

A special meeting of the City Council of the City of Newburgh was held on Monday, July 26, 2010 at 6:00 P.M. at City Hall, 83 Broadway, Newburgh, N.Y.

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

Absent: Councilwoman Bell- 1

The Pledge of Allegiance was led by Mayor Valentine.

COMTROLLER'S UPDATE

City of Newburgh Comptroller Christine Mitchell presented a brief overview of exactly what is being done and the significance of it. She explained that the bond is needed to address the debt that is associated with the Newburgh Fiscal Recovery Act. Adopting this legislation will allow the city to borrow up to \$15 Million. She anticipates a note for \$12 Million. It is difficult to project how much is actually needed at this time. Additionally they estimate \$12 Million is needed to refinance the Courthouse Bond Anticipation Note (BAN).

Mayor Valentine pointed out that there is an estoppel period involved that makes it time sensitive, hence the reason for doing this tonight. Also there would be too much to sort out if they waited until the August meeting.

COMMENTS FROM THE PUBLIC REGARDING THE AGENDA

Barbara Powell, Powell Avenue, commented that usually there is a very detailed prospectus available which then becomes part of the permanent record. It answers such questions as to where the money is going and how we intend to spend it. She asked the council who is going to prepare this prospectus.

Christine Mitchell confirmed that there are a multitude of legal requirements in regard to financing enough money for capital markets. Todd Miles is our Bond Counsel. An initial statement was drafted this week. Once the statement is made available to the public and the sale is completed, it is then put into a package.

Councilman Dillard pointed out that in reading this he understands that the State Comptroller must OK it first.

Ms. Mitchell responded that because of the long-term financing that is taking place, the State Comptroller has to come in at some point. The State Comptroller will inevitably look at all of the expenditures and certify them. This is going to get us through the gap because we have a critical cash flow situation in the city right now.

Kippy Boyle, Grand Street, recalled an earlier power point presentation. Then a prospectus had come out. She is concerned about things in the prospectus for which there was no prior authorization. She cautioned the council to keep the public informed of the details of the prospectus.

The Comptroller pointed out that this is a different animal from the older bond. The spending per se is to take care of the deficit. The deficit is a cumulative effect of years of neglect. Now we have no fund balance for 2010 because of it. In addition, the Budget itself was not accurate. Expenditures were understated and revenues were overstated. Now there is a retirement incentive available, in which they will have to look at additional severance pay for eligible employees. By the time the Water Capital Project is completed, the city will have spent close to \$1.3 Million. And there may be over \$500,000 in funding not yet accounted.

Janet Gianopoulos, Newburgh, stated that she appreciates all of the work of City staff and the maneuvering that was done in Albany. She is in favor of it. She hopes it becomes an opportunity for us to do things better next time around.

The Comptroller pointed out that by doing this we get to plan the planning and at the same time work the plan. The State legislation ultimately requires that the city have a 3-5 year fiscal plan in place. She commented that there is additional oversight. There is an incentive at hand. She commented that no one wants to see it done right more than herself.

Maryann Prokosch, Galloway Avenue, pointed out that she is completely aware of the city's financial situation. Yet she hopes that this does not occur again 15 years from now. She is very pessimistic about things. She stated that we have to learn from our mistakes. She hopes that we have learned our lesson this time.

Councilwoman Bello asked the Comptroller if there are any assurances in the resolution that this money will only be used for things that are already stated in the 2010 budget.

Comptroller Mitchell reassured her that we would be unable to finance for anything that is not certified by the State Comptroller. The State would take a very dim view on loading up the deficit.

Councilwoman Bello asked if there is anything to prevent the council from creating a new department later on. Obviously if the council decided to create a department, then it really would not be considered an emergency. Yet it would be in the budget for next year and thus becomes a certified debt according to the State Comptroller.

Ms. Mitchell explained that we would want to have a conversation with the State Comptroller with regard to what the actual requirements would be. Then she would be able to come back before the council and tell it, "This is the plan, and this is what [the State] is expecting of us." She reminded the council members that they sit at the top of the hierarchy. Everyone and everything else has to fall in line.

Councilwoman Bello said that the Water Capital Project began in 1999 and it was never paid for per former Superintendent John Platt. Yet it showed a positive fund balance in the water department for many years up until the last couple of years. Why didn't we pay off the project when we could have paid it? Or is this a brand new project altogether? Is this an absolute emergency? Is it necessary?

Mayor Valentine clarified that the project that started in 1999 did not actually begin until 2005. We were trying to get permission to do a couple of different things, such as the water hookup to the Aqueduct. It was a big

project and he remembered that it stalled because the officials at the New York State Aqueduct would not talk to us.

Comptroller Mitchell pointed out that part of the reason for doing this is that they should not be paying for projects using funds from the Water Fund.

Councilwoman Bello asked if the council has to come back to approve each expenditure, after this is approved tonight.

Ms. Mitchell responded in the negative. She explained that she is not exactly sure what the State is going to require the city to cover right away. She acknowledged that some of the payment timelines are still unclear.

Councilwoman Angelo asked the Comptroller if she would provide the council with a checklist of each project that is completed, so that the council will know when these things are cleared up right through to the end of the year. Also is the financial review board going to have a hand in this at all?

Mayor Valentine pointed out that the council is also looking to expand the financial review board. Having a control board in place would have been more expensive. It would have cost in the ballpark of \$500,000. We don't have to do that now. We certainly need to keep up the fiscal advisory board because there is a lot of additional work and requirements involved.

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

RESOLUTION NO. **164-2010**

OF

JULY 26, 2010

BOND RESOLUTION OF THE CITY OF NEWBURGH, NEW YORK, ADOPTED JULY 26, 2010, AUTHORIZING THE LIQUIDATION OF THE ACTUAL DEFICITS IN THE GENERAL FUND, SPECIAL REVENUE FUND AND CAPITAL PROJECTS FUND OF THE CITY EXISTING AT THE CLOSE OF THE FISCAL YEAR ENDED DECEMBER 31, 2010, STATING THE ESTIMATED TOTAL COST OF LIQUIDATING THE DEFICIT IS \$15,000,000; APPROPRIATING SAID AMOUNT THEREFOR, AND AUTHORIZING THE ISSUANCE OF \$15,000,000 BONDS OF THE CITY TO PAY THE COST THEREOF.

The object or purpose for which the bonds are authorized is the liquidation of the actual deficits in the General Fund, Special Revenue Fund and Capital Projects Fund of the City existing at the close of the fiscal year ended December 31, 2010.

The amount of obligations to be issued is \$15,000,000.

The period of probable usefulness is fifteen (15) years.

A complete copy of the Bond Resolution summarized above and Chapter 223 of the New York Laws of 2010 shall be available for public inspection during normal business hours at the office of the City Clerk, City Hall, 83 Broadway, Newburgh, New York

Dated: July 26, 2010
City of Newburgh, New York

Mayor Valentine extended gratitude to State Representatives Frank Skartados and William Larkin, Jr. They were incredible. Also the State Comptroller and the Governor's office were very helpful. This council body passed this unanimously. When it got to the Senate it was passed unanimously. When it got to the Assembly, even though it was late, it passed unanimously. People could have asked why the State should even bother with Newburgh. But our representatives stepped up and did it. He wanted to recognize their efforts in getting it through.

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

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

ADOPTED

RESOLUTION #164-2010

BOND RESOLUTION OF THE CITY OF NEWBURGH NEW YORK, ADOPTED JULY 26, 2010, AUTHORIZING THE FUNDING OF THE ACTUAL DEFICITS IN THE GENERAL FUND, SPECIAL REVENUE FUND, AND CAPITAL PROJECTS FUND OF THE CITY EXISTING AT THE CLOSE OF THE FISCAL YEAR ENDED DECEMBER 31, 2010, STATING THE ESTIMATED TOTAL COST OF LIQUIDATING THE DEFICIT IS \$15,000,000; APPROPRIATING SAID AMOUNT THEREFOR, AND AUTHORIZING THE ISSUANCE OF \$15,000,000 BONDS OF THE CITY TO PAY THE COST THEREOF.

Recitals

WHEREAS, legislation to be known as the “City of Newburgh Fiscal Recovery Act” has been enacted as Chapter 223 of the New York Laws of 2010 (the “Special Legislation”) which authorizes the City to issue bonds in an aggregate principal amount of not to exceed \$15,000,000 to liquidate the actual deficits in the General Fund, Special Revenue Fund, and Capital Projects Fund of the City existing at the close of the fiscal year ended December 31, 2010;

WHEREAS, upon the issuance of any bonds or notes by the City pursuant to the Special Legislation, the City Council is required to establish and thereafter maintain until the expiration of the effectiveness of the Special Legislation a special debt service fund (the Special Debt Service Fund”) to be held by the Comptroller of the State of New York (the “State Comptroller”) for the purpose of paying, from state aid revenues and real property tax revenues of the City deposited and paid into the Special Debt Service Fund by the State Comptroller pursuant to the Special Legislation, special debt service of the City as defined in the Special Legislation;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF NEWBURGH, IN THE COUNTY OF ORANGE, NEW YORK, HEREBY RESOLVES (by the favorable vote of not less than two-thirds of all the members of said City Council) AS FOLLOWS:

Section 1. The City of Newburgh, in the County of Orange, New York is hereby authorized pursuant to the provisions of the Special Legislation to liquidate the actual deficits in the General Fund, Special Revenue Fund, and Capital Projects Fund of the City existing at the close of the fiscal year ended December 31, 2010, including all incidental costs associated therewith and related thereto. The estimated total cost of said specific object or purpose, including preliminary costs and costs incidental thereto, is \$15,000,000, and said amount is hereby appropriated therefor. The plan of financing includes the issuance of \$15,000,000 bonds of the City and any bond anticipation notes issued in anticipation of the sale of such bonds to finance said appropriation and the levy and collection of taxes on all the taxable real property in the City to pay the principal of and interest on said bonds and notes.

Section 2. (a) Bonds of the City in the principal amount of not to exceed \$15,000,000 are hereby authorized to be issued 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"), and the provisions of the Special Legislation to finance said appropriation. The bonds herein authorized shall not be issued unless and until the existence of the City's actual deficits in the General Fund, Special Revenue Fund, and Capital Projects Fund of the City existing at the close of the fiscal year ended December 31, 2010 have been reviewed and confirmed by the State Comptroller and said bonds of

the City may not be issued in an amount exceeding the aggregate amount of such deficits as certified by the State Comptroller.

(b) Bond anticipation notes of the City in the principal amount of not to exceed \$15,000,000 (“deficit notes”), are hereby authorized to be issued in anticipation of the issuance of said bonds, and such deficit notes are authorized to be issued either prior to or after the State Comptroller’s certification of the amounts of such deficits. However, in the event deficit notes are issued in an amount in excess of the amount of such deficits as confirmed by the State Comptroller, the City shall, from funds other than proceeds of bonds or bond anticipation notes, either redeem such deficit notes in the amount by which the amount of such deficit notes exceeds the amount of such deficits as confirmed by the State Comptroller or deposit a sum equal to the amount by which such deficit notes exceed the amount of such deficits as confirmed by the State Comptroller into the Special Debt Service Fund.

(c) Pursuant to the Special Legislation, this bond resolution is not subject to (a) any mandatory or permissive referendum, (b) the provisions of section 107.00 of the Law with respect to any requirements for a down payment and (c) the provisions of section 10.10 of the Law.

Section 3. The period of probable usefulness of the specific object or purpose for which the bonds authorized pursuant to this resolution are to be issued, pursuant to the provisions of the Special Legislation, is fifteen (15) years.

Section 4. The Special Debt Service Fund is hereby authorized to be established pursuant to the Special Legislation and the Director of Finance, City Comptroller, Acting City Manager, Corporation Counsel and all other City officials are

authorized and directed to take any and all appropriate actions to establish and implement the Special Debt Service Fund and otherwise comply with the requirements of the Special Legislation.

Section 5. During the effective period of the Special Legislation, the City Comptroller is hereby directed to notify the State Comptroller at least fifteen (15) days prior to the issuance of any bonds or notes or entering into any installment purchase contract by the City.

Section 6. Each of the bonds authorized by this resolution, and any bond anticipation notes issued in anticipation of the sale of said bonds, shall contain the recital of validity as prescribed by Section 52.00 of the Law and said bonds, and any notes issued in anticipation of said bonds, shall be general obligations of the City, payable as to both principal and interest by general tax upon all the taxable real property within the City without limitation of rate or amount. The faith and credit of the City are hereby irrevocably pledged to the punctual payment of the principal of and interest on said bonds, and any notes issued in anticipation of the sale of said bonds, and provision shall be made annually in the budget of the City by appropriation for (a) the amortization and redemption of the bonds and any notes in anticipation thereof to mature in such year and (b) the payment of interest to be due and payable in such year.

Section 7. Subject to the provisions of this resolution, the State Legislation and pursuant to the provisions of Section 21.00 relative to the authorization of bonds with substantially level or declining annual debt service, Section 30.00 relative to the authorization of the issuance of bond anticipation notes and Section 50.00 and Sections 56.00 to 60.00 and 168.00 of the Law, the powers and duties of the City Council

relative to authorizing deficit notes and prescribing the terms, form and contents and as to the sale and issuance of the bonds herein authorized, and of any deficit notes issued in anticipation of said bonds, and the renewals of said deficit notes, and the powers and duties relative to executing contracts for credit enhancements and providing for substantially level or declining annual debt service, are hereby delegated to the Director of Finance, the chief fiscal officer of the City.

Section 8. The validity of the bonds authorized by this resolution, and of any notes issued in anticipation of the sale of said bonds, may be contested only if:

- (a) such obligations are authorized for an object or purpose for which the City is not authorized to expend money, or
- (b) the provisions of law which should be complied with at the date of the publication of such resolution, or a summary thereof, are not substantially complied with,

and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or

- (c) such obligations are authorized in violation of the provisions of the constitution.

Section 9. Pursuant to the provisions of section 16 of the State Legislation, the City is authorized to include in this resolution the following pledge and agreement of the State of New York (herein called the "State") contained in said Section 16:

“The state does hereby pledge to and agree with the holders of any bonds, notes or other obligations issued by the city during the effective period of this act and secured by such a pledge that the state will not limit, alter or impair the rights hereby vested in the city to fulfill the terms of any agreements made with such holders pursuant

to this act, or in any way impair the rights and remedies of such holders or the security for such bonds, notes or other obligations until such bonds, notes or other obligations together with the interest thereon and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully paid and discharged.”

Section 10. This bond resolution shall take effect immediately and the City Clerk is hereby authorized and directed to publish the foregoing resolution, in summary, together with a Notice attached in substantially the form prescribed by Section 81.00 of the Law in the “SENTINEL,” the “MID HUDSON TIMES”, and the “HUDSON VALLEY PRESS”, each a newspaper having a general circulation in the City and hereby designated the official newspapers of said City for such publication.

* * *

The adoption of the foregoing resolution was seconded by _____ and duly put to a vote on roll call, which resulted as follows:

AYES:

NOES:

The resolution was declared adopted.

CERTIFICATE

I, Katrina Cotten, Deputy City Clerk of the City of Newburgh, in the County of Orange, State of New York, HEREBY CERTIFY that the foregoing annexed extract from the minutes of a meeting of the City Council of said City of Newburgh duly called and held on July 26, 2010, has been compared by me with the original minutes as officially recorded in my office in the Minute Book of said City Council and is a true, complete and correct copy thereof and of the whole of said original minutes so far as the same relate to the subject matters referred to in said extract.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said City of Newburgh this ___ day of July, 2010.

(SEAL)

Deputy City Clerk

CITY OF NEWBURGH

ESTOPPEL NOTICE

The resolution, a summary of which is published herewith, has been adopted on the 26th day of July, 2010, and the validity of the obligations authorized by such resolution may be hereafter contested only if such obligations were authorized for an object or purpose for which the CITY OF NEWBURGH, in the County of Orange, New York, is not authorized to expend money or if the provisions of law which should have been complied with as of the date of publication of this Notice were not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty days after the publication of this Notice, or such obligations were authorized in violation of the provisions of the constitution.

Katrina Cotten
Deputy City Clerk

**BOND RESOLUTION OF THE CITY OF NEWBURGH,
NEW YORK, ADOPTED JULY 26, 2010,
AUTHORIZING THE LIQUIDATION OF THE ACTUAL
DEFICITS IN THE GENERAL FUND, SPECIAL
REVENUE FUND, AND CAPITAL PROJECTS FUND
OF THE CITY EXISTING AT THE CLOSE OF THE
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LIQUIDATING THE DEFICIT IS \$15,000,000;
APPROPRIATING SAID AMOUNT THEREFOR, AND
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Dated: July 26, 2010
City of Newburgh, New York

There being no further discussion to come before the council, the meeting was adjourned at 6:20 P.M.

**KATRINA COTTEN
DEPUTY CITY CLERK**