

ORDINANCE NO.: _____ - 2005

OF

SEPTEMBER 12, 2005

**AN ORDINANCE AMENDING CHAPTER 34 ENTITLED CODE OF ETHICS
OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH**

BE IT ORDAINED, by the Council of the City of Newburgh, New York that the language contained in Section 34, Ethics, Code of, be and is hereby amended to read as follows:

Chapter 34, ETHICS, CODE OF

ARTICLE I, General Provisions

§ 34-1. Declaration of policy.

A. Pursuant to the provisions of § 806 of the General Municipal Law, the City Council of the City of Newburgh recognizes that there are rules of ethical conduct for public officers and employees which must be observed if a high degree of moral conduct is to be obtained and a public confidence is to be maintained in our unit of local government. It is the purpose of this section to promulgate these rules of ethical conduct for the officers and employees of the City of Newburgh. These rules shall serve as a guide for official conduct of the officers and employees of the City of Newburgh. The rules of ethical conduct of § 34-2 as adopted shall not conflict with, but shall be in addition to any prohibition of Article 18 of the General Municipal Law or any other general or special law relating to ethical conduct and interest in contracts of municipal officers and employees.

B. The City Council of the City of Newburgh does hereby enact the "Code of Ethics of the City of Newburgh" pursuant to the authority and provisions of § 806 of the General Municipal Law. All prior local laws, ordinances or resolutions or parts of local laws, ordinances or resolutions of the City of Newburgh inconsistent with the provisions of § 34-2 are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency, and in all respects § 34-2 shall be in addition to other legislation regulating and governing the subject matter covered by this Code.

§ 34-2. Code of Ethics.

A. Definitions.

(1) As used in this section, the following terms shall have the meanings indicated:

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APPEARANCE OF IMPROPRIETY ~ Conduct, while not constituting an immediate violation of Subsection E, the Code of Ethics, exhibits characteristics of a violation of the Code of Ethics, and raises doubt as to the independence of the individual's judgment.

CHILD ~ Son, daughter, stepson or stepdaughter.

CITY ~ As used herein shall refer to the City of Newburgh, New York, unless otherwise indicated.

CONFLICT OF INTEREST ~ Any personal interest an official or employee may have in any matter or transaction which may result in an expense or loss to the City or may be adverse to or detrimental to and not in the best interest of the City.

DOMESTIC PARTNER ~ An adult person of either sex who shares a personal relationship with an official or employee of the City but who is not related to such official or employee by marriage or consanguinity; and such relationship consists of or includes the following characteristics exclusive to said relationship and no others involving the parties: co-habitation in the primary residence of both individuals; shared legal and/or physical custody or responsibility for any minors who may also reside in the primary residence; a shared significant mutual commitment to the care, support, sustenance and welfare of each to and for the other, evidenced by the continuous provision of nutrition, transportation, financial support, emotional support, health care, insurance coverage, survivors' benefits and any other manifestations of such exclusive commitment.

EMPLOYEE or OFFICIAL ~ Any elected or appointed official or employee of the City of Newburgh, whether paid or unpaid, and all members of the City of Newburgh boards, commissions, departments or agencies.

INTEREST ~ A direct or indirect pecuniary or material benefit accruing to an official or employee as the result of a contract, business or professional transaction or other relationship with the City of Newburgh. For the purpose of this article, an official or employee will be deemed to have an interest in the affairs of the following:

- (a) His or her spouse, domestic partner, minor children, and dependents.
- (b) A firm, partnership or association of which he or she is a member or employee.
- (c) A corporation of which he or she is an officer, director, employee or in which he or she owns 5% or more of any outstanding shares in any class of stock.

RELATIVE ~ A spouse, domestic partner, child or stepchild, parent or step-parent, brother, sister or grandparent of the reporting individual.

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SPOUSE ~ The husband or wife of the employee or official unless living separate and apart from the employee or official under the terms of a lawfully-executed Separation Agreement.

UNETHICAL CONDUCT ~ Conduct in violation of the provisions of the Code of Ethics.

Incorporated herein by reference are all other definitions set forth in §§ 800 and 810 of Article 18 of the General Municipal Law.

2. No City officer or employee shall:

(1) Act as attorney, directors broker, agent, consultant, representative, or employee for any person, firm or corporation interested directly or indirectly in any manner whatsoever in business or professional dealings with the City.

(2) Knowingly have an interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in conflict with, or might reasonably tend to conflict with, the proper discharge of his or her duties in the public interest.

(3) Directly or indirectly solicit, accept, or agree to accept any gift in excess of limit set forth in § 805(a) of the General Municipal Law, currently seventy-five (\$75.00) dollars or more, or as same may be further amended, from any individual person or entity, other than a child, domestic partner, spouse or other relative, who the City official or employee knows is considering, has, or within the previous 12 months has had, any business dealings with the City that involves any discretionary act by the City officer or employee. A gift shall include money, services, loan, travel, entertainment, hospitality, item or promise thereof, or any other gratuity or promise thereof, including any financial transaction on terms not available to the general public, but shall not include a campaign contribution. However, notwithstanding the within or the provisions of the General Municipal Law, no official or employee shall accept any gift of any kind or value if same would have the intent or effect, or would create the appearance of exerting an undue or improper influence upon such official or employee in the performance of their public duty.

(4) Appear before any agency or board of the municipality except on his or her own behalf, or on behalf of the municipality, when so authorized and directed.

(5) Take or refrain from taking any discretionary action, or agree to take or refrain from taking any discretionary action, or induce or attempt to induce any other City officer or employee to take or refrain from taking any discretionary action, on any matter before the City in order to obtain a pecuniary or material benefit for:

(a) Himself or herself;

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- (b) A relative or other family member;
- (c) Any partnership or unincorporated association of which the City officer or employee is a member or employee or in which he or she has a proprietary interest;
- (d) Any corporation of which the City official or employee is an officer or director, or of which he or she legally or beneficially owns or controls more than 5% of the outstanding stock;
- (e) Any person with whom the City official or employee or his or her spouse, has received within any twelve-month period during the previous 24 months, a pecuniary or material benefit having an aggregate value greater than \$1,000.
- (6) Appear as an attorney or counsel or cooperate with same, or with the clients or principals thereof against the interests of the City in any matter in which the City is a party or a complainant.
- (7) Except where such disclosure is authorized by law, disclose during his or her office with the City or thereafter any confidential information acquired in the course of his or her official duties, or use any such information to advance the financial or other private interest of himself or herself or any other person.
- (8) Within two (2) calendar years after termination of his or her term of office or employment with the City, appear before the City, or receive compensation for services rendered on behalf of any person, in relation to any particular matter upon which he or she took any action or that came before him or her during his or her term of office or employment with the City.
- (9) Direct or cause any officer or employee of the City to do or perform any service or work outside of public work or employment, or accept any such service or work, nor shall any such officer or employee offer to perform any such service or work for such officer or employee, including participation in an election campaign or contribution to a political committee.
- (10) Request of members of City Council, City staff or department heads that any individual receive preferential consideration in connection with provision of services or any appointment.
- (11) Request or permit the use of City personnel or funds or assets or City-owned vehicles, equipment, materials or property for personal convenience or profit, except when such services are available to the public generally or are provided as a City policy for the use of such officer or employee in the conduct of official business or as otherwise permitted by prior written agreement or contractual language.
- (12) By his or her conduct give reasonable basis for the impression that any person can improperly influence him or her or unduly enjoy his or her favor in the performance of his or her official duties, or that he or she is affected by kinship, rank, position or influence of any party or person.

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- (13) Engage in any actions which give the appearance of impropriety.
- (14) Participate in the preparation or discussion of or give an official opinion to the City Council on any legislation before the City Council in which he or she may have any direct or indirect financial or other private interest unless he or she discloses the nature and extent of the interest on the official record and no conflict of interest or appearance of impropriety exists.
- (15) Hold two or more positions simultaneously in public office which are defined or deemed to be incompatible or which place obligations upon such person as are or may tend to be incompatible.
- (16) Hold investments and/or be a party to financial or business transactions which create or tend to create a conflict of interest.
- (17) Engage in or request or suggest that other City employees or agents engage in nepotism or other prohibited forms of favoritism or discrimination.
- (18) Misuse the privileges and powers of holding public office or employment to unfairly or improperly benefit or favor one's self or another person.
- (19) To misuse and/or misappropriate City-owned assets, funds or property or staff to benefit one's self or another person in a private enterprise or endeavor.
- (20) To solicit, entertain or request or to offer or to provide public services or to provide or influence the provision of municipal services in favor of or to benefit a private person or entity in return for or in return for the promise of present or future employment by such private persons or entities or by another offering same.

C. Nothing in this section shall be construed to prohibit a City officer or employee or any other person who resides in the City from receiving a City service or benefit, or using a City facility, which is generally available to residents in the City.

D. Disclosure of interest or appearance of impropriety.

In cases of conflict of interest or appearance of impropriety or the possibility of a conflict of interest or appearance of impropriety, a City official or employee must make a full disclosure of that conflict of interest for the official record. If an officer or employee fails to disclose in accordance with this subsection, or discloses a potential conflict of interest or appearance of, impropriety, and does not recuse him/herself in accordance with Subsection E of this section, a complaint maybe filed with the Board of Ethics as set forth in Subsection H of this section. Such

disclosure shall be made in writing and submitted to the City Clerk and shall constitute an amendment to said person's annual letter of disclosure.

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E. A City employee or officer shall promptly recuse himself or herself from acting on a matter before the City when acting on the matter, or failing to act on the matter, may be in violation of Subsection B of this section.

F. Whenever an officer or employee is required to recuse himself or herself under this Code of Ethics, he or she shall state such information upon the public record of the board and/or of the City; and shall immediately refrain from participating further in the matter.

Note: moved above.

G. Every official and employee, defined in the definition of "employee or official" Subsection A of this section shall be required to attest that he or she has reviewed the Code of Ethics of the City of Newburgh.

H. Complaint procedures.

(1) Any officer or employee of the City of Newburgh or member of the public who would like to file a complaint that an employee or officer is acting or has acted in violation of this Code of Ethics must file copies of said complaint with the City Manager and Corporation Counsel. In the case of a complaint against the Corporation Counsel, the complaint must be filed with the City Manager. In the case of a complaint against the City Manager, the complaint must be filed with the City Council.

(2) Upon receipt of a sworn complaint alleging a violation of this Code of Ethics, the complaint shall be reviewed by the Board of Ethics as set forth in § 34-7 of this code.

§ 34-3. Unconstitutionality or illegality.

If any clause, sentence, paragraph, word, section or part of this City of Newburgh Code of Ethics shall be adjudged by any court of competent jurisdiction to be unconstitutional, illegal or invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, word, section or part thereof directly involved in

the controversy in which said judgment shall have been rendered, as long as doing so does not impair or nullify the meaning or purpose of the remainder of this Chapter or section.

§ 34-4. Suits against City.

Nothing herein shall be deemed to bar or prevent the timely filing by a present or former municipal officer or employee of any claim, account, demand or suit against the City of Newburgh or any agency thereof on behalf of himself or any member of his family arising out of any personal injury or property damage or for any lawful benefit authorized or permitted by law.

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§ 34-5. Copies of Code of Ethics.

The City Manager of the City of Newburgh shall cause a copy of this Code of Ethics to be distributed to every officer and employee of the City of Newburgh within 60 days after the effective date of this chapter. Each officer and employee elected or appointed thereafter shall be furnished a copy before entering upon the duties of his office or employment.

§ 34-6. Penalties for offenses.

In addition to any penalty contained in any other provision of law, any person who shall knowingly and intentionally violate any of the provisions of this Code of Ethics may be fined, suspended or removed from office or employment, as the case may be, in the manner provided by law.

§ 34-7. Board of Ethics.

A. A Board of Ethics of the City of Newburgh is hereby established for the purpose of providing the functions and services and carrying out the duties and exercising the powers of a board of ethics as specified herein and in State law, including, but not limited to:

(1) Giving advisory opinions with respect to ethical questions involving officers and employees of the City of Newburgh pursuant to Section 808 of the General Municipal law.

(2) Making recommendations with respect to the drafting and adoption of a code of ethics or amendments thereto, whether upon the request of the City Council or City Manager or upon its own initiative.

(3) Receiving and serving as the reviewing agency of all Annual Letters of Disclosure filed by such City officers, officials and employees as are required to do so by this Chapter; following the review of such and any further action or investigation arising therefrom the Board of Ethics shall

then convey all such original Annual Letters of Disclosure to the City Clerk whose office shall be the official repository thereof.

(4) Either upon receiving an appropriate request or upon its own initiative, investigating any circumstance or action which reasonably justifies an inquiry into the ethical propriety of same, with respect to the involvement therein of any City officer, official or employee; and pursuant to which the Board shall have the power to issue subpoenas and require the appearances of witnesses to testify under oath and to require the production of books and records and other physical evidence; and following which and as part thereof, making recommendations to the City Council, City Manager, Corporation Counsel and/or other appropriate public officer or agency as to such further action, discipline or other measures as the Board deems fitting and proper.

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(5) Receiving and approving for good cause shown or reasonably denying any application for an extension of time to file the Annual Letter of Disclosure required by this Chapter; such approval or denial to be based upon a full and fair consideration of the application and the relevant facts and circumstances; and providing such applicant with the written decision of the Board and the basis thereof.

B. The Board shall consist of five members, appointed by the Council or its designee, none of whom shall be officers or employees of the City of Newburgh. The term of all members shall be two years, dating from the date of appointment, whether or not such appointed member is succeeding a prior member at the end of a term or is filling a vacancy occurring prior to the lawful expiration of a term. Members of the Board shall receive no compensation for their services, but shall be entitled to reimbursement for their out-of-pocket mileage expenses at the prevailing rate established therefor by the City.

C. The Board shall have the powers and duties and shall be governed by the same conditions as are contained in § 808 of the General Municipal Law and other applicable and governing statute and caselaw.

D. The City Manager shall make space available in City Hall for the meetings and hearings that may be conducted by the Board of Ethics.

§ 34-8. (Reserved)

§ 34-9. (Reserved)

§ 34-10. (Reserved)

ARTICLE II, Annual Letter of Disclosure

§ 34-11. Definitions.

When used in this article and unless otherwise expressly stated or unless the content otherwise requires, the following terms shall have the meanings indicated:

AGENCY ~ Any public benefit corporation, not-for-profit corporation or public authority whose members are appointed by the City Manager or by the Council of the City of Newburgh or which by law have elected officials of the City of Newburgh as members of their governing boards.

LOCAL OFFICER OR EMPLOYEE ~ All elected officials, all members of appointed boards or commissions, the City Manager, all department heads and their deputies of the City of Newburgh or of any agency of the City of Newburgh and all City staff whose positions or titles are listed by the City Council in the form of a resolution or local law as required to file an annual letter of disclosure; except the term "local officer or employee" shall not mean a judge, justice, officer or employee of the unified court system.

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SPOUSE ~ The husband or wife, or domestic partner as this term is defined hereinabove, of the reporting individual unless living separate and apart from the reporting individual with the intention of terminating marriage or unless permanently separated pursuant to a judicial order, decree or judgment or a legally binding separation agreement.

UNEMANCIPATED CHILD ~ Any son, daughter, stepson, or stepdaughter by marriage or adoption of the reporting individual and/or of the spouse or domestic partner of the reporting individual who is under age 18, unmarried and living in the household of the reporting individual and who is not financially and otherwise self-sufficient or independent or legally emancipated from the reporting individual.

§ 34-12. Letter of disclosure.

A. All local officers and employees required to do so by this Chapter and all candidates for local elected office shall file an annual letter of disclosure containing the information and in the form set forth herein on or before the 15th day of May with respect to the proceeding calendar year, except that:

(1) A person who is required to file an annual letter of disclosure statement or equivalent with the Temporary State Commission on Local Government Ethics and who is granted an additional period of time within which to file such statement shall have a similar automatic extension of time to file the statement herein.

(2) The Board of Ethics may grant to anyone herein required to file an annual letter of disclosure an extension of time to file such letter for good cause shown.

(3) Candidates for local elected office or others who become subject to these filing requirements after May 15 in any calendar year including newly-hired employees of the City subject to the requirements of this Chapter shall file the letter required herein within thirty days after the filing by them of nominating petitions or of their designation as a candidate, or within thirty days of becoming so subject.

(4) A person subject to the filing requirements of Article 18 of the General Municipal Law or Article 4 of the Public Officers Law may file a copy of the statement required thereunder in lieu of the letter required herein, unless for some reason the content of same would differ from the content of the letter required to be filed hereunder.

B. The letters of disclosure required herein shall be filed with the Board of Ethics of the City of Newburgh. The Clerk of the City of Newburgh is hereby appointed Clerk of the Board of Ethics for the purpose of accepting letters of disclosure for filing. The Clerk shall transmit all filed statements of financial disclosure to the Board of Ethics within 30 days of their filing, or upon request of the Board of Ethics.

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C. The annual letter of disclosure shall contain the information and shall be in the form set forth below:

ANNUAL LETTER OF DISCLOSURE
FOR THE CITY OF NEWBURGH
FOR CALENDAR YEAR _____

NAME _____

OFFICE OR POSITION _____

BOARD, COMMISSION,
DEPARTMENT, AGENCY
OR ENTITY _____

MARITAL STATUS _____

NAME OF SPOUSE OR DOMESTIC PARTNER (as defined in the Code of Ethics)

NAMES OF ALL UNEMANCIPATED CHILDREN: _____

1. List any businesses which you, your spouse, or unemancipated children: (a) operate or are interested in within the City of Newburgh, (b) or which during the calendar year set forth above, regardless of location, did business with the City of Newburgh or any of its agencies. With respect to both (a) and (b) above, include all businesses whether they are sole proprietorship, partnership or corporations in which you, your spouse or unemancipated children are officers or directors or own in any combination more than 5% of the voting stock or beneficial interest therein.

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(a) _____

(b) _____

2. List the name, address and description of every occupation, employment, trade business or professional engaged in by the reporting individual, spouse or unemancipated children if such activity yielded a net income of in excess of \$2,000.

3. List all real property owned by the reporting individual, spouse or unemancipated children other than the permanent residence of the reporting individual, which real property is located either within Orange County, New York, or within five miles of the perimeter of the City of Newburgh.

4. List all real property owned by any partnership, association or corporation which the reporting individual, spouse or unemancipated children are a partner, officer or director or control at least 5% of the voting stock or have a beneficial interest therein, which real property is located either within Orange County, New York, or within five miles of the perimeter of the City of Newburgh.

5. List all real property owned jointly or as tenants in common by the reporting individual and any other person or entity other than the above, which real property is located either within Orange County, New York, or within five miles of the perimeter of the City of Newburgh.

6. (A) List any position held by the reporting individual or spouse as an officer of any political party or political organization, as a member of any political party committee or as a political party district leader. The terms "party" and "political organization" carry the same meaning as under the Election Law.

(B) I recognize that the law of the State of New York and the ordinances and policies of the City of Newburgh prohibit the derivation of any direct or consequential benefits, the use of confidential or insider's information, the involvement of any party in contract procurement or negotiation or influence upon the same or the appearance of any such activity and further require the disclosure of any conflict or any potential conflict of interest or appearance of the same by any person, party or entity who may derive any benefit as a result of any employment, relationship to or having contact or doing business with any agent, employee, representative, branch, agency or department of the City of Newburgh. This letter discloses each and all such situations and

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The statements and forms filed pursuant to this article shall be made available to the public, except that any information contained therein which is of a sensitive personal nature and which is protected and/or exempt from disclosure under any other provision of law, including but not limited to the Freedom of Information Law, Personal Privacy Protection Law or other such Federal or State law, rule or regulation, such as for example Social Security numbers, information relating to personal health status, or information relating to the welfare, safety or security of any person or entity which would be impaired if such were publically disclosed, may be deleted therefrom prior to making such statements and forms publicly available.

§ 34-15. Effective date.

This article shall take effect on January 1, 1993.

§ 34-16. Severability.

If any provision of this article is held by a court of competent jurisdiction to be invalid, that decision shall not affect the validity and effectiveness of the remaining provisions of this article, as long as the meaning, sense and purpose thereof is preserved.

THIS ORDINANCE SHALL TAKE EFFECT IMMEDIATELY.