

126-O-12

AN ORDINANCE

**Amending Ordinance 28-O-11,
“Authorizing the City to Borrow Funds from
the Illinois Environmental Protection Agency
Water Pollution Control Loan Program”**

WHEREAS, on June 13, 2011, the City enacted Ordinance 28-O-11, “Authorizing the City to Borrow Funds from the Illinois Environmental Protection Agency Water Pollution Control Program,” attached hereto as Exhibit A and incorporated herein by reference; and

WHEREAS, 28-O-11 states that IEPA’s “loan to the City shall be made pursuant to a Loan Agreement, including certain terms and conditions, between the City and the IEPA;” and

WHEREAS, IEPA requires an amendment to the terms of 28-O-11 before it will disburse any loan funds to the City,

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

SECTION 1: The foregoing recitals are found as fact and incorporated herein by reference.

SECTION 2: The City Council hereby amends Ordinance 28-O-11 to include a new Section 11 thereof, to read as follows:

As long as the City has outstanding revenue bonds payable from revenues of the System that are senior to the revenue bond authorized by this Ordinance 28-O-11, as amended, the City shall maintain an account, coverage and reserves equivalent to the accounts, coverages and reserves required by the outstanding ordinances.

SECTION 3: The findings and recitals herein are declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

SECTION 4: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5: This Ordinance 126-O-12 shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Introduced: October 22, 2012

Approved:

Adopted: November 12, 2012

November 16, 2012

Elizabeth B Tisdahl
Elizabeth B. Tisdahl, Mayor

Attest:

Approved as to form:

Rodney Greene
Rodney Greene, City Clerk

W. Grant Farrar
W. Grant Farrar, Corporation Counsel

EXHIBIT A

Ordinance 28-O-11

3/30/2011

28-O-11

AN ORDINANCE

**Authorizing the City to Borrow Funds from
the Illinois Environmental Protection Agency
Water Pollution Control Loan Program**

WHEREAS, the City of Evanston, Cook County, Illinois, ("City") operates its sewage collection 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 sewage collection purposes, and any and all further extensions, improvements, and additions to the system; 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 30 ILCS 350/1 *et seq.*, the Local Government Debt Reform Act, 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:

Large diameter sewer rehabilitation by installing a cured-in-place pipe line in approximately 1,270 feet of 60-inch diameter sewer and 280 feet of 72-inch diameter combined sewer on Emerson Street, 1,450 feet of 48-inch diameter combined sewer on Davis Street, 1,700 feet of 60-inch diameter combined sewer on Elgin Road, 320 feet of 36-inch diameter combined sewer on Central Street, and 2,200 feet of 48-inch diameter combined sewer on Prairie Avenue. The expected useful life of said rehabilitated

sewers is estimated at 100 years. All improvements are to be constructed in accordance with the plans and specifications prepared by the City of Evanston Professional Engineer registered staff. 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 three million, seven hundred fifty-six thousand, seven hundred seventy-five dollars (\$3,756,775) 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 from the Illinois Environmental Protection Agency, hereinafter referred to as "IEPA," through the Water Pollution Control Loan Program, hereinafter referred to as the "Program," 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 Program in the aggregate principal amount of four million dollars (\$4,000,000) 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 IEPA,

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

SECTION 1: That the foregoing recitals are found as fact and incorporated herein by reference.

SECTION 2: That 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 four million dollars (\$4,000,000).

SECTION 3: That, 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 Program without the written consent of the IEPA.

SECTION 4: That repayment of the loan to the IEPA 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 sewer 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 sewage treatment or disposal 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 load pursuant to the terms of the Loan Agreement.

SECTION 5: That the City Council hereby authorizes acceptance of the offer of a loan through the Program, 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 IEPA in accordance with the terms and conditions of the Loan Agreement.

SECTION 6: That the City Manager is hereby authorized and directed to execute the Loan Agreement with the IEPA and to negotiate any additional terms or conditions deemed to be in the best interests of the City.

SECTION 7: That 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: That 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 28-O-11 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: May 23, 2011

Approved:

Adopted: June 13, 2011

June 15, 2011

Elizabeth B. Tisdahl
Elizabeth B. Tisdahl, Mayor

Attest:

Rodney Greene
Rodney Greene, City Clerk

Approved as to form:

W. Grant Farrar
W. Grant Farrar, City Attorney