

Order 129-07/08  
Tab 15 1-23-08

EDWARD J. SUSLOVIC (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
DANIEL S. SKOLNIK (3)  
CHERYL A. LEEMAN (4)

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

JAMES I. COHEN (5)  
JOHN M. ANTON (A/L)  
JILL C. DUSON (A/L)  
NICHOLAS M. MAVODONES, JR. (A/L)

**ORDER AUTHORIZING GENERAL OBLIGATION BONDS  
TO FINANCE THE CITY'S SIX-YEAR  
COMBINED SEWER OVERFLOW PROGRAM (CSO)  
IN AN AMOUNT NOT TO EXCEED \$60,955,000**

**FOLLOWING** a public hearing of the City Council of the City of Portland, Maine, held upon due notice pursuant to Article VII, Section 9 of the City Charter, **IT IS HEREBY**

**ORDERED THAT:**

**There be and hereby is authorized the incurring of indebtedness by the City of Portland and the issue and sale of general obligation bonds and notes in anticipation thereof in the aggregate principal amount not to exceed Sixty Million Nine Hundred Fifty-Five Thousand Dollars (\$60,955,000) to finance the CSO Program improvements identified in Exhibit A hereto and all other costs (as defined herein) related and ancillary thereto (the "Project").**

**BE IT FURTHER ORDERED**

1. That the Director of Finance, subject to the bond issue date limitations set forth on Exhibit A hereto, be and hereby is authorized to prepare, issue, and sell such bonds in the aggregate amount of \$60,955,000 (the "Bonds") at one time, or from time to time as the Director of Finance shall determine, as one or more separate bond issues, and to determine the date, form, minimum denominations, interest rate (up to a maximum rate of 8.00% for any Bond), maturities (with the last maturity not to exceed the maximum term permitted by law) and all other details of each issue of Bonds, including the form and manner of their sale and award, subject to the provisions of law, the City Charter and this Order some or all of which may be sold in the open market or as the Director of Finance may determine;

2. That the Director of Finance be and hereby is authorized to borrow money in anticipation of said Bonds by the issuance and sale of notes or renewal notes in anticipation of said Bonds ("BANs"), and to determine the date, form, minimum denominations, interest rate (up to a maximum rate of 8.00% for any BAN), maturities (with the last maturity not to exceed 5 years from its date of issuance) and all other details of each issue of BANs, including the form and manner of their sale and award, subject to the provisions of the law, the City Charter and this Order;

3. That the Director of Finance be and hereby is authorized to provide that any of the Bonds and BANs hereinbefore authorized be made callable, with or without premium, prior to their stated dates of maturity, and each Bond or BAN issued hereunder shall be signed by the Director of Finance and by the Mayor, either or both of whose signatures may be by facsimile to the extent permitted by law, attested to by the City Clerk, under the seal of the City;

Given first reading on 1/23/08  
Passage 2-4-08 8-0 (Mavodones absent)

4. That the Director of Finance is authorized to negotiate, execute, and deliver, in the name of and on behalf of the City such contracts, agreements, and other documents, including agreements, contracts, leases, instruments, documents and certificates as may be necessary or appropriate as determined and approved by the Director of Finance in connection with the financing of the Project, which documents shall be in such form and contain such terms and conditions, not inconsistent herewith, as may be approved by the Director of Finance such approval to be conclusively evidenced by his execution thereof;

5. That the Director of Finance be and hereby is authorized to select the underwriter for the Bonds or BANs heretofore authorized and the Director of Finance be and hereby is authorized and empowered to execute and deliver such contracts or agreements as may be necessary or appropriate in connection therewith;

6. That the Director of Finance be and hereby is authorized to prepare, or cause to be prepared, a Preliminary Official Statement and an Official Statement for use in the offering and sale of the Bonds or BANs heretofore authorized, such Preliminary Official Statement and Official Statement to be in such form and contain such information as may be approved by the Director of Finance, with the advice of the bond counsel for the City, and that the use and distribution of the Preliminary Official Statement and the Official Statement in the name of and on behalf of the City in connection with offering the Bonds or BANs for sale be and hereby is approved;

7. That the Director of Finance be and hereby is authorized to select the registrar, paying agent and transfer agent (the "Transfer Agent") for the Bonds or BANs heretofore authorized and to execute and deliver such contracts and agreements as may be necessary or appropriate to secure their services;

8. That the Bonds or BANs heretofore authorized shall be transferable only on the registration books of the City kept by the Transfer Agent, and said principal amount of the bonds of the same maturity (but not of other maturity) in minimum denominations to be approved by the Director of Finance upon surrender thereof at the principal office of the transfer agent, with a written instrument of transfer satisfactory to the transfer agent duly executed by the registered owner or his attorney duly authorized in writing. Upon each exchange or transfer of a bond the City and the Transfer Agent shall make a charge sufficient to cover any tax, fee or any other governmental charge required to be payable with respect to such exchange or transfer, and with respect to such exchange or transfer, and subsequent to the first exchange or transfer, the cost of preparing new bonds upon exchanges or transfer thereof to be paid by the person requesting the same;

9. That the Director of Finance be and hereby is authorized to undertake all acts necessary to provide for the issuance and transfer of such Bonds or BANs heretofore authorized in book-entry form pursuant to the Depository Trust Company Book-Entry Only System, as an alternative to the provisions of the foregoing paragraph 8 above regarding physical transfer of Bonds or BANs, and the Director of Finance be and hereby is authorized and empowered to enter into a Letter of Representation or any other contract, agreement or understanding necessary or, in his opinion, appropriate in order to qualify the Bonds or BANs for and participate in the Depository Trust Company Book-Entry Only System;

10. That the Director of Finance and Mayor from time to time shall execute such Bonds or BANs as may be required to provide for exchanges or transfers of Bonds or BANs as heretofore authorized, all such Bonds or BANs to bear the original signature of the Director of Finance and Mayor, and in case any officer of the City whose signature appears on any Bond or BAN shall cease to be such officer before the delivery of said Bond or BAN, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery thereof;

11. That, if the Bonds or BANs, or any of them, are issued on a tax-exempt basis, the Director of Finance be and hereby is authorized and directed to covenant and certify on behalf of the City that no part of the proceeds of the issue and sale of the Bonds or BANs authorized to be issued hereunder shall be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause such Bonds or BANs to be "arbitrage bonds" or "private activity bonds" within the meaning of Sections 148 and 141 of the Internal Revenue Code of 1986, as amended;

12. That, if the Bonds or BANs, or any of them, are issued on a tax-exempt basis, the officers executing the Bonds or BANs be and hereby are individually authorized to covenant and agree, on behalf of the City, for the benefit of the holders of such Bonds or BANs, that the City will file any required reports and take any other action that may be necessary to insure that interest on the notes will remain exempt from federal income taxation, and that the City will refrain from any action that would cause interest on the Bonds or BANs to be subject to federal income taxation;

13. That the officers executing the Bonds or BANs be and hereby are individually authorized to covenant, certify and agree, on behalf of the City, for the benefit of the holders of such Bonds or BANs, that the City will file any required reports, make any annual financial or material event disclosure, and take any other action that may be necessary to insure that the disclosure requirements imposed by Rule 15c2-12 of the Securities and Exchange Commission, if applicable, are met;

14. That an amount sufficient for the payment of the annual payments of principal and interest on the Bonds issued hereunder, to the extent not payable from other funds or revenues of the City, shall be included in the tax levy of each year until the debt represented by said Bonds is extinguished;

15. That the Bonds or BANs authorized by this Order are in addition to any bonds or notes previously authorized for the same or similar purposes;

16. That any or all of the Bonds or BANs issued hereunder may be consolidated with and become a part of any other issue of temporary notes or general obligation bonds authorized to be issued by any previous or subsequent order of the City Council of the City of Portland;

17. That the term "cost" or "costs" as used herein and applied to the Project, or any portion thereof, includes, but is not limited to (1) the purchase price or acquisition cost of all or any portion of the Project; (2) the cost of construction, building, alteration, enlargement, reconstruction, renovation, improvement, and equipping of the Project; (3) the cost of all

appurtenances and other facilities either on, above, or under the ground which are used or usable in connection with the Project; (4) the cost of landscaping, site preparation and remodeling of any improvements or facilities; (5) the cost of all labor, materials, building systems, machinery and equipment; (6) the cost of land, structures, real property interests, rights, easements, and franchises acquired in connection with the Project; (7) the cost of all utility extensions and site improvements and development; (8) the cost of planning, developing, preparation of specifications, surveys, engineering, feasibility studies, legal and other professional services associated with the Project; (9) the cost of environmental studies and assessments; (10) the cost of financing charges and issuance costs, including premiums for insurance, interest for a period not to exceed three years from the issue date of the Bonds, and for any additional period permitted under Section 148 of the Internal Revenue Code of 1986, as amended, underwriters' fees and costs, legal and accounting fees and costs, application fees, and other fees and expenses relating to the financing transaction; and (11) the cost of all other financing authorized hereunder, whether related or unrelated to the foregoing;

18. That in order to effect the borrowing and issuance of the bonds or notes, or any series thereof, authorized hereunder and to finance the costs of the Project, the Director of Finance and the Mayor are hereby authorized and empowered (but not required) in the name of and on behalf of the City to borrow an amount not to exceed \$60,955,000 at any one time outstanding from the Maine Municipal Bond Bank (the "Bond Bank") (except that such amount may be exceeded when aggregated with any other amounts duly authorized to be borrowed by the City from the Bond Bank) pursuant to the State's Revolving Loan Fund program established under 30-A M.R.S.A. §6006-A and administered by the Department of Environmental Protection and the Bond Bank and to enter into a Loan Agreement between the City and the Bond Bank providing for a loan from the Bond Bank in a principal amount not in excess of \$60,955,000 and the Director of Finance be and hereby is authorized and empowered, in the name and on behalf of the City, to execute and deliver, under the seal of the City attested by its Clerk, a Loan Agreement between the City and the Bond Bank providing for a loan from the Bond Bank to the City in an amount not to exceed such amount said Loan Agreement to be in the usual and ordinary form utilized by the Bond Bank in connection with the State Revolving Loan Fund which is hereby approved, and to contain such other terms and provisions, not contrary to the general tenor hereof, as the Director of Finance may approve, his approval to be conclusively evidenced by the execution thereof.

19. That the Director of Finance be and hereby is authorized and empowered, in the name of and on behalf of the City, to execute and file with the Bond Bank and/or the Department of Environmental Protection an application for the City to issue and sell up to \$60,955,000 aggregate principal amount of its bonds to the Bond Bank pursuant to the State Revolving Loan Fund program.

20. That the following resolutions required by Section C(4)(e) of the State of Maine Revolving Loan Fund Rules, Chapter 595, Department of Environmental Protection and Maine Municipal Bond Bank (the "SRF Regulations"), and governing the loan to be made to the City under the State Revolving Loan Fund Program be and hereby are adopted:

(1) That a Project Account shall be created for the Project which shall be separate from all other accounts of the City. If operating revenues are to be used to retire the debt, a sub-account will be established.

(2) That the Project Account shall be maintained in accordance with standards set forth by the Bond Bank and in accordance with generally accepted government account standards.

(3) That a final accounting shall be made to the Bond Bank of the total cost of the project upon completion of the Project performance certification as set out in Section G(3) of the SRF Regulations and the City acknowledges that the Bond Bank reserves the right at its sole discretion to be provided with a cost certification of the Project as built.

(4) That an annual audit of the City, prepared by a certified public accountant or licensed public accountant be provided to the Bond Bank for the term of the loan.

(5) That the City shall maintain insurance coverage on the Project in an amount adequate to protect the Bond Bank's interest for the term of the loan with the Bond Bank named as loss payee.

(6) That the City will comply with any special conditions specified by the Department of Environmental Protection's environmental determination until all financial obligations to the State have been discharged.

(7) That the City certify to the Bond Bank that it has secured all permits, licenses and approvals necessary and that it has a dedicated source of revenue for repayment.

(8) That the City establish a rate, charge or assessment schedule in order to pay principal and interest. Such rate change or schedule shall provide total operations and debt service coverage at a level at which the coverage for the Bond Bank is sufficient.

(9) That the City must demonstrate the ability to pay reasonably anticipated costs of operating and maintaining the financed Project.

(10) That the City abide by the SRF Regulations, as revised and amended and relevant State statutes of the State of Maine.

21. That if any of the officers or officials of the City who have signed or sealed the Bonds shall cease to be such officers or officials before the Bonds or BANs so signed and sealed shall have been actually authenticated or delivered by the City, such Bonds or BANs nevertheless may be authenticated, issued, and delivered with the same force and effect as though the person or persons who signed or sealed such Bonds or BANs had not ceased to be such officer or official; and also any such bonds or notes may be signed and sealed on behalf of the City by those persons who, at the actual date of the execution of such Bonds or BANs, shall

be the proper officers and officials of the City, although at the nominal date of such Bonds or BANs any such person shall not have been such officer or official;

22. That the Director of Finance, Mayor and Clerk and other proper officials of the City be, and hereby are authorized and empowered in its name and on its behalf to do or cause to be done all such acts and things, not inconsistent herewith, as may be necessary or desirable in order to effect the issuance, sale and delivery of the Bonds or BANs hereinabove authorized; and

23. That if the Director of Finance, Mayor or Clerk are for any reason unavailable to approve and execute the Bonds or BANs or any other documents necessary or convenient to the issuance, execution and delivery of the Bonds or BANs, the person or persons then acting in any such capacity, whether as an assistant, a deputy, or otherwise, is authorized to act for such official with the same force and effect as if such official had performed such act.

**Exhibit A**

	<b>Bonds Authorized</b>	<b>Authorized Bonds May Not Be Issued Prior to Indicated Date</b>
<b>Total Bonds Authorized</b>	<b>\$60,955,000</b>	<b>See Below</b>
<b>2008 CSO Projects</b>	<b>\$16,909,000</b>	<b>Date Order is Adopted</b>
Fall Brook Culvert Improvements-(Ray St to Maine Ave)	\$4,000,000	
Maine Avenue - Ray to Virginia Street	\$500,000	
Florida Avenue	\$325,000	
Ray Street - Maine Avenue to Ivaloo	\$1,900,000	
Bay Street	\$850,000	
Read Street - Ocean Avenue to Canco Road	\$1,950,000	
Mellon Street - Park Ave	\$425,000	
Clifton Street - Vanna to Pya/ End	\$5,500,000	
Remove Direct Brook Connection at Forest Avenue	\$220,000	
Tier III CSO Program Development	\$500,000	
2009 Preliminary Engineering	\$739,000	
<b>2009 CSO Projects</b>	<b>\$10,347,400</b>	<b>3/1/2009</b>
West Side Sanitary Sewer Replacement	\$3,635,100	
Fall Brook - Culvert From Loring to Allen Ave	\$1,386,000	
Gleckler Road & Canco Road	\$533,700	
Wellington Road	\$1,092,600	
Berry Avenue	\$520,000	
Chesley Avenue	\$879,000	
Edgewood Avenue	\$679,000	
Burnham - Marston - Congress	\$660,000	
2010 Preliminary Engineering	\$962,000	
<b>2010 CSO Projects</b>	<b>\$9,728,500</b>	<b>3/1/2010</b>
Warren Avenue	\$859,500	
Remove Direct Brook Connection West of Mt. Sinai Cemetery	\$495,000	
Fall Brook - Culvert From Allen Ave to Lyseth Moore School	\$1,386,000	
Read Street - Canco to Adelaide Street	\$1,503,000	
Forest Avenue - Poland to Arbor Street	\$419,400	
Carlyle Road	\$1,339,200	
Canco Road - Carlyle Road to Walton Street	\$520,200	
Walton Street - Canco Road to Forest Avenue	\$836,100	
Tremaine Street	\$329,400	
Elmwood Street	\$584,100	
Poland Street	<b>\$381,600</b>	
2011 Preliminary Engineering	\$1,075,000	

<b>2011 CSO Projects</b>	<b>\$10,731,700</b>	<b>3/1/2011</b>
Ocean Avenue - Read Street to Carlyle Road	\$966,600	
Dorothy, Dibiase & Hicks	\$1,364,400	
Brewer Street	\$102,600	
Bartley Avenue	\$720,900	
Fall Lane	\$492,300	
Autumn & Martin	\$652,500	
Melody Lane	\$338,400	
Rustic Lane	\$607,500	
Alpine Road	\$765,000	
Summit Park Avenue	\$903,600	
Jackson Street	\$503,100	
Clayton Street	\$379,800	
Hillside Road	\$309,600	
Allen Avenue - Knight Street to Washington Avenue	\$954,900	
College Street	\$333,900	
Loring Avenue Area	\$273,600	
2012 Preliminary Engineering	\$1,063,000	

<b>2012 CSO Projects</b>	<b>\$9,933,200</b>	<b>3/1/2012</b>
Forest Avenue - Avalon to Belfort Street	\$1,596,600	
Commonwealth Avenue	\$1,250,100	
Malilly Road	\$299,700	
University Street	\$595,800	
Allen Ave - East of PATHS	\$260,100	
Fall Brook Street	\$535,500	
Victor Road Area	\$1,063,800	
Allen Ave - Harvard to Plymouth	\$773,100	
Lexington	\$786,600	
Broadway	\$805,500	
Belfort Street	\$867,600	
Woodlawn Avenue Area	\$730,800	
2013 Preliminary Engineering	\$368,000	

<b>2013 CSO Projects</b>	<b>\$3,305,200</b>	<b>3/1/2013</b>
Auburn Street @ Sanborn Street	\$567,000	
Washington Ave & Auburn Street	\$1,533,600	
Washington Ave @ Skylark	\$135,900	
Washington Ave - Greenwood to Coolidge	\$1,068,700	