

RESOLUTION NO. 1069b

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ESTABLISHING POLICIES FOR POST ISSUANCE COMPLIANCE RELATING TO GOVERNMENTAL BONDS.

WHEREAS, the City Council of Gig Harbor periodically desires to issue governmental bonds; and

WHEREAS, Federal tax law suggests written procedures to verify compliance with federal tax law following the issuance of bonds and during the life of the bond issue; and

WHEREAS, the City's bond counsel recommended that the City adopt written procedures relating to post issuance compliance for governmental bonds; and now, therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

The City Council hereby adopts the Post Issuance Compliance Policy attached hereto as Exhibit "A" and incorporated herewith by this reference as the Post Issuance Compliance Policy for the City of Gig Harbor.

PASSED by the City Council this 13th day of March, 2017.

APPROVED:


MAYOR, JILL GUERNSEY

ATTEST/AUTHENTICATED:



CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM;
OFFICE OF THE CITY ATTORNEY:

BY: 

ANGELA G. SUMMERFIELD

FILED WITH THE CITY CLERK: 03/02/2017
PASSED BY THE CITY COUNCIL: 03/13/17
RESOLUTION NO. 1069b

Governmental Bonds

**CITY OF GIG HARBOR, WASHINGTON
POST ISSUANCE COMPLIANCE POLICY**

This policy is intended to guide the City in meeting its obligations under applicable statutes, regulations and documentation associated with publicly offered and privately placed securities of the City. This policy addresses obligations of the City that arise and will continue following the issuance of securities. These obligations may arise as a result of federal tax law (with respect to tax-exempt securities) and securities laws (with respect to ongoing disclosure) or as a result of contractual commitments made by the City. This policy outlines obligations that may be applicable to each issue of securities and identifies the party to be responsible for monitoring compliance. In the City, the Finance Director will be responsible for ensuring that the policy is followed and checklists and records maintained. The Finance Director may delegate responsibility to employees and outside agents for developing records, maintaining records and checklists. The City will provide educational opportunities (opportunities to attend educational programs/seminars on the topic) for the parties identified in this policy with responsibilities for post-issuance compliance in order to facilitate their performance of these obligations.

A. Transcripts.

1. The City's bond counsel shall provide the City with two copies of a full transcript related to the issuance of securities (for each issue). The transcript shall be delivered in the following form: one bound paper copy and one USB key and transcripts shall be delivered to the City within six months following the date of issuance of securities. It is expected that the transcript will include a full record of the proceedings related to the issuance of securities, including proof of filing an IRS Form 8038-G or 8038-GC, if applicable.

2. Bond transcripts will be retained by the following parties and in the following locations within the City: Finance Director's office.

B. Federal Tax Law Requirements (Applicable only if the securities are issued as "tax-exempt" securities).

1. *Use of Proceeds.*

a. If the project(s) to be financed with the proceeds of the securities will be funded with multiple sources of funds, the City will adopt an accounting methodology that:

♦ maintains each source of funding separately and monitors the actual expenditure of proceeds of the securities;

♦ commingles the proceeds and monitors the expenditures on a first in, first out basis; or

♦ provides for the expenditure of funds received from multiple sources on a proportionate basis.

b. Records of expenditures (timing of expenditure and object code) of the proceeds of securities will be maintained by the Finance Director.

c. Records of investments and interest earnings on the proceeds of securities will be maintained by the Finance Director. Funds may be pooled for investment purposes, and interest earnings allocated based on proportionate cash balances. Records of investments will include the amount, the date each investment is made, the date each investment matures and if sold prior to maturity, its sale date, and its interest rate and/or yield. Interest earnings on investments bond reserve funds (whether or not funded from bond proceeds) will be similarly tracked and maintained.

d. Records of interest earnings on reserve funds maintained for the securities.

2. *Arbitrage Rebate.* The Finance Director of the City ("Rebate Monitor") will monitor compliance with the arbitrage rebate obligations of the City for each issue ("issue") of securities which are described in further detail in the tax certificate if any, executed by the City for each issue and included in the transcript for the issue. If the City did not execute a tax certificate in connection with an issue, the Rebate Monitor should consult with the City's bond counsel regarding arbitrage rebate requirements. The City will provide educational opportunities (opportunities to attend educational programs/seminars on the topic) for the Finance Director in order to facilitate his/her performance of these obligations.

a. If the Rebate Monitor determines that the total principal amount of tax-exempt governmental obligations (including all tax-exempt leases, etc.) of the City issued by or on behalf of the City and subordinate entities during the calendar year, including the issue, will not be greater than \$5,000,000, the Rebate Monitor will not be required to monitor arbitrage rebate compliance for the issue, except to monitor expenditures and the use of proceeds after completion of the project (see #3 below). For purposes of this paragraph, tax-exempt governmental obligations issued to currently refund a prior tax-exempt governmental obligation will only be taken into account to the extent they exceed the outstanding amount of the refunded bonds.

b. If the Rebate Monitor determines that the total principal amount of tax-exempt governmental obligations (including all tax-exempt leases, etc.) of the City issued or incurred any calendar year is greater than \$5,000,000, the Rebate Monitor will monitor rebate compliance for each issue of tax-exempt governmental obligations issued during that calendar year.

i. *Rebate Exceptions.* The Rebate Monitor will review the tax certificate, if any, in the transcript in order to determine whether the City is expected to comply with a spending exception that would permit the City to avoid having to pay arbitrage rebate. If the tax certificate identifies this spending exception (referred to as the six-month exception, the 18 month exception or the 2-year exception), then the Rebate Monitor will monitor the records of expenditures (see B.1 above) to determine whether the City met the spending exception (and thereby avoid having to pay any arbitrage rebate to the federal government). If the City did not execute a tax certificate in connection with an issue, the Rebate Monitor should consult with bond counsel regarding the potential applicability of spending exceptions.

ii. *Rebate Compliance.* If the City does not meet or does not expect to meet any of the spending exceptions described in (i) above, the City will:

(1) review the investment earnings records retained as described in B.1 above. If the investment earnings records clearly and definitively demonstrate that the rate of return on investments of all proceeds of the issue were lower than the yield on the issue (see the tax certificate in the transcript), then the City may opt not to follow the steps described in the following paragraph.

(2) retain the services of an arbitrage rebate consultant in order to calculate any potential arbitrage rebate liability. The rebate consultant shall be selected no later than the completion of the project to be financed with the proceeds of the issue. A rebate consultant may be selected on an issue by issue basis or for all securities issues of the City. The Rebate Monitor will obtain the names of at least three qualified consultants and request that the consultants submit proposals for consideration prior to being selected as the City's rebate consultant. The selected rebate consultant shall provide a written report to the City with respect to the issue and with respect to any arbitrage rebate owed if any.

(3) based on the report of the rebate consultant, file reports with and make any required payments to the Internal Revenue Service, no later than the fifth anniversary of the date of each issue (plus 60 days), and every five years thereafter, with the final installment due no later than 60 days following the retirement of the last obligation of the issue.

c. *Yield Reduction Payments.* If the City fails to expend all amounts required to be spent as of the close of any temporary period specified in the Tax Certificate (generally 3 years for proceeds of a new money issue and 13 months for amounts held in a debt service fund), the City will follow the procedures described in B.2.b.ii above to determine and pay any required yield reduction payment.

3. *Unused Proceeds Following Completion of the Project.* Following completion of the project(s) financed with the issue proceeds, the Finance Director will:

a. review the expenditure records to determine whether the proceeds have been allocated to the project(s) intended (and if any questions arise, consult with bond counsel in order to determine the method of re-allocation of proceeds); and

b. direct the use of remaining unspent proceeds (in accordance with the limitations set forth in the authorizing proceedings (i.e., bond ordinance) and if no provision is otherwise made for the use of unspent proceeds, to the redemption or defeasance of outstanding securities of the issue.

4. *Use of the Facilities Financed with Proceeds.* In order to maintain tax-exemption of securities issued on a tax-exempt basis, the financed facilities (projects) are required to be used for governmental purposes during the life of the issue. The Finance Director of the City will monitor and maintain records regarding any private use of the projects financed with tax-exempt proceeds. The IRS Treasury Regulations prohibit private business use (use by private parties (including nonprofit organizations and the federal government)) of tax-exempt financed

facilities beyond permitted *de minimus* amounts unless cured by a prescribed remedial action. Private use may arise as a result of:

- a. Sale of the facilities;
- b. Lease of the facilities (including leases, easements or use arrangements for areas outside the four walls, e.g., hosting of cell phone towers);
- c. Management contracts (in which the City authorizes a third party to operate a facility (e.g., cafeteria);
- d. Preference arrangements (in which the City grants a third party preference of the facilities, e.g., preference parking in a public parking lot).

If the Finance Director identifies private use of tax-exempt debt financed facilities, the Finance Director will consult with the City's bond counsel to determine whether private use will adversely affect the tax-exempt status of the issue and if so, what remedial action is appropriate.

5. *Records Retention.*

- a. Records with respect to matters described in this Subsection B will be retained by the City for the life of the securities issue (and any issue that refunds the securities issue) and for a period of three years thereafter.
- b. Records to be retained:
 - (i) The transcript;
 - (ii) Arbitrage rebate reports prepared by outside consultants;
 - (iii) Work papers that were provided to the rebate consultants;
 - (iv) Records of expenditures and investment receipts (showing timing of expenditure and the object code of the expenditure and in the case of investment, timing of receipt of interest earnings). (Maintenance of underlying invoices should not be required provided the records include the date of the expenditure, payee name, payment amount and object code; however, if those documents are maintained as a matter of policy in electronic form, then the City should continue to maintain those records in accordance with this policy);
 - (v) Copies of all certificates and returns filed with the IRS (e.g., for payment of arbitrage rebate); and
 - (vi) Copies of all leases, user agreements for use of the financed property (agreements that provide for use of the property for periods longer than 30 days), whether or not the use was within the four walls (e.g., use of the roof of the facility for a cell phone tower).

C. Ongoing Disclosure. Under the provisions of SEC Rule 15c2-12 (the "Rule"), underwriters are required to obtain an agreement for ongoing disclosure in connection with the public offering of securities. Unless the City is exempt from compliance with the Rule as a result of certain permitted exemptions, the transcript for each issue will include an undertaking by the City to comply with the Rule. The Finance Director of the City will monitor compliance by the City with its undertakings. These undertakings may include the requirement for an annual filing of operating and financial information and will include a requirement to file notices of listed "material events." For some types of material events (early bond calls), the State's fiscal agent has undertaken the responsibility of filing notice of the applicable material event.

D. Other Notice Requirements. In some instances, the proceedings authorizing the issuance of securities will require the City to file information periodically with other parties, e.g., bond insurers, banks, rating agencies. The types of information required to be filed may include (1) budgets, (2) annual financial reports, (3) issuance of additional debt obligations, and (4) amendments to financing documents. The Finance Director of the City will maintain a listing of those requirements and monitor compliance by the City.

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