

CHARTER OF THE CITY OF SAN DIEGO

Section 90.1

1. Addition voted 11-02-1954; effective 01-10-1955

Section 90.1. Notwithstanding any of the provisions of this Charter to the contrary the Council of The City of San Diego shall have power, with the consent of a majority vote of the electors of said City, to provide for the expansion, extension, replacement or betterment of the water impounding, treating and distribution system of the City and to provide for the payment of the cost of such public improvements by the issuance and sale of bonds or other securities payable in whole or in part from the revenues derived from the maintenance and operation of said public improvements as hereinafter provided in sub-paragraph (2) hereof. The Council shall exercise such power only by ordinance after recommendation by the City Manager and a finding by such legislative body that there exists a need therefor, and no such ordinance shall become effective until approved by a majority vote of the electors of said City voting at either a general or special election.

Any ordinance adopted under this section shall provide, in addition to other matters:

(1) A maturity date for the bonds or securities not to exceed thirty (30) years from the date of the issuance shall be fixed.

(2) Each bond or security shall provide that the principal of such bond or security, together with the interest thereon shall be payable only from a special fund which shall consist of such revenues of the Water Department as are in excess of the amount needed to operate and maintain the Water Department.

The Council may, however, if deemed advisable, use premiums or accrued interest payments on such bonds or securities to reduce the interest obligation on such bonds or securities. The Council may also use the proceeds of the sale of any refunding bonds which may be authorized to pay off the principal and interest obligation of said bonds or securities.

(3) Each bond or security authorized hereunder shall contain a clause to the effect that neither the principal nor interest thereon shall under any circumstances ever become an obligation chargeable or enforceable against any of the tax revenues of the

City, or any other revenues of said City, except such revenues as are expressly specified in the bond or security for the payment of such bond or security, or the interest thereon.

The Council may authorize the insertion of a covenant or agreement in each bond or security herein authorized to the effect that during the life of said bond or security and until the principal thereof, together with the interest thereon, is fully paid, the Council will fix such charges or fees for the use of such public improvements or the services furnished the people by the operation of such public improvements, or both, as will produce moneys sufficient in amount to insure the payment in full of the principal and interest of such bond or security when due, and the cost in full of the maintenance and operation of said public improvements during the life of said bond or security.

The Council shall also have power to insert in each bond or security such other covenants as will tend to insure the safety of said bond or security for investment purposes.

The Council may also provide in each issue of revenue bonds herein authorized a reservation on behalf of the City that said City shall have the right at any time to redeem and pay the principal and interest of said revenue bonds out of the proceeds derived from the issuance and sale of such refunding bonds as may be authorized.

All bonds or securities issued pursuant to the provisions of this section of the Charter shall be so worded as to make the same negotiable.

After the revenue bonds herein authorized are fully redeemed, and all the interest thereon paid to the bond-holders, the Council shall have power to fix only such charges or fees for the use of such public improvements or for the services furnished the people by the operation of such public improvements as shall pay the cost of operating and maintaining the same, together with such repairs, replacements and additions as may be needed to keep such improvements in good operating condition.

No bond or security, or any interest payable thereon, issued under this section of the Charter shall ever under any circumstances create or impose any obligation upon the City itself, or the tax revenues of said City, or any revenue of the City other than the revenues which are herein authorized to be pledged to secure the payment of the principal and interest of the bonds or securities issued pursuant to this section of the Charter, and in no event shall the City, during such time as any bonds issued pursuant to this section are outstanding, appropriate its tax revenues for Water Department purposes except to the extent that such may be needed to supplement revenues of the

Water Department for any fiscal year during which the anticipated Water Department revenues are insufficient to meet the estimated costs of normal operation and maintenance of the Water Department for such year.

2. Amendment voted 06-03-1958; effective 02-19-1959

Section 90.1: Waterworks

Subdivision 1. Unless the context otherwise requires, the definitions set forth in this subdivision govern the construction of this section.

“City” means The City of San Diego.

“This section” means this amended Section 90.1.

“Waterworks” means all facilities, property and works of the City for the development, obtaining, conservation, production, storage, treatment, transmission, furnishing and distribution of water for public and private use (whether located within or without the City) and shall comprise the public utility system of the City for water purposes, as mentioned in Section 1 of this Charter.

“Revenues” includes all moneys received from rates, tolls, or charges for water or for service from the waterworks or any part thereof, and all other income and receipts derived from the use of or operation of the waterworks or any part thereof, or otherwise arising from the waterworks or any part thereof, or any other income of the Water Department and includes interest on all funds derived from or established for the waterworks. “Revenues” shall not be construed to include taxes or assessments.

“Water rates” means rates, tolls or charges for water or for service by the waterworks or any part thereof.

Subdivision 2. Revenue bonds to provide money for the acquisition and construction of additions to and extensions and improvements of the waterworks of the City and the reconstruction and replacement of parts of such waterworks and the acquisition of all lands, easements, rights and property necessary for such purposes, may be issued as provided in this section. Any issue of revenue bonds may be for any or all of said purposes. Such revenue bonds, hereinafter sometimes called “bonds” or “revenue bonds” shall not constitute an indebtedness of the City but shall constitute obligations which shall be payable, principal and interest and any premiums upon the redemption thereof prior to maturity, only from a special fund which shall consist of such revenues of the Water Department as are in excess of the amount needed to operate and maintain the Water Department (and said special fund is presently designated and is

sometimes hereinafter in this section called the “Water Department Revenue Bond Fund”); provided, however, that this shall not preclude the payment or redemption of such bonds from the proceeds of refunding bonds issued to refund said revenue bonds or the use of accrued interest and premiums paid upon the sale and delivery of the revenue bonds for the payment of principal thereof or interest thereon. Refunding revenue bonds for the purpose of refunding any revenue bonds issued under this section may be issued as provided in this section and shall be payable only from the fund from which the revenue bonds to be refunded are payable. No restriction or limitation upon or procedure for the issuance of bonds in other sections of this Charter shall apply to revenue bonds issued under this section (including refunding revenue bonds) and this section shall constitute complete authority for the issuance of such revenue bonds (including such refunding revenue bonds) and no action or proceeding not required by this section shall be necessary for the valid authorization and issuance of such revenue bonds. No revenue bond issued under this section or any interest payable thereon shall be or become an obligation chargeable or enforceable against any of the tax revenues of the City or any other revenues of the City except such revenues of the Water Department as are in excess of the amount needed to operate and maintain the Water Department.

Subdivision 3. The limitations upon bonded indebtedness of The City of San Diego contained in sections 76 and 90 of this Charter or in any other section or provision thereof shall not apply to revenue bonds issued under the provisions of this section and payable exclusively from the fund mentioned in Subdivision 2 hereof derived from revenues from the waterworks of the City and not payable from taxes levied by the City. Waterworks revenue bonds payable from a special fund derived from revenues of the Water Department shall not be deemed indebtedness of the City within the meaning of the debt limitation provisions contained in sections 76 and 90 of this Charter or in any other section thereof.

Subdivision 4.

(a) To provide money for the acquisition and construction of additions to and extensions and improvements of the waterworks of the City and the reconstruction and replacement of parts of such waterworks and the acquisition of all lands, easements, rights and property necessary for such purposes, the Council may issue, in one issue or in separate issues or series from time to time, under this section, revenue bonds not to exceed \$11,000,000 in total principal amount. All waterworks revenue bonds in excess of said sum of \$11,000,000 shall be authorized by proceedings taken in the manner hereinafter provided in paragraph (b) of this subdivision.

(b) Except as provided in paragraph (a) of this subdivision, revenue bonds payable from revenues of the Water Department may be authorized only in the manner provided in this paragraph (b).

The first step in the proceedings shall be a recommendation by the City Manager, which recommendation shall state generally the purposes of the proposed revenue bond issue and the principal amount thereof and his recommendation that revenue bonds be issued hereunder. Such recommendation need not be in any particular form.

After the recommendation by the City Manager has been received by the Council it may adopt an ordinance finding the need for the issuance of revenue bonds under this section in the amount and for the purposes set forth in the recommendation of the City Manager. The Council, by said ordinance, shall submit to the qualified voters of the City, at an election held for that purpose, the question of issuing revenue bonds pursuant to this section to provide moneys for the purposes stated in the recommendation of the City Manager.

The Council, by a vote of two-thirds of the members thereof, may adopt a resolution stating that it determines to proceed under this section without a recommendation by the City Manager and in that case such resolution shall constitute the first step in the proceeding. Any such resolution also shall state generally the purposes of the proposed revenue bond issue and the principal amount thereof, and in the event such resolution is adopted no recommendation of the City Manager shall be required and the ordinance calling the election shall find the need for the issuance of revenue bonds under this section in the amount and for the purposes stated in such resolution. In the event the Council adopts a resolution to proceed without the recommendation by the City Manager, the ordinance calling the election may be adopted only by a vote of at least two-thirds of the members of the Council and at a meeting subsequent to that at which the resolution was adopted.

The ordinance calling the election shall:

- (a) state the purposes for which the bonds are to be issued;
- (b) state the principal amount of the bonds;
- (c) state the maximum rate of interest on the bonds, which shall not exceed six per cent per annum, payable semiannually;
- (d) call the election and fix the election date;
- (e) fix the manner of holding the election;
- (f) fix the manner of voting for or against the issuance of the bonds.

In all particulars not stated in said ordinance the election shall be held and the votes canvassed in the manner provided by law for general municipal elections in the City.

Any special election called for the purpose of voting upon a proposition of issuing bonds under this section may be consolidated with any municipal primary election or any general City election or any other election at which all of the qualified voters residing within the City are entitled to vote. Such consolidation may be made in any manner authorized under the Elections Code of the State of California or under the Elections Code of the City.

The ordinance shall be published once a week for two succeeding weeks in the official newspaper of the City, the first publication to be at least 21 days prior to the election. No other notice of such election need be given. If a majority of the voters voting on the proposition of issuing the bonds vote in favor of the issuance thereof bonds in an amount not exceeding the amount stated in the ordinance calling the election may be issued.

No error, irregularity or omission in the election or in any of the proceedings prior thereto which does not affect the substantial rights of the electors of the City or the voters voting at the election at which any revenue bonds are authorized under this section shall invalidate the election.

Subdivision 5.

(a) The Council may issue all bonds authorized at an election or all bonds authorized under paragraph (a) of subdivision 4 of this section in one issue or may divide the principal amount thereof into two or more series and fix different dates of issuance and maturities for the bonds of each series. The Council shall provide for any issue or series of bonds (if issued in series) by ordinance. The Council shall in said ordinance fix the date of issuance and the dates of maturity of each issue or series of bonds; provided, however, that no bond shall run more than 40 years from its date. Any ordinance providing for the issuance of bonds hereunder shall recite the objects and purposes for which the bonds are to be issued, the principal amount of the bonds to be issued pursuant to such ordinance, and the maximum rate of interest to be payable thereon, not to exceed six per cent per annum, payable semiannually.

(b) Said bonds shall be issued in negotiable form and shall be negotiable. The recitals of regularity of proceedings in any revenue bond issued and sold under this section shall be conclusive evidence of compliance with the provisions of this Charter and of the validity of such bond and no bona fide purchaser of such bond containing the recital permitted by this section shall be required to see to the existence of any fact or to the performance of any condition or to the taking of any proceedings required prior to the actual issuance and delivery of said bonds or to the application of the purchase price paid for said bonds.

Subdivision 6. In any ordinance providing for the issuance of revenue bonds under this section the Council may fix the terms and conditions thereof (including covenants) and may in any article, section, sentence or clause thereof make such provision (including covenant) as it may deem necessary or desirable to facilitate the issuance and sale of the bonds or for the protection or security of the holders thereof, including, without affecting the generality of the foregoing, any or all of the following:

(a) The denomination or denominations of the bonds, the medium of payment thereof, the place or places of payment thereof, which may be within or without the State of California, the form of said bonds (including recitals of regularity) and of interest coupons pertaining thereto, the form, denomination and conditions of any temporary bonds or interim certificates (which temporary bonds or interim certificates may be issued without interest coupons), and the manual (one signature must be manual) and facsimile signatures to be affixed to said bonds (definitive or temporary) or interim certificates, and the facsimile signature to be affixed to interest coupons;

(b) Provisions for the call and redemption prior to maturity of any part of or all of said bonds and the premiums to be paid upon such call and redemption;

(c) Said bonds shall be designated "Waterworks Revenue Bonds" and each bond shall state on its face that it does not constitute an indebtedness of The City of San Diego but is an obligation payable, principal and interest, and premiums, if any, upon the redemption thereof, only from a special fund which shall consist of such revenues of the Water Department as are in excess of the amount needed to operate and maintain the Water Department; provided, however, that the foregoing statement shall not preclude the payment or the redemption of said bonds from the proceeds of refunding bonds or the payment thereof from premium and accrued interest obtained upon the sale of the bonds. Such special fund is presently designated and is sometimes hereinafter in this section called the Water Department Revenue Bond Fund;

(d) Covenants relating to rates for the use of water or for services from the waterworks system. Such rates and charges for the use of water or service from the waterworks system shall provide revenues at least sufficient to pay, as the same shall become due, principal of and interest on all outstanding revenue bonds payable out of the revenues of the Water Department, including premiums, if any, due upon the redemption of any thereof (and including all payments required to be made into reserve and sinking funds, if any, for said revenue bonds or any thereof), and all other obligations and indebtedness payable out of said revenues, in addition to paying, as the same shall become due, the necessary expenses of operating and maintaining the Water Department;

(e) Covenants relating to the extent to which such services may be furnished or rendered to the City or to any government, department of government, public corporation or body free or at lower rates than otherwise charged;

(f) The collection, deposit and safekeeping of the revenues, and the permissible uses thereof;

(g) The construction fund into which the principal sums from the sale of the bonds shall be placed, the special fund or funds to be established and maintained for the payment of principal and interest of the bonds, including reserve, sinking, bond service, redemption, and trust funds, and any revenue bond payable from the Water Department Revenue Bond Fund may be paid from any such special fund established therefor; the permissible investments of moneys in said funds, or any thereof, the accounts and records to be kept, audits thereof and examination of such audits by bondholders and others;

(h) Carrying of insurance upon the waterworks or any part of the waterworks system or property against any or all risks, and in case of loss the application of the insurance proceeds;

(i) Prohibition against or limitations upon the sale, lease or other disposition or transfer of the waterworks of the City or any substantial part thereof, and the use of any funds derived from any sale, lease or other disposition or transfer permitted under the terms of such ordinance;

(j) Limitations upon the issuance of any additional bonds payable out of the revenues of the Water Department, but no bonds shall be issued pursuant to this section or under any other provision of the Charter or any other law having any priority in payment of principal or interest out of the revenues of the Water Department over any revenue bonds theretofore or thereafter issued and payable out of such revenues;

(k) Provisions whereby the consent or agreement of a stated percentage or number of the holders of the bonds may bind all holders to modifications of such provisions of the ordinance, resolution or order authorizing or providing for the issuance of such bonds or the sale thereof as may be stated in such ordinance or to a refunding of said bonds and to calls or exchanges in connection with such refunding;

(l) For the issuance of a duplicate in the manner and upon such terms and conditions as the Council may determine, in the event any bond, temporary bond, coupon or interim certificate of any such issue is lost, destroyed or mutilated;

(m) Any other provision (including covenant) valid under the Constitutions of the State of California and the United States of America.

Subdivision 7. Any ordinance providing for the issuance of any revenue bonds under this section and all other ordinances, resolutions or orders in the proceeding for the issuance of said bonds shall constitute a contract with the holders of the bonds and may be enforced by any holder by mandamus, injunction or any other applicable legal action, suit, proceeding or other remedy.

Subdivision 8. Bonds issued under this section shall be sold only at public sale following such notice as the Council, by order or resolution, may prescribe; provided, however, that if no bid is received or if the bid or bids received are not satisfactory the Council may reject all bids received, if any, and may thereafter sell such bonds at public or private sale; provided, further, that the provisions of this subdivision shall not apply to the exchange of any refunding bonds for outstanding bonds. Any revenue bonds issued hereunder may be sold at a fixed rate of interest or the bidders may be invited to state the rate or rates of interest at which they will purchase said bonds, but no rate of interest on any of the bonds shall exceed six per cent per annum, payable semiannually. If the bidders are invited to state the interest rate or rates, then upon the acceptance of a bid the Council shall by resolution or order, which shall not be subject to referendum, fix such interest rate or rates as have been bid by the successful bidder as the rate or rates of interest on bonds sold. Said bonds shall be sold for not less than par and accrued interest to date of delivery.

Subdivision 9. The proceeds from the sale of bonds issued hereunder (except premium and accrued interest which shall be paid into the bond service or other fund designated or established for the payment of principal and interest of the bonds) shall be paid into the construction fund designated by the ordinance providing for the issuance of said bonds and shall be applied exclusively to the objects and purposes set forth in such ordinance; provided, however, (1) that the Water Department Revenue Bond Fund from which the bonds are payable may be reimbursed from such proceeds for expenditures for purposes for which the bonds were issued made from such fund after the issuance of the bonds has been authorized at the election thereon, (2) that said proceeds may be used for the payment of interest on said bonds during the period of acquisition and construction and for the first six months thereafter; and (3) that when the objects and purposes for which the bonds are issued have been accomplished any remaining unexpended funds derived from the sale of the bonds shall be used for the payment of principal and interest of said revenue bonds or for the redemption of any callable bonds thereof.

Subdivision 10. Refunding revenue bonds may be issued for the payment or redemption of any revenue bonds issued pursuant to this section and such refunding bonds may be issued in principal amount sufficient to refund the outstanding bonds proposed to be refunded thereby, including payment of accrued interest and of any premiums thereon

and all expenses of such refunding. Refunding revenue bonds shall be authorized, issued and sold substantially in the manner provided for the issuance and sale of other revenue bonds hereunder or may be exchanged for the outstanding bonds to be refunded upon such terms and conditions as may be stated in the ordinance authorizing such refunding bonds, except that no election shall be necessary to authorize the issuance of refunding bonds hereunder.

Subdivision 11. To the extent that any provision of any ordinance authorizing the issuance of revenue bonds pursuant to this section or any provision of any ordinance, resolution or order pertaining to such revenue bonds adopted pursuant to the authority of this section is inconsistent with any of the provisions of any other section of this charter the provisions of such ordinance, resolution or order shall control so long as any of the bonds or coupons to which the same pertain are outstanding and unpaid. No bond shall be deemed to be outstanding and unpaid within the meaning of this section if moneys for the purpose of paying the same or redeeming the same prior to maturity and sufficient therefor have been irrevocably set aside in a bond service fund, sinking fund, redemption fund, or other trust fund created to insure the payment or redemption thereof.

The Council is authorized to take any and all steps and proceedings necessary or convenient for the authorization, issuance and sale of revenue bonds under this section and for the payment or redemption thereof.

3. Amendment voted 06-07-2016; effective 07-18-2016

See current Charter.