



Legislation Text

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CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to the solid waste system of The City of Seattle; providing for the defeasance of the claim or lien of certain of the City’s outstanding solid waste system revenue bonds and payment of the administrative costs of such defeasance; providing for and authorizing the purchase of certain obligations and for the use and application of the money derived from those investments; authorizing the execution of a defeasance trust agreement to establish a defeasance escrow; authorizing the call for redemption prior to their maturity of those outstanding bonds that are to be defeased; and ratifying and confirming certain prior acts.

WHEREAS, The City of Seattle (“City”) owns, maintains, and operates a solid waste collection, transportation, and disposal system as part of Seattle Public Utilities (“Solid Waste System”), which Solid Waste System has from time to time required various additions, improvements, betterments, and extensions; and

WHEREAS, the City has previously authorized and issued, and may from time to time in the future authorize and issue, solid waste system revenue bonds having a charge and lien on the Net Revenue of the Solid Waste System prior and superior to any other charges whatsoever (“Parity Bonds”), which are designated as defeasible under this ordinance (“Defeasible Bonds”); and

WHEREAS, it is advantageous to the City and its ratepayers to provide for the application of available Net Revenue or other available funds (other than proceeds of Tax-Advantaged Bonds) to defease outstanding Defeasible Bonds whenever the Director of Finance determines that such defeasance will achieve a long-term cost savings or other benefit to the City or its ratepayers, all as permitted under chapter 39.53 RCW; and

WHEREAS, the City has determined that it is in the best interest of the City and its ratepayers to authorize,

subject to the provisions of this ordinance, the Director of Finance to carry out the defeasance and redemption of all or any portion of the Defeasible Bonds and to pay the administrative costs of carrying out the defeasance of those Defeasible Bonds; and

WHEREAS, pursuant to the authority delegated in this ordinance, the Director of Finance from time to time will receive, review, and adopt a plan (“Defeasance Plan”) to defease selected maturities (or partial maturities) of certain series of those Defeasible Bonds, which selected series and maturities (or partial maturities) will be identified in the Defeasance Plan, and to carry out the defeasance and redemption of any Defeasible Bonds as the Director of Finance may deem in the best interests of the City and its ratepayers; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. **Definitions.** As used in this ordinance, the following capitalized terms shall have the meanings set forth below:

“**Acquired Obligations**” means Government Obligations maturing or having guaranteed redemption prices at the option of the holder at such time or times as may be required to provide funds sufficient to carry out the Defeasance Plan, and satisfying the requirements of the Defeased Bond Documents relating to the Defeased Bonds included in that Defeasance Plan. For purposes of this definition, eligible “Government Obligations” for inclusion in a Defeasance Plan shall be determined in accordance with the applicable Defeased Bond Documents.

“**Bond Counsel**” means a lawyer or a firm of lawyers, selected by the City, of nationally recognized standing in matters pertaining to bonds issued by states and their political subdivisions.

“**City**” means The City of Seattle, Washington, a municipal corporation duly organized and existing under the laws of the State.

“**City Council**” means the City Council of the City, as duly and regularly constituted from time to time.

“**Code**” means the Internal Revenue Code of 1986, or any successor thereto, as it has been and may be

amended from time to time, and regulations thereunder.

“**Defeasance Plan**” means the plan approved by the Director of Finance pursuant to the delegation set forth herein to accomplish the defeasance and redemption of the identified Defeasible Bonds. Each Defeasance Plan must identify the maturities (or partial maturities) and series of Defeasible Bonds to be defeased and redeemed thereby, and must provide for their defeasance and/or redemption, substantially as follows, with such additional detail and adjustments to be set forth in the Defeasance Trust Agreement as the Director of Finance may deem necessary or desirable:

(a) The City shall deposit available Net Revenue of the Solid Waste System, and such other money (other than proceeds of Tax-Advantaged Bonds) as may be included in the plan by the Director of Finance, into a defeasance escrow or trust account held by the Defeasance Trustee;

(b) Upon receipt of a certification or verification by a certified public accounting firm or financial advisor that the amounts deposited with it will be sufficient to accomplish the defeasance and redemption as described in such Defeasance Trust Agreement, the Defeasance Trustee shall invest such escrow deposits in the Acquired Obligations specified therein (unless directed in the Defeasance Trust Agreement to hold such deposits uninvested) and shall establish a beginning cash balance; and

(c) As further directed in the Defeasance Trust Agreement, the Defeasance Trustee shall apply the amounts received as interest on and maturing principal of such Acquired Obligations (together with any cash balance in the defeasance trust account) to call, pay, and redeem those Defeasible Bonds on the dates and times identified in the plan, and (if so directed) to pay the administrative costs of carrying out the foregoing.

If the Director of Finance serves as the Defeasance Trustee, the Director of Finance shall approve a written Defeasance Plan (which need not be set forth in a Defeasance Trust Agreement) providing that the escrow funds are to be held separate and apart from all other funds of the City and are to be applied substantially as set forth above.

“**Defeasance Trust Agreement**” means an escrow or trust agreement between the City and a

Defeasance Trustee as described in Section 3(d) of this ordinance.

“Defeasance Trustee” means the Director of Finance, or a financial institution selected by the Director of Finance, serving in the capacity of Defeasance Trustee or escrow agent under a Defeasance Trust Agreement.

“Defeased Bond Documents” means (a) the ordinance(s) authorizing the issuance of the Defeased Bonds; (b) the authenticated bond form; and (c) the written agreement(s) setting forth the terms, conditions, or covenants pursuant to which such bond was issued and sold, as set forth in any one or more of the following (if any): (i) a sale resolution, (ii) a bond purchase contract (as defined in the applicable authorizing ordinance), (iii) a bond indenture or a fiscal agent or paying agent agreement (other than the State fiscal agency contract), and (iv) a direct purchase or continuing covenant agreement.

“Defeased Bonds” means those Defeasible Bonds identified in a Defeasance Plan in accordance with this ordinance.

“Defeasible Bonds” means each series of Parity Bonds that have been designated, or may in the future be designated, as defeasible under this ordinance, including: (a) each series of Outstanding Parity Bonds listed in Exhibit A; and (b) each series of Future Parity Bonds designated by the City as Defeasible Bonds.

“Director of Finance” means the Director of the Finance Division of the Department of Finance and Administrative Services of the City, or any other officer who succeeds to substantially all of the responsibilities of that office.

“Government Obligations” means, unless otherwise defined in the Defeased Bond Documents, any government obligation as that term is defined in RCW 39.53.010, as now in effect or as may be hereafter amended.

“Gross Revenue” means (a) all income, revenues, receipts, and profits derived by the City through the ownership and operation of the Solid Waste System; (b) Payment Agreement Receipts, to the extent that such receipts are not offset by Payment Agreement Payments; and (c) the investment income earned on money held in any fund or account of the City, including any bond redemption funds and the accounts therein, in connection

with the ownership and operation of the Solid Waste System. Gross Revenue does not include: (a) income derived from investments irrevocably pledged to the payment of any defeased bonds payable from Gross Revenue; (b) investment income set aside for or earned on money in any fund or account created or maintained solely for the purpose of complying with the arbitrage rebate provisions of the Code; (c) any gifts, grants, donations, or other funds received by the City from any State or federal agency or other person if such gifts, grants, donations, or other funds are the subject of any limitation or reservation imposed by the donor or grantor or imposed by law or administrative regulation to which the donor or grantor is subject, limiting the application of such funds in a manner inconsistent with the application of Gross Revenue hereunder; (d) the proceeds of any borrowing for capital improvements (or the refinancing thereof); (e) the proceeds of any liability or other insurance, including but not limited to insurance proceeds compensating the City for the loss of a capital asset, but excluding business interruption insurance or other insurance of like nature insuring against the loss of revenues; and (f) the earnings of any separate utility system acquired or constructed by the City in accordance with the provisions for a separate system in the Defeased Bond Documents.

“Maintenance and Operation Expenses” means all expenses incurred by the City in causing the Solid Waste System to be operated and maintained in good repair, working order, and conditions, including without limitation: (a) deposits, premiums, assessments or other payments for insurance (other than payments out of proceeds of Parity Bonds), if any, on the Solid Waste System; (b) payments into pension funds; (c) State-imposed taxes; (d) amounts due under Contract Resource Obligations in accordance with the provisions of the Defeased Bond Documents; (e) payments made to any other person or entity for the collection, transportation, treatment, or disposal of solid waste or other commodity or service related to the Solid Waste System; and (f) payments with respect to any other expenses of the Solid Waste System that are properly treated as operation and maintenance expenses under generally accepted accounting principles. Maintenance and Operation Expenses does not include any depreciation, amortization, or other similar recognitions of non-cash expense items made for accounting purposes only; taxes levied or imposed by the City or payments in lieu of City taxes;

payments of claims or judgments; or capital additions or capital replacement.

“**Net Revenue**” means, for any period, Gross Revenue less Maintenance and Operation Expense.

“**Omnibus Defeasance Ordinance**” means this ordinance (as it may be amended from time to time) or any other ordinance of the City passed in the future, authorizing the defeasance and redemption of Defeasible Bonds.

“**Outstanding Parity Bonds**” means those outstanding Parity Bonds identified in Exhibit A. When used in reference to a particular date or series of Parity Bonds, Outstanding Parity Bonds shall mean those Parity Bonds (including any Parity Bonds issued subsequent to the date of this ordinance) that are outstanding as of that date or as of the issue date of such series.

“**Parity Bond Account**” means the Solid Waste System Revenue Bond Account, created in the Solid Waste Fund by Ordinance 118975 for the purpose of paying and securing payment of the principal of and interest on Parity Bonds.

“**Parity Bonds**” means solid waste system revenue obligations payable solely from the Parity Bond Account having a charge and lien on the Net Revenue of the Solid Waste System prior and superior to any other charges whatsoever.

“**Solid Waste Fund**” means the “Garbage Collection and Disposal Fund” of the City created by Ordinance 90379 and subsequently renamed the “Solid Waste Fund.”

“**Solid Waste System**” means the entire solid waste collection, transportation, and disposal system of the City, created by Ordinance 90379, as amended, together with all additions thereto and betterments and extensions thereof at any time made, acquired, or constructed, together with any other utility systems of the City hereafter combined with the Solid Waste System. The Solid Waste System shall not include any separate utility system acquired or constructed by the City pursuant to the Defeased Bond Documents.

“**Tax-Advantaged Bond**” means any bond or other financial obligation issued by the City, (a) the interest on which is intended on its issue date to be excludable from gross income for federal income tax

purposes, or (b) that is designated by the City as a tax credit bond pursuant to the Code, and which is further designated as a “qualified bond” under Section 6431 (or substantively similar provision of the Code), and with respect to which the City is eligible to claim a tax credit subsidy payment in respect of interest on the obligation.

Section 2. **Finding with Respect to Defeasance.** The City Council hereby finds that the irrevocable deposit of money and securities with a Defeasance Trustee, verified or certified as to sufficiency in accordance with a Defeasance Plan approved pursuant to this ordinance, will discharge and satisfy the obligations of the City as to the Defeased Bonds identified therein, including all pledges, charges, trusts, covenants, and agreements under the applicable Defeased Bond Documents. Immediately upon such deposit, the Defeased Bonds identified in such Defeasance Plan shall be defeased and shall no longer be deemed to be outstanding under the applicable Defeased Bond Documents.

The City Council finds and determines that it is in the best interest of the City and its taxpayers that the City carry out a Defeasance Plan approved by the Director of Finance as provided for in this ordinance and hereby ratifies and approves any such Defeasance Plan.

Section 3. **Defeasance of the Defeased Bonds.**

(a) **Approval of Defeasance Plan; Appointment of Defeasance Trustee.** The Director of Finance is authorized and directed to select a Defeasance Trustee and to negotiate, execute, and deliver a Defeasance Trust Agreement setting forth a Defeasance Plan for each series of Defeasible Bonds (or portion thereof) to be defeased and redeemed pursuant to this ordinance, in accordance with subsection (d) of this section. Multiple Defeasance Plans may be combined in a single Defeasance Trust Agreement. The Defeasance Plan shall be carried out, and the money on deposit in the defeasance escrow shall be applied, in accordance with this ordinance, the respective Defeased Bond Documents, the Defeasance Trust Agreement, and the laws of the State.

(b) **Acquisition of Acquired Obligations.** To the extent practicable and desirable, the Defeasance

Plan shall provide for the Defeasance Trustee's purchase of Acquired Obligations, bearing such interest and maturing as to principal and interest in such amounts and at such times so as to provide, together with a beginning cash balance, if necessary, for the timely payment of the amounts required to be paid by the Defeasance Plan. The Acquired Obligations shall be listed and more particularly described in a schedule attached to the Defeasance Trust Agreement, but are subject to substitution as set forth in subsection (c) of this section.

(c) **Substitution of Acquired Obligations.** The City reserves the right at any time to substitute cash or other Government Obligations (as defined in the applicable Defeased Bond Documents) for the Acquired Obligations if the City obtains a verification by a nationally recognized independent certified public accounting firm reasonably acceptable to the Defeasance Trustee confirming that the payments of principal of and interest on the substitute obligations, if paid when due, together with the cash to be held by the Defeasance Trustee, will be sufficient to carry out the Defeasance Plan. If the applicable Series of Defeased Bonds were issued as Tax-Advantaged Bonds, then prior to such substitution, the City must also obtain an opinion from Bond Counsel to the effect that the disposition and substitution or purchase of such securities will not cause adverse federal tax consequences as to any such Defeased Bonds that were issued as Tax-Advantaged Bonds (except to the extent that the City has opted to forego any available tax credit subsidy payment in connection with the original defeasance) and that such disposition and substitution or purchase is in compliance with the applicable statutes and regulations. Any surplus money resulting from the sale, transfer, other disposition, or redemption of the Acquired Obligations and the substitutions therefor shall be released from the trust estate and may be used for any lawful City purpose.

(d) **Defeasance Trust Agreement.** The Director of Finance is authorized to execute one or more Defeasance Trust Agreements with one or more Defeasance Trustees, setting forth the duties, obligations, and responsibilities of the Defeasance Trustee in connection with carrying out the applicable Defeasance Plan. Each Defeasance Trust Agreement and Defeasance Plan must, among other things: (1) identify the Defeasible Bonds

to be defeased and redeemed thereby; (2) contain the elements set forth in the definition of Defeasance Plan set forth in this ordinance, including authorizing and directing the Defeasance Trustee to use the money deposited with it to purchase the Acquired Obligations (or substitute obligations) and to apply such money along with the maturing principal of and interest on such obligations to make the payments required to be made by the Defeasance Plan; and (3) provide for the giving of notices of defeasance and redemption, as required under the Defeased Bond Documents. The Defeasance Trust Agreement may additionally provide for the payment of the costs of administering the Defeasance Plan (including without limitation, all necessary and proper fees, compensation, and expenses of the Defeasance Trustee and all other costs incidental to the setting up of the escrow to accomplish the Defeasance Plan), and for such other related matters as the Director of Finance may deem necessary or expedient.

Section 4. **Redemption of the Defeased Bonds.** The Director of Finance is authorized on behalf of the City to take such actions as may be necessary or convenient to call the Defeased Bonds for redemption. Such call for redemption of the Defeased Bonds shall identify the Defeased Bonds, redemption dates, and redemption prices (expressed as a percentage of the stated principal amount) and shall be irrevocable after the effective date of the Defeasance Trust Agreement. The dates on which the Defeased Bonds are to be called for redemption shall be, in the judgment of the Director of Finance, the earliest practical dates on which those Defeased Bonds may be called for redemption following the effective date of the Defeasance Trust Agreement. The proper City officials are authorized and directed to give or cause to be given such notices as required, at the times and in the manner required pursuant to the Defeased Bond Documents, in order to carry out the Defeasance Plan.

Section 5. **Outstanding Parity Bonds Declared Defeasible.** All outstanding Parity Bonds that have previously been, or may in the future be, designated as “Refundable Bonds” under Ordinance 125461, passed by the City Council on November 20, 2017, and signed by the Mayor on November 22, 2017 (“Omnibus Refunding Ordinance”), as it may be amended from time to time, are declared to be Defeasible

Bonds under this ordinance.

Section 6. **General Authorization.** In addition to the specific authorizations in this ordinance, the Mayor and the Director of Finance, and each of the other appropriate officers of the City, are each authorized and directed to do everything as in their judgment may be necessary, appropriate, or desirable in order to carry out the terms and provisions of, and complete the transactions contemplated by, this ordinance.

Section 7. **Severability.** The provisions of this ordinance are declared to be separate and severable. If a court of competent jurisdiction, all appeals having been exhausted or all appeal periods having run, finds any provision of this ordinance to be invalid or unenforceable as to any person or circumstance, such offending provision shall, if feasible, be deemed to be modified to be within the limits of enforceability or validity. However, if the offending provision cannot be so modified, it shall be null and void with respect to the particular person or circumstance, and all other provisions of this ordinance in all other respects, and the offending provision with respect to all other persons and all other circumstances, shall remain valid and enforceable.

Section 8. **Ratification of Prior Acts.** Any action taken consistent with the authority of this ordinance, after its passage but prior to its effective date, is ratified, approved, and confirmed.

Section 9. **Section Headings.** Section headings in this ordinance are used for convenience only and shall not constitute a substantive portion of this ordinance.

Section 10. **Effective Date.** This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2020, and signed by
me in open session in authentication of its passage this _____ day of _____, 2020.

President _____ of the City Council

Approved by me this _____ day of _____, 2020.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2020.

Monica Martinez Simmons, City Clerk

(Seal)

Attachments:
Exhibit A - Outstanding Solid Waste System Parity Bonds