

ORDINANCE NO. 2012-039

Adopted by the Sacramento City Council

September 4, 2012

AN ORDINANCE ADDING CHAPTER 3.152 TO THE SACRAMENTO CITY CODE, RELATING TO THE ISSUANCE OF REVENUE BONDS TO FINANCE CITY ENTERPRISES

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1

Under sections 3, 5, and 7 in article XI of the California Constitution and section 10 of the Sacramento City Charter, the city is authorized to make and enforce all laws and regulations concerning municipal affairs and certain other matters. And under section 119 of the Sacramento City Charter, the city is specifically authorized to issue revenue bonds for any lawful purpose and to adopt a procedural ordinance prescribing the terms and conditions of issuance. Acting in accordance with this authority, the city council finds that the public interest and necessity require the adoption of this ordinance to authorize, and to establish the procedures for, the city's sale and issuance of revenue bonds for the purpose of financing the city's enterprises.

SECTION 2

Chapter 3.152 is added to the Sacramento City Code to read as follows:

CHAPTER 3.152 ENTERPRISE REVENUE BOND LAW

Article 1. General Provisions and Definitions

3.152.010 Short title. This chapter may be cited as the Enterprise Revenue Bond Law.

3.152.020 Purpose. The city council hereby finds that the city's issuance of Bonds to finance Capital Improvement Costs is a municipal affair and promotes a necessary and essential public purpose.

Bonds will be incontestable and by their issuance and delivery will conclusively establish the due performance of all conditions precedent to their issue.

3.152.190 Amendment of chapter. This chapter may not be amended to have a material, adverse effect upon the rights of the holders of any outstanding Bonds without the written consent of the Bond holders, except as follows: this chapter may be amended at any time if the amendment is needed to cure an ambiguity or to correct or supplement a defective provision; if the city council finds that the amendment will not materially impair or adversely affect the city's interests or the interests of any Bond holder; or if the amendment will apply solely to Bonds issued after its effective date.

3.152.200 Chapter controlling. To the extent this chapter is inconsistent with any general statute or special act, this chapter will control.

3.152.210 Partial invalidity. If, for any reason, any part of this chapter is invalid, then all valid parts that are severable from the invalid part remain in effect.

Adopted by the City of Sacramento City Council on September 4, 2012 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy.

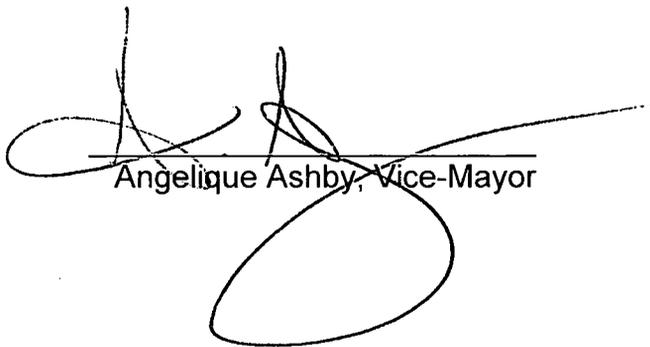
Noes: None.

Abstain: None.

Absent: Mayor Johnson.

Attest:


Shirley Concolino, City Clerk


Angelique Ashby, Vice-Mayor

Passed for Publication: September 4, 2012

Published: September 7, 2012

Effective: October 4, 2012

3.152.030 Definitions. The following definitions apply in this chapter:

“Bonds” means any bonds, notes, loans, interim certificates, debentures, installment-purchase agreements, leases, or other obligations that are issued or incurred under this chapter and are payable from Revenues described in the Issuing Instrument.

“Capital Improvement” means either or both of the following:

- A. Any addition, betterment, replacement, renewal, extension, equipping, or improvement of or to an Enterprise, including the acquisition of land or any interests in land.
- B. Any capital costs for the extension, reinforcement, enlargement, or other improvement of a facility or property, or for the acquisition of an interest in a facility or property, that is not part of an Enterprise but is determined by the city to be necessary or convenient in connection with use of an Enterprise.

“Capital Improvement Costs” means all costs and expenses the city pays or incurs in connection with planning, designing, acquiring, constructing, installing, furnishing, equipping, and financing a Capital Improvement; placing a Capital Improvement in operation; disposing of a Capital Improvement; and obtaining governmental approvals, certificates, permits, and licenses for a Capital Improvement. “Capital Improvement Costs” includes the following:

- A. Reimbursement to the city for any costs and expenses that are included in this definition, are paid by the city, have not previously been reimbursed to the city, and will not be reimbursed from contributions in aid of construction.
- B. Costs of preliminary investigation and development, including the cost of performing or acquiring feasibility and planning studies; the cost of securing regulatory approvals; the cost of acquiring land and land rights; fees for engineering and contractor services; the costs of labor, materials, equipment, utility services, and supplies; and legal fees and financing expenses.
- C. Working capital and working-capital reserves in such amounts as the city determines to be appropriate.
- D. Interest accruing in whole or in part on Bonds before and during construction of a Capital Improvement or any portion of a Capital Improvement, and interest accruing for such additional time as the city determines.
- E. Deposits from the proceeds of Bonds in any funds or accounts when the Issuing Instrument requires the deposits.
- F. The payment of principal, purchase price, premium, and interest of any indebtedness, the proceeds of which were applied to Capital Improvement Costs.
- G. Training and testing costs that are properly allocable to acquiring or constructing a Capital Improvement or placing it in operation.

- H. All costs of insurance that is in effect when a Capital Improvement is constructed and placed in operation.
- I. All costs relating to injury and damage claims that arise out of the acquisition or construction of a Capital Improvement (less insurance proceeds).
- J. Any federal, state, and local taxes and payments in lieu of taxes that are legally required or permitted and apply to acquiring or constructing a Capital Improvement and placing it in operation.
- K. Amounts due the United States of America as rebate of investment earnings on the proceeds of Bonds or as penalties in lieu of rebate.
- L. Amounts payable for capital costs of expanding, reinforcing, enlarging, or otherwise improving facilities the city determines to be necessary in connection with the use of a Capital Improvement, and the costs associated with the removal from service of, or reductions in service by, any facilities as a result of the expansion, reinforcement, enlargement or other improvement of such facilities or the construction of a Capital Improvement.
- M. Costs of issuance of any Bonds, including costs of legal, underwriting, feasibility, engineering, and other consultants; costs of city staff; costs of bond-reserve funds; and costs of bond insurance or other credit or liquidity enhancement.
- N. Fees and expenses relating to any lending or credit facility or agreement for a Capital Improvement or any portion of a Capital Improvement.
- O. All other costs the city incurs that are properly allocable to the design, acquisition, construction, or placing in operation of a Capital Improvement, including city staff costs.
- P. Any other cost as the city council may, in its discretion, define as a Capital Improvement Cost in the Issuing Instrument.

“City Treasurer” means the city treasurer or his or her designee.

“Enterprise” means the properties, improvements, and works owned, controlled, or operated at any time by the city as part of a self-supporting city program that provides services to the general public on a user-fee basis and is accounted for separately from other city funds in the city’s Comprehensive Annual Financial Report through the use of an enterprise fund.

“Include” and its variants are terms of enlargement rather than of limitation, so that “includes” means “includes but not limited to,” and “including” means “including but not limited to.”

“Issuing Instrument” means the resolution of the city council adopted under this chapter and any indenture, trust agreement, loan agreement, lease, installment-purchase agreement, revolving-credit agreement, credit or liquidity agreement, or other instrument or agreement under which the city issues Bonds.

“Rate Stabilization Fund” means any fund established by such name in an Issuing Instrument and intended to stabilize the rates paid by end-users of an Enterprise over a given time.

“Revenues” means all income, rents, rates, fees, charges, and other moneys that the city derives from an Enterprise and that the city council may, in its discretion, designate as “Revenues” in the Issuing Instrument.

Article II Issuance of Bonds

3.152.040 General Powers. The city is authorized and empowered to do the following:

- A. Issue Bonds for the purposes of financing Capital Improvement Costs, refunding outstanding Bonds, and paying all costs incurred in connection with Bonds.
- B. Establish the terms for financings undertaken in accordance with this chapter.
- C. Employ or contract for such legal, underwriting, feasibility, engineering, and other consultant services the city council determines to be necessary for the issuance and sale of Bonds.
- D. Do all things necessary or convenient to carry out the purposes of this chapter.

3.152.050 Authorization of Bonds. The city council may adopt a resolution authorizing the issuance of Bonds in accordance with this chapter. Every issue of Bonds must be payable from Revenues of the Enterprise for which Capital Improvement Costs are being financed.

3.152.060 Proceedings authorizing issuance; public or private sales.

- A. The resolution that authorizes issuance of Bonds and the Issuing Instrument may prescribe any or all of the following for the Bonds:
 - 1. The form of the Bonds, which may be issued as serial bonds, term bonds, or installment bonds, or any combination of them.
 - 2. The date or dates to be borne by the Bonds.
 - 3. The date or dates of maturity of the Bonds.
 - 4. The interest to be borne by the Bonds, which may be taxable or tax-exempt, fixed or variable, and which may be paid on a current-interest-rate basis or a capital-appreciation basis.
 - 5. The date or dates that the Bonds will be payable.
 - 6. The denominations, form, and registration privileges of the Bonds.
 - 7. The manner of execution of the Bonds.
 - 8. The place or places the Bonds are payable.

9. The terms of redemption of the Bonds.
 10. Any other terms and conditions the city deems necessary.
- B. The Bonds may be sold at either a public or private sale, on either a negotiated or competitive basis, and at a price at, above, or below the par value.

3.152.070 Application of proceeds of Bonds. The proceeds of the Bonds must be applied to Capital Improvement Costs or the retirement of outstanding Bonds.

3.152.080 Issuing instrument. In the discretion of the city council, any Bonds issued under this chapter may be secured or evidenced by an Issuing Instrument in the form of an indenture or a trust agreement between the city and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company. An Issuing Instrument may contain any lawful provisions the city council determines to be reasonable and proper.

3.152.090 Insurance or credit enhancement or liquidity support. The City Treasurer may obtain bond insurance or other credit enhancement or liquidity support for the Bonds and may enter into any credit agreement, reimbursement agreement, standby bond-purchase agreement, or similar agreement with any person or entity. Such an agreement must contain the terms of the credit, reimbursement, liquidity support, interest rate, and security, and any other terms the City Treasurer deems necessary or appropriate.

3.152.100 Bonds and investments; contracts to place on interest-rate, cash-flow, or other basis.

- A. In connection with, or incidental to, the issuance or carrying of Bonds, or the acquisition or carrying of any investment or program of investment with respect to Bonds, the City Treasurer may, on the city's behalf, enter into any contracts that he or she determines to be necessary or appropriate to place the obligation or investment of the city (as represented by the Bonds, investment, or program of investment) and the contract or contracts, in whole or in part, on the interest-rate, currency, cash-flow, or other basis he or she desires, including the following:
1. Contracts commonly known as interest-rate-swap agreements, currency-swap agreements, forward-payment-conversion agreements, and futures.
 2. Contracts providing for payments based on levels of, or changes in, interest rates, currency-exchange rates, or stock or other indices.
 3. Contracts to exchange cash-flows or a series of payments.
 4. Contracts to hedge payment, currency, rate, spread, or similar exposure, including interest-rate floors or caps, options, puts, and calls.
- B. The City Treasurer may also enter into these contracts in connection with, or incidental to, entering into or maintaining any agreement that secures Bonds.

C. These contracts must contain the payment, security, default, remedy, and other terms the City Treasurer determines to be appropriate. When determining the terms of, and the other parties to, these contracts, the City Treasurer shall give due consideration to the creditworthiness of the other parties, including any ratings of the parties by a nationally recognized rating agency.

3.152.110 Investment of Proceeds. In connection with, or incidental to, the issuance or carrying of Bonds the City Treasurer may, on the city's behalf, enter into investment agreements, forward-purchase agreements, and other investments relating to the investment of amounts held according to an Issuing Instrument.

3.152.120 Personal liability. Neither the members of the city council; nor the city's officers, employees, and agents; nor any person executing Bonds will be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

3.152.130 Refunding Bonds. The city council may issue Bonds to refund outstanding Bonds. Such a refunding includes payment of the principal, purchase price, interest, and redemption premiums, if any, of the outstanding Bonds. At the discretion of the city council, based on the City Treasurer's recommendation, the proceeds of Bonds issued to refund outstanding Bonds may be applied to the retirement of the outstanding Bonds at maturity or to the redemption (on any redemption date) or purchase of the outstanding Bonds before maturity, upon such terms as the city council determines to be appropriate.

3.152.140 Repayment of Bonds. The principal and purchase price and any premium of, and interest on, the Bonds must be payable exclusively from Revenues and other funds pledged under the Issuing Instrument, and as described in the Issuing Instrument. The issuance of Bonds may not directly, indirectly, or contingently obligate the city council to levy or pledge any form of taxation.

3.152.150 Rate Stabilization Fund. The Issuing Instrument may establish a Rate Stabilization Fund to be held by the city in connection with Bonds and used to stabilize the rates paid by end-users of an Enterprise over a given time.

Article III Miscellaneous Provisions

3.152.160 Liberal construction. This chapter, being necessary for the health, welfare, and safety of the city and its residents, is to be liberally construed to carry out its purposes.

3.152.170 This chapter is complete, additional, and alternative. This chapter provides a complete, additional, and alternative method for doing the things authorized and is to be regarded as supplemental and additional to the powers conferred by other laws.

3.152.180 Validity of Bonds. The validity of any Bonds does not depend on, and is not affected in any way by, any proceedings taken by the city for acquisition, construction, or completion of any properties or projects for which the Bonds are issued or any agreements made in connection with the acquisition, construction, or operation of those properties. The