

A regular meeting of the City Council of the City of Newburgh was held on Tuesday October 11, 2011 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 Mayor Valentine and the Pledge of Allegiance was led by Councilwoman Bell.

Present: Mayor Valentine, presiding; Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard - 5

Councilwoman Angelo moved and Councilwoman Bello seconded that the minutes of the regular meeting of September 26, 2011 be approved.

Councilwoman Angelo said that at the last Council meeting a police officer spoke and it had to be her that they were referring to because they said that you can't save the City by planting flowers and growing grass. She said that it has never been her intention to do that. It is her intention to make the City beautiful and attractive. It is her money, her energy and hours that she puts into it. If anyone wants to complain about her planting flowers, they should go to her personally. She is down here every night watering the plants because she wants the place to look nice. She also plants flowers at the Library, Unico Park, Liberty Street and her home so she asked everyone to leave her alone because she will spend her money the way she wants to spend it.

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5

CARRIED

PRESENTATION

Isaac Diggs, City Charter Review Committee, spoke about the changes that the Charter Commission is proposing to the City Charter. He explained the proposed amendments that will be on the Ballot for November 8th and encouraged everyone to look at the City of Newburgh website to find detailed literature about the changes and the actual report prepared for the legislation. He noted that these propositions will be on the reverse side of the Ballot so everyone will have to turn their Ballot over to answer yes or no to these two propositions.

Mayor Valentine added that there will be another presentation at the Citizens Advisory Meeting on October 27th at the Activity Center.

PROCLAMATION

City of Newburgh

Proclamation

In support of Orange County Department of Health's Healthy Beverages Options in Orange County

The Orange County Department of Health
is working to encourage healthy diet options, particularly reduced consumption
of sugar-sweetened beverages with added calories.

The City of Newburgh, along with many other workplaces, provides vending areas in
certain public buildings, which offer bottled water and
low-calorie beverages as options to sugary beverages.

Therefore, I, Nicholas J. Valentine, Mayor of the City of Newburgh, support the work of
the Orange County Health Department to create a healthier future for our residents, and
Strongly urge all businesses, institutions, and schools to join them to
Encourage and promote
Healthy Beverage Options in Orange County.

NICHOLAS J. VALENTINE, MAYOR

RESOLUTION NO.: 205 - 2011

OF

OCTOBER 11, 2011

**A RESOLUTION SCHEDULING A PUBLIC HEARING FOR
OCTOBER 24, 2011 TO RECEIVE PUBLIC COMMENT ON THE
CITY OF NEWBURGH'S PROPOSED ACTIONS WITH RESPECT TO
THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM FOR THE
CONSOLIDATED PLAN FOR HOUSING AND COMMUNITY
DEVELOPMENT FOR FISCAL YEAR 2012**

BE IT RESOLVED, by the Council of the City of Newburgh, New York that there is scheduled a public hearing to receive public comment on the City of Newburgh's proposed actions with respect to the Community Development Block Grant Program for the Consolidated Plan for Housing and Community Development for FY 2012; and that such public hearing be and hereby is duly set to be held at 7:00 p.m. on the 24th day of October, 2011 in the City Council Chambers, 83 Broadway, City Hall, 3rd Floor, Newburgh, New York.

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

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5

ADOPTED

RESOLUTION NO.: 199 - 2011

OF

OCTOBER 11, 2011

**A RESOLUTION SCHEDULING A PUBLIC HEARING FOR NOVEMBER 14,
2011 TO RECEIVE COMMENTS CONCERNING THE ADOPTION OF THE
2012 BUDGET FOR THE CITY OF NEWBURGH**

BE IT RESOLVED, by the Council of the City of Newburgh, New York that pursuant to Charter Section 8.15 a public hearing will be held to receive comments concerning the adoption of the 2012 Budget for the City of Newburgh; and that such public hearing be and hereby is duly set for a special City Council meeting of the Council to be held at 7:00 p.m. on the 14th day of November, 2011, at the Activity Center, 401 Washington Street, Newburgh, New York.

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

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5

ADOPTED

RESOLUTION NO.: 206 - 2011

OF

OCTOBER 11, 2011

A RESOLUTION CONFIRMING THE FILING OF THE CITY MANAGER'S PROPOSED 2012 BUDGET WITH THE CITY COUNCIL OF THE CITY OF NEWBURGH ON OCTOBER 11, 2011 AND AUTHORIZING THE TRANSMITTAL OF THE PROPOSED 2012 BUDGET TO THE OFFICE OF THE NEW YORK STATE COMPTROLLER FOR REVIEW AND COMMENT IN ACCORDANCE WITH THE NEWBURGH FISCAL RECOVERY ACT OF 2010

BE IT RESOLVED, that this Council of the City of Newburgh, New York, hereby confirms that the City Manager's proposed 2012 Budget has been filed on this date; and

BE IT FURTHER RESOLVED, that the City Manager be and he is hereby authorized to transmit the proposed City of Newburgh Budget as filed for Fiscal Year 2012 to the Office of the New York State Comptroller for review and comment pursuant to the Newburgh Fiscal Recovery Act.

Councilman Dillard asked what the time frame is for the State to get back to us.

Richard Herbek, Acting City Manager said that November 18th is the latest to receive the recommendations from the State. November 21st is the Work Session to address the State Comptroller's recommendations and the 28th of November is when the Council is scheduled to vote.

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

Ayes - Councilwoman Angelo, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 4

Nays - Councilwoman Bell - 1

ADOPTED

PUBLIC HEARING

Mayor Valentine called a public hearing that was advertised for this meeting to hear public comments concerning a local law adding Chapter 137 entitled "Collateral Loan Brokers" to the Code of Ordinances of the City of Newburgh.

Janet Gianopoulos, City of Newburgh, said that she personally has used Pawn Brokers in the past and knows other people that have used them also. This is free enterprise and she thinks it would be fine because there are stricter controls in place. It's another option for people and would probably be useful in these economic times.

Denise Ribble, City of Newburgh, is concerned about having Pawn Brokers in the City because of some of the predatory practices that Pawn Brokers have had in the past. She wonders if they will also be able to do paycheck advances and then charge people exorbitant interest rates. She saw a recent PBS special that looked at Pawn Brokers and their practices and she feels that you can never get ahead because you borrow money and pay very high interest rates. In this proposal to amend the ordinance, she wonders what protections there will be for our citizens because while it may be helpful to pawn your stuff and then buy it back or sell your gold for cash it may end up being a form of sharecropping and predatory practice that she doesn't think the citizens of the City of Newburgh need.

Rick Milton, 77-79 Broadway, thinks that the natural reaction is to overact to the idea of a Pawn Broker being here in the City of Newburgh. He has been here long enough to have seen store fronts up and down Broadway that were dealing with stolen goods. He feels that this should not be an emotionally charged issue because it is a business issue. A lot of people don't have access to emergency money and a properly run Pawn Broker is an asset to people who are in need but you have to regulate them so that they are not sleazy. In Manhattan there are a lot of honorable Pawn Brokers who are more regulated than the people you see buying and selling gold up and down Broadway and everywhere so if you have concerns about people being taken advantage of those are the places that do it more than a Pawn Broker.

Lou, CEO of Quick Cash USA, said that Pawn Brokering goes back many, many years and he currently has twenty establishments in the Bronx, Brooklyn, Queens, New Rochelle, Elmsford, White Plains, Wappinger Falls and Middletown. He could tell everyone what a great service they provide but he would rather hear comments as to why a Pawn Broker shouldn't be put in this community. He said that as far as their rates are concerned people go out

to eat and spend \$100.00 and you tip 20%, which is \$20.00 for one to two hours of service. He lends money for four months for 26% by law. We are the place people go to when their Social Security check is not enough to put food on the table. They bring in their engagement rings to borrow \$100.00 or \$200.00 until that next Social Security check comes in.

Judy Kennedy, 162 Grand Street, said that we need to make sure that we put in a permitting process so that it covers all Pawn Brokers with all the rules so that we have a way to manage this over time.

Mayor Valentine noted that there is a licensing fee with a renewal of license and a bond requirement that is necessary before someone is given a license and also fees that will be collected.

Brenda McPhail, Varick Homes, said that we talk about drug dealers and if the Council brings this in to the City of Newburgh then they are drug dealers too. She asked why they would bring something like this to Newburgh where people are already stressed because they don't have jobs. This will make people more stressed because they will run for this where there is no background or credit check.

Loretta Manning, City of Newburgh, said that we are already under stressful times with crime and this is just going to be another outlet where they can go to fence it. She has been in a situation where her gold was stolen and found where her jewelry was but because she didn't have a receipt she could not get it back. Are we going to have to worry that we are going to get knocked in the head for someone to take our merchandise and then we can't get it back? We need to think about whether we want this type of dealership to come to Newburgh.

Vince Cappiletti, City of Newburgh, said that he has a vested interest in this tenant who is moving into his property. He said that he has brought a lot of tenants into this City and they looked into this before they even thought about bringing it in. His family is familiar with Pawn Shops also as they used them for many years when they lived in the Bronx. The Pawn Shop is different from the Gold Shop by the fact that they are regulated by the State and they are licensed. They can't buy gold and melt it down before someone figures out its missing. A ticket is given to the person bringing in the gold so that they can retrieve it when they are ready. There are already many gold shops on Broadway that are not regulated and they should look into getting them regulated because we want the City to have businesses that are regulated by the State. This is a franchise with fifteen to twenty stores. They are a successful business and they do business properly so he believes that they will

survive. If he didn't think that this was a good business, he wouldn't bring them into his building.

Gay Lee, City of Newburgh said that she doesn't know much about Pawn Shops but she would like to see the Downtown area have different kinds of businesses. She is a little concerned about fencing but she understands that there are regulations and she hopes that those regulations will be followed. She added that with any business contract that is signed they should attach a copy of the Section 3 policy to ensure employment for the people in the City of Newburgh.

Joe said that he works for a Pawn Shop in New York City and in order to pawn an item you must have proper identification that is State issued such as a driver's license or passport. They are regulated by the Police Department once a week and all of their books are kept on computer. They take pictures of the item along with the identification and items are kept on site for fifteen days before they are melted down. In response to an earlier comment made that someone could not get their item back, he said that if she had brought the police in she would have been able to retain that item.

Sheila Monk, New Windsor, said that this has a good and bad advantage but it is up to the individual. This could also bring jobs to the City of Newburgh.

Susan Smith, 36 Chambers Street said that she has a problem with too many Pawn Shops coming in to the City of Newburgh but we need businesses here and jobs. People are going to be pawning their items and they are not going to have the money to get them back. If a person comes in with an item to pawn, you are not really sure that it belongs to that person because there is no receipt but yet they will still be able to pawn it. She doesn't mind Pawn Shops being here but she would like to see something else come here. She has seen about ten of them popping up all over the place so let's look elsewhere to get some businesses in here and talk about creating jobs like retail.

Mayor Valentine noted that there are no Pawn Shops in Newburgh right now. Anyone that is buying gold right now is not licensed and does not have a permit because they don't fall under this law. This is for a Pawn Shop. We don't have this law yet which is why we are voting on it. If we pass this law, maybe we can go to the ones that are not enforcing it and bring them up to the standards of this law. Right now anyone can open up a shop and do whatever they want. This is the first request we have had for one so Corporation Counsel did the research to see how to put it into effect. We are starting with one business that wants to come to Newburgh and who has asked for this before they come. From what he has heard here tonight he

thinks that after we pass a law we should go after the other businesses that do not abide by a law.

There being no further comments this public hearing was closed.

COMMENTS FROM THE PUBLIC REGARDING THE AGENDA

Mayor Valentine asked City Comptroller, Cheryl Gross to give an explanation on what we are doing with the Tax Anticipation Notes since it was added on.

Cheryl Gross, City Comptroller, explained that this slipped through the cracks of her desk and it should have been on Thursday's schedule. This is a renewal which gives us the cash flow from the taxes that we didn't collect on the properties that are outstanding. Come the end of the year when we would have expected these funds the cash flow gets tight until we begin collecting taxes again in the beginning of the year. This helps alleviate that. She apologized to the Council that they did not have this on Thursday.

Denise Ribble, City of Newburgh, submitted and read the attached comments. She also submitted a copy of the Independent Auditor's Report on Communication of Internal Control Matters Identified in the Audit dated December 31, 2009. (copies attached)

Gay Lee, City of Newburgh, said in regard to Local Law #9-2011 that it reads to her like a line out of nowhere. She is confused about how we got to this place. We have talked about a lot of things like the Hiring and Training Center, Section 3 and privatizing the city that have never made it to an agenda. She is not against the idea but she is wondering how all of a sudden this ends up on the agenda. We have other issues that need to be addressed like the Brownfield issue. Each Council person has been part of the interview process for the Brownfield Study but nothing has ever come of that. She pointed out that we are talking about revitalizing the City and our downtown areas look like crap so to add a Pawn Broker Shop on the main drag is a problem for her because it sort of cheapens the idea of what we are envisioning for this City. She is not speaking out about it because it is a for profit business but we need to be concerned about where this business is going to sit and she still would like answers on how we got here with this.

Paul Weber, Artrip & Weber, said in regard to item #16 on the agenda that for the last couple of years we have had a paid Financial Consultant by the name of Dwight Hadley. In regards to certain financial mismanagement, he came in to allegedly clean it up. Dwight Hadley lives in Clifton Park, New York, which is an hour and fifty five minutes away from here. He is paid an hourly rate of \$70.00 plus travel, meals and lodging. In 2010 he was paid a total of \$117,000.00. He billed the city for a total of 1454 hours and of those hours 176 of them were travel hours back and forth to home. In 2011 he was paid so far a total of \$54,943.00. He billed the city for 644 hours and of those

hours 120 of them were travel hours. This is all based on his vouchers which he has a copy of is anyone wishes to see them. In the last two years the City has paid Dwight Hadley \$20,720.00 just in travel time. In 2010, based on the amount paid minus the travel hours the city paid him an actual hourly rate of \$91.88 per hour. In 2011, based on the lower number of hours of work time and after subtracting travel time his actual hourly rate jumped up to \$104.85 per hour. Also in 2011, Dwight Hadley dipped into the Community Development Block Grant and was paid a total of \$4,000.00 to review those grants. In 2010 and 2011, Dwight Hadley was paid a total \$176,000.00 to work a total of 1, 802 hours whereas a full time employee works a total of 2,040 hours. Why are we paying for this when we are talking about laying off cops? Why are we paying for this if it is a duplication of services when we have a very competent Comptroller here? This is bizarre to him and he doesn't get it. Someone needs to be held accountable for this so they need to think about that when they get to #16 on the list.

Judy Kennedy, 162 Grand Street, said in regard to #16 that the City of Newburgh needs all of its police officers. She strongly supports the Police Department and this is not a time to be laying off fifteen officers. It is also not a time to be raising property taxes. Our homeowners and businesses are sinking under the burden of an already outrageous tax. The goal in negotiations must be to keep the officers and not raise the taxes. We need to let go of this Financial Consultant because there are other ways to solve this problem. In general when Budgets must be cut, the first people to go are consultants, which is a common practice across most places. There are plenty of very bright people in this City with financial expertise that could help at a difficult time and she has already spoken to some of them. We need to create new partners right here in this city, stop the travel time back and forth and work with people right here that have expertise. On the police side of the discussion there must be full acknowledgment for our current economic climate. Yes the police have not had a raise in three years and neither have most people anywhere. We are in a recession and people are losing their jobs. This is not the time for raises anywhere. The days of a steady wage increase are over. She agrees that this is not fair. It is not fair that people are losing their houses and that people don't have jobs. None of this that we are going through is fair. Both the City and the PBA need to rethink a 1.1 million dollar overtime budget line item. This is insane. Why should fifteen officers lose their jobs while others are making double pay? This is a time management problem that needs to be worked out across the board. She asked that the PBA consider all of its members, not just some of them and some officers should not win at the expense of others being layed off. We have to come to some kind of agreement on this issue that is a win, win for everybody.

Brenda McPhail, City of Newburgh, asked for an explanation on item #17. What will this Community Resource Officer be doing?

Councilwoman Bell said that they will be paid through the Board of Education.

Ms. McPhail continued and said in regard to item #16 that she sees the Parking Enforcement Officer walking up and down the street and everyone needs to obey the parking meters not just at 16 Mill Street.

Mayor Valentine noted that there is no parking meter at 16 Mill Street. This resolution is for a request by a business owner that is there so that there will be a traffic flow and someone can't park there for long periods of time preventing people from getting in to that business.

Ms. McPhail said that we say that we have no revenue so people need to pay the parking meters and we need to think of ways to bring revenue to the City of Newburgh because we are broke.

Janet Gianopolous, said in regard to items #11 and 12 that she hopes we attract many types of businesses and we will have to market ourselves so that we will attract them. These items refer to a type of business that exists in San Francisco, Los Angeles and New York City and during the time that she lived in those cities they were thriving municipalities. She is in favor of the ordinance to allow another type of business to exist with proper controls in the City of Newburgh. As for item #16 regarding the consulting services, she sees in the description that there are no additional costs associated with this agreement for professional services but she has heard people talking and complaining about it. She would like a clarification on what it means when it says that there are no additional costs because everything these days does have a price tag

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

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. A significant deficiency is a deficiency, or combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Almost two years have passed, during which time the City has retained the services of a well paid financial consultant, yet no policies addressing these significant deficiencies and control deficiencies related to internal controls have been passed by "those charged with governance". I highly recommend that all Citizens read this public record document and I am providing a copy for the minutes.

Regarding significant deficiencies, the following areas had significant deficiencies:

Audit readiness (numerous journal entries required in the general fund in order to adjust various accounts to the proper balances at December 31, 2009; Budgetary Accounts (numerous budget adjustments made during the year without formal approval from the City Council); Capitol Projects Fund (Project Length Schedule - The City was unable to provide a Project Length Schedule analysis for Capitol Projects as of December 31, 2009, **Change Order Approval – During review of the City's Courthouse Project, it was determined that change orders in the amount of 4.5 million were made without City Council approval on an original contract amount of 6.2 million)**; Community Development Fund – (Loan Subsidiary Ledger – could not obtain a balance of loans receivable as of December 31, 2009, so unable to determine if the loans reflected on the City's books agreed with the subsidiary ledger, **Budgets – original budgets did not balance due to amendments not being properly posted and misposted amendments were made without City Council approval)**; Capitol Assets – Tracking; Cash – (**Bank Reconciliation Preparation – Bank statements not reconciled to the general ledger on a monthly basis (also reconciling items not promptly investigated and adjusted with adequate explanations)**); Non-Standard Journal Entries – Non-standard journal entries were not individually authorized by management and had no supporting documentation attached. Bargaining units – (Vacation time (CSEA) – the CSEA contract lacks substantiation stating how employees will be compensated for accumulated unused vacation days upon separation from the City; Compensatory Time(Police, CSEA and Firefighters) – the City does not adhere to the contractual agreement with **Police and CSEA and Firefighters agreements lack substantiation as to how to treat accumulated unused compensatory time. It has been the City's practice to pay 100% of unused compensatory time at the employees full rate of pay upon separation from service (regardless of what the rate of pay was when they earned the comp time)**

Given that two of the three contracts mentioned above are in negotiation, has the City Council ensured that these deficiencies have been addressed?

In 2010, the deficit was projected at 12 to 14 million and taxes were increased by 71% in for 2011. Then in June of 2011, the deficit became 6 million for 2010. Control deficiencies in the 2009 Audit included Fund Deficit; PILOTS; General Fund; Fiduciary Fund and Cash.

The 2009 Audit report, in a qualified statement says that there were no material deficiencies. (Those are the ones that are illegal.) Please pardon me for the comparison, but the City's fiscal business is run like the sub-prime mortgage industry, with we the taxpayers, paying the bailout with increased taxes and fees. The people in City management who were/are responsible for these deficiencies, and the City Councils that allowed these control deficiencies condoned this fiscal irresponsibility, but have not been held accountable. Instead, it is like the sub-primers who have hired lobbyists to prevent better regulation and to keep their clients from being brought to justice. The people responsible for the sub-prime fiasco go scot-free, while Congress debates taking the mortgage interest deduction away from all of us.

Please pardon me if I have a hard time accepting the "qualified" opinion that there were no material weaknesses or financial misstatements in 2009, when we had such a large discrepancy in the 2010 audit and still no policies on internal controls.

The lack of policies put in place by this City Council to address these significant and control deficiencies continues a pattern of lax oversight and failure to provide responsible fiscal management, while once again burdening the taxpayers with a proposed budget that will raise taxes, lay off police officers, and reduce services, without significant new source(s) of revenue and no reserve fund.

City of Newburgh, New York

Independent Auditors' Report on Communication of
Internal Control Matters Identified in the Audit

December 31, 2009



O'Connor Davies Munns & Dobbins, llp
ACCOUNTANTS AND CONSULTANTS

**Independent Auditors' Report on Communication of Internal Control Matters
Identified in the Audit**

To The Honorable Mayor and
Members of the City Council
City of Newburgh
City Hall
83 Broadway
Newburgh, New York 12550

In planning and performing our audit of the basic financial statements of the City of Newburgh, New York ("City") as of and for the year ended December 31, 2009, in accordance with auditing standards generally accepted in the United States of America, we considered the City's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the City's internal control. Accordingly, we do not express an opinion on the effectiveness of the City's internal control.

We have included in this letter a summary of communications as required by generally accepted auditing standards. We are also required to communicate any control deficiencies we identified during the audit and determined to be significant deficiencies or material weaknesses. This communication is a requirement of the new Statement on Auditing Standards (SAS) 115: *Communicating Internal Control Related Matters Identified in an Audit*.

Our consideration of internal control was for the limited purpose of conducting your City's audit and was not designed to identify all deficiencies in internal control that might be significant deficiencies or material weaknesses, and therefore, there can be no assurance that all such deficiencies have been identified. *We did not identify any deficiencies in internal control that we consider to be material weakness.*

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. A significant deficiency is a deficiency, or combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

As indicated in the attached Addendum A, we identified certain deficiencies in internal control that we consider to be significant deficiencies. In Addendum B we identified certain deficiencies in internal control that we consider to be control deficiencies as well as other comments and recommendations identified in Addendum C that are opportunities for strengthening internal controls and operating efficiency.

It is important to note that control deficiencies are not necessarily issues the City Council will choose to address, however, control deficiencies may represent potential risks. Our responsibility as your auditor is to ensure that the City Council is aware of these deficiencies or weaknesses so that you can make informed decisions on how best to respond to these risks.

This report, summary of communications and addendums are intended for the information and use of management and the City Council. However, this report is a matter of public record and its distribution is not limited. We will be pleased to discuss these comments in further detail at your convenience, or to assist you in implementing the recommendations.

O'Connor Davies Munns & Dobbins, LLP

O'Connor Davies Munns & Dobbins, LLP

July 22, 2010

City of Newburgh, New York

Summary of Communications

- Auditors' Responsibility Under Auditing Standards Generally Accepted in the United States of America
 - Qualified opinion on financial statements, due to the fact that the financial statement of the City's component units were not available
 - No change in scope of the audit
 - No material errors
 - No fraud or illegal acts identified
 - No instances/suspicion or allegations of fraud were noted during conduct of audit
- Internal Accounting Controls
 - Reviewed to extent necessary to render our opinion on the financial statements
 - No material weaknesses noted
- Significant Accounting Policies
 - Accounting policies appear appropriate
 - Significant accounting policies included in Note 1 to the financial statements
- Management's Judgments and Accounting Estimates
 - Estimates used deemed adequate
- Audit Adjustments
 - No significant unrecorded adjustments
- Disagreements with Management
 - None
- Unresolved Difficulties Encountered in Performing the Audit
 - None

City of Newburgh, New York

Summary of Communications
(Concluded)

- Consultation by Management with Other Accountants
 - None of which we were made aware
- Independence
 - O'Connor Davies Munns & Dobbins, LLP is independent in all respects
- Irregularities or Illegal Acts
 - Nothing to report

City of Newburgh, New York

Addendum A
Significant Deficiencies

- **General Fund**

- **Audit Readiness**

Numerous journal entries were required in the General Fund in order to adjust various accounts to the proper balances at December 31, 2009.

Recommendation

In order to minimize the risk of material misstatement, the City should ensure that all required journal entries are recorded prior to the closing of the books and the commencement of the audit.

- **Budgetary Accounts**

It was noted that numerous budget adjustments were made during the year without formal approval from the City Council. In addition, no analysis could be provided to show a reconciliation from the original budget to the final budget.

Encumbrances left from the prior year were properly rolled into the 2009 budget, however, it appears that the City liquidates various encumbrances if it is determined they are no longer valid.

Recommendation

We recommend that all amendments to the budget be presented to the City Council for approval and a reconciliation be performed to show all changes from the adopted budget to the final budget. We further recommend that an analysis of all encumbrances be performed prior to year-end to ensure that proper amounts are being rolled forward into the subsequent year's budget.

- **Capital Projects Fund**

Our audit of the City's Capital Projects Fund disclosed the following:

- **Project Length Schedule**

A project length schedule is very important to maintain for the Capital Projects Fund because it reflects the authorizations of the various projects as well as cumulative revenues received and expenditures incurred. The City was unable to provide us with such an analysis as of December 31, 2009.

City of Newburgh, New York

Addendum A
Significant Deficiencies

- **Capital Projects Fund (Continued)**

- **Project Length Schedule (Continued)**

Recommendation

We recommend that the City work towards preparing a project length schedule for all of its on-going capital projects. Without such a schedule, it is extremely difficult to determine how much money is available to spend on the various projects and when a project is completed and should be closed out.

- **Change Order Approval**

It is not uncommon that, after the commencement of a new project, it is determined that costs will be higher than originally anticipated. Normally, the project engineer determines that an increase to the original contract is necessary and a resolution is passed approving such increase. During our review of the City's Courthouse project, it was determined that change orders in the amount of \$4.5 million were made without City Council approval on an original contract amount of \$6.2 million.

Recommendation

We suggest that, in the future, all increases to an original contract award receive the proper authorization and are presented to the City Council for final approval.

- **Community Development Fund**

- **Loan Subsidiary Ledger**

It was noted during our review of the Community Development Fund that the Community Development office does not retain a record of loans receivable as of the City's fiscal year end, but instead maintains a perpetual loan receivable schedule. Based on the fact that we could not obtain a balance of loans receivable as of December 31, 2009 and we were unable to determine if the loans reflected on the City's books agreed to the subsidiary ledger.

Recommendation

We suggest that the Community Development office retain loan receivable records as of the date of the fiscal year-end of the City. We also suggest that the loans per the subsidiary ledgers be reconciled on a monthly basis to the amounts recorded in the City's general ledger.

City of Newburgh, New York

Addendum A
Significant Deficiencies

- **Community Development Fund (Continued)**

- **Affordable Housing Corporation**

It was noted during our review of the New York State Affordable Housing Corporation grant that vouchers were paid to grantees that were not approved by the New York State Affordable Housing Corporation prior to the grant expiration on April 30, 2009. These expenditures are, therefore, not reimbursable by the grantor and must be funded by the City's General Fund.

Recommendation

We suggest that the City be certain that vouchers will be eligible for reimbursement prior to submitting them. We also suggest that the City monitor the deadlines of its various grants so as not to allow them to expire before receiving maximum reimbursement.

- **Budgets**

It was noted that the original budgets recorded in the subsidiary ledgers did not balance. In addition, the revised budgets were not in balance due to the fact that amendments were not properly posted. Upon inquiry of the various mispostings of the amendments, it was determined that these amendments were made without City Council approval.

Recommendation

In order to keep track of the spending in the Community Development Fund, it is imperative that the original budget is properly recorded in the revenue and expenditures subsidiary reports. In addition, we recommend that any change to the original budget be presented to City Council for proper authorization.

- **Capital Assets**

The last consolidated capital assets schedule compiled was from 2006. Management has informed us that there was a limitation on a software upgrade performed and the schedule has not been consolidated since. To validate capital asset balances as of December 31, 2009, City personnel had to compile several schedules to substantiate balances. There are multiple files used to track the depreciation expense in order to keep track of individual assets and to consolidate these amounts into totals, by type of asset. There appears to be a weakness in the tracking of capital assets. City provided balances were able to be audited and deemed reasonable however, there appears to be a weakness in internal control related to this area and misstatement is more likely to occur if information is not entered into the City's automated software.

City of Newburgh, New York

Addendum A
Significant Deficiencies

- **Capital Assets (Continued)**

Recommendation

We recommend Management establish one consolidated system for tracking all capital assets.

- **Cash**

- **Disbursements Account**

During our audit of the City's cash, we noted that the activity of the general disbursements account, which is an imprest account, was not posted to the general ledger and a reconciliation was not prepared as of December 31, 2009. Since this account is set up within the General Fund, the transfers from various funds to cover disbursements are recorded as due to/due from balances. Furthermore, the underpayments and overpayments from various funds are often recorded as deposits-in-transit, which do not clear in a timely fashion. City personnel have informed us that the account has not been used in the past several months and has been closed as of April 2010. It appears that the balance in the account has consistently been reduced as outstanding checks clear.

Recommendation

We recommend that the City record the activity of the disbursements account in the general ledger and appropriately record all transfers and other reconciling items.

- **Bank Reconciliation Preparation**

During our audit, we noted that bank statements for the City's various accounts were not being reconciled to the general ledger on a monthly basis. While reconciliations were provided to us as of December 31, 2009, they were not available for every month. Most of the problems encountered within the area of cash can be avoided if a proper system of checks and balances is incorporated into the City's procedures.

City of Newburgh, New York

Addendum A
Significant Deficiencies

- **Cash (Continued)**

- **Bank Reconciliation Preparation (Continued)**

Recommendation

We recommend that all of the City's bank accounts be reconciled monthly to the general ledger and that all reconciling items be promptly investigated and adjusted with adequate explanations.

- **Bank Reconciliation Review**

We noted that employees who are responsible for other cash functions also review bank reconciliations. This provides an ineffective system of cash control due to the lack of an adequate segregation of duties.

Recommendation

An employee independent of cash receipts and disbursement activities should review the bank reconciliations for any unusual items and document their approval by initialing the form. This will significantly improve the system of checks and balances necessary for strong cash control.

- **Non-Standard Journal Entries**

During our audit, it was noted that non-standard journal entries were not individually authorized by management and had no supporting documentation attached. Adequate documentation serves as an accounting record and facilitates future follow-up as well as additional insight for other users.

Recommendation

We recommend that management review and approve all non-standard journal entries and initial the support for the entries to document their approval. This process would improve controls over adjustments to the general ledger.

City of Newburgh, New York

Addendum A
Significant Deficiencies

- **Bargaining Units**

During our testing of the compensated absences, we noted the following issues with the collective bargaining unit agreements:

- **Vacation Time**

The Civil Service Employees Association contract lacks substantiation stating how employees will be compensated for accumulated unused vacation days upon separation from the City. The City's past practice has been to pay 100% of unused vacation days at an employee's full rate of pay upon separation of services.

- **Compensatory Time**

The Police Benevolent Association and the Police Superior Officers Association contracts state that "compensatory time earned in any given month shall be repaid to the employee no later than the last day of the next calendar month. If time off cannot be given in this period, then the employee is to be paid in cash ten days after the above deadline". It has been the past practice of the City to allow these employees to accumulate compensatory time and be compensated for such time at a later date. Further, the Civil Service Employees Association and International Association of Firefighters agreements lack substantiation as to how to treat accumulated unused compensatory time. It has been the City's practice to pay 100% of unused compensatory time at the employee's full rate of pay upon separation of services.

Recommendation

We suggest that the City adhere to the terms of the various collective bargaining agreements and to clearly identify in these agreements the intended policies for compensation of unused vacation and compensatory time.

City of Newburgh, New York

Addendum B
Control Deficiencies

- **General Fund**

- **Fund Deficit**

Deficits place a financial burden on a municipal entity. They are created either by revenue shortfalls or expenditures in excess of budgetary provisions. The effects of a deficit are varied but their greatest impact will generally be felt on cash flow. The larger the amounts involved, the greater the problems. Financial controls must be instituted to cure the deficit. A variety of alternatives may be used to eliminate a deficit; the simplest of which is an additional tax levy or increased user charges. The ability to generate additional revenue sources as well as the effect of more stringent expenditure controls should be examined. In addition, management must determine the origin of the deficit. If the deficit was the result of unique circumstances that will not repeat, a tax levy or user charge approach may suffice. However, if the deficit is an indication of continuing problems, then a plan must be developed which may require the use of all the available solutions. The General Fund, as of December 31, 2009 reflects an unreserved deficit of \$1,384,994. This amount is exclusive of the \$5.5 million that was appropriated for use in the 2010 adopted budget, but not available.

Recommendation

We recommend that the City implement a plan for reducing and eventually eliminating this deficit.

- **Payments in Lieu of Taxes (PILOTs)**

There is no documentation for how the City is calculating amounts due to the County and School on a PILOT received from Varick Homes. The basis for the PILOT is a City Council resolution from 1968 that indicates that the City is acting as agent for the County and School, implying that the City should be collecting for the County and School. The City has not remitted to or recorded a liability for amounts due to the County for this PILOT. Also, no support was provided for the calculation of amounts due to the School.

Recommendation

We recommend a thorough review of all PILOT agreements to determine if the proper amounts have been billed to the entity and that the proper amount has been remitted to the County or the School, as applicable. In addition, supporting documentation should be retained for any calculations of PILOT payments invoiced.

City of Newburgh, New York

Addendum B
Control Deficiencies

- **General Fund (Continued)**

- **Capital Lease Payments**

It was noted, during our analysis of the City's various capital leases, that payments are being charged within various expenditure codes throughout the General Fund. This practice make it difficult to determine if the proper amounts were paid during the year.

Recommendation

We suggest that separate expenditure codes be established within the debt service section for capital lease principal and interest payments and that these codes be included as part of the City's annual adopted budget.

- **Special Purpose Fund**

- **Inactive Trusts**

During the audit of the Special Purpose Fund, we noted that the following expendable trust accounts did not have any activity during the fiscal year: Audrey Carey Parks, Children's Day Parade, Miscellaneous Fire Department Donations, Exxon Mobil Terminal Fire Plan, Fishing Derby, Renwick Street Renovation, Police Bicycle Contributions and the Mater Plan Initiative

Recommendation

We recommend that the status of these trusts be evaluated and the balance of the inactive trusts be properly transferred to the General Fund, if deemed appropriate

- **Negative Balances**

We noted that the Debutante Ball trust account has a negative balance at year-end.

Recommendation

We recommend that Management investigate the status of this trust fund and determine if the trust should be closed or replenished.

City of Newburgh, New York

Addendum B
Control Deficiencies

- **Fiduciary Fund**

- **Inactive Trusts**

The Fiduciary Fund is provided to account for assets held by the City in a trustee or custodial capacity, or as agent for individuals, private organizations, other governmental units and/or other City funds. We noted that the Rewards escrow account has been inactive for more than six years. We also noted that the following accounts did not have any activity during the 2009 year: T690.07 Arts & Cultural Escrow, T690.08 Lakeside Plaza Building Escrow, T690.09 Community Training Events Escrow and T690.11 Youth Bureau Talent Shows Escrow.

Recommendation

We suggest that Management investigate the status of these accounts and determine the proper disposition of funds, if necessary.

- **Negative Balances**

During our audit of the Agency Fund escrow accounts, we noted that the Waterfront Development Escrow had a negative balance of \$103,000 at year-end. Based on the escrow agreement, the escrow should be replenished to \$50,000 any time the balance falls below \$25,000. This deficit balance is being covered by the General Fund which, in 2008, transferred \$100,000 to replenish the cash. This transfer appears to have been made without the approval of City Council.

Recommendation

We recommend that Management follow up with the applicant of the Waterfront Development escrow for immediate replenishment of this account. We also suggest that the City create a policy or code for escrow accounts, defining limits for replenishment and maximum deficit limits. Further, Management should put controls in place to ensure funds are not being transferred without City Council approval.

City of Newburgh, New York

Addendum B
Control Deficiencies

- Cash

- **Bank Confirmations**

We noted that one of the cash confirmations received from TD Bank North had an account that could not be located on the City's books. Upon further investigation, City personnel informed us that the account does not belong to the City, but rather to a separate organization within the City.

Recommendation

We recommend that the City contact the bank and request the removal of their tax identification number.

- **Bank Statement Cut-offs**

We noted that one of the City's bank accounts with TD Bank North has a bank statement period that does not cut off at months end.

Recommendation

We recommend that the City request the bank to provide bank statements having cut-offs at calendar month ends. This facilitates accuracy in the preparation of bank reconciliations and in the review process.

City of Newburgh, New York

Addendum C

- **Future Application of Accounting Standard – Statement of the Governmental Accounting Standards Board (“GASB”) – Fund Balance Reporting and Governmental Fund Type Definitions (GASB Statement No. 54)**

In February 2009, the Governmental Accounting Standards Board (“GASB”) issued Statement No. 54, “Fund Balance Reporting and Governmental Fund Type Definitions”. This Statement is intended to improve the usefulness of information provided to users of governmental financial statements about fund balance by 1) providing clearer, more structured fund balance classifications and 2) by clarifying the definitions of existing governmental fund types.

It is said that fund balance is among the most widely and frequently used piece of information provided in local government financial statements. GASB Statement No. 54 was developed to address the diversity and lack of consistency that had developed in the reporting of this vital information. To reduce this confusion, the new standard establishes a hierarchy of fund balance classifications based primarily on the extent to which a government is bound to observe spending constraints imposed upon how resources reported in governmental funds may be used.

GASB Statement No. 54 distinguishes fund balance between amounts that are considered nonspendable (such as fund balance associated with inventories) and other amounts that are classified based on the relative strength of the constraints that control the purposes for which specific amounts can be spent. Accordingly, fund balance amounts will be reported in the following classifications:

- **Restricted** – amounts stipulated by constitution, external resource providers or through enabling legislation.
- **Committed** – amounts that can be used only for the specific purposes determined by a formal action of the government’s highest level of decision-making authority.
- **Assigned** – amounts that are intended to be used by the government for specific purposes but do not meet the criteria to be classified as restricted or committed. In governmental funds other than the General Fund, assigned fund balance represents the remaining amount that is not restricted or committed.
- **Unassigned** – amounts that are not constrained at all in the government’s General Fund and includes all spendable amounts not contained in other classifications.

GASB Statement No. 54 also clarifies the definitions of individual governmental fund types. It provides an interpretation of certain terms within the definition of special revenue fund types, while further clarifying the debt service and capital projects fund type definitions. GASB Statement No. 54 is effective for the City’s fiscal year ending December 31, 2011 with earlier implementation encouraged.

City of Newburgh, New York

Addendum C

- **Written Investment Policy**

The current economic crisis has altered the relationship between banks and the various municipal entities that they service. In addition to sweeping changes in Federal Deposit Insurance Corporation ("FDIC") coverage that affect all depositors, banks have also begun to expand the options permitted under Section 10 of the New York State General Municipal Law in regards to collateralizing a municipality's deposits that exceed FDIC limits. For instance, one of the options that has been most prevalent is the acceptance of a letter of credit issued by the Federal Home Loan Bank.

Section 39 of the New York State General Municipal Law requires municipalities, under their written investment policies, to include in the policy "procedures and provisions to secure in a satisfactory manner the local municipality's financial interest in investments". Accordingly, many entities have included in their written investment policy a listing of the collateral which will be accepted by them as collateral to secure deposits in excess of FDIC coverage.

We suggest that a review of the written investment policy, collateral agreements and FDIC coverage regulations be performed to ensure that all deposits are fully covered and that the list of acceptable collateral instruments to secure deposits in excess of FDIC limits in the written investment policy is consistent with the collateral agreements with the banks.

- **Internal Review**

As indicated in professional standards, an annual audit is designed to provide reasonable, but not absolute, assurance that the financial statements are free of material misstatement and present fairly the financial position and results of operations of the entity. To assure ourselves of the integrity of the financial statements, we perform a variety of tests on the entity's internal control over financial reporting as well as substantiation of major assets, liabilities, revenues and expenditures based on certain calculated materiality thresholds. We are also required under Statement on Auditing Standards No. 99 (SAS 99) to consider and make inquiries about an entity's fraud risk factors. We must 1) document our inquiries of management regarding fraud risks and how the entity addresses those risks, 2) interview appropriate personnel about whether they are aware of fraud or suspected fraud, and 3) consider the results of analytical procedures performed in planning the audit along with other information gathered, and document any indications that the financial statements might have a material misstatement due to fraud.

City of Newburgh, New York

Addendum C

• **Internal Review (Continued)**

All of the above mentioned procedures are designed to prevent the financial statements from being materially misstated. However, most entities generate a large volume of transactions that, individually, are not material and would not be examined as a part of the normal year-end audit sample, such as travel expenditures. In these instances, procedures should be instituted to monitor these expenditures internally during the year, on a random basis, to ensure that they are disbursed in accordance with State and local statutes, where applicable, and that there is appropriate documentation to support the outlay.

Recommendation

Therefore, we would suggest that, on an annual basis, the City Council perform a review of "sensitive" type expenditures to ensure that they are supported by appropriate documentation, containing all required approvals and are in compliance with existing statutes.

COMMENTS FROM THE COUNCIL REGARDING THE AGENDA

There were no comments.

LOCAL LAW NO.: 9 - 2011

OF

OCTOBER 11, 2011

**A LOCAL LAW ADDING CHAPTER 137 ENTITLED
"COLLATERAL LOAN BROKERS"
TO THE CODE OF ORDINANCES
OF THE CITY OF NEWBURGH**

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

SECTION 1 - TITLE

This Local Law shall be referred to as "A Local Law Adding Chapter 137 entitled 'Collateral Loan Brokers' to the Code of Ordinances of the City of Newburgh".

SECTION 2 - PURPOSE AND INTENT

The purpose of this local law is to promote the public health, safety and welfare of the City of Newburgh by regulating and collateral loan brokers to protect the property rights of its residents and to assist law enforcement in the recovery of stolen property and the identification of suspects.

SECTION 3 - AMENDMENT

The Code of Ordinances of the City of Newburgh is hereby amended to add new Chapter 137 entitled "Collateral Loan Brokers" to read as follows:

"CHAPTER 137, COLLATERAL LOAN BROKERS

§137-1 Definitions.

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

COLLATERAL LOAN BROKER - Any person loaning money on deposit or pledge of personal property, other than securities or printed evidences of indebtedness; dealing in the purchase of personal property on condition of selling back at a stipulated price; or designated or doing business as furniture

storage warehousemen, and loaning and advancing money upon goods, wares or merchandise pledged or deposited as collateral security; a pawnbroker.

PERSON – an individual, corporation, limited liability company, partnership, association, agency, trust, estate, or other entity capable of being sued.

§137-2 License Required.

No person, either as principal, agent or employee, shall within the limits of the City of Newburgh, establish, engage in or carry on the business of collateral loan broker, either separately or in connection with some other business, without first having obtained and paid for and having in full force and effect a license as herein provided.

§137-3 Application for License; application fee.

A. Every person desiring to procure a license under this chapter shall file with the City Clerk a written application upon a blank form prepared and furnished by the City which shall provide the following information:

1. The name of the collateral loan broker.
2. The address of the principal office of such collateral loan broker, if any, wherever situated, and the address or addresses of the principal office of such collateral within New York State, if any.
3. The names, residences and business addresses of the principal officers if the applicant is an individual, partnership or firm, or the names, residences and business addresses of the principal officers if the applicant is an association or corporation.
4. A certificate of incorporation and certificate of Good Standing, if the applicant is a corporation, and if the applicant is a foreign corporation, an application for authority to business in New York State.
5. A description of the character of the business in which the applicant desires to engage.
6. The length of time such applicant or applicants, if an individual, firm or partnership, or the manager or person in charge, if the applicant is a firm, partnership, corporation or association, has or have resided in the State of New York; his/her or their place of previous residences and employment whether he/she or they or any of them have ever been convicted of a felony or misdemeanor and, if so, what offense, when and in what court.
7. The street address where such business is to be located or carried on.
8. Whether the applicant or applicants or manager have, either alone or with someone else, ever engaged in the business of collateral loan broker.

- B. The Application shall be signed and acknowledged before a notary public.
- C. The Application shall be accompanied by a non-refundable application fee as set forth in Chapter 163, "Fees" of the Code of Ordinances of the City of Newburgh.

§173-4 Bond Required.

The license application shall be accompanied by a bond to the City of Newburgh, approved as to form by Corporation Counsel, in the penal sum of \$10,000.00, with two responsible sureties or sufficient collateral security, conditioned on the faithful performance of the duties and obligations pertaining to the business so licensed, the due observance during the term of the license of any and all ordinances and laws which are now in force or may be hereafter be adopted or enacted respecting the business of collateral loan broker as defined in Section 173-1 of this Chapter, and the accounting for and paying over of all moneys which the licensee shall be liable to pay as such collateral loan broker to the City of Newburgh.

§ 173-5 Issuance or Denial of License; contents; reapplication after rejection.

- A. Upon the filing of the application, bond and information as provided in this Chapter, the City Manager may, upon his/her approval of such application and bond as to the sufficiency of the sureties or collateral securities, and upon the payment to the city of the license fee hereinafter provided, direct the City Clerk to issue to the applicant a license to engage in the business as provided in Section 173-2 of this Chapter. No license shall be denied except for specific reason and for the protection of the public safety or welfare.
- B. All licenses shall be numbered in the order in which they are issued and shall state clearly the location of the place of business in which the person receiving such license shall be authorized to establish, engage in and carry on the business, the kind of business, the dates of issuance and expiration of the license, the fees paid and the name and address of the licensee.
- C. No applicant to whom a license has been denied shall make further or additional application until a period of at least six months shall have elapsed since the last previous denial, unless he/she can demonstrate that the reason for such denial no longer exists.

§ 173-6 License fee; renewal new licenses; non-transferability; duplicate licenses.

A. Every collateral loan broker shall pay an annual license fee as set forth in Chapter 163, "Fees" of the Code of Ordinances of the City of Newburgh.

B. All renewal licenses shall be issued as of January 1 and shall continue in force until the following December 31, unless otherwise revoked by the City Manager in accordance with this Chapter.

C. New licenses shall be issued as of the date of the approval by the City Manager, to be effective until the next succeeding December 31, and the annual fee shall be paid to cover the period of the new license.

D. No license shall be used by any person other than the original licensee; and any holder of such license who permits it to be used by any other person, and any person who uses such license granted to any other person, shall be guilty of a violation of this Chapter.

E. Whenever a license shall be lost or destroyed without fault on the part of the holder or his/her agent or employee, a duplicate license in lieu thereof under the original application and bond may be issued by the City Manager in his/her discretion, upon the filing with it an affidavit by the licensee, setting forth the circumstances of the loss and what, if any, search has been made for its recovery, along with a replacement fee as set forth in Chapter 163, "Fees" of the Code of Ordinances of the City of Newburgh. No person shall destroy, deface or injure a license in any manner, or change the name, number or dates therein.

§ 173-7 Revocation of License.

The City Manager may, at any time, after investigation and hearing before the City Manager or his/her designee at which the licensee may be heard, for violation of this Chapter or for any other proper cause, revoke any license granted under the provisions of this Chapter. Whenever any license shall be revoked, no refund of any unearned portion thereof shall be made, and no license shall be granted to any person whose license has been revoked within a period of one year from the date of such revocation. Notice of such revocation and the reason therefore in writing shall be served by the City Manager upon the person named in the application by personal service or by mailing the same to the address given in the application and upon filing of a copy with the City Clerk.

§ 173-8 Change in Location of Business.

If any licensee shall move his place of business from the location designated in the license, he shall immediately give notice to the City Clerk and have the same endorsed on the license.

§ 173-9 Record of Loans.

No collateral loan broker shall accept any pledge until the person pawning such pledge shall have adequately proved his/her identity or shall have adequately proved ownership of the article pawned. Every licensed collateral loan broker shall keep in a substantially bound book, which shall be legibly written in ink and in English at the time of making a loan, an account and description of the goods, articles or things pawned or pledged, including the number or numbers and any monogram, inscription or other marks of identification that may appear thereon, the amount loaned thereon, the time and day of the loan and its maturity, the rate of interest paid on such loan and the named, general description and residence of the person pawning or pledging such goods, articles or things and a record of the means of identification of the pledger or of the proof of ownership by the pledger. Such book and all articles pawned or pledged shall at all reasonable times be open to inspection by any police officer, the City Manager, or any person duly authorized in writing for such purpose by the City Manager or Police Chief, who shall exhibit such written authority to the collateral loan broker and to all persons authorized by Section 45 of the General Business Law of the State of New York. No entry in such book shall be erased, obliterated, altered or defaced.

§ 173-10 Report to City of Newburgh Police Department.

Every collateral loan broker shall, at such times as the Police Chief may prescribe in a written notice, to be served upon such collateral loan broker by a sworn member of the Police Department, report to the Police Department, on blank forms to be furnished by the Police Department, a description of all goods, articles or things, or the identity or proof of ownership of pledgers, such as is required to be kept under Section 173-9 of this Chapter, which have been pawned or pledged in the course of business of the collateral loan broker during the days specified in such notice and, if such notice from the Chief of Police so prescribes, such collateral loan broker shall, at that time and until he/she is so notified to discontinue so doing, keep and furnish on such blank forms such information, as well as a general description of every person depositing such pledge.

§ 173-11 Note Required for Redemption.

Every licensed collateral loan broker shall, at the time of each loan, deliver to the person pawning or pledging any goods, articles or things a memorandum or note signed by him/her containing his/her address and the substance of the entry required to be made or received by any collateral loan broker for any such entry, memorandum or note. The holder of such memorandum or note shall be presumed to be the person entitled to redeem the pledge, and the collateral loan broker shall deliver such article to the person so presenting such memorandum or note upon payment of principal and interest; should such memorandum or note be lost or mislaid, the pawner shall at once apply to the collateral loan broker, in which case it shall be the duty of the collateral loan broker to permit such person to examine his/her books, and upon finding the entry for such memorandum or note so lost and upon giving to the collateral loan broker an exact description of the article pawned, the collateral loan broker shall issue a second or stop ticket for the same. In case such pawner neglects to so apply and examine such books and receive such memorandum or note in the manner above stated, the collateral loan broker shall be bound to deliver the pledge to any person producing such memorandum or note for redemption thereof. This section is not to be construed as in any manner limiting or affecting such collateral loan broker's common-law liability in cases where goods are stolen or other legal defects of title exist in the pledge.

§ 173-12. Rate of Interest.

A. No collateral loan broker shall ask, demand or receive any greater rate of interest than four per centum per month, or any fraction of a month, and a notice containing a list of such rates of interest as herein provided and in accordance with the Act of Congress entitled, "Truth in Lending Act" (15 U.S.C. 1601 et seq.) and the regulations thereunder, as such Act and regulations may from time to time be amended, shall be conspicuously displayed within the premises of such collateral loan broker. A minimum interest charge of \$0.25 per month may be made on any loan.

B. No collateral loan broker shall receive or be entitled to any interest or charges as provided by this section on any loan for any period of time exceeding 15 months from the date of the making of such loan, provided, however, that where a loan is extended at the direct request of the pledger, the collateral loan broker may receive and be entitled to any interest or charges provided by this article on such loan for any period of time not to exceed 15 months from the date of such extension.

C. No such collateral loan broker shall make any charge for packing, storing, keeping or caring for any article, goods or things pledged or upon which a loan has been made.

§ 173-13 Sale of Unclaimed Pledge.

No licensed collateral loan broker shall sell or otherwise dispose of any pawn or pledge unless the interest shall be six months or more in arrears, and all such sales shall be at public auction and shall be conducted by auctioneers licensed with the State of New York. All bids for the purchase of any defaulted pledge offered at such sale shall be expressed in dollars and cents without the use of any special signs, signals or motions if less than 11 people attend such sale.

§ 173-14 Notice of Sale.

Notice of every such public sale shall be published for at least six days previous thereto in the official newspapers of the City of Newburgh as set forth in Chapter 20 of the Code of Ordinances of the City of Newburgh, and such notice shall specify the time and place at which such public sale is to take place and a description of the goods or articles to be sold. Every collateral loan broker shall enter in a book kept for that purpose a true account of the sale of all goods sold by him/her at auction or otherwise, stating the day of the month when pledged, the name of the person pledging, the day when and the amount for which each pledge was sold and the name of the auctioneer. Any person who shall have pledged any unredeemed goods, or his/her assigns, administrators and executors, shall at all reasonable times be permitted to inspect such entry book of sale. Every collateral loan broker shall give notice of the expiration of the six months from the date of the loan after which a public sale of the article pledged may take place, by letter directed to the borrower at his/her last known residence at least 10 days and not more than 20 days after the expiration of such six months.

§ 173-15. Disposition of Proceeds of Sale.

A. The surplus money, if any, arising from any such sale, after deducting the amount of the loan, the interest then due on the same and the expense of advertising and sale shall be paid over by the collateral loan broker to the person who would be entitled to redeem the pledge in case no such sale had taken place, provided that demand therefore is made within one year after such sale shall have taken place.

B. In the event that there is any surplus money due to a pledger after such sale, the collateral loan broker shall give the pledger written notice thereof, by

mailing to such pledger, directed to him/her at the address given at the time of pledging or in the event such pledger has notified the collateral loan broker, in writing, of a change of address, to such new address, within 30 days after such sale, a notice which shall state the name and address of the collateral loan broker, the number of the pledge, the date of sale and the amount of any surplus.

§ 173-16 Posting of Rates.

Every licensee shall cause to be posted in a conspicuous part of his/her office or place where the collateral loan broker business is carried on, so as to be visible to all persons pledging goods, a printed card or table of the rates of interest authorized by this chapter, printed in large type and in both the English and Spanish languages.

§ 173-17 Prohibited Acts.

A. No collateral loan broker shall:

1. Permit the redemption of any article received by him/her in pawn until 48 hours after the same has been received by him/her in pawn.
2. Fail to deliver to the borrower a plain and complete receipt for all payments on account at the time such payments are made.
3. Carry on business at any other place than the one designated in his/her license.
4. Continue to carry on business after his/her license is revoked or shall have expired.
5. Display signage containing the words "pawn," "pawnbroker" or "pawnshop."
6. Operate his/her/its collateral loan business except in conjunction with a retail sales component that comprises at least 75% of the combined retail/collateral loan business.

B. No collateral loan broker or person in the employ of a collateral loan broker shall receive or purchase any goods, chattels, wares or merchandise from, or make any loan or advance or permit to be loaned or advanced to, any child, actually or apparently under the age of 18 years, any money, or in any manner directly or indirectly receive any goods, chattels, wares or merchandise from any such child in pledge for loans made or to be made to it or to any other person or otherwise howsoever. It shall be no defense to a prosecution for a violation of this

section that in the transaction upon which the prosecution is based the child acted as the agent or representative of another or that the defendant dealt with such child as the agent or representative of another.

§ 173-18. Transfer of License.

No license issued under this chapter may be assigned, sold or transferred.

§ 173-19 Penalties for Offenses.

A. Any person who, himself or by his/her clerk, agent or employee, shall establish, engage in or carry on the business of collateral loan broker or shall violate any of the provisions of this chapter, or who, having had his/her license revoked, shall continue to engage in or carry on the business of collateral loan broker, shall be guilty, upon conviction, of an offense punishable by a fine of not less than \$250 nor more than \$1,000 or by imprisonment for a period not exceeding 15 days, or by both such fine and imprisonment.

B. In addition to the penalty imposed, the license of the person violating the same shall be canceled or revoked, and the bond upon such license shall be forfeited. Upon such forfeiture, the amount of the bond shall thereupon become due and payable to the City of Newburgh, and the amount thereof may be recovered in a civil action based upon such forfeiture.

SECTION 4 - VALIDITY

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

SECTION 5 - EFFECTIVE DATE

This Local Law and shall be effective when it is filed in the Office of the New York State Secretary of State in accordance with the provisions of New York State Municipal Home Rule Law.

Councilwoman Bell said that on the brochure that was handed out there are pictures of cars, motorcycles, trucks, boats and jet skis and she is interested in how the value is set. If someone drives their car up and says that they need money, do they get the blue book value or do they get \$5.00? She is very concerned about that. She knows that most cities do have these but she is just concerned about the predatory aspect.

Mayor Valentine said that he doesn't now that much about the operations of Pawn Brokers but our Local Law consists of a lot of requirements. This is why it took a few months. The application for licensing is very, very strict with a bond requirement. We have stores that are open right now on Broadway that don't meet any of these requirements. He thinks that it might not be a bad idea to set in motion some kind of a licensing requirement and renewal with a fee. Here is a business that wants to come to Newburgh and is merely asking for permission to do so.

Councilwoman Bell asked Mayor Valentine if he thought that \$200.00 is a reasonable fee based on the amount of business they will generate in this economic climate. This fee seems very, very low to her.

Mayor Valentine said that we have fees of \$25.00 that people complain about.

Corporation Counsel, Michelle Kelson, said that the fees are based on other municipalities in the area.

Councilwoman Bell said that it kind of makes her feel sick that these businesses flourish at this time because times are really tough for a lot of folks. She is very concerned about violent crime and burglaries to get this money but she also knows that there are people who have no other recourse and need to borrow some money. This is a tough call for her. She will probably vote to approve it just because our city is not unique to other places.

Corporation Counsel, Michelle Kelson, said that they will have to have a business license to operate in New York State. There will be background checks and the Police Department will be able to inspect their books and their logs because there is a limit on interest rates that they can charge. The Council can always reevaluate at a later date if they determine that we need to increase fees or add more information. By having these businesses operate legally in the city the public can be more at rest.

Councilwoman Angelo said that she heard a few months ago that they might locate the Pawn Shop in the West End not down on lower Broadway.

Mayor Valentine confirmed that the location they are talking about right now is in the West End not lower Broadway.

Councilwoman Angelo added that they are talking about dealing with large items and that is a prime location for them because that building is empty right now so she is going to approve it.

Mayor Valentine said that it is in the Commercial section of Broadway.

Councilwoman Angelo moved and Councilwoman Bello seconded that the local law be enacted.

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5

ENACTED

ORDINANCE NO.: 19 - 2011

OF

OCTOBER 11, 2011

AN ORDINANCE AMENDING CHAPTER 163
ENTITLED "FEES" OF THE CODE
OF THE CITY OF NEWBURGH

BE IT ORDAINED by the City Council of the City of Newburgh that:

Section 1. Chapter 163 entitled "Fees" of the Code of the City of Newburgh be and hereby is amended as follows:

§ 137-3 Collateral Loan Broker License Application Fee \$200.00 Non-refundable

§ 137-6 Collateral Loan Broker License Annual Fee
\$200.00

Collateral Loan Broker Replacement License Fee \$100.00

Section 2. This ordinance shall take effect upon the filing of Local Law No. - 2011 of , 2011 in the Office of the New York State Secretary of State in accordance with the provisions of New York State Municipal Home Rule Law.

Councilwoman Angelo moved and Councilwoman Bello seconded that the ordinance be adopted.

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5

ADOPTED

RESOLUTION NO.: 200 - 2011

OF

OCTOBER 11, 2011

**RESOLUTION AMENDING RESOLUTION NO: 264-2010,
THE AMENDED 2011 BUDGET FOR THE CITY OF NEWBURGH, NEW
YORK TO TRANSFER \$9,000.00 FROM SANITATION FUND BALANCE
TO SANITATION DEPARTMENT
TO COVER NECESSARY REPAIRS OF TWO (2) SANITATION TRUCKS**

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

		<u>Decrease</u>	<u>Increase</u>
Sanitation Fund Balance			
	S.0000.0911	\$9,000.00	
Sanitation Department			
Repairs to Motor Vehicles	S.8160.0442		\$6,000.00
Other Services-Tipping Fees	S.8160.0448		\$3,000.00

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

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5

ADOPTED

RESOLUTION NO.: 201 - 2011

OF

OCTOBER 11, 2011

**RESOLUTION AMENDING RESOLUTION NO: 264-2010,
THE AMENDED 2011 BUDGET FOR THE CITY OF NEWBURGH, NEW
YORK TO TRANSFER \$25,000.00 FROM ARMORY, GAS AND ELECTRIC
TO CENTRAL PRINTING AND MAILING
TO COVER A POSTAGE SHORTFALL IN THE GENERAL FUND**

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

	<u>Decrease</u>	<u>Increase</u>
Armory		
Gas and Electric A.1625.0422	\$25,000.00	
Central Printing and Mailing		
A.1670.0400		\$25,000.00

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

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5

ADOPTED

RESOLUTION NO.: 202 - 2011

OF

OCTOBER 11, 2011

**RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING
WITH THE PATROLMEN'S BENEVOLENT ASSOCIATION
OF NEWBURGH, NEW YORK, INC. TO PROVIDE
FOR ADDITIONAL BENEFITS PROVIDED FOR
IN SECTION 242 OF THE MILITARY LAW
FOR POLICE OFFICER CHRISTOPHER TABACHNICK
WHILE SERVING ACTIVE DUTY IN THE MILITARY
EFFECTIVE ON OR ABOUT DECEMBER 8, 2011**

WHEREAS, the City of Newburgh and the Police Benevolent Association of Newburgh, New York, Inc. (hereinafter "the Union"), are parties to a collective bargaining agreement; and

WHEREAS, certain members of the Union serving in the military reserve have been or are liable to be called to active duty as a result of the ongoing conflicts overseas to defend American freedom and protect our people from their declared enemies, and will continue to be required to interrupt regular City employment; and

WHEREAS, the City Council of the City of Newburgh wishes to grant certain additional benefits to such employees; and

WHEREAS, the City Council has reviewed the terms of the Memorandum of Understanding, a copy of which is annexed hereto, and has consulted with the representatives of the City, who have recommended that the City Council approve the agreement;

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 on behalf of the City of Newburgh, the Memorandum of Understanding annexed hereto, or in substantially the same form; and be it further

RESOLVED, that the Council of the City of Newburgh hereby extends its esteem, gratitude, appreciation and admiration to every member of the Union and all others called to active duty on behalf of this Country.

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

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5

ADOPTED

MEMORANDUM OF UNDERSTANDING

BETWEEN
PATROLMEN'S BENEVOLENT ASSOCIATION
OF NEWBURGH, NEW YORK, INC.
AND
THE CITY OF NEWBURGH

WHEREAS, the CITY OF NEWBURGH (CITY) and PATROLMEN'S BENEVOLENT ASSOCIATION OF NEWBURGH, NEW YORK, INC. (PBA), are desirous of entering into an agreement between the parties to provide for extended military benefits for members who are military reservists and are federally activated to military duty as of the result of the events of September 11, 2001 and the ongoing conflicts overseas beyond the benefits mandated by New York State Military Law.

IT IS HEREBY UNDERSTOOD AND AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Members of the PBA ordered to active military duty (including ordered service in the reserve force) as a result of the events of September 11, 2001, and the ongoing conflicts overseas, shall be entitled to receive the following benefits:
 - a) Members who have exhausted their entitlement to paid military leave under Section 242 of the Military Law shall be entitled to an additional thirty (30) calendar days or twenty-two (22) working days of supplemental military leave at full pay, whichever is greater, in any one calendar year, not exceeding in total sixty (60) calendar days for any one continuous period of absence;
 - b) Members who have exhausted their entitlement to the paid leave set forth in paragraph (a) above shall be entitled to military leave at a rate of pay equal to the Member's rate of pay pursuant to the Collective Bargaining Agreement less the compensation received by the Member as a result of his or her active duty. The Member shall provide the city with an "enlisted pay chart" establishing the applicable military rate of pay.;
 - c) Members shall receive the same individual or family health insurance benefits provided pursuant to the Collective Bargaining

Agreement, as received by such members prior to their date of activation;

- d) Members shall accrue vacation leave at the rate set forth in the Collective Bargaining Agreement during the period they receive benefits pursuant to this Memorandum.

2. The benefits provided in paragraph 1 of this Memorandum shall be in effect from December 8, 2011 to and including April 15, 2012. The terms of this Memorandum may be extended by resolution in the event that the Member's active duty status extends beyond April 15, 2012.

3. The parties agree and acknowledge that this agreement shall not establish any past practice or precedent for members called for active military duty for any reason other than the events of September 11, 2001, and currently ongoing overseas conflicts in Iraq, Afghanistan and related areas.

Dated: October _____, 2011
Newburgh, New York

AGREED TO:

CITY OF NEWBURGH

By: _____
Richard F. Herbek, Acting City Manager

PATROLMEN'S BENEVOLENT ASSOCIATION
OF NEWBURGH, NEW YORK, INC.

By: _____
, President

RESOLUTION NO.: 203 - 2011

OF

OCTOBER 11, 2011

**A RESOLUTION AUTHORIZING AN AGREEMENT BETWEEN
THE CITY OF NEWBURGH AND J. DWIGHT HADLEY, CPA FOR
PROFESSIONAL CONSULTING SERVICES IN THE AREA
OF GOVERNMENTAL ADMINISTRATIVE AND FINANCIAL
MANAGEMENT**

WHEREAS, this Council, by Resolution No.: 14-2010 of January 11, 2010, authorized the City Manager to enter into an agreement with J. Dwight Hadley, CPA for professional consulting services which expired on March 31, 2010; and

WHEREAS, this Council, by Resolution No.: 74-2010 of March 22, 2010, authorized the City Manager to extend the agreement with J. Dwight Hadley, CPA for professional consulting services which expired on June 30, 2010; and

WHEREAS, this Council, by Resolution No.: 129-2010 of June 14, 2010, authorized the City Manager to extend the agreement with J. Dwight Hadley, CPA for professional consulting services which will expire on December 31, 2010; and

WHEREAS, this Council, by Resolution No.: 273-2010 of December 13, 2010, authorized the City Manager to extend the agreement with J. Dwight Hadley, CPA for professional consulting services which expired on June 30, 2011; and

WHEREAS, this Council, by Resolution No.: 136-2011 of July 11, 2011, authorized the City Manager to extend the agreement with J. Dwight Hadley, CPA for professional consulting services which will expire on October 31, 2011; and

WHEREAS, several projects remain in progress; and

WHEREAS, the City of Newburgh wishes to enter into an agreement to provide for an additional two (2) months of service to complete said projects with no additional increases in hours, fees or expenses; and

WHEREAS, the agreement is for providing assistance in the area of governmental administrative and financial management in the form of consulting services; and

WHEREAS, the rate for these services is \$70.00 per hour; and

WHEREAS, this Council has determined that entering into this agreement 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 the agreement with J. Dwight Hadley, CPA, in substantially the same form as annexed hereto with any other provision that Corporation Counsel may require, at a rate of \$70.00 per hour for consulting services in the area of governmental administrative and financial management.

Acting City Manager, Richard Herbek said that this represents no change in the agreement that we already have with him. It just changes his schedule at the request of the Office of the State Comptroller so that he will be available during the December time frame.

Councilwoman Bell asked Mr. Herbek how the State Comptroller made that request. Did it come to him?

Acting City Manger, Richard Herbek said that it came to him and Cheryl Gross directly.

Councilwoman Bell said that she would like to hear from them directly. She has a right and a responsibility to question until she is satisfied.

Acting City Manager Richard Herbek told Councilwoman Bell that she could ask the State Comptroller's Office that question or she can ask Cheryl Gross.

Councilwoman Bello asked when his current contract ends.

Acting City Manager, Richard Herbek said that the one we have now ends on October 31st but what we are doing is changing his schedule so that he will be available to the State Comptroller's Office so there will be periods of time when he won't be here. This is not changing the amount of compensation it is just extending the time frame till the end of the year so that he can assist the State Comptroller's Office. This will not cost any more money.

Michelle Kelson, Corporation Counsel, said that this will just extend his time from October 31st to December 31st. He will not be here for large periods of time in October and November so that the costs associated with the contract will be used for the time he is spending here to go over the Capital Projects with the State Comptroller. There is no increase in the amount of funds that you approved in a previous resolution.

Councilwoman Bell asked what the specific dollar amount is.

Cheryl Gross, City Comptroller said that she does not have the exact amount in front of her but part is from the General Fund and there is also an amount allotted through CDBG. He will not be receiving any more funds. This would just be the authorization for him to be here in December when the State Comptroller will be reviewing our Capital Projects.

Councilwoman Bell said that he is not our employee so this terminology is not strictly appropriate but he would be layed off until the Comptroller needs him for that particular period of time and on December 31st the amount that is allotted in the Budget right now will not be exceeded.

Mayor Valentine said that he is not in the 2012 Budget and his services will end on December 31st of this year.

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

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5

ADOPTED

AGREEMENT FOR VENDOR SERVICES

THIS AGREEMENT is entered into as of this ____ day of October, 2011, by and between the **CITY OF NEWBURGH**, a municipal corporation chartered under the authority of the State of New York, hereinafter referred to as the “**CITY**,” with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550; and **J. DWIGHT HADLEY, CPA**, an individual with an address of 14 Mountain Way, Clifton Park, New York 12065, hereinafter referred to as “**VENDOR**.”

ARTICLE 1. SCOPE OF WORK

VENDOR agrees to perform the SERVICES and/or supply the goods identified in Schedule A, (the “SERVICES”) which is attached to, and is part of this Agreement. VENDOR agrees to perform the SERVICES and/or supply the goods in accordance with the terms and conditions of this Agreement. It is specifically agreed that the CITY will not compensate VENDOR for any SERVICES and/or goods provided outside those specifically identified in Schedule A.

Any and all reports, documents, charts, graphs, maps, designs, images, photographs, computer programs and software, artwork, creative works, compositions, and the rights to employ, publish, disseminate, amend or otherwise use same, and/or any other intellectual property to be provided by VENDOR to CITY under the terms of this Agreement shall become the property of the CITY, unless otherwise provided for by the parties. As such, CITY, in its sole discretion, shall have the right to use, copy, disseminate and otherwise employ or dispose of such material in any manner as it may decide with no duty of compensation or liability therefore to VENDOR or to third parties. VENDOR shall have the affirmative obligation to notify CITY in a timely fashion of any and all limitations, restrictions or proprietary rights to such intellectual property and/or materials which may be applicable which would have the effect of restricting or limiting the exercise of the CITY's rights regarding same. VENDOR agrees to defend, indemnify and hold harmless the CITY for failing to notify CITY of same.

ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES and/or supply goods beginning November 1, 2011, and ending on December 31, 2011 or upon termination as provided under ARTICLE 17 TERMINATION of this Agreement.

ARTICLE 3. COMPENSATION

For satisfactory performance of the SERVICES and/or receipt of conforming goods or, as such SERVICES or goods may be modified by mutual written agreement, the CITY agrees to compensate VENDOR in accordance with the fees and expenses as stated in Schedule B, which is attached to and is part of this Agreement. VENDOR SHALL submit to the CITY a monthly itemized invoice for SERVICES rendered during the prior month, or as otherwise set forth in Schedule B, and prepared in such form and supported by such documents as the CITY may reasonably require. The CITY will pay the proper amounts due VENDOR within fourteen (14) days after receipt of a CITY Claimant's Certification form, and if the Claimant's Certification form is objectionable, will notify VENDOR, in writing, of the CITY'S reasons for objecting to all or any portion of the invoice submitted by VENDOR.

ARTICLE 4. EXECUTORY CLAUSE

The CITY shall have no liability under this Agreement to VENDOR or to anyone else

beyond funds appropriated and available for this Agreement.

ARTICLE 5. PROCUREMENT OF AGREEMENT

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

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

ARTICLE 6. CONFLICT OF INTEREST

VENDOR represents and warrants that neither it nor any of its directors, officers, members, partners or employees, have any interest nor shall they acquire any interest, directly or indirectly which would or may conflict in any manner or degree with the performance or rendering of the SERVICES herein provided. VENDOR further represents and warrants that in the performance of this Agreement, no person having such interest or possible interest shall

be employed by it and that no elected official or other officer or employee of the CITY, nor any person whose salary is payable, in whole or in part, by the CITY, or any corporation, partnership or association in which such official, officer or employee is directly or indirectly interested shall have any such interest, direct or indirect, in this Agreement or in the proceeds thereof, unless such person submits a letter disclosing such an interest, or the appearance or potential of same, to the City Manager and a copy to the Corporation Counsel of the CITY in advance of the negotiation and execution of this Agreement.

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

ARTICLE 7. INDEPENDENT CONTRACTOR

In performing the SERVICES and/or supplying goods and incurring expenses under this Agreement, VENDOR shall operate as, and have the status of, an independent contractor and shall not act as agent, or be an agent, of the CITY. As an independent contractor, VENDOR shall be solely responsible for determining the means and methods of performing the SERVICES and/or supplying of the goods and shall have complete charge and responsibility for VENDOR'S personnel engaged in the performance of the same.

In accordance with such status as independent contractor, VENDOR covenants and agrees that neither it nor its

employees or agents will hold themselves out as, nor claim to be officers or employees of the CITY, or of any department, agency or unit thereof by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the CITY including, but not limited to, Worker's Compensation coverage, health coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING

VENDOR shall not assign any of its rights, interest or obligations under this Agreement, or subcontract any of the SERVICES to be performed by it under this Agreement, without the prior express written consent of the City Manager of the CITY. Any such subcontract, assignment, transfer, conveyance, or other disposition without such prior consent shall be void and any SERVICES provided thereunder will not be compensated. Any subcontract or assignment properly consented to by the CITY shall be subject to all of the terms and conditions of this Agreement.

Failure of VENDOR to obtain any required consent to any assignment, shall be grounds for termination for cause, at the option of the CITY and if so terminated, the CITY shall thereupon be relieved and discharged from any further liability and obligation to VENDOR, its assignees or transferees, and all monies that may become due under this Agreement shall be forfeited to the CITY except so much thereof as may be necessary to pay VENDOR'S employees for past service.

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

This agreement may be assigned by the CITY to any corporation, agency, municipality or

instrumentality having authority to accept such assignment.

ARTICLE 10. BOOKS AND RECORDS

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

ARTICLE 11. RETENTION OF RECORDS

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

ARTICLE 12. AUDIT BY THE CITY AND OTHERS

All Claimant Certification forms or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said Claimant's Certification forms or invoices are based are subject to audit by the CITY. VENDOR shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the CITY so that it may evaluate the reasonableness of the charges, and VENDOR shall make its records available to the CITY upon request. All books, Claimant's Certification forms, records, reports, cancelled checks and any and all similar material may be subject to periodic inspection, review and audit by the CITY, the State of New York, the federal government, and/or other persons duly authorized by the CITY. Such audits may include examination and review of the source and application of all funds whether from the CITY, State, the federal government,

private sources or otherwise. VENDOR shall not be entitled to any interim or final payment under this Agreement if any audit requirements and/or requests have not been satisfactorily met.

ARTICLE 13. INSURANCE

For all of the SERVICES set forth herein and as hereinafter amended, VENDOR shall maintain or cause to be maintained, in full force and effect during the term of this Agreement, at its expense, insurance as may be required by law. Such policies are to be in the broadest form available on usual commercial terms and shall be written by insurers of recognized financial standing satisfactory to the CITY who have been fully informed as to the nature of the SERVICES to be performed. Where applicable, the CITY shall be an additional insured on all such policies with the understanding that any obligations imposed upon the insured (including, without limitation, the liability to pay premiums) shall be the sole obligation of VENDOR and not those of the CITY. Notwithstanding anything to the contrary in this Agreement, VENDOR irrevocably waives all claims against the CITY for all losses, damages, claims or expenses resulting from risks commercially insurable under this insurance described in this Article 13. The provisions of insurance by VENDOR shall not in any way limit VENDOR'S liability under this Agreement.

To the extent it is commercially available, each policy of insurance shall be provided on an "occurrence" basis. If any insurance is not so commercially available on an "occurrence" basis, it shall be provided on a "claims made" basis, and all such "claims made" policies shall provide that:

A. Policy retroactive dates coincide with or precede VENDOR'S start of the performance of this Agreement (including subsequent policies purchased as renewals or replacements);

B. VENDOR will maintain similar insurance for at least six (6) years following final acceptance of the SERVICES;

C. If the insurance is terminated for any reason, VENDOR agrees to purchase an unlimited extended reporting provision to report claims arising from the SERVICES performed or goods provided for the CITY; and

D. Immediate notice shall be given to the CITY through the City Manager of circumstances or incidents that might give rise to future claims with respect to the SERVICES performed under this Agreement.

ARTICLE 14. INDEMNIFICATION

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

ARTICLE 15. PROTECTION OF CITY PROPERTY

VENDOR assumes the risk of and shall be responsible for, any loss or damage to CITY property, including property and equipment leased by the CITY, used in the performance of this Agreement and caused, either directly or indirectly by the acts, conduct, omissions or lack of good faith of VENDOR, its officers, directors, members, partners, employees, representatives or assignees, or any person, firm, company, agent or others engaged by VENDOR as an expert consultant specialist or subcontractor hereunder.

In the event that any such CITY property is lost or damaged, except for normal wear and tear, then the CITY shall have the right to

withhold further payments hereunder for the purposes of set-off in sufficient sums to cover such loss or damage.

VENDOR agrees to defend, indemnify and hold the CITY harmless from any and all liability or claim for loss, cost, damage or expense (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement) due to any such loss or damage to any such CITY property described in this Article.

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

ARTICLE 16. CONFIDENTIAL INFORMATION

In the course of providing the SERVICES and/or goods hereunder, VENDOR may acquire knowledge or come into possession of confidential, sensitive or proprietary information belonging to CITY. VENDOR agrees that it will keep and maintain such information securely and confidentially, and not disclose such information to any third parties, including the media, nor use such information in any manner publically or privately, without receiving the prior approval, in writing, of the CITY authorizing such use. VENDORS obligations under this clause to maintain the confidentiality of such information and to refrain from using such information in any manner without the prior written approval of the CITY shall survive the termination or expiration of this Agreement.

ARTICLE 17. TERMINATION

The CITY may, by written notice to VENDOR effective thirty (30) days after mailing, terminate this Agreement in whole or in part at any time (i) for CITY'S convenience, (ii) upon the failure of VENDOR to comply with any of the terms or conditions of this agreement, or (iii) upon the VENDOR becoming insolvent or bankrupt. The VENDOR may, by written notice to CITY effective thirty (30) days after

mailing terminate this Agreement in whole or in part at any time (i) for VENDOR'S convenience, (ii) upon the failure of the CITY to comply with any terms and conditions of this Agreement, or (iii) upon the City becoming insolvent or bankrupt.

Upon termination of this Agreement, the VENDOR shall comply with any and all CITY closeout procedures, including, but not limited to:

A. Accounting for and refunding to the CITY within thirty (30) days, any unexpended funds which have been paid to VENDOR pursuant to this Agreement; and

B. Furnishing within thirty (30) days an inventory to the CITY of all equipment, appurtenances and property purchased by VENDOR through or provided under this Agreement, and carrying out any CITY directive concerning the disposition thereof.

In the event either party terminates this Agreement, as provided in this Article, the CITY may procure, upon such terms and in such manner as deemed appropriate, SERVICES similar to those so terminated,

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

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

ARTICLE 18. GENERAL RELEASE

The acceptance by VENDOR or its assignees of the final payment under this Agreement, whether by Claimant's Certification form,

judgment of any court of competent jurisdiction, or administrative means shall constitute and operate as a general release to the CITY from any and all claims of VENDOR arising out of the performance of this Agreement.

ARTICLE 19. SET-OFF RIGHTS

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

ARTICLE 20. NO ARBITRATION

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

ARTICLE 21. GOVERNING LAW

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

ARTICLE 22. CURRENT OR FORMER CITY EMPLOYEES

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

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

ARTICLE 23. ENTIRE AGREEMENT

The rights and obligations of the parties and their respective agents, successors and assignees shall be subject to and governed by this Agreement, including Schedules A and B, which supersede any other understandings or writings between or among the parties.

ARTICLE 24. MODIFICATION

No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the party to be bound. Changes in the scope of SERVICES in this Agreement shall not be binding, and no payment shall be due in connection therewith, unless prior to the performance of

any such SERVICES, the City Manager of the CITY, after consultation with the Department Head and Corporation Counsel, executes an Addendum or Change Order to this Agreement, which Addendum or Change Order shall specifically set forth the scope of such extra or additional SERVICES and the amount of compensation and the extension of the time for performance, if any, for any such SERVICES. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with full force and effect to the terms and conditions contained in such Addendum or Change Order.

IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the date set forth above.

THE CITY OF NEWBURGH

VENDOR

BY: _____
RICHARD F. HERBEK
ACTING CITY MANAGER

BY: _____
J. DWIGHT HADLEY
TITLE: CPA

DATE: _____

DATE: _____

APPROVED AS TO FORM:

MICHELLE KELSON,
Corporation Counsel

CHERYL A. GROSS,
City Comptroller

SCHEDULE A

SCOPE OF SERVICES

Projects still in progress include CDBG, collective bargaining, capital projects, IDA and the recovery act updates.

SCHEDULE B

FEES AND EXPENSES

RATE: In consideration for the consulting services described in Schedule "A" above, the CITY shall pay the VENDOR at the rate of seventy (\$70.00) dollars per hour plus expenses, as outlined in the Budget for Financial Assistance attached hereto, payable within fourteen (14) days after invoices for such services rendered are received by the City.

EXPENSES: The CITY will reimburse the VENDOR for reasonable and necessary travel, meals, lodging and incidental expenses incurred in traveling to/from the City of Newburgh. Any request by the CITY to travel to other locations beyond the City's geographic boundaries shall be pre-approved in writing by the CITY. Written documentation and receipts itemizing by date incurred all amounts expended will be submitted for reimbursement within fourteen (14) days of receipt by City.

RESOLUTION NO.: 204 - 2011

OF

OCTOBER 11, 2011

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT \$100,000.00 FROM THE NEWBURGH ENLARGED CITY SCHOOL DISTRICT TO FUND THE SALARY AND BENEFITS OF ONE POLICE OFFICER TO BE HIRED TO BACKFILL POLICE DEPARTMENT PERSONNEL CURRENTLY SERVING IN THE CITY'S SECONDARY SCHOOL AS A COMMUNITY RESOURCE OFFICER

WHEREAS, the City of Newburgh and the Board of Education of the Newburgh Enlarged City School District ("NECSD") have agreed to establish the position of Community Resource Officer ("CRO") to be filled by a police officer from the City of Newburgh Police Department at Newburgh Free Academy; and

WHEREAS, the NECSD has offered to reimburse the City for this CRO at the rate of \$100,000.00 so as to continue to have the CRO stationed at Newburgh Free Academy within the City of Newburgh; and

WHEREAS, this Council has determined that accepting such funds 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 accept funds from the NECSD in the amount of \$100,000.00 Dollars for the assignment of a City of Newburgh Police Officer as CRO in the NECSD; and

Councilwoman Bello asked why we are funding this position if they pay for. Do we pay for it first and then they reimburse us?

Richard Herbek, Acting City Manager, said that we are fully compensated for the services of the Community Resource Officer.

City Comptroller, Cheryl Gross said that she bills them three times a year and they reimburse us up to \$100,000.00 He only works on the days that school is open and on the other days, unless on vacation, he is back on the street.

Councilwoman Bell noted that they used to have three officers and now there is only one.

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

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5

ADOPTED

COMMUNITY RESOURCE OFFICER AGREEMENT

AGREEMENT MADE THIS _____ DAY OF OCTOBER, 2011 by and between the Board of Education of the Newburgh Enlarged City School District, having its principal place of business at 124 Grand Street, Newburgh, New York 12550 (hereinafter "the Board of Education") and The City of Newburgh having its principal place of business at City Hall, 83 Broadway, Newburgh, NY 12550 (hereinafter referred to as "the City").

WHEREAS, the City and the Board of Education agree to establish the position of Community Resource Officer (hereinafter "CRO"), to be filled by a police officer from the City of Newburgh Police Department, at the Newburgh Free Academy; and

WHEREAS, the School Board has agreed that they will reimburse the City for its expense in participating in the CRO Program in the amount of One Hundred Thousand (\$100,000.00) Dollars for the period of September 1, 2011 through August 31, 2012 school year and, the City of Newburgh Police Department will assign one officer, at the school specified above, each day that school is open for the hours of 7:30 a.m. - 3:30 p.m. during the school year and during the summer months on such days and times that summer school or the extended year program is being held in the buildings, on the terms and conditions set forth herein;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The School Board and the City of Newburgh by and through the City of Newburgh Police Department have established the following goals and objectives with regard to the CRO Program in the Schools: (a) to maintain a safe campus environment that will be conducive to learning, (b) to create a relationship based upon cooperation and mutual support between law enforcement and school officials; (c) to improve relationships between law enforcement, school, community and the youth of the school; (d) for Police Department officers and command to serve as consultants to school staff, parents, and youth on safety matters and any other matters which will provide a better environment for the students and the teachers in which to pursue their respective tasks; (e) for police officers to serve as role models to students; (f) to provide a continuum of youth services between the school and the community with the support of the Police Department and other City staff and agencies.
2. The City agrees that with the City of Newburgh Police Department shall provide one officer as CROs during the term of this agreement. The CROs shall be subject to the administration, supervision and control of the City of Newburgh Police Department at all times as well as the School Board's policies, regulations and procedures when performing functions at the

District's schools; unless otherwise provided in this agreement.

3. The officers assigned as the CROs' will be selected by the Chief of Police based upon the Police Chief's judgment and discretion, taking into consideration among other criteria the officer's training, qualifications, experience, interest in the position and the officer's ability to effectuate the goals and objectives set forth in paragraph 1.
4. The Board of Education shall have the right to request the removal of any CRO and have an officer substituted in his or her place by communicating such request to the Chief of Police at any time during the school year, which request will not be unreasonably denied.
5. The City of Newburgh agrees to provide and pay the CROs' salaries and employment benefits in accordance with the current Newburgh PBA contract.
6. It is understood and agreed that the City of Newburgh Police Department, in its sole discretion, shall have the authority to discharge and discipline an officer assigned as a CRO as provided under the terms of any agreement between the City of Newburgh and the applicable collective bargaining unit, and/or by law. The City shall indemnify and hold harmless the Newburgh Enlarged City School District from any claims, suits, or causes of action arising out of allegations of unfair or unlawful employment practice brought by an officer assigned as a CRO.
7. The following named police officer shall be initially assigned by the Chief of Police of the City of Newburgh Police Department to act as CRO's as follows:

Newburgh Free Academy - Officer Andres Arestin

It is understood that such assignments may be changed by the Chief of Police or other commanding officers as in their judgment circumstances may require.

8. It is understood and agreed that the Board of Education shall not be responsible for any overtime pay earned by an Officer serving as a CRO in connection with his or her duties as a CRO and that the cost of same shall be borne solely by the City of Newburgh. The entire extent of the obligation of the School District to compensate the City for CRO services as provided herein shall be as provided hereinabove.

9. It is understood and agreed that, should a CRO be unable to perform his or her duties as a result of illness or injury or other reason causing the CRO to be absent from work, the City of Newburgh Police Department shall assign another officer to fill the CRO position at the affected building on each such day.
10. It is understood and agreed that the CROs to be appointed by the City of Newburgh Police Department shall have the following qualifications:
 - (a) The CRO shall be a full time police officer with a minimum of two (2) years of law enforcement experience;
 - (b) The CRO shall possess sufficient knowledge of applicable Federal, State and County laws and Town ordinances as well as the School Board's policies and regulations;
 - (c) The CRO shall be capable of conducting in depth criminal investigations;
 - (d) The CRO shall possess an even temperament and set a good example for students;
 - (e) The CRO shall possess good communication skills, which would enable the CRO to function effectively within the school environment.
11. The following are the duties of the CRO:
 - (a) Consult with and coordinate activities as requested by a school principal;
 - (b) Abide by School Board policies to the extent that such compliance does not interfere with or impede the CRO in the performance of his or her duties as a law enforcement officer;
 - (c) The CRO shall develop an expertise in presenting various subjects; including in meeting Federal and State mandates in drug abuse prevention education and shall provide these presentations at the request of school personnel in accordance with the established curriculum;
 - (d) Encourage group discussions about law enforcement with students, faculty and parents;

- (e) Under no circumstances shall a CRO be a school disciplinarian. The CRO will not be involved in the enforcement of disciplinary infractions that do not constitute violations of law;
- (f) Attend meetings with parents and faculty groups to solicit their support and understanding of the CRO school program and to promote awareness of law enforcement functions;
- (g) Where possible, serve as a member of the school student services committee, familiarizing students with all community agencies which offer assistance to youths and their families such as mental health clinics, drug treatment centers, etc. Where necessary, the CRO may make recommendations for referrals;
- (h) To confer with the principal of the school to which the CRO is assigned to develop plans and strategies to prevent and/or minimize dangerous situations on or near campus or involving students at school related activities;
- (i) Perform such duties as determined and requested by a given school principal. However, such duties shall not include things normally assigned to school personnel such as lunchroom or hall duty. Nothing herein shall preclude the CRO from being available in areas where interaction with students is expected;
- (j) The CRO shall familiarize himself/herself with and shall abide by School Board policy and applicable law concerning interviews with students should it become necessary to conduct formal law enforcement interviews with students or staff on school property or at school functions under the jurisdiction of the School Board insofar as same shall be in harmony with standard police practices and standing general orders;
- (k) Initiate law enforcement action as necessary and notify the school principal as soon as possible, and, whenever practicable advise the principal before requesting additional law enforcement assistance on campus and undertake all additional law enforcement responsibilities as required by standard police practices and standing general orders;
- (l) The CRO shall act as a liaison for other law enforcement officers in matters regarding School Board policies while on school grounds;

- (m) The CRO shall affirm the role of law enforcement officer by wearing the City of Newburgh Police uniform, unless doing so would be inappropriate for scheduled school activities. The uniform shall be worn at events where it will enhance the image of the CRO and his/her ability to perform his/her duties;
- (n) The CRO shall patrol and maintain a safe corridor within the ½ mile radius directly surrounding the school to which he or she is assigned, including, but not limited to, other school buildings within that radius. The CRO shall be dispatched, as available, to calls for service emanating from within such a radius related to juvenile criminal activity.

12. It is understood and agreed that while the CRO will be stationed at one of the schools within the School Board's jurisdiction, the CRO shall remain an employee of the City of Newburgh Police Department, adhering to all policies and procedures of the Police Department.

13. The CRO shall report to the Main Office at the start of each work day and shall sign in on a log provided by the school. The CRO shall sign out at the end of each work day using the same log.

- 14. It is understood and agreed that the CRO in pursuing the performance of his/her duties shall coordinate and communicate with the school principal or the principal's designee.
- 15. The City of Newburgh Police Department shall provide the appropriate in-service training for the CRO, to enable the CRO to function efficiently. The School Board may also provide training in school policies, regulations and procedures, or additional training in other matters relating to students and their safety.
- 16. The City of Newburgh Police Department shall provide a standard marked patrol vehicle for the CRO, which vehicle shall be maintained by the City of Newburgh Police Department, providing among other things, fuel, tires, etc. and all expenses associated with the operation of the vehicle including insurance. The Police Department will also provide the CRO with a service weapon and ammunition and the usual and customary office supplies and forms required in the performance of the CRO's duties as a police officer. The CRO is authorized to carry a service weapon on school grounds.

17. Should the CRO program continue into future school years, it is understood and agreed that the School District shall evaluate annually the CRO Program and the performance of the CRO on forms to be developed jointly by the parties to this Agreement. Such evaluation by the School Board and the City of Newburgh Police Department shall be performed in order to evaluate the performance of the CRO in accordance with the Department rules and regulations and also to ascertain what may be done to improve the CRO Program.
18. The City agrees to maintain at all times during the term of this Agreement a general comprehensive liability insurance policy for a minimum of a \$1,000,000 and agrees to indemnify and hold harmless the School Board and the Newburgh City School District, its agents and employees from and against any and all claims, suits or causes of actions arising from the City of Newburgh and City of Newburgh Police Department from any injuries or losses occasioned to the CRO by the negligence of the City.
19. The School Board agrees to compensate the City for services rendered in connection with the CRO Program, in the amount of \$100,000.00. Such compensation shall be paid by the School Board to the City of Newburgh monthly.
20. The terms of this agreement are for the period commencing with the provision of such services and ending on the 31st day of August, 2012.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above-written:

BOARD OF EDUCATION OF THE
NEWBURGH ENLARGED CITY SCHOOL
DISTRICT

DAWN M. FUCHECK
BOARD OF EDUCATION PRESIDENT

THE CITY OF NEWBURGH

RICHARD F. HERBEK
ACTING CITY MANAGER
CITY OF NEWBURGH

APPROVED AS TO FORM:

MICHELLE KELSON
Corporation Counsel

CHERYL GROSS
City Comptroller

ORDINANCE NO.: 20 - 2011

OF

OCTOBER 11, 2011

AN ORDINANCE AMENDING SECTION 288-77
OF THE CODE OF ORDINANCES
TO ESTABLISH A15-MINUTE PARKING ZONE
AT 16 MILL STREET

BE IT ORDAINED, by the Council of the City of Newburgh, New York, that Section 288-77, Schedule XIX, be and is hereby amended as follows:

Section 1. Section 288-77. Schedule XIX: Time Limit Parking, be and it hereby is amended by the addition of the following location:

<u>Name of Street</u>	<u>Side</u>	<u>Time Limit: Hours/Days</u>	<u>Location</u>
Mill Street	West	15 min <u>8:00 am to 6:00 pm/ Monday - Saturday</u>	From a point at the <u>northwest corner of Ann Street and Mill Street to a point 85 feet north</u>

Section 2. This Ordinance shall take effect immediately.

Underlining _____ denotes additions.

Brackets [] denote deletions.

Councilwoman Bell said that this could be a wonderful thing in other areas such as the businesses across from 280 Broadway where people park and stay all day.

Mayor Valentine said that when you talk about parking meters and parking enforcement if the fee is cheap then people will stay there all day and if it becomes more expensive then maybe they will move on after they complete their business. This has always been a double edged sword because he has a business that has been on Broadway for over forty years so he has been dealing with the meters and enforcement. He noted that he was in Poughkeepsie recently and there is limited parking on the main streets there for one hour only. After one hour they can tow your car and tag your wheel. To park in the municipal lot in Poughkeepsie for one hour it costs \$1.00 and here in the City of Newburgh it's \$0.25. The City of Poughkeepsie also has a fund balance and a balanced Budget which is why we are looking at the parking lots that we currently are not collecting for. The lot by the Library always had parking meters which collected a lot of money and now we collect nothing. The Ann Street parking lot has County offices where people park there to work all day long and there is no arrangement with the County to pay us anything. He could go on and on with parking but the way to get revenue is from the people who come here from out of town. This is one of the things that we need to address. Perhaps parking permits for the business owners would be good but tonight it is only about a fifteen minute parking space at 16 Mill Street.

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

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5

ADOPTED

LOCAL LAW NO.: 10 - 2011

OF

OCTOBER 11, 2011

**A LOCAL LAW AMENDING CITY CHARTER SECTION C3.00
ENTITLED "MUNICIPAL OFFICERS ENUMERATED"
OF THE CODE OF THE CITY OF NEWBURGH**

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

SECTION 1 - TITLE

This Local Law shall be referred to as "A Local Law Amending Charter Section C 3.00 entitled "Municipal officers enumerated" of the Code of the City of Newburgh".

SECTION 2 - AMENDMENT

City Charter Section C 3.00 entitled "Municipal officers enumerated" of the Code of the City of Newburgh is hereby amended to read as follows:

§ C3.00. Municipal officers enumerated. The officers of the City or municipality shall be as follows:

D. The provisions of this section or of § 3 of the Public Officers Law of the State of New York or of any other provisions of law requiring a person to be a resident of the political subdivision or municipal corporation of the state for which he shall be chosen or within which his official functions are required to be exercised shall not apply to the appointment of the officers of the City of Newburgh enumerated in Subsections B and C of this section and the City Marshal, except the City Manager; the Plumbing Inspector, as to whom preference shall be given to City residents, but if, after due diligence, no such qualified candidate is found, then such Plumbing Inspector may reside within 25 miles of the City of Newburgh; and the members of the Civil Service Commission, provided that such appointed officers reside within 25 miles of the City of Newburgh or within the County of Orange.

SECTION 3 - VALIDITY

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

SECTION 4 - EFFECTIVE DATE

This Local Law shall take effect immediately when it is filed in the Office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

Acting City Manager, Richard Herbek, said that this Local Law would provide that the City Marshall not be a resident of the City but could reside within twenty five miles of the City of Newburgh.

Mayor Valentine said that at the Work Session Thursday night we discussed that we now have a City Marshall; Mr. Russell Bevier who lives on North Street here in Newburgh. He came to us following the discussion on why we couldn't find someone in the City of Newburgh. He is one of our Auxiliary Police Officers and he volunteered to do this. He submitted his application to the Court and he was appointed by the Judges on October 6th. He has already gone to work and served papers since then, which is wonderful but in order to put this to bed we need to vote it down.

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

Nays - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5

DEFEATED

RESOLUTION NO.: 207 -2011

OF

OCTOBER 11, 2011

**RESOLUTION DELEGATING TO THE
COMPTROLLER/DIRECTOR OF FINANCE THE POWERS TO
AUTHORIZE THE ISSUANCE OF NOT TO EXCEED \$5,176,282
TAX ANTICIPATION NOTES OF THE CITY OF NEWBURGH,
NEW YORK, IN ANTICIPATION OF THE COLLECTION OF
TAXES LEVIED FOR CITY PURPOSES OR RETURNED TO THE
CITY FOR COLLECTION FOR THE FISCAL YEARS
COMMENCING JANUARY 1, 2007, 2008, 2009, 2010 AND 2011,
AND TO PRESCRIBE THE TERMS, FORM AND CONTENTS,
AND PROVIDE FOR THE SALE AND CREDIT ENHANCEMENT
OF SUCH NOTES**

**THE CITY COUNCIL OF THE CITY OF NEWBURGH, IN THE
COUNTY OF ORANGE, NEW YORK, HEREBY RESOLVES AS FOLLOWS:**

Section 1. Pursuant to the provisions of the Local Finance Law, constituting Chapter 33-a of the Consolidated Laws of the State of New York (herein called the "Law"), the power to authorize the issuance of Tax Anticipation Notes (herein called the "Notes") of the City of Newburgh, in the County of Orange, New York (the "City," "County" and "State", respectively), in the aggregate principal amount of not to exceed \$5,176,282, and any notes in renewal thereof, is hereby delegated to the Comptroller/Director of Finance, as chief fiscal officer of the City.

Section 2. The following matters are hereby determined and declared:

(a) The Notes shall be issued in anticipation of the collection of real estate taxes levied for City purposes or returned to the City for collection for the fiscal years commencing January 1, 2007, 2008, 2009, 2010 and 2011.

(b) No notes have heretofore been authorized or issued in anticipation of the collection of said taxes, other than a \$2,833,756 portion of the \$5,171,224 Tax Anticipation Note-2010, dated and issued on November 30, 2010.

(c) Said Notes shall mature within the period of one year from the date of their issuance, and may be renewed from time to time in accordance with the provisions of the Law.

Section 3. The Notes shall contain the recital of validity prescribed by Section 52.00 of the Law and shall be general obligations of the City, and the faith and credit of the City shall be pledged to the punctual payment of the principal of and interest on the Notes and, unless the Notes are otherwise paid or payment provided for, an amount sufficient for such payment shall be inserted in the budget of the City and a tax sufficient to provide for the payment thereof shall be levied and collected.

Section 4. Subject to the provisions of this resolution and the Law, and pursuant to Sections 50.00, 56.00, 60.00, and 168.00 of the Law, inclusive, the powers to prescribe the terms, form and contents, and all other powers or duties

pertaining or incidental to the sale and issuance of the Notes authorized pursuant hereto, or any renewals thereof, including the powers to enter into one or more letter of credit agreements or liquidity facility agreements for the Notes, are hereby delegated to the Comptroller/Director of Finance, as chief fiscal officer of the City.

Section 5. This resolution shall take effect immediately.

Councilman Dillard said that this just came to us today and he needs further clarification on it. Did we act on this since 2007?

Cheryl Gross, City Comptroller said that the Council authorized the TAN last year. The law allows you to include five years worth of delinquent taxes that you haven't collected. We still have outstanding taxes as of 2007 and we also still have outstanding taxes for 2006 but we cannot include that anymore in the TAN.

Councilman Dillard asked if we lose the 2006.

Cheryl Gross said that if we sell the property we will then get it but she cannot use it as expected revenue because the State says that you are only allowed to expect the revenue for five years. After five years they say that you shouldn't expect the revenue but the City owns the property because we took it after three years.

Councilwoman Bell asked what the interest rate was associated with this TAN.

Cheryl Gross, City Comptroller, said that she will not know until it goes out. The last one we did in August we came in at 4.5%. Our fiscal advisers had her figure with the Budget 6% just to be on the safe side because last year we were at 5.5% and in August we came in at 4.5% for the bond that we did so she figures it will be someplace in between there.

Councilwoman Bell said that when you do a refinance you pays points. This is a refinance right?

Cheryl Gross said that this is a renewal not a refinance so there are no points. The fees we have are those that we have to pay to our Bond Counsel for writing up the resolution and the Underwriters who guarantee the sale of that note.

Councilwoman Bell asked what kind of fee we are talking about and how much was it last year?

Cheryl Gross, City Comptroller, said it depends on the amount of work and the last one was \$150,000.00.

Councilman Bell said that is not small potatoes but when you have a credit rating that is in the toilet you pay.

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

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5

ADOPTED

COMMENTS FROM THE AUDIENCE REGARDING GENERAL MATTERS

Denise Ribble, City of Newburgh said that she sent an e-mail to the City Manager regarding some energy efficiency savings that had been accomplished by the school district. She is looking forward to a presentation from the City Engineer or the City Manager about some of the potential energy efficiency savings that the City may be able to achieve. The school district saved over a million dollars over the past two years just by doing some pretty organized energy efficiency things. With the State grants that are to be coming out there was some discussion about possibly applying for some of that grant money that would help to fund and support us so she thinks it would be great if we could have an expense saving revenue generating thing happen with our energy efficiency.

Councilwoman Bell noted that if you look up you will notice that the CFL light bulbs are in, which they have been trying to get for three years. She thinks that is awesome.

Paul Weber, Artrip & Weber for the PBA, said that two weeks ago when he spoke he was pretty passionate about what he had to say. When we talk about laying off another 25% of the police force and considering we are down 27% that is not smart. He doesn't know how we are going to do this but we have to do it. Since the meeting two weeks ago we have had three shooting incidents with three different shooting victims and last night there was a home invasion with four men brandishing hand guns. It is not going to get better and certainly if you lay off fifteen more cops it is going to get much worse. He spoke earlier about some finances that were maybe not spent appropriately on Mr. Hadley and Mr. Herbek came to his defense. The other issue he wants to bring up is with the Law Firm of Lamb & Barnosky that the city pays for. This law firm is located in Melville, Long Island and the City Manager has retained them at the City's expense. They are one hour and fifty seven minutes away and they bill us at \$230.00 an hour for a city retainer. Most municipalities when they enter into these contracts with local firms it usually costs about \$150.00 but they are charging \$230.00. They charge in increments of fifteen minutes so if you have a question over the phone that is fifteen minutes or \$57.00. The retainer clearly reads that we will not pay for travel expenses but they do. The retainer was signed by Mr. Herbek on August 18, 2010 and by December 31, 2010 the City paid the law firm \$62,646.00. We have two attorneys working for us right now and they are very competent yet we paid this Long Island law firm \$62,000.00 in four months. Through September, 2011 the city has paid them another \$75,000.00 for a total of \$138,000.00 in thirteen months. The city has paid approximately \$8,280.00 in attorney fees just for traveling back and forth to Long Island and in 2011 the city paid a total

\$12,000.00 for travel. He asked why the City is paying for this. Why are we doing this? Did the Council vote on this or have any knowledge at all that we had a separate law firm? We are talking about laying off cops and this is again a duplication of services. While it might already be in the Budget like Dwight Hadley's finances are it doesn't mean you have to spend it.

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

STATEMENT READ BY MAYOR VALENTINE

“This is a statement of the Budget Committee of the City Council. The Committee consists of Councilmember Christine Bello, Councilmember Curlie Dillard, Deputy Mayor Regina Angelo and Mayor Nicholas Valentine.

We have been meeting since September 22nd and during these meetings we have been discussing the 2012 Tentative Budget with a variety of Department Heads and City Staff including the City Manger, Comptroller and Corporation Counsel.

One member of the City Council has chosen not to participate in one of the most important duties of a City Council member. This is a violation of your Oath of Office and your fiduciary responsibility to the citizens of Newburgh and a betrayal of the public trust. Therefore, we as a group are changing the Rules of Order of the City Council meeting.

Any member of the Council who has not participated in the Budget meetings will only be able to speak about our findings or decisions during the final Comments of the Council and those remarks will be limited to three (3) minutes. In addition, this member may not convey, transmit or communicate to any member of the audience information that can then be entered into the record during the public comment period.

This decision by the City Council cannot be taken lightly and has never been taken in the history of this Council but it is necessary because the Budget is the most important vote that the City Council makes. The future of the operations of City Government rest in the hands of the elected body, the City Council.”

COMMENTS FROM THE COUNCIL

Councilwoman Angelo said that Marge Bell has always been a very adept Councilperson and always speaks her mind. Her departure from the Budget meetings disturbed her as well as the other Council members and Mayor. Everyone's input has always been needed especially at budget preparing time. There are many times that we don't wish to hang in there, but we feel it is our duty to the citizens of Newburgh and they deserve our input. On many occasions she has reminded here colleagues that once you have taken your Oath you are married to the City of Newburgh for four years. Come Hell or high water it is your obligation to respect your duty.

Councilwoman Bell said that she guesses this is a Roasting because she decided and made public the idea that this process is a farce and that she made the decision not to participate in such farce. She thinks that here colleagues can say whatever they want because her constituents understood the decision she made and why. She personally was very hurt, as all of the residents were, by the actions taken by Mr. Herbek and Mayor Valentine to circumvent a process and not have the consideration to let the rest of the Council know that a proposal had come from Senator Larkin to help us. They then scheduled a Press Conference a couple of days later where they talked about finding six million dollars and said that we were in good fiscal condition. This is a farce. No revenue has been generated. She has demanded over and over again some revenue generating strategies. Mr. Herbek has sat here all this time and not produced one revenue generating idea. She sat here last year through this farce of a Budget and suggested all kinds of alternatives such as job sharing, privatizing and bringing certain positions out to the County. All types of things to decrease spending. It was a disgrace the way Mayor Valentine and Mr. Herbek just sat there and acted as if the things she was suggesting were from another planet. This is outrageous. She told them that they can say whatever they like because her constituents understand why she said that she would not participate in this farce.

Councilwoman Bello said her comments are on a completely different subject. She had a long time business call her who was very upset because they had received a bill from the City for false alarms. They stated to her that the times the alarm went off in their building they were not there so it was not as if they had put in the wrong code. This tells her that something triggered the alarm and apparently scared the perpetrator away. This means that the alarm was working and she doesn't believe that these businesses or residents should be penalized because the alarm is working. Its one thing if it is a faulty alarm but who is to say that something didn't trigger that alarm. She

checked the Code and does not see a clear definition of a false alarm and she thinks this is a lousy way to try to generate revenue if that is what this is doing. With robberies increased from last year people want to protect themselves. We need to do something about this and clearly define it in our Code.

Acting City Manager, Richard Herbek, said that we did that last year by establishing an Alarm Review Board and he is sure that this particular case will come before that Board.

Michelle Kelson, Corporation Counsel, said that legislation was passed last year so within thirty days of receiving a bill they can request a hearing with this Board which consists of the City Manager, Fire Chief and Police Chief. If it turns out that the alarm was triggered because it did what it was supposed to do by scaring someone away, then the Appeal Board has the authority to strike that charge.

Councilwoman Bello asked how they make an appointment with the Appeal Board.

Michelle Kelson said that they can request an appeal in writing with the City Manger's office and then they will schedule the hearing.

Mayor Valentine noted that he had two business owners contact him and he told them to request a hearing to appeal.

Michelle Kelson, Corporation Counsel, added that they will put a notice on the website explaining what needs to be done if someone wishes to appeal.

Councilwoman Bello thanked everyone for coming tonight and for their comments.

Councilman Dillard suggested that we put a copy of the letter that we responded to pertaining to the MAC on the City's website because he believes that a lot of people did not understand what was stated in that letter. The MAC legislation that Senator Larkin wrote should be put on the website as well. He thanked everyone for coming tonight.

Mayor Valentine said that he has done Budgets in the City of Newburgh for thirteen years now and last year was difficult but he doesn't think that it was the most difficult. We thought that the world was going to come to an end last year. Everyone was going to leave and doors were going to be closed but none of that has happened. There was an article in the paper today stating that people are paying their taxes and they are surviving through

this. You can call it a farce if you want to but if we didn't take the steps we took last year then we would be closed. Without that 40% tax increase we wouldn't be just talking about fifteen cops we would be talking about half of the police force and government as we know it would be closed. It was not an easy decision and it passed three to two after a negotiation session and give backs. It cost us more money because we waited one day last year. To move a Bond resolution and a vote of a Budget that was not approved sent shockwaves through the financial institutions and our interest rate went up but can't blame one individual person because it was a tremendous amount of pressure that we were all under. This year there is an opportunity, as there was last year, for everybody to get together and survive through what he is considering to be the last of the toughest years. Get to 2012. This will be done with honest negotiations with the City Manager and not with statements from one lobby or another. He could rattle off salaries and overtime of officers and combined services of what we pay for each officer but he is not going to do that because it is not right. That is for the negotiating table. Last year with the Fire Department it was bumpy, tough and ugly at times but in the end we saved jobs and money. We were going on an idea and trying something. All of those ideas from the twenty-four hour shift to cutting back on overtime and the scheduling of holiday pay had never been done. It probably should have been done in other negotiations but every time you are negotiating the City Council just wanted to get through it and now our backs are up against the wall with police. He has read where other municipalities have laid off police and he wonders how that could possibly happen. The money is not there. It is not someplace else like in a contingency fund or a slush fund that we use for negotiations. There is nothing here. It is being spent on the most basic of services that we as a city government need to provide to its residents. There is no Recreation Department and there is very little fluff in this building if you look at the staff of people that work here. Say what you will but you have a City Manger that is working here for less money than any Budgeted City Manager in the last seven years. The truth is in the dollars that are being spent. What we need in these next couple of weeks is for both sides to sit and talk. The City Council will meet any time that is necessary to come to some fair and equitable solution. He believes it is possible to do this and that they will do everything they can as a Council. He said to please understand that the 2% cap was something that was put upon them by State Government. Andrew Cuomo is not going to come to Newburgh on a white horse and save us. He is merely the one who put the 2% cap on us and this City Council does not wish to go beyond it. We have listened to the audience and the constituency and they have all said in one voice that they do not want a tax increase of more than what is allowed. They could vote on it and go above it but they are not. Now it's about how to make this work. He said that there is no job more risky or difficult than the police officer and over the years he has developed a relationship with many of them. He has also spent time with the Special Units

that have done a great job with gangs and violence. Tremendous work with tremendous people who are so talented at what they do. Let's try our best to please not throw that away because of some dollars. Dollars will come back when times get better as they have in this city in the past. This is about a contribution to helping this city get over its one final hurdle. When we are done and when times get better then future Councils can say it is time to give them what they truly deserve and what is due to them. Understand that it does not come lightly from any of us. We don't go home after a meeting and shrug it off. We take this to heart. He has spoken to his fellow Council members about the difficulty of what they have to do and what they are facing. Management, fiscal responsibility and controlling our costs are also at this table so he told everyone that the door is open. They are listening and they want to make this work and if it takes all the way to the last moment before we vote in November, we will do it. This is not over just because a Proposed Budget is being sent to the Comptroller's Office. We will do whatever we need to do.

Mayor Valentine adjourned the meeting and noted that the Council will be going into Executive Session to discuss pending litigation.

There being no further business to come before the Council, the meeting adjourned at 9:35 p.m.

LORENE VITEK
CITY CLERK