

7/15/2009

60-O-09

**AN ORDINANCE**

**Authorizing the City to Borrow American Recovery and Reinvestment Act Funds from the Illinois Environmental Protection Agency State Public Water Supply Revolving Loan Fund**

WHEREAS, the City of Evanston, Cook County, Illinois, ("City") operates its drinking water treatment facility and potable water distribution system, including all property, real, personal, or otherwise owned or to be owned by the City or under the control of the City, and used for drinking water treatment and distribution purposes, and any and all further extensions, improvements, and additions to the system; but, however, expressly excluding property which from time to time is deemed by the City to be no longer useful or necessary to the continued effective and efficient operation of the system or extensions, improvements or additions which are at the time of construction, acquisition and installation expressly excluded from the definition of system hereunder by the City, hereinafter referred to as "System," and in accordance with the provisions of Section 6(a) of Article VII of the *1970 Constitution of the State of Illinois* and the *Local Government Debt Reform Act, Illinois Compiled Statutes 1993 30 ILCS 350/1 et seq.*, hereinafter collectively referred to as the "Act"; and

WHEREAS, The City Council has determined that it is advisable, necessary and in the best interests of public health, safety and welfare to improve the System. Said improvements include the following:

Loan L173382 is for the replacement of existing 80 to 100-year old deteriorating 6-inch and 8-inch water mains in three locations with new 8-inch diameter water mains. Loan L173383 is for the installation of a specialized intake heating system on the 54-inch diameter water intake pipe to

eliminate freezing and icing conditions during extremely cold weather conditions. The project locations are Dodge Avenue from Dempster Street to Lee Street (water main replacement), Dempster Street from McDaniel Avenue to Fowler Avenue (water main replacement), McDaniel Avenue from Dempster Street south to the *cul de sac* (water main replacement), and the Evanston Water Utility (intake heating system). The expected useful life of the water main improvements are estimated at 100 years and the useful life of the heated intake system is estimated at 40 years. All improvements are to be constructed in accordance with the plans and specifications prepared by the City's staff and consulting engineers. All work herein described shall be referred to as the "Project."

**WHEREAS**, the estimated cost of constructing and installing the Project, including engineering, legal, financial, and other related expenses is two million five hundred thousand dollars (\$2,500,000) and there are insufficient funds on hand and lawfully available to pay such costs; and

**WHEREAS**, such costs are expected to be paid for with a loan to the City by the American Recovery and Reinvestment Act through the Illinois Environmental Protection Agency's Public Water Supply Revolving Loan Fund, said loan to be repaid from revenues of the System, and such loan is authorized to be accepted at this time pursuant to the Act; and

**WHEREAS**, pursuant to, and in accordance with, the provisions of the Act, the City is authorized to borrow funds from the Public Water Supply Revolving Loan Fund in the aggregate principal amount of two million five hundred thousand dollars (\$2,500,000) for the purpose of providing funds to pay the costs of the Project; and

**WHEREAS**, the loan to the City shall be made pursuant to a Loan Agreement, including certain terms and conditions, between the City and the Illinois Environmental Protection Agency;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF  
THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:**

**SECTION 1:** The City Council hereby finds that the recitals contained in the preamble to this Ordinance are true and correct and hereby incorporates them into this Ordinance.

**SECTION 2:** It is necessary to public health, safety and welfare and in the best interests of the City to construct the Project and that the System continue to be operated in accordance with the provisions of the Act, and that for the purpose of constructing the Project, it is hereby authorized that funds be borrowed by the City of Evanston in an aggregate principal amount not to exceed two million five hundred thousand dollars (\$2,500,000).

**SECTION 3:** Subject to the express provisions of this Ordinance, the City may not adopt additional ordinances or amendments which provide for any substantive or material change in the scope and intent of this Ordinance, including but not limited to interest rate, preference or priority of any other ordinance with this Ordinance, parity of any other ordinance with this Ordinance, or otherwise alter or impair the obligation of the City to pay the principal and interest due to the Public Water Supply Revolving Loan Fund without the written consent of the Illinois Environmental Protection Agency.

**SECTION 4:** Repayment of the loan to the Illinois Environmental Protection Agency by the City pursuant to this Ordinance is to be solely from the revenues derived from the System, as hereinafter provided; and the loan does not constitute an indebtedness of the City within the meaning of any constitutional or statutory limitation. For the purposes hereof, "revenues" (hereinafter "Revenues") of the

System means all income from whatever source derived from the System, including investment income and the like, connection, permit and inspection fees and the like, user charges of all kinds for the use and service of the System, and including such transfers from the corporate funds or the water fund of the City as the City Council shall from time to time determine through the budget and appropriation of such funds, or other proper action; but shall not include non-recurring income from the sale of property of the System, governmental or other grants or loans, and as otherwise determined in accordance with generally accepted accounting principles for municipal enterprise funds. The repayment of the loan from the Revenues shall in all events be made only after provision for the payment of "Operation and Maintenance Costs" of the System, hereby defined to mean all costs of operating, maintaining and routine repair of the System, including such items as wages, salaries, costs of materials and supplies, taxes, power, fuel, insurance, purchase of drinking water treatment or distribution capacity, including all payments for such services to be made pursuant to long-term contracts for the provision of such services, but shall not include debt service of any kind, depreciation, any capital reserve requirements, and as otherwise determined in accordance with generally accepted accounting principles for municipal enterprise funds. The City hereby pledges the Revenues, after provision has been made for the payment of Operation and Maintenance Costs, to the repayment of the loan; and covenants and agrees to charge such rates and impose such fees and charges for the use and service of the System as shall be sufficient to pay in a timely manner all repayments as required on the loan pursuant to the terms of the Loan Agreement.

**SECTION 5:** The City Council hereby authorizes acceptance of the offer of a loan through the Public Water Supply Revolving Loan Fund, including all terms and conditions of the Loan Agreement ("Loan Agreement"), as well as all special conditions contained therein and made a part thereof by reference. The loan funds awarded shall be used solely for the purpose of the Project as approved by the Illinois Environmental Protection Agency in accordance with the terms and conditions of the Loan Agreement.

**SECTION 6:** The City Manager is hereby authorized and directed to execute the Loan Agreement with the Illinois Environmental Protection Agency and to negotiate any additional terms or conditions deemed to be in the best interests of the City.

**SECTION 7:** The City hereby covenants and agrees that the Revenues, after provision has been made for the payment of Operation and Maintenance Costs, are a dedicated source of funds for the repayment of the loan as evidenced by the Loan Agreement. The City reserves the right, without limitation of any kind, to issue obligations ("Obligations") of any kind (including bonds, notes, or other obligations by whatever name and including all loans) payable from the Revenues and prior in lien to, on a parity of lien with, or subordinate in lien to the lien on the Revenues for the repayment of the loan as provided in the Loan Agreement, as shall be determined by the City Council; provided, however, that any covenants or agreements made by the City for the benefit of the holders of such Obligations shall, at the time of the incurring of such Obligations, also be made in a similar manner for the benefit of the obligation to repay the loan as represented by the Loan Agreement.

The City intends that the obligation to repay the loan as represented by the loan as evidenced by the Loan Agreement shall bear interest as provided therein on a basis which is not tax-exempt under the provision of the Internal Revenue Code of 1986, and the officers of the City charged with the execution of the Loan Agreement shall act in accordance with this stated intent.

**SECTION 8:** If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

**SECTION 9:** All ordinances or resolutions, or parts thereof, in conflict herewith, are hereby repealed.

**SECTION 10:** This Ordinance 60-O-09 shall be in full force and effect from and after its passage, approval and publication in the manner provided by law, all pursuant to the Act and including, expressly, the home rule powers of the City pursuant to Section 6(a) of Article VII of the *Illinois Constitution of 1970*.

Introduced: July 27, 2009  
Adopted: July 27, 2009

Approved: July 29, 2009

Elizabeth B. Tisdahl  
Elizabeth B. Tisdahl, Mayor

Attest:  
Rodney Greene  
Rodney Greene, City Clerk

Approved as to form:  
Elke B. Tober-Purze  
Elke B. Tober-Purze, Interim  
First Assistant Corporation Counsel