building Department's requirements.

3. Bluestone shall defend and indemnify the City with respect to any cause of action in law or equity arising out of any and all actions taken by Bluestone, its employees, agents, subcontractors, suppliers, materialmen, etc., except to the extent any such liability was caused directly by the City.

4. All asbestos remediation, abatement or other asbestos-related work on the project shall be performed by a properly licensed, experienced and financially secure subcontractor. All asbestos subcontractors shall be adequately insured, with the City being named as an additional insured.

5. At the closing of the 1 Liberty Street property identified in the PLA, Bluestone shall reimburse the City for 50% of all of the City's C.T. Male Associates, PC consultant costs incurred by the City in bringing the 1 Liberty Street School Building into federal and state compliance subsequent to the initial work performed by Bluestone prior to the City's stop work order dated on or about August 16, 2010. The City will submit to Bluestone proof of all such C.T. Male Associates, PC costs within 60 days after the full execution of this Amendment. The City will also provide to Bluestone prior to the closing a statement setting forth the facts of the United State Justice Department involvement regarding the asbestos work performed by Bluestone.

6. The City herein confirms to Bluestone that the purchase price of \$50,001.00 is the total purchase price for the 1 Liberty Street, 5 Johnes Street, and 9 Johnes Street properties.

7. Bluestone and Jerome H. Blue agree to execute and deliver to the City's Corporation Counsel within 60 days after the full execution of this Amendment, a verified written withdrawal of their Notice of Claim against the City dated September 10, 2010, including all claims noted therein, with prejudice.

8. The City shall pass the following resolutions either prior to or within 60 days after the execution of this Amendment: (1) a resolution rescinding that portion of its prior Resolution No.: 194 - 2010 (August 16, 2010) that requested Bluestone to stop work at the Liberty Street School, (2) a resolution rescinding its prior Resolution No.: 193- 2010 (August 16, 2010) directing the City Manager to serve upon Bluestone Developers., Inc. a Notice to Cure various alleged breaches of contract, and (3) a resolution rescinding its prior Resolution No.:192-2010 (August 16, 2010) that rescinded Resolution No.: 144-2010 regarding certain amendments to the LPA.

7. Except as specifically provided above, all of the terms, conditions, obligations and duties set forth in the PLA dated June 19, 2008, and the Option to Purchase Agreement dated November 6, 2009, shall remain as so provided in those agreements.

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment and date this Amendment as the _____ day of June, 2012.

THE CITY OF NEWBURGH

By: _____
Richard F. Herbek, City Manager

BLUESTONE DEVELOPERS, INC.

By: _____
Jerome H. Blue, President

STATE OF NEW YORK)

) SS.:

COUNTY OF ORANGE)

On the ____ day of June, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared RICHARD F. HERBEK, personally known to me or proven to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he was duly authorized to, and did, execute the same in his capacity as City Manager for the City of Newburgh, New York, and that by his signature on the instrument the City of Newburgh executed the instrument.

(Notary Public)

STATE OF NEW YORK)

) ss.:

COUNTY OF _____)

On the ____ day of June, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared JEROME H. BLUE, personally known to me or proven to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he was duly authorized to, and did, execute the same in his capacity as president of Bluestone Developers, Inc., and that by his signature on the instrument Bluestone Developer, Inc. executed the instrument.

(Notary Public)

RESOLUTION NO.: 106 - 2012

OF

JUNE 18, 2012

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH, NEW YORK
SUPPORTING THE CONSOLIDATED FUNDING APPLICATION OF
THE NEWBURGH COMMUNITY LAND BANK
FOR URBAN INITIATIVES PROGRAM FUNDING THROUGH
THE EMPIRE STATE DEVELOPMENT GRANT PROGRAM FUNDING

WHEREAS, the purpose of the Urban Initiatives Program is to provide funding to New York communities for the restoration and improvement of housing, commercial areas and public facilities in urban neighborhoods; and

WHEREAS, Urban Initiatives Program funding will be awarded to organizations with a direct interest in improving the health, safety and economic viability of a distressed urban neighborhood; and

WHEREAS, the Newburgh Community Land Bank is requesting funding to implement programs for the restoration and improvement of housing in the City of Newburgh, which result in the improvement of the overall development of the City of Newburgh and its residents;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh, New York fully supports the New York State Consolidated Funding Application through the Urban Initiatives Program of the Newburgh Community Land Bank.

RESOLUTION NO.: 107 - 2012

OF

JUNE 18, 2012

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A SEPARATION AND SETTLEMENT AGREEMENT
WITH LEYLAND ALLIANCE LLC**

WHEREAS, the City of Newburgh and Leyland Alliance LLC entered into an Exclusivity and Planning Agreement dated September 22, 2006 and a Development Agreement together with Escrow Agreement dated August 14, 2007 (collectively the "Prior Agreements") regarding the proposed redevelopment of approximately thirty (30) acres of City-owned lands located on and in close proximity to the Newburgh waterfront on the Hudson River ("Newburgh Waterfront"); and

WHEREAS, the City and Leyland, due to the passage of time and the changing development market, wish to terminate the Prior Agreements and resolve any remaining obligations to the other; and

WHEREAS, this Council has determined that entering into to a Separation and Settlement Agreement with Leyland is in the best interests of the City of Newburgh and its further development;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute the Settlement and Separation Agreement with Leyland Alliance LLC, in substantially the same form as annexed hereto, with other provisions as Corporation Counsel may require.

A SEPARATION AND SETTLEMENT AGREEMENT dated _____, 2012, by and between the CITY OF NEWBURGH, a New York municipal corporation with offices at 83 Broadway, Newburgh, New York 12550 ("City"), and LEYLAND ALLIANCE LLC, a Delaware limited liability company authorized to do business in New York with offices at 233 Route 17, Tuxedo Park, New York 10987 ("Leyland").

WHEREAS, the City and Leyland entered into an Exclusivity and Planning Agreement dated September 22, 2006 and a Development Agreement together with Escrow Agreement dated August 14, 2007 (collectively the "Prior Agreements") regarding the proposed redevelopment of approximately thirty (30) acres of City-owned lands located on and in close proximity to the Newburgh waterfront on the Hudson River ("Newburgh Waterfront"), and

WHEREAS, the City and Leyland, due to the passage of time and the changing development market, wish to terminate the Prior Agreements and resolve any remaining obligations to the other,

NOW, THEREFORE, the City and Leyland agree as follows:

1. Termination of Prior Agreements. The Prior Agreements are hereby terminated in their entirety, with no continuing obligations to survive such termination, either to each other or other parties.
2. Compensation. In settlement of all obligations under the Prior Agreements, the parties hereto agree to exchange mutual releases of their obligations under the Prior Agreements, and the City shall transfer to Leyland certain unimproved real property generally bounded by First Street on the south and Second Street on the north; and Colden Street on the east and Montgomery Street on the west, and also described as the following twelve parcels of property: 1 and 3 Colden Street; 2, 4, 10, 12, 14, 28, 30, 32 and 34 Montgomery Street; and 55 Second Street; such parcels also known as Section 24, Block 9, Lots 1 and 2 (1 and 3 Colden Street); Section 24, Block 9, Lot 3 (2 Montgomery Street); Section 24, Block 10, Lots 14, 12, 11, 7, 4, 3, 2 and 1 (4, 10, 12, 14, 28, 30, 32 and 34 Montgomery Street); and Section 24, Block 10, Lot 15 (55 Second Street), all as designated on the Official Tax Map of the City of Newburgh (hereafter collectively referred to as "the Premises").
3. Terms of Transfer. The terms of transfer shall be as follows:
 - A. TRANSFER PRICE. The price for the transfer of the properties shall be \$1.00 and other valuable consideration as set forth in Paragraph 2 above.

- B. PREMISES SOLD "AS IS". The Premises is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) property tax, water and sewer assessments, and other costs of ownership of the Premises with respect to any period following the Closing hereunder shall be the responsibility of Leyland, as purchaser; and (d) all easements, covenants, conditions and rights-of-way of record, provided that the City agrees not to grant or otherwise create any such encumbrances between the date hereof and the date of Closing. In view of the "as is" nature of the proposed conveyance of the Premises hereunder, and the fact that the conveyance of the Premises is a material inducement to Leyland's decision to enter into this Agreement, the parties agree that this Agreement shall be subject to a due diligence period of sixty (60) days following the date hereof (the "Due Diligence Period"). In the event Leyland, during the course of its due diligence, determines that there are one or more material adverse issues relating to the Premises, Leyland shall so notify the City; the City shall then have up to thirty (30) days to cure or otherwise rectify any such matter. If the City is unable to do so, and one or more of such material adverse issues continue to exist, Leyland may terminate this Agreement at any time during or within ten (10) business days following the expiration of said thirty (30) day period, by giving notice of termination to the City, in which event this Agreement shall be of no force or effect. Notwithstanding the foregoing, in the event a notice of termination is given hereunder, the parties shall endeavor in good faith to enter into a new agreement substantially similar to this Agreement, but with property or other consideration of reasonably equivalent value being substituted for the Premises (such value being determined as though the Premises had not been affected by any material adverse issues).
- C. CLOSING. At the closing of title, the City will convey title to the Premises by standard City Quitclaim Deed, free and clear of all exceptions, liens and encumbrances, subject to the exceptions identified in paragraph 3B. The cost of recording the deed shall be the obligation of Leyland. The closing of title to the property will occur at the Office of the Corporation Counsel, City of Newburgh, no later than ninety (90) days from the date of this Agreement, subject to such adjournments as either party may reasonably request.
- D. DEVELOPMENT OF THE PREMISES.
1. PERMITTED USES. The Premises shall be developed subject to and in conformity with the laws, ordinances, codes, rules and regulations of the City of Newburgh and State of New York.

2. TIME FOR COMMENCEMENT AND COMPLETION. The deed to the premises will contain provisions stating that Leyland is required to obtain a building permit for the development of the Premises within thirty-six (36) months of the date of the deed and to complete the development of the Premises in compliance with all State, County and Local standards for occupancy within thirty-six (36) months following the date a building permit is issued. Said periods shall be extended by the number of days, if any, that Leyland is delayed in satisfying such requirements due to appeals as to any permits, approvals or other entitlements issued, or for any other reason beyond the control of Leyland. In addition, the City shall not unreasonably withhold its approval of extensions of said time periods as may be requested by Leyland, for good cause shown.
3. CITY'S RIGHT OF REVERSION.
 - a. The deed shall also require that any conveyance of the property must be made subject to the requirements of Paragraph 3(D).
 - b. The deed shall also require Leyland to use commercially reasonable efforts to combine the Premises herein identified as one lot of record within one (1) year of the date of transfer. The City agrees to cooperate with Leyland in this regard.
 - c. Failure to comply with any of the requirements in the deed shall cause the title to the property to revert to the City of Newburgh.
4. Entire Agreement. This Agreement contains the entire Agreement between Leyland and the City with respect to the transactions contemplated herein; and no party shall be bound by nor shall be deemed to have made any representations, warranties or covenants except those contained herein. This Agreement cannot be modified, changed, discharged or terminated except by an instrument in writing, signed by the party against whom the enforcement or any modification, change, discharge or termination is sought.
5. Notices. Any notices, request, instrument or other document to be given hereunder shall be in writing and, shall be delivered personally or sent by certified, registered or express mail, return receipt requested, as follows:

If to Leyland:

Leyland Alliance LLC
P.O. Box 878
233 Route 17
Tuxedo, New York 10987
Attn: Howard Kaufman, Manager

If to the City:

The City of Newburgh
83 Broadway, City Hall
Newburgh, New York 12550
Attn: City Manager

With a copy to:

Corporation Counsel
City of Newburgh
83 Broadway
Newburgh, New York 12550

Each party may change its address for the purposes of this Paragraph by giving written notice of such change to the other party in the manner herein provided. If this Agreement provides for a designated period after a Notice within which to perform an act, such period shall commence on the date of receipt or tender of the Notice. If this Agreement requires the exercise of a right by Notice on or before a certain date or within a designated period, such right shall be deemed exercised on the date of mailing or tender of the Notice pursuant to which such right is exercised.

6. Severability. In case any one or more of the provisions or parts of a provision contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or part of a provision of this Agreement.
7. Governing Law. This Agreement has been negotiated and executed in the State of New York and shall be governed by and construed in accordance with the laws of the State of New York.
8. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
9. Assignment. Neither the City nor Leyland may assign this Agreement to another party.

Remainder of this Page Intentionally Left Blank

CITY OF NEWBURGH

By _____
Richard F. Herbek
City Manager

LEYLAND ALLIANCE LLC

By _____
Howard Kaufman
Managing Member

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

On the _____ day of _____, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared RICHARD F. HERBEK, personally known to me or proven to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he was duly authorized to, and did, execute the same in his capacity as City Manager for the City of Newburgh, New York, and that by his signature on the instrument the City of Newburgh executed the instrument.

(Notary Public)

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

On the _____ day of _____, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared HOWARD KAUFMAN, personally known to me or proven to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he was duly authorized to, and did, execute the same in his capacity as managing member of Leyland Alliance LLC and that by his signature on the instrument Leyland Alliance LLC executed the instrument.

(Notary Public)

RESOLUTION NO.: 108 - 2012

OF

JUNE 18, 2012

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE AN AMENDMENT TO THE CONTRACT
WITH MALCOLM PIRNIE-ARCADIS FOR DETAILED DESIGN
SERVICES IN CONNECTION WITH THE WASTE WATER TREATMENT
PLANT WATER POLLUTION CONTROL PLAN EMERGENCY BACKUP
GENERATION AND SOLIDS HANDLING SYSTEMS PROJECT AT AN
ADDITIONAL COST NOT TO EXCEED
TWO HUNDRED TEN THOUSAND DOLLARS

WHEREAS, this Council, by Resolution No.: 254-2011 of December 12, 2011, authorized the City Manager to enter into an agreement for professional engineering services with Malcolm Pirnie-Arcadis in connection with the Waste Water Treatment Plant Water Pollution Control Plant Emergency Backup Generation and Solids Handling Systems Project; and

WHEREAS, Malcolm Pirnie-Arcadis has previously completed a basis of design memorandum subject to the electrical backup generator and the NYSERDA FlexTech Study, which together outline basis of design necessary for the completion of the referenced Waste Water Treatment Plant improvements; and

WHEREAS, detailed design services are necessary for the creation of plans and specifications suitable for competitive bidding and construction of referenced improvements; and

WHEREAS, Malcolm Pirnie-Arcadis submitted a proposal for engineering services dated May 30, 2012, outlining the necessary scope and fee schedules related thereto; and

WHEREAS, Malcolm Pirnie-Arcadis submitted a project schedule dated June 14, 2012, outlining key milestone dates relevant to the completion of services; and

WHEREAS, referenced Project is subject to a New York State Department of Environmental Conservation Consent Order requiring the completion of said Project; and

WHEREAS, funding for such project shall be derived from HG1.8130.0200.8100; and

WHEREAS, this Council has determined that entering into such contract is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute an amendment to the contract with Malcolm Pirnie-Arcadis for detailed design services in connection with the Waste Water Treatment Plant Water Pollution Control Plan Emergency Backup Generation and Solids Handling Systems Project at an additional cost not to exceed Two Hundred Ten Thousand Dollars.

RESOLUTION NO.: 109 - 201

OF

JUNE 18, 2012

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ACCEPT DONATIONS IN SUPPORT OF THE
NEWBURGH ILLUMINATED EVENT

BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept donations with the appreciation and thanks of the City of Newburgh.



CITY OF NEWBURGH COUNCIL MEETING AGENDA

June 18, 2012

7:00 pm

Mayor:

1. Prayer
2. Pledge of Allegiance

City Clerk:

3. Roll Call
4. Approval of the minutes of the May 24, 2012 Work Session meeting
5. Approval of the minutes of the May 29, 2012 City Council meeting
6. City Clerk's Report for the month of May
7. Registrar of Vital Statistics Report for the month of May
8. Civil Service Administrator's Report for the month of May

Presentation:

9. Presentation of Certificates of Recognition to the Newburgh Free Academy Girls' and Boys' track teams who recently competed in the Penn Relays

Public Hearing:

10. A public hearing concerning a local law amending Chapter 248 "Sewers" of the Code of Ordinances of the City of Newburgh Amending Article IV entitled "Stormwater Management Regulations".

Comments from the public regarding the agenda:

Comments from the Council regarding the agenda:

City Manager's Report:

11. Local Law No. 3 - 2012
A local law amending Chapter 248 "Sewers" of the Code of Ordinances of the City of Newburgh amending Article IV entitled "Stormwater Management Regulations".

12. Resolution No. 87 – 2012
A resolution of the City Council accepting the Land Use Streamlining Recommendations for the City of Newburgh.
13. Resolution No. 88 - 2012
A resolution authorizing the City Manager to execute an agreement for the payment in lieu of taxes by and among the City of Newburgh and Voisins of Newburgh, Inc.
14. Resolution No. 89 – 2012
A resolution amending Resolution No. 238-2011, the 2012 Budget for the City of Newburgh, New York to transfer \$38,000.00 from contingency to code compliance in connection with the purchase of two vehicles for use by the City of Newburgh Department of Code Compliance.
15. Resolution No. 90 - 2012
A resolution authorizing the City of Manager to apply for and accept if awarded funds from the New York State Department of Education for the 21st Century Community Learning Centers Grant and authorizing any and all expenditures necessary to fund the program throughout its entirety through vendor contracts and other program related costs as per the State approved budget in an amount not to exceed \$1,300,000.00. (see revised resolution)
16. Resolution No. 91 – 2012
A resolution authorizing the City Manager to apply for and accept if awarded a grant from the New York State Office of Alcoholism and Substance Abuse Services for enforcing underage drinking laws which will be administered through Catholic Charities in an amount not to exceed \$9,300.00.
17. Ordinance No. 3 - 2012
An ordinance amending Section 220-19, "Aquatic Center and Athletic Fields" of Chapter 220, "Parks and Recreation Areas" of the Code of Ordinances. (see revised ordinance)
18. Ordinance No. 4 - 2012
An ordinance amending Chapter 293 entitled "Water" of the Code of the City of Newburgh to require connection to the City water system and prohibit wells.
19. Resolution No. 92 - 2012
A resolution authorizing the execution of a license agreement for the use of the stadium located at Delano-Hitch Recreation Park by the Newburgh Hook Elite Boxing Club and EBC Sports Ministries.

20. Resolution No. 93 – 2012
A resolution authorizing the City Manager to enter into a license agreement with the House of Refuge to allow use of City-owned property located at 140 Broadway for the Tuesday Farm Market.
21. Resolution No. 94 – 2012
A resolution of the Newburgh City Council, as the newly elected legislative body of the City of Newburgh, New York in accordance with Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), approving the issuance by the Newburgh Housing Authority of up to \$10,000,000 aggregate principal amount multi-family housing revenue bonds (Burton Towers, LLC Project), Series 2012.
22. Resolution No. 95 – 2012
A resolution authorizing the City Manager to execute a memorandum of understanding nunc pro tunc between the City of Newburgh and St. Luke's Cornwall Hospital to allow for the participation in the prescription drug discount program established under Section 340B of the Public Health Services Act.
23. Resolution No. 96 – 2012
A resolution requesting the State Legislature to enact legislation to allow for a third full-time judge in the City of Newburgh designated to housing matters.
24. Resolution No. 97 – 2012
A resolution authorizing the City Manager to submit an application to the New York State Department of Environmental Conservation for a project under Round 11 of the Urban and Community Forestry program for the purpose of planting trees on City streets for an amount not to exceed \$5,000 requiring an equal match (in kind services accepted).
25. Resolution No. 98 – 2012
A resolution of the City Council of the City of Newburgh, New York supporting the consolidated funding application of the Ritz Theatre-Newburgh, Inc. for Urban Initiatives program funding through the Office of Community Renewal.
26. Resolution No. 99 – 2012
A resolution of the City Council of the City of Newburgh, New York supporting the consolidated funding application of Best Resource Center, Inc. for Workforce Development Initiatives program funding through the Empire State Development grant program funding.

27. Resolution No. 100 – 2012
A resolution authorizing the City Manager to of Newburgh, New York supporting the consolidated funding application of Safe Harbors of the Hudson for Urban Initiatives program funding through the Office of Community Renewal.
28. Resolution No. 101 – 2012
A resolution authorizing the City Manager to apply for and accept if awarded State grant funding under the New York Main Street program for façade upgrades and streetscape improvements in an amount not to exceed \$250,000.00
29. Resolution No. 102 – 2012
A resolution authorizing the City Manager to apply for and accept if awarded grants from the Regional Tourism Marketing grant initiative, Environmental Protection Funds municipal grant program and the Local Waterfront Revitalization program though the Empire State Development grant program.
30. Resolution No. 103 – 2012
A resolution authorizing the settlement of litigation regarding the in rem tax foreclosure of liens for the year 2010 and 2011 relative to 98 Gidney Avenue (Section 7, Block 7, Lot 25).
31. Resolution No. 104 – 2012
A resolution approving the Consent Judgment and authorizing the City Manager to sign such Consent Judgment in connection with the tax certiorari proceeding against the City of Newburgh in Orange County Supreme Court bearing Orange County Index No. 7258-2011, involving Section 58, Block 1, Lots 1.48, 1.-7, 1.-17, 1.-25, 1.-27, and 1.-28 (Paul and Joseph Management, Inc.).
32. Resolution No. 105 – 2012
A resolution rescinding Resolutions Nos. 192-2010, 193-2010 and 194-2010 of August 16, 2010 and authorizing the City Manager to execute amendments to the Land Purchase Agreement dated June 19, 2008 by and between the City of Newburgh and Bluestone Developers, Inc. and authorizing the City Manager to close title for the Liberty Street School property known as 1 Liberty Street, being Section 45, Block 5, Lot 18 and the associated properties located at 5 and 9 Johnes Street known as Section 46, Block 1, Lot 14 and 15.
33. Resolution No. 106 – 2012
A resolution of the City Council of the City of Newburgh, New York supporting the Consolidated Funding Application of the Newburgh Community Land Bank for Urban Initiatives program funding through the Empire State Development Grant program.

34. Resolution No. 107 – 2012

A resolution authorizing the City Manager to execute a separation and settlement agreement with Leyland Alliance, LLC.

35. Resolution No. 108 – 2012

A resolution authorizing the City Manager to execute an amendment to the contract with Malcolm Pirnie-Arcadis for detailed design services in connection with the wastewater treatment plant Water Pollution Control Plan Emergency Back Up Generation and Solids Handling Systems Project at an additional cost not to exceed two-hundred and ten thousand dollars.

36. Resolution No. 109 – 2012

A resolution authorizing the City Manager to accept donations in support of the Newburgh Illuminated event

Old Business:

New Business:

Public Comments Regarding General Matters of City Business:

Further Comments from the Council:

Adjournment:

A regular meeting of the City Council of the City of Newburgh was held on Tuesday, May 29, 2012 at 7:00 P.M. in the Council Chambers at City Hall, 3rd Floor, 83 Broadway, Newburgh, New York 12550.

The Prayer was led by Rev. Deke Spierling, President of the Greater Newburgh Ministerial Association followed by the Pledge of Allegiance.

Present: Mayor Kennedy, presiding; Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee - 5

Councilwoman Angelo moved and Councilwoman Lee seconded that the minutes of the May 10, 2012 Work Session and the May 14, 2012 City Council meeting be approved and that the City Clerk's Report and the Registrar of Vital Statistics Report for the month of April be received, filed and made available to the Press.

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

CARRIED

Councilwoman Angelo moved and Councilwoman Lee seconded that the Civil Service Administrator's Report for the month of April be received and filed only.

Ayes - Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Councilman Dillard, Mayor Kennedy - 5

CARRIED

PROPOSED PUBLIC HEARING

RESOLUTION NO.: 73-2012

OF

MAY 29, 2012

RESOLUTION SCHEDULING A PUBLIC HEARING FOR JUNE 18, 2012
TO HEAR PUBLIC COMMENT CONCERNING A LOCAL LAW
AMENDING CHAPTER 248 "SEWERS" OF THE CODE OF ORDINANCES
OF THE CITY OF NEWBURGH AMENDING ARTICLE IV ENTITLED
"STORMWATER MANAGEMENT REGULATIONS"

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that there is hereby scheduled a public hearing to receive comments concerning a Local Law "Amending Chapter 248, 'Sewers', Article IV entitled 'Stormwater Management Regulations' of the Code of the City of Newburgh"; and that such public hearing be and hereby is duly set for the next regular meeting of the Council to be held at 7:00 p.m. on the 18th day of June, 2012, at the Council chambers, Third Floor, City Hall located at 83 Broadway, Newburgh, New York.

Councilwoman Angelo moved and Councilwoman Lee seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

LOCAL LAW NO.: _____ - 2012

OF

JUNE 18, 2012

A LOCAL LAW AMENDING CHAPTER 248 "SEWERS"
OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH
AMENDING ARTICLE IV ENTITLED
"STORMWATER MANAGEMENT REGULATIONS"

BE IT ENACTED by the City Council of the City of Newburgh as follows:

SECTION 1 - TITLE

This Local Law shall be referred to as "A Local Law Amending Chapter 248, 'Sewers', Article IV entitled 'Stormwater Management Regulations' of the Code of the City of Newburgh".

SECTION 2 - PURPOSE AND INTENT

The purpose of this local law is to comply with New York State Department of Environmental Conservations related to Stormwater Management/Control and Prohibition of Illicit Discharges and Connections to City MS4 System.

SECTION 3 - AMENDMENT

Chapter 248 entitled "Sewers", Article IV entitled "Stormwater Management Regulations" of the Code of the City of Newburgh is hereby amended by to read as follows:

§ 248-58. Definitions and word usage.

STORMWATER MANAGEMENT OFFICER (SMO)

An employee or officer designated by the municipality to accept and review stormwater pollution prevention plans, forward the plans to the applicable municipal board, inspect stormwater management practices and enforce the provisions of this Local Law in conjunction with other City officials and departments and other municipal agencies. Unless otherwise designated, the City Stormwater Management Officer shall be the City Engineer.

STORMWATER POLLUTION PREVENTION PLAN (SWPPP)

A plan for controlling stormwater runoff and pollutants from a site during and after construction activities, and as described in and required by these regulations, including standards, criteria, requirements and enforcement thereof.

§ 248-59. Applicability.

A. This Local Law shall apply to all water and other substances and materials entering the MS4 generated on any developed and/or undeveloped lands unless explicitly exempted by law, statute, rule or regulation or by an authorized enforcement agent or agency.

B. A and stormwater pollution prevention plan developed in compliance with the New York State Stormwater Management Design Manual dated latest revision and prepared in accordance with the specifications herein must be submitted by the Owner and/or by his agent as authorized hereunder for review and acceptability to all City agencies and officials having jurisdiction over approval of a land development activity, as defined in this Local Law, including any one or more of the following:

- (1) A subdivision of land.
- (2) The approval of a site plan.
- (3) Issuance of a building permit where greater than one acre of property will be impacted.
- (4) Construction or extension of an existing City street or property, or private roadway.
- (5) Alteration of an existing drainage system or watercourse.
- (6) Redevelopment of existing sites.
- (7) Such other project undertaken within the boundaries of the City or on or adjacent to property in which the City has an interest which poses an impact upon such property and which in the opinion of the City Engineer requires the creation and implementation of such plan or plans as necessary to satisfy the Purpose and Objectives of this Law.

§ 248-60. Exemptions.

The following development activities are exempt from the Stormwater Pollution Prevention Plan Requirements.

- A. Developments which disturb less than one acre of land and which in the professional opinion of the Stormwater Management Officer will not cause or may be reasonably anticipated to not cause stormwater accumulation, discharges, or flows equivalent to or greater than such as are regulated under and restricted or prohibited hereunder, or which will not cause or may be reasonably anticipated to not cause prohibited discharges, pollution, erosion, sedimentation, flooding or other impacts intended to be regulated, restricted or prohibited by this Local Law, regardless of the size of the parcel of land being developed or re-developed.
- B. Agricultural land management activities.
- C. Maintenance or improvement of an existing structure which will not have an impact on the quantity and/or quality of surface water discharge from the site, and which are performed in such manner as to maintain pre-existing grade, facilities, boundaries, hydraulic capacity and/or function and purpose.
- D. Repairs to any stormwater management practice or facility deemed required by the Stormwater Management Officer.
- E. Cemeteries, graves, and plots therein which existed prior to the enactment of this law and/or which are exempt under State law, rule or regulation.
- F. Emergency activities undertaken to protect the life, health and safety of any person(s), or property or natural resources, as same may be deemed an emergency by the City Manager or by the Stormwater Management Officer.
- G. Home gardening undertaken for the personal benefit of the owner which does not generate the impacts intended to be regulated hereby.

§248-61. Prohibitions of illegal discharges.

No private or corporate person, owner, developer, contractor, site operator or other party or entity or agent shall discharge or cause to be discharged into any stormwater collection or conveyance system, natural watercourse or water body within the City of Newburgh or the MS4 any materials other than stormwater except as provided in Subsection A(1) hereinbelow. The commencement, conduct or continuance of any illegal discharge to the MS4 is prohibited except as described as follows:

- A. The following discharges are exempt from discharge prohibitions established by this article, unless the Department or the municipality has determined them to be substantial contributors of pollutants or the cause of impacts prohibited hereunder: water line flushing or flushing of other portable water sources, landscape irrigation or lawn watering, existing diverted stream flows, rising groundwater, uncontaminated groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains, crawl space or basement sump

pumps, air-conditioning condensate, irrigation water, springs, water from individual residential car washing, natural riparian habitat or wetland flows, dechlorinated swimming pool discharges, residential street washwater, water from fire-fighting activities, and any other water source not containing pollutants or causing impacts prohibited hereunder. Such exempt discharges shall be made in accordance with an appropriate plan for reducing pollutants or mitigating or eliminating prohibited impacts. With the exception of the discharges identified herein, no discharge piping from any floor drain, sanitary drains, process piping or other similar source shall be connected to any City-owned or -maintained stormwater collection and conveyance system. The Building Inspector and/or Code Enforcement Officer shall be authorized to enforce the provisions of this section.

- B. Discharges approved in writing by the SMO to protect life or property from imminent harm or damage, provided that such approval shall not be construed to constitute compliance with other applicable laws and requirements, and further provided that such discharges may be permitted for a specified time period and under such conditions as the SMO may deem appropriate to protect such life and property while reasonably maintaining the purpose and intent of this article.
- C. Dye testing in compliance with applicable state and local laws is an allowable discharge but requires a verbal notification to the SMO prior to the time of the test.
- D. This prohibition shall not apply to any discharge permitted under an SPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Department, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the MS4.
- E. Violations of this section shall be punishable by the penalties set forth in § 248-76 herein. Every new day, measured from 12:00 midnight, during all or part of which a violation is found to exist shall constitute a separate violation hereof. In addition to such penalty, the City may bring a separate civil action in any court of competent jurisdiction to recover from any violator(s) the cost of any damages caused by such violation plus the cost of remediating such damage, plus any legal and attorneys' fees and costs associated with such action, including the right of the City to compel compliance or to restrain by injunction any such violations of this section. This shall be in addition to any other penalties or remedies provided by any other law, regulation, or rule or section hereof.

§248-68. Access and monitoring of discharges.

A. Applicability. This section applies to all facilities that the SMO must inspect to enforce any provision of this Law, or whenever the authorized enforcement agency has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this Law.

B. Access to Facilities.

1. The SMO shall be permitted to enter and inspect facilities subject to regulation under this Law as often as may be necessary to determine compliance with this Law. If a person who is the owner or is in control of or is responsible for such premises or who is a discharger has security measures in force which require proper identification and clearance before entry into its premises, such person(s) shall make the necessary arrangements to allow access to the SMO.
2. Facility operators shall allow the SMO ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records as may be required to implement this law.
3. The municipality shall have the right to set up on any facility subject to this Law such devices as are necessary in the opinion of the SMO to conduct monitoring and/or sampling of the facility's stormwater discharge.
4. The municipality has the right to require the facilities subject to this Law to install monitoring equipment at the expense of the owner, operator or responsible person(s) or discharger(s) as is reasonably necessary to determine compliance with this Law. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by such person(s) at their own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
5. Unreasonable delays in allowing the municipality access to a facility subject to this Law is a violation of this Law. A person who is the owner, operator, person responsible for or discharger of a facility subject to this Law commits an offense if the person denies the municipality reasonable access to the facility for the purpose of conducting any activity authorized or required by this Law. Such offense shall be considered a Class A Misdemeanor and may be prosecuted as set forth in §248-76.
6. If the SMO has been refused access to any part of the premises from which is stormwater discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Law, or that there is a need

to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Law or any order issued hereunder, then the SMO may seek issuance of a search warrant from any court of competent jurisdiction in addition to all other remedies as set forth in this Chapter.

§ 248-70. Contents of a stormwater pollution prevention plan

The stormwater pollution prevention plan shall fully document compliance with the requirements of NYSDEC construction SPDES permit and New York State Stormwater Management Design Manual. All sites requiring a stormwater pollution prevention plan to be implemented must document a zero increase in peak discharge from the predevelopment conditions as compared to postdevelopment conditions.

§ 248-71. Components of a pollution prevention plan

A. Stormwater Pollution Prevention Plans shall be prepared by a professional licensed by the State of New York to prepare such documents. Plans shall consist of an analysis of the predevelopment runoff rates, versus post development runoff rates with engineering controls implemented to assure that predevelopment peak discharge at property lines, streams or water courses are not exceeded in the post development conditions for each design storm event and return frequency. Each stormwater management report shall take into account existing soils, vegetation and cover types, and topography in the analysis. Reports shall identify engineering computations and variables utilized in all calculations. Any assumptions utilized in the calculations shall be clearly identified. Stormwater management reports shall comply with the requirements of the New York State Stormwater Management Design Manual, (year of latest revision), and appropriate regulatory guidelines and standards. Additional information shall be provided as requested by the Planning Board, Building Inspector, Stormwater Management Officer. Stormwater management reports will address both water quantity control as well as water quality control including storage requirements for water quality and/or volume, stream, brook and other water and watercourse protection, ten-year peak runoff control and a 100 year flood control. Detention ponds shall be analyzed for a 25 year return frequency storm event for pre and post development runoff analysis. This local law by reference will utilize the New York State Stormwater Management Design Manual (year of latest revision) as a basis for stormwater management and design guidelines for stormwater management practices; and shall include such other and further provisions as the Stormwater Management Officer may reasonably require as being in the best interests of the City and as are required or defined in all applicable laws, rules and regulations.

B. Such Plans shall include but not be limited to the following:

- (1) Background information and erosion and sediment controls:

- (a) Background information about the scope of the project, including location, type and size of project.
- (b) Site map/construction drawing(s) for the project, including a general location map. At a minimum, the site map should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharges; *Site map should be at a scale no smaller than 1" = 100.*
- (c) Description of the soil(s) present at the site.
- (d) Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the New York Standards and Specifications for Erosion and Sediment Control (Erosion Control Manual), not more than five (5) acres shall be disturbed at any one time unless pursuant to an approved Stormwater Pollution Prevention Plan.
- (e) Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff.
- (f) Description of construction and waste materials expected to be stored on-site with updates as appropriate, and a description of controls to reduce pollutants from these materials including storage practices to minimize exposure of the materials to stormwater, and spill prevention and response.
- (g) Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project from initial land clearing and grubbing to project close-out.
- (h) A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice.
- (i) Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins.

- (j) Temporary practices that will be converted to permanent control measures.
 - (k) Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place.
 - (l) Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice.
 - (m) Name(s) of the receiving water(s).
 - (n) Delineation Plan implementation responsibilities for each part of the site.
 - (o) Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable.
 - (p) Any existing data that describes the stormwater runoff at the site.
- (2) Conditions A, B and C. In addition to the foregoing, land development activities as defined in this Law and meeting conditions "A", "B" or "C" below shall also include water quantity and water quality controls (post-construction stormwater runoff controls) as set forth below as applicable and as may be required by the Stormwater Management Officer.
- (a) Condition A: Stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water identified on the Department's 303(d) list of impaired waters or a Total Maximum Daily Load (TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.
 - (b) Condition B: Stormwater runoff from land development activities disturbing five (5) or more acres.
 - (c) Condition C: Stormwater runoff from land development activity disturbing between one (1) and five (5) acres of land during the course of the project, exclusive of the construction of single family residences and construction activities at agricultural properties.
- (3) SWPPP Requirements for Condition A, B and C:

- (a) All information in §248-71(B) (a-p) of this Local Law.
- (b) Description of each post-construction stormwater management practice.
- (c) Site map/construction drawing(s) showing the specific location(s) and size(s) of each post-construction stormwater management practice.
- (d) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms.
- (e) Comparison of post-development stormwater runoff conditions with pre-development conditions.
- (f) Dimensions, material specifications and installation details for each post-construction stormwater management practice.
- (g) Maintenance schedule to ensure continuous and effective operation of each post-construction stormwater management practice.
- (h) Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easement shall be recorded on the plan and shall remain in effect with transfer of title to the property.
- (i) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with the provisions of this local law.

C. Plan certification.

- (1) The Stormwater Pollution Prevention Plan shall be prepared by a landscape architect, certified professional or professional engineer and must be signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meets the requirements in this local law.
- (2) Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or stormwater management practice installation shall sign and date a copy of the following certification statement before undertaking any land development activity: "I certify under penalty of law that I understand and agree to comply with the terms and conditions of the Stormwater Pollution Prevention Plan. I also

understand that it is unlawful for any person to cause or contribute to a violation of water quality standards." The certification must include the name and title of the person providing the signature, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

- (3) A copy of the SWPPP shall be retained at the site of the land development activity during construction from the date of initiation of construction activities to the date of final stabilization.

D. Other environmental permits. The applicant shall assure that all other applicable environmental or legal permits and other approvals have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.

§ 248-73. Maintenance.

A. The Applicant or Developer

- (1) Stormwater management and stormwater pollution prevention plans shall address maintenance of all stormwater related improvements on subdivisions and site plans. Maintenance activity shall be the responsibility of the Owner and/or responsible party as defined herein of the site. Erosion control plans, in compliance with NYSDEC standards and as approved by the Planning Board, Zoning Board of Appeal, Building Department, Office of Code Compliance, or Stormwater Management Officer, or any office, department, agency or officer charged with enforcement of law, codes or regulations, shall be implemented prior to construction activities commencing on a site. Soil erosion control methods and techniques shown on the approved plans and any additional controls required by the Code Compliance Supervisor, Building Inspector, Stormwater Management Officer and/or City Engineer shall be implemented and maintained throughout the project construction phase. Erosion and sediment control devices shall remain properly maintained on the site until the site has been stabilized. Maintenance of stormwater management appurtenances on site plans shall continue to be the responsibility of the site Owner and/or responsible party as defined herein. Periodic maintenance of stormwater management control is required to assure their functions. Maintenance shall be performed in accordance with the stormwater pollution prevention plan and sound environmental practices, and as may be reasonably required by the Stormwater Management Officer. Maintenance activities shall include, but are not limited to, mowing of vegetation, removal of debris, removal of sediment, cleaning of catch basins and pipes, repair and replacement of defective structures, equipment, or devices. During construction, sediment shall be removed from sediment traps, sediment ponds and other sediment

collection facilities and points as soon as and whenever their total design capacity has been reduced for any reason or cause by fifty (50%) percent.

- (2) Post development maintenance of stormwater management facilities designed and constructed on a residential subdivision shall be performed by a Homeowners Association, or other individual, partnership, association, corporation, Owner or other legally-responsible party, or a drainage district established by the City Council in order to provide for required maintenance activities. Appropriate easements shall be provided to City and to other parties as necessary, for access to and maintenance of all stormwater management facilities. Costs for maintenance shall be borne either by a Homeowners Association, or other individual, partnership, association, corporation, Owner or other legally-responsible party, or a drainage district. Cost associated with maintenance within a district shall be assessed to each individual property annually on an ad valorem basis, as same is approved by the State Comptroller and as is assessed and administered under law.

- (3) The applicant or developer or their representative shall be on site at all times when construction or grading activity takes place and shall inspect and document the effectiveness of all erosion and sediment control practices. Inspection reports shall be completed every 7 days and within 24 hours of any storm event producing 0.5 inches of precipitation or more. The reports shall be delivered to the Stormwater Management Officer and also copied to the site log book.

B. Maintenance Easement(s). Prior to the issuance of any approval that has a stormwater management facility as one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility. The easement shall provide for access to the facility at all reasonable times for periodic inspection by the City of Newburgh to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this local law. The easement shall be recorded by the grantor in the office of the County Clerk after approval by the Corporation Counsel for the City of Newburgh.

C. Stormwater Management and Maintenance after Construction.

- (1) Owners and/or other responsible parties are hereby made responsible for the continued operation and maintenance of all stormwater management facilities on properties, construction sites and subdivisions. The policy of the City of Newburgh is to reduce negative impacts associated with construction activities, including reducing impacts to receiving water quality as well as to maintain appropriate erosion, run-off and flood control from

developed sites. All temporary soil erosion and sediment control devices and appurtenances required during the construction phase shall be maintained until sites become stabilized either through the provision of impervious surfaces or the establishment of vigorous vegetative growth, or the permanent establishment of such facilities and controls as the Stormwater Management Officer may reasonably require. All areas disturbed during construction shall be revegetated sufficiently to control erosion from all disturbed areas. Prior to issuance of a Certificate of Occupancy for a site plan or the first residential structure on a subdivision, the involved engineer shall certify to the Stormwater Management Officer that all stormwater management facilities have been constructed in conformance with the applicable stormwater pollution prevention plan. All appropriate and necessary elements of the stormwater pollution prevention plan shall become part of the approved site plan/subdivision and shall be enforceable by the City code enforcement officer. The City of Newburgh hereby recognizes that the stormwater management and soil erosion sediment control plans are an important part of site development plans and therefore require enforcement of the implementation of said plans as part of the site development building permit process, as well as of such other and further legal procedures as may be proper under applicable law, rules and regulations. All site plans and subdivisions which are subject to this stormwater management Local Law shall contain appropriate notes under seal of the authorized and licensed professional responsible therefor requiring ongoing maintenance of all stormwater management facilities and devices during construction. Annual review and inspection of the stormwater management facilities by the Owner, homeowners association, or other responsible party, or district as may be applicable, shall be required; and such other further and more frequent reviews, inspections and reports thereupon shall be performed as the Stormwater Management Officer may reasonably require.

- (2) The owner or operator of permanent stormwater management practices installed in accordance with this law shall be operated and maintained to achieve the goals of this law. Proper operation and maintenance shall include as a minimum, the following:
 - (a) A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this law.
 - (b) Written procedures for operation and maintenance and training and qualification of new maintenance personnel.

- (c) Discharges from the SMP's shall not exceed design criteria or cause or contribute to water quality standard violations.

D. Maintenance Agreements. The City of Newburgh may approve a formal maintenance agreement for stormwater management facilities binding on all subsequent landowners and recorded in the office of the County Clerk as a deed restriction on the property prior to final plan approval. The maintenance agreement shall be consistent with the terms and conditions of this local law and all applicable provisions of local or State code, rules and regulations. The City of Newburgh, in lieu of a maintenance agreement, at its sole discretion may accept dedication of any existing or future stormwater management facility, provided such facility meets all the requirements of this local law and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

E. Maintenance Bonds; Required documents and filing

(1)

Construction completion guarantee. In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the City in its approval of the Stormwater Pollution Prevention Plan, the City may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the City of Newburgh as the beneficiary. The security shall be in an amount to be determined by the City based on submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the City, provided that such period shall not be less than one year from the date of final acceptance or such other certification that the facility(ies) have been constructed in accordance with the approved plans and specifications and that a one year inspection has been conducted and the facilities have been found to be acceptable to the City. Per annum interest on cash escrow deposits if any shall be reinvested in the account until the surety is released from liability.

(2) Maintenance guarantee. Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required in the City's discretion to provide the City with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control

facilities both during and after construction, and until the facilities are removed from operation. If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the City may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs. Owners, developers and/or their authorized agents shall execute necessary agreements, documents, deed restrictions, covenants or easements, and any and all other required documents required to comply with this and other provisions of this local law, and shall be responsible for satisfying all filing and certification requirements prior to final approval of a residential subdivision by the City Planning Board.

§ 248- 75. Fees for services.

The City of Newburgh may require any person undertaking land development or other activities regulated by this article to pay reasonable costs at prevailing rates for review of SWPPPs, inspections, or SWP maintenance performed by the City or performed by a third party for or on behalf of the City. The City may require the payment of such fees and/or the establishment of an escrow account in an amount to be determined by the City upon the recommendation of the Stormwater Management Officer to provide a fund sufficient to pay the reasonably anticipated costs thereof.

§ 248- 76. Enforcement; penalties for offenses; civil action and other remedies.

A. Notice of violation.

(1) The City shall have the right to gain access to and to inspect any stormwater sewer or other collection system or conduct, whether man-made or natural or combination of both, in the same manner and with the same authority as provided by this article or by any law, code, rule or regulation which provides the City with the authority to gain access to and inspect property and structures to ensure and enforce compliance with all state and local building, fire, safety and health codes, rules and regulations, including but not limited to this article. When the City determines that a land development activity is not being carried out in accordance with the requirements of this article or that a person has violated a provision hereof, it may issue a written notice of violation to the landowner, operator, person responsible for same or the discharger. The notice of violation shall contain:

- (a) The name¹ and address of the landowner, developer, applicant, operator, discharger and/or responsible party.
- (b) The address, when available, or a description of the building, structure or land upon which the violation is occurring.
- (c) A statement specifying the nature of the violation.

- (d) A description of the remedial measures required of the owner, operator, person responsible or discharger necessary to bring the land development activity and/or to eliminate any illicit or illegal connections or discharges and to bring such premises and persons into compliance with this article, and a time schedule for the completion of such remedial action.
 - (e) A statement of the penalty or penalties that are, shall be or may be assessed against the person to whom the notice of violation is directed.
 - (f) A statement and description of any monitoring, analysis and reporting requirements to be imposed.
 - (g) A statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within 15 days of service of notice of violation with the Code Compliance Office.
 - (h) The description of the required implementation of source control or treatment BMPs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.
- (2) Cease and desist/stop-work orders. The City may issue a cease and desist and/or a stop-work order for violations of this article. Persons receiving a cease and desist or stop-work order shall be required to halt all land development activities, except those activities that address the violations leading to the order as the City may allow. The order shall be in effect until the City confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure to obey an order in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this article.
- (3) Injunctions. Any land development or other activity that is commenced or is conducted contrary to this article may be restrained by injunction or otherwise abated in a manner provided by law. The City may recover from the violator(s) any and all of its costs and expenses, including attorneys' fees incurred in securing injunctive relief, fines or other relief or remedies.
- (4) Withholding of certificate of occupancy or other approval or permit. If any building or land development or other activity is installed or conducted in violation of this article, the City Engineer, Stormwater Management Officer and/or Code Enforcement Officer may prevent the occupancy of said building or land by withholding, suspending or rescinding a certificate of occupancy or other permit issued by any City agency or official.
- (5) Restoration of lands. Any violator may be required to restore land and related facilities to its undisturbed condition and to remove or to require corrections of defective or noncompliant or illegal connections to any storm sewer system or other system or conduit, whether man-made or natural or any combination

thereof. In the event that restoration is not undertaken within a reasonable time after notice, the City may take necessary corrective action, the cost of which shall become a lien upon the property until paid. If said cost remains unpaid, it shall become a tax upon the premises and may be enforceable by the City in the same manner as provided by law for the enforcement of unpaid taxes, as provided for and as described in § 248-65A(2) hereinabove.

- (6) Appeal of notice of violation. Any person receiving a notice of violation may appeal the determination of the SMO to the City Manager within 15 days of its issuance, who shall hear the appeal within 30 days after the filing of the appeal, and within five days of making a decision, shall file such decision in the office of the Municipal Clerk and mail a copy of the decision by certified mail to the violator(s).

B. Alternative remedies.

(1) Where a person has violated a provision of this article, he/she may be eligible for alternative remedies in lieu of a civil penalty, upon recommendation of the City Manager and/or SMO and/or Director of Code Compliance, where:

- (a) The violation was unintentional.
- (b) The violator has no history of previous violations of this article.
- (c) Environmental damage was minimal.
- (d) The violator acted quickly to remedy the violation.
- (e) The violator cooperated in investigation and resolution.
- (f) Other significant mitigating factors exist.

(2) Alternative remedies may consist of one or more of the following:

- (a) Attendance at compliance workshops.
- (b) Storm drain stenciling or storm drain making.
- (c) River, stream or creek cleanup activities.
- (d) Any other activity deemed by the City to be a significant contribution to the health, safety and welfare of the City of Newburgh, its citizens and/or the environment.

C. Penalties. Any person who commits any act in violation of any provision of this article shall be deemed to have committed an offense and shall be liable for penalties imposed herein for such violation. Each act committed in violation of any provision of this article shall constitute a separate offense. Each day a violation continues shall be deemed a separate act.

(1) Except as otherwise provided in this article, for every violation of every provision of this article, a person shall be subject to a fine of not less than \$200 but not more than \$1,000 or imprisonment not exceeding 15 days, or both.

(2) Any person violating this article shall be subject to a civil penalty enforceable and collectable by the City in the amount of \$500 for each such offense.

(3) In addition to the above-provided penalties, the City also may bring an action or proceeding in the name of the City in the City Court of the City of Newburgh, or other court of competent jurisdiction, to compel compliance with, or to restrain by injunction or otherwise, the violation of this article, or of the New York State Department of Environmental Conservation Rules and Regulations, notwithstanding that a penalty or other enforcement measure for such violation has otherwise been provided or imposed.

(4) In addition to the foregoing and at the City's discretion, after due notice and opportunity to correct any violation(s) have been given by the City, the City may undertake any and all necessary and proper actions to correct such violation(s). The City may, then seek full reimbursement for all of its costs and expenses, including attorneys fees and court costs, which the City has incurred for such corrections and any legal action brought hereunder, as provided in § 248-65A(2) hereinabove.

- D. Remedies not exclusive. The remedies listed in this article are not exclusive of any other remedies available under this article; under any other local law, regulation, rule, code or ordinance; or under any applicable federal, state, county or regulatory law, code, rule or regulation, and it shall be within the discretion of the City and its enforcement officers to seek individual or cumulative or any combination of such remedies.

Strikethrough denotes deletions

Underscore denotes additions

PUBLIC HEARING

Mayor Kennedy called a public hearing that was advertised for this meeting to hear public comment concerning the development of the long term control plan for the City of Newburgh combined sewer overflow.

Craig Marti, City Engineer, said that the long term control plan is related to the combined sewer overflow situation which the City has. We are under a consent order with the New York State Department of Environmental Conservation for which we have retained the services of Malcolm Pirnie to evaluate our existing system and develop a long term plan that will help the City achieve compliance with DEC and EPA regulations.

Robert E. Ostapczuk with Malcolm Pirnie gave an overview of the development of the long term control plan for the City of Newburgh combined sewer overflow.

Craig Marti, City Engineer, said that the purpose of tonight's presentation is to inform the public of where we have been and where we are going with regard to the program. He said that the comments, questions and concerns received tonight will be considered as they develop the rest of their plan.

Barbara Smith, Powell Avenue, said that she is totally ignorant to what they are talking about and she did not thoroughly understand it. She said that with the faulty system that we have currently could they please explain in layman's terms what is happening now with our water system and the runoff and the combined system. What are they planning or how are we going to improve whatever it is that is happening negatively at this particular moment with the rain outside?

Robert E. Ostapczuk responded that most likely the intensity of rain we just had for that brief period of time he would say that some of the regulators were overwhelmed with a lot of small but frequent overflows so flows of mostly runoff were going out to the river with the permitted overflows. As far as what the City can do with moving forward is kind of where they are right now. They are just starting that analysis and there are multiple solutions. It might even be a combination of solutions.

Richard Peterson, City of Newburgh, said that he is a representative of Varick Homes and he thinks that further discussion should be personalized a bit. There is an ongoing problem at Varick Homes that started when they redeveloped the Waterfront as a play land and they put some waste and catch basins on Colden Street and Water Street that are just below the Project.

When there is a heavy downpour you will get a white water bubbling up out of the channels that backs up into the property and he will guarantee that before the week is over they will have to have two or three plumbing services to clean our drains because the water backs up. He knows that this is not typically what should happen with this discussion but this should be more personal for the people who are affected by it. They are severely affected by it because their plumbing bill has soared in the last eight or nine years because of this problem. He thinks that we need to have an agenda that deals with individual cases of where the system is breaking down.

Kippy Boyle, Grand Street, said that she is looking at an agenda dated May 23, 2011 listing a public hearing concerning the municipal stormwater management program for the City of Newburgh as required by the New York State Environmental Conservation law and the rules and regulations of the New York State Department of Environmental Conservation. That was a year ago so she is confused at this point. She understands that there is discussion about the sewer portion of it but it seemed like the thing discussed at the Work Session was about pollution control and it was not about a sustainable plan. She hopes that during this review there will be an opportunity to look at green solutions. As an example, with the downpour we just had, how much runoff would it save if instead of roof runoff going into those drains if they were going into the ground directly?

Craig Marti, City Engineer, said that he believes the public hearing from last year was one that will be coming up again this year which deals with our annual MS4 report which is a different program. As for the green infrastructure, that is always a part of the options in the development of a long term control plan. It works very well in some cities depending on the size and type of problem and in other cities it is less cost effective so that is part of the financial analysis that they will be preparing for.

There being no further comments this public hearing was closed.

COMMENTS FROM THE PUBLIC REGARDING THE AGENDA

Sheila Monk, 36-38 Chamber Street, said in regard to resolution #76-2012 that she thought the youth advocate program was already doing jobs for the youth in the community and that they were starting at \$8.50 per hour. Her concern is that if they are starting their youth off at \$8.00 per hour and the City is starting theirs off with \$10.00, \$11.00 and \$12.00 can that be looked into? She also thought that the youth program for the summer jobs was already closed. She asked for a better explanation on resolution #78-2012 and on resolutions #80, 82, 83 & 84 she sees a lot of this on the agenda regarding settlements so she thinks that the public should have knowledge about that.

Janet Gianopoulos, City of Newburgh said that she thinks some of the agenda items are premature. Since we had so many in-rems published earlier this spring she thinks that before we look into things like the Varick Homes agreement for thirty-five more years for certain people we need to look at what we are doing to the current homeowners like how the government is taking money from those homeowners and giving it to other people. In regard to resolution #86-2012, she is not sure how the water fund works but wouldn't some of that funding come from the water enterprise fund?

Kippy Boyle, Grand Street, said that in regard to resolution #85-2012 the Council did not ask any questions at the Work Session. She thinks that this is for a thirty-five year PILOT so she thought there might have been a question or two. She would like to know what the annual PILOT payments will be and what the schedule is. On resolution #86-2012 she did not understand this whole transfer of funds. She was under the impression that the water fund has quite a substantial balance so why would we be transferring money to that. The explanation of how the money was going to be used for painting the water towers versus replacing them should have been on a chart so that everyone could see the analysis because it was really complicated with a lot of rearranged numbers. She would like a clearer description of that and she definitely wants to know what the current balance of the water fund is.

Richard Peterson, representative of Varick Homes, said that they are trying to work as a partner with the City of Newburgh to provide affordable, accessible housing to low-income tenants at a very high quality. They are trying to maintain that high quality by not increasing the rents or privatizing and getting market rent from everybody forcing the people out that can't pay it. In the meantime, their lawyers and advanced administrative team have been working with the City Manager and the City Attorney so as information becomes available they will make it public. They are just trying to survive in a

difficult market and make sure that people who can't defend themselves or afford decent housing have a decent place to live. They have always partnered with the City and from his initial onset, the only person here who might remember is Councilwoman Angelo, they were a half million dollars in the hole with Central Hudson and a million and a quarter with the City of Newburgh but they paid every dime off within five years. They did not ask for a penny from anyone because they had fair rates under the PILOT. He said that they are just trying to stay alive and do for others that can't do for themselves.

There being no further comments, this portion of the meeting was closed.

COMMENTS FROM THE COUNCIL REGARDING THE AGENDA

Councilwoman Lee commented that she might be leaving early this evening due to an emergency so she wanted to note that she is one hundred percent in support of the letter that has been written to our Orange County Executives regarding the shooting of Michael Lembhard. The reason that she is in support of it is because we have had five murders in four years and it is time that we have an outside and independent Investigator. She is still willing to send a letter on her own if their group letter doesn't suffice. She also wanted to thank Mr. Peterson from Varick Homes because she has been asking for not-for-profits to enter into PILOT agreements but most do not. She doesn't want to put all of our problems on the back of Varick Homes because we still have entities here that don't and won't pay taxes.

Mayor Kennedy said that we as Council members might want to take a look at the whole discussion about PILOT's to see if we can put some standards in place as far as payments and how we handle the various not-for-profits and what homes they provide so that we are not giving one percentage to one group and a different percentage to another group. We shouldn't be having favoritism. She is not sure what rate has been set up with Varick Homes but we need to put some standards in place so that we are treating everyone fairly.

There being no further comments, this portion of the meeting was closed.

CITY MANAGER'S REPORT

City Manager, Richard Herbek wanted to let the City Council and the public know that on June 6, 2012 at 6:00 P.M. we will be back here to hear from PACE University on the work for the PACE Land Use Law Center. They will be presenting their recommendations for streamlining the City's current land use process. This is extremely important as a lot of work has gone into this and information will be provided to the Council in advance. He also noted that from June 4th to June 9th the Builders Blitz will be taking place on Chambers Street. It will be exciting and interesting to watch these homes going up in a period of five days.

RESOLUTION NO.: 74 - 2012

OF

MAY 29, 2012

**A RESOLUTION AUTHORIZING THE ACCEPTANCE OF A GRANT IN
THE AMOUNT OF \$500.00 FROM THE ORANGE COUNTY HISTORIAN
FOR THE PURPOSE OF IDENTIFYING MATERIALS IN THE CITY'S
ARCHIVES RELATED TO THE CIVIL WAR AND TO THE WAR OF 1812
TO BE INCORPORATED INTO AN E-EXHIBIT ON
THE HUDSON RIVER VALLEY HERITAGE WEBSITE**

WHEREAS, the City has an extraordinary collection of primary historic 19th century Village of Newburgh and City of Newburgh materials such as minutes and documents; and

WHEREAS, many of the materials have been photocopied, scanned and transcribed through a National Park Service grant; and

WHEREAS, the Orange County Historian recognizes the significance of the City's archives and has offered the City a grant in the amount of \$500.00 to identify materials relating to the current nationwide recognition of the anniversaries of the Civil War and the War of 1812; and

WHEREAS, the City is willing to match the grant solely with Records Management Officer, City Historian, volunteer and intern hours, totaling 69 hours, in the identifying, scanning, and interpreting of the materials, and in the creating of the e-exhibit; and

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be authorized to accept a grant from the Orange County Historian in the amount of \$500.00 for the purpose of identifying materials in the City's archives related to the Civil War and to the War of 1812 to be incorporated into an e-exhibit on the Hudson River Valley Heritage website.

Councilwoman Angelo moved and Councilwoman Lee seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

RESOLUTION NO.: 75 - 2012

OF

MAY 29, 2012

**A RESOLUTION AUTHORIZING THE EXECUTION
OF A RELEASE OF RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY
FROM A DEED ISSUED TO MIGUEL CHAVEZ
TO THE PREMISES KNOWN AS 387 FIRST STREET
(SECTION 28, BLOCK 1, LOT 12)**

WHEREAS, on June 17, 2011, the City of Newburgh conveyed property located at 387 First Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 28, Block 1, Lot 12, to Miguel Chavez; and

WHEREAS, Mr. Chavez has requested a release of the restrictive covenants contained in said deed; and

WHEREAS, the appropriate departments have reviewed their files and advised that the covenants have been complied with, and recommends such release be granted; and

WHEREAS, this Council believes it is in the best interest of the City of Newburgh to grant such request;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute the release, annexed hereto and made a part of this resolution, of restrictive covenants numbered 1, 2, 3, 4 and 5 of the aforementioned deed.

Councilwoman Angelo moved and Councilwoman Lee seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

KNOWN ALL PERSONS BY THESE PRESENTS, that the City of Newburgh, a municipal corporation organized and existing under the Laws of the State of New York, and having its principal office at City Hall, 83 Broadway, Newburgh, New York 12550, in consideration of TEN (\$10.00) DOLLARS lawful money of the United States and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby release and forever quitclaim the premises described as 387 First Street, Section 28, Block 1, Lot 12, on the Official Tax Map of the City of Newburgh, from those restrictive covenants numbered 1, 2, 3, 4 and 5 in a deed dated June 17, 2011, from the CITY OF NEWBURGH to MIGUEL CHAVEZ, recorded in the Orange County Clerk's Office on June 29, 2011, in Liber 13193 of Deeds at Page 1542 and does further release said premises from the right of re-entry reserved in favor of the City of Newburgh as set forth in said deed.

THE CITY OF NEWBURGH

RICHARD F. HERBEK,
City Manager

On the _____ day of _____ in the year 2012, before me, the undersigned, a Commissioner of Deeds in and for said State, personally appeared RICHARD F. HERBEK, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

RESOLUTION NO.: 76 - 2012

OF

MAY 29, 2012

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO AGREEMENTS WITH YOUTH ADVOCATE PROGRAMS,
INC. AND AGE ELIGIBLE YOUTH PARTICIPATING IN THE SUMMER
YOUTH PLACEMENT AND PREVENTION PROGRAM TO PROVIDE JOBS
FOR YOUNG PEOPLE TO WORK FOR THE CITY OF NEWBURGH

WHEREAS, Youth Advocate Programs, Inc. is offering a Placement and Prevention Program for the purpose of providing meaningful work experience for participants; and

WHEREAS, such program shall be open to at risk age eligible youth from the ages of 14 to 21; and

WHEREAS, such program will assist them in obtaining skills and enhancing their resumes for the goal of full time employment; and

WHEREAS, various City Departments have expressed an interest in using this program to provide employment experience for young people and service to the City of Newburgh; and

WHEREAS, this Council finds that entering into each such agreement with Youth Advocate Programs, Inc. and its age eligible youth for this purpose is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into agreements with Youth Advocate Programs, Inc. and age eligible youth participating in the Summer Youth Placement and Prevention Program to provide jobs for young people to work for the City of Newburgh.

City Manager, Richard Herbek, noted that we do not set the rates or even pay the individuals. This is handled through the program and all we are doing is providing the employment opportunities. He believes that they try to place about thirty individuals at any one time which is what the Budget

provides. We met with the individuals who are running the program, canvassed our departments and came up with three or four possibilities for placement. We will need to meet with these individuals to make sure that they will meet the needs of what we have. Some are secretarial positions and others are more workforce related projects possibly with the Department Public Works. He believes that this will be the third program that we have been involved in. One is our own program that we have had for many years where we have a certain number of summer positions paid for out of the City Budget. These are usually individuals who are home from College working with us at the Pool and Day Camp. There is also the County Youth Employment Service which is another one so there are various employment opportunities for young people which is great.

Councilman Dillard said that he is looking for the Gidney Avenue Park to be reopened. There are a lot of kids who go there and this would be an ideal opportunity to bring some supervision there and create some jobs.

Mayor Kennedy noted that she might have a solution to that. She received a call from the Orange County Employment and Training Group and they have additional money available. It would be up to us to define a project that has a specific scope and have a supervisor to oversee it. It would be up to us to create this project and create what we need to have done. Orange County is being very helpful with trying to help us create more job opportunities for the youth and she would like to take advantage of that. They need to look at what projects they can put together so she wants to have these discussions ASAP.

Councilwoman Lee moved and Councilwoman Angelo seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

RESOLUTION NO.: 77- 2012

OF

MAY 29, 2012

**A RESOLUTION APPOINTING MEMBERS
TO THE COMMUNITY DEVELOPMENT BLOCK GRANT ADVISORY
COMMITTEE**

WHEREAS, the City of Newburgh is awarded Community Development Block Grant ("CDBG") funds by the Department of Housing and Urban Development ("HUD") to support community development projects; and

WHEREAS, the rules and regulations of HUD require the City to appoint a committee to give guidance and advice with respect to the expenditure of CDBG funds for community development projects; and

WHEREAS, pursuant to Resolution No. 278-2010 of December 13, 2010 the membership of the CDBG Advisory Committee shall consist of the following nine (9) members:

- Four (4) members, at least two (2) of whom represent the low income community, on the basis of their knowledge and interest in housing, homeless needs, disability rights, youth services, seniors and social services.
- Three (3) professional practitioners on the basis of their expertise in the areas of housing, homeless needs, disability rights, youth services, seniors and social services.
- One (1) Member of the City Council.
- One (1) City employee who is a staff member of the Department of Planning and Development.

WHEREAS, it is necessary to appoint members to such CDBG Advisory Committee;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the following individuals be and are hereby appointed as new members to the CDBG Advisory Committee, effective immediately:

Pastor Burke - Community Member
Angel Figueroa - Community Member
Roxie Royal - Community Member
Tamie Hollins - Community Member
Cheryl Noel - Professional Practitioner
Nora Cofresi - Professional Practitioner
Barbara Smith - Professional Practitioner
Judy Kennedy - City Mayor
Courtney Kain - City Employee

Councilwoman Lee moved and Councilwoman Angelo seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

RESOLUTION NO.: 78 - 2012

OF

MAY 29, 2012

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO NEGOTIATE ON BEHALF OF THE CITY OF NEWBURGH
A LAND DEVELOPMENT AGREEMENT WITH
MILL STREET PARTNERS, LLC, THE COMMUNITY PRESERVATION
CORP. AND THE REGIONAL ECONOMIC COMMUNITY ACTION
PROGRAM, INC. IN CONNECTION WITH THE DEVELOPMENT OF CITY
OWNED PROPERTIES KNOWN AS THE MID-BROADWAY SITE**

WHEREAS, the City of Newburgh wishes to develop the City-owned .66 acre Lander Street surface parking lot (between Chambers Street and Lander Street) as well as the 1.8 acre principal site that fronts on Broadway (the "Mid-Broadway Site"); and

WHEREAS, the City has issued a Request For Qualifications (RFQ) for the development of the Mid-Broadway Site and received six (6) responses from developers interested in pursuing a development project on the Mid-Broadway site; and

WHEREAS, the City Council has reviewed the responses to the RFQ and has determined that Mill Street Partners, LLC, The Community Preservation Corp. and The Regional Economic Development Community Action Program, Inc. is the preferred team to develop the Mid-Broadway site; and

WHEREAS, to advance the progress of said project it is necessary, appropriate and in the best interests of the City to negotiate a Development and Land Disposition Agreement with Mill Street Partners, LLC, The Community Preservation Corp. and The Regional Economic Development Community Action Program, Inc.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to negotiate on behalf of the City of Newburgh a Development and Land Disposition Agreement with Mill Street Partners, LLC, The Community Preservation Corp. and The Regional Economic Development Community Action Program, Inc. for the development of the Mid-Broadway site.

City Manager, Richard Herbek, said that we had six developers who expressed interest about a year ago in this Project. The former Council went through a process where presentations were made but they tabled moving forward in August of 2011. This Council wanted to reopen the discussion with various developers and made the decision that we should move forward with negotiating a Land Development Agreement with Mill Street Partners, the Community Preservation Corp. and the Regional Economic Community Action Program, Inc.

Councilwoman Angelo feels that this is a very important resolution for the City of Newburgh. Some of the goals that they presented will be bringing new revenue into the City, creating jobs for Newburgh residents and maximizing community involvement and input during the planning process attracting more residents to move and live downtown. They also want to create a huge supermarket in that area. She asked the City Manager if we officially own the building in the back.

City Manager, Richard Herbek, said that we do not own that and it makes sense to be part of the project. That will have to be part of the discussion once we get to that point. That building is empty at this time.

Councilman Dillard said that this land has sat vacant for the last three years and this could create an opportunity for the City that it has not had in a long time. We have the opportunity now to create jobs under Section 3 and hire local people with training. He has prayed and wished for this project to come forth and he finally has fellow Council members that have the guts to take the risk. He feels that this developer can do the job what we need him to do in terms of financing, hiring local people and bringing us a polished project.

Councilwoman Lee said that this is an exciting moment. She has been coming to the City Council meetings since 2007 and it always frustrated her when no decision was made so she thinks that this is going to be landmark. She supports giving the City a face lift that doesn't price the lifetime residents of the City out of the City. She thinks that this is a good balance and she hopes that this passes tonight.

Mayor Kennedy thinks that this is an important resolution and an opportunity for the City. She said she can support this partnership but she wants to make sure that we build the right thing and we do it in a timely manner. This Land Disposition Agreement has to be very carefully crafted so that we manage it properly and we hire local people. She does have some concern about a grocery store because there is already one right across the street from there and this would put them out of business. She also wants to

make sure that any kind of PILOT that comes out of this we recognize that we have taxpayers that are also full time residents so we have to make sure that any PILOT agreement that comes out of this is a fair PILOT that also considers our taxpayers.

Councilwoman Angelo moved and Councilwoman Lee seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

RESOLUTION NO.: 79 - 2012

OF

MAY 29, 2012

**A RESOLUTION DIRECTING THE CITY MANAGER TO ISSUE A
PUBLIC EVENT PERMIT TO
THE POP WARNER YOUTH FOOTBALL LEAGUE FOR
A COMMUNITY TAG DAY/COIN DROP FUNDRAISER**

WHEREAS, the Pop Warner Youth Football League has submitted a proposal to conduct a community tag day/coin drop fundraiser in at the corner of Broadway and Route 9W (Robinson Avenue), corner of Lake Street and Washington Street, corner of Broadway and Wisner Avenue and the corner of Washington Street and Water Street in the City of Newburgh; and

WHEREAS, such proposal includes adult participants standing in the roadways to collect money; and

WHEREAS, City staff has reviewed the fundraising proposal and recommended that no persons be permitted to stand in the roadways during the fundraiser; and

WHEREAS, the City Council of the City of Newburgh finds that the permitting the Pop Warner Youth Football League to conduct its fundraiser as proposed to be in the best interests of the City of Newburgh.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby directed and authorized to issue a public event permit to the Pop Warner Youth Football League to conduct a community tag day/coin drop fundraiser as proposed subject to the following conditions:

- The submission of a Certificate of Liability Insurance, naming the City of Newburgh as an additional insured, in the form and amounts required by Chapter 110, "Mass Gatherings and Public Events" of the Code of Ordinances of the City of Newburgh;
- An addendum to the permit agreeing to defend and indemnify and hold harmless the City of Newburgh with respect to any all actions taken by

the Pop Warner Youth Football League in connection with the community tag day/coin drop fundraiser

- Identification of each and every location where participants will collect money;
- All participants to wear reflective safety vests;
- No children shall stand in the roadway to collect money at any time during the fundraising event.

Councilwoman Lee said that her concern is with the coin drop in the center of the street. She still has a hard time with it but she is trying to work through her own issues about being in the streets and car accidents and such so it is not personal. She still has three people to vote before she decides but it is very difficult for her because she doesn't want anyone in the street.

Councilwoman Angelo said that she feels the same way. She is leery about the areas that they are going to conduct the coin collection. She knows that we stopped this quite a while ago and told the members of Pop Warner that they will have to be very careful when they are on the street.

An audience member noted that it will be the adults doing the collecting with the kids on the sidewalks looking cute in their uniforms.

Councilwoman Lee moved and Councilwoman Angelo seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Mayor Kennedy - 4

Nays - Councilwoman Lee - 1

ADOPTED

RESOLUTION NO.: 80 - 2012

OF
MAY 29, 2012

A RESOLUTION AUTHORIZING THE SETTLEMENT OF
LITIGATION REGARDING THE IN REM TAX FORECLOSURE
OF LIENS FOR THE YEARS 2009, 2010 AND 2011 RELATIVE TO
104 PROSPECT STREET (SECTION 16, BLOCK 11, LOT 26)

WHEREAS, The City of Newburgh commenced proceedings for the foreclosure of certain tax liens, such actions being designated as Orange County Index Numbers 2009-12857, 2010-012561 and 2012-001071; and

WHEREAS, the attorneys for HBSC have advised the City that they are prepared to settle such action; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to settle this matter;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to withdraw the liens on the property located at 104 Prospect Street (Section 16, Block 11, Lot 26), City of Newburgh, from the List of Delinquent Taxes, provided that the sum of Twenty Four Thousand Four Hundred Twenty Five and 53/100 (\$24,425.53) Dollars representing all past due tax liens, together with all interest and penalties accruing thereon, together with all currently due taxes and charges, water charges and sewer charges, are all paid in full by certified or bank check on or before June 8, 2012.

Corporation Counsel, Michelle Kelson, explained that the property owner filed a bankruptcy petition that prevented us from moving forward on the 2009 tax lien. The bank came forward wanting to pay the amounts due but they are not eligible for the installment payments because they are not the property owner. We were able to lift the bankruptcy stay from the property owner so we can accept the money but it is past the redemption date for both of those tax years so we need authorization from the Council to do that.

Councilwoman Lee moved and Councilwoman Angelo seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

RESOLUTION NO.: 81 - 2012

OF

MAY 29, 2012

A RESOLUTION TO AUTHORIZE THE COMMENCEMENT OF
LITIGATION AGAINST TRAVELERS CASUALTY & INDEMNITY
COMPANY REGARDING ITS DEFENSE AND INDEMNIFICATION
ON BEHALF OF THE CITY OF NEWBURGH IN CONNECTION WITH
THE CLAIM OF JAMELL T. COLEMAN

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that it hereby authorizes Dennis J. Mahoney, Esq., and his law firm of Burke, Miele & Golden, LLP, to commence a declaratory judgment action against Travelers Casualty & Indemnity Company (and such other defendants as is legally appropriate) for the defense and indemnification of the City of Newburgh, and for such other and different legal remedies that may be available and advantageous to the City in connection with the claim of Jamell T. Coleman.

Councilwoman Lee moved and Councilwoman Angelo seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

RESOLUTION NO.: 82 - 2012

OF

MAY 29, 2012

**A RESOLUTION TO AUTHORIZE A SETTLEMENT IN THE MATTER OF
BRIAN REILLY AGAINST THE CITY OF NEWBURGH
IN THE AMOUNT OF TWENTY THOUSAND DOLLARS**

WHEREAS, the City of Newburgh and Brian Reilly have brought claims against each other; and

WHEREAS, Mr. Reilly and the City of Newburgh have reached an agreement for the payment of the settlement in the amount of Twenty Thousand (\$20,000.00) Dollars in exchange for a release to resolve all claims among them; and

WHEREAS, this Council has determined it to be in the best interests of the City of Newburgh to settle the matter for the amount agreed to by Mr. Reilly and the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the Corporation Counsel is hereby authorized to settle the claim of Brian Reilly against the City of Newburgh in the total amount of Twenty Thousand (\$20,000.00) Dollars and that City Manager be and he hereby is authorized to execute documents as the Corporation Counsel may require, to effectuate the settlement as herein described.

Michelle Kelson, Corporation Counsel, explained that Mr. Riley has claims against the City and the City has claims against Mr. Riley. In exchange for the payment, each party will release the other from any further litigation moving forward. Considering that this is eight years old she feels that settling this matter at this time is probably in the best interest of all parties.

Councilwoman Lee moved and Councilwoman Angelo seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

RESOLUTION NO.: 83 - 2012

OF

MAY 29, 2012

**A RESOLUTION AUTHORIZING THE SETTLEMENT OF
LITIGATION REGARDING THE IN REM TAX FORECLOSURE
OF LIENS FOR THE YEAR 2009 and 2010 RELATIVE TO
206 NORTH MILLER STREET REAR (SECTION 11, BLOCK 2, LOT 30)**

WHEREAS, The City of Newburgh commenced proceedings for the foreclosure of certain tax liens, such actions being designated as Orange County Index Numbers 2009-12857 and 2010-012561; and

WHEREAS, Lawrence Roundtree has advised the City that he is the son of the owner of record, Freddie Roundtree, and they are prepared to settle such action; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to settle this matter;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to withdraw the liens on the property located at 206 North Miller Street Rear (Section 11, Block 2, Lot 30), City of Newburgh, from the List of Delinquent Taxes, provided that the sum of Five Hundred Seventy One and 54/100 (\$571.54) Dollars representing all past due tax liens, together with all interest and penalties accruing thereon, together with all currently due taxes and charges, water charges and sewer charges, are all paid in full by certified or bank check on or before June 15, 2012.

Councilwoman Angelo moved and Councilwoman Lee seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

RESOLUTION NO.: 84 - 2012

OF

MAY 29, 2012

**RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A PAYMENT OF CLAIMS BY
PROGRESSIVE INSURANCE A/S/O JORGE PACHECO
FOR MEDICAL AND WAGE BENEFITS IN THE AMOUNT OF \$7,714.76
AND JORGE AND JOCELYN PACHECO, INDIVIDUALLY,
THE AMOUNT OF \$10,000.00**

WHEREAS, Progressive Insurance has made a subrogation claim on behalf of its insured, Jorge Pacheco, against the City of Newburgh for first party medical and wage payments in the amount of Seven Thousand Seven Hundred Fourteen and 76/00 Dollars (\$7,714.76); and

WHEREAS, Jorge and Jocelyn Pacheco have made an individual claim against the City for personal injuries; and

WHEREAS, the Pachecos and the City have reached an agreement for the payment of the claim in the amount of Ten Thousand Dollars (\$10,000.00) in exchange for a release to resolve property damage claims among them; and

WHEREAS, this Council has determined it to be in the best interests of the City of Newburgh to settle the matter for the amount owed to Progressive and the amount agreed to by the Pachecos and the City;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the Corporation Counsel is hereby authorized to settle the subrogation claim of Progressive Insurance a/s/o Jorge Pacheco for medical and wage benefits in the total amount of Seven Thousand Seven Hundred Fourteen and 76/100 Dollars (\$7,714.76) and that City Manager be and he hereby is authorized to execute documents as the Corporation Counsel may require to effectuate the settlement as herein described; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York, that the Corporation Counsel is hereby authorized to settle the individual claim of Jorge and Jocelyn Pacheco in the amount of Ten Thousand

Dollars (\$10,000.00) and that the City Manager be and he hereby is authorized to execute documents as the Corporation Counsel may require to effectuate the settlement herein described.

Councilwoman Lee moved and Councilwoman Angelo seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

RESOLUTION NO.: 85 - 2012

OF

MAY 29, 2012

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE AN AGREEMENT FOR THE
PAYMENT IN LIEU OF TAXES BY AND AMONG
THE CITY OF NEWBURGH AND VARICK
HOMES HOUSING DEVELOPMENT FUND
CORP.

WHEREAS, the City of Newburgh (the "City") encourages a sufficient supply of adequate, safe and sanitary dwelling accommodations properly planned for families and senior citizens of low income; and

WHEREAS, Varick Homes Housing Development Fund Corp. (the "HDFC"), a New York not-for-profit corporation organized under Article XI of the New York Private Housing Finance Law ("PHFL") and Section 402 of the NYS Not-for-Profit Corporation Law has constructed, owned and maintained certain improved real property located at 69 South Street, City of Newburgh, Orange County, New York, Tax Map No. Section 19, Block 2, Lot 1 (the "Land"), consisting of approximately one hundred twenty-two (122) residential units for families and senior citizens of low income and known as Varick Homes Apartments (the "Project"); and

WHEREAS, the HDFC's plan for the continued use of the Project constitutes a "housing project" as that term is defined in the PHFL; and

WHEREAS, the HDFC is a "housing development fund company" as the term is defined in Section 572 of the PHFL and Section 577 of the PHFL authorizes the City Council to exempt the Project from real property taxes; and

WHEREAS, the HDFC is seeking a new PILOT Agreement whereby they will make annual payments in lieu of taxes to the City as set forth in the PILOT Agreement presented to the City Council for approval;

NOW THEREFORE, BE IT RESOLVED, that the members of the City Council hereby exempt the Project from real property taxes to the extent authorized by Section 577 of the PHFL and approve the proposed PILOT Agreement by and among the City of Newburgh and the HDFC, in substantially

the form presented at this meeting, providing for annual payments as set forth in such agreement; and

BE IT FURTHER RESOLVED, that the City Manager is hereby authorized to execute and deliver the foregoing PILOT Agreement, in substantially the same form with other documents as Corporation Counsel may require, on behalf of the City.

Councilwoman Lee wished to point out again that Varick Homes is one of few Not-For-Profits who enter into a payment in lieu of taxes which is voluntary. The Hospital doesn't pay taxes and neither does Mt. St. Mary's or Orange County Community College. She thanked Mr. Peterson for voluntarily paying taxes.

Councilwoman Angelo thanked Mr. Peterson also.

Councilwoman Lee moved and Councilwoman Angelo seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman lee, Mayor Kennedy - 5

ADOPTED

85-12

**AGREEMENT FOR PAYMENT IN LIEU OF TAXES (PILOT)
BY AND AMONG
THE CITY OF NEWBURGH
AND
VARICK HOMES HOUSING DEVELOPMENT FUND CORP.**

THIS AGREEMENT FOR PAYMENT IN LIEU OF TAXES (the "PILOT Agreement" or "Agreement"), dated _____, 2012, by and among the **CITY OF NEWBURGH, NEW YORK**, a municipal corporation organized and existing under the laws of the State of New York, having its principal office located at 83 Broadway, Newburgh, New York 12550 (the "City"), **VARICK HOMES HOUSING DEVELOPMENT FUND CORP.**, a New York not-for-profit corporation organized pursuant to Article XI of the Private Housing Finance Law of the State of New York, having its principal office located at 121-A Varick Street, Newburgh, New York 12550 (the "HDFC").

WHEREAS, the HDFC is the record owner of certain improved real property located at 69 South Street, City of Newburgh, Orange County, New York, Tax Map No. Section 19, Block 2, Lot 1 (the "Property"); and

WHEREAS, the HDFC is a corporation established pursuant to section 402 of the Not-For-Profit Corporation Law and Article XI of the Private Housing Finance Law ("PHFL"); and

WHEREAS, the HDFC has been formed for the purpose of providing residential rental accommodations for low income families and senior citizens; and

WHEREAS, the HDFC will continue to own, redevelop, rehabilitate, renovate, maintain and operate a housing project on the Property consisting of approximately 122 dwelling units; and

WHEREAS, the HDFC's plan for the use of the Property constitutes a "housing project" as that term is defined in the PHFL; and

WHEREAS, the HDFC is a "housing development fund company" as the term is defined in Section 572 of the PHFL; and

WHEREAS, pursuant to Section 577 of the PHFL, the local legislative body of a municipality may exempt the real property of a housing project of a housing development fund company from local and municipal taxes, including school taxes, other than assessments for local improvements, to the extent of all or a part of the value of the property included in the completed project; and

WHEREAS, the City Council members of the City of Newburgh, New York, by resolution adopted May 29, 2012, approved and authorized the execution of this Agreement,

NOW, THEREFORE, it is agreed as follows:

1. Pursuant to Section 577 of the PHFL, the City hereby exempts from local and municipal taxes, other than assessments for local improvements, one hundred percent (100%) of

the value of the Property, including both land and improvements. "Local and Municipal Taxes" shall mean any and all real estate taxes levied by the State of New York, Orange County ("County"), the City of Newburgh ("City"), the Newburgh City School District ("School District") or other taxing jurisdiction. Exclusions from the exemption described herein (in addition to assessments for local improvements) shall include special tax and/or special assessment districts, if any.

2. This tax exemption will operate for a period of forty (40) years from July 1, 2012. This Agreement shall not limit or restrict the HDFC's right to apply for or obtain any other tax exemption to which it might be entitled upon the expiration of this Agreement.

3. So long as the exemption hereunder continues, the HDFC shall make annual payments in lieu of taxes ("PILOT") in the amount of the greater of Fifteen Thousand and 00/100 Dollars (\$15,000.00) or Eight Percent (8%) of the effective gross rents ("PILOT Payment") to cover all Local and Municipal Taxes owed in connection with the Property and the Project. All Tax bills shall be sent to the HDFC c/o 4 Executive Boulevard - Suite 100, Suffern, NY 10901. Annual PILOT Payments shall be due on June 30th of each calendar year for the preceding year. PILOT Payments shall be mailed via First Class mail through the United States Postal Service to the City of Newburgh, Attention Tax Collector at 83 Broadway, Newburgh, New York 12550. So long as the tax exemption remains in effect, tenant rental charges for restricted units shall not exceed the maximum established or allowed by law, rule or regulation, and the Property shall be operated in conformance with the provisions of Article XI of PHFL. Any amounts due pursuant to this Section 3 for a period that is less than a full 365 days (366 days in leap years) shall be pro-rated for each PILOT Year for such shorter period of time.

4. The tax exemption provided by this Agreement will continue for the term described above provided that the Property continues to be used as housing facilities for families and senior citizens of low income, provided that if the project should no longer serve the purposes set forth in subsection (a) above, then this agreement shall terminate on sixty (60) days notice by any party to this agreement. In the event an action is brought to foreclosure a mortgage upon the Property, and the legal and beneficial interest in the Property shall be acquired at the foreclosure sale or from the mortgagee, or by a conveyance in lieu of such sale, by a housing development fund corporation organized pursuant to Article XI of the PHFL, or by the Federal government or an instrumentality thereof, or by a corporation which is, or by agreement has become subject to the supervision of the superintendent of banks or the superintendent of insurance, such successor in interest shall operate the Property in conformance with Article XI of the PHFL.

5. The failure to make the required payment will be treated as failure to make payment of taxes and will be governed by the same provisions of law as apply to the failure to make payment of taxes, including but not limited to enforcement and collection of taxes and assessment of interest and penalties to the extent permitted by law. In the event the City commences a proceeding to enforce the provisions of this Agreement, then, in addition to the remedies to which the City shall be entitled, it shall have the right to award reasonable attorney fees. Notwithstanding the above, the City may terminate this Agreement, and the tax exemption shall thereupon terminate, pursuant to Section 6 hereof.

6. This Agreement and the exemption granted hereunder shall terminate pursuant to Section 5 above or in an event of default as follows:

(a) Failure of the HDFC to pay in full any payment due under this Agreement within thirty (30) days of mailing of written notice by the City stating that said payment is past due.

(b) The intentional and knowing failure of the HDFC to comply with or perform any provision of this Agreement if such failure continues in whole or in part for more than sixty (60) days after mailing of written notice by the City of such failure to comply or perform, or such longer period as may be necessary provided that the Owner shall diligently pursue such cure.

(c) the intentional and knowing failure of the HDFC to operate the Project in compliance with all applicable rules and regulations of Article 11 of the Private Housing Finance Law of the State of New York if such failure continues in whole or in part for more than sixty (60) days after mailing of written notice by the City of such failure to comply or perform, or such longer period as may be necessary provided that the Owner shall diligently pursue such cure.

In the event of a default hereunder, in addition to the termination of this Agreement and the tax exemption, the City may exercise any and all rights or remedies permitted by law.

Notwithstanding any provision hereof to the contrary, the mortgagees of record with respect to the Property (the "Lender") shall have an additional period of thirty (30) days after the cure periods of the Borrower set forth in this Section 6 to cure any monetary defaults and an additional period of up to one hundred twenty (120) days to cure non-monetary defaults provided that the Lender shall diligently pursue such cure.

7. All notices and other communications hereunder shall be in writing and shall be sufficiently given when delivered to the City at the address stated above and to the HDFC c/o 4 Executive Boulevard - Suite 100, Suffern, NY 10901 (or such other address as the party to whom notice is given shall have specified to the party giving notice) by registered or certified mail, return receipt requested or by such other means as shall provide the sender with documentary evidence of such delivery. Copies of notices to the Company shall be provided to the Lender for the Project at such address as may be designated in writing by the HDFC.

8. This Agreement shall inure to the benefit of and shall be binding upon the City, and the HDFC and their respective successors and assigns, including the successors in interest of the HDFC. There shall be no assignment of this Agreement except in accordance with Section 4 hereof or with written consent of the other party, which consent shall not be unreasonably withheld, provided however that the foregoing prohibition on Assignment shall not apply to a transfer of the equitable title to the Project pursuant to a Nominee Agreement or any similar document, in which event the City agrees to amend this Agreement in order to reflect the interests of such transferee.

9. If any provision of this Agreement or its application is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that

provision to other persons or circumstances shall be enforced to the greatest extent permitted by law.

10. This Agreement may be executed in any number of counterparts with the same effect as if all the signing parties had signed the same document. All counterparts shall be construed together and shall constitute the same instrument.

11. In the event that the Project is declared to be subject to taxation by an amendment to the PHEL, other legislative change, or by a final judgment of a court of competent jurisdiction, the obligation of the Owner hereunder to pay amounts hereunder with respect to the Project shall to such extent be null and void. If any provision of this Agreement or its application is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to other persons or circumstances shall be enforced to the greatest extent permitted by law.

12. This Agreement constitutes the entire agreement of the parties relating to payments in lieu of taxes with respect to the Property and supersedes all prior contracts, or agreements, whether oral or written, with respect thereto.

13. Each of the parties individually represents and warrants that the execution, delivery and performance of this Agreement, (i) has been duly authorized and does not require any other consent or approval, (ii) does not violate any article, by-law or organizational document or any law, rule, regulation, order, writ, judgment or decree by which it is bound, and (iii) will not result in or constitute a default under any indenture, credit agreement, or any other agreement or instrument to which any of them is a party. Each party represents that this Agreement shall constitute the legal, valid and binding agreement of the parties enforceable in accordance with its terms.

Remainder of page intentionally left blank.

IN WITNESS WHEREOF, the City and the HDFC have caused this Agreement to be executed in their respective names by their duly authorized representatives and their respective seals to be hereunder affixed, all as of the date above-written.

DATED: _____, 2012 CITY OF NEWBURGH, NEW YORK

By: _____

Name: Richard Herbek

Title: City Manager

DATED: _____, 2012 VARICK HOMES HOUSING DEVELOPMENT FUND
CORP.

By: _____

Name: Richard Peterson

Title: President

STATE OF NEW YORK)

) SS.:

COUNTY OF)

On the ____ day of _____ in the year 2012, before me personally appeared Richard Herbek, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

STATE OF NEW YORK)

) SS.:

COUNTY OF)

On the ____ day of _____ in the year 2012, before me personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

RESOLUTION NO.: 86 - 2012

OF

MAY 29, 2012

RESOLUTION AMENDING RESOLUTION NO: 238-2011,
THE 2012 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK
TO TRANSFER \$550,000.00 FROM "FUND BALANCE" TO "TRANSFER TO
OTHER FUNDS" TO PROVIDE FOR ADDITIONAL FUNDING IN
CONNECTION WITH THE BRADY, ELLIS AND MARNE AVENUE WATER
TANK REPAIR AND REPLACEMENT

WHEREAS, findings of design work by Barton & Loguidice, P.C. indicates necessary increases in the amount of \$550,000.00 for the project budget in connection with the Brady, Ellis and Marne Avenue Water Tank Repair Project bringing the total cost from \$2,200,000 to \$2,750,000; and

WHEREAS, such increase requires an amendment to the 2012 Budget; and

WHEREAS, this Council has determined that amending the 2012 Budget is in the best interests of the City of Newburgh and this Project;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, that Resolution No: 238-2011, the 2012 Budget of the City of Newburgh, is hereby amended as follows:

	<u>Decrease</u>	<u>Increase</u>
F.0000.0599.1000 Fund Balance	\$550,000.00	
F.9900.0901 Transfer to Other Funds		\$550,000.00

City Manager, Richard Herbek, said that this is coming out of the fund balance and the water fund is an enterprise fund. The Council made a decision to replace the Marne Avenue tank with a new concrete tank as being in the long term best interest of the City. We do have a Bond Anticipation

Note outstanding and this additional \$550,000.00 will allow us to proceed with the project. All three water tanks need work; some more than others. In the case of the Marne Avenue tank it needs to be completely replaced.

Mayor Kennedy said that she is very pleased that they are moving ahead on this. They have had a real hard time doing capital improvement projects and keeping things up in this City. As things have deteriorated and kind of fallen apart we find ourselves in a mess. This is the one time that we are actually taking a proactive stance by replacing a water tank that is in bad need of repair and doing it in a way that the upkeep over the next forty years would be of least cost. This is one of those long term plans that will move the City ahead so she is pleased to support this tonight.

Councilwoman Lee moved and Councilwoman Angelo seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

ADOPTED

OLD BUSINESS

There was no old business

NEW BUSINESS

Councilman Dillard said that at the Work Session he asked that each Council member receive a definition of the consolidated funding application and who is on the committee to write the application.

City Manager, Richard Herbek, said that they haven't done it yet. They have had one meeting and they are looking for all the help they can get. He believes that the applications are due by July 7th and there is another meeting coming up on June 6th. He can let them know who the participants were in the first one and if there are others who would like to help us out we are looking for whatever assistance we can get.

Councilman Dillard said that he is very concerned because he went through this process when he worked at RECAP years ago. Everyone throughout the County came in but no one who they were basing their stats on was involved in the process. If we are going to take the lead on this we should have people who generate the stats and all their representatives in on the writing of the application.

Mayor Kennedy said that she agrees and she has been talking to someone about this but they are just at the very initial stage.

City Manager, Richard Herbek said that he will get that list out to the Council and he believes we had about twelve or fifteen individuals involved in the first meeting.

There being no further new business this portion of the meeting was closed.

GENERAL COMMENTS FROM THE PUBLIC

Tamie Hollins, Varick Homes, wished to salute Mr. Peterson and noted that Varick Homes not only has residents who may not financially be fit to buy a home but Varick Homes has set up a standard where we are able to come in because it is subsidized and we can purchase a home. She knows a lot of parents who started off in Varick Homes who no longer live there because they bought homes. She also knows young adults who started off in Varick Homes with their parents who are now in College. She read a message from a young woman who is currently in College and is in the process of studying Abroad. She wished to thank the Council for allowing this PILOT because Varick Homes is a stepping stone to purchasing a home and to our kids going to College so that they won't need to go to Varick Homes because they will own a home too.

Janet Gianopoulos, City of Newburgh, said that going back to the list of in-rem that the Council published for this year she asked the Council to reflect and advise everyone of how many individuals who own homes are on that list for this spring. Additionally, there are four more legislative meetings before the Preliminary Budget so she would like to know what the Council may be planning legislatively on behalf of the homeowners and an idea of how many might be on the next in-rem list. She would also like the Council to reconfirm that the indication about Pop Warner is not encouraging anyone to disobey traffic laws.

Sheila Monk, City of Newburgh, said that she has a concern about the new houses that Habitat is building. She knows a lot of people who applied for Habitat with good credit and decent jobs but they were not eligible to get a home. She would like to know how many African Americans are being put in the houses that are being built now. She knows that the new house today is going to a family that doesn't speak English. She said that she is not racist but she knows a lot of African Americans who tried to go through Habitat but were not eligible for homes even though they had good credit and decent jobs. This issue needs to be addressed because if we are going to do houses then we need to be fair and honest about jobs, housing and everything concerning the residents of Newburgh. She added that she had a discussion today with Murphy about the negativity that he is always writing about the City of Newburgh. He never writes anything positive and that needs to be addressed also. She told him that maybe we need to start a petition to not to buy the Times Herald Record. We have to tell him to stop writing negative articles about the City of Newburgh.

Jeff Wallace, Broadway, said that he is calling on the Housing Authority and the Codes Department to have an aggressive summer campaign on housing violations. By the end of summer we could have fifty warrants to appear with fines to be collected from the errant landlords.

Timothy Hayes-el, South Street, said that he has been working with Tom Wilson who is running for Congress and someone is pulling his signs down and he doesn't like that. He said that he is with Tom Wilson and if people don't like it then so what.

Juanita, City of Newburgh, said that she wanted to commend everyone for their efforts on this and her family is appreciative. Not only is it for Michael but it's for the next kid out there and for the kids that went before him. For anyone who doesn't know what "it" is she noted that the Council is submitting a letter to the County Legislators, County Leaders and New York State Legislators asking them for a special investigator every time there is a shooting involving a police officer because we know from past experiences that this is what we need. Her family wants to thank everyone for their efforts but as she was reading she noticed one part that reads *"we are at very high risk for more violence and bloodshed if this case proceeds per the normal process"*. She said that they don't want bloodshed. It sounds like we are going to start a riot if it doesn't go right. They are not trying to riot they just want justice.

Usef Belford, Farrington Street, complimented DPW on the fine clean up that they did at Audrey Carey Park. He remembers the year before last that there were lights on in that Park at night and a sprinkler system that would go off at a certain time. School will be out officially on the 12th and there haven't been any lights on at that Park while the children are playing at night. He noted that some of us parents need to be mindful and responsible for our own children because we can't look at the City to do our job. It is also getting hot now so we need to be mindful of the sprinkler system for the children to play. He thanked Newburgh for the fine job that we have been doing to keep our streets clean and build Newburgh.

James Smith, Grand Street, said that when the Youth had their Parade it went down South Street but the Memorial Day Parade comes down Broadway and the street is blocked off. Why can't we have the Youth Parade down Broadway also? Next year he would like to see it going down Broadway like everything else with the traffic stopped. Secondly, the streets are being dug up by the contractors and not repaired. This needs to be looked into because our streets are terrible.

Brigidanne Flynn, City of Newburgh said that a few years ago we entered into a Land Disposition Agreement with Leyland and we are still

waiting. She doesn't think that there is any legal way right now that we can get out of that so with Mid Broadway let's give ourselves a safety valve so that we can get out of it if it doesn't happen.

Stacey Burks, Pastor with Newburgh Christian Worship Center, said that this past Sunday they had their first year anniversary and over three hundred people came to support them. What made him feel great about that is that it was love and caring that brought everybody out as a community and as one. Years ago what made the communities strong was the Church because a majority of the people fellowshiped together on Sundays and came closer. He believes that a family that prays together stays together.

Pauline Dillard, City of Newburgh, said that she has a complaint about the ARC Board. She was surprised that they let a homeowner on Chambers Street put a huge mural on the outside of the building. She doesn't like it but it is not her house and she doesn't own the City. She also knows that the ARC has given homeowners in that neighborhood a very hard time just to paint their porch or replace a wooden facade to the point of where people just had to walk away. Now there is a homeowner that someone is connected to or likes to let them put a mural up on the side of a building that is in the Historic District. She was shocked and surprised by this when we have a building on the corner of Broadway that was literally shut down for bringing the facade up one foot and now that building has been a slum for the last four years. She said that this is typical Newburgh which is why we are in the state we are in. The other issue that she has is on Martin Luther King Blvd. where she saw some children trying to cross the street and they were weaving in and out of traffic so we have to get a traffic light down there. Kids shouldn't have to get hit or crippled before something gets done.

Ali Muhammad, Beacon, said that his father is the Imam at the Moske Masjid al-Ikhlās here in Newburgh and this is his first time attending a City Council meeting but he thinks that other municipalities could learn a lot from the City of Newburgh. He wishes more people would come out because he thinks it is great and the City is moving forward positively.

Roxie Royal, City of Newburgh, applauds the City because she heard them talking about having summer work for our youth. If they are working they can't be doing other things. She asked when are we going to help our High School students find jobs as internships for some white collar jobs? Labor jobs are fine but we need to give our children something else to look forward to. It would be nice for our young people to get dressed up and work in a clean job. We talk about the crime in our City but we are proactive; we don't work at prevention. We have a lot of teenagers in the City of Newburgh that have nothing to do and no place to go. Our young people like to

rollerblade or roller-skate and they like to do things to entertain themselves but they have no place to do it. We are down here in the crime area and our children are the ones that suffer from it because they have nothing else to do. She would like the Council to think of that and especially the internships for our young people. Give them some hope and something to dream about.

Nicole Kaiser, Poughkeepsie, said that when she was living here she tried to open a skating rink for the young people to have something to do but they were told that there was no funding in the Budget for something like that. If something like that could be done now, she is moving back here so maybe they can get together and figure out something for all the kids to do because it needs to be done. If they have something to do then they won't be out on the streets trying to find something to get into and fighting.

There being no further comments this portion of the meeting was closed.

COMMENTS FROM THE COUNCIL

Councilwoman Angelo said that she was waiting to hear one comment from someone saying that they enjoyed the Parade yesterday. They worked on it since September of last year. As for the Pride Parade going down Broadway, they will have to discuss that with the Police Department. The Memorial Day Parade always went that route and they made everyone march into Washington's Headquarters yesterday for the ceremonies. This week we have the Bounty coming in and docking down at the Landing on Thursday. There will be vendors with food and you can take tours on the Boat. The West Point Band will be performing on Saturday night from 5:00 p.m. to 6:30 p.m. so everyone should come down and have a good time. She understands that Showboat is going to be performed at Bannerman's Island which she thinks is wonderful. You can get on the boat at Torches which will take you to Bannerman's Island to see the show. Also the Mutiny on the Bounty movie is going to be shown at Downing Theater and she thinks that admission is \$1.00. Take the kids and enjoy it. It should be a nice weekend. She thanked everyone who came to watch the Parade.

Councilman Brown said that he grew up in the Pop Warner Program and it made him the man that he is today. He had the opportunity to meet people who he would not normally have met by bringing people together. He made a lot of friends over the years that he was in Pop Warner which helped him moving into the High School years. Since he already knew these guys and they were friends there was no animosity, arguing or fighting. You make friends through sports so this Council has to support youth programs. As far as the Mid Broadway site, that was the past Council's decision which they should have made last year so that it wouldn't have landed on our table. That site could have been developed and in the process of moving forward right now. His only concern with this is that we don't get caught up with an undeveloped site due to financing. We have to pay close attention to the financing of this site and make sure that the money is in place to complete it. It is already an eyesore and we don't want it to be half an eyesore so he wants to make sure that the money is in place to complete this project and he believes that this contractor will be able to do that. As for the youth jobs that are being created for the City of Newburgh, that too is important. When he came home from College he worked on the grounds crew for the Board of Education and it taught him that he didn't want to be a grounds keeper. He is glad that we are able to create some jobs for the youth in the City. He thanked everyone for coming.

Councilman Dillard wished to address the concern someone had concerning the codes in the City. This past Friday he and George Garrison

followed up on a complaint made by a homeowner on Johnston Street and they were astounded by what they saw a few houses down. They saw a coop full of rabbits and chickens and as they looked further they found that it was a pit-bull training site. They saw debris, hazardous material and the ring. As they went further toward the coops they saw a big pit-bull caged up with wire and if he had become agitated he could have broken through that fence and come out to the sidewalk where he could harm one of our children. He reported this to our City Manager and commended the Building and Plumbing Inspectors because they knew exactly what to do. They indicated that they would get in touch with the Animal Control Officer and submit a report to the City Manager. He said that he would like to be part of a team of volunteers to go into these backyards and see exactly what's going on.

Councilwoman Lee said that she doesn't want what she said earlier to be misconstrued and she wants everyone to understand that she offered to fundraise for Pop Warner. In 1997, she witnessed a car knock a kid thirty feet into the air and in 2002, she received a call to come home right away because her friend was hit broadside in a car and was killed instantly. These are some of the things that cross her mind when people stand in the street. She encouraged them to be careful. She didn't say no because she doesn't want them to fundraise but she needs to know for herself that she drove this point home to them and she said "no". She thinks that they need to be very careful. They might fundraise and have every intention of being careful but that doesn't mean that the driver will be, which is her point. She added that she said at the last City Council meeting that she will be moving into an office in the City so that she can see what's happening and she knows what people are talking about. She thinks that sitting on the third floor in City Hall is a little too far from the action. In addition, she wishes that during this campaign season that no one would remove any signs because they are quite costly and everyone has a right to put a sign out to advertise that they are running. She asked everyone to be mindful and respectful of that.

Mayor Kennedy said that someone asked about the Youth Parade going down South Street and she was told that it used to be on Broadway but not very many people showed up so it was moved to South Street where there were a lot more people in attendance. It also might have something to do with police involvement and the cost with that as well. About the streets being dug up, she stopped and asked about the corners on South Street which the State put in last year and are now digging up. She is watching them pretty closely because they made a mess of that. As for the other streets, we have to try to coordinate Central Hudson and City projects so that we are not putting down new streets and then digging them up the next week because it just doesn't make any sense. As for the youth jobs, she believes the count now is about fifty jobs for the youth and some of them are office jobs. As we try to develop

these things we need to start partnering with our businesses. We are just starting to get a handle on a lot of opportunities which she believes we missed in the past because we didn't take action. She is pleased about what Councilman Dillard is doing with looking in the backyards because she has people telling her that we have pit-bull training, fights and all kinds of stuff going on in backyards with animal abuse. She also agrees that we need some real code crack downs as have residents throwing trash out their top floor windows into the backyards. We can clean it up but if people keep throwing it out then we will have to do something about that. As Councilman Dillard just said, that will have to be a community effort. This City Council cannot do it alone. It will take all of the citizens participating and helping by telling us what is going on and holding their neighbors accountable. She is pleased to see people stepping up and wanting to see that happen. She asked Michelle Kelson, Corporation Counsel, how many homes we have saved from going into tax foreclosure this year by being able to do installment payments.

Michelle Kelson, Corporation Counsel, said that we have over forty properties that have made inquiries.

Mayor Kennedy said that we are moving in the right direction to keeping people in their homes and letting them pay their taxes in payments. That is money that we are taking in instead of losing and houses that we are not taking on to manage because we are not good at managing houses.

There being no further business to come before the Council Councilwoman Lee moved and Councilwoman Angelo seconded that the meeting be adjourned.

All in favor the meeting adjourned at 7:45 P.M.

LORENE VITEK
CITY CLERK

City of Newburgh, Newburgh New York
Work Session of the City Council

Thursday, May 24, 2012

Members Present: Mayor Judy Kennedy
Councilwoman Regina Angelo
Councilman Curlie Dillard
Councilwoman Gay Lee
Councilman Cedric Brown

Also Present: Richard F. Herbek, City Manager
Michelle Kelson, Corporation Counsel

Call to Order: The meeting was called to order by City Manager Richard F. Herbek at 6:05 pm.

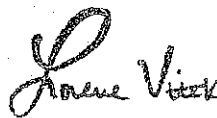
Executive Session: At 8:45 p.m. a motion was made by Councilwoman Lee and seconded by Councilman Dillard to enter into executive session regarding matters of pending litigation.

YES: 5 NO: 0 CARRIED

Adjournment: Upon consensus the Council adjourned the meeting noting the time as 10:00 p.m.

Account#	Account Description	Fee Description	Qty	Local Share
	Marriage License	Marriage License	30	525.00
	Season Boat Launch Permit	Season Boat Launch Permit	13	1,300.00
		Sub-Total:		\$1,825.00
A1255	Conservation	Conservation	7	11.48
		Sub-Total:		\$11.48
A12550002	Cancellation Certificate	Cancellation Certificate	2	50.00
		Sub-Total:		\$50.00
A12550003	Misc. Fees	Certified Copies - Marriage	29	290.00
		Sub-Total:		\$290.00
A12550008	Misc. Fees	Copies	223	57.75
		Sub-Total:		\$57.75
A12550012	Thumbprint Fee	Thumbprint Fee	1	5.00
		Thumbprint Fee	1	5.00
		Sub-Total:		\$10.00
A1550	Public Pound	Public Pound	2	20.00
		Sub-Total:		\$20.00
A15500004	Dog Redemption	Redemptions	2	70.00
		Sub-Total:		\$70.00
A15500010	Vet Bill (rabies)	Vet Bill (Rabies)	1	28.00
		Sub-Total:		\$28.00
A21150005	Gis Mapping Services	Gis Mapping Services	1	20.00
		Sub-Total:		\$20.00
A25010001	Liquor Tax	Liquor Tax	3	323.00
		Sub-Total:		\$323.00
A2544	Dog Licensing	Female, Spayed	5	37.50
		Female, Unspayed	3	37.50
		Male, Neutered	7	52.50
		Male, Unneutered	6	75.00
		Sub-Total:		\$202.50
A25900008	Alarm Permit	Alarm Permit	4	400.00
		Sub-Total:		\$400.00
A25900011	Petroleum Dispensers	Petroleum Dispensers	2	200.00
		Sub-Total:		\$200.00
A25900012	Peddlers Permit	Application Fee	2	150.00
		On Foot - Per Month	2	50.00
		With Vehicle - Per Month	2	100.00
		With Vehicle - Per Yr.	2	400.00
		Sub-Total:		\$700.00
A25900019	Taxi Application Fee	Taxi Application Fee	4	400.00
		Sub-Total:		\$400.00
A25900020	Taxi Drivers License	Taxi Drivers License	2	200.00

Account#	Account Description	Fee Description	Qty	Local Share
		Sub-Total:		\$200.00
		Total Local Shares Remitted:		\$4,807.73
Amount paid to:	NYS Ag. & Markets for spay/neuter program			39.00
Amount paid to:	NYS Environmental Conservation			196.52
Amount paid to:	State Health Dept. For Marr. Licenses			675.00
Total State, County & Local Revenues:	\$5,718.25	Total Non-Local Revenues:		\$910.52



City Clerk

6/1/2012

Date



CITY OF NEWBURGH

CITY CLERK'S OFFICE
83 BROADWAY
NEWBURGH, NEW YORK 12550
PHONE (845)569-7311
FAX (845)569-7314

LORENE VITEK
CITY CLERK

JUNE 4, 2012

KATRINA COTTEN
LISETTE ACOSTA-RAMIREZ
DEPUTY CLERKS

MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM: REGISTRAR OF VITAL STATISTICS

I RESPECTFULLY REPORT THAT THERE HAS BEEN
RECEIVED IN THE OFFICE OF VITAL STATISTICS DURING THE MONTH
OF MAY 2012 THE SUM OF \$5,562.00 AS FOLLOWS:

227 CERTIFIED COPIES OF BIRTH CERTIFICATES	\$2,270.00
329 CERTIFIED COPIES OF DEATH CERTIFICATES	<u>\$3,292.00</u>
TOTAL	\$5,562.00

IN ADDITION:

373 BIRTHS HAVE BEEN FILED IN THIS OFFICE TO DATE,
263 DEATHS HAVE BEEN FILED IN THIS OFFICE TO DATE,

LORENE VITEK

PERSONNEL REPORT
CIVIL SERVICE COMMISSION
MAY 2012

COLLECTOR

Sabrina Wells Davis
352 Robinson Avenue
Newburgh, NY

Cashier P/T
Appt. Temporary
5/11/12 \$10/hr.

POLICE:

Donald Campbell
19 Canterbury Lane
New Windsor, NY

Police Lieutenant
Resigned 5/2/12
\$90,135

Dan Cameron
159 Dickerson Ave
Montgomery, NY

Police Lieutenant
Provisional Promotion
5/3/12 \$90,135

FIRE:

John Borden
264 Liberty Street
Newburgh, NY

Firefighter
Disability Retirement
5/18/12 \$58,585

DPW:

Adonay Aguilar
124 Wisner Avenue
Newburgh, NY

Sanitation Worker
Reinstated from Suspension
5/11/12 \$45,230

John Jefferson
31 Stony Run Rd
Newburgh, NY

Working Supervisor
Resigned 5/17/12
\$46,174

Brenda McPhail
77 Varick Homes
Newburgh, NY

Waterfront Attendant
Appt. Temporary
5/18/12 \$10/hr.

Tamie Hollins
55 Varick Homes
Newburgh, NY

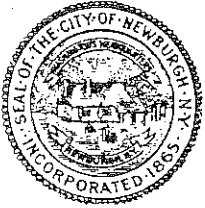
Waterfront Attendant
Appt. Temporary
5/18/12 \$10/hr.

Ricardo Rivera
195 Lake Drive
Newburgh, NY

Motor Equip Operator
Promoted 6/1/12
\$44,140

Edwin Gotay
13 Vanamee Street
Newburgh, NY

Sanitation Worker
From temp to permanent
6/1/12 \$38,748



CITY OF NEWBURGH

CITY CLERK'S OFFICE
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NEWBURGH, NEW YORK 12550
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FAX (845)569-7314

LORENE VITEK
CITY CLERK

KATRINA COTTEN
LISETTE ACOSTA-RAMIREZ
DEPUTY CLERKS

MEMORANDUM

TO: Michelle Kelson, Corporation Counsel

FROM: Lorene Vitek, City Clerk

RE: Notice of Claim:
State Farm Insurance vs City of Newburgh

DATE: June 12, 2012

Please find attached Notice of Claim regarding the above, which was received via Certified Mail on this date.

Attachment

Cc ~~City Manager~~
Mayor & Council

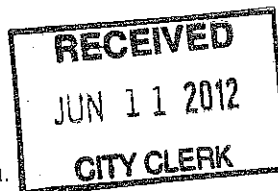


Municipal and State Level Notice of Claim

Claim Number	Date of Loss	Location of Loss	Our Insured
52-0H77-590	10/01/2011	Rte 9w South And I84 Overpass	Deborah J Eagen

City Of Newburgh
83 Broadway
Newburgh NY 12550-5617

State Farm Claims
PO Box 106106
Atlanta GA 30348-6106



In the Matter of the Claim of State Farm Fire And Casualty Company against City Of Newburgh.

PLEASE TAKE NOTICE that I, State Farm Fire And Casualty Company, the undersigned, pursuant to the Statutes in such cases made and provided, do hereby intend to make claim against City Of Newburgh. In support of such claim I do state the following:

1. My name is State Farm Fire And Casualty Company and my post office address is PO Box 106106 Atlanta, GA 30348-6105.
2. The claim is one against City Of Newburgh for damages sustained by a 2005 Chrysler 300, owned by Deborah J Eagen.
3. The time this claim arose and damages hereinafter alleged were sustained at approximately 3:00 PM on 10/01/2011.
4. The particular place of the sustaining of such damages was on Rte 9w South And I84 Overpass, Newburgh, NY.
5. The said damages for which claim is hereby made arose in the following way:
Heding South On 9w And Hit Large Pothole In Construction Zone.

WHEREFORE, I respectfully request that this, my Intention to File a Claim, be allowed and paid by the said name.

May 29, 2012
State Farm Fire And Casualty Company
(877) 208-1487 Ext. 3270

Kim Zendran on behalf of Deborah J Eagen

State Farm Fire And Casualty Company, being duly sworn, says that he/she is the claimant named in the foregoing Intention to File Claim; that he/she has read the same and knows the contents thereof; that the same is true to his/her own knowledge except as to the matter alleged upon information and belief as to those matters he believes is to be true.

Witness:

Kim Zendran

Dated:

5/30/12

Notary Public:

[Signature]

COUNTY OF Saratoga : STATE OF New York





CITY OF NEWBURGH

CITY CLERK'S OFFICE
83 BROADWAY
NEWBURGH, NEW YORK 12550
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FAX (845)569-7314

LORENE VITEK
CITY CLERK

KATRINA COTTEN
LISETTE ACOSTA-RAMIREZ
DEPUTY CLERKS

MEMORANDUM

TO: Michelle Kelson, Corporation Counsel

FROM: Katrina Cotten, Deputy City Clerk

RE: Summons and Complaint Notice:
Melissa Mucci vs. City of Newburgh

DATE: June 11, 2012

Please find attached Summons and Complaint Notice regarding the above, which was personally served on our office on this date.

Attachment

Cc City Manager
Mayor & Council

UNITED STATES DISTRICT COURT

for the

Southern District of New York

Melissa Mucci

Plaintiff

v.

City of Newburgh

Defendant

12 CV
Civil Action No.



SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* City of Newburgh
83 Broadway
Newburgh, NY 12550

JUDGE KARAS

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,

whose name and address are: Christopher Watkins
Sussman & Watkins
PO Box 1005
Goshen, NY 10924

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: APR 25 2012

A handwritten signature in black ink, appearing to be "Cathy G. K...".
CLERK OF COURT
CLERK
Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MELISSA MUCCI,

Plaintiff,

vs.

CITY OF NEWBURGH,

Defendant.

12 CV

COMPLAINT

JURY TRIAL DEMANDED

RECEIVED

JUN 11 2012

CITY CLERK

2012 APR 25 PM 2:24

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

I. INTRODUCTION

1. Plaintiff brings this action against defendant to redress the violation of her rights to be free from sexual harassment, gender discrimination and retaliation under Title VII of the Civil Rights Act of 1964, as amended, and for violation of her due process rights under the Fourteenth Amendment of the U.S. Constitution.

II. PARTIES

2. At all relevant times, plaintiff Melissa Mucci has been a police officer employed by the City of Newburgh Police Department, in the County of Orange, New York, within this judicial district.

3. Defendant City of Newburgh is a municipal corporation established pursuant to the laws of the State of New York. It may sue and be sued.

III. JURISDICTION

4. As plaintiff brings this action to enforce Title VII of the Civil Rights Act of 1964, this Court has jurisdiction over the case pursuant to 28 U.S.C. §§ 1331, 1343 (3) and (4) and 42 U.S.C. § 2000e et seq.

5. Plaintiff filed a timely EEOC charge of sexual harassment and gender discrimination,

including retaliation, against defendant and received a right to sue notice from the U.S. Department of Justice on April 9, 2012, within ninety days of the filing of this Complaint.

IV. FACTUAL AVERMENTS

6. Plaintiff has been employed by the City of Newburgh as a police officer since March 2002. She is one of only five female officers on a police force with over ninety officers.

7. Defendant first disseminated a sexual harassment policy to Police Department employees in 2010, after plaintiff filed a written complaint of sexual harassment with the City of Newburgh.

8. Throughout her employment, plaintiff has been subjected to unwanted sexual comments and conduct from male police officers employed by defendant, including by superior officers.

9. In or about 2007, Plaintiff was physically attacked by her fellow officer Frank Labrada, who wanted to pursue a physical relationship with Plaintiff.

10. During this attack, Labrada hit plaintiff in the head and grabbed her bullet proof vest, causing her to flee from him. In addition, Labrada damaged plaintiff's vehicle.

11. Thereafter, plaintiff observed an officer, whom she reasonably believed to be Labrada, surveilling her home.

12. This incident was brought to the attention of defendant's former police chief, Eric Paolilli, and plaintiff described the attack and the subsequent surveillance by Labrada.

13. Upon information and belief, Paolilli placed Labrada on desk duty for thirty days. However, Labrada was subsequently promoted to Sergeant and suffered no other repercussions.

14. In 2006, Plaintiff suffered an injury to her ankle while on the job. Upon return, she re-injured her ankle off the job and ultimately had surgery on her ankle in March 2009.

15. Plaintiff received 207-c benefits based on her ankle injury.

16. However, in July 2009, defendant summarily ended plaintiff's 207-c benefits without a predetermination hearing, despite receipt of medical evidence that plaintiff continued to be disabled from working as a police officer.

17. In November 2011, a hearing officer determined that defendant's actions violated plaintiff's due process rights and ordered her benefits restored. However, plaintiff suffered deleterious financial and emotional effects from the wrongful cessation of her benefits for which she could not be adequately compensated through the 207-c hearing process.

18. In October 2009, after the City had stopped her 207-c benefits, plaintiff returned to a "light duty" position. Although plaintiff was prescribed pain medication for her ankle, Paolilli directed that she could not take such medication while working in her light duty position, thus causing aggravated physical pain and discomfort.

19. Upon information and belief, defendant has treated male officers more favorably than it has treated Plaintiff with respect to 207-c benefits.

20. Upon her return to work, plaintiff was repeatedly subjected to the same type of sexually harassing comments and conduct to which she had been subjected since beginning her employment with defendant.

21. For example, upon returning to work in October 2009, Detective John Staton said, "Nice Ass" to plaintiff.

22. Plaintiff told Staton not to speak to her in that manner.

23. Other male officers continued to make similar comments to plaintiff. She did not invite such comments and they were not welcome.

24. On or about December 31, 2009, Chief Paolilli told plaintiff that he was aware that he

made her uncomfortable and that he liked to speak with her because it "amused" him to see her look uncomfortable. Upon information and belief, Paolilli did not and would not make a similar comment to a male officer.

25. On that same date, Chief Paolilli chastised Plaintiff in front of several co-workers because she had requested leave time to meet with her PBA lawyer in connection with her 207-c appeal. He sternly told her, "Don't ask your boss to leave work early to go speak with your lawyer about suing your boss. Don't do it again!" Paolilli's comments and actions caused plaintiff extreme anxiety and physical discomfort.

26. On or about January 4, 2010, P.O. Kenneth Brune told plaintiff that her "ass looks good" in the New Year.

27. That same day, Detective Staton put his face close to plaintiff and feigned giving her a kiss. Plaintiff told him to get away from her. She experienced a severely upset stomach from the stress caused by this unwanted harassment and had to leave work early.

28. When she went to her personal vehicle in the parking lot, she found that it had been damaged again while it was in the police parking lot. Although plaintiff completed a report about the damage, upon information and belief defendant failed to take reasonably diligent measures to identify and punish the wrongdoer.

29. On or about January 8, 2010, Detective Staton stood behind Plaintiff and stared at her rear end.

30. That same day, while Plaintiff was using a step ladder to file paperwork, Officer Brune approached plaintiff and said, "Go up one more step so that I can make you feel good." He then told plaintiff that she had "Killer hips." Plaintiff rebuffed Brune, as she had done in the past.

31. Later, on that same day, Staton stared at plaintiff's buttocks while talking with another officer. When plaintiff asked what he was doing, he responded, "That's where the goods are."

32. On or about January 11, 2010, Staton approached plaintiff and whispered, "I think I am in love with you." He then sniffed her and told her she smelled like Herbal Essence shampoo. Plaintiff, disgusted, told him to get away from her.

33. On January 14, 2010, Brune said to plaintiff, "I like your jeans, what kind are they? Thank you for wearing them. We should call the company and thank them." Brune then proceeded to sing lines from the song, "Baby got back."

34. When plaintiff told him to shut up, Brune said, "Oh, come on, you've been stalked worse than this," apparently referring to Labrada who was then present in the department. Brune then referred to plaintiff's space heater by saying, "This is how you keep your ass so hot."

35. Plaintiff suffered severe emotional distress because of the ongoing harassment by her fellow officers and Chief Paolilli's hostile treatment. Her doctor advised that she could not work in the environment because of the deleterious effects on her mental and physical health.

36. On or about January 19, 2010, Plaintiff made a formal, written complaint of hostile work environment and gender-based harassment with Corporation Counsel for the City of Newburgh.

37. On January 22, 2010, Corporation Counsel advised Plaintiff that she had to return to work and that counsel anticipated finishing her report of Plaintiff's Complaint by January 29, 2010.

38. On January 25, 2010, Plaintiff reported for work and provided Chief Paolilli with her doctor's note stating that Plaintiff could not then work because of the stressful effect on her mental health. Plaintiff was relieved of duty.

39. Plaintiff was thereafter ordered to return to work.

40. Plaintiff never received any report from defendant regarding the outcome of its investigation of her formal, written complaint of harassment or of any remedial measures taken by respondent.

41. Plaintiff has suffered severe and/or pervasive harassment because of her gender by defendant.

42. Despite notice, defendant failed to take prompt and effective remedial measures to prevent the harassment or to mitigate its effects.

43. Chief Paolilli compounded the negative effects of the harassment by treating Plaintiff in a hostile manner and by mocking and belittling her.

44. Because of the gender-based harassment and hostility that has permeated Plaintiff's workplace, her work environment has had substantial deleterious effects on her physical and mental health.

45. In addition, Plaintiff was deprived of certain 207-c benefits in substantial part because of her gender and because of her prior notice to respondent's administration of sexual harassment, including the physical assault by Sergeant Labrada.

46. In addition, defendant's cessation of plaintiff's 207-c benefits in July 2009 without a pre-deprivation hearing violated plaintiff's constitutionally protected due process rights.

47. With respect to the due process denial, Chief Paolilli was a designated final policymaker with respect to 207-c benefits and was personally involved in the deprivation.

V. CAUSES OF ACTION

48. Plaintiff incorporates paragraphs 1-47 as if fully re-written herein.

49. **Title VII - Sexual Harassment/Gender Discrimination and Retaliation (Title VII).**

By dint of the foregoing, defendant has violated Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, by subjecting plaintiff to sexual harassment, gender discrimination, and retaliation.

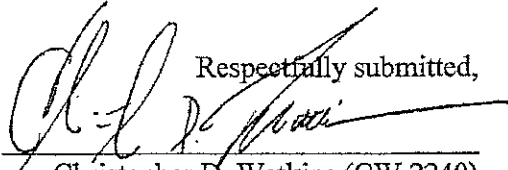
50. **Section 1983 - Due Process Violation.** By summarily discontinuing plaintiff's 207-c benefits without a pre-deprivation hearing, defendant violated plaintiff's right to procedural due process under the 14th Amendment, as made actionable by 42 U.S.C. § 1983.

VI. PRAYER FOR RELIEF

51. WHEREFORE, plaintiff prays that this Honorable Court:

- (a) empanel a jury to hear and decide this matter;
- (b) award to plaintiff compensatory damages, including damages for lost pay and benefits, physical pain and suffering, physical sickness and severe emotional distress;
- (c) award to plaintiff reasonable attorneys' fees and costs pursuant to 42 U.S.C. section 1988,
- and
- (d) enter any other relief justified by the law and facts.

Dated: April 20, 2012
Goshen, New York


Respectfully submitted,
Christopher D. Watkins (CW 2240)
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Attorneys for Plaintiff

JOINT RULE 16 CONFERENCE INFORMATION REPORT

Caption: _____ Civil Action No.: _____

Basis of Jurisdiction: _____ Jury or Non-Jury Trial: _____

Plaintiff's lead trial counsel: _____

Defendant's lead trial counsel: _____

Do counsel have full authority to settle at Rule 16 conference? _____

If not, client with such authority who will attend: _____

When did the parties exchange Rule 26(a) initial disclosures? _____

How much time do the parties need for fact discovery? _____

Identify any other discovery issues which should be addressed at the Rule 16 conference, including any need for sequencing of discovery, limitations on discovery, protective orders, or other elements which should be included in a particularized discovery plan: _____

Does either side expect to file a case-dispositive motion? _____

If yes, under what Rule? _____

If yes, specify the issue(s): _____

Proposed deadline for filing dispositive motions: _____

Does either side anticipate the use of experts? _____

If yes, what is the proposed deadline for expert discovery? _____

Approximate date case should be trial-ready: _____

Estimated trial time for Plaintiff's case: _____

Estimated trial time for Defendant's case: _____

Has settlement been discussed? _____

If not, why not? _____

Is a settlement conference likely to be helpful? _____

If so, when? Early? After discovery? _____

Have you discussed consenting to proceed before a United States Magistrate Judge? _____

*This form should be faxed to Chambers at 267-299-5067
no later than one day before the Rule 16 conference*