

# ORDINANCE No. 177937

\* Authorize water system revenue and refunding bonds (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. The City enacted Ordinance No. 177129 on December 18, 2002, authorizing the City to issue up to \$200 million of revenue bonds under the Uniform Revenue Bond Act. The City published notice as required by law. More than 60 days have passed since that notice was published, and no petitions were filed to refer that ordinance. The City is now authorized to issue the bonds described in that ordinance.
2. The City has previously enacted Ordinance No. 174241 which provides the terms under which the City may issue water system revenue bonds that are secured by a first lien on the net revenues of the City's water system.
3. The City adopts this Ordinance to authorize the issuance of water system revenue bonds pursuant to Ordinance No. 177129 and Ordinance No. 174241 to finance water system projects, to repay a line of credit and to refund certain outstanding water revenue bonds of the City.
4. Section 1.J.1.g of Ordinance No. 174241 permits the City to amend that ordinance "to make any change which, in the reasonable judgment of the City, does not materially and adversely affect the rights of the owners of any Outstanding Bonds." The City Council finds that the amendments described in Section 1.C of this ordinance do not materially and adversely affect the rights of the owners of any Outstanding Bonds for the following reasons:
  - A. The amendment described in Section 1.C.1 of this ordinance merely changes the titles of the officers of the City to whom authority is delegated to deal with water revenue bonds. The amendment described in Section 1.C.1 of this ordinance therefore does not materially or adversely affect the rights of owners of Outstanding Bonds.
  - B. The amendments described in Section 1.C.2 and 1.C.3 of this ordinance require that the Bonds authorized by this ordinance, and all future Bonds, be secured by separate subaccounts in the Reserve Account and remove outdated references to the Rate Stabilization Account. These amendments do not change the existing security for Outstanding Bonds, and the Outstanding Bonds will continue to be secured by a pooled reserve for those bonds. The amendments described in Section 1.C.2 and 1.C.3 of this ordinance therefore do not materially or adversely affect the rights of owners of Outstanding Bonds.

NOW, THEREFORE, the Council directs:

- A. Authorization. The City is hereby authorized to issue its Water System Revenue and Refunding Bonds, 2003 Series A Bonds (the "2003 Series A Bonds"). The 2003 Series A Bonds shall be "Bonds" and "Parity Obligations" as defined in Ordinance No. 174241.

The 2003 Series A Bonds shall be special obligations of the City and shall be secured solely by the net revenues of the water system and other amounts specifically pledged to the payment of "Bonds" as defined in Ordinance No. 174241. The 2003 Series A Bonds shall not be issued in a principal amount that exceeds the sum of the amounts required to: provide \$75 million of net proceeds for water system projects and for repayment of a line of credit; to refund certain outstanding water revenue bonds; and to pay estimated costs of obtaining credit enhancement, funding reserves, issuing of the 2003 Series A Bonds and carrying out this ordinance.

- B. Delegation. The Debt Manager of the City, the Chief Financial Officer of the Bureau of Financial Services, the Chief Administrative Officer of the Office of Management and Finance, or the person designated by the Chief Administrative Officer of the Office of Management and Finance to act as Debt Manager under this Ordinance (any of whom is referred to in this ordinance as a "Debt Manager") may, on behalf of the City:
1. Provide that the 2003 Series A Bonds may be issued in one or more series, which may be sold at different times.
  2. Participate in the preparation of, authorize the distribution of, and deem final the preliminary and final official statements and any other disclosure documents for each series of the 2003 Series A Bonds.
  3. Establish the final principal amounts, maturity schedules, interest rates, sale prices, redemption terms, payment terms and dates, record dates and other terms for each series of the 2003 Series A Bonds, and either publish a notice of sale, receive bids and award the sale of each series to the bidder complying with the notice and offering the most favorable terms to the City, or select one or more underwriters and negotiate the sale of any series with those underwriters.
  4. Undertake to provide continuing disclosure for each series of the 2003 Series A Bonds in accordance with Rule 15c2-12 of the United States Securities and Exchange Commission.
  5. Apply for and purchase municipal bond insurance, reserve sureties or other forms of credit enhancements for each series of the 2003 Series A Bonds, and enter into related agreements.
  6. Finalize the terms of, execute and deliver bond declarations that describe the terms of each series of the 2003 Series A Bonds.
  7. Appoint and enter into agreements with escrow agents, paying agents, verification agents and other professionals and service providers.
  8. Take any action desirable to call, redeem and pay any bonds that are refunded with the 2003 Series A Bonds.

9. Enter into covenants to maintain the excludability of 2003 Series A Bond interest from gross income under the Internal Revenue Code of 1986, as amended.
10. Refund, call and defease any bonds that are refunded with by the 2003 Series A Bonds.
11. Execute any documents and take any other action in connection with the 2003 Series A Bonds which the Debt Manager finds will be advantageous to the City.

C. Amendments to City Ordinance No. 174241.

The following amendments shall take effect when the City has received the required consents under Ordinance No. 174241.

1. The definition of "Director" in Section 1.A of Ordinance No. 174241 is amended to read as follows:

"Director" means the Debt Manager of the City, the Chief Financial Officer of the Bureau of Financial Services, the Chief Administrative Officer of the Office of Management and Finance, or the person designated by the Chief Administrative Officer of the Office of Management and Finance to act as Director under this Ordinance.

2. The following amendments are made to Ordinance No. 174241 to provide for separate reserve subaccounts for the 2003 Series A Bonds and any subsequent Parity Obligations:

- a. The definition of "Reserve Requirement" in Section 1.A of Ordinance No. 174241 is amended to read as follows:

"Reserve Requirement" means: (a) for Bonds issued before January 1, 2003: the lesser of Maximum Annual Debt Service on all Outstanding Bonds issued before January 1, 2003, or the amount described in the next sentence of this definition; and (b) for Bonds issued on or after January 1, 2003, the Tax Maximum for the Series of which those Bonds are a part. For Bonds that are part of a Series that was issued before January 1, 2003, if, at the time the Series was issued, the amount required to be added to the Revenue Bond Reserve Account to make the balance in the Revenue Bond Reserve Account equal to the Maximum Annual Debt Service on all Outstanding Bonds issued before January 1, 2003, exceeds the Tax Maximum calculated with respect to that Series, then the Reserve Requirement for all Bonds issued before January 1, 2003, means the Reserve Requirement in effect on the date of issuance of that Series (calculated as if that Series of Bonds were not Outstanding), plus the Tax Maximum for that Series. However, the City may elect to fund the Reserve Requirement for any Series of Bonds in equal annual installments over a period of five years, as provided in 1.C.3.g. If the City makes this

election for a Series of Bonds, the Reserve Requirement shall be reduced by any installments the City has elected to make, but which are not yet due to be deposited in the Revenue Bond Reserve Account.

b. Section 1.C.3 of Ordinance No. 174241 is amended to read as follows:

**3. Revenue Bond Reserve Account.** Amounts credited to the Revenue Bond Reserve Account shall be used only to pay Bonds, and only if amounts in the Revenue Bond Account and Net Revenues credited to other accounts in the Water Enterprise Fund are insufficient. The Revenue Bond Reserve Account shall be divided into subaccounts. One subaccount shall contain all amounts credited to the Revenue Bond Reserve Account for all Series of Bonds issued before January 1, 2003, and shall be used in accordance with this Section 1.C.3 only to pay Bonds issued before January 1, 2003. The City shall establish separate subaccounts in the Revenue Bond Reserve Account for each Series of Bonds that is issued after January 1, 2003, and amounts in those subaccounts shall be used in accordance with this Section 1.C.3 only to pay Bonds that are part of the Series for which the subaccount is created.

- (a) If, on any Payment Date the amounts on deposit in the Revenue Bond Account are insufficient to pay all Bond principal of, premium (if any) and interest due on that Payment Date, the City shall transfer Net Revenues in the Water Enterprise Fund (other than amounts in the Revenue Bond Reserve Account) to the Revenue Bond Account in an amount equal to the deficiency. If the City is unable to make the transfer described by the preceding sentence, then the City shall allocate the deficiency pro rata among the outstanding Series of Bonds for which a payment is due on that Payment Date, and shall transfer an amount equal to the allocated deficiency from each subaccount of the Revenue Bond Reserve Account to the Revenue Bond Account.
- (b) If the value of the investments in any subaccount of the Revenue Bond Reserve Account on a Valuation Date is less than the Reserve Requirement for that subaccount, the City shall begin making substantially equal monthly transfers of Net Revenues to all deficient subaccounts of the Revenue Bond Reserve Account in accordance with 1.B.1.d.
- (i) Transfers to each subaccount of the Revenue Bond Reserve Account shall be applied first, to reimburse the Providers of any Reserve Credit Facilities that were issued for any Series that is secured by that subaccount *pro rata* for amounts advanced under the Reserve Credit Facility; second, to replenish the balance in that subaccount with cash or

Permitted Investments; and third to pay any other amounts owed under a Reserve Credit Facility that was issued for any Series that is secured by that subaccount (including any interest, fees and penalties associated with any draw under such a Reserve Credit Facility).

- (ii) The first transfers shall be made not later than the first day of the month following the valuation date, and the transfers shall continue until the balance in each subaccount of the Revenue Bond Reserve Account equals the applicable Reserve Requirement.
  - (iii) If the deficiency is due to a transfer from a subaccount of the Revenue Bond Reserve Account to the Revenue Bond Account pursuant to 1.C.3.a, each transfer to the that subaccount under 1.B.1.d shall be at least equal to one twelfth of the difference between the applicable Reserve Requirement and the balance in the subaccount on the Valuation Date. The "difference between the applicable Reserve Requirement and the balance in the subaccount on the Valuation Date" shall be calculated by including all amounts then owed under Reserve Credit Facilities that were issued for any Series that is secured by that subaccount, including any interest, fees and penalties associated with any draws under a Reserve Credit Facilities.
  - (iv) If the deficiency is due to a change in the value of investments, each transfer to a subaccount in the Revenue Bond Reserve Account shall be at least equal to one fourth of the difference between the Reserve Requirement for that subaccount and the balance in that subaccount on the Valuation Date.
- (c) If the value of the investments in any subaccount of the Reserve Account on a Valuation Date exceeds the applicable Reserve Requirement, the City may transfer the excess to any account of the Water Enterprise Fund.
- (d) Moneys in the Revenue Bond Reserve Account may be invested only in Permitted Investments that mature no later than the final maturity date of the Bonds. Earnings on each subaccount of the Revenue Bond Reserve Account shall be credited to that subaccount whenever the balance in that subaccount is less than the applicable Reserve Requirement. Otherwise earnings shall be credited to the Revenue Bond Account.

- (e) Permitted Investments in each subaccount of the Revenue Bond Reserve Account shall be valued on each Valuation Date in the following manner:
- (i) Demand deposits, deposits in the Oregon Short Term Fund and investments which mature in two years or less after the Valuation Date shall be valued at their face amount, plus accrued interest;
  - (ii) Investments which mature more than two years after the Valuation Date and for which bid and asked prices are published on a regular basis in the Wall Street Journal (or, if not there, then in the New York Times) shall be valued at the average of their most recently published bid and asked prices;
  - (iii) Investments which mature more than two years after the Valuation Date and for which the bid and asked prices are not published on a regular basis in the Wall Street Journal or the New York Times shall be valued at the average bid price quoted by any two nationally recognized government securities dealers (selected by the City in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service;
  - (iv) Reserve Credit Facilities shall be valued at the amount which is available to be drawn or paid under them;
  - (v) Certificates of deposit and bankers acceptances which mature more than two years after the Valuation Date shall be valued at their face amount, plus accrued interest; and
  - (vi) Any investment which is not specified above and which matures more than two years after the Valuation Date shall be valued at its fair market value as reasonably estimated by the City.
- (f) Withdrawals from each subaccount of the Revenue Bond Reserve Account shall be made in the following order of priority:
- (i) *First*, from any cash credited to the subaccount;
  - (ii) *Second*, from the liquidation proceeds of any Permitted Investments credited to the subaccount; and

- (iii) *Third*, from moneys drawn or paid pro-rata under any Reserve Credit Facilities that were issued for any Series that is secured by that subaccount.
  - (g) All amounts on deposit in a subaccount of the Revenue Bond Reserve Account may be applied to the final payment (whether at maturity, by prior Redemption or by means of a defeasance as provided in 1.P hereof) of all Outstanding Bonds that are secured by that subaccount. Amounts so applied shall be credited against the amounts the City is required to transfer into the Revenue Bond Account under 1.B.1.b
  - (h) Any Ordinance authorizing the issuance of a Series of Bonds shall require a deposit into the applicable subaccount of the Revenue Bond Reserve Account in amounts sufficient to make the balance in that subaccount at least equal to the applicable Reserve Requirement. The deposit required by this 1.C.3.g may be made in not more than five annual installments, with the final installment due not later than the fifth anniversary of the issuance of the Series of Bonds. If the City elects to fund the portion of a Reserve Requirement which is allocable to a Series of Bonds in installments, the election and the schedule for such deposits shall be stated prominently in the proceedings authorizing the Series of Bonds.
3. The following amendments are made to Ordinance No. 174241 to remove references to the Rate Stabilization Account.
- a. The definition of "Rate Stabilization Account" in Section 1.A of Ordinance No. 174241 is deleted.
  - b. Section 1.B.1.j of Ordinance No. 174241 is amended to read:  
  
On any date, the City may spend Net Revenues for any lawful purpose, but only if all deposits and payments having a higher priority under this Section have been made.
  - c. Section 1.C.6 of Ordinance No. 174241 is deleted.

Section 2. Declaration of Emergency. The Council declares that an emergency exists because interest rates are currently favorable and delay in enactment of this Ordinance will delay sale of

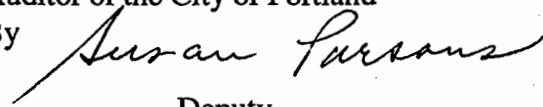
the 2003 Series A Bonds, which could increase the City's interest costs. Therefore, this Ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council, **OCT 01 2003**

Mayor Vera Katz  
Office of Management and Finance  
TG:EJ:Bond Counsel  
September 19, 2003

**GARY BLACKMER**  
Auditor of the City of Portland

By



Deputy