REPORT TO MAYOR AND COUNCIL **NO: 10-081**

Council Meeting: March 23, 2010

SUBJECT: Ordinance of the City of Sunnyvale Adding Chapter 3.70 (Sunnyvale Municipal Utilities Revenue Bond Law) to Title 3 (Revenue and Finance) Authorizing the City of Sunnyvale to Finance Public Utility Enterprises Under the Utilities Revenue Bond Law

BACKGROUND

The City of Sunnyvale owns and operates a water utility, a solid waste utility, and a wastewater utility. From time to time, the City has had a need to issue debt to finance the substantial capital and infrastructure projects that operating such public utilities require. The City, through the Sunnyvale Financing Authority, has recently issued water and wastewater bonds in 2001, refunded solid waste revenue bonds in 2003, and issued new solid waste bonds in 2007. The 2001 bonds refunded utility revenue bonds issued in 1992 and funded an additional $12.5 million in wastewater projects. The 2003 bonds refunded utility revenue bonds used to build the SMaRT Station®, and the 2007 bonds funded the replacement of the materials recovery equipment inside the SMaRT Station. Staff is currently preparing a Report to Council to request authorization to issue an additional $40 million in water and wastewater revenue bonds in May of this year. In addition, there will be need to issue bonds to finance a $400 million Water Pollution Control Plant Renovation over the next 10-15 years.

EXISTING POLICY

Fiscal Sub-Element Policy F.2.5 Revenue Bonds – All City utility related improvements shall be funded only from revenues of the respective utilities.

Fiscal Sub-Element Policy I.1b.1 Capital improvements associated with the existing infrastructure of a utility should be primarily funded from two sources: rate revenue and debt financing.

DISCUSSION

The simplest and most cost-effective means for the City to finance utility capital projects is through the issuance of revenue bonds by the City rather than by the Sunnyvale Financing Authority (the "Financing Authority) or through the issuance of certificates of participation. The City's bond counsel has advised that the City could issue utility revenue bonds only through the adoption of an ordinance which utilizes the City's charter powers. Staff is

recommending that Council adopt an ordinance authorizing the City of Sunnyvale to issue utility revenue bonds.

The proposed municipal utility revenue bonds ordinance (Attachment A) will benefit the City in two ways. First, it will simplify the bond documentation as only the City will be involved in the process instead of both the City and the Financing Authority. Second, this change will facilitate the marketing of the City's utility revenue bonds, potentially leading to lower borrowing costs. These potential benefits will become most important as the City moves to replace the City's aging Water Pollution Control Plant. It should be noted that while the notice has been written to provide the most flexibility, the City is only intending to issue revenue bonds for its existing utilities.

FISCAL IMPACT

There is no fiscal impact associated with taking this action.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center, and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

ALTERNATIVES

1. Adopt the proposed ordinance adding Chapter 3.70 to Title 3 of the Sunnyvale Municipal Code authorizing the City of Sunnyvale to finance public utility projects under the utility revenue bond law.
2. Do not adopt the proposed ordinance and continue issuing utility revenue bonds through the Sunnyvale Financing Authority (secured by an Installment Sale Agreement between the City and the Authority).

RECOMMENDATION

Staff recommends Alternative 1 - Adopt the proposed ordinance adding Chapter 3.70 to Title 3 of the Sunnyvale Municipal Code authorize the City of Sunnyvale to finance public utility enterprises under the utility revenue bond law.

Reviewed by:

Mary J. Bradley Director, Department of Finance
Prepared by: Timothy J. Kirby, Revenue Systems Supervisor

Approved by:

Gary M. Luebbers
City Manager

Attachments

A. Ordinance of the City of Sunnyvale enacting the City of Sunnyvale Municipal Utilities Revenue Bond Law, Relating to the Financing of Public Utility Enterprises

ORDINANCE NO. _____

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE ADDING CHAPTER 3.70 (SUNNYVALE MUNICIPAL UTILTIES REVENUE BOND LAW) TO TITLE 3 (REVENUE AND FINANCING) OF THE SUNNYVALE MUNICIPAL CODE RELATING TO THE FINANCING OF PUBLIC UTILITY ENTERPRISES

WHEREAS, it is in the public interests of the City and the health, safety and well-being of the residents of the City to facilitate the acquisition, construction and improvement of revenue producing public utility enterprises in the City (the "utilities"), including but not limited to: (a) the system of the City for the acquisition, storage, treatment and distribution of water for domestic. commercial and industrial use, irrigation, sanitation, fire protection, recreation or any other public or private use; (b) the system of the City for the collection, treatment and disposal of sewage, waste or storm water, including drainage; (c) the solid waste refuse collection, recycling and disposal system of the City; (d) public parking lots, garages or other automotive or vehicular parking facilities, including any and all public off-street vehicular parking facilities; (e) facilities and other property required for the generation, production, transmission and distribution of electric energy for lighting, heating, and power for public or private uses; (f) facilities and other property required for the production, transmission and distribution of gas for public or private uses; and (g) any other utility enterprise which the City is authorized to create, acquire, construct, operate and maintain; and

WHEREAS, the general laws of the State of California unduly limit or restrict the ability of the city to finance the acquisition, construction and improvement of utilities, and it is in the public interests of the city to provide a mechanism by which utilities may be financed in an efficient and economical manner; and

WHEREAS, enactment of legislation by the City Council providing such a financing mechanism for utilities (1) will promote the health, safety and welfare of the City, including those public interests enumerated above, and (2) constitutes a municipal affair of the City of Sunnyvale, a valid exercise of the police powers of the City of Sunnyvale, and a public purpose in which the City of Sunnyvale has a peculiar and unique interest; and

WHEREAS, in order to assist the financing of utilities of the City, as an exercise of its powers with respect to municipal affairs, staff has recommended the City Council enact the "Sunnyvale Municipal Utilities Revenue Bond Law."

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

<u>SECTION 1.</u> CHAPTER 3.70 ADDED. Chapter 3.70 (Sunnyvale Municipal Utilities Revenue Bond Law) to Title 3 (Revenue and Finance) of the Sunnyvale Municipal Code is hereby added to read as follows:

Chapter 3.70

Sunnyvale Municipal Utilities Revenue Bond Law

3.70.010. Title
3.70.020. Purpose.
3.70.030. Definitions.
3.70.040. General powers.
3.70.050. Authorization of bonds.
3.70.060. Issuance of bonds.
3.70.070. Terms of bonds.
3.70.080. Issuance under indenture or trust agreement.
3.70.090. Personal liability.
3.70.100. Refunding bonds.
3.70.110. Repayment of bonds.
3.70.120. Trust funds.
3.70.130. Purchase of bonds by city.
3.70.140. Bond anticipation notes.
3.70.150. Grant anticipation notes.
3.70.160. Liberal construction.
3.70.170. Provisions of this chapter are complete, additional and alternative.
3.70.180. Judicial validation proceedings.
3.70.190. Amendment of this chapter.
3.70.200. Chapter 3.70 controlling.

3.70.010. Title.

This chapter may be cited as the "Sunnyvale Municipal Utilities Revenue Bond Law."

3.70.020. Purpose.

The city council hereby finds and declares that it is necessary, essential, a public purpose and a municipal affair for the city to provide financing for municipal utilities serving residents and businesses of the city in the interests of the public health, safety and welfare.

3.70.030. Definitions.

Unless the context otherwise requires, the following definitions shall govern the construction of this chapter:

(1) "Acquisition and construction" mean, with respect to any utility or portion thereof, the acquisition, construction, improvement, furnishing, equipping, remodeling, repair, reconstruction or rehabilitation thereof.

(2) "Bonds" mean any bonds, notes, installment sale agreements, leases or other obligations issued or entered into by the city pursuant to this chapter for the purpose of financing the costs of a utility, which are payable exclusively from revenues relating to such utility and other funds permitted by this chapter.

(3) "This chapter" means Chapter 3.70 of the Sunnyvale Municipal Code, as amended from time to time in accordance herewith.

(4) "Charter" means the charter of the City of Sunnyvale, as amended from time to time.

(5) "City" means the City of Sunnyvale, California, a charter city in the State of California existing under and exercising powers pursuant to the Charter and the Constitution of the State of California.

(6) "City council" means the City Council of the City of Sunnyvale.

(7) "Costs" mean, with reference to a utility or any portion thereof, any or all of the following costs incurred for the acquisition and construction thereof:

(a) Obligations of the city incurred for labor and materials in connection with the acquisition and construction of such utility or portion thereof;

(b) The cost of acquisition and construction of any property, whether real or personal and improved or unimproved, including franchise rights and other intangible property, and any interests therein, required for the acquisition and construction of such utility or portion thereof;

(c) The cost of demolishing, removing or relocating any building or structure, and the cost of making relocation assistance payments required by law;

(d) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition and construction of such utility or portion thereof;

(e) All costs of engineering, legal and consultant services, including the costs of the city for surveys, estimates, plans and specifications and preliminary investigation therefor, and for supervising construction, as well as for the performance of all other duties required by or consequent upon the proper acquisition and construction of such utility or portion thereof;

(f) All costs incurred in connection with proceedings by the city necessary to comply with the California Environmental Quality Act of 1970, as amended;

(g) All amounts required to fund any reserve funds for bonds and any interest on bonds becoming due and payable during a period not exceeding the period of acquisition and construction of such utility or portion thereof, and for 12 months thereafter;

(h) All costs of issuance of the bonds;

(i) All costs which the city shall be required to pay, under the terms of any contract or contracts, for the acquisition and construction of such utility, or portion thereof;

(j) The refinancing of any existing indebtedness relating to such utility or portion thereof; and

(k) Any sums required to reimburse the city for advances made for any of the above items, or for any other costs incurred and for work done which are properly chargeable to such utility or portion thereof.

(8) "Revenues" mean, with respect to a utility, all gross income and revenue received by the city from the ownership and operation of such utility, including all fees and charges received by the city for the services of such utility, and all other income and revenue howsoever derived by the city from the ownership and operation of such utility or arising from such utility, and including all receipts derived from the investment of such income or revenues, including moneys deposited in a sinking, redemption or reserve fund or other fund to secure

the bonds or to provide for the payment of the principal of or interest on the bonds and such other moneys as the city council may in its discretion make available therefor. With respect to any grant anticipation notes issued under this chapter, the term "revenues" shall also include the revenues derived from the proceeds of any federal or state grant with respect to such utility. The precise description of the revenues with respect to any utility for which financing is provided under this chapter shall be set forth in the proceedings of the city council authorizing such financing.

(9) "State" means the State of California.

(10) "Utility" means any revenue-producing improvement, building, system, plant, works, facility, or undertaking of any nature whatsoever, which are used in any municipal utility enterprise of the city. Such municipal utility enterprises may include, but shall not be limited to, any one or more of the following:

(a) The system of the city for the acquisition, storage, treatment and distribution of water for domestic, commercial and industrial use, irrigation, sanitation, fire protection, recreation or any other public or private use;

(b) The system of the city for the collection, treatment and disposal of sewage, waste or storm water, including drainage;

(c) The solid waste refuse collection, recycling and disposal system of the city;

(d) Public parking lots, garages or other automotive or vehicular parking facilities, including any and all public off-street vehicular parking facilities;

(e) Facilities and other property required for the generation, production, transmission and distribution of electric energy for lighting, heating, and power for public or private uses;

(f) Facilities and other property required for the production, transmission and distribution of gas for public or private uses; and

(g) Any other utility enterprise which the city is authorized to create, acquire, construct, operate and maintain. The precise description of any utility for which financing is provided under this chapter shall be set forth in the proceedings of the city council authorizing such financing.

3.70.040. General powers.

In connection with the acquisition and construction of a utility by the city, the city is authorized and empowered:

(1) To issue bonds for the purpose of financing or otherwise assisting the payment of the costs of such utility and for the purpose of funding or refunding any issue of bonds;

(2) To establish the terms and conditions for the financing of any component of such utility undertaken pursuant to this chapter;

(3) To employ or contract for such legal, consultant, underwriting, economic feasibility, or other services in connection with the financing of such utility, or to contract for bond insurance or other forms of collateral security, as may be necessary in the judgment of the city council for the successful financing of such utility and the issuance and sale of bonds therefore; and

(4) In addition to all other powers specifically granted in this chapter, to do all things necessary or convenient, in the judgment of the city council, to carry out the purposes of this chapter.

3.70.050. Authorization of bonds.

The city may issue its bonds for the purpose of financing or otherwise assisting the acquisition and construction of all or any portion of a utility as authorized by this chapter. Every issue of bonds shall be a special obligation of the city, payable solely from all or any part of the revenues with respect to such utility. It shall not be necessary that the issuance of any bonds be subject to authorization by the voters of the city.

3.70.060. Issuance of bonds.

Bonds may be issued as serial bonds or as term bonds, as current interest bonds or capital appreciation bonds, or in such other or additional forms as the city council may deem advisable. The bonds shall be authorized by resolution of the city council and shall bear such date or dates, mature at such time or times, bear interest at such fixed or variable rate or rates, be payable at such time or times, be in such denominations, be in such form, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, and be subject to such terms of redemption as the city council may provide. The bonds may be sold at either a public or private sale and for such prices as the city council shall determine.

Sec. 3.70.070. Terms of bonds.

Any proceedings of the city authorizing bonds for a utility may contain provisions respecting any of the following terms and conditions, which shall be a part of the contract with the owners of the bonds:

(1) The pledge of all or any part of the related revenues, subject to such agreements with bond owners as may then exist;

(2) The creation of any mortgage, lien or other security interest on any part of a utility, or on any other funds, rights or assets of the city of any nature whatsoever relating to such utility;

(3) The interest and principal to be received and other charges to be charged and the amounts to be raised each year thereby, and the use and disposition of such revenues;

(4) The setting aside of reserves or sinking funds and the regulation and disposition thereof;

(5) Limitations on the purposes to which the proceeds of a sale of any issue of bonds, then or thereafter issued, may be applied, and pledging such proceeds to secure the payment of the bonds or any issue of bonds;

(6) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds;

(7) The procedure, if any, by which the terms of any contract with bond owners may be amended or abrogated, the amount of bonds the owners of which must consent thereto, and the manner in which such consent may be given;

(8) Specification of the acts or omissions to act which shall constitute a default in the duties of the city to the owners of the bonds, and providing the rights and remedies of such owners in the event of default; and

(9) Such other terms and conditions pertaining to the issuance of the bonds as are deemed advisable by the city council.

3.70.080. Issuance under indenture or trust agreement.

In the discretion of the city council, any bonds issued under the provisions of this chapter may be secured by a trust agreement or indenture by and between the city and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company within or without the state. Such trust agreement or the indenture may pledge or assign the revenues to be received or proceeds of any contract or contracts pledged, and may convey or mortgage any property. Such trust agreement or indenture may contain such provisions for protecting and enforcing the rights and remedies of the bond owners as may be reasonable and proper and not in violation of law, including such provisions as is permitted to be included in any resolution or resolutions of the city council authorizing the issuance of bonds hereunder. Any bank or trust company doing business under the laws of the state which may act as depository of the proceeds of bonds or of revenues or other moneys may furnish such indemnity bonds or pledge such securities as may be required by the city. Any such trust agreement or indenture may set forth the rights and remedies of the bond owners and of the trustee or trustees, and may restrict the individual right of action by bond owners. In addition to the foregoing, any such trust agreement or indenture may contain such other provisions as the city council may deem reasonable and proper for the security of the bond owners.

3.70.090. Personal liability.

Neither the members of the city council nor any person executing the bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

Sec. 3.70.100. Refunding bonds.

The city council may provide for the issuance of bonds any portion of which is to be used for the purpose of refunding outstanding bonds, including the payment of the principal thereof and interest and redemption premiums, if any, thereon. The proceeds of bonds issued to refund any outstanding bonds may, in the discretion of the city council, be applied to the retirement of such outstanding bonds at maturity, or the redemption (on any redemption date) or purchase of such outstanding bonds prior to maturity, upon such terms and subject to such conditions as the city council shall deem advisable.

3.70.110. Repayment of bonds.

Revenues, or any portion thereof, as designated in the resolution, trust agreement or indenture authorizing the issuance of the bonds, shall be the sole source of funds pledged by the city for repayment of bonds issued hereunder. Bonds issued hereunder shall not be deemed to constitute a debt or liability of the city or a pledge of the faith and credit of the city but shall be payable solely from

revenues. All bonds shall contain on the face thereof a statement to the following effect:

> *Neither the faith and credit nor the taxing power of the City of Sunnyvale is pledged to the payment of the principal of or interest on this bond.*

The issuance of bonds shall not directly, indirectly or contingently obligate the city council to levy or pledge any form of taxation or to make any appropriation for their payment.

3.70.120. Trust funds.

All moneys received pursuant to the provisions of this chapter, whether proceeds from the sale of bonds or revenues or other moneys or assets authorized by this chapter to be pledged to secure payment of bonds, shall, to the extent set forth in the resolution or trust agreement authorizing the issuance of the bonds, be deemed to be trust funds to be held and applied solely for the purposes of this chapter. Any bank or trust company in which such moneys are deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes specified in this chapter, subject to the terms of the resolution, agreement or indenture authorizing the bonds.

3.70.130. Purchase of bonds by city.

The city shall have the power, out of any funds available therefor, to purchase its bonds. The city may hold, pledge, cancel or resell such bonds, subject to and in accordance with its agreement with bond owners.

3.70.140. Bond anticipation notes.

In anticipation of the sale of bonds authorized by this chapter, the city is hereby authorized to issue bond anticipation notes, and to renew the same from time to time, in such series and amounts as are determined by the city council to be necessary or appropriate for the costs of a utility approved by the city council. Such notes shall be payable from revenues or other moneys or assets authorized by this chapter to be pledged to secure payment of bonds, and which are not otherwise pledged, or from the proceeds or sale of the particular bonds in anticipation of which they are issued. Such notes shall be issued in the same manner as other bonds which are authorized to be issued hereunder.

3.70.150. Grant anticipation notes.

In anticipation of the receipt of funds derived from any federal or state grants with respect to a utility or any portion thereof, the city is hereby authorized to issue grant anticipation notes, and to renew the same from time to time, in such series and amounts as are determined by the city council to be necessary or appropriate for the costs of a utility approved by the city council and reimbursable from such grants. Such notes shall be payable from the revenues derived from the proceeds of such grants or other moneys or assets authorized by this chapter to be pledged to secure payment of bonds, and which are not otherwise pledged, or from the proceeds or sale of the particular bonds in anticipation of which they are issued. Such notes shall be issued in the same manner as other bonds which are authorized to be issued hereunder.

3.70.160. Liberal construction.

This chapter, being necessary for the health, welfare and safety of the city, its residents and businesses, shall be liberally construed to effect its purposes. Furthermore, the city council hereby declares that this chapter is an exercise of the power granted to the city by the city charter and the Constitution of the State of California, and is an exercise by the city of its powers as to municipal affairs and its police powers, and this chapter shall be liberally construed to uphold its validity under the laws of the state.

3.70.170. Provisions of this chapter are complete, additional and alternative.

This chapter shall be deemed to provide a complete, additional and alternative method for doing the things authorized hereby, and shall be regarded as supplemental and additional to the powers conferred by other laws. The issuance of bonds under the provisions of this chapter need not comply with the requirements of any other law applicable to the issuance of bonds for a utility. The purposes authorized hereby may be effectuated and bonds are authorized to be issued for any such purposes under this chapter notwithstanding that any other law may provide for such purposes or for the issuance of bonds for like purposes and without regard to the requirements, restrictions, limitations or other provisions contained in any other law.

3.70.180. Judicial validation proceedings.

An action may be brought pursuant to Chapter 9 (commencing with Section 860 of Title 10 of Part 2 of the Code of Civil Procedure) to determine the validity of bonds and the legality and validity of all proceedings previously taken and proposed to be taken for the authorization, issuance, sale, and delivery of the bonds and for the payment of the principal thereof and interest thereon.

3.70.190. Amendment of chapter.

This chapter shall not be amended so as to have a material, adverse affect upon the rights of the owners of any outstanding bonds theretofore issued hereunder, without the written consent of such bond owners; *provided, however*, that this chapter may be amended at any time:

(1) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision herein contained, as the city may deem necessary or desirable; or

(2) if such amendment does not materially impair or adversely affect the interests of any such Bond owner in the opinion of the city council; or

(3) if such amendments apply solely to bonds not theretofore issued.

3.70.200. Chapter 3.70 controlling.

To the extent that the provisions of this chapter are inconsistent with the provisions of any general statute or special act or parts thereof, the provisions of this chapter shall be deemed controlling.

SECTION 2. CEQA EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project which has the potential for causing a significant effect on the environment.

SECTION 3. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared invalid.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 5. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication of a notice once in The Sun, the official newspaper for publication of legal notices of the City of Sunnyvale, setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on _____, 2010, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2010, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

_____

City Clerk
Date of Attestation: _____

_____

Mayor

SEAL

APPROVED AS TO FORM AND LEGALITY:

_____

David E. Kahn, City Attorney