Order 177-07/08
3/17/08

EDWARD J. SUSLOVIC (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
DANIEL S. SKOLNIK (3)
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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 THE DESIGN, CONSTRUCTION AND EQUIPPING OF OCEAN AVENUE ELEMENTARY SCHOOL WITH TOTAL PROJECT COSTS NOT TO EXCEED $20,164,591 AND AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS IN AN AMOUNT NOT TO EXCEED $19,690,417 THEREFORE

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 design, construction and equipping of the Ocean Avenue Elementary School, and all other costs (as defined herein) related and ancillary thereto (the "Project") with total Project costs not to exceed $20,164,591, and that there be and hereby is authorized the issue and sale of the City's general obligation bonds in the aggregate principal amount not to exceed Nineteen Million Six Hundred Ninety Thousand Four Hundred Seventeen Dollars ($19,690,417) to finance a portion of the costs of such Project.

BE IT FURTHER ORDERED

1. That the Director of Finance be and hereby is authorized to prepare, issue, and sell such bonds in the aggregate amount of $19,690,417 (the "Bonds") at one time, or from time to time, as one or more separate bond issues, and to determine the date, form, interest rate, (up to a maximum average annual rate of 8.00%, denominations, maturities (with the last maturity not to exceed 30 years from its date of issuance) 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;

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 up to $19,690,417 principal amount of notes or renewal notes in anticipation of said Bonds in minimum denominations of $100,000 and any integral multiple of $5,000 in excess thereof (or such other minimum denomination as the Director of Finance shall approve), and to determine the date, form, interest rate (up to a maximum rate of 8.00%, maturities (with the last maturity not to exceed 5 years from its date of issuance) and all other details of each issue of notes, 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 notes hereinbefore authorized be made callable, with or without premiums, prior to their stated date of maturity, and each Bond or note 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;

Given first reading on 3/17/08 Failed to pass on 4/7/08
Reconsidered & Passage 4/28/08 9-0

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 and notes and the Director of Finance of the City 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 notes, 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 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 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 notes and to execute and deliver such contracts and agreements as may be necessary or appropriate to secure their services;

8. That the Bonds and notes 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 of $5,000 and any integral multiple in excess thereof (or such other minimum denominations as the Director of Finance may approve) 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 and notes in book-entry form pursuant to the Depository Trust Company Book-Entry Only System, as an alternative to the provisions of the foregoing paragraph regarding physical transfer of bonds, 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 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 notes as may be required to provide for exchanges or transfers of bonds or notes as heretofore authorized, all such bonds or notes 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 notes shall cease to be such officer before the delivery of said bond or notes, 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 the Director of Finance and Mayor be and hereby are 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 notes authorized to be issued hereunder shall be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause such notes to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended;

12. That the officers executing the Bonds or notes 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 notes, 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 Bond and notes to be subject to federal income taxation;

13. That the officers executing the Bonds or notes 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 notes, 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 and any notes (to the extent not expected to be paid with the proceeds of the bond or a renewal note) issued hereunder shall be included in the tax levy of each year until the debt represented by said Bonds and notes is extinguished;

15. 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 prior to and

during construction and for a period up to 3 years from the issue date of the Bonds, 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; and

16. That if any of the officers or officials of the City who have signed or sealed the Bonds or notes shall cease to be such officers or officials before the Bonds or notes so signed and sealed shall have been actually authenticated or delivered by the City, such Bonds or notes 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 notes 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 notes, shall be the proper officers and officials of the City, although at the nominal date of such Bonds or notes any such person shall not have been such officer or official.

17. 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 as may be necessary or desirable in order to effect the issuance, sale and delivery of the Bonds and notes hereinabove authorized.

18. That if the Director of Finance, Mayor or Clerk are for any reason unavailable to approve and execute the Bonds or notes or any other documents necessary or convenient to the issuance, execution and delivery of the Bonds or notes, 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.

BE IT FURTHER ORDERED that the question of whether the voters approve and ratify this Order, and the Project and the Bonds authorized hereby shall be placed upon the ballot at a municipal referendum election to be held on June 10, 2008.