

Meeting of August 18, 2014

**South Portland City Council  
Position Paper of the City Manager**

***Subject:***

**ORDINANCE #6-14/15 - Bond ordinance to appropriate \$3,500,000 (\*) for the Thornton Heights Separation Phases II, III and IV project and to authorize \$3,500,000 (\*) principal amount of bonds to finance such appropriations. Passed first reading on 8/4/14. ROLL CALL VOTE. Passage requires majority vote.**

***Position:***

This item is brought forward for second reading to the Bond Ordinance for the Thornton Heights Separation Phases II, III and IV project. This project was included in the FY2015 Capital Improvement Program.

The City Council is being asked to consider sending a bond referendum to the voters in November to utilize the Clean Water State Revolving Loan Fund (SRF) program to finance a portion of Thornton Heights and Pleasantdale projects.

The areas of Thornton Heights and Pleasantdale have had long histories of flooding because of inadequate sewers and no storm drains in the areas. The high flows generated from these areas have contributed significant flows to combined sewer overflows at three of the most active CSO's in the City; Cash Corner, Broadway/Evans, and Elm Street. Separation of these areas are critical components identified in the City's CSO Facilities Plan to significantly reduce the overflow events from the three CSO locations.

In reviewing available resources to fund these projects, it was determined that long term financing should be utilized to finance a portion of this multi-year project. There are various phases of these projects. Phase 1 includes work in the Sunset area, which is currently underway as approved in the 2015 CIP and paid for with available resources. Phase 2 work in the Main Street area includes stormwater and sewer work as well as streetscape work on Main Street. The City has been successful in obtaining a \$934,998 PACTS grant as previously discussed and approved at the June 16, 2014 Council meeting to pay for a portion of the street improvements and a large contribution from the TIF funds is anticipated to pay a portion of the project. At present the estimated total project costs of all phases totals in excess of \$12 million. In total we are recommending the City request voter approval for \$3,500,000 at this time.

The Maine Department of Environmental Protection (MDEP), through the Maine Municipal Bond Bank, administers the Clean Water State Revolving Loan Fund (SRF). Under the program's design, the SRF program provides communities with low interest and partially forgiven loans. The City has submitted an application to MDEP and has received preliminary notice that the Thornton Heights and Pleasantdale projects are eligible to receive funding by the DEP in the form of a 20-year low interest loan for \$3,500,000 with \$100,000 of principal forgiveness. The interest rate on the loan and associated fees result in a net interest rate which is 2% below market. At present that rate would be below 1.5%.

The loan is anticipated to be for both sewer (\$1,250,000) and storm water costs (\$2,250,000). Debt service relating to sewer cost would be paid through the Sewer Enterprise fund and would have minimal (<\$40,000) impact on the sewer rate. At present the Sewer Fund is carrying very little debt (approximately \$420,000) and this added debt would not be detrimental. All stormwater debt service costs will be paid for using TIF funds in the early years (through 2024). Upon expiration of the TIF districts (post 2024), these costs would be shifted over to be funded by the General Fund. Upon expiration of the TIF districts, the related tax revenue would also shift and would not result in a negative impact to the tax rate.

The City is very fortunate to be able to finance a large portion of these projects with TIF and grant funding. Bonding for these projects will represent less than 30% of project costs, with minimal impact to the sewer rate and no net impact to the tax rate.

This ordinance passed first reading on August 4, 2014 and is in order for second reading and Council action. If adopted, it will be placed before the voters on November 4, 2014 for authorization to issue debt. The bond ordinance has been reviewed and approved by the City's bond counsel.

***Requested Action:***

Council passage of ORDINANCE #6-14/15.

  
City Manager



CITY OF SOUTH PORTLAND

GERARD A. JALBERT  
Mayor

JAMES H. GAILEY  
City Manager

SUSAN M. MOONEY  
City Clerk

SALLY J. DAGGETT  
Jensen Baird Gardner & Henry

IN CITY COUNCIL

ORDINANCE #6-14/15

**BOND ORDINANCE TO APPROPRIATE \$3,500,000 (\*) FOR CONSTRUCTION OF THORNTON HEIGHTS/PLEASANTDALE SEWER AND STORMWATER SYSTEM IMPROVEMENTS AND TO AUTHORIZE \$3,500,000 (\*) PRINCIPAL AMOUNT OF BONDS TO FINANCE SUCH APPROPRIATIONS**

**THE COUNCIL** of the City of South Portland hereby ordains:

THAT the sum of \$3,500,000 is hereby appropriated for the purpose of paying costs of engineering and construction of the Thornton Heights/Pleasantdale Phase 2, 3 and 4 sewer separation and stormwater project, including sewer and stormwater system improvements, related streetscape improvements and other costs related thereto (the "Project" or the "Capital Project").

THAT the incurring of indebtedness by the City of South Portland by issuance of bonds of the City in the principal amount of up to \$3,500,000 (\*) pursuant to the Charter of the City is hereby authorized to finance the appropriations provided for in this Ordinance, and the full faith and credit of the City is hereby pledged for the payment of the principal of and the interest on said bonds.

THAT the principal of such bonds shall be paid in approximately equal annual installments over a period not to exceed 20 years.

THAT the issuance of one or more series of notes in anticipation of the issuance of the bonds heretofore authorized, in an amount not to exceed the amount of bonds authorized by the voters at referendum election, is hereby approved, with such notes to be in such amounts, bear interest at such rate or rates and to have such maturities, but not more than eighteen (18) months after the date of issuance, as approved unanimously by the Mayor and Chair of the City Council, the City Manager and the Director of Finance.

District One  
MICHAEL R. POCK

District Two  
PATRICIA A. SMITH

District Three  
MELISSA E. LINSKOTT

District Four  
LINDA C. COHEN

District Five  
GERARD A. JALBERT

At Large  
MAXINE R. BEECHER

At Large  
THOMAS E. BLAKE

THAT the estimated maximum cost to the City of the Project described in the first paragraph of this ordinance, including the sum of \$3,500,000 hereby appropriated, is \$9,260,000, and the period of usefulness of the Project is determined to be in excess of 35 years.

THAT the net debt of the City of South Portland after the issuance of the bonds authorized by this Ordinance and assuming no other change in the outstanding bonds and notes of the City of South Portland from the bonds or notes of the City outstanding on the date of enactment of this Ordinance will be \$54,460,200 (\*), and the bonds authorized by this Ordinance will be within the debt limit prescribed by the Constitution and Laws of the State of Maine.

THAT this Ordinance shall not authorize the issue of bonds for any Capital Project which shall not be approved by the voters at referendum election held pursuant to Section 609 of the City Charter.

THAT the bonds and notes herein authorized shall be either sold at public sale upon sealed bid, as provided in Section 623 of the City Charter, or by negotiated sale in such manner as the Director of Finance deems appropriate and in the best interest of the City, including, without limitation, by private sale to the Maine Municipal Bond Bank pursuant to the State's Clean Water State Revolving Fund and the Director of Finance be and hereby is authorized to provide that any of the bonds and notes herein authorized be made callable, with or without premium, prior to their maturity.

THAT the bonds and notes shall be transferable only on the registration books of the City kept by the transfer agent, 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 or her attorney duly authorized in writing.

THAT if the bonds or notes, or any part of them are issued on a tax-exempt basis, the officers executing such bonds or notes be and hereby are individually 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 bonds or notes to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code").

THAT if the bonds or notes, or any part of them, are issued on a tax-exempt basis, the officers executing such 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 ensure that interest on the bonds or 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 notes to be subject to federal income taxation.

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 ensure that

the disclosure requirements imposed by Rule 15c2 12 of the Securities and Exchange Commission, if applicable, are met.

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, following completion of construction, for a period not to exceed 3 years from the issue date thereof, 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.

THAT the investment earnings on the proceeds of the bonds and notes, if any, and the excess proceeds of the bonds or notes (including premium), if any, be and hereby are appropriated for the following purposes: (1) To any costs of the Project in excess of the principal amount of the bonds or notes authorized hereunder; (2) If the bonds or notes are issued on a tax exempt basis, in accordance with applicable terms and provisions of the Arbitrage and Use of Proceeds Certificate delivered in connection with the sale of the bonds or notes including, to the extent permitted thereunder, to the City’s General Fund; and (3) To pay debt service on the bonds.

THAT the Director of Finance, Mayor and Chair of the City Council, City Manager, 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, and to execute, deliver, file, approve, and record all such financing documents, contracts, agreements, deeds, assignments, certificates, memoranda, abstracts, and other documents as may be necessary or advisable, with the advice of bond counsel for the City, to carry out the provisions of the resolutions heretofore adopted at this meeting in connection with the Project, the issuance, execution, sale, and delivery by the City of the bonds and notes and the execution and delivery of the documents, including without limitation any loan agreement and other documents required by the Maine Municipal Bond Bank or the Maine Department of Environmental Protection in connection with the Maine Clean Water State Revolving Loan Fund.

THAT if any of the officers or officials of the City who have signed or sealed the bonds and notes hereinbefore authorized 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 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.

THAT if the Director of Finance, Mayor and Chair of the City Council, City Manager or Clerk are for any reason unavailable to approve and execute the bonds or any related financing documents, 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 himself or herself performed such act.

THAT during the term any of the bonds are outstanding, the Director of Finance is hereby authorized, in the name and on behalf of the City, to issue and deliver refunding bonds on either a current or advance refunding basis, to refund some or all of the bonds then outstanding, and with the consent of the Mayor and Chair of the City Council and the City Manager, to determine the date, form, interest rate, maturities (not to exceed 20 years from the date of issuance of the original bonds) and all other details of such refunding bonds including the form and manner of their sale and award. The Director of Finance is hereby 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, countersigned by the Mayor and Chair of the City Council, sealed with the seal of the City, attested by its Clerk.

(\*) This amount shall be reduced by the amount of bonds designated for any Capital Project described above which is not approved by the voters at referendum election pursuant to Section 609 of the City Charter. The final amounts in the title as printed on the bonds will be the aggregate of the amounts approved at said referendum.

Fiscal Note: \$3,400,000 (\$100,000 forgiven pursuant to State Revolving Loan Program)  
Principal + \$535,000 Interest = \$3,935,000

Dated: August 4, 2014