LOCAL LAW NO.: 1 - 2013

OF

AUGUST 19, 2013

A LOCAL LAW RESCINDING CITY CHARTER SECTION C15.11 THROUGH C15.17 ENTITLED "BOARD OF PARKS, RECREATION AND CONSERVATION, CHAPTER 279 ENTITLED "TREES AND SHRUBS" AND RESCINDING CHAPTER 296 ENTITLED "WATERFRONT CONSISTENCY REVIEW" AND ADDING CHAPTER 159 ENTITLED "CONSERVATION ADVISORY COUNCIL" TO THE CODE OF THE CITY OF NEWBURGH

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 Rescinding City Charter Section C15.11 through C15.17 Entitled "Board of Parks, Recreation and Conservation, Chapter 270 Entitled 'Trees and Shrubs' and Rescinding Chapter 296 Entitled 'Waterfront Consistency Review' and Adding Chapter 159 Entitled 'Conservation Advisory Council' to the Code of Ordinances of the City of Newburgh."

SECTION 2 – PURPOSE AND INTENT

The purpose of this local law is to create a Conservation Advisory Council in the City of Newburgh. The City of Newburgh wishes to create a more investment ready community and to achieve this goal, the City focused, in part, on streamlining the land use approval process. The streamlined land use approval process should attract real estate investment from current and potential residents, business owners, and developers by offering faster and more predictable land use processes and approvals. Streamlining these approvals will also encourage existing uses and structures to be maintained and upgraded.

Part of the streamlining process, recommended in the Pace Land Use Law Center Streamlining Report, includes the consolidation of the Waterfront Advisory Committee (WAC) and Shade Tree Commission (STC) into a new advisory council, in the form of a Conservation Advisory Council, which would act as an advocate for the City of Newburgh's natural resources.

Under this local law, the WAC and the STC would be integrated into a new Conservation Advisory Council, which would advocate for Newburgh's many valuable natural resources including open spaces, wetlands, coastal areas, and trees. In addition, the proposed CAC will create an inventory of Newburgh's natural resources, make recommendations to City agencies and

boards on environmental policies and practices, and promote the City's environmental goals to the public.

SECTION 3 - AMENDMENT

The City Charter is hereby amended to rescind City Charter Sections C15.11 through C15.17 entitled "Board of Parks, Recreation and Conservation and the Code of Ordinances is hereby amended to rescind Chapter 279 entitled "Trees and Shrubs" and to rescind Chapter 297 entitled "Waterfront Consistency Review" in their entirety. The Code of Ordinances is hereby further amended to add Chapter 159 entitled "Conservation Advisory Council" to read as follows:

Chapter 159: Conservation Advisory Council

Section 159-1: Title

This Chapter will be known as "Chapter 159 of the Code of Ordinances" and shall be entitled "The City of Newburgh Conservation Advisory Council."

Section 159-2: Authority and Purpose

A. This section is adopted under the authority of the Municipal Home Rule Law, New York General Municipal Law Article 12-F, the New York General Municipal Law Waterfront Revitalization and Coastal Resources Act of the State of New York (Article 42 of the Executive Law), and New York General Municipal Law Article 5, Section 96-B Tree Conservation.

B. The City of Newburgh ("City") is renowned for its scenic beauty and bucolic open spaces, urban and historic character, natural resources and outstanding quality of life. The City is also known for the care it takes to ensure that its nationally recognized resources are protected and preserved. The preservation and improvement of the quality of the natural environment within the City are of vital importance to the health, welfare and economic well-being of present and future residents and require action by the City Council. The City recognizes its vulnerabilities to changing weather patterns and the need to take measures to both mitigate and adapt to them; the City also acknowledges that green infrastructure tempers warming, sequesters carbon and helps to absorb storm water. It is recognized that the biologic integrity of the natural environment, on which residents depend for survival and the natural and functional beauty of our surroundings, which affect the quality of our life experiences, must be protected with the full cooperation and participation of all the people of the City working in partnership with local, state and federal officials and with various public and private institutions, agencies and organizations. Recognizing the effects of climate change, the preservation, enhancement, remediation, and utilization of the natural and man-made resources of the City, including its unique coastal area, must take place in a coordinated and comprehensive manner to ensure a proper balance between natural resources and the need to accommodate population growth and economic development. Accordingly, this

section is intended to achieve such a balance, permitting the beneficial use of natural resources while preventing: loss of living estuarine and riparian resources and wildlife; diminution of open space areas or public accesses to the waterfront; erosion of shoreline and stream-banks; impairment of scenic beauty; losses due to flooding, erosion and sedimentation; encroachment on such other lands owned by the City that would negatively impact its drinking water sources; or permanent adverse changes to ecological systems.

Establishment of a Conservation Advisory Council is a necessary step in fostering coordinated action on environmental issues. It is essential that the City Council designate one entity for coordinating and communicating, in a timely manner, all relevant information on the natural environment among the Planning Board, Zoning Board of Appeals, City Counsel, City Manager, Corporation Counsel, City Engineer, Water Department, Department of Public Works, City Planner, Architectural Review Commission, the Arborist, Code Compliance Bureau, and Building Inspector.

Section 159-3: Definitions

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

ACTIONS – Action as defined in NYCRR §617.2(b).

AGENCY – Any board, agency, department, office, other body or any officer of the City of Newburgh.

ARBORIST – The professional retained by the City to perform services with regard to the selection, identification, treatment and removal of trees.

COASTAL ASSESSMENT FORM (CAF) – The form contained in Appendix A, used by an agency to assist it in determining the consistency of an action with the Local Waterfront Revitalization Program.

CONSISTENT – That the action will fully comply with the LWRP policy standards and conditions and, whenever practicable, will advance one or more of them.

LOCAL WATERFRONT REVITALIZATION PROGRAM (LWRP) – The Local Waterfront Revitalization Program is both a plan and a program. The term refers to both the planning document prepared by the City, as well as the program established to implement the plan The LWRP contains the City's policies and recommendations, consistent with the coastal management policies of the state, to promote beneficial waterfront development enhanced by or dependent of the City's waterfront resources and in balance with protection of its natural coastal resources. The Local Waterfront Revitalization Program of the City of Newburgh, approved by the

Secretary of State pursuant to the Waterfront Revitalization and Coastal Resources Act (Executive Law Article 42), is on file in the office of the Clerk of the City of Newburgh.

NATURAL RESOURCE INVENTORY – A compilation of the natural resources of the City including locations appropriate for expansion of natural resources, areas appropriate for green infrastructure, and open areas, as defined by N.Y. Gen. Mun. Law § 239(y), and of the ownership, present use and proposed use of such areas, described and listed according to the priority of preservation. This compilation shall be maintained in a useable format; the primary purpose of the Natural Resource Inventory is to provide data that can provide a basis for municipal planning to maintain or enhance the conservation of natural or scenic resources.

OPEN SPACE MAP – A visual and geographically accurate representation of the natural resources and open areas contained in the Natural Resource Inventory that has been accepted and approved by the City Council.

PARK – All public parks that have individual names.

PUBLIC AREAS – All other grounds owned by the City of Newburgh, County of Orange.

PUBLIC TREES – All shade and ornamental trees growing in the City's right-of-way, parks or any public areas where otherwise indicated.

SEQRA – The New York State Environmental Quality Review Act requires local legislatures and land use agencies to consider, avoid, and mitigate significant environmental impacts of the projects that they approve, the plans or regulation they adopt, and the projects they undertake directly.

SHRUB – Woody plants with many more or less erect stems.

SIGNIFICANT ACTIONS – An action that may have a significant adverse impact on the environment as determined under NYCRR §617.7.

STREET AND RIGHT-OF-WAY – The entire width of every public way or right-of-way when any part thereof is open to the use of the public, as a matter of right, for the purposes of vehicular or pedestrian traffic.

TREE – All woody plants having one well-defined stem or a more or less definitely formed crown and attaining a height of at least 15 feet and a diameter of not less than two inches at maturity.

WATERFRONT AREA – That portion of New York State coastal waters and adjacent shorelands, as defined in Article 42 of the Executive Law, which is located within boundaries of

the City of Newburgh, as shown on the Coastal Area Map on file in the office of the Secretary of State and as delineated in the City of Newburgh Local Waterfront Revitalization Program.

Section 159-4: Conservation Advisory Council

A. A Conversation Advisory Council is created and shall be hereafter known as the "Conservation Advisory Council of the City of Newburgh." The Conservation Advisory Council is authorized to review materials and make recommendations to appropriate agencies regarding the development, management, and protection of the City's natural resources, designated in the Natural Resource Inventory, including, but not limited to, coastal resources, the City's drinking water sources, and City trees, as well as make recommendations on the consistency of actions proposed within the City's waterfront area according to LWRP policy standards and conditions. The Conservation Advisory Council shall be charged with the duties as set forth in this section.

B. The City Council of the City of Newburgh is hereby authorized to appoint seven persons to said Conservation Advisory Council, all of whom shall be residents of the City of Newburgh. Of the members of the Conservation Advisory Council first appointed, three shall hold office for a term of one year and four for terms of two years from and after their appointment. Their successors shall be appointed for terms of two years from and after the expiration of the terms of their predecessors in office. Members may be removed by the City Council for cause and after public hearing. Vacancies shall be filled by the City Council by appointment for the unexpired term.

C. The City Council shall annually appoint one Conservation Advisory Council member to serve as Chairperson of the Committee. The current chair shall continue to serve until a replacement is appointed. The members of the Conservation Advisory Council may recommend the Chairperson to the City Council for their consideration.

D. The Conservation Advisory Council may employ or retain such persons or firms as may be needed as authorized by the City Council.

E. The Conservation Advisory Council shall have the power to adopt rules of procedure for the conduct of all business within its jurisdiction.

F. The members of the Conservation Advisory Council shall serve without compensation, but may be reimbursed for reasonable and necessary expenses incurred in the performance of their duties within the appropriations made available therefor.

G. The Conservation Advisory Council shall advise various City agencies on greening the City's infrastructure and matters affecting the preservation, development, and use of the lands listed in the Natural Resource Inventory and shown on the Open Space Map and natural features and conditions of such lands in the City insofar as aesthetics, quality, biologic integrity, and other environmental factors are concerned, including, in the case of human activities and developments,

with regard to any major threats posed to environmental quality, so as to enhance the long-range value of the environment to the people of the City.

H. The Conservation Advisory Council shall study problems and identify the needs of the City of Newburgh in connection with stormwater management, green infrastructure, sustainability and watershed protection. The Conservation Advisory Council will also make recommendations to the City Council as to desirable policy, promotion activities, and legislation concerning urban forestry and tree maintenance program.

I. The Conservation Advisory Council shall develop and conduct a program of public information in the community which shall be designed to foster increased understanding of the nature of environmental problems and issues and support for their solutions. The Conservation Advisory Council shall include information regarding the selection, planting and maintenance of trees within the corporate limits.

J. The Conservation Advisory Council shall conduct studies, surveys and inventories of the natural and man-made features within the City to create a Natural Resource Inventory and Open Space Map using a computer-based geographic information system (GIS) as may be necessary to carry out the general purposes of this section.

K. The Conservation Advisory Council shall maintain an up-to-date Natural Resource Inventory and Open Space Map for the City of Newburgh.

L. The Conservation Advisory Council shall be authorized to coordinate, assist and unify the efforts of private groups, institutions and individuals with the City in accord with the purposes of this section.

M. The Conservation Advisory Council shall communicate and act as liaison with public and private agencies and organizations of local, state and national scope whose programs and activities have an impact on the quality of the environment or who can be of assistance to the Conservation Advisory Council.

N. The Conservation Advisory Council shall obtain and maintain in an orderly timely fashion maps, reports, books and other publications to support the necessary research of the Conservation Advisory Council into local environmental conditions in a space within a municipal building with a designated phone number, mailbox, email address, access to a photocopy machine, printer, fax machine, scanner, and a City computer configured with the City's GIS system.

O. The Conservation Advisory Council shall further assist the City in the development of sound environmental planning and ensure preservation of natural and scenic resources on the local level throughout the City and City-owned land as follows:

(1) Review each proposed application for action by the City Council, Planning Board, and Zoning Board of Appeals which seeks approval for the use or development of open space and natural resources. In the event an application is located within the Local Waterfront Revitalization Area, the Conservation Advisory Council shall issue an advisory consistency recommendation in accordance with the LWRP policy standards and conditions set forth in Section 159-5.3(G). The Building Inspector shall not approve applications for sidewalk repair or replacement unless the applicant has obtained a recommendation from the Conservation Advisory Council.

(2) Submit a written report promptly to the referral body after receipt by the Conservation Advisory Council of such application, so that the referral body will have the report prior to substantive consideration of the application, but in no event later than 30 days after receipt by the Conservation Advisory Council of such application. If the Conservation Advisory Council fails to report within such 30-day period, the referring body may take final action on the proposed action without such report. Such report shall evaluate the proposed use or development of the open space in terms of the environmental planning objectives of the City and shall include the effect of such use or development on the City's environment. The report shall make recommendations as to the most appropriate use or development of the applicable open space and may include recommendations of preferable alternative uses consistent with open space conservation. A copy of every report shall be filed with the City Council.

(3) Make available for public inspection at the office of the Conservation Advisory Council and on the City's website copies of all such reports of the Conservation Advisory Council.

(4) Nothing herein shall prevent the City Council or other City agency or department from requesting advice from the Conservation Advisory Council.

P. Working in cooperation with the Planning Board, a designated member of the Conservation Advisory Council shall attend Planning Board meetings and provide to the Planning Board the Conservation Advisory Council's recommendations concerning features, plans and programs relating to environmental planning. The Conservation Advisory Council shall also review industrial, commercial, institutional and subdivision proposals for their environmental impact, and similarly recommend to the City Council appropriate and desirable changes in existing local laws and ordinances relating to environmental conservation or recommend new local laws and ordinances. When appropriate, the CAC shall provide a similar function to other boards and agencies in the City of Newburgh.

Q. The Conservation Advisory Council shall advise and make recommendations to the Superintendent of Public Works as to:

(1) The planting of new, pruning and removal of trees, including advice on City infrastructure to maximize tree survival and minimize damage to City and community property.

(2) The type and kind of trees to be planted upon such municipal streets or parts of municipal streets or in parks as are designated or requested.

(3) Applications for the planting of shade or ornamental trees with the purpose of populating the City of Newburgh with desirable tree types.

(4) Proposed street or sidewalk reconstructions to recommend whether such actions would result in the planting of new, replacement, or removal of trees, to recommend whether such replacement and removal is necessary and to recommend the type and kind of tree, if any, with which such trees should be replaced.

(5) Implementation and incorporation of a qualified Tree Maintenance Program meeting state-funding requirements.

(6) Funding and training opportunities for tree maintenance and plantings and green infrastructure techniques.

R. The Conservation Advisory Council shall hold regular and special meetings at which the subject of trees and vegetation, urban forestry, and green infrastructure, inasmuch as it relates to the City of Newburgh, may be discussed by the Commissions, City officials and employees, and all others interested in such programs.

S. The Conservation Advisory Council may advise the Superintendent of Public Works, the Engineering Department, and the Water Department, as to stormwater management relating to green infrastructure.

T. The Conservation Advisory Council may act as an Interested Agency, representative of the City's environmental concerns, by commenting on actions outside of the City that may impact the City's drinking water resources that are subject to SEQRA review. Notice of such action shall be referred to the Conservation Advisory Council.

U. The Conservation Advisory Council shall advise the City Manager, the City Council and the Recreation Department with respect to the maintenance of all parks, playgrounds, recreation fields, swimming pools and other recreational facilities.

V. The Conservation Advisory Council shall keep accurate records of its meeting and actions and shall file an annual report with the City Council on or before the thirty-first day of December of

each and every year. Once approved by the City Council, the annual report shall be forwarded to the state commissioner of environmental conservation.

Section 159-5: Waterfront Consistency Review Law

Section 159-5.1 Title.

This section will be known as "Section 159-5 of the Code of Ordinances" and shall be entitled "The City of Newburgh Waterfront Consistency Review Law."

Section 159-5.2 Authority and purpose.

A. This section is adopted under the authority of the Municipal Home Rule Law and the Waterfront Revitalization and Coastal Resources Act of the State of New York (Article 42 of the Executive Law).

B. The purpose of this section is to provide a framework for agencies of the City of Newburgh to consider the policies and purposes contained in the Local Waterfront Revitalization Program when reviewing applications for actions or direct agency actions located in the coastal area; and to assure that such actions and direct actions are consistent with the said policies and purposes.

C. It is the intention of the City of Newburgh that the preservation, enhancement, and utilization of the natural and man-made resources of the unique coastal area of the City take place in a coordinated and comprehensive manner to ensure a proper balance between natural resources and the need to accommodate population growth and economic development. Accordingly, this section is intended to achieve such a balance, permitting the beneficial use of coastal resources while preventing: loss of living estuarine resources and wildlife; diminution of open space areas or public accesses to the waterfront; erosion of shoreline; impairment of scenic beauty; losses due to flooding, erosion and sedimentation; or permanent adverse changes to ecological systems.

D. The substantive provisions of this section shall only apply while there is in existence a City Local Waterfront Revitalization Program which has been adopted in accordance with Article 42 of the Executive Law of the State of New York.

Section 159-5.3 Review of actions.

A. Whenever a proposed action is located in the City's waterfront area, an agency shall, prior to approving, funding, or undertaking the action, make a determination that it is consistent with the LWRP policy standards and conditions set forth in Subsection G herein. When multiple agencies are reviewing the same proposed action in the City's waterfront area, the Planning Board shall be designated to perform the coastal consistency determination. In the case that the Planning Board is not a reviewing agency, the Zoning Board of Appeals shall be designated to make a coastal consistency determination.

B. Whenever an agency receives an application for approval or funding of an action, or as early as possible in the agency's formulation of a direct action to be located in the waterfront area, the applicant, or, in the case of a direct action, the agency, shall prepare a coastal assessment form (CAF) to assist in the consistency review of the proposed action.

C. If the proposed action is located in the City's waterfront area, the agency responsible for the LWRP consistency determination shall seek an advisory consistency recommendation from the Conservation Advisory Council. In such case the agency shall forward applications promptly, and include sufficient additional information, such as the CAF, as is necessary for the Conservation Advisory Council to make an advisory recommendation of coastal consistency. The agency referring the application, prior to making its determination, shall consider the recommendation of the Conservation Advisory Council with reference to the consistency of the proposed action. In the event that the Conservation Advisory Council recommendation is not forthcoming within 30 days following referral of the application, the agency responsible for the LWRP consistency determination shall make its decision without the benefit of the Conservation Advisory Council recommendation.

D. After referral from an agency, the Conservation Advisory Council shall consider whether the proposed action is consistent with the LWRP policy standards and conditions set forth in Subsection G herein. The Conservation Advisory Council may request an applicant submit all completed applications, CAFs and any other information deemed to be necessary to its consistency recommendations.

E. Recommendation.

(1) The Conservation Advisory Council shall render its written recommendation to the agency within 30 days following referral of the CAF from the agency, unless extended by mutual agreement of the Conservation Advisory Council and the applicant or, in the case of direct action, the agency. The recommendation shall indicate whether, in the opinion of the Conservation Advisory Council, the proposed action is consistent with or inconsistent with one or more of the LWRP policy standards or conditions and shall elaborate, in writing, the basis for its opinion.

(2) The Conservation Advisory Council_shall, along with its consistency recommendation, make any suggestions to the agency concerning modification of the proposed action to make it consistent with LWRP policy standards and conditions or to greater advance them.

(3) In the event that the Conservation Advisory Council recommendation is not forthcoming within the specified time, the referring agency shall make its decision without the benefit of the Conservation Advisory Council recommendation.

F. The agency shall make the determination of consistency based on the CAF, the Conservation Advisory Council recommendation, when applicable, and such other information as is deemed to be necessary in its determination. The agency shall issue its determination within 30 days following receipt of any additional required information required from the applicant and the Coastal Advisory Council's recommendation. The agency shall have the authority, in its finding of consistency, to impose practicable and reasonable conditions on an action to ensure that it is carried out in accordance with this section.

G. Actions to be undertaken within the coastal waterfront and LWRP area shall be evaluated for consistency in accordance with the following LWRP policy standards and conditions, which are derived from and further explained and described in Section III of the City of Newburgh LWRP, a copy of which is on file in the City Clerk's office and available for inspection during normal business hours. Agencies which undertake direct actions shall consult with Section IV of the LWRP in making their consistency determination. The action shall be consistent with the policy:

(1) To restore and revitalize deteriorated and underutilized waterfront areas (Policies 1, 1A, 1B, 1C, 1D and 1E).

(2) To retain and promote commercial and recreational water-dependent uses (Policy 2).

(3) To strengthen economic base of smaller harbor areas by encouraging traditional uses and activities. (Policies 4 and 4A).

(4) To ensure that development occurs where adequate public infrastructure is available to reduce health and pollution hazards (Policy 5).

(5) To streamline development permit procedures (Policy 6).

(6) To protect significant and locally important fish and wildlife habitats from human disruption and chemical contamination (Policies 7, 7A, 8 and 8A).

(7) To maintain and expand commercial fishing facilities to promote commercial and recreational fishing opportunities (Policies 9, 9A and 10).

(8) To minimize flooding and erosion hazards through nonstructural means, carefully selected long-term structural measures and appropriate siting of structures (Policies 11, 11A, 12, 13, 14, 16, 17 and 28).

(9) To safeguard economic, social and environmental interests in the coastal area when major actions are undertaken (Policies 18 and 18A).

(10) To maintain and improve public access to the shoreline and to water-related recreational facilities while protecting the environment (Policies 2, 19, 19A, 20, 20A, 21, 21A, 21B, 22 and 22A).

(11) To protect and restore historic and archeological resources (Policies 23 and 23A).

(12) To protect and upgrade scenic resources (Policy 25).

(13) To site and construct energy facilities in a manner in which will be compatible with the environment and contingent upon the need for a waterfront or water location (Policies 27, 29 and 40).

(14) To prevent ice management practices which could damage significant fish and wildlife and their habitat (Policy 28).

(15) To protect surface water and groundwaters from direct and indirect discharge of pollutants and from overuse (Policies 30, 31, 33, 34, 35, 36, 36A, 37 and 38).

(16) To perform dredging and dredge spoil in a manner protective of natural resources (Policies 15 and 35).

(17) To handle and dispose of solid and hazardous wastes and effluents in a manner which will not adversely affect the environment nor expand existing landfills (Policies 39 and 39A).

(18) To protect air quality (Policies 41, 42 and 43).

(19) To protect freshwater wetlands (Policy 44).

H. Inconsistency; findings.

(1) If the agency determines that the action would not be consistent with one or more of the LWRP policy standards and conditions, such action shall not be undertaken unless the agency makes a written finding with respect to the proposed action that:

(a) No reasonable alternatives exist which would permit the action to be undertaken in a manner which will not substantially hinder the achievement of such LWRP policy standards and conditions;

(b) The action would be undertaken in a manner which will minimize all adverse effects on such LWRP policy standards and conditions;

(c) The action will advance one or more of the other LWRP policy standards and conditions; and

(d) The action will result in an overriding City, regional or statewide public benefit.

(2) Such a finding shall constitute a determination that the action is consistent with the LWRP policy standards and conditions.

I. Each agency shall maintain a file for each action made the subject of a consistency determination, including any recommendations received from the Conservation Advisory Council. Such files shall be made available for public inspection upon request.

Section 159-5.4 Enforcement.

The City Building Inspector shall be responsible for enforcing this Section. No work or activity on a project in the waterfront area which is subject to review under this section shall be commenced or undertaken until the Building Inspector has been presented with a written determination from an agency that the action is consistent with the City's LWRP policy standards and conditions. In the event that an activity is not being performed in accordance with this section or any conditions imposed hereunder, the Building Inspector shall issue a stop-work order, and all work shall immediately cease. No further work or activity shall be undertaken on the project so long as a stop-work order is in effect.

Section 159-5.5. Penalties for offenses.

A. A person or entity who violates any of the provisions of or who fails to comply with any conditions imposed by this section shall have committed a violation, punishable by a fine of $500 for a conviction of a first offense and punishable by a fine of $1,000 for a conviction of a second or subsequent offense. For the purpose of conferring jurisdiction upon courts and judicial officers, each week of continuing violation shall constitute a separate additional violation.

B. The Corporation Counsel is authorized and directed to institute any and all actions and proceedings necessary to enforce this section. Any civil penalty shall be in addition to and not in lieu of any criminal prosecution and penalty.

Section 159-6: Tree Protection

Section 159-6.1. Planting of trees.

No person shall plant any tree, shrub or other vegetation within the limits of any public street, park or public right-of-way area without first obtaining a permit from the Superintendent of Public Works and complying with the following requirements: such permit shall be granted upon the determination of the Superintendent of Public Works, after consulting with the Police Department and the Conservation Advisory Council, that such a planting will not create a traffic hazard and will not interfere with the use of such a street, park, or public area by the public, that such planting will enhance the beauty and appearance of the street, park or public area and the surrounding area, and that such planting meets the goals and objectives of the City with regard to green infrastructure and urban forestry objectives. The Conservation Advisory Council may also consult with any other City department which may provide information relating to the planting of the tree.

(1) Trees planted within the limits of any public street, park or public area shall be of the species and quality approved by the Conservation Advisory Council and shall be planted at least 30 feet apart unless otherwise authorized by the Superintendent in consultation with the Conservation Advisory Council and Arborist. Each tree planted shall measure not less than 2 inches nursery caliper.

(2) Should any tree, shrub or plant planted within the limits of any public street, park or public area, in the opinion of the Superintendent of Public Works, after consultation with the Police Department, the Arborist and the Conservation Advisory Council, at any time constitute a traffic hazard, interfere with the use of such street, park or public area by the public or detract from the beauty and appearance of the street, park or public area or the surrounding area, such tree, shrub or plant will be pruned or removed as necessary.

Section 159-6.2. Authority of Superintendent of Public Works.

The general care, pruning and maintenance of all trees and shrubs planted within the limits of any public street or public place shall be vested in the Superintendent of Public Works.

Section 159-6.3. Permit for treating public trees.

No shade or ornamental tree or shrub in any public street, park or public area in the City shall be cut, pruned, broken, climbed, injured, sprayed, cabled, fertilized, treated, damaged, destroyed or removed, nor shall the roots, stems, branches or leaves of any such tree or shrub be cut, broken or otherwise disturbed until or unless a permit therefor has been approved by the Superintendent of Public Works. Such a permit is not necessary for the usual periodical removal of small branches to

allow the free passage of wires, but any such work will be subject to the inspection of the Superintendent of Public Works and, where such work is not up to standard, any expense incurred by the City in repairing the same will be charged to the public utility responsible.

Section 159-6.4. Tampering with trees.

No person not duly authorized by the Superintendent of Public Works shall place any rope, sign, poster or other fixture on either a tree or guard thereof standing in the public street, park or public area or damage, misuse or remove any device placed to protect such tree or shrub.

Section 159-6.5. Injuries to public trees.

A. No person shall pour salt water or other injurious chemicals upon any public highway or place within the City in such a way as to injure any tree planted or growing thereon.
B. No horse or other animal shall be permitted to stand in any public street, park or public area within the City in such a manner or position that it may cut, deface or mutilate any tree or shrub standing thereon.
C. In the erection or repair of any building or structure, the owner thereof shall place such guards around all nearby trees standing in any public street, park or public area to effectually prevent injury thereto. To the extent possible, the guards shall be placed at a minimum standard for 1.0 foot radius for each diameter inch of tree.

Section 159-6.6. Use of spurs, insulated wires and guy wires.

A. Any person, including public utilities, their agents, servants and employees, is prohibited from climbing trees with the aid of spurs.
B. Any wires of the public utilities passing among the branches of City trees shall be properly insulated so as to prevent damage to said trees.
C. No person shall, without the written permission of the Superintendent of Public Works, attach any electrical or other wire, insulators or any device for the holding of an electric or other wire to any tree growing or planted upon any public street, park or public area, nor shall the approved attachments be attached to the tree in such a manner as to girdle or restrict growth.

Section 159-6.7. Discontinuance of electric current during work on trees and shrubs.

Every person having any wire charged with electricity extending over a public street, park or public area within the City shall, upon written notice from the Superintendent of Public Works, temporarily remove such wire or discontinue the transmission of the electric current through the same when necessary for the safety of workmen engaged upon the trees or shrubs growing on such public street, park or public area. The work of removing such wire or ceasing of the transmission of electricity through it shall be completed within 24 hours after the service of a written notice by said Superintendent making such request.

Section 159-6.8. Interference with work prohibited.

No person shall prevent, delay or interfere with the Superintendent of Public Works or any of his employees in the planting, pruning, spraying, removing or otherwise treating of any tree or shrub standing or growing in the public street, park or public area within the City or in the removal of stone, cement or other substance about the trunk of any such tree or shrub which, in the opinion of said Superintendent, tends to retard its growth.

Section 159-6.9. Prohibited planting of trees.

Property owners and other persons are prohibited from planting silver maples and allied species, ailanthus and poplars of any variety within a distance of 20 feet from any public street, sidewalk, park or public place.

Section 159-6.10. Permit for removal of trees.

A. No person shall remove a tree greater than eight inches in diameter, measured 54 inches from the base of said tree, in an historic district, without first having a tree removal permit approved by the Superintendent of Public Works.

B. The Superintendent of Public Works is authorized and empowered to obtain the assistance of the Arborist or other persons professionally trained and experienced in tree planting, preservation and landscaping.

Section 159-6.11. Removal of branches overhanging public areas.

Where privately owned trees encroach upon any public street, park or public area, the Superintendent of Public Works or the Building Inspector may serve, personally or by mail, upon the owner of such property, a written notice to trim the encroaching branches. If such owner fails to comply with such notice, the City may abate such condition and assess a lien against the property for the costs of such abatement, together with an administrative fee of 15%, pursuant to the procedures set forth in Chapter 226 of the City Code.

Section 159-6.12. Removal of dead trees.

Where any dead tree or trees located on private property adjacent to a public street, park or public area constitute a danger or are potentially dangerous to the traveling public, the Superintendent of Public Works or Building Inspector may serve personally or by mail upon the owner of such property a written notice to remove the dead tree. If such owner fails to comply with such notice, the City may abate such condition and assess a lien against the property for the costs of such

abatement, together with an administrative fee of 15% pursuant to the procedures set forth in Chapter 226 of the City Code.

Section 159-6.13. Protected trees.

A. A tree may be designated as protected by the Architectural Review Commission after consultation with the CAC and a public hearing. Such designation may be made because of the tree's age, history, uniqueness or special beauty. Such designation may be made anywhere within the limits of the City. No protected tree designation may be made without written consent of the tree's owner.

B. Trees designated as protected may not be removed unless the Superintendent of Public Works, as advised by the Arborist, determines, because of their condition, they are a danger to persons or property or that they are diseased and cannot be saved.

Section 159-6.14. Penalties for offenses.

A. Whenever any tree or trees are removed, cut down, damaged or destroyed in violation of this chapter, the removal, cutting, damaging or destroying of each and every tree shall be construed as a separate and independent offense. Any person, firm or corporation violating any of the provisions of this chapter will be required to replace in kind each and every tree removed, cut down or destroyed. If the tree was so large and so mature that it cannot be replaced, the Superintendent of Public Works may require the planting of multiple trees. If multiple trees cannot be planted on the site of the violation, other available planting spaces on public property will be used to accommodate the balance of the penalty. No certificate of occupancy shall be issued for any new construction on property on which occurred any violation of this chapter unless and until the provisions of this subsection have been complied with.

B. In addition to any other penalty, any person, firm or corporation or the individual hired by such person, firm or corporation violating any provision of this chapter shall be subject to prosecution as a violation and, upon conviction, shall subject the violator to penalties prescribed by § 1-12 of the City Code of Ordinances or shall be subject to a civil penalty of $500, collectable by the City in a civil action, and shall be subject by an action in a court of competent jurisdiction to compel compliance or to restrain by injunction, notwithstanding the fact that the above penalties are also provided for, sought or imposed for such violation.

C. In addition to the foregoing, any person, firm or corporation engaged in the business of tree removal or care who or which shall aid, assist or abet in the violation of this chapter may be denied the status of a permittee under this chapter for a reasonable period of time to ensure future compliance, in the discretion of the Superintendent of Public Works, subject to appeal to the City Manager.

Section 159-6.15. Enforcement.

The Superintendent of Public Works and the Building Inspector, with the assistance of the police, shall enforce this Section.

Section 159-7 Severability

The provisions of this section are severable. If any provision of this section is found invalid, such finding shall not affect the validity of this section as a whole or any part of provision hereof other than the provision so found to be valid.

Section 159-8 Effective Date

This Local Law shall take effect on October 1, 2013.

I, Lorene Vitek, City Clerk of the City of Newburgh, hereby certify that I have compared the foregoing with the original resolution adopted by the Council of the City of Newburgh at a regular meeting held 8/19/13 and that it is a true and correct copy of such original.

Witness my hand and seal of the City of Newburgh this 3 day of Sept. 20 13

City Clerk