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OFFICE OF THE CITY CLERK
OAKLAND

2009 APR 16 PM 1:03

CITY OF OAKLAND
AGENDA REPORT

TO: *Office of the City Administrator*
ATTN: Dan Lindheim
FROM: Finance and Management Agency
DATE: April 28, 2009

RE: **An Ordinance Authorizing the Director of Finance to Determine Whether to Issue General Obligation Bonds by an Open Competitive Sale or a Negotiated Sale.**

SUMMARY

On July 15, 2008, the City Council of the City of Oakland (the "Council") adopted Resolution No. 81462 C.M.S. adopting a Debt Management Policy (the "Debt Policy") for Fiscal Year 2008-09. One aspect of the Debt Policy is to provide guidance to City Council and to City staff by identifying the parameters for issuing debt. Under the Debt Policy, general obligation ("G.O.") bonds will be issued on a competitive basis unless otherwise determined on a case-by-case basis that a negotiated sale is the most advantageous.

Historically in normal market conditions, general obligation bonds are issued through a competitive bid. However, the municipal bond market has been experiencing a period of tremendous volatility as it has faced several unique challenges stemming from the global financial crisis. Furthermore, the credit crunch has resulted in the demise or exit of four of the top eight underwriters of municipal bonds such as Bear Stearns, UBS, Merrill Lynch and Lehman Brothers.

The proposed ordinance has been prepared to seek immediate authorization for the following actions from City Council:

- Authorize the Director of Finance (the "Director") to determine the method of sale of general obligation bonds.
- Authorize the Director to appoint an underwriter(s) and enter into a bond purchase agreement with consent of the City Attorney.
- The debt structure of any general obligation bond shall be in accordance with the City's debt policy and bond purchase contract.

FISCAL IMPACT

Approval of this ordinance will have no fiscal impact on the City's general fund. A general obligation bond measure is passed by voter approval; therefore debt service is repaid by levying a supplemental property tax. All associated costs of issuance are paid at the time of issuance.

BACKGROUND

Debt Policy

The annual Debt Policy was adopted by the City Council and the Agency for Fiscal Year 2008 – 2009 through Resolution No. 81462 C.M.S. on July 15, 2008. In accordance with the guidelines set forth in the Debt Policy, the City will determine, on a case-by-case basis, whether to sell its bonds competitively or through negotiation. General obligation bonds will be issued on a competitive basis unless otherwise determined on a case-by-case basis that a negotiated sale is the most advantageous. In a competitive sale, the City's bonds shall be awarded to the bidder providing the lowest true interest cost as long as the bid adheres to the requirements set forth in the official notice of sale. The City recognizes that some securities are best sold through negotiation. In its consideration of a negotiated sale, the City shall assess the following circumstances:

1. Bonds issued as variable rate demand obligations
2. A complex structure which may require a strong pre-marketing effort
3. Size of the issue, which may limit the number of potential bidders
4. *Market volatility is such that the City would be better served by flexibility in timing its* sale in changing interest rate environments

KEY ISSUES AND IMPACTS

Pursuant to the City's Debt Policy, general obligation bonds will be issued by competitive sale unless otherwise determined that a negotiated sale is most advantageous. By approving this ordinance, the City will have the flexibility, under the purview of the Director of Finance, to determine issuance by competitive sale or through negotiation for any G.O. issue.

It is beneficial for the City to sustain this level of flexibility, especially in the current market. The municipal bond market is experiencing a period of tremendous volatility as it faces several unique challenges stemming from the global financial crisis. Consequently, the demand for municipal bond offerings in the primary market has shrunk tremendously. Also, the subprime crisis has created so much fear in the marketplace that investors are more concerned about credit ratings. Currently, the City's G.O. rating is A1/AA-/A+. Since January 2009, five (5) bond issues with similar ratings to the City were brought to the market, and all were sold through negotiated sale.

By pursuing a competitive sale in the current market, the City could subject itself to the following challenges:

- **Increased rates.** Due to the City's split credit rating, the current G.O. ratings will likely result in the G.O. bonds being priced at A-level yields and in spreads of in excess of 100 basis points (1%). As a result, the City would likely pay higher borrowing costs than if the bonds were sold through a negotiated sale.

- **Failed bond sale.** Sale of bonds can potentially fail because of limited investor demand due to the City's G.O. credit rating and an underwriting community weakened by downsizing.

- **Project timeline.** Accordingly, a failed bond sale will interrupt project timelines. Funding for current projects either in progress or of priority depend upon the upcoming issuance of the Series 2009B Measure DD G.O. bonds. Since funds are required by October 2009, the debt service calculation must be incorporated into the County of Alameda's FY2009 – 2010 property tax levy which must be submitted by August 8th. Failure to meet these deadlines will impact project timelines by delaying project implementations.

Given the current conditions of the municipal market, allowing the City the flexibility to sell G.O. bonds through a negotiated sale could minimize the borrowing costs than if the bonds were sold through a competitive sale.

SUSTAINABLE OPPORTUNITIES

There is no impact to economic, environmental or social equity opportunities following actions under this report.

DISABILITY AND SENIOR CITIZEN ACCESS

There is no impact to disability or senior citizen access following actions under this report.

RECOMMENDATION(S) AND RATIONALE

Staff recommends that the City Council adopt this ordinance authorizing certain procedures for the issuance and sale of general obligation bonds. By approving the ordinance, the City will have the flexibility to respond to changing market conditions and make prudent decisions for the financial benefit of the City.

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that the City Council adopt the ordinance and authorize:

- The Director or his or/ her designee the jurisdiction to determine the method of sale of any issue of general obligation bonds, by either competitive sale or through negotiation, while considering market conditions, the financial interests of the City or any relevant factors.

- The Director to appoint one or more investment banking firms to act as underwriters for the sale of general obligation bonds in accordance with City policies and procedures.
- The debt service structure of any general obligation bonds issued pursuant to the ordinance shall be in accordance with the Debt Policy and as provided in the bond purchase contract for such bonds.
- The term of any general obligation bonds issued pursuant to the ordinance shall not exceed fifty (50) years.
- The ordinance be exempt from the California Environmental Quality Act (see e.g., CEQA Guidelines §§ 15378(d)(2), 15378(d)(4), 15378(d)(5), 15061(B)(3); 15162).

Respectfully submitted,

JOSEPH T. YEW, JR.
Finance Director/ Treasurer

Prepared by:
Katano Kasaine, Treasury Manager
Treasury Department

APPROVED AND FORWARDED TO THE
FINANCE AND MANAGEMENT COMMITTEE:

Office of the City Administrator

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 APR 16 PM 1:04

INTRODUCED BY COUNCILMEMBER ____________________

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY

OAKLAND CITY COUNCIL

ORDINANCE NO. ________C.M.S.

AN ORDINANCE AUTHORIZING THE DIRECTOR OF FINANCE TO DETERMINE WHETHER TO ISSUE GENERAL OBLIGATION BONDS BY AN OPEN COMPETITIVE SALE OR A NEGOTIATED SALE.

WHEREAS, pursuant to Section 106 of the City Charter, the City of Oakland (the "City") has the right and power to make and enforce laws in respect to municipal affairs; and

WHEREAS, the City Council of the City (the "City Council") on July 15, 2008, unanimously adopted Resolution No. 81462 C.M.S., entitled "Resolution Adopting the City of Oakland's Debt Management Policy and Swap Policy for Fiscal Year 2008-2009;" and

WHEREAS, the goal of the Debt Management Policy and Swap Policy for Fiscal Year 2008-2009 (the "Debt Policy") is to maintain long-term financial flexibility while ensuring the City's capital needs are adequately supported; and

WHEREAS, the Debt Policy permits the issuance of general obligation bonds by competitive sale, or by negotiated sale if it is determined that negotiated sale is most advantageous; and

WHEREAS, the City desires to issue general obligation bonds, by competitive or negotiated sale, to finance various capital improvements; and now therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and determines the forgoing recitals to be true and correct and hereby adopts and incorporates them into this Ordinance.

SECTION 2. The City may issue general obligation bonds by competitive or negotiated sale. The Director of Finance (the "Director") is hereby authorized to determine the method of sale of any issue of general obligation bonds. The Director shall consider market conditions, the financial interests of the City or any other relevant factors in determining the method of sale.

SECTION 3. In the event the Director determines to sell general obligation bonds by negotiated sale, the Director is hereby authorized to sell the bonds by negotiated sale pursuant to one or more bond purchase contracts, which contract(s) shall be in such form as the Director shall determine upon consultation with the City Attorney. In order to facilitate the sale of any general obligation bonds by negotiated sale, the Director is hereby authorized to appoint one or more investment banking firms to act as underwriters for any such general obligation bonds in accordance with City policies and procedures.

SECTION 4. The debt service structure of any general obligation bonds issued pursuant to this Ordinance shall be in accordance with the Debt Policy and as provided in the bond purchase contract for such bonds.

SECTION 5. The term of any general obligation bonds issued pursuant to this Ordinance shall not exceed fifty (50) years.

SECTION 6. This ordinance is exempt from the California Environmental Quality Act (see e.g., CEQA Guidelines §§ 15378(d)(2), 15378(d)(4), 15378(d)(5), 15061(B)(3); 15162);

SECTION 7. This ordinance shall be effective on immediately, if passed by the affirmative vote of at least six City Council members; if this ordinance is passed by the affirmative vote of five City Council members it will be effective seven days after final passage.

IN COUNCIL, OAKLAND, CALIFORNIA, _______________________, 2009

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID AND PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST:_____________________________

LaTonda Simmons
City Clerk and Clerk of the
Council of the City of Oakland, California

DATE OF ATTESTATION:_______________