Presented by: The Manager
Introduced: 03/04/2019
Drafted by: R. Palmer III

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2019-09

An Ordinance Amending the Public Finance Code Relating to Investments and Collateral.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the City and Borough of Juneau Municipal Code.

Section 2. Repeal and Reenactment of Chapter. Chapter 57.25 Investments and Collateral, is repealed and reenacted to read:

Chapter 57.25

INVESTMENTS AND COLLATERAL

57.25.005 Scope.

The finance director is responsible for the administration of the provisions of this chapter. This chapter applies to the investment of short-term operating funds and long-term funds.

57.25.010 Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bank means a state or federally chartered commercial or mutual bank, or credit union located in the United States and having insurance of accounts through the appropriate federal insuring agency of the United States.

Benchmark (also Portfolio Benchmark) means an industry recognized standard index which shall be used to measure the performance of the investment portfolio.

Capital means combined capital, surplus, and undivided profits. The term also means reserves for loan losses when applied to commercial banks, mutual savings banks, or credit unions.

Certificate of deposit means a negotiable or nonnegotiable security instrument or depository agreement.

Delinquent means the failure of the bank to return invested funds to the City and Borough on the maturity date and after demand for the funds has been made.

NASD means National Association of Securities Dealers. A self-regulatory securities industry organization responsible for the operation and regulation of the NASDAQ stock market and over-the-counter markets.

NASDAQ means National Association of Securities Dealers Automated Quotation. A computerized system established by the NASD to facilitate trading by providing broker/dealers with current bid and ask price quotes on over-the-counter stocks and some listed stocks. All trading on the NASDAQ exchange is done over a network of computers and telephones.

NRSRO means Nationally Recognized Statistical Rating Organization. NRSRO is a credit rating agency (CRA) that issues credit ratings that the U.S. Securities and Exchange Commission (SEC) permits other financial firms to use for certain regulatory purposes.

Portfolio means the combined holding of more than one stock, bond, commodity, cash equivalent, or other asset by an investor. The purpose of a portfolio is to reduce risk by diversification.

Rated bank means:

(1) A bank all of whose debt issues are rated A or higher or its equivalent by a nationally recognized rating service;

(2) A bank whose letters of credit secure third-party debt issues rated A or higher or its equivalent by a nationally recognized rating service; or

(3) A bank which is a subsidiary of a one-bank holding company, all of whose commercial paper has the highest rating given by a nationally recognized rating service or whose debt issues are rated at least an A or its equivalent by a nationally recognized rating service.

Securities mean marketable, negotiable financial instruments that hold some type of monetary value. They represent an ownership position in a publicly-traded corporation (via stock), a creditor relationship with a governmental body or a corporation (represented by owning that entity's bond), or rights to ownership as represented by an option.

Value means the monetary measurement of the worth of collateral to the City and Borough as described in this chapter.

Weighted average life means the portfolio value derived by multiplying the book value of each investment by its maturity period, then dividing the sum of these products by the total book value of the portfolio.

57.25.015 Management of municipal funds.

(1) Pooling of Funds. The finance director will consolidate cash and reserve balances from all funds to maximize investment earnings and to increase efficiencies with regard to investment pricing, safekeeping, and administration.

(2) Investment decisions shall be guided by this section and by the City and Borough of Juneau Investment Policy. Material changes to the Investment Policy shall be brought to the assembly finance committee by the city manager for review.

(3) The finance director will choose which investment portfolio is most appropriate for funds based on the objectives at hand. Portfolio types are outlined in the Investment Policy.

(4) Appropriate benchmarks shall be selected by the finance director based upon portfolio goals and holdings of the portfolio. Benchmark selection shall be approved by the city manager as a function of the Investment Policy Statement.

(5) Safekeeping and Custody.

(A) Delivery vs. Payment. All trades of marketable securities will be executed using the delivery vs. payment (DVP) method to ensure that securities are deposited in an eligible custody account prior to the release of funds.

(B) Safekeeping. Securities will be held by a centralized, independent third-party custodian selected by the City and Borough, as with all securities held in the City and Borough's name. The safekeeping institution shall annually provide a copy of their most recent report on internal controls (Statement of Auditing Standards No. 70, or SAS 70).

(6) Restricted Funds shall be deposited into separate and restricted alternative investments, bank accounts, or other accounts which may be interest-bearing and held by financial institutions for the benefit of the municipality, with all revenues and expenses associated with such funds allocated to such investments or accounts. Restricted funds may be commingled with other similarly restricted funds within the discretion of the finance director.

(7) The finance director may obtain the services of such investment managers, advisors, custodians, and other professionals as are reasonably prudent and necessary to manage all municipal funds.

(8) Investment portfolio performance reports shall be prepared and posted to the City and Borough website on a quarterly basis. These reports shall be addressed with the assembly finance committee on a semi-annual basis.

57.25.018 Investment objectives.

Investment portfolios will be selected to achieve the overall investment objectives. The primary objectives of investment activities shall be safety, liquidity, and return:

(a) *Safety.* Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The objective will be to mitigate credit risk and interest rate risk. The finance director and hired contractors, if any, shall manage investment funds exercising the judgment and care under the circumstances then prevailing which an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it, not in regard to speculation but in regard to the permanent disposition of funds, considering probable safety of capital as well as probable income.

(1) *Credit Risk.* The City and Borough will minimize credit risk, which is the risk of loss of all or part of the investment due to the failure of the security issuer or backer, by:

(A) Limiting investments to the types of securities listed in Code Section 57.25.020.

(B) Pre-qualifying and conducting ongoing due diligence of the financial institutions, broker/dealers, intermediaries, and advisers with which the City and Borough will do business.

(C) Diversifying the investment portfolio so that the impact of potential losses from any one type of security or from any one individual issuer will be minimized.

(2) *Interest Rate Risk.* The municipality will minimize interest rate risk, which is the risk that the market value of securities in the portfolio will fall due to changes in market interest rates, by:

(A) Structuring the investment portfolio so that security maturities match cash requirements for ongoing operations, thereby avoiding the need to sell securities on the open market prior to maturity.

(B) Investing operating funds primarily in shorter-term securities, money market mutual funds, exchange-traded funds (ETF), or similar investment pools and limiting individual security maturity as well as the average maturity of the applicable portfolio.

(b) *Liquidity.* The investment portfolio shall remain sufficiently liquid to meet all operating requirements that may be reasonably anticipated. This is accomplished by structuring the portfolio so that securities mature concurrent with cash needs to meet anticipated demands (static liquidity). Furthermore, since all possible cash demands cannot be anticipated, the portfolio should consist largely of securities with active secondary or resale markets to meet unanticipated demands (dynamic liquidity). Alternatively, a portion of the portfolio may be placed in money market mutual funds, ETFs, or local government investment pools which offer same-day liquidity for short-term funds.

(c) *Return.* The investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the investment risk constraints and liquidity needs. Return on investment is of secondary importance compared to the safety and liquidity objectives described above. The core investments are limited to relatively low risk securities in anticipation of earning a fair return relative to the risk being assumed. Securities shall generally be held until maturity with the following possible exceptions:

(1) A security with declining credit may be sold early to minimize loss of principal;

(2) Selling a security and reinvesting the proceeds that would improve the quality, yield, or target duration in the portfolio may be undertaken; or

(3) Unanticipated liquidity needs of the portfolio require that the security be sold.

57.25.020 Authorized investments.

To provide maximum security for the investment of public funds and to provide the greatest interest revenue consistent with safety, funds may be invested only in the following instruments:

(1) Obligations of, or obligations insured or guaranteed by, the United States or agencies or instrumentalities of the United States;

(2) Commercial paper issued by corporations or businesses and rated at least A1/P1 by a nationally recognized statistical rating organization (NRSRO), and collateralized commercial paper with no time limit;

(3) Negotiable certificates of deposit issued by rated banks;

(4) Repurchase agreements secured by obligations insured or guaranteed by the United States or agencies or instrumentalities of the United States;

(5) Bank obligations insured by the appropriate federal insurance agency, including nonnegotiable certificates of deposit secured as provided in Section 57.25.030;

(6) Custodial money market funds and other mutual funds so long as the nature of the fund is generally consistent with all other provisions of this section of the code;

(7) United States dollar denominated corporate bonds rated investment grade or higher by a nationally recognized rating agency at the time of purchase;

(8) Mortgage-backed securities and collateralized mortgage obligations (CMOs) issued and insured or guaranteed by the United States or agencies or instrumentalities of the United States;

(9) Asset-backed securities that are publicly traded and rated AAA by a NRSRO at the time of purchase;

(10) Domestic Fixed Income Mutual Fund or ETF: Securities issued in the United States matching security types, quality, and maturity ranges contained in the Bloomberg Barclays Aggregate Index;

(11) Domestic Equity Mutual Fund or ETF: Common and preferred stock issued by companies domiciled in the United States, and traded on a domestic stock exchange, or traded through the NASDAQ system;

(12) International Equity Mutual Fund or ETF: Common and preferred stock issued by companies domiciled outside the United States, primarily in developed countries, as defined by the Financial Times Stock Exchange;

(13) Loans to specified funds of the City and Borough for the purpose of capital acquisition, made as provided in section 57.05.045;

(14) An investment pool for public entities authorized by AS 37.23; or

(15) Other investment types or asset classes as provided in the Investment Policy and consistent with all other provisions of this section of the code.

57.25.030 Security on nonnegotiable certificates of deposit.

Nonnegotiable certificates of deposit must be fully secured at all times as to the payment of principal and interest due on the maturity of the nonnegotiable certificate of deposit. The insured portion must be secured by insurance of accounts through the appropriate federal insurance agency. The portion in excess of the bank's insurance of accounts must be secured by collateral valued in a manner determined by the City and Borough, and conforming to the requirements of sections 57.25.040 through 57.25.110, at 102 percent.

57.25.040 Ownership and encumbrance of collateral.

Pledged collateral must be owned by the bank issuing the certificate of deposit. Except for the assignment required under section 57.25.110, the bank must keep the pledged collateral free and clear of liens, security interests or encumbrances. The bank shall not release, assign, sell, mortgage, lease, transfer, pledge or grant a security interest in, encumber, substitute, or otherwise dispose of or abandon all or any part of the pledged collateral without the prior written authorization of the City and Borough.

57.25.050 Collateral valued at current market.

The City and Borough may accept the following types of collateral placed at current market value by a bank if that bank's valuation process is consistent with methods used in preparing its federal or state bank reports:

(1) Obligations of, or obligations insured or guaranteed by, the United States or agencies or instrumentalities of the United States;

(2) General obligation bonds and notes issued and insured or guaranteed by the state, or a political subdivision of the state;

(3) Revenue bonds issued by the state or an agency or instrumentality of the state;

(4) Revenue bonds issued by a political subdivision of the state which are rated A or its equivalent or higher by a nationally recognized rating service;

(5) Corporate debt securities rated AA or its equivalent or higher by a nationally recognized rating service;

(6) General obligation bonds issued by a state or a municipality in the United States other than the state, rated A or its equivalent or higher by a nationally recognized rating service;

(7) The insured portion of a federally insured or guaranteed loan; or

(8) Negotiable certificates of deposit issued by a rated bank.

57.25.060 Reserved.

57.25.070 Reserved.

57.25.080 Reserved.

57.25.090 Reserved.

57.25.100 Addition, substitution or change of collateral.

(a) The City and Borough reserves the right to review any and all collateral proposed or submitted by a bank to secure nonnegotiable certificates of deposit. If the City and Borough determines that the collateral does not meet the requirements of this chapter, or determines that City and Borough funds are not adequately secured by the collateral, the City and Borough may demand additional collateral or substitution of collateral.

(b) The bank must notify the City and Borough immediately, and confirm in writing within three business days, of any decline in value below required levels of its pledged collateral, and must immediately offer sufficient additional collateral, if:

(1) The value of the federally insured portion of nonnegotiable certificates of deposit pledged as collateral is less than the amount of principal and interest due upon maturity;

(2) Any collateral described in section 57.25.050 or section 57.25.060 pledged by the bank as collateral is no longer eligible as collateral.

57.25.110 Security agreements on collateral.

(a) A bank issuing nonnegotiable certificates of deposit must enter into a security agreement with the City and Borough for all uninsured loans or collateral pledged.

(b) The security agreement shall include all of the following terms and conditions:

(1) That the bank must assign its interest in the collateral to the City and Borough and must transfer the collateral within two days of a collateralized investment award;

(2) The security agreement shall specify the authority of the City and Borough to:

(A) Demand a substitution of collateral;

(B) Exercise assignment or other rights under the security agreement; and

(C) Take other action as provided under this chapter;

(c) That the bank issuing the nonnegotiable certificates of deposit shall pay all costs and expenses associated with the depository agreement and the depository account.

(d) All collateral pledged by a bank must be kept-in depository accounts with another bank to be known as the trustee bank.

(e) The City and Borough may accept the trustee bank in a tri-party agreement between the bank pledging collateral, the trustee bank and City and Borough. The tri-party agreement shall include all of the following terms and conditions:

(1) All those terms and conditions set forth in subsection (b) of this section;

(2) The City and Borough shall have control over pledged collateral submissions to and withdrawals from the depository account; and

(3) The trustee bank must send a depository receipt to the finance director promptly after the transfer or substitution of collateral.

57.25.120 Reports and access to records of banks bidding on or holding nonnegotiable certificates of deposits.

(a) *Reports required.* The following reports must be submitted to the City and Borough by banks bidding on or holding outstanding nonnegotiable certificates of deposits:

(1) A copy of the bank's balance sheet and profit and loss statement must be submitted within 45 days after the end of each fiscal quarter as follows:

(A) The financial statements must be prepared under generally accepted accounting principles; or

(B) The financial statements must be prepared under state or federal regulatory requirements, if the bank does not use generally accepted accounting principles.

(2) On or before the tenth day of each month, the bank must submit a report listing the then current principal balance of loans pledged as collateral. The report must be prepared as of the last day of the previous month and must be prepared as of the last day of the previous month and must be certificated by a bank officer.

(b) *Information available upon request.* Upon request by the City and Borough, the following information shall be made available by banks bidding on or holding outstanding nonnegotiable certificates of deposit:

(1) The originals or certified copies of any papers and instruments relating to any or all of the collateral pledged to secure the nonnegotiable certificates of deposit;

(2) Reports of examinations by state or federal agencies, and reports by the bank's independent auditors, to the extent not expressly prohibited by law;

(3) Upon seven days' notice, such other information as the City and Borough may require.

(c) *Access to information.* To the extent not expressly prohibited by law, the City and Borough shall have full access to, the right of inspection of, and the right to make extracts from, any records of the bank relating to all or any part of the collateral pledged to secure the nonnegotiable certificates of deposit.

57.25.130 Noncompliance.

(a) If a bank defaults in the payment of principal or interest due upon maturity of a nonnegotiable certificate of deposit for any investor, or fails to comply with the security, tri-party, or depository agreements provided for in this chapter, or otherwise fails to comply with the provisions of this chapter, the City and Borough may:

(1) Without penalty, call all or a portion of the nonnegotiable certificates of deposit issued by the bank;

(2) Sell, exchange, transfer, or otherwise dispose of the pledged collateral to recover the principal and interest due upon maturity of the nonnegotiable certificate of deposit and all costs incurred by the City and Borough as a result of such sale, exchange, transfer or disposal;

(3) Take other action available under the security, tri-party, or depository agreements; and

(4) Take such other action as may be available at law or equity.

(b) To the extent not expressly prohibited by law, the bank must indemnify and hold the City and Borough harmless from any forfeiture or loss of interest or other penalty or costs, including attorney's fees, imposed upon or incurred by the City and Borough by reason of its early withdrawal of any or all nonnegotiable certificates of deposit issued by the bank.

57.25.140 Certificate of deposit restrictions.

After reviewing a bank's financial position and determining that a limit is necessary to ensure the safety of City and Borough funds, the City and Borough may limit any increase or award on all future certificates of deposits issued by that bank.

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Section 3. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this 1st day of April, 2019.

Beth A. Weldon, Mayor

Attest:

Elizabeth J. McEwen, Municipal Clerk