

An emergency meeting of the City Council of the City of Newburgh was held on Tuesday, November 23, 2010 at 1:00 P.M. in the Council Chambers, 3rd Floor, City Hall, 83 Broadway, Newburgh, NY 12550

The Pledge of Allegiance was led by Mayor Valentine.

Present: Mayor Valentine, presiding; Councilwoman Angelo, Councilwoman Bello, Councilman Dillard - 4

Absent: Councilwoman Bell - 1

Acting City Manager, Richard Herbek stated that the phone has been ringing off the hook since this morning because today is the day we are selling almost twenty-two million dollars worth of Bonds; 5.1 million dollars worth of Tax Anticipation Notes and seventeen million dollars worth of Bond Anticipation Notes. With the action that was taken or not taken last night we have a situation where we are not in conformity with the Newburgh Fiscal Recovery Act and our underwriters are saying that there is a lack of investment interest in the market place. We have been on the phone with the State Comptroller's Office and with our Bond Counsel to see what we can do to fix this because the financial state of the city is at stake right now.

Corporation Counsel, Bernis Nelson said that we have two special acts that we are dealing with. We have the Charter of the City of Newburgh which under Section C8.15C provides that if a Budget by the last meeting on the fourth Monday in November is not adopted by the City Council then the City Manager's Budget as presented is deemed adopted by the city. The Newburgh Fiscal Recovery Act has language in it which says notwithstanding any special, general or local law the Newburgh Fiscal Recovery Act shall supersede. An informal opinion from the State Comptroller's Office says that they do not deem the Budget adopted last night to be consistent with the requirements of the Newburgh Fiscal Recovery Act. Under the Newburgh Fiscal Recovery Act the city is required to incorporate the recommendations of the State Comptroller and bring the Budget into consistency with those recommendations. This is a circular argument in a way. The Budget presented by the City Manager on October 4th may not be consistent with the State Comptroller's recommendations unless they were to have no recommendations. Because they did not have a copy of it until following its submission on October 4th, they made their recommendations subsequent to that. The City Charter provision and the Newburgh Fiscal Recovery Act brings to conclusion that in fact that provision supersedes and that we are not constrained by the last Monday of the month and it in fact can be continued. She recommends that in order to be in compliance with the Newburgh Fiscal Recovery Act that they bring a motion to reconsider under Robert's Rule of Order the motion that was brought and voted on last night. If that is then

voted in favor, that will take care of this situation and will bring it into consistency with their recommendations because as you know the Amended Budget as presented to the Council last Thursday was consistent with the State Comptroller's recommendations and we have a letter from the State Comptroller that states it was consistent. If we do not do that, we are not going to have the confidence of the market and we will have great trouble in issuing those notes which could put us into a default situation. She recommended that a motion to reconsider be brought and that motion must be brought by a party who voted in how the motion went last night. Since there were three people who voted against the motion last night then one of those three must bring a motion to reconsider for this to be put on the table.

Mayor Valentine asked about the second.

Ms. Nelson said that the second could be by anyone.

Councilwoman Bello moved and Mayor Valentine seconded to reconsider the adoption of the resolution.

Ayes - Councilwoman Angelo, Councilman Dillard, Mayor Valentine- 3

Nays - Councilwoman Bello - 1

CARRIED

Todd Miles, Bond Counsel said that his role is to guide the City through the process under State and Federal laws that enables the city to access the capital markets for its cash flow needs. He is not here to comment on any particular issue within the Budget discussion only to reiterate for the Council the bigger picture for the City. There has been a lot of discussion in the Press lately that are relied upon by participants in the capital market and there are many state and local governments in this Country that are in severe distress. There is a lot of discussion about a loss in confidence of the capital markets in general and many are concerned that these markets may begin to fragment and dissipate which would be a catastrophe for all of us. He said that they had numerous discussions months ago about State intervention with the City and this Council unanimously requested a control board be imposed on the City. They had discussed what that means in terms of their control over the Budget process and decision making but Albany decided that they were not going to impose that and a Recovery Act was enacted. There is a key element in that legislation which is very similar to a control board which is that a State Official was legally put at the table with them in the Budget process that they are engaged in right now. That Official has been given the power and responsibility to look at the Budget and make recommendations to it and the law says that the City Council must accept those recommendations in the Budget as adopted. That legislation also gives the State Comptroller the power to enforce that law. We are in a situation today where he has received some concerned calls about what happened at the meeting last night and what that means for the financing that we are trying to get. As the Corporation Counsel explained, the State has made it very clear that they take their responsibility of legislation very seriously and they will not back down. To be honest, he thinks that the amount of dollars that they are talking about here is \$146,000.00. He is not belittling or minimizing the significance of any increase in the tax rate of the City but he wants them to keep in mind that there is a bigger principal involved here. The State Comptroller views their responsibility seriously and will not back down even if it is for \$146,000.00. They have made recommendations and they expect the City Council to adopt those recommendations in the Budget and if they don't then the consequences will be extremely dire for this City. On one hand there may be enforcement action taken by the State Comptroller against the City Council but the bigger concern is that if we cannot sell these notes and close them next week then it is conceivable that the City will have completely lost its access to the capital markets. If you are not able to finance your capital projects over multiple years, you might find yourself with certain capital projects that have to be paid for in cash. If you can't borrow to spread that cost over several years, then you will be faced with tax increase much higher than the 1% which is the issue today. Time is of the essence here and we need the Council to take responsible action today, hopefully within the hour, so that we can go back to the underwriters who are holding on to these purchasers that are interested in

Newburgh's notes at the moment and tell them that the City Council recognizes what the Fiscal Recovery Act requires of them, understands the roll of the State Comptroller's Office in that process and has acted responsibly within the laws of the State of New York to enact a Budget that complies with that legislation. We are hopeful that these purchasers will remain at the table and you will maintain your market so that business can continue and we can move forward.

Councilwoman Bello said that there seems to be urgency with the State Comptroller and heavy duty threats. She has an obligation to represent the people and to give her opinion in representing the people. We went to the State Comptroller and begged for the highest level of oversight which would have freed us from the obligation of contracts but they refused and gave us the second level of oversight. The fact of the matter is whether this goes through today or not we have 90% of our Budget mandated by contracts and unless we can get relief from that then we are spinning our wheels anyway.

Councilman Dillard asked what the consequences will be if they refuse this?

Todd Miles said that Councilman Dillard had asked him earlier what kinds of enforcement actions are conceivable by the State Comptroller's Office. As he noted earlier, he is not here speaking for the State Comptroller's Office and does not know what they might do but he said he could describe what happened with another City in New York. In the City of Yonkers in the 1980's they had a State appointed control board that ordered the City Council to adopt certain measures that were related to implementing fair housing in the City but two of the Council members refused to vote for it and the Federal Judge that had jurisdiction over that litigation held those City Council members in contempt and ordered them to jail in order to force them to comply with that control board order. This is just an example of how State Officials are willing to enforce their responsibility on local governments. He said that he will leave it to their imagination to understand what the possibilities are and he doesn't think that anyone in this City wants to go in that direction because the long term consequences would be a disaster.

Mayor Valentine said that this is also a financial issue because these bonds and notes can't go out if we do not have an affirmative vote this afternoon.

Todd Miles said that if there are no purchasers for these notes then the City will default and that has consequences for the City and everyone else in the State because that hasn't happened yet. There has never been a default in New York so if there is one here he doesn't know what the consequences will

be but they won't be good for anyone. At the very least it could raise the cost of borrowing for everyone in the State.

Mayor Valentine said that this would affect municipalities as a whole.

Todd Miles said that you could be completely shut out of the capital markets with the inability to finance anything that the City requires and everything will have to be paid for with tax dollars.

Councilwoman Bello said that the way she sees this is that the long term consequences are disastrous no matter what they do. As for our borrowing ability, the fact of the matter is that we keep borrowing and the people here don't have the money to pay. We need relief from the mandated contracts. That is what we need. We would then be able to operate a city within our means if the State Comptroller would give us that privilege.

Todd Miles said he doesn't believe that the State Comptroller has the power to relieve the city of contractual obligations.

Councilwoman Bello said if they could have gotten the stricter oversight because we have only so much money to work with and we work within our means and we reorganize in order to operate.

Todd Miles said that we have been down that road and the Legislature has spoken by not doing that and the reality is that they will not do that so they need to govern the City in view of the legislation that was enacted. He understands the desire for the other but that is not going to happen here and they are not going to be given that option.

RESOLUTION NO.: 264 - 2010

OF

NOVEMBER 23, 2010

**A RESOLUTION ADOPTING THE AMENDED BUDGET
FOR THE FISCAL YEAR 2011**

WHEREAS, the City Manager, on October 4, 2010, submitted to the City Council of the City of Newburgh, New York, a detailed estimate, including the "Manager's Proposed Fiscal Year 2011 Budget" and the "Manager's Proposed Personnel Analysis Book" of same date, of revenues and expenditures necessary and proper for all municipal activities accounted for in the General, Water, Sewer, Sanitation and Self-Insurance Funds during the fiscal year of 2011; and,

WHEREAS, such detailed estimates has been filed in the City Clerk's Office as required by the Charter of the City of Newburgh so that said estimates may be inspected by anyone interested, and a public hearing was held on November 8, 2010 in reference to said estimates for any item thereof; and

WHEREAS, the Council has made such changes, alteration, corrections and amendments to the said budget as it appears to said Council to be proper, including incorporating such changes as deemed necessary in response to the New York State Office of the State Comptroller's budget review report #B8-10-23 dated November 10, 2010.

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Newburgh, New York does hereby approve, determine and adopts the budget for the year 2011 as appears in the annexed "City Council Adopted Fiscal Year 2011 Budget" dated November 22, 2010, and the "City Council Adopted Personnel Analysis Fiscal Year 2011 Budget" of same date; and,

BE IT FURTHER RESOLVED, that the sum of \$18,807,484 be levied and raised on account of City taxes for the year 2011 on all the taxable property in the City of Newburgh according to the valuation of the last assessment roll of said City for State, County and City purposes, being \$746,815,200 for Homestead Properties and \$440,303,011 for Non-Homestead Properties, including special franchise assessments, in accordance with the Real Property Tax Law of the State of New York; and,

BE IT FURTHER RESOLVED, that the City Collector is authorized and directed to cause said amount of \$18,807,484 to be extended and apportioned on said assessment roll at \$14.0941 for Homestead properties and \$18.8091 for Non-Homestead Properties on every \$1,000 of taxable real property, including special franchise assessments; and,

BE IT FURTHER RESOLVED, that the required sewer, water and sanitation fees for the taxable and non-taxable properties for the year 2011 is as set forth in Section 163-3 of the City Code of Ordinances; and,

BE IT FURTHER RESOLVED, that the City Collector is authorized and directed to cause any and all amounts reported as omitted taxes to be levied against the real property subject to said omitted taxes and to cause the amounts reported by the City Collector as overdue and unpaid water rents, sewer rents and sanitation user fees, and unpaid charges of property abatement, with the interest and penalties thereon, to be added to the tax levied against the real property for which or in connection with which such water, sewer and sanitation was provided; and,

BE IT FURTHER RESOLVED, that said City tax roll shall be delivered to the City Collector on the 2nd day of January 2011, signed by the City Manager and under the seal of the City, directing and commanding said City Collector to receive and collect in the manner provided by the law for the levying and collecting of County taxes by City Collectors, these several amounts in the roll specified as against the persons or property therein mentioned and described, and that said warrant shall direct the City Collector to collect said assessments in four equal installments as follows:

The first installment commencing on the 3rd day of January 2011, and collect up to and including the 1st day of February 2011, without fees, and to add 5% from the 2nd day of February 2011, up to and including the 3rd day of April 2011.

The second installment commencing on the 1st day of March 2011, and collect up to and including the 1st day of April 2011, without fees, and to add 5% from the 2nd day of April 2011, up to and including the 30th day of May 2011.

The third installment commencing on the 1st day of May 2011, and collect up to and including the 1st day of June 2011, without fees, and to add 5% from the 2nd day of June 2011, up to and including the 31st day of July, 2011.

The fourth installment commencing on the 1st day of July 2011, and collect up to and including the 1st day of August 2011, without fees, and to add 5% from the 2nd day of August 2011, up to and including the 29th day of September, 2011.

In addition thereto, for all late payments remaining unpaid for ninety (90) days after the first date designated for the collection of same, there shall be added an additional penalty in the amount of 10% per annum computed from said first date of collection; and

BE IT FURTHER RESOLVED, that the amounts, when collected, be deposited daily with the Key Bank of NY, N.A., Bank of America, TD Bank, Citizens, or in any of the said banks in compliance with the requirements set forth in the Newburgh Fiscal Recovery Act by said City Comptroller and credited and applied to the General, Water, Sewer, Sanitation and Self-Insurance Funds and accounts as stated in the Adopted Budget for taxes now confirmed and approved by said City Council, including credit balances heretofore appropriated.

Mayor Valentine said that one thing he feels works in favor for them on this is that one of the things that is in the Amended Budget that was not in the Proposed Budget is the flexibility of a four payment plan for paying taxes. That was lost last night because it was in the same resolution. By voting in the affirmative today besides solving all of our other problems we actually give some relief to the taxpayers of the City of Newburgh. This was something that we fought very hard for in the Budget process so instead of having three installments there will now be four starting in January. There is some relief in the fact that it will spread out over four payments where a lot of municipalities do not do that. We can't let something like that go unnoticed in the middle of everything else.

Councilman Dillard said that he is very disappointed concerning this resolution but he realized that by not voting for it will put the City in a very dire situation. He would also like to see our fiscal oversight handled properly and he would like the Fiscal Advisory Board to enact with the City Council immediately. We are only five people with different ideas in terms of running this City and in particular the budgetary problems of the City. He feels that we also must bring on a Comptroller immediately.

Councilwoman Angelo moved and Councilman Dillard seconded that the resolution be adopted.

Ayes - Councilwoman Angelo, Councilman Dillard, Mayor Valentine-3

Nays - Councilwoman Bello

ADOPTED

There being no further business to come before the Council, the meeting adjourned at 1:30 p.m.

**LORENE VITEK
CITY CLERK**