



## City of Newburgh Council Work Session

7:00 pm  
May 5, 2011

### AGENDA

1. Procedural Items related to the City Council meeting on May 9, 2011:
  - a. Minutes of the meeting of April 25, 2011
  - b. Notices of Claim
2. Planning and Development/Real Estate
  - a. 485-a Exemption for Mixed Use Improvements (see memo)
  - b. Youth Services award of contract
  - c. Land Use Plan
3. Engineering:
  - a. (Res. 87) Scheduling a public hearing for May 23, 2011 to receive public comment on the City's Municipal Stormwater Management program.
  - b. (Res. 88) Vendor services contract with Jamie Lo for temporary GIS services (not to exceed 8 hours per week at \$30.00 per hour).
4. Finance Department:
  - a. (Res. 89) Authorization to transfer \$11,600.00 from the Comptroller budget line to the Information Technology budget line to provide funding for the data conversion from the AS400 to the ADP system.
  - b. (Res. 90) Authorization to transfer \$3,000.00 from the Contingency budget line to the City Clerk budget line to provide funding for increased costs for legal publications
  - c. (Res. 91) Authorization to transfer \$1,000.00 from the Contingency budget line to the Parks budget line to provide funding for lighting in Downing Park
  - d. (Res. 92) Authorization to transfer \$50,000.00 from the Special Items Contingency budget line to the Police Motor Equipment budget line to provide for the purchase of two patrol cars for the Police Department
  - e. (Res. 93) Acceptance of donations to support the City's pool program
  - f. (Res. 94) Acceptance of donations to support the City's International Festival
  - g. (Res. 95) Acceptance of donations to support the City's Fourth of July celebration
  - h. (Res. 96) Home Rule Request requesting authorization to establish an administrative tribunal to hear and determine parking, standing and stopping violations
  - i. Home Rule Request (Police and Fire 20 year optional retirement) should have Assembly No. by Thursday to draft the resolution.

- j. Home Rule Request (Deficit Bonds) Should have bill numbers before Thursday to draft the resolution
- k. Reprogramming \$50,000.00 of CDBG funds to use for demolition projects rather than sidewalks
- l. (Res. 97) Crystal Lake Loan Repayment (see also memo of April 1, 2011)

5. Discussion Items:

- a. NYS DEC grant for the split body garbage truck (see DEC letter of April 12, 2011)
- b. 150 First Street – outstanding water and sewer bill
- c. Delano Hitch Recreation Park Fees(see two proposed ordinances)

6. Executive Session:

- a. Settlement of Litigation
- b. Pending Litigation
- c. Matters pertaining to the employment of a particular individual or individuals

RESOLUTION NO.: 87 - 2011

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OF

MAY 9, 2011

A RESOLUTION SCHEDULING A PUBLIC HEARING  
FOR MAY 23, 2011 TO HEAR PUBLIC COMMENT  
CONCERNING THE MUNICIPAL STORMWATER MANAGEMENT PROGRAM  
FOR THE CITY OF NEWBURGH AS REQUIRED BY  
NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW AND THE  
RULES AND REGULATIONS OF THE NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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 the Municipal Stormwater Management Program for the City of Newburgh as required by New York State Environmental Conservation Law and the rules and regulations of the New York State Department of Environmental Conservation ("NYSDEC") ; 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 23rd day of May, 2011, in the 3<sup>rd</sup> Floor Council Chambers, City Hall, 83 Broadway, Newburgh, New York.

OF

MAY 9, 2011

A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ENTER INTO AN AGREEMENT FOR VENDOR SERVICES  
WITH JAMIE LO AT A RATE OF THIRTY DOLLARS PER HOUR  
TO PROVIDE CONSULTING SERVICES TO THE CITY OF NEWBURGH  
IN CONNECTION WITH GEOGRAPHIC INFORMATION SYSTEMS DATA

WHEREAS, the City of Newburgh is currently involved in several projects such as the Smart Growth Grant and the Land Bank; and

WHEREAS, such projects require expertise in the field of Geographic Information Systems ("GIS") data; and

WHEREAS, Jamie Lo has expressed a desire to assist the City of Newburgh with the GIS data; and

WHEREAS, the rate for these services is \$30.00 per hour not to exceed 8 hours per week, with such funding to be derived from A.1440.0455; and

WHEREAS, it is necessary and appropriate to enter into an agreement for vendor services in connection with such consulting services; and

WHEREAS, this Council has determined that entering into such agreement is in the best interests of the City of Newburgh and its future 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 an agreement, in substantially the same form annexed hereto and subject to approval of the Corporation Counsel with such other terms and conditions as Counsel may require, with Jamie Lo at a rate of \$30.00 per hour to provide consulting services to the City of Newburgh in connection with Geographic Information Systems ("GIS") data.

~~A not-to-exceed cost of \$9,000.00 has been established for the scope of SERVICES and/or the supply of goods rendered by VENDOR. Costs in excess of such not-to-exceed cost, if any, may not be incurred without prior written authorization of the City Manager of the CITY, evidenced only by a written Change Order or Addendum to this Agreement, after consultation with the Department Head. It is specifically agreed to by VENDOR that the CITY will not be responsible for any additional cost or costs in excess of the above noted not-to-exceed cost if the CITY'S authorization by the City Manager is not given in writing prior to the performance of the SERVICES giving rise to such excess or additional costs.~~

Any bills or invoices sent by VENDOR to the CITY more than one (1) year after services which are the subject of such billing have been rendered shall not be paid by the CITY and the CITY shall have no liability therefor.

#### ARTICLE 4. EXECUTORY CLAUSE

The CITY shall have no liability under this Agreement to VENDOR or to anyone else beyond funds appropriated and available for this Agreement.

#### ARTICLE 5. PROCUREMENT OF AGREEMENT

VENDOR represents and warrants that no person or selling agency has been employed or retained by VENDOR to solicit or secure this Agreement upon an agreement or upon an understanding for a commission, percentage, a brokerage fee, contingent fee or any other compensation. VENDOR further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. VENDOR makes such representations and warranties to induce the CITY to enter into this Agreement and the CITY relies upon such representations and warranties in the execution hereof.

For a breach or violation of such representations or warranties, the CITY shall

~~have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.~~

#### ARTICLE 6. CONFLICT OF INTEREST

VENDOR represents and warrants that neither it nor any of its directors, officers, members, partners or employees, have any interest nor shall they acquire any interest, directly or indirectly which would or may conflict in any manner or degree with the performance or rendering of the SERVICES herein provided. VENDOR further represents and warrants that in the performance of this Agreement, no person having such interest or possible interest shall be employed by it and that no elected official or other officer or employee of the CITY, nor any person whose salary is payable, in whole or in part, by the CITY, or any corporation, partnership or association in which such official, officer or employee is directly or indirectly interested shall have any such interest, direct or indirect, in this Agreement or in the proceeds thereof, unless such person submits a letter disclosing such an interest, or the appearance or potential of same, to the City Manager and a copy to the Corporation Counsel of the CITY in advance of the negotiation and execution of this Agreement.

For failure to submit such letter of disclosure, or for a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim for, or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if elected, shall not constitute the

from any further liability and obligation to VENDOR, its assignees or transferees, and all monies that may become due under this Agreement shall be forfeited to the CITY except so much thereof as may be necessary to pay VENDOR'S employees for past service.

The provisions of this clause shall not hinder, prevent, or affect any assignment by VENDOR for the benefit of its creditors made pursuant to the laws of the State of New York.

This agreement may be assigned by the CITY to any corporation, agency, municipality or instrumentality having authority to accept such assignment.

#### ARTICLE 10. BOOKS AND RECORDS

VENDOR agrees to maintain separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

#### ARTICLE 11. RETENTION OF RECORDS

VENDOR agrees to retain all books, records and other documents relevant to this Agreement for six (6) years after the final payment or termination of this Agreement, whichever later occurs. CITY, or any State and/or Federal auditors, and any other persons duly authorized by the CITY, shall have full access and the right to examine any of said materials during said period.

#### ARTICLE 12. AUDIT BY THE CITY AND OTHERS

All Claimant Certification forms or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said Claimant's Certification forms or invoices are based are subject to audit by the CITY. VENDOR shall submit any and all documentation and justification in support of expenditures or

fees under this Agreement as may be required by the CITY so that it may evaluate the reasonableness of the charges, and VENDOR shall make its records available to the CITY upon request. All books, Claimant's Certification forms, records, reports, cancelled checks and any and all similar material may be subject to periodic inspection, review and audit by the CITY, the State of New York, the federal government, and/or other persons duly authorized by the CITY. Such audits may include examination and review of the source and application of all funds whether from the CITY, State, the federal government, private sources or otherwise. VENDOR shall not be entitled to any interim or final payment under this Agreement if any audit requirements and/or requests have not been satisfactorily met.

#### ARTICLE 13. INDEMNIFICATION

VENDOR agrees to defend, indemnify and hold harmless the CITY, including its officials, employees and agents, against all claims, losses, damages, liabilities, costs or expenses (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement), whether incurred as a result of a claim by a third party or any other person or entity, arising out of the SERVICES performed and/or goods supplied pursuant to this Agreement which the CITY or its officials, employees or agents, may suffer by reason of any negligence, fault, act or omission of VENDOR, its employees, representatives, subcontractors, assignees, or agents.

In the event that any claim is made or any action is brought against the CITY arising out of the negligence, fault, act, or omission of an employee, representative, subcontractor, assignee, or agent of VENDOR either within or without the scope of his respective employment, representation, subcontract, assignment or agency, or arising out of VENDOR'S negligence, fault, act or omission, then the CITY shall have the right to withhold further payments hereunder for the purpose of set-off of sufficient sums to cover the said claim or action. The rights

~~CITY to complete the SERVICES herein will be charged to VENDOR and/or set-off against any sums due VENDOR.~~

Notwithstanding any other provision of this Agreement, VENDOR shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of VENDOR'S breach of the Agreement or failure to perform in accordance with applicable standards, and the CITY may withhold payments to VENDOR for the purposes of set-off until such time as the exact amount of damages due to the CITY from VENDOR is determined.

The rights and remedies of the CITY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

#### ARTICLE 17. GENERAL RELEASE

The acceptance by VENDOR or its assignees of the final payment under this Agreement, whether by Claimant's Certification form, judgment of any court of competent jurisdiction, or administrative means shall constitute and operate as a general release to the CITY from any and all claims of VENDOR arising out of the performance of this Agreement.

#### ARTICLE 18. SET-OFF RIGHTS

The CITY shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but are not limited to, the CITY'S right to withhold for the purposes of set-off any monies otherwise due VENDOR (i) under this Agreement, (ii) under any other agreement or contract with the CITY, including any agreement or contract for a term commencing prior to or after the term of this Agreement, (iii) from the CITY by operation of law, the CITY also has the right to withhold any monies otherwise due under this Agreement for the purposes of set-off as to any amounts due and owing to the CITY for any reason whatsoever including, without limitation, tax delinquencies, fee delinquencies or monetary penalties or interest relative thereto.

#### ARTICLE 19. NO ARBITRATION

Any and all disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to arbitration unless specifically agreed thereto in writing by the City Manger of the CITY, but must instead only be heard in the Supreme Court of the State of New York, with venue in Orange County or if appropriate, in the Federal District Court with venue in the Southern District of New York, White Plains division.

#### ARTICLE 20. GOVERNING LAW

This Agreement shall be governed by the laws of the State of New York. VENDOR shall render all SERVICES under this Agreement in accordance with applicable provisions of all federal, state and local laws, rules and regulations as are in effect at the time such SERVICES are rendered.

#### ARTICLE 21. CURRENT OR FORMER CITY EMPLOYEES

VENDOR represents and warrants that it shall not retain the SERVICES of any CITY employee or former CITY employee in connection with this Agreement or any other agreement that said VENDOR has or may have with the CITY without the express written permission of the CITY. This limitation period covers the preceding three (3) years or longer if the CITY employee or former CITY employee has or may have an actual or perceived conflict of interests due to their position with the CITY.

For a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim for or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages

SCHEDULE A

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SCOPE OF SERVICES

For Professional Services in connection with on-going GIS related projects to include:

- a. Land Bank Project with Pace University;
- b. Smart Growth Project with Orange County;
- c. GIS Implementation Plan; and
- d. Updating of Data Warehouse

RESOLUTION NO.: 89 - 2011

OF

MAY 9, 2011

RESOLUTION AMENDING RESOLUTION NO: 264-2010,  
THE AMENDED 2011 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK  
TO TRANSFER \$11,600.00 FROM COMPTROLLER  
TO TECHNOLOGY TO FUND PAYROLL FOR DONNA RICKEY  
TO ASSIST IN THE CONVERSION WITH ADP AND  
DATA TRANSFER FROM THE AS400

BE IT RESOLVED, that Resolution No: 264-2010, the 2011 Amended Budget of the City of Newburgh, is hereby amended as follows:

	<u>Decrease</u>	<u>Increase</u>
Comptroller A.1315.0110	\$ 11,600	
Technology A.3120.0202		\$ 11,600

RESOLUTION NO.: 90 - 2011

OF

MAY 9, 2011

RESOLUTION AMENDING RESOLUTION NO: 264-2010,  
THE AMENDED 2011 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK  
TO TRANSFER \$3,000.00 FROM CONTINGENCY TO THE CITY CLERK  
TO PROVIDE FUNDING FOR INCREASED COSTS FOR LEGAL PUBLICATIONS

BE IT RESOLVED, that Resolution No: 264-2010, the 2011 Amended Budget of the City of Newburgh, is hereby amended as follows:

	<u>Decrease</u>	<u>Increase</u>
Special Items		
Contingency A.1900.1990	\$ 3,000	
City Clerk		
Legal Notices A.1410.0462		\$ 3,000

RESOLUTION NO.: 91 -2011

OF

MAY 9, 2011

RESOLUTION AMENDING RESOLUTION NO: 264-2010,  
THE AMENDED 2011 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK  
TO TRANSFER \$1,000.00 FROM CONTINGENCY TO  
PARKS TO PROVIDE ELECTRIC FOR  
LIGHTS IN DOWNING PARK

BE IT RESOLVED, that Resolution No: 264-2010, the 2011 Amended Budget of the City of Newburgh, is hereby amended as follows:

	<u>Decrease</u>	<u>Increase</u>
Special Items		
Contingency A.1900.1990	\$ 1,000	
Parks		
Gas and Electric A.7110.0422		\$ 1,000

RESOLUTION NO.: 92 2011

OF

MAY 9, 2011

RESOLUTION AMENDING RESOLUTION NO: 264-2010,  
THE AMENDED 2011 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK  
TO TRANSFER \$50,000.00 FROM CONTINGENCY TO  
POLICE TO PROVIDE FOR THE PURCHASE OF TWO  
PATROL CARS FOR THE CITY OF NEWBURGH POLICE DEPARTMENT

BE IT RESOLVED, that Resolution No: 264-2010, the 2011 Amended Budget of the City of Newburgh, is hereby amended as follows:

	<u>Decrease</u>	<u>Increase</u>
Special Items		
Contingency A.1900.1990	\$ 50,000	
Police		
Motor Equipment A.3120.0202		\$ 50,000

RESOLUTION NO.: 93 - 2011

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OF

MAY 9, 2011

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT DONATIONS  
TO PROVIDE FUNDING TO OPEN THE AQUATIC CENTER  
FOR THE 2011 SUMMER SEASON

WHEREAS, various businesses, firms and individuals have made and are willing to make contributions of money and in-kind assistance to support the opening of the Aquatic Center for the 2011 Summer Season; and

WHEREAS, this Council deems it to be in the best interests of the City of Newburgh to accept such donations;

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 accept said donations with the appreciation and thanks of the City of Newburgh on behalf of its children, families and citizens for their support; and

BE IT FURTHER RESOLVED, that the City Comptroller is hereby directed to deposit said donations into the General Fund, Line A.0000.2001, Pool Fees.

RESOLUTION NO.: 94 - 2011

OF

MAY 9, 2011

A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ACCEPT DONATIONS IN SUPPORT OF THE  
CITY OF NEWBURGH'S 23RD ANNUAL FESTIVAL

WHEREAS, the City of Newburgh will be holding its 23rd Annual Festival over the Labor Day Holiday; and

WHEREAS, various businesses, firms and individuals have made and are willing to make contributions of money and in-kind assistance to support this event; and

WHEREAS, this Council deems it to be in the best interests of the City of Newburgh to accept such donations;

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 accept said donations with the appreciation and thanks of the City of Newburgh on behalf of its children, families and citizens, for their support and sponsorship of this event.

RESOLUTION NO.: 95 - 2011

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OF

MAY 9, 2011

A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ACCEPT DONATIONS IN SUPPORT OF THE CITY OF NEWBURGH'S  
FOURTH OF JULY CELEBRATION

WHEREAS, various businesses, firms and individuals have made and are willing to make contributions of money and in-kind assistance to fund the City of Newburgh's Fourth of July Celebration; and

WHEREAS, this Council deems it to be in the best interests of the City of Newburgh to accept such donations and enter into such contract and;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager is hereby authorized to accept donations in support of the City's Fourth of July Celebration.

RESOLUTION NO.: 96 -2011

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OF

MAY 9, 2011

A RESOLUTION AUTHORIZING THE SUBMISSION  
OF A HOME RULE REQUEST TO THE LEGISLATURE OF THE STATE OF NEW  
YORK REQUESTING THE ENACTMENT INTO LAW OF  
SENATE BILL S03959 AND ASSEMBLY BILL A07299  
AUTHORIZING THE CITY OF NEWBURGH TO ESTABLISH AN  
ADMINISTRATIVE TRIBUNAL TO HEAR AND DETERMINE  
PARKING, STANDING AND STOPPING VIOLATIONS

WHEREAS, the establishment of an administrative tribunal to hear and decide parking, standing and stopping violations in the City of Newburgh would be of great benefit to the administration of justice and to the enforcement of traffic laws and enhance urban commerce; and

WHEREAS, pursuant to Municipal Home Rule Law it is necessary for the New York State Senate and Assembly to enact respectively bills which would establish such a tribunal in the City of Newburgh; and

WHEREAS, pursuant to Municipal Home Rule Law Section 30 it is necessary and appropriate to send this Home Rule Request asking that the subject legislation be enacted and said tribunal be thus created;

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Newburgh, New York does hereby authorize the submission of this Home Rule Request to the Senate and Assembly of the State of New York requesting the adoption into law of Bills S 03959 and A 07299, to authorize the City of Newburgh to establish an administrative tribunal to hear and determine parking, standing and stopping violations.

RESOLUTION NO.: 97-2011

OF

MAY 9, 2011

A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF NEWBURGH AUTHORIZING THE PAYMENT  
OF THE BALANCE OF A LOAN FROM THE SECTION 108  
LOAN GUARANTEE PROGRAM OBTAINED FOR THE PURPOSE OF  
DEVELOPING CITY-OWNED LAND SURROUNDING CRYSTAL LAKE

WHEREAS, pursuant to Resolution No. 88-97 of November 24, 1997, the City of Newburgh applied for and received financial assistance from the U.S. Department of Housing and Urban Development, Community Development Block Grant, Section 108 Loan Guarantee Program ("Section 108 Loan") for the purpose of developing a 68 acre parcel of land surrounding Crystal Lake, for the purchase of fire apparatus and for completing the renovations to the Downing Park Shelter House; and

WHEREAS, the City completed the purchase of the fire apparatus and undertook certain improvements of the infrastructure along Temple and Ellis Avenues using the Section 108 Loan funds but was unable to complete the commercial development around Crystal Lake; and

WHEREAS, the City must make principal and interest payments on the Section 108 Loan principal semi-annually;

WHEREAS, the City may pre-pay balance of the Section 108 Loan in full resulting in a savings of approximately \$100,000.00 in interest payments which could be applied to eligible CDGB programs; and

WHEREAS, the City Council of the City of Newburgh determines it to be in the best interest of the City to pre-pay the balance of the Section 108 Loan;

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 pay the balance of the Crystal Lake Section 108 Loan in full in the August 2011 payment.