

**ORDINANCE**                    **1626**  
**ADOPTED**                        **10/19/09**  
**PUBLISHED**                    **11/11/09**

AN ORDINANCE APPROPRIATING \$1,600,000 FOR THE NEWTON STREET AREA SEWER PROJECT AND AUTHORIZING THE ISSUE OF A TOTAL OF \$1,600,000 BONDS OF THE CITY TO MEET SAID APPROPRIATION, CONSISTING OF UP TO \$1,600,000 PUBLIC ACT 07-51 BONDS AND \$800,000 GENERAL OBLIGATION BONDS AND PENDING THE ISSUANCE THEREOF THE MAKING OF TEMPORARY BORROWINGS FOR SUCH PURPOSE

Section 1. The sum of \$1,600,000 is appropriated for the planning, acquisition and construction of the installation of sanitary sewers in the Newton Street, Newton Place, East Avenue, West Avenue, Eagle Street, Will Road and Ash Road areas, or so much thereof, or such additional streets within the adjacent area and as may be accomplished within said appropriation and bond authorization provided herein, and including gravity sewer lines, force mains, pump stations, manholes, acquisition of easements and other interests in property, associated utility, street and drainage improvements, repair and relocation, appurtenances related thereto, licenses and permits, blasting if and as necessary, and for testing, surveying, paving, engineering, administration, advertising, printing, legal, and financing costs (hereafter the "Project") as shall be determined by the Norwich Sewer Authority (the "WPCA"). Said appropriation shall be inclusive of all state and federal grants in aid, and in addition to all other appropriations therefore.

Section 2. The estimated useful life of the project is thirty years. The total estimated cost of the project is \$1,600,000 (the "Project") allocated between costs paid by the WPCA estimated at \$1,022,680 (the "WPCA Share", 63.92%), but in no event will the WPCA Portion be an amount that would cause the City Share to be in excess of \$800,000; and costs paid by the City from non sewer revenues are estimated to be \$577,320 (the "City Portion", 36.08%) but in no event in excess of \$800,000 as more fully defined in Section 5(ii). The Project Cost will be financed by the bonds, notes and other obligations authorized to be issued herein (the "bonds"). No portion of the Project is expected to be paid from sources other than the proposed bonds. The Project is a general benefit to the City of Norwich and its general governmental purposes.

Section 3. To meet said appropriation:

(i) bonds of the City may be issued, maturing not later than the thirtieth year after their date, or such later date as may be allowed by law. Said bonds may be issued in one or more series as shall be determined by the City Manager and the Comptroller, and the amount of bonds of each series to be issued shall be fixed by the City Manager and the Comptroller, provided that the total amount of bonds to be issued shall not be less than an amount which will provide funds sufficient with other funds available for such purpose to pay the principal of and the interest on all temporary borrowings in anticipation of the receipt of the proceeds of said bonds outstanding at the time of the issuance thereof, and to pay for the administrative, printing and legal costs of issuing the bonds. The bonds shall be in the denomination of \$1,000 or a whole multiple thereof, or, be combined with other bonds of the City and such combined issue shall be in the denomination per aggregate maturity of \$1,000 or a whole multiple thereof, be issued in bearer form or in fully registered form, be executed in the name and on behalf of the City by the manual

or facsimile signatures of the City Manager and the Comptroller, bear the City seal or a facsimile thereof, be certified by a bank or trust company designated by the City Manager and the Comptroller, which bank or trust company may be designated the registrar and transfer agent, be payable at a bank or trust company designated by the City Manager and the Comptroller, and be approved as to their legality by Murtha Cullina LLP, Attorneys-At-Law, of Hartford. They shall bear such rate or rates of interest as shall be determined by the City Manager and the Comptroller. The bonds shall be general obligations of the City and each of the bonds shall recite that every requirement of law relating to its issue has been duly complied with, that such bond is within every debt and other limit prescribed by law, and that the full faith and credit of the City are pledged to the payment of the principal thereof and the interest thereon. The aggregate principal amount of the bonds, annual installments of principal, redemption provisions, if any, the date, time of issue and sale and other terms, details and particulars of such bonds, shall be determined by the City Manager and the Comptroller in accordance with the requirements of the General Statutes of Connecticut, as amended. In connection with the issuance of any bonds or notes authorized herein, the City may exercise any power delegated to municipalities pursuant to Section 7-370b, including the authority to enter into agreements moderating interest rate fluctuation, provided any such agreement or exercise of authority shall be approved by the City Council. In order to meet the capital cash flow expenditure needs of the City, the City Manager and Comptroller are authorized to allocate and reallocate expenditures incurred for the Project to any bonds or notes of the City outstanding as of the date of such allocation, and the bonds or notes to which such expenditures have been allocated shall be deemed to have been issued for such purpose, including the bonds and notes and Project herein authorized; or

(ii) temporary notes of the City may be issued pursuant to Sections 7-264 or 7-264a of the General Statutes of Connecticut, as amended. The amount of such notes to be issued, if any, shall be determined by the City Manager and the Comptroller and they are hereby authorized to determine the date, maturity, interest rate, form and other details and particulars of such notes, and to sell, execute and deliver the same. Said notes shall be secured by the full faith and credit of the City and may be further secured in any other manner set forth in Sections 7-264 or 7-264a, aforesaid, as determined by the City Council; or

(iii) State or Federal loans as set forth in Section 7 hereof; or

(iv) bonds, notes or other obligations pursuant to section 5 hereof; or

(v) any combination of bonds or temporary notes or State and Federal loans may be issued, provided that the total, aggregate principal amount thereof outstanding at any time shall not exceed \$1,600,000.

Section 4. The issue of the bonds aforesaid and of all other bonds or notes of the City heretofore authorized but not yet issued, as of the effective date of this Ordinance, would not cause the indebtedness of the City to exceed any debt limit calculated in accordance with law. The principal and interest on the proposed issue are to be paid from property taxation to the

extent not paid from other funds available for the payment thereof and the full faith and credit of the City are pledged to such payment.

#### Section 5.

(i) The bonds, notes and other obligations (hereafter in this section "bonds") authorized by this ordinance are authorized and shall be and are issued pursuant to (i) Public Act 07-51 (the "Act") with respect to the WPCA Portion of bonds issued to finance Project Cost wherein the City hereby pledges to the bond owners its full faith and credit and general obligation taxing power to pay principal and interest when due on the bonds issued to finance the WPCA Portion, and the City receives and the WPCA pledges the Pledged Revenue to pay such debt service; and (ii) general obligation bonds issued pursuant to Chapter VIII of the Charter of the City of Norwich with respect to the City Portion of Project Cost.

(ii) Pursuant to the Act, the WPCA hereby pledges to the City (1) to assess, levy, implement and collect sewer benefit assessments and connection charges derived from the Project in accordance with the General Statutes and ordinances and resolutions of the Council, and to do so immediately as each such assessment or charge is permitted by law to occur and to diligently pursue all legal and administrative actions to levy, finalize and collect the same, such benefit assessments and connection charges as finally determined the "Project Assessments"; (2) to pay to the City an amount equal to Project Assessments, and investment income derived therefrom (revenue from Project Assessments and investment income hereafter "Project Revenue"); (3) to pay Project Revenue to the City as and when Project Revenue is received by the WPCA; (4) unless otherwise agreed by the Comptroller and the General Manager of the Department of Public Utilities, to schedule installment payments due dates of the Project Assessments no later than the date of payments due on the bonds and to consult with the Comptroller in respect thereto; (5) to assess interest on installment payments in accordance with C.G.S. Section 7-253, and to pledge and pay such interest to the City, such interest constituting investment income included as Project Revenue; and (6) in addition to clauses (1) through (5), to assess, levy, implement and collect sewer system revenues from whatever source, including sewer system use charges, in amounts and when required to timely pay the WPCA Portion to the City (hereafter "Supplemental WPCA Revenue"). The Supplemental WPCA Revenue and Project Revenue hereafter "Pledged Revenue". The pledge to pay an amount equal to "Project Assessments" means the amount to be paid is determined by the amount of the Project Assessments as finally determined, irrespective of the amount of revenue collected by the WPCA from the Project Assessments, with any shortfall between Project Assessments and Project Revenue to be paid from Supplemental WPCA Revenue. The WPCA grants a lien to the City on the Pledged Revenues, subject to the provisions of Section 12.

(iii) The City shall pay a portion of the cost of the Project constituting the difference between Project Cost minus Project Assessments; provided the City Portion shall not exceed \$800,000 (the "City Portion"), and the sum of the WPCA Portion and the City Portion (as limited to \$800,000) – shall equal Project Cost. The WPCA shall not be obligated to pay the City Portion. Notwithstanding any other ordinance or resolution regarding the determination of the

Project Cost to be paid by the City, the City Portion shall not exceed \$800,000. In the event Project Assessments would cause the City Share to exceed \$800,000, the WPCA Portion shall be calculated so that the City Portion does not exceed \$800,000, and the WPCA, in addition to the provisions of Section 5 regarding benefit assessments and connection fees, shall levy, assess, collect and pay to the City, Supplemental WPCA Revenue sufficient to pay the WPCA Portion. For purposes of determining the WPCA Portion, each home or building shall be deemed connected to the Project.

Unless the City or WPCA has paid its respective Portions from other sources, any outstanding bonds, notes or other obligations issued to fund the Project shall be apportioned between the City and the WPCA in the same percentage as the City Portion and WPCA Portion.

The WPCA hereby agrees, covenants and pledges to pay debt service on the WPCA Portion of the bonds from Pledged Revenue, unless the City or WPCA has paid its respective portion from other sources, in which case the portion of debt service shall be paid based on the amount of bonds outstanding that finance the WPCA Portion and the City Portion. The Pledge of the WPCA to the City as herein set forth shall be valid, binding and enforceable in accordance with the terms and provisions of the Act, and may be supplemented by resolutions jointly approved by the WPCA and City Council. The full faith credit and general obligation pledge of the City shall be valid, binding and enforceable irrespective of compliance by the WPCA with its covenants and pledge herein. Neither this Ordinance, nor resolutions or other actions taken hereafter, shall adversely affect the full faith and credit pledge of the City herein on the entire principal amount of bonds authorized or issued pursuant to this ordinance.

Until the procedure for establishing benefit assessments is finally implemented, the City and the WPCA portions shall be 36.08 and 63.92 percent respectively, at which time they shall be recalculated in accordance with this ordinance.

(iv) Upon adoption of this ordinance by the City Council and its approval by the WPCA, the pledge of revenues and covenants herein shall be binding and enforceable by the City upon the WPCA, in accordance with the provisions of the Act all rights of which shall accrue to the City, including the right of the City to recover its costs, expenses and attorneys' fees in any court or other proceeding brought to enforce compliance by the WPCA with the pledge and covenants herein. The failure or inability of the WPCA to pay Project Revenues to the City, or to pay the WPCA share, shall not abrogate the general obligation pledge of the City to pay debt service on the bonds when due.

(v) The City and the WPCA may by resolution amend, add to or clarify the terms of the pledge of the WPCA to the City, provided that no such amendment shall alter the full faith and credit pledge of the City of Norwich to the holders of bonds issued hereunder.

Section 6. Said bonds shall be sold by the City Manager and Comptroller in a competitive offering or by negotiation, in their discretion. If sold at competitive offering, the bonds shall be sold upon sealed proposals, or at auction, at not less than par and accrued interest

on the basis of the lowest net or true interest cost to the City, or comparable method. A notice of sale or a summary thereof describing the bonds and setting forth the terms and conditions of the sale shall be published at least five days in advance of the sale in a recognized publication carrying municipal bond notices and devoted primarily to financial news and the subject of state and municipal bonds. If the bonds are sold by negotiation the purchase contract shall be approved by the City Council. With respect to the receipt of original issuance premium or bid premium upon the sale of the bonds or notes herein authorized, the Manager and Comptroller are authorized, but not required, to apply original issuance premium and bid premium, if applicable, to fund any purpose for which bonds of the City are authorized to be issued, and such application shall reduce the amount of authorized and unissued bonds of the purpose to which the premium was applied, in the amount so applied.

Section 7. The City Manager and the Comptroller are authorized to make temporary borrowings in anticipation of the receipt of the proceeds of any series of said bonds. Notes evidencing such borrowings shall be signed by the manual or facsimile signatures of the City Manager and the Comptroller, have the seal of the City or a facsimile thereof affixed, be payable at a bank or trust company designated by the City Manager and the Comptroller, be certified by a bank or trust company designated by the City Manager and the Comptroller pursuant to Section 7-373 of the General Statutes of Connecticut, as amended, and be approved as to their legality by Murtha Cullina LLP, Attorneys-At-Law, of Hartford. They shall be issued with maturity dates which comply with the provisions of the General Statutes governing the issuance of such notes, as the same may be amended from time to time. The notes shall be general obligations of the City and each of the notes shall recite that every requirement of law relating to its issue has been duly complied with, that such note is within every debt and other limit prescribed by law, and that the full faith and credit of the City are pledged to the payment of the principal thereof and the interest thereon. The net interest cost on such notes, including renewals thereof, and the expense of preparing, issuing and marketing them, to the extent paid from the proceeds of such renewals or said bonds, shall be included as a cost of the project. Upon the sale of said bonds the proceeds thereof, to the extent required, shall be applied forthwith to the payment of the principal of and the interest on any such temporary borrowings then outstanding or shall be deposited with a bank or trust company in trust for such purpose.

Section 8. The General Manager of the Department of Public Utilities (the "General Manager") is authorized in the name and on behalf of the City to apply for and accept any and all Federal and State loans and/or grants-in-aid of the Project and is further authorized to expend said funds in accordance with the terms hereof and in connection therewith to contract in the name of the Board of Public Utilities Commissioners (the "Board") with engineers, contractors and others. To meet any portion of the costs of the Project determined by the State of Connecticut Department of Environmental Protection to be eligible for funding under Section 22a-475 *et seq.* of the Connecticut General Statutes, as the same may be amended from time to time (the "Clean Water Fund Program"), the City may issue interim funding obligations in anticipation of project loan obligations and project loan obligations in such denominations as the City Manager and Comptroller shall determine. The City Manager and Comptroller are hereby authorized to determine the amount, date, maturity, interest rate, form and other details and

particulars of such interim funding obligations and project loan obligations, subject to the provisions of the Clean Water Fund Program, and to execute and deliver the same. Said obligations shall be general obligations of the City and each of the notes shall recite that every requirement of law relating to its issue has been duly complied with, that such obligation is within every debt and other limit prescribed by law, and that the full faith and credit of the City are pledged to the payment of the principal thereof and the interest thereon. The General Manager is hereby authorized to execute and deliver to the State in the name of and on behalf of the City Project Loan and Project Grant Agreements under the Clean Water Fund Program.

Section 9. Resolution of Official Intent to Reimburse Expenditures with Borrowings. The City (the "Issuer") hereby expresses its official intent pursuant to §1.150-2 of the Federal Income Tax Regulations, Title 26 (the "Regulations"), to reimburse expenditures paid sixty days prior to and after the date of passage of this ordinance in the maximum amount and for the capital project defined in Section 1 with the proceeds of bonds, notes, or other obligations ("Bonds") authorized to be issued by the Issuer. The Bonds shall be issued to reimburse such expenditures not later than 18 months after the later of the date of the expenditure or the substantial completion of the project, or such later date the Regulations may authorize. The Issuer hereby certifies that the intention to reimburse as expressed herein is based upon its reasonable expectations as of this date. The Comptroller or his designee is authorized to pay project expenses in accordance herewith pending the issuance of reimbursement bonds, and to amend this declaration.

Section 10. The City Manager and Comptroller are hereby authorized to exercise all powers conferred by section 3-20e of the general statutes with respect to secondary market disclosure and to provide annual information and notices of material events as enumerated in Securities and Exchange Commission Exchange Act Rule 15c2-12, as amended, as may be necessary, appropriate or desirable to effect the sale of the bonds and notes authorized by this ordinance.

Section 11. It is hereby found and determined that the issue of all, or a portion of, the Bonds, Notes or other obligations of the City authorized to be issued herein as qualified private activity bonds, or with interest that is includable in gross income of the holders thereof for purposes of federal income taxation, is in the public interest.

Section 12. The Council and Sewer Authority hereby express their mutual understanding and agreement that WPCA covenants and pledge of sewer revenues hereunder are subordinated in right to the Joint Resolution of the City of Norwich, Connecticut and the Sewer Authority of the City of Norwich adopted November 21, 1994 and November 22, 1994.

**MAYOR BENJAMIN P LATHROP  
CITY MANAGER ALAN H BERGREN**