

Michelle S. [Signature]
OFFICE OF THE CITY CLERK CITY ATTORNEY
OAKLAND

2004 SEP 16 AM 10:02

ORDINANCE NO. 12674 C.M.S.

AN ORDINANCE ADDING CHAPTER 4.50 TO TITLE 4 OF THE OAKLAND MUNICIPAL CODE SETTING FORTH POWERS AND PROCEDURES FOR THE ISSUANCE OF SEWER REVENUE BONDS FOR THE PURPOSE OF FINANCING AND REFINANCING SEWER SYSTEM IMPROVEMENTS; AND SETTING FORTH DEFINITIONS, GENERAL PROVISIONS, GENERAL POWERS, ISSUANCE PROCEDURES AND CERTAIN SUPPLEMENTAL PROVISIONS RELATING TO THE ISSUANCE OF SUCH BONDS, INCLUDING ESTABLISHMENT OF A RATE STABILIZATION FUND

WHEREAS, the City of Oakland (the "City") is a municipal corporation and charter city duly organized and existing under a charter pursuant to which the City has the right and power to make and enforce all laws and regulations in respect of municipal affairs and certain other matters in accordance with and as more particularly provided in Sections 3, 5 and 7 of Article XI of the Constitution of the State of California and Section 106 of the Charter of the City (the "Charter"); and

WHEREAS, the City Council of the City, acting under and pursuant to the powers reserved to the City under Sections 3, 5 and 7 of Article XI of the Constitution of the State of California and Sections 106 and 812 of the Charter, finds that the public interest and necessity require the adoption of this ordinance to authorize, and establish the procedures for, the sale and issuance of sewer revenue bonds by the City for the purpose of financing improvements to the sewer system of the City, as more particularly set forth below;

NOW, THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The Municipal Code of the City of Oakland is hereby amended by adding Chapter 4.50, entitled "Sewer Revenue Bond Law" as follows:

**CHAPTER 4.50
SEWER REVENUE BOND LAW**

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS

Sec. 4.50.10. Title. This chapter may be cited as the City of Oakland Sewer Revenue Bond Law.

Sec. 4.50.20 Purpose. The Council hereby finds and declares that it is necessary, essential, a public purpose and a municipal affair for the City to be authorized to issue Bonds for the purpose of financing the Cost of Capital Improvements of the Sewer System.

Sec. 4.50.30 Definitions. Unless the context otherwise requires, the following definitions shall govern the construction of this Chapter:

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“Bonds” means any bonds, notes, loans, interim certificates, debentures, installment purchase agreements, leases or other obligations issued by the City pursuant to this Chapter, which are payable solely from Revenues as described in the Issuing Instrument.

“Capital Improvement” means any addition, betterment, replacement, renewal, extension or improvement of or to the Sewer System, including, without limitation, the acquisition of land or any interests therein, determined by the City to be necessary or convenient in connection with the utilization of the Sewer System.

“Chapter” means this Chapter 4.50 of the Oakland Municipal Code, as amended from time to time in accordance herewith.

“Charter” means The Charter of the City of Oakland, as amended from time to time.

“City” means the City of Oakland, California, a chartered city in the State existing under and exercising powers pursuant to the Charter and the Constitution of the State.

“Cost” means with respect to any Capital Improvement, all costs and expenses of planning, designing, acquiring, constructing, installing and financing such Capital Improvement, placing such Capital Improvement in operation, disposal of such Capital Improvement, and obtaining governmental approvals, certificates, permits and licenses with respect thereto, heretofore or hereafter paid or incurred by the City. Payment of Cost shall include the reimbursement to the City for any of the costs included in this definition of Cost paid by the City which have not previously been reimbursed to the City and which are not to be reimbursed from contributions in aid of construction. The term Cost shall include, but shall not be limited to, funds required for:

(a) Costs of preliminary investigation and development, the performance or acquisition of feasibility and planning studies, and the securing of regulatory approvals, as well as costs for land and land rights, engineering and contractors’ fees, labor, materials, equipment, utility services and supplies, legal fees and financing expenses.

(b) Working capital and reserves therefor in such amounts as shall be determined by the City.

(c) Interest accruing in whole or in part on Bonds prior to and during construction of a Capital Improvement or any portion thereof, and for such additional period as the City may determine.

(d) The deposit or deposits from the proceeds of the Bonds in any funds or accounts which deposit or deposits are required by the Issuing Instrument.

(e) The payment of principal, premium, if any, and interest when due (whether at the maturity of principal or at the due date of interest or upon redemption or otherwise) of any note or other evidence of indebtedness the proceeds of which were applied to any of the costs of a Capital Improvement.

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(f) Training and testing costs which are properly allocable to the acquisition, placing in operation, or construction of a Capital Improvement.

(g) All costs of insurance applicable to the period of construction and placing a Capital Improvement in operation.

(h) All costs relating to injury and damage claims arising out of the acquisition or construction of a Capital Improvement less proceeds of insurance.

(i) Legally required or permitted federal, state and local taxes and payments in lieu of taxes applicable to the period of construction and placing a Capital Improvement in operation.

(j) Amounts due the United States of America as rebate of investment earnings with respect to the proceeds of Bonds or as penalties in lieu thereof.

(k) Amounts payable with respect to capital costs for the expansion, reinforcement, enlargement or other improvement of facilities determined by the City to be necessary in connection with the utilization of a Capital Improvement and the costs associated with the removal from service or reductions in service of any facilities as a result of the expansion, reinforcement, enlargement or other improvement of such facilities or the construction of a Capital Improvement.

(l) Costs of issuance of any Bonds.

(m) Fees and expenses pursuant to any lending or credit facility or agreement applicable to the period for construction and placing a Capital Improvement in operation.

(n) All other costs incurred by the City, including but not limited to City staff costs, properly allocable to the acquisition, construction, or placing in operation of the Sewer System.

“Council” means the City Council of the City.

“Issuing Instrument” means the resolution of the Council adopted pursuant to this Chapter and any indenture or trust agreement pursuant to which the City issues Bonds.

“Rate Stabilization Fund” means the fund established pursuant to Section 4.50.140

“Revenues” means all income, rents, rates, fees, charges and other moneys derived from the ownership or operation of the Sewer System, including, without limiting the generality of the foregoing:

(a) all income, rents, rates, fees, connection fees, charges, or other moneys derived by the City from the sewer services or facilities, and commodities or byproducts, sold, furnished or supplied through the facilities of or in the conduct or operation of the business of the Sewer System, and including, without limitation, investment earnings on the operating reserves to the extent that the use of such earnings is limited to the Sewer System by or pursuant to law,

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and earnings on any funds or accounts established for Bonds, parity obligations or subordinated obligations but only to the extent that such earnings may be utilized under the Issuing Instrument for the payment of debt service for such Bonds, parity obligations or subordinated obligations;

(b) standby charges and capacity charges derived from the services and facilities, sold, furnished or supplied through the Sewer System;

(c) any amount received from the levy or collection of taxes which are solely available and are earmarked for the support of the operation of the Sewer System;

(d) transfers from the Rate Stabilization Fund; and

(e) grants for maintenance and operations received from the United States of America or from the State of California; provided, however, that Revenues shall not include in all cases, customers' deposits or any other deposits or advances subject to refund until such deposits or advances have become the property of the City.

“Sewer System” means the properties, improvements and works at any time owned, controlled or operated by the City as part of the system for the collection, storage, treatment, distribution, administration, disposal or discharge of sewage waste and its other commodities or byproducts, whether located within or without the City for public and private use and any related or incidental operations designated by the Council as part of the Sewer System.

“State” means the State of California.

ARTICLE II. ISSUANCE OF BONDS

Sec. 4.50.40 General Powers. The City is authorized and empowered:

(a) To issue Bonds for the purpose of financing the Cost of Capital Improvements of the Sewer System and for the purpose of refunding Bonds.

(b) To establish the terms and conditions for the financings undertaken pursuant to this Chapter.

(c) To employ or contract for such legal, consultant, underwriting, economic feasibility, or other services, as may be necessary in the judgment of the Council for the issuance and sale of Bonds.

(d) In addition to all other powers specifically granted in this Chapter, to do all things necessary or convenient to carry out the purposes of this Chapter.

Sec. 4.50.50 Authorization of Bonds. The City may issue Bonds pursuant to a resolution of the Council for the purpose of financing the Cost of Capital Improvements of the Sewer System as authorized by this Chapter. Every issue of Bonds shall be payable from Revenues as described in the Issuing Instrument.

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Sec. 4.50.60 Proceedings Authorizing Issuance; Public or Private Sales.

(a) The proceedings of the City authorizing the issuance of the Bonds may provide all of the following for the Bonds:

- (1) The form of the Bonds, which may be issued as serial bonds, term bonds, or installment bonds, or any combination thereof.
- (2) The date or dates to be borne by the Bonds.
- (3) The time or times of maturity of the Bonds.
- (4) The interest, which may be taxable or tax-exempt, fixed or variable and which may be paid on a current interest or capital appreciation basis, to be borne by the Bonds.
- (5) The time or times that the Bonds shall be payable.
- (6) The denominations, form, and the registration privileges of the Bonds.
- (7) The manner of execution of the Bonds.
- (8) The place or places the Bonds are payable.
- (9) The terms of redemption of the Bonds.
- (10) Any other terms and conditions deemed necessary by the City.

(b) The Bonds may be sold at either a public or private sale and at a price at, above or below the par value thereof.

Sec. 4.50.70 Application of Proceeds of Bonds. The proceeds of the Bonds shall be applied to the Cost of Capital Improvements, including all costs of issuing the Bonds, including any bond reserve funds, and the costs of any insurance or other credit enhancement authorized by Section 4.50.90.

Sec. 4.50.80 Indenture. In the discretion of the Council, any Bonds issued under the provisions of this Chapter may be secured by an indenture or trust agreement by and between the City and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company within or without the State. Such indenture or trust agreement may contain such provisions for protecting and enforcing the rights and remedies of the Bond owners as may be reasonable and proper and not in violation of law. Any such indenture or trust agreement may set forth the rights and remedies of the Bond owners and of the trustee or trustees, and may restrict the individual right of action by Bond owners. In addition to the foregoing, any such indenture or trust agreement may contain such other provisions as the Council may deem reasonable and proper for the security of the Bond owners.

Sec. 4.50.90 Insurance or Credit Enhancement. The City may obtain insurance or other credit enhancement of the Bonds and may enter into any credit, reimbursement agreement or other agreement with any person or entity. The agreement shall

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contain the terms of the credit, reimbursement, interest rate, security, and any other terms the City deems necessary or appropriate.

Sec. 4.50.100 Bonds and Investments; Contracts to Place on Interest Rate, Cash Flow, or Other Basis. In connection with, or incidental to, the issuance or carrying of the Bonds, the City may enter into investment agreements, forward purchase agreements and other investments relating to the investment of amounts held pursuant to an Issuing Instrument, and the City may also enter into any contracts which the City determines to be necessary or appropriate to place the obligation, as represented by the Bonds, in whole or in part, on the interest rate, cash-flow, or other basis desired by the City, including, without limitation, contracts commonly known as interest swap agreements, forward payment conversion agreements, futures, or contracts providing for payments based on levels of, or changes in, interest rates, stock or other indices, or contracts to exchange cash flows or a series of payments, or contracts, including, without limitation, interest rate floors or caps, options, puts or calls to hedge payment, rate, spread, or similar exposure. These contracts and arrangements shall be entered into with the parties, selected by the means, and contain the payment, security, default, remedy, and other terms and conditions, determined by the City, after giving due consideration for the creditworthiness of the counterparties, where applicable, including any rating by a nationally recognized rating agency or any other criteria as may be appropriate.

Sec. 4.50.110 Personal Liability. Neither the members of the Council, officers, employees or agents of the City, nor any person executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

Sec. 4.50.120 Refunding Bonds. The Council may provide for the issuance of Bonds any portion of which is to be used for the purpose of refunding outstanding Bonds, including the payment of the principal thereof and interest and redemption premiums, if any, thereon. The proceeds of Bonds issued to refund any outstanding Bonds may, in the discretion of the Council, be applied to the retirement of such outstanding Bonds at maturity, or the redemption (on any redemption date) or purchase of such outstanding Bonds prior to maturity, upon such terms and subject to such conditions as the Council shall deem advisable.

Sec. 4.50.130 Repayment of Bonds. The principal and any premium of, and interest on, the Bonds shall be payable from Revenues and other funds pledged therefor under the Issuing Instrument, as described in the Issuing Instrument. The issuance of Bonds shall not directly, indirectly or contingently obligate the Council to levy or pledge any form of taxation.

Sec. 4.50.140 Rate Stabilization Fund. The City hereby establishes the Rate Stabilization Fund to be held by the City in connection with Bonds.

ARTICLE III. MISCELLANEOUS PROVISIONS

Sec. 4.50.150 Liberal Construction. This Chapter, being necessary for the health, welfare and safety of the City and its residents, shall be liberally construed to effect its purposes. Furthermore, the Council hereby declares that this Chapter is an exercise of the power granted to the City by the City Charter and the Constitution of the State and is an exercise by the

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City of its powers as to municipal affairs and its police powers, and this Chapter shall be liberally construed to uphold its validity under the laws of the State.

Sec. 4.50.160 Provisions of this Chapter are Complete, Additional and Alternative. This Chapter shall be deemed to provide a complete, additional and alternative method for doing the things authorized hereby, and shall be regarded as supplemental and additional to the powers conferred by other laws. The issuance of Bonds and the entering into of any credit, reimbursement or other agreement under the provisions of this Chapter need not comply with the requirements of any other law applicable to the issuance of bonds. The purposes authorized hereby may be effectuated and Bonds are authorized to be issued for any such purposes under this Chapter notwithstanding that any other law may provide for such purposes or for the issuance of bonds for like purposes and without regard to the requirements, restrictions, limitations or other provisions contained in any other law.

Sec. 4.50.170 Validity of Bonds. The validity of any Bonds shall not be dependent on or affected in any way by any proceedings taken by the City for acquisition, construction, or completion of any properties or projects for which the Bonds are to be issued or any contracts made in connection with the acquisition, construction, or operation of any such properties. The Bonds shall be incontestable and shall by their issuance and delivery conclusively establish the due performance of all conditions precedent to their issue.

Sec. 4.50.180 Amendment of Chapter. This Chapter shall not be amended so as to have a material, adverse affect upon the rights of the owners of any outstanding Bonds theretofore issued hereunder, without the written consent of such Bond Owners; provided, however, that this Chapter may be amended at any time (a) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision herein contained, as the City may deem necessary or desirable; or (b) if such amendment does not materially impair or adversely affect the interests of any such Bond owner or City in the opinion of the Council; or (c) if such amendments apply solely to Bonds not theretofore issued.

Sec. 4.50.190 Chapter Controlling. To the extent that the provisions of this Chapter are inconsistent with the provisions of any general statute or special act or parts thereof, the provisions of this Chapter shall be deemed controlling.

Sec. 4.50.200 Partial Invalidity. If any section, paragraph, sentence, clause or phrase of this Chapter shall for any reason be held illegal or unenforceable, such holding shall not affect the validity of the remaining portions of this Chapter. The Council hereby declares that it would have adopted this Chapter and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the proceedings authorized to be taken pursuant thereto irrespective of the fact that any one or more sections, paragraphs, sentences, clauses, or phrases of this Chapter may be held illegal, invalid or unenforceable.

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SECTION 2. Pursuant to Section 216 of the Charter of the City, this ordinance shall become effective immediately if adopted by the affirmative vote of at least six members of the City Council of the City of Oakland.

Introduction Date: 10/5/04
OCT 19 2004

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2004

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN AND PRESIDENT DE LA FUENTE - 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST: Tatonda Simmons for
CEDA FLOYD
City Clerk and Clerk of the
Council of the City of Oakland, California

Michelle S. H.

NOTICE AND DIGEST

AN ORDINANCE ADDING CHAPTER 4.50 TO TITLE 4 OF THE OAKLAND MUNICIPAL CODE SETTING FORTH POWERS AND PROCEDURES FOR THE ISSUANCE OF SEWER REVENUE BONDS FOR THE PURPOSE OF FINANCING AND REFINANCING SEWER SYSTEM IMPROVEMENTS; AND SETTING FORTH DEFINITIONS, GENERAL PROVISIONS, GENERAL POWERS, ISSUANCE PROCEDURES AND CERTAIN SUPPLEMENTAL PROVISIONS RELATING TO THE ISSUANCE OF SUCH BONDS, INCLUDING ESTABLISHMENT OF A RATE STABILIZATION FUND

The Ordinance establishes the procedures the City must follow in order to issue sewer revenue bonds.

The Ordinance sets forth the general terms of the bonds and limits the expenditure of bond proceeds to: the cost of capital improvements, including all costs of issuing the bonds, and the costs of any insurance or other credit enhancement.

The Ordinance also establishes a rate stabilization fund.