

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date:	October 7, 2013
	Agenda Item No.	21
	Roll Call No.	<u>13-1561</u>
	Communication No.	<u>13-507</u>
	Submitted by:	Scott E. Sanders, Finance Director

AGENDA HEADING:

Set date for public hearings regarding the issuance of general obligation bonds to provide funds to pay costs of the judgment in the franchise fee litigation and related post-judgment interest thereon.

SYNOPSIS:

Set date for public hearing regarding the issuance of general obligation bonds. This hearing is the first step in issuing debt for the payment on the judgment involving the franchise fee litigation. The hearing amount is set at not-to-exceed \$42 million to ensure sufficient proceeds will be raised to cover the judgment, cost of issuance, and post-judgment interest that will accrue from the date of the judgment until the bond sale is closed and payment is made to the class administrator. The estimated costs of the three (3) components are \$39,929,642 payment to the class which includes attorney fees and administration costs; \$650,000 for cost of issuance; and \$350,000 for post-judgment interest accrued between the date of judgment and the delivery of funds anticipated to be in mid-December. A Council workshop discussion is scheduled for October 21st to provide further description of the anticipated term of the bonds and the payment strategy. The sale of the bonds is scheduled for November 20th.

FISCAL IMPACT:

Amount: Estimated at \$40,930,000 plus interest; consisting of \$39,929,642 in judgment costs, \$650,000 in cost of issuance expenses and approximately \$350,000 in post-judgment interest.

Funding Source: Either Franchise Fee Revenue – Tort Fund – GE005, LGL040000 if available via voter referendum, or Property Tax Debt Service Levy – Debt Service Fund – DS001, FIN900100.

ADDITIONAL INFORMATION:

A public hearing must be held prior to any borrowing by the City. The final sizing will occur prior to the workshop discussion scheduled for October 21st.

In a 2006 decision (Kragnes v. City of Des Moines, 714 N.W.2d 632 (Iowa 2006)), the Iowa Supreme Court ruled that the gas and electric franchise fees imposed by the City could constitute unauthorized taxes if the fees were not reasonably related to the City’s administrative and regulatory expenses incurred in the exercise of its police power. The Iowa Supreme Court also upheld a decision by the Iowa District Court for Polk County to certify a class action seeking to recover any excess franchise fees. The Iowa District Court for Polk County subsequently certified a class for purposes of the litigation and following a trial on the merits, determined that the amount of the franchise fees received by the City exceeded the costs allowable under the Iowa Supreme Court’s ruling, and ordered a refund in an amount to be determined. On March 2, 2012, the Iowa Supreme Court affirmed the District Court’s certification of the class (Kragnes v. City of Des Moines, 810 N.W.2d 492 (Iowa 2012)), and

held that members of the class are entitled to a refund of the fees that were collected in excess of the amounts approved in the earlier ruling. The case was remanded to the District Court to determine how to implement the refund and for the award of attorneys' fees. Although no specific judgment has been entered by the District Court as of the present date, City staff estimates that final judgment in the litigation will be entered in the near future in the amount of approximately \$40 million, and that the City will be required to pay that amount to the plaintiff class within the next five (5) months. Post-judgment interest will accrue until the judgment is paid in full.

In 2009, during the course of the litigation, Iowa law was amended to specify that a franchise fee assessed by a city may be based upon a percentage of gross revenues generated from sales of the franchise within the city not to exceed five (5) percent, without regard to the City's cost of inspecting, supervising, and otherwise regulating the franchise. The legislation, therefore, authorized the collection and usage of City's current franchise fees. However, the legislation was not retroactive and did not eliminate the refund claims asserted in the pending litigation. Earlier this year, Iowa law was further amended to allow the City to hold an election on a proposal to increase its current franchise fees to seven (7) and one-half percent as a means of raising the funds necessary to pay the costs of the judgment. As of the date hereof, the City has not determined whether to call for such an election. The City is authorized under Iowa law to issue general obligation bonds for the purpose of financing the judgment following a public hearing on the bond proposal.

PREVIOUS COUNCIL ACTION(S): NONE

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

October 21, 2013: Council Workshop discussion on terms of debt issuance and impact on general obligation debt capacity. Hold hearing and approval to proceed with issuance of 2013 General Obligation Bonds.

November 4, 2013: Direct sale of bonds and approval of preliminary offering statement.

November 20, 2013: Special Council meeting to sell bonds and award lowest bid.

December 9, 2013: Final approvals including authorization to levy taxes if other sources are not available.

December 17, 2013 or thereabouts: Close bond sale and delivery of proceeds. Payment made to administrator.

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