

ORDINANCE NO. 4732

AN ORDINANCE OF THE CITY OF ALBANY, OREGON
AUTHORIZING THE ISSUANCE AND SALE OF NOT TO
EXCEED \$3,560,000 ADVANCE REFUNDING SEWER
SYSTEM REVENUE BONDS; APPROVING ESCROW
DEPOSIT AGREEMENT; ESTABLISHING A RATE
COVENANT; DESIGNATING A PAYING AGENT AND
BOND REGISTRAR; AND DECLARING AN EMERGENCY.

Pursuant to Ordinance No. 4638, adopted by the City Council of the City of Albany, Oregon on July 18, 1984, and amended by Ordinance No. 4645 adopted by the City Council of the City of Albany on August 8, 1984, the City of Albany, Oregon (the "City") issued its Sewer System Revenue Bonds, Series 1984 ("Series 1984 Bonds") in the amount of \$3,000,000. The principal amount of \$2,935,000 of the Series 1984 Bonds is outstanding.

Oregon Revised Statutes 288.605 to 288.695, inclusive, authorizes the issuance of advance refunding bonds, without an election, in order to effect a savings discounted to present value to a public body or to effect a favorable reorganization of the permanent debt structure of the public body. Significant savings in debt service and a favorable reorganization of the permanent debt structure of the City may be obtained by the City by advance refunding the Series 1984 Bonds.

Pursuant to a Resolution of the City Council, an Advance Refunding Plan for the Series 1984 Bonds has been submitted to the office of the Oregon State Treasurer by Seattle-Northwest Securities Corporation of Portland, Oregon, the financial advisor to the City, (the "Financial Advisor") on behalf of the City of Albany, Oregon.

NOW, THEREFORE, to reduce debt service of the Series 1984 Bonds, resulting in cost savings for the benefit of the people of the City, and to favorably restructure the permanent debt of the City and, subject to the review and authorization of the Oregon State Treasurer of the Advance Refunding Plan, it is necessary and desirable for the City to authorize the issuance and sale of Advance Refunding Sewer System Revenue Bonds, in an aggregate principal amount not to exceed \$3,560,000.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY, OREGON
ORDAIN AS FOLLOWS:

Section 1. Issuance of Advance Refunding Bonds. The City Council of the City does hereby authorize the issuance of Advance Refunding Sewer System Revenue Bonds in an amount not to exceed

\$3,560,000 (the "Advance Refunding Bonds"). The Advance Refunding Bonds are to be issued for the purpose of providing for the discharge of the Series 1984 Bonds and to pay the costs of issuance of the Advance Refunding Bonds. The Advance Refunding Bonds shall be serial negotiable bonds of the City and shall bear interest payable semi-annually on the first day of February and the first day of August, commencing February 1, 1987 until final maturity or sooner redemption. The Advance Refunding Bonds shall be payable in funds which at the time of payment is legal tender for the payment of public and private debts within the United States of America.

Section 2. Maturity of Advance Refunding Bonds. The Advance Refunding Bonds shall be entitled "City of Albany, Oregon, Advance Refunding Sewer System Revenue Bonds, Series 1986", and shall bear the facsimile signature of the Mayor of the City and the manual or facsimile signature of the City Recorder. In addition, the City Council does hereby request and authorize the Bond Registrar to execute the Certificate of Authentication as of the date of delivery of the Advance Refunding Bonds.

The Advance Refunding Bonds shall be issued in fully registered form, shall be in denominations of Five Thousand Dollars (\$5,000) each, or any integral multiple thereof, shall be issued as printed bonds, shall be dated as the City Manager shall determine and shall be numbered sequentially beginning with R-1, and shall mature on the first day of August, as follows:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
1987	\$105,000	1992	\$ 80,000
1988	70,000	1993	90,000
1989	75,000	1994	100,000
1990	80,000	1995	110,000
1991	80,000	1996	115,000

\$395,000 Term Bonds Due August 1, 1999

\$2,260,000 Term Bonds Due August 1, 2009

Section 3. Authorization of City Manager to Modify Terms of Bond Issue. The City Council does authorize the City Manager, for the purposes of the sale of the Bonds, to modify the terms of the Bonds as to the date of the Bonds, principal amount, and maturity of the Bonds, all upon the recommendations of the Financial Advisor.

Section 4. Change in Principal Amount and Maturities. The annual principal amounts of the Bond maturities may be modified in insubstantial amounts to provide for any estimated changes in the principal amount of Bonds as may be required for the purchase of

sufficient Government Obligations for deposit into the Escrow Deposit Fund under the Escrow Deposit Agreement between the City and the Escrow Agent.

Section 5. Payment of Advance Refunding Bonds. The principal of the Advance Refunding Bonds shall be payable at maturity upon presentation of the Advance Refunding Bonds at the principal corporate trust office of the Paying Agent in Portland, Oregon. Payment of each installment of interest due on February 1 and August 1 of each year shall be made by check or draft of the Paying Agent mailed to the registered owner of each Bond whose name and address appears on the registration books of the City maintained by the Paying Agent as of the close of business on the 15th day of the month next preceding the interest payment date.

Section 6. Designation of Paying Agent. The City Council does appoint and designate First Interstate Bank of Oregon, N.A., of Portland, Oregon, as the Paying Agent and Bond Registrar of the Advance Refunding Bonds. The City Manager is authorized to negotiate and execute on behalf of the City a Paying Agent and Bond Registrar Agreement. The Agreement shall provide for compliance with Oregon Administrative Rule 170-61-010.

Section 7. Transfer or Exchange of Advance Refunding Bonds. The Advance Refunding Bonds are transferable, or subject to exchange, for fully registered Bonds in the denomination of \$5,000, or integral multiples thereof by the registered owner thereof in person, or by the owner's attorney, duly authorized in writing, at the office of the Bond Registrar. The Paying Agent shall maintain a record of the names and addresses of the registered owners of the Advance Refunding Bonds. The records of registered bond ownership are not public records within the meaning of Oregon Revised Statutes 192.410(4).

All bonds issued upon transfer, or in exchange, for Advance Refunding Bonds shall evidence the same debt and entitled to the same benefits as the Advance Refunding Bonds surrendered for such exchange or transfer. All fees, expenses and charges of the Paying Agent and of the Bond Registrar shall be payable by the City. The Bond Registrar shall not be required

(a) to transfer or exchange any Bond after the close of business on the 15th day of the month next preceding any interest payment date, or

(b) to transfer or exchange any Advance Refunding Bond called or being called for redemption.

Section 8. Compliance with Advance Refunding Plan. In accordance with the Advance Refunding Plan, the City does authorize that the principal and maturing interest due on the Advance Refunding

Bonds from date of issue to final maturity, or sooner redemption, shall be payable from the net revenues of the City's sewer system, being the same source of payment as for the Series 1984 Bonds.

Section 9. Rate Pledge and Covenant. The City pledges to the payment of the Advance Refunding Bonds the sewer revenues of the City's sewer system, after payment of the operation and maintenance expenses including the administrative overhead of the utility system ("Net Revenues"). The City covenants and agrees that it shall impose and collect such sewer user fees and charges and shall revise its rate structure, from time to time, as shall be necessary in order that the revenues of the sewer system will be sufficient at all times to provide for the operation and maintenance and administrative expenses of the sewer system including the waste water treatment collection, maintenance and administrative costs and to provide Net Revenues not less than 1.3 times the then fiscal year's annual debt service on the Advance Refunding Bonds. All use of the sewer system shall be subject to the full rates prescribed by the City, and no free use of the sewer system will be permitted.

Section 10. Creation of Debt Service Fund. The City does authorize the creation of a Debt Service Fund and shall deposit the funds remaining, if any, in the debt service fund created by Ordinance Nos. 4638 and 4645 and thereafter shall deposit monthly from the Net Revenues of the sewer system an amount not less than one-sixth (1/6) of the amount required to pay the interest due on the Advance Refunding Bonds on the next forthcoming interest payment date and a further amount not less than one-twelfth (1/12) of the amount required for the payment of the principal of the Advance Refunding Bonds to be retired at the next forthcoming principal maturity or mandatory redemption date. The August 1, 2009 Term Bonds shall be deemed to be amortized in the annual amounts of principal as are subject to mandatory redemption plus annual interest on the outstanding Advance Refunding Bonds. In determining the amounts required for the monthly deposits the City may consider any other sums then on deposit in the Debt Service Fund for the payment of principal of and interest on the Advance Refunding Bonds. The funds so deposited are pledged irrevocably to be used only to pay the interest of and the principal on the Advance Refunding Bonds. Net Revenues not so deposited monthly in the Debt Service Fund and not needed to fund any deficiency in the Debt Service Reserve Account may be used and applied by the City for capital improvements to the sewer system or for such other uses and purposes relating to the operation of, maintenance of, repair, restoration, enlargements or administrative expenses of the sewer system.

Section 11. Creation of Debt Service Reserve Account. The City does authorize the creation of a Debt Service Reserve Account and shall deposit the funds in the debt service reserve account created by Ordinance Nos. 4638 and 4645 up to an amount equal to

the maximum annual debt service on the Advance Refunding Bonds, defined as the maximum amount in the aggregate of principal and interest due on the Bonds in any remaining maturity years of the Bonds, and any excess amount to the Debt Service Fund. If there are insufficient funds in the debt service reserve account for the Series 1984 Bonds to equal the maximum annual debt service on the Advance Refunding Bonds, immediately upon the sale and delivery of the Advance Refunding Bonds, the City shall deposit to the Debt Service Reserve Account sufficient funds which, when added to the funds transferred from the debt service reserve account for the Series 1984 Bonds, equals the maximum annual debt service on the Advance Refunding Bonds. The Debt Service Reserve Account and the moneys therein are irrevocably pledged to the payment of the debt service on the Advance Refunding Bonds. In the event insufficient funds are available in the Debt Service Account to pay maturing principal and interest on the Advance Refunding Bonds, funds in the Debt Service Reserve Account may be drawn upon in the amount of the deficiency. Any deficiency in the Debt Service Reserve Account shall be restored from the next available Net Revenues, and funds in the Debt Service Reserve Account may be applied upon the final maturity of principal and interest on the Advance Refunding Bonds.

Section 12. Additional Bonds. The City may issue additional sewer revenue bonds (the "Additional Bonds") on a parity with the Advance Refunding Bonds, which shall be secured in all respects in the same manner as the Advance Refunding Bonds and shall be issued for the purpose of making additions, enlargements, replacements, extensions and improvements to the sewer system. Such Additional Bonds may be issued upon compliance with the following conditions:

(a) That no deficiency exists in the required moneys to be on deposit in the Debt Service Fund and Debt Service Reserve Fund;

(b) Provisions shall be made, from the proceeds of the Additional Bonds, to deposit to the Debt Service Reserve Account a sum equaling the maximum annual debt service on the proposed Additional Bonds; and

(c) The City shall obtain and have on file a certificate from an independent professional engineer or certified public accountant determining that the Net Revenues (gross revenues less operation and maintenance and administrative expenses including waste water treatment collection, maintenance and administrative costs) in any twelve (12) consecutive months within the 24 months immediately preceding the issuance of such Additional Bonds equals 1.3 times the maximum annual debt service of the Advance Refunding Bonds and of the proposed Additional Bonds.

In determining whether the City complies with the conditions for the issuance of Additional Bonds the following adjustments may be made to the Net Revenues in the certificate as required in Subparagraph (c) above:

(i) Any rate change that has taken place or previously has been approved and is effective may be reflected in the Net Revenues of the twelve-month term;

(ii) Any increase in the Net Revenues estimated to result from any additions, betterments and improvements to and extensions of the Sewer System which become operational during such twelve-month period, or were under construction at the time of such certificate or will be constructed from the proceeds of the Additional Bonds to be issued may be included in the determination;

(iii) Additional revenues to be realized from sewer users added to the Sewer System during or subsequent to the twelve-month term;

(d) The adoption of an ordinance by the City Council containing provisions incorporating and making binding upon the registered owners of the Additional Bonds all provisions of this Ordinance which describe the rights and obligations of the registered owners of the Advance Refunding Bonds; and

(e) Provided that, the Additional Bonds, when issued in accordance with this Section, shall be secured on a parity with and equally and ratably with the registered owners of the Advance Refunding Bonds and the Additional Bonds, without preference, priority or distinction because of the date of the issue of such Advance Refunding Bonds or the incurrence of the additional parity debt.

Section 13. Investment of Funds. The moneys in the Debt Service Fund and the Debt Service Reserve Account shall be invested as prescribed by Oregon Revised Statutes 294.035 for the investment of surplus funds of political subdivisions. Earnings of the Debt Service Fund shall accrue to the Debt Service Fund. Earnings of the Debt Service Reserve Account shall be applied first to any deficiency in such account and the remaining amount transferred to the Debt Service Fund.

Section 14. Optional Redemption. The City reserves the right to call and redeem any or all of the outstanding Advance Refunding Bonds, as a whole or in part, in inverse numerical order of maturity and by lot within a maturity on any interest payment date on or after August 1, 1996 at par value plus accrued interest to the date of redemption. Notice of redemption shall be given as provided by law and by registered or certified mail to the

registered owners of the Advance Refunding Bonds intended to be called for redemption thirty (30) days prior to the optional redemption date. The notice shall be mailed to the registered owner at the address of the registered owner appearing on the registration books of the City maintained by the Bond Registrar.

Section 15. Mandatory Redemption.

(a) Advance Refunding Bonds maturing August 1, 1999 are subject to mandatory redemption prior to maturity, in part and by lot, as determined by the City on August 1, 1997, and on each August 1 thereafter, in the principal amounts as set forth below at a price of 100% of the principal amount thereof plus accrued interest to the date of redemption:

<u>Year</u>	<u>Amount</u>
1997	\$120,000
1998	130,000
1999	145,000

(b) Advance Refunding Bonds maturing August 1, 2009 are subject to mandatory redemption prior to maturity, in part and by lot, as determined by the City on August 1, 2000, and on each August 1 thereafter, in the principal amounts as set forth below at a price of 100% of the principal amount thereof plus accrued interest to the date of redemption:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
2000	\$150,000	2005	\$230,000
2001	170,000	2006	250,000
2002	185,000	2007	265,000
2003	195,000	2008	290,000
2004	210,000	2009	315,000

Notice of redemption shall be published as provided by law and by registered or certified mail to the registered owners of the Advance Refunding Bonds called for redemption thirty (30) days prior to the redemption date. The notice shall be mailed to the registered owner at the address of the registered owner appearing on the registration books of the City maintained by the Bond Registrar.

Section 16. Use of Proceeds. The proceeds of the sale of the Advance Refunding Bonds shall be applied as follows:

(a) As provided in the Escrow Deposit Agreement dated as of October 1, 1986 and executed by and between the City and First Interstate Bank of Oregon, N.A., as Escrow Agent, there shall be deposited in the Escrow Deposit Fund certain

government obligations and cash initially transferred, sufficient in amount, that the maturing principal of and interest on such government obligations, together with other funds in the Escrow Deposit Fund, shall pay the maturing principal of and interest on the Series 1984 Bonds when and as they become due.

(b) The balance of the Advance Refunding Bonds proceeds shall be used first to fund any deficiency in the Debt Service Reserve Account, second to pay administrative costs, expenses or fees incurred in the issuance of the Advance Refunding Bonds, and any remaining proceeds shall be deposited in the Debt Service Fund.

Section 17. Purchase of Government Obligations and Escrow Deposit Agreement. The Escrow Agent is authorized to purchase direct obligations of the United States Government for the account of the Escrow Deposit Fund. The terms and provisions of the Escrow Deposit Agreement shall be as approved by the City Manager and Bond Counsel and the City Manager is authorized to execute the Escrow Deposit Agreement for and on behalf of the City.

Section 18. Sale of Advance Refunding Bonds. The City has received a Contract of Purchase from Seattle-Northwest Securities Corporation, a copy of which is attached hereto as Exhibit A. Pursuant to the authority granted by Oregon Revised Statute 288.625(2), the City Council of the City deems it advisable to negotiate the sale of the Advance Refunding Bonds rather than competitively bid such sale. The Contract of Purchase attached hereto as Exhibit A is hereby approved and the execution by the City Manager of such Contract of Purchase on behalf of the City is hereby authorized, ratified and approved.

Section 19. Form of Advance Refunding Bonds. The Advance Refunding Bonds shall be issued substantially in the form as approved by the City Manager.

Section 20. Printing of Advance Refunding Bonds. The City Manager is authorized to contract for the printing of the Advance Refunding Bonds. The City Manager may provide for the printing of, in addition to the original issue of Advance Refunding Bonds, additional bonds to be printed in blank form as to registration and to be designated by appropriate number for the Bond Registrar for delivery to the registered owner upon transfer or exchange of Advance Refunding Bonds. The additional bonds shall be dated as approved by the City Manager and shall be signed by the facsimile signature of the present Mayor of the City and by the facsimile signature of the present City Recorder and the Bond Registrar shall manually sign the Certificate of Authentication as of the date of the transfer of the Advance Refunding Bonds.

Section 21. Arbitrage. The proceeds of the Advance Refunding Bonds shall be used and invested in such manner that the Advance Refunding Bonds shall not become "arbitrage bonds" within the meaning of Section 103(c) of the Internal Revenue Code of 1954, as amended, and the regulations issued thereunder.

Section 22. Compliance with Pending Tax Legislation. The City is familiar with H.R. 3838 as passed by the United States House of Representatives on December 17, 1985 and as passed by the United States Senate on June 24, 1986 (the "House Bill"). In addition, the City is familiar with the agreement of the Joint Conference Committee between the House and Senate reported out on August 16, 1986 (the "Conference Agreement"). The City covenants to comply with each applicable requirement of the House Bill and the Conference Agreement unless, in the opinion of Bond Counsel, such compliance is not required in order to maintain the exemption of interest on the Advance Refunding Bonds from Federal income taxation.

Section 23. Bond Counsel. Messrs. Rankin, McMurry, VavRosky & Doherty, of Portland, Oregon are hereby appointed Bond Counsel for the issuance of the Advance Refunding Bonds.

Section 24. Preliminary Official Statement. The City shall prepare, with the assistance of the Financial Advisor, a Preliminary Official Statement for the Advance Refunding Bonds. When advised by staff that the final Official Statement does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained in the official statement not misleading in the light of the circumstances under which they are made, then the City Manager is authorized to certify the accuracy of the Official Statement on behalf of the City.

Section 25. The City covenants it will not amend the bond ordinance authorizing issuance of the Advance Refunding Bonds without the prior consent of Municipal Bond Insurance Association (the "Bond Insurer"), if the Bond Insurer has issued and has outstanding a policy of insurance insuring the payment of principal of and interest on the Advance Refunding Bonds.

Section 26. Failure to pay principal and interest on the Advance Refunding Bonds or failure to comply with the covenants of this Ordinance will constitute a default and the bondholders or the Bond Insurer may take any remedies legally available.

Section 27. Execution of Closing Documents. The City Manager is authorized to execute the Arbitrage Certificate and any and all additional documents which may be reasonably required to issue, sell and deliver the Advance Refunding Bonds.

Section 28. Maintenance of Sewer System. The City will not dispose of or transfer its title to the sewer system nor merge the sewer system with the City's water system without consent of the Bond Insurer, if presently insured, or, if not insured, the consent of the registered bondholders of not less than two-thirds in aggregate principal amount of the Advance Refunding Bonds then outstanding. The City shall operate and maintain the sewer system in good condition and repair. The City covenants to maintain the sewer system presently existing or hereafter constructed and installed insured against loss by fire and hazards included within the term "extended coverage", and other casualties in an amount not less than the full replacement cost of the sewer system without deduction for depreciation.

Section 29. Books and Records. The City shall maintain complete books and records relating to the operation of the sewer system and its financial affairs and will cause such books and records to be audited annually at the end of each fiscal year and an audit report prepared. At all reasonable times the registered owners of the Advance Refunding Bonds, or their designated representative, shall have the right to inspect the sewer system and the records, accounts and data of the City relating thereto.

Section 30. Emergency. In order that necessary procedures may be carried through in an orderly manner prior to the issuance of the Advance Refunding Bonds herein authorized and so that the Advance Refunding Bonds may be issued promptly to secure the maximum anticipated debt service savings, an emergency is hereby declared to exist and this Ordinance shall be in full force and effect immediately upon passage by the Council and approval by the Mayor.


Adopted by the City Council in open session this 24th day of September, 1986.

Passed by City Council: September 24, 1986
Approved by Mayor: September 26, 1986
Effective Date: September 24, 1986



Mayor

ATTEST:



City Recorder