

RESOLUTION NO. 2551

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, ADOPTING POST BOND ISSUANCE COMPLIANCE POLICIES AND PROCEDURES.

WHEREAS, Federal regulations, specifically SEC Rule 15c2-12, require continuing disclosure of municipal bond information; and

WHEREAS, the intent of these regulations is to provide greater transparency in the municipal bond market and more access to related bond information; and

WHEREAS, the City Council desires to adopt Policies and Procedures to meet compliance requirements;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, WASHINGTON HEREBY RESOLVES AS FOLLOWS:

Section 1. The following post bond issuance compliance policies and procedures are hereby adopted as follows:

These policies and procedures are intended to guide the City of Bonney Lake, Washington (the "City"), in meeting its obligations under applicable statutes, regulations and documentation associated with publicly offered and privately placed bonds of the City. These procedures address obligations of the City that arise and will continue following the issuance of bonds. These obligations may arise as a result of federal tax law (with respect to tax-exempt or other tax-benefitted bonds) and securities laws (with respect to ongoing disclosure) or as a result of contractual commitments made by the City.

This resolution summarizes the obligations that may be applicable to each bond issue and identifies the party responsible for monitoring compliance. In the City, the Chief Financial Officer will be responsible for ensuring that the procedures are followed and checklists and records maintained. The Chief Financial Officer 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 memorandum with responsibilities for post-issuance compliance to facilitate their performance of these obligations.

A. **Transcripts.**

1. The City's bond counsel will provide the City with two copies of a full transcript related to the issuance of each bond issue. The transcript will be delivered (typically in bound paper form or on CD ROM, or both) to the City within six months

following the date of issuance of the bonds. It is expected that the transcript will include a full record of the proceedings related to the bond issuance, including proof of filing an 8038-G or 8038-GC, if applicable.

2. Bond transcripts will be retained by the Chief Financial Officer in his or her official City office.

B. Federal Tax Law Requirements (Applicable only if the bonds are issued as tax-exempt or other tax-benefitted bonds).

1. *Use of Proceeds.*

a. If the project(s) to be financed with the proceeds of the bonds 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 bonds;

◆ 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 bonds will be maintained by the Chief Financial Officer.

c. Records of investments of and interest earnings on proceeds of bonds will be maintained by the Chief Financial Officer. Such records should include the amount of each investment, 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 proceeds will be deposited in the fund in which the proceeds of the bonds were deposited (if not, then the plan for use of interest earnings will be discussed with the City's bond counsel).

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

2. *Arbitrage Rebate.* The Chief Financial Officer of the City ("Rebate Monitor") will monitor compliance with the arbitrage rebate obligations of the City for each issue ("issue") of bonds 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 Chief Financial Officer 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, plus such additional amount not exceeding \$10,000,000 as is to be spent for the construction of public school facilities, 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 obligations.

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, plus such additional amount not exceeding \$10,000,000 as is to be spent for the construction of public school facilities, 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 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 6-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:

x. 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.

y. 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 bonds 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.

z. 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 Chief Financial Officer 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 bonds of the issue.

4. *Use of the Facilities Financed with Proceeds.* To maintain the tax status of bonds issued on a tax-exempt or tax-benefitted basis, the financed facilities (projects) are required to be used for governmental purposes during the life of the issue. The Chief Financial Officer will monitor and maintain records regarding any private use of the projects financed with proceeds of tax-exempt or tax-benefitted bonds. The IRS Treasury Regulations prohibit private business use (use by private parties including nonprofit organizations and the federal government) of facilities financed with tax-exempt or tax-benefitted bonds beyond permitted 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., a golf course or 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 Chief Financial Officer identifies potential private use of facilities financed with tax-exempt or tax-benefitted bonds, the Chief Financial Officer will consult with the City's bond counsel to determine whether that private use will adversely affect the tax status of the bonds 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 bonds issue (and any issue that refunds the bonds 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 so long as 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 that 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. Continuing Disclosure/Ongoing Disclosure. Under the provisions of SEC Rule 15c2-12 (the "Rule"), participating underwriters are required to obtain an agreement (sometimes called an "undertaking") for ongoing disclosure (the "Continuing Disclosure Agreement") from the issuer (or other "obligated person") in connection with the public offering of bonds. Unless the City is exempt from compliance with the Rule as a result of certain permitted exemptions, the transcript for each issue will include the applicable Continuing Disclosure Agreement. The Continuing Disclosure Agreement may be set forth in the authorizing ordinance or in a certificate or agreement delivered at closing.

The Chief Financial Officer of the City will monitor compliance by the City with its Continuing Disclosure Agreements. These agreements typically include the requirement for an annual filing of operating and financial information and the requirement to file notices of certain listed events. Currently, all such filings must be made on the web-

based Electronic Municipal Market Access system (“EMMA”) maintained by the Municipal Securities Rulemaking Board (“MSRB”). The Chief Financial Officer will be registered with EMMA to make any required filings and will be familiar with the procedures and formats for EMMA filings. The Chief Financial Officer may designate additional City staff members who will register with EMMA.

In order to monitor compliance by the City with its Continuing Disclosure Agreements, the Chief Financial Officer will be responsible for the following:

- A. Assist in the preparation or review of operating and financial information in the form required by each Continuing Disclosure Agreement. Under its current Continuing Disclosure Agreements, the City is required to file its annual financial statements (which may or may not be audited) on EMMA by September 30 each year. If audited financial statements are not available by that date, they must be filed on EMMA within 10 business days of when they are available from the State Auditor’s Office.
- B. Maintain a calendar, with appropriate reminder notifications, listing the filing due dates for operating and financial information that must be completed by or before September 30 of each year (or any earlier or later deadline set forth in a Continuing Disclosure Agreement).
- C. Ensure timely dissemination of the operating and financial information, in the format and manner provided in each Continuing Disclosure Agreement, which will include transmitting such filing to the MSRB through EMMA at www.emma.msrb.org in the format prescribed by the MSRB.
- D. Monitor the occurrence of an “Listed Event” (as defined in each Continuing Disclosure Agreement) and timely file notice of the occurrence of any Listed Event within 10 business days (or such other time period as set forth in the Continuing Disclosure Agreement) of the occurrence of the Listed Event.
- E. Ensure timely filing of notice of any failure to perform under a Continuing Disclosure Agreement, if and as required by the Continuing Disclosure Agreement.
- F. Monitor the performance of any dissemination agent engaged by the City to assist in the performance of any obligation under a Continuing Disclosure Agreement.

The City may elect to retain a dissemination agent (also known as a disclosure agent) – an outside service that would handle continuing/ongoing disclosure filings for the City. The Chief Financial Officer would be responsible for managing any such relationship.

For some types of listed events (early bond calls, for example), the State’s fiscal agent typically is responsible for filing notice of the applicable event. Certain listed events require the City to determine whether an occurrence is “material,” and for those events, the Chief Financial Officer may wish to consult bond counsel. (An example of such a

listed event, which must be filed within 10 business days of being notified, is a change in the bond rating for the City.)

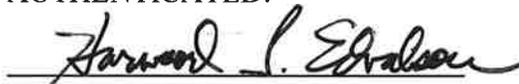
D. Other Notice Requirements. In some instances, the proceedings authorizing the issuance of bonds will require the City to file information periodically with other parties, e.g., bond insurers, banks, rating agencies. The types of information required to be filed may include (1) budgets, (2) annual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

PASSED BY THE CITY COUNCIL this 13th day of September, 2016.



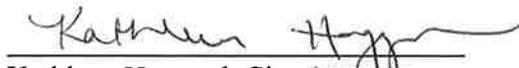
Neil Johnson, Jr., Mayor

AUTHENTICATED:



Harwood T. Edvalson, City Clerk

APPROVED AS TO FORM:



Kathleen Haggard, City Attorney

City of Bonney Lake, Washington
City Council Agenda Bill (AB)

Department/Staff Contact: Executive / Don Morrison	Meeting/Workshop Date: 13 September 2016	Agenda Bill Number: AB16-105
Agenda Item Type: Resolution	Ordinance/Resolution Number: Res. No. 2551	Councilmember Sponsor: Lewis

Agenda Subject: Adoption of Post Bond Issuance Compliance Policies and Procedures

Full Title/Motion: A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Adopting Post Bond Issuance Compliance Policies And Procedures.

Administrative Recommendation: Approve

Background Summary: Over the past few years, the U.S. Securities and Exchange Commission (SEC) has taken a larger role in overseeing and regulating municipal bonds. One fairly recent rule is Rule 15c2-12 which relates to Electronic Municipal Market Access (EMMA). This includes requirements for continuing disclosure for bond issuers in order to provide greater transparency in the municipal bond market and more access to information. The City is required to adopt "Post Bond Issuance Compliance Procedures". An adopted policy needs to be in place before the Official Statement is released and the bonds sold at the end of the month. The policies and procedures contained in Resolution No. 2551 were developed by our bond attorney to meet these Federal SEC requirements.

Attachments: Resolution No. 2551

BUDGET INFORMATION				
Budget Amount	Current Balance	Required Expenditure	Budget Balance	Fund Source
				<input type="checkbox"/> General <input type="checkbox"/> Utilities <input type="checkbox"/> Other
Budget Explanation: NA				

COMMITTEE, BOARD & COMMISSION REVIEW			
Council Committee Review:	<i>Approvals:</i>	Yes	No
Date:	Chair/Councilmember	<input type="checkbox"/>	<input type="checkbox"/>
	Councilmember	<input type="checkbox"/>	<input type="checkbox"/>
	Councilmember	<input type="checkbox"/>	<input type="checkbox"/>
Forward to:	Consent Agenda:	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Commission/Board Review:			
Hearing Examiner Review:			

COUNCIL ACTION	
Workshop Date(s):	Public Hearing Date(s):
Meeting Date(s):	Tabled to Date:

APPROVALS		
Director:	Mayor:	Date Reviewed by City Attorney: (if applicable)