



Legislation Text

File #: 09-0671, **Version:** 1

Amendment to Resolution R-09-064 Authorizing the Use of Build America Bonds in Place of General Obligation Capital Improvement Bonds to Fund Construction of a Parking Structure at South Fifth Avenue

Recommended for Council is an amendment to resolution R-09-064. The original resolution authorized issuance of general obligation capital improvement bonds in the maximum principal amount of \$55,000,000, for the purpose of financing the construction of a 677 space, four story underground parking structure. This amendment authorizes the use of Build America Bonds.

The American Recovery and Reinvestment Act of 2009 created the Build America Bond program, which authorizes state and local governments to issue taxable bonds to finance any capital expenditures for which they otherwise could issue tax-exempt governmental bonds. State and local governments receive a direct federal subsidy payment for a portion of their borrowing costs on Build America Bonds equal to 35 percent of the total coupon interest paid to investors.

An analysis performed by Stauder, Barch & Associates determined that the City would benefit from issuing Build America Bonds instead of traditional LTGO bonds by virtue of a lower true interest cost. The City's bond counsel, Dykema Gossett, prepared the resolution with further review by the City Attorney.

A copy of resolution R-09-064 is attached for your convenience.

Prepared by: Tom Crawford, Chief Financial Officer

Reviewed by: Abigail Elias, Chief Assistant City Attorney

Approved by: Roger W. Fraser, City Administrator

CITY OF ANN ARBOR
County of Washtenaw, State of Michigan

R-09-321

RESOLUTION TO AMEND RESOLUTION AUTHORIZING GENERAL OBLIGATION BONDS (2009 Parking Facility Capital Improvement Bonds)

Minutes of a regular meeting of the City Council of the City of Ann Arbor, County of Washtenaw, State of Michigan held on the 20th day of July, 2009, at 7:00 o'clock p.m. Eastern Daylight Time.

PRESENT: Councilmembers Teall, Higgins, Hohnke, Anglin, Smith, Briere, Rapundalo, Derezinski,

Greden, Taylor, Mayor Hieftje, 11;

ABSENT: 0.

The following preamble and resolution were offered by Councilmember Teall and supported by Councilmember Smith:

Whereas, on February 17, 2009, the City Council adopted its Resolution R-09-064 (the "Authorizing Resolution") authorizing issuance of the City's Capital Improvement Bonds (Limited Tax General Obligation) (the "Bonds") pursuant to the Revised Municipal Finance Act, Act 34, Public Acts of Michigan, 2001, as amended, to finance a substantial portion of the cost of acquiring and constructing an approximately 677 space, four-level underground public parking structure in the City and related improvements, including a new street running west to east on the north side of the Ann Arbor Public Library, utility upsizing under Fifth Avenue and Division Street and a new downtown alley (the footprint of such project being from the west side of Fifth Avenue to the west side of Division Street and under Fifth Avenue from the northern edge of the current parking lot to the southern boundary of the lot), with the parking structure to be built in a manner to allow future construction of an up to 25-story building on the site, with the Bonds further financing construction of streetscape improvements on Fifth Avenue and Division Streets from Beakes to Packard, including improved crosswalks, new streetlights, trees, sidewalks, bike lanes and curb (collectively, the "Project"); and

Whereas, the maximum aggregate principal amount of the Bonds provided for in the Authorizing Resolution is \$55,000,000.00, and it is currently anticipated that the aggregate principal amount of the bond issue will be approximately \$49,420,000.00; and

Whereas, as an alternative to issuing the Bonds on a tax exempt basis, the City may, pursuant to the American Recovery and Reinvestment Act of 2009 signed into law on February 17, 2009 (the "Recovery Act"), designate the Bonds as Build America Bonds for purposes of the Recovery Act ("Build America Bonds"), and receive credit payments from the United States Treasury equal to 35% of the interest payable on the Bonds, on or about each interest payment date; and

Whereas, the City Council wishes to authorize the Chief Financial Officer and the Treasurer to elect that the City issue the Bonds in whole or in part as Build America Bonds for purposes of the Recovery Act if they determine that it would be in the best interests of the City, and to amend the Authorizing Resolution accordingly.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The following paragraph shall be added at the end of Section 2 of the Authorizing Resolution:

"The Chief Financial Officer and Treasurer are hereby authorized and directed to determine, in consultation with Stauder, Barch & Associates, Inc. (the "Financial Consultant"), whether to issue and sell all or a portion of the Bonds on a taxable basis as Build America Bonds. In the event the Bonds are to be issued partially as Build America Bonds, the Bonds shall be issued in two separate series of tax-exempt Bonds and taxable Build America Bonds, and the Chief Financial Officer and Treasurer are authorized, in consultation with Dykema Gossett PLLC ("Bond Counsel"), to make such

revisions to the form of Bond as may be necessary and appropriate for the Bonds to be issued as Build America Bonds. Bonds issued as Build America Bonds shall be designated as the 'City of Ann Arbor Capital Improvement Bonds (Limited Tax General Obligation), Series 2009-A (Taxable)', with such additional phrases as may be necessary and appropriate to further identify the Bonds as Build America Bonds."

2. The first sentence of Section 3 of the Authorizing Resolution shall be amended and restated in its entirety to read as follows:

"The Bonds shall bear interest payable May 1, 2010 and each May 1 and November 1 thereafter until maturity, with the rate of interest on Bonds maturing in any one year being not in excess of 8.0% per annum, with a net effective interest rate to the City, after application of any credit payments received from the United States Treasury, of not exceeding 7.0% per annum."

3. The following sentence shall be added at the end of the first paragraph of Section 9 of the Authorizing Resolution:

"Any credit payments received from the United States Treasury shall be deposited into the Bond Payment Fund or into any escrow fund which may be established for defeasance of the Bonds."

4. The prefatory clause of Section 13 of the Authorizing Resolution shall be amended and restated in its entirety to read as follows:

"Notwithstanding any other provision of this Resolution, with respect to Bonds issued as tax-exempt Bonds, the City covenants that it will not at any time or times:"

5. The following two paragraphs shall be added at the end of Section 17 of the Authorizing Resolution:

"To the extent that all or a portion of the Bonds are to be issued and sold as Build America Bonds, the Chief Financial Officer and Treasurer are hereby authorized and directed, in consultation with Bond Counsel, to make such revisions to the form of Notice of Sale as may be necessary and appropriate for those Bonds to be issued as Build America Bonds."

"The Chief Financial Officer and Treasurer are hereby authorized on behalf of the City to determine to conduct and pursue a negotiated sale of the Bonds if, in light of current market conditions and upon advice of the Financial Consultant, or if necessary to ensure compliance with provisions of the Internal Revenue Code relating to Build America Bonds, a negotiated sale would present advantages and opportunities to select and adjust terms for the Bonds, to allow more flexibility in accessing the municipal bond market, and to price and sell the Bonds at the time that is expected to best achieve the most advantageous interest rates and costs to the City. In the event that a negotiated sale is pursued, the Chief Financial Officer and Treasurer are authorized to select an underwriter for the Bonds, to negotiate and execute a bond purchase agreement with such underwriter, and to take all other necessary actions required to effectuate the sale, issuance and delivery of the Bonds within the

parameters authorized in this Resolution.”

6. Section 19 of the Authorizing Resolution is amended and restated in its entirety to read as follows:

“Execution and Delivery of Required Documents. The Mayor, City Clerk, Treasurer and Chief Financial Officer (each an “Authorized Officer”), or any one of them, are authorized on behalf of the City to apply for such rulings, orders and approvals and file or submit appropriate elections or other documents to any federal, state or local governmental agency in order that the Bonds may be validly issued and, as applicable, cause the interest thereon to be exempt from federal income taxation or to qualify the Bonds as Build America Bonds as such term is described in Section 54AA of the Code and to obtain the direct payment of the appropriate credits from the United States Treasury with respect to such Build America Bonds. Such Authorized Officers, or any one of them, are further authorized to execute and deliver such other certificates, documents, instruments and other papers as may be required or may be necessary or convenient to effectuate the valid sale and delivery of the Bonds as tax-exempt bonds or as taxable Build America Bonds in accordance with the terms thereof. The Authorized Officers, or any one of them, are authorized and directed to approve the circulation of a preliminary and a final official statement describing the Bonds and providing information relative to the City, and to deem the preliminary official statement “final” for purposes of Securities and Exchange Commission Rule 15c2-12 (the “Rule”), subject to the applicability of an exemption from the Rule.”

7. The Authorizing Resolution, except as specifically amended hereby, shall remain in full force and effect. All resolutions and parts of resolutions insofar as they conflict with the provisions of this Resolution are hereby rescinded.

A roll call vote on the foregoing resolution was taken, the result of which is as follows:

YES: Councilmembers Teall, Higgins, Hohnke, Anglin, Smith, Briere, Rapundalo, Derezhinski, Greden, Taylor, Mayor Hieftje, 11;

NO: 0;

ABSTAIN: 0.

THE RESOLUTION WAS THEREUPON DECLARED ADOPTED.

CERTIFICATION

I, the undersigned, the duly qualified and acting Clerk of the City of Ann Arbor, Michigan, do hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Council at a regular meeting held on July 20, 2009, the original of which is on file in my office, and that such meeting was conducted and public notice thereof was given pursuant to and in compliance with Act No. 267, Michigan Public Acts of 1976, as amended, and that minutes of such meeting were

kept and are available as required by such Act.

Jacqueline Beaudry
City Clerk

Dated: July __, 2009