

*Order 23-08/09  
Tab 35 7-21-08*

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 HUD SECTION 108 LOAN AND ISSUANCE OF THE  
CITY'S TAX INCREMENT FINANCING BONDS AND NOTES IN THE  
AMOUNT OF \$10,200,000**

**WHEREAS**, the City Council previously authorized the City Manager to apply to the United States Department of Housing and Urban Development ("HUD") for a Section 108 Loan and a Brownfield Economic Development Initiative ("BEDI") Grant under Section 108 of the Housing and Community Development Act of 1974, as amended (the "Act"), to be used for economic development activities in the City's Bayside neighborhood; and

**WHEREAS**, the City of Portland has now applied for and received an offer from HUD to enter into a Contract for Loan Guarantee Assistance in the amount of \$10,200,000 (referred to as the HUD 108 Loan and the HUD 108 Loan Agreement, as more particularly defined below), the proceeds of which the City intends to use to fund grants to finance a portion of the costs of some or all of the following improvements:

- Infrastructure improvement with respect to Whole Foods Market;
- Relocation of New England Metal Recycling E. Perry Scrap Yards;
- Acquisition of the current New England Metal Recycling site;
- Design and construction of an approximately 700 space parking garage with ancillary retail space (all referred to collectively as the "Bayside Projects"); and

**WHEREAS**, pursuant to Title 30-A, Chapter 206 of the Maine Revised Statutes, as amended, the City Council has previously established (and amended) the Bayside Redevelopment Municipal Development and Tax Increment Financing District (as amended, the "Bayside TIF District") and adopted (and amended) a development program and financial plan with respect thereto (as amended, the "Bayside Development Program"); and

**WHEREAS**, the Bayside Development Program, as amended contemplates that the City will help to finance certain improvements in the Bayside TIF District, including but not limited to the Bayside Projects listed above, all as more particularly described in the Bayside Development Program; and

**WHEREAS**, pursuant to Section 5231 of Title 30-A of the Maine Revised Statutes, as amended, the City Council hereby desires to authorize acceptance of the HUD 108 Loan and the entering into of HUD 108 Loan Agreement with respect thereto; and

**WHEREAS**, on March 24, 2008 the City Council approved the Consolidated Annual Action Plan which amended the Consolidated Housing and Community

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Development Plan to include undertaking eligible activities to be financed with the said HUD 108 Loan; and

**WHEREAS**, pursuant to notice published as required by law, including but not limited to Article VII, Section 9 of the City Charter, the City Council has held a public meeting and a public hearing upon the proposed HUD 108 Loan and has considered the extent of objections and support received from residents or property owners as to said proposal;

**NOW, THEREFORE IT IS HEREBY ORDERED THAT:**

**There be and hereby is authorized and approved the borrowing of an amount not to exceed Ten Million Two Hundred Thousand Dollars (\$10,200,000) and the related issuance and sale of the City's limited obligation tax increment financing variable / fixed rate bonds or notes and notes in anticipation thereof (the "Indebtedness") to finance a portion of the costs of the Bayside Projects listed above and all other costs (as defined herein) related and ancillary thereto.**

**BE IT FURTHER ORDERED:**

6. That pursuant to Article VII, Section 9 of the City Charter, the City Council makes the following findings and determinations:

- a. The purpose of the Bayside Projects is to help revitalize the distressed Bayside neighborhood. Bayside was once a densely settled, mixed use neighborhood with a working class enclave of carpenters, masons, and blacksmiths who worked in tanneries, foundries, and other factories. The neighborhood had more industrial uses than its adjoining urban neighborhoods. Over the past 40 years, approximately one half of its housing was demolished, much of it replaced by parking lots. Today, Bayside is a blighted area with uses incompatible with an area adjacent to a vital downtown. Bayside's industry has largely closed or migrated and today is predominantly scrap metal yards, brownfields or vacant industrial land of unusual configuration, parking lots serving downtown, and class C office space. It has poor circulation patterns, an abandoned rail line, and disjointed land configuration related primarily to parcels on which the old rail line once trafficked.
- b. Completion of the Bayside Projects will help the City (i) establish new industries to replace obsolete ones; (ii) remove contamination, blighted buildings, and blighting land uses; (iii) upgrade and replace blighted infrastructure; (iv) relocate the scrap yard businesses outside the Bayside area to a more appropriate location facilitate (v) re-use by firms that complement downtown Portland and the City overall; (vi) creates an estimated 240 to 435 new jobs, all of which will be available to low/moderate income people; (vii) leverage private investment (estimated at approximately \$62 million), to create new

buildings and create a vital area of mixed business, residential, and recreational uses and (viii) increase tax revenues.

- c. Based on the foregoing, completion of the Bayside Projects will generate substantial direct and indirect economic benefits for the City and its residents. The Bayside Projects constitutes a good and valid public purpose and will contribute to the economic growth and well-being of the inhabitants of the City.
- d. Any adverse economic effect on or detriment to the City in pursuing the Bayside Projects and in entering into the HUD 108 Loan Agreement and issuing its Indebtedness is outweighed by the contribution made by the Bayside Projects to the economic growth or well-being of the City and the betterment of the health, welfare and safety of its inhabitants.

7. That to finance a portion of the costs of the Bayside Projects, the Director of Finance be and hereby is authorized to prepare, issue, and sell the Indebtedness authorized hereby in the aggregate principal amount not to exceed \$10,200,000 at one time, or from time to time, as term debt or serial debt or some combination thereof, and to determine the dated date, form, minimum denomination, interest rate or rates (which may be variable or fixed rate or a combination of the two and if a fixed rate, up to a maximum annual interest rate of 8.00%), maturities (with the last maturity of the long term Indebtedness not to exceed the maximum term permitted by law and with the maturity of any Indebtedness issued in anticipation of the long term Indebtedness not to exceed 5 years from its issue date), provisions for early redemption, with or without premium, prior to any stated dates of maturity, and all other details, terms and provisions, not inconsistent herewith, including the form and manner of their sale and award as she may approve, such approval to be conclusively evidenced by the execution thereof, subject to the provisions of the law, the City Charter and this Order; and

8. That the Indebtedness authorized hereby 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

9. That in order to effect the borrowing and issuance of the Indebtedness authorized hereby, the Director of Finance and Mayor are hereby authorized and empowered, in the name of and on behalf of the City, to borrow from HUD an amount not to exceed \$10,200,000 at any one time outstanding (the "HUD 108 Loan") and the Director of Finance and the Mayor be and hereby are authorized and empowered, in the name and on behalf of the City, to enter into, execute and deliver to HUD, under the seal of the City attested by its Clerk, a Contract for Loan Guarantee Assistance (the "HUD 108 Loan Agreement") providing for a loan in an amount not to exceed such amount, said HUD 108 Loan Agreement to be in the usual and ordinary form utilized by HUD in connection with loans made under the Act, which is hereby approved, to contain such other terms and provisions not contrary to the general tenor hereof as the Director of

Finance and the Mayor may approve, their approval to be conclusively evidenced by the execution thereof; and

10. That the said HUD 108 Loan is hereby accepted in accordance with the provisions for said loan funds as established by HUD, with the condition that the City's full faith and credit shall not be pledged to repay the said HUD 108 Loan or the Indebtedness authorized hereby and that neither the HUD 108 Loan Agreement nor the Indebtedness shall be a general obligation of the City but shall be secured and payable solely and only from (a) a portion of the tax increment revenues of the Bayside TIF District, subject to annual appropriation by the City Council, (b) all allocations of Community Development Block Grants which have been made or for which the City may become eligible in the future under Section 106 or Section 108(q) of the Act, pursuant to 24 CFR 570.705(b)(2), (c) program income directly generated from the use of the HUD 108 Loan, pursuant to 24 CFR 570.500(a), (d) all proceeds (including insurance and condemnation proceeds) from any of the foregoing, (e) all funds or investments in the accounts established in the HUD 108 Loan Agreement, and (f) such additional security as shall be required by HUD and approved by the Director of Finance; and

11. That the Director of Finance is authorized to negotiate, execute, and deliver, in the name of and on behalf of the City a Pledge, Assignment and Security Agreement, a Variable/Fixed Rate Promissory Note, a Funding Approval/Agreement, and such other contracts, agreements, documents, leases, instruments, and certificates as may be necessary or appropriate as determined and approved by the Director of Finance in connection with the HUD 108 Loan, the Indebtedness or the financing of the Bayside Projects (together, the "Related Financing Documents"), which Related Financing 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; and

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

13. That the Indebtedness authorized hereby 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 or odd 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 such exchange or transfer, 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 instruments upon exchanges or transfer thereof to be paid by the person requesting the same; and

14. That the Director of Finance and Mayor from time to time shall execute such instruments as may be required to provide for exchanges or transfers of the Indebtedness authorized hereby, all such instruments to be signed in the same fashion as the Indebtedness authorized hereby; and

15. That the Indebtedness authorized hereby are in addition to any indebtedness previously authorized for the same or similar purposes; and

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

17. That the Director of Finance, Mayor and Clerk be, and hereby are authorized and empowered in the name of and on behalf of the City 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 Indebtedness authorized hereby; and

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

19. That if the Director of Finance, Mayor or Clerk are for any reason unavailable to approve and execute the Indebtedness authorized hereby or the HUD 108

Loan Agreement or any other Related Financing Documents necessary or convenient to the issuance, execution and delivery of the Indebtedness authorized hereby, 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.