

TEXT OF PROPOSED ORDINANCE PROPOSITION P

Ordinance establishing a Public Utilities Revenue Bond Oversight Committee, setting forth the authority, duties and responsibilities of the Committee, and establishing qualifications for Committee membership, and related provisions.

Note: This entire section is new.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The San Francisco Administrative Code Chapter 5, Article 5 is hereby amended by adding Section 5.30 through 5.36, to read as follows:

Sec. 5.30. Findings.

The people of the City and County find and declare that:

- (a) The City's 100-year-old water, power and clean water public utility infrastructure is suffering from decades of deferred maintenance. The regional water collection and transmission system, stretching from the Tuolumne River headwaters at Hetch Hetchy to the San Francisco County Line, supplies water to the City as well as to 1.7 million residents and businesses in Alameda, Santa Clara and San Mateo Counties. This system is in need of substantial repair and/or replacement. In the event of system failure, the City and its suburban customers could be without water for up to 30 days, with portions of the service area going without water for as long as 60 days. The water distribution and wastewater treatment systems within the City are in a similar state of deterioration, threatening the health and welfare of City residents, visitors and the business community.
- (b) Over the past 25 years, funds for upgrading the water collection and power generation facilities of Hetch Hetchy have been in short supply. During this same period, the waste water treatment plants have aged to the point where significant capital improvements are necessary in order for the City to remain in compliance with applicable federal and state water quality regulations.
- (c) The San Francisco Public Utilities Commission ("PUC") has never prepared an integrated and coordinated long-term strategic plan consisting of a capital improvement program, a long-range financial plan, an assessment of future utility needs and the evaluation of alternative technologies, private-public partnerships and non-rate payer revenue enhancements. Focusing on short-term planning, the PUC has turned out a series of bond issues, such as Propositions A and B in 1997, which have been promoted to the voters on the basis of broad project gener-

alities. Even within the PUC itself, the list of projects earmarked for specific bond revenues are in a constant state of flux. Projects are frequently delayed and often uncompleted years after funding was approved by the voters.

- (d) Over the past 20 years, the PUC has readily consented to the transfer of "surplus" Hetch Hetchy revenues to the City's general fund. Conservatively, these transfers have cost the PUC more than \$500 million. During this same period of time, the utility infrastructure deteriorated and rates escalated dramatically.
- (e) The PUC estimates that over the next 20 years, the cost of needed capital improvement projects will amount to hundreds of millions of dollars. Although the PUC's capital improvement list undoubtedly contains individual projects that should go forward as soon as practicable, the design, bidding and contract drafting process often takes years to complete. In the absence of long-term strategic planning, individual projects have been frequently delayed and, in some cases, actually abandoned as funding and project priorities unaccountably shifted over time.
- (f) The health and welfare of all of the PUC's customers would be promoted by the creation of a qualified body committed to a persistent, vigorous and independent review of the expenditure of revenue bond funds for the PUC's capital improvement program over the next decade. An ongoing review of this kind would be of material assistance to both the PUC and the Board of Supervisors ("Board") in ensuring that the program is carried out in compliance with all applicable laws.

Section 5.31. Establishment and Purpose.

- (a) There is hereby established a Public Utilities Revenue Bond Oversight Committee (the "Committee"), which shall have the responsibility of reporting publically to the Mayor, the PUC and the Board of Supervisors ("Board") regarding the PUC's (or, to the extent allowed by law, any charter entity succeeding to the PUC's authority related to expenditure of revenue bonds) expenditure of revenue bond proceeds on the repair, replacement, upgrading and expansion of the City's water collection, power generation, water distribution and wastewater treatment facilities.
- (b) The Committee shall provide oversight to ensure that: (1) The proceeds from revenue bonds authorized by the Board and/or the voters of the City are expended in accordance with the authorizing bond resolution and applicable law; (2) Bond proceeds are expended solely for uses, purposes and projects authorized in the bond resolution; and (3) Revenue bond funds are appropriately expended for

authorized capital improvements so that an uninterrupted supply of water and power continues to flow to the City and to the PUC's customers. The Committee may comment to the Board of Supervisors on the development and drafting of proposed legislation pertaining to PUC revenue bonds prior to a Board determination regarding whether to submit a measure for voter approval or authorizing the issuance of revenue bonds, if voter approval is not otherwise required. The Board is not required to accept the Committee's comments or recommendations on such bond proposals. Further, the Committee shall not participate or interfere in the selection process of any vendor hired to execute bond funded projects.

- (c) In furtherance of its purpose, the Committee may engage in any of the following activities:
 - (1) Inquiring into the disbursement and expenditure of the proceeds of PUC revenue bonds authorized and issued in accordance with the San Francisco Charter by receiving any and all reports, financial statements, correspondence or other documents and materials requested by the Committee related to the expenditure of revenue bond funds by the PUC;
 - (2) Holding public hearings to review the disbursement and expenditure of the proceeds of such revenue bonds;
 - (3) Inspecting facilities financed with the proceeds of such revenue bonds;
 - (4) Receiving and reviewing copies of any capital improvement project proposals or plans developed by the PUC related to the City's water, power or wastewater infrastructure and funded by bond proceeds;
 - (5) Reviewing efforts by the City to maximize bond proceeds by implementing cost-saving measures, including, but not limited to, all of the following: (i) mechanisms designed to reduce the costs of professional, consulting and similar fees and expenses related to site preparation and project design; (ii) recommendations regarding the cost-effective and efficient use of core facilities; (iii) developing and using alternate technologies; and, (iv) accessing other sources of infrastructure funding, excluding bond refunding; and,
 - (6) Commissioning independent review and evaluation of the disbursement and expenditure of the proceeds of such revenue bonds by accessing any funds set aside for this purpose under subsection (d) of this section to retain outside auditors, inspectors and necessary experts to

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conduct such independent review.

- (d) To the extent permitted by law, in accordance with Sections 5.35(c) and (d) of this Article, from and after the effective date of this Ordinance one-twentieth of one percent of the gross proceeds from each issuance or sale of public utility revenue bonds shall be deposited in a fund established by the Controller's Office and appropriated by the Board at the direction of the Committee to cover the costs of said Committee.
- (e) The Board shall, without expending revenue bond funds, provide the Committee with appropriate clerical, technical and administrative assistance in furtherance of its purpose and provide sufficient resources to publicize the conclusions and recommendations of the Committee.

Section 5.32. Public Meetings. All Committee proceedings shall be subject to the California Public Records Act (Sections 6250, et seq., of the Government Code of the State of California), the City's Sunshine Ordinance (Chapter 67 of this Code) and the Ralph M. Brown Act (Government Code Sections 54950, et. seq.). The Committee shall issue regular reports on the results of its activities. A report shall be issued at least once a year. Minutes of the proceedings of the Committee, and all reports issued by the Committee, shall be a matter of public record and made available on the City's website.

Section 5.33. Membership.

- (a) The Committee shall consist of seven members to be appointed as follows: two members by the Mayor; two members by the Board; one member by the Controller; and one member by the governing body of the Bay Area Water Users Association. The seventh member shall be the Budget Analyst for the Board or his/her representative.
- (b) At a minimum, the members appointed by the Mayor and the Board shall, individually or collectively, have expertise, skills and experience in economics, the environment, construction and project management. The member appointed by the Controller shall have background and experience in auditing, accounting and project finance.
- (c) Except as expressly authorized herein, no current officer or employee of the City shall be appointed to the Committee. All members of the Committee shall be subject to applicable conflict-of-interest provisions of local and state law. No vendor, contractor or consultant of the City that performs work funded by bonds issued by the City shall be appointed to the Committee.
- (d) Each Committee member will serve for no more than two consecutive terms. Upon their initial appointment, three members

of the Committee shall be assigned by lot an initial term of two years and the remaining four members shall have an initial term of four years. Thereafter, each Committee member shall serve a four-year term.

- (e) Each Committee member, except City employees appointed to serve as part of their official City duties and the Budget Analyst or employees of the Budget Analyst, shall be compensated at a rate of \$100.00 per month during each year of the member's term of office. Such compensation shall be appropriated by the Board without expending revenue bond funds therefor.

Section 5.34. Illegal Expenditures.

- (a) If, after conducting all appropriate reviews and independent audit of actual expenditures of revenue bond proceeds by the PUC (or, to the extent allowed by law, any charter entity succeeding to the PUC's authority related to expenditure of revenue bonds), the Committee, after consultation with the City Attorney, determines that revenue bond proceeds are being or have been expended for purposes not authorized by the authorizing bond resolution or otherwise amount to an illegal expenditure or illegal waste of such revenue bond proceeds within the meaning of applicable law, the Committee may, by majority vote of all its members, prohibit the further issuance or sale of authorized public utility revenue bonds which have yet to be issued or sold.
- (b) A decision by the Committee to prohibit the issuance and sale of authorized but as yet unissued or unsold revenue bonds may be appealed by the PUC to the Board within 30 days of the Committee's decision. By two-thirds vote of all its members, the Board by resolution may overturn the Committee's decision and remand the matter to the Committee for further consideration consistent with the views expressed by the Board in its resolution.
- (c) Alternatively, the Committee's prohibition on the issuance or sale of authorized but unissued or unsold revenue bonds may be vacated by two-thirds vote of all the members of the Board, if the PUC, in response to the report of the Committee, provides evidence of corrective measures satisfactory to the Board.

Section 5.35. Application.

- (a) All public utilities revenue bond authorizations approved either concurrent with or after the effective date of this Ordinance shall be subject to the provisions set forth herein.
- (b) All bond authorizations introduced at the Board after the effective date of this Ordinance shall contain a statement incorporating the provisions of this Ordinance

in such bond resolution.

- (c) The provisions of this Ordinance shall also apply to all PUC public utility revenue bonds authorized, issued or offered for sale after July 1, 2002.
- (d) Section 5.30 (d) of this Article shall only apply to PUC revenue bonds authorized after the effective date of this Article.

Section 5.36. Sunset and Severability.

- (a) Unless the Board by ordinance re-authorizes the provisions of this Ordinance for a specified period of years, the provisions of this Ordinance shall expire on January 1, 2013.
- (b) If any part or provision of this Ordinance or its application to any person or circumstance is held invalid for any reason, the remainder of this Ordinance, including its application to other persons or circumstances, shall not be affected by such a holding, and shall continue in force and effect. To this end, the provisions of this Ordinance are severable.
- (c) The validity of the authorization and issuance of any bonds is not dependent on and shall not be affected in any way by any failure by the Committee, to act in accordance with the provisions of this Ordinance.