EXECUTIVE ORDER NO. 90

TO: All Agencies Under the Mayor

FROM: Wellington E. Webb
MAYOR

DATE: August 31, 1999

SUBJECT: Conduit Revenue Bonds

PURPOSE: To establish legal procedures regarding the issuance of "conduit" bonds.

RESPONSIBLE AUTHORITY(S): Manager of Revenue

1. This order supersedes all previous executive orders on the same or similar subjects. It governs the officers, boards, employees, and agents of the City processing applications and approving or directing steps necessary or incidental to the Mayor's recommendation to the Board of Council ordinances of inducement for, and ordinances authorizing the issuance of, revenue bonds (herein, as limited and listed under "A' through "E" below, called "bonds") of the following types:

   A. Industrial development bonds;

   B. Multifamily housing bonds;

   C. "Section 501(c)(3)" bonds;

   D. Single-family housing bonds; and

   E. Other, similar limited obligations secured, paid, or both secured and paid solely from revenues derived from the projects financed or limited obligations secured by assets of single-family housing programs pledged by the City, but not obligations for which the City is the owner of the financed project or has financial liability other than that with respect to such pledge itself, in the case of single-family housing programs.

2. Policies and procedures for such bonds shall be prepared by and amended from time to time as necessary by the Planning Office and the Mayor's Office of Economic Development and International Trade (or the successors to those agencies, as determined by the Mayor, from time to time), subject, however, to the approval by the City Attorney upon the recommendation of bond counsel (selected under Charter §A10.5). The policies and procedures, including the application forms, shall be maintained by the respective executive offices and made available to the public.
A current copy of the materials shall be filed with the Clerk and Recorder, ex-officio Clerk of the City.

3. Bonds issued by the City must be either of investment grade or privately placed. The investment grade may be established either through the underlying rating of the borrower by a nationally recognized statistical rating organization, such as Moody's Investors Service or Standard & Poor's Ratings Services, or through "credit enhancement," such as an insurance policy issued by a qualified insurer or letter of credit issued by a bank. If the bonds are privately placed, the placement must be with qualified institutional buyers as defined in § 144A of the Securities Act of 1933, as amended, or with accredited investors as set forth in Regulation D promulgated under the Securities Act of 1933, as amended. No exceptions shall be made to this policy.

4. Without the prior approval of the Manager of Revenue and the City Attorney, no officer, employee, or agent of the City shall approve the offering document of the borrower or authorize the publication or distribution of the offering document. However, it shall be the responsibility of the Planning Office or the Mayor's Office of Economic Development and International Trade, whichever of them is involved, to review the offering document for obviously untrue or misleading statements of material fact and call to the attention of the applicant/borrower the potential for securities law violations.

5. Disclosure and continuing disclosure requirements under Rule 15c2-12 of the Securities and Exchange Commission shall be undertaken and satisfied by the borrower and set forth specifically in the bond documents; however, in order to more fully assure compliance, both the borrower and the bond trustee (acting as a dissemination agent) shall be responsible for distribution of the annual and other more frequent disclosures, as necessary. No undertaking (as defined in Executive Order No. 114) to comply with continuing disclosure requirements shall be binding upon the City without the prior written approval of the Manager of Revenue. The requirements and policies of Executive Order No. 114 are not superseded by this executive order.

6. Fees to be paid by the applicant/borrower for the work attendant to reviewing, processing, and approving bond documents may be established by the Planning Office and the Mayor's Office of Economic Development and International Trade, subject to the approval of the Mayor upon the recommendation of the Manager of Revenue. Fees shall be uniform for the particular type of bonds to be issued for all applicants, but fees may be reduced for failed or withdrawn applications. The fees of counsel retained by the City for bond projects shall be paid either from proceeds of the sale of the issue or directly by the applicant-borrower.
7. Indemnifications for liabilities of the City, its officers, employees, and agents shall be obtained directly from the borrower, and, depending on the ability of the borrower to meet such contingent liabilities, the borrower's indemnities shall be further secured by such guarantees as deemed appropriate by the Manager of Revenue.

8. Should any one or more of the parties concerned with a particular bond application (such as the developer; counsel to the developer; the issuer; bond counsel to the issuer; remarketing agents; if any, underwriters; underwriter's counsel; trustee; counsel to the trustee; guarantor; guarantor's counsel; and co-bond counsel) become aware of a potential conflict of interest or other question of an ethical nature regarding the borrowing, that possibility shall be disclosed in writing to the Manager of Revenue and the City Attorney, each of whom, working jointly or separately, shall undertake the investigation deemed necessary as the circumstances dictate; and should the ethical question be then considered significant by either of them, the Mayor shall be informed in order to take whatever action the Mayor deems appropriate, including the rejection of the application.

9. The Planning Office or the Mayor's Office of Economic Development and International Trade shall, at the time an inducement ordinance is scheduled for action by the City, be prepared to answer questions from the City's elected officials on the following topics:

a. Why are these bonds being issued?

b. How are the proceeds of the bonds going to be used?

c. What is the nature of these bonds?

1. Are they for industrial or commercial development?

2. How will my constituency benefit?

3. Will they be paid from below-market rentals, in part?

4. Are other governmental or civic units involved?

d. What circumstances might interfere with the payment of debt service on the bonds? Will the City be protected from financial exposure?

e. What options do the bondholders have if project revenues are insufficient to make scheduled payments of interest or principal?
f. Has this borrower defaulted on previous obligations? When? What happened? Was there a bankruptcy?

10. Offering documents that do not state that the City, as issuer, makes no warranty or representation as to the completeness or accuracy of the information relating to the borrower and to information within the control of the borrower contained in the offering document shall not be approved by the City. The benefited entity shall agree to indemnify and hold harmless the City, its officers, and employees from costs of defending the City, its officers, and employees in actions for damages relating to the issuance of the bonds, and from damages resulting from the negligence of the City in processing and issuing the bonds.

11. The Planning Office and Mayor's Office of Economic Development and International Trade shall jointly administer the bond volume cap allocation that is awarded to the City pursuant to the Colorado Private Activity Bond Ceiling Allocation Act, Part 17 of Article 32 of Title 24, C.R.S., as amended. The Planning Office and the Mayor's Office of Economic Development and International Trade shall make joint recommendations to the Mayor on how to maximize the use of such bond volume cap allocation. If agreement cannot be reached on a joint recommendation, each agency shall make its recommendation to the Mayor and the Mayor may accept either of the recommendations or any other apportionment the Mayor deems to be in the best interest of the City.
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Approved for Legality:

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