Chapter 225

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Municipal Utilities

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MUNICIPAL OWNERSHIP AND OPERATION OF PUBLIC UTILITIES GENERALLY

225.010 Definition. As used in this chapter, unless the context requires otherwise, "city" means any incorporated city or town.

225.020 Authority of cities to acquire, own and operate utilities within and without city limits. (1) When the power to do so is conferred by or contained in its charter or act of incorporation, any city may build, own, operate and maintain waterworks, water systems, railways and railroads, electric light and power plants, within and without its boundaries for the benefit and use of its inhabitants and for profit. To that end it may:

(a) Acquire water systems and use, sell and dispose of its water for domestic, recreational, industrial, and public use and for irrigation and other purposes within and without its boundaries.

(b) Build, acquire, own and operate railways operated by steam, electric or other power within and without its boundaries and running from such city to other towns, cities and points without its boundaries.

(c) Acquire right of way, easements or real property within and without its boundaries for any such purpose.

(2) In exercising such powers, any city may bring actions for the condemnation or taking of private property for public use in the same manner as private corporations are now authorized or permitted by law to do. [Amended by 1967 c.306 §1]

225.030 Utility may provide services outside city limits. Any city owning, controlling or operating a system of waterworks or electric light and power system for supplying water or electricity for its inhabitants and for general municipal purposes, and any person controlling or operating any water system or electric light and power system under contract, lease or private ownership, may sell, supply and dispose of water or electricity from such system to any person within or without the limits of the city in which the water or electric light and power system is operated, and may make contracts in reference to the sale and disposal of water or electricity from such system, for use within or without the corporate limits. [Amended by 2005 c.22 §167]

225.040 Validation of prior municipal contracts. All contracts or agreements made prior to May 20, 1911, and in effect as of that date, for sale and disposal of water or electricity by any city or person operating, controlling or owning water or electric light and power systems, to any person within or without the limits of the city in which the system is operated, are ratified and declared legal and valid contracts in so far as the right of the city to contract with reference to same is concerned. [Amended by 2005 c.22 §168]

225.050 Joint acquisition, ownership and operation of waterworks; joint financing. (1) Any or all cities may construct, own or operate jointly, in such proportion as they may agree, waterworks and water pipelines, water rights and water.

(2) For the purposes of subsection (1) of this section, the cities may:

(a) Purchase, own, hold, appropriate and condemn land, rights of way, water or water rights in their own names or in the name of a joint or other commission or agency.

(b) Purchase one from the other or others waterworks, water pipelines, water rights or water or any interest therein or in either of them.

(c) Provide joint or other commissions or agencies for construction, operation or control of the matters listed in this section.

(d) Issue, sell or otherwise dispose of bonds or other securities of the city for the purpose of carrying out any of the provisions of this section.

225.060 Joint ownership, operation and financing of municipal utilities with another state. (1) Whenever authorized by their charter or incorporation law, cities and other municipal corporations may, either severally or in joint agreement, purchase, own, operate and maintain any works in an adjoining state necessary or pertinent to the furnishing of water supply or electric power, or both, for the benefit and use of their inhabitants and for profit, in so far as authorized and permitted by the laws of the adjoining state.

(2) For the purposes stated in subsection (1) of this section, and subject to its limitations, cities and other municipal corporations may purchase, own, appropriate and condemn land, rights of way, and water or water rights or both.

(3) Cities and other municipal corporations may also issue, sell and otherwise dispose of their bonds or other securities for the purposes of this section.

225.070 Use of surplus city waters for federal military purposes. The governing body of any city may contract with and permit the United States of America to use for military purposes within or without the boundaries of such city the surplus waters thereof and such use shall be deemed to be for municipal purposes.

225.080 Financing costs of municipal waterworks or water system; benefit assessments. (1) In order to finance the cost of installing any improvement for waterworks or water systems authorized by ORS 225.020, a city council may provide for and make a local assessment for benefits, for all or part of the cost of such construction, against any and all property whether within or without the city or partially within or partially without the city and enforce collection of such assessments. An assessment shall not be levied under this section against property located outside the city, however, unless the governing body of the county where such property is located, by resolution, approved the assessment of the property to be assessed.

(2) ORS 224.010 to 224.170, applying to assessments for construction of sewer systems, apply to assessments authorized by this section. [1971 c.269 §2]

225.085 Klamath Cogeneration Project; service contracts; prohibited transactions. Notwithstanding any other law, the City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath Cogeneration Project, may enter into transactions with other persons or entities for the production, supply or delivery of electricity or fuel on an economic, dependable and cost-effective basis, including financial products contracts and other service contracts that reduce the risk of economic losses in the transactions. This section does not authorize any transaction that:

(1) Constitutes the investment of surplus funds for the purpose of receiving interest or other earnings from the investment; or

(2) Is intended or useful for any purpose other than the production, supply or delivery of electricity or fuel on a cost-effective basis. [1999 c.683 §2]

Note: 225.085 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 225 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

TELEPHONE SYSTEM

225.110 Ownership and operation of telephone system within or without city limits. When authorized by its charter or act of incorporation, a city may purchase, build, own, operate and maintain telephone or telegraph systems within or without its boundaries, for the benefit and use of its inhabitants at cost or for profit. [Amended by 2005 c.22 §169]

225.120 Interconnections; cooperation with state. For the purposes of ORS 225.110, a city may interconnect by agreement or otherwise with other public or private telephone systems and conduct both a local and long distance telephone business or it may cooperate with the state at any time that the state undertakes to handle the long distance telephone service for its cities, telephone districts or both.

225.130 Right to acquire property. For any of the purposes of ORS 225.110 and 225.120, a city may acquire rights of way, easements and real property within or without its boundaries.

225.140 Condemnation of private property for telephone system. Except as provided in ORS 225.150 and 225.160, in exercising the powers granted by ORS 225.110 to 225.130, a city may bring actions for condemnation or taking of any private property necessary for such public use, in the manner provided or permitted by law for private corporations, notwithstanding that the property may already be devoted to a public use.

225.150 Compensation. The city shall pay compensation by deposit in court of an order drawn on the city treasurer for the amount of compensation fixed by the court in the condemnation proceeding.

225.160 Alternate condemnation proceeding. In lieu of proceeding under ORS 225.140, a city may elect to proceed with condemnation in the manner provided by law for condemnation of land for highway or other purposes by this state.

MUNICIPAL LIGHT AND POWER SYSTEM

225.210 Compliance with rate regulations. Each city which owns and operates an electric light and power system or which distributes electric energy for hire, shall charge such rates therefor as meet the requirements of ORS 225.220 to 225.300.

225.220 Enforcement of statutory requirements. (1) The requirements of ORS 225.210 to 225.300 shall be enforced and observed by that officer who by the charter is charged with the administration of any electric light and power plant or distributing system owned or operated by the city.

(2) As used in this section, "officer" includes board or other public authority of the city.

225.230 Rates set in accordance with estimates of annual expenses. (1) The officer referred to in ORS 225.220 shall annually before January 1, make a written estimate of the probable expense of maintaining and conducting the electric light plant or distributing system during the next ensuing year, including the cost of any contemplated alterations, improvements, additions or exten-

sions, together with the probable amount necessary for redemption of any unpaid warrants and the interest thereon, as well as the amount required for payment of interest and maturing principal on any outstanding bonds of the city issued for or in connection with any such electric light plant or distributing system.

(2) The officer shall thereupon ascertain and prescribe as near as can conveniently be done an electric current rate or rates for the ensuing year which will create a fund sufficient to meet all requirements in subsection (1) of this section.

(3) The officer may also include a further amount sufficient to create such fund, as in the judgment of the officer may be desirable or necessary to meet requirements of future contemplated additions, improvements or extensions to the plant or system.

225.240 Exclusive authority to set rates. The officer referred to in ORS 225.220 shall be the sole judge of what rates or charges shall be exacted for the electric current furnished for use of street lighting and other public purposes for the city.

225.250 Application of earnings. The earnings of the electric plant or distributing system shall be applied and used in payment of warrants and interest thereon issued in connection with operation of any such plant or system, and also in payment for alterations, improvements, additions or extensions and for redemption and retirement of outstanding bonds, together with interest thereon, and shall be expended only in connection with and for improving such plant or system and not for other municipal purposes, except as otherwise provided in ORS 225.270.

225.260 Use of proceeds of bond issues. The proceeds of bond issues issued after June 6, 1931, by authority of charter provisions of the city for the purpose of creating, acquiring, building, improving, enlarging, altering or repairing the plant or system referred to by ORS 225.210 shall be used exclusively for the purposes for which such bonds were authorized and issued.

225.270 Use of surplus earnings. When any city which owns or operates a municipal electric power plant or system or distributing system, has paid principal and interest to date on all indebtedness incurred in connection therewith, and has created and accumulated an adequate depreciation and replacement reserve in the judgment of the officer having control of such plant or system, the city shall, for the purpose of reducing general property taxes within such city, pay to itself not less than three percent of the annual gross operating revenue of such plant or system, or a volumetric charge based upon the amounts of electricity delivered, transmitted or distributed to retail electricity consumers regardless of the source. The volumetric charge shall not be less than the equivalent of three percent of the gross operating revenues of the municipality utility in 1999. The city shall adjust a volumetric charge to end users such that charges established for different customer classes bear the same approximate relationship as the gross revenues per kilowatt hour paid by the classes in 1999. [Amended by 1999 c.865 §32]

225.280 Warrants on future income; limitations; retirement. (1) When authorized by the city charter, the officer referred to in ORS 225.220 as having charge of the electric plant or distributing system may execute its warrants upon the city treasurer, drawn against the funds created by and for the benefit of such plant or system in excess of the current cash on hand but not in an amount exceeding one-half of the estimated annual income for the next ensuing year, from such plant or system. The estimate of annual income shall be made by the officer referred to in ORS 225.220.

(2) Warrants so drawn in excess of the cash on hand in any such fund shall be stamped "Not Paid for Want of Funds" by the city treasurer, shall bear the legal interest from the date of such indorsement until the date of payment and shall be paid from the current receipts of the plant or system. The warrant indebtedness shall not be considered or construed to be within the charter limitations respecting any municipal debt.

(3) Warrants issued pursuant to this section shall be retired in the order of their presentation for indorsement "Not Paid for Want of Funds" as funds are available.

225.290 Use of unappropriated state waters. Any city which is authorized by its charter or by law to construct, acquire, maintain or operate an electric generating plant or distributing system may acquire in its own name the right to use the unappropriated waters of this state in accordance with laws of this state. [Amended by 1955 c.707 §32]

225.300 Privilege of filing for use of state waters; limitations; determination of reasonable needs. Any filing made by any city upon the unappropriated waters of this state for use in the future development of a hydroelectric plant by such city shall be reserved to such city and shall not be subject to appropriation by any other person, municipality or corporation unless it is judicially determined that the filing exceeds the reasonable present and future requirements of such city. In that event the surplus or excess may, by judgment of a court of competent

jurisdiction, be released and discharged from the filing. Proceedings in court for the determination of whether or not the filing by any city exceeds its reasonable present and future requirements may be instituted by the State of Oregon, by the Water Resources Commission in the name of and for the State of Oregon, or by any other applicant for the right to use the waters involved. [Amended by 1955 c.707 §33; 2003 c.576 §400]

IRRIGATION AND FIRE PROTECTION SYSTEM

225.310 Definitions for ORS 225.310 to 225.400. As used in ORS 225.310 to 225.400, unless the context requires otherwise, "facilities" means a water supply for irrigation and for fire protection of property within the city together with a distribution system therefor, reservoirs, pumps, mains, stations, with all appurtenances necessary, useful or convenient for the treatment, storage and distribution of water supply.

225.320 Ownership and operation of irrigation and fire protection facilities. Any city may own, acquire, construct, equip, operate and maintain within or without its statutory or corporate limits, in whole or in part, facilities for irrigation and fire protection.

225.330 Acquisition of property for facilities. (1) For the purposes of ORS 225.320, the city may acquire by gift, grant, purchase or condemnation necessary lands and rights of way within or without its statutory or corporate limits.

(2) For the purpose of acquiring property under subsection (1) of this section, the city may invoke and shall have the rights, powers and privileges granted public corporations by laws pertaining to this subject.

225.340 Fixing of rates. The city governing body may establish just and equitable rates or charges to be paid for the use of the irrigation and fire protection facilities by each person, firm or corporation whose premises are served thereby, or upon subsequent service thereto.

225.350 Recovery and collection of service charges. If the service charges established under ORS 225.340 are not paid when due, the amounts thereof, together with such penalties, interests and costs as may be provided by the city governing body, may be recovered in an action at law. [Amended by 1991 c.459 §354]

225.360 Approval, issuance, payment of bonds. For the purposes of ORS 225.320, the city governing body may, after referring the question of acquiring and constructing the facilities to a vote of the electors of the city and after approval thereof by a majority of the electors, authorize the issuance of and cause to be issued bonds of the city for such purposes, either general obligation, limited obligation or self-liquidating in character, in a sum not more than the amount authorized at such election and subject to the provisions of ORS 225.370 and 225.380. Bonds so authorized and issued may provide for payment of both principal and interest thereon from service charges to be imposed by the city governing body for services to be extended and through employment and use of the irrigation and fire protection facilities. If service charges are imposed to be so paid, such portion thereof as may be deemed sufficient shall be set aside as a sinking fund for payment of interest on the bonds and the principal thereof at maturity.

225.370 Character, maturities, sale price of bonds. The city governing body may determine the maturities and tenor of bonds issued under ORS 225.360. However, the bonds shall be serial in character and in accordance with any provisions of law or charter. The bonds shall:

(1) Be payable in not to exceed 30 years from the date of issuance thereof.

(2) Be sold at a price to net the city not less than the par value thereof with accrued interest.

(3) Bear interest at not to exceed six percent per annum. [Amended by 2005 c.22 §170]

225.380 Application of debt limitations. The amount of any self-liquidating bonds issued under ORS 225.360 shall not be within any limitation of indebtedness fixed by law or charter, but shall be in addition to the amount of the bonds within the limitation. However, the aggregate of the bonds, after deducting sinking funds applicable to payment of principal of the bonds, shall not exceed two and one-half percent of the latest real market value of the issuing city. [Amended by 1967 c.293 §27; 1981 c.804 §74; 1991 c.459 §355]

225.390 Preparation and examination of plans. Before calling any election for the purposes set forth in ORS 225.360, the city governing body shall cause to be prepared plans, specifications and estimates of costs of any proposed facilities to be voted upon, which may be examined by any elector of the city.

225.400 Scope of municipal authority. The authority given by ORS 225.310 to 225.390 shall be in addition to and not in derogation of any power existing in any city under any constitutional, statutory or charter provisions.

MUNICIPAL OWNERSHIP OF POWER FACILITIES

225.450 Definitions for ORS 225.450 to 225.490. As used in ORS 225.450 to 225.490, unless the context requires otherwise:

(1) "City" means a city organized under the law of California, Colorado, Idaho, Montana, Nevada, Oregon, Washington or Wyoming and owning and operating an electric light and power system.

(2) "Common facilities" means any works and facilities necessary or incidental to the generation, transmission, distribution or marketing of electric power and related goods and commodities.

(3) "District" means a people's utility district organized under ORS chapter 261 or a similar public utility district organized under the law of California, Colorado, Idaho, Montana, Nevada, Washington or Wyoming.

(4) "Electric cooperative" means a cooperative corporation organized under the law of California, Colorado, Idaho, Oregon, Montana, Nevada, Washington or Wyoming and owning and operating an electric generation, transmission or distribution system. [1967 c.603 §2; 1979 c.151 §1; 1993 c.141 §1; 1999 c.865 §34]

225.460 Policy. (1) The Legislative Assembly finds and declares it to be in the public interest and for a public purpose that cities, districts, electric cooperatives and electric utility companies participate as authorized in ORS 225.450 to 225.490 jointly and with other persons to:

(a) Achieve economies of scale in the generation of electricity;

(b) Meet the future power needs of this state and its inhabitants; and

(c) Participate in transactions useful for the development of an efficient system for the transmission and distribution or marketing of electric power and related goods and commodities.

(2) ORS 225.450 to 225.490 shall be construed liberally to effectuate the purposes set out in subsection (1) of this section. [1967 c.603 §3; 1999 c.865 §35]

225.470 Authority of city to acquire interest in power facilities. In addition to the powers otherwise conferred on cities of this state, a city that owns or operates an electric light and power system, or a city that owns or operates an electric cogeneration facility as defined in ORS 758.505, may plan, finance, construct, acquire, operate, own and maintain an undivided interest in common facilities within or without the state jointly with one or more other cities, with one or more districts, with one or more electric cooperatives or with one or more persons, or with any combination of such cities, districts, electric cooperatives or persons, and may make such plans and enter into such contracts and agreements as are necessary or appropriate for such joint planning, financing, construction, acquisition, operation, ownership or maintenance. [1967 c.603 §4; 1979 c.151 §2; 1993 c.141 §2; 1999 c.865 §36; 2001 c.733 §4]

225.480 City liability; application of moneys; use of eminent domain prohibited. (1) In carrying out the powers granted in ORS 225.470, a city of this state shall be liable only for its own acts with regard to the planning, financing, construction, acquisition, operation, ownership or maintenance of common facilities. No moneys or other contributions supplied by a city of this state for the planning, financing, construction, acquisition, operation or maintenance of common facilities shall be credited or applied otherwise to the account of any other participant in the common facilities.

(2) A city shall not exercise its power of eminent domain to acquire a then existing thermal power plant or any part thereof. [1967 c.603 §5]

225.490 Use of municipal money or property; revenue bonds. Any city of this state participating in common facilities under ORS 225.450 to 225.490 may furnish money and provide property, both real and personal, and to the extent and in the manner provided by its charter issue and notwithstanding any other provision of law, sell, either at public or privately negotiated sale, revenue bonds pledging revenues of its electric system and its interest or share of the revenues derived from the common facilities and any additions or betterments thereto, in order to pay its respective share of the cost of the planning, financing, acquisition and construction thereof. All moneys paid or property supplied by any such city for the purpose of carrying out the powers conferred by ORS 225.450 to 225.490 are declared to be for a public purpose. [1967 c.603 §6; 1969 c.341 §1; 1999 c.865 §37]