Chapter 224

2003 EDITION

City Sewers and Sanitation

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CONSTRUCTION OF SEWER SYSTEM; ASSESSMENT PLAN

224.010 Definitions for ORS 224.010 to 224.170. As used in ORS 224.010 to 224.170, unless the context requires otherwise:

(1) "City" means any incorporated city or town.

(2) "Council" means the council or other municipal authority of a city.

224.020 Authority of city to construct sewage system. Whenever the council of any city deems it necessary or expedient to construct a sewer partially within and partially without the city, or to construct a sewer outlet, or do any other work, acts or things without the city for proper disposal of sewerage and drainage, the city, through its council, may acquire by purchase, condemnation or otherwise, any property rights of way, easement and other rights without the city as may be needed or deemed essential for the construction of the sewer, sewer outlet, or other works. It may also provide for and do all things which may be necessary or deemed essential for proper construction of such sewer, sewer outlet, and for other works, acts and things which may be deemed necessary or essential for the proper disposal of sewerage and drainage from the city and adjacent territory.

224.030 Authority of city to alter water flow; limitations. A city, through its council, may divert water and waterways, fill or drain lakes, ponds or other waters, increase or diminish the flow of waters in natural channels or dam channels and do such other acts and things as may be found necessary or essential for the matters provided for in ORS 224.010 to 224.120 and in ORS 224.170. However, no property rights or other vested rights shall be taken without agreement with the owner or a proceeding of condemnation.

224.040 Assessment of property; collection. The council may provide for and make a local assessment for benefits against any and all property whether within or without the city or partially within or partially without the city and enforce a collection of such assessments.

224.050 Rights of owners outside city limits. The owners of property without the city shall be given like notice and shall have like opportunities of remonstrance and have all other rights and remedies which the owners of property within the city may have or be given, including the privileges of the Bancroft Bonding Act or similar charter provisions relating to bonding of assessments.

224.060 [Amended by 1959 c.220 §1; repealed by 1967 c.280 §1 (224.065 enacted in lieu of 224.060)]

224.065 Writ of review. Notwithstanding any of the provisions of ORS 224.010 to 224.170, owners of any property against which an assessment for a local improvement under this chapter has been imposed may seek a review thereof under the provisions of ORS 34.010 to 34.100. [1967 c.280 §2 (enacted in lieu of 224.060 and 224.070)]

224.070 [Amended by 1959 c.220 §2; repealed by 1967 c.280 §1 (224.065 enacted in lieu of 224.070)]

224.080 Record and effect of judgment. Upon final determination of the review a transcript of the judgment shall be filed with the auditor, clerk or other official of the city having charge of the assessment records, whereupon it shall be entered in the records of the city and other records as provided in ORS 224.090 and 224.100 and shall constitute the assessment against the property. It shall bear interest from the date that other assessments for such sewer or work bear interest and shall be enforced and collected in like manner as the assessment is collected against other property which may have been assessed for such sewer or other work. In case the judgment on appeal is for the same amount as the assessment, no entries need be made of the transcript. [Amended by 1967 c.280 §3]

224.090 Assessment lien on property outside city limits; priority. No assessment under ORS 224.040 against property beyond the limits of the city shall be a lien on the property until a certified transcript of the assessment in so far as it affects such property has been filed with the county clerk or other person having custody and charge of the mortgage records of the county. From the date of such filing the assessment shall be a lien and charge against the property upon which it is imposed, prior and superior to all other liens and encumbrances whatsoever thereon, except general taxes.

224.100 Records and indexes of transcripts; effect of writ of review. The clerk or officer referred to in ORS 224.090 shall record the transcript referred to in that section in the mortgage records of the county and properly index it. The issuance of a writ of review shall not prevent the recording and indexing of such transcript, but upon final determination of the review a further transcript shall be recorded showing the amount of the assessment. The second transcript shall be indexed and recorded and the same shall, for the amount specified therein, have the same force and effect as the first transcript would have had. [Amended by 1967 c.280 §4; 1999 c.654 §24]

224.110 Enforcing liens on property outside city limits. The city, through its council, may collect and enforce or provide for collecting and enforcing payment of liens

created by virtue of ORS 224.090 or 224.100 by a sale of the property in the same manner and with the same force and effect as is or may be provided with respect to property within the city, or a proceeding in court to foreclose such liens.

224.120 Sale without foreclosure. In case of a sale without a foreclosure in court a duplicate certificate of sale shall be made by the city official making the sale and recorded with the county clerk or other officer having charge of mortgage records of the county. In case of redemption or issuance of a deed upon such certificate of sale a further certificate of such fact shall be made by the proper city official and shall be recorded in the same manner. [Amended by 1999 c.654 §25]

224.130 Assessment of property in drainage district. Nothing contained in ORS 224.010 to 224.170 shall authorize the city to assess any property now included in any drainage district organized under ORS 547.005 to 547.030 and beyond the limits of the city unless the owner of such property or the officers of such district consent thereto. However, if the owner of property in such district at any time desires to connect with and utilize any sewer or drain constructed pursuant to ORS 224.020, a just and equitable assessment may be made and charged against the property owned by the owner and especially and peculiarly benefited by such connection.

224.140 Authority to control sewer system. A city, through its council, may enact and enforce such ordinances and other provisions as may be necessary or essential for the proper policing, protection, management and control of sewers, ditches, canals and other works beyond the city limits and constructed by the city under or by virtue of ORS 224.010 to 224.170. The city may construct extensions, laterals and branches to such sewer system upon the terms and provisions applicable to original construction.

224.150 Federal aid. The city may negotiate and obtain from the federal government financial aid in construction referred to in ORS 224.140 by a work relief program, grant, loan or other means of like or different nature.

224.160 Procurement of funds for construction. Pending the making of an assessment for all or part of any construction referred to in ORS 224.140, the city may make temporary loans or advances from the fund legally available under its charter in order to procure the federal aid or perform such construction, or both. Such loan shall be refunded from a local assessment when made and collected. If the city is without adequate funds to make such temporary loan it may from time to time borrow funds therefor and give its certificate of indebtedness for the money so borrowed. This certificate shall be paid only from funds collected from the local assessment authorized to be made for the construction. The rate of interest upon the certificates of indebtedness shall not exceed six percent per annum and no greater amount shall be borrowed than the amounts necessary for the purposes of construction.

224.170 Laws and charter provisions applicable to reassessments. The provisions of the city charter applicable to curative measures or reassessments shall be applicable to property without the city limits as well as to the property within the city. The owners of property beyond the city limits shall have like rights of objection, remonstrances, hearing and other remedies as the owners of property within the city or town. The right of review of any reassessment by the circuit court as provided by ORS 224.065 relative to an original assessment, and the provisions of ORS 224.065, 224.080 and 224.100 relative to review of an original assessment shall be applicable to review of a reassessment. [Amended by 1967 c.280 §5]

224.210 [Repealed by 1973 c.213 §9]

224.220 [Amended by 1971 c.573 §1; repealed by 1973 c.213 §9]

224.230 [Amended by 1967 c.427 §1; repealed by 1973 c.213 §9; amended by 1973 c.835 §162; amendment treated as reenactment, see 224.232]

CONSTRUCTION OF SEWER SYSTEM; BOND PLAN

224.232 Bond election; Environmental Quality Commission order; court enforcement; issuance of bonds without elector approval. (1) The governing body of the municipality, by proposed charter amendment or ordinance, may refer the question of acquiring and constructing the facilities to a vote of its electors, and after approval thereof by a majority of such electors, may authorize the issuance of and cause to be issued bonds of the municipality for such purposes. The bonds may be general obligation, limited obligation or self-liquidating in character in a sum not more than the amount authorized at such election. The bonds may provide for payment of principal and interest thereon from service charges to be imposed by the governing body for services to be extended through employment and use of the facilities. If service charges are imposed to be paid as provided in ORS 224.220 (1971 Replacement Part), 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.

(2) When the Environmental Quality Commission of the State of Oregon enters an order pursuant to ORS 468.090 that requires the acquisition or construction of facilities in a municipality for compliance, the governing body of the municipality must refer to its electors the question of a bond issue in an amount sufficient to finance the necessary acquisition or construction of such facilities. The election must be held within one year of the date on which the order of the Environmental Quality Commission becomes final.

(3) If, within eight months after the final order of the Environmental Quality Commission becomes final, the governing body of the municipality has not called an election in compliance with subsection (2) of this section, the Environmental Quality Commission may apply to the circuit court of the county in which the municipality is located or to the circuit court of Marion County for an order compelling the holding of an election.

(4) If the electors do not approve the bond issue, submitted pursuant to subsection (2) or (3) of this section, the Environmental Quality Commission may apply to the circuit court of the county in which the municipality is located or to the circuit court of Marion County for an order directing that self-liquidating bonds of the municipality be issued and sold pursuant to ORS 224.210 to 224.260 (1971 Replacement Part), and directing that the proceeds be applied to the acquisition or construction of facilities required to comply with the order of the Environmental Quality Commission. If the court finds that the facilities required by the order of the Environmental Quality Commission are necessary to the public health under the minimum standards of the Environmental Quality Commission, it shall issue an order directing that such bonds be issued and sold without elector approval in such an amount as the court finds necessary to acquire or construct such facilities, and that the proceeds be applied for such purposes.

(5) Any court proceeding authorized by subsection (3) or (4) of this section shall be advanced on the court docket for immediate hearing. [1973 c.835 §162 amending 224.230 treated as reenactment of 224.230 repealed by 1973 c.213 §9]

Note: 224.232 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 224 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

224.240 [Amended by 1965 c.283 §1; repealed by 1973 c.213 §9]

224.250 [Amended by 1967 c.293 §23; 1967 c.427 §2; repealed by 1973 c.213 §9]

224.260 [Repealed by 1973 c.213 §9]

224.270 Validation of bond issues. All proceedings and elections had prior to March 9, 1935, in cities of less than 100,000 population under ORS 224.232 and 224.270 are validated. All bonds voted prior to March 9, 1935, by any municipality, as defined in ORS 224.210 (1971 Replacement Part), for a sanitary disposal of sewage under ORS 224.210 to 224.260 (1971 Replacement Part) shall, when issued and sold, be legal and binding obligations of the municipality if the issuance of bonds for that purpose has been authorized and approved by a majority vote of the electors voting on the question and regardless of whether the question was submitted to the electors by the council or other governing body by resolution, ordinance or by charter amendment. The governing body of the municipality may, either before or after issuing the bonds, adopt plans, specifications and estimates for a sanitary disposal of sewage with or without following any previous plans, specifications, estimates or methods.

SEWER CONSTRUCTION IN CITIES OF 3,500 OR LESS

224.310 Definitions for ORS 224.310 to 224.420. As used in ORS 224.310 to 224.420, unless the context requires otherwise:

(1) "Municipality" means a duly incorporated city or town having a population of not more than 3,500 inhabitants as determined from the latest official enumeration of inhabitants, either federal or state, made prior to the date of authorization of the construction and establishment by the municipality of a sewerage system or of an extension to an existing sewerage system.

(2) "Sewerage system" means complete or primary sewage treatment and disposal facilities, sewer mains, pumping stations, and all equipment and appurtenances necessary, useful or convenient for the treatment or disposal of sewage, or any portion of such a system, whether within or without the corporate limits of a municipality. [Amended by 1953 c.287 §9; 1959 c.157 §4]

224.320 Municipalities eligible for state help in financing sewer systems. Municipalities that have been certified by the Environmental Quality Commission as being in need of sewerage systems and that are unable to sell bonds upon the public market, or are unable to obtain satisfactory offers for bonds upon such market, for the purpose of financing the costs of construction thereof may apply to the State Treasurer for the purpose of financing such costs under ORS 224.310 to 224.420. The Environmental Quality Commission shall furnish to the State Treasurer in writing a list of the municipalities that are in the greatest need of

sewerage and sanitation facilities. [Amended by 1955 c.593 §1]

224.330 Conditions precedent to financing application. A municipality shall not apply to the State Treasurer for financing under ORS 224.320 unless:

(1) It submits to the State Treasurer plans and specifications prepared by competent licensed engineers setting forth the type or character of sewer system or sewerage facilities proposed for the particular municipality and the estimated cost of the system and of the appurtenances thereto.

(2) It submits to the State Treasurer the proposed plan of the municipality for liquidation of indebtedness to be incurred for financing the cost of such system or facilities. [Amended by 1953 c.287 §9]

224.340 Bonds; form; interest; sale price. Notwithstanding the provisions of any other Act or of any city charter, the bonds issued by municipalities pursuant to ORS 224.350 and 224.370 shall bear such dates, be in such form, run for such periods of time, bear such rates of interest, and be sold by the municipalities at such prices as the State Treasurer may determine. [Amended by 1953 c.287 §9; 1955 c.593 §2; 1981 c.94 §12]

224.350 General powers of the State Treasurer under ORS 224.310 to 224.420; rules. (1) The State Treasurer shall be the sole judge as to whether state funds shall be invested in the project and as to which undertakings shall first be financed. The decision of the State Treasurer on the subject of investment and priority shall be final.

(2) The State Treasurer may enlist the technical services of any state officer or department in a study of the feasibility and cost of the sewerage project.

(3) The State Treasurer, in the discretion of the State Treasurer, may purchase, with funds subject to investment by the State Treasurer, or with moneys from the revolving fund as provided in ORS 224.390, general obligation sewerage system bonds of any municipality including bonds issued under statutory or charter authority pursuant to applications to pay assessments in installments. To facilitate the construction of a sewerage system for a municipality, the state may purchase at current market prices with such funds the outstanding water system bonds of the municipality. After the purchase of such bonds, the State Treasurer may agree with the municipality as to allocation of the net revenues of the water system of the municipality to the payment of the principal of and the interest upon the water system bonds, and upon the sewerage system bonds of the municipality. If the State Treasurer deems it expedient in the acquisition and construction of a sewerage system for a municipality to furnish sewerage service for territory that is contiguous to a municipality, or for territory outside the municipality that, in the judgment of the State Treasurer, can conveniently be served by the sewerage system thereof, the state may purchase the sewerage system bonds of a sanitary district or districts comprising such territory, or any part thereof, provided the public indebtedness for all purposes within said sanitary district or districts shall not exceed 12-1/2 percent of the real market value of all taxable property therein.

(4) The State Treasurer may authorize municipalities or sanitary districts, or both, to issue sewerage system bonds with the right reserved to them to redeem bonds at par value and accrued interest prior to the final maturity dates of the bonds.

(5) The State Treasurer, in the discretion of the State Treasurer, may authorize deferment of payment of interest upon the sewerage bonds of the municipality or district for a period not exceeding three years, and may provide for the issuance of such bonds with graduated rates of interest.

(6) The State Treasurer may adopt rules and regulations specifying the procedure to be followed by a municipality or sanitary district in availing itself of the provisions of ORS 224.310 to 224.420. [Amended by 1953 c.287 §9; 1967 c.293 §25; 1991 c.459 §352]

224.360 [Amended by 1953 c.287 §9; 1955 c.593 §3; repealed by 1967 c.335 §60]

224.370 Municipality not to assume further obligations. So long as any of the sewerage bonds of the municipality or district are owned by the state, the municipality or district shall not issue other bonds of any character without prior written approval of the State Treasurer. [Amended by 1953 c.287 §9]

224.380 Limitations on authority of State Treasurer to purchase bonds. The State Treasurer may purchase sewerage bonds from a municipality or sanitary district at private sale if the municipality or district does not receive any bids for the bonds, or if bids received therefor are unsatisfactory. General obligation sewer bonds or sewerage system bonds, other than those issued pursuant to applications to pay assessments in installments, may be purchased by the State Treasurer under the provisions of ORS 224.310 to 224.420 only if the revenues of the sewerage system of the issuing municipality or district, or both, after the payment of operation and maintenance expenses, are pledged wholly to the payment of the principal of and the interest upon the said bonds, and the municipality and the sanitary district, if any, served by the sewerage system of a municipality covenant to levy ad

valorem taxes upon all of the taxable property within their corporate limits to meet deficiencies in such revenues for such purposes, and only if the combined indebtedness for all public purposes, other than state or federal, within the boundaries of the municipality, including the proposed sewerage system indebtedness, but excluding obligations issued for other utilities that are self-supporting or self-liquidating or are approximately so, does not exceed 12-1/2 percent of the real market value of all property that is by law assessable for state and county purposes within the limits of the municipality. Notwithstanding that such revenues may have been pledged to the payment of the principal of and the interest upon a particular issue of general obligation bonds owned by the state, the same revenues, with the approval of the State Treasurer, may be pledged to the payment of the principal of and the interest on additional issues of such bonds purchased by the state from the municipality or district. The additional issues shall be on a parity with previous issues as to the pledge of such revenues for such purposes. Municipalities may provide that receipts from the payment of assessments levied under authority of chapter 593, Oregon Laws 1955, and the interest thereon shall be applied to payment of the principal of and the interest upon their general sewerage system bonds issued under authority of chapter 593, Oregon Laws 1955, rather than issue Bancroft or assessment bonds pursuant to such assessments. In order to complete the financing of a sewerage system, the State Treasurer may purchase issues of general obligation sewerage system bonds of municipalities or sanitary districts, payable only from ad valorem property taxes, provided the issues do not exceed the debt limits specified in this section. If, in addition to the net revenues of the sewerage system of the issuing municipality, the net revenues of the municipality-owned water system of the municipality that may become available in not more than five years from the issue date of the sewerage system bonds also are pledged to the said bonds, and the municipality further covenants to levy ad valorem taxes upon all the taxable property within its corporate limits to meet deficiencies in sewerage system and water system revenues for such purposes, the sewerage system bonds of the municipality may be purchased by the State Treasurer, provided the combined indebtedness for all purposes within the boundaries of the municipality, including the proposed sewerage system indebtedness, but excluding obligations issued for other utilities that are self-supporting or self-liquidating or are approximately so, does not exceed 15-3/8 percent of the real market value of the property within the limits of the municipality. This limitation shall include the ratios of indebtedness to real market value of other subdivisions that overlap the municipality to an extent of more that 12-1/2 percent of the real market value of all the taxable property of the municipality. [Amended by 1953 c.287 §9; 1955 c.593 §4; 1967 c.293 §26; 1991 c.459 §353]

224.390 State Sewer Bond Revolving Fund. The State Sewer Bond Revolving Fund is created for investment under authority of ORS 224.310 to 224.420 and for payment of costs of the State Treasurer in carrying out the provisions of those sections. The State Treasurer may engage such assistance and incur such expenses as may be necessary for that purpose. The earnings of the revolving fund shall accrue to the General Fund, and the amounts received in payment of the principal of investments thereof shall be credited to the General Fund, to be available for the payment of general governmental expenses. [Amended by 1963 c.341 §3]

224.400 Control of State Treasurer over rates, collection of charges and delinquent assessments; budget approval. (1) Each municipality financing the cost of a sewerage system under authority of ORS 224.310 to 224.420 shall submit to the State Treasurer for approval a schedule of its rates and proposed method of collection of its sewerage charges. The rates shall be such as, in the judgment of the State Treasurer, shall provide sufficient funds with other revenues, if any, and ad valorem property taxes to liquidate, during the period approved by the State Treasurer, the indebtedness incurred by the municipality to defray the cost of the sewerage system and its appurtenances. Should the rates prove to be insufficient for such purpose, the State Treasurer may direct the municipality to increase the rates to the point at which the sewerage project becomes self-liquidating, and the municipality shall establish forthwith the rates prescribed by the State Treasurer.

(2) If the municipality does not have the ability to collect sewerage charges in connection with or as part of the charge for another service or utility that can be curtailed to secure collection, and if the State Treasurer so directs, delinquent assessments for sewerage charges shall be certified to the assessor of the county in which the municipality is located and shall be entered upon the tax rolls of the county and be collected and accounted for in the same manner in which city taxes are collected and accounted for. The charges shall constitute liens against the real property of the person against whom they are assessed.

(3) If required by the State Treasurer, the municipality shall obtain from the State

Treasurer approval of the annual budgets and tax levies of the municipality, before they are certified to the clerk and assessor of the county in which the municipality is located, for extension upon the county tax rolls. [Amended by 1955 c.593 §5; 1991 c.459 §353a]

224.410 Authority to appoint receiver and withhold earmarked moneys on default. If any municipality fails to meet, when due, any obligation sold to the state under authority of ORS 224.310 to 224.420, the State Treasurer, with the approval of the circuit court of the county in which the major portion of the assessed valuation of the municipality is located, may appoint a receiver to operate the system. The receiver shall act in the capacity of receiver so long as the circuit court deems receivership necessary to protect the interests of the state and of the municipality. In order to insure prompt payment of interest or principal of bonds acquired by the State Treasurer pursuant to ORS 224.380, the State Treasurer may withhold and apply to the payment of such obligations, any moneys which may accrue to the municipality from state sources. Moneys so withheld shall be repaid to the municipality when the funds with which to meet the obligations for the payment of which funds were withheld are paid by the municipality to the state. The right to withhold said moneys for the purpose provided in this section shall exist only so long as any of the sewage bonds of the municipality are owned by the state.

224.420 Duty of local treasurer to keep funds separate and withhold bond payments; liability of treasurer. The treasurer of each municipality and of each sanitary district that finances the cost of a sewerage system or facilities under authority of ORS 224.310 to 224.420 shall keep collections or assessments for sewerage service separate and distinct from other funds of the municipality and shall withhold from tax receipts not less often than quarterly the full amounts proportionate to the elapsed portion of the tax year that have been levied for the payment of interest on and the principal of the sewerage system bonds of the city or sanitary district. For failure to account for sewerage revenues and taxes as provided in this section, such treasurers shall be liable upon their official bonds. [Amended by 1953 c.287 §9]

224.450 Validation of revenue bonds issued by cities of less than 100,000; sale of bonds to the federal government. All bonds or other obligations issued prior to November 15, 1936, by any city or town of less than 100,000 population, for the purpose of financing in whole or in part the construction, enlargement, extension, repair or improvement of a sewer system, including a sewage treatment or disposal plant and all facilities appurtenant to such system or connected therewith, where such bonds or other obligations are payable or will be payable solely from the gross or net revenues of such sewer system or any part thereof, including the revenues of improvements, additions and extensions thereto which may thereafter be constructed or acquired, as well as the revenues of the existing sewer systems, plants or properties, if any, so enlarged, extended, repaired or improved, and all proceedings for the authorization and issuance of such bonds or other obligations and the sale, execution and delivery thereof, hereby are validated, ratified, approved, authorized and confirmed, notwithstanding that the amount of such bonds or other obligations, together with the amount of bonds or other obligations of such city or town outstanding at the time of the issuance thereof, exceeds or will exceed any limitation or restriction on the amount or percentage of indebtedness or of outstanding bonds or other obligations of such city or town contained in the charter of such city or town or in any general or special law, and notwithstanding any defects or irregularities in such proceedings, and without regard to the fact that such bonds or other obligations may have been issued pursuant to the charter of such city or town or pursuant to any general or special law. Notwithstanding any provision in such proceedings that such bonds or other obligations shall be issued in manner and form satisfactory to the Reconstruction Finance Corporation, or that such bonds or other obligations shall be sold to the Reconstruction Finance Corporation, such bonds or other obligations may be sold to the United States of America, through the appropriate federal officer, agency or instrumentality in manner and form satisfactory to such officer, agency or instrumentality. The bonds or other obligations issued and sold prior to November 15, 1936, are the binding and legal obligations of the city or town issuing them in the actual form in which those bonds and obligations have been issued.

SEWAGE CHARGE ON WATER USERS

224.510 Sewage charge on water users. (1) Unless prohibited by its charter, a city may impose on the users of water a sewage charge which shall be billed and collected by the city. The proceeds of the sewage charge may be used for paying, in whole or in part, the cost of planning, constructing or operating a sewage disposal system.

(2) The sewage charge shall be established and the rate fixed by the city's governing body. [1957 c.400 §1]