

CITY OF SEATTLE
ORDINANCE 126223
COUNCIL BILL 119923

AN ORDINANCE relating to the drainage and wastewater system of The City of Seattle; providing for the defeasance of the claim or lien of certain of the City’s outstanding drainage and wastewater 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 (the “City”) owns, maintains, and operates a system of sanitary sewerage and storm and surface water drainage as part of Seattle Public Utilities (the “Drainage and Wastewater System”), which Drainage and Wastewater 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, drainage and wastewater system revenue bonds having a charge and lien on the Net Revenue of the Drainage and Wastewater System prior and superior to any other charges whatsoever (“Parity Bonds”), which are designated as defeasible under this ordinance (the “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

1 the defeasance and redemption of all or any portion of the Defeasible Bonds and to pay
2 the administrative costs of carrying out the defeasance of those Defeasible Bonds; and

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

10 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

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

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

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

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

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

3 **“Code”** means the Internal Revenue Code of 1986, or any successor thereto, as it has
4 been and may be amended from time to time, and regulations thereunder.

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

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

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

22 (c) As further directed in the Defeasance Trust Agreement, the Defeasance Trustee
23 shall apply the amounts received as interest on and maturing principal of such Acquired

1 Obligations (together with any cash balance in the defeasance trust account) to call, pay, and
2 redeem those Defeasible Bonds on the dates and times identified in the plan, and (if so directed)
3 to pay the administrative costs of carrying out the foregoing.

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

8 **“Defeasance Trust Agreement”** means an escrow or trust agreement between the City
9 and a Defeasance Trustee as described in Section 3(d) of this ordinance.

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

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

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

22 **“Defeasible Bonds”** means each series of Parity Bonds that have been designated, or
23 may in the future be designated, as defeasible under this ordinance, including: (a) each series of

1 Outstanding Parity Bonds listed in Exhibit A; and (b) each series of Future Parity Bonds
2 designated by the City as Defeasible Bonds.

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

6 **“Drainage and Wastewater Fund”** means the fund created by Ordinance 84390 and
7 later renamed by Ordinance 114155, into which is paid the Gross Revenue of the Drainage and
8 Wastewater System.

9 **“Drainage and Wastewater System”** means the drainage and wastewater system of the
10 City, including the sanitary sewerage and storm and surface water drainage systems, as it now
11 exists (except properties, interests, and rights under the jurisdiction of the City’s Parks and
12 Recreation Department, Seattle Center Department, Seattle Public Utilities Water System, City
13 Light Department, and Department of Finance and Administrative Services), and all additions
14 thereto and betterments and extensions thereof at any time made, together with any utility
15 systems of the City hereafter combined with the Drainage and Wastewater System. The Drainage
16 and Wastewater System shall not include any separate utility system that may be created,
17 acquired or constructed by the City as provided in the Defeased Bond Documents.

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

21 **“Gross Revenue”** means (a) all income, revenues, receipts and profits derived by the
22 City through the ownership and operation of the Drainage and Wastewater System; (b) the
23 proceeds received by the City directly or indirectly from the sale, lease or other disposition of

1 any of the properties, rights or facilities of the Drainage and Wastewater System; (c) Payment
2 Agreement Receipts, to the extent that such receipts are not offset by Payment Agreement
3 Payments; and (d) the investment income earned on money held in any fund or account of the
4 City, including any bond redemption funds and the accounts therein, in connection with the
5 ownership and operation of the Drainage and Wastewater System. Gross Revenue does not
6 include: (a) income derived from investments irrevocably pledged to the payment of any
7 defeased bonds payable from Gross Revenue; (b) investment income set aside for or earned on
8 money in any fund or account created or maintained solely for the purpose of complying with the
9 arbitrage rebate provisions of the Code; (c) any gifts, grants, donations or other funds received
10 by the City from any State or federal agency or other person if such gifts, grants, donations or
11 other funds are the subject of any limitation or reservation imposed by the donor or grantor or
12 imposed by law or administrative regulation to which the donor or grantor is subject, limiting the
13 application of such funds in a manner inconsistent with the application of Gross Revenue
14 hereunder; (d) the proceeds of any borrowing for capital improvements (or the refinancing
15 thereof); (e) the proceeds of any liability or other insurance, including but not limited to
16 insurance proceeds compensating the City for the loss of a capital asset, but excluding business
17 interruption insurance or other insurance of like nature insuring against the loss of revenues;
18 (f) general *ad valorem* taxes, excise taxes and special assessments (other than ULID
19 Assessments), including interest and penalties thereon; and (g) earnings of any separate utility
20 system that may be created, acquired, or constructed by the City in accordance with the
21 provisions for a separate system in the Defeased Bond Documents.

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

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

4 **“Operating and Maintenance Expense”** means all expenses incurred by the City in
5 causing the Drainage and Wastewater System to be operated and maintained in good repair,
6 working order and condition, including without limitation: (a) deposits, premiums, assessments
7 or other payments for insurance, if any, on the Drainage and Wastewater System; (b) payments
8 into pension funds; (c) State-imposed taxes; (d) amounts due under Contract Resource
9 Obligations in accordance with the provisions of the Defeased Bond Documents; (e) payments
10 made to another person or entity for treatment or disposal of sewage or other commodity or
11 service; and (f) payments with respect to any other expenses of the Drainage and Wastewater
12 System that are properly treated as Operating and Maintenance Expense under generally
13 accepted accounting principles applicable to municipal corporations, including payments (other
14 than payments out of proceeds of Parity Bonds or other obligations not issued to pay current
15 expenses of the Drainage and Wastewater System) into reasonable reserves for items of
16 operating or maintenance expense the payment of which is not immediately required. Operating
17 and Maintenance Expense does not include: depreciation, amortization, or other similar
18 recognitions of non-cash expense items made for accounting purposes only; taxes levied or
19 imposed by the City, or payments in lieu of City taxes; payments of claims or judgments; or
20 capital additions or capital replacements of the Drainage and Wastewater System.

21 **“Outstanding Parity Bonds”** means those outstanding Parity Bonds identified in
22 Exhibit A. When used in reference to a particular date or series of Parity Bonds, Outstanding

1 Parity Bonds shall mean those Parity Bonds (including any Parity Bonds issued subsequent to the
2 date of this ordinance) that are outstanding as of that date or as of the issue date of such series.

3 **“Parity Bond Account”** means the Drainage and Wastewater Revenue Bond Account,
4 1990, created by Ordinance 115098 in the Drainage and Wastewater Fund for the purpose of
5 paying and securing payment of the principal of and interest on Parity Bonds.

6 **“Parity Bonds”** means drainage and wastewater system revenue obligations payable
7 solely from the Parity Bond Account having a charge and lien on the Net Revenue of the
8 Drainage and Wastewater System prior and superior to any other charges whatsoever.

9 **“Tax-Advantaged Bond”** means any bond or other financial obligation issued by the
10 City, (a) the interest on which is intended on its issue date to be excludable from gross income
11 for federal income tax purposes, or (b) that is designated by the City as a tax credit bond
12 pursuant to the Code, and which is further designated as a “qualified bond” under Section 6431
13 (or substantively similar provision of the Code), and with respect to which the City is eligible to
14 claim a tax credit subsidy payment in respect of interest on the obligation.

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

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

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

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

14 (b) **Acquisition of Acquired Obligations.** To the extent practicable and desirable,
15 the Defeasance Plan shall provide for the Defeasance Trustee's purchase of Acquired
16 Obligations, bearing such interest and maturing as to principal and interest in such amounts and
17 at such times so as to provide, together with a beginning cash balance, if necessary, for the
18 timely payment of the amounts required to be paid by the Defeasance Plan. The Acquired
19 Obligations shall be listed and more particularly described in a schedule attached to the
20 Defeasance Trust Agreement, but are subject to substitution as set forth in subsection (c) below.

21 (c) **Substitution of Acquired Obligations.** The City reserves the right at any time to
22 substitute cash or other Government Obligations (as defined in the applicable Defeased Bond
23 Documents) for the Acquired Obligations if the City obtains a verification by a nationally

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

14 (d) **Defeasance Trust Agreement.** The Director of Finance is authorized to execute
15 one or more Defeasance Trust Agreements with one or more Defeasance Trustees, setting forth
16 the duties, obligations, and responsibilities of the Defeasance Trustee in connection with carrying
17 out the applicable Defeasance Plan. Each Defeasance Trust Agreement and Defeasance Plan
18 must, among other things: (1) identify the Defeasible Bonds to be defeased and redeemed
19 thereby; (2) contain the elements set forth in the definition of Defeasance Plan set forth in this
20 ordinance, including authorizing and directing the Defeasance Trustee to use the money
21 deposited with it to purchase the Acquired Obligations (or substitute obligations) and to apply
22 such money along with the maturing principal of and interest on such obligations to make the
23 payments required to be made by the Defeasance Plan; and (3) provide for the giving of notices

1 of defeasance and redemption, as required under the Defeased Bond Documents. The Defeasance
2 Trust Agreement may additionally provide for the payment of the costs of administering the
3 Defeasance Plan (including without limitation, all necessary and proper fees, compensation, and
4 expenses of the Defeasance Trustee and all other costs incidental to the setting up of the escrow
5 to accomplish the Defeasance Plan), and for such other related matters as the Director of Finance
6 may deem necessary or expedient.

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

18 Section 5. **Outstanding Parity Bonds Declared Defeasible.** All outstanding Parity
19 Bonds that have previously been, or may in the future be, designated as “Refundable Bonds”
20 under Ordinance 125455, passed by the City Council on November 20, 2017 and signed by the
21 Mayor on November 22, 2017 (the “Omnibus Refunding Ordinance”), as it may be amended
22 from time to time, are declared to be Defeasible Bonds under this ordinance.

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

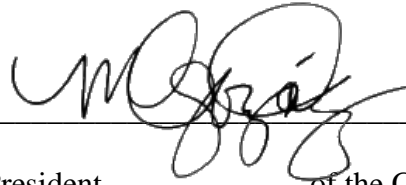
6 Section 7. **Severability.** The provisions of this ordinance are declared to be separate
7 and severable. If a court of competent jurisdiction, all appeals having been exhausted or all
8 appeal periods having run, finds any provision of this ordinance to be invalid or unenforceable as
9 to any person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

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

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

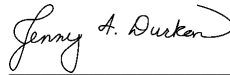
1 Section 10. **Effective Date.** This ordinance shall take effect and be in force 30 days
2 after its approval by the Mayor, but if not approved and returned by the Mayor within ten days
3 after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by the City Council the 23rd day of November, 2020,
5 and signed by me in open session in authentication of its passage this 23rd day of
6 November, 2020.

7 

8 President _____ of the City Council

9 Approved by me this 1st day of December, 2020.

10 

11 Jenny A. Durkan, Mayor

12 Filed by me this 1st day of December, 2020.

13 

14 Monica Martinez Simmons, City Clerk

15 (Seal)

16

17

18

19 Exhibits:

20 Exhibit A – List of Outstanding Parity Bonds

EXHIBIT A

OUTSTANDING DRAINAGE AND WASTEWATER SYSTEM PARITY BONDS

Issue Name	Dated Date	Original Par Amount	Bond Legislation		
			New Money Ord.	Refunding Ord.	Bond Sale Res.
Drainage and Wastewater Revenue Bonds, 2008	04/16/2008	\$84,645,000	Ord. 122637	--	Res. 31050
Drainage and Wastewater Revenue Bonds, Series 2009A (Taxable Build America Bonds – Direct Payment)	12/17/2009	\$102,535,000	Ord. 123055	--	Res. 31177
Drainage and Wastewater Improvement and Refunding Revenue Bonds, Series 2009B	12/17/2009	\$36,680,000	Ord. 123055	Ord. 121938 (as amended by Ord. 122209 and Ord. 122637)	Res. 31177
Drainage and Wastewater Improvement and Refunding Revenue Bonds, 2012	06/27/2012	\$222,090,000	Ord. 123753	Ord. 121938 (as amended by Ord. 122209 and Ord. 122637)	Res. 31387
Drainage and Wastewater Improvement and Refunding Revenue Bonds, 2014	07/10/2014	\$133,180,000	Ord. 124337	Ord. 124338 (amending and restating Ord. 121938)	Res. 31531
Drainage and Wastewater System Improvement and Refunding Revenue Bonds, 2016	06/22/2016	\$164,945,000	Ord. 124914	Ord. 124338 (amending and restating Ord. 121938)	Res. 31674
Drainage and Wastewater System Improvement and Refunding Revenue Bonds, 2017	06/28/2017	\$234,125,000	Ord. 125297	Ord. 124338 (amending and restating Ord 121938) as amended by Ord. 124914	Res. 31756
Drainage and Wastewater System Improvement Revenue Bond, 2020A (Ship Canal Water Quality Project – N18106WA) (WIFIA Loan)	04/24/2020	Not to Exceed \$192,181,651	Ord. 125454 Ord. 125712 (amending Ord. 125454)	--	--