

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

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

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

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

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

CARRIED

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

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

CARRIED

PROPOSED PUBLIC HEARING

RESOLUTION NO.: 73-2012

OF

MAY 29, 2012

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

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

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

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

ADOPTED

LOCAL LAW NO.: _____ - 2012

OF

JUNE 18, 2012

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

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

SECTION 1 - TITLE

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

SECTION 2 - PURPOSE AND INTENT

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

SECTION 3 - AMENDMENT

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

§ 248-58. Definitions and word usage.

STORMWATER MANAGEMENT OFFICER (SMO)

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

STORMWATER POLLUTION PREVENTION PLAN (SWPPP)

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

§ 248-59. Applicability.

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

§ 248-60. Exemptions.

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

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

§248-61. Prohibitions of illegal discharges.

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

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

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

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

§248-68. Access and monitoring of discharges.

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

B. Access to Facilities.

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

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

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

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

§ 248- 71. Components of a pollution prevention plan

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

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

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

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

C. Plan certification.

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

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

- (3) A copy of the SWPPP shall be retained at the site of the land development activity during construction from the date of initiation of construction activities to the date of final stabilization.
- D. Other environmental permits. The applicant shall assure that all other applicable environmental or legal permits and other approvals have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.

§ 248-73. Maintenance.

A. The Applicant or Developer

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

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

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

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

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

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

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

E. Maintenance Bonds; Required documents and filing

(1)

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

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

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

§ 248- 75. Fees for services.

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

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

A. Notice of violation.

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

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

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

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

B. Alternative remedies.

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

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

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

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

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

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

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

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

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

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

Strikethrough denotes deletions

Underscore denotes additions

PUBLIC HEARING

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

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

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

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

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

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

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

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

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

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

There being no further comments this public hearing was closed.

COMMENTS FROM THE PUBLIC REGARDING THE AGENDA

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

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

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

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

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

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

COMMENTS FROM THE COUNCIL REGARDING THE AGENDA

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

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

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

CITY MANAGER'S REPORT

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

RESOLUTION NO.: 74 - 2012

OF

MAY 29, 2012

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

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

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

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

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

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

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

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

ADOPTED

RESOLUTION NO.: 75 - 2012

OF

MAY 29, 2012

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

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

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

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

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

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

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

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

ADOPTED

RESOLUTION NO.: 76 - 2012

OF

MAY 29, 2012

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

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

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

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

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

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

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

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

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

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

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

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

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

ADOPTED

RESOLUTION NO.: 77- 2012

OF

MAY 29, 2012

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

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

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

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

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

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

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

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

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

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

ADOPTED

RESOLUTION NO.: 78 - 2012

OF

MAY 29, 2012

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ADOPTED

RESOLUTION NO.: 79 - 2012

OF

MAY 29, 2012

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Nays - Councilwoman Lee - 1

ADOPTED

**RESOLUTION NO.: 80 - 2012
OF
MAY 29, 2012**

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

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

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

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

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

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

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

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

ADOPTED

RESOLUTION NO.: 81 - 2012

OF

MAY 29, 2012

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

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

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

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

ADOPTED

RESOLUTION NO.: 82 - 2012

OF

MAY 29, 2012

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

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

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

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

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

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

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

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

ADOPTED

RESOLUTION NO.: 83 - 2012

OF

MAY 29, 2012

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

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

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

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

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

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

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

ADOPTED

RESOLUTION NO.: 84 - 2012

OF

MAY 29, 2012

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

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

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

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

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

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

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

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

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

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

ADOPTED

RESOLUTION NO.: 85 - 2012

OF

MAY 29, 2012

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

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

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

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

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

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

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

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

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

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

Councilwoman Angelo thanked Mr. Peterson also.

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

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

ADOPTED

85-12

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

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

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

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

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

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

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

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

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

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

NOW, THEREFORE, it is agreed as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Remainder of page intentionally left blank.

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

DATED: _____, 2012 CITY OF NEWBURGH, NEW YORK

By: _____
Name: Richard Herbek
Title: City Manager

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

By: _____
Name: Richard Peterson
Title: President

RESOLUTION NO.: 86 - 2012

OF

MAY 29, 2012

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

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

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

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

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

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

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

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

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

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

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

ADOPTED

OLD BUSINESS

There was no old business

NEW BUSINESS

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

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

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

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

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

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

GENERAL COMMENTS FROM THE PUBLIC

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COMMENTS FROM THE COUNCIL

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

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

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

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

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

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

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

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

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

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

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

LORENE VITEK
CITY CLERK

