

Order 23-11/12

Passage: 8-15-11 9-0

NICHOLAS M. MAVODONES (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JOHN R. COYNE (5)
JOHN M. ANTON (A/L)
DORY RICHARDS WAXMAN (A/L)
JILL C. DUSON (A/L)

**ORDER AUTHORIZING REFUNDING BONDS
IN AN AMOUNT NOT TO EXCEED \$24,915,000**

WHEREAS, the City has previously issued its \$14,445,000 2002 General Obligation Bonds dated April 1, 2002, its \$18,450,000 2003 General Obligation Bonds dated February 1, 2003 and its \$18,700,000 2004 General Obligation Bonds – Series A dated April 1, 2004 (collectively, the “Prior Bonds”); and

WHEREAS, due to a drop in interest rates, the City desires to refinance the Prior Bonds through an advance refunding in order to obtain debt service savings on the Prior Bonds;

NOW, 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 issue and sale of the City’s general obligation bonds in the aggregate principal amount not to exceed Twenty-Four Million Nine Hundred Fifteen Thousand Dollars (\$24,915,000) to refinance the Prior Bonds through an advance refunding.

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 \$24,915,000 (the “Bonds”) at one time, or from time to time, as one or more separate bond issues, and to determine the date, form, minimum denomination, interest rates (as term bonds or serial bonds or some combination thereof), maturities (with the last maturity not to exceed the maximum term permitted by law) and all other details, terms and provisions, note inconsistent herewith, including the form and manner of their sale and award as he may approve, such approval to be conclusively evidenced by the execution thereof;
2. That the Director of Finance be and hereby is authorized to provide that any of the Bonds hereinbefore authorized be made subject to call for redemption, with or without premium, prior to their stated dates of maturity, as provided in 30 A M.R.S.A. §5772(6), as amended;
3. That each Bond 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, and shall be in such form and contain

such terms and provisions not inconsistent herewith as they may approve, their approval to be conclusively evidenced by their execution thereof;

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 refunding escrow agreements, instruments and certificates as may be necessary or appropriate as determined and approved by the Director of Finance in connection with the refinancing of the Prior Bonds, 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 her execution thereof;

5. That the Director of Finance be and hereby is authorized to select the underwriter for the Bonds 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 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 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") and an escrow agent for the Bonds 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 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 of \$5,000 and any integral multiple in excess thereof (or such other minimum denomination as the Director of Finance shall 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 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 above 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 as may be required to provide for exchanges or transfers of Bonds as heretofore authorized, all such Bonds 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 shall cease to be such officer before the delivery of said Bond, 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 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 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 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 any part of them, are issued on a tax exempt basis, the officers or officials executing the Bonds be and hereby are individually authorized to covenant and agree, on behalf of the City, for the benefit of the holders of such Bonds, 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 to be subject to federal income taxation;

13. That the officers executing the Bonds 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, 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 any or all of the Bonds 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;

15. 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 hereinabove authorized;

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

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

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

19. That the investment earnings on the proceeds of the Bonds, if any, and the excess proceeds of the Bonds (including premium), if any, be and hereby are authorized to be used to fund the refunding escrow for the Prior Bonds, to pay redemption premium on the Prior Bonds, to pay interest on the Prior Bonds or the Bonds and to pay issuance costs for the Bonds.

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

21. That during the term any of the Bonds (or bonds issued to refund such Bonds) are outstanding, the Director of Finance be and hereby is authorized to issue and deliver refunding bonds to refund on either a current or advance refunding basis some or all of the Bonds then outstanding, and to determine the date, form, interest rate, maturities and all other details of such refunding bonds, including the form and manner of their sale and award. The Director of Finance be and hereby is further authorized to provide that any of such refunding bonds hereinbefore authorized be made callable, with or without premium, prior to their stated date(s) of maturity, and each refunding bond 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, and shall be in such form and contain such terms and provisions not inconsistent herewith as they may approve, their approval to be conclusively evidenced by their execution thereof.

