

ORDINANCE NO. 24-\_\_\_\_\_

ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA ADDING ARTICLE 22,  
CHAPTER 8 OF THE HAYWARD MUNICIPAL CODE REGARDING WATER AND  
WASTEWATER ENTERPRISE REVENUE BOND LAW

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

**SECTION 1.** Chapter 8 of the Hayward Municipal Code is added to read as follows:

CHAPTER 8, ARTICLE 22  
WATER AND WASTEWATER ENTERPRISE REVENUE BOND LAW

**8-22.101 - TITLE.**

This Article may be cited as the City of Hayward Water and Wastewater Enterprise Revenue Bond Law.

**8-22.102 - PURPOSE AND INTENT.**

This Article is enacted by the City Council of the City of Hayward under and pursuant to the powers granted and reserved to the City under Sections 3, 5 and 7 of Article XI of the Constitution of the State of California and Section 200 of the Charter of the City.

The purpose and intent of this Article is to provide the procedures to be followed by the City with respect to the authorization, issuance and sale of bonds and other obligations for the purpose of financing capital improvement costs related to the water enterprise of the City and the wastewater enterprise of the City.

The City Council hereby finds that the City's issuance of bonds to finance capital improvement costs relating to the water system and to the wastewater system is a municipal affair and promotes a necessary and essential public purpose.

**8-22.103 - DEFINITIONS.**

(a) The following definitions apply in this Article and shall not be construed to define the same terms found in any other section of this Code. As used in this Article, the following terms shall have the meanings set forth below:

- (1) "Bonds" means any bonds, notes, loans, interim certificates, debentures, installment purchase agreements, installment sale agreements, leases, or other obligations that are issued or incurred under this Article and are payable from revenues described in the issuing instrument.

- (2) "Capital improvement" means (a) any addition, betterment, replacement, renewal, extension, equipping, or improvement of or to the water system or the wastewater system, including the acquisition of land or any interests in land, and (b) any capital costs for the extension, reinforcement, enlargement, or other improvement of a facility or property, or for the acquisition of an interest in a facility or property, that is determined by the City to be necessary or convenient in connection with use of the water system or the wastewater system.
- (3) "Capital improvement costs" means all costs and expenses the City pays or incurs in connection with planning, designing, acquiring, constructing, installing, furnishing, equipping, and financing a capital improvement; placing a capital improvement in operation; disposing of a capital improvement; and obtaining governmental approvals, certificates, permits, and licenses for a capital improvement. "Capital improvement costs" includes the following:
- (A) Reimbursement to the City for any costs and expenses that are included in this definition, are paid by the City and have not previously been reimbursed to the City.
  - (B) Costs of preliminary investigation and development, including the cost of performing or acquiring feasibility and planning studies; the cost of securing regulatory approvals; the cost of acquiring land and land rights; fees for engineering and contractor services; the costs of labor, materials, equipment, utility services, and supplies; and legal fees and financing expenses.
  - (C) Working capital and working-capital reserves in such amounts as the City determines to be appropriate.
  - (D) Interest accruing in whole or in part on bonds before and during construction of a capital improvement or any portion of a capital improvement, and interest accruing for such additional time as the City determines.
  - (E) Deposits from the proceeds of bonds in any funds or accounts when the issuing instrument requires such deposits.
  - (F) The payment of principal, purchase price, premium, and interest of any indebtedness, the proceeds of which were applied to capital improvement costs.
  - (G) Training and testing costs that are properly allocable to acquiring or constructing a capital improvement or placing it in operation.
  - (H) All costs of insurance that is in effect when a capital improvement is constructed and placed in operation.

- (I) Amounts due the United States of America as rebate of investment earnings on the proceeds of bonds or as penalties in lieu of rebate.
  - (J) Amounts payable for capital costs of expanding, reinforcing, enlarging, or otherwise improving facilities the City determines to be necessary in connection with the use of a capital improvement, and the costs associated with the removal from service of, or reductions in service by, any facilities as a result of the expansion, reinforcement, enlargement or other improvement of such facilities or the construction of a capital improvement.
  - (K) Costs of issuance of any bonds, including costs of legal, underwriting, feasibility, engineering, and other consultants; costs of City staff; costs of reserve funds; and costs of bond insurance or other credit or liquidity enhancement for the bonds.
  - (L) Fees and expenses relating to any lending or credit facility or agreement for a capital improvement or any portion of a capital improvement.
  - (M) Any other cost as the City Council may, in its discretion, define as a capital improvement cost in the issuing instrument.
- (4) "Director of Finance" means the chief financial officer of the City or any designee of such official.
  - (5) "Include" and its variants are terms of enlargement rather than of limitation, so that "includes" means "includes but not limited to," and "including" means "including but not limited to."
  - (6) "Issuing instrument" means the resolution of the City Council adopted under this Article and any indenture, trust agreement, loan agreement, lease, installment-purchase agreement, revolving-credit agreement, credit or liquidity agreement, assignment agreement, or other instrument or agreement under which the City issues bonds for the water system or the wastewater system as described in this Article.
  - (7) "Revenues" means all income, rents, rates, fees, charges, and other moneys that the City derives from the water system or the wastewater system and that the City Council may, in its discretion, designate as "revenues" in the issuing instrument. At the discretion of the City Council, the revenues that are pledged to the payment of bonds may be net of the costs of operating and maintaining the water system or the wastewater system.
  - (8) "Wastewater system" means the system owned or operated by the City for the collection, treatment, disposal or reuse of wastewater, including sewage treatment

plants, intercepting and collecting sewers, outfall sewers, force mains, pumping stations, ejector stations, oxidation ponds, pipes, valves, machinery and all other appurtenances necessary, useful or convenient for the collection, treatment, purification, reclamation or disposal of sewage, and any necessary lands, rights-of-way and other real or personal property useful in connection therewith.

- (9) “Water system” means the water treatment, production, storage and distribution system owned or operated by the City, including but not limited to all facilities, properties and improvements at any time owned or operated by the City for the collection, treatment and supply of water within the service area of such system, and any necessary lands, rights, entitlements and other property useful in connection therewith, together with all extensions thereof and improvements thereto hereafter acquired, constructed or installed by the City.

(b) Terms not defined in this section shall be interpreted to give this Article its most reasonable meaning and application, consistent with applicable State and federal law.

#### **8-22.104 - GENERAL POWERS.**

The City is authorized and empowered to do the following:

- (a) Issue bonds for the purposes of financing capital improvement costs, refunding outstanding bonds, and paying all costs incurred in connection with bonds.
- (b) Establish the terms for financings undertaken in accordance with this Article.
- (c) Employ or contract for such legal, financial advisory, underwriting, feasibility, engineering, and other consultant services the City Council determines to be necessary for the issuance and sale of bonds.
- (d) Do all things necessary or convenient to carry out the purposes of this Article.

#### **8-22.105 - AUTHORIZATION AND TERMS OF BONDS.**

The City Council may adopt a resolution authorizing the issuance of bonds in accordance with this Article. Every issue of bonds shall be payable from revenues of the water system or the wastewater system for which capital improvement costs are being financed. The resolution that authorizes the issuance of bonds and the issuing instrument may prescribe any or all of the following for the bonds:

- (1) The form of the bonds, which may be issued as serial bonds, term bonds, or installment bonds, or any combination thereof.

- (2) The date or dates to be borne by the bonds.
- (3) The date or dates of maturity of the bonds.
- (4) The interest to be borne by the bonds, which may be taxable or tax exempt, fixed or variable, and which may be paid on a current-interest-rate basis, a capital-appreciation basis or any combination thereof.
- (5) The date or dates that interest on the bonds will be payable.
- (6) The denominations, form, and registration privileges of the bonds.
- (7) The manner of execution of the bonds.
- (8) The place or places the bonds are payable.
- (9) The terms of redemption of the bonds.
- (10) Any other terms and conditions as the City may deem necessary or advisable.

Notwithstanding the foregoing provisions of this section, at the discretion of the City Council, any bonds issued under this Article may be secured or evidenced by an issuing instrument in the form of an indenture or a trust agreement between the City and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company. An issuing instrument may contain any lawful provisions the City Council determines to be reasonable and proper.

#### **8-22.106 - NO ELECTION.**

No election shall be required for the issuance and sale of the revenue bonds under this Article.

#### **8-22.107 - BOND INSURANCE.**

The director of finance may obtain bond insurance or other credit enhancement or liquidity support for the bonds and may approve the entering into by the City of any credit agreement, reimbursement agreement, standby bond-purchase agreement, or similar agreement with any person or entity. Such an agreement must contain the terms of the credit, reimbursement, liquidity support, interest rate, and security, and any other terms the director of finance deems necessary or appropriate.

**8-22.108 - PERSONAL LIABILITY.**

Neither the members of the City Council; nor the City's officers, employees, and agents; nor any person executing bonds will be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance of the bonds.

**8-22.109 - LIMITED LIABILITY.**

The bonds issued under this Article shall not constitute or evidence a lien or charge on the general revenues of the City, and shall constitute and evidence an obligation of the City that is payable only from the revenues of the water system or the wastewater system for which capital improvement costs are being financed, and the face of each bond shall contain a legend to this effect.

**8-22.110 - REFUNDING BONDS.**

The City Council may issue bonds to refund outstanding bonds. Such a refunding includes payment of the principal, purchase price, interest, and redemption premiums, if any, of the outstanding bonds. At the discretion of the City Council, based on the director of finance's recommendation, the proceeds of bonds issued to refund outstanding bonds may be applied to retire the outstanding bonds at maturity, to redeem the outstanding bonds on a redemption date or to purchase the outstanding bonds before maturity, upon such terms as the City Council determines to be appropriate.

**8-22.111 - SALE OF THE BONDS.**

The bonds may be sold at either a public or private sale, on either a negotiated or competitive basis, and at a price which is at, above, or below the par value of the bonds. The manner of sale of the bonds shall be designated in the resolution of the City Council authorizing the issuance of the bonds.

**8-22.112 - LIBERAL CONSTRUCTION.**

This Article, being necessary for the health, welfare, and safety of the City and its residents, is to be liberally construed to carry out its purposes.

**8-22.113 - COMPLETE, ADDITIONAL, AND ALTERNATIVE METHOD.**

This Article provides a complete, additional, and alternative method for doing the things authorized and is to be regarded as supplemental and additional to the powers conferred by other laws. No action or proceeding other than those required by this Article shall be necessary for the valid authorization and issuance of the bonds.

**8-22.114 - VALIDITY OF BONDS.**

The validity of any bonds does not depend on, and is not affected in any way by, any proceedings taken by the City for acquisition, construction, or completion of any properties or projects for which the bonds are issued or any agreements made in connection with the acquisition, construction, or operation of those properties. The bonds shall be incontestable and by their issuance and delivery shall conclusively establish the due performance of all conditions precedent to their issue.

**8-22.115 - AMENDMENT OF ARTICLE.**

This Article may not be amended to have a material, adverse effect upon the rights of the holders of any outstanding bonds without the written consent of the bond holders, except as follows: this Article may be amended at any time if the amendment is needed to cure an ambiguity or to correct or supplement a defective provision; if the City Council finds that the amendment will not materially impair or adversely affect the City's interests or the interests of any bond holder; or if the amendment will apply solely to bonds issued after its effective date.

**8-22.116 - ARTICLE CONTROLLING.**

To the extent this Article is inconsistent with any general statute or special act, this Article shall be controlling.

**8-22.117 REVENUE BONDS EXCLUDED FROM BONDED INDEBTEDNESS OF CITY.**

Revenue bonds issued under this Article shall not be taken into consideration in determining the bonded indebtedness which the City is authorized to incur and shall be excluded from any limitation provided by the Charter or by law on the amount of bonded indebtedness of the City.

**8-22.118 - SEVERABILITY.**

If any section, subsection, sentence, clause, phrase or word of this Article is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Article.

**SECTION 2.** California Environmental Quality Act (CEQA). The City Council independently finds and determines that this action is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines, as an activity that is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The general exemption applies in this instance because it can be seen with certainty that there is no possibility that the proposed amendments could have a significant effect on the

environment, and thus are not subject to CEQA. Thus, it can be seen with certainty that the proposed project would not have a significant effect on the environment.

**SECTION 3.** If any section, subsection, paragraph or sentence of this Ordinance, or any part thereof, is for any reason found to be unconstitutional, invalid or beyond the authority of the City of Hayward by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

**SECTION 4.** This Ordinance shall become effective on the 30th day following the date of its passage and adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_ day of \_\_\_\_\_, 2024, by Council Member \_\_\_\_\_,

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_ day of \_\_\_\_\_, 2024, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:  
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: \_\_\_\_\_  
Mayor of the City of Hayward

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward